

Judgment / O, 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 6 of 1969

ON APPEAL FROM
THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(Appellate Jurisdiction)

B E T W E E N :

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP CO. LTD. Appellants
(Defendants)

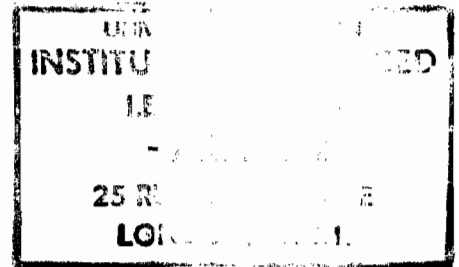
- and -

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING
CORPORATION LIMITED Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

VOLUME I

(Pages 1 to 402)



LINKLATERS & PAINES,
Barrington House,
59-67 Gresham Street,
London, E.C.4.
Solicitors for the
Appellants.

COWARD, CHANCE & CO.,
St. Swithins' House,
Walbrook,
London, E.C.4.
Solicitors for the
Respondents.

10, 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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(Defendants)

- and -

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING
CORPORATION LIMITED Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 6 of 1969

ON APPEAL FROM
THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(Appellate Jurisdiction)

B E T W E E N :

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP CO. LTD. Appellants
(Defendants)

10

- and -

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING
CORPORATION LIMITED Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS dated
30th September 1961

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.1

20 Suit No. 1284 of 1961

Writ of
Summons

BETWEEN

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Limited
... Plaintiffs

30th September
1961

And

1. Chan Cheng Kum
2. Hua Siang Steamship
Company Limited
... Defendants

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ELIZABETH II, BY THE GRACE OF GOD OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND OF
HER OTHER REALMS AND TERRITORIES QUEEN HEAD OF THE
COMMONWEALTH, DEFENDER OF THE FAITH

In the High Court of the State of Singapore, Island of Singapore

TO: 1. Chan Cheng Kum 16 Winchester House Singapore. 2. Hua Siang Steamship Company Limited, 16 Winchester House, Singapore.

No.1 Writ of Summons 30th September 1961 (continued)

WE COMMAND YOU, that within Eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a Cause at the Suit of Wah Tat Bank Limited a company incorporated in Sarawak with limited liability and having its registered office in Sibu, Sarawak and Oversea-Chinese Banking Corporation Limited a company incorporated in Singapore with limited liability and having its registered office at China Building, Chulia Street, Singapore. 10

AND take notice that in default of your so doing, the 1st & 2nd Plaintiffs may proceed therein to judgment and execution.

WITNESS, The Honourable Sir Alan Edward Percival Rose, K.C.M.G. Chief Justice of the State of Singapore, the 30th day of September, 1961. 20

(Sd.) Allen & Gledhill

Solicitors for the 1st and 2nd Plaintiffs

The First and/or Second Plaintiffs claim delivery up of rubber and/or pepper delivered to the First Defendant and/or Second Defendant for carriage on board the First Defendant's Motor Vessels "Hua Heng" and "Hua Li" in May and June 1961 or the value thereof, and damages for breach of contract and/or duty and/or for wrongful detention and/or conversion in connection therewith. 30

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 such 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 solicitor at the Registry of the High Court at Singapore. 40

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 \$5.50 with an addressed envelope to the Registrar of the High Court at Singapore.

In the High Court of the State of Singapore, Island of Singapore

We accept service on behalf of the second defendant in this suit and we undertake to enter appearance in due course.

(Sd.) Laycock & Ong

Solicitors for the 2nd Defendant.

Dated 2nd October 1961.

No.1

Writ of Summons

30th September 1961

(continued)

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No. 2

No.2

FURTHER FURTHER AMENDED STATEMENT OF CLAIM
dated December 1963

Further Further Amended Statement of Claim

Suit No: 1284 of 1961

Between

December 1963

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited
... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited
... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon
... Third Parties

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1. The First Plaintiffs are and were at all material times a bank having its head office at Sibu Sarawak and incorporated in accordance with the laws of Sarawak.

