

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 22 of 1976

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

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B E T W E E N :

KENNETH EDWARD HILBORNE

Appellant

- and -

THE LAW SOCIETY OF SINGAPORE

Respondent

---

RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
London,  
WC2A 3UL

MESSRS. JAQUES & CO.,  
2, South Square,  
Gray's Inn,  
London,  
WC1R 5HR

Solicitors for the Appellant

Solicitors for the Respondent

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

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B E T W E E N :

KENNETH EDWARD HILBORNE Appellant

- and -

THE LAW SOCIETY OF SINGAPORE Respondent

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RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 22 of  
1976

O N A P P E A L

FROM THE COURT OF APPEAL OF SINGAPORE

B E T W E E N :

KENNETH EDWARD HILBORNE

Appellant

- and -

THE LAW SOCIETY OF SINGAPORE

Respondent

RECORD OF PROCEEDINGS

No. 1

LETTER SECRETARY OF THE LAW SOCIETY TO  
THE APPELLANT

Before the  
Inquiry  
Committee  
of the Law  
Society of  
Singapore

THE LAW SOCIETY OF SINGAPORE,  
SUPREME COURT BUILDING,  
SINGAPORE, 6.

No. 1

27th July, 1971.

Letter  
Secretary  
of the Law  
Society to  
the  
Appellant

IC/5/71  
KEH/MC/75/70.

CONFIDENTIAL

10. K.E. Hilborne, Esq.,  
Messrs. Hilborne & Co.,  
22/23 Nunes Building,  
9 Malacca Street,  
Singapore 1.

27th July  
1971

Dear Sir,

Re: Civil Appeal No.28 of 1970

20 I refer to your letter dated the 24th May,  
1971 and am directed to inform you that the Council  
after considering the Report of the Inquiry  
Committee on the complaint made against you by the  
Registrar of the Supreme Court, had determined that  
under section 91(1)(b) of the Legal Profession Act,  
1966, no cause of sufficient gravity exists for a  
formal investigation, but that as your conduct

Before the Inquiry Committee of the Law Society of Singapore

towards their Lordships was improper it is the Council's present intention that you should be ordered to pay a penalty under section 92 of the Act; the amount of the penalty in this case has been fixed at \$200/-.

No. 1

Letter Secretary of the Law Society to the Appellant  
27th July 1971  
(continued)

2. Before making a formal order to this effect, I am directed to notify you of the Council's intention to do so pursuant to the provisions of section 92(3) of the Act, and to enquire whether you wish to be heard by the Council before such an order is made.

10

Yours faithfully,

Signed:-

Secretary,  
The Law Society, Singapore

No. 2

Letter Appellant to the Secretary of the Law Society  
29th July 1971

No. 2

LETTER APPELLANT TO THE SECRETARY OF THE LAW SOCIETY

22 Nunes Building,  
9 Malacca Street,  
Singapore, 1.

29th July 1971

20

The Secretary,  
The Law Society,  
Supreme Court Building,  
Singapore.

Dear Sir,

Re: Civil Appeal No.28 of 1970

I have received your letter of the 27th instant, and I note what you say. I take it that your letter means that there was a finding by the Inquiry Committee that my conduct was improper, and I should be glad if you would kindly confirm this. Furthermore, I desire to be informed whether or not I am entitled to know the grounds on which that finding was based since I wish to be quite clear about this. On receipt of your reply, I will write you further with regard to the second paragraph of your letter.

30

Yours faithfully,  
Sgd.K.E. Hilborne  
(K.E. HILBORNE)

40

3.

No. 3

LETTER SECRETARY OF THE LAW SOCIETY TO  
THE APPELLANT

Before the  
Inquiry  
Committee  
of the Law  
Society of  
Singapore

THE LAW SOCIETY OF SINGAPORE,  
SUPREME COURT BUILDING,  
SINGAPORE, 6.

20th August, 1971 No. 3

IC/5/71.

Letter  
Secretary  
of the Law  
Society to  
the  
Appellant

10

K.E. Hilborne, Esq.,  
Messrs. Hilborne & Co.,  
22/23 Nunes Building,  
9 Malacca Street,  
Singapore. 1.

20th August  
1971

Dear Sir,

Re: Civil Appeal No. 28 of 1970

20

I am directed to reply to your letter dated the 29th July, 1971, and to say that it is the Council which has to consider the propriety or otherwise of your conduct. It has done so after considering the recommendations of the Inquiry Committee, and is of the opinion that your statement that in refusing to reopen the appeal the Judges were setting a seal on dishonesty is, on your own construction of the words as set out in your letter of the 24th May, 1971, to the Inquiry Committee, improper conduct.

2. I am directed to enquire whether you wish to be heard by the Council before any Order is made by it under Section 92(3) of the Legal Profession Act, 1966.

Yours faithfully,

Signed:

Secretary,

The Law Society of  
Singapore.

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4.

No. 4

Before the  
Inquiry  
Committee  
of the Law  
Society of  
Singapore

LETTER APPELLANT TO THE SECRETARY OF  
THE LAW SOCIETY

22 Nunes Building,  
9 Malacca Street,  
Singapore, 1.

24th August, 1971.

No. 4  
Letter  
Appellant  
to the  
Secretary  
of the Law  
Society

The Secretary.  
The Law Society of Singapore,  
Supreme Court Building,  
singapore.

10

Dear Sir,

Re: Civil Appeal No. 28 of 1970

I have received your letter of the 20th instant,  
and I note what you say. I desire to appear  
before the Council.

Yours faithfully,

Sgd. K.E. Hilborne

(K.E. HILBORNE)

20

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5.

In the High  
Court of  
Singapore

            
No. 7  
Originating  
Summons  
No.163 of  
1972  
26th May

No. 7  
ORIGINATING SUMMONS NO.163 of 1972  
IN THE HIGH COURT OF THE REPUBLIC  
OF SINGAPORE

Originating Summons)  
No. 163 of 1972        )

IN THE MATTER OF SECTIONS 89  
(1) and 95 of the Legal Profession  
Act, (Chapter 217) Ed. 1970

Between

30

KENNETH EDWARD HILBORNE Plaintiff

and

THE LAW SOCIETY OF SINGAPORE  
Defendants

ORIGINATING SUMMONS

Let The Law Society of Singapore attend  
before the Judge in Chambers on Monday, the  
19th day of June, 1972, at 10.30 a.m. on the

hearing of an application by the Plaintiff that the Order made by the Defendants dated the 5th day of May 1972 pursuant to Section 89(1) of the Legal Profession Act (Chapter 217) whereby the Plaintiff was ordered to pay a penalty of \$250.00 be set aside and that the Defendants do pay the costs of this application.

In the High Court of Singapore

                      
No. 7

Originating Summons No.163 of 1972

26th May 1972  
(continued)

Dated the 26th day of May 1972.

Sd.

10

REGISTRAR

This summons is taken out by Messrs. Murphy and Dunbar of Hongkong Bank Chambers, Singapore, solicitors for the said Plaintiff whose address is No. 9 Malacca Street, Singapore, and is an Advocate and Solicitor.

Note: This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

20

If a Defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court may think just and expedient.

Filed this 26th day of May, 1972.

\_\_\_\_\_

In the High Court of Singapore

AFFIDAVIT OF KENNETH EDWARD HILBORNE

No. 8

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Affidavit of Kenneth Edward Hilborne

Originating Summons No. 163 of 1972 )

25th May 1972

In the Matter of Section 89(1) and 95 of the Legal Profession Act, (Chapter 217) Ed. 1970.

Between

10

KENNETH EDWARD HILBORNE

Plaintiff

And

THE LAW SOCIETY OF SINGAPORE

Defendants

A F F I D A V I T

I, KENNETH EDWARD HILBORNE of No. 9 Chee Hoon Avenue, Singapore, make oath and say as follows :-

1. I am an Advocate and Solicitor of the Supreme Court of Singapore and a member of the firm of Messrs. Hilborne & Company of No. 9 Malacca Street, Singapore.

20

2. My firm acted for the Plaintiffs, The Brothers of St. Gabriel in Suit No. 1093 of 1970 the Writ of Summons wherein was issued on the 29th day of May 1970. The Defendants in that action were, firstly, one Tan Eng Huat, and, secondly, Golden Palace Private Limited. The Plaintiffs claim was for the sum of \$2,510.00 being the unpaid balance of money payable in respect of furniture manufactured and delivered by the Plaintiffs at the request of the First Defendant. The claim was against the First Defendant with an alternative claim against the Second Defendants on the ground that the First Defendant had ordered the goods on their behalf. The paper writing annexed hereto and marked "KEH-1" is a true copy of the indorsement on the said Writ of Summons.

30

40

On the 12th day of June 1970, the First Defendant, having entered appearance through his solicitors, Messrs. Donaldson & Burkinshaw, filed his defence, a true copy whereof is annexed hereto and marked "KEH-2". The substance of such defence was that the First Defendant, in his capacity as managing director of the Second Defendants had ordered the said furniture for the use of the Second Defendants' night club and restaurant, known as the Golden Pagoda Nite-Club and Restaurant.

3. The Second Defendants entered an appearance through their solicitors, Messrs. Chung & Company, but did not file a defence, but on the 4th day of June, Messrs. Chung & Company wrote two letters to my firm, true copies whereof are annexed hereto and marked "KEH-3" and "KEH-4". One of these letters requested that the Plaintiffs should furnish further and better particulars of their claim, as set out in the letter, and the other denied that the Second Defendants had ever ordered the said furniture, and maintained that the First Defendant had ordered the same for the night club and restaurant of which he was a partner, and that the Second Defendants had leased the building to the First Defendant as from the 1st day of August 1969. The letter further alleged that at no time had the Second Defendants ever made use of the said furniture. The version of the facts put forward by the Second Defendants was brought to the attention of the First Defendants, and on the 12th day of June his solicitors replied; the paper writing annexed hereto and marked "KEH-5" is a true copy of the letter. On the 15th day of June, Messrs. Chung & Company pursued their request for particulars, and on the 16th idem my firm replied thereto; true copies of the said letters are annexed hereto and marked "KEH-6" and "KEH-7".

4. On the 14th day of July the Second Defendants not having filed their defence, the Plaintiffs obtained judgment against them for the amount claimed and costs. On the 21st day of July the Second Defendants applied to this Honourable Court to set aside the said judgment and the said application was supported by an affidavit of Mokhtar bin Shariff, a clerk employed by their solicitors, a true copy whereof is annexed and marked "KEH-8". That affidavit in substance repeats the statements contained in the letter of the 4th day of June, and reiterates that at no

In the High  
Court of  
Singapore

No. 8

Affidavit  
of Kenneth  
Edward  
Hilborne

25th May  
1972

(continued)

time did the second Defendants have any interest in the Golden Pagoda Nite-Club and Restaurant. On the 24th day of July the Plaintiffs filed an affidavit in reply through Shaik Mohamed, a clerk in my firm, and a true copy whereof is annexed hereto and marked "KEH-9".

5. The said application came on for hearing on the 27th day of July before the Honourable the Chief Justice who ordered that the said judgment be set aside, and it was further ordered that the Second Defendants should have 10 days after delivery of particulars or after their application for particulars (which had in the meantime been filed) should be dismissed, to file their defence. 10

6. On the 14th day of August 1970 the Plaintiffs gave notice of appeal against the Order made by the Honourable the Chief Justice, and on the 20th idem the Second Defendants filed their defence, the full text whereof is as follows :- 20

" D E F E N C E

1. Paragraph 1 of the Statement of Claim is admitted.

2. The 2nd Defendants have no knowledge of and alternatively, they do not admit paragraphs 2 and 3 of the Statement of Claim.

3. As to paragraph 4, the 1st Defendant became a shareholder in the 2nd Defendant Company on the 2nd July 1969 when 1,000 shares of \$100.00 each fully paid in the capital of the 2nd Defendant Company were allotted to him. 30

4. If, which is not admitted, the 1st Defendant ordered the furniture referred to in the Statement of Claim, he did not do so for or on behalf of the 2nd Defendants.

Save as hereinbefore expressly admitted, the 2nd Defendants deny each and every allegation contained in the Statement of Claim as therein alleged or at all. 40

Dated and Delivered this 20th day of August, 1970."

7. The appeal came on for hearing before the Court of Appeal (Tan, Winslow and Choor Singh JJ.) on the 20th and 21st days of January 1971 and was dismissed.

In the High  
Court of  
Singapore

            
No. 8

Affidavit  
of Kenneth  
Edward  
Hilborne

25th May  
1972  
(continued)

10. 8. Shortly after the dismissal of the appeal it came to my notice as a consequence of information given to me by the First Defendant, his solicitor Mr. C.S. Wu, and Mr. Ong Swee Keng, a shareholder in the Second Defendants, that certain statements contained in the proceedings filed by the Second Defendants were either not true or inaccurate and misleading, and on the 1st day of February 1971 I wrote to Messrs Chung & Co., and a true copy of such letter is annexed hereto and marked "KEH-10", a true copy of the reply is annexed hereto and marked "KEH-11", and subsequently I requested Mr. Ong Swee Keng to make a Statutory Declaration regarding the material facts, a true copy whereof is annexed hereto and marked "KEH-12". The order made by the Court of Appeal not having been passed and entered, I made a request to that Court that I be given an opportunity of submitting that there should be further hearing of the appeal having regard to the disclosures made, and such request was heard in Chambers before Mr. Justice Tan and Mr. Justice Choor Singh on the 12th day of March 1971 (Mr. Justice Winslow being indisposed). Their Lordships, notwithstanding the facts brought to their notice, did not see fit to entertain further hearing of the appeal, and it was during the course of this hearing that I uttered the words which are the subject of these proceedings. On the 15th day of March, Messrs Chung & Company wrote to the private secretaries of Mr. Justice Tan and Mr. Justice Choor Singh and a true copy of such letter is annexed hereto and marked "KEH-13". On the 19th day of March the Registrar wrote to the Secretary of the Law Society, a true copy whereof is annexed hereto and marked "KEH-14". On the 40 12th day of April I received a letter from the Secretary to the Inquiry Committee, a true copy whereof is annexed and marked "KEH-15", and on the 24th day of May I replied thereto; the paper writing marked "KEH-16" is a true copy of such reply.

9. On the 5th day of May 1972 I received a letter from the Secretary, The Law Society, a true copy whereof is annexed hereto and marked "KEH-17"

10. No comment was made by either of their



In the High Court of Singapore

No. 8

Affidavit of Kenneth Edward Hilborne  
25th May 1972  
(continued)

Lordships at the time when I uttered the words complained of, and in the light of the further material and relevant information which had come to my knowledge and which knowledge I put before their Lordships it seemed to me that to take no cognisance thereof nor express disapproval thereof was in effect to approbate conduct which had caused false or misleading facts to be put before no less than four Judges. I am therefor aggrieved at the Order made against me by the Defendants and desire that it be set aside.

10

SWORN at Singapore this 25th day of May, 1972 } Sd. K.E. Hilborne

Before me,

Sd: Tan Hock Tey

COMMISSIONER FOR OATHS

Filed this 26th day of May, 1972.

No. 9

Notes of Argument

20th June 1972

No. 9

NOTES OF ARGUMENT

IN THE HIGH COURT OF SINGAPORE

Originating Summons )  
No. 163 of 1972)

In the matter of Sections 89(1) and 95 of the Legal Profession Act, (Chapter 217) Ed. 1970.

Between

Kenneth Edward Hilborne  
Plaintiff

And

The Law Society of Singapore  
Defendants

20

30

19.6.72 - To set aside the Order.  
2.15 p.m.  
Coram: CHUA, J.

NOTES OF ARGUMENTIn the High  
Court of  
SingaporeNo. 9Notes of  
Argument20th June  
1972

(continued)

Dunbar for Hilborne.

T.Q. Lim for Law Society.

Dunbar: S.95 Cap. 217 - application under Order  
of Council under S. 89.

10 There was ample cause to believe that 2nd  
Defendant had misrepresented facts to the Court.  
Issue in the Suit was whether 1st Defendant ordered  
the furniture for his firm or for the 2nd defendant.  
Plaintiff obtained judgment against 2nd defendant by  
default of defence. 2nd defendant applied to set  
aside the judgment. In support affidavit of Mokhtar  
filed Ex. KEH-8. Judgment was regular. C.J. set  
aside the judgment. Plaintiff gave notice of appeal.  
Appeal heard on 20th and 21st January and was dismissed.  
Certain information came to knowledge of plaintiff's  
solicitors that certain statements contained in the  
proceedings filed by the 2nd defendant were either  
untrue or inaccurate. Plaintiff then requested the  
20 C.A. for further hearing of the appeal. During the  
course of the hearing Plaintiff uttered the words  
that in refusing to re-open the appeal the Judges  
were setting a seal on dishonesty. Plaintiff then  
wrote to 2nd defendant's solicitors - KEH-13 and 2nd  
defendant's solicitors sent copy of letter to P.S.  
to the two Judges. Registrar then wrote to the  
Society on instruction of the Judges.

