

IN THE PRIVY COUNCIL

No. 22 of 1973

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 O N A P P E A L

 FROM THE COURT OF APPEAL IN SINGAPORE
 

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B E T W E E N :

(1) WAH TAT BANK LIMITED

(2) OVERSEA-CHINESE BANKING CORPORATION LIMITED Appellants  
(Plaintiffs)

- and -

10 CHAN CHENG KUM Respondent  
(Defendant)

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 CASE FOR THE APPELLANTS
RECORD

1. This is an appeal by leave of the Court of Appeal in Singapore granted on 25th June 1973 from an Order of the said Court of Appeal (Chief Justice Wee Chong Jin, Mr. Justice Chua and Mr. Justice Choor Singh) dated 16th April 1973 dismissing an appeal by the Appellants from the Order of Mr. Justice Winslow dated 24th July 1972 whereby the Learned Judge dismissed the Appellants's claim against the Respondent on the issue ordered to be retried between the Appellants and the Respondent by Order of the Federal Court dated 7th July 1967, which said Order was affirmed (subject to a different provision as to costs) by the Privy Council on 29th March 1971.

p. 154

p. 152

p. 127

20 against the Respondent on the issue ordered to be retried between the Appellants and the Respondent by Order of the Federal Court dated 7th July 1967, which said Order was affirmed (subject to a different provision as to costs) by the Privy Council on 29th March 1971.

p. 38

p. 40

30 2. The issue ordered to be retried as aforesaid arises out of an Action brought by the Appellants against the Respondent as First Defendant and the Hua Siang Steamship Company Limited (hereinafter referred to as "Hua Siang S.S. Co. Limited") as Second Defendants. In this action the Appellants

RECORD

claimed against both Defendants damages for conversion arising out of the failure of the Defendants to deliver and/or their misdelivery of certain consignments of rubber shipped on board vessels owned or chartered by the Respondent and the Hua Siang S.S. Co. Limited. At the original trial of this action, Mr. Justice Kulasekaram on 30th December 1965 dismissed the Appellants' claims and the Appellants appealed to the Federal Court of Malaysia. The Federal Court of Malaysia on 7th July 1967 allowed the Appeal by ordering judgment to be entered against the Hua Siang S.S. Co. Limited (the Second Defendants) upon the grounds that the same had wrongfully converted the said consignments by delivering them to a company called Tiang Seng Chan (Singapore) Limited instead of to the Appellants and in the case of the Respondent (the First Defendant) by ordering a retrial of "the remaining issue" as to whether the Respondent was also liable for conversion of the said consignments. The Hua Siang S.S. Co. Limited and the Respondent appealed to your Lordships' Committee from the aforesaid Orders of the Federal Court but the Privy Council dismissed the Appeals and (subject to a variation as to the costs of the action) affirmed the aforesaid Orders of the Federal Court. On 20th June 1969, that is to say prior to the said hearing before the Privy Council, the Appellants had caused their damages to be assessed and had entered judgment against the Hua Siang S.S. Co. Limited for \$570,500 and their taxed costs. Save as to costs and a sum of £500 this judgment remains unsatisfied.

p. 38

p. 39  
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p. 40

p. 168

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3. The issue ordered to be retried as aforesaid came before Mr. Justice Winslow on 6th March 1972. At the rehearing Counsel for the Respondent submitted (inter alia) :-

(a) That the Respondent was not a joint tortfeasor with the Hua Siang S.S. Co. Limited and so was not liable in conversion to the Appellants;

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(b) But that even if the Respondent was a joint tortfeasor, since the Appellants had obtained a final judgment against the Hua Siang SS Co. Limited they (the Appellants) were barred from proceeding against the Respondent as a joint tortfeasor by virtue of the old common law rule (that final judgment against one joint tortfeasor is a bar to proceeding against another joint tortfeasor) and notwithstanding the provisions of Section 11(1)(a) of the Civil Law Act (Cap. 30) (corresponding to Section 6(1) (a) of the English Law Reform (Married Women and Tortfeasors) Act 1935).

