No. 4 of 1974
IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 5 of 1974

ON APPEAL
FROM THE COURT OF APPEAL IN SINGAPORE

BETWEEN:

MARIA CHIA SOOK LAN — Appellant

- and -

BANK OF CHINA — Respondents

CASE FOR THE RESPONDENTS

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1. This is an appeal from a judgment of the Court of Appeal of Singapore (Wee Chong Jin C.J., F.A. Chua J. and T. Kulasekaram J.) dismissing with costs the Appellant's appeal from a judgment in the High Court of Singapore dated 6th July 1972 whereby the learned trial Judge (Tan Ah Tah J.) gave judgment in both actions in favour of the Respondents. p.226 p.192

2. These actions are concerned with letters of guarantee and a deposit of title deeds by the Appellant guaranteeing and securing advance made by the Respondents to the Dwidaya Trading Company. The first action was brought by the Respondents on 6th October 1967 to obtain payment of $900,000 under three letters of guarantee signed by the Appellant guaranteeing payment of all advances made by the Respondents to the Dwidaya Trading Company. The second action was brought by the Appellant on 20th October 1967 claiming relief in respect of the deposit of the title deeds of the Appellant's property at 28 Cuscaden Road, Singapore with the Respondents to secure all advances made by the Respondents to the Dwidaya Trading Company. Although there were separate pleadings in both actions, they were both tried together and the evidence given in one action was by agreement of the parties admissible in the other action. A single judgment in respect of both actions was given by Tan Ah Tah J.

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and the Court of Appeal.

3. The facts which give rise to the present appeal are fully set out in the judgment of the Court of Appeal. The Respondents will refer to the Appellant's husband, Yo Kian Tohan as "Yo", and the Dwidaya Trading Company - a sole proprietorship firm owned by him - as "the Company" in the same was as in the judgment of the Court of Appeal. The Respondents will also in the same way refer to the principal documents as follows:

"P1" pp 417-420 — The letter of guarantee dated 2nd October 1961, for $100,000

"P4" pp 421-423 — The Confirmation of Deposit of Title Deeds of 28 Cuscaden Road

"P2" pp 424-427 — The letter of guarantee dated 12th January 1962 for $200,000

"P3" pp 441-444 — The letter of guarantee dated 27th January 1965 for $600,000

4. The issues which arise on this appeal are:

(1) Whether the concurrent findings of fact by the Court of Appeal and the Trial Judge and the findings as to the credibility of the witnesses should be overuled.

(2) Whether the letters of guarantee (P1, P2 and P3) and the Confirmation of Deposit of Title Deeds (P4) were procurred by undue influence.

(3) Whether the second letter of guarantee (P2) and the Confirmation of Deposit of Title Deeds (P4) can be avoided on the grounds of non est factum.

(4) Whether the Consent Order obtained by the Respondents in respect of 28 Cuscaden Road should be set aside.

(5) Whether the deposit of title deeds of 28 Cuscaden Road was void and unenforceable under the provisions of the Registration of Deeds Act.

(6) Whether the Appellant was estopped from relying on the allegations made by her in respect of the deposit of title deeds and of P4.

The Appellant advances other allegations at various stages of these proceedings; these were subsequently abandoned or withdrawn. Among the allegations not

now in issue but which were made by the Appellant were:

(a) The Respondents had by threats intimidation and undue influence procurred Yo to exercise his will dominion and influence over the Appellant to induce her to sign P1 and had, as agent for the Respondent, falsely concealed the true nature of the document from her.

The Appellant subsequently admitted liability for this guarantee.

(b) The Respondents procured the Appellant's signature to P2 (which was said to be undated and to contain blanks) by falsely and fraudulently stating that it was a formality to assist Yo in the business of the Company and by not revealing the true nature and import of the document to her.

(c) The Respondents procured the Appellant's signature to P2 by saying that it was to be a substitute for P1.

