

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 43 of 1975

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)

---

RECORD OF PROCEEDINGS

VOLUME I

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COWARD CHANCE,  
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London EC2V 7LD.

Solicitors for the Appellants

JANSONS,  
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Solicitors for the Respondent

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 Bdh. Appellants  
(Defendants)

- and -

Choo Ah Pat, Administratrix  
of the Estate of Loke Yaik  
Hoe @ Loke Yauk Hoh @ Loke  
Yauk Hoe, deceased Respondent  
(Plaintiff)

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RECORD OF PROCEEDINGS

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	* The Appellants objected to the reproduction of these Exhibits in the Record.		

Documents transmitted to the Judicial Committee, not included in the Record, but reproduced separately.

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*	Written submissions by Plaintiff's Solicitors	11th July 1973
*	Written submissions by First Defendant's Solicitors	undated

Exhibit No.	Description of Document	Date
*	Written submissions by Second Defendant's solicitors	7th July, 1973
*	Written submissions by Plaintiff's Solicitors in reply	17th July, 1973
*	Written reply to submissions by Plaintiff's Solicitors	18th July, 1973
*	Written submissions for First Respondent	undated
*	Written submissions for Second Respondent	19th April, 1974

\* The Appellants objected to the reproduction of these documents.

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Documents transmitted to the Judicial Committee but not reproduced

	Description of Document	Date
	Notice of Motion for conditional leave to appeal to His Majesty the Yang Di Pertuan Agung	25th February, 1975
	Affidavit on behalf of Second Respondent in support of motion	14th February, 1975
	Affidavit of First Respondent in support of Motion	15th February, 1975
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xiv.

Documents referred to in Record  
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Exhibit No.	Description of Documents	Date
D 15	Rent Receipt Book	

1.

No. 1  
Re-Amended Writ

In the High  
Court in  
Malaya at  
Kuala Lumpur

Amended this 25th day of November, 1971  
pursuant to the leave of the Honourable Mr. Justice  
Raja Azlan Shah dated the 8th day of November, 1971.

No. 1  
Re-amended  
Writ

Sd/- ..... Illegible  
.....  
Senior Assistant Registrar,  
High Court, Kuala Lumpur.

26th June  
1971

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

10

CIVIL SUIT NO.469 OF 1971

BETWEEN

Choo Ah Pat, Administratrix  
of the Estate of Loke Yaik Hoe  
@ Loke Yauk Hoh @ Loke Yaik Hoe,  
deceased

Plaintiff

AND

1. Chow Yee Wah
2. The Kwong Yik (Selangor)  
Banking Corporation Bhd.

Defendants

20

RE-AMENDED GENERALLY INDORSED WRIT

The Honourable Tan Sri Ong Hock Thye P.S.M.,  
D.P.M.S., Chief Justice of the High Court in  
Malaya, in the name and on behalf of His Majesty  
the Yang di-Pertuan Agong.

To:

30

1. Chow Yee Wah  
and/or his Solicitors,  
M/s. Shearn Delanore & Co.,  
No.2, Jalan Benteng,  
Kuala Lumpur
2. The Kwong Yik (Selangor)  
Banking Corp. Bhd.  
No. 75, Jalan Bandar,  
Kuala Lumpur.



In the High Court in Malaya at Kuala Lumpur

No. 1

Re-amended Writ

26th June 1971

(continued)

WE COMMAND YOU, that within (8) days after service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in action at the suit of Choo Ah Pat, Administratrix of the Estate of Loke Yaik Hoe @ Loke Yauk Hoh @ Loke Yauk Hoe, deceased.

AND TAKE NOTICE that in default of you so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, Inche Anwar Bin Ismail Senior Assistant Registrar of the High Court, in Malaya, this 28th day of June, 1971.

10

Sd/- Joginder Singh & Co.  
.....  
Plaintiff's Solicitors

Sd/- Anwar bin Ismail  
.....  
Senior Assistant Registrar,  
High Court, Kuala Lumpur.

N.B. This Writ is to be served within twelve months from the date thereof, or if renewed, within six months from the date of last renewal including the day of such date, and not afterwards.

The Defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitors at the Registry of the High Court at Kuala Lumpur.

20

A defendant appearing personally may, if he desires enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court, Kuala Lumpur.

The Plaintiff as the Administratrix of the Estate of Loke Yaik Hoe @ Loke Yauk Hoh @ Loke Yaik Hoe, deceased claims:-

30

1. A Declaration against the 1st and/or the 2nd Defendants that:-

(a) the alleged cheque No.043382 for \$60,384.80 purported to be drawn by the deceased on 18th July, 1967 on the 2nd Defendants was invalid and of no effect for the said cheque:-

(i) was never and is not the deceased's cheque ~~and/or invalid and a nullity~~ and/or

In the High Court in Malaya at Kuala Lumpur

(ii) was obtained from the deceased by the 1st and/or the 2nd Defendants their servants or agents by exerting undue influence on the deceased and/or when the deceased was of unsound mind memory and understanding and/or

No. 1

Re-amended Writ

26th June 1971

(continued)

10 (iii) was fraudently raised by the 1st and/or the 2nd Defendants their servants or agents

(b) the alleged documents purportedly executed by the deceased on 20th July, 1967 whereby the deceased is alleged to have opened a joint-account with the 1st Defendant, account No. 1-361, on 20th July, 1967 at the 2nd Defendants Sub-branch at No.55, Jalan Pasar, Kuala Lumpur were invalid and of no effect  
20 for the said documents:-

(i) were never and are not the documents of the deceased; ~~and/or are invalid and a nullity~~ and/or

(ii) were obtained from the deceased by the 1st and/or the 2nd Defendants their servants or agent by exerting undue influence on the deceased and/or when the deceased was of unsound mind memory and understanding and/or

30 (iii) were forgeries or false documents and fraudulent documents concocted for fraud by the 1st and/or 2nd Defendants their servants or agents;

(c) alternatively, in the event this Honourable Court holds that the said cheque and the said documents were validly and lawfully drawn and executed respectively by the deceased that the:-

40 (i) authority given to the 2nd Defendants to honour the said cheque and/or to open the said joint-account by the deceased was revoked by the subsequent mental condition and/or mental disorder of the deceased and/or by the deceased becoming unsound of mind memory and understanding;

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 1

Re-amended  
Writ

26th June  
1971

(continued)

(ii) rule of survivorship at law (if any) and/or the instructions and/or advice and/or directions given in the said documents as regards the survivor of the deceased and the 1st Defendant being entitled to the monies standing to the deceased's credit in the said joint-account at the time of the death of deceased was and has been overridden by equity.

10

~~(e)~~(d) the deceased's signature (or thumbprint) on the alleged cheque No. A 043382 for \$60,384.80 is a forgery and/or unauthorised signature within the meaning of s.24 of the Bills of Exchange Ordinance, 1949;

~~(a)~~(e) the 1st and/or the 2nd Defendants were not holders in due course of the alleged cheque No. A 043382 and/or had a defective title thereto at all material times;

2. against the 1st and/or the 2nd Defendants the refund of the sum of \$60,384.80 the value of the alleged cheque, or the sum of \$57,382.30 standing to the credit of the aforesaid alleged joint account at the time of the deceased's death on 24th July, 1967 as having been unlawfully withdrawn by the 1st and/or the 2nd Defendants. 20
3. against the 1st and/or the 2nd Defendants further and/or alternatively the sum of \$60,384.80 being the value of the alleged cheque No. A 043382 for having converted for his and/or their own use the alleged cheque and wholly deprived the deceased and/or his Estate of the alleged cheque. 30
4. alternatively, against the 2nd Defendants the sum of \$60,384.80 for money had and received for the use of the deceased and/or his Estate.
5. yet further against the 1st and/or the 2nd Defendants interest at the rate of 9 per cent per annum with monthly rests on \$60,384.80 or \$57,382.30 from the 1st August, 1967 to date of judgment. 40
6. further or other relief to the Honourable Court may deem just in the circumstances of this case.

- 7. interest on the decretal amount at 6 per cent per annum from date of judgment to date of realisation.
- 8. Costs.

In the High Court in Malaya at Kuala Lumpur

          
No. 1

~~Dated this 26th day of June, 1971.~~

~~Sd/- Joginder Singh & Co.  
.....  
Solicitors for the Plaintiff~~

Re-amended Writ

26th June 1971  
(continued)

Dated this 24th day of November, 1971

Sd/- Joginder Singh & Co.  
.....  
Solicitors for the Plaintiff

10

This Writ was issued by JOGINDER SINGH & COMPANY whose address for service is at Nos. 20/22, Jalan Mountbatten, 1st Floor, Kuala Lumpur.

Solicitors for the Plaintiff who resides at No.20, Lorong Sentosa (57D) Petaling Jaya.

This Writ was served by me at  
on the defendant on the                    day of  
197    at the hour of

Indorsed this                    day of                    197 .

20

(signed)

(address)

No. 2 - Re-Amended Statement of Claim

In the High Court in Malaya at Kuala Lumpur

Re-Amended this 25th day of November, 1971 pursuant to the leave of the Honourable Mr. Justice Raja Azlan Shah dated the 8th day of November, 1971.

No. 2

Re-Amended Statement of Claim

26th June 1971

Sd/- Illegible  
.....  
Senior Assistant Registrar,  
High Court, Kuala Lumpur

Amended this 6th day of August, 1971 pursuant to Order 28 Rule 2 of the Rules of Supreme Court, 1957.

Sd/- Illegible  
.....  
Senior Assistant Registrar,  
High Court, Kuala Lumpur

10

RE AMENDED STATEMENT OF CLAIM

1. The Plaintiff is the administratrix of the Estate of Loke Yaik Hoe @ Loke Yauk Hoh @ Loke Yauk Hoe, deceased (hereinafter called 'the deceased') by virtue of Letters of Administration granted to the Plaintiff as the natural and lawful mother of the deceased by the High Court at Kuala Lumpur under Petition No. 588 of 1967.

20

2. The 1st Defendant is a businessman.

3. The 2nd Defendants are a limited liability company incorporated in the States of Malaya and have their registered office at No.75, Jalan Bandar, Kuala Lumpur and carry on the business of banking.

4. The deceased was English educated with Senior Cambridge qualifications at all material times.

5. At all material times to this case and some time prior thereto the deceased had an account with the 2nd Defendants at their Head Office No. 75, Jalan Bandar, Kuala Lumpur. The deceased had about \$60,384.80 in the month of July, 1967 in his said account with the 2nd Defendants at their Head Office.

30

6. At all material times to this case the 2nd Defendants had a sub-branch at No.55, Jalan Pasar, Kuala Lumpur (hereinafter referred to as the said Branch) which also carried on the business of banking.

40

7. The said Branch at all material time to this case had ~~a sub-Account~~ an officer named Kwan Mun Hoe in their employment (hereinafter called the said Servant). The said Servant was the servant or agent of the 2nd Defendants at all material times.

In the High Court in Malaya at Kuala Lumpur

No. 2

8. In the month of July, 1967 the deceased was seriously ill and was admitted to the General Hospital Kuala Lumpur suffering from Hypertensive Congestive Cardiac Failure with Cardia Cirrohosis.

Re-Amended Statement of Claim

26th June 1971

(continued)

9. At the time of admission to the said hospital on 13th July, 1967, the deceased was very ill.

10. On 20th July, 1967 the deceased's condition was poor and he was very ill. The Plaintiff further avers and will ever that the deceased was in delirium and not in his proper senses and was unable to recognise any one including his mother on 20th July, 1967.

11. On 18th July, 1967 the deceased is alleged by the 2nd Defendant to have drawn a cheque No. A 043382 on the 2nd Defendants for \$60,384.80 and made payable to the 2nd Defendants and their said Branch.

12. On 20th July, 1967 the deceased is purported to have executed documents whereby the deceased is alleged to have opened a joint-account with the 1st Defendant, account No. 1-361 on 20th July, 1967 at the 2nd Defendant's said Branch (hereinafter referred to as the said alleged Joint-Account).

13. The deceased died on 24th July, 1967.

14. On 24th July, 1967 the sum of \$57,382.30 was standing to the credit of the said alleged joint-account.

15. The said alleged joint-account, account No. 1-361, was subsequently purportedly closed on 30th July, 1967 by the 1st Defendant and the sum of \$57,382.30 or whatever sum then standing to the credit of the said alleged joint-account was withdrawn by the 1st Defendant for his own use.

16. The Plaintiff contends and will contend that the deceased at the material time when the said alleged cheque No. A 043382 for \$60,384.80 purports to have been executed or drawn by the deceased on 18th July, 1967 was not of sound mind memory and understanding.

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 2

Re-Amended  
Statement  
of Claim

26th June  
1971

(continued)

P A R T I C U L A R S

At the time the deceased is purported to have drawn the said alleged cheque the deceased was suffering from hypertensive congestive cardiac failure with cardiac cirrhosis and was gravely ill and was hospitalised at the aforesaid hospital. He was in a state of delirium. His memory was so defective and untrustworthy that there was total or an almost total loss of memory of recent events and in particular he had forgotten and was unable or frequently unable to recognise any of his closest relative and/or friends. He was at the time of the purported execution or drawing of the said alleged cheque in such a condition of mind and memory as to be unable to understand the nature of the act and its effects, or the extent of the amount appearing in the said alleged cheque he was purporting to draw, or to comprehend and appreciate the claims to which he ought to give effect or the purpose for which he was purportedly drawing the alleged cheque or to whom and how he ought to dispose his monies lying in his said account with the 2nd Defendants.

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17. The Plaintiff avers and will aver that the alleged cheque No. A 043382 purported to be drawn by the deceased on 18th July, 1967 as aforesaid was never ever and is not the deceased's cheque for at the material time the deceased's thumbprint was affixed thereto the deceased did not know and approve and was incapable of knowing and approving the nature and contents of the said alleged cheque and the deceased's thumbprint was affixed thereto without his authority allegedly on 18th July, 1967 as aforesaid by the 1st Defendant and/or the said servant the servant or agent of the 2nd Defendants. The Plaintiff adopts and repeats the particulars contained in paragraph 16 supra.

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18. The Plaintiff further and/or alternatively contends and will contend that the said alleged cheque No. A 043382 for \$60,384.80 was obtained from the deceased by the fraud of the 1st Defendant and/or the said servant, the servant or agent of the 2nd Defendants.

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PARTICULARS OF FRAUD OF THE 1st  
DEFENDANT AND/OR THE SAID SERVANT, THE  
SERVANT OR AGENT OF THE 2ND DEFENDANT

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 2

Re-Amended  
Statement  
of Claim

26th June  
1971

(continued)

- (a) affixing the deceased's thumbprint on to the alleged cheque while the deceased was fast asleep;
- (b) affixing the deceased's thumbprint on to the alleged cheque when the deceased was very ill and not fully conscious;
- 10 (c) affixing the deceased's thumbprint on to the alleged cheque when the deceased was very ill and in delirium;
- (d) affixing the deceased's thumbprint on to the alleged cheque just immediately before or just immediately after the deceased's death on 24th July, 1967;
- (e) affixing the deceased's thumbprint on to the alleged cheque without the authority of the deceased;
- 20 (f) affixing the deceased's thumbprint on to the alleged cheque when the 1st Defendant and/or the said Servant knew or ought to have known that the deceased was very ill and not conscious or not fully conscious and/or was delirious and/or was not in his proper senses;
- (g) affixing the deceased's thumbprint on to the alleged cheque when the 1st Defendant and/or the said servant knew or ought to have known that the deceased was at the material time very ill and of unsound mind memory and understanding particulars whereof appearing in paragraph 16 supra are repeated and adopted.
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19. Similarly the Plaintiff contends and will contend that the deceased at the material time when the said alleged documents whereby the said alleged joint-account with the 1st Defendant is alleged by the 1st and/or the 2nd Defendants to have been opened on the 20th July, 1967 purport to have been executed by the deceased on 20th July, 1967 was not and had not been for some days prior to 20th July, 1967 of sound mind memory and understanding.

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In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 2

Re-Amended  
Statement of  
Claim

26th June  
1971  
(continued)

PARTICULARS

At the time the deceased is purported to have executed the alleged documents on 20th July, 1967 the deceased was suffering from hypertensive congestive cardiac failure with cardiac cirrhosis and was very ill and was hospitalised at the aforesaid hospital. He was in a state of delirium and had been in that state since some days prior to 20th July, 1967. His memory was so defective and untrustworthy that there was total or an almost total loss of memory of recent events and in particular he had forgotten and was unable or frequently unable to recognise any of his closest relations including his own mother and/or friends. He had been since some days prior to 20th July, 1967 and was at the time of the purported execution of the alleged documents in such a condition of mind and memory as to be unable to understand the nature of the act and its effect, or the nature and contents of the alleged documents, or to comprehend and appreciate to whom and how he ought to dispose his monies lying in his said account with the 2nd Defendants.

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20. The Plaintiff avers and will aver that the alleged documents whereby the said alleged joint-account with the 1st Defendant is alleged to have been opened on the 20th July, 1967 as aforesaid were never ever and are not the deceased's documents for at the material time the deceased's thumbprints were affixed thereto the deceased did not know and approve and was incapable of knowing and approving the nature and contents of the alleged documents and the deceased's thumbprints were affixed thereto without his authority allegedly on 20th July, 1967 as aforesaid by the 1st Defendant and/or the said servant, the servant or agent of the 2nd Defendants. The Plaintiff adopts and repeats the particulars contained in paragraph 19 supra.

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21. The Plaintiff further and/or alternatively contends and will contend that the alleged documents whereby the said alleged joint-account with the 1st Defendant is alleged to have been opened on the 20th July, 1967 were obtained from the deceased by the fraud of the 1st and/or the said servant the servant or agent of the 2nd Defendants.

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PARTICULARS OF FRAUD OF THE 1st  
DEFENDANT AND/OR THE SAID SERVANT, THE  
SERVANT, OR AGENT OF THE 2ND DEFENDANTS

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 2

Re-Amended  
Statement  
of Cxclaim

26th June  
1971

(continued)

- (a) Affixing the deceased's thumbprints on to the alleged documents while the deceased was fast asleep;
- (b) Affixing the deceased's thumbprints on to the alleged documents when the deceased was very ill and not conscious or not fully conscious;
- 10 (c) Affixing the deceased's thumbprints on to the alleged documents when the deceased was very ill and in delirium;
- (d) Affixing the deceased's thumbprints on to the alleged documents just immediately before or just immediately after the deceased's death on 24th July, 1967;
- (e) Affixing the deceased's thumbprints on to the alleged documents without the authority of the deceased;
- 20 (f) Affixing the deceased's thumbprints on to the alleged documents when the 1st Defendant and/or the said Servant knew or ought to have known that the deceased was very ill and not conscious or not fully conscious and/or was delirious and/or was not in his proper senses.
- (g) Affixing the deceased's thumbprints on to the alleged documents when the 1st Defendant and/or the said Servant knew or ought to have known that the deceased was at the material time very ill and of unsound mind memory and understanding particulars whereof appearing in paragraph 19 supra are repeated and adopted.
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22. Further and/or alternatively the Plaintiff avers and will aver that the deceased's thumbprint contained and/or appearing in the said alleged cheque No. A 043382 for \$60,384.80 was at all material times and is a forgery and/or unauthorised signature of the deceased within the meaning of s.24 of the Bills of Exchange Ordinance No. 75 of 1949.

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In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 2

Re-Amended  
Statement  
of Claim

26th June  
1971  
(continued)

23. Further the Plaintiff contends and will contend that the 1st Defendant and/or the 2nd Defendants, their servants or agents:-

- (a) were never at any time holders in due course of the said cheque No. A 043382 for \$60,384.80;
- (b) had at all material times a defective title to the said cheque No. A 043382 within the meaning of s.29(2) of the said Bill of Exchange Ordinance;

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24. In the yet further alternative, in the event this Honourable Court holds that the deceased voluntarily and with full knowledge and in his proper senses affixed his thumbprint to the said cheque for \$60,384.80 on 18th July, 1967 and/or executed the alleged documents whereby the said alleged joint-account with the 1st Defendant is alleged to have been opened on the 20th July, 1967 (which are denied) the Plaintiff avers and will aver:-

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- (A) that the authority given to the Second Defendants by the said deceased to honour the said cheque by drawing same and/or the authority given to the Second Defendants by the said deceased by executing the alleged documents to open the said alleged joint-account with the 1st Defendant was revoked by the mental condition and/or mental disorder of the deceased and/or by the deceased becoming of unsound mind memory and understanding subsequent to the affixing of the said thumbprints on the said cheque and the alleged documents as aforesaid.

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#### P A R T I C U L A R S

Commencing from some day between the 17th and 24th July, 1967 the deceased, being gravely ill and suffering from hypertensive congestive cardiac failure with cardiac cirrhosis, fell into a state of delirium which affected his mind and became senseless to and/or oblivious of what was going on round him. This State of his mental condition continued to the time of his death. His memory became so defective and untrustworthy that there was total or almost total loss of memory of recent events and in particular he had forgotten and was

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unable to recall to mind and/or comprehend and appreciate that he had drawn the said cheque and/or that he had given the said authority or mandate to the Second Defendants to open the said alleged joint-account and/or unable to recognise any of his closest relatives and/or friends and/or was unable to give further thought to the claims to which he ought to give effect or to whom and how he ought to dispose his monies lying in his said account with the 2nd Defendants and/or was unable to revoke the alleged authority and the alleged mandate he had given to the 2nd Defendants to honour the said cheque and to open the said joint-account:

In the High Court in Malaya at Kuala Lumpur

No. 2

Re-Amended Statement of Claim

26th June 1971

(continued)

(B) that the deceased was induced to do so by the undue influence of the 1st Defendant and/or the said servant and/or one Chan Yoke Ying at the time when the 1st Defendant and/or the said servant and/or the said Chan Yoke Ying was and/or were in a position to dominate, and did dominate, the will of the deceased.

PARTICULARS OF UNDUE INFLUENCE

(a) At all material time the deceased was seriously ill and lying at the said hospital suffering from hypertensive congestive cardiac failure with cardiac cirrhosis;

(b) At all material times the 1st Defendant and/or the said Servant and/or the said Chan YHoke Ying visited the deceased at the said hospital and knew in what condition the deceased was;

~~(c) At all material time the 1st and/or the 2nd Defendants played on the deceased's mind and/or his fear of impending death by suggesting that he should draw the said cheque and given the 2nd Defendants the said Authority or mandate to open with the said cheque the said joint account in his name and that the 1st Defendant.~~

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 2

Re-Amended  
Statement  
of Claim

26th June  
1971  
(continued)

- (c) That at all material times the 1st and/or the said servant and/or the said Chan Yoke Ying played on the deceased's mind and/or his fear of impending death and/or coerced and/or pressed and/or brought pressure to bear upon the deceased to draw the said cheque and give the 2nd Defendants the said mandate to open with the said cheque the said alleged joint account in his (deceased's) name and that of the 1st Defendant allegedly to utilise the monies in the said joint-account for the alleged benefit of the said Chan Yoke Ying in the event of his death; 10
- (d) At all material time the deceased had no independent advice, in particular, of a lawyer in the matter;
- (e) At all material times the deceased had no adequate advice in the matter and the deceased succumbed to the influence of the 1st Defendant and/or the said servant and/or the said Chan Yoke Ying. 20
- (c) that the advice and/or instructions and/or<sup>2</sup> directions contained in the alleged documents authorising the 2nd Defendants to open the said alleged joint-account that the survivor of the deceased and the 1st Defendant shall be entitled to the balance standing to the credit of the said joint account or the rule of survivorship at law (if any) was at all material times and has been overridden by equity as the entire money in the said joint-account was provided by the deceased and none by the 1st Defendant and the entire monies standing to the credit of the said joint-account therefore lawfully belongs to the Estate of the said deceased. 30
- 24.25. In spite of repeated demands the 1st Defendant and/or the 2nd Defendants have failed and/or refused and/or neglected to pay the value of the said cheque No. A 043382 for \$60,384.80 or any part thereof. 40
- 25.26. Further and/or alternatively the Plaintiff avers and will aver that the 1st and/or the 2nd Defendants have converted the said cheque No. A 043382 for the sum of \$60,384.80 for his and/or their own use and wholly deprived the deceased

and/or his Estate of the said cheque.

26.27. In the further alternative the Plaintiff claims the sum of \$60,384.80 against the 2nd Defendants for money had and received for the use of the deceased and/or his Estate.

27.28. The Plaintiff yet further claims from the 1st and/or the 2nd Defendants interest at the reasonable rate of 9 per cent per annum with monthly rests on \$60,384.80 or \$57,384.30 from the 1st August, 1967 to the date of judgment.

Wherefore the Plaintiff claims:-

- (i) A declaration against the 1st and/or the 2nd Defendants that the:-
- (a) alleged cheque No. A 043382 for \$60,384.80 purported to be drawn by the deceased was and is not the deceased's cheque and/or is invalid and a nullity and/or was fraudulently raised;
- (b) alleged documents purportedly executed by the deceased whereby the said alleged joint account was opened with the 1st Defendant at the 2nd Defendants' said Branch were and are not the deceased's documents, are invalid and a nullity and/or were forgeries or false documents and fraudulent documents concocted for fraud or alternatively that the instructions and/or advice and/or directions contained in the said documents with regard to survivorship and/or the rule of survivorship at law (if any) have been overridden by equity;
- (c) deceased's signature on the alleged cheque No. A 043382 is a forgery and/or unauthorised signature within the meaning of s.24 of Bill of Exchange Ordinance No.75 of 1949;
- (d) 1st and/or the 2nd Defendants were not holders in due course of the alleged cheque No. A 043382 and/or had a defective title thereto at all material times;

In the High Court in Malaya at Kuala Lumpur

—  
No. 2

Re-Amended Statement of Claim

26th June 1971

(continued)

In the High Court in Malaya at Kuala Lumpur

No. 2

Re-Amended Statement of Claim

26th June

1971

(continued)

- (ii) against the 1st and/or the 2nd Defendants the sum of \$60,384.80 or \$57,382.30; or
- (iii) against the 1st and/or the 2nd Defendants the sum of \$60,384.80 under paragraph 25 26; or
- (iv) against the 2nd Defendants the sum of \$60,384.80 under paragraph 26. 27;
- (v) against the 1st and/or 2nd Defendants interest at 9 per cent per annum with monthly rests on \$60,384.80 or \$57,382.30 under paragraph 27 28;
- (vi) further or other relief to this Honourable Court may deem just in the circumstances of this case;
- (vii) interest on the decretal amount at 6 per cent per annum from the date of judgment to date of realisation;
- (viii) Costs of suits;

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~~Dated this 26th day of June, 1971.~~

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~~Sd/- Joginder Singh & Co.  
.....  
SOLICITORS FOR THE PLAINTIFF.~~

~~Dated this 5th day of August, 1971.~~

~~Sd/- Joginder Singh & Co.  
.....  
SOLICITORS FOR THE PLAINTIFF.~~

Re-Amended this 24th day of November, 1971.

Sd/- Joginder Singh & Co.  
.....  
SOLICITORS FOR THE PLAINTIFF.

This Re-Amended Statement of Claim was filed by Messrs. JOGINDER SINGH & CO., Solicitors for the Plaintiff herein and whose address for service is Nos. 20/22, Jalan Mountbatten, 1st Floor, Kuala Lumpur.

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No. 3

Amended Defence of First Defendant

Amended pursuant to Order of the Honourable Mr. Justice Raja Azlan Shah dated the 8th day of November, 1971.

AMENDED DEFENCE OF THE FIRST DEFENDANT

1. Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13 and 14 of the Reamended Statement of Claim are admitted.

10 2. Except that the deceased was admitted to the General Hospital seriously ill on the 13th July, 1967 and that he died there on the 24th of July, from hypertensive cardiac failure with uraemia, paragraph 8 of the Reamended Statement of Claim is not admitted.

20 3. Paragraphs 10, 15, 16, 17, 18, 19, 20, 21 and 22 and the particulars thereunder are denied. The Defendant avers that the deceased was at all times fully 'compos mentis' and anxious to make provision for his common law wife, Chan Yoke Ying, who had resided with the deceased as man and wife for some seven years prior to the deceased being admitted to hospital.

30 4. Prior to his admission to hospital the deceased had discussed the question of making provision for the said Chan Yoke Ying with the servant of the Second Defendants and the deceased then asked the First Defendant if he would agree to be a party to a joint account with him so that in the event of his death the First Defendant could utilise the monies in the account for the maintenance and benefit of his wife the said Chan Yoke Ying.

40 5. After due consideration and after thorough discussion with the deceased the First Defendant agreed to open a joint account with the deceased and the First Defendant was present at the General Hospital, Kuala Lumpur, on the 18th of July when the deceased affixed this thumb-print to the said cheque for \$60,384.80 and also to the mandate to the Second Defendant requesting the opening of the said joint account.

In the High Court in Malaya at Kuala Lumpur

                      
No. 3

Amended Defence of First Defendant

4th August 1971



In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 3

Amended  
Defence of  
First  
Defendant

4th August  
1971

(continued)

6. The deceased affixed his own thumb-print to the said documents and did so voluntarily and with full knowledge of the purpose and effect thereof. When the deceased affixed his thumb-print to the said documents he was fully conscious and of sound mind and memory and understanding. He fully appreciated and understood the nature and effect of the said documents and that he was transferring the sum of \$60,384.80 to an account in the joint names of the First Defendant and himself to be used by the First Defendant for the benefit of the deceased's wife should anything happen to him.

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7. The First Defendant signed the aforesaid mandate to the Second Defendant to open the joint account on the 20th of July when the account was duly opened.

On the death of the deceased the First Defendant held the monies standing to the credit of the joint account in trust for the deceased's wife and the same has been utilised by the First Defendant solely for the use and benefit of the said wife in accordance with the expressed wishes and intentions of the deceased.

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8. It is expressly denied that the said cheque was drawn or the said joint account opened by the deceased as a result of any fraud by the First Defendant and/or the servant of the Second Defendant. The said documents were executed by the deceased voluntarily and with his full knowledge and understanding to give effect to his expressed wishes to provide some security for his wife in the event of his death.

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9. Paragraph 24 (a) of the Re-amended Statement of Claim and the particulars thereunder are denied. This Defendant avers that the deceased was at all times until his death 'compos mentis' and of sound mind and memory and understanding. This Defendant further repeats paragraphs 3, 4, 5, 6, 7 and 8 of the Amended Defence.

10. Paragraph 24(b) of the Re-Amended Statement of Claim and the particulars (a), (b) and (c) thereunder are denied. This Defendant repeats that the deceased voluntarily affixed his thumb-print to the said cheque and to the said mandate in order to make provision for his common law wife, the said Chan Yoke Ying. Particulars (d) and (e) are therefore irrelevant.

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11. With reference to paragraph 24(c) of the Re-Amended Statement of Claim, this Defendant avers that the entire arrangement was aimed at making provision for the deceased's common law wife, the said Chan Yoke Ying, and that this Defendant was not entitled to the balance or any part thereof standing in the joint account at the time of the deceased's death except as Trustee for the said Chan Yoke Ying.

In the High Court in Malaya at Kuala Lumpur

No. 3

Amended Defence of First Defendant

4th August 1971 (continued)

10 12. Paragraphs 23, 25 and 26 are denied. Save and except as is hereinbefore expressly admitted each and every allegation set forth in the Statement of Claim and the Particulars thereunder is denied as if the same was set forth herein and traversed seriatim.

13. And this Defendant prays that this action be dismissed with costs.

Dated and delivered this 4th day of August, 1971.

20 Sd-Shearn Delamore & Co.  
.....  
SOLICITORS FOR THE FIRST DEFENDANT

Amended this 6th day of December, 1971.

Sd-Shearn Delamore & Co.  
.....  
SOLICITORS FOR THE FIRST DEFENDANT.

This Amended Statement of Defence of the First Defendant was filed by Messrs. Shearn Delamore & Co. and Drew & Napier, Solicitors for the First Defendant whose address for service is No. 2, Benteng, Kuala Lumpur.

In the High Court in Malaya at Kuala Lumpur

No. 4

Amended Defence of Second Defendant

No. 4

Amended Defence of Second Defendant

5th August 1971

AMENDED Pursuant to Order of the Honourable Mr. Justice Raja Azlan Shah dated the 8th day of November, 1971

AMENDED STATEMENT OF DEFENCE OF 2ND DEFENDANT

1. Paragraphs 1, 2, 3, 4, 5, 6, 11, 12, 13 and 14 of the Re-Amended Statement of Claim are admitted.

2. The Officer referred to in paragraph 7 of the Re-Amended Statement of Claim was not a Sub-Accountant but an Officer-in-Charge of the said Branch. Save and except as aforesaid paragraph 7 of the Re-Amended Statement of Claim is admitted.

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3. Except that the deceased was ill and admitted to the General Hospital on the 13th July 1967 and that he died thereon the 24th July, 1967, paragraphs 8 and 9 of the Re-Amended Statement of Claim are denied.

4. Paragraphs 10, 15, 16, 17, 18, 19, 20, 21 and 22 and the particulars thereunder are denied. This Defendant avers that the deceased was at all time fully 'compos mentis' and anxious to make provisions for his common law wife, Chan Yoke Ying, who had resided with the deceased as man and wife for some seven years prior to the deceased being admitted to hospital. The deceased was not on good terms with the Plaintiff, his mother, who refused to recognise the said Chan Yoke Ying as his wife.

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5. Prior to his admission to hospital the deceased had discussed the question of making provision for the said Chan Yoke Ying with the said servant of the Second Defendants and the deceased then asked the First Defendant if he would agree to be a party to a joint account with him so that in the event of his death the First Defendant could utilise the monies in the account for the maintenance and benefit of his wife the said Chan Yoke Ying.

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6. After due consideration and after thorough discussion with the deceased the First Defendant

agreed to open a joint account in the names of himself and the deceased. The first defendant the said servant of the Second Defendant and the wife of the deceased were present at the General Hospital, Kuala Lumpur, on the 18th of July when the deceased affixed his thumb print to the said cheque for \$60,384.80 and also to the mandate to the Second Defendant requesting the opening of the said joint account.

In the High Court in Malaya at Kuala Lumpur

—  
No. 4

Amended Defence of Second Defendant

5th August 1971  
(continued)

10 7. The deceased affixed his own thumb print to the said cheque and the said mandate and did so voluntarily and with full knowledge of the purpose and effect thereof. When the deceased affixed his thumb print to the said cheque and the said mandate he was fully conscious and of sound mind and memory and understanding. He fully appreciated and understood the nature and effect of the said cheque and the said mandate and that he was transferring the sum of \$60,384.80 to an account in the joint names of the First Defendant and himself to be used by the First Defendant for the benefit of the deceased's wife should anything happen to him.

20 8. The First Defendant signed the aforesaid mandate to the Second Defendant to open the joint account on the 20th of July when the account was duly opened. On the death of the deceased the First Defendant held the monies standing to the credit of the joint account only as a trustee for the deceased's wife.

30 9. It is expressly denied that the said cheque was drawn or the said joint account opened by the deceased as a result of any fraud by the First Defendant and/or the servant of the Second Defendant. The said cheque and the said mandate were executed by the deceased voluntarily and with his full knowledge and understanding to give effect to his expressed wishes to provide some security for his wife in the event of his death.

40 10. Paragraph 24(a) of the Re-Amended Statement of Claim and the particulars thereunder are denied. The Defendant avers that the deceased was at all times until his death 'compos mentis' and of sound mind and memory and understanding. This Defendant further repeats paragraphs 4, 5, 6, 7, 8 and 9 of the Amended Defence.

11. Paragraph 24(b) of the Re-Amended Statement of

In the High Court in Malaya at Kuala Lumpur

No. 4

Amended Defence of Second Defendant

5th August 1971 (continued)

Claim and the particulars (a), (b) and (c) thereunder are denied. This Defendant repeats that the deceased had voluntarily affixed his thumb print to the said cheque and to the said mandate in order to make provision for his common law wife, the said Chan Yoke Ying. Particulars (d) and (e) are therefore irrelevant.

12. With reference to paragraph 24(c) of the Re-Amended Statement of Claim, this Defendant avers that the entire arrangement was aimed at making provision for the deceased's common law wife, the said Chan Yoke Ying, and that the 1st Defendant was not entitled to the balance or any part thereof standing in the joint account at the time of the deceased's death.

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13.10. Paragraphs 23, 24, 25, 25, 26, 26, 27 are denied. Save and except as is hereinbefore expressly admitted, each and every allegation set forth in the Re-Amended Statement of Claim and Particulars thereunder is denied as if the same was set forth herein and traversed seriatim.

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Dated and delivered this 5th day of August, 1971.

Sd-/Shook Lin & Bok  
.....  
SOLICITORS FOR THE SECOND DEFENDANT.

Amended this 3rd day of December, 1971.

Sd-/Shook Lin & Bok  
.....  
SOLICITORS FOR THE SECOND DEFENDANT

This Amended Defence is filed by Messrs. Shook Lin & Bok Solicitors for the Second Defendant herein and whose address for service is 801, Lee Wah Bank Building, Medan Pasar, Kuala Lumpur.

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No. 5

Amended Reply

In the High Court in Malaya at Kuala Lumpur

Amended this 25th day of November, 1971 pursuant to the leave of the Honourable Mr. Justice Raja Azlan Shah dated the 8th day of November, 1971.

No. 5

Amended Reply

20th August 1971

Sd-/ Illegible  
.....  
Senior Assistant Registrar  
High Court, Kuala Lumpur.

AMENDED REPLY

1. The Plaintiff joins issue with the 1st and the 2nd Defendants on their Defence.

10 2. With regard to paragraphs 3 and 4 of the Statements of Defence of the 1st and the 2nd Defendants respectively, the Plaintiff re-asserts paragraphs 10, 15, 16, 17, 18, 19, 20, 21 and 22 of her Statement of Claim and most emphatically denies the rest of the said paragraphs 3 and 4.

20 3. Further the Plaintiff avers that both the 1st and the 2nd Defendants and/or the said Chan Yoke Ying are estopped from contending that the said Chan Yoke Ying was the common law wife of the said deceased because of the following facts:-

30 On the 21st day of January, 1969, the said Chan Yoke Ying filed against the Plaintiff herein in the High Court at Kuala Lumpur Probate Suit No. 1 of 1969 wherein the said Chan Yoke Ying contended that she was the lawful widow and next-of-kin of the said deceased and had a beneficial interest in succession entitling her to a grant of Letters of Administration to the Estate of the said deceased. The Plaintiff herein in her defence in the said  
40 Probate Suit denied the said Chan Yoke Ying's said claim and pleaded that she was the lawful mother of the said deceased who died a bachelor and therefore solely entitled to the grant of Letters of Administration to the Estate of the said deceased. By Order (consent) dated 13th April, 1970 (inter alia) the Plaintiff herein was given liberty to obtain the Grant of Letters of Administration to the said Estate. The said Order is still in full force and effect. The Plaintiff will refer to the said Order and the said Probate Suit for their full terms and effects at the trial of this case.

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 5

Amended Reply

5th August  
1971

(continued)

4. The Plaintiff denies paragraphs 4, 5, 6 and 7 of the 1st Defendant's Defence and paragraphs 5, 6, 7 and 8 of the 2nd Defendant's Defence.

5. However, in the event this Honourable Court holds that the said deceased on 18th July, 1967 affixed his thumbprint to the said cheque for \$60,384.80 and also to the mandate to the Second Defendant requesting the opening of said joint account voluntarily and with full knowledge of the purpose and effect thereof (which is denied) the Plaintiff avers:-

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(a) that the authority given to the Second Defendant by the said deceased to honour the said mandate given to the Second Defendant by the said deceased to open the said joint account was revoked by the mental condition and/or mental disorder and/or by the deceased becoming of unsound mind memory and understanding subsequent to the affixing of the said thumb print as aforesaid.

20

#### PARTICULARS

Commencing from some day between the 18th and 24th July, 1967 the deceased, being gravely ill and suffering from hypertensive congestive cardiac failure with cardiac cirrhosis, fell into a state of delirium which affected his mind and became senseless to and/or oblivious of what was going on round him. This state of his mental condition continued to the time of his death. His memory become so defective and untrustworthy that there was total or an almost total loss of memory of recent events and in particular he had forgotten and was unable to recall to mind and/or comprehend and appreciate that he had drawn the said cheque and/or that he had given the said mandate to the Second Defendant and/or unable to recognise any of his closest relatives and/or friends and/or was unable to give further thought to the claims to which he ought to give effect or to whom and how he ought to dispose his monies lying in his said account with the 2nd Defendants and/or was unable to revoke the alleged authority and the alleged mandate

30

40

he had given to the 2nd Defendants to honour the said cheque and to open the said joint account;

- 10 (b) that the deceased was induced to do so by undue influence of the 1st Defendant and/or the said servant and/or the said Chan Yoke Ying at the time when the 1st Defendant and/or the said servant and/or the said Chan Yoke Ying was and/or were in a position to dominate, and did dominate, the will of the deceased.

PARTICULARS OF THE UNDUE INFLUENCE

- 20 (a) At all material times the deceased was seriously ill and lying at the said hospital suffering from hypertensive congestive cardiac failure with cardiac cirrhosis;
- (b) At all material times the 1st Defendant and/or the said Servant and/or the said Chan Yoke Ying visited the deceased at the said hospital and knew in what condition the deceased was;
- 30 (c) At all material times the 1st and/or the 2nd Defendants and/or the said Chan Yoke Ying played on the deceased's mind and/or his fear of impending death by suggesting that he should draw the said cheque and give the 2nd Defendants the said mandate to open with the said cheque the said joint-account in his name and that of the 1st Defendant allegedly to utilise the monies in the said joint-account for the alleged benefit of the said Chan Yoke Ying in the event of his death;
- (d) At all material times the deceased had no independent advice, in particular, of a lawyer in the matter.
- 40 (e) At all material times the deceased had no adequate advice in the matter and the deceased succumbed to the influence of the 1st Defendant and/or the said servant and/or the said Chan Yoke Ying.

6. ~~Further~~, However, in the event his Honourable Court holds that the said Joint-account was opened in the name of the deceased and the 1st Defendant

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No. 5

Amended Reply

5th August 1971

(continued)



In the High Court in Malaysia at Kuala Lumpur

No. 5

Amended Reply

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(continued)

and the said cheque for \$60,384.80 was deposited or credited to the said joint-account so that the 1st Defendant could use the monies in the said account for the maintenance and benefit of the alleged common law wife of the deceased in the event of the deceased's death (which is denied) the Plaintiff avers that:-

(a) there was no valid donatio mortis causa;

(b) there never was any completely constituted trust or any valid trust and that therefore the 1st Defendant ~~the 1st Defendant~~ never held the monies standing to the credit of the said joint-account in trust for the deceased's alleged common law wife on the death of the deceased as alleged or otherwise;

10

(c) ~~that the advice and/or instruction in the said mandate that the survivor of the deceased and the 1st Defendant shall be entitled to the balance standing kto the credit of the said joint-account has been overridden by equity as the entire money in the said joint-account was provided by the deceased and none by the 1st Defendant and the entire monies standing to the credit of the said joint account therefore lawfully belongs to the Estate of the said deceased.~~

20

7. Save and except as in hereinbefore expressly admitted each and every allegation set forth in the Statement of Defence of the 1st and the 2nd Defendants is denied as if the same was set forth herein and traversed seriatim.

30

~~Dated this 20th day of August, 1971.~~

~~Sd/- Joginder Singh & Co.  
.....  
Plaintiff's Solicitors.~~

Dated this 24th day of November, 1971.

Sd/- Joginder Singh & Co.  
.....  
Plaintiff's Solicitors.

This Amended Reply was filed by Messrs. Joginder Singh & Co., on behalf of the Plaintiff whose address for service is Nos. 20/22, Jalan Mountbatten, 1st Floor, Kuala Lumpur.

40

No. 6  
Judge's Notes of Evidence  
IN THE HIGH COURT IN MALAYA  
AT KUALA LUMPUR  
IN OPEN COURT  
BEFORE ABDUL HAMID, J.  
THIS 28TH DAY OF JUNE, 1972

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Judge's  
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Evidence  
28th June  
1972

Civil Suit 469/71

Mr. Joginder Singh for Plaintiff.

10 Mr. M. Shankar for First Defendant.

Mr. Chan Siew Yoon for Second Defendant.

Mr. Joginder Singh applies to amend the amended bundle of pleadings - p.20 paragraph B - the addition of the words underlined in purple "and/or one Chan Yoke Ying"; also same words under "particulars of undue influence." Consequently on p.21 paragraphs (c) and (e).

Mr. Shankar has no objection to amendment but the first defendant does not admit.

20 Mr. Chan Siew Yoon does not object.

Agreed bundle - AB.

Not agreed bundle - NAB.

Letter of reply to Collector of Estate Duty from Shearn, Delamore & Co. dated 27.7.68 shall form part of AB and marked 38A as to truth of letter.

Mr. Joginder Singh submits:

(1) Who is to start?

(2) Question of estoppel.

30 Defendant to start. Defendant's case deceased "compos mentis" and there was "donatio mortis causa". There are highly suspicious circumstances

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(continued)

regarding the drawing of cheque and the execution of documents opening a joint account by the deceased with the first defendant - giving mandate as to survivorship.

Mr. Shankar says the consideration of that if evidence is not adduced then plaintiff is entitled to judgment.

Of unsound mind:

Making a Will:

(1971) 2 MLJ 263 at 264 10

Scott etc. v. Andrew L.R. Vol.7 H.L. English & Irish Appeals, 448

Winthe v. Nye (1959) 1 W.L.R. 284.

Banks v. Goodfellow (1869/70) L.R. Vol.5 Q.B.549

Sinee v. Sinee (1879/80) L.R. Probate Div. p.84

Riding v. Hawkins 14 P.D. 56 at p.57.

Forgery - onus on defendants - Brewer v. Westminster Bank Lt. & Anor - (1952) 2 A.E.R. p.650 at p.653.

Gifts inter vives: - Moore v. Moore - 18 Equity Cases 474 "Donatio mortis causa". Onus at p.481. 20

Undue influence: A prerequisite that defendants must prove deceased knew of the nature of and approved the documents executed. Subramaniam etc.- (1957) MLJ 11 at p.12.

"Donatio mortis causa" - Eleanor Grice - 15 E.R.476 (P.C.)

Mr. Shankar: Says there must be distinction drawn between right to begin and onus of proof. Right to begin to be decided on pleadings.

Basic presumption is that a man intends basic consequences of his act and that a man is sane. 30

Pleadings: Same issue all over - that deceased had no knowledge of what he was doing etc.

Nature of illness denied by both defendants.

Position is during lifetime of deceased deceased signed a cheque and opened a joint account. Plaintiff says not valid. Plaintiff to prove - onus rests on plaintiff.

Evidence Ordinance s.101 referred to. Refers to p.893 Sarkar on Evidence 11th ed. Also at p.897.

Mr. Chan Siew Yoon: Concurs with Mr. Shankar's submission.

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(continued)

10 Court: Having heard submissions, it is my view that it is for plaintiff to show to my satisfaction that the right to begin falls on defendants. In the light of allegations in the pleadings, it is my judgment that in this particular case, it is for the plaintiff to prove his case.

20 Mr. Shankar raise question of security of costs. Earlier defendant has given notice that plaintiff is not ordinarily resident. If in course of proceedings defendant establishes that plaintiff is not ordinarily resident, defendant will renew affidavit for costs.

Mr. Joginder Singh calls witnesses.

PW1: Choo Ah Pat, affirmed, speaks in Cantonese. 73 years. No.20, Lorong Sentosa, Petaling, Kuala Lumpur.

Plaintiff's evidence

—  
Choo Ah Pat  
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30 I am plaintiff - sole administratrix of the Estate of Like Yaik Hoe, deceased. Yaik Hoe was my natural born son. I also have a daughter - Loke Siew Kim - an adopted daughter. She was adopted when she was about one month old. I am the widow of Loke Chow Kit.

Loke Siew Kim was adopted with the consent of Loke Chow Kit. Yaik Hoe was five years older than Siew Kim. Before Chow Kit's death, deceased, Siew Kim and I lived in Malacca. At the time of Chow Kit's death, I was in China. Two widowed sisters-in-law were in China.

40 At the time of Chow Kit's death, Siew Kim, deceased, and I were in China. We were in China for three years. Later, we returned to this

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Choo Ah Pat  
Examination

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(continued)

country. I had travel documents. (A document shown to witness). This is the document - (produced and marked P1).

Photograph in P1 shows deceased, Siew Kim and myself. On our return from China, we stayed at Ampang with Loke Chow Thye - my brother-in-law - Chow Kit's brother.

Deceased and Siew Kim attended school. Deceased passed Senior Cambridge from St. John's Institution. 10

I married Chow Kit when he was a widower. His first wife had died. His second wife was still alive. Her name was Chan Yuen Lin. She was the wife of Chow Kit when Chow Kit married me. There were nine issues from Chan Yuen Lin. Before Chow Kit's death, my children never lived with the children of Chan Yuen Lin. There was no contact at all between my children and the children of Yuen Lin even after Chow Kit's death.

When the deceased began working, he had contact with the children of Yuen Lin. The deceased was one of the beneficiaries of my late husband's estate. The deceased had one share whilst the sons of Yuen Lin each had two shares. All the daughters had one share each. 20

When the deceased grew up, he stayed at the first defendant's wife's house. I do not know for how long he stayed there. The first defendant's wife is the daughter of Chan Yuen Lin.

Before the deceased's death, the relationship between the first defendant and the deceased was normal. The first defendant's wife's and the deceased's relationship was not that cordial. 30

After living with Chow Thye for some time, I moved to the house of Chow Thye's sister-in-law somewhere along Ampang Road. The deceased started work at Sereamban. I and Siew Kim occupied the first floor of a dispensary along the Main Road, Seremban. The deceased was living together with us. The deceased supported me and Siew Kim. My son liked to go after women. He did not have any particular woman. He would discard a woman after a period. 40

When the deceased became unemployed, he returned to Kuala Lumpur. I and Siew Kim also returned. The deceased found a job at Kuala Lumpur. He worked as a salesman in an aerated water company. Siew Kim was also employed later. This was before the Japanese Occupation. The deceased had a special woman friend. He kept this woman. He discarded this special one and looked for another. I do not know whether this was his pattern of life.

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Judge's Notes of Evidence

10 During the Japanese Occupation, Siew Kim and I lived along Klang Road. I did not know where the deceased lived for a few months. Later I found him. He visited me once. I did not know where he lived.

Plaintiff's Evidence

Choo Ah Pat Examination

After the war, Siew Kim got a job in Singapore and she lived there. I remained in Kuala Lumpur - living at the church under the care of a priest at Brickfields, Kuala Lumpur. The deceased visited me at the church. He was unemployed then. I lived at the church for more than six months. After that I lived at the houses of various members of the church. Later I lived with the deceased in Pudu. Before that I did not know where he stayed. The deceased later rented a flat behind a theatre also in Pudu. I lived with him.

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(continued)

20 Deceased visited me when I stayed at the houses of various members of the church.

I knew that the deceased had a special woman - this Chan Yoke Yin. I do not know about the rest. I first came to know of Chan Yoke Yin when I went to live with the deceased at a flat behind a theatre. She was then living with my son. This was not long before my son's death. I did not know of any other woman the deceased had before I went to live with him at Pudu. I did not know of the relationship between the deceased and Chan Yoke Yin.

30 Q. Defendants are saying that Chan was the deceased's wife?  
A. No, my son was not married.

40 Q. In July, 1967 before your son's illness, where were you?  
A. I was in Singapore staying with my daughter, Siew Kim.

Not long after, I received a letter from Chow

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(continued)

Woh Peng addressed to me stating that my son was seriously ill and had been admitted to the General Hospital, Kuala Lumpur. On receiving the news, I returned to Kuala Lumpur, arriving on 19th July. My daughter accompanied me. On arrival at Kuala Lumpur, I called at Chow Woh Peng's house and from there we went to the hospital. At the hospital, I saw my son who could not make me out. I arrived at the hospital at about 9.00 a.m. My son was very ill. He could not recognize anyone and neither could he make a sound. I talked to him but he did not say a word. I stayed with my son till 2.00 p.m. The deceased during that time did not recognize anyone and neither did he speak to anyone, after that I returned to Chow Woh Peng's house. I did not return to hospital but my daughter did.

10

On the next day - 20th July - I visited my son in the morning after 8.00 a.m. My son's condition was the same. He could not recognize anyone. I stayed with my son until 1.00 p.m. There were other friends visiting my son. My daughter was not with me in the morning of 20th July. She came in the afternoon. One Kuan Man Koh was there. I do not know when he came. When I arrived he was already there.

20

On the afternoon of 20th July, nobody looked after my son. Loke Siew Kim was at Chow Woh Peng's house. She came to the hospital to bring me back. I did not go any where after that for the whole evening.

30

On 21st July I visited my son at the hospital in the morning between 8.00 and 9.00 a.m. My son's condition - he was still seriously ill. He was not able to recognize me. He did not say a word. I remained at the hospital till 3.00 p.m. My son could not recognize anything. After leaving my son, I returned to Woh Peng's house. I did not go anywhere after that.

On 22.7.67 I visited my son at the hospital, arriving at about the same time. I went away in the afternoon. During all this time my son was very ill. He kept pulling his clothing - trousers. He could not recognise anyone. After leaving the hospital, I was back at Woh Peng's house. I remained at the house.

40

On 23.7.67, I visited my son, arriving at about the same time. I left in the afternoon. My son's condition remained the same. He was not able to recognize anyone for the whole period.

After leaving the hospital, I returned to Woh Peng's house. I did not go anywhere.

I knew of my son's death on 24th.

Adjourned to 2.15 p.m.

10 Hearing continues at 2.15 p.m. Parties as before.

PW1: On former oath: I met Chan Yoke Yin at the hospital after I arrived from Singapore. I also met Chow Yee Wah and Kuan Man Koh. Subsequent to funeral, I met these people at Chow Woh Peng's house.

I saw Kuan Man Ko in Court.

20 Neither Chan Yoke Yin nor Chow Yee Wah nor Kwan Man Ko told me that the deceased opened a joint account with the first defendant. None of them mentioned anything about the taking of the deceased's thumbprint.

I did not know of the joint account and the drawing of a cheque until I asked my solicitor to make a check of it. My solicitor told me he had written to the Bank.

I did not know that my son had \$30,677.40.

30 Kuan Man Koh is the son of the first defendant's sister-in-law. Kuan Man Chiew is the elder brother of Kuan Man Koh.

It is not true that I was not in good terms with the deceased.

It is true that I refused to recognize Chan Yoke Yin as my son's wife because they were not officially married. My son never married any woman in his lifetime.

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Plaintiff's Evidence

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Plaintiff's  
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Cross-  
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Cross-examination by Mr. Shankar:

My son's money means a lot to me. It is not true that the reputation of my son means nothing to me. I told the Court about my son's sex life. I do not profit anything. My son should not have brought this kind of woman home - Chan Yoke Yin was one - woman from massage parlour. It was bad of him to keep a woman of this type during his lifetime.

(Witness did not answer the question put by counsel as to purpose of bringing evidence of the deceased's sex life).

10

I did not know that Chan Yoke Yin had been living with my son since 1961. I only knew she had been living together with him for over two years. I went to live with them at some point of time. I do not know the year I went to live with them. I was with them for over two years. During the two years I was with them, Chan Yoke Yin was staying together in the same house. They did not live as man and wife. She cooked for my son.

20

Q. Did they live in the same room?  
A. They lived in a separate room. When I went to live with them, Chan Yoke Yin gave me her room.

(Witness is very evasive).

Q. There were only two rooms in that flat and you occupied one room and they occupied the other?

30

A. I don't know.

Q. Do you know that it was on Madam Chan's insistence that you went to live with them?

A. I don't know. It is not true that my son asked me to leave.

Q. If one of your relatives describes you as obstinate, would you agree with that description?

A. In what way was I obstinate?

(Counsel refers to p.3 NAB - "Hope your "Mum" does not give you headaches with her unchangeable habits and obstinacy.").

40

Q. Do you agree with that description?  
A. I do not. Just because I do not submit to them.

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Q. Submit to whom?  
A. Chan Yoke Yin was not the right woman.

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Q. My question is submit to whom?  
A. My son.

Judge's Notes of Evidence

10 Q. It was your son's wish whether he chose to live with Yoke Yin?  
A. I know it is his wish.

Plaintiff's Evidence

Q. If Yoke Yin had lived since 1961 until the death of your son, would you not think that he should leave her something?

Choo Ah Pat  
Cross-examination

A. What has my son got. I made an affidavit that I had nothing left. All the worldly goods had been taken by Yoke Yin. I do not have any rubbish left with me.

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(continued)

20 Q. When your son died, the estate was worth around \$43,626.75 as shown in the Estate Duty affidavit?  
A. Where can we find so much?

(Affidavit marked D2).

Q. In the present action, you are suing about \$60,000/-?

A. I don't know. (Now says "I know").

Q. The basis of your claim is that this money rightly belonged to your son?

A. I don't know.

30 I am here to make a claim for my son's one share left behind my his father. I make a claim from the first defendant for the sum of money that was put in the Bank. I do not know how much.

Q. It is not a claim from the first defendant for any money that your son might have left to his wife?

A. Where can he find that sum of money for his wife?

Q. Before this claim was filed, did anyone read out to you what this claim is all about?

40 A. No. It is true no one ever read the statement of Claim to me. In this course of action when the statement of claim was amended, the

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Plaintiff's Evidence

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(continued)

contents were not make known to me.

- Q. I did ask earlier"what has my son got"?
- A. Yes.

I am surprised to learn that before his death my son had about \$100,000.

It was his wish whether he wished to live with Yoke Yin but they were not married.

It is a surprise that I can inherit about \$30,000 from my son's estate. I have not received the money yet. I have received the money kept in the Singapore Bank. After deducting \$15,000 for Chan Yoke Yin, my solicitor handed me the balance. I cannot remember how much. I do not know how much money I am holding as administratrix of my son's estate.

10

I have received cash. My counsel gave it to me. I cannot remember how much and when he gave it.

I remember the incident at the hospital.

I was handed over \$20,000. Out of this, I had to pay \$1,800 from my purse for three years to my niece-in-law and \$5,000/- estate duty. The remaining sum is my possession. I have spent some of it for my medical fees. I have only a few thousand dollars left.

20

- Q. Before your son died, he was possessed of a fairly large sum of money?
- A. Yes.

- Q. If your son had lived with Yoke Yin from 1961 until his death, are you contending that he should leave her nothing?

30

- A. We should give her something. I have given her \$15,000. That was his wish how much he wanted to leave her but he left no will.

Adjourned to 29.6.72 9.00 a.m.

This 29th day of June 1972

Hearing continues.  
Parties as before.

29th June 1972

P.W.l re-affirmed.

Cross-examination by Mr. Shankar:

Estate Duty affidavit - I did say yesterday that I knew nothing about it. I did swear this affidavit. Whatever I said in it was the truth.

Put: You have no respect for the oath?  
A. I disagree.

Q. You have shown yourself to be creditor for \$1,500 as funeral expenses - that is untrue?

10 A. I have not heard of the expenses before. I agree that I had not spent one cent on funeral expenses of my son. I swore this affidavit in this Court before the Commissioner for oath.

I deny that when I married Chow Kit it was the third marriage. When I married him he had no wife. Chan Yuen Lin was still alive when I married the late Chow Kit.

Yuen Lin was not married to the late Chow Kit.

Put: You are absolutely reckless about other people's reputation? A: I don't agree.

20 When I married Chow Kit, I filled in the gap of the first wife. I claim status of a first wife. I married Chow Kit through the good office of a match maker. We swore under the Heaven. That took place in Malacca. I was then 15. The late Chow Kit already had a home in Kuala Lumpur then.

30 The swearing was a solemn pledge between a man and a woman to show their intention to marry each other. The absence of witness was immaterial. It was still a valid marriage if they made a pledge between the two of them. Subsequently I was introduced by my husband to his friends as his wife.

(Pg. 1 AB shown to witness). I am aware that Chow Kit left a Will and made provisions in the Will.

Q. In this Will Chow Kit described Yuen Lin as his wife - you accept that?

A. I don't accept that. I have not been told so.

Q. In the same document, nowhere has he referred to you as his wife?

40 A. I don't accept that nowhere in the Will I was mentioned as a wife.

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(continued)

- Q. Do you agree that in the Will Chow Kit left you nothing?  
A. I don't agree as I do not know the genuineness of the copy of the document. I agree that I didn't inherit anything from the Estate of the late Chow Kit.

Loke Siew Kim appeared in Pl as Luk Ah Mui. She too did not inherit anything from the Estate of the late Chow Kit. Every member of Yuen Lin's family inherited something from the Estate of the late Chow Kit.

10

- Q. Can you explain?  
A. I distrust this Will.

Yaik Hoe was my natural born son. We went to China and stayed there for three years. Chow Kit was in Malaya.

- Q. Was it not true that another boy was born to you in China whilst you were in China?  
A. No.

(A photograph is shown to PW1). The boy on the right was the deceased. It is not true that the boy on the left is my son. On the left was a daughter of my neighbour in Malacca.

20

Put: You did have a son and because of that your son had a dislike for you? A: No, that is not true. My son had been a very dutiful son.

- Q. Because you inherited nothing from the Estate of the late Chow Kit, you were bitter towards the rest of the family?  
A. Not true.

30

- Q. Because you thought your son had left everything to Yoke Yin and only rubbish (as you put it) to you, you were bitter towards her?  
A. It is not true.

- Q. You still believe the deceased had left everything to her and nothing to you?  
A. The deceased had given something to me.

I am not making any claim here against Chan Yoke Yin.

- Q. Your real purpose in coming to Court is to find out what happened to the one share of

40

the deceased in the Estate of the late Chow Kit?

10 A. My purpose of coming to Court is to ask my Solicitor to sue the first defendant and Kwong Yik Bank. Statement of Claim and amendment had not been read to me. The Statement of Claim had been explained to me after yesterday's hearing by a clerk of my solicitor. I was with this clerk for a few hours. The whole case was explained to me in these few hours.

Q. Were you aware that this procedure was grossly improper?

A. In what way was it improper? I thought it was proper. I do not know the clerk's name. It took place at the office of my solicitor.

Court: Inquired from Mr. Joginder Singh whether this was done with his knowledge.

20 Mr. Joginder Singh: This was not done with my knowledge.

This girl Miss Loh also explained to me. Only a male clerk and a girl were there. Siew Kim my daughter was there when this was explained to me.

Before yesterday, some of the things contained in the statement of claim I did not know.

30 (Now says) - I wish to make a change of my statement. What I said yesterday was not correct. I like to change it and say that I asked my solicitor to proceed as soon as possible. (Now says) - Whatever action taken by the first defendant and the Bank in taking my son's thumbprint impression was unlawful.

I say that before yesterday the statement of claim and/or the amendments were not explained to me.

(Now says) - The amendments had been explained to me.

Joint account with the first defendant:

40 I said no one ever told me of this. I only knew of it after my solicitor made a check of it.

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examination

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(continued)

Q. Are you aware that your solicitor commenced checking in May, 1968?

A. Yes.

Q. Would you agree that before making a serious allegation you must be sure of your facts?

A. Yes.

Q. To accuse a person of forgery is a serious matter?

A. I know. It is a criminal offence.

10

/Counsel refers to bundle of pleadings  
p.14 paragraph 18(d) and reads it to witness.  
Witness says, "I understand."/

I instructed my solicitor to make this allegation. I know it is a monstrous allegation to make against anybody. I personally did not know such a thing had happened.

Q. What is the basis of your allegation?

A. There is evidence. I still maintain the allegation. I agree the deceased died at 1.00 a.m. on the morning of 24th July - i.e. after mid-night of 23rd July. I was not in the hospital when the deceased died. No one was in the hospital. I don't agree that there is no basis or foundation for my allegation. 20

Q. What evidence have you to substantiate your allegation?

A. There is a paper bearing the thumbprint of my son.

Q. How do you know the thumbprint was taken after your son was dead? 30

A. I don't know.

Q. Since you don't know, will you care to withdraw that allegation?

A. I am not prepared to withdraw that allegation.

Q. Way back in May, 1968, you were already fully aware of the position regarding the joint account?

A. No one ever told me.

- Q. You commenced proceedings more than three years later?  
 A. I did not take that long.  
 Q. Would you concede that when proceedings commenced you were already aware of the cheque executed by the deceased on 18th July?  
 A. I did not see and I don't know.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence  
 Plaintiff's Evidence  
 Choo Ah Pat

10 [Counsel refers to p.12 paragraph 11 of pleadings and reads it to witness. It is read to witness without the amendment, i.e. without the words 'by the second defendant']

- Q. When you commenced these proceedings, you were already aware that on 18th July the deceased drew a cheque?  
 A. I don't know. I have not been informed of this. I instructed my solicitor.