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.2

Further Fur-
ther Amended
Statement
of Claim

December 1963
(continued)

2. The Second Plaintiffs were at all material times acting as the agents of the First Plaintiffs.

3. The First Defendant is and was at all material times the owner of the motor vessels "Hua Heng" and "Hua Li".

4. Further or alternatively the Second Defendants were at all material times the charterers of the "Hua Heng" and "Hua Li" or alternatively persons who had booked space therein.

5. From time to time in the course of business and at the request of Tiang Seng Chan (Singapore) Limited (hereinafter called the Shippers) it was verbally agreed between the First Plaintiffs and the Shippers that the First Plaintiffs would and the First Plaintiffs did finance shipments of the goods of the Shippers for carriage to Singapore by negotiating against the Shippers' Bills of Exchange and/or notes in favour of the Second Plaintiffs and against "Mate's Receipts" on the condition that the goods were consigned to the Second Plaintiffs as agents for the First Plaintiffs; The said goods were thereupon to be pledged or treated as having been pledged to the First Plaintiffs as security for the said financing by the First Plaintiffs of such shipments.

6. In pursuance of such an agreement the Shippers delivered to the First Defendants or alternatively the Second Defendants at Sibu 20 consignments of rubber and/or pepper for carriage on board the "Hua Heng" and the "Hua Li" to Singapore and delivery thereto to the Second Plaintiffs or their order, and there were issued by or on behalf of the First Defendant or alternatively the Second Defendants 20 receipts entitled "Mate's Receipt" which acknowledged receipt of the said consignments in apparent good order and condition and named the Second Plaintiffs as consignees. The Plaintiffs will refer to the said receipts as may be necessary for their full terms particulars and effects. Particulars of the said consignments and receipts are set out in the Schedule delivered herewith.

7. In further pursuance of the said agreement the First Plaintiffs paid to the Shippers various sums and the Shippers gave to the First Plaintiffs bills

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of exchange or Notes drawn on the head office in Singapore of the Shippers and payable to the order of the Second Plaintiffs and the Shippers delivered the said receipts to the First Plaintiffs. Particulars of the said payments and bills of exchange or notes are set out in the said Schedule.

In the High Court of the State of Singapore, Island of Singapore

No.2

8. The First Plaintiffs forwarded the said bills of exchange or notes, together with the said receipts, to the Second Plaintiffs for collection. The Shippers and their head office at Singapore have failed and/or refused to honour and/or accept any of the said bills of exchange or notes and have failed and/or refused to pay the sums due thereunder or any sums.

Further Further Amended Statement of Claim

December 1963 (continued)

8A. It is a custom of merchants and ships dealing and plying between Sarawak Ports and Singapore that goods are accepted for shipment without the issue of a bill of lading but against Mate's Receipt only which is regarded as a document of title and goods are only delivered against its production. All the "Mate's Receipts" issued by the First and/or Second Defendants to the Shippers were in fact issued by the First and/or Second Defendants having regard to and in cognisance of the custom above stated and without any bills of lading being requested or issued. Alternatively it was at all material times a custom of merchants and ships dealing and plying between Sarawak Ports and Singapore that Mate's Receipts were treated as documents of title and goods only delivered against their production to or to the order of the consignee named in such Mate's Receipts unless (in exceptional cases) bills of lading were requested and issued, in which event it was a custom as aforesaid only to issue such bills of lading against production and surrender of the corresponding Mate's Receipts.

9. In the premises the First and/or Second Plaintiffs are and were at all material times the owners and/or pledges and/or persons entitled to the immediate possession of the said consignments.

