*Privy Council Appeal No. 57 of 1932.*

**Shaik Sahied bin Abdullah Bajerai** - - - - - - *Appellant*

*v.*

**S. S. T. Sockalingam Chettiar** - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE STRAITS SETTLEMENTS (SETTLEMENT OF SINGAPORE).

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3RD FEBRUARY, 1933.

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*Present at the Hearing*:

LORD ATKIN.
LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.

[*Delivered by* LORD ATKIN.]

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This is an appeal from the Supreme Court of the Straits Settlements, where the Court of Appeal dismissed an appeal from the Acting Chief Justice, who gave judgment for the plaintiff. The action was brought by the plaintiff, a professional moneylender, against the defendant, a landowner, upon a promissory note payable on demand and a post-dated cheque given in respect of money-lending transactions. The only defence material to this appeal is that there was no memorandum in writing of the contract signed by the borrower in pursuance of Section 6 of the English Moneylenders Act. The question is whether the provisions of Section 6 apply to this transaction in Singapore. The suggestion is that the section is made applicable by Section 5 ~~(17) of the Civil Law Ordinance No. 111 of 1920 of the Straits Settlements.~~ That section provides: "In all questions or issues which arise or which have to be decided in the Colony with respect to the law of partnerships, corporations,

sub-section 1 of Ordinance 111 of 1926 (Revised Laws of the Straits Settlements).

banks and banking, principals and agents, carriers by land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the corresponding period if such question in issue had arisen or had to be decided in England unless in any case other provision is or shall be made by statute." The argument is that the question in this case is whether the defendant is liable on a negotiable instrument, that such question is one "with respect to" mercantile law, which includes the law of negotiable instruments, and that in applying English law to such a case in England the Courts would have had to apply the Moneylenders Act. The Courts in Singapore have rejected this contention, and their Lordships agree with this decision, but for reasons which do not altogether conform to those given in the Colony. It is to be noted that the section does not purport to apply in every mercantile transaction. It applies only where a question or issue has to be determined with respect to mercantile law. The general object no doubt is to secure uniformity of mercantile law in Singapore and the United Kingdom, though, of course, whatever the object, full effect must be given to the plain meaning of the words used. It is obvious that there are mercantile transactions in which no question with respect to mercantile law arises; just as there are non-mercantile transactions in which such a question does arise. On a claim arising out of a sale of goods, the only question may be whether the plaintiff ever entered into an alleged written contract. If the sole question is whether his signature is a forgery, no question as to mercantile law seems to arise; if it is said he had given express or implied authority to someone to bind him, a question "with respect to" the law of principal and agent or mercantile law generally may well arise. Similarly, an allegation that an assent to a mercantile contract was obtained by duress, or by fraud, would normally not be a question with respect to mercantile law. So if a question of insurable interest arose on a claim on a fire policy, the law as to what constituted an insurable interest would be determined by the law of England; but the application of the principles in Singapore might depend upon the law of landlord and tenant, bills of sale, or the administration of deceased persons' estates, none of which in themselves form part of the mercantile law. It might, on the other hand, depend upon questions relating to the law of contracts of sale or contracts of carriage by sea or land, which would bring into application the statute. Similarly, in an ordinary action of fraud, or in a criminal prosecution, in neither case arising out of a mercantile transaction, questions of property might arise which could only be determined by recourse to mercantile law. Now it seems beyond dispute that the English Moneylenders Acts, 1900 to 1927, form no part of the mercantile law. They contain saving clauses which make it plain that borrowing of money in the course of

ordinary commercial transactions is excluded from their scope. If such a case as this arose in England between a professional moneylender and a landowner it would not, their Lordships think, occur to anyone that an issue raised under any of the sections of the Moneylenders Acts related to mercantile law. Indeed, it seemed to be admitted in argument that such a question only arose where the suit was on a negotiable instrument. So that if the moneylender took a mortgage with a covenant or took a promissory note, the same defence that he was unregistered would arise " with respect to mercantile law " in the second case but not in the former. The contention is untenable.