(d) The Appellant did not give her consent to the Order in O.S. 185 of 1966 in respect of 28 Cuscaden Road. If any consent was given, it was given by Yo acting under the threats, intimidation and undue influence of the Respondents.

(e) The Respondents or the Respondents in conspiracy with YO fraudulently concealed from the Appellant the true purpose for which they required her signature to P4 and fraudulent misrepresented the true nature of the transaction.

5. Tan Ah Tah J. gave judgment on the 6th July 1972 in favour of the Respondents in both actions after a trial lasting many days during which several witnesses were called by the parties. On her appeal to the Court of Appeal, the Appellant did not contest the trial judge's finding that there had been no fraud by the Respondents or any conspiracy between them and Yo; that the Appellant had given her consent to the Consent order in O.S. No.185 of 1966; that P4 was not void under the provisions of the Stamp Ordinance. The Court of Appeal upheld all the findings of fact made by the learned trial judge and affirmed his judgment and

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dismissed the appeal.

6. The Respondents will deal with each issue in turn.

7. The concurrent Findings of Fact by the Court of Appeal and the trial judge and the findings as to the credibility of the witnesses.

The Appellant and Yo's evidence as to the facts relating to all the main issues in these actions was very different to the evidence given by the officers of the Respondents and the Solicitors formerly employed by her. The learned trial judge made a number of important findings of fact and the Court of Appeal upheld his findings; the most important findings of fact were:

p.202 p.247 (1) The Appellant had failed to establish that her assent to P3 was procured by undue influence. Neither Loke or Djeng exercised any undue influence over her or used pressure threats or intimidation to make her sign this letter of guarantee.

p.203 p.249 (2) The Appellant had failed to establish that her assent to P2 and P4 or any other transaction was procured by undue influence. Neither Loke, Djeng or Yo exercised undue influence over her in any transactions.

p.199-202 p.246-251 (3) P2, P3 and P4 were explained to the Appellant who fully understood them before she signed them. They did not contain blanks.

p.204 p.250 (4) The Appellant had failed to prove that P2 was fundamentally different to the document she believed it to be.

p.204 p.251-2 (5) The Appellant had failed to prove that P4 was fundamentally different to the document she believed it to be. Her English was sufficiently proficient to have enabled her to understand the document when she read it at least to the extent to realize her liability was not limited to $100,000.

p.196 p.244,250, 252 (6) The Appellant was a woman of considerable business acumen and ability

(7) The Appellant was not a witness of truth

and worthy of credit.

The Respondents will deal in more detail with these findings hereafter but it is convenient first to consider the findings of the trial judge as to the credibility of the witnesses. Tan Ah Tah J. after hearing all the witnesses found that the Appellant and Yo were both prepared to tell lies whenever it suited them and each of them did tell a number of lies; He also found that they were untruthful on a number of specific occasions and apart from one specific matter - the presence of Yo on the signing of P3 - he accepted the evidence of the 2 sub managers of the Respondents Loke Chan Hing ("Loke") and Djeng Hsueh Heng ("Djeng") wherever their testimoney differed from that of the Appellant and Yo. The learned trial judge found that Loke and Djeng, Mr. Tan Wee Tong and Mr. Selvadurai (solicitors formerly employed by the Appellant), and Mr. Low Sin Chan and Mr. Ng Ling Cheow to be honest. The Respondents respectfully submit that the Court of Appeal was correct in holding that they would not disturb the judge's finding as to the credibility of the witnesses; a judgement on the credibility of the witnesses could only be made by someone who had for days heard and observed the witnesses as they gave evidence: Onassis and Calogeropoulos v. Vergottis [1968] 2 Lloyd's Rep. 403. Furthermore there was clear and sufficient evidence to justify these findings.