10. In breach of their duty as bailees and/or carriers the First and/or Second Defendants have failed and refused to deliver the said consignments to the First and/or Second Plaintiffs and have delivered the said consignments to or cause or permitted the same to come into the possession of

In the High Court of the State of Singapore, Island of Singapore

No.2

Further Further Amended Statement of Claim

December 1963 (continued)

some person or persons, whom neither of the Plaintiffs are at present able to identify, without the authority of the Plaintiffs or either of them and without the production by such person or persons of the said receipts or alternatively have appropriated the said consignments to their own use.

11. Further or alternatively by letters dated 15th September 1961 the Second Plaintiffs on behalf of the First Plaintiffs and/or on their own behalf demanded from the First Defendant and the Second Defendants respectively delivery up of the said consignments but the First and/or Second Defendants have wrongfully refused and/or failed to deliver up the said consignments or any of them and have wrongfully detained the same. 10

12. By letter dated the 22nd day of September 1961 written on behalf of both Defendants by their Solicitors Messrs. Laycock & Ong it is alleged that the first Defendant is the owner of the said Motor Vessels "Hua Heng" and "Hua Li"; that he is in no way concerned with their operation and that it is the Second Defendants who operate the said Motor Vessels. It is further alleged that the goods were delivered strictly in accordance with the instructions of the Consignors and that the said goods are no longer in the possession of the Second Defendants. 20

13. Further or alternatively the First and/or Second Defendants by dealing with the said consignments and acting in relation thereto in the manner alleged in paragraph 10 hereof have wrongfully converted the same. Further or alternatively the First and Second Plaintiffs will rely upon the detention alleged in paragraph 11 hereof as evidence of such conversion. 30

14. By reason of the matters alleged in paragraphs 10 to 13 hereof the First and/or Second Plaintiffs have suffered damage in the sum of ~~M\$595,000/-~~ M\$623,186.66 being the value of the said consignments as set out in the said Schedule. 40

And the First and/or Second Plaintiffs claim:

- (1) Delivery up of the said consignments or ~~M\$595,000/-~~ M\$623,186.66 their value;
- (2) Damages;

(3) Interest.

Dated and Re-delivered this day of
December 1963.

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.2

Solicitors for the 1st &
2nd Plaintiffs

Further Fur-
ther Amended
Statement
of Claim

December 1963
(continued)

No. 3

No.3

THE SCHEDULE REFERRED TO IN PARAGRAPHS 6 AND 7
OF THE FURTHER FURTHER AMENDED STATEMENT OF
CLAIM dated 15th October 1963

Schedule
referred to
in paragraphs
6 and 7 of
the Further
Further
Amended
Statement
of Claim

15th October
1963.

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<u>Date</u>	<u>Vessel</u>	<u>Voyage</u>	<u>Mate's Receipt Number</u>	<u>Description of Goods</u>
15.5.61	"Hua Li"	9/61	03782	250 bundles Rubber Dry R.S.S. No. 3 350 piculs
15.6.61	"Hua Li"	9/61	03781	100 bundles Milled Bark Scrap 70 - piculs
16.5.61	"Hua Li"	9/61	03786	190 bundles Rubber Dry RSS-3. 266 piculs.
16.5.61	"Hua Li"	9/61	03787	(6 bundles White Pepper 8.40 piculs (9 bundles Black Pepper 10.80 piculs
17.5.61	"Hua Li"	9/61	03791	190 bundles Rubber Dry R.S.S. No. 3 266 piculs

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In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 3

Schedule
referred to
in paragraphs
6 and 7 of
the Further
Further
Amended
Statement
of Claim

15th October
1963
(continued)