30 Meaning of "set one's seal to" - Oxford Dictionary-  
"authorised or confirm". Webster's "That which  
confirms, ratifies, authenticates or makes secure".

We are not saying the Judges decision was wrong;  
it is immaterial in any case.

KEH.16 Ex. E, Judgment of Court of Appeal.

40 Plaintiff was firmly convinced that Mokhtar's  
affidavit was blatantly untrue and misleading and that  
was why he went back before Their Lordships. With  
that frame of mind Plaintiff was disappointed and he  
made this remark. Mr. Chung took it as a reflection  
on himself, hence the challenge to Plaintiff to  
repeat it outside Court hence the letter from Plaintiff  
to Mr. Chung.

Disciplinary powers of Council - S.84. Not  
stated under what para. of S.84 Plaintiff is alleged to

In the High Court of Singapore

No. 9

Notes of Argument

20th June 1972

(continued)

have contravened. (Lim: I would justify it under para. (b) grossly improper conduct).

The Queen v. Gray (1900) 2 Q.B. 36. kP.37;  
40 "Any act done.....or expostulation.....  
.....contempt of court."

Ambard v. A.G. for Trinidad (1926) A.C.322;  
334 "Their Lordships can find..... (355).....  
of Court" and that in applying .....of ordinary  
men".

Plaintiff was expressing view that the decision the two Judges made was in effect giving effect to the dishonesty of the 2nd defendant. Nothing in that which should have been made a matter of disciplinary inquiry. Until Mr.Chung wrote the Judges had not thought of taking action against the plaintiff nor did the Judges say anything at the time. Mr. Chung should not have written to the P.S.

10

Lim: Affidavit of plaintiff attempted to show that he was entitled to make the remark that he made. That is irrelevant if it is contempt except on question of punishment.

20

No grounds set out in affidavit to set aside the order of the Council. But we have agreed that the ground plaintiff is relying on is that the conduct complained of does not give rise to jurisdiction of the Council under S.89 to order a penalty.

(Dunbar: All I am saying is that no penalty should have been imposed."

30

I was a member of the Inquiry.

The plaintiff is guilty of contempt of Court and it follows the Council has power to order plaintiff to pay a penalty.

Contempt of Court - Reg. v. Gray, p.40 "Any act done.....Court". What happened in R. v. Gray can be seen at p.38 "The facts of the case are these.....(39)..... (40).....contempt of Court".

Vadynsagara v. The Queen (1963) A.C. 589, facts 591; 595 - 596.

40

Kingdon v. Goho (1948) M.L.J. 17, 18 l.c.  
 "Contempt of Court covers a wide range.....(19)  
 .....contempt of Court".

In the High  
 Court of  
 Singapore

No. 9

Notes of  
 Argument

20th June  
 1972

(continued)

10 Our case - appeal dismissed and plaintiff applied  
 to Court for further hearing. After hearing  
 plaintiff the C.A. made an order refusing to reopen  
 or to order a further hearing and it was at this  
 stage after order was made (Dunbar: My instructions  
 are that before the Judges made order words uttered  
 ..... Hilborne: It was clear Judges were going to  
 refuse the application and before they did so I said  
 if you do so you will be setting the seal to  
 dishonesty). I don't think it would make any  
 difference. KEH 13 - letter of Mr. Hilborne to  
 Chung & Co. of 13th March, 1971 "I am writing.....  
 a dishonesty". The inference is that the Court had  
 already refused to re-open. KEH 16 page 5 "the  
 object of appearing.....(6)..... were  
 20 expressed". Here again the inference is that the  
 Court had clearly decided when Mr. Hilborne made  
 the remark.

The Court of Appeal having decided not to reopen  
 the appeal Mr. Hilborne said those words.

30 Plain meaning of the expression "to set a seal"  
 on something means to express one's assent to something  
 or to endorse something and in our case it was  
 "dishonesty". It means in the opinion of Mr. Hilborne  
 Court was expressing its assent to dishonest or  
 endorsing dishonesty of those instructing Mr. Chung.  
 I submit this is a statement which is calculated to  
 bring the Court or the Judges concerned into  
 contempt or to lower the authority of the Court or the  
 Judges or to scandalise the Court or the two Judges.  
 (See Reg. v. Grey).

I submit Mr. Hilborne is guilty of contempt  
 of Court. He is also an officer of the Court and  
 is guilty of attacking the honesty of the Judges.

40 Even though the words were uttered before Court  
 made the order I submit it amounted to contempt of  
 Court. The Court had already indicated its view  
 that they would not reopen and he made the remark.  
 It is unnecessary to couch it in those terms.

If there was contempt then Council has power to  
 order a penalty. Council's power to order penalty  
 is contained in S.89 (1) - power is discretionary and  
 unlimited except as to quantum.

In the High Court of Singapore

No. 9  
Notes of Argument  
20th June 1972  
(continued)

S.88 - 4 things Council can do.

S.87 - Investigation by Inquiry Committee.

Council has power to order penalty in a case where in its determination a case has been made out for disciplinary action under S.84 although there is no cause of sufficient gravity for a formal investigation. If a case is made out under one of the paras. under S. 84(2) then the Council would be entitled to order a penalty. I rely on 84 (2) (b) - guilty of grossly improper conduct in the discharge of his professional duty.

10

Cases on "grossly improper conduct".

In re a Solicitor (1932) 1 M.L.J. 177.

In re J.L.P.H. (1953) M.L.J. 161.

Rajasooria v. Disciplinary Committee (1955) M.L.J. 65.

In re Advocate & Solicitor (1962) M.L.J. 125.

Lau Liat Meng v. Disciplinary Committee (1967) 2 M.L.J. 141.

S.84(2)(h) and S.83(3) having regard to those, I submit in a case coming under S.89 the position is the same as in England in relation to powers of Council of the Law Society of England in dealing with disciplinary matters - it is Council which considers whether a breach has been committed. I submit it is for Council to decide whether the conduct complained of is professional misconduct and it is for Court to be satisfied there are grounds for the determination by the Council.

20

30

In re a Solicitor ex parte The Law Society (1912) 1 K.B. 302, 308 "The Committee found....."; 311; 314 "It is obvious....."; 315 "I have no hesitation ....."

I submit in this case the Council having considered the report and having heard the Advocate & Solicitor concerned was justified in finding the Advocate & Solicitor guilty of grossly improper conduct and under S.89 they are not required to give any reasons or to report any findings to the Advocate & Solicitor concerned except to notify the Advocate &

40

Solicitor under S.89 (3) of its intention to order payment of a penalty and give the Advocate & Solicitor concerned a reasonable opportunity to be heard by the Council.

In the High  
Court of  
Singapore

            
No. 9

Mr. Hilborne appeared before the Council and he was heard.

Notes of  
Argument

I ask for application to be dismissed and for an order to confirm the order of the Council under 95(3)(a).

20th June  
1972  
(continued)

10 4.50 Dunbar : I will take one hour. My  
learned friend has raised many matters.

- Adjourned to 9.30 tomorrow -

Sgd: F.A. Chua.

20.6.72: 9.35

Hearing resumed.

20 Lim: My learned friend said Mr.Hilborne was justified in making the statement. Whether there was dishonesty depends on which evidence Court would accept. The only proper place to adjudicate that is at the trial and not on affidavits. I submit there was no justification to impute dishonesty on 2nd defendant, much less to say that it was setting a seal to dishonesty.

Dunbar: My learned friend admits that Mr.Hilborne was not saying that the Court was dishonest. Neither of Judges took exception to the remark at the time.

30 My learned friend said he was relying on S.84(2)(b), it took me by surprise; I was assuming that Council was acting under para. (h). Council wrote to Mr. Hilborne on 20th August, 1971; words used there were "improper conduct". Para (b) "grossly improper conduct". It appears the Council has overlooked "grossly". Council thought there was no cause of sufficient gravity and acted under S.89 I take it "any usage or rule of conduct" para. (b) has not been breached.

In the High Court of Singapore

No. 9

Notes of Argument

20th June 1972

(continued)

My learned friend also relied on para (h); this has some reference to the practice in England and we have not heard anything on it at all.

36 Hals. 225 312 - nothing to cover the case.

Cases referred to by my learned friend:

In re a Solicitor 1912 1 K.B. 302, 312. Judges are lawyers and not medical men and opinion of Medical Council would carry weight. Law Society - procedure in England different from procedure here.

10

Vediyasagara (1963) A.C. 589; 596 "But whether.....in the circumstances". Different thing to that we have in our case.

Other cases cited have no bearing on our case - Kingdon's case; (1932 M.L.J. 117); (1953) M.L.J. 161; (1955) M.L.J. 65; (1962) M.L.J. 125; Lau Liat Meng's case.

I submit what has happened here is that the Council has gone wrong and ex post facto they were expressing their disapproval which were not covered by para (b) or (h).

20

Ex H - liquidator consented to judgment and did not ask for costs.

10.10 a.m.

Court: In my view Mr. Hilborne was guilty of contempt of Court and the Council was perfectly right in imposing the penalty which it did. The O.S. is dismissed with costs. The penalty imposed is affirmed.

Sd. F.A. Chua.

30

23.6.72:

Dunbar.

T. Q. Lim.

Dunbar: I apply for leave to appeal to the Court of Appeal.

Lim: I have no objection.

Court: Leave to appeal granted.

Sd: F.A. Chua.

19.

No. 10

ORDER OF COURT

In the High  
Court of  
Singapore

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

No.10

Originating Summons )  
No. 163 of 1972 )

Order of  
Court

20th June  
1972

In the Matter of Sections  
89(1) and 95 of the Legal  
Profession Act, (Chapter  
217) Ed. 1970

Between

10

Kenneth Edward Hilborne  
Plaintiff

And

The Law Society of  
Singapore Defendants

BEFORE THE HONOURABLE MR. JUSTICE CHUA IN CHAMBERS

20

Upon the application of the abovenamed Plaintiff  
by Originating Summons dated 26th May 1972 for an  
order that the order made on 5th May 1972 by the  
Council of the abovenamed Defendants that the Plaintiff  
pay a penalty of \$250.00 be set aside and Upon Hearing  
Counsel for the Plaintiff and Defendants and Upon  
Reading the affidavit of the Plaintiff filed herein  
on 26th day of May 1972 and the exhibits therein  
referred It is Ordered that the said application be  
dismissed with costs to be taxed and paid by the  
Plaintiff to the Defendants and It is Further Ordered  
that the said penalty be affirmed.

Dated this 20th day of June, 1972.

Sgd:- Robert Teo

30

Asst. Registrar

\_\_\_\_\_



In the High  
Court of  
Singapore

No. 11

LEAVE TO APPEAL

No.11  
Leave to  
Appeal  
23rd June  
1972

ORDER OF COURT DATED  
23rd Day of June 1972

IN THE HIGH COURT OF THE REPUBLIC  
OF SINGAPORE

Originating Summons )  
No. 163 of 1972. }

In the Matter of Sections  
87(1) and 95 of the Legal  
Profession Act, (Chapter  
217) Ed. 1970.

10

Between

KENNETH EDWARD HILBORNE  
Plaintiff

And

THE LAW SOCIETY OF  
SINGAPORE Defendants

BEFORE THE HONOURABLE MR. JUSTICE CHUA IN CHAMBERS

UPON the application of the abovenamed  
Plaintiff made this day on further hearing of  
the abovementioned Originating Summons and UPON  
HEARING Counsel for the Plaintiff and for the  
Defendants It is ordered that the Plaintiff have  
leave to appeal to the Court of Appeal against  
the order made herein on the 20th day of June,  
1972.

20

Dated this 23rd day of June, 1972.

Sd: R.E. MARTIN

ASSISTANT REGISTRAR

21.

No. 12

NOTICE OF APPEAL

In the Court  
of Appeal in  
Singapore

No.12

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 39 OF 1972.

Notice of  
Appeal

15th July  
1972

Between

KENNETH EDWARD HILBORNE Appellant

And

THE LAW SOCIETY OF SINGAPORE

Respondents

10 IN THE MATTER OF Originating Summons  
No. 163 of 1972.

And

IN THE MATTER OF Sections 89(1) and 95  
of the Legal Profession Act, (Chapter  
217) Ed. 1970.

Between

Kenneth Edward Hilborne Plaintiff

And

The Law Society of Singapore Defendants

NOTICE OF APPEAL

20

TAKE NOTICE that Kenneth Edward Hilborne,  
the abovenamed Appellant being dissatisfied with  
the decision of the Honourable Mr. Justice Chua  
given at Singapore on the 20th day of June, 1972  
appeals to the Court of Appeal against the whole of  
the said decision.

Dated the 15th day of July, 1972.

Sd. HILBORNE & CO.

Solicitors for the  
Appellant.

30

To the Registrar,  
Supreme Court,  
Singapore.

In the Court  
of Appeal in  
Singapore

And to the abovenamed Respondents and their  
solicitors, Messrs. T.Q. Lim & Co., Singapore.

No.12  
Notice of  
Appeal  
15th July  
1972  
(continued)

And the address for service of the Appellant  
is at the office of Messrs. Hilborne & Co mpany  
Nos. 22/23 Nunes Building, No. 9 Malacca Street,  
Singapore, 1.

No.13  
Petition of  
Appeal  
30th August  
1972

No. 13

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO.39 of 1972

Between

KENNETH EDWARD HILBORNE Appellant

10

And

THE LAW SOCIETY OF SINGAPORE  
Respondent

IN THE MATTER OF Originating Summons  
No. 163 of 1972

And

IN THE MATTER OF Sections 89(1) and  
95 of the Legal Profession Act,  
(Chapter 217) Ed. 1970.

Between

Kenneth Edward Hilborne Plaintiff

20

And

The Law Society of Singapore  
Defendants

PETITION OF APPEAL

To the Honourable the Judges of the Court of  
Appeal. The Petition of the abovenamed  
Appellant showeth as follows :-

1. The appeal arises from a claim by the  
abovenamed appellant to set aside the Order  
made by the abovenamed respondents dated the

30

5th day of May 1972 pursuant to Section 89(1) of the Legal Profession Act (Chapter 217) whereby the above-named appellant was ordered to pay a penalty of \$250.00.

In the Court  
of Appeal in  
Singapore

No.13

Petition of  
Appeal

30th August  
1972  
(continued)

2. By judgment dated the 20th day of June, 1972, judgment was given for the respondents.

3. Your petitioner is dissatisfied with the said judgment on the following grounds :-

10 (i) That the learned Judge erred in law and in fact in finding that the appellant "was guilty of contempt of Court", for the following reasons:-

(a) the facts did not provide any, or any sufficient, material which could support a case that the appellant had committed contempt of Court;

20 (b) the application before the learned Judge, under Section 95 of the Legal Profession Act, was to set aside the order made by the respondents. Such order was based on a finding by the respondents that the appellant had been guilty of improper conduct and it was no part of the case against him that he had committed contempt of Court;

(c) if the facts provided material which court support a case of contempt of Court, it was for the Court itself to take cognisance of that contempt and to act accordingly. (sic)

30 (ii) That the learned judge ought in the circumstances have have given reasons for his finding that the appellant had committed contempt of Court.

(iii) That the respondents ought to have apprised the appellant of the nature of the offence under Section 84(2) of the Act alleged to have been committed by him and the learned Judge ought to have set aside the penalty imposed upon him on the ground that the respondents had failed to do so.

40 (iv) That the respondents imposed the penalty upon the appellant upon the ground that he had been guilty of "improper conduct". The learned judge ought to have set aside the said penalty on the ground that the provisions of Section 84(2), and in particular sub-paragraph (b) therefore do not

In the Court  
of Appeal in  
Singapore

            
No.13

Petition of  
Appeal

30th August  
1972  
(continued)

provide for such an offence.

- (v) That the respondents ought not to have ordered the appellant to pay the said penalty and the order to do so ought to have been set aside.

4. Your Petitioner prays that such judgment may be reversed.

Dated the 30th day of August, 1972.

Sgd. HILBORNE & CO.

Solicitors for the Appellant

And to the abovenamed Respondents  
and to their solicitors,  
Messrs. T. Q. Lim & Co.,  
Singapore.

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\_\_\_\_\_

NO. 14  
ORDER

In the Court  
of Appeal in  
Singapore

ORDER OF COURT DATED  
23RD OF NOVEMBER 1972

No.14

Order

23rd November  
1972

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 39 of 1972

BETWEEN

KENNETH EDWARD HILBORNE APPELLANT

AND

10 THE LAW SOCIETY OF SINGAPORE RESPONDENT

In the Matter of Originating  
Summons No. 163 of 1972

AND

In the Matter of Sections 89(1)  
and 95 of the Legal Profession  
Act, (Chapter 217) Ed. 1970

BETWEEN

KENNETH EDWARD HILBORNE PLAINTIFF

AND

20 THE LAW SOCIETY OF SINGAPORE DEFENDANTS

CORAM: THE HONOURABLE THE CHIEF JUSTICE,  
THE HONOURABLE MR. JUSTICE WINSLOW,  
THE HONOURABLE MR. JUSTICE D'COTTA.