Cross-examination  
 29th June 1972  
 (continued)

Adjourned for 15 minutes.

Hearing continues. Parties as before.

PW1 on former oath.

20 Cross-examination by Mr. Shankar:

[Counsel refers to p.12 paragraph 10 of pleadings and reads it to witness] The first time I visited my son in the hospital was on 19th. I sue as administratrix of my deceased son's estate.

[D.42 AB shown to witness].

- Q. Before you took out Letter of Administration, there was a contest between you and Yoke Yin?  
 A. Yes.

30 [Pg.42 AB is a statement of claim filed by Yoke Yin].

- Q. She claimed herself as the lawful widow and next-of-kin of the deceased?  
 A. Yes. She claimed she had a beneficial interest. I denied it and there was a settlement. I offered \$15,000 in full settlement of her claim.



In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Choo Ah Pat

Cross-examination

29th June 1972

(continued)

[Counsel refers to p.42 AB paragraph 2 and reads it to witness; also p.48 AB/.

Q. Do you concede you made this affidavit?

A. Yes.

Q. You settled her claim that she was a lawful widow?

A. I do not know if she were the widow of the deceased or not. After all, I have paid her off. Of the money received I gave \$1,000 to Siew Kim.

10

Q. Is it true that all the nephews and nieces of the deceased addressed Yoke Yin as "Sei-Sam" (fourth antie)?

A. It is up to these people to call her whatever they like.

On the morning of 24th July, I went to the hospital with Siew Kim. Siew Kim was woman of independent means.

I remember there was an exchange of heated words between Siew Kim and Yoke Yin. The quarrel was at the temple where the cremation took place. Siew Kim complained to me that Yoke Yin did not give her due respect. I don't agree that Siew Kim was well disposed towards Yoke Yin.

20

I lived in Singapore with my daughter, before I came to Kuala Lumpur, for less than a month. I did complain at the temple that the deceased had left everything to Yoke Yin and nothing to me.

The cremation took place on 25th. I did not go to the cremation. I do not know who bore the funeral expenses of my son. I knew that cash was being handled by the first defendant but I was not informed of it.

30

The following day (26th) the first defendant came to see me and my daughter at Woh Peng's house at Perak Road. The deceased's eldest sister gave \$50/- to me and \$20/- to Siew Kim. The \$50/- given to me was on loan and the \$20/- given to Siew Kim was for Siew Kim to travel to Singapore by rail. The money was not given by the first defendant.

40

It was usual to reimburse money for people who came for the funeral.

Q. You were aware that the first defendant spent for the funeral and the \$50 and \$20 were moneys given by the deceased?

A. I don't know. The first defendant did not tell me. My son had money in the bank. I dare not say whether money spent by first defendant was the money of my son from the bank because there had been collection from well-wishers.

10

I did not know that the money spent by the first defendant was my son's money from the bank.

I knew that my son had money in the bank. I knew I was the only one who could inherit.

Q. You were not concerned where the money for the funeral expenses came from?

A. I did not know. No one told me. How could I be concerned? I did not question anyone or say that my son had money in the bank. Why should anyone want to spend?

20

After my son's death. I did not have a single document pertaining to my son's estate.

Medical expenses had to be paid for. I never thought as to who was going to pay for the medical expenses. I had thought of how the widow was going to carry on. I therefore gave her \$15,000.

The \$15,000 was given after the death of my son - after quite many months.

30

Put: That you expressed your concern to the first defendant - as to how Yoke Yin was going to manage for money. A. I did not. Not to anyone. I did not ask Yoke Yin as to how she was going to carry on as I did not see her.

40

Put: You did ask the first defendant and you even asked the first defendant to lend her money to meet expenses that were mounting up. A. I did not. I have never spoken to the first defendant concerning Yoke Yin's welfare. Chan Yoke Yin did not have any money and she asked the first defendant to lend her money. This conversation took place after my son's death.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Choo Ah Pat

Cross-examination

29th June 1972

(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Choo Ah Pat

Cross-  
examination

29th June  
1972

(continued)

Q. Was there any conversation about money before your son's death?

A. There was between me and my son. He told me he had money in the Bank. He did not tell me how much. He told me he had money with Kwong Yik Bank.

Q. When he told you this, your worries about medical expenses were set at rest?

A. Yes.

I had this conversation long before his death - 10 prior to my leaving for Singapore.

In the hospital, after my arrival from Singapore, there was no conversation about money even though I was very concerned about it.

Put: You asked the first defendant to lend Yoke Yin money? A. I did ask the first defendant to lend Yoke Yin money at the hospital.

Q. In the presence of your son?

A. It was at the mortuary. Three of us were there - first defendant, Yoke Yin and myself. 20

Q. The First defendant did say, "Look, don't worry, your son has already provided money in a joint account with me to look after the widow."

A. No, it is not true.

Q. This conversation took place before your son died?

A. No.

Q. If Yoke Yin wanted money from the first defendant she could ask for it from him herself? 30

A. Yoke Yin told me she dared not ask the first defendants to lend her money.

Q. You asked Yoke Yin what she was going to do for money?

A. I did not ask.

Q. She also told you about the execution of the joint account?

A. No.

No conversation of this nature took place at all. 40

Letters of Administration:

Q. Yoke Yin had all the papers - you had none?  
A. I don't know.

Q. Do you remember you and Yoke Yin asked Ng Kok Choy to extract Letters of Administration?  
A. Yes.

At that time I was staying at Woh Peng's house. Woh Peng's husband was Ng Kok Thoy's brother.

10 If I wanted to make any complaint about my son's estate, I could have done it to Ng Kok Thoy. The documents relating to my son's estate were all in Yoke Yin's hand.

Yoke Yin never invited me to jointly apply for Letters of Administration. I did not sign a joint retainer but he asked me to make an affidavit saying that Yoke Yin was my son's widow.

(A joint retainer shown to witness).

20 Q. You agree you put your thumbprint on the retainer authorising Kok Thoy to act for both of you?  
A. No, I did not make a joint retainer.

I admit I affixed my thumbprint on the retainer but the document was not read to me. I did not know the contents. When I put the thumbprint, I knew that it was meant for making application for Letters of Administration.

Ng Kok Thoy prepared the petition for Letters of Administration and Estate Duty affidavit.

30 When the documents were ready, I was called to the office. His clerk Ali accompanied us to the High Court to make declaration. Yoke Yin and the first defendant also came. Siew Kim has a husband. I do not know he is of what race. His name is Anthony. He is in Singapore.

40 Anthony was not at the High Court waiting for us. One Phillip was there. He was a Tamil residing along Klang Road. He is a friend of Siew Kim. Phillip was there by appointment. I asked him to come.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Choo Ah Pat Cross-examination

29th June 1972  
(continued)

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Choo Ah Pat

Cross-examination

29th June 1972

(continued)

Q. At the verandah downstairs, Phillip asked Ali for all the documents that had been brought for you to swear?

A. Yes, he was given the documents.

Q. As soon as he got the documents he walked off with them?

A. No.

I did not swear any of these documents that day. I did go back to Kok Thoy's office that day.

10

Q. You and Phillip soon after getting the documents went away and never got back to Kok Thoy's office?

A. This I cannot now remember clearly, i.e. if I had gone back to Kok Thoy's office.

Phillip had a discussion with me after he got the documents. He did not ask me not to affirm. I asked him to read out the contents to me. This took place on the verandah in front of the High Court. I asked him to read what Yoke Yin's name was described as. Yoke Yin's name was described as the legal wife not as a widow.

20

Adjourned to 2.30 p.m.

Hearing continues at 2.30 p.m. Parties as before.

PW1 on former oath.

Cross-examination by Mr. Shankar:

Q. The first time you brief Mr. Joginder Singh to act for you was on 27.2.68?

A. I cannot remember.

30

Q. You filed your own petition for Letters of Administration on 27.10.67?

A. I cannot remember.

(Pg. 8 AB shown to witness). I agree.

I filed this on my own.

Q. During these few months before Mr. Joginder Singh came in, Mr. Phillip was your legal Adviser?

A. Yes. On his advice I filed the petition. I asked Phillip to get someone to prepare the petition.

Siew Kim did not know about this matter. Phillip was Siew Kim's friend but Siew Kim was not instrumental in getting Phillip as my adviser. I am not calling Phillip.

Put: It was Phillip who insitgated you to bring these proceedings? A. No.

- 10 Q. Particulars in the petition were copied from the petition prepared by Kok Thoy?  
 A. Yes, but I asked Phillip not to temper or alter the particulars in any respect. The name of Yoke Yin had been removed as applicant. I was the sole applicant. It was removed because she was not the official wife and she had no status - how could she be a joint petitioner?

I did not want her to be a co-petitioner.

- 20 Q. What did Phillip do with the original documents after he had made the copies?  
 A. I have not kept those papers that Phillip took.

Put: Until today you are still keeping those papers. A. I don't have them.

(Mr. Joginder Singh interrupts to say that he has them).

- Q. Do you not agree that the right thing to do was to go and see Kok Thoy rather than snatch the documents downstairs?  
 30 A. I did not snatch them.  
 Q. Phillip did it on your instructions?  
 A. Phillip asked me to get another lawyer and I used those papers to get another lawyer.  
 Q. If you were an honest woman you would not have adopted such tactics.  
 A. That was not a tactic. Since Kok Thoy did not want to deal with it, I had to get another lawyer.

In the High Court in Malaya at Kuala Lumpur

—  
 No. 6

Judge's Notes of Evidence  
 Plaintiff's Evidence  
 Choo Ah Pat  
 Cross-examination  
 29th June 1972  
 (continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Choo Ah Pat

Cross-  
examination

29th June  
1972

(continued)

Joint account:

I asked my solicitor to make a check of it. I was away in Singapore. On my return from Singapore - some months had elapsed - I came to know of the joint account. I cannot remember what year.

Q. Was it within one year of the date of your son's death?

A. (Witness does not answer the question).

Q. When you discovered about the joint account, did this question of fraud, forgery, etc. occur to you? 10

A. At that time I did not suspect anything. My lawyer received a letter and he later informed me.

A month or so after I discovered, I began to suspect. When I first suspected, at that time I had already been granted Letters of Administration. I do not know whether I had then filed the suit. 20

I did not make a police report when I suspected forgery. I handed this matter to my lawyer. I agree that until today I have not made a police report.

Q. You have seen the documents relating to movements of money from 18th July to date?

A. I don't know.

Q. If these documents show that all this money had gone into the hands of Yoke Yin, would you be surprised? 30

A. Of course.

Q. From 29.10.70 until you came for the hearing of this case, you were residing in Singapore?

A. I came back on 19.5.72. Before 19.5.72, I was in Singapore. I went to Singapore in the later part of last year. My permanent home is in Singapore. I am going back to Singapore after this case is over. Then I'll come back again. I am not a citizen of Singapore. 40

My claim is that this money is part of the estate of my son.

Q. The grant makes no mention that the money is part of the estate?

A. This money is not included here because my son sold three pieces of land and put the money in the bank.

In the High Court in Malaya at Kuala Lumpur

No. 6

Cross-examination by Mr. Chan Siew Yoon - No.

Judge's Notes of Evidence

Re-examination by Mr. Joginder Singh:

Plaintiff's Evidence

10

Q. In respect of this case, how many times did you see me in my office?

A. Many times. I wrote from Singapore telling you to hurry.

Choo Ah Pat

Cross-examination

When I saw you, you explained to me step by step the action to be taken.

29th June

1972

(continued)

My counsel explained to me in relation to this \$60,000.

Re-examination

I gave the instruction to file the claim against the first defendant and Kwong Yik Bank.

29th June

1972

I said earlier that the claim was not explained because yesterday I was not clear about it.

20

Ng. Kok Thoy: Who invited you to go to Mr. Ng Kok Thoy?

A. The first defendant - soon after my son's death. He saw me only once.

Q. Before the day you came to the High Court to swear the documents, how many times did you see Kok Thoy?

A. About three times. I disagreed with Kok Thoy. He wanted me to admit Yoke Yin as official daughter-in-law. He wanted me to sign the petition together with her. I did not agree.

30

Q. Phillip: Did you and Phillip go and see Kok Thoy before filing the petition on your own accord?

A. Yes.

Q. Is it true that Phillip snatched the papers away?

A. I cannot remember if Phillip took the papers away.

40



In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Choo Ah Pat

Re-examination

29th June 1972

(continued)

Q. After filing the petition on your own accord, Yoke Yin filed a caveat?

A. I don't know.

I and Phillip did not see Kok Thoy after filing the petition.

Q. From 29.10.70 when you first went to Singapore, how much time did you spend in Singapore and Malaysia?

A. It is difficult for me to say. I travelled up and down between Singapore and this country. The duration of my stay here is uncertain. I could stay here for a month or two and then go to Singapore again.

10

Q. Do you know that the estate duty of \$5,000 included the sum of \$60,000?

A. I know.

Adjourned to tomorrow 30.6.72 at 9.00 a.m.

Mr. Shankar raises the question of security for costs - in view of the circumstances of this case.

20

Mr. Joginder Singh opposes most strenuously. He says it is too late to make application. Power is discretionary. This is certainly not a bogus claim. There is evidence that her permanent home is in Malaysia. She is temporarily out of jurisdiction.

Mr. Shankar says that this application is made bona fide. According to her evidence, her permanent home is in Singapore.

Court: Ruling reserve

30

Adjourned to tomorrow 30.6.72 at 9.00 a.m.

30th June 1972

This 30th day of June, 1972

Hearing continues. Parties as before.

Mr. Joginder Singh:

My Lord, parties are the same and counsel are the same this morning. At the outset, I must confess my ignorance and some uncertainties with regard to the medical witnesses I am calling. In

this respect, these medical witnesses, in my humble view, are not called experts. These doctors who attended to the deceased during his illness in the hospital materially attended to and treated the patient. I am seeking guidance from Your Lordship whether I need make an application.

In the High Court in Malaya at Kuala Lumpur

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Court: Mr. Joginder Singh, I have not fully understood you as to what application you are making.

Judge's Notes of Evidence

10 Mr. Shankar: My Lord, my learned friend perhaps thinks that he needs a court order under O.37A r.8 R.S.C. to call the four doctors who attended to the deceased. My Lord, in my view, there is no necessity of obtaining an order from Your Lordship to call these witnesses. Either party is at liberty to call whatever medical witnesses they like.

Plaintiff's Evidence

30th June 1972

(Court agrees with Mr. Shankar).

Mr. Joginder Singh: I am much obliged to my learned friend, My Lord.

Dr. V. Vignaendra

20 PW.2: Dr. V. Vignaendra, affirmed, speaks in English.

Examination

30th June 1972

Mr. Joginder Singh:

Q. Dr., your full name?  
A. Vignaendra Velupillay.

Q. Would you please inform His Lordship the degrees you hold?  
A. M.B.B.S., M.R.C.P. Australia.

30 Q. What position do you hold?  
A. Lecturer in the Department of Medicine, University of Malaya.

Q. In July, 1967, to which hospital were you attached?  
A. General Hospital, Kuala Lumpur.

Q. To which medical unit were you attached at the General Hospital, Kuala Lumpur?  
A. I was attached to Medical Unit 1.

Q. Doctor, who was the Head of this Medical Unit 1 of the General Hospital, Kuala Lumpur in 1967?

In the High  
Court in  
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Kuala Lumpur

No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Dr. V.  
Vignaendra

Examination

30th June

1972

(continued)

- A. The Head of the Unit was Dato' (Dr.) Sinnadurai.
- Q. In July, 1967, did you treat one Loke Yaik Hoe at the General Hospital, Kuala Lumpur?
- A. According to the medical record I have here, on 13th July, 1967, I admitted to the ward one Loke Yaik Hoe.
- Q. At the time of his admission, what was this Loke Yaik Hoe suffering from?
- A. Suffering from hypertensive cardiac failure. That was one condition. The other condition was cardiac cirrhosis. 10
- Q. Are these the two conditions?
- A. These are the two conditions noted here.
- Q. Any other conditions?
- A. Yes.
- Q. Could you explain to His Lordship what do you mean by hypertensive cardiac failure?
- A. By this term, I mean the patient had raised blood pressure and he had malfunctioning of his heart as a result of which he could not push out his blood properly to the various organs in the body. 20
- Q. Dr., what do you mean by cardiac cirrhosis?
- A. This term means a chronic malfunctioning of the patient's liver which results from malfunction of his heart.
- Q. When was he admitted on 13th July?
- A. 4.40 p.m. as recorded in the notes.
- Q. You saw this patient and I am sure you must have made your clinical notes of his condition. Could you please read your clinical notes to His Lordship from the time you saw him? 30
- A. History: Patient was ill for two months. Dyspoena on exertion for two months. Paroxysmal nocturnal dyspoena also for two months. No haemoptysis. Patient was known to be diabetic for ten years but at that time was not on treatment for diabetes. Was a known hypertensive since 1948. I could not ascertain whether he had treatment for hypertension or not. On Physical 40

examination patient was ill not cyanosed jaundiced. He was dyspnoeic. His pulse rate was 96 per minute with occasional missed beats. His blood pressure 150 - 190. His jugular venous pulse was raised. He had ankle oedema. His lungs were on auscultation bilateral vasal crepitus. On auscultation of his cardio-vascular system fis dual rhythm no murmurs. His abdomen was soft. His liver and spleen were not palpable. He had ascites. He had liver palms. Diagnosis hypertensive cardiac failure.

10

I ordered the following investigations:-

- (1) An electro cardiogram;
- (2) Liver function test;
- (3) Xray test;
- (4) Blood urea test; and
- (5) Two-hour post parenteral blood sugar.

The treatment I ordered was:-

20

- (1) Complete bed rest;
- (2) Patient to be propped up in bed; and
- (3) Patient given a diet of 1,500 calories per day with low slight diet and fluid restriction.

To be given the following drugs:-

30

- (1) digoxin;
- (2) .25 milligramme (m.g.) twice per day;
- (3) injection mersalyl 2 c.c. every other day for 5 doses;
- (4) chlorothiazide 500 m.g. on that day and every morning; and
- (5) potassium chloride 1 gramme (g.) 3 times a day.

That is all I have recorded, My Lord.

Q. Could you please explain what is dyspoena?

A. It means difficulty in breathing.

Q. What do you mean by - No haemoptysis?

A. Patient is not coughing out any blood.

Physical examination:

Q. What do you mean by - was ill not cyanosed jaundiced?

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence

Plaintiff's Evidence

Dr. V. Vignaendra Examination

30th June

1972

(continued)

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Court of  
Malaya at  
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No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Dr. V.  
Vignaendra  
Examination  
30th June  
1972  
(continued)

- A. Patient did not appear blue but he appeared to be yellow in the eyes and this yellowness is due to a pigment called bile.
- Q. Doctor, he was dyspnoeic?  
A. On examination, this was confirmed.
- Q. Pulse rate 96 a minute. Is it normal?  
A. No, My Lord, it is abnormal.
- Q. Was his blood pressure normal?  
A. On the low limit of abnormal.
- Q. Could you explain this expression - jugular venous pulse was raised? 10  
A. These are veins in the neck which appear to be distended and it is a sign of failure of function of the heart.
- Q. What do you mean by - he had ankle oedema?  
A. Swelling around the ankle which is also a sign of failure of the heart.
- Q. What do you mean by - his lungs were on auscultation bilateral vasal crepitus?  
A. These are abnormal sounds and they can be heard in a variety of conditions, œ of which is failure of the left side of the heart. 20
- Q. What do you mean by - dual rhythm no murmurs?  
A. Patient had no valve leison to account for the heart failure.
- Q. What do you mean by - abdomen was soft?  
A. It is normal.
- Q. What do you mean by - liver and spleen not palpable?  
A. I just could not palpate his spleen or liver.
- Q. What do you mean by - ascites? 30  
A. Fluid in the abdominal cavity.
- Q. What is the effect of Yaik Hoe's ascites?  
A. He had fluid in his abdomen but this fluid was not marked enough to cause any effect on the patient. This fluid just means that it is a sign of cardiac and liver malfunction.
- Q. Further you said he had liver palms. Could you please explain?  
A. This is a sign of chronic liver disease.

- Q. You carried out investigations the first of which was electro cardiogram. What results obtained?  
 A. The electro cardiogram was not done by me. It was read by another doctor. I can only read his findings on the chart.

In the High Court in Malaya at Kuala Lumpur

—  
 No. 6

- Q. All investigations you ordered were not done by you? Results not ascertained by you?  
 A. They were ascertained by the other doctors.

Judge's Notes of Evidence

- 10 Q. As a medical man who attended to Loke Yaik Hoe, what was his general condition at the time of his admission?  
 A. He was a very ill patient who showed evidence of cardiac and liver failure.

Plaintiff's Evidence

Dr. V. Vignaendra Examination

- Q. At the time of admission, could this patient talk to you?

30th June 1972

(continued)

- 20 A. The patient had given me some history but apparently was not able to answer some questions - for example, if he has been treated for high blood pressure. He was not fully clear mentally on questions put to him.

- Q. How did he converse? Like a normal man?  
 A. Patient was very ill and breathless - short of breath.

Court: That is no reflection that he did not know what he was saying.

- A. Yes, My Lord.

- 30 Q. If someone wants the patient to execute a certain document, would you certify that he is in a proper frame of mind to do it?

- A. I cannot give a definite answer because I did not fully examine his mental status.

- 40 (Mr. Shankar applies for the medical records to be made available to the defence for inspection. Says that according to the Evidence Ord. a witness is allowed to refresh his memory and the records are now in the Court's possession. Mr. Joginder Singh also makes the same application. Court directs that the medical records be made available to defence and Plaintiff for inspection).

(Mr. Shankar applies for cross-examination to be deferred. Court agrees and directs that cross-examination be deferred until all the medical evidence has been heard).

In the High  
Court in  
Malaya at  
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No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Dr. Lim Eu  
Jin

Examination

30th June  
1972

(Court directs that the medical records be marked "A").

(Mr. Joginder Singh informs Court that PW2 will be leaving for U.S.A. between the end of August and the middle of September. Court takes note of this).

PW3: Dr. Lim Eu Jin, affirmed, speaks in English.

Mr. Joginder Singh:

Q. Your name please?

A. Lim Eu Jin. 10

Q. Your degrees?

A. M.B.B.S. Singapore, M.R.C.P. Glasgow, M.R.C.P. Edinburgh.

Q. At present, to which hospital are you attached?

A. I am a physician at the Lady Templer Hospital, Kuala Lumpur.

Q. In July 1967, to which hospital were you attached?

A. General Hospital, Kuala Lumpur. 20

Q. At the said hospital, to which medical unit were you attached?

A. I was one of the specialists in Medical Unit 1.

Q. Did you in July, 1967 treat one Loke Yaik Hoe at the General Hospital, Kuala Lumpur?

A. Yes I did.

Q. When did you first see this patient - on what date?

A. 15th July, 1967.

Q. You saw this patient and recorded your clinical notes? 30

A. No, I didn't.

Q. Could you please read the notes recorded to His Lordship slowly?

- A. These notes are clinical notes recorded by the other doctors who saw the patient. On 15th July patient was clinically the same - mental deterioration. Hesitant intellectually. The other notes refer to his heart and lung conditions. Heart - dual rhythm, soft left parasternal systolic murmur. Lungs - clear. Liver - not palpable no ankle oedema.
- 10 Q. After 15th July when did you see him next - did you see him on the 16th?  
 A. Although I did not make any notes, I was in charge of the patient and I saw him almost every day.
- Q. Have you recorded anything for the 16th July?  
 A. I did not make any notes until 20th July.
- Q. Were any clinical notes made on 14th July?  
 A. Some notes were made on 14th July.
- Q. By whom?  
 A. I cannot recognize the handwriting.
- 20 Q. Were any clinical notes made on 16th July, 1967?  
 Q. Who made them?  
 A. Dr. Bau. She is at present a General Practitioner.
- Q. Were any clinical notes written down on 17th of July in respect of this patient?  
 A. Yes.
- Q. By whom?  
 A. (Witness hesitates, ponders and says, "I know this person but just can't get his name now.")
- 30 Q. Is it Dr. Daljit Singh?  
 A. Yes, Dr. Daljit Singh.
- Q. Where is he at present?  
 A. Undergoing post-graduate studies in the United Kingdom.
- Q. Were any clinical notes written down on 18th July, 1967?  
 A. Yes, they were made by the same doctor - Dr. Daljit Singh.
- 40 Q. Were any clinical notes written down on 19th July?

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Plaintiff's Evidence

Dr. Lim Eu Jin

Examination

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(continued)



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Dr. Lim Eu  
Jin

Examination

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(continued)

- A. Yes, by Dr. Daljit Singh who was in charge of the case.
- Q. You saw this patient on 20th and made clinical notes. Could you read out these notes slowly to His Lordship?
- A. On 20th July, I wrote a note to Mr. Sreenevasan - "Dear Mr. Sreenevasan, This is the patient I discussed with you regarding peritoneal dialysis. His hypertensive failure is under control but his blood urea has gone up to 360 m.g. per cent." These were the notes I wrote when I referred this patient to Mr. Sreenevasan. 10
- Q. Did you see him on 21st July, 1967?
- A. I am afraid there are no indications or notes that I had seen him on 21st July.
- Q. Were any clinical notes written down on 21st July, 1967?
- A. Yes, notes taken down by Dr. Daljit Singh again. 20
- Q. Did you see this patient on 22nd July?
- A. I cannot remember.
- Q. No notes made by you?
- A. No.
- Q. Were clinical notes regarding this patient made on 22nd July by any doctor?
- A. No.
- Q. On 23rd July, 1967, did you see this patient?
- A. I cannot remember.
- Q. No notes by you? 30
- A. No.
- Q. On 23rd July, 1967, did any other doctor see him and make clinical notes?
- A. Yes, there are notes by Dr. Daljit Singh on 23rd July, 1967.
- Q. Did anybody else see him after Dr. Daljit Singh until the time of his death on 23rd July?
- A. No.

- Q. Dr. Vignaendra had stated that he had ordered certain investigations to be carried out on 13th July at the time of patient's admission. Did you get these results of the investigations ordered by Dr. Vignaendra?
- A. Yes, we have the results.
- Q. Who carried out the electro cardiogram test?
- A. Normally, it is done routinely by a technician who is trained. Results of E.C.G. sent there.
- 10 Q. Liver function test on this patient?
- Court: Who conducted this test - do you know?
- A. The results are here but I do not know who conducted the test. It was done at the hospital.
- Q. Could you read the results of the liver function test?
- A. Total bilirubin 3.2 m.g. per cent. Vendenburgh reaction positive. Alkaline phosphatase 23 K.A. units. Zinc sulphate 18 units. Total proteins 8.8 g. per cent. Albumin 3.4 g. per cent. Globulin 5.4 g. per cent. A:G ratio 0.6.
- 20 These are the results of the liver function test.
- Q. What do these results indicate?
- A. They indicate that there is intrinsic damage of the liver.
- Q. Was it still functioning?
- A. It was still functioning.
- 30 Chest Xray - (Witness says Xray films are not in Court).
- Blood urea test:
- Q. What were the results of the blood urea test on the day of admission and subsequently?
- A. On the 14th July, the blood urea was 168 m.g. per cent. On the 17th July it was 252 m.g. per cent. On the 19th July blood area was 360 m.g. per cent and on the 21st July it was 368 m.g. per cent.
- 40 Q. What do these results indicate in the overall?

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(continued)

- A. Overall results indicated that the kidney was damaged and there was progressive deterioration of the kidney function.

Two-hour post blood sugar test:

- Q. What was the result of this test?  
A. Result of the blood sugar test on 14th July was 81 m.g. per cent. That is the only reading for blood sugar level.
- Q. Going back to the 15th July when he was examined and clinical notes made - same mental deterioration and hesitant intellectually - could you explain that? 10  
A. At that time the patient was mentally confused and by "hesitant intellectually" I mean he was not able to converse intellectually with me. It indicates impairment of the mental faculties at that time.
- Q. Soft left parasternal systolic murmur - could explain this?  
A. This is a physiological or functional murmur or heart sound which can be heard when there is failure of the heart or when there a failing heart. 20
- Q. You said you saw him almost every day although you did not make notes. Will you be able, without clinical notes, to remember his condition on say, 14th July?  
A. I remember there was progressive mental deterioration in his condition.
- Q. Does this throw any light on his mental condition? 30  
A. I would say that I would have expected some further progressive mental deterioration.
- Q. Can you remember whether you saw him on 16th?  
A. No, I cannot remember.
- Q. Can you remember if you saw this patient on 17th, 18th and 19th July?  
A. I remember having seen him between those dates but I cannot remember which specific date. 40
- Q. Can you remember his condition on those days you cannot remember you saw this patient, i.e. 17th, 18th and 19th July?

A. I remember his general clinical condition remained the same as when I first saw him.

Q. On 20th July, 1967, you wrote to Dr. Sreenevasan and referred the patient to him. Why did you refer this patient to Dr. Sreenevasan?

A. I referred him to Dr. Sreenevasan because some of the blood tests that I did showed that the kidneys were failing rapidly.

10 Q. When did you carry out the blood tests?

A. This had been stated earlier.

Court: Tests on 14th, 17th, 19th and 21st July, 1967.

A. You said on 14th July you expected further progressive mental deterioration. You saw this patient between 17th, 18th and 19th July. What was his mental condition - if you can remember?

20 A. Generally his mental condition was at variance; on some days he was more confused but on some days less but on the whole there was progressive mental deterioration.

Court: When you saw him between 17th and 21st July, you just examined him or you just observed him as in ward rounds?

A. I went on my ward rounds with my junior doctors talking to patients and examining them as well.

Court: What do you mean by - mental deterioration?

30 A. Mentally more confused, not orientated; not aware of his surroundings as a normal person would.

Court: Why did you say he was confused?

A. That was my general impression at that time.

Court: He was not able to converse intellectually - What do you mean?

A. I mean he was mentally dull.

Court: You did not know whether he was intellectual or dull?

40 A. It is possible to find out if a person is intellectual or not when conversing with him.

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(continued)

Court: Is there any note showing he was not  
intellectual?

A. No.

Court: He could not answer some of your questions?

A. Yes.

Court: Perhaps some of the things you asked he  
did not know and could not answer?

A. Yes.

Court: What about 19th and 20th July?

A. He was able to speak. 10

Court: At all times he was able to speak?

A. Yes, at all times he was able to speak.

Q. He was not able to converse intellectually?

A. Yes. These notes were made at that time to  
guide me as to a particular indication of  
his mental state.

Q. As a result of your assessment of his mental  
state - you realised that he was mentally  
deteriorating?

A. Yes. 20

Q. Was he rational at that time?

A. I stated that he was mentally confused when  
I examined him but it is possible that he  
could have been in a clearer state of mind  
at other times.

Q. This is only a possibility?

A. Yes.

Q. If someone had come to you on 14th July and  
wanted the patient, i.e. Yaik Hoe to execute  
a certain document at the time of examination,  
would you have certified he was in a proper  
frame of mind to execute the document? 30

Court: Could he sign a cheque?

A. Yes.

Court: When you said he was mentally confused,  
it is not that he was in that state of mind  
where he did not know what he was doing or  
understand the nature of his act?

A. He was confused but he could understand.

Court: He was not in the position of a mad man?

A. No.

Q. On the 16th, 17th, 18th and 19th, if someone came to you wanting this patient to execute a document, would you have certified that the patient could do so?

A. I am not in a position to say whether at any one time during or between 16th and 19th July he was in a proper frame of mind to execute a document.

Q. Similarly, subsequently after the 20th again putting the same question, would the answer be the same?

A. Yes, the answer would be the same. I just remember seeing him but I never examined him and made notes.

Q. Was he conscious from the time he was admitted to the time he died?

A. He was conscious initially. Consciousness is just a medical term implying awareness and being alive. Subsequently at a certain stage there was gradual mental deterioration in the patient but he was conscious.

Q. Will it be true if someone said he was of sound mind from the time you first saw him further?

A. He was not of sound mind throughout.

Court: Are you saying he was of unsound mind?

What do you mean by unsound mind?

A. I am using his words.

Mr. Joginder Singh: My Lord, I will rephrase my question.

Q. Did this patient possess full mental faculties throughout from the time you saw him up to the time of his death?

A. He was not in full possession of his mental faculties throughout.

Q. Was this man from the time you saw him until his death ever in full possession of his mental faculties?

A. I cannot remember that.

Q. On 15th, 16th, 17th, 18th and 19th, was he in possession of his full mental faculties?

A. This would depend on the time of examination.

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(continued)

Q. You examined him on 15th July. Was he in full possession of his mental faculties then?

A. At that time he did not possess full mental faculties. What I mean is that, although I examined him, he was not in full control of his mental faculties. This does not exclude the possibility that he could be in full control of his mental faculties at other times.

Q. For the 16th, 17th, 18th and 19th, your answer would be the same? 10

A. Yes.

Mr. Joginder Singh: My Lord, I would also make application for the medical records to be made available to me.

Court: Yes.

Mr. Joginder Singh: My Lord, at this state I think it will be appropriate and better for me to apply for continuation of the cross-examination of the witnesses although application for cross-examination to be deferred has been made. Can I apply for this now, My Lord? 20

Court: I have allowed application for cross-examination to be deferred.

Mr. Joginder Singh: My Lord, the question of Dr. Daljit Singh a very material witness - I would apply for postponement of this case so that Dr. Daljit Singh can be called to give evidence.

Court: Make it at the proper time. 30

Joginder Singh: Very well, My Lord.

G.Sreenevasan

Examination

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1972

PW4: G.A. Sreenevasan: affirmed, speaks in English.

Q. Your name doctor?

A. Sreenevasan.

Q. Your degrees?

A. M.B.B.S. Adelaide University, South Australia; Master of Surgery from Liverpool University; Fellow of the Royal College of Surgeons, England, Edinburgh and Ireland; Fellow of the Australasian College of Surgeons and Fellow of the American College of Surgeons. 40

Q. At present attached to where?  
A. General Hospital, Kuala Lumpur.

Q. In July, 1967, to which hospital were you attached?  
A. Also General Hospital, Kuala Lumpur.

Q. In July, 1967, did you attend or treat one patient by the name of Loke Yaik Hoe?  
A. Yes, Loke Yaik Hoe.

10 Q. On what date did you see him?  
A. I saw him on 20th July, 1967 at 10.15 p.m. according to my notes.

Q. Could you please read out your notes?  
A. This case was referred to me by Dr. Lim Eu Jin on that day and my notes read as follows-  
"I really do not think this is at all a suitable case as he is a case of mental dementia. It is difficult to get him to lie down in bed. He is insistant on sitting up in bed. It would be difficult to continue dialysis."  
20

Q. Why was it necessary to refer to you to have this patient dialysed?  
A. Dr. Lin thought the patient had high blood urea, i.e. waste product, and he thought dialysis may help the patient.

Q. What is dialysis?  
A. Removal of waste product by mechanical means. That is in general term. If you want more details, I can go into it.

30 Court: Not necessary.

Q. What do you mean by - dementia?  
A. It is a designation for mental deterioration.

Q. How bad was the mental deterioration of this patient?  
A. On 20th at 10.15 p.m. when I examined him it was difficult to get him to lie down. He was insistent on sitting up.

40 Q. With regard to mental deterioration, what was the degree of mental deterioration when yhou used the words mental dementia?

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Judge's Notes of Evidence

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G.Sreenevasan Examination

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(continued)



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(continued)

- A. To the point of being restless. He was getting up and lying down on the bed constantly. He could not understand what I was trying to tell him.
- Q. What was the cause of this mental deterioration?
- A. This is a very interesting problem as a matter of fact. The high blood urea per se is not regarded by most workers in the field to be responsible for mental symptoms but the facts associated with it and there is retention of fluid and therefore swelling of the brain which is responsible for that mental dementia. The other factor is acid accumulation. 10
- Q. As no dialysis was done on this patient, what was the nett result of the presence of high blood urea in the blood?
- A. Normally, there would be about 40 m.g. per cent per day excreted. Because he was passing a fair amount of urine he got rid of some of the urea. 20
- Q. The next day the urea increased by 8 m.g. per cent. Would you expect the urea to increase on 22nd and 23rd?
- A. Yes I would, but no test was done as far as I can see.
- Q. You examined him on 20th. No dialysis was done. Progressive urea increased on 21st. Would you expect his mental condition to remain static at least until 21st?
- A. Urea per se does not affect the mental condition. You cannot judge by urea alone. 30
- Q. From your medical finding, would you expect his mental dementia to remain static or to become worse?
- A. It is difficult to assess the degree of mental deterioration.
- Q. You found him in mental deterioration on 20th. Would you expect that condition to improve the next day or would you expect it to remain or to become worse?
- A. In general terms, if we do not dialyse them, they do not improve. 40
- Q. I want you to tell us something based on medical evidence and examination of this patient. What would be his condition in

- particular on 20th July?
- A. I only can give what I had seen in my time.
- Q. Was this man when you examined him at 10.15 p.m. on 20th in normal full possession of his mental faculties?
- A. No. Patient was not in full possession of his mental faculties at the time of examination.
- Q. Did he still possess the same mental faculties at 10.15 p.m. on 20th July and if so, to what degree?
- 10 A. This is very difficult to judge. Certainly he was not in full control of his mental faculties but as to what extent and what degree, it is difficult to judge.
- Q. Again, on 20th July, could he talk rationally to you?
- A. No.
- Q. Could he talk in conversation with you at that time - 20th July?
- 20 A. I do not think I had a long conversation with him. His mental dementia did not permit him to have conversation with me or to discuss his problems with me.
- Q. If someone at that time had come to you and wanted this patient to execute a document - any document - would you have certified that this patient was in his proper frame of mind to execute any document?
- 30 A. No, I would not. This is at 10.15 p.m. when I saw him.

PW5: Dato's (Dr.) Sinnadurai, affirmed, speaks in English.

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Judge's Notes of Evidence

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G.Sreenevasan Examination

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(continued)

- Q. Doctor, your degrees?
- A. 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.
- Q. To which hospital are you attached?
- 40 A. University of Malaya as the university physician - not the University Hospital.
- Q. In July, 1967, to which hospital were you attached?

Dr.Sinnadurai

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Dr. Sinnadurai

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(continued)

- A. General Hospital, Kuala Lumpur. I was the Senior Consultant Physician at the hospital.
- Q. You were also in charge of the Medical Unit 1 of the General Hospital, Kuala Lumpur in 1967?
- A. Yes.
- Q. Were you responsible for the care of all patients admitted to your unit?
- A. Yes.
- Q. Were you also responsible for the acts of all the doctors working under you? 10
- A. Yes.
- Q. In July 1967, did you have a patient by the name of Loke Yaik Hoe in Medical Unit 1?
- A. Yes.
- Q. As Head of the Medical Unit, you were responsible for the care and treatment of this patient?
- A. Yes.
- Q. You were also responsible for the doctors attending on him? 20
- A. Yes.
- Q. Can you tell us if this patient was admitted on 13th July, 1967?
- A. Yes.
- Q. Admitted by Dr. Vignaendra?
- A. Yes.
- A. From the clinical notes made by Dr. Vignaendra can you describe this patient's condition at the time of admission?
- A. He was admitted as a case of medical urgency. He was admitted at 4.40 p.m. 30
- Q. Why was he admitted as a case of medical urgency?
- A. He was referred to us by a general practitioner because he had difficulty in breathing, general weakness and the breathing difficulty was worse especially at night like asthma. At the same time he was having oedema - swelling of the legs - and was in cardiac failure - congestive failure - in other words, he was rushed in because he was showing signs of congestive failure needing urgent attention 40

to make him more comfortable and also for further investigation and management.

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Q. What was his condition on 14th July?

A. When I saw him on 14th, he was in distress - shorter breath and restless.

Q. Was an evaluation of his mental condition made on 14th?

A. I cannot recall but according to the notes, no mention is made of it. We were rather more concerned about his clinical state and were trying to find out the cause as to why he was in cardiac failure. There was history of diabetes, high blood pressure and alcoholism.

Judge's Notes of Evidence

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Dr. Sinnadurai Examination

Q. What else about his condition on 14th?

A. On the 14th we found that he was having irregular heart beat - there was degree of heart block.

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(continued)

Q. Compared to his condition on 13th, was his condition on 14th better, same, or worse?

A. I cannot answer. I did not see him on 15th. I saw him only on 14th.

Q. We now come to 15th July.

A. On 15th there was some mental deterioration. Intellectually he was somewhat hesitant in answering questions. There was some improvement in general condition because of the treatment given. He was feeling better especially with regard to the swelling of the legs. Generally he was feeling better clinically.

Q. Mental deterioration - what does it signify?

A. Mental deterioration means a certain amount of impairment in his mental acuity in the manner he was able to answer questions.

Q. What quality of answers?

A. It is difficult to recall. The impression was he was rather dull and not alert. By the time we discovered this, he was not only having heart failure but he was also having kidney failure plus liver failure. All these had contributed to the general clinical picture.

Q. Intellectually he was hesitant - what does this mean?

A. From the point of reasoning and answering question, we found him not very clear or alert in mind.

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(continued)

Q. Could you tell us about his condition on 16th July 1967?

A. Cough with green sputum. Lungs clear and legs showing very minimum oedema.

Q. On 17th.

A. On 17th Dr. Daljit Singh made note that his general condition was better. He was more comfortable but the urea was going up, i.e. nitrogenous and waste product were retained in the blood.

10

Q. Anything more to add about 17th doctor?

A. No.

Q. On 18th?

A. Blood urea had gone up. Risen to 252 m.g. per cent. Patient confused - mentally confused.

Q. Mentally confused - what do you mean by that?

A. More drowsy and clouded in his answers when you talk to him and when asked questions, answers not clear.

20

Q. Did he possess full mental faculties?

A. In fact from 15th we had the impression that his mental faculties were rather deteriorating. Other than these general notes, we never made any special notes of the day-to-day mental condition of the patient.

Q. Would this condition of drowsiness and clouded answers have continued to 18th?

A. In this condition, that is to say, uraemic condition, there can be periods of transient ups and downs occurring. It is a condition that waxes and wanes. It is not something that is steady all the time. It was difficult during the whole 24 hours to say what his mental condition was.

30

Q. Blood urea gone up - would you expect transient ups and downs quite many on 18th or just a few?

A. Sorry, I am not in a position to answer that.

Q. Anything else you have to add about 18th?

A. On 18th we ordered further investigation like serum electrolite. This condition of complex factors would affect his kidneys, liver and heart. Three factors.

40

Q. All these three factors would affect his mind?  
A. Yes.

Q. On 19th?

A. He was more confused, not able to speak and was passing urine and faeces in bed (incontinence). In other words, his clinical state was getting worse. I and Dr. Lim had a discussion about this case and I suggested that he should have a discussion with Dr. Sreenevasan for surgery management because it seemed nothing much was worth doing for this patient from the medical point of view. We thought Dr. Sreenevasan could dialyse this man, that is, to clean up the waste product in his body. Dr. Lim did have a word with Dr. Sreenevasan on 19th. On the 19th night, his condition got worse. He started pulling out all the tubes we put in. He showed evidence of psychotic behaviour - like a mad man. In other words, he was intoxicated by the waste product retained in the blood.

Q. On 20th?

A. On 20th Dr. Lim referred the patient to Dr. Sreenevasan, having spoken to him on the previous day. His general condition grew worse day to day in spite of our attempts to make him comfortable. We were only able to prolong him up to 24th.

Q. If someone had come to you on 14th July, 1967 wanting the patient to execute any document and wanting you to certify that he was in a proper frame of mind to execute such document, would you have certified?

A. I would have a further look at him before I commit myself. Straightaway no. I would examine him and carry out an investigation first.

Q. Would that apply for the other days as well?

A. Yes. From 15th we had formed the impression that his mental condition was deteriorating. I might have asked for a second opinion - depending on the type of document to be executed.

Q. On 16th?

A. From 15th he was getting worse. I will still give the same answer as just now. As I

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Dr.Sinnadurai

Examination

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(continued)

mentioned earlier, their conditions wax and wane. These people who are suffering from kidney condition present an appearance of well being. Unless you are a clinician, you might feel that they look a picture of health but if you look at your findings, you would realize how ill they are.

- Q. Ill both physically and mentally?  
A. In this case, clinically he was physically ill. Straightaway I would not certify unless I examined him first and had made investigation and asked for a second opinion meaning a psychiatric opinion - not a medical opinion. 10
- Q. On 17th?  
A. The answer would be the same as for 16th, 17th, 18th, 19th and 20th if you want him to execute.
- Q. Will it be true if somebody said he was conscious throughout from the time of admission up to the time of death?  
A. The word "throughout" I would not agree with. There could have been certain transient periods when the man might be alert for a little time and from what we could assess, he was going downhill. From 18th and 19th, his physical and mental state was going down and causing us concern. 20
- Q. This waxing and waning - did it continue from 18th and 19th onwards?  
A. On 21st patient looked brighter than on 20th. On 18th, 19th and 20th, he was drowsy and confused; refused to take food and drink. Subsequently on 23rd and 24th he relapsed into drowsy condition and on 23rd night he had gone more drowsy - in other words, he gone into a comatose condition - in a coma. I myself have not made any notes. 30

Mr. Shankar asks Court to put this on record. Court directs that this be put on record/

Court: Adjourned to 11th July, 9.30 a.m.

Sgd. DATO ABDUL HAMID,  
JUDGE,  
HIGH COURT, MALAYA.

40

73.  
This 12th day of July, 1972

C.S. 469/71 (Continuation)

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12th July  
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Hearing continues. Parties as before.

Mr. Joginder Singh applies for reamendment of claim: 0.28 r.l.

Refers to (1968) 1 M.L.J. p.31 at p.32. Plaintiff relying on this case - Grant Advertising International Inc. & Anor. v. Glaze. Same cause and arising out of the same transaction. The second defendant is not at all prejudiced.

10

Application made bona fide and second defendant not caught by surprise.

This amendment deals with a lesser charge than fraud.

Refers to White Book 1961 p.624. Court will not readily allow at the hearing - application made at earliest possible stage.

Mr. Chan Siew Yoon addresses:

20

Application served yesterday at noon. Prepared to go on.

Application introduces two new causes of action - involving two new sets of facts and new sets of ideas.

Original based on fraud undue influence - thumbprint taken when deceased was of unsound mind.

By amendment new facts have to be introduced - for example whether proper for bank to honour cheque without verifying whether thumbprint was in fact thumbprint of deceased.

30

These allegations involve new sets of facts. Action against Bank now on vicarious liability - fraud on part of its employee. Amendment is to introduce liability personal to the Bank. Plaintiff is trying to change the character of the action - very substantial amendment.

40

Refers to Marshall v. London Passengers Transport Board, (1956) 3 All E.R. p.83 at p.88. As for (1968) 1 M.L.J. p.31 application made before trial. New cause introduced did not involve new sets of facts. Plaintiff could file new suit.



IN the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Judge's  
Notes of  
Evidence

12th July  
1972  
(continued)

Mr. Shankar addresses:

Application completely devoid of merit. First defendant severely prejudiced. So many different causes of action - prolong trial - enlarge areas of inquiry.

Trial had already gone on for three days. Application should be dismissed.

If Court should allow it the only condition is to give leave to file fresh action and the present action stands dismissed. 10

Refers to p.627 White Book 1961 - "New Case." - "The Court will not refuse to allow an amendment simply because it introduces a new case ..... fresh action." "..... or where the defendant's position would be prejudiced by allowance of the amendment." "Where the amendment amounts to the assertion of a new claim and abandonment of the original claim ..... to dismiss the original action without prejudice to a second action dealing with the subject-matter of the proposed amendment (Lalsey v. Brotherhood, 15 Ch. D. 514; 19 ch. D. 386)." 20

Mr. Joginder Singh replies:

Concedes that these are new causes of action but they are not of different character - refers to paragraphs 26 and 27 statement of claim.

(Mr. Joginder Singh now says that he is abandoning the application for amendment).

Application dismissed with costs to be taxed and paid to first and second defendants. 30

Plaintiff's  
Evidence

PW2 - cross-examination - nil

PW3 Dr. Lim Eu Jin - reaffirmed in English.  
Cross-examination - Nil.

Witness released.

PW4: No cross-examination.

PW5: No cross-examination.

PW6: Loke Siew Kim, affirmed, speaks in English. Sales Assistant, Robinson's Singapore. No. 19, Ernani Estate, Singapore, 16.

In the High Court in Malaya at Kuala Lumpur

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No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Like Siew Kim

Examination

12th July 1972

I knew plaintiff. She is my mother. I am adopted daughter of the plaintiff. I was adopted when I was less than a month old. The deceased was my brother. We grew up together during our childhood. We lived together until we were adults. The deceased went to St. John's Institution. He passed his Senior Cambridge.

10

So far I never received any letter from the deceased. When we were young I used to see him write letters. After that no. He completed letters by signing.

In July, 1967 I was living in Singapore at the same address. My mother was staying with me. I received a message from Madam Choy Woh Peng that my brother was seriously ill. I received a phone call from my daughter during office hours. Choy Woh Peng informed me by letter.

20

(Letter produced and marked P3). I received it on 18th afternoon. I applied for leave and asked permission to go home earlier than usual. I left for home 1½ hours earlier than usual. My mother showed me the letter and I read it. I packed and took the night mail to Kuala Lumpur. I arrived on 19th morning at Kuala Lumpur. I took a taxi to Madam Choy Woh Peng's house. After a wash we went to the hospital to see my brother, arriving at the hospital at approximately 8.45 a.m. My brother was very seriously ill. He was unable to talk to me. He did not recognize me. I was at his bedside for more than 2 hours. He was not able to recognize anyone during the two hours.

30

I went in the afternoon at about 5.30 p.m. His condition was still the same.

On 20th: I visited my brother in the afternoon between 12.00 noon and 1.00 p.m. His condition was still the same. He could not recognize anybody. I made no further visit.

40

On 21st: I visited him as usual in the afternoon until visiting hours in the evening. His condition was getting worse. He was unable to recognise anybody.

In the High  
Court in  
Malaya at  
Kuala Lumpur

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Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Loke Siew Kim

Examination

12th July  
1972

(continued)

On 23rd: I visited him in the afternoon. His condition was very bad. I stayed up to evening visiting hours. He was unable to recognize anybody. I was informed of his death on 24th morning.

During the course of my visits, I met Chan Yoke Yin, Chow Yee Wah and Kwan Mun Ko.

Mr. Chow Yee Wah and Kwan Mun Ko are in Court.

Neither of the three I mentioned spoke to me on any matter. 10

After the deceased's death, neither of the three persons spoke to me on any matter. After the funeral I did not have occasion to see any of the three persons.

I do not know anything about my brother's money matters. I came to know only after my mother's lawyer informed me. I knew about the joint account.

I have seen Mr. Joginder Singh in his office together with my mother. I know of proceedings filed by my mother. 20

Cross-  
examination  
on behalf  
of First  
Defendant

12th July  
1972

Cross-examination by Mr. Shankar:

I am certain of the date I came to Kuala Lumpur because I got leave. The document of leave is with my office in Singapore. The last time I saw the document relating to leave was on 18th July. The strength of my memory is based on that.

(P3 shown to witness - letter dated 17th July). 30

Q. Date stamped on P3 18th July at Kuala Lumpur?  
A. I cannot read it.

Q. If it was posted at Kuala Lumpur on 18th you would only have received on 19th?  
A. I will agree.

In that event I could only be in Kuala Lumpur on morning of 20th.

I assisted my mother originally in filing action. I know what it was all about.

(Paragraph 10 of amended bundle of pleadings read to witness). I understand.

Q. Why was nothing said in the statement of claim that the deceased was in delirium and could not recognize anyone on 19th?

A. I don't know. When this claim was filed I could not remember the date.

10 I can't remember when I came to know of my brother's financial matters. I am not beneficiary of my brother's estate. I was in Singapore when I got the information.

My interest in the matter was to see justice done. I did not know of the injustice until I was informed that they had taken a thumbprint for the joint account.

I was actually concerned with my mother's affairs from the time I got the information. Before that I knew nothing. I did not interfere before that.

20 I cannot remember how many months after the deceased's death I got the information.

30 On the morning after the deceased had died I went to the hospital with my mother. I did not ask Yoke Yin to give all the things like flask etc. to me. It is not true there was a quarrel about this. There was no quarrel and I had no misunderstanding with her at all. I had no quarrel with Chow Yee Wah. I know my mother also gave evidence on oath. I accompanied her when she came for hearing.

What my mother said - that I had heated words with Yoke Yin - was not true. There was no quarrel between me and Yoke Yin at the cremation. I never complained about Yoke Yin not giving me due respect.

I and my mother stayed at Woh Peng's house. I left for Singapore on 25th July by train.

Before I left first defendant saw me at Woh Peng's house. The first defendant did not give me the \$20/-. Ng Chee gave me the \$20/-.

40 It is not true that I snatched the \$20/- from the first defendant and began a quarrel with him.

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence

Plaintiff's Evidence

Loke Siew Kim

Cross-examination on behalf of First Defendant

12th July

1972

(continued)

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Malaya at  
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Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Loke Siew Kim

Cross-  
examination  
on behalf  
of First  
Defendant

12th July  
1972

(continued)

It is true that I asked him on whose authority he sent the deceased's things for destruction.

My desire was to see that the plaintiff gets a share of the deceased's estate. In my mind Yoke Yin had no right to any part of that estate. Before his death I did not see my brother for several years.

I had no personal knowledge of his relationship with Yoke Yin. Plaintiff did not get anything from the estate of the late Chow Kit. I do not know whether it was an injustice. I would regard it as an injustice if my brother had not left anything to my mother. I did not think that my brother at the time of his death had died a pauper. I made no attempt to find out to whom that money was going to. I knew who paid for funeral expenses. The first defendant paid for the funeral expenses. I do not know whether he paid out of my brother's money.

10

I never heard anything about applying for Letters of Administration.

20

It is not true the first defendant discussed this in my presence.

I was married to an Indian - Anthony - in 1946. I still live with him. He had a friend by the name of Phillip. He was a colleague working together in John Little.

I knew he intervened in the application for Letters of Administration on my mother's behalf. I knew he stopped a joint application by Yoke Yin and plaintiff and assisted plaintiff in making an application on her own. He did not intervene exactly at my request. I was involved in some way. I asked Phillip to help the plaintiff to get her Letters of Administration. He kept me informed of steps he was taking. He briefed lawyer with my knowledge and approval.

30

The act of applying for Letters of Administration by the plaintiff was part of my scheme to see that justice was done. That was long before plaintiff's lawyer informed me of thumbprint and joint account.

40

My impression was that - i.e. at the time

I assisted my mother to get Letters of Administration - my brother had left everything to Yoke Yin. I thought the plaintiff should get everything.

The day I arrived at the hospital deceased was wearing a sarong. I did not see any medical equipment such as tubes - nothing at all.

I went to the hospital every day until the day he died.

Q. You only went once - the day you came?

A. That is not true.

I used to stay from 12.30 p.m. until about 6.00 p.m. Some of the relatives visited him.

Cross-examined by Mr. Chan Siew Yoon:

Only now I know that deceased had been living with Yoke Yin a few years before his death.

It is fair that my brother should leave something to Yoke Yin. My brother stammered a bit.

Re-examination:

At the time of my brother's death I did not know of thumbprint and joint account.

(Mr. Joginder Singh requires at least 3 days before the case can be closed. Mr. Shankar and Mr. Chan say that they require at least 3 to 4 days. Adjourned to 13.9.72 - for hearing on 13th, 14th, 15th and 18th to 22nd.

Sgd. DATO ABDUL HAMID  
JUDGE,  
HIGH COURT, MALAYA.

CERTIFIED TRUE COPY

Sd -/ Illegible  
.....

Secretary to Judge,  
Kuala Lumpur 19th July, 1972

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence

Plaintiff's Evidence

Loke Siew Kim

Cross-examination on behalf of First Defendant

12th July 1972  
(continued)

Cross-examination on behalf of Second Defendant

12th July 1972

Re-examination

12th July 1972

10

20

30

In the High  
Court in  
Malaya at  
Kuala Lumpur

This 13th day of Sept. 1972

Mr. Joginder Singh with Mr. Sriram for plaintiff.

Mr. M. Shankar for First Defendant.

Mr. Chan Siew Yoon for Second Defendant.

Judge's  
Notes of  
Evidence  
Plaintiff's  
Evidence

PW7: Choy Wor Pheng, affirmed, speaks in English.  
64 years old. No. 85, Jalan Limau Nipis,  
Bungsar Park.

Choy Wor  
Pheng  
Examination  
13th  
September  
1972

I know the plaintiff. I am related to her.  
She is my grandmother. I know her son Loke Yaik  
Hoe. I know the 1st Defendant. He is an uncle  
married to my auntie. The respondent (second  
defendant) is Kwan Mun Ko. He is related to me.  
He is my cousin.

10

I also know Peter Kwan Mun Chew of Kwong  
Yik Bank. He is the brother of Kwan Mun Ko.

In July, 1967, I wrote a letter to Madam  
Loke Siew Ki. (A letter produced and shown to  
witness). This is the letter.

(P3 identified). I posted it on the same  
day. I wrote this letter to let her know that  
her son was ill. My grandmother came with Siew  
Kim (P.6). They arrived on 19th morning.

20

On 19th morning I accompanied my grandmother  
and Siew Kim to the General Hospital. The purpose  
was to see Yaik Hoe. Yaik Hoe's condition - he  
looked delirious. He did not talk to any of us.  
He could not recognize anyone.

Cross-  
examination  
on behalf  
of First  
Defendant

Cross-examination by Mr. Shankar:

The plaintiff is my step-grandmother. I  
wrote to her on 17th July. I remember. I posted  
the letter at the General Post Office. I sent my  
son Ng Kah Wing to the General Post Office to  
post the letter. He was then a working man living  
with me. He has no car of his own. He went in his  
father's car. He posted the letter on the same  
day, because the letter arrived in Singapore on  
18th and they arrived on 19th. I assumed the  
letter arrived in Singapore on 18th.

30

(Counsel refers to the envelope. It is  
postmarked 18th).

40

It could not have been posted on 18th.

Q. If someone from the post office says that the letter was posted on 18th and arrived in Singapore on 19th, would you dispute it?

A. That cannot be.

I have no other document to show they arrived on 19th but I can prove that they arrived on 19th because I took them to the General Hospital on 19th.

10 Q. What do you mean by "delirious".

A. I mean the person was not aware of anything.

I cannot remember how long ago I saw the deceased prior to that day I saw him. I seldom saw him.

I answered several questions when you (referring to counsel) came to my house.

(Mr. Joginder Singh expressed surprise and objected. Mr. Shankar says a written statement recorded by him on his return to office after he had interviewed the witness, will be produced.

20

Court: There is no property in witness. Counsel acted properly). (A written statement recorded by counsel shown to witness and read by her. The statement was recorded on 9.6.72).

Court: Statement need not be tendered.

I refused to sign the statement because the answers written were different. There were many answers.

30

I am the daughter of Loke Soh Sin. On 17th July, 1967, I received a telephone call from Ng Chee. She asked me whether the plaintiff was staying with me. She used to stay with me. I replied that she was staying in Singapore. Ng Chee told me that Loke Yaik Hoe was seriously ill in the hospital. She also said that he had heart trouble and his legs were swollen. She spoke to me in Cantonese. She used a Cantonese word to mean that he was unconscious. She used the word "ms'ng". She did not use the English word "delirious". I used the word "delirious" in the letter because I understood the word "ms'ng" to mean "delirious". Ng Chee asked me to write a

40

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence

Plaintiff's Evidence

Choy Wor Pheng

Cross-examination on behalf of First Defendant

13th September 1972 (continued)



In the High  
Court in  
Malaya at  
Kuala Lumpur

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Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Choy Wor  
Pheng

Cross-  
examination  
on behalf  
of First  
Defendant

13th  
September  
1972  
(continued)

letter to inform the plaintiff of what was happening.

I did not see the deceased before writing the letter.

The Plaintiff and Siew Kim came by the night mail from Singapore. I was then living at Jalan Perak. Siew Kim is also known as Mooi Tow. We all had breakfast. We went to the hospital between 9.00 and 10.00 a.m. There were many people in the ward. Ng Chee was also there. We all went into the ward together. I called him "Ah Ho" "Ah Ho". He did not answer. He stared blankly and did not answer. I did not say anything further to him. All of us kept quiet. I stayed for 10 to 15 minutes and then came out. I think the deceased had a beard then. I cannot remember whether he had dentures on. I don't know whether he wore dentures. I cannot remember whether he had glasses on.

10

Before that morning, he came once to my house to see the plaintiff. That was a few years before.

20

I only went once to the hospital. That was on 19th. I did not go to the hospital on the night he died. I did not attend the funeral.

I do not know about the plaintiff's allegation of fraud against Chan Yoke Ying, Kwan Mun Ko and Chow Yee Wah.

I got a subpoena. I informed the Court that I was ill and could not attend. I do not know Chan Yoke Ying at all. The first time I met her was on 19th at the hospital.

30

After the funeral, the plaintiff stayed with me for some time - for about a month or so. During that month there was reference about going to lawyers. Ng Kok Thoy - a lawyer - is my brother-in-law. The plaintiff also knows Ng Kok Thoy quite well.

Mr. Chow recommended the plaintiff to see Ng Kok Thoy for letters of administration.

This case was never discussed with me. I was surprised to receive a subpoena. That was the first time I realised there was going to be a case.

40

I cannot remember when the plaintiff went to live in Singapore. It was in the same year. She stayed from place to place. She had no home of her own.

In the High Court in Malaya at Kuala Lumpur

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Cross-examination by Mr. Chan Siew Yoon - No.

Judge's  
Notes of  
Evidence  
Plaintiff's  
Evidence  
Choy Wor  
Pheng  
Cross-  
examination  
on behalf  
of First  
Defendant

13th  
September  
1972  
(continued)

Re-examination:

Mr. Shankar came with a young lawyer. Mrs. Chow also came. She is related to me. She is my 8th auntie. She works in Shearn, Delamore & Co.

Re-  
examination  
13th  
September  
1972

10

They came before the case started. I told them that I had been subpoenaed to give evidence. The next day Mr. and Mrs. Chow (1st defendant) came to see me. They brought a statement and asked me to read and asked me to correct whatever was not correct and they asked me to initial it. I refused to initial it. After that nobody came to see me.

PW8: Eng Gong Yoh, affirmed, speaks in English. Sub-Accountant, Malayan Banking, Jalan Bandar.

Eng Gong Yoh  
Examination

20

One Loke Yaik Hoe had an account with my bank. (Pg.26 AB referred). I have a specimen signature card in respect of that account. (Produced and marked P4). I have two cheques signed by the deceased. (Produced and marked P5 and P6). I also have the account opening form. (Produced and marked P7).

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Judge's  
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Evidence

Plaintiff's  
Evidence

Eng Gong Yoh  
Examination

13th  
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(continued)

(Mr. Chan says that the only occasion a cheque was drawn by the deceased by the use of his thumbprint was in this particular case. In other cheques drawn by the deceased, his signature was used).

Cross-examination - No.

(Mr. Sriram indicates that he is calling Mr. M.K. Ramachandran, an accountant in Banking Operation Department, Bank Negara to give evidence as an expert witness on the practice of clearance of cheque payment out, opening and operation of current personal account and current joint account. 10

Mr. Chan Siew Yoon objects on principle. He says that if the intention of the plaintiff is to show negligence on the part of the bank, then the evidence is not relevant. The case is based on fraud.

Mr. Shankar refers to Order 37 rule 8. He says it applied to Court expert. 20

Mr. Sriram says that notice is given under Order 37A rule 8. He refers to (1968) 1 Weekly Law Reports p.956. He says that conversion is also the plaintiff's case. The evidence of this witness is very relevant.