4. Mr. Justice Winslow held (contrary to the first submission) that the Respondent was a joint tortfeasor in the conversion of the said consignments. But he further held that the Appellants' claim failed because the second point afforded a good defence. The Court of Appeal in Singapore affirmed the decision of Mr. Justice Winslow on the second point but also, contrary to the Learned Judge, held that the Respondent was not a joint tortfeasor as aforesaid. Accordingly the questions which arise on this Appeal are :-

(a) Whether the learned Judge was right in holding that the Respondent was guilty of conversion of the consignments in question (the "joint tortfeasor" point);

(b) Whether, if so, the Appellants are entitled to pursue their claim against the Respondent, notwithstanding the final judgment entered against the Hua Siang S.S. Co. Limited (the "Section 11 point").

The joint tortfeasor point

5. At the hearing before Mr. Justice Winslow, the Appellants submitted that there were two independent grounds for holding that the Respondent was a joint tortfeasor. The first of these grounds was that the Respondent was the employer of the Masters and Crews who actually misdelivered the consignments in question and thus was vicariously

RECORD  
p. 102  
11.20-28

liable for their actions. The learned Judge decided this point against the Appellants who did not appeal from this decision. However,, the Appellants also submitted that quite apart from any question of vicarious liability, the Respondent (who was at all material times the Managing Director of the Hua Siang S.S. Co. Limited) had expressly or impliedly directed or procured the commission of the acts of misdelivery so as to be privy to them and thus was a joint tortfeasor with those who actually carried out the misdelivery. (In this connection reference may be made to Smith's Leading Cases 13th Ed. (1929) Vol. 1 p.450: "In tort not only he who does the wrongful act but all who aid or counsel, command or procure it to be done are liable as principals: Com Dig., Trespass, C(1); Barker -v- Braham 2 W. Bl. 867; Brooke -v- Bool /1928/ 2 K.B. 578; and see post, p.455".) The Learned Judge accepted the Appellants' submissions on this point but the Court of Appeal rejected them. For the following reasons the Appellants respectfully submit that the learned Judge was correct and this his decision on this point should be restored.

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Exhibit  
P.21  
181-187

6. In the first place the Appellants submit that the evidence of the Respondent himself at the original hearing (the record of which was put in before Mr. Justice Winslow) makes clear beyond doubt that the Respondent personally dictated the course of action followed by those actually misdelivering the goods and thus was privy to the misdelivery within the principles laid down in the authorities cited above and in Rainham Chemical Works Limited -v- Belvedere Fish Guano Co. /1921/ 2 A.C. 465 and Performing Right Society -v- CiryI Theatrical Syndicate /1924/ 1 K.B.1. The Appellants submit that it would be no exaggeration to say that, from the evidence of the Respondent himself at the earlier hearing, it is clear that the Respondent regarded himself as under an obligation to see to it that the tort of conversion was regularly committed subject only to production of letters of indemnity from those to whom delivery was wrongly made. Thus, the Respondent in cross-examination accepted as being correct what was

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stated in the first sentence of paragraph 3A of the Amended Statement of Claim by the Second Defendant against the Third Parties. In this sentence it was pleaded as follows :-

10 "3A. Further or alternatively, early in 1961 it was orally agreed at the offices in Singapore of the First Third Party [viz. Tiang Seng Chan (Singapore) Limited, the company to which misdelivery was made] between the First Defendant on behalf of himself and/or of the Second Defendant on the one hand, and the Third Parties on the other hand, that should the Second Defendants thereafter from time to time release to the Third Parties on their request goods to be carried by the Second Defendant's vessels, the Second, Third and Fourth Third Parties respectively would in consideration thereof personally indemnify the Second Defendant on demand against all consequences and liabilities whatsoever which might arise therefrom, and would further on demand add their respective signatures to any formal indemnity signed on behalf of the First Third Party for the purpose of evidencing such agreement and/or of personally joining in such indemnity."