IN OPEN COURT

THE 23RD DAY OF NOVEMBER, 1972.

O R D E R

30 THIS APPEAL coming on for hearing this day in  
the presence of Mr. T.G. Dunbar of Counsel for the  
Appellant and Mr. T.Q. Lim of Counsel for the  
Respondent AND UPON READING the Record of Appeal  
filed herein AND UPON HEARING Counsel aforesaid  
IT IS ORDERED that the said Order of the Honourable  
Mr. Justice Chua given on 20 June 1972 be affirmed  
and that this Appeal be dismissed with costs to be  
taxed and paid by the Appellant/Plaintiff to the  
Respondent/Defendants AND IT IS ALSO ORDERED that

In the Court  
of Appeal in  
Singapore

the sum of S\$500.00 lodged in Court as security for  
the costs of the Appeal be paid out by the Accountant-  
General to the Respondent.

No.14  
Order  
23rd November  
1972  
(Continued)

Given under my hand and the Seal of the Court  
this 27th day of September 1973.

Sgd. R.E. MARTIN  
ASSISTANT REGISTRAR

No.15  
Judgment  
5th March  
1973

No. 15  
JUDGMENT

IN THE COURT OF APPEAL OF THE REPUBLIC  
OF SINGAPORE

10

CIVIL APPEAL No. 39 of 1973

B E T W E E N :

KENNETH EDWARD HILBORNE Appellant

- and -

THE LAW SOCIETY OF SINGAPORE Respondents

Coram: Wee Chong Jin, C.J.  
A.V. Winslow, J.  
T. Kulasekaram, J.

J U D G M E N T

20

At the conclusion of the hearing we  
dismissed this appeal against the refusal of  
Chua J. on 20th June 1972 in Chambers to set aside an  
order of 5th May 1972 made by the Council of the Law  
Society of Singapore that the appellant should pay a  
penalty of \$250 under section 89(1) of the Legal  
Profession Act (Cap. 217) (hereinafter referred to as  
"the Act").

We now give our reasons.

A preliminary question arose as to the competence 30  
of such an appeal to the Court of Appeal in the absence  
of any specific provision to this effect in Part VII of  
the Act which relates to disciplinary proceedings affect-  
ing members of the legal profession. Further, it seemed

to us that a doubt arose as to whether the order made under section 95 of that Act was an order made in the exercise of the original civil jurisdiction conferred on the High Court by section 29 of the Supreme Court of Judicature Act (Cap. 15) having regard to the subject matter of the appeal and the context of the situation in which the action of the respondent was originally invoked to say nothing of the fact that even where cause of sufficient gravity for disciplinary action under section 93 has been found, an application proceeds under section 98 for an order to show cause which, before being made absolute, is heard by a court of three judges and not by the Court of Appeal.

In the Court  
of Appeal in  
Singapore

          
No.15

Judgment

5th March  
1973

(Continued)

Without determining this preliminary question, we proceeded to hear the appeal on its merits, on the basis, as counsel for the Respondent seemed at one stage to suggest, that jurisdiction did in fact exist to hear the appeal despite our own doubts in the matter then. We would revert to this later.

Counsel for the Appellant, Mr. T.G. Dunbar, opened the appeal on its merits with the proposition that the order for the penalty imposed on Mr. Hilborne should have been set aside because what Mr. Hilborne had done was only a "perfectly proper right of exercise of his forensic skill" of which the Council took too strict a view by determining that although no cause of sufficient gravity existed for a formal investigation he should be ordered to pay a penalty.

It is therefore necessary briefly to set out the facts which led to the Council's order for the penalty of \$250.

In Suit No. 1093 of 1970 the Appellant acted for the Plaintiffs against one Tan Eng Huat and Golden Palace Private Ltd. in a claim for \$2,510 being the balance due in respect of furniture delivered to the second Defendants' premises at the request of the first Defendant. In the alternative, it was claimed that, if the same had been ordered by first Defendant for the use of the second Defendants, a company, the second Defendants were liable. The writ was issued on 29th May 1970 and the first Defendant, having entered an appearance, filed his defence on 12th June 1970. The second Defendants entered an appearance but did not file a defence although their Solicitors wrote two letters to the Plaintiffs Solicitor



In the Court  
of Appeal in  
Singapore

denying the claim on the ground that it was the first Defendant who was personally responsible for ordering the furniture.

No. 15  
Judgment  
5th March  
1973  
(Continued)

On 14th July 1970, the Plaintiffs obtained judgment against the second Defendants in default of defence for the amount claimed with costs.

On 21st July, the second Defendants applied for the judgment to be set aside, supporting their application by an Affidavit filed by a clerk of their solicitors. An Affidavit in reply by a clerk of the Appellant's firm was filed on 24th July and on 27th July the judgment was set aside with leave for the second Defendants to file their defence which was accordingly filed on 20th August.

10

A notice of appeal having been filed by the Plaintiffs, the matter came before the Court of Appeal on 20th and 21st January, 1971 and was dismissed.

Subsequently the Appellant received information from the Solicitor for the first Defendant, and Mr. Ong Swee Keng, a shareholder in the second Defendants, that certain statements in the proceedings filed by the second Defendants were either not true or inaccurate and misleading.

20

As the order made by the Court of Appeal had not yet been passed and entered, the Appellant applied on behalf of the Plaintiffs for a further hearing of the appeal in view of the fresh information he had received. This application was heard in Chambers on 13th March 1971 before two members of the Court of Appeal which had orally dismissed the appeal, the other member being indisposed.

30

During the application for further hearing, after the said judges had refused to re-open the appeal, the Appellant uttered the words that, in refusing to do so, the judges were setting a seal on dishonesty.

The Registrar of the Supreme Court, on the instructions of the said judges requested the Law Society to act under Section 86(2) of the Act.

On being called upon by the Inquiry Committee of the Law Society for an explanation, the Appellant in a letter dated 24th May, 1971 at Ex. KEH-16 said, after dealing with facts.

40

"The object of appearing before their Lordships on the 13th March, 1971, was to re-open hearing of the appeal on the ground that both courts had been misled, inasmuch as the true and material facts had not been disclosed at any time from the commencement of the correspondence (4.6.70) to the hearing of the appeal (21.1.1971). In the event, their Lordships did not deem fit to re-open the hearing of the appeal. It seemed, and still seems, to me that for a litigant to misinform the court in circumstances such as these was dishonesty in the legal, if not the actual sense, and for a court having been appraised of the nature of the falsity, to fail to express any disapproval of the same, let alone investigate the matter further, was tantamount to condonation of that dishonesty. It was these circumstances that led to the observation which I made. No doubt it was a somewhat blunt expression of opinion but I do not recall either of their Lordships taking objection at the time, either to the content of the words or the manner in which they were expressed."

After considering the report of the Inquiry Committee, the Council of the Law Society, as we have already said, ordered the Appellant to pay a penalty of \$250 and the Council's order was affirmed by a judge of the Supreme Court. We can see no reason to interfere with the order made by the Council. The words uttered by the Appellant were in our view improper and ought not to have been used.

It was argued that those words could not amount to contempt of court and that the two judges to whom those words were addressed did not at the time consider that the Appellant was in contempt of court in uttering those words. The point is irrelevant because, whether or not the Appellant was guilty of contempt of court, we are of the opinion that it was for the Council under section 88 to determine whether or not in the circumstances the Appellant had said something which in the view of the Council ought not to have been said by a member of the profession, and, if so, whether or not the impropriety was sufficiently serious to merit the imposition of a monetary penalty. As we have just said we agree with the view taken by the Council. For these reasons we upheld the order made by Chua J.

In the Court  
of Appeal in  
Singapore

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No.15

Judgment

5th March  
1973

(Continued)

In the Court  
of Appeal in  
Singapore

          
No.15

Judgment

5th March  
1973

(Continued)

With regard to the question of jurisdiction on which we reserved our opinion, we are of the view that, although section 95 of the Act empowers an application such as the Appellant's to be made by way of originating summons to a judge to set aside the Council's order, the order made herein is not an order made by the High Court in a civil matter either in the exercise of its original or of its appellate jurisdiction. Section 29 of the Supreme Court of Judicature Act (Cap. 15) confers jurisdiction on the Court of Appeal to hear and determine an appeal only in such cases. 10

Moreover, the doubts we had in this matter as earlier expressed have not in any way been dispelled.

The provisions of Part VII of the Act clearly contemplate a special procedure in respect of disciplinary proceedings affecting the profession. One has only to consider the position that would arise should a person who had made a written complaint to the Society have been dissatisfied with the Council's action. Such a person could apply to a judge by way of originating summons under section 96 of the Act and the only orders a judge could make could be to affirm the Council's decision or to direct the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee. Surely it cannot be successfully contended that an appeal would lie in such circumstances to the Court of Appeal. As the Act provides, if a Disciplinary Committee makes a finding adverse to the advocate and solicitor the procedure prescribed under section 98 of the Act, would apply and the matter would eventually go before a Court of three Judges and not before the Court of Appeal. 20 30

Moreover, the order made by a single judge under sections 95 and 96 is not an interlocutory order within the meaning of section 34 of the Supreme Court of Judicature Act.

We are accordingly of the opinion that the Court of Appeal has no jurisdiction to entertain an appeal of this nature from an order made by a judge under section 95 of the Act. 40

Sgd. Wee Chong Jin  
Chief Justice

Sgd. A.V. Winslow  
Judge

Sgd. T. Kulasekaram  
Judge

Singapore  
5th March 1973.

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No. 16

In the Court  
of Appeal in  
Singapore

NOTICE OF MOTION

No.16

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 39 OF 1972

Notice of  
Motion

20th February  
1973

BETWEEN

KENNETH EDWARD HILBORNE

APPELLANT

AND

THE LAW SOCIETY OF SINGAPORE

RESPONDENT

In the Matter of Originating  
Summons No. 163 of 1972

AND

In the Matter of Sections 89 (1)  
and 95 of the Legal Profession  
Act, (Chapter 217) Ed. 1970.

BETWEEN

KENNETH EDWARD HILBORNE

PLAINTIFF

AND

THE LAW SOCIETY OF SINGAPORE

DEFENDANTS

NOTICE OF MOTION

TAKE NOTICE that on MONDAY the 19th day of  
MARCH, 1973 at 10.00 o'clock in the forenoon or  
as soon thereafter as he can be heard MR. T.G.  
DUNBAR of Counsel for the abovenamed Appellant  
will move the Court for :-

- (1) leave under Section 3 (1) (a) (iii) of the  
Judicial Committee Act (Cap.8) to appeal  
to the Judicial Committee of Her Britannic  
Majesty's Privy Council against the whole  
of the Judgement of the Court of Appeal  
delivered herein at Singapore on the 23rd day  
of November, 1972; and
- (2) directions under Section 4(2) of the said  
Act.

Dated this 20th day of February, 1973.

Sgd: HILBORNE & CO.  
SOLICITORS FOR THE APPELLANT

In the Court  
of Appeal in  
Singapore  
            
No.16

The address for service of the Appellant  
is at the office of Messrs. Hilborne &  
Company, Advocates and Solicitors of  
Nos. 22/23 Nunes Building, No.9 Malacca  
Street, Singapore.

Notice of  
Motion  
20th February  
1973  
(Continued)

This Notice of Motion was taken out by  
Messrs. Hilborne & Company of Nos.  
22/23 Nunes Building, No. 9 Malacca  
Street, Singapore, Solicitors for the  
abovenamed Appellant.

10

To the abovenamed Respondent and to  
their Solicitors, Messrs. T.Q. Lim &  
Company, Singapore.

No.17  
Affidavit of  
Appellant  
20th February  
1973

No. 17  
AFFIDAVIT OF APPELLANT  
IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 39 OF 1972

BETWEEN

KENNETH EDWARD HILBORNE

APPELLANT

AND

THE LAW SOCIETY OF SINGAPORE

RESPONDENT

20

In the Matter of Originating  
Summons No. 163 of 1972

AND

In the Matter of Sections 89(1)  
and 95 of the Legal Profession  
Act, (Chapter 217) Ed. 1970.

BETWEEN

KENNETH EDWARD HILBORNE

PLAINTIFF

AND

THE LAW SOCIETY OF SINGAPORE

DEFENDANTS

30

A F F I D A V I T

I, KENNETH EDWARD HILBORNE of No. 9 Chee Hoon

Avenue, Singapore, make oath and say as follows :-

1. Prior to the March 14th 1971 it was brought to my notice by two members of the Singapore Bar that certain material facts deposed to in affidavits filed in the High Court in proceedings before that Court were untrue. The proceedings in question were those in Suit No. 1093 of 1970, entitled The Brothers of St. Gabriel vs. 1. Tan Eng Huat 2. Golden Palace Private Limited. In those proceedings my firm, Hilborne & Company, had acted as solicitors and I had appeared as Counsel for The Brothers of St. Gabriel, the plaintiffs in the action. Following certain proceedings in the Court below which were decided against the plaintiffs and in which the aforesaid affidavits were filed the plaintiffs appealed to the Court of Appeal (Tan, Winslow and Choor Singh JJ.). Their appeal was dismissed on the 21st day of January 1971.. It was between the latter date and the 14th day of March 1971 that I first became informed on those matters which satisfied me that material parts of the said affidavits were false.

2. I took steps to bring these facts to the notice of the members of the Court of Appeal before the order of that Court dismissing the Plaintiffs' appeal had been passed and entered, and on the morning of the 14th day of March 1971 in Chambers before Mr. Justice Tan and Mr. Justice Choor Singh (Mr. Justice Winslow being indisposed) and in the presence of Counsel for the Second Defendants, I brought the relevant material to their notice and submitted that the appeal ought to be re-opened and that I ought to be allowed to address the Court of Appeal in the light of the revelations to which reference had been made. Although their Lordships did not dispute their relevance, they appeared reluctant to re-open the appeal, and I thereupon made the following observation, namely, that if they declined to re-open the appeal they would be 'setting a seal on dishonesty'. I meant by that, that if false, material, and misleading facts were placed before a Court which were later brought to its notice, it was the duty of the Court to express its disapprobation and to take such as might ensure that the perpetuation of that dishonesty did not ensue to the advantage of those responsible for it, and that if a Court did not respond in such manner that would be approbating or setting a seal of

In the Court  
of Appeal in  
Singapore

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No.17

Affidavit of  
Appellant

20th February  
1973

(Continued)

In the Court  
of Appeal in  
Singapore

No.17

Affidavit of  
Appellant

20th February  
1973

(Continued)

approval on such conduct. At the time, no objection was taken or any comment made by either of the Judges but two days later they brought the fact to the notice of the Registrar of the High Court who in turn placed the matter before the Law Society.

3. In due course, The Law Society fined me the sum of \$250.00 for 'improper conduct', although it was not made clear to me on what basis or upon what facts it was considered that I had acted improperly. Pursuant to the provisions of the Legal Profession Act, I applied to a single Judge to review the decision of the Law Society. The learned Judge found that I had been guilty of contempt of court and declined to interfere with the findings and order made by the Law Society.

10

4. I appealed to the Court of Appeal against the finding of the learned Judge (Chua J.) and such appeal came on for hearing on the 23rd day of November 1972 (Wee CJ. Chua and D'Cotta JJ.). During the course of the hearing the Court intimated that the finding of contempt of court could not stand but they questioned whether I had a right of appeal to the Court of Appeal. The Court dismissed my appeal and stated that it would give its reasons in writing. No reasons have been delivered and in view of the provisions of Section 4(1) of the Judicial Committee Act (Cap. 8) it is necessary to apply for leave to appeal to the Judicial Committee of the Privy Council before the 23rd day of February 1973.

20

5. I desire to appeal further because I am of the view that a question of principle is involved. Further, I see no evidence that The Law Society or the learned Judge who reviewed their decision applied the proper principle of law or the relevant provisions of the Legal Profession Act. Without knowing the grounds upon which the Court of Appeal dismissed my appeal I am unable to comment thereon, but I maintain that an appeal to that Court was open to me.

30

6. I am aware that the amount of the fine is small and of comparative insignificance. Nevertheless, the questions at issue seem to be of importance not only to members of the legal profession in particular but to the public in general, and it is for this reason that I desire to take the matter further.