Mr. Shankar says conversion arises out of facts pleaded.

Court: I allow this witness to be called).

M. K.  
Ramachandran  
Examination

13th  
September  
1972

PW9: M.K. Ramachandran, affirmed, speaks in English. Accountant, Bank Negara Malaysia, Banking Operations Section. 30

I have been working in commercial banks for 13 years and Central Bank for 12 years.

I am conversant with commercial banking - practice and theory.

When an individual wants to open a current account, he will fill in a current account opening application form which will be duly signed. He will request the Banker to open the account. The Banker will require an introduction and will get 40

the identification of the person concerned. There will be a specimen signature card.

When an account holder draws a cheque on his account, the signature on the cheque will be verified from the specimen signature.

(NAB p.5 shown to witness). When a person puts his thumbprint instead of his signature as shown in the specimen signature and draws a cheque, the bank will put on an enquiry as to the circumstances leading to the affixing of the thumbprint.

10

Q. If a person who affixed his thumbprint instead of his signature was seriously ill in hospital, what should the bank do in the ordinary course of business?

A. The bank will require a certificate from the medical attendants certifying the customer's ability to sign a cheque and that the customer was in full faculties at the time of signing.

Medical attendants means the doctor attending.

20

This is the procedure to be adopted when a bank puts on an enquiry. This is the normal requirement.

(Pg. 6 NAB shown to witness). This is a joint account opening form. A thumbprint is accepted in the case of an illiterate person who cannot sign. If a person is ill in hospital and wants to open a joint account using a thumbprint, here again the certification by a doctor will be required by the bank.

30

If a cheque is presented for payment and bears a thumbprint instead of a signature as shown on the specimen signature card, payment, in my opinion, is not in the ordinary course of business. It is a deviation from the normal procedure. The same reasons apply for the opening of a joint account.

(Pg. 7 and p.8 NAB shown to witness). These are specimen signature cards.

40

(Pg. 5 NAB shown to witness). The account number is given. Usually the account number is given at the time of the opening of the account. This cheque was paid in on 20.7.67. (See p.9 NAB).

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Judge's Notes of Evidence

Plaintiff's Evidence

M. K. Ramachandran  
Examination

13th  
September  
1972  
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Kuala Lumpur

No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

M. K.  
Ramachandran  
Examination

13th  
September  
1972  
(continued)

Cross-  
examination  
on behalf  
of First  
Defendant

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September  
1972

In the case of a joint account, the account will be blocked if one of the jointholders dies, until the clearance is obtained from the Estate Duty authority. This is the usual practice under the Estate Duty Enactment.

The words 'signature admitted' below the thumbprint on p.5 NAB mean that the bank has accepted the thumbprint for the payment of the sum mentioned.

Signature is usually accepted at the time of payment. 10

(Pg. 9 NAB shown to witness). This is a shortlived account.

Cross-examination by Mr. Shankar:

These rules of practice relating to specimen signature cards are safeguards to ensure that the signature appearing on a cheque is that of the account holder. These rules are rules of prudence. It is possible the practice from bank to bank might vary in its details. 20

If for some reason a person injures his hand and cannot sign and if the bank manager is satisfied that the faculties of his mind have not been impaired, he may accept his signature. There are exceptions to the rules of thumbprint.

The duty on the Banker is very high to ensure that the signature on a cheque is indeed that of an account holder. If there is forgery, the bank would be liable if it had not ensured. This relates to failure on the part of Banker to take proper care. 30

The requirement of a certificate of medical attendance is also a rule of prudence.

(Pg. 6 NAB shown to witness). This form can also vary from bank to bank in its details.

Account Number: When a cheque is made payable to "yourselves", the bank can elect to insert the number of the account to which the cheque was credited.

(Adjourned to 2.30 p.m. Hearing continues at 2.30 p.m.). (PW9 on former oath). 40

If the bank manager is satisfied with the identity the person and that he has full faculties of his mind and is unable to sign and can only affix his thumbprint, he can accept his thumbprint.

In the High Court in Malaya at Kuala Lumpur

          
No. 6

The bank is put on an enquiry if there is something to arouse its suspicion that a customer's faculties of mind are not all there.

Judge's  
Notes of  
Evidence

10 (Counsel refers to p.62 line F of Notes of Evidence). If the person presents an appearance of well being and looks a picture of health, the bank manager would be entitled to take his thumbprint.

Plaintiff's  
Evidence

M. K.  
Ramachandran

If the person conversed with the bank manager and wanted the bank manager to take his thumbprint, that would make his case even stronger.

Cross-  
examination  
on behalf  
of First  
Defendant

20 Estate Duty: The rule about the blocking of an account until clearance from Estate Duty authority that duty paid had been obtained, is not an inflexible rule.

13th  
September  
1972  
(continued)

I have come across cases where the Banker paid out survivors upon obtaining an indemnity or guarantee to cover the Banker for any sum by way of Estate Duty which he may be called upon to pay.

If the Banker is satisfied with the customer's solvency, the Banker can use his discretion and allow withdrawal at his risk.

30 (Pg. 9 NAB shown to witness). If a Banker is satisfied of the death of one of the members of a joint account, he must, subject to what I said about Estate Duty, pay to the other member surviving.

(Questions on Banking Practice issued by Institute of Bankers, London, 9th ed. question 644, p.235).

40 I would agree that the draft must be taken to be in favour of payees jointly and consequently the survivor can obtain payment on supply of proper evidence of the death of the other payee without the concurrence of his legal personal representative.

In the High  
Court in  
Malaya at  
Kuala Lumpur

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Judge's  
Notes of  
Evidence  
Plaintiff's  
Evidence

M. K. Rama  
Raochandran

Cross-  
examination  
on behalf  
of First  
Defendant

13th  
September  
1972  
(continued)

Re-  
examination  
13th  
September  
1972

The same principle would apply to moneys in a joint account.

All these rules I referred to were designed for the protection of the Banker. This protection is the protection that the bank requires from an account holder.

Q. If a Banker does something at the express direction of an account holder, no protection is required?

A. Yes.

10

The rule that a thumbprint is accepted in the opening of an account by an illiterate person, is a flexible rule. The rule would not be rigidly applied if the customer is already the holder of an account.

Re-examination:

Q. Is it prudent for a Banker in the ordinary course of business to pay out the amount due on a cheque without question when the cheque bears a thumbprint instead of a registered signature?

A. In my opinion, I would not pay a cheque without any enquiry.

20

(Refers to a man having the appearance and well being of a picture of health).

If the Banker is satisfied of the intention of the account holder - after conversing with the account holder - he may take the thumbprint, provided that the faculties of mind of the account holder are not impaired. The Banker should ask him why he should want to put a thumbprint.

30

If the Banker is satisfied after the account holder has given a good reason why he cannot sign, the Banker can accept the thumbprint. If a Banker is satisfied with the faculties of mind of an account holder, he need not insist on a doctor's certificate.

(Counsel refers to p.62, line D of Notes of Evidence - "From 15th we had formed the impression that his mental condition was deteriorating. I might have asked for a second opinion - depending on the type of document to be executed.") If it was medical advice that the customer's faculties of mind was deteriorating, in my opinion, the Banker should have asked for a doctor's certificate.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence Plaintiff's Evidence M. K. Ramachandran

10 (Question 644 Banking Practice). The Banker has only to draw the attention of the survivor as to the payment of Estate Duty. If the Banker has satisfactory guarantee or indemnity he may pay out. That is the practice in this country.

Re-examination 13th September 1972 (continued)

Q. If the Banker is fully conscious of the deterioration of the customer's faculties of mind and the customer wants to open an account using his thumbprint, what should the Banker do?

20 A. He should obtain a medical certificate from the doctor in attendance.

PW10: Leow Wong Kwong, affirmed, speaks in English. 26 years old. 71B, Jalan Tenteram, Block 9, Singapore, 12.

Leow Wong Kwong Examination

I am an employee of Robinson's, Singapore as an attendance clerk. My duties are to look after the attendance of employees.

13th September 1972

30 I know Loke Siew Kim. She is an employee of Robinson's. I have the record of leave for the month of July pertaining to Loke Siew Kim. She was on compassionate leave from 18th July to 21st July, 1967. She was on leave from 22nd to 27th July.

On 18th July, she came to work. She applied for leave on 18th. The previous clerk has retired from the company and returned to India.

(Produces record of leave. Line 7. Marked P8).

Cross-examination:

Cross-examination

40 This book is accessible in the morning when an employee registers his attendance. On 18th July, 1967, I was not in charge. I started in February, 1970. I did not watch how my predecessor carried out his functions.



In the High Court in Malaya at Kuala Lumpur

I don't know whether there was rubbing on column dated 19th.

No. 6

Re-examination: No.

Judge's Notes of Evidence

(Adjourned to 9.30 a.m. tomorrow).

Plaintiff's Evidence

Leow Wong Kwong

Cross-examination

13th September 1972 (continued)

14th September 1972

This 14th day of September, 1972

(Hearing continues . Parties as before).

Mr. Shankar refers to report in Straits Times dated 14.9.72.

Refers to Defamation Ordinance, 1957.

Submits that the report is a gross abuse of privilege and impugns the integrity of an officer of this Court. A vital portion was omitted. Ruling omitted.

10

Court held that there was no property in witness. (See (1956) MLJ p.xiv.

Court's ruling was omitted. Although the statement recorded was not admitted, it was nevertheless produced. It is for Court to consider what action to take.

The report is distorted.

20

Asks that a copy of proceedings be made available.

Court: A layman who reads the report may be

inclined to believe that the integrity of counsel was being questioned. The omission of my ruling may indeed convey the impression that there was a serious question of integrity.

In the High Court in Malaya at Kuala Lumpur

As an officer of the Court, it is the duty of counsel to assist the Court. If he in any way misleads the Court or acts improperly, he may be subjected to disciplinary proceedings.

No. 6

Judge's Notes of Evidence

10 I ruled yesterday that there was no property in witness and I also ruled that counsel acted properly. If the report had contained my ruling, such an impression might not have been conveyed. In the circumstances, I require the Press concerned to make the necessary correction.

14th September 1972 (continued)

Mr. Sriram submits subpoena duces tecum served on managing director of second defendant. The subpoena asked for certain documents "X".

Letter received from Shook Lin & Bok produced and marked "Y".

20 Mr. Sriram says he no longer requires (1) and (2). In respect of (3), he is only asking for cheques in June and July 1967 except the cheque where the thumbprint was used. As for (4), he is only asking for the bank statement for June and July, 1967.

Mr. Chan Siew Yoon: Says he is only concerned with procedure. The managing director is an employee of the bank - a party to the suit.

30 The proper procedure is to serve notice to produce document.

Subpoena in this case was not properly issued.

Notice to produce has also been served.

Court: It is difficult for the Court to decide at the relevancy of the document at this stage.

Mr. Chan undertakes to produce.

Mr. Sriram withdraws subpoena.

Mr. Joginder Singh says that the last witness

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

14th September 1972 (continued)

Dr. Daljit Singh is still away in the United Kingdom and cannot be contacted. The Ministry of Health has written to the Students' Bureau but he could not be contacted. He is a very material witness.

Mr. Shankar says on evidence as it is, he will be submitting that the plaintiff has not made out a case.

Court: Case to go on fixing list. To be fixed for hearing as soon as witness is available.

10

Sgd. DATO ABDUL HAMID  
JUDGE,  
HIGH COURT,  
MALAYA.

CERTIFIED TRUE COPY  
Sd-/ Illegible  
.....  
Secretary to Judge,  
Kuala Lumpur.

15th September, 1972

Plaintiff's Evidence

19th April 1973

This 19th day of April, 1973

20

Hearing continues.

Mr. Joginder Singh with Mr. Sri Ram for Plaintiff.

Mr. M. Shankar for first defendant.

Mr. Chan Siew Yoon for second defendant.

Mr. Jagjit Singh watching brief for one of the witnesses.

Mr. Joginder Singh asks to examine the medical notes which is in the Court's custody but have not yet been produced as exhibit.

30

No objection from counsel for defendants.

Witness Abdul Wahab bin Nan Abidin subpoenaed to produce 24 hour nursing notes in respect of Ward 19A, General Hospital, Kuala Lumpur, kept in respect of Loke Yaik Ho deceased in July 1967.

Mr. Shankar enquires whether it is an exhibit before this Court.

Mr. Sri Ram says under s.139 of the Evidence Act, 1950, a witness can be produced and need not be examined.

Mr. Joginder Singh now calls him as a witness.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Judge's  
Notes of  
Evidence  
Plaintiff's  
Evidence  
19th April  
1973  
(continued)

PW11 Abdul Wahab bin Nan Abidin, affirmed, speaks in English. Executive Officer, General Hospital, Kuala Lumpur.

Abdul bin  
Nan Abidin  
Examination

10 I produce 24 hour nursing notes in respect of Ward 19A, General Hospital, Kuala Lumpur. This record book has been kept under lock and key ever since this case started.

19th April  
1973

(Marked for identification - P9).

Cross-examination by Mr. Shankar:

Some time last year, a search was instituted at the General Hospital for this book. I am not aware whether subpoena was issued.

Cross-  
examination  
on behalf  
of First  
Defendant

20 The search was made in Ward 19A. Ward 19A was not in existence last year. (Now says) - The search was instituted in the Medical Record Office. I was not aware of the fact as to whether the book became immediately available. I was not aware that it was Sister Chuan Ho who found the book. I do not know who found the book. I do not know how many people handled the book before it was kept. I have no record of the date when the book was locked up.

19th April  
1973

It was kept in a steel cabinet by the Secretary of the hospital. I do not know his name.

The Timbalan Pengarah (Perubatan) handed this book to me to be produced.

Re-examination: No.

Mr. Joginder Singh refers to the chemist's report.

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Kuala Lumpur

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Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Seong Siew  
Choon

Examination

19th April  
1973

(continued)

PW12 Seong Siew Choon, affirmed, speaks in English. 46 years. 76, Main Street, Kuala Lumpur. Provision salesman; servicing station; cinema; own property.

In 1967, I knew a person by the name of Loke Yaik Hoe. I can recognize the signature of Loke Yaik Ho.

(A cheque is shown to witness - cheque No. A.043381 - drawn on Kwong Yik (Selangor) Banking Corporation for \$200).

The signature on the cheque is that of Loke Yaik Ho. 10

Reverse side. One is my signature in English - another is written by me in Chinese.

On the left is the signature of Mr. Wong Poi - (identified).

I had this cheque in my possession. Mr. Loke gave me the cheque. I collected it in person. I cannot remember the exact date but it was some time in the first week of July 1967. I received it from him in my house at 14, Jalan Brunei, Off Pudu Road, Kuala Lumpur. He rented the front portion second floor from me. It was not a post-dated cheque. I have known Loke for many years. I had never received a postdated cheque from the deceased. 20

After receiving the cheque, I took the cheque back to Kuala Lipis. I asked Wong Poi to cash it for me. He gave me cash in exchange for the cheque.

(Cheque marked P10). 30

I did not come to know that Loke was ill and was hospitalized in July 1967. I knew after July 1967. It was in August when I came to collect my rent. I knew he passed away.

Cross-  
examination  
on behalf  
of First  
Defendant

19th April  
1973

Cross-examination by Mr. Shankar:

I kept a rent receipt book. I have misplaced the rent receipt book for July 1967. After I had received the subpoena, I looked for the receipt book. I could not get it.

I have an account book where I made entries of rents collected.

I have it at Kuala Lipis.

(Mr. Shankar applies that cross-examination of this witness be deferred until he produces the account book). (Mr. Joginder Singh has no objection).

(Witness to produce the account book at 9.30 a.m. on Monday, 23rd April, 1973).

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Seong Siew Choon

Cross-examination on behalf of First Defendant

19th April 1973 (continued)

10 PW13 Wong Poi, affirmed, speaks in Cantonese. 64 years. No.134, Sg. Besi Road, Kuala Lumpur. Transport business - Lee Soon Transport Company.

Wong Poi Examination 19th April 1973

(P10 shown to witness - examines reverse side). My signature appears on the back. It was given to me by Seong Siew Choon (the last witness). I put this cheque into my account either on 14th or 15th of July.

20 I got the cheque at Kuala Lipis from Seong either on 14th or 15th July, 1967. He changed the cheque for cash.

After receiving the cheque, I returned to Kuala Lumpur. I paid it into the Bank on 17th July - Development Bank - into my company's account.

I did see the cheque. I had my glasses on. I did not notice the date.

I have record of receipt of this cheque. I wrote it down in a book. (Book produced - marked P11 - entry P11A).

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence  
 Plaintiff's Evidence

Wong Poi Examination

19th April 1973  
 (continued)

Cross-examination

19th April 1973

Re-examination

19th April 1973

"Seong Chow Chuan - exchange for cash - Kwong Yik - \$200."

I have the bank statement showing when I put the cheque in. I produce the statement of account - (marked P12).

(Witness points to item 17th July - \$370 - deposit consisted of two cheques - one for \$200 - the other \$170. Entry P12A. There is also a record on the amount \$170 - marked entry P11B. Date the two cheques were banked - 17th July).

10

(P10 shown to witness). I did not alter the cheque.

Cross-examination:

P11 is in my own handwriting. The date entries on P11 are not in chronological order.

(Entry on 10th July referred). (Next entry 6th July). Whenever I received a cheque, I recorded it in a book. I would only make an entry after the cheque had been paid into the Bank. A cheque I have issued I would enter on date of the cheque.

20

There is no record of the date I receive a cheque.

I have known Seong since I was a child. Sometimes he used to come and see me. He never exchanged cheque for cash. He used to ask me to buy sundry goods.

I cannot remember the date when cheques were received but I can remember the dates when cheques were paid in.

30

Re-examination:

- Q. How can you remember this cheque was received at Kuala Lipis on 14th or 15th July?
- A. I am not sure of the date. It is either 14th or 15th July. It was exchanged for cash.

Witness released.

(Mr. Shankar asks that he be allowed to recall witness if necessary).

PW14 Dr. Daljit Singh Nagreh alias Daljit Singh son of Daulat Singh, affirmed, speaks in English. 34 years. A906, Jalan Taman Telok, Sisek, Kuantan, Pahang.

In the High Court in Malaya at Kuala Lumpur

Dermatologist. M.B.B.S. Singapore. Diploma in Dermatology, London. M.R.C.P. United Kingdom.

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Judge's  
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Evidence  
Plaintiff's  
Evidence

Dr. Daljit  
Singh Nagreh

Examination

19th April  
1973

10 In July 1967, I was a medical officer attached to the General Hospital, Kuala Lumpur - Medical Unit 1. The head of the unit was Datuk (Dr.) Sinnadurai. I was in charge of Ward 19A and B - also Ward 20.

According to the notes, I have attended to the patient named Loke Yaik Ho. He was in Ward 19A. I might have seen him earlier when he was admitted to Ward 20.

20 According to the notes, the patient was referred to Datuk (Dr.) Sinnadurai by Dr. Loke. On admission Loke Yaik Ho was an ill patient suffering from hypertension with cardiac failure. He also had liver disease secondary to cardiac failure - also shown to have renal failure.

The first note made by me is dated 17th July. I might have seen him at an earlier date but I have not made any note myself.

Senior Consultants do sometimes write notes but most of the time the notes were written by doctors working in the unit.

30 I cannot recollect whether I saw this patient on 15th July. On 15th July, the notes seem to have been written by Dr. Lim Ewe Jin.

According to note, the blood urea of the patient taken on 13th July was 168 m.g. per cent. This is very high. Urea is waste product excreted by the kidney.

Effect of urea on patient: On 17th, no specific note was made as to effect of raised blood urea on the patient.

40 I wrote the following note on 17th July - "Feeling better. Not dyspnoeic. No ankle oedema. Heart - dual rhythm. Lungs clear. Blood urea 168 m.g. per cent done on 13.7.67."



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Singh Nagreh

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19th April  
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(continued)

"Feeling better" was a general term to describe his condition in comparison to that on the previous day.

The figure "168" has been circled in the note to draw attention to abnormally high figure.

18th July: The note made reads -

"Confused. Blood urea 252 m.g. per cent. Heart dual rhythm. Lungs clear."

There is also a note to say -

"Repeat blood urea and serum electrolytes." 10

There is also a review of this treatment on this day. I had drawn a line across all the previous treatment and dated it 18th July. On another sheet written in my handwriting is written -

"Treatment dated 18/7 is as follows -

- (1) Low protein 40 g., low salt diet.
- (2) Eigoxin 0.25 m.g. daily.
- (3) Injection durnbolin one ampule 2 times weekly (Tuesday and Friday). 20
- (4) Intake/output chart.

There is also a stroke cancelling eigoxin treatment. This is dated 21.7.1967.

I produce the note - (marked - file containing note P.13. Witness marked the pages where note was written by him).

On 18th July, the blood urea increased from 168 m.g. to 252 m.g. It is very high. The normal blood urea is from 28 m.g. to 40 m.g. per cent. The rise was rapid. 30

It indicates that his kidneys were failing. The fact that he was confused was the effect of raised blood urea.

By "confused" I mean he was not able to answer to questions relevantly partly because he was unable to appreciate fully what the question was.

I probably did ask him some questions but I have not made any record of them.

There is no note to say whether he was alert or drowsy.

Q. Could he think rationally?

A. As I said earlier, he was not able to answer questions relevantly. This would also mean he would not think rationally.

10 Q. On 18th July, would it be right in saying Loke had complex and multiple factors affecting his health.

A. Yes, he did.

These factors would affect his mental state.

Going back to the note on 15th July, clinically there was some mental deterioration and hesitant intellectuality. But on 18th July, I have not made any record pertaining to his mental state other than the fact that he was confused.

20 Change of treatment: The entire treatment was revised. Several items were struck off from his previous treatment and new line of treatment was also to prevent his blood urea from rising further.

It was necessary to change the treatment because of new information gained while he was in the ward. When he was first admitted, the predominant feature was cardiac failure etc. Later, it became evident he also had kidney failure. This was progressive.

30 Changed treatment: There is no record whether it was changed after consultation with others but the routine in the Ward was to discuss the conditions of patients in Wards 19A and B before any changes in treatment were made - unless these were emergency measures in which case they were done by the person who first saw the patient.

40 On 18th July, I have not made any note whether Loke Yaik Ho had incontinence, but according to the record, the intake/output chart, it states on 18th July the patient had passed urine in bed. There is another entry which says - "Passed urine on the floor."

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Examination

19th April 1973  
(continued)

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Examination

19th April 1973

(continued)

"Incontinence" means inability to control bladder function.

The presence of incontinence indicates several things - for one it could mean he had damage of the nervous system whereby he lost control of his bladder function. It could also mean that his state of mind was such that it did not matter to him where he emptied his bladder.

Nursing notes are records of all patients' conditions kept by a nurse in charge of the ward. These are kept over 24 hours. Each nurse enters her remarks towards the end of her shift duty. Usually there was one staff nurse or Sister who would be in charge who would make her remarks. There were three shifts - morning, afternoon and night - morning 7.00 a.m. to 2.00 p.m. - afternoon 2.00 p.m. to 9.00 p.m. - night 9.00 p.m. to 7.00 a.m.

10

As a rule, doctors do not look at the nursing notes but if one wants to know, notes are available.

20

(Adjourned to 2.00 p.m. Hearing continues at 2.00 p.m. Parties as before).

(PW14 - Examination-in-Chief) Loke Yaik Ho's condition according to nurses' notes (P9) on 18.7.67 - morning shift:

"Condition - fairly ill and drowsy-looking - seen by doctors in charge. Off: all previous treatments."

Written in red with the treatment I gave earlier.

30

Afternoon shift:

"General condition - ill and drowsy, sleeping on and off. On strict intake and output please. Low protein and low salt diet taken fairly well."

Night shift:

"General condition - fair. On strict intake and output chart. Patient P.U. (passed urine) on the floor."

40

These nursing notes would be in keeping with my finding that the patient was confused and ill.

The overall picture of this patient is that of a man who is very ill and was admitted with cardiac failure progressively developing renal failure.

The overall mental state: It would appear from the clinical notes as well as nursing notes that he was confused and in a state of mind that he did not know what he was doing.

This covers the period from 13th to 18th July.

19th July: I made notes on two occasions on that day.

First note:

"General condition - poor - looks confused. Unable to speak well - passing urine in bed and on floor. No incongestive cardiac failure. Bladder appears distended. Repeat blood urea and serum electrolytes."

Second note at 9.00 p.m.:

"General condition poor - very drowsy and confused. Unable to speak. Pruritic rash over chest and back. Blood urea 360 m.g. per cent. Bladder distended. Not dehydrated. Electrolytes sodium 140 milli equivalent per litre. Potassium 4 milli equivalent per litre. Chlorides 88 milli equivalent per litre."

On 19th his physical condition was worse than that on 18th July. His mental condition had also deteriorated further, along with his physical condition.

On 19th night, I inserted a catheter to relieve him of distended bladder.

"Distended bladder" means that he had not been able to pass urine for some time and urine had accumulated in his bladder.

Forty-four ounces of urine were removed through this tube.

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Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Examination

19th April

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Dr. Daljit  
Singh Nagreh

Examination

19th April

1973

(continued)

I made a note of glycosuria or acetonuria. This means there was no sugar or acetone in this specimen of urine.

20th July: I made notes on this date. Compared to his condition on the night before, he was as drowsy in the morning - slightly brighter.

Pulling out the catheter and refusal to take food and drink indicate that he did not appreciate what was being done to him.

10

Mental state: I would describe his mental state as that of an ill patient.

The patient was referred to Sreenivasan.

21st July: (Witness reads notes made on 21st July as follows) -

"Seen by Mr. Sreenivasan last night. Thinks the patient is not suitable to peritoneal dialysis. Patient looks brighter than yesterday. Passed urine in bed last night.

"Patient looks brighter than yesterday" - By this would mean he was not as drowsy as the day before.

20

(Asked about general condition on 20th July, witness says) - I do not think it is possible for me to say anything more than the fact that he was drowsy.

"Drowsiness" means that a patient is very sleepy and is difficult to arouse.

23rd July: I made notes on two occasions. (Reads notes of 23rd July on both occasions as follows) -

30

"General condition - poor.

Restless and drowsy.

Dehydrated.

Not taking any food or fluids.

Passed urine in bed.

Patient refuses to have any drip and hits anyone who tries to feed him.

General condition - poor - very drowsy.

Dehydrated.

Not taking oral fluids.

40

At this stage, he was a very ill patient lapsing into a state of almost unconsciousness.

Overall condition from 19th to 23rd: General condition deteriorating. Mental state - very drowsy and confused on 19th. Improved on 20th and 21st. On 23rd condition was much worse than on 19th.

I have not come across any mention of paralysis in the notes.

(Adjourned to 9.30 a.m. tomorrow.

10

This 20th day of April, 1973

(Hearing continues. Parties as before).

(PW14 re-affirmed, speaks in English).

Cross-examination by Mr. Shankar:

I had a photostat copy of the clinical notes yesterday. It was shown to me by Mr. Joginder Singh on Saturday last week when he came to Kuantan to get my statement. Before that I saw the notes in 1967.

20

If I had not seen these notes, I could not have remembered anything about this patient.

From the notes, another specialist could give a good assessment of the clinical picture.

I was conferred with M.B.B.S. in February, 1964. In July, 1967, I had 3½ years' experience as a doctor. It is not true that I was interested in skin problems in 1967. I had an interest to become a skin specialist eventually.

30

It is true that when there was any difficult problem, I would ask my superior officer for advice and we discussed the patient together.

As for Loke Yaik Ho's problem, I would have discussed it with them from time to time.

Probably there were about 120 beds in Medical Unit 1.

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Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Examination

19th April 1973 (continued)

Cross-examination on behalf of First Defendant

20th April 1973

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Dr. Daljit  
Singh Nagreh

Cross-  
examination  
on behalf  
of First  
Defendant

20th April  
1973

(continued)

I did my ward round between 8.30 a.m. and 12.30 p.m. I had to take care of all patients in Unit 1 - Ward 19A and 19B. I also looked after Ward 20 (Male - 2nd Class) with a houseman directly looking after the patients there. Approximately there were 30 patients.

I cannot recall from memory how many patients I took care of in July 1967. It was a busy period - an average 10 patients at any one time.

10

On average I looked at about 30 patients a day for Wards 19A, 19B and 20. I also had to follow-up patients in the follow-up clinics, - 3 afternoons in a week - average 15 patients on each clinic day.

How much time I would spend on an individual patient varies according to the severity of the patient's illness.

I cannot remember how much time I spent with Loke Yaik Ho on each occasion, but from my notes and realising his condition, I probably had spent a fair amount of time with him - from 15 minutes to half an hour on each occasion.

20

Q. In so far as assessing his mental condition is concerned, would you concede that to know a person for a long time prior to seeing him would be an advantage?

A. No, it would not have been an advantage. From his condition, he had sufficient mental changes that it would not have made any difference in recognizing these.

30

Q. The mental condition from 13th to 18th July given yesterday - was it gathered from the notes?

A. The notes were made after examining him.

Q. Are you saying that from 13th to 18th, minute to minute, Loke Yaik Ho did not know what he was doing?

A. No, there were times during these days when he would have known for very short periods what he was doing.

40

- Q. The duration of these periods when he knew what he was doing could be attested to by a person observing at that time?  
 A. I agree.

Drowsy: (Exhibit P13 shown to witness. Entry on 14.7.67). I do not know who prescribed this treatment. It might have been the medical officer in charge of the ward in which he was warded. Initially he was admitted to Ward 20.

- 10 One of the treatments - fluid restriction (item 4). The amount of liquid should be reduced.

Item 6 - Injection etc.: Mersalyl - diuretic - a drug meant to induce passing of urine.

Item 7 - chlorothiazide is also a diuretic.

The combined effect was to produce output of urine. They were effective diuretic but not powerful diuretic.

A normal person given the diuretic would tend to pass more urine than normal.

- 20 Input and output chart: The purpose was to measure liquid taken in and the amount of urine passed out. The function is carried out by nurses.

To measure accurate output, it must be passed into urine container - saved up for the nurse. That would require the co-operation of the patient. Whenever he co-operated, a reading of output should be available.

- 30 Q. At the time he was co-operating, he knew what he was doing?  
 A. Yes.

The patient was occupying Room 3A. I cannot confirm whether there was a toilet in that room. Somewhere in Ward 19A, there was a toilet. To get to the toilet, he had to walk or be wheeled there or be helped by somebody. That help may not have come from the nurses as their duty was to trap urine. If he were to go to the toilet, the nurse would stop him.

- 40 Intake and output chart - 14/7 to 18/7 (page 26 of P13):

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant

20th April 1973  
 (continued)



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Kuala Lumpur

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Plaintiff's  
Evidence

Dr. Daljit  
Singh Nagreh

Cross-  
examination  
on behalf  
of First  
Defendant

20th April  
1973  
(continued)

Q. Looking at the chart, could you confirm that from 7.00 am. to 2.00 p.m., the patient produced 5 ozs. output?

A. Yes.

Four ounces - about 1 cup.

When the patient was trapped, he knew that he was passing urine. I do not know whether 5 ozs. was produced in one go or in separate quantities.

Between 2.00 p.m. and 9.00 p.m. entry was nil. "P.U. in toilet" - It may mean that he went to the toilet once or several times.

10

Q. Can you from the notes, say when the first dose was administered to Loke Yaik Ho?

A. From page 3 of P13, on 13/7, the first dose of 2 c.c. of injection was given (Mersalyl).

There is no record of the actual time of the administering of the tablets or oral medicine. It is reasonable to conclude that since chlorothiazide was prescribed, the first dose would have been administered shortly after he was admitted.

20

The effect of these drugs would be noted in a matter of few hours.

On 15/7 Loke Yaik Ho was already under the influence of diuretic. From 9.00 p.m. there was 'nil' entry and 'P.U. in bed.'

From the night of 15/7, from 9.00 p.m. to 7.00 a.m. 16/7, the entry there was 'P.U. in toilet.' It can be inferred that Loke Yaik Ho went to the toilet to pass urine but we do not know how many times. On 16/7 and 17/7 there were visits to the toilet.

30

On the night of 17/7, there was an entry - "N.P.U." It was then crossed out and there was an entry - " $\frac{1}{2}$  ounce."

On 18/7 from 7.00 a.m. to 1.00 a.m., 10 ozs. were collected. I cannot say whether it was in one go or several quantities. He might have been aware that he was passing urine.

The procedure as to collection of urine from a patient: In this particular case, I do not know how the urine was collected. Generally,

40

in the case of a conscious patient, he is given a very large bottle. Usually, it is left in his room by the side of the bed or in the toilet if a toilet is attached to the room, and the patient is asked to pass all urine into that bottle. In the case of a patient who is not able to get out of bed for some reason or other, he is normally provided with a urinal into which he can pass urine. The urinal can be left by the side of the bed.

10 This urinal is placed between the thighs and this would apply to patients who are unable to help themselves. It would not apply to a patient who sits up on the side of the bed.

20 The other procedure for collecting urine from a patient who is conscious or unco-operative and in whose case it is necessary to know the exact amount of urine produced, is to insert a catheter. This could either be released periodically for the urine to be collected, or it could be connected to a bag or a bottle for continuous drainage.

The job of collecting urine is not a pleasant one even for a nurse. Looking at the chart, there is further entry on that chart after 2.00 p.m. on 18/7.

The next chart is at p.23. At page 27, there is a chart for measuring sugar from urine. It is not an intake and output chart.

Intake and Output chart:

30 Page 28 - first entry 4.00 p.m. - the reading is between 2.00 p.m. and 9.00 p.m. At 4.00 p.m. "P.U. in bed." At 6.00 p.m. "P.U. in bed."

On 19/7:

At 8.30 a.m. "P.U. in bed." At 12.00 noon, "P.U. in bed."  
Total: 7.00 a.m. to 2.00 - "P.U. in bed."

Page 27 - entry for 10.00 a.m. and 2.00 p.m. - "N.P.U." According to the chart, one nurse entered "P.U. in bed" and the other "N.P.U."

40 (Page 9 of P13 referred). I would assume the entry was made in the morning. From the nursing notes, these changes were also noted by the morning-shift nurse.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant

20th April 1973  
(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Judge's  
Notes of  
Evidence

Plaintiff's  
Evidence

Dr. Daljit  
Singh Nagreh

Cross-  
examination  
on behalf  
of First  
Defendant

20th April  
1973

(continued)

The papers in P13 are not filed according to chronological order. The file itself is not the original file.

(Witness shown Exhibit P9 - entry on 18/7/67).  
It does confirm that the change in the treatment was made in the morning.

The other note (page 10 P13) was also made in the morning. I did not make a note of the patient's condition on the evening of 18/7/67.

There is an entry in red stating "Intake output chart please." These notes are kept entirely by the nurses. This is to inform the nurses coming for the next shift that they should carry on the instruction strictly. 10

Clinical notes are being kept in Ward 19 in the common doctors' office. The nurses have access to these notes at all times. The nurses take the instructions down in their treatment cards. The doctor, when he gives the instruction, simultaneously writes down the instruction in the clinical note. A clinical note, after it is written, is handed back to the nurse. 20

On 21st morning - digoxin - that was prescribed on 18/7/67 but was discontinued. The nurse in attendance would have known that.

On 20/7/67 at 10.15 p.m. Mr. Screenivasan saw the patient and said that the patient was not suitable for dialysis.

(P9 - entry for 22/7/67 referred).

Q. Can you confirm that the nurse concerned made an entry on 22/7/67 - "K.I.V. for dialysis by Mr. Sreenivasan Surgical Unit 2 (Morning Shift)? There is a similar entry by the afternoon shift nurse. 30

A. Yes.

Q. The description 'drowsy' would not fit a person who is capable of walking to the toilet to ease himself and come back?

A. It could apply. It depends on the degree of drowsiness. He could stagger to the toilet and get back. 40

- Q. However drowsy he was, he would know what he was doing?  
 A. This would depend on how complicated was the act involved.

In the High Court in Malaya at Kuala Lumpur

In the absence of the patient, it would be difficult to estimate the degree of drowsiness.

No. 6

(P9 - entry for 14/7/67 referred).

Judge's Notes of Evidence

- Q. Can you confirm that the nurse who made the entry commented that Mr. Loke Yak Ho was a very obstinate person?  
 A. Yes, there is an entry.

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

(Entry for 15/7/67 referred).

Cross-examination on behalf of First Defendant

- Q. The nurses commented that his general condition was fair?  
 A. Yes.

20th April 1973  
 (continued)

One of the treatments prescribed was "C.R.I.B." (complete rest in bed) - to lie in bed in a propped-up position.

- Q. According to the nurse's note, Loke Yaik Ho refused to listen to instruction and would not maintain "C.R.I.B."?  
 A. There is such an entry. It is difficult to say whether he did not listen to instruction or he did not get the message.

(Entry for 16/7/67 referred). The patient was complaining of cough. Presumably he was able to talk. It indicates that he was able to communicate.

(Entry for 17/7/67 referred). His condition was noted to be fair. There is an entry for 18/7/67 that he was ill and drowsy but the last entry states that his general condition was fair.

(Entry for 19/7/67 referred). Morning - C.R.I.B. advised but the patient was unco-operative. Last entry for 19/7/67 - general condition fair. There is a further entry that Loke Yaik Ho got out of bed and stood at the window - the entry is in red ink.

Physically the patient was able to move around himself at that time.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant

20th April 1973 (continued)

On 20/7/67 - morning - catheter was inserted but the patient pulled it out again.

Night of 20/7/67 - The patient was ill and drowsy. At 10.15 p.m., the patient insisted on sitting up in bed and refused to lie down. From the notes, it would appear that it was difficult to get across to the patient.

From my notes for 18th and 19th morning and for 19th night where I said he was confused, I would say he did not get the message. I did not perform psychiatric tests on the patient.

10

When I treated the patient, I did not separate his physical state from his mental state.

(Page 3 P13 referred). From 13th to 19th, the blood pressure had been stabilised. The temperature had also been stabilised, except the temperature on the first 3 days was normal. 99.2 degrees on 2 occasions. The respiration rate has been entered at 2.00 p.m., except on the first day. Pulse and heart beat was around 80 to 90 - within normal limits.

20

According to the chart, the blood pressure, temperature and respiration were within normal limits.

From 20/7/67, the blood pressure was high.

The first blood urea reading was noted on 17th and this was from specimen blood taken on 13th. Subsequent reading showed it was higher and this caused concern.

- Q. The result of that concern was that you discontinued, as from 18th, the treatment?
- A. The treatment was revised on 18th in view of this raised blood urea level.

30

The only item carried on was eigoxin. All other items were discontinued.

(Adjourned to 9.30 a.m. Monday morning).

CERTIFIED TRUE COPY  
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.....  
SECRETARY TO JUDGE  
KUALA LUMPUR  
23rd April, 1973.

SGD. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

40

This 23rd day of April, 1973

(Hearing continues at 9.55 a.m. Parties as before).

(PW14 re-affirmed, speaks in English).

Kidney disfunction:

From the time of admission, there was evidence of renal impairment. Renal means kidney.

It is not necessarily so that there would be an increase in potassium when there is kidney damage. It is not a general rule that one would expect potassium rise.

10

The rise in potassium in kidney failure would depend on the type of kidney failure, i.e., the type of lesion - also at a certain stage of the disease. In kidney failure of sudden onset whether there is a complete or almost complete shut down in the production of urine and also in a long standing slowly progressive kidney failure in the terminal stages when there is a fall in the production of urine, there would be a rise in the level of blood potassium.

20

Q. If there is an absence in the rise of potassium level, one may infer that there has not been a shut down of production of urine nor that the terminal stages has been reached where there is a diminished production of urine.

A. Yes.

(Witness referred to p.14 of P13). On 17th the potassium level was below the normal range. On 19th and 21st the potassium level would fall at the lower end of the normal range. The normal range varies according to the method of estimating it. It normally varies from 3.5 to 5.4. There is more than one method of estimating it. I cannot say which method was applied in this particular case.

30

The level of sodium was normal between 17th and 21st July. The level of chlorides was lower than normal. The level of potassium was not an indicator of the amount of urine produced.

40

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence  
Plaintiff's Evidence  
Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant  
23rd April 1973  
(continued)

In the High  
Court in  
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Kuala Lumpur

—  
No. 6

Judge's  
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Dr. Daljit  
Singh Nagreh

Cross-  
examination  
on behalf  
of First  
Defendant

23rd April  
1973  
(continued)

The level of chlorides is now believed to be of no help in assessing renal function and in most centres it is not even performed.

There was no dramatic variation in the level of serum electrolytes from 17th to 21st. The only level that was constantly going up was the blood urea.

Q. Would you concede that Mr. Sreenivasan is an acknowledged expert in eurology?

A. Yes.

10

(Counsel refers to p.54 of notes of evidence, line C3 as follows - "The high blood urea per se is not regarded by most workers in the field to be responsible for mental symptoms but the facts associated with it and there is retention of fluid and therefore swelling of the brain which is responsible for that mental dementia.")

Q. Would you agree with that statement?

A. I would agree, but there are other factors.

20

(Counsel refers to p.55 of notes of evidence, line B2 as follows - "Urea per se does not affect the mental condition. You cannot judge by urea alone.")

Q. Do you agree?

A. I do not entirely agree.

Q. In so far as this case is concerned, when you received the results of the reading, you assumed they were correct?

A. Yes.

30

On 18th I requested for a serum electrolytes test.

Q. When such a test is requested, you would sign a form as appears at p.17A of Pl3?

A. Yes. This form is referred to as IMR form.

There is no IMR form dated 18th July. If a test is ordered as a routine, the specimen would be taken by the staff nurse or Sister the following morning, but if the result is required urgently, it could be taken by the doctor who orders the test.

40

These tests were routine tests. The filling in of the date is normally done by the nursing staff.

On page 17A of P13, no date was entered in the form. At that time, there were no facilities for auto analysis of specimen.

Q. The method used was to compare specimen with pre-established specimen?

10 A. I do not know the details as to how the tests were conducted.

Q. As a general statement, would you agree with - "It has long been recognized that extreme degrees of nitrogen retention may not be accompanied by uremic symptoms and that there is no constant correlation between the degree of nitrogen retention and the severity of the symptoms?" (Counsel referred to Cecil and Loeb - Text Book of Medicine, 9th ed. p.1122 - 1955).

20 A. As a general statement I would agree with that.

The patient was on eigoxin. Tolerance of a drug varies from patient to patient.

Q. One of the side effects of eigoxin was mental confusion?

A. Yes, it is.

Q. The degree of mental confusion produced would depend on the dose?

A. Yes - it depends on the total dose.

30 The dose given in this case was 0.25 m.g. twice a day. The toxic effects of eigoxin would wear off very quickly compared to other drugs having similar action.

Q. The degree of confusion produced would be very difficult to estimate?

40 A. Yes, in the presence of other conditions, it is difficult to assess the degree of confusion contributed to by an overdose or large dose of eigoxin. A dose of 0.25 m.g. twice a day was more than a maintenance dose. Once daily is a maintenance dose to an average patient.

(Page 23 of P13 referred). On 18th only 0.25 m.g. was administered to the patient.

In the High Court in Malaya at Kuala Lumpur

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Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant

23rd April 1973  
(continued)



In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant

23rd April 1973 (continued)

The mode of measuring the effect of eigoxin is to measure the apex heart beat. The reading from p.23 to p.92 was taken at 8.00 a.m. There was no heart beat reading that evening.

Incontinence: Diuretic was discontinued as from 18th.

(Page 27 of Exhibit P13 referred). According to the chart, the patient did not pass urine on that day.

On the assumption that he did not pass urine, the chart does not indicate that the patient was capable of urine retention. The patient was catheterised on the night of 19th.

10

I said that the pulling out of the catheter indicated that the patient did not appreciate what was being done for him.

If the patient allowed it, it could mean that the patient was appreciating what was being done for him. The other possibility is that he was unaware that a catheter was being inserted because he was unconscious or was unable to appreciate what was happening.

20

The catheter was inserted at 9.30 p.m. on 19th. It was released at various times from 9.30 p.m. to 5.30 a.m. the following morning. The catheter was inserted through the urethra. It was physically uncomfortable.

There are patients who do not like catheters inserted into them. Such patients could pull it out themselves.

30

(P9 shown to witness). 19th July - last entry - the general condition of the patient was fair. It was made by the nurse on shift duty from 9.00 p.m. to 7.00 a.m. 20th July. The nurse also recorded that the patient got up and stood at the window.

- Q. The condition of the patient deteriorated from 21st to 23rd?
- A. Yes.

Q. No further readings of either blood urea or serum electrolytes were taken after 21st?

A. Yes.

Q. From your notes, it would appear that you did not even see the patient on 22nd?

A. I may or may not have seen the patient.

Q. When Mr. Sreenivasan saw this patient, you were not present?

A. I cannot confirm or deny.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Cross-examination on behalf of First Defendant

23rd April 1973 (continued)

Re-examination

23rd April 1973

10 Cross-examination by Mr. Chan Siew Yoon - No.

(Adjourned for 15 minutes).

Re-examination by Mr. Joginder Singh:

The catheter is not easily pulled out. A catheter of this type has a pump near its end which is inflated after the catheter has been placed in the bladder. This bulb usually contains about 15 millimetres of water when it is fully inflated. This prevents the catheter from slipping out of the bladder. To remove the catheter, the bulb has to be deflated first by draining its contents.

20

It would cause great pain if the catheter were to be pulled out. It would be difficult to say whether the patient was conscious or not when he pulled out the catheter.

[Counsel refers to p.55 of notes of evidence (Mr. Sreenivasan's evidence - passage referred to in cross-examination - "Urea per se does not affect the mental condition. You cannot judge by urea alone.")] I said I did not entirely agree with that statement. The rapidity with which blood urea rises from day to day is an important factor. In a patient in whom the blood urea rises rapidly over a period of a few days, it would certainly have an effect

30

In the High  
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Re-  
examination

23rd April  
1973

(continued)

on his mental state. On the other hand, in a patient with blood urea which has elevated over a period of months, lesser effects would be noticeable on his mental state.

In this case, as far as the kidney functions were concerned, the blood urea was the only factor. The patient also had sufficiently severe liver damage present on admission which would also affect his mental state.

On 18th July, I had not made any note pertaining to his liver condition. Changes as a result of liver damage which were noted on admission substantiated by the alteration in his liver function test would indicate irreversible liver damage.

10

(Counsel refers to Cecil and Loels, 9th ed.).

The qualification to what I testified earlier is that a severe degree of nitrogenous waste product accumulating in the body over a very prolonged period of time measured in terms of months may not manifest itself with any mental changes.

20

(Pg.27 of P13 referred). Chart - passing or urine: The function of this chart is merely to record by testing if there was any sugar present in the urine collected at these specific times.

Chart for 19th: "N.P.U." merely indicates that at 10.00 a.m. and 2.00 p.m., a specimen of urine for carrying out these tests was not available.

30

Whether the patient was conscious at a particular time during this period 13th to 18th could be best testified by a doctor present.

Q. On P13 and P12, could you confirm that the patient was more ill from 18th to 23rd than from 13th to 17th?

A. Yes.

(Pg.26 P13 referred). On 14th July, the patient went to the toilet between 2.00 p.m. and 9.00 p.m. He was asked to save all specimen of urine for measurement. He was not following

40

instruction when he went to the toilet.

I used in cross-examination the term "patient was not getting the message."

- Q. Could you confirm from Yaik Ho's act by going to the toilet, whether he got the message?  
 A. I am unable to confirm or deny that Yaik Ho did not know what he was doing when he went to pass urine in the toilet before 15th July.

10 From the notes made on 15th July which said that he had mental deterioration and from my own notes made on 18th July onward, I would infer that he did not get the message.

Pg.26 of P13 referred - entry on 14th night - 9.00 p.m. to 15th morning - "P.U. in bed.") There is an entry. I am unable to say whether he knew the nature and consequences of passing urine in bed.

20 From the notes, I could say that it was probable that the patient did not know what he was doing when he passed urine in bed.

There is an entry for the night of 15th to the morning of 16th on p.26 of P13.

He was not following instruction.

The patient visited the toilet on 16th morning and after the shift.

The patient did not follow instruction - a simple instruction.

Input and output chart: - It requires the co-operation of the patient.

30 Container placed between the thighs: It requires the co-operation of the patient.

P9 - nursing notes - 15th July morning shift:  
 The instruction to remain in bed was a simple instruction.

P13 - p.26 - last entry 18th July made at 7.00 p.m. and 2.00 a.m. - no other entry on p.26. Entries at p.28 - 4.00 p.m. to 6.00 p.m. - "P.U. in bed."

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Re-examination

23rd April 1973  
 (continued)

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Dr. Daljit  
Singh Nagreh

Re-  
examination

23rd April  
1973

(continued)

There is no record to show that the patient passed urine between 2.00 p.m. and 4.00 p.m. on 18th July.

P9: In the afternoon, it is recorded that on 17th July - general condition was the same, blood urea ..... Doctor to note .....

The patient was unable to swallow capsules. It is not recorded in the note why the patient was unable to swallow.

On 20th July - p.9 of notes - confirm that the patient was drowsy throughout the day. On 20th morning the catheter reinserted was pulled out again.

10

On 21st - patient was ill and drowsy-looking - also in the afternoon.

On 22nd July: Patient's condition - very ill and drowsy throughout the day. It was noted that the doctor in charge had seen the patient.

Condition of patient on 18th July -

- Q. Would this patient know what he was doing if he allegedly fixed his thumbprint?  
A. In my opinion, with reference to my notes and the nurses' notes, on 18th July, Yaik Ho would not have been in a position to know what he was doing when he affixed his thumbprint.

20

In my opinion, at no time at all, was the patient in a position to know what he was doing.

(Adjourned to 2.15 p.m.)

(Hearing continues at 2.20 p.m. Parties as before. Re-examination of PW14 continued).

30

(Pages 2 and 3 of P13 referred). 13th to 19th - heart beat, temperature ..... within normal limits. On 23rd his temperature was 100.4 degrees. Earlier readings on 23rd July were within normal limits.

Respiration - within normal limit - except for the last reading on 23rd July. Pulse rate was within normal limit except the last reading.

Patient died at 1.00 a.m. Last reading was at 8.00 p.m.

Blood pressure: On admission, it was on high side. Subsequently it dropped. There was no recording on 14th and 15th. From the 16th up to 19th, it was normal. The level was consistent between 16th and 19th. The level was reduced by treatment on which he was put on admission. The treatment was changed on 18th. Upon change the treatment used for heart failure also improved his blood pressure and some of this treatment was discontinued on 18th.

Witness released.

(PW12 Seeong Siew Choon re-affirmed, speaks in English).

(Cross-examination by Mr. Shankar continued). I have brought an account book showing the rents collected from Loke Yaik Ho with effect from June 1959 to 1966.

I am the registered owner of this building - No.14, Jalan Brunei. Loke was only one of the tenants in that building. In 1967 there were several other tenants in that building. Apart from this building, I owned other buildings in Kuala Lumpur. I own another shophouse - No.47, Jalan Pasar, Kuala Lumpur.

I do not know about No. 58/1, Jalan Selatan, Off Pasar Road. I got a subpoena. The subpoena was addressed to 58/1, Jalan Selatan, off Pudu Road. No. 47, Jalan Pasar is a few doors' away from Kwong Yik Bank - Jalan Pasar Branch.

In 1967 I visited this branch office to pay in money into the account of my father. When I came from Kuala Lipis, I would stay at No. 47, Jalan Pasar. There was accommodation for me in one of the rooms at the upper floor.

I have the counterfoils of the receipt books. The receipt books relating to 1967 are these two.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Dr. Daljit Singh Nagreh

Re-examination

23rd April 1973  
(continued)

Seong Siew Choon

Further cross-examination

23rd April 1973

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Seong Siew Choon

Further cross-examination

23rd April 1973  
(continued)

Normally I write receipts before I arrive at Kuala Lumpur.

The account book for 1967 was not completed. I cannot remember whether the last month's rent for 1967 was paid in cash. I cannot remember whether I collected 3 months' rents - the last 3 months' rents. I cannot remember receiving money from the first defendant. I do not remember meeting him in 1967.

- Q. The rent for September, 1967 was not paid to you at all? 10  
A. It is so long ago - I cannot remember.

There was \$30/00 by way of deposit for rent from the time the tenancy began. I also held a deposit of \$20 for electricity and \$10 for water. The tenant was on credit for \$110/00.

I confirm that when the receipt for September, 1967 was issued, the deposit was set off against the rent and \$20/00 was given back. I cannot remember whether it was in June, July or August, rent was received in one lump sum. 20

According to the receipts, I collected rents up to the end of September, 1967. I cannot remember when the tenant left.

Occasionally I used to be late in collecting rent. I would then collect the rents outstanding previously. I cannot remember who went to collect the rent - whether it was I or my father. I cannot remember whether any advance notice was given. 30

I remember I received a cheque from Kwong Yik Bank after the first week of July. I cannot remember how long after the first week of July I received the cheque.

(Witness shown 3 receipts - for February, March and April, 1967). The signatures on these receipts are my father's.

The building was mine from 1959. My father signed the receipts. When I was free I prepared the receipts. When he was free he prepared the receipts. My father had an account in Kwong Yik Bank. 40

Not all the 3 receipts were issued on the same day. Two of them - February and March - were issued on 14.3.67.

There is a mistake. The receipt dated 1.3.67 should be dated 1.2.67 and the receipt dated 1.2.67 should be dated 1.3.67. Between the two receipts, there were other receipts which had been issued.

(Receipts, marked D14 A, B and C - counter-foils - marked D15).

10 On the original there is marked "Paid". I cannot recognize whose writing it is. In P15 every counterfoil bears my father's signature.

(Three receipts for June, July and August, 1967 produced - marked D16 A, B and C). I cannot remember whether all three receipts were issued to the tenants on the same day. I cannot remember whether money was paid in September, 1967.

20 Cheque for \$200: This was paid to me when I went to collect rent. The rent was \$90/00 per month. There is no relationship between the amount drawn on the cheque and the amount of rent.

(A receipt for the month of May shown to witness. Produced and confirmed by witness. Marked D17).

(Chan Yoke Yin called in). She is the lady who was staying with the deceased. I do not know whether she was the deceased's wife.

30 Q. Would you deny that this lady brought cheque (P10) to you at your house at Jalan Pasar and asked you to cash it for her?

A. I do not seem to remember that. It is so long ago. Definitely not - I did not get a cheque from her.

Q. Can you explain why a cheque for \$200/- was given to you?

A. I received \$200/- for two months' rent and paid back \$20 to Mr. Loke - deceased. I now say I remember giving \$20/- cash to the deceased. There is no record.

40 I cannot remember the other occasions when I cashed cheques for the deceased.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Judge's Notes of Evidence

Plaintiff's Evidence

Seong Siew Choon

Further cross-examination

23rd April 1973

(continued)



In the High Court in Malaya at Kuala Lumpur

Re-examination: No.

Witness released.

No. 6

(Mr. Joginder Singh closes case for plaintiff).

Judge's Notes of Evidence

(Adjourned to 9.30 a.m. tomorrow).

Plaintiff's Evidence

Sgd. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

Seong Siew Choon

23rd April 1973

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.....  
SECRETARY TO JUDGE  
KUALA LUMPUR

24TH APRIL, 1973

24th April 1973

THIS 24TH DAY OF APRIL, 1973

(Hearing continues at 9.50 a.m. Parties as before).

(Kuan Mun Koh - representative of second defendant - left the Court. He is to be called as a witness).

20

Defendant's Evidence

DWL: Chow Yee Wah, affirmed, speaks in Cantonese. No. 1130, Lorong Ayer Kuning, Setapak, Kuala Lumpur. Orchid breeder.

Chow Yee Wah

Examination

Q. It is alleged that the thumbprint of Yaik Hoe was taken on a cheque after he died. Is there substance in the allegation?  
A. Definitely not.

24th April 1973

Q. It is also suggested that alternatively the thumbprint was put on the cheque when Yaik Hoe did not know what he was doing. Is there any substance in that?  
A. There is no substance in this allegation.

30

I first came to know the deceased before the Japanese War. He was a salesman in Fraser and Neave. I continued to know him. In 1954 my relationship with him became closer. I married

his half sister Loke Soh Eng.

Q. In 1956 was there any change in the personal representative of the Estate of Loke Chow Kit?

A. Yes, at that time, the administrator of Loke Chow Kit passed away and the deceased was elected one of the administrators.

10 My wife had a share in the Estate. Loke Soh Keen is the third daughter of Loke Chow Kit. My wife is the youngest - No. 8. In 1958 Loke Soh Keen passed away. I and my wife were the executors of Loke Soh Keen's will.

Since 1958 I had to see the deceased in so far as the affairs of the Estate of Loke Soh Keen were concerned in the capacity of trustee of Loke Soh Keen's Estate. I went to see him quite often.

20 Since 1961 the deceased was living behind the Majestic Theatre at Jalan Brunei. He lived there before 1961. Since 1961 Chan Yoke Yin lived with the deceased at Jalan Brunei. They had known each other since childhood. She was a good woman. They were husband and wife.

(Mr. Joginder Singh asks the Court to decide on the question of estoppel - whether the witness can give evidence that the deceased and Yoke Yin were husband and wife. The witness is estopped from adducing such evidence. In the statement of claim (p.26) the first defendant claimed to be a mere trustee of Yoke Yin).

(Court: Overrule objection).

I say that Chan Yoke Yin and the deceased were husband and wife because when I went to see the deceased, he introduced her to me as his wife. The nephews, nieces and sisters of the deceased regarded Chan Yoke Yin as their fourth aunt. I regarded her as fourth sister-in-law.

Choo Ah Pat was then in 1961 - living in Petaling Jaya. In 1961-4 she had no fixed residence. Choo Ah Pat came to stay with the deceased and Yoke Yin in 1965. She stayed for a few months. She left the house because she was not on good terms with her son.

On 13.7.67 the deceased was admitted to

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hospital. On 12.7.67 in the evening, I went to Loke Park Thong's house. Park Thong is the niece of the deceased. She was staying at No.13, Jalan Mayang. Next door was Dr. Loke Wye Tuck. I arrived at her houses between 5.00 to 6.00 p.m. That day was the birthday of Park Thong's daughter. I met Kuan Mun Koh. There was a party for Park Thong's daughter. Kuan Mun Koh is the representative of the second defendant. Kuan Mun Koh told me that his uncle was sick and that if he met me, he was to ask me to go and see his uncle. He referred to the deceased. He told me something was to be done - in connection with the opening of a joint account. The next day I went to see the deceased at about 9.00 a.m. I met the deceased at Jalan Brunei. When I went there the deceased was seated at one square table in the hall. He put both his hands on the table - facing the door. The door was not locked. No.14, Jalan Brunei is a three-storey terrace house. The deceased's flat was on the top floor. When I arrived I did not see Chan Yoke Yin. I greeted him and asked him, "What is the matter?"

10

20

(Mr. Joginder Singh objects to evidence of what the deceased said. Says it is hearsay evidence. Refers to s.32 - particularly to subsection (1). Evidence does not pertain to cause of death).

(Mr. Shankar: Question of state of mind - mental capacity at issue. Refers to s.7 and s.14 Evidence Ordinance).

30

(Court: Overrule. Witness may relate what transpired - not what deceased said).

I and the deceased had a discussion. He wanted to have a joint account with me. The purpose was to look after his wife. I noticed that he was sick. I inquired whether Dr. Loke Wye Tuck could see him. He agreed. The discussion lasted for about one hour. In the course of the discussion, the deceased's wife Chan Yoke Yin came. She came from a room. She gave me a cup of tea. Later I went home. On the way home I stopped at Dr. Loke Wye Tuck's clinic at Jalan Pahang. I had to pass his clinic to go to my house. I told Dr. Loke Wye Tuck that his uncle was sick and that earlier I had a discussion with the deceased and that

40

deceased agreed to see him. Dr. Loke did not know where the deceased was living. I subsequently arranged to go to the deceased's flat with Dr. Loke. We went in my car. When we both arrived, the deceased was in the bathroom. He came out of the bathroom. The deceased was wearing a sarong. He had a bath.

10 Dr. Loke tested the deceased's blood pressure. Dr. Loke asked the deceased not to move about so often. He recommended that the deceased be admitted to hospital for treatment and also for rest. Dr. Loke would arrange for an ambulance to take the deceased to the hospital. Dr. Loke told me that the deceased's heart was weak and he did not want the deceased to exert himself. I accompanied the deceased to hospital. We arrived between 4.00 and 5.00 p.m. The deceased was at first admitted to Ward 20 - second class. I left the hospital after 4.30 p.m. That evening between 20 5.00 and 6.00 p.m., I visited him again. The next day I visited the deceased at about 5.00 p.m. I went to Ward 20. I was told that the deceased had changed ward. I went to another ward. I saw the deceased standing at the window. He was doing nothing. I went to his room and greeted him. I asked him what he was doing. He told me he bought ice cream to eat. I stayed with him for half an hour or more. I told the deceased to be in his bed. I saw a glass of beer by the side of his bed. 30 I asked him why he had taken beer. He said he took beer to make it easier to pass urine. The deceased was sick but he was not serious. He appeared to me to be normal - mentally normal.

The next day I went again to see him at the hospital. My wife Soh Eng went with me to visit the deceased. We stayed with the deceased for half an hour or more.

I did visit the deceased again the next day on 16th. I did not go on 17th.

40 There was an incident between my wife and the deceased - probably on 15th. The deceased was the administrator of Loke Chow Kit's Estate. When we subdivided the land there was a payment of \$7.00 or \$8.00 to be made to the Municipality. Earlier on we had a meeting and all beneficiaries agreed to pay. We asked the deceased to sign. He refused to sign. Because no payment was made the

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work would be delayed. My wife asked the deceased to sign but he refused to sign. The deceased told my wife that he would look into the matter when he recovered and came out of hospital.

(Adjourned for 15 minutes. Hearing continues at 11.45 a.m. Parties as before).

(A cheque No. A.043382 together with application and 2 current account cards shown to witness).

I have seen these documents before. They relate to the opening of a joint account. The cheque is dated 18th July. 10

Q. Between 13th to 18th, was there further discussion between you and the deceased about the opening of a joint account?

A. Every time when I visited him the deceased asked me to hurry up with the opening of the joint account.

I noticed that the deceased's mental state was such that it was not necessary for me to hurry up with the matter. 20

"Sun keng" means the brain is not in order. "Cheng sun" means the appearance.

I used the word "cheng sun." I told Dr. Loke Wye Tuck of the deceased's desire to have a joint account with me. The deceased told Dr. Loke that he had decided to open a joint account.

On the morning of 18th, I had a discussion with Dr. Loke. It was between 10.00 and 11.00 a.m. Dr. Loke telephoned me. He told me the deceased had decided to open a joint account with me. He asked me to see Kuan Mun Koh who would handle this matter. Dr. Loke told me that he dropped in to see the deceased. After a telephone conversation, I got in touch with Kuan Mun Koh. I telephoned Kuan Mun Koh and arranged to meet Kuan Mun Koh at the hospital at about 5.00 p.m. I met Kuan Mun Koh at 5.00 p.m. at the hospital. The deceased was in Ward 19 - first-class ward. The deceased was in a room. When I arrived at the hospital the deceased was sitting on the edge of the bed with his legs dangling. The deceased's wife was present. Soon after I had arrived, Kuan Mun Koh also arrived. Kuan was holding a paper bag. 30 40

The intention of Kuan Mun Koh was to open a joint account for me and the deceased. Kuan Mun Koh asked the deceased about the joint account with me. The deceased said, "Yes." Then Mr. Kuan took documents out from his paper bag. He asked the deceased for a cheque book. The deceased's cheque book was in the deceased's suitcase. The cheque book was taken out of the suitcase by Chan Yoke Yin on the instruction of the deceased.

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10 Kuan Mun Koh handed the documents he took out to the deceased. The deceased asked for a pair of spectacles from his wife. The deceased wore spectacles. The spectacles were in a drawer by the side of the bed. Yoke Yin took the glasses for him. The deceased opened the case and put on the spectacles by himself. The deceased took the documents and read them. I can recognise the documents.