<u>Date</u>	<u>Vessel</u>	<u>Voyage</u>	<u>Mate's Receipt Number</u>	<u>Description of Goods</u>	
17.5.61	"Hua Li"	9/61	03795	(190 bundles Rubber (Dry RSS-3. (266 piculs (60 bundles Rubber (Dry RSS-3. (84 piculs	
19.5.61	"Hua Li"	9/61	0101	250 bundles Rubber Dry R.S.S. No. 3. 350 piculs	10
6.6.61	"Hua Heng"	10/61	03879	270 bundles Rubber Dry R.S.S. No. 3 378 piculs	
7.6.61	"Hua Heng"	10/61	03881	400 bundles Rubber Dry R.S.S. No. 3. 560 piculs	
12.6.61	"Hua Heng"	10/61	03893	500 bundles Rubber Dry R.S.S. No. 3. 700 piculs	20
12.6.61	"Hua Heng"	10/61	03894	370 bundles Rubber Dry R.S.S. No. 3. 518 piculs	
12.6.61	"Hua Heng"	10/61	03887	70 bundles Rubber Dry R.S.S. No. 3. 98 piculs	
13.6.61	"Hua Heng"	10/61	2602	(200 bundles Rubber (Dry R.S.S. No. 3. (280 piculs (110 bundles Milled (Bark Scrap 77 (piculs	30
20.6.61	"Hua Li"	11/61	0133	100 bundles Rubber Dry R.S.S. No. 3. 140 piculs	
20.6.61	"Hua Li"	11/61	0134	100 bundles Rubber Dry R.S.S. No. 3. 140 piculs	

<u>Date</u>	<u>Vessel</u>	<u>Voyage</u>	<u>Mate's Receipt Number</u>	<u>Description of Goods</u>	In the High Court of the State of Singapore, Island of Singapore No. 3
20.6.61	"Hua Li"	11/61	0137	140 bundles Rubber Dry R.S.S. No. 3. 196 piculs	Schedule referred to in paragraphs 6 and 7 of the Further Further Amended Statement of Claim 15th October 1963 (continued)
20.6.61	"Hua Li"	11/61	0138	120 bundles Rubber Dry R.S.S. No. 3. 168 piculs	
10 22.6.61	"Hua Heng"	11/61	2607	100 bundles Milled Bark Scrap 70 piculs	
28.6.61	"Hua Heng"	11/61	2619	160 bundles Rubber Dry R.S.S. No. 3. 224 piculs	
29.6.61	"Hua Heng"	11/61	2629	280 bundles Rubber Dry R.S.S. No. 3. 392 piculs	

PARTICULARS OF PAYMENTS AND BILLS OF
EXCHANGE OR NOTES

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<u>Bill of Exchange/Note No.</u>	<u>Date</u>	<u>Payment</u>
3758	19.5.61	\$20,000.00
3768	19.5.61	\$40,000.00
3769	19.5.61	\$40,000.00
3770	19.5.61	\$40,000.00
3771	19.5.61	\$40,000.00
3777	19.5.61	\$10,000.00
3814	13.6.61	\$40,000.00
3815	13.6.61	\$60,000.00
3816	13.6.61	\$35,000.00
3817	13.6.61	\$40,000.00
3818	13.6.61	\$25,000.00
3819	13.6.61	\$30,000.00
3820	13.6.61	\$30,000.00
3821	13.6.61	\$10,000.00
3833	20.6.61	\$20,000.00
3834	20.6.61	\$20,000.00
3835	20.6.61	\$15,000.00

C/F \$515,000.00

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 3

Schedule
referred to
in paragraphs
6 and 7 of
the Further
Further
Amended
Statement
of Claim

15th October
1963
(continued)

<u>Bill of Exchange/Note No.</u>	<u>Date</u>	<u>Payment</u>
	B/F	₹515,000.00
3836	29.6.61	₹15,000.00
3837	29.6.61	₹15,000.00
3838	29.6.61	₹20,000.00
3839	29.6.61	₹10,000.00
3853	29.6.61	₹10,000.00
3854	29.6.61	₹ 5,000.00
3856	29.6.61	₹ 5,000.00
Total		₹595,000.00

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To: The First Defendant and/or his Solicitors
Messrs. Laycock & Ong,
Singapore.