40

SWORN at Singapore this 20th)  
day of February, 1973. )

Before me,

Sgd: Tan Hock Tey

COMMISSIONER FOR OATHS

Sgd: K.E. HILBORNE

No. 18

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

In the Privy  
Council

No.18

AT THE COUNCIL CHAMBER WHITEHALL

The 6th day of October 1975

L.S. BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

Order grant-  
ing Special  
Leave to  
appeal to  
the Judicial  
Committee of  
the Privy  
Council

6th October  
1975

10 WHEREAS by virtue of the Republic of  
Singapore (Appeals to Judicial Committee) Orders  
1966 and 1969 there was referred unto this  
Committee a humble Petition of Kenneth Edward  
Hilborne in the matter of an Appeal from the  
Court of Appeal in Singapore between the  
Petitioner and The Law Society of Singapore  
Respondent setting forth that the Petitioner  
prayed for special leave to appeal from a  
Judgment of the Court of Appeal in Singapore  
dated the 5th March 1973 which dismissed the  
20 Petitioner's Appeal from an Order of the High  
Court in Singapore dated the 20th June 1972  
affirming an Order by the Respondent that the  
Petitioner should pay a penalty of \$250 pursuant  
to section 89(1) of the Legal Profession Act  
(Cap. 217): And humbly praying Their Lordships  
to grant the Petitioner special leave to appeal  
against the Judgment of the Court of Appeal in  
Singapore dated the 5th March 1973 and for  
further or other relief.

30 THE LORDS OF THE COMMITTEE in obedience to  
the said Orders have taken the humble Petition  
into consideration and having heard Counsel in  
support thereof and in opposition thereto Their  
Lordships do grant special leave to the Petitioner  
to enter and prosecute his Appeal against the  
Judgment of the Court of Appeal in Singapore dated  
the 5th March 1973.

40 AND Their Lordships do further order that the  
proper officer of the said Court of Appeal be  
directed to transmit to the Registrar of the Privy  
Council without delay an authenticated copy of the  
Record proper to be laid before the Judicial  
Committee on the hearing of the Appeal upon payment  
by the Petitioner of the usual fees for the same.

E.R. MILLS.

Registrar of the Privy Council.



Exhibits

KEH 1

Statement  
of Claim  
in The  
Brothers  
of St.  
Gabriel  
-v-  
Tan Eng  
Huat and  
Another

12th June  
1970

EXHIBITSEXHIBIT KEH 1STATEMENT OF CLAIM

The Plaintiffs' claim is for \$2,510.00.

1. The Plaintiffs are a registered society under The Societies Act 1966, and at the time of the transaction hereinafter described they were carrying on their activities under the name or style of St. Joseph's Trade School.

2. Prior to the 4th July 1969 the First Defendant requested the Plaintiffs to manufacture certain items of furniture at their St. Joseph's Trade School, the agreed price whereof was \$2,810.00. The Plaintiffs agreed to manufacture the said furniture which they did and they delivered the same to the premises of the Second Defendants. 10

3. The Plaintiffs rendered their invoices dated the 4th July 1969 and 7th August 1969 to the First Defendant in respect of such furniture but only a sum of \$300.00 has been paid by the First Defendant to the Plaintiffs. 20

4. The First Defendant is a shareholder in and a member of the Second Defendants.

5. The Plaintiffs claim the sum of \$2,510.00 from the First Defendant. Alternatively, if the First Defendant ordered the said furniture for and on behalf of the Second Defendants, the Plaintiffs claim the said sum from the second Defendants. The Plaintiffs also claim interest at 6% on the sum of \$2,510.00 from the 4th day of July 1969 up to date of judgment.

Sd:- HILBORNE & CO.

30

SOLICITORS FOR THE PLAINTIFFS

This is the exhibit marked "KEH-1" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sd: Tan Hock Tey

Commissioner for Oaths.

EXHIBIT KEH 2DEFENCEIN THE HIGH COURT OF THE REPUBLIC OF SINGAPORESuit No. 1093 )  
of 1970 }ExhibitsKEH 2

Defence

12th June  
1970

B E T W E E N

The Brothers of St. Gabriel  
Plaintiffs

AND

1. Tan Eng Huat  
2. Golden Palace Private Limited  
Defendants

10

DEFENCE OF THE FIRST-NAMED DEFENDANT

1. The First-named Defendant was at all material times the Managing Director of the Second-named Defendants (hereinafter referred to as "the Company"). In or about March 1969, the First-named Defendant as the Company's Managing Director placed an order for furniture to be manufactured by the Plaintiffs for the Company for use at the Company's Night Club and Restaurant premises at 57-G Jalan Ang Siang Kong, Singapore, known as Golden Pagoda Garden Nite-Club and Restaurant. The furniture was duly delivered by the Plaintiffs to the Company pursuant to the said Order.

20

2. The furniture has at all times been the property of the Company, and the Company is justly liable to the Plaintiffs for the amount claimed by the Plaintiffs in this action.

30

3. Save as has hereinbefore been expressly admitted, the First-named Defendant denies each and every allegation contained in the Statement of Claim as if the same were set out herein seriatim and specifically traversed.

Dated and Delivered this 12th day of June, 1970.

Sd: Donaldson & Burkinshaw  
Solicitors for the First-named  
Defendant.

Exhibits

KEH 2

Defence

12th June

1970

(Continued)

To the above named Plaintiffs,  
and their Solicitors,

Messrs. Hilborne & Co.,  
Singapore.

This is the exhibit marked "KEH - 2" referred to in  
the Affidavit of K.E. Hilborne and sworn before me  
this 25th day of May, 1972.

Before me,

Sd. Tan Hock Tey

Commissioner for Oaths.

10

EXHIBIT KEH 3

KEH 3

Letters

Messrs.

Chung & Co.

to Messrs.

Hilborne

& Co.

LETTER MESSRS. CHUNG & CO.  
TO MESSRS. HILBORNE & CO.

CHUNG & CO.

Messrs. Hilborne & Co.,  
Singapore.

4th June, 1970.

Dear Sirs,

Re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel

vs

1. Tan Eng Huat

2. Golden Palace Private Limited

20

We act for the 2nd Defendants Messrs. Golden  
Palace Private Limited in the above suit brought by  
your clients the Brothers of St. Gabriel. Our  
clients require the following particulars of your  
clients' Statement of Claim :-

(a) Under paragraph 2

(i) of the request made by the 1st  
Defendant to the Plaintiffs to  
manufacture certain items of  
furniture at the agreed price of  
\$2,810/-, of whether the request was  
oral or in writing, if oral stating  
the full terms thereof, if in writing  
sufficiently identifying the  
document;

30

- (ii) of the items of furniture the price whereof was agreed at \$2,810/-;
- (iii) of the person or company with whom the Plaintiffs agreed to manufacture the said furniture;
- (iv) of the date of delivery of the said furniture;
- (v) of the exact place where the said furniture were delivered.

Exhibits

KEH 3

Letters  
Messrs.  
Chung & Co.  
to Messrs.  
Hilborne  
& Co.  
(Continued)

10

(b) Under Paragraph 3.

of the sum of \$300/- paid by the 1st Defendant to the Plaintiffs, of whether the said sum was paid by cash or cheque, if by cheque full particulars of the said cheque and if by cash the date of such payment.

20

We shall be obliged if you will kindly deliver the above particulars after they have been filed one week from the date hereof.

Yours faithfully,

Sd:- Chung & Co.

This is the exhibit marked "KEH - 3" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sd: Tan Hock Tey  
Commissioner for Oaths

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Exhibits

EXHIBIT KEH 4

KEH 4

LETTER MESSRS. CHUNG & CO. TO  
MESSRS. HILBORNE & CO.

Letter  
 Messrs.  
 Chung & Co.  
 to Messrs.  
 Hilborne  
 & Co.

CHUNG & CO.  
 ADVOCATES & SOLICITORS

4th June 1970.

4th June  
 1970

Messrs. Hilborne & Co.,  
 Singapore.

Dear Sirs,

re: Suit No. 1093 of 1970  
 The Brothers of St. Gabriel

10

vs

1. Tan Eng Huat  
2. Golden Palace Private Limited

We act for the 2nd Defendants Golden Palace  
 Private Limited in the above Suit.

We are instructed that our clients never  
 ordered any of the furniture set out in your clients'  
 Statement of Claim for which the sum of \$2,810/- is  
 claimed.

The furniture was ordered by the 1st Defendant  
 for the firm of Golden Pagoda Garden Nite-Club and  
 Restaurant of Jalan Ang Siang Kong, 11 $\frac{3}{4}$  m.s. Tampenis  
 Road, Singapore, of which the 1st Defendant was a  
 partner.

20

Our clients, as owners of the building leased  
 it to the above firm on the 1st August 1969 although  
 possession was delivered to the 1st Defendant some  
 time in June 1969.

The business of the above firm was terminated on  
 the 1st December 1969.

30

At no time was any of the furniture ordered by  
 our clients or by the 1st Defendant on behalf of our  
 clients nor was any part of the furniture ever made use  
 of by our clients.

We shall be entering appearance in the course  
 of today or tomorrow.

No doubt your clients may wish to give prompt  
 attention to what we have stated in this letter and if

they propose to discontinue no doubt they will do so as soon as possible.

Yours faithfully,

(Sd.) Chung & Co.

This is the exhibit marked "KEH-4" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sd:- Tan Hock Tey

Exhibits

KEH 4

Letter  
Messrs.  
Chung & Co.  
to Messrs.  
Hilborne  
& Co.

4th June  
1970  
(Continued)

10

EXHIBIT KEH 5

LETTER MESSRS. DONALDSON & BURKINSHAW  
TO MESSRS. HILBORNE & CO.

DONALDSON & BURKINSHAW  
ADVOCATES & SOLICITORS

Messrs. Hilborne & Co.,  
Singapore.

12th June, 1970.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel

20

v.

Tan Eng Huat and another

We thank you for your letter of the 8th instant with enclosure.

We do not think you need to be too anxious over your clients' claim. Our client, Tan Eng Huat was the Managing Director of Golden Palace (Pte.) Ltd. at the time he ordered furniture from your clients for the Company. The furniture was intended for the Company's Night Club known as Golden Pagoda Nite-Club and Restaurant. This Night Club and Restaurant opened for business on the 5th July 1969, and was run by the Company until the 1st August 1969, when it was leased to one Khoo Say Beng for one year together with

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KEH 5

Letter  
Messrs.  
Donaldson &  
Burkinshaw  
to Messrs.  
Hilborne  
& Co.

12th June  
1970

Exhibits

KEH 5

Letter to  
Messrs.  
Donaldson &  
Burkinshaw  
to Messrs.  
Hilborne  
& Co.  
12th June  
1970  
(Continued)

furniture. The lease was surrendered to the Company by consent in writing on the 27th November 1969 with all the furniture returned to the Company under the surrender. The same furniture is still used by the Restaurant and Night Club, which is at the moment leased by the Company to a new lessee.

Our client will give your clients every assistance to establish the above facts at the trial. If necessary, another Director of the Company, Mr. Ong Swee Keng of Messrs. Ong Swee Keng & Co., Advocates and Solicitors, will be prepared to come forward to corroborate the above facts.

10

We may mention that the part payment of \$300.00 made to your clients was made by the Company, and the payment was duly recorded in the Company's account books.

Yours faithfully,

(Sd.) Donaldson & Burkinshaw

This is the exhibit marked "KEH-5" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

20

Before me,

Sd:- Tan Hock Tey  
Commissioner for Oaths.

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EXHIBIT KEH 6

LETTER MESSRS. CHUNG & CO.  
TO MESSRS. HILBORNE & CO.

CHUNG & CO.,  
ADVOCATES & SOLICITORS.

15th June 1970.

Messrs. Hilborne & Co.,  
Singapore.

Dear Sirs,

10 re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

With reference to our letter of the 4th instant, if the Particulars are not filed within 48 hours, we shall apply to Court for an order directing your clients to file the Particulars requested.

20 You will please note that time for defence will not run until the Particulars asked for have been filed and served on us.

Yours faithfully,

(Sd.) Chung & Co.

This is the exhibit marked "KEH 6" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sd:- Tan Hock Tey

Commissioner for oaths.

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Exhibits

KEH 6

Letter  
Messrs.  
Chung & Co.  
to Messrs.  
Hilborne  
& Co.



ExhibitsEXHIBIT KEH 7

KEH 7  
 Letter  
 Messrs.  
 Hilborne  
 & Co. to  
 Messrs.  
 Chung & Co.  
 16th June  
 1970

LETTER MESSRS. HILBORNE & CO.  
 TO MESSRS. CHUNG & CO.

HILBORNE & CO.  
 ADVOCATES & SOLICITORS.

Messrs. Chung & Co.,  
 Singapore.

16th June, 1970.

Dear Sirs,

re: Suit No. 1093 of 1970  
 The Brothers of St. Gabriel  
 vs.

10

1. Tan Eng Huat  
 2. Golden Palace Private Ltd.

We have received your letter of the 4th instant. We note what you say regarding the liability of your clients, but according to the 1st Defendant the goods were ordered by your clients. He apparently was your clients' managing director at the material time, and as such, would be able to give you all the particulars which you require.

20

Yours faithfully,

Sd:- Hilborne & Co.

P.S.

We have received your letter of the 15th instant. We were under the impression that time continued to run as far as the pleadings were concerned unless the Defendant was unable to file a defence which surely is not the case here.

This is the exhibit marked "KEH-7" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

30

Before me,

Sd:- Tan Hock Tey  
 Commissioner for Oaths.

EXHIBIT KEH 8

AFFIDAVIT OF MOKHTAR BIN SHARIFF  
AND EXHIBITS REFERRED TO THEREIN

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1093 }  
of 1970 }

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein

BETWEEN

The Brothers of St. Gabriel  
Plaintiffs

AND

1. Tan Eng Huat  
2. Golden Palace Private Limited  
Defendants

10

A F F I D A V I T

I, MOKHTAR BIN SHARIFF of Top Floor, Chow House, Robinson Road, Singapore, affirm and say as follows :-

1. I am a Court Clerk in the employ of Messrs. Chung & Co. Solicitors for the abovenamed 2nd Defendants.

20

2. On the 4th June 1970, my employers wrote 2 letters to Messrs. Hilborne & Co., In one of those letters, Messrs. Chung & Co. informed Messrs. Hilborne & Co. that the furniture, the price of which was being claimed by the Plaintiffs, was ordered by the 1st Defendant for the firm known as Golden Pagoda Garden Nite-Club and Restaurant situate within the park enclosure run by the 2nd Defendants. as an amusement park. At no time did the 2nd Defendants have any interest in the firm. A copy of this letter dated 4th June 1970 is annexed hereto and marked 'MBS No. 4'.

30

3. Prior to this letter, the 2nd Defendants had also informed Messrs. Hilborne & Co., by 2 letters dated 13th April and 5th May 1970 that they had had no business transactions with the Plaintiffs nor did they order any furniture from the Plaintiffs. Indeed, according to a letter dated 8th April 1970 from Messrs. Hilborne & Co. to the 2nd Defendants, the Plaintiffs had at all times looked to the 1st

40

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

Defendant for payment of the said furniture. A copy of this letter dated 8th April 1970 is annexed hereto and marked "MBS. No. 5".

4. The other letter also dated 4th June 1970 was a letter from Messrs. Chung & Co. asking for particulars of the claim.

5. On the 15th June 1970, since no particulars were filed, Messrs. Chung & Co. wrote to Messrs. Hilborne & Co. requiring them to file the particulars within 48 hours. A copy of this letter dated 15th June 1970 is annexed hereto and marked "MBS. No.6".

10

6. In reply to that letter, Messrs. Hilborne & Co. wrote on the 16th June 1970 to say that the 1st Defendant was the Managing Director at the material time of the 2nd Defendant Company and should be able to give the particulars required by the 2nd Defendants. A copy of this letter dated 16th June 1970 is annexed hereto and marked "MBS. No.7".

20

7. On the 24th June 1970, Messrs Chung & Co. wrote to Messrs. Hilborne & Co. stating that they would make an application for the particulars required. A copy of this letter dated 24th June 1970 is annexed hereto and marked "MBS.No.8".

8. On the morning of the 10th July 1970, an application was made by Summons-in-Chambers Entered No. 1482/70 by Messrs. Chung & Co. for the particulars set out in their letter of the 4th June 1970 and the application was served on Messrs. Chung & Co. on the same day.

30

9. On the following day, Messrs. Chung & Co. received a letter from Messrs. Hilborne & Co. requiring them to file their Defence by 4 p.m. on Monday, the 13th instant. A copy of this letter dated 10th July 1970 is annexed hereto and marked "MBS. No.9".

10. On the morning of the 14th July 1970 Messrs. Chung & Co. replied to their letter and advised them that the application for particulars was coming on for hearing on the 17th July 1970 and that the question of particulars should be decided by the Court. They also advised the Plaintiffs' Solicitors that if they entered Judgment in default

40

of Defence, they would apply to Court to have it set aside. A copy of this letter dated 14th July 1970 is annexed hereto and marked "MBS. No.10".