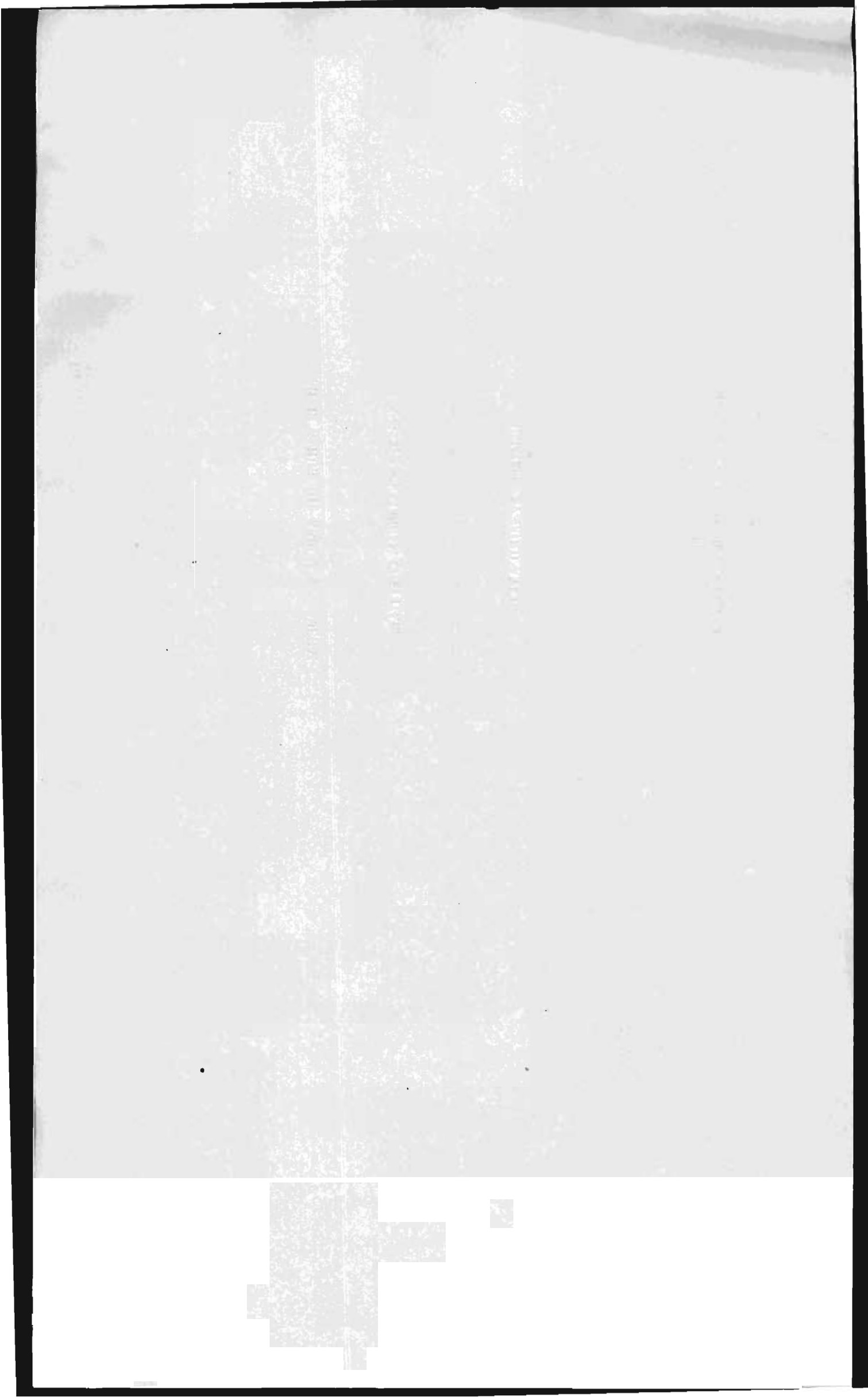
On this point the learned Judges with respect have followed too closely the decision of this Board in *Seng Djit Hin* v. *Nagurdas Purshotundas & Co.* [1923], A.C. 444. In that case the claim arose on a contract for the sale of goods, and the question to be decided was whether the seller of goods c.i.f. was excused from delivery because his goods had been requisitioned by the Government. He pleaded the provisions of the Defence of the Realm regulations. The Board decided that such a question arose with respect to mercantile law. Temporarily they formed part of the provisions of the law relating to the sale of goods, clearly a branch of mercantile law. Their Lordships find nothing in the case which appears inconsistent with what has been said above. The defendant's plea therefore fails *in limine* on the ground that no question had to be decided with respect to mercantile law.

But their Lordships think it desirable to add a few words as to the reason which prevailed with all the learned Judges below, that in any event the Moneylenders Acts were not such legislation as it was ever contemplated should be extended by the ordinance to the Colony. As the Acting Chief Justice said, " They are a very special municipal series of legislative provisions creating procedure and machinery and setting up restrictions and sanctions which are quite impossible of application in our case." No doubt all legislation is in one sense municipal ; but for the purposes of the ordinance there seems to be a clear distinction between legislation which has the effect of modifying the general principles of any branch of mercantile law, and legislation which is intended to regulate the exercise in England only of particular activities by providing for registration, licences, procedure, and penalties which can only be carried into effect in England itself. Such law is not capable of extension to the Colony, and in their Lordships' opinion for that reason is not covered by the ordinance. It is unnecessary to rehearse the various provisions in the Moneylenders Acts which indicate that the Acts are intended solely for the English regulation of the activities of moneylenders in England, and would be unsuitable and impossible of performance in the East. In no event could they be included in the law to be administered in pursuance of the ordinance.

Counsel for the appellant preferred to meet this construction of the statute on narrower ground. The Acts, he said, are to be

applied in Singapore ; but *lex non cogit ad impossibilia,* and if some of the provisions are found there to be impossible of performance, *e.g.*, registration, then there will be no duty to obey them. But such parts as are possible, as the provisions in Section 6, are incorporated into the law of Singapore. The whole Act is shipped to Singapore, but parts cannot be landed and are dumped in the harbour ; the rest is imported. Their Lordships cannot accept this contention. The Act must be judged as a whole, and if it is found to be restricted to regulation of activities in England and not to be capable of general application, it is not within the scope of the ordinance at all. To take one or two sections of such an Act, divorced from their context, is to apply a new law, which is not the law of England, and so abstracted might never have been introduced into England at all.

The learned Judges, in arriving at their conclusions on this point, appear to have fortified their opinion by reference to the words used by Lord Dunedin in giving the judgment of the Board in the case above cited, that the Defence of the Realm Act and the Courts Emergency Powers Act could be pleaded if the facts allowed of their application. In that case the attention of the Judicial Committee was not directed to the question raised here, which did not arise. The words used only mean if the facts in the particular case make the particular provision applicable ; in that case if the performance was in fact prevented by requisition. In the present case, therefore, their Lordships are unable to rely upon a previous decision of their own in support of the view that they have expressed. But though unfortified by authority, they entertain no doubt that the result is as stated. They will therefore humbly advise His Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.



**In the Privy Council.**

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SHAIK SAHIED BIN ABDULLAH BAJERAI

*v.*

S. S. T. SOCKALINGAM CHETTIAR.

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DELIVERED BY LORD ATKIN.

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