

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE
JURISDICTION)

B E T W E E N :

1. CHOW YEE WAH
 2. THE KWONG YIK (Selangor)
Banking Corporation Bhd.
- Appellants
(Defendants)

- and -

CHOO AH PAT, Administratrix of the
Estate of Loke Yaik Hoe @ Loke
Yauk Hoh @ Loke Yauk Hoe Deceased

Respondent
(Plaintiff)

CASE FOR THE RESPONDENT

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1. This is an Appeal by Chow Yee Wah (hereinafter called "the First Appellant") and The Kwong Yik (Selangor) Banking Corporation Bhd. (hereinafter called "the Second Appellant") from the Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) (Gill C.J. Ali F.J. and Ong F.J.) dated the 20th day of January 1975 allowing with costs the Appeal of Choo Ah Pat, administratrix of the Estate of Loke Yaik Hoe deceased (hereinafter called "the Respondent") from the Judgment and Order of the High Court of Malaya at Kuala Lumpur (Abdul Hamid J) dated the 26th day of November 1973 which dismissed with costs the claim of the Respondent for the sum of \$60,384.80 against the First and Second Appellants.

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2. The Principal issue raised in this Appeal is the mental condition of Loke Yaik Hoe deceased, when his thumb print was affixed to a cheque and other documents

3. Loke Yaik Hoe died on the 24th day of July 1967 at the age of 57. For some years prior to his death he lived with a lady called Chan Yoke Ying. The Respondent is the mother of Loke Yaik Hoe and the administratrix of his estate.

4. Loke Yaik Hoe had an account with the Second Appellant bank at its head office in Jalan Bandar Kuala Lumpur. The Second Appellant also had a branch office at 55, Jalan Pasar, Kuala Lumpur. Loke Yaik Hoe was English educated and used to sign his cheques and other documents in English. The specimen signature card held by the Second Appellant had his signature in the English language.

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5. For some nineteen years prior to his death Loke Yaik Hoe suffered from hypertension and he had diabetes for about ten years. Somewhere along the line his heart, liver and kidneys became damaged and malfunctioned. From about the middle of May 1967 he became more ill and on the 13th day of July 1967 he was admitted to the General Hospital Kuala Lumpur a very sick man. Eleven days later, on the 24th day of July 1967, he died in that hospital. During those eleven days in hospital he was attended to by no less than five Government doctors.

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6. On the 18th day of July 1967, that is, five days after he was admitted into hospital, Loke Yaik Hoe is alleged to have affixed his thumb impressions to a cheque purported to have been drawn by him on the Second Appellant in favour of its branch at 55, Jalan Pasar Kuala Lumpur for the sum of \$60,384.80. Further by certain documents dated the 20th day of July 1967 to which his thumb impression had been affixed he is purported to have directed the said branch of the Second Appellant to open a joint account at the said branch in his and the First Appellant's name.

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7. Using the said documents and the said cheque a joint account in the names of Loke Yaik Hoe and the First Appellant was opened in the said branch of the Second Appellant on the 20th day of July 1967 and the said sum of \$60,384.80 was withdrawn from the personal account of Loke Yaik Hoe in the head office of the Second Appellant and credited to the joint account of Loke Yaik Hoe and the First

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Appellant in the said branch of the Second Appellant.

8. Between the 24th day of July 1967 and the 31st day of July 1967 the First Appellant withdrew a sum of \$5,000/- from the said joint account and on the 31st day of July 1967 he withdrew the whole of the balance sum of \$55,382.30 that remained to the credit of that account and paid it into a new joint account which he and his wife had opened in the said branch on that day.

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10 9. The Respondent who was granted letters of administration to the estate of Loke Yaik Hoe in September 1970, instituted these proceedings in June 1971 alleging fraud and asking for a declaration that the cheque for \$60,384.80 bearing the thumb print of Loke Yaik Hoe was invalid primarily on the ground that when this thumb print was affixed to the said cheque the mental condition of the deceased was such that he was not capable of understanding the nature and consequence of his act. The Respondent also asked for similar
20 declaration in respect of the said documents dated the 20th day of July 1967 and for consequential relief. Alternatively she contended that the whole amount which was in the said joint account of Loke Yaik Hoe and the First Appellant having been contributed by Loke Yaik Hoe the rule of survivorship at law is overridden by equity.

30 10. In their defences the First and Second Appellants denied fraud and stated that Loke Yaik Hoe, "was at all times until his death compos mentis and of sound mind and memory and understanding" and that he affixed his thumb impression to the said cheque and documents on the 18th day of July 1967. They further contended that Loke Yaik Hoe intended to make provision for Chan Yoke Ying, the lady with whom he was then living.