20 These are the documents the deceased read. (Witness examines the letter for joint account and the specimen cards).

The deceased said his hand was swollen and it was difficult for him to hold a pen. The deceased inquired from Kuan Mun Koh whether he could use his thumbprint. Kuan Mun Koh agreed.

30 Cheque: The handwriting on the cheque was that of Kuan Mun Koh. Kuan Mun Koh took an ink pad from his paper bag for the deceased to press. Kuan Mun Koh told the deceased where to affix his thumbprint.

Cheque: Before the deceased affixed his thumbprint, Kuan Mun Koh had written on the cheque and the deceased had read it. The same procedure was followed for the other documents. The deceased was happy.

Q. What did the deceased do after affixing his thumbprint?

A. The deceased handed the documents together with the cheque book to Kuan Mun Koh.

40 (Cheque - marked D18. Mandate - marked D19. Two specimen signature cards marked D20 A and B).

I signed the documents on 20th at the bank. I did not sign on 18th. At the hospital Kuan Mun Koh

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asked for my identity card. I did not have it with me. So I went to the bank on 20th with my identity card. After I had signed the documents, in the evening I went to the hospital. I told the deceased that I had gone to the bank to sign the documents. When I gave the information, the deceased was leaning against the raised portion of the bed. The deceased was very happy. He asked me to look after his wife properly. I stayed with the deceased for half an hour or more. I saw the deceased's relatives feeding him with porridge.

10

On 21st I saw the deceased's mother at the hospital. When the plaintiff arrived, I was talking to the deceased. The deceased was on the edge of the bed with his legs dangling. The deceased sat on his own without assistance. When the plaintiff arrived, the deceased turned his head to the side. The deceased asked me who informed his mother. The deceased was angry with his mother. The deceased's wife was there. The plaintiff came together with her adopted daughter.

20

The next day - 22nd July - I went to the hospital again. I did not see the deceased's wife. The Plaintiff was there. There was a discussion between me and the plaintiff. The deceased's mother told me she did not see the deceased's wife there and she suspected the deceased's wife had gone away. I replied that the deceased's wife would not do that. The plaintiff told me that the deceased's wife had gone away and that she had no more money. I told the plaintiff that regarding money, the plaintiff herself did not have to worry. I told the plaintiff that the deceased had a joint account with me. The plaintiff did not say anything. She was quiet.

30

On 23rd I went to the hospital to see the deceased.

(Adjourned to 2.15 p.m. Hearing continues at 2.15 p.m.).

(Examination-in-chief of DWL continued).

40

That evening I went to see the deceased between 6.00 and 7.00 p.m. I saw the deceased lying down. Both his legs were above the railings at the foot of the bed and tied to the bed. Both his arms were stretched out. A piece of wood was

10 tied underneath his arm. There was a stand by the side of his bed with one bottle hanging. There was a tube leading from the bottle to his arm. At that time the deceased was very weak. He complained that he did not like his arms to be bound. At about midnight, the general hospital telephoned me and I was told the deceased was seriously ill. I was asked to inform the deceased's wife. I immediately informed his wife. I told her to go to the General Hospital to see the deceased. When we arrived, we were told that the deceased had passed away.

The deceased's manner of speech when he was alive: He used to stammer before he spoke.

20 After the deceased's death, I arranged for the funeral. The deceased's body was first moved to the mortuary. When the deceased's body was at the mortuary, the plaintiff was waiting in a shed outside the mortuary. I brought the plaintiff to the mortuary from Jalan Perak. The plaintiff was then staying at Woh Peng's house at Jalan Perak.

Outside the mortuary, the plaintiff and I had a discussion. The plaintiff told me that if Yoke Yin was prepared to go back and worship the ancestral tablet, she was prepared to recognize her as the wife of the deceased.

I can remember Loke Siew Kim. She was also at the shed. Yoke Yin was also at the shed.

30 Whilst the discussion was going on, Siew Kim was complaining why all the things used at the hospital, e.g. flask, could not be given to her. Yoke Yin replied that all these things were valueless and had been given to the workers.

I did make withdrawal from the joint account for the funeral expenses. The funeral took place on 25th July. The body was kept at the crematorium on 24th.

40 Q. Can you confirm the Plaintiff's evidence that she complained at the crematorium that the deceased had left all his property to the wife and nothing to her?

A. Yes.

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After the cremation, the next day, I went to see the plaintiff. I told her that her daughter-in-law had left \$50.00 with me to be given to her. I refer to Chan Yoke Yin. Chan Yoke Yin also asked me to give \$20.00 to Siew Kim. I did so. When I gave the \$20.00 to Siew Kim, she snatched away the \$20.00. She told me that since all those things used at the hospital were not given to her, she would not recognize her sister-in-law. Siew Kim was very angry. I told her there was no point quarrelling as it was a small matter. I told the plaintiff it was no use quarrelling. I told her that after all these had been settled, we would go and see a lawyer in order to settle matters concerning the deceased's Estate. One of the relatives is a lawyer. His name is Ng Kok Thoy.

10

I took the plaintiff and the deceased's wife to see Ng Kok Thoy.

On 29.7.67, I withdrew \$2,000 from the account. I handed the money to the deceased's wife. At the end of July, the balance was transferred to a joint account - my wife's and my account. The joint account had a balance of about \$55,000. The joint account of my wife and myself was under two parts - one under current account - the other under deposit account. I put \$50,000 as fixed deposit divided into two parts - one for \$10,000 - the other for \$40,000. In the current account there were about \$5,000.

20

Q. Why was it necessary for you to have a joint account with your wife?

A. In case anything happened to me, my wife could look after the wife of the deceased.

30

Yoke Yin has never been educated. She can only write her own name slowly. We explained to Yoke Yin the nature of the accounts. This was done before the joint account of myself and my wife started. She agreed.

I never touched one cent for my own personal use.

40

I took the plaintiff and the deceased's wife to see Kok Thoy. Kok Thoy asked the deceased's wife for documents. Kok Thoy was supposed to apply for Letters of Administration.

When the papers were ready, Kok Thoy instructed his clients to go to the High Court to effect an affidavit.

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10 On that day, I took the deceased's wife and the plaintiff to Kok Thoy's office. From there I accompanied Ali to the High Court. On arrival at the High Court, at the verandah, there was one Indian by the name of Phillip. He asked Ali for the documents for examination. Phillip was a friend of Siew Kim. Ali handed the bundle of documents to him. Phillip took the documents and went away. I could not do anything. Then all of us went back to Kok Thoy's office. I complained to Kok Thoy. I took the plaintiff and the deceased's wife home.

The next day I saw the plaintiff at her house again. The plaintiff told me she did not wish to make joint application with the deceased's wife. She wanted to make a separate application.

20 Up to the time of the preparation of the documents, the plaintiff did not object to the joint application.

30 The plaintiff said that whatever she wished to give to the deceased's wife, she would give. I told her it was unfair. According to the lawyer, only the deceased's wife and the plaintiff were entitled to the Estate. The plaintiff insisted on doing this. I complained to Kok Thoy. Kok Thoy said he would act for the deceased's wife in lodging a caveat to prevent the plaintiff from applying.

There was a probate suit between the plaintiff and the deceased's wife.

In the months that followed the deceased's death, the deceased's wife was staying at No. 14, Jalan Brunei.

40 Q. For the months of June, July, August and September, when and how were the rents paid?  
A. All rents were paid in the middle of August - exactly in the middle of August.

That morning in the middle of August, I went to see the deceased's wife. I saw her at her house about the collection of rents. After that date,

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I did not see rent collection again. Yoke Yin told me the owner of the premises wanted to collect rents. I asked Yoke Yin how much rent was due. She told me that there were three months' arrears - June, July and August. I told Yoke Yin I had money with me. I settled the rents.

I was given three receipts for the months of June, July and August. The September rent was paid out from the deposit. The transaction for September was done after I had settled the rentals for June, July and August. I told the collector that the deceased's wife would move out at the end of September. The collector agreed.

10

Seong Siew Choon's evidence - I have seen Seong before. I saw him in the middle of August when he collected the rents. I paid three months' rents to him.

In May, 1968, I got a letter from the Collector of Estate Duty.

(Pg.33 AB shown to witness).

20

The reply to the letter on p.33 is at p.34. In July, 1968, the Collector wrote again (p.36). He asked me to furnish particulars (evidence) of joint account.

I replied - (letter at p.37). I disclosed to the Collector that the entire sum was provided for by the deceased.

The collector wrote again (pg.38 AB). I replied on 27th July, 1968 (pg.38 AB). I disclosed how I spent the \$3,000.

30

Subsequently I got a demand from the plaintiff's solicitors on 29.12.1970. Before I received this letter, I had no indication that the plaintiff was contemplating action against me.

In October, 1969, I transferred the entire balance of the deposit account into deposit account in the name of the deceased's wife. That was made 14 months before I received the demand from the plaintiff's solicitors. I did not transfer the entire balance into the deceased's wife's name in July 1967 as the deceased had instructed me to look after his wife. Since Yoke

40

Yin was illiterate, she could not manage the account. So I put up a joint account. The deceased had instructed me not to release the money immediately.

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10 (Witness adds) - The fixed deposit was in the name of myself and my wife. The interest had to be added into my return for income tax. This was another reason why the balance was not transferred to Yoke Yin immediately. When the sum was transferred, the address given was my address. Even now, Yoke Yin consults me about her financial affairs.

The deceased and Yoke Yin did not have any children.

(Adjourned to 10.00 a.m. tomorrow).

Sgd. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

20 CERTIFIED TRUE COPY

Sd-/ Illegible  
.....  
Secretary to Judge  
Kuala Lumpur.

25th April, 1973.

THIS 25TH DAY OF APRIL, 1973

(Hearing continues . Parties as before).

(DWL: - Cross-examination by Mr. Sri Ram

Cross-examination

30 I consider myself an honest man. Whatever I did in this case was done with good intentions. I held this sum of \$60,384.80 in trust for Yoke Yin. The purpose was to assist Yoke Yin.

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I have known the plaintiff for a long time - since 1954 when I was married. I knew the deceased from pre-war. I did not know the plaintiff then.

(Not agreed bundle - p.3 (P3) - Counsel refers to passage - "Hope your 'Mum' does not give you headaches with her unchangeable habits

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and obstinacy. Anyway, hope she is quite contented staying with you .....").

The plaintiff left the deceased in 1965. The plaintiff left the deceased because she could not get along well with the deceased. I could not get along well with the plaintiff. I cannot say whether I like or dislike the plaintiff. I was not aware of the deceased's wealth prior to his death.

I did not know of the deceased's account No. 4-267 with Kwong Yik Bank. Now I know. I first came to know of it when the deceased discussed with me about having a joint account with me. I first came to know of it on the morning of July 13, 1967. I did not know how much he had in that account. I came to know of it when I signed the documents together with him to open a joint account.

10

The entire amount was transferred to the joint account. I know Kuan Mun Koh. His elder brother is Kuan Mun Chew - he was the manager of the Head Office of Kwong Yik Bank. I have known the two brothers prior to the Japanese War. They are related to me. They are my wife's sister's sons.

20

My income is derived from the selling of orchid plants.

The deceased was 24 to 25 years old when I first met him. I was then a painting contractor. The deceased used to go to the office of Walter Grenier - an accountant's office. We met each other there.

30

I remember receiving a query from the Estate Duty Office in 1968 - (Pg. 36 AB). I was asked about the relationship between myself and the deceased. I did not bring this letter to the solicitors.

(Counsel refers to p.37 AB). This is the reply written by the solicitors. The deceased was described as the brother of my wife. It is a true description.

40

The deceased was not working in 1957. He practically had no source of income. The deceased

had inherited properties from his late father.

Prior to admission, the deceased was not seriously ill for two months. He was not ill either. He used to go out to town. Before 13th I met the deceased about a month previous to that date.

10 I have known Chan Yoke Yin since the time she stayed with the deceased. I met her. I first met her in 1961. I did not know whether she was working or not. Yoke Yin and the deceased lived together as husband and wife for 7 years. They went through Chinese customary rites.

20 This took place in 1961. I am personally aware of this. The deceased personally informed me of this. I was there when the ceremony took place. It took place at No.14, Jalan Brunei. Friends and relatives were present. The plaintiff was not there. No cards were printed. No photographs were taken. No Chinese priest officiated. It is not necessary that a certificate should be signed by both parties according to Chinese customs. A marriage certificate form could be bought from any shop. No certificate was signed in this marriage. The fact that there was a marriage was not advertised in any Chinese papers.

Before 1961 I used to visit the deceased often. He was not living with any woman then.

Q. Yoke Yin has never lived for 7 years with the deceased?

30 A. I disagree.

I disagree that Yoke Yin only lived with the deceased as a mistress for 2½ years. I disagree that the deceased never underwent any form of marriage with anyone during his lifetime.

40 When I told the plaintiff that regarding money she herself did not have to worry, I did explain to her the purpose of the joint account. The purpose of the joint account was to provide money for Yoke Yin. I said this to the plaintiff around 20th. It is not the exact date. It happened some time past 5.00 p.m. Loke Siew Kim was present.

I did not receive a letter from Kwong Yik

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Bank asking for any consent to release certain documents.

(Page 55 AB shown to witness). (Witness now says). - I received this letter in September, 1970. The conversation that took place between me and the plaintiff on 20th July, 1967, came to my mind. I was surprised the plaintiff wanted to know about the joint account.

(Page 56 AB shown to witness). This is my reply. I received this letter (on p.65 AB) dated 29.12.1970. I am aware of the allegation. I do not consider it serious because the money had been given to Yoke Yin. The conversation that took place between me and the plaintiff in 1967 came to my mind. I felt normal when I received the letter. I took the letter to the solicitors for reply. I told them the whole story.

10

(Page 68 AB referred to). I agree there is no mention of the conversation I had with the plaintiff on 20th July, 1967 concerning the joint account. I agree there is nothing in the statement of defence. I do not have to state that in the defence. The first time this fact was mentioned was when my counsel cross-examined the plaintiff. This conversation on 20th July, 1967 is not my imagination.

20

Q. How long after the deceased died you went to see the plaintiff about taking letter of administration?

30

A. About one week after the deceased's death.

I had not discussed with Kok Thoy before I saw the deceased. The first instruction was given to Kok Thoy three weeks after the deceased had died.

Yoke Yin, plaintiff, myself, Kok Thoy and Ali were present when I gave the instruction. I am one of the executors of the Estate of Loke Soh Keen.

I am aware of the formalities before letter of administration could be granted. I am not aware that a widow alone can apply for letter of administration. I am aware that a widow by herself can apply.

40

On the advice of Ng Kok Thoy, I requested the plaintiff to make a joint application. I brought Yoke Yin and the plaintiff to see Kok Thoy. I agree I acted as adviser to Yoke Yin. I did not advise Yoke Yin to apply for letter of administration on her own. Yoke Yin had all the papers relating to the deceased's estate. The plaintiff had no document whatsoever. I went through the papers with Yoke Yin. I did not know the exact assets and liabilities of the deceased.

10

I did not advise Yoke Yin to apply for letter of administration by herself because the deceased had a living mother. The purpose of applying for letter of administration was because the deceased had not mentioned about all his properties in the will. So letter of administration had to be applied for. The deceased had not left behind a will.

Kok Thoy was to apply for letter of administration to gather the rest of the deceased's property. I said this yesterday. I mean the share in the deceased's father's estate - motor-car - account in bank - i.e. the balance in Malayan Bank - another bank - Malayan Bank in Singapore.

20

When I said I did not know the exact assets and liabilities, I meant the exact amount of assets and liabilities. I have access to the papers in the hands of Yoke Yin.

When Kok Thoy was instructed, the papers were handed over to him by Yoke Yin. I did mention about the \$60,000 gift to Kok Thoy.

30

I do not know whether the affidavit (P2) contained the same information as the affidavit prepared by Kok Thoy for a joint application.

I, Yoke Yin, plaintiff and Ali went to the High Court.

(An Estate Duty affidavit shown to witness). This was the affidavit taken to the High Court to be affirmed and it was taken by Phillips. It was to be affirmed not on my advice but on the advice of Ng Kok Thoy.

40

(Affidavit produced. Marked P21). Mr. Kok Thoy was told of the \$60,000 gift.

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(Item 23(b) of P21 shown to witness).  
This document was prepared by Kok Thoy. I do  
not know why this was not included.

It is not true I and Yoke Yin concealed this  
fact - about this \$60,000 - from Kok Thoy. I  
told Mr. Kok Thoy about the \$60,000 gift.

Q. The reason why you did not tell Kok Thoy  
was because Yoke Yin herself did not know  
a about the \$60,000?

A. I disagree.

10

Estate duty was paid in respect of the  
\$60,000 some time in February, 1972. I instructed  
my solicitors to write to the Estate Duty Office.

I received a letter (p.33 AB) from the  
Estate Duty Office.

That was in 1968. The form (p.35 AB) was  
sent back to the Estate Duty Office. The estate  
duty was paid in 1972. In the form (p.35 AB) I  
said the total value of the assets was not known.

At Kok Thoy's office, I asked Yoke Yin to  
hand over all the papers to Kok Thoy. I did not  
look at the papers.

20

(Now says) - I went through the documents  
that Yoke Yin had, before she handed them to Kok  
Thoy. When I said I did not look at the papers,  
what I meant was the estate duty affidavit.

(Adjourned to 2.15 p.m. Hearing continues  
at 2.15 p.m. Parties as before.

The total value of the deceased's estate was  
not contained in the papers Yoke Yin had - the  
value of the deceased's share in his father's  
estate was not there. The three items in Yoke  
Yin's hands were - the Malayan Bank Account,  
Kuala Lumpur, the Malayan Bank Account, Singapore  
and the motor-car. The amount in the bank accounts  
were specifically stated in the bank balances. The  
value of the car was not stated. The value of the  
car was ascertained by Ng Kok Thoy. Also  
ascertained was the deceased's share in his  
father's estate. I did not look through the  
value given.

30

40

Page 35 AB referred to). When I affirmed this, I did not know the total value of the deceased's estate.

I agree I could have found out from Kok Thoy or Yoke Yin the exact total value of the deceased's estate. I did not ask them as there was no necessity for me to know the exact total value. I was only concerned with the joint account I had with the deceased. The clerk of Kok Thoy did read out the contents of the affidavit to Yoke Yin and the plaintiff. I was present.

After the incident at the High Court, I immediately went to Kok Thoy's office. After a discussion with Kok Thoy, I saw the plaintiff for the second time. It was on this occasion that the plaintiff said she would give Yoke Yin what she wished to give. I described the plaintiff as being unfair. At that time Yoke Yin already had some sixty thousand dollars to her credit - a substantial sum. I said it was unfair because the sixty thousand dollars were given to Yoke Yin by the deceased during the lifetime of the deceased. The sixty thousand dollars should not be included in the estate.

I remember the incident about caveating the petition filed by the plaintiff. At the time the plaintiff filed the petition, Yoke Yin was still instructing Kok Thoy. The caveat was filed by Kok Thoy. This was followed by a probate suit. I was not acting as an adviser as Kok Thoy was handling the matter and he had handed it over to Mr. Devaser. I was aware that the plaintiff settled the probate suit by paying \$15,000 to Yoke Yin. Yoke Yin deposited it in a fixed deposit account in a finance company.

Q. At all times when this application was being made, you never mentioned the fact of this gift to anyone?

A. I deny that.

Joint account: I agree that a survivor is entitled to the entire balance of a joint account. Kuan Mun Koh knew the purpose of this joint account (p.6 AB). When he brought the mandate (D19) to the hospital, he knew the purpose of the joint account. I agree that the word "trust" does not appear anywhere. There was a trust.

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Judge's Notes of Evidence  
Defendant's Evidence

Chow Yee Wah

Cross-examination

25th April 1973

(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Judge's  
Notes of  
Evidence  
Defendant's  
Evidence  
Chow Yee Wah  
Cross-  
examination  
25th April  
1973  
(continued)

I agree the deceased was a well-educated man. The question of will did not arise when I had a discussion with the deceased. I did not suggest a will because this was the wish of the deceased. I could not tell what was the best thing he should do.

(D19 referred to). The initial on the chop "Signature admitted" is that of Kuan Mun Koh. The words "signature admitted" were placed after the deceased had affixed the thumbprint on 18th July, 1967, at the General Hospital, Kuala Lumpur, at about past 5.00 p.m. The date on the mandate is 20th. There is no other evidence besides the cheque which is dated 18th July, 1967, to show that it was made and executed on 18th. On the face of the mandate, it looks as though the mandate was executed on 20th.

10

The figure "1-361" written at the top of the mandate was written on 20th July when I went to affix my signature.

20

I have no documentary proof that I was a trustee of the joint account. I could not have agreed if someone had said I owned the money. If someone had asked if I was a trustee of the fund I would have agreed.

(Page 35 AB referred to). I know what affirmation is. I filled in only the truth. I did not conceal anything.

(Paragraph 3 of p.35 AB referred to). It was deleted. The gift was not given to me. I did not receive the money. That was why I deleted paragraph 3.

30

I did not know I could have written down the gift given to Yoke Yin. This form was typed by my wife in my wife's office at Messrs. Shearn, Delamore & Company.

My wife knew about this gift. I would not know why she did not include it. I am not blaming my wife. My wife has been working in Messrs. Shearn, Delamore & Company for 15 years as typist and stenographer. I do not know her exact appointment.

40

(Paragraph 4 of p.35 referred to). This affidavit was in respect of estate duty of the deceased's estate. I do know that this declaration is in respect of a joint account with the deceased. I did not understand that I had to fill in that the money did not belong to me.

In the High Court in Malaya at Kuala Lumpur

No. 6

I received a letter on 19th July, 1968 from the Collector of Estate Duty.

Judge's Notes of Evidence

10 (Page 37 AB referred to). This letter is a letter of reply from my solicitors. It did not say for what purpose the deceased provided the fund. At this state I had informed my solicitors the purpose for which the fund was provided.

Defendant's Evidence

Chow Yee Wah

(Adjourned to 10.00 a.m. tomorrow)

Cross-examination

CERTIFIED TRUE COPY  
Sd-/ Illegible  
.....  
Secretary to Judge,  
Kuala Lumpur.  
26th April, 1973.

Sgd. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

25th April 1973  
(continued)

THIS 26TH DAY OF APRIL, 1973

26th April 1973

(Parties as before. Hearing continues at 10.00 a.m.).

(DW1: Cross-examination by Mr. Sri Ram continued. DW1 re-affirmed, speaks in Cantonese).

The account 1-361 did not last only for 11 days.

30 (Page 9 Not Agreed Bundle shown to witness). The account was opened on 20th July and closed on 31st July, 1967. After that, there was no operation through this account. There were \$55,382.30.

40 On 31st July, 1967, I transferred the amount into my name and my wife's name. When I transferred it, the bank did not get an indemnity from me for estate duty. The subject of estate duty was never discussed. I gave instruction for this transfer to the manager of the sub-branch - one Kuan Mun Koh. The amount was transferred to me and my wife's account at the Jalan Pasar sub-

In the High  
Court in  
Malaya at  
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No. 6

Judge's  
Notes of  
Evidence

Defendant's  
Evidence

Chow Yee Wah

Cross-  
examination

26th April  
1973

(continued)

branch. I did not take cash out. It was just a transfer. I drew a cheque for the sum of \$55,382.30 and paid it into account - 1-365 - a new account.

On the same day, I withdrew \$50,000 from account 1-365 by means of a cash cheque. That cheque book was originally allotted for account 1-361 but was subsequently cancelled. On the same day, I used \$50,00 to open two fixed deposit accounts with Kwong Yik Finance in the name of myself and my wife. Account 1-365 is still open. There are \$10,000 in this account. When I withdrew the \$50,000, there was a balance of \$5,000. With that \$5,000, I paid monthly to Yoke Yin her expenses. I paid her by way of cheques - cash cheques. After Yoke Yin had signed a cheque, she would either ask my nephew to cash the cheque or she would herself go to the bank. At times she asked me to cash the cheques. I did not obtain receipts from Yoke Yin. My wife did not sign any cheque.

10

20

I did not open a joint account in the names of myself and Yoke Yin because she was illiterate. In the event of my death, Yoke Yin would not be able to handle the matter. I deny that the opening of a joint account was a sham in so far as Yoke Yin is concerned.

Dr. Loke Wye Tuck is related to me. He is my brother-in-law's son. My wife financed Dr. Loke's education. When I arrived at the house, Yoke Yin was there. She was present when Dr. Loke examined the deceased. I and Dr. Loke spent about half an hour. Dr. Loke went back to his house to have his lunch. After lunch, he and I went to the General Hospital and arranged for an ambulance. The ambulance was arranged for 2.00 p.m. The ambulance arrived at 2.30 p.m. He was carried into the ambulance. From upstairs, he was carried down in a rattan chair. Then he was carried on a stretcher on to the ambulance. I accompanied the deceased to the hospital. Yoke Yin also accompanied the deceased in the ambulance. The deceased was not breathless when he was in the ambulance. The deceased was normal. He had no difficulty in breathing on admission.

30

40

Q. On admission, the doctor said that the deceased was very ill and breathless?

A. I do not know what the doctor said. I was present when the doctor gave evidence.

The deceased did not tell me he was ill for two months.

The last time I spoke to the deceased before he died was on 23rd July, 1967 - past 6.00 p.m. I left at about 7.30 p.m. I did not meet Dr. Daljit Singh that day.

10 The tube that I saw was connected to the deceased's left arm.

(P9 referred - entry on 23.7). I deny that there was no apparatus set up.

18th July, 1967: In the morning, I received a telephone call from Dr. Loke. It was past 10.00 a.m. Dr. Loke had already seen the deceased on his way to work. I arranged with Kuan Mun Koh to meet him at 5.00 p.m. at the General Hospital.

20 On the telephone, I told Kuan Mun Koh that the deceased had decided to open a joint account with me. Kuan Mun Koh agreed. He said he would be free after office hours. After that I put down the telephone.

That evening I arrived at 5.00 p.m. My wife was with me in the car.

30 When the deceased affixed his thumbprint, the persons present were myself, Kuan Mun Koh and Yoke Yin. I drove the car to the hospital. I and my wife were the first to arrive. Yoke Yin was already there. Kuan Mun Koh arrived about half an hour later.

Kuan Mun Koh was the one who started the conversation about the joint account. I did not have my driving licence in my possession then. I only take my driving licence along with me when I go outstation.

40 (Pg.5 Not agreed Bundle) - Exhibit D18 referred). The cheque book from which D18 was taken was in a suitcase. In relation to the deceased, the suitcase was on the bedside table. The deceased's spectacles were in the drawer of the bedside table. It was in a spectacle case.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Defendant's Evidence

Chow Yee Wah

Cross-examination

26th April 1973 (continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

No. 6

Judge's  
Notes of  
Evidence

Defendant's  
Evidence

Chow Yee Wah

Cross-  
examination

26th April  
1973

(continued)

Kuan Mun Koh opened the subject of joint account. He took certain documents from the paper bag. The deceased asked Kuan Mun Koh whether he brought the documents or not. Kuan replied he had brought them. Kuan Mun Koh then took out the documents from the paper bag and showed them to the deceased. That was how it happened.

(Pg.138 notes of evidence referred to).

The deceased asked Kuan Mun Koh whether he came on account of the opening of the joint account. Kuan Mun Koh replied, "Yes." It was the deceased who asked Kuan Mun Koh first. To the best of my recollection, it was the deceased who asked Kuan Mun Koh first. I am not quite certain who asked who first. The documents given by Kuan Mun Koh were the mandate (D19) and D20 A and B. All the three documents were handed to the deceased together. After he had received the three documents, he asked his wife for the spectacles. The spectacle case was a plastic case buttoned up. The wife unbuttoned the case and handed the spectacles to the deceased. The frame of the spectacles was gold-plated. I cannot remember whether the rim was very thin. I did not pay particular attention how the spectacles were handed. I know the spectacles were handed to him by his wife.

Q. In Examination-in-Chief, you said Yoke Yin took the glasses for him and the deceased opened the case and took out the glasses herself.

A. How it happened I cannot remember exactly but the deceased put on the spectacles himself.

(D20 A and B referred to). The thumbprints were affixed on 18th. The particulars were filled in before the thumbprints were taken. I signed D20 A and B on 20th July because I did not have my identity card. My identity card was not entered before the deceased put his thumbprint. The figure "1-361" on the top had already been printed on 18th July.

(D19 referred to). That was already entered on 18th July.

(D18 (cheque) referred to). All the

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particulars were filled in before the deceased put his thumbprint. All the particulars were written in. Before the cheque was credited, the account had no money. The account 1-361 was only opened on 20th.

In the High Court in Malaya at Kuala Lumpur

          
No. 6

Judge's  
Notes of  
Evidence

Defendant's  
Evidence

Chow Yee Wah

Cross-  
examination

26th April  
1973

(continued)

"Signature admitted" was initialled by Kuan Mun Koh on 18th. The chop was also on 18th. He brought along the chop. The date of the cheque was 18th July. When the deceased placed his thumb-  
10 print, the date was not written on the cheque. After the deceased had placed his thumbprint, he handed the cheque back to Kuan Mun Koh. Kuan Mun Koh then chopped "signature admitted" and initialled. At the same time, he chopped the date. All this happened in the deceased's room at the General hospital, Kuala Lumpur. D19 (mandate) was not dated when the deceased placed his thumbprint.

Q. Are you aware that it is the plaintiff's  
20 allegation that the thumbprint on D18 was not that of her late son?

A. I am not aware of the allegation.

(At this state, counsel agree that the thumbprint on D19 (mandate) be examined and compared with the thumbprint on D18 (cheque) by the Chemist together with D20 A and B).

(The Senior Assistant Registrar is to forward the original documents to the Chemistry Department forthwith).

Cross-examination continued:

30 D18 was thumbprinted first. This was followed by D19. Then the two specimen signatures on D20 A and B.

During the hour, the deceased maintained the same position, i.e., sitting on the bed with his legs dangling. I left the deceased's room at past 6.00 p.m.

(P13 referred to). The deceased did not pass urine in bed at 6.00 p.m.

After I had left, I went home.

40 When the documents were executed, my wife was at the verandah. The corridor was on the outer



In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Defendant's Evidence

Chow Yee Wah

Cross-examination

26th April 1973

(continued)

side of the building. The windows were facing the corridor.

On 17th, as far as I can remember, I did not visit the deceased.

Neither I nor Kuan Mun Koh or Yoke Yin obtained medical advice before the documents were executed by the deceased nor at the time of the execution of the documents.

I visited the deceased every evening except 17th. On every occasion that I went to visit the deceased, he seemed perfectly well and in good spirits.

10

The deceased was mentally alert when I saw him between 5.00 and past 6.00 p.m. on 18th.

On 20th July I went.

(Adjourned to 2.15 p.m.).

(Hearing continues at 2.15 p.m. Parties as before).

(DWL on former oath. Cross-examination by Mr. Sri Ram continued).

20

The spectacles were in both the deceased's hands. He had no difficulty in putting the spectacles on. He had no difficulty in handing the spectacles back to Yoke Yin. He handed the spectacles to Yoke Yin with the right hand.

Q. You said the deceased gave reasons for his difficulty to sign?

A. Yes.

Q. His hand was swollen and he had difficulty in holding a pen?

A. Yes.

30

The advice from Kok Thoy was not sought for either by myself or Kuan Mun Koh in respect of the provision for Yoke Yin by the deceased.

Q. The alleged thumbprint on D18 was not taken from the deceased when the deceased was of sound mind?

A. I deny that.

- Q. The thumbprints on D19 and D20 A and B were obtained from the deceased when the deceased was not in a proper frame of mind?  
 A. I deny that.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Defendant's Evidence

Chow Yee Wah

Cross-examination

26th April 1973

(continued)

I signed the mandate on 20th July at Kuan Mun Koh's office. I did not seek Kuan Mun Koh's advice on the opening of the joint account. I was with Kuan Mun Koh for about half an hour. It was past 10.00 a.m. - between 10.00 and 10.30 a.m.

- 10 I visited the deceased on the night before, i.e. on 19th. I cannot remember whether Kuan Mun Koh visited the deceased on 19th.

- Q. During the half hour, did you discuss about the deceased's health?  
 A. Yes.

We felt that his condition was better than the condition in which he was, before he was admitted.

- 20 It was not possible for me to sign on 18th and provide the identity card number later. My identity card had to be verified first before I could sign. It had to be verified by Kuan Mun Koh. Kuan Mun Koh wanted it to be done that way. Kuan Mun Koh knows me well.

He was being cautious.

During my association with the deceased, I sought his advice and he sought my advice. He respected me. My advice carried weight.

- 30 Q. These documents you produced - D18, D19 and D20 - allegedly executed by the deceased, were not executed by the deceased on the date specified on them, but on a later date when his death was imminent?  
 A. I deny that.

- Q. The documents were backdated?  
 A. I deny that.

- 40 I deny that my statement - that every time I visited the deceased he was well and in good spirits - is a concoction. Only once during my visit did I meet Choy Wor Peng. I am clear about the date. It was on 20th or 21st at past 5.00 p.m.

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Defendant's Evidence

Chow Yee Wah

Re-examination

26th April

1973

(continued)

Re-examination by Mr. Shankar:

On the night of 23rd, the deceased's condition was worse than the condition he was in on the previous date.

When I said "perfectly well" I meant that, when I spoke to him, he was able to speak to me.

The deceased did not sign because the deceased's hand was swollen and to hold a pen, he had to bend his fingers. As it was difficult for him to bend his fingers, he was unable to write. The deceased said that his hand was swollen and he could not move it to sign his name.

10

Outstanding balance in account 1-365:

Q. When this account 1-365 was started on 31st July, \$50,000 were deposited and \$5,000 were left in this account. To whom do these \$5,000 belong?

A. Yoke Yin.

Q. To whom was the total amount paid - down to the last cent?

A. Yoke Yin.

20

Q. All cheques which have been furnished to parties here would prove that?

A. Yes.

Q. After all the money in that account had been paid to Yoke Yin, what did you do with that account?

A. I did not close the account. Now my wife and I make use of the account. Thereafter every cent in the account belongs to myself and my wife.

30

Not a single cent came from either Yoke Yin or the deceased.

The fixed deposits of \$40,000 and \$10,000, when they were in the name of myself and my wife, the interest was paid into that account.

(Page 16 Not Agreed Bundle referred to). The sum \$1,330.00 was withdrawn for expenses used in connection with funeral).

Page 21 and page 35 Not agreed Bundle referred to). Every cent earned by way of interest was paid into that account. The withdrawals were withdrawn from cheques with Yoke Yin's signature and cash was paid to her.

In the High Court in Malaya at Kuala Lumpur

No. 6

The deceased was taken by chair downstairs. He himself went and sat on a chair. He was carried down. This was done on the advice of Dr. Loke.

Judge's Notes of Evidence

Defendant's Evidence

10 Account number on mandate: Kuan MunKoh wrote that.

Chow Yee Wah

[Page 34 Agreed Bundle - Estate duty declaration - referred to]. This was a letter I sent enclosing p.35 Agreed Bundle. I sent that on my own, not through the solicitors.

Re-examination

26th April 1973

(continued)

Settlement of the probate suit: I knew each - Yoke Yin and the plaintiff - had their own counsel.

(Adjourned to 10.00 a.m. tomorrow).

20 Sgd. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

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Sd-/ Illegible  
.....  
Secretary to Judge  
Kuala Lumpur.

27th April, 1973

THIS 27th DAY OF APRIL, 1973

27th April 1973

Hearing continues at 10.15 a.m.).

30 (Parties as before).

(Mr. Chan Siew Yoon says that he will take at least two hours for evidence of second defendant to be adduced).

(Mr. Sri Ram says that he may not finish cross-examination today).

In the High Court in Malaya at Kuala Lumpur

No. 6

Judge's Notes of Evidence

Defendant's Evidence

Chow Yee Wah

Re-examination

27th April 1973

(continued)

(The Senior Assistant Registrar is to fix this case for continuation in the first week of July - preferably 2nd to 6th July, 1973).

(Mr. Shankar applies for PW12 to be in Court at continued hearing).

(Mr. Joginder Singh assures the Court that he will subpoena this witness).

Sgd. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

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.....  
Secretary to Judge,  
Kuala Lumpur.

27th April, 1973

Adj. to 2nd July, 1973

No. 6

THIS 2ND DAY OF JULY, 1973

Judge's Notes of Evidence

Defendant's Evidence

2nd July 1973

Mr. Joginder Singh with Mr. Sri Ram for Plaintiff.  
Mr. K. Shankar for First Defendant.  
Mr. Chan Siew Yoon for Second Defendant.

20

(Mr. Chan Siew Yoon asks that the report from the Registrar of Criminals be marked as an exhibit.

Plaintiff's counsel agrees. Marked D22).

Kwan Mun Koh

Examination

2nd July 1973

DW2: Kwan Mun Koh, affirmed, speaks in English. 49 years. No. 4, Road 59F, Lorong Putri, Petaling Jaya. Officer-in-Charge, Kwong Yik Bank, Pasar Road, Kuala Lumpur.

I have been in charge since 1965. Before that year, I was at the Head Office, Kwong Yik Bank. I have been at the Head Office since 1953. I am related to the deceased. I am his nephew.

30

I know Chan Yoke Ying. She is my aunt. She was the wife of the deceased.

In July, 1967, Madam Chan came to see me. It was July 11. It was at my office. She came to see me saying that my uncle wanted to see me

after office at No.14, Jalan Brunei - at my uncle's flat.

10 I called on him at 5.00 p.m. I saw him. I noticed he was sick. His leg was slightly swollen. He could walk about. He told me he wanted to make provision for his wife. We were both seated in the hall. He wanted to open a joint account in joint name of himself and Chow Yee Wah - the first defendant. He wanted his money in his personal account at Head Office to be transferred to this joint account. He told me that if anything should happen to him, Chow Yee Wah would be able to look after his wife with the money. He did not tell me how much money he had in his personal account at Head Office. He wanted me to find out how much he had with Head Office. I promised to let him know the next day.

20 I told my uncle that he could open a joint account. Before I left I asked him whether he had consulted Chow Yee Wah. He said he had not done so. He wanted me to inform Chow and he also requested me to tell Chow to see him at his flat. My uncle appeared to me to be normal. I then left the house. This was not the first time my uncle had asked me to do something for him. He used to ask me to put money into his account and draw money from his account.

30 The next day - July 12 - I saw my uncle. I brought with me some forms to show him. Joint account mandate forms.

(P19 shown to witness). This is the sort of form I referred to. I showed only this form.

I told my uncle on 12th his bank balance was \$60,000. My uncle appeared to me to be very normal. He could walk about. His leg was slightly swollen.

40 That evening I went to see Chow Yee Wah at his house. I did not meet Chow. He was then in Dr. Tang's house. I went to Dr. Tang's house. Dr. Tang is the nephew-in-law of the deceased. Dr. Tang's wife is Loke Pak Thong. I saw Chow there. He was attending a dinner party there. I was not invited to this dinner party. I told him what happened at my uncle's flat. I told him my uncle wanted to see him. He said it was rather

In the High Court in Malaya at Kuala Lumpur

—  
No. 6

Judge's Notes of Evidence

Defendant's Evidence

Kwan Mun Koh

Examination

2nd July 1973  
(continued)

In the High  
Court in  
Malaya at  
Kuala Lumpur

—  
No. 6

Judge's Notes  
of Evidence

Defendant's  
Evidence

Kwan Mun Koh

Examination

2nd July 1973  
(continued)

late to see my uncle that night. He promised to go the next day. I returned home.

On July 13 in the afternoon Chow phoned to say that my uncle had been admitted to the General Hospital and that I could see him at the General Hospital. He did not tell me whether he had seen my uncle. After office I went to the hospital. I saw my uncle. He was cheerful. His general health was normal. My uncle asked me why I did not turn up the night before as promised. I told him Chow did not want to go as it was too late.

10

To the best of my recollection, I went to see my uncle on 14th. He was normal. He did not raise the subject of joint account. After that it was on July 16 that I visited my uncle. His condition was normal. He raised the subject of joint account. I told him I discussed the matter with Chow. He said that Chow came to see him on 13th to discuss the matter but Chow said that since he was going to be admitted to hospital, it should be discussed later.

20

On July 18 Chow rang up in the afternoon to say that he and my uncle had discussed the matter and that I should get ready all the necessary documents for my uncle to sign.

I made arrangements with Chow for the signing of the documents. It was to take place in the hospital at 5.00 p.m. on 18th. I went to the hospital at 5.00 p.m. I brought along standard equipment and forms. By "standard equipment" I mean stamping pad, date chop and thumbprinting set. I saw my uncle. My aunt and Chow were also there. When I arrived, I saw my uncle sitting at the edge of the bed. He appeared very normal. He greeted me. He asked me whether I was busy with my work in the bank. He was in cheerful mood. I told him I brought all the forms. I carried the forms and standard equipment in a paper bag. My uncle told his wife to bring out a cheque book from the drawer. His wife took it out from the drawer and she handed the cheque book to the deceased. The deceased handed the cheque book to me. He requested me to fill in the cheque as well as the form. He asked me to fill an account of \$63,384.80 on the cheque. He did not mention any figure. He just asked me to fill in for him. I filled the cheque and form

30

40

and handed the cheque together with the form to him. He asked his wife for his pair of spectacles. His wife took it out from the drawer. He put it on himself. Then he read the document as well as the cheque.

In the High  
Court in  
Malaya in  
Kuala Lumpur

No. 6

Judge's Notes  
of Evidence

Defendant's  
Evidence

Kwan Mun Koh

Examination

2nd July 1973  
(continued)

10 I then asked him whether the particulars were in order. He said it was all right. Then I told him to sign. He asked me whether he could affix his thumbprint on the document instead of signing as his hand was slightly swollen and that he had difficulty in holding a pen. I said he could still sign but he was afraid his signature may not be good. I told him he could affix his thumbprint. I prepared the stamping pad. He asked me for the pad. When I handed it to him he pressed his thumb against the pad. He then asked me to guide him where to put his thumbprint. I pointed out the spots to him one by one. As I did so, he put down his thumbprint.

20 The deceased asked from his wife a piece of paper to wipe off the ink from his thumb. His wife handed to him a piece of toilet paper. He used the paper to wipe off the ink. He himself wiped off the ink.

(D18 shown to witness). I filled in "pay to yourself Dollars sixty thousand three hundred and eighty four and cents eighty only" with crossing "& Co". Also the date - 18.7.1967. The thumbprint was that of the deceased.

30 (D19 shown to witness). I filled in "Loke Yaik Ho and Chow Yee Wah". I crossed the words "both of us" and "s" after the word "account". The thumbprint was that of the deceased.

I also filled up D20 A and B (identified). I filled in the account the names "Loke Yaik Ho" and "Chow Yee Wah" on both cards. The thumbprint was that of the deceased.

40 On the cheque (P18) I witnessed the thumbprint of the deceased. I wrote down "signature admitted" and I initialled. I did the same for the specimen signature cards and mandate form.

There is no substance in the allegation that the thumbprints were taken after the deceased's death. There is no substance in the allegation



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(continued)

that the thumbprints were taken when the deceased was unconscious.

It is not true that the thumbprints of my uncle were taken when he did not know what he was doing.

After I had received the documents from my uncle, I asked Chow to sign. He did not sign the documents because he had not brought his identity card. He would come to my office the next day to sign the documents - the mandate form and specimen signature cards. He did not come on 19th. He came on 20th in the morning. He signed the documents. I opened the joint account.

10

On the cheque after Chow had signed, I wrote "Pasar Road Account 1-361" within brackets. On mandate form (D19) I wrote "A/C No. 1-361 dated 20th July, 1967". On the cards I wrote "A/C No. 1-361, identity card No. 3665682, KLM SL 021678, identity card No. 3425548/SL 014665, address 1130, Lorong Ayer Kuning, 6, Setapak, Kuala Lumpur, telephone No. 621450.

20

I paid in the cheque. I sent it to Head Office for clearance. In due course that amount was transferred to the joint account.

I recorded "signature admitted" because he could not sign the usual signature. That is the practice.

On the same day (20th) I went to see my uncle. He was normal. I told him that the account had been opened. He was very happy. After 20th I did not see my uncle again.

30

Everything I did, i.e. the opening of the joint account - was done in accordance with the wishes of my uncle. My uncle had no children.

I produce the ledger card in respect of joint account 1-361. (Marked D23). After the withdrawal of two sums of \$3,000 and \$2,000 respectively, there was a balance of \$55,382.30 as at 31.7.1967. The whole of the balance was drawn out on that day. On that day, Chow and his wife opened another joint account at Jalan Pasar Branch of the Bank. That joint account is

40

No. 1-365. The whole balance drawn out was paid into account No. 1-365. I produce the ledger in respect of account 1-365. (Marked D24). On the same day, a sum of \$50,000 was drawn out from the joint account 1-365. On the same day, Chow and his wife Loke Soh Eng opened two deposit accounts - one for \$10,000 and the other for \$40,000.

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(continued)

10 There were two application forms for the fixed deposit account. I produce the two forms. (Marked D25A and B). I produce the two specimen signature cards. (Marked D26A and B). At the back of D26A and B, there is a record of renewals of the deposit. The deposit account was renewable once in six months. The two accounts were renewed four times. The two deposit accounts with withdrawn altogether on 31.10.69. When renewing the deposit accounts, they had to surrender old receipts for new ones. I produce all the surrendered receipts - ten altogether. (Marked D27 A to J).

20 (An application form for fixed deposit account shown to witness). This is an application by Chan Yoke Ying with Pasar Road Branch of the bank to open two deposit accounts - one for \$40,000 and the other for \$10,000 - dated 31.10.69. (Application marked D28). I produce specimen signature cards bearing the signature of Madam Chan (marked D29).

At the back of D29 there is a record of renewals.

30 Subsequently my bank prepared continuation of renewal. (Four cards produced marked D30 A to D).

(D29 referred). It only records two items. D30 A to D record the subsequent renewals after first deposit.

D29 shows a total of \$50,000.

40 (D30A referred). The date of renewal was 30.4.1970. On the day of renewal, instead of two deposit accounts, there were eight deposit accounts. The total amount for the eight accounts was \$63,000. The dates of renewals were slightly different. There were two accounts of \$10,000 renewed on 30.4.1970. Two accounts of \$10,000 were renewed on 8.5.1970. Also on 8.5.1970, there were further two accounts - one for \$5,000 and the other for

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¥4,000. On 12.5.1970, there was one account for ¥12,000. On 21.5.1970, there was one account for ¥4,000. Subsequent to these dates, they have been renewed up to now. Madam Chan still has ¥63,000 deposited with Kwong Yik Bank.

I produce all the surrendered receipts in respect of all eight accounts. (Marked D31 A to P).

(D24 referred). There were consistent withdrawals of ¥200, ¥300, ¥500 - sometimes ¥350 - from this account 1-365. Withdrawal was for the purpose of Chan Yoke Ying's maintenance. I can produce the cheques in respect of these withdrawals. All these cheques were signed by Chan Yoke Ying at the back.

10

The ledger card (D24) shows some credit entries - four credit entries - ¥1,500, ¥1,687.50, ¥1,687.50 and ¥1,687.50.

These sums represented interest earned on fixed deposits when the deposits were in the name of Chow and his wife. These sums are shown on the reverse side of B26 A and B.

20

(Agreed Bundle - p.32 - referred).

(The last sentence of paragraph C). That letter is my letter.

(D24 referred). The last item was on 27.12.1969. There is a balance sum of ¥70.25. Account 1-365 is continued. The balance ¥70.25 is still on that account.

Cross-examination

Cross-examination by Mr. Sri Ram:

Deceased was still in possession of his full mental faculties at all times until his death?

30

I made no notes or memoranda of what happened in the material dates six years ago.

I have a brother Peter Kwan Mun Chew. He is working at Head Office. In July, 1967 Peter Kwan was the Manager.

(Pages 27/8 Agreed Bundle referred). I signed as sub-accountant. I was also holding the post of Officer-in-Charge. I had known my uncle since my young days. I kept in touch with

40

him prior to July 11, 1967. I did not meet my uncle between May to June - two months prior to July 11, 1967.

The Branch Office was subject to control by Head Office. There is no one representing Head Office.

10 D18 was used to open joint account 1-361. This was received at Pasar Road Branch and sent to Head Office for clearance. If a Chartered Bank cheque was received, then the cheque would be sent to Bank Negara for clearance.

My sub-branch was acting as collector of the proceeds of D18. The Head Office was acting as paying Banker. D18 was in respect of account No. 4-267 maintained by deceased at Head Office. The ledger of this account 4-267 is with Head Office.

The Head Office would have full particulars of an account maintained at the branch office and vice versa.

20 11th July 1967: I met the deceased at his flat. I had a conversation with the deceased. He did not tell me he had not been well two months preceding 11th July. He looked well. When I said he was sick, I was referring to the way he was walking. He looked a picture of health. I spent with him slightly more than half an hour. He did not give me the impression that he was under expectation of death in a short time.

30 It is not true I did not discuss the joint account with the deceased on 11th July.

On 12th July, I met the deceased again at about 5.00 p.m. I had a conversation with the deceased. The deceased got up and walked around. He was in the same condition as the day before.

I did not visit the deceased every day from 11th until he died. I cannot recall meeting plaintiff on any of the dates I visited the deceased in the hospital except the last day on 20.7.1967.

40 I remember PW7. She is my cousin. I met her on the last day at the hospital. I met her on 20th evening. I did not visit plaintiff on 23rd.

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Cross-examination

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(continued)

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Judge's Notes of Evidence

Defendant's Evidence

Lwan Mun Koh

Cross-examination

2nd July 1973 (continued)

Q. On 20th when you visited the deceased he was unable to speak or recognise anyone.

A. That is not true.

(Adjourned to 2.00 p.m.).

(Hearing continues at 2.00 p.m. Parties as before).

(DW2 on former oath).

On 18th July, I received a call from Chow at about 4.00 p.m. Chow told me that he and my uncle had discussed the matter and I had to get all the necessary documents for my uncle to sign.

10

Chow did not mention anything about conversation between himself and Dr. Loke. That was not the first time I knew the deceased wanted to open a joint account with Chow. When I spoke with Chow, I was under the impression that the deceased was going to sign all the documents.

The very first time I knew of the deceased's inability to sign was when I spoke to him at the hospital.

20

I informed Chow that I was not able to come during office hours. In the ordinary course of banking business, the banking hours are conducted between 10.00 a.m. and 3.00 p.m. on week days and between 9.30 a.m. and 11.30 a.m. on Saturdays. That would be my office hours. When I obtained the thumbprint of the deceased on D18, D19 and D20 A and B, I confirm I did so outside normal office hours.

I arrived at the hospital at about 5.00 p.m. I was with the deceased for about twenty minutes. I cannot remember whether I or Chow left first. When I walked into the deceased's ward, only his wife and Chow were there. At the hospital, Chow's wife was there but she was not in the room. During the twenty minutes I was at the hospital, the deceased did not alter his position on the bed. The deceased started conversation regarding the joint account first. The deceased was righthanded.

30

Standard equipment: I carry them if someone wants to open an account outside my premises.

40

I handed the mandate and specimen signature cards to the deceased. I cannot remember with which hand he received the documents. Before reading them, he asked for his spectacles. The spectacles were handed to him by his wife. I cannot remember whether the deceased received the spectacles with the case and whether he opened the case, removed the spectacles and put them on. The deceased put the spectacles on by using both his hands. I cannot recall whether my uncle used gold rimmed spectacles. He had no difficulty in putting on his spectacles. He proceeded to hold the documents and read through them. The documents were handed together with the cheque. The deceased held them in both hands.

10

The deceased said he had difficulty in holding a pen. He had no difficulty in holding the spectacles.

The cheque was also handed together with the documents to the deceased. (Now says) - the cheque was handed to the deceased after he had affixed his thumbprint.

20

The deceased called for the cheque book first. The deceased did not read through the documents before putting his thumbprint. He read through the documents after he had put his thumbprint. He did not query anything.

D18 was thumbprinted first. All the particulars including the date were filled in. The words "(Pasar Road Account 1-361)" were filled in on 20.7.1967.

30

I do not agree that the words in brackets were filled in on 18th. I also wrote "right thumbprint of Loke Yaik Ho" on 18th.

Q. In the ordinary course of banking practice, the chop "signature admitted" is placed at the time of payment of the cheque?

A. No.

Q. The words "signature admitted" mean that the bank has accepted the thumbprint for the payment of the sum mentioned in the cheque?

40

A. No.

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Judge's Notes of Evidence

Defendant's Evidence

Kwan Mun Koh

Cross-examination

2nd July 1973  
(continued)

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Judge's Notes of Evidence

Defendant's Evidence

Iwan Mun Koh

Cross-examination

2nd July 1973 (continued)

Q. A signature is usually accepted at the time of payment of a cheque?

A. Correct.

Q. When you accepted the thumbprint of the deceased, you accepted it as an officer of the branch office and not as an officer of Head Office?

A. Yes.

D19 (p.6 Not Agreed Bundle) referred 7  
"1-361" was written on 20th.

10

The sentence - "A copy ..... abide thereby" referred 7. I confirm no such rules were handed to the deceased. The date was not filled in on 18th.

On 18th I filled in the name of the deceased.

(Counsel refers to p.166 of notes of evidence).  
I disagree that the figure "1-361" was chopped on 18th.

I noticed the deceased's hand was swollen.

Q. In such a case as this where the client is unable to sign, as a Banker, you would require a certificate from the doctor in attendance stating that the client is unable to sign and that he is in full possession of his mental faculties at the time of placing his mark?

20

A. In this case he said he could still sign but he was afraid his signature might not be good.

(Counsel refers to p.170 of notes of evidence).  
Q. The first defendant said, "The deceased did not sign because the deceased's hand was swollen and to hold a pen, he had to bend his fingers?"

30

A. I disagree - my recollection is that the deceased still could sign but did not want to sign because he was afraid his signature might not be good because his hand was slightly swollen.

I did not ask him to try to sign.

I am not aware of this book by Sheldon - Practice and Law of Banking 7th ed. (Page 4).

I agree with the statement that if a client cannot write, he may sign by a mark but his mark should be witnessed in the presence of the Banker by a person known to the Banker.

I did not get someone to witness the thumbprint.

10 I confirm that neither I nor Chow or Madam Chan sought medical advice at the time of the execution of the documents.

After placing his thumbprint, the deceased returned the documents to me. He handed them to me with his own hands. The cheque book from which D18 came, was handed back to the deceased. I do not know what he did with it. I cannot remember what happened to his spectacles.

20 Q. You in conspiracy with Chow and Madam Chan obtained the thumbprint of the deceased on D18 and D19 and D20A and B on a subsequent date and not on 18th and then backdated these documents?

A. No.

The deceased's condition on 18th was the same as that of the previous occasion I saw him.

On 18th I did not obtain the signature of Chow. I know Chow very well. I wanted the particulars of Chow's identity card on that day. He could not produce it.

30 Chow did not have an account with our branch office prior to 18th. The deceased did not have an account with my branch before 18th.

I did not visit the deceased on 19th. It was necessary to have the identity card number before he signed. This is to identify the person's identity. I knew Chow very well but still I had to confirm his identity.

I met Chow on 20th morning before he came to

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2nd July 1973  
(continued)



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Judge's Notes of Evidence

Defendant's Evidence

Kwan Mun Koh

Cross-examination

2nd July 1973 (continued)

office. I and he discussed the deceased's health. We came to the conclusion that he was getting better. I was concerned with the deceased's welfare. I did not ask any doctor about the deceased's condition because there was no doctor around.

To me every time I visited the deceased, he appeared all right. Since I became Banker, I acted as adviser to the deceased. I disagree that at the time the deceased executed the documents, I was in a position to exert influence over the deceased to execute the documents. He executed the documents at his own freewill.

10

I did not advise him to get solicitor's advice before opening a joint account.

On 18th July, I did not gain the impression he was a man under expectation of death in a short time.

(Adjourned to 9.30 a.m. tomorrow).

20

Sgd. ABDUL HAMID

JUDGE,

HIGH COURT,

MALAYA.

CERTIFIED TRUE COPY

Sd -/ Illegible  
.....  
SECRETARY TO JUDGE  
KUALA LUMPUR.

3rd July, 1973.

This 3rd day of July, 1973

(Parties as before).

(DW2 re-affirmed).

Cross-examination by Mr. Sri Ram continues:

10 I did issue a cheque book in respect of account 1-361 on 20th July in the afternoon to Chow. The cheque book was with Chow from the time I issued it till the time the joint account came to an end. It is not necessary to accept cash to open an account. The thumbprint did not tally with the signature appearing in the specimen card at the Head Office. It is not necessary that they should reject the cheque although the thumbprint was not on the specimen card at the Head Office. When D18 was received in this case, the Head Office telephoned me to confirm whether the thumbprint on the cheque was that of Loke Yaik Ho. I confirmed it. The sub-accountant in charge of current account telephoned me - Mr. Kam.

20 D18 was not endorsed to the deceased and Chow as it was made payable to "yourself" i.e. the sub-branch to account 1-361.

I did not keep a record of conversation with Kam regarding the confirmation of Loke Yaik Ho's thumbprint.

(Page 29 Agreed Bundle referred).

(Page 32 Agreed Bundle referred).

(D23 shown to witness). The account lasted only 11 days.

30 I have heard of the term "accommodation account." I do not know what it means.

On 19th the joint account had not been opened. From 18th July onwards I had no notice of the deceased's progressive mental deterioration.

I do not agree that I should have suspended the opening of the joint account until I heard further of my uncle's health.

After account 1-361 was closed, the same cheque

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Cross-  
examination

3rd July 1973  
(continued)

book was used for account 1-361 was used for the new joint account between Chow and his wife.

When I allowed Chow to draw money from account 1-361, I did not ask for indemnity in respect of estate duty.

(A specimen signature card in respect of Head Office account 4-267 produced and marked P32. Application for the opening of the account is produced and marked P33. A statement of account is produced). This is the last ledger account. (Marked P34). With the transfer of the money, that account was no longer subsisting.

10

I said yesterday I could produce cheques drawn by Chow and endorsed by Madam Chan. (Thirty-seven cheques shown to witness). Thirty of these cheques were drawn on account 1-365 and endorsed by Madam Chan. (Produced and marked D35). There are four not endorsed. (Marked D36).

There were also endorsements by either Chow Yee Wah or Chow Chee Kong - apart from endorsement by Madam Chan in D35. D35 and D36 were all with the bank after they had been cashed. It is not the practice in the Branch to return cheques after they have been cashed.

20

There is no date of the endorsements. The cheques were endorsed by Madam Chan before they were cashed.

(Mr. Shankar wants to know whether these questions, suggesting dishonesty on the part of the bank, were asked on the instruction of the plaintiff).

30

(Mr. Sri Ram: These questions were asked on the instructions of the plaintiff).

I call Madam Chan "aunt".

The deceased and Madam Chan did not undergo any form of marriage ceremony. He first met Madam Chan in 1962. I do not know how many years they lived together.

I have heard of trust account - for Trusteeship. I agree nowhere in D19 was trust mentioned. This is not a trusteeship account.

40

Account 1-361 was not a trusteeship account; neither was account 1-365.

Account 1-361 - the survivor is entitled to the account.

Standard equipment:

- Q. The so-called standard equipment you brought because at that time you knew he was not in a position to sign due to his unconsciousness.
- A. Not true.

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Judge's Notes of Evidence

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Kwan Mun Koh

Cross-examination

3rd July 1973  
(continued)

Re-examination

3rd July 1973

10 Re-examination:

If a cheque is drawn on Kwong Yik Bank Head Office, it is sent to Head Office for clearing. After I had prepared the cheque, I handed the cheque book together with the documents to the deceased. At that time I had already filled in the documents.

20 After receiving the documents with the cheque book, he asked for the spectacles. The deceased read the cheque and the documents at the same time. I asked him whether the particulars were in order. He said they were all right. I told him to sign.

He thumbprinted the documents and the cheque all at the same time one after another. The cheque was torn from the cheque book after the thumbprinting. He asked me to tear off the cheque from the cheque book. I handed back the cheque to the deceased.

The same cheque book was used for account 1-361 and account 1-365.

30 The cheques in D35 show account 1-365. Some show cancellation of account 1-361. The cheque that does not show cancellation came from another cheque book.

(Page 32 Agreed Bundle referred). The letter was written by me. What I stated in the letter - that I saw him every day until he died - was wrong.

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Judge's Notes of Evidence

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Kwan Mun Koh

Re-examination

3rd July 1973 (continued)

Chan Yoke Ying Examination 3rd July 1973

Court: I said that because this was a typing error. It was meant to be 11th July - not 12th.

I had omitted the word 'almost'.

(Court adjourned for 15 minutes).

(Hearing continues).

DW3: Chan Yoke Ying, affirmed, speaks in Cantonese. 46 years. No.4, Hot Spring, Kuala Lumpur.

Loke Yaik Ho was my husband. I cannot read or write. My husband taught me and I know how to sign my name.

10

In 1967 my husband was admitted to the General Hospital. A few days after his admission the question arose as to my household expenses. My husband gave me a cheque for \$200. When the cheque was prepared I was at the hospital. It was written by one Kwan Mun Chew. I was at that time standing opposite my husband. Kwan Mun Chew was also standing opposite my husband. The cheque was signed by my husband. I can't identify the cheque as I do not know how to read. After the cheque was signed, my husband tore it off from the cheque book and gave it to me for my household expenses. He asked me to take the cheque to see one Ah Sung to exchange it for cash. Ah Sung was my landlord. I followed my husband's instruction. To see Ah Sung, I went to Ah Sung's house at Pasar Road. I met my landlord's son.

20

I told him that my husband had asked me to see him to change the cheque for cash. He did change it.

30

I was present when my husband thumbprinted a cheque for \$60,000 (or so).

I know the plaintiff.

- Q. It is suggested by the plaintiff that you, Chow Yee Wah and Kwan Mun Koh conspired to obtain the deceased's thumbprint on the cheque when he was either dead or unconscious to a point that he did not know what he was doing?
- A. The plaintiff is telling a lie.

10 After my husband's death, I received a letter addressed to my husband from my landlord. I can produce the letter and envelope. (Marked D37 for identification - envelope D37A). At that time, I was staying at Jalan Brunei - a flat on the second floor.

Subsequent to my husband's death, Soong Siew Choon came and told me my husband owed him three months' rent. I paid the three months' rent. I obtained receipts. Soong Siew Choon also gave me a red envelope with an address. Soong Siew Choon was the son of my landlord.

20 (Red envelope marked D38 for identification).

(Mr. Shankar says he is making witness available for cross-examination).

Cross-examination by Mr. Joginder Singh:

I and the deceased had a small tea party on the occasion of our marriage. Normally this was what we Chinese people do. This was held at our house in 1961. I cannot remember what month.

30 No invitation cards were printed or sent out. No photographs were taken of our marriage. We did not sign a certificate of marriage. The marriage was not advertised in Chinese Newspapers.

At the tea party, some of those present were my husband's friends. One of them was the brother of my husband and Chow Yee Wah. Plaintiff was not present. My husband did not recognize her as his mother.

I do not know Loke Siew Kim.

We did not take photographs because we did not like to take photographs.

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Chan Yoke Ying

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Chen Yoke  
Ying

Cross-  
examination

3rd July  
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(continued)

I agree I and the deceased were not married. It is not true I lived as his mistress with him for two years before the deceased's death.

Court: I lived with the deceased for over six years.

I had never stayed in Melaka but I had been to Melaka. I did not visit Melaka when the deceased was hospitalised in July, 1967.

I visited the deceased every day when he was in hospital. I was concerned about his health. The doctors were very proud and I did not know how to speak English. So I did not ask about my husband's health. Now I am learning Bahasa Malaysia. I knew a little in 1967.

10

I had not seen a Chinese doctor attending to the deceased.

The deceased was never unconscious outside the flat in the morning before he was admitted to hospital.

The deceased was taken to hospital because his hands and legs were swollen.

20

When cheque (P10) was signed, the deceased's hand was a bit swollen. When the deceased put his thumbprint on D18, his hand was also swollen. The swelling was slight.

On the day of his admission, I did not know whether he suffered from some other disease. The deceased did not look pale. He was not short breath.