Exhibits

KEH 8

10 11. At 2.45 p.m. on the 14th July, 1970 Messrs. Hilborne & Co. replied that they intended to obtain judgment that day. Furthermore, in their view, our application was not a proper case for particulars at all. A copy of this letter dated 14th July 1970 is annexed hereto and marked "MBS. No.11".

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

20 12. Immediately upon receipt of that letter, Messrs. Chung & Co. wrote to say that they would like an extension of 4 days to file their Defence in view of the forthcoming application on the 17th July 1970. This letter was delivered on the same day and it appears that the time of delivery was 3 p.m. a quarter of an hour after receipt of the Plaintiffs' solicitors' letter of the same date. A copy of this letter dated 14th July 1970 is annexed hereto and marked "MBS. No.12".

13. It was not until 4.45 p.m. on the 16th July 1970 that Messrs. Chung & Co. were informed that Judgment had been entered against the 2nd Defendants and that being the case, the Defendants should settle their differences between themselves and make payment to the Plaintiffs. They assumed that the application for particulars would not go on the following day. A copy of this letter dated 15th July 1970 is annexed hereto and marked "MBS. No.13".

30 On the following day when the application came up before the Chief Justice, he adjourned it sine die to enable the 2nd Defendants to set aside the judgment entered by default.

AFFIRMED at Singapore this )  
21st day of July, 1970. )

Sd. Mokhtar bin Shariff

Before me,

Sd. Mesni Chon

Commissioner for Oaths

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

CHUNG & CO.  
ADVOCATES & SOLICITORS

Messrs Hilborne & Co.,  
Singapore.

4th June 1970.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel

vs.

1. Tan Eng Huat
2. Golden Palace Private Limited

10

We act for the 2nd Defendants Golden Palace Private Limited in the above Suit.

We are instructed that our clients never ordered any of the furniture set out in your clients' Statement of Claim for which the sum of \$2,810/- is claimed.

The furniture was ordered by the 1st Defendant for the firm of Golden Pagoda Garden Nite-Club and Restaurant of Jalan Ang Siang King, 11 $\frac{3}{4}$  m.s. Tampenis Road, Singapore, of which the 1st Defendant was a partner.

20

Our clients, as owners of the building leased it to the above firm on the 1st August 1969 although possession was delivered to the 1st Defendant some time in June 1969.

The business of the above firm was terminated on the 1st December 1969.

At no time was any of the furniture ordered by our clients or by the 1st Defendant on behalf of our clients nor was any part of the furniture ever made use of by our clients.

30

We shall be entering appearance in the course of today or tomorrow.

No doubt your clients may wish to give prompt attention to what we have stated in this letter and if they propose to discontinue no doubt they will do so as soon as possible.

Yours faithfully,

Sgd:- Chung & Co.

This is the exhibit marked "MBS.4" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

Before me,

Sgd:-

Commissioner for Oaths

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

HILBORNE & CO.  
ADVOCATES & SOLICITORS.

8th April, 1970.

10 The Golden Palace Pte. Ltd.,  
No. 57-G Jalan Ang Siang Kong,  
Tampines Road,  
Singapore.

Dear Sirs,

We act for St. Joseph's Trade School who in response to an order by Mr. Tan Eng Huat manufactured and delivered a quantity of furniture to your premises to the value of \$2,510/-. Our clients submitted their bill for this amount to Mr. Tan Eng Huat on the 31st December 1969, but despite repeated reminders, they have not been paid. On the 14th ultimo, we accordingly wrote to Mr. Tan Eng Huat demanding payment, but we have now received a letter from his solicitors, Messrs Donaldson & Burkinshaw referring us to your company for payment. Our clients are not concerned with any private arrangements there may be between you and Mr. Tan Eng Huat nor are they concerned as to who actually discharges their account. However, unless payment is made within 7 days, we shall issue a Writ of Summons against you and Mr. Tan Eng Huat without further notice.

Yours faithfully,

Sd:- Hilborne & Co.

This is the exhibit marked "MBS. 5" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

Before me,

Sd:-

Commissioner for Oaths

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

CHUNG & CO.  
ADVOCATES & SOLICITORS.

Messrs Hilborne & Co.,  
Singapore.

16th June, 1970.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

With reference to our letter of the 4th instant, if the Particulars are not filed within 48 hours, we shall apply to Court for an order directing your clients to file the Particulars requested.

10

You will please note that time for defence will not run until the Particulars asked for have been filed and served on us.

Yours faithfully,

Sd:- Chung & Co.

This is the exhibit marked "MBS. 6" referred to in the affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

20

Before me,

Sgd.

Commissioner for Oaths.

---

HILBORNE & CO.  
ADVOCATES & SOLICITORS

16th June, 1970.

Exhibits

KEH 8

Messrs Chung & Co.,  
Singapore.

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.

1. Tan Eng Huat
  2. Golden Palace Private Ltd.
- 

10

We have received your letter of the 4th instant. We note what you say regarding the liability of your clients, but according to the 1st Defendant the goods were ordered by your clients. He apparently was your clients' managing director at the material time, and as such, would be able to give you all the particulars which you require.

Yours faithfully,

Sd:- Hilborne & Co.

P.S.

20

We have received your letter of the 15th instant. We were under the impression that time continued to run as far as the pleadings were concerned unless the Defendant was unable to file a Defence which surely is not the case here.

This is the exhibit marked "MBS. 7" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

Before me,

Sgd.-

30

Commissioner for Oaths.

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Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

CHUNG & CO.  
ADVOCATES & SOLICITORS

24th June 1970.

Messrs Hilborne & Co.,  
Singapore.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

We refer to the telephone conversation between your Mr. Hilborne and our Mr. Chung this afternoon and note that you will not be filing the Particulars we require. 10

In the circumstances, we shall make an application for these Particulars.

Yours faithfully,

Sd:- Chung &amp; Co.

This is the exhibit marked "MBS - 8" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970. 20

Before me,

Sgd:-

Commissioner for Oaths.

HILBORNE & CO.  
ADVOCATES & SOLICITORS

10th July 1970.

Messrs. Chung & Co.,  
Singapore.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

We refer to the correspondence herein and we should be glad if you would kindly file your Defence by 4.00 p.m. on Monday the 13th instant.

Yours faithfully,

(Sd.) Hilborne &amp; Co. 30

This is the exhibit marked "MBS - 9" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

Before me,

Sgd:-

Commissioner for Oaths.

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Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

CHUNG & CO.  
ADVOCATES & SOLICITORS

14th July, 1970.

10

Messrs. Hilborne & Co.,  
Singapore.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

We thank you for your letter of the 10th instant.

20

As you are aware, we have made an application for particulars and this is coming on for hearing on the 17th instant.

If an order is made on our application, we will not be required to file our Defence until the particulars we require have been delivered.

When we first asked for these particulars on the 4th June 1970 and you have not at any time communicated to us that we are not entitled to these particulars, you have refused to file them in the circumstances.

30

We feel that the Court should decide whether we are entitled to the particulars we asked for and if so, whether there should be a stay of your action pending the filing of these particulars.

You will no doubt appreciate that if you enter Judgment in default of Defence, we shall apply to Court to have it set aside.

Yours faithfully,

Sd:- Chung & Co.

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

This is the exhibit marked "MBS - 10" referred to in the affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

Before me,

Sgd:-

Commissioner for Oaths

HILBORNE & CO.  
ADVOCATES & SOLICITORS.

14th July, 1970.

Messrs. Chung & Co.  
Singapore.

I M M E D I A T E

10

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

We have received your letter of the 14th instant which we hasten to reply to since we intend to obtain judgment to-day. In our view, this is not a proper case for particulars at all having regard to the fact, as we understand it, that your clients' defence is that the subject matter of the claim has nothing to do with them since they did not order the goods. However, even if in these circumstances, a request for particulars is proper, we do not understand how they are necessary to enable you to plead your defence. It seems to us that your clients have had ample time to file the defence and we shall no doubt resist an application to set aside any judgment which we may obtain.

20

Yours faithfully,

30

Sd:- Hilborne & Co.

This is the exhibit marked "MBS - 11" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

Before, me,

Sgd:-

Commissioner for Oaths.

CHUNG & CO.  
ADVOCATES & SOLICITORS.

14th July, 1970.

Exhibits

KEH 8

Messrs. Hilborne & Co.,  
Singapore.

I M M E D I A T E

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
(Continued)

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

10 We have your letter of the 14th instant.

20 Apart from the fact as to whether the particulars are necessary for the filing of our Defence, we are asking in fact by our application fixed for hearing on the 17th instant for an extension of 4 days to file our Defence. It would be a great pity if in spite of our request and our application, you should sign judgment before the Court can decide on the validity of our application. It is obvious that your request to us to file our Defence was inspired by the fact that we took out our application for particulars, but whether we are entitled to particulars or not, we feel that a deferment by you to sign judgment for a period of 4 days will not in any way prejudice your clients.

Yours faithfully,  
Sd:- Chung & Co.

This is the exhibit marked "MBS 12" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me this 21st day of July, 1970.

30 Before me,

Sgd:-

Commissioner for Oaths

HILBORNE & CO.  
ADVOCATES & SOLICITORS

15th July, 1970.

Messrs. Chung & Co.  
Singapore.

Dear Sirs, re: Suit No. 1093 of 1970

We have received your letter of the 14th instant which

Exhibits

KEH 8

Affidavit of  
Mokhtar Bin  
Shariff and  
Exhibits  
referred to  
therein  
Continued

was received at 3.00 p.m. by which time we had already obtained judgment, and we enclose a copy thereof. We do not think the rules of court ought to be employed to perpetrate an injustice, but we do not think that that has occurred here. This is a case where goods have been supplied and where payment has not been paid and where the parties concerned have been shilly-shallying amongst themselves in order to defeat or delay payment. Now that we have obtained judgment against your clients, they should sort out their differences with the other parties concerned, after the debt has been paid, and we should like payment within the next 3 days. We take it that you will not be going on with your Summons-in-Chambers on Friday.

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Yours faithfully,

Sd:- Hilborne & Co.

This is the exhibit marked "MBS - 13" referred to in the Affidavit of Mokhtar bin Shariff and affirmed before me on 21st day of July, 1970.

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Before me,

Sgd:-

Commissioner for Oaths

This is the exhibit marked "KEH - 8" referred to in the Affidavit of K.E. HILBORNE and sworn to before me this 25th day of May, 1972.

Before me,

Sgd:- Tan Hock Tey

Commissioner for Oaths

EXHIBIT KEH9

AFFIDAVIT OF SHAIK MOHAMED

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Suit No. 1093 of 1970

B E T W E E N:

THE BROTHERS OF ST. GABRIEL Plaintiffs

- and -

1. TAN ENG HUAT  
2. GOLDEN PALACE PRIVATE LIMITED Defendants

Exhibits  
KEH9  
Affidavit  
of Shaik  
Mohamed.  
24th July  
1970

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A F F I D A V I T

I, SHAIK MOHAMED of No. 8-A Tras Street, Singapore, solemnly affirm and say as follows :-

1. I am a clerk in the firm of Messrs. Hilborne & Company, solicitors for the Plaintiffs in this action.
2. These proceedings commenced on the 14th March with a letter written by Messrs. Hilborne & Company to the 1st Defendant herein as follows :-

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"We have been consulted by St. Joseph's Trade School who informed us that their account for \$2,510.00 dated the 31st of December, 1969 is still outstanding and unpaid. This bill is in respect of a quantity of different items of furniture ordered by you and delivered by our clients. We regret that unless payment is made in the course of the next seven (7) days," our instructions are to commence proceedings without further notice."

30

3. On the 1st April, Messrs. Donaldson & Burkinshaw, the 1st Defendant's Solicitors replied to Messrs. Hilborne & Company as follows :-

"We act for Mr. Tan Eng Huat, and your letter of the 14th ultimo addressed to our client has been referred to us with instructions to reply.

The goods mentioned in your letter were ordered by our client for and on behalf of Golden

Exhibits

KEH9

Affidavit  
of Shaik  
Mohamed.24th July  
1970.

(continued)

Palace Pte. Ltd. of 57-G Jalan Ang Siang Kong, Tampines Road, Singapore. Our client was at the material time the Managing Director of the Company.

Our client is therefore under no personal liability in respect of your clients' claim, and we would therefore suggest that you refer the claim to the Company for settlement."

On receiving this letter Messrs. Hilborne & Company on the 3rd April wrote to Messrs. Donaldson & Burkinshaw as follows :-

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"We have received your letter of the 1st of April. Whether your client acted as agent or not, our clients do not know but the simple solution would be for payment to be made to our clients. In default of payment, we should join both parties and we would be glad if you would kindly let us know whether you have instructions to accept service."

4. On the 7th April, 1970 Messrs. Donaldson & Burkinshaw replied as follows :-

20

"We thank you for your letter of the 3rd instant.

We have already explained to you that our client is not the debtor. If in spite of our explanation you should still sue our client for the money without first referring your clients' claim to Golden Palace Pte. Ltd. for settlement, then your clients must bear the consequences in regard to the costs that such proceedings will involve our client in."

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5. On receiving that letter, Messrs. Hilborne & Company for the first time, on the 8th April wrote to the 2nd Defendants as follows :-

"We act for St. Joseph's Trade School who in response to an order by Mr. Tan Eng Huat manufactured and delivered a quantity of furniture to your premises to the value of \$2,510.00. Our clients submitted their bill for this amount to Mr. Tan Eng Huat on the 31st of December 1969, but despite repeated reminders, they have not been paid. On the 4th ultimo, we accordingly wrote to Mr. Tan Eng Huat demanding payment, but we have now

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received a letter from his solicitor, Messrs. Donaldson & Burkinshaw referring us to your company for payment. Our clients are not concerned with any private arrangements there may be between you and Mr. Tan Eng Huat nor are they concerned as to who actually discharges their account. However, unless payment is made within 7 days, we shall issue a Writ of Summons against you and Mr. Tan Eng Huat without further notice."

Exhibits  
KEH9  
Affidavit  
of Shaik  
Mohamed .  
24th July  
1970.  
(continued)

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On the 13th April the 2nd Defendants replied as follows :-

"We refer to your letter of the 8th instant and would advise that we have had no business transaction with your client, St. Joseph's Trade School. Further, we do not seem to have received any bill or furniture from your client too. In this respect, we shall be grateful if you would kindly refer this matter to Mr. Tan Eng Huat for clarification."

20

A copy of this letter was sent to Messrs. Donaldson & Burkinshaw on the 20th April, in a letter of that date from Messrs. Hilborne & Company as follows :-

"We enclose a copy of a letter which we have received from Golden Palace Private Limited. Both parties appear to be behaving in an irresponsible fashion, and we are making them co-defendants. Kindly let us know whether you have instructions to accept service."

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6. On the 28th April Messrs. Donaldson & Burkinshaw replied to Messrs. Hilborne & Company as follows :-

"We thank you for your letter of the 20th instant with enclosure, and enclose for your information, a copy of our letter to Golden Palace Pte. Ltd. written on our clients' instructions.

40

We trust that your clients' claim will now be settled by Golden Palace Pte. Ltd. without further objection."

The enclosure referred to reads as follows :-



Exhibits

KEH9  
Affidavit  
of Shaik  
Mohamed  
24th July  
1970  
(continued)

"We act for Mr. Tan Eng Huat of 11 Seraya Road, and Messrs. Hilborne & Co. have sent us a copy of your letter to them of the 18th instant for our information.

As you must be aware, St. Joseph's Trade School's present claim is in respect of the rattan furniture made for and delivered to your Company, for use in the Golden Pagoda Restaurant and Nite Club. This furniture is the Company's property, as the Golden Pagoda Restaurant and Nite Club is leased out to the present lessees inclusive of furniture. The Company is therefore clearly liable to pay for the cost of the furniture.

10

Our client therefore requests that you make immediate settlement of St. Joseph's Trade School's present claim."

7. On the 11th May, 1970, Messrs. Hilborne & Company received a further copy of a letter written by Messrs. Donaldson & Burkinshaw to the 2nd Defendants, as follows :-

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"We have taken instructions on your letter of the 5th instant.

We are returning you our previous letter of the 28th ultimo, as this letter was sent to you, and just because you disagree with its contents does not mean that you should return this letter to us.

Our client Mr. Tan Eng Huat had never at any time in the past "rented" the Golden Pagoda Restaurant & Nite Club from your Company. We are instructed that at the material time, the premises were leased to one Khoo Say Beng by a written Lease dated the 15th September 1969. In point of fact, our client as the Company's Managing Director signed on behalf of the Company in the Lease. Under this Lease, the premises were let to the lessee "together with the furniture ....." . The furniture referred to in the Lease was the same furniture made by St. Joseph's Trade School for the Company. Upon the termination of the Lease, the premises were returned to the Company together with the furniture therein, as provided under Clause 2(9) of the Lease. The present premises together with

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the same furniture are now subject to the present letting.