40 11. The hearing of the action in the High Court commenced on the 28th day of June 1972 and concluded on the 5th day of July 1973.

12. At the hearing the Respondent gave oral evidence and stated that in July 1967 she was living in Singapore and that upon hearing that her son, Loke Yaik Hoe, was seriously ill and had been admitted to the General Hospital Kuala Lumpur

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she returned to Kuala Lumpur on the 19th day of July 1967, and at about 9.00 a.m. on that day went to the hospital and saw Loke Yaik Hoe. He was very ill and could not recognise her or anyone else. Neither did he speak to anyone. She visited him on every subsequent day until his death and he did not recognise her or any one else or speak to her at any time.

13. The five Government doctors who attended on Loke Yaik Hoe in the hospital from the 13th day of July 1967 to the 24th day of July 1967 gave evidence for Respondent. 10

(i) Dr. V.Vignaendra M.B.B.S., M.R.C.P. Australia who admitted Loke Yaik Hoe into hospital on the 13th day of July 1967, said that at the time of admission Loke Yaik Hoe was a very ill patient who showed evidence of cardiac and liver failure and was not fully clear mentally on questions put to him. This witness was not cross-examined. 20

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(ii) Dr. Lim Eu Jin, M.B.B.S. Singapore M.R.C.P. Glasgow M.R.C.P. Edinburgh said that he was the doctor in charge of Loke Yaik Hoe and that he saw the patient almost every day from the 15th day of July 1967. He said that on the 15th day of July 1967 the patient was mentally confused and was not able to converse intellectually with him. This indicated impairment of the mental faculties. He said that during the period 17th July to 19th July 1967 on the whole there was progressive mental deterioration, "mentally more confused, not orientated, not aware of his surroundings as a normal person would." This witness was also not cross-examined. 30

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(iii) Dr. Sinnadurai L.M.S. Singapore, Fellow of the Royal College of Physicians, Ireland; Fellow of the Royal College of Chest Surgeons, America and Fellow of the Royal Academy of Medicine, Ireland who was the Senior Consultant Physician at the General Hospital Kuala Lumpur said that from the 15th day of July 1967 the mental conditions "of the patient was deteriorating;" that on the 18th day of July "the blood urea had risen to 252 m.g. per cent; Patient confused. Mentally confused" and that on the 19th night he was intoxicated by the waste product retained in the blood and "showed evidence of psychotic 40

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behaviour - like a mad man". This witness too was not cross-examined.

(iv) Dr. G.A.Sreenevasan M.B.B.S. Adelaide, Master of Surgery Liverpool. F.R.C.S. England, Edinburgh and Ireland, F.A.C.S. Australia and F.A.C.S. America who saw the patient on the 20th day of July at the request of Dr. Lim Eu Jin with a view of doing a dialysis on the patient said that he did not carry out a dialysis because of the mental dementia of the patient. This witness was also not cross-examined.

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(v) Dr. Daljit Singh M.B.B.S. Singapore, M.R.C.P. United Kingdom, Diploma in Dermatology London, said that he had attended Loke Yaik Hoe from the 17th day of July 1967 until his death on 24th day of July 1967 and that in his opinion, "at no time at all was the patient in a position to know what he was doing."

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14. For the Appellant the First Appellant gave evidence and said that he accompanied Loke Yaik Hoe to the General Hospital on the 13th day of July, 1967 and that subsequently he visited Loke Yaik Hoe at the hospital every day except the 17th and that on every occasion the deceased seemed perfectly well and in good spirits. He said that on the 18th day of July 1967 at about 5 p.m. he met by arrangement at the hospital Kwan Mun Koh who was the officer in charge of the said branch of the Second Appellant, and a nephew of his wife. Kwan Mun Koh brought with him the said documents relating to the opening of the joint account in the name of Loke Yaik Hoe and the First Appellant. Loke Yaik Hoe affixed his thumb impressions to the said cheque and documents in the presence of Kwan Mun Koh, Chan Yoke Ying and Chow Yee Wah.

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(i) Kwan Mun Koh also gave evidence for the Appellants and said that he visited Loke Yaik Hoe at the hospital on the 13th day of July 1967 and subsequently on several occasions and on every occasion the deceased appeared to be alright.

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Loke Yaik Hoe told him that he wanted to open a joint account in the name of himself and the First Appellant so that the First Appellant would be able to look after Chan Yoke Ying. On

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the 18th day of July he visited Loke Yaik Hoe at about 5 p.m. when Loke Yaik Hoe appeared to be very normal and was in a cheerful mood. The First Appellant and Chan Yoke Ying were also present and Loke Yaik Hoe affixed his thumb impression to the said cheque and documents.