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Not only did the Respondent agree with that sentence but he said in his evidence: "I agree that I made that agreement in early 1961. The Third Parties agreed to be personally liable to me. That was the promise of Lee Chin Tian [viz. the Second Third Party]. The indemnities continued to be signed on behalf of the company T.S.C. [viz. the First Third Party] but by the oral agreement in early 1961 the Second, Third and Fourth Third Parties would be personally liable on indemnities by the company thereafter. Because I got this personal agreement of the Third Parties I went on delivering against indemnities without production of Mate's Receipts." The Respondent made it clear in his evidence that he regarded himself as under an obligation to deliver to the First Third Party. In describing the procedure he constantly used the first person singular as in the answer "Having got their

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p. 183  
11.15-22

p. 186  
11.10-13

RECORD  
p. 187  
11.6-8

personal promises I was prepared to go on delivering as before." In these and many other answers the Respondent in substance admitted that he was privy to the tort of conversion. The Appellants rely upon Sections 17 and 18 of the Evidence Act.

p. 112  
11.21-30

7. In the second place, the Appellants submit that the evidence of Choo Chew Sing (the only witness called before Mr. Justice Winslow) supports the Appellants' case that the Respondent 10 was at all material times privy to the misdeliveries. This evidence was unshaken by cross-examination and was accepted by the learned Judge.

p. 77  
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8. In the third place, it is noteworthy that the Respondent chose not to give evidence himself at the hearing before Mr. Justice Winslow. He was present at the hearing and was identified by the witness Choo Chew Sing. The Appellants submit that the learned Judge correctly drew an inference adverse to the Respondent from this 20 omission, both as a matter of principle (see, for example, cases such as Williamson -v- Rover Cycle Co. [1901] 2 I.R. 619) and by virtue of Section 114, illustration (g) of the Evidence Act.

p. 113  
11. 45-48

9. In the fourth place, it is also noteworthy that the Respondent called no evidence from any one else who might reasonably be expected to advance his contention that he was not personally involved, if such were indeed the case. For example, the Respondent's son, Chan Kim Yam, might have been 30 called. Again, the Appellants submit that the learned Judge was right in taking this absence of testimony into account in deciding this issue against the Respondent.

p. 151  
11.6-7

10. In the fifth place, the Appellants respectfully submit that the reasoning of the Court of Appeal cannot be sustained. The Court of Appeal appear to have relied upon the fact (if such it be, for there was no evidence) that "it is common commercial practice to deliver goods on indemnity." The comment made by Scrutton L.J. in 1928 remains apposite: "If this is so the 40 sooner that course of business is changed the

better" - Hannam -v- Arp (1928) 30 Lloyds' Rep. 306 at 308; and see Wright J. in Thoresens Linje -v- Tyrer (1929) 35 Lloyds Rep. 163 at 170 and the opinion of your Lordships' Committee in Sze Hai Tong Bank -v- Rambler Cycle Co. [1959] A.C. 576, 586.

RECORD

10 11. The Court of Appeal also appears to have relied upon the fact that "it is not unusual commercial practice for former commercial policies to be continued by the new company"; but if (as was the case) the previous course of dealing was wrongful, the continuance of that course of dealing by the new company must also remain wrongful.

p. 151  
11..7-9

20 12. The Court of Appeal then continued by observing that it was "perfectly proper for the Respondent as a Director in charge of the financial side of [the Hua Siang S.S. Co. Limited] to take a personal interest in the matter as the finances of the company were involved and he did what any managing director would have done under the circumstances." The Appellants submit that the words "perfectly proper" are an inappropriate way to describe conduct which involves a flagrant departure from a rule which Wright J. considered in the case referred to above as "of prime importance in commerce", namely, that goods should be delivered only to the rightful owner. If the deliveries were wrongful then the "personal interest" of the Respondent, which the Court of Appeal acknowledged to have existed, can only support the Appellants' submissions and cannot on any view be used as an argument to exonerate the Respondent.