The allegations contained in your letter of the 5th instant are therefore clearly false, and we assume that they are made with a view to averting your liability to St. Joseph's Trade School in respect of its claim for the cost of the furniture".

Exhibits  
KEH9  
Affidavit  
of Shaik  
Mohamed  
24th July  
1970  
(continued)

10 8. The next letters received were two letters from Messrs. Chung & Co. both dated the 4th June, as solicitors for the 2nd Defendants, and these are referred to in paragraphs 2 and 4 of the affidavit of Mohktar bin Shariff affirmed and filed herein on the 21st July, 1970.

9. Following the receipt of these two letters, Messrs. Hilborne & Company again wrote to Messrs. Donaldson & Burkinshaw as follows :-

20 "We enclose a copy of a letter which we have received from Messrs. Chung & Co. and you will note what they say. Unless this is sorted out satisfactorily, it looks to us as if we will have to join a 3rd Co-Defendant and this is going to make it expensive for somebody."

Messrs. Donaldson & Burkinshaw replied on the 12th June, as follows :-

"We thank you for your letter of the 8th instant with enclosure.

30 We do not think you need to be too anxious over your clients' claim. Our client, Tan Eng Huat was the Managing Director of Golden Palace (Pte.) Ltd. at the time he ordered furniture from your clients for the Company. The furniture was intended for the Company's Night Club known as Golden Pagoda Nite-Club and Restaurant. This Night Club and Restaurant opened for business on the 5th July, 1969, and was run by the Company until the 1st August, 1969, when it was leased to one Khoo Say Beng  
40 for one year together with furniture. The Lease was surrendered to the Company by consent in writing on the 27th November 1969 with all the furniture returned to the Company under the surrender. The same furniture is still used by the Restaurant and Night Club, which is at

Exhibits

KEH9

Affidavit  
of Shaik  
Mohamed24th July  
1970

(continued)

the moment leased out by the Company to a new lessee.

Our client will give your clients every assistance to establish the above facts at the trial. If necessary, another Director of the Company, Mr. Ong Swee Keng of Messrs. Ong Swee Keng & Co. Advocates and Solicitors, will be prepared to come forward to corroborate the above facts.

We may mention that the part payment of \$300.00 made to your clients was made by the Company, and the payments was duly recorded in the Company's Account Books." 10

10. I refer to paragraph 6 of the said affidavit. The letter marked "M.B.S. No.7" also contained the following post-script :-

" We have received your letter of the 15th instant.

We were under the impression that time continued to run as far as the pleadings were concerned unless the Defendant was unable to file a defence which surely is not the case here." 20

11. Judgment was obtained on the 14th July 1970 and on the 17th idem the 2nd Defendants' application for further particulars was adjourned. In an endeavour to assist the 2nd Defendants Messrs. Hilborne & Company wrote the following letter on the same day :-

" We refer to the proceedings before the Chief Justice this morning when the question was raised as to when the goods in question were ordered. We telephoned our clients to-day and they informed us that there were two orders, the first of which was given on the 21st of March 1969 and the second on the 12th April 1969. Our clients are sending us copies of these orders which we will send on to you. We are giving you this information in a spirit of co-operation and in the hope that our clients will now be paid without our having to take any further steps on the judgment. It seems to us very strange indeed that this information could not have been got either from Mr. Tan Eng Huat or some other way. However, those are the facts, and in order to 30 40

enable your clients to consider them and to have an opportunity of applying to set aside the judgment, we will not execute on it for 14 days, that is until the 1st proximo, at the earliest."

Exhibits  
KEH9  
Affidavit  
of Shaik  
Mohamed

12. A further letter was written on the 20th July as follows:-

24th July  
1970  
(continued)

10 " Further to our letter of the 17th instant we now enclose herewith two photostat copies taken from our Clients' Order Book. We notice that these orders refer to deposits of \$100/- and \$200/- respectively, and no doubt these refer to the sum of \$300/- mentioned by Mr. Chung in our telephone conversations."

13. The last letter from Messrs. Chung & Co. before the present application was filed was as follows:-

" We have your letter of the 17th instant.

20 We do not think that your letter was written in a spirit of co-operation at all. If indeed your clients are prepared to co-operate, we would like them to let us have the particulars we asked for by letter dated the 4th June 1970.

30 We informed you as long ago as the 4th June 1970 that the furniture was ordered by the 1st Defendant for his firm called Golden Pagoda Garden Nite-Club and Restaurant in which our clients, the 2nd Defendants, had no interest. For that reason, we had asked you for the particulars of the furniture, the date of delivery, the place of delivery and the mode of payment. Unless our clients are satisfied that the furniture, the price of which is now claimed by your clients, was ordered by the 1st Defendant on behalf of the 2nd Defendants, they are not prepared to make payment."

AFFIRMED at Singapore this )  
24th day of July, 1970 ) Sd: SHAIK MOHAMED

40 Before me,  
Sd. Kek Wah Swee

COMMISSIONER FOR OATHS

This is the exhibit marked "KEH - 9" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,  
Sd. Tan Hock Tey  
Commissioner for Oaths.

ExhibitsEXHIBIT KEH 10

KEH 10  
Letter  
Messrs.  
Hilborne  
& Co. to  
Messrs.  
Chung & Co.  
1st February  
1971

LETTER MESSRS. HILBORNE & CO. TO MESSRS. CHUNG & CO.

HILBORNE & CO.  
ADVOCATES & SOLICITORS  
SINGAPORE.

Messrs. Chung & Co.,  
Singapore

1st February, 1971.

Dear Sirs,

Re: Civil Appeal No. 28 of 1970

We have received your letter of the 30th ultimo, and we note what you say. However, since the hearing and disposal of this Appeal, certain further information has come to our knowledge which seems to us to be relevant and which thrown some light on certain statements made by Mokhtar bin Shariff in his affidavits of the 21st day of July and 20th of August 1970, and on the Defence filed in these proceedings by yourselves on the 20th of August 1970. The affidavits were included in the Record of Appeal and the Defence was incorporated into the Record at the hearing of the appeal on Mr. Chung's application. The first affidavit of Mokhtar bin Shariff refers to a letter dated the 4th of June 1970 written by yourselves to ourselves. This is the letter which is marked as Exhibit No.4 in the affidavit of the 21st of July. This letter makes 3 statements, as follows:-

1. The furniture was ordered by the 1st Defendant for the firm of Golden Pagoda Garden Nite-Club and Restaurant.
2. Your clients leased part of the premises to the firm on the 1st of August 1969.
3. The firm had been in possession since June 1969.
4. The furniture had never been made use of by your clients.

We are now informed by Messrs Donaldson & Burkinshaw and by Mr. Tan Eng Huat himself that in fact the Golden Pagoda Garden Nite-Club was run by your clients in the first instance, and it was not until afterwards that it was leased out. We enclose a photostat copy of the inside

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of an invitations card issued by your clients relating to the opening of the Nite-Club on the 26th of July 1969. How can this invitation card be reconciled, firstly, with the contents of your letter under reference, and secondly, with the particular statement that Mr. Tan Eng Huat had possession of the Nite-Club on behalf of his firm from June onwards? Mr. Tan Eng Huat says that on the night of the opening the furniture was in the Nite-Club and remained there until the lessees took over the Club and the furniture on the 1st of August.

Exhibits  
KEH 10  
Letter  
Messrs.  
Hilborne  
& Co. to  
Messrs.  
Chung & Co.  
1st February  
1971

We turn now to those paragraphs in Mr. Mokhtar's affidavit and in the Defence which in our view convey a false impression. It is said, or it is clearly conveyed, that Mr. Tan Eng Huat had no authority to do anything on behalf of the Company until he was made a Managing Director on the 18th of April 1969. We refer you to paragraph 12 of Mr. Mokhtar's affidavit of the 20th of August 1970. In paragraph 13 of the affidavit and paragraph 3 of the Defence, it is stated that Mr. Tan Eng Huat did not become a shareholder in the Company until the 2nd of July 1969. Again, clearly the purpose of these statements is to say or suggest that Mr. Tan Eng Huat had no authority. Our attention has today been drawn by Mr. Wu of Messrs. Donaldson & Burkinshaw to the Minutes of the Meeting held on the 26th of February 1969, a copy of which we enclose herewith.

Paragraph (e) states that Mr. Ong Swee Keng and Mr. Tan Eng Huat "shall be appointed Directors of the Company with immediate effect." We are also informed by Mr. Wu that Article 82 of the Company's Articles provided as follows :-

"Unless otherwise determined by a general meeting a director shall not be required to hold any share qualification in the Company,"

It seems to us clear from this, that as from the 26th of February Mr. Tan Eng Huat was a director of the company, but this fact has not been divulged or disclosed to us or our clients at any time.

Paragraph (c) states that Mr. Tan Eng Huat "shall be appointed Managing Director of the Company as soon as it is convenient to do so." Although the formal appointment may not have been made until April, we are advised that in point of fact Mr. Tan

Exhibits

KEH 10  
Letter  
Messrs.  
Hilborne  
& Co. to  
Messrs.  
Chung & Co.  
1st February  
1971  
(continued)

Eng Huat managed the company and acted as managing director at all material times from the 8th of February onwards until he voluntarily disassociated himself with the Company's affairs. This fact again has not been divulged or disclosed.

We take it that whoever gave you instructions on behalf of the 2nd Defendants, must have been aware of the contents of the affidavits by Mr. Mokhtar bin Shariff. Our view is that the matters which we have raised in this letter, are relevant both insofar as the application to set aside the Judgment before the learned Chief Justice was concerned and also as far as the Court of Appeal was concerned since it is clear that considerable importance was attached to the first affidavit of Mr. Mokhtar bin Shariff. If we have in any way misunderstood the position, no doubt you will let us know at the earliest possible moment, but as things stand at present, we intend to bring these matters to the attention of the President of the Court of Appeal with view to the hearing of the Appeal being re-opened.

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Yours faithfully,

Sgd:- Hilborne & Co.

Encl.

c.c. The Provisional Liquidator,  
Golden Palace (Pte.) Ltd.,  
Singapore.

This is the exhibit marked "KEH - 10" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May 1972.

30

Before me,

Sd: Tan Hock Tey

Commissioner for Oaths.

EXHIBIT KEH 11ExhibitsLETTER MESSRS. CHUNG & CO. TO MESSRS. HILBORNE & CO.CHUNG & CO.  
ADVOCATES & SOLICITORSMessrs. Hilborne & Co.,  
Singapore.

2nd February, 1971

HEK 11  
Letter  
Messrs. Chung  
& Co. to  
Messrs.  
Hilborne & Co.

Dear Sirs,

re: Civil Appeal No. 28 of 1970

10 We acknowledge receipt of your letter of the  
1st instant received by us this morning at 11.30 a.m.

We are not prepared to give you any explanation at all except that the various matters in dispute referred to in your letter are issues in Suit No. 529/70 and in companies Winding-up No. 10/70.

If we feel that any useful purpose can be served by answering some of the unjustifiable charges and allegations in your letter, we would gladly do so.

20 If you feel that you should bring those matters to the attention of the President of the Court of Appeal, we will not impede you in any way since, we repeat, we consider that the matters raised by you are completely irrelevant to the Appeal and are matters only in issue in the above suit and in Companies Winding-up No. 10/70.

30 If you feel that the Defence filed by us is unsustainable, you have your remedy in applying either for summary judgment or for the Defence to be struck out.

It is of course not for us to advise you on the proper steps to take but in view of serious charges in your letter and the very unusual manner in which you have been conducting the Plaintiffs' case, we feel that it would not be out of place for us to put you on the right track.

40 If you take any of the steps threatened in your letter, we trust that you will do so after our Mr. Chung's return from Hong Kong on the 20th of this month. Our Mr. Chung is leaving



Exhibits

HEK 11  
Letter  
Messrs. Chung  
& Co. to  
Messrs.  
Hilborne & Co.  
(continued)

Singapore on the morning of the 5th instant.

Yours faithfully,

Sd: Chung & Co.

c.c. The Provisional Liquidator,  
Official Assignee's Office,  
Singapore.

This is the exhibit marked KEH-11 referred to  
in the Affidavit of K.E. Hilborne and sworn  
before me this 25th day of May, 1972.

Before me,

10

Sgd: Tan Hock Tey

Commissioner for Oaths.

KEH 12  
Statutory  
Declaration  
of  
Ong Swee Keng

EXHIBIT KEH 12

STATUTORY DECLARATION OF ONG SWEE KENG

THE STATUTORY DECLARATION ORDINANCE

(CHAPTER 9)

STATUTORY DECLARATION

I, ONG SWEE KENG, an advocate and solicitor  
practising under Messrs. Ong Swee Keng & Co., of  
No. 65 South Bridge Road, (2nd Floor) Singapore,  
1, do solemnly and sincerely declare as follows:-

20

1. I have been a Director of Golden Palace (Pte.)  
Ltd. since the 28th February 1969. I have  
petitioned the High Court for a Winding Up Order  
in respect of the Company, and the Petition is  
pending hearing.

2. I am aware of the proceedings in Suit No.  
1093 of 1970 where the body or association known  
as Boys' Town are seeking to recover moneys owing  
to them for furniture supplied by them. During  
the last one or two weeks I have been requested  
by Messrs. Hilborne & Co. Solicitors for Boys'  
Town to state the facts relating to certain  
matters which I understand are material to the  
proceedings.

30

3. Tan Eng Huat of 11 Seraya Road, Singapore

has also been a director of the said Company since the 28th February 1969. In or about January 1969 at the invitation of the Company's Chairman Thong Kong Fye, Tan Eng Huat and I agreed each to invest \$150,000.00 in the Company by subscribing to 3,000 shares between us, representing half the Company's subscribed share capital. The Company's Resort Premises known as Golden Palace Holiday Resort commenced business on the 8th February 1969, and on the day previous to that (the 7th February 1969) Thong Kong Fye, Tan Eng Huat and I represented the Company in discussions with the Resort's prospective Concessionaires to negotiate the concession terms. In point of fact, Tan Eng Huat, with the consent and approval of Thong Kong Fye as well as all the other Directors of the Company, took charge of the management of the Company's business from the 8th February 1969. It had already been agreed even then that Tan Eng Huat would be appointed the Company's Managing Director at the next meeting of the Board of Directors. Tan Eng Huat was in daily control of the Company's business generally, he was responsible for engaging staff and supervising their activities, keeping accounts and attending to all matters within the scope of normal management of a business. The general accord amongst the Directors that Tan Eng Huat be appointed the Company's Managing Director was re-affirmed in writing on the 28th February 1969, and the appointment formally confirmed at the meeting of the Board of Directors convened on the 18th April, 1969. Tan Eng Huat remained the Company's Managing Director until the 22nd October 1969 when the post of Managing Director was vacated, and Tan Eng Huat became one of the Company's two Executive Directors instead.

4. My attention has been drawn by Messrs. Hilborne & Co. to a letter dated the 4th June 1970 to them. In that letter it is stated - "The furniture was ordered by the 1st Defendant for the firm of Golden Pagoda Nite-Club and Restaurant of Jalan Ang Siang Kong, 11 $\frac{3}{4}$  m.s. Tampenis Road, Singapore of which the 1st Defendant was a partner." At the time when the furniture was ordered in or about March 1969, the company had recently started business, and all the equipment necessary for its carrying on business had to be purchased by the Company, and I do not understand the statement that such furniture was ordered by Tan Eng Huat for the firm of which he was a partner. It is true that he became a lessee of the Nite-Club as from the 1st August 1969 but that was not the position in March. The said letter also contains the

Exhibits

KEH 12  
Statutory  
Declaration  
of  
Ong Swee Keng  
(continued)

Exhibits  
 KEH 12  
 Statutory  
 Declaration  
 of  
 Ong Swee Keng  
 (continued)

statement that "possession was delivered to the 1st Defendant some time in June 1969". This is untrue, and contrary to the actual facts which are that the company carried on the Nite-Club for some three weeks in July before leasing it out. The lease included the furniture. For the same reasons the statement that "nor was any part of the furniture ever made use of by our client," meaning the Company, is incorrect.

5. I have also been shown statement made in an affidavit of Mokhtar bin Shariff made on the 20th August 1970, and in particular to paragraphs 12 and 13. The facts stated therein are in themselves true, but if these statements are intended to support the suggestion that Mr. Tan Eng Huat had no authority to act on behalf of the company they are misleading since, as has been stated above, the reverse is the truth. The same observations would apply to paragraph 3 of the Defence of the Company which states that Mr. Tan Eng Huat did not become a shareholder until the 2nd July 1969.

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20

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act, 1835.

DECLARED before me at Singapore ) Sd:  
 this 4th day of March, 1971. ) Ong Swee Keng.

Before me,

Sgd: Tan Hock Tey

Commissioner for Oaths.