8. Undue Influence

The Respondents primarily rely on the concurrent findings of fact made by the Courts in Singapore as hereafter set out. The Appellant contended that P2, P3 and P4 should be set aside because the Respondents had induced the Appellant to sign the documents through the exercise of undue influence over her. The Appellant's arguments in relation to P3 were different to those advanced in relation to P2 and P4 and it is convenient to deal with them separately. At the trial the Appellant's case as to P2 and P4 was that (a) Yo, as agent of the Respondents, has procured the execution of these documents by the exercise of undue influence over the Appellant and (b) that in circumstances where the Appellant did not understand English well and has difficulty in communicating with the Respondents' officials and had not received any proper explanation of the documents, any independent advice and any consideration, the Respondents had exercised undue influence over the Appellant. It was apparently p.40

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admitted during the trial that Yo did not exercise undue influence on the Appellant and the trial judge found that there was no evidence of undue
p.203 influence. Furthermore it was conceded (at any rate in the Court of Appeal) that it is well settled the burden of proving undue influence between husband and wife lay on the party alleging this: Howes v. Bishop [1909] 2 K.B. 390; Bank of Montreal v. Stuart [1911] A.C. 120. Moreover, if
p.203 there was any undue influence by Yo the judge's findings (not now in issue) that there was no conspiracy between Yo and the Respondents must entail the inference that the Respondents knew nothing of any undue influence; they gave consideration for P1 and P4 and are not affected by any undue influence which might have been exercised by Yo. The Respondents respectfully submit that the trial judge was correct in finding that the Appellant's assent to these documents was not procured by the exercise of undue influence by Yo.

9. As to the second way in which the allegations of undue influence as to P2 and P4 were argued at the trial, the learned trial judge's findings of
p.196 fact are most material. He found that the Appellant could converse in English and Malay and her English was understandable. He found that she was a shrewd woman with considerable business
p.196 ability and experience. In view of her experience and business ability, the learned judge found that
p.203 she did not require independent advice and, if she had required such advice, she could readily have obtained it. He also found that the contents of P2 and P4 has been explained to the Appellant and that she fully understood the contents of both documents before she signed them. Moreover the learned judge found that neither Yo, Loke or Djeng
p.203 had exercised any undue influence over the Appellant
pp246-251 in any of the transactions. He held that consideration was given for both P2 and P4. The Court of Appeal upheld these findings. The Respondent respectfully submit that the weight of the evidence supports the concurrent findings made by the learned trial judge and the Court of Appeal and they were correct in finding that no undue influence had been exercised by the Respondents.

10. In the court of Appeal, the Appellant contended
p.248 that the burden of satisfying the Court that P2 and P4 were not procured by undue influence was on the Respondents. The Court of Appeal rejected this
p.248 submission and held that the burden of proving undue influence was the Appellant's. It was conceded by the Appellant that the relationship

between the Appellant and the Respondents was not within that class giving rise to the presumption of undue influence and that there was no fiduciary relationship between the Appellant and the Respondents giving rise to the presumption of undue influence; the cases on undue influence between hasband and wife relied on by the Appellant in argument - Howes v. Bishop [1909] 2 K.B. 390, Re Lloyds Bank [1930] 1 Ch. 289, Zamet v. Hyman [1961] 1 W.L.R. 1442 - do not support the contention that the burden of proof can be placed on the Respondents; it is established that in a case of undue influence between husband and wife, a wife who alleges undue influence by her husband has the burden of proving undue influence: Mackenzie v. Royal Bank of Canada [1934] A.C. 468. In any event the cases about husband and wife are not apposite to the relationship between two strangers: (cf. Re Lloyd's Bank (supra) at p. 302). The Respondents respectfully submit that the decision of the Court of Appeal is correct in holding that the burden of proving undue influence was the Appellant's and that she had failed to discharge it. p.249

11. Moreover the circumstances relied on by the Appellant do not in any way suggest there was undue influence by the Respondents. The Respondents respectfully submit that the concurrent findings of the trial judge and the Court of Appeal on the circumstances in which P2 and P4 were entered into are correct and supported by the evidence. p.203 pp.247-9

12. It is admitted that there was no fiduciary relationship between the Appellant and Respondents; there is no evidence that the relationship between the Appellant and the Respondents was such as to impose on the Respondents a duty to advise the Appellant or to take care of her in the management and disposal of her property; there is no evidence of a relationship of trust and confidence and none such has been alleged. The decision of the Court of Appeal in Lloyds Bank v. Bundy [1975] 1 Q.B. 326 is therefore not relevant to the present appeal, even if correctly decided. The judgment of the Master of the Rolls went further than was necessary for the decision in that case and in so far as it sought to alter well established principles, the Respondents will respectfully submit it was wrong.