p. 151  
11. 9-15

40 13. The Court of Appeal then observe that "the action of the Respondent in obtaining personal indemnities from the directors of T.S.C. [the Company to whom the goods were misdelivered] was taken after the acts of conversion"; in fact the evidence established that the conversions took place after the 15th May 1961 and that the agreement under which indemnities were to be provided was made by the Respondent early in 1961. In any event the very act of obtaining the

p. 151  
11. 15-18

RECORD

indemnities (whenever this took place) can only support the Appellants' submission that the Respondent was privy to the misdeliveries.

p. 151  
11.19-22  
p. 151  
11.29-33

14. Furthermore, it is noteworthy that the Court of Appeal gave no reason for taking the view that all the other matters relied upon by the learned Judge did not point to the conclusion that the Respondent was privy to the misdeliveries, or for the view that Mr. Justice Winslow was not entitled to draw an inference adverse to the Respondent from the fact that the Respondent called no evidence. The Court of Appeal commented adversely that the Appellants had relied upon the earlier evidence of the Respondent by way of admissions notwithstanding it was common ground at the original hearing that the issues depended upon the credibility of witnesses and took the view that these admissions did not establish that the Respondent had procured the wrongful delivery. The Appellants respectfully submit that this point might have had substance if it was earlier evidence adduced by the Appellants that was relied upon, but the truth of the matter is that it was the evidence of the Respondent himself and if this had been misunderstood or incorrectly recorded (or indeed should not have been accepted) it was for the Respondent to go into the witness box before Mr. Justice Winslow to say so. This he did not do, though (as already mentioned) he was present in Court at the hearing.

15. Finally, the Appellants respectfully submit that the Court of Appeal were wrong in treating the various examples of joint tortfeasors given by Scrutton L.J. in The Kursk /1924/ P.140 at 155 as exhaustive categories: the examples given by Scrutton L.J. were clearly intended to be illustrative and not exhaustive and citations such as those referred to in paragraph 5 above show clearly the width and flexibility of the joint tortfeasor concept and that it would be wrong to confine it to rigidly defined classes as in the present case the Court of Appeal have attempted to do.



16. For the foregoing reasons the Appellants respectfully submit that the Court of Appeal were wrong in overruling the decision of Mr. Justice Winslow on this point and that the evidence points irresistibly to the conclusion that the Respondent was indeed a joint tortfeasor with the Hua Siang S.S. Co. Limited and thus was also liable to the Appellants for conversion.

The Section 11 point

10 17. If the Appellants are right so far the Respondent is a joint tortfeasor and he should pay damages for conversion. But the Respondent denies this. He invokes the old common law rule that final judgment against one joint tortfeasor is a bar to proceeding against another joint tortfeasor. He contends that Section 11(1)(a) of the Civil Law Act (corresponding to Section 6(1)(a) of the English Law Reform (Married Women and Tortfeasors) Act 1935) has not altered the position. The old  
20 rule which the Respondent seeks to invoke has been variously described as "technical" (per Scrutton L.J. [1923] 1 K.B. 1, 9) and "highly technical" (per Sargant J. [1918] 1 K.B. 180, 192); "such a defence is entirely technical and has no substance or merits" (per Pickford L.J. ibid at 185). The Respondent is nevertheless entitled to avail himself of the rule, but only if he can show that notwithstanding the Act it still applies in the circumstances of the present case.

30 18. Section 11(1)(a) of the Civil Law Act provides :-

"(11.(1) Where damage is suffered by any person as a result of a tort (whether a crime or not) -

(a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;"

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RECORD

19. Before entering upon a discussion of the question of construction it is important by way of background to appreciate what the existing state of the law was prior to the enactment of Section 11(1)(a). As this section is a copy of the corresponding English statutory provisions, namely, Section 6 of the Law Reform (Married Women and Tortfeasors) Act 1935, and as the law of Singapore was the same as English law prior to these respective enactments, the inquiry may be put in this way - As at 1st August 1935 (the day before the English Act came into operation) what was the position in English law as to the effect of a judgment obtained against one tortfeasor?