To: The Second Defendants and/or their Solicitors
Messrs. Laycock & Ong,
Singapore

To: The Third Parties and their Solicitors,
Messrs. Boswell, Hsieh & Lim,
Singapore.

Further Further Amended as underlined in purple
ink pursuant to Order of Court dated the
day of December 1963.

20

Dated this day of December 1963.

Dy. Registrar.

Further Amended as underlined in green ink pursuant
to Order of Court dated the 11th day of October 1963.

Dated this 15th day of October 1963.

(Sd.) T.C. Cheng

Dy. Registrar.

Amended as underlined in red ink pursuant to Order
of Court dated the 11th day of May 1962.

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Dated this 19th day of May 1963.

(Sd.) T.C. Cheng

Dy. Registrar.

No. 4

FURTHER FURTHER AMENDED DEFENCE
dated 4th November 1963

In the High
Court of the
State of
Singapore,
Island of
Singapore

Suit No. 1284)
of 1961.)

Between

No.4

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Limited
- ... Plaintiffs

Further Fur-
ther Amended
Defence

And

4th November
1963

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Company Limited
- ... Defendants

And

- 1. Tiang Seng Chan (Singapore) Limited
- 2. Lee Chin Tian
- 3. Lee Teow Keng
- 4. Lee Peng Koon
- ... Third Parties

1. The Defendants admit Paragraph 1, 3, 4 and 12.

2. The Defendants have no knowledge of the matters alleged in Paragraph 2, 7, and 8 of the Statement of Claim and put the Plaintiffs to proof thereof.

3. As to Paragraph 6 of the Statement of Claim the Defendants admit that Tiang Seng Chan (Singapore) Limited (hereinafter called "the Shippers") delivered to the Second Defendant at Sibu 20 consignments of rubber and/or pepper for carriage on board the "Hua Heng" and the "Hua Li" to Singapore. The Defendants have not nor ever have had knowledge of the alleged agreement referred to in the first line of Paragraph 6 of the Statement of Claim and do not admit that the deliveries of the said 20 consignments were in pursuance of any such agreement. The Defendants admit that the Second Defendant issued 20 receipts entitled "Mate's Receipts" which acknowledged receipt of the said consignments in apparent good order and condition and named the Second Plaintiffs

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In the High
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No.4

Further Fur-
ther Amended
Defence

4th November
1963
(continued)

as consignees. All the said "Mate's Receipts" were incapable of negotiation and bore a printed notice that they were not negotiable. ~~The Second Defendant are common carriers and all the Mate's Receipts referred to in the Statement of Claim were issued whilst the Second Defendants were acting as common carriers. All the consignments and shipments referred to in the Statement of Claim were received by the Second Defendants whilst acting as common carriers.~~

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The goods the subject of Mate's Receipts numbered 03781, 03786 and 03795, as set out in the Schedule to the Amended Statement of Claim were not for delivery to the Second Plaintiff only but were for delivery to "Oversea-Chinese Banking Corporation Limited/Tiang Seng Chan (S) Limited."

3A. The person or persons on board the vessels "Hua Li" and "Hua Heng" who actually issued the Mate's Receipts referred to in the Amended Statement of Claim and the person or persons who delivered the goods referred to in the said Mate's Receipts at the Port of Singapore were (a) employed by the Second Defendant and not by the first Defendant and (b) had no authority to act on behalf of the First Defendant or to bind the First Defendant in any way.

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4. The Defendants have no knowledge of the matters alleged in paragraph 5 of the Amended Statement of Claim and do not admit the same and put the Plaintiffs to proof thereof.

5. The Defendants deny that there is or was at any material time such a custom as is alleged in Paragraph 8A of the Amended Statement of Claim. Even if the alleged custom exists or existed (which is denied) it was expressly excluded from the contract of carriage the subject of this action by reason of the fact that each and every Mate's Receipt relied on by the Plaintiffs bore on the face of it and them the words "Not Negotiable". The Defendants deny that all or any of the said Mate's Receipts were issued having regard to or in cognisance of the alleged (but denied) custom. A Mate's Receipt is never regarded as a document of title either by custom or otherwise. Even if such custom exists (which is again denied) it has never been applicable to the vessels of the Second Defendant plying between Sarawak Ports and Singapore.