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(ii) Chan Yoke Ying gave evidence for the Appellants and said that she had been living with Loke Yaik Hoe for over six years and that from the time he was admitted to the hospital until his death the deceased was in full possession of his mental faculties.

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(iii) One Dr. Loke Wai Tuck, who was in private practice, also gave evidence for the Appellants and said that he was a nephew of the wife of the First Appellant. He had not seen Loke Yaik Hoe for many years prior to the 13th day of July 1967 but from that day he had visited the deceased in the hospital socially every day until his death. He said that at all times when he saw him the deceased was mentally fully alert.

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15. The learned trial Judge, Abdul Hamid J, who gave judgment on the 26th day of November 1973 dismissed the Respondent's claim and held, it is respectfully submitted wrongly

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i. That the onus was on the Respondent to establish that the deceased was suffering from mental disorder.

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ii. that there was no evidence that the deceased was suffering from any mental disorder.

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iii. that none of the medical witnesses could say exactly what the deceased's frame of mind was at the time when he purportedly drew the cheque and executed the documents.

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iv. that though the deceased was seriously ill and his mental faculties were somewhat impaired he was not completely relieved of his mental faculties, his memory and his understanding.

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v. that he was satisfied that the deceased was of sound memory and understanding and that he fully appreciated the nature and effect of his act.

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- vi. that there were no suspicious circumstances surrounding the disposition. Page 606
- vii. that there was no evidence of fraud. Page 601
- viii. that the First Appellant was a lawfully constituted trustee and held the money in trust for Chan Yoke Ying. Page 620-624
- ix. that the Second Appellant was not negligent. Page 617-8
- 10 16. The Respondent appealed against the said decision to the Federal Court of Malaysia. By a unanimous Judgment delivered by Ali F.J. on the 20th day of January 1975 that Court allowed the appeal, set aside the judgment of the learned trial judge, and ordered the Appellants to pay to the Respondent the sum of ~~60~~,384.80 and costs.
- 20 17. In the judgment Ali F.J. reviewed the evidence and stated that the fact that the deceased was a very sick man and that his illness had affected his mind was beyond doubt and that there was also no doubt that his condition was progressively deteriorating from the day he was admitted to the hospital. Ali F.J. said that as he understood the medical evidence the deceased was most of the time, if not all the time, in a state of mental confusion because of the large amount of waste products in his blood. He also referred to various gaps in the evidence of the First Appellant, Kwan Mun Koh and Chan Yoke Ying.
- 30 He also stated that there was nothing in the defence evidence which could point with reasonable certainty that deceased intended to create a trust or to make a voluntary settlement which was binding on him. Page 1189
18. Ali F.J. Held
- i. that the Respondent's evidence as a whole reasonably supports a case of fraud as alleged by the Respondent Page 1189
- 40 ii. that the deceased was not in full possession of his mental faculties when his thumb prints were affixed to the said cheque and documents. Page 1196
- iii. that there was no evidence of an express Page 1199

trust to rebut the presumptions of a resulting trust.

19. The Respondent respectfully submits that the decision of the Federal Court of Malaysia was correct and that it should be affirmed.

20. The Respondent respectfully submits that the Appeal should be dismissed (with costs) for the following among other

R E A S O N S

1. At the time when his thumb impressions were affixed to the said cheque and documents the mental condition of the deceased was such that he was not capable of understanding the nature and consequences of his acts. 10

2. There was unchallenged expert medical evidence to show that at least between the 15th day of July and the 24th day of July the mental condition of the deceased was generally confused and deteriorating to such an extent that he was not able to understand the nature and consequences of his acts. 20

3. The learned trial Judge failed to draw the correct inferences from the evidence.

4. The learned trial Judge misdirected himself on the burden of proof.

5. The learned trial Judge misdirected himself in holding that there was no evidence of fraud.

6. The learned trial Judge misdirected himself in holding that the First Appellant was a lawfully constituted trustee and that he held the money in trust for Chan Yoke Ying. 30

7. The Second Appellant was negligent in accepting the said cheque and documents and in honouring them.

8. Alternatively the authority allegedly given by the deceased to the Second Appellant to honour the said cheque and/or to open the joint account was revoked by the mental condition of the deceased subsequent to the 18th day of July 1967.

9. For the reasons given in the Judgment of the Federal Court.

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Yauk Hoe Deceased Respondent
(Plaintiff)

CASE FOR THE RESPONDENT

R.J. JANSONS
6/8 Portman St.,
Portman Square,
London W.1.

Solicitor for the Respondent.