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20. The answer to this inquiry is that the same rule obtained for joint contractors and for joint tortfeasors. It is conveniently set out in the Second Edition of Halsbury's Laws of England, Volume 13 of which included the title Estoppel and stated the law as at 1st April 1934. In paragraph 471 on page 416 it is stated: "On this principle scilicet merger of cause of action in judgment, a judgment recovered (though unsatisfied) against some one of a number of persons who are jointly (not jointly and severally) liable on the same contract, or are liable for the same tort, with others, is, until set aside, a bar to an action against the others (although the Plaintiff may not have been aware of their liability), not on the ground of estoppel, but because there was but one cause of action, and that has merged in the judgment - transit in rem judicatum; and because in the case of contract the others are deprived by the act of the plaintiff of the right to have their liability determined in the same judgment with their co-contractors." The reason last given had no application to tort because one joint tortfeasor had no right to insist that all other joint tortfeasors be joined. Thus for tort the rule was founded upon the doctrine of merger.

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21. The same rule applied whether there were consecutive actions or whether both Defendants were initially sued together in the same action.

Examples of consecutive actions are: for contract King -v- Hoare (1844) 13 M & W 494; 153 E.R. 206 and for tort Brinsmead -v- Harrison (1872) L.R. 7 CP 547. Examples of both Defendants initially being sued together in the same action are: for contract McLeod -v- Power and Perrins (1898) 2 Ch. 295 and for tort Goldrei, Foucard & Son -v- Sinclair and Russian Chamber of Commerce in London /1918/ 1 K.B. 180.

22. In the Exhibit P.D.1 it was recorded as follows :-

pp.178-179

"1. It is accepted by both parties that under common law final judgment against one joint tortfeasor operates as a complete bar to all further proceedings against any other joint tortfeasor whether in the same action or otherwise.

2. It is accepted by the Defendant Chan that the Federal Court judgment being only interlocutory, is not by itself a complete bar to all further proceedings against the Defendant Chan under the common law.

3. It is accepted by the Plaintiffs that the Federal Court judgment coupled with the assessment of damages thereunder, constitutes a final judgment and is a complete bar at common law to all further proceedings against the Defendant Chan.

4. It therefore follows that the Plaintiffs' claim against the Defendant Chan is now barred and a claim against him must be dismissed unless the common law rule has been altered by statute.

5. It is for this reason that Section 11(1) of the Civil Law Act becomes relevant. The Plaintiffs contend that that section has altered the common law rule so that the final judgment already given in this case is not a bar to further proceedings against the Defendant Chan.

RECORD

6. It is accepted by both parties that Section 11(1)(a) does alter the common law rule so that final judgment against one joint tortfeasor is no longer a bar to an action against any other joint tortfeasor, if, but only if, he has not been "sued" within the meaning of that subsection.

7. The Plaintiffs contend that the final judgment already given in this case is not a bar to further proceedings against the Defendant Chan because they contend that "sued" in Section 11(1)(a) means "sued to final judgment", and since Mr. Chan has not been sued to final judgment there is no complete bar to further proceedings against him.

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8. If this contention is upheld this Court is free to consider and decide upon the Plaintiffs' claim against the Defendant Chan within whatever may be held to be the proper scope of the retrial ordered by the Federal Court.

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9. The Defendant Chan contends that the final judgment already given in this case is a bar to all further proceedings against the Defendant Chan because "sued" in Section 11 (1)(a) bears its ordinary and natural meaning and the Defendant Chan, who is a Defendant in the same action in which the final judgment has been given against the Defendant company, has been "sued" within such ordinary and natural meaning.