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The Defendants at the trial of this action will object that evidence of the alleged custom is inadmissible. ~~Alternatively, if such alleged custom exists or existed at any relevant time (which is denied) then such custom is or was unreasonable, uncertain and contrary to law.~~

In the High Court of the State of Singapore, Island of Singapore

No.4

10 6. All the said 20 consignments were received by the Second Defendant subject to the right of the shipper to alter its directions as to delivery of the said consignments. On each and every occasion that the 20 consignments were shipped the shippers did in fact alter their directions as to delivery. The shippers in respect of each of the twenty consignments directed the Second Defendants to deliver the goods comprised therein to the shippers themselves at the Port of Singapore and the Second Defendants duly complied with the said directions.

Further Further Amended Defence

4th November 1963
(continued)

20 6A. Further or alternatively, on divers occasions during a period of several years prior to the shipment of the said consignments the first and/or second Defendants had carried goods by sea from Sibü to Singapore, which goods were shipped by the Shippers and in respect whereof Mate's Receipt in the form of the Mate's Receipts hereinbefore mentioned were issued to the Shippers. The said Mate's Receipts recorded, in particular, that such goods were consigned to the second and/or first Plaintiffs. On arrival at Singapore the said goods were invariably delivered to the Shippers without prior production by the Shippers or anyone else of the Mate's Receipts relating thereto. The first and second Plaintiffs, while well knowing at all material times of this course of dealing, at no time complained to the first or second Defendants, and at no time laid claim to the goods so delivered. In the premises the Plaintiffs impliedly authorised the Defendants to deliver goods shipped as aforesaid to the Shippers; alternatively in the premises the Plaintiffs held out the Shippers as their authorised agents to take delivery and the Defendants acted upon such holding out by delivering to the Shippers as set out in paragraph 6 hereof. In the premises the Defendants are under no liability to the Plaintiffs as alleged or at all, and the Plaintiffs are estopped from denying that the Shippers were authorised by them to take delivery of the consignments referred to in paragraph 6 hereof.

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In the High
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Island of
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Further Fur-
ther Amended
Defence

4th November
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(continued)

P A R T I C U L A R S

Particulars are in the Schedule annexed hereto.

7. The Second Defendants did not at any material time have any knowledge express or implied of any interest by the Plaintiffs or either of them in the said goods.

8. The Defendants deny that the First and/or the Second Plaintiffs were at any material time the owners and/or pledgees and/or persons entitled to the immediate possession of the said consignments. 10

9. The Second Defendant was in contractual relationship with the shippers and such contract was not assigned and was not capable of assignment. The Defendants owed no duty to any party other than the shippers.

10. The Defendants deny that they have committed any breach of duty either as carriers or bailees. They admit that the Second Defendants have refused to deliver the said consignments to the First or Second Plaintiffs and say that such refusal was in answer to a demand made long after the goods in such consignments had arrived at the Port of Singapore. No stop notice was ever received from the Plaintiffs or either of them. The Defendants say that the Second Defendants deliver the said consignments to the shippers in compliance with directions to that effect received from the shippers. Further or in the alternative the goods referred to in the three Mate's Receipts which named the consignees as "Oversea-Chinese Banking Corporation Limited/Tiang Seng Chan (S) Limited" were delivered to the consignees, namely, to Tiang Seng Chan (S) Limited. 20 30

11. The Defendants admit the receipt of the letters referred to in paragraph 11 of the Statement of Claim and admit that they have not delivered the said 20 consignments to the Plaintiffs but they deny they have wrongfully refused or failed to make such delivery or that they have wrongfully detained the said consignments. 40

12. The Defendants deny that they or either of them have wrongfully converted the said consignments

or that they or either of them have detained the said consignments.