13. In relation to P3 the Appellant conceded that she had to prove that her agreement to sign P3 was procured by undue influence. At the trial numerous p.246 p.201

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allegations about the circumstances of the signing of P3 were made by the Appellant; but before the Court of Appeal, the Appellant's arguments were advanced on the basis of the findings made by the trial judge which the Appellant contended were that (a) she was asked to sign the guarantee in her husband's absence, (b) that she was told that if she did not sign the guarantee the Respondents would sell her shares and make Yo bankrupt. The
p.202 Respondents respectfully submit that the finding of the learned trial judge that Loke and Djeng did not exercise undue influence over the Appellant and did not use pressure threats or intimidation
p.247 and the refusal of the Court of Appeal to interfere with these findings of fact are correct and should not be disturbed. The Appellant had failed on the facts to prove that her assent to P3 was procured by undue influence. If the Appellant is able to set aside these findings of fact, the Respondents respectfully submit that the cases relied on by the Appellant - Williams v. Bayley (1966) 1 H.L. 200 and Mutual Finance v. John Whetton Limited [1937] 2 K.B. 380 - to show that the statements made by Loke amounted to unfair and improper conduction and coercion do not apply to
p.110,112 the facts of this case. The statement by Loke that if a further guarantee was not given, bankruptcy proceedings would have to be taken against the Company which would result in Yo being made bankrupt and the Appellant's shares would have to be sold, was not the threat to prosecute criminal proceedings; it was a statement of the civil position of the Company, Yo and the Appellant and of the rights of the Respondents: Powell v. Hoyland (1851) 6 Ex. 67. Furthermore the cases relied on by the Appellant are distinguishable as they are concerned with the suppression of a crime and as unlike the cases cited, there was also ample consideration by the Respondents for the guarantee: see Flower v. Sadler (1882) 10 Q.B.D. 572.

14. Non est factum

The Appellant contended that P2 and P4 were void on the grounds of non est factum. The Appellant had therefore to prove - and the burden of proof is a heavy one - that the documents she signed were fundamentally or radically different to the documents she believed she was signing and that she took all reasonable precautions in the circumstances: Saunders v. Anglia Building Society [1971] A.C. 1004. The learned trial judge found that there was no
p.202 misunderstanding least of all a fundamental misunderstanding on the part of the Appellant as to either the character or the contents of the

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documents signed by her. The Court of Appeal upheld this finding. The Respondents respectfully submit that these concurrent findings ought not to be disturbed. p.250-2

15. The decision of the trial judge and of the Court of Appeal if supported by the weight of the evidence. The Appellant's case at the trial was that when she signed P2 it was undated and blank and that she was told that she was required to sign it because P1 was of no use. The trial judge found that all the details had been typed onto the form, that he did not believe her statement that she had signed it because she was told P1 was defective, and that the contents of the document has been explained to her and that she had understood them. In the Court of Appeal, the Appellant did not seek to rely on her own evidence (which had been rejected) but on a note of that given by Djeng in cross-examination; this was a new point raised before the trial judge and the only material before the Court of Appeal was a note of the evidence. The note of evidence records that Djeng said "this is a guarantee for money owing on trust receipts. I explained this to the Defendant". The Respondents respectfully submit that this is not the kind of evidence which would enable a Court to find that the Appellant had satisfied the high burden of proof required. In any event a guarantee for money owing in general and money owing on trust receipts is not fundamentally different and there is no evidence that the Appellant considered they were different or fundamentally different or made any enquiries about the difference between the two kinds of guarantee. In view of this and the fact that the Appellant had considerable business acumen and ability and she had signed another guarantee about 3 months before and of the rejection of her evidence by the trial judge and his other findings, the Respondents respectfully submit that the Court of Appeal were correct in upholding the findings of the trial judge. The Appellant had not satisfied the heavy burden of proof.