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10. If this contention is upheld then all further proceedings against the Defendant Chan are completely barred and the Plaintiffs' claim against the Defendant Chan must be dismissed."

23. Mr. Justice Winslow and the Court of Appeal held that the word "sued" connoted merely the institution of a suit. But for the following reasons the Appellants submit that the word "sued" means sued to judgment and does not refer

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merely to the institution of a suit. In the first place, there is no reason why the legislature, who were engaged in abolishing the common law rule that a judgment against one tortfeasor automatically barred claims against all others, should nevertheless maintain that rule in cases where proceedings have been started against those others. There is simply no reason for such a reservation, which would produce obvious cases of injustice of a kind which the legislature clearly intended to abolish.

24. In the second place, the word "sued" in its context, must mean more than the mere commencement of a suit. The sub-section provides that there shall be no bar to an action against any other person "who would, if sued, have been liable as a joint tortfeasor." No one is liable as a joint tortfeasor (or otherwise) because of the institution of proceedings. Liability can be said to arise either upon the occurrence of the events in respect of which the law allows a remedy to persons injured thereby, or upon the adjudication by a Court that liability exists, but can hardly be said to arise merely because a suit is commenced or continued. In the context of the Section the Appellants respectfully submit that the words ("if sued") must be a reference to the adjudication of liability.

25. In the third place, the Appellants respectfully adopt the reasoning used by the Court of Appeal in England in Hart -v- Hall & Pickles [1969] 1 Q.B. 405. In that case the Court of Appeal, when construing the same phrase in Section 6(1)(c) of the Law Reform (Married Women and Tortfeasors) Act 1935, came to the unanimous conclusion that the words "if sued" must mean if sued to judgment. The Appellants rely too on the judgment of Parker J. (as he then was) in Littlewood -v- George Wimpey [1953] 1 W.L.R. 426, 438-9.

26. In the fourth place, the Appellants submit that the Court of Appeal in the present case were not correct in categorising the Respondent's construction of the phrase as "the ordinary and

RECORD

natural meaning". To do so ignores the context in which the words "if sued" are used and indeed in that context (as submitted above) the Respondent's construction gives the words a meaning that they do not and cannot normally or ordinarily bear. The Appellants submit that the words "if sued", in a context which refers to liability, must mean an adjudication of liability - this is their ordinary and natural meaning in that context.

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27. There is an alternative approach to Section 11 which the Appellants desire to argue on this appeal. The point was not argued below but as it involves a question of construction of the sub-section the Appellants would submit that in principle the point should be open to them. The Appellants wish to contend that it is irrelevant that Chan had already been joined in this action at the moment when the final judgment against the Second Defendants was obtained. This is because Section 11(1)(a) defines the action which is not to be barred by reference to a quality possessed by the notional Defendant. That quality is that he is a person who would, if sued, have been liable as a joint tortfeasor. The time at which he has to have that quality may be put as early as the moment when the tort was committed and should not be put any later than the moment when the action is commenced against the first tortfeasor sued. If the Defendant has or had the quality at the appropriate time, it does not matter what subsequently happens, for example, whether he is left out of the first action or brought into it or whether the initial proceedings against him are discontinued or held in abeyance. None of these fortuitous circumstances ought to make any difference to the result. Yet on the Respondent's argument they would make a vital difference.

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28. If the approach suggested in the preceding paragraph is correct much less importance attaches to the precise meaning to be attached to the words "if sued". On the facts of this case the action against the Respondent would not be barred whichever of the two rival constructions

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were to be adopted.

RECORD

29. It may be suggested that paragraph 6 of the Exhibit P.D.1 (quoted in paragraph 22 above) precludes the Respondent from raising the foregoing argument. As to this the Appellants say:-

(1) Neither side supposed at the time that it was agreeing or asking the other side to agree to any proposition which involved an erroneous construction of Section 11(1)(a).