30

This is the exhibit marked "KEH - 12" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sgd: Tan Hock Tey

Commissioner for Oaths.

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EXHIBIT KEH 13

LETTER MESSRS. CHUNG TO THE PRIVATE SECRETARIES  
OF MR. JUSTICE TAN AH TAH  
AND MR. JUSTICE CHOR SINGH

Exhibits

KEH 13

Letter  
Messrs. Chung  
to Private  
Secretaries  
of Mr. Justice  
Tan Ah Tah and  
Mr. Justice  
Choor Singh  
15th March  
1971

CHUNG & CO.  
ADVOCATES & SOLICITORS

15th March 1971.

10 The Private Secretary to  
Mr. Justice Tan Ah Tah,  
Supreme Court,  
Singapore.

The Private Secretary to  
Mr. Justice Choor Singh,  
Supreme Court,  
Singapore.

Dear Sirs,

20 re: Civil Appeal No. 28 of 1970  
The Brothers of St. Gabriel  
vs.  
Tan Eng Huat and another

We enclose herewith copy of a letter of the  
13th instant from Messrs. Hilborne & Co. to  
ourselves.

30 Our first reaction was to report this matter  
immediately to the Bar Society, but having regard  
to the very serious allegation that the 2 Judges  
present, in refusing to reopen the appeal, were in  
the opinion of Mr. Hilborne setting a seal on  
dishonesty, we felt that the matter should first  
be referred to their Lordships for their consideration.

Would you kindly ascertain for us whether any  
action will be contemplated by the Bench.

Yours faithfully,

Sgd: Chung & Co.

This is the exhibit marked "KEH - 13" referred  
to in the Affidavit of K.E. Hilborne and sworn  
before me this 25th day of May 1972.

Before me,

Sgd: Tan Hock Tey

Commissioner for Oaths.

Exhibits

HILBORNE &amp; CO.

KEH 13

13th March, 1971.

Letter  
Messrs. Chung  
to Private  
Secretaries  
of Mr. Justice  
Tan Ah Tah and  
Mr. Justice  
Choor Singh  
13th March  
1971

Messrs. Chung & Co.,  
Singapore.

Dear Sirs,

re: Civil Appeal No. 28 of 1970

I am writing in connection with these proceedings this morning during which I stated to the two Judges present that in my opinion in refusing to reopen this appeal, they were setting a seal on dishonesty. Mr. Chung challenged me to repeat these words outside the Court, and this is the purpose of this letter. I am suggesting that the paragraphs complained of are not true, in the sense that they accurately convey the substance of the matter. I am further suggesting that either Mr. Chung knew this at the time or that if he discovered it afterwards he took no steps to correct the false impression that these paragraphs conveyed. The same remarks apply to the defence.

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What this amounts to, I am not prepared to say, but it is certainly what I meant when I used the word "dishonesty" before the Judges.

Yours faithfully,

Sgd: K.E. Hilborne

Enclosure to Ex. "KEH - 13"

KEH 14

EXHIBIT KEH 14

Letter  
Private  
Secretary to  
Mr. Justice  
Tan Ah Tah  
and Mr.  
Justice Choor  
Singh to  
Secretary of  
Singapore  
Law Society  
19th March  
1971

LETTER PRIVATE SECRETARY TO MR. JUSTICE TAN AH TAH  
AND MR. JUSTICE CHOOR SINGH TO SECRETARY OF  
SINGAPORE LAW SOCIETY

30

REGISTRAR SUPREME COURT  
SINGAPORE

19th March, 1971.

The Secretary  
The Law Society,  
Supreme Court Building,  
Singapore, 6.

Sir,

Re: Mr. K.E. Hilborne

I am directed by Mr. Justice Tan Ah Tah and

40

Mr. Justice Choor Singh to forward herewith a photostat copy of each of the following letters:-

- (1) Letter dated 13th March 1971 from Mr. K.E. Hilborne to Messrs. Chung & Co.
- (2) Letter dated 15th March 1971 from Messrs. Chung & Co. to the respective Private Secretaries to their Lordships.

10 These documents are referred to the Law Society under section 89(2) of the Legal Profession Act, 1966.

Their Lordships are of the view that the conduct of Mr. Hilborne in expressing the opinion, after the decision not to reopen the appeal had been pronounced, that "in refusing to reopen this appeal, they (i.e. Their Lordships) were setting a seal on dishonesty" merits investigation.

Yours faithfully,

Sd: Tan Wee Kian

REGISTRAR

20 SUPREME COURT

SINGAPORE.

This is the exhibit marked "KEH - 14" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sg: Tan Hock Tey

Commissioner for Oaths.

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Exhibits

KEH 14

Letter  
Private  
Secretary to  
Mr. Justice  
Tan Ah Tah  
and Mr.  
Justice Choor  
Singh to  
Secretary of  
Singapore  
Law Society  
19th March  
1971  
(continued)

Exhibits

EXHIBIT KEH 15

KEH 15  
Letter  
Secretary of  
Inquiry  
Committee of  
Singapore  
Law Society  
to the  
Appellant  
12th April  
1971

LETTER SECRETARY OF INQUIRY COMMITTEE OF SINGAPORE  
LAW SOCIETY TO THE APPELLANT

INQUIRY COMMITTEE  
THE LAW SOCIETY OF SINGAPORE  
SUPREME COURT BUILDING  
SINGAPORE

CONFIDENTIAL

12th April, 1971.

K.E. Hilborne, Esq.,  
Messrs. Hilborne & Co.,  
22/23 Nunes Building,  
9 Malacca Street,  
Singapore.

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Dear Sir,

re: Civil Appeal No. 28 of 1970.

Pursuant to section 90(4) of the Legal Profession Act, 1966, I am directed to forward herewith copy of a letter dated the 19th March 1971, from the Registrar, Supreme Court, Singapore, together with copies of the letters referred to therein.

20

2. The Committee is of the view that the statement made by you that the two Judges present in refusing to reopen the appeal were, in your opinion, setting a seal on dishonesty is a matter that calls for an explanation.

3. You are, therefore, invited to give to the Inquiry Committee, in writing, any explanation you may wish to offer and to advise the Inquiry Committee if you wish to be heard by the Committee.

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Yours faithfully,

Sd: Inquiry Committee,  
The Law Society,  
Singapore.

This is the exhibit marked "KEH - 15" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sgd: Tan Hock Tey

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Commissioner for Oaths.

EXHIBIT KEH 16

LETTER HILBORNE & CO., TO THE SECRETARY OF THE  
INQUIRY COMMITTEE OF THE LAW SOCIETY

HILBORNE & CO.,  
ADVOCATES & SOLICITORS

24th May, 1971.

The Secretary,  
Inquiry Committee,  
The Law Society,  
Singapore.

Exhibits

KEH 16  
Letter  
Hilborne &  
Co. to the  
Secretary of  
the Inquiry  
Committee of  
the Law  
Society  
24th May,  
1971

10 Sir,

re: Civil Appeal No. 28 of 1970

I have received your letter of the 12th April and its enclosure, which requires an explanation from me regarding a statement which I made on the 13th March 1971 when Mr. Chung and myself appeared before Mr. Justice Tan Ah Tah and Mr. Justice Choor Singh, the other member of the Appeal Court, Mr. Justice Winslow, being absent through indisposition.

20 For a proper understanding of this matter, it will be necessary to deal with the events which led up to the 13th March, and this I will do as briefly as possible. In Suit No. 1903 of 1970, my firm were acting for the plaintiffs, popularly known as Boys' Town. In March and April 1969, they had manufactured a quantity of furniture for a company known as Golden Palace Private Limited. The order was placed by a gentleman named Tan Eng Huat, on behalf, as my clients understood it, of the company, which was a resort restaurant and night club complex newly started at Pasir Ris. The furniture was delivered, and the bills, amounting to \$2,810.00 were presented for payment to Mr. Tan Eng Huat \$300.00 had previously been paid to account, so that the balance due was \$2,510.00. My clients were not paid and they consulted me in March 1970. A letter was written to Mr. Tan who maintained that the furniture was ordered on behalf of the company; a letter to the company elicited the reply, through their solicitors, Messrs. Chung & Co. that Mr. Tan was personally liable. In the

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Exhibits

KEH 16

Letter  
Hilborne &  
Co. to the  
Secretary of  
the Inquiry  
Committee of  
the Law  
Society  
24th May,  
1971  
(continued)

circumstances, a Writ of Summons was issued joining both Mr. Tan and the company as co-defendants, since it was clear that one or other of them was liable, there being no dispute about the placing of the order and delivery of the furniture.

Mr. Tan through his solicitors, Messrs. Donaldson & Burkinshaw, filed a defence to the claim, but the company, for reasons which are not here material, allowed judgment to go by default on the 14th July 1970. However, before that in their original letter of denial of liability, Messrs. Chung & Co. had written my firm a letter, dated the 4th June which is annexed hereto and marked " A ". The letter contained the following statements which are material :

10

1. "The furniture was ordered by the 1st Defendant (Tan Eng Huat) for the firm of Golden Pagoda Garden Nite-Club and Restaurant ----- of which the 1st Defendant was a partner".
2. "At no time was any of the furniture ordered by our clients or by the 1st Defendant on behalf of our clients nor was any part of the furniture ever made use of by our clients".

20

After judgment had been obtained, Messrs. Chung & Co. applied to set it aside, and in support of their application an affidavit was filed by their clerk which exhibited (amongst other documents) the letter marked "A". A material paragraph also included the statement that "At no time did the 2nd Defendant (the Company) have any interest in the firm" i.e. the Golden Pagoda Garden Nite-Club and Restaurant. The basis of the claim and the Judgment against the company was that the goods had, in fact, been ordered by Mr. Tan Eng Huat on behalf of the company as appears from a letter dated the 1st April from Messrs. Donaldson & Burkinshaw, attached and marked " B ". The statements, and positions taken up, in "A" and "B" are clearly irreconcilable. The application to set aside the judgment came before the Chief Justice on the 27th July 1970. The main burden of the argument was on a point of law

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which is not here material, but on the issue of Mr. Tan's or the company's liability, the company relied simply on the contents of letter "A". At the hearing of the summons it was submitted on behalf of Boy's Town that that was insufficient to discharge the onus, normally placed on a defendant who seeks to set aside a judgment of showing merits. However, the learned Chief Justice set aside the judgment and the plaintiffs being dissatisfied with this decision appealed against it. It might be mentioned here that, unfortunately, the learned Chief Justice did not at the time, either of the hearing or subsequently, give the reasons for his decision. Before the hearing of the appeal, Messrs. Chung & Co. filed the 2nd Defendants' Defence. Paragraph 3 of the Defence reads as follows :-

"the 1st Defendant (Tan Eng Huat) became a shareholder in the 2nd Defendant Company on the 2nd July 1969 when 1000 shares of \$100.00 each fully paid in the capital of the 2nd Defendant Company were allotted to him".

The actual invoices of the plaintiffs (annexed and marked C & D) were issued against Messrs. Chung & Co.'s clients in March and April 1969. The position prior to the hearing of the appeal, therefore, was that as against the contention by Messrs. Donaldson and Burkinshaw that Tan Eng Huat was at the material time (in March and April 1969) the Company's Managing Director, there were the following contra-indications by Messrs. Chung & Co.

1. the statement in "A" (reproduced in the affidavit before the Chief Justice) that Tan Eng Huat was a partner in the firm of Golden Pagoda Garden Nite-Club and Restaurant.
2. the statement in "A" (reproduced in the affidavit) that at no time was any furniture ordered by the company.
3. the statement in "A" (reproduced in the affidavit) that no part of the furniture was ever used by the company.
4. the statement in the affidavit that at no time did the company have any interest in the night club.

Exhibits

KEH 16

Letter  
Hilborne &  
Co. to the  
Secretary of  
the Inquiry  
Committee of  
the Law  
Society  
24th May,  
1971  
(continued)

Exhibits

KEH 16

Letter  
Hilborne &  
Co. to the  
Secretary of  
the Inquiry  
Committee of  
the Law  
Society  
24th May,  
1971  
(continued)

5. the statement in the Defence relating to the date of Tan Eng Huat becoming a shareholder in the company on the 2nd July 1969.

Although the Defence had not been before the Chief Justice at the hearing of the application to set aside the judgment in January 1971, when the appeal came on for hearing, Mr. Chung successfully applied for it to be included in the record. In the event, the appeal was dismissed, and a copy of the Judgment is annexed hereto and marked " E ". It is clear that a vital aspect of the matter before the Court of Appeal and, (it was presumed by the Court of Appeal in the absence of any Grounds of Decision) before the Chief Justice was the status of Mr. Tang Eng Huat in March and April and his relationship with the company

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At this stage the plaintiffs, had no direct evidence which tended to throw doubt on the truth of any of the statements referred to, and it was only after the dismissal of the plaintiffs appeal when steps were being taken to obtain a judgment under Order 14 that I was led to Mr. Ong Swee Keng, who on the 4th March set out the true facts in a Statutory Declaration annexed and marked F. It became clear from discussions with Mr. Ong and his solicitor, Mr. C.S. Wu, that the information given to both Courts by the company, through their solicitors, was either untrue or of such a nature as to convey a wrong impression. Accordingly, urgent steps were taken to draw these facts to the attention of the Court of Appeal before the order dismissing our clients' appeal was passed and entered (See in re Harrison's Settlement (1955) Ch. 260). Besides the affidavit of Mr. Ong Swee Keng, there was also produced the invitation Card to the opening of the Golden Palace Garden Nite-Club and Restaurant (marked G herewith); it is clear from this document that that enterprise was owned by the company at the date of opening (26.7.1969) and not by any firm in which Mr. Tang Eng Huat was a partner. On the contrary, it is clear that Mr. Tan Eng Huat was managing the company's business from the 8th February 1969 onwards, that it was agreed on the 28th February that he should be Managing Director, and that the furniture was used by the company in the Night Club. The object of appearing before their

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lordships on the 13th March 1971, was to re-open hearing of the appeal on the ground that both Courts had been misled, inasmuch as the true and material facts had not been disclosed at any time from the commencement of the correspondence (4.6.1970) to the hearing of the Appeal (21.1.1971) In the event, their lordships did not deem fit to re-open the hearing of the appeal. It seemed, and still seems, to me that for a litigant to misinform the Court in circumstances such as these was dishonesty in the legal, if not the actual sense, and for a Court, having been apprised of the nature of the falsity, to fail to express any disapproval of the same, let alone investigate the matter further, was tantamount to condonation of that dishonesty. It was these circumstances that led to the observation which I made. No doubt it was a somewhat blunt expression of opinion but I do not recall either of their lordships taking objection at the time, either to the content of the words or the manner on which they were expressed. The letter written to Mr. Chung's firm was in response to a challenge by him, in front of their lordships, to repeat the substance of my remarks in circumstances where privilege would not obtain.

There is one further epilogical document which I might refer to. The document marked H is a letter dated the 30th April 1971, some 6 weeks after I made the observation. It is self-explanatory and indicates, to my mind, that there never was any doubt that the company were, at all material times, liable for this debt. My client, it would seem, therefore, owe it to the generosity and sense of fairness of the liquidator and her legal advisers that justice in the end was, after all done.

Yours faithfully,

Sd.: - HILBORNE & CO.

40 Encl.:

Exhibits

KEH 16

Letter  
Hilborne &  
Co. to the  
Secretary of  
the Inquiry  
Committee of  
the Law  
Society  
24th May,  
1971  
(continued)

Exhibits  
KEH 16 "A"

EXHIBIT KEH 16 "A"

CHUNG & CO.,  
ADVOCATES & SOLICITORS

Messrs. Hilborne & Co.,  
Singapore.

4th June 1970.

Dear Sirs,

re: Suit No. 1093 of 1970  
The Brothers of St. Gabriel  
vs.

1. Tang Eng Huat
2. Golden Palace Private Limited

10

We act for the 2nd Defendants Golden Palace Private Limited in the above suit.

We are instructed that our clients never ordered any of the furniture set out in your clients' Statement of Claim for which the sum \$2,810/- is claimed.

The furniture was ordered by the 1st Defendant for the firm of Golden Pagoda Garden Nite-Club and Restaurant of Jalan Ang Siang Kong, 11 $\frac{3}{4}$  m.s. Tampenis Road, Singapore, of which the 1st Defendant was a partner.

20

Our clients, as owners of the building leased it to the above firm on the 1st August 1969 although possession was delivered to the 1st Defendant some time in June 1969.

The business of the above firm was terminated on the 1st December 1969.

At no time was any of the furniture ordered by our clients or by the 1st Defendant on behalf of our clients nor was any part of the furniture ever made use of by our clients.

30

We shall be entering appearance in the course of today or tomorrow.

No doubt your clients may wish to give prompt attention to what we have stated in

this letter and if they propose to discontinue  
no doubt they will do so as soon as possible.