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16. At the trial the Appellant's contention that P4 should be avoided on grounds of non est factum was based on her own evidence. This was rejected by the trial judge and the Appellant did not seek to rely on it in the Court of Appeal. In the Court of Appeal the Appellant relied on the note of evidence given by Loke about the signing of P4 "Djeng did not exactly tell Defendant the limit was $100,000.... Djeng may have informed her that her

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liability was $100,000.... It is very difficult to recall what Djeng said". Djeng's evidence was
p.113 that he could not recall what he said. On the
pp465-504 basis of this note and of documents showing the
265 limit of the overdraft of the Company, the Appellant contended that the Appellant was told her liability under P4 was limited to $100,000; that therefore the documents she signed being unlimited was fundamentally different to what she believed she was signing. Her own evidence was that she belived that the document was a formality. There is no evidence that he believed it was limited to $100,000. This was a new point taken during the course of the appeal; it was not raised at trial or in the notice of appeal and the judge was not asked to find and did not find whether Djeng told the Appellant that the limit was
p.208 $100,000. A wholly different point was taken at the trial that P4 was limited to $100,000 because the Bank's records showed the limite of the overdraft was $100,000. The Respondents respectfully submit that there is no real evidence
p.115 that Djeng ever said that the limit was $100,000; Djeng knew the security was for an unlimited
p.214 amount and in view of the trial judge's findings that he was honest, it cannot be assumed he would have told the Appellant a lie. Moreover in 1961 the value of the property at 28 Cuscaden Road was not more than $100,000. A statement that the liability was limited to $100,000 would not in any event make the document fundamentally different, particularly when at the time the
p.112 property was worth under $100,000. Furthermore the Appellant read P4 and the trial judge found
p.199 that she understood the contents of P4. In all the circumstances the Respondents humbly submit
p.252 that the Court of Appeal were correct in finding that she had failed to establish the plea of non est factum, to prove that the document she believed she was signing was fundamentally different to the document she signed and to prove that she had exercised care. If it is still contended by the Appellant that P4, if valid, is valid only up to $100,000 or that the Respondents are unable to rely on it for any sum in excess of $100,000, the Respondents will say that there is no basis on the facts or in law for the contention.

17. The validity of the Consent Order.

At the trial of the action the Appellant
p.48-9 contended that she had not given her consent to the Consent Order in O.S. 185 of 1966. The learned
p.211 judge found that she had, and the challenge to this

finding was not pursued on appeal. The Appellant relied only on appeal on the argument that there was no concluded agreement between the parties prior to the consent order because the amount of the instalments had not been agreed. Therefore the consent order based on an agreement never concluded should be set aside. The learned trial judge and the Court of Appeal rejected this submission and refused to set the consent order aside. The Respondents respectfully submit that the learned trial judge was correct in holding that there was nothing which invalidated the agreement between the parties and therefore no ground upon the principle established in Huddersfield Banking Co. Limited v. Henry Lister & Son Limited [1895] 2 Ch. 273, to set the consent order aside. Alternatively the Respondents will contend that if consent order can be set aside on the ground that there was no concluded agreement preceding the order, the decision of the Courts holding that there was a concluded agreement is correct. The Respondents respectfully submit that there was a concluded agreement for the reasons given by the Court of Appeal. The case of Scammell v. Ouston [1941] A.C. 257 relied on by the Appellant in argument is distinguishable; the amount of the instalments was not an essential term of the agreement and it was impossible to determine their amount until after the sale of the Thomson Rise Property; there was a concluded and definite bargain and the parties had ceased negotiating. Furthermore the Court, if necessary, could have determined what were reasonable instalments, implying, if necessary, a term that the instalments be reasonable: Scammell v. Ouston (supra) at P.273; F. & G. Sykes (Wessex) Ltd. v. Fine Fare Ltd. [1967] 1 Lloyd's Rep.53 Alternatively the Respondents humbly submit that on the facts the parties had entered into two separate agreements - (1) a concluded agreement to consent to the Order in the terms of the originating summons and (2) an agreement which may have been concluded (but which it is unnecessary to decide) not to enforce the Order unless the instalments were unpaid. If the second was not concluded, it does not affect the validity of the first on which the consent order rests.