10 (2) This case involves a provision of Singapore law which is founded upon an English Statute and which has been widely adopted in the Commonwealth. It would be a major misfortune if the highest Court in the Commonwealth were obliged to decide the case on the footing of a fallacious proposition agreed between the parties as to the meaning of Section 11(1)(a).

20 If, and so far as may be necessary to raise the point, the Appellants will ask to be allowed to withdraw from any agreement or concession embodied in the said paragraph 6.

30 30. Next, the Appellants respectfully submit that the Court of Appeal were wrong in acceding to the argument of the Respondent to the effect that the sub-section in question has not abolished the single judgment rule "insofar as it relates to joint tortfeasors in a single action". The Appellants submit that this rule ought properly to be regarded as a feature of a legal regime in which successive final judgments against joint tortfeasors were impossible. Once the regime is altered the rule cannot be erected to the status of a bar to an action. The observations of the House of Lords in Broome -v- Cassell [1972] A.C. 1027 were not directed to a case such as the present where the question is simply one of the true effect of the section in the circumstances of this case; and if on the true construction of the section, the judgment against the Hua Siang S.S. Co. Limited is not a bar to the action against the Respondent, then

p. 141  
11.5-8

RECORD

ex hypothesi the "single judgment rule" can have no application or effect and must yield to the statute.

31. The Appellants further contend that there is no basis for the fear expressed in argument on behalf of the Respondent that if this action is allowed to proceed there is the possibility that the Appellants could recover damages in two different sums and could levy execution in the aggregate for more than their actual loss. Apart 10  
from the theoretical nature of the objection (the fact being that the Second Defendants, the Hua Siang S.S. Co. Limited, have declared through their solicitors that they have no money with which to meet the judgment), it has always been the policy of the law to secure that a Plaintiff is not allowed to recover more than his real loss.

32. Finally, the Appellants say that there is nothing in paragraph (b) of Section 11(1) to cut 20  
down the plain meaning of paragraph (a). The highest it can be put is that provisions which it might have been desirable to include have been omitted. But this does not provide a basis for glossing the language of paragraph (a).

33. The Appellants humbly submit that this appeal be allowed for the following amongst other

R E A S O N S

1. BECAUSE on the evidence the Respondent was a joint tortfeasor in the conversion of the consignments in question and Mr. Justice Winslow 30  
was right in so holding;

2. BECAUSE the Court of Appeal were wrong in reversing the decision of Mr. Justice Winslow that the Respondent was a joint tortfeasor and their judgment on this point should be reversed;

3. BECAUSE the Appellants are not barred by the judgment against the Hua Siang S.S. Co. Limited from pursuing to judgment their claim against the Respondent;



4. BECAUSE upon their true construction the words "if sued" in Section 11(1)(a) of the Civil Law Act (Cap.30) mean if sued to judgment and accordingly the Respondent has not been sued within the meaning of that section;
5. BECAUSE the decisions of Mr. Justice Winslow and the Court of Appeal were wrong in holding that the words "if sued" in the said Act meant merely if proceedings had been instituted against the person concerned and the judgments both of Mr. Justice Winslow and of the Court of Appeal on this point should be reversed;
6. BECAUSE even if the words "if sued" bear the meaning put upon them by Mr. Justice Winslow and the Court of Appeal, it ought nevertheless to be held that the action against the Respondent is within the class of actions which is not to be barred by the existence of a final judgment against another joint tortfeasor;
7. BECAUSE there is nothing in the "single judgment" rule to debar the Appellants from recovery here and/or the said rule must yield to the language of the statute.

J.G. Le QUESNE

F.P. NEILL

MARK SAVILLE

No. 22 of 1973

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL IN  
SINGAPORE

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B E T W E E N :

- (1) WAH TAT BANK LIMITED
- (2) OVERSEA-CHINESE BANKING  
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Appellants  
(Plaintiffs)

- and -

CHAN CHENG KUM Respondent  
(Defendant)

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CASE FOR THE APPELLANTS

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