Yours faithfully,

Sgd:- CHUNG & CO.

Exhibits  
KEH 16 "A"  
(continued)

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EXHIBIT KEH 16 "B"

KEH 16 "B"

DONALDSON & BURKINSHAW,  
SINGAPORE.

1st April 1970.

10 Messrs. Hilborne & Co.,  
Singapore.

Dear Sirs,

We act for Mr. Tan Eng Huat and your  
letter of the 14th ultimo addressed to our  
client has been referred to us with instruc-  
tions to reply.

20 The goods mentioned in your letter were  
ordered by our client for and on behalf of  
Golden Palace Pte. Ltd. of 57-G Jalan Ang Siang  
Kong, Tampenis Road, Singapore. Our client was  
at the material time the Managing Director of the  
Company.

Our client is therefore under no personal  
liability in respect of your clients' claim,  
and we would therefore suggest that you refer  
the claim to the Company for settlement.

Yours faithfully,

Sd:- DONALDSON & BURKINSHAW

c.c. Mr. Tan Eng Huat.

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ExhibitsEXHIBIT KEH 16 "C"

KEH 16 "C"

Tan Eng Huat

No. 0765

## CARPENTRY SECTION

St. Joseph's Trade School

9½ m.s. Bukit Timah Road,

Order No. 21/3

Date: 21.3.69.

NAME: Golden Palace (Pte.) Ltd.

ADDRESS: Jalan Ang Siang Kong, 11¼ m.s.  
Tampenis Road.

TEL: 491211

10

DESCRIPTION

- (20) 36" x 36" Table with matt. black formica  
top \$35.00 each.
- (15) 24" x 30" Table with matt black formica  
top \$15.00 each.
- (100) Dining Chairs \$10/- each.

NEW PIECES

(15) 36" x 36" x 30" Table = \$38	\$570.00	
(20) 20" x 30" x 30" 8/Table = \$18	-	360.00
(100) Chairs = \$10	-	<u>1000.00</u>
		<u>\$1930.00</u>

20

TO BE DELIVERED ON the B'ing of MayESTIMATED AT \$1,100.00Deposit 33 1/3 \$100.00

EXHIBIT KEH 16 "D"

No.0769

Exhibits  
KEH 16 "D"

## CARPENTRY SECTION

St. Joseph's Trade School

9½ m.s. Bukit Timah Road.

ORDER No. 4/67A

Date: 12/4/69

NAME: Golden Palace (Pte.) Ltd.

ADDRESS: Jalan Ang Siang Kong, 11¼ m.s. Tampenis Road  
Singapore.

10 TEL:

## DESCRIPTION

1 Bar in wooden and Cane \$300/-

12' x 24" x 48" with Matt Black top six drawer,  
Centre with lock, two partitions four sliding  
doors right side with lock.

\$23

10 round Cane stool with dunlop sit at \$18/-

each = \$180.

6 Round extension table top with Matt Black top

20 48" diameter \$25/- each = \$150/-

TO BE DELIVERED ON THE V. Soon

Estimated at \$680.00

Deposit 33 1/3 \$200.00



Exhibits

EXHIBIT KEH 16 "E"

KEH 16 "E"

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 28 of 1970

Between

The Brothers of St. Gabriel

Appellants

And

Golden Palace Private Limited

Respondents

(In the Matter of Suit No. 1093 of 1970 in the  
High Court in Singapore

10

Between

The Brothers of St. Gabriel

Plaintiffs

And

1. Tang Eng Huat

2. Golden Palace Private Limited

Defendants)

CORAM: Tan Ah Tah, J.

A.V. Winslow, J.

20

Choor Singh, J.

Thursday, 21st January 1971.

ORAL JUDGMENT

This is an appeal against an order made by the Chief Justice whereby a judgment entered by the Plaintiffs against the second defendants, who had not filed a defence, was set aside. We have considered this case on the assumption that the second defendants have to satisfy this court

that there are merits in the defence on which they are now relying. On this point it is relevant to cite certain passages from the judgment of Lord Atkin in *Evans v. Bartlam* (1937) A.C. 473 at pages 479, 480 and 481. These passages are as follows :-

Exhibits

KEH 16 "E"  
(continued)

10 "..... I agree that both rules, Order XIII, r.10, and Order XXVII, r. 15, give a discretionary power to the judge in Chambers to set aside a default judgment. The discretion is in terms unconditional. The Courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a prima facie defence ....."

20 "But in any case in my opinion the Court does not, and I doubt whether it can, lay down rigid rules which deprive it of jurisdiction. Even the first rule as to affidavit of merits could, in no doubt rare but appropriate cases, be departed from".

30 "..... Appellate jurisdiction is always statutory; there is in the statute no restriction upon the jurisdiction of the Court of Appeal: and while the appellate Court in the exercise of its appellate power is no doubt entirely justified in saying that normally it will not interfere with the exercise of the Judge's discretion except on grounds of law, yet if it sees that on other grounds the decision will result in injustice being done it has both the power and the duty to remedy it."

40 It seems clear therefore that the rule that the defendant must file an affidavit himself or by his agent showing merits is not an absolutely rigid one. In this particular case the affidavits filed by the clerks of the respective solicitors for the plaintiffs and for the second defendants contain enough material upon which we can adjudicate in this case.

The first matter that we wish to refer to is an allegation in the statement of claim. In

ExhibitsKEH 16 "E"  
(continued)

paragraph 2 of the statement of claim it is alleged that prior to the 4th of July 1969 the first defendant requested the plaintiffs to manufacture certain items of furniture at their St. Joseph's Trade School, the agreed price whereof was \$2,810.00. The plaintiffs agreed to manufacture the said furniture which they did and they delivered the same to the premises of the second defendants. It is to be noted that in this paragraph there is no allegation that the first defendant ordered the furniture on behalf of the second defendants or as their agent. There is no further reference to the second defendants until we come to paragraph 5 which reads :-

10

"The Plaintiffs claim the sum of \$2,510.00 from the First Defendant. Alternatively, if the First Defendant ordered the said furniture for and on behalf of the second Defendants, the Plaintiffs claim the said sum from the Second Defendants."

20

It is clear that there is no allegation at all in the statement of claim that the first defendant ordered the furniture for and on behalf of the second defendants.

The case put forward on behalf of the plaintiffs can be further illustrated by a passage from a letter written by Messrs. Hilborne & Co. on the 3rd of April 1970 to Messrs. Donaldson & Burkinshaw, who were acting for the first defendant, which reads as follows :-

30

"We have received your letter of the 1st of April. Whether your client acted as agent or not, our clients do not know but the simple solution would be for payment to be made to our clients. In default of payment, we should join both parties and we would be glad if you would kindly let us know whether you have instructions to accept service."

40

To summarise the matter, it is to be observed, first, that there is no allegation in the statement of claim that the first defendant ordered the furniture on behalf of the second defendants. Secondly, there is this letter dated the 3rd of April 1970 which states that the plaintiffs did not know whether the first

defendant acted as agent for the second defendants. Finally, we have the denial of liability by the second defendants who say that they are not liable for payment because they did not order the furniture.

Exhibits

KEH 16 "E"  
(continued)

10 There is an additional matter which we must refer to and that is the application for particulars which was made by the solicitors for the second defendants. In the first place they wrote a letter to the solicitors for the plaintiffs asking for particulars. This application was rejected by the solicitors for the plaintiffs. The solicitors for the second defendants then filed an application by way of summons-in-chambers asking for particulars of the claim. At some stage during the proceedings the solicitors for the second defendants wrote a letter to the solicitors for the plaintiffs asking for time, namely for a four-day period, within which to file their defence. It seems to us that this request was a perfectly reasonable one. However, it was not acceded to by the solicitors for the plaintiffs.

20  
30 In all the circumstances of this case we are of the view that the Chief Justice was justified in setting aside the judgment. We would add that counsel for the plaintiffs has not shown that the Chief Justice has exercised his discretion wrongly or that he has failed to exercise it. The appeal must therefore be dismissed.

The plaintiffs will pay two-thirds of the costs of the appeal to the second defendants. The deposit will be paid out to the second defendants or their solicitors.

This oral judgment delivered by the Honourable Mr. Justice Tan Ah Tah was taken down by me and is approved by His Lordship.

(Sd.) Yeo Con Chong

40 Private Secretary to  
the Honourable Mr. Justice  
Tan Ah Tah.

20/3/71.

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ExhibitsEXHIBIT KEH 16 "F"

KEH 16 "F"

THE STATUTORY DECLARATION ORDINANCE(CHAPTER 9)STATUTORY DECLARATION

I, ONG SWEE KENG, an advocate and Solicitor practising under Messrs. Ong Swee Keng & Co., of No. 65 South Bridge Road, (2nd Floor), Singapore, 1, do solemnly and sincerely declare as follows :-

1. I have been a Director of Golden Palace (Pte.) Ltd. since the 28th February 1969. I have petitioned the High Court for a Winding Up Order in respect of the Company, and the Petition is pending hearing. 10

2. I am aware of the proceedings in Suit No. 1093 of 1970 where the body or association known as Boy's Town are seeking to recover moneys owing to them for furniture supplied by them. During the last one or two weeks I have been requested by Messrs. Hilborne & Co. Solicitors for Boy's Town to state the facts relating to certain matters which I understand are material to the proceedings. 20

3. Tan Eng Huat of 11 Seraya Road, Singapore has also been a Director of the said Company since the 28th February 1969. In or about January 1969 at the invitation of the Company's Chairman Thong Kong Fye, Tan Eng Huat and I agreed each to invest \$150,000.00 in the Company by subscribing to 3,000 shares between us, representing half the Company's subscribed share capital. The Company's Resort Premises known as Golden Palace Holiday Resort commenced business on the 8th February 1969, and on the day previous to that (the 7th February 1969) Thong Kong Fye, Tan Eng Huat and I represented the Company in discussion with the Resort's prospective Concessionaires to negotiate the concession terms. In point of fact, Tan Eng Huat, with the consent and approval of Thong Kong Fye as well as all the other Directors of the Company, took charge of the management of the Company's business from the 8th February 1969. It has already been agreed even then that Tan Eng Huat would be appointed the Company's Managing Director at the next 30 40

meeting of the Board of Directors. Tan Eng Huat was in daily control of the Company's business generally, he was responsible for engaging staff and supervising their activities, keeping accounts and attending to all matters within the scope of normal management of a business. The general accord amongst the Directors that Tan Eng Huat be appointed the Company's Managing Director was re-affirmed in writing on the 28th February 1969, and the appointment formally confirmed at the meeting of the Board of Directors convened on the 18th April, 1969. Tan Eng Huat remained the Company's Managing Director until the 22nd October, 1969, when the post of Managing Director was vacated, and Tan Eng Huat became one of the Company's two Executive Directors instead.

ExhibitsKEH 16 "F"  
(continued)

4. My attention has been drawn by Messrs. Hilborne & Co. to a letter dated the 4th June 1970 to them. In that letter it is stated - "The furniture was ordered by the 1st Defendant for the firm of Golden Pagoda Nite-Club and Restaurant of Jalan Ang Siang Kong, 11 $\frac{3}{4}$  m.s. Tampenis Road, Singapore of which the 1st Defendant was a partner." At the time when the furniture was ordered in or about March 1969, the company had recently started business, and all the equipment necessary for its carrying on business had to be purchased by the Company, and I do not understand the statement that such furniture was ordered by Tan Eng Huat for the firm of which he was a partner. It is true that he became a lessee of the Nite-Club as from the 1st August 1969 but that was not the position in March. The said letter also contains the statement that "possession was delivered to the 1st Defendant some time in June 1969". This is untrue, and contrary to the actual facts which are that the company carried on the Nite-Club for some three weeks in July before leasing it out. The lease included the furniture. For the same reason the statement that "nor was any part of the furniture ever made use of by our client," meaning the Company, is incorrect.

5. I have also been shown statement made in an affidavit of Mokhtar bin Shariff made on the 20th August 1970, and in particular to paragraphs 12 and 13. The facts stated therein are in themselves true, but if these statements are intended to support the suggestion that Mr.

Exhibits

KEH 16 "F"  
(continued)

Tan Eng Huat had no authority to act on behalf of the Company they are misleading since, as has been stated above, the reverse is the truth. The same observations would apply to paragraph 3 of the Defence of the Company which states that Mr. Tang Eng Huat did not become a shareholder until the 2nd July 1969.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act, 1835.

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DECLARED before me at)  
Singapore this 4th day) Sd: ONG SWEE KENG  
of March, 1971. )

Before me,

Sgd:- Tan Hock Toy

COMMISSIONER FOR OATHS

KEH 16 "G"

EXHIBIT KEH 16 "G"

THE MANAGEMENT OF GOLDEN PALACE (PTE.) LTD.

On the Opening of their  
GOLDEN PAGODA GARDEN NITE-CLUB  
cordially invites the company of  
Mr./Mrs./Messrs \_\_\_\_\_

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to the Official Opening Ceremony  
at Jalan Ang Siang Kong  
(off Tampenis Road, 11 $\frac{3}{4}$  m.s.)

by

Mr. Chua Tho Tiong on 26th July, 1969  
at 2.30 p.m. and thereafter to a Buffet  
Party from 2.30 p.m. to 6.00 p.m.

30

Golden Palace (Pte.) Ltd. - Tel: 491211  
Golden Pagoda Garden Nite-Club - Tel: 492903

EXHIBIT KEH 16 "H"

Exhibits

KEH 16 "H"

DONALDSON & BURKINSHAW  
ADVOCATES & SOLICITORS

30th April, 1971.

Messrs. Hilborne & Co.,  
Singapore.

Without Prejudice

Dear Sirs,

re: Suit No.1093 of 1970  
The Brothers of St. Gabriel

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vs.

1. Tan Eng Huat
2. Golden Palace (Pte.) Limited

As you may be aware, a Winding-up Order has now been made in respect of Golden Palace Private Limited in Companies Winding-Up No. 10 of 1970, and the Official Receiver has been appointed Liquidator.

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The writer has recently discussed your clients' claim in this action with the Liquidator. We explained that there could be no denying that your clients ought to be entitled to Judgment on their claim against the Company, and although the Company has obtained substantial taxed costs against your clients in the interlocutory proceedings, it would morally be wrong for the Company to insist on the payment of these costs.

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The Liquidator shared the sentiments that we expressed and suggested that she would be prepared to consent to Judgment on the Company's behalf for the amount of your clients' claim, and waive the Company's taxed costs against your clients as well, provided that your clients would seek no costs against the Company in the action.

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You will doubtless appreciate that the terms offered by the Liquidator are very much to your clients' advantage, and if your clients are amenable to a settlement on these terms, then we shall file an application for a Consent Judgment which will incorporate these terms. Please let us hear from you after you have taken



Exhibits

instructions.

KEH 16 "H"

Yours faithfully,

Sd:- Donaldson & Burkinshaw

c.c. Official Receiver

Mr. Tan Eng Huat.

This is the exhibit marked "KEH 16" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

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Sd:- Tan Hock Tey

COMMISSIONER FOR OATHS.

KEH 17

EXHIBIT KEH 17

Letter  
Secretary of  
the Law  
Society to  
the Appellant

LETTER SECRETARY OF THE LAW SOCIETY  
TO THE APPELLANT

THE LAW SOCIETY OF SINGAPORE  
SUPREME COURT BUILDING  
SINGAPORE.

5th May, 1972.

K.E. Hilborne, Esq.,  
Messrs. Hilborne & Co.,  
9 Malacca Street,  
Singapore, 1.

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Dear Sir,

re: Council's Order under section 89(1) of  
the Legal Profession Act (Cap. 217).

I am directed to refer to the Council meeting held last week at which you were present and that notice was given to you of the Council's intention to make an Order for the payment of a penalty and

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at which your representations were heard.

2. The Council after further due consideration has ordered that you pay \$250/- under section 89 of the Legal Profession Act (Cap. 217).

Yours faithfully,

Sgd:-

Secretary,  
The Law Society of Singapore.

Exhibits

KEH 17

Letter  
Secretary of  
the Law  
Society to  
the Appellant

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This is the exhibit marked "KEH 17" referred to in the Affidavit of K.E. Hilborne and sworn before me this 25th day of May, 1972.

Before me,

Sd:- Tan Hock Tey

Commissioner for Oaths.

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No. 22 of 1976

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

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B E T W E E N :

KENNETH EDWARD HILBORNE

Appellant

- and -

THE LAW SOCIETY OF SINGAPORE

Respondent

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RECORD OF PROCEEDINGS

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CHARLES RUSSELL & CO.,  
Hale Court,  
Lincoln's Inn,  
London,  
WC2A 3UL

MESSRS. JAQUES & CO.,  
2, South Square,  
Gray's Inn,  
London,  
WC1R 5HR

Solicitors for the Appellant

Solicitors for the Respondent