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18. Registration of Deeds Act.

At the trial the learned judge found (by accepting the evidence of Djeng) that the title deeds of 28 Cuscaden Road had been sent to the Respondents for safe keeping and to secure a future overdraft by the Company; that an arrangement was made on or before 1st October 1961 that the title

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deeds be treated as deposited as security for the Company's overdraft. The trial judge rejected the evidence of the Appellant that the deeds had been deposited to secure her personal overdraft. These findings were challenged before the Court of Appeal, but the Court of Appeal did not reverse these findings but appears to have approved them. The Respondents humbly submit that the findings of the trial judge are correct and ought not to be overulled. On the basis of these findings, the learned judge held, following the decision of Stevens J. in The Ho Hong Bank v. Chop Mock Chin Leong (1929) S.S.L.R. 195, that P4 was not rendered inadmissible by S.4 of the Registration of Deeds Ordinance (Cap. 255) and rejected the Appellant's argument that the equitable mortgage of 28 Cuscaden Road was void and unenforceable. The Court of Appeal did not give any decision on this issue. The Respondents humbly submit that the decision of the learned trial Judge was correct for the reasons given by him and other reasons. The learned trial Judge held that because of the deposit of the deeds made in August 1961 and the agreement made on or before 1st October 1961 between Yo, on behalf of the Appellant, and the Respondents that the Respondents should hold the deeds as security for the Company's overdraft, the equitable mortgage was not created by P4. P4 merely confirmed the terms of the contract already created. It was therefore not rendered inadmissible by section 4.

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19. The Respondents respectfully submit that where there is no document recording the deposit of deeds as security, the equitable mortgage thus created is valid and can be proved by evidence without reference to the Registration of Deeds Ordinance. This is accepted. It is submitted that the subsequent confirmation in writing of an already completed equitable mortgage should not affect the position. Section 4 of the Registration of Deeds Ordinance strikes at documents, not at transactions: of the English cases on Bills of Sale: Newlove v. Shrewsbury (1888) 21 Q.B.D. 38. On the facts found, the equitable mortgage of 28 Cuscaden Road was created and the transaction entirely completed before P4 was signed and the transaction is in no way dependant on P4. In these circumstances the provisions of the Evidence Ordinance do not apply. It is also unnecessary for the Respondents to rely on P4 as evidence, and so Section 4 of the Registration of Deeds Ordinance is also inapplicable. Therefore as the equitable mortgage was already created, the Respondents were

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able to rely on the terms of the oral agreement and prove these, as they did. The judgment of Stevens J. in The Ho Hong Bank Limited v. Chop Hock Chin Leong (supra) and Braddell's Law of the Straits Settlements pp. 213-4 are relied on by the Respondents. The decisions in Samy Nathan Chetty v. Rama Samy Chetty (1904) 8 S.S.L.R. 117 and Re M.D. Mistry (1904) 8 S.S.L.R. 122 are distinguishable; in the former case the document was contemporaneous with and formed part of the transaction and in the latter it was clear also that the parties intended the document to form part of the transaction. Alternatively the two cases are wrongly decided. Moreover in so far as the decision in Kasmerah v. Hadjee Mohamed Taib (1904) 8. S.S.L.R. 113 is inconsistent with allowing an equitable mortgagee to adduce other evidence to prove the concluded oral agreement and deposit giving rise to the equitable mortgage, it was wrongly decided. Furthermore the Respondents respectfully submit that their contention is consistent with the policy of the Registration Ordinance which is to protect the public from secret and fraudulent conveyances by postponing and unregistered transaction to a subsequent registered transaction: Stevens J. in Ho Hong Bank (supra). The Ordinance ought not to be used to defeat honest mortgagees or as an instrument of fraud.