In the flat before admission, the deceased was sitting - not confined to bed. At the time of admission, I was at the hospital. When the doctor examined him, I was present. At the hospital before admission, the deceased was not short of breath. The deceased had not been ill two months prior to admission. The swelling of the leg and hand came one night before his admission.

30

From the time the deceased was admitted to the hospital until his death, the deceased was in full possession of his mental faculties.

40

I did see the plaintiff at the hospital during the time the deceased was hospitalized. I cannot remember when I first saw the plaintiff. I saw the plaintiff three or four days prior to the deceased's death. I saw the plaintiff two or three days after the thumbprint was taken.

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10 On 18.7.67 the deceased asked Kwan Mun Koh to do something for him - to open an account - about \$60,000. The deceased asked him to get an account opened in the names of Chow Yee Wah and the deceased. This was the first time the deceased asked Kwan Mun Koh to open the account. Before my husband's admission to the hospital, he asked me to go to Pasar Road. He had something to ask Kwan Mun Koh to do.

Judge's Notes of Evidence  
Defendant's Evidence

Chan Yoke Ying

Cross-examination

20 I was not with the deceased the whole day on the day the thumbprint was taken. On that day, I went to the hospital at about 9.00 o'clock in the morning. I left the hospital at lunch hour. I went back to the hospital in the afternoon at about 5.00 p.m. There was nobody else apart from the deceased. Later Chow Yee Wah came. His wife also came but she stayed outside. Chow Yee Wah came a while later. He talked to my husband. The deceased was sitting on the bed. Chow Yee Wah talked to the deceased for a little while. Kwan Mun Koh came. I did not see the time. I cannot remember how long Kwan Mun Koh stayed there - about half an hour.

3rd July 1973  
(continued)

30 When the deceased saw Kwan Mun Koh he asked him whether he was going to open an account. Kwan Mun Koh said, "Yes." Later Kwan Mun Koh gave some papers to my husband for him to see. I cannot remember what papers these were. Kwan Mun Koh wrote on those papers before he gave them to my husband. My husband asked me to get the spectacles from inside the cabinet beside my husband's bed. The deceased held the papers with both hands. He was a bit clumsy. The spectacles were in a case. I opened the case and gave the spectacles to the deceased. The deceased took out the glasses himself. He unfolded and put the glasses on himself. After putting on the glasses he read through the papers. I cannot remember how long he read. After reading he handed the papers back to Kwan Mun Koh. The deceased then removed the glasses, folded them and handed them back to me with the right hand.

40



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(continued)

The spectacles were of gold plated frame. I cannot remember whether it was a thick or thin frame.

My husband asked me to take out a cheque book. This was after he had handed back the papers to Kwan Mun Koh. I took it out from my husband's leather bag. The bag was on the top of the cabinet beside my husband's bed. I handed the cheque book to the deceased. The deceased handed it to Kwan Mun Koh to write. I saw at a glance Kwan Mun Koh writing. After writing, Kwan Mun Koh asked my husband to sign the cheque as well as the papers. My husband said he did not want to sign but wanted to put his thumbprint on it. He told Kwan Mun Koh that his hand was clumsy. After he had said that, Kwan Mun Koh gave him a stamp pad to put his thumbprint on the cheque.

10

The deceased said he was clumsy in signing. His hand was slightly swollen. He said to Kwan Mun Koh that he could not sign because his hand was swollen.

20

My husband affixed his thumbprint to the documents. He affixed it himself.

The deceased had some difficulty in affixing his thumbprint.

When the deceased affixed his thumbprint, neither I nor Kwan Mun Koh nor Chow Yee Wah asked for any doctor to be present. There was no doctor around.

30

I cannot identify the papers on which Kwan Mun Koh did some writing because I did not see them before.

I did not myself have a look at the papers. I did not know the contents of these documents.

After detaching the cheque from the cheque book, Kwan Mun Koh gave the cheque book back to my husband.

I am certain of that. My husband gave the cheque book back to me and I put it back into the bag. The cheque book has been burnt on the day of his cremation.

40

(Adjourned to 2.15 p.m.)

(Hearing continues at 2.15 p.m.).

(Parties as before).

(DW3 on former oath).

10 The account was to be opened in the names of the deceased and Chow Yee Wah. Chow Yee Wah did not sign any document at the hospital. Chow Yee Wah was supposed to sign some documents. I overheard him telling Kwan Mun Koh that he did not have his identity card. I do not know whether it was strange or not. I overheard my husband telling Chow Yee Wah to go to Kwan Mun Koh's bank and to bring his identity card. I do not know whether he did that.

On 18th - I am not clear as to who left first. I left some time past 6.00 p.m. At about 6.00 p.m. the deceased did not pass urine in bed.

20 The next day I visited the deceased for a while. I went to visit him in the morning at about 9.00 a.m. I talked to him for a while and then left. I did not see the time. It was about five to ten minutes.

The deceased asked me to buy things for him to eat. I did not see Choy Woh Peng. I did not know who is Loke Siew Kim.

I am not clear whether I went to see the deceased on the afternoon of 19th.

When I saw the deceased, he appeared to be about the same. He was not seriously ill.

30 On subsequent days, the condition of the deceased appeared to be the same.

One day I saw Choy Woh Peng at about 11.00 a.m. - two or three days after the thumbprint was taken. The plaintiff was with her.

I did not see Choy Woh Peng and the plaintiff on the day after the thumbprint was taken.

I visited the deceased on the last day before the deceased died in the evening. That

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Judge's  
Notes of  
Evidence  
Defendant's  
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Chan Yoke  
Ying

Cross-  
examination

3rd July  
1973  
(continued)

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Chan Yoke Ying

Cross-examination

3rd July

1973

(continued)

night I saw the doctor tie up my husband. I left after that. I did not know what time it was. Choy Yee Wah came and asked me to go back. I saw a rubber tube in the deceased's hand.

Whilst I was living with the deceased, the plaintiff came to live with the deceased. She left the house. My husband chased her away.

The plaintiff did not live for a year with the deceased.

When I first got married to the deceased, I asked the deceased to look for his mother and bring her back to live with us. At first my husband did not agree. Later he brought her back. It is not true that the deceased recognized his mother.

10

I do not agree that the story of Kwan Mun Koh taking the thumbprint of the deceased was a concoction. It is a fact.

The deceased was not in a state of unconsciousness when the thumbprint was taken.

20

The cheque for £200 was signed in the afternoon at about 6.00 p.m. I did not cash this cheque from Soong Siew Choon.

(D37 and D38 identified. Counsel asks why she did not show these to Siew Choon).

At first I did not know that Siew Choon said that the money was paid as rent. After my return, I searched the house and found D37 and D38 and took them to Chow Yee Wah and asked him what these documents were. I remember Soong Siew Choon had given me his Lipis address.

30

I did receive D37 and D38 in July, 1967.

Re-examination

3rd July 1973

Re-examination:

In addition to these (D37 and D38) I also gave Chow Yee Wah some rent receipts.

Tea Party: At that time my husband gave me a diamond ring. My husband said that this was because we were husband and wife.

I do not know Loke Siew Kim. I know Nui Thow. I do not know whether she is an adopted daughter or bought child of the plaintiff.

Landlord's son: He is the landlord's son. (Soong Siew Choon identified).

(PW12 recalled for cross-examination. Application made by Mr. Shankar. PW12 re-affirmed in English.)

10 (P10 shown to witness). I was shown this cheque when I gave evidence previously. I said this cheque was given to me on the first week of July - after I had a look at the cheque. I saw that the date of that cheque was 17th July.

I maintained that the cheque was given to me for rent by the deceased.

I could not remember whether I saw him signing the cheque. I think the cheque was already written.

20 If I had seen the deceased in the early part of July I would have collected the rent for July and June.

Nobody had refreshed my memory before I gave evidence that I get the cheque in the early part of July. Nobody discussed with me before I gave evidence. I remembered that I got the cheque in the early part of July when I saw the cheque. This is because I always went on the first week of the month to collect the cheque.

I never collected postdated cheques from the deceased.

30 When I received the cheque, it could have been 7th or 17th July. I am not sure.

Before I was confident I received the cheque on the first week of July.

(Counsel refers to p.92 of notes of evidence). I said I knew after July 1967, that Loke was ill.

(D37 referred). This is my father's letter and it is his signature. (Marked D37).

(Mr. Joginder Singh has no objection to it

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Chan Yoke Ying

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3rd July 1973

(continued)

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Judge's Notes of Evidence Defendant's Evidence

being marked as an exhibit but disputes the truth of the contents).

I used to go to the deceased's flat to collect the rent on my father's behalf.

My father is a truthful man.

I do not agree that I was mistaken because I could have cashed the cheque and kept the money and not given it to my father.

I and my father lived in the same house in Lipis. Even though I and my father lived in the same house, he did not know when he wrote this letter of 25th that I had collected the rent.

10

My father would know if I had left for Kuala Lumpur to collect rent.

(D16A and D16B shown to witness). The signatures are that of my father. (D16A is dated 1.6.67 and D16B is dated 1.7.67).

I agree that if my father had written receipts on 1.6.1967 and 1.7.1967, he would not have written the letter of 25th July. The letter asked for the rent to be paid to him.

20

(D38 referred). It is in my handwriting. (Marked D38).

Chan Yoke Ying

Re-examination

3rd July 1973

(continued)

Re-examination:

No.14, Jalan Brunei is my house. I have a title to it. He collected the rents because he paid for the house.

(P10 referred). My endorsement is at the back.

Witness released.

30

Dr. Loke Wai Tuck

Examination

3rd July 1973

DW4: Dr. Loke Wai Tuck, affirmed, speaks in English. 52, Jalan Balau, Damansar Heights.

In 1967 I knew Loke Yaik Ho. He was my uncle. I met Chan Yoke Ying on 13.7.1967. When I went into her house, I called her "Sei Sam" - fourth auntie. I regarded her as my uncle's wife.

In July, 1967 - 13th - Chow Yee Wah - another uncle - came to my dispensary and said my uncle was sick and wanted to see a doctor. He suggested that I came along. (First defendant identified). I agreed. I had a rough idea where Loke Yaik Ho lived. Chow took me to Yaik Ho's house.

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Defendant's Evidence

Dr. Loke Wai Tuck

Examination

3rd July

1973

(continued)

10 I arrived at the deceased's house. I cannot recall exactly the time but it was approximately after lunch. I did not see the deceased immediately. My uncle was in the bathroom. Roughly I waited for about half an hour. Finally he came out. He was fairly clean. He was on his own but I could see he was walking very slowly. I examined him. After examining, I told him I would refer him to the General Hospital. I made arrangement for him to be admitted to the hospital. He was admitted to the hospital that afternoon. At that time I lived at No.1, Jalan Mayang, Off Jalan Yap Kwan Seng. My dispensary was at 133, Jalan Pahang. To go to my  
20 dispensary, I had to pass the General Hospital every day.

On my way to work, I dropped in to see him at the hospital. Sometimes in the afternoon I again dropped in to see him. At all times when I saw him, he was mentally fully alert. His manner of speech - he had a stammer. He had a very bad temper. Anybody he did not like he would abuse him or her.

30 After my uncle was admitted, Mr. Chow got in touch with me again. Chow told me that the deceased had asked him to open a joint account. I discussed this with the deceased. In my mind I knew that my uncle was seriously ill. I went to my uncle and asked him whether he had any money to use because he might have to pay medical fees and other items while in hospital - maintenance of housekeeping and I also asked him about his future.

40 He said he had spoken to uncle Chow and it was being carried out - the matter - financial matter - was being attended to.

My visits continued until the day he died.

Mr. Chow gave me this information a few days after the deceased was admitted.

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Judge's Notes of Evidence

Defendant's Evidence

Dr. Loke Wai Tuck

Examination

3rd July 1973 (continued)

Cross-examination

3rd July 1973

Once I saw the deceased standing near the window and on most occasions, I saw him sitting at the edge of the bed.

Only once when I visited him I saw a doctor in attendance.

Cross-examination:

It is not quite right that my education was financed by Loke Siew Eng.

I was on scholarship. It was given to me by the Services Canteen Trust Fund, Australia. I was eligible for this scholarship because my father was with the Royal Australian Air Force during the Second World War.

10

Madam Loke Siew Eng used to give me some pocket money and some money to come back on holidays. Madam Loke Siew Eng is my father's sister. I am grateful for what she had done for me.

Q. I put it to you that you are not giving truthful evidence.

20

A. I deny it. I have taken the oath to tell the truth.

I remember on 30th June when some doctors were in the witnesses' room, I joined them in the witnesses' room. I was called to be a witness.

The last time I saw my uncle (deceased) was many many years before 13th July. I remember 13th July because when this case came up, I knew the case history of my uncle and I was subpoenaed to give evidence. So I checked the dates in my case history card.

30

Condition of the deceased on 13th: I noticed he was very short of breath. I thought he was seriously ill and told him I had to put him in a hospital. I examined him all round. My uncle was gasping for breath after coming out from the bathroom, having to go down the stairs. I was not with him at the time of his admission.

I did not visit the deceased on 18th itself.

10 I did ask my uncle for his case history. I cannot remember it exactly. He told me for two months he had diarrhoea six to ten times a day. That would weaken him.

His mental state was normal.

20 I called to see the deceased on the morning of 14th before going to work at about 9.00 a.m. I stayed with him for five to ten minutes. On every occasion I visited him, I stayed with him for roughly ten to fifteen minutes. I did not examine the deceased on 14th. I felt his pulse, felt whether there was swelling on the leg. His condition on 14th: He was up and around the ward - somewhere at the corner. I had to wait for him. While waiting, I noticed a beer bottle by his bedside. When he finally appeared, I asked him whether he had beer. He smiled. I told him off and asked him not to take beer. He was supposed to be in bed.

30 It is not true that my uncle did not understand simple instruction. It was just that he liked drinking.

On 15th: I visited him on 15th. I visited him in the morning around 9.00 a.m. I examined his leg. I did not make notes.

Condition on 15th: He was still about the same. He still had shortening of breath and oedema of the leg. His mental condition was normal. When I conversed with him, he answered normally. His mental state was always the same.

40 During the few minutes I was with him he appeared normal. He behaved normally. He was not in a confused state of mind.

I saw the deceased on 16th in the morning at about 9.00 a.m. His condition: Mentally he was

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Cross-examination

3rd July 1973  
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Dr. Loke Wai  
Tuck

Cross-  
examination

3rd July 1973  
(continued)

still normal but physically his oedema did not seem to subside to the extent he would regain normal breathing. He still had to breath at increased rate and had to sit upright on the edge of the bed. A person who is short of breath would feel more uncomfortable if he sits upright. I visited him not more than two or three occasions in the afternoon from 14th onwards.

On morning of 18th: As far as I remember, his physical condition was still short breath. It seems to me every time I was there, he was sitting at the edge of the bed looking out of the window. 10

Mental condition: From 14th to 18th it would seem to me that his mental condition was normal. Sometimes he asked me about golf.

To my mind, during the periods I visited my uncle, he appeared to me to possess his full mental faculties.

On 18th he was not in a confused state of mind. He was not in a state of drowsiness. I visited the deceased again on 19th. He was not in a state of confusion nor drowsiness. Whenever I visited my uncle, except for the last two days, he was always awake. During the last two days he died - towards the end he deteriorated. He was asleep when I visited him. I did not wake him up. 20

On 19th I noticed he had shortness of breath. On 20th I do not think I found him in a state of drowsiness. Up to 21st the deceased was still all right. I did not notice him to be in that state of confusion. I did not see or hear him behaving like a confused person or a person in any delirium. 30

Most likely I visited the deceased in the morning.

On some occasions I noticed instrument for catheterising. I cannot be sure on what days. He complained that it made him want to urinate.

On 23rd the deceased was asleep when I visited him. I do not know whether he was in a coma. 40

Re-examination:

The deceased complained that the catheter was very uncomfortable. The deceased spoke to me rationally.

Witness released.

(Adjourned to 9.30 a.m. tomorrow).

Sgd. ABDUL HAMID,

JUDGE,

HIGH COURT,

MALAYA.

This 4th day of July, 1973

(HEaring continues at 9.30 a.m.)

(Parties as before).

DW5: Peter Kwan Mun Chiew, affirmed, speaks in English. 52 years. Senior Manager, Kwong Yik Bank Berhad.

I am related to the deceased Loke Yaik Ho. He was my uncle. He was admitted to hospital on 13.7.67 and died on 24.7.67.

I paid him a visit once on 16.7.67 at about 6.00 p.m. I was with my wife. I saw my uncle. He was sitting on the side of the bed with his legs dangling down. The deceased's wife was also in the room. I wished him as I went into the room. He said, "hello" nodding his head. I had general conversation with him. He appeared to be quite normal. He talked to me rationally.

He asked me to draw a cheque for him. He was trying to reach for his cheque book at the bedside table. I helped him to get the cheque book out. I asked him how much he wanted to write. He said \$200. He asked me to write "cash". I did write the cheque as instructed.

After I had written the cheque, I told him that it was 16th evening and the bank was closed. I asked him whether I could write the date as

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Dr. Loke Wai Tuck

Re-examination

3rd July 1973

Peter Kwan Mun Chiew

Examination

4th July 1973

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Defendant's  
Evidence

Peter Kwan  
Mun Chiew

Examination

4th July 1973  
(continued)

Cross-  
examination

"17th". I then passed him the cheque for his signature. I put it on the trolley table and pushed the trolley table to his front. He signed the cheque with his own hand. He tore the cheque out from the cheque book. He handed the cheque to his wife. He did not say anything to his wife.

After that the deceased wanted to be back on the bed. He had some difficulty in putting his leg up. I helped him to put his leg up. He was then lying down. I had, after that, a few words of conversation with him. I bade him goodbye and left him. It was a quarter to seven when I left him.

10

(P10 shown to witness). This is the cheque I prepared for him. (P10 identified).

Cross-examination by Mr. Sri Ram:

The cheque was drawn on Head Office account. I did not offer to cash the cheque. There is nothing to indicate it was written on 16th.

Q. The cheque was not written on 16th at 6.00 p.m. but on the first week of July?  
A. I do not agree.

20

The cheque book was in the drawer. I did not notice a suit case on the table.

I did not see the deceased gasping for breath.

There was a sub-accountant in 1967 by the name of Mr. Kam.

Q. On 16th evening the deceased was not in full possession of his mental faculties?  
A. I disagree.

30

Re-examination: No.

Witness released.

(Defendants' case closed).

(Counsel for both parties to submit written submissions by 11.7.1973. The written submissions will also be exchanged between the plaintiff's and defendants' counsel.

Reply to the written submissions, if any, shall be submitted on or before 13.7.1973.

Sgd. ABDUL HAMID,  
JUDGE,  
HIGH COURT,  
MALAYA.

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Judge's Notes of Evidence

4th July 1973 (continued)

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KUALA LUMPUR.

10

5th July, 1973.

No. 7

Judgment

JUDGMENT OF ABDUL HAMID, J.

No. 7

Judgment

26th November 1973

This is a claim brought by the Plaintiff Choo Ah Pat against Chow Yee Wah the first defendant and Kwong Yik (Selangor) Banking Corporation, Limited the second defendants.

The plaintiff is alleging -

20

(a) that cheque No. A043382 for \$60,384.80 purported to be drawn on July 18, 1967 on the second defendants by her son Loke Yaik Hoe who died on the morning of July 24, 1967 was invalid and of no effect as the cheque -

(i) was never and is not the deceased's cheque, and/or

30

(ii) was obtained from the deceased by the first and/or second defendants their servants or agents by exercising undue influence on the deceased and/or when the deceased was of unsound mind, memory and understanding and/or was fraudulently raised by the first and/or the second defendants their servants or agents;

(b) that the documents purportedly executed by the deceased on July 20, 1967 whereby the

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(continued)

deceased was alleged to have opened a joint account with the first defendant (Account No. 1-361) on July 20, 1967 at the second defendants' sub-branch No. 55, Jalan Pasar, Kuala Lumpur were invalid and of no effect for the said documents were -

- (i) never and are not the documents of the deceased;
  - (ii) obtained from the deceased by the first and/or second defendants their servants or agents by exerting undue influence on the deceased and/or when the deceased was of unsound mind, memory and understanding, and/or
  - (iii) forgeries or false documents and fraudulent documents concocted for fraud by the first defendant and/or the second defendants their servants or agents;
- (c) Alternatively if the Court should hold that the said cheques and documents were validly and lawfully drawn and executed by the deceased that -
- (i) the authority given to the second defendants to honour the said cheque and/or to open the said joint account was revoked by the subsequent mental condition and/or mental disorder of the deceased and/or by the deceased becoming unsound of mind, memory and understanding;
  - (ii) the rule of survivorship at law (if any) and/or the directions given in the said documents as regards the survivor of the deceased and the first defendant being entitled to the monies standing to the deceased's credit in the said joint account at the time of the deceased's death was and has been over-ridden by equity.
- (d) that the deceased's signature (or thumbprint) on the alleged cheque No. A 043382 for \$60,384.80 was a forgery and/or unauthorised signature within the meaning of section 24 of the Bills of Exchange Ordinance, 1949;

10

20

30

40

(e) that the first and/or the second defendants were not holders in due course of the alleged cheque No. A 043382 and/or had a defective title thereto at all material times.

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(continued)

The plaintiff is asking the first and/or the second defendants to refund the sum of \$60,384.80, the value of the alleged cheque or the sum of \$57,382.30 standing to the credit of the joint account at the time of the deceased's death on July 24, 1967 as having been unlawfully withdrawn by the first and/or the second defendants.

10

Alternatively the plaintiff is claiming a sum of \$60,384.80 being the value of the alleged cheque No. A 043382 against the first and/or the second defendants for having converted the sum for his and/or their own use and for wholly depriving the deceased and/or his estate of the same.

The plaintiff also claims against the second defendants for a sum of \$60,384.80 for monies had and received for the use of the deceased and/or his estate.

20

Briefly the facts are as follows. The deceased Loke Yaik Hoe was the son of the late Loke Chow Kit and the plaintiff. When the late Loke Chow Kit took the plaintiff as his wife he was then already married to one Chan Yuen Lin with whom he had nine children. One of Chow Kit's daughters is the wife of the first defendant. Kwan Mun Koh representing the second defendants is a nephew of the deceased. He is an officer of the Kwong Yik Bank, Pasar Road.

30

Loke Yaik Hoe was admitted to the General Hospital, Kuala Lumpur on July 13, 1967. A few days before he died, a joint account between him and the first defendant was opened at the Kwong Yik Bank Pasar Road Branch. On July 18, 1967, the deceased purportedly drew a cheque in favour of Kwong Yik Bank on his account No. 4-267 with the Head Office for a sum of \$60,384.80. He also purportedly executed certain documents authorising the opening of the joint account. The said sum was transferred to the joint account on July 20, 1969

40

From the pleadings, it is revealed that the main issue before this Court is whether the deceased was of sound mind, memory and under-

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(continued)

standing when he drew, if he did, cheque No. A 043382. The plaintiff is asking the Court to conclude, primarily on the strength of medical evidence, that the deceased was suffering from some unsoundness of mind that he did not know the nature of his act when the thumbprint was affixed on the cheque and the other documents.

I would at the outset consider whether the thumbprint on the cheque was that of the deceased. Although the plaintiff is alleging that the thumbprint on the cheque is a forgery, no particulars have been set out and no evidence adduced to support the allegation. And, in regard to the thumbprints found on the mandate and the specimen cards, no allegation is made that they were forged. The plaintiff does not in fact dispute that those thumbprints were that of the deceased. By consent, the thumbprints on the cheque, mandate and specimen cards were sent to the Pendaftar Penjenayah Malaysia & Singapura for verification. After carrying out comparison, the Pendaftar Penjenayah certified that the digital impressions found on all the documents are identical with one another and they belong to one and the same person. On the strength of the report and the evidence before me, I am satisfied that the thumbprints on the cheque, the mandate and the specimen cards are those of the deceased.

10

20

The plaintiff is also alleging that the thumbprint was affixed on the cheque just immediately before or just immediately after the deceased's death. Here too there is not an iota of evidence to support the allegation. In fact sufficient evidence exists to establish that the cheque and the documents were already in the possession of the second defendants a few days prior to the deceased's death.

30

The cheque in question was in fact cleared by the defendant bank on July 20, 1967, and the \$60,384.80 was transferred to the joint account on the same day. (See exhibit P34). To my mind, the thumbprints on the cheque and the documents must have been affixed either on or before July 20, 1967.

40

It is to be observed that the plaintiff has not adduced any evidence whatever to show when these thumbprints were affixed. On the other

hand, the defendants produced evidence to show that the thumbprints were affixed on July 18, 1967.

I shall now examine the medical evidence adduced by the plaintiff. Altogether, five doctors were called.

10 Dr. Vellupillai, a lecturer at the University of Malaya attached to Medical Unit 1, General Hospital, Kuala Lumpur, stated that when the deceased was admitted to the ward on July 13, 1967, he (the deceased) was suffering from hypertensive congestive cardiac failure and cardiac cerrhosis. The deceased had raised blood pressure and a malfunctioning of the heart as a result of which he could not push out his blood properly to the various organs in the body. He also suffered from chronic malfunctioning of the liver resulting from the malfunctioning of the heart.

20 Dr. Vellupillai referred to the clinical notes recorded at 4.40 p.m. on July 13th which state -

30 "History: Patient was ill for two months. Dyspnoea on exertion for two months. Paroxysmal nocturnal dyspnoea also for two months. No haemoptysis. Patient was known to be diabetic for ten years but at that time was not on treatment for diabetes. Was a known hypertensive since 1948. I could not ascertain whether he had treatment for hypertension or not. On physical examination patient was ill not cyanosed jaundiced. He was dyspnoeic. His pulse rate was 96 per minute with occasional missed beats. His blood pressure 150 - 190. His jugular venous pulse was raised. He had ankle oedema. His lungs were on auscultation bilateral vasal crepitus. On auscultation of his cardiac vascular system his dual rythm no murmurs. His abdomen was soft. His liver and spleen were not palpable. He had ascites. He had liver 40 palms. Diagnosis hypertensive cardiac failure."

He ordered certain tests to carried out and prescribed the following treatment -

- "(1) digoxin;
- (2) 0.25 milligramme twice per day;

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26th November 1973

(continued)



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(continued)

- (3) injection mersalyl 2 c.c. every other day for 5 doses;
- (4) chlorothiazide 500 m.g. on that day and every morning; and
- (5) potassium chloride 1 gramme 3 times a day."

He further testified that the patient had difficulty in breathing. The pulse rate was 96 per minute which was abnormal and the blood pressure was on the low limit of abnormal. The deceased had swelling around the ankle, a sign of failure of the heart. There was also abnormal signs of showing failure of the left side of the heart. Other signs of cardiac and liver malfunction include the presence of fluid in his abdomen. The fluid was not marked enough to cause any effect on the deceased. 10

In answer to a question put by the plaintiff's counsel as to the general condition of the deceased on admission, Dr. Vellupillai said that the deceased was a very ill patient. He showed signs of cardiac and liver failure. The deceased was not able to answer some questions, e.g. if he had been treated for high blood pressure. He was not fully clear mentally on the questions put to him. 20

Dr. LimEwe Jin a physician at the Lady Templer Hospital, Kuala Lumpur, attached to the General Hospital Medical Unit 1 testified that he first saw the patient on July 15, 1967. He did not record any clinical notes but only referred to the notes made by the other doctors. 30

On July 15th the deceased's mental condition was clinically the same. There was mental deterioration and the deceased was hesitant intellectually. He did not make any notes but saw the deceased almost every day. The only note he made was on July 20th as follows:-

"Dear Mr. Sreenivasan,

This is the patient I discussed with you regarding peritoneal dialysis. His hypertensive failure is under control but his blood urea has gone up to 360 m.g. per cent." 40

Dr. Lim referred to the results of the tests that were performed. As for liver function the results indicated that there was intrinsic damage of the deceased's liver. It was, however, still functioning. The overall results of blood urea tests (page 45 of Notes of Evidence) indicated that the deceased's kidneys were damaged and there was progressive deterioration of the kidney function. Dr. Lim explained that mental deterioration and hesitant intellectually meant that the patient was mentally confused and was not able to converse intellectually. It indicated impairment of the mental faculties at the time.

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As for July 14th, Dr. Lim said that there was progressive mental deterioration in the deceased's condition and he expected further progressive mental deterioration. Asked whether he remembered seeing the deceased on 17th, 18th and 19th, Dr. Lim said he remembered seeing the deceased between those dates but he could not remember the specific dates. He recalls that the general condition of the deceased was the same as when he first saw him. Dr. Lim referred the deceased to Mr. Sreenivasan because some of the blood tests showed that the kidneys were failing rapidly.

Mr. Sreenivasan a surgeon at the General Hospital, Kuala Lumpur, an expert in the field of surgery, said that he saw deceased on July 20th when the case was referred to him. He made a note as follows:-

"I really do not think this is at all a suitable case as he is a case of mental dementia. It is difficult to get him to lie down in bed. He is insistent on sitting up in bed. It would be difficult to continue dialysis."

He explained that when he examined the deceased on July 20th at 10.15 p.m., he found it difficult to get him to lie down. Deceased was insistent on sitting up. Mr. Sreenivasan described the degree of mental deterioration as being to the point of being restless. Deceased was getting up and lying down on the bed constantly. In his view, deceased could not understand what he was trying to tell him. Dr. Sreenivasan attributed the cause of it to mental dementia. According to him, the facts are associated with high blood urea

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and the retention of fluid that cause swelling of the brain and they are responsible for mental dementia. The other factor is the acid accumulation. Asked whether he would expect the deceased's mental condition to remain static or to become worse, he replied that it was difficult to assess the degree of mental deterioration. Mr. Sreenivasan emphasized that he could only give an assessment of the deceased's condition from what he had seen in the deceased in his time. He expressed the view that the patient was not in normal full possession of his mental faculties at 10.15 p.m. on July 20th at the time of examination. He, however, qualified by saying, "This is very difficult to judge. Certainly he was not in full control of his mental faculties but as to what extent and what degree, it is difficult to judge." Mr. Sreenivasan also expressed the view that the deceased could not talk rationally. He, however, made it clear that he did not have a long conversation with the deceased because the deceased's mental dementia did not permit him to have conversation or discuss any problems. In his opinion, he would not, if someone had come to him wanting the patient to execute a document, certify that the deceased was in his proper frame of mind to do so.

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Datuk (Dr.) Sinnadurai, Senior Consultant Physician attached to the General Hospital, Kuala Lumpur, said that he was responsible for all patients admitted to Medical Unit 1. Loke Yaik Hoe was admitted as a case of medical urgency referred by a medical practitioner because the patient had difficulty in breathing and general weakness. The patient also had swelling of the leg and cardiac failure. The patient was rushed in because he was showing signs of congestive cardiac failure needing urgent attention to make him more comfortable.

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On July 14th the patient was in distress, short of breath and restless. On July 15th there was some mental deterioration. Intellectually he was somewhat hesitant in answering questions. There was, however, improvement in the patient's general condition because of treatment given. Generally he was feeling better. He explained that mental deterioration signified a certain amount of impairment of mental acuity in the manner he was able to answer questions. He was

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rather dull and not alert. The general clinical picture was also contributed by kidney and liver failure.

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10 On July 18th the patient was mentally confused, more drowsy and clouded in his answers. Asked by plaintiff's counsel whether this condition of drowsiness and clouded answers continued to July 18th, Dr. Sinnadurai said that in this uraemic condition, there can be periods of transi-  
ent ups and downs occurring - a condition that waxes and wanes. On July 19th the deceased's clinical state became worse particularly on the 19th night when deceased started pulling out all the tubes that had been inserted. Dr. Sinnadurai felt that this was evidence of psychotic behaviour. He attributed this to intoxication caused by the waste product retained in the blood.

20 Dr. Sinnadurai was further of the view that the deceased's general condition grew worse day to day in spite of attempts to make him comfortable. Counsel for the plaintiff asked Dr. Sinnadurai whether he would, on July 14th, certify that deceased was in proper mind to execute documents. He replied saying that straightaway he would not, but he would have to have a further look at deceased and carry out investigation first. This would also depend on the type of document to be executed. He, however, qualified by saying,  
30 "That condition waxes and wanes and these people who are suffering from kidney condition present a picture of health but one would only realize how ill they are by looking at the finding."

40 Dr. Sinnadurai is of the opinion that he would hold the same view on the other days, that is 16th to 20th July if someone had asked him to certify. Commenting on the patient's consciousness, Dr. Sinnadurai said that he would not agree if someone had said that deceased was conscious throughout but he felt that there could have been certain transient periods when deceased might have been alert for a little time.

Dr. Sinnadurai also testified that deceased looked better on July 21st compared to 18th, 19th and 20th when deceased appeared drowsy, refusing to take food and drink.

Dr. Daljit Singh was the last doctor to testify.

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Briefly, he stated that he attended to Loke Yaik Hoe who was in Ward 19A. Before that the patient was in Ward 20. He made his first note on July 17th as follows:-

"Feeling better. Not dyspnoeic. No ankle oedema. Heart - dual rythm. Lungs clear. Blood urea 168 m.g. per cent done on 13.7.1967".

The patient's condition was better compared to the previous day's. On 18th he made the following notes:-

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"Confused. Blood urea 252 m.g. per cent. Heart dual rythm. Heart clear."

There is a further note to say - "Repeat blood urea and serum electrolitis." Dr. Daljit reviewed treatment on that day. He stated that the blood urea on July 18th was very high. It was raised from 168 m.g. to 252 m.g. per cent, an indication that the kidneys were failing. Deceased's confusion was the effect of raised blood urea.

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By "confused" Dr. Dajit said, he meant deceased was not able to answer questions relevantly partly because he was unable to appreciate fully what the questions were. He, however, made no record of the questions he asked.

He further stated that complex and multiple factors on July 18th would affect deceased's mental state. Nevertheless, he conceded that he had not made any record pertaining to his mental state other than the fact that deceased was confused.

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Referring to intake and output chart, he stated that there is a record showing that deceased had passed urine in bed and on the floor. Although no note was made to show that deceased was unable to control bladder function, he believed that deceased had a damaged nervous system whereby he lost control of his bladder function. It could also mean that deceased's state of mind was such that it did not matter to him where he emptied his bladder.

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Dr. Daljit referred to the nursing notes to the effect that on July 18th in the morning, deceased was fairly ill and drowsy-looking, in

in the afternoon deceased's general condition was ill and drowsy, sleeping on and off, and at night deceased's general condition was fair. He commented on the overall mental state having regard to the clinical notes as well as the nursing notes stating that deceased was confused and in such a state of mind that he did not know what he was doing.

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10 On July 19th deceased's general condition was worse than on the 18th and his mental condition deteriorated further along with his physical condition. On July 20th, however, compared with the condition the night before, he was drowsy in the morning but slightly brighter.

Referring to deceased's refusal to take food and drink and the pulling out of the catheter, Dr. Daljit expressed the view that deceased did not know what was being done for him.

20 On July 21st deceased looked brighter than on the previous day and he was not as drowsy.

30 Cross-examined by Mr. Shankar, Dr. Daljit admitted that he would not have remembered anything about this patient if he had not seen the nursing notes. He believed he spent a fair amount of time with deceased realizing his condition. When counsel suggested that to assess the mental condition of a person, it was an advantage to know the person a long time prior to this. Dr. Daljit disagreed. He stated that from deceased's condition, there were sufficient mental changes that such knowledge would not have made any difference.

40 Commenting on the output of urine, Dr. Daljit stated that the combined effect of mersalyl and chlorotiazide injection was to produce output of urine and he agreed that the passing of urine into a container required deceased's co-operation and for deceased to pass urine in the toilet, he knew what he was doing. Mr. Shankar drew Dr. Daljit's attention to the record showing visits to the toilet on the 16th and 17th and the collection of 10 ozs. of urine from 7.00 a.m. to 1.00 p.m. on the 18th. Commenting on it, Dr. Daljit said he might have been aware he was passing urine.

Dr. Daljit did not deny that he made no note

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as to the patient's condition on the evening of July 18th. When Mr. Shankar suggested to him that the description of "drowsy" would not apply to a person who was capable of walking to the toilet to ease himself and come back, Dr. Daljit said that it could, depending on the degree of drowsiness. "Deceased could stagger to the toilet and get back but whether he would know what he was doing depends on how complicated the act involved was."

Counsel also drew Dr. Daljit's attention to an entry made by the nurse observing that deceased was a very obstinate person and a further entry stating that deceased refused to listen to instruction and would not maintain complete rest in bed. Dr. Daljit commented that it was difficult to say whether he did not listen or did not get the message. He, however, conceded that on July 16th, the patient complained of cough, indicating that he was able to communicate.

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Dr. Daljit confirmed that there was an entry on July 17th that deceased's condition was fair and that although there was an entry on July 18th that he was ill and drowsy, the last entry stated that his general condition was fair.

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He further confirmed that on the morning of July 19th, although deceased was asked to have complete rest in bed, he was unco-operative. An entry was made to the effect that deceased's general condition was fair. There was a further entry stating that deceased got out of bed and stood at the window.

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Physically deceased was able to move around by himself at that time. Commenting on an entry on July 20th that the patient insisted on sitting up in bed and refusing to lie down, Dr. Daljit said that it would appear there was some difficulty in getting across to the patient. He concluded from the notes of July 18th and 19th mornings that deceased was confused and did not get the message although he admitted that he did not perform psychiatric tests. Referring to the treatment of eigoxin, he stated that one of the side effects of eigoxin was mental confusion but the degree would depend on the total dose. As to the catheter that had been inserted, he agreed that it was physically uncomfortable and there are patients who do not like a catheter to be inserted and they could pull it out themselves.

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Re-examined by counsel for the plaintiff as to the rise of blood urea from day to day, Dr. Daljit stated that in a patient in whom blood urea rises rapidly over a period of a few days, it would have an effect on his mental state. He added that severe liver damage also affects the mental state.

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10 Confirming what he said under cross-examination, Dr. Daljit stated that he was unable to confirm or deny that deceased did not know what he was doing when he went to pass urine in the toilet before the 15th. It was only his inference that deceased did not get the message.

20 Before I proceed to make my finding, I would at this juncture pause to consider the onus of proof. Mr. Joginder Singh submitted that the law in regard to mental capacity should be that applicable to cases of mental disorder. He contended that where a person has been proved to have been so mentally disordered as to be incapable for purposes of disposition of property, the law presumes such a condition to continue until it is proved to have ceased. The presumption is founded upon Section 114(d) of the Evidence Act, 1950, which provides that -

"The Court may presume that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things shall cease to exist, is still in existence."

30 He drew my attention to a passage in Sarkar on Evidence, 12th edition, page 991 which states that -

40 "The illustration is founded on the presumption in favour of continuance or immutability. It is a very general presumption founded on the experience of human affairs, that persons, states of mind or things once proved to have existed previously or subsequently in a particular state are to be understood as persisting in continuing in that state until the contrary is established by evidence either direct or circumstantial."

He also drew my attention to a passage in Halsbury's Laws of England, 3rd edition, volume 29, page 419 paragraphs 819 and 820 which state -



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"Every man is presumed to be sane until the contrary is proved, and this presumption holds as well in civil as in criminal cases, though in the case of a will it is the duty of the executors or any other person setting up the will to show that it is the act of a competent testator.

Where a person has been proved or is admitted to have been mentally disordered as to be incapable for purposes of contract or disposition, the law presumes such a condition to continue until it is proved to have ceased;" 10

Mr. Joginder Singh submitted that the burden of proving recovery from mental disorder or lucid interval lies on the person alleging it.

With respect I disagree. To my mind, the presumption would only arise when a state of things has been proved or is admitted to be in existence. The burden of establishing the existence of the state of things lies with the person making such allegation. In the instant case, the onus rests with the plaintiff to establish that the deceased was suffering from mental disorder. There was no evidence to show that deceased suffered from mental disorder prior to or on admission to the hospital. Whilst in the hospital his mental state was attributed mainly by the facts associated with high blood urea and the retention of fluid causing swelling of the brain, and it was not, as the doctors themselves testified, something static. Dr. Sinnadurai described the mental state as a condition that waxes and wanes. 20 30

Though there was evidence of some mental confusion, its degree was never established. There was also insufficient evidence to justify a finding that deceased was at all time in the state of mental confusion. Furthermore, I am not satisfied that there was no probability of any alteration in his mental condition. The burden should not therefore be shifted to the other party to show that at the material time such mental state ceased to exist. To fortify my view, I cite the following passage in Sarkar on Evidence, 12th edition, page 991 where it is stated that - 40

"The drawing of such presumption results in casting the burden of proof on the party against whom the presumption is raised. If a thing or a state of things is shown to exist and the space of time for which it existed is such that there is a probability that there has been no alteration in its conditions, the burden is on the opposite party to show that it has ceased to exist."

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10 I wish to observe that care must be taken when  
dealing with a general proposition as a rule of  
evidence for general application as there is this  
further rule that every man is presumed to be sane  
until the contrary is proved. It is true that  
there is this presumption of mental disorder for  
purposes of contract or disposition where a person  
has been proved or is admitted to have been  
mentally disordered as to be incapable for such  
purposes but whether the presumption is raised in  
20 any given case will, I think, depend principally  
upon the facts of that particular case.

It is also Mr. Joginder Singh's contention  
that the proposition has equal application to gifts  
made by a person of unsound mind and a disposition  
made by such person is absolutely void. The Court  
need not, I think, at this point, concern itself  
with the effect of the disposition. Having found  
that the presumption does not arise, the burden  
therefore, rests on the plaintiff to show that  
30 deceased was of unsound mind at the time when he  
made the disposition.

Mr. Chan Siew Yoon counsel for the second  
defendants argued that in view of the presumption  
in favour of sanity, the person who relies on  
unsoundness of mind must therefore prove it. He  
drew my attention to the Indian Case of Mohamed  
Yakob bin Abdul Quddus (1923) A.I.R. (Patna) page  
137.

40 In that case, a ninety-six year old father  
purchased the property in the name of his son with  
the intention that it be a gift to him. An  
unsuccessful attempt was made to set aside the  
gift on ground of unsoundness of mind. On the  
question of on whom the onus of proof must fall,  
Jwala Prasad J. said at page 192 -

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"..... There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must prove it sufficiently to satisfy the test .... There weakness of mind is not sufficient ....." "Assuming that Imdad Hossain was suffering from occasional aberrations of mind, as has been sought to be proved by the Plaintiffs, the Plaintiffs must further show that the particular transactions in question were entered into when he was subject to those occasional fits. There is no evidence that the documents in question were executed at a time when Imdad Hossain was suffering from any hallucination of his brain. There, the documents in question were not executed when he was 'insane' ....."

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I am inclined to agree with Mr. Chan's submission. The Court is also of the view that the burden of proving the deceased was not compos mentis at the time when he drew the cheque and executed the documents, lies with the plaintiff. The Court is further of the view that the question is purely one of fact. On the evidence given by medical witnesses, I do not think it can be challenged that the deceased was suffering from a serious illness. On admission to the General Hospital, he was suffering from hypertensive congestive cardiac failure with cardiac cerrhosis and prior to admission, he was ill for at least two months. However, there was absolsutely no evidence, indeed it is never alleged, that he was suffering from any mental disorder.

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Counsel for the plaintiff reviewed the evidence at some length and submitted that the independent medical testimony viewed in the light of all the circumstances of the case has established the plaintiff's charges of unsound mind and memory to the hilt.

I have scrutinized the evidence very carefully and I feel that whilst it is true to say that the medical witnesses were able to testify as to the general mental condition of the deceased, none of them 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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Dr. Vellupillai, for instance, made it quite

clear that he could not give any definite answer as he did not examine the deceased's mental state when asked by Mr. Joginder Singh whether he could testify the deceased was in a proper frame of mind to execute certain documents if someone wanted him to do it. It cannot, I think, be denied that the deceased had suffered some impairment of his mental faculties as a result of the serious illness to the extent that he was unable to converse intellectually but it is also evident that the deceased's mental condition had not remained static. Dr. Lim said that the condition was at variance - on some days he was more confused but on some other days less but on the whole there was progressive mental deterioration. Explaining what he meant by mental deterioration, Dr. Lim said that it meant mentally confused, not orientated and not aware of his surroundings. Asked to explain why he said the deceased was confused, he told the Court that this was his general impression at that time. The deceased according to him was mentally dull. He further told the Court that on July 19th and 20th, the deceased was able to speak. In fact he even went further to say that deceased was able to speak at all times. Although the deceased was mentally confused when he examined him, it was possible he could have been in a clear state of mind at other times.

Dr. Lim also expressed the view that the deceased could sign a cheque and that though the deceased was confused, he could understand. This answer was given in reply to my question to clarify whether with reference to mental confusion he meant the deceased did not know what he was doing or understand the nature of his act.

When asked by Mr. Joginder Singh whether he would certify the deceased could execute a document if on July 15th, 16th, 17th, 18th and 19th, someone had come to him wanting the deceased to do so, Dr. Lim stated that he was not in a position to say whether at any one time during or between July 16th and 19th, the deceased was in a proper frame of mind to execute a document.

In answer to the question whether the deceased was conscious from the time he was admitted to the time he died, Dr. Lim said the deceased was conscious initially. Subsequently at a certain stage there was progressive mental deterioration.

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Dr. Lim felt that the deceased was not in full possession of his mental faculties throughout but he qualified by saying that whether or not the deceased was in full possession of his mental faculties would depend on the time of examination. When he examined the deceased on July 15, 1967, he was of the view that the deceased did not possess full mental faculties. That, he said, did not exclude the possibility that he could have been in possession of his full mental faculties at other times.

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Mr. Sreenivasan in his testimony made it quite clear that it was difficult to assess the degree of mental deterioration. He could only give an assessment of the deceased's condition from what he observed at the time of examination on July 20th. It is also evident that Mr. Sreenivasan spent very little time with the deceased.

Datuk (Dr.) Sinnadurai also testified as to the deceased's mental condition. In his view, there could be periods of transient ups and downs - a condition that waxes and wanes. It is not something that is static all the time and it is difficult to say what his mental condition was during the whole 24 hours. Dr. Sinnadurai also expressed the view that there could have been certain transient periods when the deceased might have been alert for a little time.

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Dr. Daljit who himself attended to the deceased, testified at great length and in his testimony he conceded, commenting on the deceased's mental condition, that it was not minute to minute from 13th to 18th that the deceased did not know what he was doing. There were times during these days that he would have known for very short periods what he was doing. He went further to say that the duration of these periods when he knew what he was doing could be attested by a person observing at that time.

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Dr. Daljit conceded that the deceased made some visits to the toilet to urinate and the deceased's ability to walk to the toilet and back could mean that he knew what he was doing. He, however, qualified by saying that whether he knew what he was doing depended on how complicated the act involved was. In the instant case, I find

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that there was evidence to show that the deceased had not only walked to the toilet but had also urinated in a container specially provided for the collection of urine indicating that he knew what he was doing. There was also evidence to show that the deceased had complained of cough and had also got out of bed to stand at the window.

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10 Apart from the medical evidence, there was the testimony of the plaintiff who said that the deceased was never conscious at all and that at no time during her visits did the deceased ever utter any word. I find this hard to believe.

20 I shall now proceed to examine the defence on this point. It is the defendants' case that the entire sum transferred from the deceased's account in the Head Office of the defendant bank into the joint account was on the authority of a cheque drawn by and which bore the thumbprint of the deceased. The entire sum went to one Chan Yoke Ying, the deceased's wife. Neither Chow Yee Wah the deceased's brother-in-law nor the bank received any part of the money.

Mr. Shankar observed that although the statement of claim contained lengthy statements setting out allegation after allegation, there is in fact only one substantial allegation, namely, whether the deceased was already dead or unconscious or was so ill that he did not know what he was doing when the thumbprints were obtained.

30 Kwan Mun Koh testified that the first intimation he received of the deceased's desire to open a joint account with Chow Yee Wah was on July 11, 1967 from the deceased himself at the deceased's flat. He paid a visit at the request of the deceased through Chan Yoke Ying. Desirous of making some provision for his wife, deceased wanted the money in the Head Office transferred to the joint account. If anything should happen to him, Chow Yee Wah was to look after his wife. Deceased  
40 requested Kwan Mun Koh to tell Chow Yee Wah. According to Kwan Mun Koh, his uncle (deceased) had in the past asked him to put money into and draw money from his account.

On July 12th Kwan Mun Koh again saw the deceased at the deceased's flat. The same evening Kwan Mun Koh told Chow Yee Wah at a party of the

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deceased's wish. Chow Yee Wah promised to see the deceased the next day. On the following day Kwan Mun Koh was told by Chow Yee Wah through the telephone that deceased was admitted to the General Hospital. When Kwan Mun Koh visited the deceased at the hospital on the same day, he explained to the deceased that he could not turn up the night before as Chow Yee Wah thought it was already too late.

Although Kwan Mun Koh was subjected to severe cross-examination by counsel for the plaintiff, he did not seem to have made any contradiction in his earlier testimony. Mr. Joginder Singh failed to shake his credit. I must say he impressed me as being a witness of truth. Apart from the impression I have formed of this witness, I find that his evidence is substantiated by equally reliable witnesses.

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If I may for a moment digress, I propose to analyse the reasons why deceased had chosen Chow Yee Wah to be the co-holder and not someone else - not even Chan Yoke Ying. Deceased had good reason for not choosing his wife. Chan Yoke Ying was an illiterate woman and she only knew how to sign her name after she was taught by the deceased to do it. The deceased had undoubtedly considered it in her interest to entrust the money into the hands of Chow Yee Wah for her benefit if anything should happen to him. Chow Yee Wah was deceased's brother-in-law by his marriage to Loke Siew Eng, deceased's sister. At one time deceased stayed with Loke Siew Eng. The plaintiff herself stated that when deceased grew up, he stayed at his sister's house. It seems probable that Chow Yee Wah was, to the deceased, someone he could confide in. It is also revealed that the deceased was one of the administrators of the estate of his late father, and on the death of Loke Soh Keen, the third daughter of the late Loke Chew Kit, Chow Yee Wah and Loke Siew Eng became the executors of Loke Soh Keen. Together they handled the affairs of the estate of the late Loke Chow Kit. By reason of the close association deceased had with Chow Yee Wah coupled with the fact that Chow Yee Wah was his brother-in-law, the deceased had probably regarded Chow Yee Wah as the one person he could rely upon to look after the welfare of his wife.

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I would in passing observe that although the plaintiff maintained that Chan Yoke Ying was not her son's legal wife, it is evident that deceased had been living with Chan Yoke Ying as husband and wife since 1961. In the eyes of the deceased, Chan Yoke Ying was his wife and to Chow Yee Wah, Kwan Mun Koh and Dr. Loke Wai Tuck, with the exception of the plaintiff, Chan Yoke Ying was the wife of the deceased. In my view, it is not really necessary for me to consider whether there was a valid marriage or for that matter the exact nature of the deceased's relationship with Chan Yoke Ying. Chan Yoke Ying was obviously someone deceased shared his life with at least from 1961 until he passed away. The question is was it really least expected that he would want to leave behind something for her?

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After carefully considering the facts before me, I am quite convinced that it was the deceased's earnest wish to make some sort of provision for his wife. It may have crossed the deceased's mind that Chan Yoke Ying might not receive anything on his death if she should be excluded as a beneficiary. The plaintiff's attitude towards Chan Yoke Ying had probably left very little doubt in the deceased's mind that she would after his death do everything within her power to get Chan Yoke Ying excluded as a beneficiary. It should also be remembered that deceased left no issue and the only person who would benefit on the deceased's death, other than Chan Yoke Ying, would be the plaintiff. There is abundant of evidence to show that deceased disliked his mother and she in turn hated Chan Yoke Ying. Plaintiff's description of Chan Yoke Ying gives me the impression that she really detested her. In her estimation Chan Yoke Ying was responsible for taking away the deceased from her and she too was the cause of the deceased's dislike for her. She seemed very bitter and was prepared to go to any length, to lie, if necessary, in order to win the case and deprive Chan Yoke Ying of the money left by the deceased. In her testimony the plaintiff had this to say of Chan Yoke Ying, "My son's money means a lot to me ..... My son should not have brought this kind of woman home - Chan Yoke Ying was one - woman from a massage parlour. It was bad of him to keep a woman of this type during his lifetime." In view of this, it is not unreasonable to assume that the deceased was fully conscious of



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his mother's attitude and he was therefore quite anxious to see that his wife would be well taken care of after his death.

To summarise very briefly, I would say that in the light of the testimony of Kwan Mun Koh, Chan Yoke Ying and Chow Yee Wah, I am fully satisfied that even before the admission to the General Hospital, the deceased had in fact made up his mind to open a joint account with Chow Yee Wah to facilitate Chow Yee Wah the use of the fund for the benefit of Chan Yoke Ying after his death. I hasten to add that there is also abundant of evidence before this Court to show that the fund was indeed utilised solely for her benefit after his death. In arriving at my finding, I have taken into consideration the testimony of Dr. Loke Wai Tuck - a nephew of the deceased. He saw the deceased on July 13th at the request of Chow Yee Wah. After examining the deceased, he made arrangement for his uncle to be admitted to the General Hospital. Subsequently Chow Yee Wah got in touch with him saying that the deceased had asked him to open a joint account. As a result, Dr. Loke Wai Tuck inquired about it from the deceased. Deceased told him that he had spoken to Chow Yee Wah and it was being carried out, i.e. the financial matter was being attended to.

10

20

Kwan Mun Koh saw the deceased on July 11th. Except for the swollen leg, deceased appeared to him to be normal. A reliable indication of the deceased's condition before and on admission may be gathered from the evidence of Dr. Loke Wai Tuck. Deceased walked unaided but very slowly. Mentally he was fully alert except that he stammered. This it would seem was his manner of speech. Dr. Loke Wai Tuck kept a case history card and referring to the deceased's condition on July 13th he said, "I noticed he was short of breath. I thought he was seriously ill and told him I had to put him in hospital. I examined him all round. My uncle was gasping for breath after coming out from the bathroom, having to go down the stairs."

30

40

It is revealed that for two months prior to July 13th, the deceased had diarrhoea six to ten times a day and that weakened him. Dr. Loke Wai Tuck gave a description of the condition of the deceased as he found him on July 14th, 15th, 16th

and 18th. In his view, the deceased's mental condition at those times he saw the deceased was normal. Deceased appeared to possess his full mental faculties and was neither in a confused state of mind nor in a state of drowsiness. Dr. Loke Wai Tuck also said that the condition was about the same except the last two days when deceased's condition deteriorated and deceased was asleep at the time of his visits.

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10 I shall now proceed to determine whether at the time deceased drew the cheque and executed the documents authorising the opening of the joint account, he was of sound state of mind and knew what he was doing. Evidence concerning the mental state of the deceased at the relevant time is to be found solely from the testimony of the defence witnesses.

20 The first defendant identified the cheque and the documents the deceased had affixed his thumbprints on July 18th. On the morning of the 18th, he discussed with Dr. Loke Wai Tuck concerning deceased's wish to open a joint account. Subsequently he saw Kwan Mun Koh and they agreed to meet at the hospital at five in the afternoon. On arrival at the hospital, Chow Yee Wah saw the deceased sitting on the edge of the bed with his legs dangling. Chan Yoke Ying was with the deceased. Soon after Kwan Mun Koh arrived. On arrival Kwan Mun Koh inquired from the deceased concerning the opening of the joint account. The documents were handed to the deceased after they had been filled up by Kwan Mun Koh. The cheque also bears the handwriting of Kwan Mun Koh. Deceased could not sign because his hands were swollen and inquired whether he could use his thumbprint. Kwan Mun Koh consented. Deceased affixed his thumbprints on both the cheque and the documents. Chow Yee Wah, the co-holder of the joint account, signed the documents on July 20th at the bank as he did not have in his possession his identity card on that day.

40 The evidence of Chow Yee Wah is substantiated by the testimony of Kwan Mun Koh and Chan Yoke Ying. I have examined the evidence of Kwan Mun Koh and Chan Yoke Ying including the testimony given under cross-examination very carefully. I am fully satisfied that they were telling the truth. I do not think there is any need for me

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to repeat what they said. Suffice for me to say that on the evidence given by them I am satisfied that the deceased knew what he was doing when he drew the cheque and gave the authority to open a joint account. I am also satisfied that he was not in any way deceived into affixing his thumb-prints. I am further satisfied that he was then of sound memory and understanding and that he fully appreciated the nature and effect of his act. Mr. Shankar referred to the day-to-day happenings at the hospital prior to and after the 18th which, it is submitted, support the defendants' contention that the deceased was not, contrary to what the plaintiff is endeavouring to show, of unsound mind, memory and understanding. To my mind, these incidents lend weight to the defendants' contention 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 understanding.

10

Kwan Mun Koh and Chow Yee Wah merely carried out the deceased's instruction. Chow Yee Wah was entrusted with the money for the benefit of Chan Yoke Ying and he indeed used the money for her benefit. There is not a shred of evidence to show that Chow Yee Wah had used it for his own or someone else's benefit.

20

Allegation is made that the cheque was obtained from the deceased by the defendants by exerting undue influence on the deceased. On careful analysis of the evidence, I am unable to find any evidence at all to support the allegation and I do not suppose I am wrong in saying that the plaintiff has completely failed to produce any evidence from which the Court can reasonably conclude the exertion by the defendants of undue influence upon the deceased. Mr. Joginder Singh drew my attention to section 16 of the Contracts (Malay States) Ordinance, 1950 which reads -

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"16. (1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

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I am obliged to counsel for drawing my attention to this section. However, on the evidence before me, even after taking into consideration the close relations that existed between Kwan Mun Koh, Chow Yee Wah and Chan Yoke Ying and the deceased, I am no less satisfied - to use the words of Lord Hailsham LC in Noriah and Shaik Allie Malayan Cases, Volume 1, page 79 at page 107 - that "the gift was the spontaneous act of the donor acting under circumstances which enabled him to exercise an independent will and which justify the Court in holding that the gift was the result of free exercise of the donor's will."

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There is also allegation of fraud but no evidence has been adduced to substantiate the allegation. With respect, I am unable to conclude that fraud has been perpetrated. There is to my mind no merit whatever in the allegation. It is insufficient to merely state a bare allegation without setting out the material particulars relating to the alleged fraud.

I have considered the cases cited by the plaintiff's counsel in support of his submission that fraud need not be proved by direct affirmative or positive evidence but may be proved by circumstantial evidence. Mr. Joginder Singh has stated the law correctly; however, judging from the passage in Kerr on Fraud and Mistake, 7th edition, page 672/3, it would seem that 'care must be taken not to draw the conclusion hastily from premises that will not warrant it; but a rational belief should be discarded because it is not conclusively made out.' In the instant case, the facts established have not, in my view, afforded a sufficient and reasonable ground for drawing the inference of fraud and the documents, as they stand, do not point to the defendants having been fraudulent.

It is further alleged by the plaintiff that the authority given to the second defendants to honour the cheque and/or to open the joint account by the deceased was revoked by the subsequent mental condition and/or mental disorder of the deceased by the deceased being of unsound mind, memory and understanding. In reply Mr. Chan Siew Yoon cited to me the following passage from M.S. Parthasarathy's cheque in Law & Practice at page 102 where it is stated -

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"Hence, when a banker gets notice of mental disorder of his customer, which would amount to incapacity to manage his affairs, he should stop payment of all cheques drawn by such a customer, until the customer recovers or instructions are received from the Court. If the banker comes to know that his customer has been admitted into a mental hospital or if he is informed by a relative of the customer that the latter is not mentally sound, the banker is put on enquiry; he cannot, however, dishonour cheques drawn by the customer unless he is certain that the mental disorder would affect the customer's capacity to manage his affairs." 10

It would appear that -

"The test of mental derangement of any person is whether it amounts to incapacity to manage his affairs, but, in the absence of a medical report, it is not easy to apply in practice. The safest course is to continue to honour cheques until such time as the customer is certified under the Lunacy Act, 1890, or becomes a patient in the home." 20  
(L.C. Mathew On Banker and Customer Relationship and the Accounts of Personal Customers at page 125).

I have concluded that the joint account was opened on July 20th and this was done pursuant to the authority given by the deceased on July 18th and that the defendant bank quite rightly acted upon that authority. In that event I fail to see how that authority can be deemed to have been revoked by the deceased's subsequent condition when it is never established, and I do not indeed find as a fact, that subsequent to the 18th, deceased was completely deprived of his full mental faculties. There was, therefore, no reason for the defendants to disobey the instruction which had been freely and voluntarily given by the deceased. 30 40

In this regard, it is perhaps appropriate for me to refer to the evidence of Mr. M. K. Ramachandran concerning the normal banking practice relating to the opening of an account.

10            Though a bank, as a rule, usually follows certain established practice, it is clear that the rule is not applied very rigidly and the practice may vary depending on the circumstances of each particular case. In the instant case, for example, the deceased was neither a stranger to the defendant bank nor unknown to Kwan Mun Koh. Besides deceased already had an account at the Head Office. Kwan Mun Koh had therefore, acted properly when he consented to the deceased's request to affix his thumbprints instead. The deceased seemed to him to be in possession of his mental faculties and had not appeared to be irrational.

20            At this point, may I refer to the suggestion made by the plaintiff that the practice is to block payment on a joint account if one of the joint holders dies until clearance is obtained from the Estate Duty Office. I agree with Mr. Shankar's submission that the money was still in the full possession of the bank and its subsidiary at all material times and therefore no clearance from the Estate Duty Office was required for this.

30            It is also convenient at this point, to comment on the submission made by Mr. Joginder Singh that where a deceased person is alleged to have made a gift of property during his lifetime and such gift is challenged, the onus of proof lies upon the donee or other person claiming the gift to show righteousness of the transaction, to remove any and all suspicious circumstances surrounding the making of the gift and to establish that the donor had the requisite mental capacity to make the gift. The gift in the instant case was in the form of money left to Chow Yee Wah for the benefit of Chan Yoke Ying, and the circumstances under which the gift was made have already been dealt with earlier on. To my mind, there were no suspicious circumstances surrounding the gift and furthermore there were no significant evidence from which I could infer that the gift had been improperly made. On the contrary, I found as a fact that the deceased had the requisite mental capacity to make the gift. It may perhaps be pertinent to observe in passing that Chan Yoke Ying, the donee, has not been made a party to the proceeding.

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In the present case, the deceased made an unequivocal declaration that if anything should happen to him, the money in the joint account was to be used by Chow Yee Wah for the benefit of his wife Chan Yoke Ying. Though the deceased had a vested right over the money before his death, it would seem clear that such money was vested in the survivor of the joint account as trustee entrusted with the money for the benefit of Chan Yoke Ying on the death of the deceased.

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Mr. Joginder Singh pointed out to certain facts and argued that there were suspicious circumstances surrounding the alleged gift. I do not propose to deal with each and every point submitted by Mr. Joginder Singh. It will suffice if I say that suspicion cannot be inferred from the fact that no solicitor's advice was made available when deceased decided to open a joint account and similarly from the fact that no doctor was in attendance when the thumbprints were taken.

20

It is argued that the only persons present at the time the thumbprints were taken were those against whom charges of dishonesty and undue influence were levelled. That is not exactly true. No charges have been made against Chan Yoke Ying. As for Kwan Mun Koh, I fail to see any reason why he should want to exert his influence upon the deceased.

It is true that no medical advice was sought but the question did not seem to arise. They all had no reason to doubt that deceased did not know what he was doing. Dr. Loke Wai Tuck who saw the deceased on that day was satisfied that the deceased had sufficient memory and understanding and was in possession of his mental faculties.

30

Mr. Joginder Singh highlighted the evidence of Dr. Daljit when he (Dr. Daljit) said that -

"In my opinion, with reference to my notes and the nurses' notes, on 18th July, Yaik Hoe would not have been in a position to know what he was doing when he affixed his thumbprint. In my opinion, at no time at all, was the patient in a position to know what he was doing."

40

Dr. Daljit's evidence cannot be considered in isolation but regard has to be given to the whole of the evidence before me.

10 May I emphasize that my finding that the deceased fully consented to the opening of the joint account is consistent with the evidence showing that step was taken by the deceased to have a joint account opened prior to his admission to the hospital. To my mind, he was fully aware of what he was doing. In any event, there is no suggestion that before admission he was confused or of unsound mind or that he failed to appreciate the effect of the step he was taking.