20. The Respondents alternatively contend that assuming P4 is an assurance within the meaning of the Registration of Deeds Ordinance, the Respondents can adduce P4 in evidence as they did not tender it as evidence of title, but only as evidence of the contract; section 4 is therefore inapplicable. It is only when an assurance is tendered as evidence of title to land is it made inadmissible. P4 merely sets out and confirms the terms of the verbal agreement by which the Respondent acquired an equitable mortgage of the Appellant's property. The Respondents respectfully submit that this is not evidence of title. The Respondents rely on the Judgements of Stevens J. in Ho Hong Bank (supra) and of Terrell J. A.R. A.R.M. Ramanathan Chettiar v. Chua Tiang Seng and others (1933) 2 M.L.J. 69.

21. The Respondents alternatively contend that if P4 is an assurance and is evidence of title, the Respondents nevertheless are entitled to rely on it, if they sever those parts which record the deposit. The deposit can be proved by oral evidence. The Respondents submit that the decision in Kasmerah v. Hadjee Mohamed Taib (1904) 8 S.S.L.R.

113 of the Court of Appeal to this effect is correct and, as a decision which has stood and been followed and acted on for 70 years, ought not to
p.421 be overuled. On the basis of this decision, the only words to be rejected are the heading "Confirmation of Deposit of Title Deeds" and the phrase "that the title deeds relating to the undermentioned properties which were in your possession were to be held by you as security". The Respondents submit therefore that the rest of P4 was admissible to prove the contract and the deposit could be proved by oral evidence as if there had been no document confirming it. As proof by oral evidence of the deposit was given the Respondents respectfully submit that the decision of the learned trial judge can be maintained on this ground also.

22. The Respondents will alternatively contend that s.4 is inapplicable because P4 was incapable of Registration under the provisions of the
p.421 Registration of Deeds Ordinance. P4 did not comply with the provisions of s.7 (2)(b) and (c) as the occupation of the Appellant and the name of the district within which the land was situated was not stated; it did not comply with the provisions of s.7(5) as it was not in the form prescribed by the Registration of Deeds Rules, 1934, (G.N. 824 of 1934), Rule 6(1) and Form No.6. The Respondents were under no duty to draw up any document and the equitable mortgage would have been valid without any such document; thus, as the Respondents had drawn up a document incapable of Registration, s.4 does not apply in the same way as it does not apply if there is no document at all. The Respondents will humbly submit that s.4 of the Act ought not to be construed to penalise the Respondents for failing to register a document which could not be registered; and/or where there is a document incapable of registration the deposit should be able to be proved as if there were no document.

23. The Respondents alternatively contend that on the true construction of the Ordinance, P4 is not an assurance; it was merely a subsequent confirmation of the prior oral agreement.

24. Estoppel

p.212-214 The learned trial judge upheld the Respondents' contention that the Appellant was estopped and precluded in equity from disputing the validity of the consent order or from raising

the pleas of non est factum undue influence and other allegations in respect of P4. The trial judge found that the Appellant was aware by May 1966 that the Respondents asserted they held the title deeds of 28 Cuscaden Road as security for the Company's overdraft; she took no step to oppose the Respondents' application in O.S. 185 of 1966 and consented to the order made. In letters written by her solicitor to the Respondents on her instructions it was made clear to the Respondents that these title deeds were security for the Company's overdraft. It was not until November 1967 that the Appellant alleged that the security was not valid or held by them as security for the Company's account. In reliance on these representations (by the Appellant's statements and conduct), the Respondents had acted to their detriment in refraining from pursuing or being unable to pursue their legal remedies in full. The Court of Appeal, in view of its decision on other issues, did not decide this issue. The Respondents humbly submit that the decision of the trial judge was correct. Maclaine v. Gatty /1921/ 1 A.C. 376; Hopgood v. Brown /1955/ 1 W.L.R. 213. The Respondents also contend that the Appellant's silence and inaction after May 1966 until November 1967 during which time the Respondents obtained and acted on the consent orders constituted and estoppel; Spever Bower and Turner: Estoppel by Representation, paras. 55-7. The Respondents moreover suffered detriment because of the Appellant's representations: they delayed selling the property at 28 Cuscaden Road and enforcing their other rights under the other securities held by them.

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25. AND the Respondents humbly pray that this Appeal should be dismissed with costs for the following, among other

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(1) BECAUSE the Respondents have proved that they did not exercise undue influence over the Appellant to induce her to sign the third letter of guarantee (P3), alternatively that the Appellant has failed to prove such undue influence.

(2) BECAUSE the Respondents have proved that they did not exercise undue influence over the Appellant to induce her to sign the Confirmation of Deposit of Title Deeds (P4) for the Second Letter of Guarantee (P2), alternatively that the Appellant has failed to prove such undue influence.

(3) BECAUSE the trial judge and the Court of Appeal were correct in holding that the statements made by the Respondents at the time when the third letter of guarantee was signed, did not constitute unfair and improper conduct and did not amount to coercion or undue influence.

(4) BECAUSE the trail judge and the Court of Appeal were correct in holding that the burden of proving the allegations of undue influence in respect of the Confirmation of Deposit of Title Deeds (P4) and the Second letter of guarantee (P2) lay on the Appellant.

(5) BECAUSE the Appellant's husband did not exercise undue influence over her in respect of any of the transactions, and that in any event the Respondents were unaware of any such undue influence and entered into each of the transactions for value and without notice of any undue influence on the part of the Appellant's husband.

(6) BECAUSE the second letter of guarantee (P2) and the Confirmation of Deposit of Title Deeds (P4) were not fundamentally different from the documents which the Appellant believed them to be when she signed them.

(7) BECAUSE the Appellant did not exercise care when signing the second letter of guarantee (P2) and the Confirmation of Deposit of Title Deeds (P4).

(8) BECAUSE the parties entered into a consent order recognising the validity of the security over the property at Cuscaden Road, and there are no grounds upon which the order should be set aside.

(9) BECAUSE the equitable mortgage of the Appellant's property could be proved by the Respondents without reliance on the Confirmation of Deposit of Title Deeds (P4)

(10) BECAUSE the Respondents were entitled to adduce the Confirmation of Deposit of Title Deeds (P4) in evidence at the trial since it was not adduced as evidence of title.

(11) BECAUSE the Respondents were able to adduce the Confirmation of Deposit of Title Deeds (P4) in evidence by severing certain words.

(12) BECAUSE section 4 of the Registration of

Deeds Ordinance was inapplicable, since the Confirmation of Deposit of Title Deeds (P4) was incapable of Registration thereunder.

(13) BECAUSE the Confirmation of Deposit of Title Deeds (P4) was not an assurance.

(14) BECAUSE the Appellant is estopped from disputing the validity of the Consent Order and raising any plea that would affect the validity of the Confirmation of Deposit of Title Deeds (P4).

(15) BECAUSE the decisions of the trial judge and of the Court of Appeal were correct and should be upheld.

JOHN THOMAS

No.4
No.5 of 1974

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N:

MARIA CHIA SOOK LAN
(Married Woman) — Appellant

- and -

BANK OF CHINA — Respondent

C A S E FOR THE RESPONDENTS

PARKER GARRETT & CO.,
St. Michael's Rectory,
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