20 Mr. Joginder Singh attacked the defendants' story saying that the gift gives rise to suspicion as every defence witness maintained that deceased was in full possession of his mental faculties. Suffice if I say I have considered very carefully the evidence of each of these witnesses. I am satisfied that no attempt has been made by any of them to fabricate. I have cautioned myself of the need to be fully satisfied of the veracity of their testimony. These witnesses knew the deceased's habit and mannerism intimately, and, without meaning to discredit or to reject the doctors' testimony, I think Kwan Mun Koh and Chow Yee Wah have proved to my satisfaction that deceased knew the nature and effect of what he was doing when he affixed the thumbprints on the cheque and mandate. Indeed, I am satisfied of the propriety of the transaction.

40 On the question of mental incompetency of the deceased, Mr. Chan Siew Yoon referred to the test proposed by Cockburn C.J. in the well-known case of Banks v. Goodfellow (1870) L.R. 5 Q.B. page 549. It is submitted that although this case refers to mental competency in making a will, it will equally apply to a case of gift. Mr. Chan Siew Yoon is of the view that this case has no application to the instant case as it was only concerned with proof of a testamentary capacity in cases of a will. Nonetheless he feels that the case has laid down a few useful guides. At page 565 of that case, Cockburn C.J. said -

"It is unnecessary to consider whether the principle of the foreign law or that of our

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own is the wiser. It is obvious, in either case, that to the due exercise of a power thus involving moral responsibility, the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition. It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect, and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties - that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

10

20

Mr. Chan Siew Yoon further submitted that whether the deceased had mental capacity or not is a question of fact for the Court to decide. He urged the Court to bear in mind the fact that a man might be in a state of extreme imbecility and yet he may possess sufficient understanding to direct how his property should be disposed of. He invited my attention to a passage in Banks v. Goodfellow (supra) where at page 567 Cockburn C.J. said -

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"In deciding upon the capacity of the testator to make his will, it is the soundness of the mind, and not the particular state of the bodily health, that is to be attended to; the latter part may be in a state of extreme imbecility, and yet he may possess sufficient understanding to direct how his property shall be disposed of."

Mr. Chan Siew Yoon argued that a man's memory may be very imperfect or that his mental condition may be impaired by age or disease and yet his understanding may be sufficiently sound for many of the transactions in life which include the distribution of his property. In support of his argument, Mr. Chan Siew Yoon referred to the following passage from Banks v. Goodfellow (supra) where Cockburn C.J. said -

40

"But his memory may be very imperfect; it may be greatly impaired by age or disease; he may not be able at all times to recollect the names, the persons, or the families of those with whom he had been intimately acquainted; may at times ask idle questions, and repeat those which had before been asked and answered, and yet his understanding may be sufficiently sound for many of the ordinary transactions of life. He may not have sufficient strength of memory and vigour of intellect to make and to digest all the parts of a contract, and yet be competent to direct the distribution of his property by will. This is a subject which he may possibly have often thought of, and there is probably no person who has not arranged such a disposition in his mind before he committed it in writing."

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It is the contention of the defendants that the rationality of the disposition is indicative of possession of faculties. Deceased had intended to make a disposition to Chan Yoke Ying who, to him, was his wife and the object of his affection and regard. Cockburn C.J. in Banks v. Goodfellow (supra) made the following observation -

"The instincts and affections of mankind, in the vast majority of instances, will lead men to make provision for those who are the nearest to them in kindred and who in life have been the objects of their affection."

Mr. Chan Siew Yoon cited two other cases - Smee v. Smee (1879) 5 P.D.84 and Harwood v. Baker (1840) 2 Moo P.C. 282. Commenting on Smee v. Smee (supra) where the testator made a will in favour of his wife to the exclusion of his brothers, Mr. Chan Siew Yoon pointed out that the case has no application here as, firstly, the testator there had a history of insanity; secondly, there was delusion which resulted in his omission to consider the claims of his brothers and sisters; thirdly, the will disposed of the whole fortune of the testator.

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In the case of *Harwood v. Baker* (supra) it is submitted that the reason for the decision in that case will find no place in the instant case. There the testator made a will in favour of his wife to the exclusion of other next-of-kin. That will was made two hours before he lost consciousness and five hours before his death. Before illness, he had expressed intention of distributing a large portion of his property among his relatives.

10

Referring to the facts of this case, it is pointed out that the deceased's intention to provide for his wife was formed before his admission to the hospital. Deceased read the documents and cheque before affixing his thumbprint. Deceased's closest relatives were his wife and aged mother and the money left to his wife was not his entire fortune. There was a strained relationship between him and his mother.

Mr. Joginder Singh referred to equity and the rule of survivorship and submitted that the right of survivorship vested in the first defendant is overridden by equity. It is the plaintiff's contention that only the deceased provided the money for the joint account and the first defendant none and therefore the money standing to the credit of the joint account should lawfully belong to the estate of the deceased.

20

I am inclined to agree with Mr. Chan Siew Yoon's submission that equity may intervene but only to presume that the survivor is holding the money as trustee in favour of the estate (see Russel v. Scott 55 C.L.R. page 440 at page 450 per Dickson and Evatt JJ). The presumption, it is argued, only affects burden of proof. Such presumption may be displaced by an affirmative proof of specific intention to confer a beneficial interest.

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In this connection the Court must I think, have due regard to the purpose for which the money was transferred to the joint account. Deceased knew what he was doing when he executed the various documents. The transfer of the money to the joint account was specifically

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for the purpose of conferring a beneficial interest on Chan Yoke Ying in the event of his death. Clearly therefore the survivor should be entitled to the balance standing to the credit of the account, not for himself and not for the estate, but for the widow Chan Yoke Ying.

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10 Mr. Joginder also submitted that when a  
banker unlawfully paid out funds for his customer,  
the banker commits the tort of conversion. As for  
the present case, it is his contention that the  
defendant bank acted negligently and/or in bad  
faith and/or outside the ordinary course of  
business. He urged the Court to consider the  
fact that the specimen signature card at the Head  
Office does not bear the thumbprint whilst the  
cheque (D18) bears it and despite the deviation  
D18 was paid out without an enquiry. I have at  
some length dealt with this point earlier on and  
have also made a finding that Kwan Mun Koh the  
20 servant of the defendant bank had not acted  
improperly in allowing the deceased to affix the  
thumbprint. I have also found that circumstances  
surrounding the taking of the thumbprint were not  
surreptitious. On the evidence before me, I do  
not hesitate to say that basically as an officer  
of the defendant bank in the branch office he  
had not acted improperly when he admitted the  
signature of the deceased even though he did not  
do so at the time of payment.

30 It is Mr. Joginder Singh's contention that  
there was a deviation from normal practice.  
There might have been but it was stated very  
clearly by Mr. Ramachandran (PW9) who was  
called by the plaintiff to testify that the  
rules are rules of prudence and it is possible  
the practice from bank to bank might vary in its  
details. If the bank manager is satisfied with  
the identity of the person and that person has  
full faculties of his mind, he can accept a thumb-  
40 print in place of the signature if for some  
reason he was unable to do it. The bank is only  
put on an enquiry if there is something to arouse  
its suspicion that a customer's faculties of  
mind are not all there. Furthermore, it would  
seem that these rules are designed for the  
protection of the banker - a protection that  
banks require from an account holder. In these  
circumstances, I do not see how the defendant

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bank could be said to have acted negligently. I am also unable to find that the defendant bank had acted in bad faith. I should emphasize that the whole transaction, in my view, was conducted by the defendant bank in good faith and without negligence and not outside the ordinary course of business.

As an alternative to the claim under the head of conversion, Mr. Joginder Singh submitted that even if the collection of the cheque (D18) by the second defendants did not constitute conversion, the fact that deceased had separate authority and dominion over the fund in the joint account by reason of D19 entitles the plaintiff as administratrix on behalf of the estate to call for the sums standing to the credit in the joint account. In other words, she can do by way of claiming the money had and received by the second defendants from the deceased.

10

Mr. Chan Siew Yoon, on the other hand, argued that the second defendants received the money belonging to the deceased since the second defendants were payees of the amount with instruction to pay it into the new joint account of the deceased and the first defendant. But for the plaintiff to recover the money, the receipt by the second defendants must be under such circumstances as to create a privity between the second defendants and the plaintiff. (See *Soujiva Row's Contracts* 7th edition, Volume II 1968 page 1818).

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It is further argued that the present case does not fall within any of the circumstances that would create privity to support an action for money had and received by the second defendants.

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It is the contention of the second defendants that in this case, they received the payment of the cheque for the benefit of the deceased and the first defendant (who is the third party) jointly. The money so received could only be applied to the joint account, which is the purpose for which the deceased paid the bank in the first place and not for any other purpose. If the bank had continued to hold the money so paid over in the sole account of the deceased instead of as directed, then it would clearly be held liable for money had and received to the first defendant

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who, upon the death of the deceased became the sole legal owner of the sum in question by reason of the rule of survivorship.

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To sum up, I would say that in the present case, there is not the slightest doubt in my mind that the deceased had the necessary intention from the very beginning, concerned with the welfare and interest of his wife in the event of his death, to make provision for her while he was still alive.

10 Why he decided to authorise the opening of the joint account with Chow Yee Wah and the transfer of the money into the joint account with a view that the money would be utilised for his wife's benefit in the event of his death is something that only the deceased himself could say. I can only assume in view of the illness he might not live long. He had probably thought that the chances of his surviving his illness was quite slim.

20 It is true that the gift was contingent in the sense that she would only be entitled to benefit on the deceased's death, and, that if the deceased should recover from his illness, the money would still be his. Nevertheless, I am fully satisfied that in law, Chow Yee Wah, having been specifically directed to apply the money solely for Chan Yoke Ying's use, was a lawfully constituted trustee to hold the money in trust for the benefit of Chan Yoke Ying.

30 May I now refer to a case cited by Mr. Chan Siew Yoon - Russel v. Scott (supra) - where at page 454 Dickson and Evatt J.J. said -

40 "For it is said that the deceased's intention that her nephew on surviving her should take the amount of the bank account is a testamentary wish to which effect could be given only by a duly executed will. This must mean that, while retaining full beneficial property in a corpus, she intended that on her death some other person should succeed to her property in that corpus or to some interest therein to which he was not before entitled either absolutely or contingently, and to which the law gave him no title to succeed. It is only in this sense that an intention to benefit can be said to be testamentary. Law and equity supply many

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means by which the enjoyment of the property may be made to pass on death. Succession post-mortem is not the same as testamentary succession. But what can be accomplished only by a will is the voluntary transmission on death of an interest which up to the moment of death belongs absolutely and indefeasibly to the deceased. This was not true of the chose in action created by opening and maintaining the joint bank account."

10

Before I conclude may I say that I am entirely in agreement with Mr. Chan Siew Yoon's submission that there is in the instant case a completely constituted trust. The law dealing with the constitution of voluntary trusts is to be found in the most celebrated case of Milroy v. Lord 45 E.R. Ch. Div. page 1185 where Turner L.J. at page 1189 said -

"..... I take the law of this Court to be well settled, that, in order to render a voluntary settlement valid and effectual, the settler must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him. He may of course do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he himself holds it in trust for those purposes; and if the property be personal, the trust may, as I apprehend, be declared either in writing or by parol; but, in order to render the settlement binding, one or other of these modes must, as I understand the law of this Court, be resorted to, for there is no equity in this Court to perfect an imperfect gift."

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I am further in agreement with Mr. Chan Siew Yoon's submission that the fact the deceased might revoke the trust in the event of his recovering from his illness would not make any difference as it would seem clear from the

following passage in the judgment of Starke J. in Russel v. Scott (supra) -

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"Thus a voluntary settlement vesting property in trustees for the benefit of the donor for his life, and after his decease for the benefit of other persons, with a power of revocation is not testamentary: it takes effect immediately upon its execution, and is not postponed until after the donor's death."

10

In conclusion, I would say that it is my considered judgment that for reasons that I have stated, having regard to the whole of the evidence adduced before this Court, I find no merit in the plaintiff's claim. I would therefore dismiss the plaintiff's claim against both defendants with costs.

Sgd. (ABDUL HAMID)  
JUDGE,  
HIGH COURT,  
MALAYA.

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Kuala Lumpur  
Dated this 26th day of November, 1973.

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Mr. Joginder Singh for Plaintiff.  
Mr. M. Shankar for First Defendant.  
Mr. Chan Siew Yoon for Second Defendant.

Certified true copy

Sd-/ Illegible  
.....  
Secretary to Judge,  
Kuala Lumpur

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3rd December, 1973



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ORDER

        
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BEFORE THE HONOURABLE MR. JUSTICE ABDUL HAMID

Order

THIS 26TH DAY OF NOVEMBER, 1973

IN OPEN COURT

26th November  
1973

O R D E R

This action coming on for hearing on the 28th, 29th & 30th days of June, 1972; 12th day of July, 1972; 13th and 14th days of September, 1972; 19th, 20th, 23rd, 24th, 25th, 26th and 27th days of April, 1973; 2nd, 3rd and 4th days of July, 1973 in the presence of Mr. Joginder Singh (Mr. Sri Ram with him) of Counsel for the Plaintiff, Mr. Shankar of Counsel for the 1st Defendant and Mr. Chan Siew Yoon of Counsel for the 2nd Defendants AND UPON READING the Pleadings AND UPON HEARING evidence and submission by Counsel as aforesaid IT WAS ORDERED that this action do stand adjourned for Judgment AND the same coming on for Judgment this day in the presence of Mr. Joginder Singh & Mr. Sri Ram of Counsel for the Plaintiff, Mr. Shanker of Counsel for the 1st Defendant and Mr. Lawrence Tan of Counsel for the 2nd Defendants IT IS ORDERED that this action be and is hereby dismissed AND IT IS ORDERED that the Plaintiff do pay to the 1st and 2nd Defendants each the costs of this action as taxed by the proper officer of the Court.

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Given under my hand and the seal of the Court this 26th day of November, 1973.

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Sd/- ZELEHA ZAHARI

Senior Assistant Registrar,  
High Court, Kuala Lumpur.

No. 9

Notice of Appeal

In the  
Federal Court  
of Malaysia

IN THE FEDERAL COURT OF MALAYSIA (Appellate  
Jurisdiction)

No. 9

FEDERAL COURT CIVIL APPEAL NO.147 OF 1973

Notice of  
Appeal

20th December  
1973

BETWEEN

Choo Ah Pat, Administratrix of the  
Estate of Loke Yaik Hoe, @ Loke Yeuk  
Hoh @ Loke Yeuk Hoe, deceased

APPELLANT

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AND

1. Chow Yee Wah
2. The Kwong Yik (Selangor) Banking  
Corporation Bhd.

RESPONDENTS

(In the matter of Civil Suit No.469  
of 1971 in the High Court in  
Malaya at Kuala Lumpur

BETWEEN

Choo Ah Pat, Administratrix of the  
Estate of Loke Yaik Hoe,  
@ Loke Yeuk Hoh @ Loke Yeuk Hoe,  
deceased

PLAINTIFF

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AND

1. Chow Yee Wah
2. The Kwong Yik (Selangor) Banking  
Corporation Bhd.

DEFENDANTS

NOTICE OF APPEAL

TAKE NOTICE that Choo Ah Pat, Administratrix  
of the Estate of Loke Yaik Hoe @ Loke Yeuk Hoh @  
Loke Yeuk Hoe, deceased, the Appellant abovenamed,  
being dissatisfied with the decision of the  
Honourable Mr. Justice Datuk Abdul Hamid given at  
Kuala Lumpur on the 26th day of November, 1973,  
appeals to the Federal Court, Malaysia, against  
the whole of the said decision

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Dated this 20th day of December, 1973

In the  
Federal Court  
of Malaysia

No. 9

Notice of  
Appeal

20th December  
1973  
(continued)

Right Thumbprint of  
Choo Ah Pat  
.....  
SIGNATURE OF APPELLANT

Sd-/ Joginder Singh & Co.  
.....  
SOLICITORS FOR THE APPELLANT

TO:

1. The Chief Registrar,  
The Federal Court,  
Malaysia,  
Kuala Lumpur.
2. The Senior Assistant Registrar,  
High Court, 10  
Kuala Lumpur.
3. The 1st Respondent, Chow Yee Wah,  
or his Solicitors,  
Messrs. Shearn Delamore & Co.,  
No. 2, Benteng,  
Kuala Lumpur.
4. The 2nd Respondents, The Kwong Yik  
(Selangor) Banking Corporation Bhd.,  
or their Solicitors, 20  
Messrs. Shook Lin & Bok,  
Bangunan Lee Wah Bank,  
Kuala Lumpur.

The address for service of the Appellant is  
c/o Messrs. Joginder Singh & Co., Advocates &  
Solicitors, Nos. 20/22, Jalan Mountbatten,  
1st Floor, Kuala Lumpur.

No.10

Memorandum  
of Appeal

29th January  
1974

No. 10

Memorandum of Appeal

MEMORANDUM OF APPEAL

CHOO AH PAT, the Administratrix of the  
Estate of Loke Yaik Hoe, @ Loke Yeuk Hoh @ Loke  
Yeuk Hoe, deceased the Appellant abovenamed  
appeals to the Federal Court against the whole of  
the decision of the Honourable Mr. Justice Datuk  
Abdul Hamid given at Kuala Lumpur on the 26th  
day of November, 1973 on the following grounds:-

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1. The Learned Trial Judge erred in dismissing the Plaintiff's suit.

2. The Learned Trial Judge erred in holding:-

(i) that the burden of proving the state of the deceased's mind at the relevant time was on the Plaintiff;

(ii) that the burden rest on the Plaintiff to show that the deceased was of unsound mind when he made the disposition;

10 (iii) that the burden was on the Plaintiff to prove that the deceased was not compos mentis at the time when he drew the cheque (D18) and executed the documents (D19 and D20 A-B)

20 3. The Learned Trial Judge should have held that the issue on this point was whether the deceased understood the nature of the act and its effect when his thumbprint was affixed to the cheque and the documents and that the burden was on the Defendants to prove that he did.

4. If the burden of proof as to the state of the deceased's mind at the relevant time was on the Plaintiff the Learned Trial Judge erred in holding that the Plaintiff had failed to discharge the burden.

5. The Learned Trial Judge failed to attach sufficient importance to and to draw the correct inference from:-

30 (i) The evidence of the 5 doctors called by the Plaintiff; and

(ii) the Male Day Report Book (24 hours nursing notes) - Exhibit P9.

6. The Learned Trial Judge erred in holding that "the deceased knew what he was doing when he drew the cheque and gave the authority to open the joint account" and that "he was then of sound memory and understanding and that he fully appreciated the nature and effect of his act".

40 7. The Learned Trial Judge should have held that at the relevant time the mental faculty of the

In the  
Federal Court  
of Malaysia

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No.10

Memorandum  
of Appeal

29th January  
1974  
(continued)

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Memorandum  
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(continued)

deceased was so impaired that he was unable to understand the nature of the act and its effect when his thumbprint was affixed on the cheque and other documents.

8. The Learned Trial Judge erred in holding that the 2nd Defendants were not negligent in accepting and honouring the cheque with the deceased's thumb-impression and in accepting the other documents with only the deceased's thumb-impressions for the purposes of opening the joint account. 10

9. The Learned Trial Judge erred in holding that the Plaintiff adduced no evidence to substantiate her allegation of fraud and that she had not given material particulars of fraud.

10. The Learned Trial Judge failed to direct his mind to or attach sufficient importance to the evidence led by the Plaintiff to show that the deceased's thumb-impression was affixed to the cheque and the documents when he was not in a proper state of mind to appreciate what was being done. 20

11. The Learned Trial Judge erred in holding that the authority allegedly given by the deceased to the 2nd Defendants to honour the cheque (D18) and/or to open the joint-account No. 1-361 was not revoked by the mental condition and/or mental disorder in which the deceased was subsequent to the 18th July 1967.

12. The Learned Trial Judge should have found that the deceased's mental disorder subsequent to the 18th July, 1967 amounted to incapacity to manage his affairs and that the 2nd Defendants should not have honoured the said cheque (D18) and/or opened the said Joint-account No. 1-361. 30

13. The Learned Trial Judge erred in holding that no undue influence had been exerted on the deceased by the Defendants.

14. The Learned Trial Judge erred in holding that the 1st Defendant was a lawfully constituted trustee to hold the funds in the Joint-account No. 1-361 in trust for the benefit of D.W.3 - Chan Yoke Ying. 40

Dated this 29th day of January, 1974.

(Sgd.) Joginder Singh & Co.

Solicitors for the Appellant.

In the  
Federal Court  
of Malaysia

          
No.10

Memorandum  
of Appeal

29th January  
1974  
(continued)

To:

The Registrar,  
Federal Court of Malaysia,  
Kuala Lumpur.

and to:

1. Senior Assistant Registrar,  
High Court,  
Kuala Lumpur.
  - 10 2. The 1st Respondent and/or  
his Solicitors,  
M/s. Shearn Delamore & Co.,  
2, Benteng,  
Kuala Lumpur.
  3. The 2nd Respondents and/or  
their Solicitors,  
M/s. Shook Lin & Bok,  
Lee Wah Bank Building,  
Kuala Lumpur.
- 20 The Address for service of the Appellant is  
care of Messrs. Joginder Singh & Co., Advocates &  
Solicitors Nos. 20-22, Jalan Mountbatten, 1st Floor,  
Kuala Lumpur.

No. 11

NOTES OF ARGUMENTS RECORDED BY  
GILL, CHIEF JUSTICE

Kuala Lumpur.

24th April, 1974

Encik R.R. Chelliah with Encik Joginder Singh and  
Encik Sri Ram for Appellant.

30 Encik Shanker for first Respondent.

Encik Chan Siew Yoon for Second Respondent.

No.11

Notes of  
Arguments  
recorded by  
Gill, C.J.

24th April  
1974

In the  
Federal Court  
of Malaysia

          
No.11

Notes of  
Arguments  
recorded by  
Gill, C.J.

24th April  
1974  
(continued)

Chelliah:

The facts of this case. Appellant is the mother of the late Loke Yaik Hoe and the administratrix of his Estate, Loke having died on 24.7.1967 at the age of 57. Loke was English educated and had passed the Senior Cambridge Examination. For some years prior to his death he lived with a lady called Chan Yoke Ying. Their exact status is in dispute.

Mr. Loke had an account with the second defendant Bank at their head office in Jalan Bandar, Kuala Lumpur. The Bank also had a Branch office at 55 Jalan Pasar, Kuala Lumpur. Loke used to sign his cheques and other documents in English. The specimen signature card held by the Bank had his signature in the English language. The card appears at Part II Volume V page 934 of the appeal record. 10

For some time, about 19 years prior to his death, Loke suffered from hypertension and for 10 years he had diabetes. Somewhere along the line his heart, liver and kidney became damaged and malfunctioned. There was evidence that he was also an alcoholic. This appears at pages 80-84 of appeal record. 20

From about the middle of May 1967, Loke became more ill. On 13th July 1967 he was admitted to the General Hospital, Kuala Lumpur, a very sick man. On 24th July 1967, 11 days later, he died in hospital. During the 11 days in Hospital he was attended to by no less than five Government doctors, all of whom were called to give evidence by the appellant. The sum total of the evidence was that right from the time of his admission on 13th July to the time of his death on 24th July, every time each of them saw or spoke to Mr. Loke, he was in a state of mental confusion and mental deterioration. 30

Some time after his death the appellant came to understand that on 18th July 1967, i.e. 5 days after his admission to Hospital and six days before his death, he was alleged to have affixed his thumb impression on a cheque purported to have been drawn on the Bank in favour of its Branch at Jalan Pasar for the sum of \$60,384.80 and by certain other documents dated 20th July 1967 to 40

which his thumb impression had been affixed he is purported to have directed the said Branch to open a joint account in his and the first defendant's names.

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(continued)

10 The first defendant is the brother-in-law of Loke, having married his step-sister. With the use of the said cheque and documents, a joint account was opened in the said Branch on 20th July 1967 and the said sum of \$60,384.80 was withdrawn from the personal account of Loke in the Head Office and credited to the joint account in the Branch office.

20 Between 24th July 1967 and 31st July 1967 the first defendant withdrew a sum of \$5,000 from the joint account, and on 31st July a sum of \$55,382.30 remained to the credit of the joint account. On the same day the first defendant withdrew the whole of the balance from the joint account and he and his wife opened two deposit Accounts with the Kwong Yik Finance Company Ltd. for the sum of \$40,000 and \$10,000 each and in their joint names. Copies of Deposit applications appear at pages 784 and 785. Deposit receipts appear at pages 788 and 790.

30 In about May 1968 the appellant engaged Mr. Joginder Singh and started making inquiries about these deals. In October 1969, over two years after the deceased's death, this sum of \$50,000 was transferred to the name of Madam Chan Yoke Ying, by opening two Deposit accounts in her name. Refer to pages 808, 815 and 818. Evidence appears at page 191 of appeal record.

It is also in evidence that in between July 1967 and October 1969 the income derived from the fixed deposits by the first defendant and his wife was shown by the first defendant as his income to the Income Tax Department. Refer to evidence at page 192, line B.3.

40 The appellant as administratrix of the Estate of Loke instituted these proceedings against the first defendant and the Bank in June 1971 for a declaration that the cheque for \$60,384.80 bearing the thumb impression of the deceased was invalid primarily on the ground that when the thumb print of the deceased was affixed to the cheque his mental condition was such that he was not capable of understanding the nature and consequence of his act. The appellant asked for consequential reliefs and the declaration.



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(continued)

It is my respectful submission that although various pleas in the alternative are made in the Statement of Claim such as non est factum, fraud and undue influence, there is really one main issue and that is the mental condition of the deceased when his thumb impression was affixed to the cheque and other documents. It will also be my respectful submission that it is not necessary to show that the deceased was mad or insane in the sense that he should be an inmate of a mental home. It will be my respectful submission that a very young child or a very old person or a sick person or a person who is mentally retarded can all be sane people and yet unable to understand the nature and consequences of their acts.

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The case for the appellant was that at the time when the thumb print was affixed deceased's mind had been reduced by serious illness to a state that he could not understand the full meaning and consequence of what was being done. I would submit that the inferences drawn by the Judge from the evidence were wrong and that he did not evaluate the evidence as he should have done.

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The appellant herself does not know how the thumb print came to be affixed. This is clear from her pleadings. My submission is that whatever the nature of the physical act may have been it was an involuntary act. The evidence of the defendants was that the thumb impression was affixed on 18th July 1967 at 5 p.m. in the presence of the first defendant, Kwan Mun Koh, (D.W.2) a nephew of the deceased and the person in charge of the Pasar Branch of the second defendants and Chan Yoke Ying. Chan Yoke Ying now claims to be the beneficiary of the money under some sort of trust which was created by the deceased prior to his death.

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The learned Judge dismissed the appellant's claim and in doing so held that the burden was on the appellant to show that the deceased was not in a fit state of mind and that she had failed to do so and that he accepted the evidence of the defendants that the deceased was of a normal mind.

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I will now deal with the facts. I shall deal with the appeal in two parts. First I shall take the Court through the evidence which I rely on and then the relevant law.

The appellant really relies on the evidence of the five doctors who attended on the deceased. The evidence of the first of the doctors, Dr. Vignaendra (P.W.2) starts at page 78. He was the doctor who admitted the deceased to Hospital. Refer to page 79, line A 5 to C 4 page 80, from page 81 line D 4 to page 84 D 3. The sum total of the evidence of P.W.2 was that deceased was a very ill patient when admitted. He was not fully clear mentally on questions put to him. This doctor was not cross-examined.

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The next doctor was Lim Eu Jin (P.W.3). He was the doctor who attended on deceased from 15th July to the time of his death. Refer to evidence at page 85 continued on top of page 86 line B 4, page 89 line E1 (rapid rise of blood urea), page 90 line B 1 to C 4, line E 1 to F 5, page 91 line B 2 to C 1, line E 2 to F 5, page 92 line B 1, page 93 line E 3 (His Lordship was looking for evidence of madness), page 94 line C 5 to F 5, page 95 line A 1 to line A 5, line C 3 to E 3. To sum up the evidence of the witness, he saw the patient almost every day. The patient's condition on 15th July was mental deterioration and confusion. There was progressive mental deterioration and the condition remained the same on 16th, 17th, 18 and 19th July. Mental deterioration - not aware of his surroundings as a normal person. Every time the witness saw the deceased or spoke to him his condition was the same. He made clear that he did not mean that the man was a mad man. This doctor was not cross-examined at all.

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I will next deal with the evidence of Dr. Sinnadurai (P.W.5), starting at page 100. Refer to page 102 line A 4, page 103 line B 1 to line F 5, page 104 line C 2 to F 5 at page 106, page 107 line A 1 to line F 5. Summing up his evidence, he had seen him on 15th July when mental condition was in a state of deterioration. From the 15th July the deceased gave the impression that his mental condition was getting worse day by day. I am dealing specifically with the 18th on which date he was said by this witness to be mentally confused and the blood urea had risen to 252 m.g. per cent. Then the doctor went onto describe the deceased's condition on 19th. By the night-fall of 19th July he was acting like a mad man. Again, this doctor was not cross-examined.

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(continued)

I now go to the evidence of Dr. Daljit Singh (P.W.14) starting at page 139. Refer to page 141 line D 3 to line E 3, page 142, line A 3 to line D 2, page 144 line B 1, E 3, page 145 line A 1 to A 5, line D 1 to F 2 page 169 line B 1 to C 5.

The last medical witness was Dr. Sreenivasan (P.W.4). His evidence starts at page 96. Refer to evidence at page 97 line B 1 to F 5, page 98 line A 4 to F 5, page 99 line B 4 to F 5, page 100. This witness was not cross-examined.

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Court adjourned and resumed after 15 minutes.

R.R. Chelliah (continuing)

The last doctor we referred to was Dr. Daljit Singh. I would refer to his clinical notes which form part of P 13 starting at page 736 and continued at page 737. Refer to nurse's notes at page 714. Page 718 contains notes of 18th July. Refer to P 13 at page 763 which against the entry on 18th July states that deceased passed urine in bed at page (sic) 4 p.m. and 6 p.m. Refer to evidence at page 166. The deceased was alleged to have put his thumb impression on the cheque and other documents around 5 p.m.

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From the evidence of all the five doctors, who are independent Government doctors having no interest in the subject matter of the suit, it is clear that from 13th July to 24th July at least one of them saw the deceased every day in the Hospital. Everyone of them spoke of mental deterioration. At least from 15th July, the evidence shows that there was progressive deterioration and by the night of 19th July the deceased was acting like a mad man. Between 14th and 19th July there was rapid increase in the blood urea. Although the doctors frankly admitted that it was possible for the patient to have short lucid moments, none of them saw him in any such lucid moments. In fact every time each of them saw the patient he was mentally confused, dull and deteriorating. The doctors went on specifically to say that at no time was the deceased able to know what he was doing on 17th, 18th and 19th July. Dr. Sreenivasan who only saw the deceased once at 10.15 p.m. on 20th July said positively that when he saw the patient he was not in a proper frame of mind to execute any document. Even Dr. Sinnadurai,

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who spoke of waxing and waning said that he would have to take some opinion from a Psychiatrist before he could say that the deceased was fit to sign any documents. Dr. Lim's evidence was that there was progressive mental deterioration from 15th July onwards. My submission is that if the evidence of the doctors is accepted it is clear that at least as a general state of the deceased's mental condition he was not in a proper frame of mind to know the nature and consequence of his acts over the period 13th to 24th July and particularly over the period 15th to 19th July.

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As against the medical evidence, the evidence called for the respondents consisted of one doctor who was not attending on deceased during the period 13th July to 24th July and who visited the Hospital as a visitor. The other witnesses on the mental condition of the deceased was the first defendant, Kwan Mun Koh and Chan Yoke Ying. The last three witnesses were laymen. They are all, including the doctor, related to one another in some way or other.

Refer to evidence of Dr. Loke Wai Tuck (D.W.4) starting at page 257. Refer Page 259 line E 4 and then to page 206 line D 5, page 260 line B 4, page 258 line C 3, page 261 line E 4 continued on page 262 line A 1 to F 5, page 263 line A 1 to D 2.

Refer to evidence of Chow Yee Wah (D.W.1), the first defendant starting at page 175. Refer to evidence at pages 181, 182, and 183 as to how the thumb impression of the deceased was taken. Refer to evidence at page 183 line B 3 to C 3. None of the doctors said anything about either of deceased's hands being swollen, nor were they asked during the cross-examination about swollen hands. Refer to page 183 line C 3 to D 3. This shows that Kwan Mun Koh came ready with an ink pad. Refer to page 193 line D 4, page 194 line A 5, pages 205 and 206 (how the money was dealt with), page 211 line C 4, page 212 line A 2 to C 2.

Come to evidence of Kwan Mun Koh (D.W.2) starting at page 218. Refer to evidence at page 220 line D 5 to line F 5, page 221 line A 1 to F 5, page 222 line A 1 to A 4, page 228 line F to over the page and page 237 line E 1. If this evidence of the witnesses was opposed entirely to the evidence of the doctors, they were lying. If they

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were lying on one point then the Judge should have treated the rest of the evidence with suspicion.

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(continued)

Evidence of Chan Yok Ying (D.W.3) starting at page 243. Refer to page 247 line C 2 to F 5, page 252 line D 2.

When the evidence of these witnesses contradicted the evidence of the medical witnesses so directly and violently, how much reliance can you place on the rest of their evidence?

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It is my respectful submission at this stage that on the evidence of the five Government doctors, no matter on whom the initial burden lay, the learned trial Judge should have held that there was sufficient evidence to show that at least between the 15th of July and 20th 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 act. Then he should have held that if there were any lucid moments, the onus of proving that was on the respondents.

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Adjourned until 2.15 p.m.

Sgd. S.S. Gill.

Hearing resumed at 2.15 p.m.

Chelliah (continuing)

I now turn to the judgment of the learned trial Judge starting at page 557. In the earlier pages he reviews the evidence. Refer to page 580 line E 3 and read on from there to page 581 line D 4. I pause here to observe that the evidence of Dr. Daljit Singh and Dr. Sreenivasan was such that the deceased's mind was in such a state that he could not know the nature and consequences of his act. That was the view of the doctors who attended on him and treated him. What other evidence, apart from medical evidence can be produced on this? Read on at page 581 line D 5 to page 582 line C 4. I emphasise the word "probability" in view of the medical evidence that there was "possibility" of lucid moments. Read on from line 5 at page 582 to page 585 line B 2. This clearly shows that the learned Judge was looking for evidence of insanity.

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Read on from page 585 line B 3 to line D 5. Again the Judge was looking for evidence as to the deceased's state of mind at the crucial hour divorced from the evidence of the statement of mind before and after that crucial hour.

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(continued)

10 Continue reading from page 585 line E 1 to page 586 line E 5. Refer to evidence at page 93 line A 4, page 95 line B 4. To continue from line F 1 on page 586 to page 588 line A 4. The learned Judge went wrong on onus of proof. In any event, he failed to evaluate the evidence of the doctors and to draw a correct inference therefrom. He erred in holding that the degree of impairment of the deceased's mind had not established. Whatever the degree of impairment might have been, it was certainly sufficient to show that he did not know the nature and consequence of his act. I do respectfully submit that the Judge appears to have looked for evidence to establish madness or insanity.

20 I submit that he equated the words "probable" and "possible". It would further appear that his Lordship misdirected himself in disregarding the evidence of the doctors merely because they were not present at the very moment when the thumb impression of the deceased is alleged to have been taken.

30 Come to Judge's judgment at page 595 line C 2 to line D 5. The learned Judge appears to have placed too much importance upon what was alleged to be the express intention of the deceased prior to his admission to Hospital. Even assuming that he had expressed such an intention, it does not follow that he had the mental capacity to do whatever he is alleged to have done as regards the thumb printing of the cheque and the other documents.

40 Continue from page 595 line D 5 to page 597 line C 4. This evidence of Dr. Like was diametrically opposed to the evidence of the five Government doctors. Read on from page 597 line D 4 to page 600 line A 1. The Judge speaks of "completely relieved of his mental faculties, his memory and understanding."

Turn to page 606 line B 5 to line D 4. Chan Yoke Ying was not made a party because the letters from the defendants did not indicate her interest in the matter. Read on from page 606 line D 5 to page 608 line A 5. Dr. Loke Wai Tuck was not present at the taking of the thumb print.

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Read on from page 608 line B 1 to page 609 line D 5. My submission is that the learned trial Judge appears to have laid too much importance to demeanour of defence witnesses. He placed too much weight on what these witnesses alleged to have been the intention of the deceased prior to going to Hospital. He did not direct his mind to consider the question as to why it was necessary for the deceased to open a joint account with the first defendant to provide for Chan Yoke Ying. If his intention was to provide for her, he could have opened a joint account with her, given her half the money or any other money he wanted to give or left a will. The explanation given by the first defendant was that she was illiterate and could not sign her name, and yet their own evidence clearly shows that immediately the joint account was opened the first defendant claims to have withdrawn from the joint account a sum of \$5,000/- by way of a cash cheque and that Chan Yoke Ying signed the cheque and cashed it. Refer to evidence at page 205 line E 5 to page 206 line C 3. Refer to D.35 at page 937 (Mr.Shanker says that there was evidence that deceased taught her how to sign).

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Adjourned until 9.30 a.m. on 27.5.74.

Sd. S.S. Gill.

28th May 1974

Tuesday, 28th May 1974

Coram: Gill, Chief Justice, Malaya,  
Ali, Judge, Federal Court,  
Ong Hock Sim, Judge, Federal Court.

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Counsel as before. Hearing continued.

Chelliah (continuing)

At the last hearing I referred to the mental condition of the deceased at the relevant time. I said the Judge failed to evaluate the evidence properly and to arrive at correct inferences.

I now propose to deal with the law on this particular issue. My first submission is that the appellate Court is in as good a position to draw inferences from the facts and form its own opinion as the trial Judge. Refer to Mersey Docks & Harbour Board v. Proctor (1923) All E.R. 134,

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137 line 1; McLaughlin v. The Daily Telegraph Newspaper Company Ltd. (1904) 1 C.L.R. 243, 277; The Daily Telegraph Newspaper Company v. McLaughlin (1904) A.C. 776, 779 (para. 2); Benmax v. The Austin Motor Company (1955) 1 A.E.R. 326, 327, 329G. It is my submission that this Court is entitled to draw its own inference from the medical witnesses.

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(continued)

10 The question as to whether a person is mentally incapacitated does not depend on belief or disbelief of witnesses. It depends largely on inferences to be drawn from evidence. Refer to Ram Sundar Saha & Others v. Kali Nerain Sen Choudhury & Others A.I.R. (1927) Cal. 889, 892. In a case of this nature the demeanour of a witness should not be relied upon without testing it against the whole of the evidence in question. Refer to Yuill v. Yuill (1945) 1 A.E.R. 183, 188(H): Onassis and Calogeropoulos v. Vergottis (1968) 1 Lloyd's Law Reports 294, 297, 298, 302, 303.

20 Where witnesses likely to be biased give evidence in direct contradiction to medical officers their evidence must be received with caution. Refer to Harwood v. Baker 13 E.R. 117, 118 (evidence of doctors), 121, 122, 123 (297) (evidence of witness). Similar position in the present case.

30 In order to invalidate the act of the deceased, the issue is not necessarily whether the deceased was insane or mad. All that is necessary is that he was of an infirmity of mind which rendered him incapable of fully understanding the nature of his act. Two of the cases which support this view I have already referred to are Harwood v. Baker and The Daily Telegraph Newspaper Company Limited v. McLaughlin. Both are decisions of the Privy Council. The third I would like to refer to in this connection is Ball v. Mannin: Vol. 6 E.R. 568, 569, (383), 572. Similar observations have been made in other cases. McLaughlin v. The Daily Telegraph Newspaper Company Ltd. (1904) 1 C.L.R. 243, 269: Ram Sundar Saha & Others v. Kali Narain Sen Chowdhury & Others A.I.R. (1927) Cal.889,890.

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Whether it be an act Inter Vivos or Donatio Mortis causa or a testamentary disposition, the burden is on the person asserting the validity of the act to prove the person doing the act had the necessary mental capacity.



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Taking the case of act Inter Vivos, refer to Farid-Un-Nisa v. Munshi Mokhtar Ahmad A.I.R. (1925) P.C. 204, 206, 209; Thomas v. The Times Book Company Limited (1966) 2 All E.R. 241, 244. In the case of Donatio Mortis causa it must be established by the clearest evidence by the donee. Refer to Cosnahan v. Grice 15 E.R. 476, 479. In the case of a testamentary disposition, the burden is on the person setting up the action to try to establish the validity of the will. Refer to Smee v. Smee (1879) 5 P.D. 84, 90, 91, 92.

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Where the mental illness or incapacity has been shown to have existed both before and after the alleged act, an allegation that the act was done in a lucid moment must be established by strong evidence by the party alleging it. Refer to Williams & Mortimer on Executors Administrator and Probate (1970) p. 143. This was so held in McLaughlin's case (at page 277).

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To sum up, it is my submission that the learned trial Judge erred in holding that the burden was on the appellants to prove infirmity. The burden was on the respondents to prove mental capacity which they failed to prove on the evidence. Even if the burden was initially on the appellant to show a general state of incapacity at the relevant time, she had discharged that burden sufficiently through the medical evidence of the five doctors that the deceased was generally incapacitated from the 13th of July to 24th of July when he died. It is my further submission that the respondent had failed to prove lucidity at the relevant time. If the Court so holds then the cheque was void and of no legal effect.

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Court adjourned and resumed after 20 minutes.

Chelliah (continuing)

If the cheque is void and is a nullity, then the second defendant Bank who paid out and collected on the cheque is liable to pay that money to the appellant as the administratrix of the Estate of Loke Yaik Hoe deceased. In this case we need not make any distinction between the paying Bank and the Collecting Bank, both being the same.

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The Bank is liable to pay on two grounds.

Firstly on the basis of non est factum. In law the deceased never signed the cheque and the cheque is not his. Refer to Foster v. Mackinnon (1869) 4 C.P. 704, 711; Saunders v. Arglia Building Society (1970) 3 All E.R., 961, 963, 066; McLaughlin's case, which I have already cited at page 273 (13th line from top) of 1 C.L.R. (1904). As far as the Bank is concerned, they are liable as in the case where the signature on the cheque has been forged. The Bank is liable even if there has been no negligence on the part of the Bank. Refer to Paget's Law of Banking (8th edition) page 336, Imperial Bank of Canada v. Bank of Hamilton (1903) A.C. 49; Abbu Chettiar v. Hyderabad State Bank A.I.R. (1954) Madras 1001, 1005 (para 10). Secondly, the Bank's representative here was negligent in accepting the deceased's thumb print without consulting a doctor in the circumstances of this case. D.W.2 said in evidence that the normal signature of the deceased was in English handwriting and we have the specimen signature of deceased at page 934 of the appeal record. He knew that the deceased had been in Hospital for some 5 days before the thumb print was taken. He knew some urgency had been shown by those concerned to transfer this fairly large sum of money to a joint account while the deceased was still in Hospital and he should have reasonably suspected that the deceased's illness was such that the deceased's life was in danger. Evidence that he did not consult a doctor appears at pages 236, 237 line D 3. The question here is not what D.W.2 believed but what an ordinary prudent man would have done in the circumstances. If the second defendant failed to make such an inquiry, as a prudent Bank would have done, then it was negligent. Refer to Baker v. Barclays Bank Limited (1955) 1 W.L.R. 822, 835, 838 (penultimate paragraph); Sheldon on Practice and Law of Banking (9th edition) page 4; Marfani & Co. v. Midland Bank (1967) 3 All E.R. 967, 971 line B 3; Marfini & Co. Ltd. v. Midland Bank Ltd. (1968) 2 All E.R. 753.

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If the Court is not with me on the mental state of the deceased, then the question arises as to the legal consequences of a joint account and to whom the balance standing to the credit of the joint account belonged on the death of the deceased. The appellant claimed that in the circumstances of this case the first defendant as

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the survivor held it under a resulting trust for the benefit of the Estate of the deceased. The respondents, on the other hand, claimed that the first defendant held it as trustee for Chan Yoke Ying as the common law wife of deceased. Refer to para. 11 of the amended statement of defence. The learned trial Judge held that the first defendant was the lawfully constituted trustee and that he held the money in trust for Chan Yoke Ying. Refer to his judgment starting at page 615 line E up to line B 3 on page 616. Refer to page 620, 621, 622, 623, and 624. The learned Judge misdirected himself in holding that the first defendant was a duly constituted trustee for Chan Yoke Ying. The two passages quoted by the Judge have no relevance to the issue. The passage in Milroy v. Lord was in fact in favour of the appellant in that the Court will not perfect an imperfect gift.

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The law relating to a joint account is that where A and B hold a joint account in a Bank and A provides all the money in the account, then upon his death in law B was entitled to take what is left in the account by virtue of his contract with the Bank, but in equity B will hold the money under a resulting trust for the Estate of A, unless B can prove that A intended him to take the money for his own benefit. Refer to Guranditta & Another v. Ram Ditta (1928) 1 A. 235, 240. In this case, the first defendant as the survivor does not claim the money to be his own. What he is claiming is that he is holding it under a validly constituted trust for the benefit of Chan Yoke Ying. Unless he can establish a validly constituted trust in favour of Chan Yoke Ying the equitable presumption that he holds the money under a resulting trust for the Estate of the deceased must prevail.

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To constitute a valid trust, certain fundamental requisites apply. Among them there are two which are relevant to our case. Firstly, there must be a declaration of trust or disposition of property on trust. Secondly, there must be certainty of the property which is to be held in trust.

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Dealing with the first requisite, the declarer or disposer must not retain any control over the property which is inconsistent with an intention to create a trust. Refer to Warriner v.

Rogers (1873) 16 Equity Cases 340, 348; Richards v. Dalbridge (1874) 18 Equity Cases 11, 13, 14, 15.

In opening the joint account, the deceased retained control over the money. This destroys the argument that a trust had been created. What is the evidence on record as to what the deceased said as to the opening of the joint account? Refer to evidence of D.W.1 at page 178 line D 3, page 182 D, page 184 line C 1. Refer to evidence of D.W.2 at page 219 line A 1 and line B 2. That is all the evidence. In my submission that is insufficient for the declaration of a valid trust.

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Adjourned until 9 a.m. tomorrow.

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Wednesday 29th May, 1974

29th May 1974

Hearing continued. Counsel as before.

Chelliah (continuing)

The second requisite which is necessary for the formation of a trust is that there must be certainty of the property which is to be the subject matter of trust. In the case of Sprange v. Barnard & Others 29 E.R. 320 the subject matter of the trust was what shall remain at his death. It was held that that was an uncertain property that was to be the subject matter of the trust and therefore no valid trust had been constituted. The relevant passage is at page 322. In our case, the opening of a joint current account entitles both to draw money from the account from time to time and what would form the subject matter of the trust would have been what remained to the credit of the account at the time of deceased's death. Therefore kthe purported trust, if there was an intention to create a trust, must fail. It is clear on authority that equity will not perfect an imperfect trust by construing it as a trust. A passage in Milroy v. Lord 45 E.R. 1185 was cited to the learned trial judge which is quoted in his judgment. It appears at page 1189. If that passage is continued it will be found that it favoured the appellant. My submission therefore is that the first defendant has not been validly constituted trustee for Chan Yoke Ying, and therefore the equitable presumption of a resulting trust in favour of the deceased's estate prevails.

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I now turn to the case of Russell v. Scott (1936) 55 C.L.R. 440, which is the other case relied on by the trial Judge. The same issue was raised in the case of Owens v. Green (1932) Irish Reports 225. The argument about testamentary disposition found favour in this case. The same argument was raised in the Australian case and was rejected on the ground that the right of the survivor to the money in the joint account arose from the chose of action that was contractually created by the opening of the joint account. This is clear from the judgment at 454 in the Australian case. We are not quibbling with that passage. It correctly states the law, but is not applicable to the present case. The second passage from the Australian case would be applicable if there had been a validly constituted trust in this case.

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This was not a case of Donatio Mortis Causa as one of the requirements of a valid donatio mortis causa is that the donor must part with the dominium over the subject matter of the donatio. Refer to the case of In re Craven's Estate, Lloyds Bank v. Cockburn (1937) Ch. D. 423, 426.

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(Note: a sum of \$5,000 was taken out from the joint account by the first defendant between 24th July and 31st July. On 31st July the first defendant opened a joint account in his name and that of his wife Loke Soh Eng and then withdrew \$50,000/- from it and put it on two fixed deposits of \$10,000 and \$40,000 in the joint names of himself and his wife. This appears in the evidence at page 225).

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Shanker:

Chan and I have agreed that Chan will address Court first and I shall address Court afterwards.

Chan addressing on behalf of Second Respondent.

Counsel for appellant has raised three main issues. They are mental capacity of deceased, whether the Bank is liable in the event that the deceased had no mental capacity at the time he put his thumb print on the cheque and other documents and whether a valid and completely constituted trust had been created in favour of Chan Yoke Ying.

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The first issue is more a question of fact. We cannot find a clearer case than this of a validly constituted trust. So far as Chan Yoke Ying is concerned, there is a perfect gift although subject to a trust. This may not be a case of donatio mortis causa, but it could be a gift inter vivos.

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10 I will proceed with mental capacity which is  
tied up with the facts. What should be the correct  
approach by this Court so far as it concerns mental  
capacity? In my submission the correct approach  
would be to find out what is the most crucial  
finding of the learned trial Judge touching on  
this point. That crucial finding is at page 599  
starting from line A 1. The next question is  
whether that finding is supported by evidence.  
If there is evidence supporting that finding, was  
the learned Judge wrong in accepting that evidence  
in the light of the other evidence in the case.  
20 I don't think there can be any doubt that there is  
sufficient evidence to support that finding.  
There is the evidence of the defence witnesses  
including a doctor. There is the evidence of the  
surrounding circumstances relating to the thumb  
print of the cheque and other documents. There is  
the evidence of the lay witnesses who were present  
at the time the deceased affixed his thumb  
impression. It is that evidence that the Judge  
relied on primarily in arriving at his finding.  
30 Refer to page 598 line A. The affixing of the  
thumb print indicated the soundness of mind of  
the deceased. In fact more was said about the  
deceased by various witnesses than what was said  
by the learned trial Judge. Refer to page 221  
line C 5 to page 223 line C. Refer to the case of  
Gross v. Lewis Hillman Limited and another (1970)  
1 Ch. 445, 459 line D. Refer to evidence of  
Dr. Sinnadurai at page 105 that deceased behaved  
like a mad man when there were no tests carried  
40 out. One cannot say that defence witnesses were  
not telling the truth when they saw the deceased  
to be normal on each occasion they visited the  
Hospital. Refer to evidence at page 106 line E 1  
to F 5. Refer to evidence at page 92 line E 5  
onwards. There is also evidence from Dr. Daljit  
Singh. Refer to page 157 line B. Deceased looked  
a picture of health, was able to speak and move  
about. In the circumstances, could anyone say  
that defence witnesses were lying? The learned  
50 Judge was fully aware of the apparent conflict of

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evidence. It is interesting to note how he resolved that conflict. Refer to page 609 line A 3.

There is no real conflict of evidence. One can say that the Judge was wrong if medical evidence ruled out any possibility of the deceased being able to understand the nature and effect of his act when he affixed his thumb print to the cheque and the other documents. The learned Judge clearly took the view that it was possible. Refer to judgment at page 586 line A 1. Balance of probabilities was all on the side of the respondents. As to condition of deceased, refer to evidence at page 262. As to condition of deceased on 18th July, refer to page 492 to 494. Refer to Judge's judgment at page 575 line E 4 to page 578 line E 4, page 589 line B 3, page 599 line D 1. There is no evaluation of medical evidence involved here. So far as the evidence of the doctors is concerned, he merely accepted the evidence of the doctors. There is no question of inference. The learned Judge drew inferences from the acts of the deceased. He did not evaluate the medical evidence. 10 20

There is a clear finding by the Judge that the deceased had the necessary mental capacity for his act on 18th July. He drew support for his findings from other factors. First, the rationality of the gift. Secondly, steps had been taken by the deceased to make provision for his wife before he was admitted to hospital and before any allegation was made as to his mental state. Refer to page 593 line B to page 595 line C. What deceased did was consistent with what he had been planning to do. This shows that he was in a proper frame of mind. Also refer to page 608 line D 3 to line A 2 at page 609. The very fact that the gift itself is rational is sufficient evidence to show a sound state of mind at the relevant time. Refer to Banks v. Goodfellow (1870) 5 Q.B. 549, 557 (4th line from bottom), 563 (from second para.), 565, 567 (13th line from top) (if the person concerned had thought of the act in his lifetime, a slight degree of mental capacity is sufficient to give effect to his thought). Chan Yoke Ying had been living with the deceased for six years. He was never married before that. He had no children. There were two persons closest to him. One was his common law wife Chan Yoke Ying, and the other his mother, the plaintiff in the case. There is evidence that the deceased and his mother were not 30 40

on good terms. Notwithstanding that, he had not given all his money away to Chan Yoke Ying. He had other money. Refer to Section 12 of the Contract Ordinance, 1950. Refer to Williams & Mortimer (1970) page 140.

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(continued)

24th June 1974

Hearing continued. Counsel as before.

10 Chan (continuing)

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20 Before last adjournment I submitted that the gift in this case was rational. That in itself was a clear indication that the deceased knew what he was doing. The intention to benefit the wife had been expressed before deceased entered hospital and before any allegations were made about his mental condition. In the circumstances very little capacity will be required. I cited the case of Banks v. Goodfellow (1870) 5 Q.B. 549, 557. I also referred to Williams and Mortimer on Executors Administrators and Probate (1970 edition) page 140. The learned Judge's findings are supported by these two factors.

30 What should be the true issues in so far as mental capacity is concerned? I agree with what was submitted by Counsel for the appellant on this issue. It was also submitted by Counsel that the issue was not whether the deceased was insane. I agree with that. Nowhere did the learned trial Judge say in this judgment that he would require a high degree of proof before he could say whether the deceased knew what he was doing. The learned Judge was aware of what the issue before the Court was. Refer to his judgment starting at line E at page 561 of record. Refer also to page 597 line D, page 599 line A 5. Refer to evidence at page 93 line E. This was in answer to questions by Court. Refer to page 586 line F to line B 2 on page 587. Refer to page 581 line D 3. What  
40 the judge said about soundness of mind should not be read in isolation. The question of probability is irrelevant here. The question is whether in the circumstances of the case the evidence of the defence witness can possibly be true.



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I now come to question of burden of proof. Unless there is no evidence or the evidence is so evenly balanced and there is no preponderance of probability, then the question of onus of proof is purely academic. Refer to Yong Chiang v. Bong Tjhin Oi (1973) 2 M.L.J. 136. If the burden of proof was on the plaintiff, even if there was no evidence for the defence or the defence was rejected as being unreliable, there the plaintiff was not entitled to succeed because she had not produced enough evidence to prove her case or to shift the burden on the other side. Refer to Halsbury (3rd edition) Vol. 29, page 419 (paragraphs 819, 820). This is not a case of a will so the general presumption of sanity must prevail. Even if the defendants had not called any evidence, my submission is that the plaintiff had not proved her case. Refer to Mohamed Yakub v. Abdul Quddus & Others A.I.R. (1923) Patna 187, 191. The Judge in this case came to the conclusion that there was not sufficient evidence to shift the burden. Refer to Judge's judgment at page 581 line A 5. Even if the Court rejects the evidence of the defence, the plaintiff is not likely to succeed. The question of burden of proof therefore is not purely academic.

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On the question of mental capacity the learned Judge had made a definite finding, merely, that the deceased knew what he was doing when he drew the cheque and gave authority to open a joint account and that he fully appreciated the nature and effect of his act. In support of this finding the learned Judge relied on the evidence of defence witnesses, particularly relating to the time of the execution of the cheque and the other documents. In accepting that evidence the Judge was faced with danger from two sources. Firstly, as counsel for appellant has said, since there was evidence from medical witnesses that each time they saw him he was confused and therefore there was a violent conflict between the evidence of medical witnesses and the defence witnesses. And the medical witnesses were disinterested witnesses. If their evidence is accepted, then the evidence of the defence witnesses to the effect that each time they saw him he was mentally normal their evidence cannot be accepted and that it follows that the whole of their evidence should be rejected as being unreliable. The learned Judge was fully aware of this conflict and he did warn himself of

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the need for caution. But he resolved this conflict by saying that he did not mean to reject the evidence of the doctors, but he accepted the evidence of defence witnesses as they knew the habits and mannerisms of the deceased intimately. By saying that the Judge clearly had in mind the various habits of the deceased such as that he stammered when he talked and he was an obstinate person, always refusing to co-operate. It would then follow that the learned trial Judge took the view that some allowance must be given to a possible mistake by the doctors. I also said that in this respect the evidence of defence witnesses was supported by the evidence of the doctors. Such as his ability to talk and his ability to move about and the possibility of his being a picture of health.

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The second source of danger is this. Since whenever the doctors saw him he was confused, then the possibility of his being in a clear state of mind, as testified by the doctors, is a mere possibility. My submission is that it was not a mere possibility but a real possibility. It was real because some allowance must be given to the possibility of mistake because of his habits and mannerisms. Then we have the medical opinion which is strengthened by the entry in the medical records that it was very possible for him to have a clearer state of mind at other times. And the learned trial Judge attached some importance to a statement of Dr. Lim to the effect that though the deceased was confused he could understand.

Apart from this, there are two other factors which support the finding. First, the gift was a rational gift and by law it is sufficient indication that he knew what he was doing. Secondly, the intention to make a provision for the wife was expressed before his admission to hospital and before any allegation of unsoundness of mind was made against him. Very slight degree of mental capacity was therefore required. I also submitted that the learned trial Judge was fully aware what was the issue before him on the question of mental capacity. I also submitted that the presumption of sanity would apply in this case. Therefore the general burden of proof was on the plaintiff. I also said that the burden of proof may shift once the plaintiff has produced evidence to show that the deceased was mentally

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disordered that he was incapable for purposes of contract or disposition. My submission is that the burden had not shifted as rightly found by the learned trial Judge. The question of burden of proof is relevant here because if the entire evidence of defence witnesses was rejected as entirely unreliable, the plaintiff was not entitled to succeed as she had not discharged the burden.

The next issue is this. Assuming that the cheque is null and void on the ground that the deceased did not have the necessary mental capacity, would the second defendants be liable to pay the amount of the cheque to the plaintiff as personal representative of the deceased? 10

It is argued that the Bank would be liable on the ground of non est factum. Whether the Bank was negligent or not I concede that if the cheque is a nullity, then the second defendants would be liable on the principle of non est factum. Our case all along was that the deceased had the necessary mental capacity. The officer of the Bank in this case was not negligent. 20

It was submitted by appellant's counsel that the Bank's representative was negligent in that he did not call a medical certificate to the effect that the deceased was too ill to sign. In support of that he cited Sheldon on Banking (10th edition) page 3. That passage has no relevance to this case, because the deceased was not too ill to sign. His hand was swollen, so that he could not sign. 30

It was also submitted by appellant's counsel that there were suspicious circumstances. This was explained by the witness that the ink pad was his standard equipment, and this explanation was accepted by the learned trial Judge. There was therefore no negligence on the part of the Bank.

Adjourned until 2.30 p.m. 40

Sd. S.S. Gill

Resumed at 2.30 p.m.

Chan (continuing)

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I come to the question of trust. It was urged that there was here no validly constituted trust. In my submission there is here a completely valid trust. It is essential to bear some facts in mind. Refer to evidence at page 219 starting at line A, page 178 line D 3 to D 5. The cheque and the mandate form were thumb printed on 18th July. Joint account was opened on 20th July. On the same day the total amount in the head office was transferred from the head office to a joint account in the Pasar Road branch. No money was drawn out from this account during the lifetime of the deceased. Apart from this account, the deceased had two other bank accounts (see page 776). It is my submission that a trust had already been created. Refer to Equity and the Law of Trusts by Philip H. Pettit (19th edition) page 52. This is not a case of declaration of trust. This is a case of a transfer of property to trustees coupled with an expressed intent.

Refer to Russel v. Scott (1936) 55 C.L.R. 440. That was a case of transfer of money to a joint account. Read facts of case from headnote. Read from page 457 of the report. In the same way there was an intention to benefit Chan Yoke Ying in this case, so that there was no resulting trust in favour of the deceased's estate. The survivor here was to hold the money in trust for Chan Yoke Ying. The fact that the deceased here could revoke the trust before his death did not make any difference to the trust. Read from page 445 of report (second paragraph).

Refer to Thompson v. Brown (1835) 40 E.R. 13 as to power of revocation of a trust. The trust in this case arose as soon as the money was transferred to the joint account. Both the deceased and the joint owner of the account became trustees for the woman whom the deceased intended to benefit.

Warriner v. Rogers (1873) 16 Equity Cases 340 and Richard v. Dalbridge (1874) 18 Equity Cases 11 state that there should not be any retention of any interest in the property which is inconsistent with the intention to create a trust. An immediate trust was created for himself for life and thereafter for the benefit of Chan Yoke Ying. There was no clear expression about the creation of an

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immediate trust for his own benefit for life and  
thereafter for Chan Yoke Ying, but it was implied  
as the intention was there.

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Russel v. Scott is most relevant to our case.

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This also can be a gift notwithstanding the  
intervention of the trust. I concede that it was  
not a gift intervivos or a donatio mortis causa.  
Refer to Pettit's Equity at page 29. If the  
trust fails for uncertainty, it will still take  
effect as a gift.

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(continued)

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Refer to Sprange v. Barnard. That case does  
not apply to the facts of this case as the deceased  
had set aside the money for Chan Yoke Ying.

Shanker:

The mandate in this case is of crucial  
importance on the question as to whether there  
was a trust and when it arose. My submission is  
that whatever else the deceased may have said  
during his life, we have also to take this docu-  
ment into account. Refer to mandate at page 771.

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Adjourned until 10 a.m. tomorrow.

Sd. S. S. Gill.

25th June  
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Hearing continued. Counsel as before.

Shanker (continuing):

The broad basis of my submission is contained  
in my written notes which I have handed to the  
Court and to counsel for the appellant.

The two main submissions by counsel for the  
appellant. The answer to these submissions hinges  
on three questions. It was conceded by counsel  
for appellant that the real issue was whether the  
deceased knew what he was doing when he thumb-  
printed the documents. Refer to pages 1 and 2 of  
my written submission.

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About faeces. Evidence at page 261 line A 1.  
Refer to pages 761 and 763. Evidence of Dr.  
Sinnadurai at page 105 line C 5 to F and continued

on page 106. We say that Dr. Sinnadurai's memory on the question of faeces was clearly at fault. The proper inference that should be drawn from this aspect of the case is that recovery from diaorrea and having to visit the toilet up to ten times a day, the deceased must during his visits to the toilet have taken that function in his stride. To elaborate, the implication that appellant's counsel is urging upon this Court is that deceased did not know what he was doing. That should be only if he was inconsistent in relation to all his functions. As to Dr. Sinnadurai's evidence that the deceased was showing evidence of psychotic behaviour, his memory was clearly, at fault, refer to page 150. Diuretics used to induce urine. Read from line C 3 on page 150 to line E 3 on page 151, page 152 line F to page 153 line E 2, page 163 line B 4 to C 3, note sheets at page 719 (Mr. Joginder Singh refers to page 102 line A to show that Dr. Sinnadurai was not speaking from memory and page 107 line F 3). First record of any violent behaviour on the part of the patient was on 23rd July. Refer to page 740.

I now wish to deal with the significance of the passing of urine in bed. I have covered it at page 5 to 7 of my written submissions. The charts are themselves in conflict as to whether deceased passed urine in bed at 4 p.m. and 6 p.m. on 18th July. Secondly, one must not lose sight of the fact that the deceased was fed with diuretic drugs the purpose of which was to induce the passing of urine. No adverse inference can be drawn as to the deceased's mental state from those entries which occur from time to time in the nurses' notes that he had passed urine in bed. The nurses' notes constituted evidence of persons who were not called to testify. So there is inevitably a situation in which a certain amount of speculation and conjecture will come into the picture. The inferences which can be drawn are as follows. We know that the deceased was instructed to save his urine. We also know that various methods might have been used. There is no evidence that anybody saw him in the act of urinating in bed. We have evidence that the deceased went to the toilet to pass urine.

If complete rest in bed was advised and a urinal was to be brought to him to trap the urine,

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the presence or co-operation of the nurse may well have been required. If deceased could go to the toilet and then return to his bed this must lead to an inference that either the nurse was not there or not doing her job. It also shows that the deceased was not unaware of his surroundings. P 9 shows that crib bell was out of order on 18th July. Inferences from such evidence can only be speculative. Perhaps he called the nurses who never came. We do not know what quantity of urine was on the bed or on the floor. He could have knocked over the bottle on the floor, might have missed his aim or the bottle might have overflowed. This evidence is not of such a quality that the only rational and logical inference we can draw for it is that the man was not aware of what he was doing. 10

Nursing notes. Refer to my written submission at page 7. Refer to Nurses' Chart at page 761, 762 and 763. If we are to place any reliance on this kind of record, it will have to be shown that the record was rigidly and scrupulously kept. This testimony is unreliable and conflicting. Round off argument by referring to page 718 (about 18th July). No entry about urine in bed. From those entries no adverse influence can be drawn as to the mental state of deceased. 20

Shanker (continuing)

I now propose to deal with medical evidence with regard to which it is submitted by appellant that every time the doctors saw him his mental state was deteriorating. Refer to page 8 of my written submission. No doctor was prepared to commit himself as to the degree of mental deterioration of deceased. My cross-examination of Dr. Daljit Singh on certain passages from medical text-books. Medical science as to condition of a person suffering from kidney failure. Refer to Dr. Daljit Singh's evidence at page 162, starting from line A 3 to line E 3. Sum total of medical evidence was mental confusion and not mental disorder or unsoundness of mind. Refer to page 166 line B 4 to C 4. 30 40

Refer to extracts from medical evidence at page 9 of my written submissions. No inference can be drawn from the evidence of Dr. Vignaendra one way or the other. Evidence of Dr. Lim.

Evidence of Dr. Sreenivasan. Evidence of Dr. Daljit Singh. Cumulative effect of medical evidence. Dr. Daljit Singh reversed himself in re-examination (page 169 line B to line C 5). Dr. Daljit Singh contradicted himself. (Page 169 line B to line C 5). Dr. Daljit Singh contradicted himself. If the balance of probability test is applied to all the evidence, the opinion which Dr. Daljit Singh expressed has no foundation in fact.

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10            Refer to judgement of learned judge at page  
581 line D 2. This is above criticism. There is  
independent evidence to show beyond all reasonable  
doubt that the man was in his proper frame of mind  
between 13th and 18th July to know what he was  
doing. Refer to annexure to my written submissions.  
Admittedly the man was ill. What was of moment was  
his mental condition. Confused but could under-  
stand. Characteristics of deceased. Nothing  
improbable about what the deceased doing all the  
20 things he did on 18th July. No inference can be  
drawn that evidence of defence witnesses was  
incredible. It was in keeping with the medical  
feature.

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Adjourned until 2.30 p.m.

Sgd. S.S. Gill

Hearing resumed at 2.30 p.m.

Shanker (continuing)

30            I now propose to go into the cases dealt with  
by appellant's counsel on the question of mental  
capacity. The facts in each of those cases were  
so far removed from the facts of our case that  
they are not applicable.

40            Refer to McLaughlin v. Daily Telegraph (1904)  
1 C.L.R. 243. In our case we are not dealing with  
a certified lunatic. At no time did any doctor  
suggest that deceased in this case was suffering  
from any mental disorder. Read from page 245 of  
report. Read page 264, 267, 272. If the  
defendants acted bona fide all the time, then there  
is no question of the first defendant being liable  
in conversion. Read on at page 274, page 277 (top  
of page). Deceased's condition was a variable  
condition and not permanent.



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Refer to Ram Sundar Saha A.I.R. (1927) Cal. 889. This case is authority for the proposition that it was for the appellant to prove that the deceased was of such unsoundness of mind as is within section 12 of our Contract Ordinance. All the evidence for the plaintiffs was such that it was not sufficient to tilt the balance of probabilities so as to cast any burden of proof on the defendants.

Refer to Harwood v. Baker (1840) 13 E.R.117. Read from page 118. The medical evidence in that case was that the condition of the deceased when he was alleged to have made the will was static. That makes the case inapplicable to this case.

10

Refer to Pereira v. Pereira (1901) A.C.354. This case is very similar to ours. In this case instructions by the deceased were given before he entered Hospital. Read pages 358, 359, 360, 361 and 362. In this case instructions were given on 12th July but nothing was done until 18th July. This case was considered in Battan Singh v. Amir Chand (1948) 1 A.E.R. 152 which was cited in the Court below. There is a closer parallel of this case to our case. There was a complicated will in that case. In our case there was only the signing of a cheque. The instructions in this case were given before the deceased entered hospital. The delay between 11th and 18th. Two days before this cheque was thumb printed, the deceased had signed a cheque presented to him by Peter Kwan.

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Adjourned until 9 a.m. tomorrow.

Sd. S.S. Gill

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Hearing continued. Counsel as before.

Shanker (continuing)

The appellant's counsel had submitted that the learned Judge has relied too much on the demeanour of the defence witness and overlooked the effect of medical evidence. To say that the trial Judge tried this case on demeanour would be putting words in his mouth which are not there. Nowhere in his judgment has the trial Judge stated

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that he was deciding the case merely on the question of belief or disbelief of witnesses or merely on the demeanour of the witnesses. The true onus which lay on the Judge, taking the evidence as a whole was that he should have tested the evidence of the defence witnesses on the anvil of the medical evidence. This the trial Judge did do. Refer to page 609 from line A 2. The Judge gave himself the warning. The only inference from the primary facts is that the deceased was of sound mind. Refer to third paragraph at page 360 of Pereira's case. Defence witnesses in this case were cross-examined at length.

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Harwood v. Baker was cited by the other side for the proposition that the evidence of a biased witness should be received with caution. Passage relied on at page 121. The facts are quite different from the facts in that case. Bias in that case was clearly established. I would rely on Public Prosecutor v. Foong Chee Cheong (1970) 1 M.L.J. 97. What was said in that case applies equally in civil cases. All of them were related. Chow and Kwan were not beneficiaries. Chow accounted for every cent of the money, and income tax was out of the same account (joint account in the name of first respondent and his wife). From the moment of the deceased's death all the money taken out was utilised for Chan. In this connection I refer to pages 21(a) and 21(b) of my written submissions. Chow applied the money according to the wishes of the deceased. He had no fraudulent intention. Money had already been transferred 14 months before this case started. There was no secrecy about the transaction. Plaintiff herself was fully aware of the matter. Refer to pages 53, 56, 66, 67 and 68 and taking into consideration the evidence of defence witnesses.

Mr. Chow gave evidence to say that he informed Mr. Ng Kok Thoy about the joint account.

Refer to page 22 of my written submissions. The person who raised the question of mental disorder of deceased was plaintiff's counsel. Refer to pages 307 to 316 of record. The Judge dealt with this in his judgment at page 579 and page 582. That part of his judgment is beyond criticism.

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Farid-Un-Nisa, Thomas v. Times Book Co. and Conahan v. Grice were cited as authority for the proposition that the onus of proving mental capacity was on the person benefitting from a disposition. I submit that that is not so. If there is a perfect and legal transfer of an asset in a manner which is adequate in law to transfer legal title, the onus is on the person who impeaches the transition to show that it was invalid because of incapacity. In this connection I refer to mandate form at page 771. This joint account was one for the operation of which the signature of either one was enough. Legal title to the entire moneys was transferred to Chow the moment the mandate was signed. Submissions on this point by plaintiff in the lower Court appear at pages 270 and 287. My submission is that the distinction between those cases and this case is that there was no legal transfer in those cases. Refer to written submission at page 25. 10 20

Refer to Farid-Un-Nisa (1925) 52 I.A. 342. This case was decided on its own facts and does not contain a principle of general application. Plaintiff was the person who signed the document. Read from bottom of page 344. Respondents admitted that the onus was on them. Read page 350, paragraph 2 onwards to page 351 and then page 354 (half way down the page). Refer to Thomas v. The Times Book Co. Ltd. (1966) 2 A.E.R. 241. If there is a proper and legal transfer there is no onus on the transferee. In this connection refer to Re Garnett (1885) 31 Ch.D.1. 30

Refer to Smee v. Smee (1879) 5 Probate 84 dealt with at page 28 of my written submissions. Go on to Guran Ditta v. Ram Ditta (1928) 55 Indian Appeals 235, 240 para. 2. Our law is governed by the Civil Law Ordinance 1956, Section 3. Guran Ditta's case therefore has no application in this case.

Go on to Warriner v. Rodgers (1873) 16 Eq. Case 340. Refer to my written submission at page 29. Refer to Richard v. Dalbridge (1874) 18 Equity cases 11 which is referred to at page 30 of my written submissions. Refer to In re Rose (1949) 1 Ch. 78. Read headnote. Read pages 88 (last paragraph) and 89. In this case the mandate left nothing to be done by deceased. The form used in this case was a perfect transfer. 40

Refer to Sprange v. Barnard 29 E.R. 320 which I have summarised at page 31 of my written submissions.

10 Assuming that deceased knew what he was doing and assuming that what defence witnesses said is true, then there was a perfect gift in favour of Chan Yoke Ying. Refer to Pettit on Equity page 53. In this case everything that was required to be done by the deceased was done. In a joint account the dominium lay in both deceased prior to his death and Chow. There was no intention by deceased to use any of the money after the joint account was opened. He paid no further sum into the account and made no withdrawals from it.

20 Refer to Young v. Sealey (1949) 1 Ch. 278 (page 32 of my written submissions). 284, (2nd paragraph), 285, 286, 287 (last paragraph), 294 (paragraph 2). The mandate used in this case was a common form. Refer to Section 5 of Civil Law Ordinance, 1956. If Young v. Sealey was good law in England in 1956, it was good law in 1970.

Refer to In re Figgis (1969) 1 Ch. 123, 126, 129, 139 line A, 144, 146, 149 C 3. There are clear words in this case by deceased that the money in the account was for the benefit of the wife.

Adjourned until 2.30 p.m.

Sd. S. S. Gill

Resumed at 2.30 p.m.

30 Shanker (continuing)

Figgis' case is authority for the proposition that if a man makes a gift of the funds in his current account on his death to some one, the gift is valid. Apart from evidence of witnesses, there is the mandate.

40 I now come to Russell v. Scott 55 C.L.R.440. I find it difficult to understand how counsel for appellant sought to distinguish that case from the case before us. I refer to arguments of Maughan K.C. at page 445. He conceded that the money belonged to the old lady at the time of her death. Read last paragraph at page 450, 451, 453.

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Refer to Bouts v. Ellis (1853) 17 Beav. 121,  
Re Beaumont (1902) 1 Ch. 889, Re White (1928) W.N.  
182; Clement v. Cheeseman (1884) 27 Ch. Div. 631,  
all of which are summarised in Halsbury (3rd  
edition) Vol.18, page 403, paragraph 763.

Refer to Birch v. Treasury Solicitor (1951)  
Ch. 298, 304, 305 (last para.) 307 (last para.),  
312 (last para.). We submit that in dispensing  
justice we should not be governed by the maxim  
the forms of action we have buried but they rule  
us from the grave.

10

I now come to the question of the powers of  
this Court on appeal. Refer to my written sub-  
missions on this point and the cases referred to  
therein.

To sum up the crucial issue in this case is,  
did the man know what he was doing when he put  
his thumb prints on the documents? If probabili-  
ties are equally divided, then plaintiff had not  
proved her case. On law authorities are on our  
side.

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Adjournment until 9.30 a.m.

Sd. S.S. Gill

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Hearing continued. Counsel as before.

Chelliah addresses Court:

I will first deal with the two propositions  
made by Mr. Chan Siew Yoon. The first was about  
the rationality of the gift which, he said was in  
law evidence of mental capacity. The second  
proposition was that previous expression of  
intention to make the gift would require very  
slight degree of mental capacity at the time of  
the thumb printing of the documents. He then  
proceeded to cite Banks v. Goodfellow (1870) 5 Q.B.  
549. My submission is that that case is no author-  
ity for any such proposition. Facts of that case.  
Read from 9th line from bottom of page 557 to end  
of second paragraph at page 559, page 563 from  
second para. to page 564, page 565. In that case  
there was a delusion. Here we are dealing with  
deterioration of mind. Read at page 569 the

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passage cited from Harwood v. Baker page 570 half way down starting with "No doubt, where the fact.." Rationality or propriety is of no importance. What is being done here is that a rational explanation is being given to an irrational act.

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Refer to Waring v. Waring 6 Moo P.C. 341; 13 E.R. 715, 718, 719 (second para.) 721 (3rd para.) 723 (bottom para.1) and note at the end of the case.

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10 Mr. Shanker took the same point when he cited Pereira v. Pereira. Before dealing with that case I would refer to Parker v. Felgate (1883) 8 Probate 171 which is referred to therein. The ratio in Parker's case is cited at page 361 of Pereira's case. Refer to Battan Singh v. Amir Chand (1948) 1 All E.R. 152, 155 line C4, 156 line G.

20 Looking at the facts of this, there was no question of the deceased giving any instructions to any solicitor at any time. He expressed a desire to somebody to provide for Madam Chan. Evidence at page 218 line E 4 to page 219 line C4. Merely expressed intention and then asked for information. This happened on 11th July, two days before he was admitted to hospital. Refer to letter written by the same witness at page 660 of record. This letter was in answer to letter at page 657. This letter mentions 12th July which he said in cross-examination was the correct date. Refer to page 228 line D 4, page 243 line C 3.

30 Deceased admitted to hospital on 13th. Refer to evidence of Dr. Vigenandra page 83 line D 4 to E 3, pages 220 and 221 (Visits on 13th, 14th and 16th only discussions and not instructions. Therefore no similarity to Pereira's case or Buttan's case. Nothing mentioned to Chow on 11th. Mr. Shanker refers to page 181 line C 2 at page 178 line D 2). As regards what Mr. Shanker points out, there was nothing for Chow to hurry.

40 It was submitted by Mr. Chan that this was a simple act which needed very little thinking, and therefore very little mental capacity was required. It was not a simple act. He was giving away more than  $\frac{2}{3}$  of his wealth. (Mr. Chan says it was a simple act of opening a joint account). Deceased had to think as to the effect of a joint account.

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I next want to deal with medical charts in Volume IV of record, which were put in as P.13 and appear at page 728 to 764. They are generally referred to as clinical notes. They consist of doctors' notes made by the doctor, the intake and output chart made by nurses, urine for sugar charts made by nurses, result sheets of various tests carried out by I.M.R. and other bodies. These sheets are loose sheets, not in book form and they are kept in a folder with a string attached. They were taken out of folder for photostating. They got mixed up a little in the process. They were produced after such displacement for Court identification, each sheet being numbered. The sheet at page 761 is numbered 26 in a circle. Continuation is at page 763 and not 762 which is numbered (27) which is urine for sugar chart. Page 763 goes on to 19th July, then page 764 from 20th July to 21st July. Then one has to go back to page 760 for continuation up to 23rd July. Mr. Shanker referred to page 761 which shows that records were kept for three specific periods. In the Intake and Output charts at 761 the total quantity of intake is given without showing what was given and at what time. Page 763 shows the type of food taken and the time treatment was changed on 18th July. That is why the columns for the periods 2 p.m. - 9 p.m. and 9 p.m. - 7 a.m. were not written up. This is apparent from doctor's notes at pages 728 to 740. The old treatment appears at pages 731 and 734, which are cancelled with line drawn across. The new treatment is shown at page 736. Dr. Daljit gave evidence explaining these pages at page 141 of record, line A 3 to C 2. There is nothing improper or irregular about the entries on page 761 and 763, and no inference can be drawn that the nurses were not doing their duties properly or regularly.

Dr. Sinnadurai's assessment that deceased was acting like a madman on 19th July was not attacked. If one looks at page 719, the entry about deceased pulling out catheter and standing at window on the book is in red ink, which must have some significance. Refer to page 720 as to his condition (ill and drowsy). Refer to doctor's notes at page 737. An entry under Dr. Daljit's handwriting for 18th July. Turn over to page 738 first entry in Dr. Daljit's handwriting for 19th July and then entry at 9.0 p.m. Entries by this doctor for 18th July and 19th July. Refer to Dr. Sreenivasan's evidence

at page 97 line B and his note at page 739. The sum total of this evidence is clear indication of deceased's mental state. The doctors saw the patient. They were in a better position to judge. We must give credit to doctors for their training. Passing urine, going to toilet and eating etc. are involuntary acts.

Adjourned until 9 a.m.

Sd. S.S. Gill

10 28th June 1975

Hearing continued. Counsel as before.

Chelliah (continuing)

I submitted that in considering the evidence of the five doctors the learned Judge failed to make a proper evaluation of that evidence and to draw the correct inference. Mr. Chan came out with the proposition that there was no evaluation of that evidence and that in fact there was no question of evaluation in this case.

20 It was said that burden was on the plaintiff, that that burden had not been discharged and that even if the defendants called no evidence the plaintiff had failed to prove her case. It would appear that even the learned Judge took the same view. That is why I say that he went wrong. I say that whatever the act was, whether gift inter vivos, donatio mortis causa or testamentary disposition, the burden was on the person asserting the validity of the act to prove that the person  
30 doing the act had the necessary mental capacity. I refer to the case Udham Singh v. Indar Kaur (1971) 2 M.L.J. 263.

40 If there is no transfer then the question of mental capacity does not arise at all. My submission is that the cases go to show that where there has been a transfer the question of mental capacity arises. In Farid-Un-Nisa case, there had been a valid transfer according to Indian Transfer of Property Act. Respondents there acknowledge that the onus was on them. In every one of the cases cited the transfer had been effected. In the case of Thomas v. The Times Book Co. Ltd. it was delivery of a manuscript, so that

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a transfer had taken place. The trial Judge ruled that onus was on the plaintiff. If there is no effective transfer the question of mental capacity does not arise. Question of mental capacity will arise only if there has been an effective transfer.

In my submission we had discharged the onus of calling medical evidence thereby shifting the burden on the defendants. The question of burden of proof is purely academic. What I complain about is the learned Judge's statement at page 581 which Mr. Shanker said is above criticism. The Judge says in his judgment that the degree of mental state of confusion was never established. In my submission in saying that the learned Judge could not have directed his mind to the evidence of Dr. Sinnadurai, Dr. Sreenivasan and Dr. Daljit Singh, for at page 105 at least referring to the night of 19th July Dr. Sinnadurai said that the man was acting like a mad man. This is also the evidence of Dr. Daljit Singh at page 169 line B 1 to C 5. That shows the degree of mental state of confusion. When he was giving evidence. He was an M.R.C.P. Then there is the evidence of Dr. Sreenivasan at page 99 line E 5 to F 5, page 100 line C to line E 3. Either the trial Judge failed to appreciate fully the nature of these doctors' evidence or he was looking for a higher state of mental incapacity, which can only be insanity or near insanity or he was looking for a higher standard of proof (in other words, something better than the evidence of these doctors) or proof beyond doubt that he had mental incapacity. My submission is that if he was looking for any one of these three propositions, then he erred in law. Doctors explained what mental confusion meant. Refer to evidence of Dr. Daljit Singh at page 149 line D 2 to E 4, so that knowledge of habits and mannerisms had nothing to do with the matter.

I will now turn to the question of trust. Mr. Chan argued that a trust was created the moment the joint account was opened. It was a trust for deceased for life and thereafter for his wife. I say it cannot be so for three reasons. Firstly, this was not a joint trust account. There is a difference between a joint trust account and a joint account. We have to look at the evidence of Kwan at page 242 where he said that this was not a trusteeship account. Secondly, there cannot be money transferred in trust to A absolutely and

and then to B absolutely. (Mr. Shanker says that advancement arose straightaway because the deceased said that the money was for the benefit of Madam Chan). The moment the joint account was opened the deceased was entitled to them, whole of the money, so that if he used up the whole of the money the remainder was empty. If there had been a fixed joint account the position would be different. There the deceased would have been entitled to only the interest. Thirdly, in order to create a trust there must be an effective clear declaration of trust. There is no such declaration at all in this case to the effect that the money was to be held in trust for deceased for life and thereafter for Madam Chan.

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I dealt with the requisites of a trust in my opening submission. I said that in this case there had been no transfer of property without retention of any right to it. It has been submitted that on the opening of the joint account there was a complete transfer of the right to draw from the account and that all that he reserved was a power of revocation. My submission is that that is wrong. In opening the joint account the deceased gave Chow a right to draw from the account without destroying his own right to draw from the account. Therefore he still had the right to draw any amount if and when he required. The power of a revocation retained by the deceased was to destroy the power of Chow to draw from the account, but Chow had no such right. Chow kept the papers because the transfer was made on 18th July and the man died on 24th July. Would he have allowed Chow to keep the books and papers if he had come out alive from the hospital? In fact there is no evidence as to who kept the cheque books. The fact that the money remained intact was due to the fact that the man died in six days. If the intention was to divest himself of all interest in the money, he would have asked for a joint account to be opened in the name of Chow and Madam Chan.

Without a complete transfer there cannot be a gift. Mr. Chan cited a passage from page 29 of Pettit's Equity. That does not apply here. That passage presupposes a complete transfer in the first place.

Mr. Shanker referred to the case of In re Rose (1949) 1 Ch. 78 as a proposition that the Court

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will complete an incomplete gift. In that case there was a complete transfer of shares. The transferee could register transfer. Here there was no complete transfer. In re Rose, the transferor had kept nothing.

Mr. Shanker then referred to Young v. Sealey, In re Figgis and Russell v. Scott and argued that Chow was the alter ego of Madam Chan. That the necessity for a transfer still arises. All the deceased said was that he was going to transfer the money to Chow so that he could look after Madam Chan. There was nothing in the words used that he was treating Chow as the alter ego of Chan. There was nothing more than a pious hope that Chow would look after Chan. On the question of when gift arises refer to page 1014 above letter E. Re Figgis (1968) 1 A.E.R. 999.

10

I next wish to deal with the cheque for \$200/- which was put in as P 10 which was signed by deceased on 16th July though it was dated 17th July. I draw attention of the Court to the fact that the date of signing of the cheque was indispute in the Court below. There was a suggestion that it was signed on 7th July and that 1 was added to make it 17. The cheque appears at page 724. The document examiner said that there was insufficient evidence for him to form an opinion. There are two signatures of endorsees. Refer to evidence of P.W.12 at page 135 line E 5. This witness was cross-examined. Refer to pages 170 line C, 254. Then there is the evidence of P.W.13 at page 137 line C 4. Madam Chan said that she did not have it cashed with P.W.12 (see her evidence at page 253 line E 2).

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C.A.V.

Sd. S.S. Gill.

TRUE COPY

(Sgd.) G.E.Tan  
.....  
Secretary to  
Chief Justice,  
High Court, Malaya.

40

9th April 1975.

No. 12

Notes of Arguments recorded by Ali  
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Kuala Lumpur24th April, 1974

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F.J.

Mr. R.R. Chelliah with Messrs. Joginder Singh and  
Sri Ram for Appellant.

Mr. M. Shanker for first Respondent.

Mr. Chan Siew Yoon for second Respondent.

24th April  
1974

Chelliah -

10 Appellant is the mother of deceased and  
administrator of his Estate. Deceased died on  
(sic) 24/6/67 at the age of 57. Deceased educated and  
passed Senior Cambridge. For several years before  
his death he lived with a lady Chan Yoke Yin.  
Exact status of lady in dispute. Deceased had  
account with second defendant Bank at Head Office  
in Kuala Lumpur. Second defendant Bank had a  
branch at Leboh Pasar, Kuala Lumpur. Deceased  
used to sign his cheques in English. Specimen  
20 signature card held by second defendant Bank had  
signature in English. Copy of this is in Appeal  
Record Pt.II, Volume 5, page 934.

For sometime about 12 years before his death  
Deceased suffered from hypertension. 10 years  
had diabetic. Somewhere about this time his  
heart, liver and kidneys became damaged and  
malfunctioned. PW 2 Dr. Vignaendra's evidence  
in Volume I of Record, pages 80 - 84. From  
about middle of May, 1967 Deceased became more  
30 ill.

On 13/7/1967 he was admitted to General  
Hospital, Kuala Lumpur, a very sick man. 11 days  
later he died in the hospital. During the 11  
days in hospital he was attended by no less  
than 5 government doctors, all of whom gave  
evidence for the appellant. Sum and substance  
of the evidence was that right from the time of  
his admission to the time of his death, every  
time when each of them spoke to the deceased he  
was in a state of mental confusion and mental  
40 deterioration.

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Sometime after his death the appellant came to understand that on 18/7/67, i.e. 5 days after he was admitted to the hospital and 6 days before his death, he was alleged to have affixed his thumb impression on a cheque purported to have been drawn by him in favour of the second defendant bank branch at Jalan Pasar for the sum of \$60,384.80. By certain other documents dated 20/7/67 to which his thumb impression had been affixed he was purported to have directed the said branch to open a joint-account in his and first defendant's name.

10

First defendant is the brother-in-law of deceased, having married deceased's step sister. With the use of the said documents a joint-account was opened at the Bank's branch at Pasar Road. The amount from his personal account at the branch office was transferred to the joint-account at the branch office. Between 24/7/67 and 31/7/67 first defendant withdrew \$5,000/- from the joint-account. On 31/7/67 a sum of \$55,382.30 remained in the joint-account. Also on 31/7/67 first defendant withdrew the whole of the balance from the joint account. On the same day he and his wife opened two deposit accounts with Kwong Yik Finance Co. Ltd. for \$40,000/- and \$10,000/- each. Each account in joint-account (Pages 192-226 of Volume I). Copies of applications for fixed deposits at pages 784-5. Deposit Receipts on pages 788-790.

20

30

About May, 1968 appellant saw Mr. Joginder Singh and started making enquiries. In October, 1969, over two years after deceased's death the sum of \$50,000/- was transferred to Chan Yoke Ying's account opened at Kwong Yik Finance Corporation Ltd. Pages 808, 815 and 818.

Interests from fixed deposits received by first defendant were shown to Income Tax Department as part of his income. Evidence at page 192.

40

Appellant instituted proceedings against first defendant and second defendant Bank in June 1971 for a declaration that the cheque said to have been drawn by deceased was invalid, principally on the ground that when the thumb print was affixed, deceased's mental condition was such that he was incapable of understanding

the nature and consequence of his act. Consequential reliefs were asked for.

Submits that although various pleas in the alternative are made in the statement of claim such as non est factum, fraud, undue influence, there was really one main issue, i.e. the mental condition of the deceased when his thumb print was affixed on the documents.

10 Submits not necessary to show deceased was mad or insane in the sense that he should be in an institution or mental home. Submits a young child, any old person or a sick person or a person mentally retarded can all be the same people but unable to understand the nature and consequence of his act.

20 Case for appellant - When the thumb print was affixed deceased's mind had been reduced by serious illness to a stage that he could not understand the full meaning of his act and consequence of his act. Trial Judge's inference drawn from evidence wrong. He did not evaluate the evidence as he should.

30 Appellant does not know how the thumb print was affixed. Whatever the nature of the physical act it was involuntary act. Evidence of defence was that thumb impression affixed on 18th of July at 5 p.m. in the presence of first defendant, Kwong Mun Koh (DW 2), officer-in-charge of Pasar Road Branch of the Bank and nephew of the deceased. The other person was Chan Yoke Ying, the lady with whom deceased had lived. She now claims as a beneficiary of this money. Trial Judge dismissed the appellant's claim. Held that burden was on appellant to show that deceased was not in a fair state of mind. That she failed to do so. That he accepted evidence of defendant. That deceased was of normal mind.

My arguments in two parts. Firstly on evidence and then the law.

40 Evidence of government doctors relied upon by appellant for the deceased's mental condition. First doctor, PW 2, page 78. Sum and substance of PW 2's evidence is that he was a very ill patient. He was not fully clear mentally on questions put to him. PW 2 was not cross-examined.

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PW 3 Dr. Lim Eu Jin. He was in General Hospital in July 1967. He attended the patient from 15th of July to the time of his death (page 86). Blood urea rise. Evidence at page 90 on his mental faculties.

Court's question reflects trial Judge was looking for evidence of madness or insanity - page 93, page 95.

PW 3 was not cross-examined.

PW 5 Dr. Sinnadurai - pages 100, 102, 103, 105. Submits that Pw 5's evidence was that deceased's mental condition was getting worse and worse day by day. Mentally confused. 10

PW 14 Dr. Daljit Singh Nagreh - page 139. Normal blood urea - 28 to 40. Page 144.

Nurses' notes. Page 145. Clinical Notes page 169.

PW 4 Dr. Sreenevasan - page 96, 97, 99. Witness not cross-examined.

Short adjournment. 20

Chelliah continues -

Refers to clinical notes of Dr. Daljit Singh (Vol. 4, page 736 et seq. Page 166 of Volume 1).

Thumb impression taken around 5 p.m.

Submits evidence of 5 doctors who are independent witnesses. They have no interest in the dispute. Clear from 13th to 24th July, 1967 at least one of the doctors saw deceased every day. From time of admission there was mental deterioration according to doctors. At least from 15th July there was progressive deterioration and by the night of 19th he was acting like a mad-man. There was rapid increase of urea in blood. Although doctors admitted possibility of lucid moments none of them said the deceased having such lucid moments. In fact each time doctors saw patient he was confused - dull and deteriorating. 30

Dr. Sinnadurai saw deceased once on 20th of July. Dr. Sinnadurai says he has to take opinion 40

of Psychiatrist before he could say that patient was fit to execute any document.

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Dr. Lim's evidence on progressive mental deterioration. On the general state of the deceased's mental condition he was not in a proper frame of mind to know the nature and consequence of his act over the period from 13th to 24th July, particularly from 15th to 19th.

10 Refers to respondent's evidence on mental state.

Evidence of Dr. Loke who did not attend to patient, first defendant Kwan Mun Koh and Chan Yoke Ying.

Dr. Loke's evidence at page 257 and 258.

Refers to evidence of DW 1 Chow Yee Wah - page 183.

On the signing of the documents and cheque, pages 193, 206, 212.

Mun Koh's evidence (DW 2), page 218.

20 Evidence of DW 3 Chan Yoke Ying, page 252.

Submits on evidence as a whole there cannot be any other conclusion that he was not in a mental state to understand what he was doing and the consequences of what he has done.

30 Submits that on evidence of 5 government doctors, no matter on whom the eventual burden lay, the trial Judge should have held that there was sufficient evidence to show that between 15th and 20th July the mental condition of the deceased was generally confused and deteriorating to such an extent that he was not able to understand the consequence of his acts. Even if there was any lucid moments it was on the defendants to prove it.

Adjourned to 2.15 p.m.

Hearing resumes at 2.15 p.m.

Chelliah continues:



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Refers to judgment of trial Judge. Page 580 et seq. Submits trial Judge requires evidence of mental disorder, i.e. insanity, before onus to show otherwise shifts to the defence. Submits trial Judge did not evaluate the medical evidence properly and came to correct inferences. He erred in holding that impairment of deceased's mind had not been established. Submits evidence sufficient to establish that deceased was not in a state of mind to do the act and to understand the consequence of his act.

10

Fact doctors not present was taken into account by trial Judge in holding against the plaintiff.

Page 595. Trial Judge placed too much importance on alleged intention of deceased to provide for his wife.

Trial Judge attached too much importance to demeanour of defence witnesses. Placed too much weight on what witnesses alleged - intention of deceased prior to admission in hospital. Did not direct his mind to consider the question why it was necessary for deceased to open a joint-account to provide for Chan Yoke Ying. Question: Why did not deceased have a joint-account with her or give her half the money? He could have left a will. Explanation given for this was that she could not sign her name. Evidence show that immediately a joint-account was opened, first defendant drew from the joint account \$5,000/- by way of a cash cheque. Chan Yoke Ying signed the cheque and cashed it. Page 206 evidence of this.

20

30

(Shanker: Points out as incorrect that Chan Yoke Ying could not sign her name.)

Adjourned to 27th & 28th May for continuation at 9.30 a.m.

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Parties as before.

Chelliah continues his address

40

Trial Judge failed to evaluate evidence properly and draw proper inference. He relied mainly on demeanour.

Appeal Court is as good in a position as trial Judge to draw the necessary inference and form its own independent opinion.

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(1) Mersey Docks Harbour Board v. Proctor  
(1923) All E.R.134, reads from p.137.

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(2) McLaughlin v. Daily Telegraph Newspaper  
Company Ltd.(1904) 1 C.L.R. 243. Reads  
from page 277. See also Appeal Case  
(1904) p.776, p.779.

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(3) Benmax v. The Austin Motor Company  
(1955) 1 A.E.R. 326, page 327, also  
page 329.

Question - whether a person is mentally incapacitated does not depend on belief or disbelief of witnesses. It depends largely on inferences to be drawn from evidence.

Refers to Ram Sunder Saha & Others v. Kali  
Nerain Sen Choudury & Others (1927) A.I.R. (Cal.)  
889.

In cases of this nature evidence of witness must be tested against the whole of the evidence on the point.

Refers to Yuill v. Yuill (1945) 1 A.E.R.  
183, 188.

Refers to Onassis and Calogeropoulos v.  
Vergottis (1968) Vol. 1 Lloyds Law Report p.294,  
297.

Submits in cases where witnesses likely to be biased gave evidence in contradiction to medical evidence their evidence must be received with caution. Refers to Harwood v. Baker, 13 E.R. p.117. Privy Council decision. Issue was mental state of a patient. Pages 118, 119, 122 & 123. Submits close parallel of the case cited with instant case.

Submits further that in order to invalidate the act of the deceased the issue is not necessarily whether deceased was insane or mad. All that was necessary that he was of infirmity of

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mind which rendered him incapable of understanding the nature of his act.

Refers to -

- (1) Harwood v. Baker 13 E.R.118, 119.
- (2) McLaughlin v. Daily Telegraph Newspaper Company (1904) 1 C.L.R. 243; (1904) A.C.776, 779.
- (3) Ball v. Mannin, Vol. 6 E.R. (house of Lords) at page 568. Reads Headnote. Reads from page 569.

10

Submits whether it is an act intervivos or Donatio Mortis causa burden is on the person asserting validity of gift to prove the deceased had the necessary mental capacity.

Act Inter Vivos. Refers to (1) Farid-Un-Nisa v. Mokhtar Ahmad (1925) AIR (Privy Council) p.204, 206.

(2) Thomas v. The Times Book Co. Ltd. (1966) 2 All E.R. 241.

In the case of Donatio Mortis Causa it must be established by the clearest evidence by the donee.

20

Refers to Cosnahan v. Grice 15 E.R. 476. Reads headnote - page 479.

Submits that this is not donatio mortis causa because essential conditions not satisfied. Case for respondent that this is a trust. Burden on person claiming a valid testamentary disposition.

Refers to Smee v. Smee (1879) 5 P.D. 84.

Where mental illness or incapacity has been shown to have existed both before and after the alleged act, an allegation that the act was done in a lucid moment must be established by strong evidence by the parties alleging it. (Williams and Mortimer on Executors Administrators and Probate (1970) Edition, p.143).

30

Submits even if the burden is initially on the appellant to show a general state of incapacity

at the relevant time, she discharged the burden sufficiently through medical evidence of five doctors that the deceased was generally incapacitated from 13th July to 24th July when he died.

Also submits respondent failed to prove lucidity at the relevant time.

If I am right the cheque and the documents thumbprinted by the deceased are void.

Short adjournment.

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10 Resumes -

Submits if cheque is void and a nullity the second defendant Bank who paid out is liable to pay the money to the appellant as administratrix of the Estate of the deceased. Not necessary to make a distinction between defendant bank and collecting bank, both being the same.

Bank liable on 2 grounds. (1) on the basis of non est factum.

20 Refers to Foster v. Mackinnon (1869) 4 C.P.

704, 711.

Saunders v. Anglia Building Society  
(1970) 3 A.E.R. 961, 963.

MacLaughlin v. Daily Telegraph (1904)  
1 C.L.R.

Bills of Exchange Act 1882, s.60.

Imperial Bank of Canada v. Bank of  
Hamilton (1903) A.C. 49.

30 Abbu Chettiar v. Hyderabad State  
Bank A.I.R. (1954) Madras 1001,  
1005.

Bank liable on ground (2) - Negligence.  
Bank's representative negligent in accepting  
deceased's thumbprint without consulting a doctor  
in the circumstances of this case.

DW 2 said that deceased's normal signature  
was in English handwriting. (Vol. 5 - Specimen  
signature of deceased - p.934). He knew deceased

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had been in hospital for 5 days before thumbprint was taken. He knew ~~that~~ some urgency shown by those concerned to transfer fairly large sum of money to a joint account while deceased was still in hospital. He should have reasonably suspected that deceased's illness was such that deceased life was in danger. (Record Vol. 1, page 236, evidence that he did not consult a doctor. Also on page 237).

Submits: Question is not what DW 2 believed but what a prudent bank would do in the circumstances. If second defendant fails to make such enquiries as a prudent bank would have done then it is negligence.

10

Refers to Baker v. Barclay Bank Ltd. (1955)  
1 WLR 822, 825.

Sheldon on Practice and Law of  
Banking, 9th Edn. p.4.

Marfani & Co. Ltd. v. Midland Bank  
Ltd. (1967) 3 A.E.R. 967.

20

The standard required is that from the practice of banks.

Refers to Marfani & Co. Ltd. v. Midland  
(1968) 2 A.E.R.-573 - appeal dismissed.

Submits on legal consequence of a joint-account and to whom the balance standing to the credit of joint-account belongs on death of deceased.

Appellant claims that first defendant as survivor held it under a resulting trust for the benefit of the Estate of the deceased.

30

Respondents on the other hand claim that first defendant held it as a trustee for the deceased's common law wife. (Para 11 of amended statement of defence, p.33 Vol.1 of Record).

Submits trial Judge thought first defendant lawfully constitute trustee holding the money in trust for Chan Yoke Ying - page 615 Vol.2 of Record; also page 260. Submits that trial Judge misdirected himself in holding first defendant as duly constituted trustee for Chan Yoke Ying. Refers to Russell & Scott (1936) 55 C.L.R.440

40

referred to by Judge not relevant. Passage in Milroy v. Lord (45 E.R. 1185) referred to is in favour of the appellant.

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10 Law on joint-account is this. Where A and B hold a joint-account in a bank and A provides all the money in the account, then upon his death, at law B is entitled to take what is left in the account by virtue of his contract with the bank. In Equity B will hold the money under a resulting trust for the Estate of A unless B can prove that A intended him to take the money for his own benefit. This is clearly the law.

Refers to Guran Ditta v. Ram Ditta (1928) Ind. App. 235 - Privy Council - page 240.

20 Submits in this case the survivor first defendant does not claim any benefit. He claims he is holding it as trustee for Chan Yoke Ying. Unless he can establish a validly constituted trust as claimed the equitable presumption is that he holds the money under a resulting trust for the deceased's Estate must prevail.

Certain fundamental requisites necessary to constitute a complete trust. Of these (1) there must be a declaration of trust or disposition of property in trust, (2) there must be certainty of the property which is to be held in trust.

On No.(1), the declarer or disposer must not retain any control over the property which is inconsistent with the intention to create a trust.

30 Refers to Warriner v. Rodgers (1873) 16 Equity Case 340. Reads Headnote. Reads from page 348. Refers to Richard v. Dalbridge (1874) 12 Equity Case 11, 13, 14 and also 15. Here by opening a joint-account and remained in control.

Submits failure of divesting himself of the money completely destroys the submission that it is a trust. No evidence on record of what deceased said as to opening of joint-account.

40 DW 1 - page 178 of Vol.1 of Record pages 182-184.

DW 2 - page 219. These words insufficient to create a trust.

Adjourned to 9 a.m. tomorrow.  
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Hearing continues.

Parties as before.

Chelliah continues address: Another condition for creating a valid trust is that there must be certainty of the subject matter.

Refers to Sprange v. Bernard & Others (29) E.R. 320. There it was held that uncertainty of subject matter rendered trust invalid. Reads page 322.

10

Submits that joint-account in this case entitled both to draw money from the account. What formed the subject of the trust would be what remained in account at the time of his death. Submits intended trust as claimed by respondent fails. Equity will not perfect any imperfect gift.

Refers to Milroy v. Lord, 45 E.R. 1185. Passage quoted by the trial Judge appears on page 1189. Continuation of the passage makes it clear that Court will not give effect by a different mode if a mode was used.

20

Submits first defendant has not been a validly constituted trustee. Equitable presumption of a resulting trust in favour of deceased's Estate must prevail.

Refers to Russell v. Scott (1936) 55 C.L.R. 440. Two passages quoted by the trial Judge irrelevant.

Refers to Owen v. Greene (1932) Irish Reports 225. Right of survivor to money in account arose from a chose in action contractually created by the opening of the joint-account.

30

Refers to Russell v. Scott (1936) 55 C.L.R. 440, p.454.

Submits this is not Donatio Mortis Causa. Requirement is that donor must part with the dominium over the subject matter. See Lloyds Bank v. Cockburn (1937) Ch.D. p.426.

On account in bank between 24th July and 31st July \$5,000/- was taken. On 31st July first defendant opened joint-account with his wife Loke Soh Eng. Fixed deposit.

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Counsel for respondent said that first defendant closed the joint-account. See evidence on page 188. Evidence on this also appears on page 225.

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10.00 a.m. Chelliah says he ends his address.

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10 Chan for respondent No.2 - The Bank.

Short adjournment.

Chan addresses:

Three main issues raised by the appellant. (1) Mental capacity of deceased, (2) Whether Bank is liable in the event deceased had no mental capacity at the time he put his thumbprint to open a joint account on cheques and other documents, (3) Whether there was a validly constituted trust in favour of Chan Yoke Ying.

20 The issue No.(1) is more a question of fact. I am not questioning authority. On issue No.(2), if this is a trust or gift the bank is liable. On issue No.(3), no clear case of trust than in this case. So far as first defendant is concerned there is a completely constituted trust. So far as Chan Yoke Ying there is a perfect gift subject to a trust.

30 On mental capacity - issue No.(1). What should be the correct approach? Submits proper approach is to find out the most crucial finding of learned Judge on this point. This is at page 599 - reads extract from notes of evidence. Whether finding stated is supported by evidence. If there is evidence supporting the finding was the learned trial Judge wrong in accepting the evidence in the light of other evidence in this case.

40 I don't think there can be any doubt that there was evidence to support the finding. Evidence of defence witnesses including one doctor, particularly that relating to circumstances surrounding the affixing of the thumbprint on the



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cheque and other documents. Each of the witnesses testified to the various acts of the deceased clearly indicated a sound state of mind. Trial Judge relied on that evidence primarily for his finding.

Page 598. Submits act of deceased enquiring whether he could affix thumbprint and affixing thumbprint indicate that he was in a proper state of mind. Evidence of Kwan Mun Koh at page 221 D Vol.1 - "On July 18 .....!" onwards. Trial Judge held this witness is a truthful witness.

10

Query: Was the judge justified in accepting defence witnesses in the light of other evidence, particularly medical evidence.

Function of Court of Appeal - Refers to Gross v. Hillman Ltd. (1970) 1 Ch.445. Reads from page 459.

Refers to Dr. Sinnadurai's evidence in page 105, line F.

Submits one doctor would interpret it in one way and another doctor would interpret it in another way.

20

Evidence on page 164A - on insertion of catheter.

Defence witness's evidence that deceased was mentally normal supported by plaintiff's medical evidence. Page 106 - "On 16th?" et seq. Extract of evidence to the effect that deceased was able to speak. (Chan agrees that this should be read in context of the whole evidence. Dr. Daljit Singh supports evidence of defence - page 157.

30

Submits - From extracts of evidence I have read it is possible to conclude that deceased was mentally all right. Witnesses saw him in the same condition.

Submits trial Judge aware of conflict of evidence. Page 609. He accepted evidence of defence witnesses as truthful.

(Ong F.J. observes that it did not require complete mental comprehension to do a single act as in this case.)

40

Submits medical evidence did not rule out any possibility of deceased being in such a state of mind that he could not understand the nature and effect of affixing his thumbprint to the cheque and other documents. Refers to page 586, Judgment of trial Judge on Dr. Lim.

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Refers to page 586, reads. Submits trial Judge considered the pros and cons of the medical evidence before coming to his finding.

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10 (Shanker refers to page 492, extract of medical evidence given - not my impression of evidence but actual evidence).

Chan continues:

Refers to page 576, also page 589. Concedes error of dates in judgment - 16th should read 18th and 18th should read 16th in reference to Dr. Daljit's evidence.

20 Page 589 and also page 599. No evaluation of medical evidence. So far as evidence of doctors is concerned he accepted their evidence. No question of evaluation. Judge used his experience of human behaviour.

30 Judge came to his finding from two other factors - (1) the rationality of the gift, and (2) that steps taken by deceased to make provision for his wife before admission to the hospital and before allegations made on his mental state. Refers to pages 593 - 595. The finding was consistent with deceased being in a proper state of mind. I will show authorities.

Refers to page 593B - rationality of gift - to page 595C.

No.(2) factor. Page 608D - fact that gift is rational indicates a sound state of mind at the relevant time.

40 Refers to Banks v. Goodfellow (1870) 5 Q.B. 549. Reads headnote. Reads passages from p.557 - 559. Also page 563-565. Also page 567. Submits the act done by deceased was a single act of giving away his property not by will but by creating a joint-account. Did not require much mental capacity to enable him to do it.

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Submits deceased lived with Chan Yoke Ying for 6 years. He was never married before. Chan Yoke Ying lived with him. He had no children. Two persons closer to him (1) Chan Yoke Ying - common law wife, (2) his mother. Evidence that mother and deceased not on good terms. He did not give away all his money. All these show the rationality of the act. Rationality is a consideration. Contract Ordinance 1950, section 12. Reads. Slight degree of mental capacity is required. Refers to Williams & Mortimer (1970) page 140.

10

Adjourned to 6th June, 1974 at 10 a.m.

Sd. Ali

24th day of June 1974.

24th June  
1974

Hearing continues.

Parties as before.

Chan continues address:

Rationality of gift. Deceased knew what he was doing. Little mental capacity required. Refers to Banks v. Goodfellow (1870) 5 Q.B. 549. Also Williams and Mortimer on Executors Administrators and Probate (1970 Edition, page 140).

20

What was the true issue? I agree that the issue is whether at the time deceased affixed his thumbprint he was mentally fit and had mental capacity. Judge did not say in his judgment that high standard of proof required.

Refers to Record Vol.3, pages 561 and 562. Also page 597 - issue again stated - line D. Page 599 line A.

30

In asking Dr. Lim the question on deceased's mental condition the trial Judge had in mind degree of proof required.

Submits balance of probability is irrelevant.

(Shanker explains what Chan means by so saying. Submits that balance of probability not relevant. So far as the defence witnesses' evidence of facts, seen by them at the time, the

Judge accepted credibility of witnesses.)

Chan continues:

Burden of proof. Refers to Yong Chiang v. Bong Tjhin Oi (1973) 2 M.L.J. 136.

Plaintiff has not discharged burden by sufficient evidence.

Refers to Halsbury, 3rd Edition, Vol.29, page 419.

10 Submits that presumptive deed as sane applies. It is for the appellant to rebut presumption by showing that deceased was so mentally disordered as to be incapable for purposes of contract or disposition.

Refers to Mohamed Yakub v. Abdul Quddus A.I.R. (1923) Patna 187, 191.

Short adjournment.

Chan continues -

20 On question of mental capacity trial Judge has made a specific finding, i.e. deceased knew what he was doing when he drew the cheque and gave authority to open a joint-account. That he fully appreciated the nature and effect of his act. In support trial Judge relied on the evidence of defence witnesses, particularly evidence relating to the time of execution of the cheque and other documents. Trial Judge in accepting evidence faced danger from two sources (1) evidence of medical witnesses that each time they saw him he was confused as to constitute a violent conflict between  
30 the evidence of medical witnesses and defence witnesses. Medical witnesses were disinterested witnesses. If their evidence accepted then defence evidence that deceased was mentally normal could not be accepted. It follows that whole of defence witnesses' evidence should be rejected as being unreliable.

40 Submits trial Judge was aware of the position and reminded himself of the need for caution. He resolved it by saying that he did not mean to reject medical evidence. But he accepted defence evidence as witnesses knew the habits mannerisms

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of deceased intimately.

Second source of danger. Evidence that deceased was confused. No mere possibility that he had clear mind. It is real. Some allowance must be given to possibility of doctors' mistakes. There was medical evidence that although deceased was confused he could understand.

Two other factors support trial Court's finding. (1) Rationality of the gift is itself sufficient indication of his mental capacity. (2) Intention to make provision for his wife was made before any allegation of unsoundness of mind was made. On authority in cases of this nature a slight degree of mental capacity is required.

10

Submits again that presumption of sanity must apply. Burden of proof shifts only when plaintiff adduced evidence that deceased was so mentally disordered for purpose of contract and other disposition. Submits burden has not shifted as found by trial Judge.

Assuming cheque was null and void, would the Bank be liable to negligence, i.e. to pay the amount to the plaintiff as representative of the Estate of the deceased. Chelliah has submitted the Bank would be liable on principle of non est factum regardless of question of negligence. I agree if cheque is a nullity Bank is liable on principle of non est factum.

20

Adjourned to 2.30 p.m.

Resumes at 2.30 p.m.

Chan continues -

30

On trust. Submits there is here a completely and validly constituted trust. Essential facts - page 219 line A. Evidence of intention. Also page 178. No money drawn out during lifetime of deceased. Deceased had two other bank accounts. These facts support conclusion that trust completed.

Refers to Equity and Law of Trusts by Philip H. Pettit, 19th Edition, page 52. This is not a declaration of trust. It is a case of transfer of property coupled with express intention to create a trust.

40

Refers to Russell v. Scott (1936) 55 C.L.R. 440. In the Federal Court of Malaysia  
 Facts in Russel's case outlined. Reads from page 457. Principle in Milroy v. Lord as applied in Russel v. Scott also applies here. The fact that he reserved the right to revoke the trust does not affect the trust. Refers to page 444 of the report.

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Notes of Arguments recorded by Ali Hassan, F.J.

Refers to Thompson v. Brown (1835) 40 E.R. p.14.

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10 In this case trust created when the money was put in the joint-account. Refers to Chelliah's argument that there must not be anything inconsistent with the intention to create a trust as held in (1) Warriner v. Rodgers (1873) 16 Equity Cases 340. (2) Richard v. Dalbridge (1874) 18 Equity Cases 11. Submits that these cases decided that there should not be any retention of any interest in any property which is inconsistent with the intention to create a trust.

20 Submits an immediate trust was created during his life time. A trust in favour of wife arises after the deceased's death. Concedes no clear expression of immediate creation of trust for his own benefit for life and thereafter for Chan Yoke Ying. It was implied.

Submits Russel v. Scott (1936) 55 C.L.R. 440 very relevant to my case.

30 Submits that if Court is against me that there is a trust then this is a gift. It is neither a gift *intervivos* nor *donatio mortis causa*. Submits if trust fails this would be a gift. Refers to Pettit on Equity and Law of Trust.

I am replying to Chelliah's reliance on Sprange v. Bernard 29 E.R. 320.

Time 3.50 p.m.

Adjourned to tomorrow at 9 a.m. for Shankar to address.

40 Shankar asks that he be allowed to say - on the words used to create the trust. Crucial importance time when trust created or arose. Submits document on page 771 should be considered in the light of Chan's submission with which I agree.

Court adjourns. Sd. Ali.

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Hearing continues.

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Shankar for first respondent addresses Court.  
Hands in written submission. Says broad basis  
of my submission is in these notes.

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Refers to Dr. Sinnadurai's evidence, p.105F.  
Doctor's memory was clearly at fault on question  
of faeces.

Submits that proper inference that in view  
of the evidence of deceased having diarrhoea\*  
six times a day the deceased must urinate in the  
toilet as recorded. Appellant invites Court to  
infer that from incontinence the deceased was  
able to perform his second function.

10  
\*sic

Reference to deceased's psychotic behaviour  
by Dr. Sinnadurai reflected doctor's memory at  
fault.

Refers to page 150. Also pages 152 and 153.

First record of violent behaviour of patient  
on 23rd July.

20

Nurses' notes constituted evidence of persons  
not called.

No one saw deceased passing urine in bed.

Chart shows deceased as co-operating in the  
collection of urine.

Submits if a man in Ward 19A can go to toilet  
and back to bed he must be aware of his  
surroundings.

If reliance is to be placed on records, as  
in this case, it must be shown that records are  
rigidly and scrupulously kept.

30

Section 30 of Evidence Ordinance.

Chart on page 763 shows that on 18th July  
patient was given papaya at 4 p.m. and soup at  
6 p.m. Also P.U. in bed at these times. Submits

charts unreliable. If held to be reliable the inference also in favour of defence as deceased seemed to be able to eat papaya and drink soup between 4 p.m. and 6 p.m.

Summing it all up: From entries in chart no adverse inference could be drawn on mental capacity.

Short adjournment.

Shankar continues -

10           Comments on appellant's submission that every time doctors visited deceased he was found in a state of mental deterioration. (Page 8 of written submission).

Refers to Dr. Daljit Singh's evidence, page 162. Sum total of medical evidence is mental confusion and not madness or mental disorder or unsoundness of mind.

20           Refers to Dr. Daljit Singh's evidence. Our case is that deceased certainly knew what he was doing. Re-examination of Dr. Daljit Singh. Refers to page 169. Dr. Daljit Singh changed his evidence saying that deceased did not or could not know what he was doing.

Refers to various events for inference to be drawn.

Nothing improbable about fact that deceased did not do as stated by defence witnesses.

30           Medical evidence does not discredit any defence witness. Indeed it seems to support our case that he was mentally capable.

Adjourned to 2.30 p.m.

Resumes at 2.30 p.m.

Shankar continues address :

Submits on cases cited by appellant. Effect of each of these cases far removed from present case. They are not applicable. To apply to the instant case is to confuse the issue.

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Page 15 of written submission. MacLaughlin v. Daily Telegraph (1904) 1 CLR 243. MacLaughlin a certified lunatic. Deceased in our case is not. No evidence he was suffering from any mental disorder. Reads from MacLaughlin's case and refers to facts of case, pages 264, 267, 272 and 274.

Refers to Ram Sunder Saha, A.I.R. (1927) (Cal.) 889.

Refers to Harwood v. Baker (1840) 13 E.R. 117. Distinguishes on ground that deceased was able to do other acts after 18th July.

10

Refers to Pereira v. Pereira (1901) A.C.354. This case was considered in Battan Singh v. Amir Chand (1948) 1 A.E.R. 152.

Submits that Pereira's case is almost similar to present case.

Adjourned to tomorrow at 9 a.m.

Sd. Ali.

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20

Hearing continues.

Parties as before.

Shankar continues address :

Refers to appellant's submission on Judge relying too much on demeanour and overlooking effect of medical evidence. My answer is that this is not correct having regard to his judgment. Submits Judge did not say he was relying only on demeanour and believing or disbelieving of witnesses. Submits function of trial Judge was to test defence evidence in the light of appellant's evidence. He did so in this case. Refers to page 609 of Record.

30

XXN of witnesses. Page 193 Vol.1 - Chow Yee Wah's evidence in cross-examination.

Page 231 evidence of Kwan Mun Koh.

Refers to Harwood v. Baker, 13 E.R. 117,121.

Refers to Public Prosecutor v. Foong Chee Cheong (1970) 1 M.L.J. 97. Reads from page 98.

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Chow never touched the money. He accounted for the money - every cent of it.

Money from the joint-account used for Chan Yoke Ying's maintenance.

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Refers to written submission - p.21(a) & (b).

Submits on joint-account - deposit account - in the names of Chow and his wife.

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(continued)

10 Chow behaved scrupulously in handling the money. Fact Chow and wife opened a joint-account. 14 months before this case came money was already transferred.

On secrecy as observed by C.J., Shankar submits no secrecy. Refers to page 691 Vol.4. Refers to page 53 Vol.1.

Question is how did plaintiff know of the existence of joint-account.

20 On page 22 et seq written submission. Person who raised question of mental disorder of deceased was plaintiff.

Submission at pages 307 to 316 of Vol.2.

Refers to page 580 of judgment. Judge dealt with submission. Several witnesses called by plaintiff considered. Pages 308 to 310. All equated mental illness to mental disorder. Page 582. Judgment - page 578.

30 3 cases - (1) Farid-Un-Nisa (1925) 52 I.A. p.342, (2) Thomas v. Times Book Co. Ltd. (1966) 2 A.E.R. 241, and (3) Cosnam v. Grice 15 E.R. 476, cited by appellant as sufficient proposition that the person benefitting from a disposition has to prove mental capacity. Submission page 24 - that if a transaction is valid in law to transfer property onus on person who claims it is invalid.

Refers to mandate. Legal title to the entire money was transferred to Chow when mandate on p.771 was signed. In the cases cited no transfer of legal title or legal delivery.

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Short adjournment.

Shankar continues -

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On page 26 of written submission. On Farid-Un-Nisa (1925) 52 I.A. p.342. Submits case decided on its own facts. Re Thomas v. Times Book Co. Ltd. (1966) 2 A.E.R. 241. Submits that this case is explained by general rule that if there is a complete legal transfer that transferee has no onus to discharge.

Refers to Re Garnett (1885) 31 Ch.D. 1. 10

Refers to Smee v. Smee (1879) 5 Probate 84.

Refers to Guran Ditta v. Ram Ditta (1928) 55 Indian Appeals 235.

Refers to Section 3, Civil Law Ordinance 1956.

Refers to Richard v. Dalbridge (1874) 18 Eq.Cas.11 - considered in re Rose (1949) 1 Ch.78.

Submits Milroy v. Lord 45 E.R.1185 against appellant.

Refers to Sprange v. Barnard 29 E.R.320 - page 31 of written submission. 20

Kwan Mun Koh and Chow disinterested witnesses.

Refers to Pettit on Equity and Law of Trust.

Submits (1) There was a perfect gift of chose in action. (2) There was a trust.

Refers to Pettit on Equity & Law of Trust page 53.

Although legal title remains vested in settler trust created in that (1) Chow has dominium on money in the joint-account as well as deceased, (2) certainty of beneficiary. 30

Refers to Young & Anor v. Sealey (1949) 1 Ch. 278. Reads.

Refers to In re Figgis (1969) 1 Ch. 123, 139.

Time 1 p.m.

Adjourned to 2.30 p.m.

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Resumes at 2.30 p.m.

Shankar continues -

Refers to Russel v. Scott 55 C.L.R. 440.

Refers to Bouts v. Ellis (1853) 17 Beav.121.

Page 33 of written submission.

10 Refers to Birch v. Treasury Solicitor (1951)  
Ch.298, 306.

Submits all cases cited by appellants  
relating to function of Appellate Court - Onassis,  
Gross, etc.

Sums up what he has submitted - Crucial  
issue: Did deceased know what he did when he  
thumbprinted? Knowledge required slight. Banks  
v. Goodfellow (1870) 5 Q.B. 549.

If Court accepts my submission that he knew  
that is the end of the matter.

20 Secondly - question of onus - not discharged.

Thirdly - if Court finds against me on facts  
then it must necessarily mean that defence wit-  
nesses were liars who committed fraud.

I ask appeal to be dismissed.

Chelliah:

On secrecy. We did not know or our clients did  
not know of the joint-account.

Plaintiff's suspicion. I will show justifiable  
grounds for suspicion.

30 Standard equipment.

Adjourned to tomorrow at 9.30 a.m.

Sd. Ali.

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Chelliah addresses :

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Reply to Chan's submission. (1) Rationality of the gift. (2) Previous expression of intention is evidence of mental capacity. Reliance on Banks v. Goodfellow (1870) 5 Q.B. 549. Submits that case is no authority for the proposition.

Refers to Waring v. Waring, 6 Moo P.C. 341; 13 E.R. 715. Note to reprint says that Waring case disapproved by Banks v. Goodfellow (1870) L.R. 5 Q.B. 549 but now accepted as correct. Page 726. 10

Refers to Parker v. Felgate (1883) 8 Probate 171 cited in Pereira v. Pereira (1901) A.C. 354 relied upon by the respondents.

Refers to Battan Singh v. Amir Chand (1948) 1 A.E.R. 152, 155 - caution in applying Parker v. Felgate. 20

Submits there was no question of deceased giving instruction to any solicitor at any time.

What was suggested was that he expressed a desire to provide for the lady Madam Chan. Evidence of Kwan Mun Koh on page 218 merely shows intention. Not instruction to make provision. That was on 11th July.

Refers to letter at page 660, Vol.4 of Record. Letter by Kwan Mun Koh.

Deceased was admitted to hospital on 13th. 30

Whether Mun Koh saw deceased on 11th or 12th. What he said was only evidence of intention to provide but no instruction was given.

On point that the act did not require much mental capacity. Submits that the act is not just the act of putting his thumbprint.

Short adjournment.

Resumes :

(Chan explains that what he meant by simple act was that the matter was simple.)

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Chelliah -

On respondents' submission relating to doctors' evidence. Refers to Vol.4, Chart at page 728, Chart at page 761, Chart at page 763. There was a change of treatment. Dr. Daljit's evidence - page 141.

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10 Submits no inference to be drawn from the way in which Charts were kept by nurses.

Mr. Shankar's submission that Dr. Sinnadurai was not correct in saying that deceased was acting like a madman - refers to page 719.

Refers to Chart at p.737 et seq. Notes of Dr. Daljit Singh.

Evidence of Dr. Sreenevasan at page 97.

20 Submits that deceased standing at the window etc. according to Dr. Sinnadurai were signs of mental incapacity.

Adjourned to 9 a.m. tomorrow

Sd. Ali.

28th day of June, 1975.

28th June  
197

Hearing continues.

Parties as before.

Chelliah continues address :

On medical evidence.

On burden of proof trial Judge's view was wrong.

30 Burden to establish whether the act was gift inter vivos, donatio mortis causa or testamentary disposition is on the person asserting the validity of the act to prove that the person making the gift or disposition had the necessary mental capacity.

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Refers to Udham Singh v. Indar Kaur (1971)  
2 MLJ 263.

Submits that if there is no transfer of property in the case of gift the question of mental capacity does not arise at all. Question arises only when there is a transfer.

Submits in Farid-Un-Nisa case property was transferred a year ago.

Thomas v. The Times Book Co. Ltd. cited by the respondents also concerned with transfer having taken place. 10

Submits when there is no effective transfer question of mental capacity does not arise.

Even assuming burden is on me the medical evidence in this case is sufficient to shift the onus of proving mental capacity on to the respondents.

Refers to page 581. Burden on respondents to prove act done during lucid interval.

(Shankar explains that medical evidence has shown that there was time during which deceased had lucid interval.) 20

Words "degree not established" in judgment is not reconcilable with evidence of Dr. Daljit Singh and Dr. Sreenevasan. Refers to page 105. Refers to the night of 19th July. Dr. Sinnadurai said that the man was acting like a mad man. This was evidence of degree of mental confusion.

Dr. Daljit Singh's evidence - p.169, line C, who said that deceased could not have known what he was doing when he affixed his thumbprints. 30

This again, I submit, shows degree of mental confusion.

Evidence of Dr. Sreenevasan, page 99. He saw the patient on 20th. He found patient was not in full possession of mental capacity. Page 100. Also shows effect of medical evidence.

In saying that degree of mental confusion not established trial Judge either failed to

appreciate fully the nature of medical evidence or he was looking for a higher degree of mental incapacity which must be insanity or he was looking for a higher standard of proof or proof beyond reasonable doubt that he had the mental capacity to execute the documents. Submits that if the trial Judge was looking for any of these three propositions he erred in law.

10 Refers to page 149 - Dr. Daljit Singh's evidence. Submits that habits and mannerisms did not mislead the doctors into mistaking patient as being mentally confused.

In reply to Chan - submits trust cannot be created immediately on opening of joint-account. This is not right for reasons -

- (1) account not a joint trust account;
- (2) there cannot be money transferred in trust for A absolutely and then to B absolutely.

20 The moment a joint account opened the deceased entitled to the money in the account absolutely. If he used all the money there would be nothing left for B. It is otherwise in the case of a fixed-deposit joint-account;

- (3) in order to create a trust there must be an effective declaration of trust. No evidence of such declaration at all.

I repeat that there is no trust because  
(a) there was no transfer of property; (b) there was no declaration of trust.

30 On Chan's submission of transfer of chose in action, says that it is wrong. Chow was given right to draw without destroying deceased's right to draw. Power of revocation was exerciseable only by the deceased but not by Chow.

Submits if deceased's intention was to divest himself completely of the money he could have given it to Chow.

40 On Chan's submission that if no trust then there is a gift as stated in Pettit's Equity and Law of Trust. Submits that there must be a complete transfer.

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In re Rose (1949) 1 Ch. 78 as submitted by Shankar facts different. Here deceased did nothing to divest himself of the property. In re Rose everything was done to divest the owner of the rights to the shares.

Young v. Sealey (1949) 1 Ch. 278, and Re Figgis (1968) 1 A.E.R. 999, these cases would apply if Madam Chan was in the place of Chow. The words used by the deceased in this case must be looked at in order to apply any of these cases. Nothing to suggest that Chow was alter ego of Chan except pious hope that Chow would look after Chan.

10

Refers to re Figgis (1968) 1 A.E.R. 999. Reads from page 1014, line D - "It may be that the correct analysis is that there is an immediate gift of a fluctuating and defeasible asset consisting of the chose in action for the time being constituting the balance in the bank account."

On cheque for \$200/-.

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Short adjournment.

Hearing resumes.

Chelliah continues -

On cheque for \$200/- said to have been signed on 17th July, 1967, signing was disputed in the Court below. It was suggested that it was signed on 7th July and that "1" was added. Page 724 of Vol.4 of Record. Evidence on this at page 135.

Chelliah asks that the appeal be allowed.

C.A.V.

30

Sd. Ali.

20th January  
1975

20th day of January, 1975

R.R.Chelliah with Joginder Singh and Sri Ram for appellant.

Choo Yew Choong for first respondent.

C.V. Doss for second respondent.

The Chief Justice and Ong Hock Sim, F.J. have indicated that they concur with the judgment I am about to deliver. They are not present in Court.

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No.12

I deliver judgment.

Notes of Arguments recorded by Ali Hassan, F.J.

Appeal allowed with costs.

Deposit to appellant.

Sd. Ali.

20th January 1975 (continued)

Certified true copy.

10 Sd. J. Leon  
.....  
(J. LEON)  
Secretary to Judge.

No. 13

No.13

Notes of Arguments Recorded by Ong Hock Sim, F.J.

Notes of Arguments recorded by Ong Hock Sim, F.J.

Wednesday, 24th April, 1974

F.C., Civil Appeal No.147 of 1973

24th April 1974

Mr. R.R. Chelliah with Mr. Joginder Singh and Mr. Sri Ram for Appellant.

20 Mr. Shankar for 1st Respondent

Mr. S.Y. Chan for 2nd Respondent.

Mr. Chelliah:

30 Appellant is mother of Loke Yaik Hoe and administratrix of his Estate. Mr. Loke died on 24th July 1967. Mr. Loke had lived with one Chan Yoke Ying for some years up to time of his death. Her exact status is not defined. The 2nd Respondent has head office in Jalan Bandar with branch at Jalan Pasar. Deceased was educated in English up to School Certificate. He signed cheques on his account with the Head Office. In respect of his branch account, thumb impression was used on specimen card. For 19 years deceased had high

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blood pressure and diabetes for the last 10 years. There was damage to liver and heart. In July 1967 he was admitted to General Hospital a very sick man. He died 11 days later. During that time he had been attended by no less than 5 Government doctors who were called to give evidence. The sum total of that evidence was to the effect that every time each of them spoke to Mr. Loke, he was in a state of mental confusion and mental deterioration. Some time after his death the appellant came to know that on 18th July, five days after his admission and six days before his death, he had affixed his thumb impression on a cheque drawn on the Bank for the sum of \$60,384.80. Other documents were also executed bearing date 20th July, 1967. First defendant was brother-in-law of the deceased. By use of cheque and other documents, a joint account was opened in name of deceased and first defendant at the Pasar Road Branch. Between 24th July 1967 and 31st July 1967, the first defendant withdrew a sum of \$5,000/- leaving a sum of \$55,382.30 in the joint account. The whole of the balance was withdrawn on same date and first defendant and his wife opened two deposit accounts in their joint names, one for \$10,000/- and the other for \$40,000/- (pp. 192, 226) with Kwong Yik Finance Ltd. (p. 784, 788, 790). In May 1968, appellant engaged Mr. Joginder Singh and started making inquiries about this deal. Sometime in 1969, these sums were withdrawn and re-deposited in the name of Chan Yoke Ying, (p.815, 818) (p.191E4). The income derived from the fixed deposits was shown by first defendant to income tax department as part of his own income (p.192B). The appellant instituted action in June 1971 for a declaration that the cheque was invalid on the ground that at the time deceased affixed his thumb impression he was unable to understand nature and consequences of his act, and sought also consequential reliefs. Submit that although various pleas are raised in the alternative such as non est factum, fraud and undue influence, there is only one real issue and that is the mental condition of the deceased when he affixed his thumb impression on the cheque. Will submit it is also not necessary to show that deceased was mad or insane or inmate of a mental home. Also respectful submission a very young child or an old person or a mentally retarded person could be unable to understand what he was doing. It is case for appellant that at the time the thumb print was

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affixed, the deceased's mind, by reason of serious illness, was in such state as not to know what he was doing. Submit that inferences drawn by the Judge were wrong and he had failed to evaluate the evidence. The appellant herself did not know how the thumb impression came to be affixed in the sense whether his thumb impression was placed on it or was his own act. Defendant's version was that it was affixed on 18th July 1967 at 5.00 p.m. in the presence of first defendant, a nephew of the deceased, Kwan Mun Koh, who was in charge of the Pasar Road branch and Chan Yoke Ying, who is beneficiary of that money under some sort of trust created by deceased, before his death. The learned Judge dismissed appellant's claim on the ground that she had failed to discharge onus of proving that the deceased was unable to understand the nature of his act. Shall deal in two parts. Firstly shall deal with the evidence and then with the relevant law.

To show deceased's mental condition, will rely on the evidence of the five doctors.

The first is P.W.2, Dr. V. Vignaendra. p.78 et seq. He was doctor who admitted the deceased (p.79).

Testimony as to his condition at time, pp. 79-80, p.81 D4 - p.83 D4.

p.83D4 - p.84 C2.

PW.2 - "very ill patient", "not fully clear mentally". This witness was not cross-examined.

2nd Doctor is P.W.3, Dr. Lim Eu Jin who attended on deceased from 15th July up to his death.

"Clinically the same - mental deterioration. Hesitant intellectually" p.86.

"I saw him almost every day" (p.86, p.89E re blood urea test).

P.90 B1 - C4, P. 90E - F4.

p. 91B2 - C1, p. 91 E2 - F4.

p. 92B.

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p. 93E - F4.

p. 94 C5 - p.95.

This witness testified he saw patient nearly every day. His condition on 15th July showed mental deterioration and confusion. Continued the same. Not aware of his surroundings. (He was also not cross-examined).

P.W.5 - Dr. Sinnadurai - from p. 100.

p.102 A4

p.103 B1 - F5.

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p.104 C2 - 105 - 106 - 107.

To sum up, P.W.5 saw patient on 15th July, mental condition was deterioration and from 15th July onwards, deceased gave impression his mental condition getting worse day by day. Specifically on 18th July, patient was mentally confused and blood urea had risen to 252 m.g. per cent. On 19th July deceased was mentally more confused. By nightfall that night showed evidence of psychotic behaviour - intoxicated by waste product retained in the blood. (This witness was also not cross-examined).

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P.W.14 - Dr. Daljit Singh from p. 139.

p. 141 D3 - E3

p. 142 A3 - D2.

p. 144 B1-B4, p.144 E3 - F4, p.145A - B1,  
p. 144 B4 - F4

p. 169B1 - C5.

P.W.4 - Dr. Sreenevasan from p. 96

p.97B1 - F4.

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p. 98 B4, p.98A - B3, p.98C - 99 A2.

p. 99 C4, p.99 B2-B3, p.99 E5 - 199 E3.

(Witness not cross-examined.)

Clinical Notes of P.W.14 - p. 736, 737, 738.

Nurses Notes from p. 714 p. 718.

Ex.P. 13 at p. 763 - 18/7 4 p.m. - p.154, 166.

All these doctors are Government doctors and no personal interest.

From 13th July to 24th July, one or more of them saw the deceased.

10 Every one of them spoke of mental deterioration and from 15th July, evidence showed progressive deterioration. By night of 19th, he was acting like a madman. Between 14th and 19th July, rapid increase of urea.

Although the doctors frankly admitted it was possible for patient to have lucid moments, none of them saw him at such intervals. In fact, each said he was mentally confused, dull and mentally deteriorating each time he saw patient.

20 Dr. Daljit Singh specifically stated that patient was in state of mind that he did not know what he doing.

Dr. Sreenevasan stated when he saw deceased on 20th July, he was not in a position to execute any document.

Dr. Sinnadurai would have to take a second opinion from psychiatrist before advising on fitness to execute any document.

Dr. Lim said there was progressive deterioration from 15th onwards.

30 From this medical evidence, it was clear that at least as a general state of deceased's mental condition, he was not of a proper frame of mind to know the nature and consequences of his act - from 13th to 24th particularly so from 15th to 19th.

40 As against this evidence, the evidence adduced on behalf of respondents consisted of a doctor who did not attend to him from 13th and who only saw him in hospital as a visitor. The other witnesses were 1st respondent, Kwan Mun Koh and Chan Yoke Ying.

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Evidence of D.W.4 Loke Wai Tuck (doctor)  
from p. 257.

p. 259 D2 - D3, p. 259 E4 - p.260 A2.  
(but see p. 206E)

p. 258 C3 - D2.

p. 261 E4 - p. 263, p. 264A.

Evidence of 1st Respondent, from p. 175.

pp. 181 - 183 p. 181 B4 - p. 182.

p. 182B4 - p.183 A5.

p. 183 B4 - C3.

10

None of the doctors said his hand was  
swollen though they said his ankle was swollen.  
No question put to doctors whether deceased's  
hand was swollen.

p. 183 - 184 A4.

p. 193 - 194.

p. 205 - 206, p.211 C3 - E3, p.212 A2 - C2.

Evidence of 2nd Respondent from p.218.

p. 220D5 - p. 221 - p.222, p.228F - p. 229A2  
p.237E1 - E2.

20

Madam Chan Yoke Ying's evidence starts at  
p. 243, p. 247C2 - p.248 A1.

p. 252 C5 - D5.

Defence evidence in direct conflict with  
medical evidence as to defendant's state of mind  
or general condition, how much reliance can be  
placed on such evidence.

Submit that on the medical evidence, no  
matter on whom onus lies in the first place,  
learned Judge should have held that from 15th  
July, the mental condition of deceased was  
confused and deteriorating to such extent as not  
to know the nature of act or consequences.

30

Should have held that onus was on respondent to prove those lucid moments.

2.15 p.m.

Refers to Judgment - starting at p. 557, p.580 E3 - p. 581 E4 - p.582 A.

p.582 A4 - p. 583 - p. 584 - p. 585.

10 Judge was looking for evidence as to state of mind of deceased at the time he executed the documents.

p.586 - Dr. Lim's evidence - p. 93A4 - E2.

p. 95 D3.

p.586 F - 587 - 588 A4.

20 Submit Judge erred in holding that degree of impairment of deceased's mind had not been sufficiently established. Whatever degree, it was sufficient to show he did not know the nature and consequences of his act. The Judge appears to have looked for evidence establishing madness or insanity.

Also erred in equating meaning of "possible" and "probable".

Erred further in disregarding evidence of the doctors merely because they were not present when thumb impression was taken. P.595 C2 - D4 - Judge placed too much importance on expression of deceased's intention before his admission.

p. 595 D4 - p. 596 - 597 C5, p. 597 D - 598 D4, p. 598 E - p. 599 C1.

30 p. 599 C1 - p. 600 A1.

p. 606 B5 - p. 607 - 608 - 609 D5.

Judge appeared to have laid too much importance on the demeanour of the defence witnesses, placed too much weight on what those witnesses said of intention of deceased prior to admission into hospital, failed to direct his mind to question why it was necessary for deceased to

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28th May 1974

open a joint account with 1st defendant to provide for Chan Yoke Ying. He could have opened a joint account with her or given her the money or left a will. Explanation given by 1st defendant was she was illiterate. Evidence clearly showed that 1st defendant withdrew from joint account a sum of \$5,000/- by cash cheque and Chan Yoke Ying signed the cheque and cashed it.

p.205 E4 - p. 206 C2. p.937 - p.938 ("D 35").

To 27th and 28th May - 9.30 a.m.

10

Tuesday, 28th May, 1974.

Federal Court Sitting at Kuala Lumpur.

Coram: Gill, C.J.  
Ali, F.J.  
Ong, F.J.

F.C.C.A. 147/73

Counsel as before.

Mr. Chelliah:

Appellate Court in as good position to draw inferences from specific facts and form its own opinion.

20

Mersey Docks & Harbour Board vs Proctor  
1923 A.E.R. (Rep.) 134, 137.

McLaughlin vs. Daily Telegraph  
1904 1 C.L.R. 243, 277; 1904 A.C. 776, 779.

Benmax vs The Austin Motor Company  
1955 1 A.E.R. 326.

Question as to whether a person is mentally incapacitated does not depend on the credibility of witnesses; it depends on inferences to be drawn from evidence.

30

Ram Sundar Saha & Ors. vs. Kali Narain Sen Choudhury & Others  
A.I.R. 1927 (Cal.) 889, 892.

In cases of this nature, demeanour of witness should not be relied on without testing testimony in the light of the whole of the evidence.

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Onassis & Calogeropoulos vs. Vergottis  
1968 Vol. 1, Lloyd's Law Reports 294 at  
297, 298, 302, 303.

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10 Where witnesses likely to be biased give evidence contradicting the medical evidence, there is need for caution before accepting their evidence.

28th May 1974  
(continued)

Harwood vs. Baker 13 E.R. 282, 284, 286, 287,  
289, 290, 293, 295, 297.

In order to invalidate the act of the deceased the issue is not necessarily whether deceased was insane or mad - but that he was of infirmity of mind as to render him incapable of appreciating the nature of his act.

Harwood vs. Baker (cit) and McLaughlin vs. Daily Telegraph (cit).

20 Ball vs. Mannin 6 E.R. 568.

Ram Sundar Saha 889, 890.

McLaughlin 1904 1 C.L.R. 243, 269.

Burden is on person asserting the validity of the act to prove the person had the necessary capacity.

Act intervivos

209. Farid-Un-Nisa A.I.R. 1925 P.C. 204-211, 206,

30 In case of donatio mortis causa, the donee must establish the gift.

Cosnahan vs. Grice 15 E.R. 216.

Smee vs. Smee 1879 5 P.84.

Where mental illness or incapacity has been shown to have existed before and after the alleged act, capacity to execute the act must be shown by strong evidence by the person alleging it.

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Williams & Mortimer - Executors, etc. p.143  
(Property & Conveyancing Library No.10).

Submit Judge erred in holding burden on appellant to prove deceased's infirmity of mind. Submit burden on respondents to prove deceased's mental capacity - which they have failed to do.

If it was for appellant to show mental incapacity initially, she had discharged that burden by the medical evidence adduced.

Submit respondents had failed to prove lucidity at the relevant time. 10

If cheque is void, then Bank which paid out and collected on the cheque is liable to pay Appellant as administratrix of her son's estate.

Paying bank and collecting bank need not be distinguished - same bank liable on basis of non est factum - if deceased's mind did not go with act of signing, then it is not valid cheque.

Foster vs. Mackinnon 1869 L.R. 4 C.P. 704  
at 711. 20

Saunders vs Anglia Building Society  
1970 3 A.E.R. 961, 966.

Position same as if cheque had been forged as far as the Bank is concerned, even if Bank had not been negligent.

Imperial Bank of Canada vs. Bank of Hamilton  
1903 A.C. 49.

Bank's representative was negligent in accepting deceased's thumb print without consulting a doctor in the circumstances of the case. 30

Deceased usually signed, account to D.W.2 in English - Specimen signature, at page 934. He was aware deceased had been admitted. He also knew some urgency in transfer of this money into a joint account while deceased was still in hospital. Should have suspected that deceased's illness was such that his life was in danger.

P. 236 - did not consult doctor.

Baker vs. Barclays Bank Ltd.

1955 1 W.L.R. 822, 835, 838.

Sheldon on Practice and Law of Banking 7th Edition, page 4.

1967 3 A.E.R. 967, 971

1968 2 A.E.R. 573

Mental State of Deceased - if Court is not agreed as to that- to whom does money in Joint Account belong, after death of deceased?

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10 First Defendant claimed as survivor and held it under a resulting trust for benefit of the estate of deceased.

Respondent claimed first defendant held as trustee for Madam Chan - paragraph 11 at page 33.

Judge held that first defendant was a lawfully constituted trustee and held money in trust for Madam Chan Yoke Ying - p.615 - 616. p.620 - 624.

20 Submit Judge misdirected himself that first defendant was a lawfully constituted trustee for Chan Yoke Ying.

Re joint account, where A and B had such account but A provided the whole amount, B was entitled to take the money by virtue of the contract with the Bank - but in equity, he will hold the money by way of resulting trust for estate of A unless he can prove A intended him to have the money.

1928 Ind. App. 235 - Guran Ditta v. Ram Ditta at p.240.

30 Here first defendant does not claim money as his own.

Requisites of a valid trust - firstly there must be a declaration of trust and disposition of property on trust.

Secondly, certainty of the property to be held on trust.

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Declarer or disposer must not retain any control over the property, inconsistent with intention to create a trust.

Warriner vs. Rogers 16 Equity Cases 340

Richards vs. Delbridge  
1874 L.R. 18 Equity Cases 11.

What is the evidence of what deceased said re opening of joint account?

p.178, 182, 219.

To 9 a.m. 29.5.74.

10

29th May 1974

Wednesday, 29th May, 1974

Counsel as before:

Mr. Chelliah:

Sprange v. Barnard 1789 M.R. 2 BRO. C.C.  
585, - 29 E.R. 320.

Trust failed - no certainty as to property.

Equity will not perfect an imperfect gift by construing it as a trust.

Milroy v. Lord 45 E.R. 1185, 1189.

Submit resulting trust in favour of the deceased's estate must prevail.

20

Owens v. Green I.R. 1932 p.225.

Russel v. Scott 55 C.L.R. 440, 454,  
pp. 621, 623 - judgment.

This is not a case of donatio mortis causa as donor had not parted with the dominion of the subject-matter of the donatio.

In Re Craven's Estate. Lloyds Bank v. Cockburn (No.1) 1937 Ch.D. 423, 426 - 428.

By agreement, Mr. Chan on behalf of second Respondent will respond to be followed by Mr. Shankar for first Respondent.

30

Counsel for Appellant has raised three issues:-

- (1) Mental capacity.
- (2) Whether Bank is liable if deceased had not the mental capacity at the time of affixing his thumb print on the documents.
- (3) Whether there is a legally constituted trust in favour of Chan Yoke Ying (f).

Submit first issue is question of fact.

10           What is Judge's finding on question of mental capacity? p.599 - 600. Is there evidence to support finding? If there is, was judge wrong in accepting such evidence in the light of other evidence?

Submit there was sufficient evidence to support such finding.

Evidence of defence witnesses, including a doctor.

20           Surrounding circumstances re affixing of thumb impression.

Various acts of deceased tend to show deceased knew what he was doing.

p.598.

Refers to evidence of Kwan Mun Koh at p.221D.

Gross vs. Lewis Hillman Ltd. & Anor.  
1970 1 Ch. 445, 459.

P.W.5: Dr. Sinnadurai - p.105 CA - 106.

D.W.4: Dr. Loke p.263F.

P.W.14: Dr. Daljit Singh p.164A.

30           P.W.5: p. 106E.

P.W.3: Dr. Lim p.92F - 93.

P.W.14: p.157A4.

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Judge was aware of conflict of evidence  
p. 609A3.

Submit Judge would be wrong if there is  
evidence to rule out possibility of deceased  
understanding nature of the act. Judge found  
that deceased could understand - pp. 586-587.

From medical evidence, he found deceased to  
be mentally sound.

He also considered the rationality of the  
gift - p.593B - 595C.

10

p.608D - p.609A.

Fact - gift is rational. Would show a sound  
state of mind at the relevant time.

Banks v. Goodfellow 1870 L.R.5 Q.B. 549.  
Where matter not complex, very slight degree  
of comprehension would suffice.

Williams & Mortimer, p.140.

To 6th and 7th June - 10 a.m.

24th June  
1974

Monday, 24th June, 1974

Federal Court Sitting in Kuala Lumpur

20

Coram: Gill, C.J. Malaya  
Ali, F.J.  
Ong Hock Sim, F.J.

Federal Court Civil Appeal No. 147 of 1973

Counsel as before:

Submitted this was a rational gift.  
Deceased knew what he did. Intention to benefit  
wife had been expressed before he entered hospital.  
No allegation as to his mental condition.

Banks v. Goodfellow (cit).

30

Williams & Mortimer p.140

Judge's finding supported by evidence.

Question of mental capacity: It must be at

time thumb-print was affixed.

p.561 - Main issue is whether deceased was of sound mind, memory and understanding when he drew cheque No. A 043382. Plaintiff on strength of medical evidence asked Court to conclude deceased was suffering from unsoundness of mind that he did not know nature of his act when affixing his thumb print.

Judge dealt with this - p.597D, p.599 A4-D.

10

No where did judge say he required high standard of proof of mental incapacity. p.93E. (See pp.586-587).

pp. 581 - 582.

Question is whether testimony of the defence witnesses can possibly be true - not question of balance of probabilities (in the view of counsel).

Will deal now with burden of proof.

Where there is no evidence or evidence so evenly balanced or no preponderance - the question is academic.

20

Yong Chiang v. Bong Tjhin Oi  
1973 - 2 M.L.J. - 136 at 137.

If burden on plaintiff unless she adduced sufficient evidence to shift the burden or where defence also adduced evidence and such evidence was not rejected, would submit plaintiff not entitled to succeed.

Even if defendants had not called evidence, would still submit plaintiff had not proved her case.

30

Presumption of sanity would apply.

Mohamed Yakub v. Abdul Quddus & Ors.  
1923 A.I.R. (Patna) p.187 at p.191.

Submit Judge has considered that there was sufficient evidence to shift the onus. p.581A4 - p.582, p.585.

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On question of mental capacity, judge has made a definite finding - that deceased knew what he was doing when he drew cheque and gave authority to open joint account and appreciated the nature and effect of his act. He relied on evidence of defence witnesses, particularly relating to execution of cheque and other documents. In doing so, judge was faced with two problems.

Firstly, medical evidence called by the plaintiff was to effect each time they saw deceased he was mentally confused. They were government medical doctors and therefore disinterested. There was violent conflict with defence witnesses who claimed he was mentally normal every time they saw him. Therefore their evidence should be rejected as being unreliable. Judge was aware of this and warned himself of need for caution. He resolved conflict by saying that while he did not reject the medical evidence, he accepted defence evidence because the witnesses knew deceased's habits and mannerisms. Some allowance should be given to possible mistake on part of the doctors. 10 20

Secondly, since each time doctors saw deceased, he was confused, then the possibility of deceased's being of a clearer mind at some time is mere possibility. Again some allowance should be made by reason of deceased's habits and mannerisms for possibility of mistake. Medical evidence and entries in the medical report to effect it was possible for him to have a clearer state of mind. Dr. Lim said deceased though confused could understand. Two other factors support finding 30

- (1) Rationality of gift is indication he knew what he was doing.
- (2) Intention to make provision for his wife was made before admission and before any allegation of mental incompetency.

Presumption of sanity applies and burden of proof is on plaintiff. Was there evidence showing deceased was so mentally disordered as to be incapable for purposes of contract or disposition to shift burden to the other side? Onus of proof is relevant on question whether defence evidence was rejected. 40

Assuming cheque is null and void on ground deceased had not the mental capacity at time of execution, would second defendant be liable to pay the amount on the cheque to the personal legal representative of the deceased? Was bank negligent or not? No difference, Bank would be liable if cheque void.

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Submit officer of Bank was not negligent in this case.

10 It had been urged that Bank was negligent in that it had failed to obtain medical certificate to effect deceased could not sign.

Sheldon: Practice and Law of Banking 10th edition.

Not a case here of deceased being too ill to sign - but that his hand was swollen at the time.

Also urged that there were suspicious circumstances re obtaining thumb print. Explanation given was accepted by judge.

20 To 2.30 p.m.

2.30 p.m.

Question of Trust.

Was there a validly constituted trust?

Submit there was.

p. 219A-D, p.178 D3-D5.

30 Total amount in Head Office was transferred to Branch account on 20.7.67. No money was drawn out from the joint account during the life-time of deceased. Deceased had two other accounts - p.776 items 1 and 2.

Equity and the Law of Trusts by Pettit:(slip)

Milroy v. Lord 1862 4 DE.G.F. & J. 264 at 274-275.

This is not case of declaration of trust but of transfer of property coupled with an expressed trust.

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Russel v. Scott 55 C.L.R. 440 at 450.

Fact he reserved right to revoke the trust  
does not affect the trust. p.444, 448.

Tompson v. Browne 40 E.R. 13.

Refers to authorities cited by Appellant's  
counsel.

16 Equity Cases 340 and 1874 L.R.18 Equity  
Cases 11.

Submit there was immediate trust when  
cheque was drawn up.

10

No clear expression of creation of immediate  
trust for himself for his life time and after  
death for his wife.

This can also be a gift notwithstanding  
intervention of a trust.

Refers to p.29 Essentials of a Trust by  
Pettit.

Refers to Sprange v. Barnard p.82 (ibid).

Mr. Shankar:

Refers to p.771 - Mandate re Joint Account,  
Clauses 1 and 3.

20

To 10 a.m. 25.6.74.

25th June  
1974

Tuesday, 25th June, 1974.

Counsel as before.

Mr. Shankar: Tenders submission on behalf of  
first Respondent. Reads.

pp. 1-4.

pp. 5-8.

Charts in conflict whether patient passed  
urine.

30

Diuretic drugs fed patient - to induce  
passing of urine. Visits to toilet.

It cannot be inferred from this evidence that deceased could not have known what he was doing.

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Nurses not called for cross-examination on notes.

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Ex. P.13 at pp.761-763.

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Ex. P.9 p.718.

pp. 8-14 - Mental condition of deceased.

25th June  
1974  
(continued)

10 Sum total of medical evidence was deceased was labouring from medical confusion and not mental disorder or unsoundness of mind.

Refers to pp. 162 and 166.

Submit Dr. Daljit Singh at p.169 contradicts his earlier testimony and ought not to be given much weight.

To 2.30 p.m.

2.30 p.m.

Mr. Shankar:

Applies to add to diary the entries at p.763 1st column.

20 pp.14 para 14 - on Cases cited.

McLaughlin - was a certified lunatic, not the deceased here. (1 C.L.R. 243) see p.15 of written submission.

If defendants acted bona fide there can be no question of liability for conversion. There must be knowledge or notice of the mental state.

Condition of deceased was variable.

Submit evidence produced not sufficient to shift burden of proof to defendant.

30 Harwood v. Baker 13 E.R. p.282, 285, 288.

Pereira v. Pereira 1901 A.C. 354.

Battan Singh v. Amir Chand 1948 1 A.E.R. 152.

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Facts in Pereira similar to this case.

Complicated will in Pereira, here a simple  
cheque.

Instructions here given before admission to  
hospital or question of mental condition.

Execution was on 18th July, a week after  
instructions were given.

Another cheque signed 2 days earlier.

To 9 a.m. 26.6.74.

Wednesday, 26th June 1974

10

Counsel as before.

Mr. Shankar: (para. 15 Written Submission)

Appellant's counsel submitted that trial  
Judge relied too much on demeanour of witnesses.

I would submit that judge did test the defence  
evidence in the light of the medical testimony  
(page 609).

Harwood v. Baker cited by Appellant's counsel  
that evidence of a biased witness should be viewed  
with caution. 13 E.R. 293.

20

P.P. v. Foong Chee Cheong  
1970 - 1 M.L.J. - 97.

Chow Yee Wah accounted for every cent -  
Cheque at p.270 to Comptroller-General of Inland  
Revenue.

Handled money scrupulously in accordance  
with wishes of deceased.

p.691, p.53, p.56, p.66, p.67, p.68 -  
Appellant was aware, so no question of conceal-  
ment of transfer of this money to joint account.

30

Correspondence between solicitors and Bank  
pp.641-660.

pp.188, 243.

Not declared in Estate Duty Affidavit?

Matter was handled by Mr. Kok Thoy.

pp.22-24 of Written Submission - The person who raised question of mental disorder of deceased in lower Court was plaintiff's counsel - pp.307.

Judge dealt with this - pp.579, 582-3. Will refer to cases of:-

(1) Farid-Un-Nisa - 1925 52 I.A. 342,344,350.

10

(2) Thomas v. Times Book Co.Ltd.- 1966 2 A.E.R. 241, 244.

(3) Cosnahan v. Grice - 15 E.R. 476.

Burden of proof of capacity on person benefiting - appellant's contention.

Would contend if there has been an effective transfer, burden would lie on person who alleges incapacity - p.771 is effective document - legal title to money was transferred to Chow the moment the mandate was signed.

20

Submission on this point by plaintiff in lower court appears at 270-287.

Would submit that in those cases there was no effective legal transfer as there is in this case.

Moore v. Moore - 1874 18 Eq. Cases 474.

Cosnahan v. Grice (cit).

Halsbury's Vol.18 p.398(b), 404, 401.

Crux - was gift complete?

S.3 Civil Law Ordinance 1956.

30

Evidence in this case of intention to benefit his wife.

Re Rose 1949 1 Ch. 78 at 88-89.

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(continued)

Submit there was a perfectly constituted gift.

And there was a perfectly constituted trust.

If held deceased knew what he was doing and  
defence witnesses are believed.

Refers to Pettit p.53.

Appellant contends deceased retained control  
and there was uncertainty as to corpus.

Here nothing more for deceased to do. In  
joint account dominion in both.

Amount transferred was certain - and joint  
account opened with it - for specific use for  
provision of his wife.

10

No operation of account after opening by  
deceased.

Young & Anor. v. Sealey - 1949 1 Ch.278.

Roberts & Anor. v. MacLaren & Ors.  
1969 1 Ch. 123.

To 2.30 p.m.

2.30 p.m.

Mr. Shankar:

20

Russell v. Scott - 55 C.L.R. at 445.

Halsbury's Vol. 18 Sec. 763.

Refers to cases at p.33 of Written  
Submission.

Birch v. Treasury Solicitor - 1951 1 Ch.298.

Did he know what he was doing when he put  
his thumb-print on documents?

Slight degree of mental capacity required  
for such execution.

Submit appeal be dismissed.

30

To 9.30 a.m.

Thursday, 27th June, 1974

Counsel as before.

Mr. Chelliah: (in reply):

Will deal with the two propositions advanced by Mr. Chan.

- (1) Rationality of gift was consistent with mental capacity.
- (2) Previous expression of intention to make provision for Chan Yoke Ying before admission to hospital would tend to show only slight degree of mental capacity would be sufficient for execution of cheque.

Banks v. Goodfellow - 1870 L.R. 5 Q.B. 549, at 557-579, 563-564 - Submit that this is not authority for saying in law rationality of act alone is sufficient to satisfy that testator had mental capacity pp.568-569 - "If he had not the capacity required, the propriety of the disposition is a matter of no importance."

Waring v. Waring - 6 Moo. P.C. 341; 13 E.R. 715, 718, 719 and see Note at p.726.

Parker v. Felgate - 1883 8 P.D. 171 referred to in Pereira v. Pereira (cit) at p.361.

Battan Singh v. Amir Chand - 1948 1 A.E.R. No question here of deceased giving instructions to solicitor at any time. He expressed desire to provide for Madam Chan to somebody - p.218-219.

See p.660 in reply to p.657 D.W.2 - p.288 D3 p.83 - Condition of deceased at time of admission evidence of P.W.2 - not fully clear mentally on questions put to him.

pp.220-221 - conversations by D.W.2 - p.181C and p.178.

Effect of joint account not a simple act.

Medical evidence has been attacked by 1st Respondent's counsel.

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Medical chart - 728 to 764 consisting of  
Notes made by doctors, Intake & Output Charts  
by Nurses, etc.

Loose Sheets - marked P.13 - produced after  
being taken out for photostating from folder.

p.761 with 26 in circle - purely numbered  
for Court identification when produced - continued  
at p.763, 764 got interposed by p.762.

For 22-7 and 23-7 at p.760.

Not fault of nurses for this mix-up. 10  
Record kept for 3 periods - p.761 times printed.  
Not stated what was given. p.763 entries  
differently entered - details given - quantities  
and types given. Treatment was changed on 18.7 -  
reason for p.761 was written up for 7 a.m. to  
2 p.m. but p.763 begins with entries for afternoon  
(after 2 p.m.).

Old treatment at pp.731 and 734.

New treatment at p.736 written by Dr.Daljit  
himself. - p. 141A3. 20

No inference can be drawn therefore that  
nurses were not doing their duties properly or  
regularly.

Dr. Sinnadurai's assessment that deceased  
acted like a madman on 19th July night was said  
to be inaccurate, because nurse's note p.719 for  
evening of 19/7, p.720 condition ill and drowsy  
on morning of 20/7.

p.737 Dr. Daljit's Notes of condition on  
18/7. 30

p.738 doctor's notes on condition on 19/7.

P.W.4 - p.97B - p.739.

Submit Dr. Sinnadurai's assessment was not  
inaccurate.

To 9 a.m. 28/6/74.

Friday, 28th June, 1974

Counsel as before.

Mr. Chelliah:

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10 Submit judge failed to make proper evaluation of the medical evidence and draw correct inferences therefrom. Mr. Chan said there was no question of evaluation of medical evidence. Burden of proof on plaintiff had not been discharged and even if defendants had given no evidence, plaintiff must fail as contended by respondents and judge seemed to agree therewith. It was for person asserting validity of act to prove the person doing the act had the necessary mental capacity.

Udham Singh v. Indar Kaur - 1971 2 M.L.J. 263.

Submit only where there has been a transfer would question of mental capacity arise.

Assuming burden on plaintiff, would submit that the medical evidence adduced by the plaintiff had thrown the burden on defendants.

20 Judge said though there was evidence of some mental confusion, degree was not established and burden not therefore shifted to other party.

Submit it was for defendants to prove that at time of execution, defendant had the mental capacity.

In my submission, in saying that the learned judge could not have directed his mind to the evidence of Doctor Sinnadurai, Dr. Daljit and Dr. Sreenivasan.

30 Dr. Sinnadurai said on night of July 19th, deceased was like a madman. p.105.

Dr. Daljit at p.169 deceased would not have been in a position to know what he was doing when he affixed his thumb-print.

40 p.99 - Dr. Sreenivasan said at 10.15 p.m. on 20th, deceased not in full possession of his mental faculties. Also p.100C. Submit judge failed to appreciate the medical evidence or he was looking for a higher state of mental incapacity or expected a higher proof of mental incapacity - judge thereby erred in law.

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p.149 for assessing his mental condition, doctor said not necessary to have prior knowledge. Mr. Chan argued that trust was created immediately joint account was opened for deceased during his life and after for Chan.

This was not joint trust account. p.242. This account was not a trusteeship account. There cannot be money transferred in trust for A absolutely and then to B absolutely. In a joint account like this, deceased could have drawn out the whole amount and there would be nothing left over. There must be a clear declaration of trust. No such declaration in this case to the effect that the money be held in trust for deceased during his life and thereafter for Madam Chan. 10

There was here no effective transfer of property without retention of any right to it. It has been submitted there had been a complete transfer to Chow of a right to operate the account and deceased retained only a power to revoke. Say this is incorrect. In opening account, deceased gave Chow a power to draw on the account but at the same time he retained his right to withdraw the money. The right retained by deceased was power to withdraw. Chow's right to operate the account. If he had intention to divest himself of the money, he could have opened account in names of Chow and Madam Chan. 20

Nothing said by deceased to show that he was treating Chow as the alter ego of Chan. All he said was that the account was opened so Chow could look after Chan if he should die. 30

In re Figgis - 1969 1 Ch. 123; 1968 1 A.E.R. 999 at 1014.

D10 at p.724 - P.W.12 pp.135 - 137, 170-174.

P.W.13 - 137-139. D.W.5 - 265-267.

D.W.3 at p.253.

C.A.V.

Federal Court Sitting at Kuala Lumpur on  
Monday, March 17th, 1975

In the  
Federal Court  
of Malaysia

Coram: Suffian, L.P.  
Ong Hock Sim, F.J.  
Chang Min Tat, J.

No.13

Federal Court Civil Appeal No.147/73

Mr. Shankar with Mr. S.Y. Chan for Appellants.

Mr. Joginder Singh for Respondent.

10 No objection to grant of leave but objection  
as to stay by Respondent.

Prayer 1 - granted.

Re: Prayer 2 - Deposit in the name of Chief  
Registrar in a Bank Account to earn interest at  
usual bank rates pending outcome of Appeal -  
Deposit renewable every 6 months.

Certified true copy.

20 Sd. Lee Yoke Weng  
(LEE YOKE WENG)  
Secretary to Tan Sri  
Dato Justice H.S.Ong  
Federal Court,  
Kuala Lumpur  
25/4/75

No. 14

Coram: Gill, C.J. Malaya  
Ali, Federal Judge  
Ong, Federal Judge

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JUDGMENT OF ALI, F.J.

30 The appellant is the administratrix of the  
estate of her deceased son, Loke Aik Hoe @ Loke  
Yauk Hoh @ Loke Yauk Hoe, who died in the General  
Hospital, Kuala Lumpur, on July 24, 1967. The  
first respondent is deceased's brother-in-law and  
the second respondent is a banking corporation  
with its head office and sub-branch in the city  
of Kuala Lumpur, at Jalan Bandar and at Jalan  
Pasar respectively. At all material times the

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officer in charge of the sub-branch bank was Kwan Mun Koh, a defence witness in this case.

Before he was admitted to the hospital on July 13, 1967, the deceased was living in a rented flat with a woman named Chan Yoke Ying, another defence witness, who as described in the defence pleadings was the common law wife of the deceased. In the petition for letters of administration the appellant described her as deceased's mistress.

On July 20, 1967 a sum of \$60,384.80 was transferred from the deceased's personal account at the second respondent's Head Office bank to the sub-branch bank where, on the same date, a joint account was opened with the deceased and first respondent as joint holders. On July 30, i.e. after deceased's death, the first respondent closed the account. The balance in the account as on July 24, 1967 was \$57,382.30. Between July 24 and July 30, 1967 the first respondent withdrew a total sum of \$5,000/-. On July 31 he opened a joint account with his wife. He then withdrew \$50,000/- from this joint account and put the money on fixed deposits in two lots of \$10,000/- and \$40,000/- which deposits were renewed every six months. Sometime early in October, 1969 Chan Yoke Ying applied to the bank to put, apparently, the same \$50,000/- on fixed deposits in her name. 10 20

The appellant filed her petition for letters of administration sometime in October, 1967. It would appear that she had been living in Singapore for sometime with her adopted daughter, Siew Kim. On hearing that deceased was in hospital she came to Kuala Lumpur on July 19. According to her on that date and until he died the deceased was unable to recognise her or speak to her. In due course, about the middle of 1968, she instructed her solicitors to make enquiries from local and Singapore banks as regards monies in the deceased's accounts. When she was informed of the transfer of deceased's money as stated above she asked for detailed particulars of the circumstances in which the transfer was made. Having reasons to believe that the transfer could not have been authorised by the deceased she commenced proceedings to recover the money following the grant of letters of administration to her sometime in September, 1970. 30 40

In her pleadings she alleged, amongst others, fraud. In the particulars of fraud set out she said that in view of deceased's illness the thumbprints could only have been obtained when the deceased was either fast asleep, not fully conscious or in delirium, or that they could have been obtained either immediately before or immediately after the deceased's death. She based these assumptions on the medical evidence which was subsequently given at the trial. Alternatively, she contended that even if deceased had voluntarily authorised the transfer of the money to the joint account such authority was revoked by his subsequent mental condition. She further contended that the whole amount in the joint account having been contributed by the deceased the rule of survivorship at law is overridden by equity. The equitable rule as stated by Cotton L.J. in Standing v. Bowring (1886) 31 Ch.D. 282, 287 is as follows:

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"... the rule is well settled that where there is a transfer by a person into his own name jointly with that of a person who is not his child, or his adopted child, then there is prima facie a resulting trust for the transferor. But that is a presumption capable of being rebutted by shewing that at the time the transferor intended a benefit to the transferee ....."

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See also Underhill's Law of Trusts and Trustees, 12th Edition, page 211.

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The respondents' common defence was a denial of the allegation of fraud. They maintained that the deceased voluntarily executed the said cheque and documents on July 18, 1967. They further maintained that the joint account was an arrangement aimed at making provision for deceased's common law wife, Chan Yoke Ying. The defence contention apparently was that the presumption of a resulting trust is rebutted by evidence of an express trust. In her reply the appellant joined issue stating that in the particular circumstances of this case no valid trust could have prevailed.

Both here and below two questions arose for consideration and they are as follows: Firstly, a question of fact whether or not deceased was in full possession of his mental faculties when his thumbprints were affixed to the said cheque and

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documents on July 18, 1967, and secondly, if he was, could a valid trust prevail in this case. The learned trial Judge answering both questions in the affirmative dismissed the action.

The first question primarily involves the consideration of the medical evidence relied on by the plaintiff as establishing that deceased was in a state of mental confusion when his thumbprints were affixed to the said cheque and documents. The medical evidence which is voluminous has been referred to in some detail in the judgment of the trial Judge who said that although there was some evidence of mental confusion it was insufficient to justify a finding that deceased was in a state of mental confusion at all times. Thereupon he concluded that deceased was not in a state of mental confusion on July 18, 1967.

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The medical evidence, shortly stated, was as follows: On his admission to the General Hospital, Kuala Lumpur on July 13, 1967 the deceased was found suffering from hypertensive cardiac failure and cardiac cirrhosis which means that he was having heart as well as liver troubles. The fact that he was seriously ill on that day is beyond doubt. Dr. Vignaendra who admitted him to the hospital said he noticed signs that deceased was having heart and liver troubles. He also said that deceased had a history of diabetes which, however, was not troubling him. On July 14, it was found from tests carried out that deceased's kidneys were also troubling him. His blood urea on that day was 168 m.g. per cent. The clinical notes made by doctors who examined him indicated that his condition was progressively deteriorating. Dr. Lim Eu Jin, a physician, who said this also stated that deceased was mentally confused, not orientated and not aware of his surroundings. He formed this opinion because he was unable to engage the deceased in any intelligent conversation. On July 19 the deceased's blood urea had gone up to 360 m.g. per cent. The indications were that waste products were being retained in his blood. On that day Dr. Lim wrote a note to the surgeon urologist Mr. Sreenevasan suggesting dialysis. The surgeon saw the deceased on July 20 but formed the opinion that he was not a suitable case for dialysis. He said that deceased would

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not or could not be made to lie down in bed. He described the deceased as a case of mental dementia. Dr. Sinnadurai, a physician and head of the medical unit in the hospital, spoke of the deceased's condition on the night of July 19, 1967 in these words -

10           "On the 19th night, his condition got worse. He started pulling out all the tubes we put in. He showed evidence of psychotic behaviour - like a mad man."

20           Another medical witness Dr. Daljit Singh also gave evidence generally to the same effect. Bearing in mind the appellant's allegation of fraud which suggests that the thumbprints could easily have been obtained on any day between July 13 and July 20, 1967 and not necessarily on July 18 and the fact that the cheque and documents were not signed, there seems to be force in the appellant's counsel's submission that the medical evidence had estab-  
lished that the cheque and documents were not signed because of deceased's mental condition. He pointed out that appellant is not required to prove her case beyond reasonable doubt as in criminal proceedings. On the other hand, he said, in a case of this nature there is always a tendency to fabricate. In his written submission at the trial counsel for the appellant referred to *Cosnahan v. Grice* 15 E.R. (P.C.) 476, 479 in which Lord Chelmsford observed in these words -

30           "Cases of this kind demand the strictest scrutiny. So many opportunities, and such strong temptations, present themselves to unscrupulous persons to pretend these deathbed donations, that there is always danger of having an entirely fabricated case set up."

40           In the instant case it is not difficult to see that deceased's thumbprints on the cheque and documents could easily have been obtained in the manner alleged by the appellant in her statement of claim. Her suspicion that they were so obtained was not altogether unfounded. The fact that deceased was a very sick man and that his illness had affected his mind is beyond doubt. There is also no doubt that his condition was progressively deteriorating from the day he was admitted to the hospital. As I understand the medical evidence he

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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. Dr. Sinnadurai in his evidence stated that a patient suffering from kidney ailment usually presents a picture of well being. In my respectful view the appellant's evidence considered as a whole reasonably supports a case of fraud as alleged by the appellant. It remains for consideration whether there is anything in the defence evidence to support a different conclusion. The view of the learned trial Judge on the defence evidence was summed up in the following words - 10

"I have examined the evidence of Kwan Mun Koh and Chan Yoke Ying including the testimony given under cross-examination very carefully. I am fully satisfied that they were telling the truth. I do not think there is any need for me to repeat what they said. Suffice for me to say that on the evidence given by them, I am satisfied that the deceased knew what he was doing when he drew the cheque and gave the authority to open a joint account. I am also satisfied that he was not in any way deceived into affixing his thumb-prints. I am further satisfied that he was then of sound memory and understanding and that he fully appreciated the nature and effect of his act." ..... 20 30

Shortly stated the defence evidence was as follows: In his evidence the first respondent Chow Yee Wah had stated that on July 12, 1967 he met Kwan Mun Koh at a birthday party where he was told that deceased was sick and that he wished to see first respondent about opening a joint account. The following morning, on July 13, he went to deceased's flat. Deceased, he said, was alone. He stayed for about an hour discussing the opening of a joint account with the deceased. The purpose of the joint account, he said, was to make provision for Chan Yoke Ying. It is not clear whether Chan Yoke Ying was present and understood what was being discussed. Seeing that deceased was sick the first respondent suggested that he would call Dr. Like Wye Tuck, a nephew of the deceased, which was agreed. On the way back Chow Yee Wah stopped at Dr. Loke's clinic at Jalan Pahang. He told the doctor to go and see his uncle who was sick. As Dr. Loke did 40

not know where deceased was living first respondent accompanied him to the deceased's flat. On examining deceased's blood pressure Dr. Loke advised deceased to go to hospital and undertook to arrange for an ambulance. He told first respondent that deceased had a weak heart. At about 5 p.m. that day deceased was taken to the hospital by ambulance accompanied by the first respondent. He visited the deceased on the following day, July 14. He saw deceased was sick but that he was drinking beer to make it easier for him to pass urine. On that day they did not talk about the joint account. On July 15 he and his wife visited the deceased and stayed for half an hour or more. On that day there was some argument or altercation between deceased and his half sister, first respondent's wife, over certain payment arising from a subdivision of land belonging to the estate of their father Loke Chew Kit. Deceased was the administrator of the estate. According to first respondent deceased refused to sign the agreement to pay the fees when asked by his half sister to do so. First respondent also said that -

"The deceased told my wife that he would look into the matter when he recovered and came out of hospital."

I pause to observe that according to Kwan Mun Koh on July 11, 1967 deceased had told him about opening a joint account because he was afraid he might die. To continue with the evidence of first respondent he said that he also visited the deceased on July 16 but not on July 17. On July 18 Dr. Loke Wye Tuck telephoned first respondent between 10 a.m. and 11 a.m. to say that deceased had decided to open a joint account and that first respondent was to ask Kwan Mun Koh to meet him at the hospital on that day at about 5 p.m. As to what happened in the hospital ward the first respondent's evidence was the same as that of Kwan Mun Koh which is as follows: Kwan Mun Koh was the officer in charge of the sub-branch bank at Jalan Pasar. Deceased was his uncle. He said that on July 11, 1967 he was asked to see the deceased at his flat. He went there. He noticed that deceased was sick and that his leg was slightly swollen. Referring to his conversation with the deceased he said -

"He told me he wanted to make provision for his wife. We were both seated in the hall.

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He wanted to open a joint account in joint name of himself and Chow Yee Wah - the first defendant. He wanted his money in his personal account at Head Office to be transferred to this joint account. He told me that if anything should happen to him, Chow Yee Wah would be able to look after his wife with the money. He did not tell me how much money he had in his personal account at Head Office. He wanted me to find out how much he had with Head Office. I promised to let him know the next day."

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He saw the deceased on July 12 and told him that his bank balance then stood at \$60,000/-. He went to see the deceased in the hospital on July 13 and 14 but apparently did not discuss the joint account. He said it was discussed on July 16 but nothing happened. He then referred to first respondent's telephone call on July 18 and said -

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"On July 18 Chow rang up in the afternoon to say that he and my uncle had discussed the matter and that I should get ready all the necessary documents for my uncle to sign.

I made arrangement with Chow for the signing of the documents. It was to take place in the hospital at 5.00 p.m. on 18th. I went to the hospital at 5.00 p.m. I brought along standard equipment and forms. By 'standard equipment' I mean stamping pad, date chop and thumbprinting set."

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After saying that deceased was in a cheerful mood he went on to describe how deceased asked his wife Chan Yoke Ying to get the cheque book from the drawer. Kwan Mun Koh at first mentioned the figure \$63,384.80 (corrected to \$60,000/- before us) as the amount which deceased asked him to write in the cheque. Shortly afterwards he said this -

"He did not mention any figure. He just asked me to fill in for him."

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It is not clear, therefore, when was the amount \$60,384.80 written on the cheque and where was it written. Kwan Mun Koh went on to say that deceased asked him if he could affix his thumbprint on the documents instead of signing them. The reason

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10 given by the deceased was that his hand was slightly swollen and that he had difficulty in holding a pen. He was afraid that his signature might not be good. Kwan Mun Koh decided that deceased could affix his thumbprints. Thereupon he prepared the stamping pad, handed it to the deceased who pressed his thumb against it having asked Kwan Mun Koh to guide him where to put his thumbprints. First respondent did not sign the documents on that day because he did not have his identity card. He went to the sub-branch bank on July 20 to sign it. It is not clear when the cheque was sent to the Head Office bank for clearance but the stamp on the cheque indicates that it was cleared on July 20, 1967. The application to open the joint account was also dated July 20, 1967 although according to the evidence it was thumbprinted on July 18. The application was approved by Kwan Mun Koh presumably on the strength of the deceased's thumbprint which he had witnessed earlier. Chow Yee Wah's signature appears twice on the application. Why twice and not once is also not clear. In the specimen signature card which was signed by the first respondent presumably on July 20, 1967 and thumbprinted by the deceased on July 18, 1967 the address given was only that of Chow Yee Wah. Again no reason was given why deceased's address was not there. Continuing with his evidence Kwan Mun Koh said that on July 20 he saw deceased and told him that the account had been opened. Deceased, he said, was happy. He also said this -

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"Everything I did, i.e. the opening of the joint account - was done in accordance with the wishes of my uncle. My uncle had no children."

40 He did not see the deceased again after July 20. On July 31 first respondent withdrew \$55,382.30 with which he opened another joint account with his wife. On the same day they put on fixed deposits sums of \$10,000/- and \$40,000/- which were renewed every six months until October 31, 1969 when Chan Yoke Ying applied to the sub-branch bank to put also \$50,000/- on fixed deposits of \$10,000/- and \$40,000/- in her name. In cross-examination he said that his brother, Peter Kwan, was working as manager at the Head Office bank in July, 1967. As it seems to me the suggestion was because of this there was no difficulty in getting

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the cheque cleared by the Head Office bank. To another question relating to the clearance of the deceased's cheque by the Head Office bank he said if it had been a Chartered Bank cheque, for instance, it would have to be sent to the Central Bank (Bank Negara) for clearance.

Both first respondent and Kwan Mun Koh were cross-examined at some length. Kwan Mun Koh was asked why a doctor was not present when the thumbprinting had to be done. He said there was no doctor around. He was also asked about the thumbprinting set. He said it was brought not because he knew before hand that deceased would be unable to sign the cheque but because it was the practice to bring the standard equipment when business had to be done outside the bank premises. He admitted, however, that the thumbprinting of the cheque was done outside the normal working hours of the bank.

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Lastly, there was also the evidence of Chan Yoke Ying who supported the first respondent and Kwan Mun Koh on the thumbprinting of the cheque and documents. Her evidence, however, does not suggest that she knew the joint account was opened for her benefit. At least not before the middle of 1968 when she decided to file a caveat to oppose the appellant's petition for letters of administration. Why she did not do so earlier is not clear. Was it because she was not sure of her position as the lawful widow of the deceased? The fact that she decided to take proceedings in January 1969 to assert her claim fairly supports the view that she did so on the advice of the first respondent. She was so advised because the first respondent knew or had reason to know that he could no longer hold on to the money as his own. Without Chan Yoke Ying he would have no defence to the appellant's claim to the balance of \$57,382.30. The probate suit No. 1 of 1969 filed by Chan Yoke Ying was, however, settled when the appellant agreed to let her have some of the deceased's monies in other banks. When it became clear to the first respondent that appellant would proceed with her claim to the money in this case upon obtaining the grant of letters of administration he apparently decided to hand over the two fixed deposits totalling \$50,000/- to Chan Yoke Ying. Hence her application to put this amount on two fixed deposits of

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10     \$10,000/- and \$40,000/- sometime in October, 1969. In view of this it is not difficult to see where Chan Yoke Ying's interest lies in this case. The various gaps in the evidence of first respondent and Kwan Mun Koh and also Chan Yoke Ying's interest in this case make it difficult for me to accept as true that deceased voluntarily thumbprinted the cheque and documents as stated by them. The need for careful scrutiny as stated by Lord Chelmsford in Cosnahan v Grice 15 E.R. (P.C.) 476 is another reason for saying that defence evidence should not have been accepted without corroboration. Needless to say that there was no corroboration. As regards the first question therefore I respectfully differ from the learned trial Judge by answering it in the negative, that is to say that the deceased was not in full possession of his mental faculties when his thumbprints were affixed to the cheque and other documents.

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20             On the second question the learned trial Judge was of the view that there was a duly constituted trust. He agreed with the respondents' submission that the effect of the joint account was to vest in the deceased and the first respondent rights to the money in the account. Russell v. Scott (1936) 55 C.L.R. 440 was relied upon as supporting this view. Russell v. Scott is a decision of the Australian High Court. It was a case in which an

30     elderly lady transferred all her money to a joint account of which she and her nephew were joint holders. Speaking of the joint account Starke J. said, on page 448, that its effect was to vest in the holders right to the money and this carries with it a legal right to title by survivorship. The vesting, he said, takes effect immediately and is not dependent on the death of one of the holders. On that view he held that a gift or disposition by way of a joint account is not a testamentary disposition and rejected the argument that it was.

40     Having done that he went on to consider the question of trust and, on page 449, he referred to the rule stated by Cotton L.J. in Standing v. Bowring (1886) 31 Ch. D. 282 as already referred to above, and concluded that any presumption of a resulting trust under the rule has been rebutted by the fact as found by the trial Judge that the aunt had intended the nephew to take, beneficially, whatever balance at her death. In the instant

50     case it has been submitted that although there was no intention that Chow Yee Wah, the first respondent,

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was to take beneficially the presumption of a resulting trust has nonetheless been rebutted by the fact that the deceased intended his common law wife, Chan Yoke Ying, though not a surviving holder of the account, to take beneficially whatever balance in the joint account at his death. This point did not arise in Russell v. Scott (1936) 55 C.L.R.440. Nor did it arise in Standing v. Bowring (1886) 31 Ch. D. 282. The defence case, as I understand it, is that there is evidence of an express trust to rebut the presumption of a resulting trust. It thus becomes necessary to examine the evidence. The evidence of Kwan Mun Koh was that on July 11, 1967 he discussed with the deceased the proposal to open a joint account with Chow Yee Wah, the first respondent. The purpose of the account, he said, was to make provision for Chan Yoke Ying and the reason for it was that deceased was sick and was afraid that he might die. As a result of this Kwan Mun Koh told first respondent at a party what had been discussed and asked him to see the deceased. First respondent saw the deceased on July 13 who again discussed the said proposal. It is not clear how much of the money was to be given to Chan Yoke Ying and how or in what manner the joint account was to be operated during his life time or after his death. As pointed out by counsel for the appellant if deceased had intended Chan Yoke Ying to have all or part of the money in the bank there was no reason why he could not give her a cheque for it instead of opening an account. The deceased was intelligent enough to understand what would be the practical thing to do if in fact he knew that he was going to die and that it was necessary to make provision for Chan Yoke Ying. Even if it be true that he wanted to open a joint account as stated by defence witnesses it might well be because he had no reason to think that he was going to die but that the joint account would be a convenient arrangement for Chan Yoke Ying to get money for necessary expenses from first respondent instead of having to get the deceased who was sick to sign cheque or cheques for the purpose.

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In my respectful view there was nothing in the defence evidence which could point with reasonable certainty to the fact that deceased intended to create a trust or to make a voluntary settlement which is binding on him. See Milroy v.

Lord 45 E.R. Ch. Div. 1185 per Turner L.J. If I may say so even the learned trial Judge was not certain what the deceased's intention was when he said -

In the  
Federal Court  
of Malaysia

No.14

Judgment of  
20th January  
1975  
(continued)

"It is true that the gift was contingent in the sense that she" (Chan Yoke Ying) "would only be entitled to benefit on the deceased's death, and, that if the deceased should recover from his illness, the money would still be his."

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I think the rule is that for a valid trust to prevail there must be reasonable certainty as regards intention to create a trust. Not only that there must also be reasonable certainty as regards the property which is to be held in trust. In Underhill's Law of Trusts and Trustees, 12th Edition, it is stated on page 22 thus:

"However, intention to create a trust is not of itself sufficient (even where the most direct and imperative words of confidence are used), if either the property, or the persons to be benefited, or the way in which they are to be benefited be not indicated with reasonable certainty."

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See also Mussoorie Bank v. Raynor (1882) 7 App.Cas. at p.331. In view of the uncertainty of deceased's intention in this case I would conclude that there was no evidence of an express trust to rebut the presumption of a resulting trust as referred to in the rule stated by Cotton L.J. in Standing v. Bowring (1886) 31 Ch. D. 282 or stated by Starke J. in Russell v. Scott (1936) 55 C.L.R. 440.

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For the reasons above stated I would set aside the judgment of the trial Court. There will be judgment against both respondents in the sum of \$60,384.80 with costs. The appellant shall also have the costs of this appeal.

TAN SRI DATO' JUSTICE ALI BIN  
HASSAN (Ali bin Hassan)

40

Judge,  
Federal Court, Malaysia.

Kuala Lumpur,  
20th January, 1975

Gill, C.J. and Ong, F.J. concurred.



In the  
Federal Court  
of Malaysia

No.14

Judgment of  
20th January  
1975  
(continued)

Counsel -

Mr. R.R. Chelliah (with Mr. Joginder Singh and  
Mr. G. Sri Ram for appellant.

Solicitors: M/s Joginder Singh & Co.

Mr. M. Shankar for first respondent.

Solicitors: M/s Shearn Delamore & Co.

Mr. Chan Siew Yoon for second respondent.

Solicitors: M/s Shook Lin & Bok.

Salinan yang di-akui benar

Sgd. Illegible  
.....  
Setia-usaha Hakim,  
Kuala Lumpur.

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No.15

Order

20th January  
1975

No. 15

Order

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA;  
ALI, JUDGE, FEDERAL COURT, MALAYSIA;  
ONG HOCK SIM, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 20TH DAY OF JANUARY, 1975

O R D E R

20

THIS APPEAL coming on for hearing on the 24th  
day of April; 28th and 29th days of May; 24th, 25th,  
26th, 27th and 28th days of June, 1974 in the  
presence of Mr. R.R. Chelliah (Mr. Joginder Singh  
and Mr. G.Sri Ram with him) of Counsel for the  
Appellant and Mr. M. Shanker of Counsel for the  
1st Respondent and Mr. Chan Siew Yoon of Counsel  
for the 2nd Respondents AND UPON READING the  
Records of Appeal herein AND UPON HEARING the sub-  
mission by Counsel aforesaid IT WAS ORDERED that  
this Appeal do stand adjourned for judgement  
AND the same coming on for judgment this day in  
the presence of Mr. R.R. Chelliah (Mr. Joginder  
Singh and Mr. G. Sri Ram with him) of Counsel for  
the Appellant, Mr. Christopher Choo Yew Choong of  
Counsel for the 1st Respondent and Mr. C.V. Das  
of Counsel for the 2nd Respondents IT IS ORDERED

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10 that the Appeal be and is hereby allowed AND IT IS ORDERED that the judgment of the Honourable Mr. Justice Abdul Hamid given on the 26th day of November, 1973 be and is hereby set aside AND IT IS FURTHER ORDERED that the 1st and 2nd Respondents do pay to the Appellant the sum of \$60,384.80 (Ringgit sixty thousand three hundred and eighty four and Cents eighty only) AND IT IS FURTHER ORDERED that the costs of this Appeal and the costs in the Court below be taxed by the proper officer of the Court and be paid by the Respondents to the Appellant AND IT IS LASTLY ORDERED that the sum of \$500.00 (Ringgit Five Hundred Only) paid into Court by the Appellant as security for costs of this Appeal be refunded to the Appellant.

GIVEN under my hand and the seal of the Court this 20th day of January, 1975.

Sgd. E. E. SIM  
CHIEF REGISTRAR.

No. 16

20 Order granting Final Leave to Appeal to His Majesty the Yang Dipertuan Agung

CORAM: GILL, CHIEF JUSTICE, HIGH COURT, MALAYA;  
ALI, JUDGE, FEDERAL COURT, MALAYSIA;  
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,  
MALAYSIA.

IN OPEN COURT  
THIS 18TH DAY OF AUGUST, 1975  
O R D E R

30 UPON MOTION made unto the Court this day by Mr. Chan Siew Yoon of Counsel for the 2nd Respondent abovenamed and mentioning for Mr. M. Shanker of Counsel for the 1st Respondent abovenamed in the presence of Mr. Joginder Singh of Counsel for the Appellant abovenamed AND UPON READING the Notice of Motion dated the 24th day of July, 1975 and the Affidavits of Chow Yee Wah and Khaw Tee Joo both affirmed on the 23rd day of June, 1975 and filed in support of the said Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that Final Leave  
40 be and is hereby granted to the 1st and 2nd Respondents abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the Judgment of the Federal Court dated the 20th day of January, 1975

In the  
Federal Court  
of Malaysia

No.15

Order

20th January  
1975  
(continued)

No.16

Order  
granting  
Final Leave  
to Appeal  
to His  
Majesty the  
Yang  
Dipertuan  
Agung

18th August  
1975

In the  
Federal Court  
of Malaysia

—  
No.16

Order  
granting  
Final Leave  
to Appeal to  
His Majesty  
the Yang Di-  
pertuan Agung

18th August  
1975  
(continued)

AND IT IS FURTHER ORDERED that the costs of this  
application be costs in the cause.

GIVEN under my hand and the Seal of the  
Court this 18th day of August, 1975.

Sgd.            Illegible

DEPUTY REGISTRAR,  
FEDERAL COURT, MALAYSIA.

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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

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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)

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RECORD OF PROCEEDINGS

VOLUME I

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

JANSONS,  
6-7-8 Portman Street,  
Portman Square,  
London W1H 0BA.

Solicitors for the Appellants

Solicitors for the Respondent