13. The Defendants deny that they or either of them are responsible for the damage which the Plaintiffs allege they have suffered. The Defendants do not admit that the Plaintiffs or either of them have in fact suffered the damage alleged in the Statement of Claim. The Defendants deny that the value of the said consignments was the sum of \$595,000/-. The Defendants do not admit the descriptions of the goods as set out in the Schedule to the Statement of Claim are correct descriptions. The Defendants deny that the Plaintiffs are entitled to the relief claimed in the Statement of Claim or at all.

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14. Save as is herein expressly admitted or denied the Defendants deny each and every the allegations contained in the statement of Claim as though the same had been set out in detail and specifically denied.

Dated and re-delivered this 4th day of November 1963.

(Sd.) Laycock & Ong.

Solicitors for the Defendants

FURTHER FURTHER AMENDED as underlined in blue ink pursuant to Order of Court dated the 11th day of October 1953.

Dated this 4th day of November 1963.

(Sd.) T.C. Cheng

Dy. Registrar.

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In the High Court of the State of Singapore, Island of Singapore

No.4

Further Further Amended Defence

4th November 1963
(continued)

No. 5

In the High
Court of the
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PARTICULARS DELIVERED UNDER PARAGRAPH 6A OF THE FURTHER
FURTHER AMENDED DEFENCE (Undated)

No.5
Particulars
delivered
under para-
graph 6A of
the Further
Further
Amended
Defence
(Undated)

<u>Vessel</u>	<u>Description of Goods</u>	<u>Shipper</u>	<u>Consignee</u>	<u>Date of Shipment</u>	<u>Goods delivered to</u>	<u>Mate's Receipt Endorsed By</u>
M.V. "Hua Heng"	300 bundles Smoked Rubber RSS3	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	12.1.1959	Tiang Seng Chan (S) Ltd.	Oversea- Chinese Bank
"	300 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	100 bundles Smoked Rubber RSS3	"	"	"	"	"
"	50 Bags Black Pepper	"	"	"	"	"
"	130 bundles Smoked Rubber RSS3	"	"	5.2.1959	"	"
"	100 bundles Smoked Rubber RSS3	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	280 bundles Smoked Rubber RSS3	"	"	"	"	"

<u>Vessel</u>	<u>Description of Goods</u>	<u>Shipper</u>	<u>Consignee</u>	<u>Date of Shipment</u>	<u>Goods delivered to</u>	<u>Mate's Receipt Endorsed by</u>
M.V. "Hua Heng"	100 bundles Smoked Rubber RSS3	Tiang Seng Chan (S) Ltd.	O.C.B. N/O:- Tiang Seng Chan (S) Ltd.	23.2.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	150 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	11.3.1959	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	50 bundles Smoked Rubber RSS3	"	"	"	"	"
"	250 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	150 bundles Smoked Rubber RSS3	"	"	"	"	"
"	70 bundles Milled Bark Scrap	"	"	"	"	"

In the High Court of the State of Singapore, Island of Singapore

No.5

Particulars delivered under paragraph 6A of the Further Amended Defence

(Undated)
(continued)

In the High Court of the State of Singapore, Island of Singapore

No.5

Particulars delivered under paragraph 6A of the Further Amended Defence

(Undated)
(continued)

<u>Vessel</u>	<u>Description of Goods</u>	<u>Shipper</u>	<u>Consignee</u>	<u>Date of Shipment</u>	<u>Goods delivered to</u>	<u>Mate's Receipt Endorsed by</u>
M.V. "Hua Heng"	300 bundles Milled Bark Scrap	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	26.3.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	60 bundles Smoked Rubber RSS3	"	"	"	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	50 bundles Smoked Rubber RSS3	"	"	"	"	"
"	240 bundles Smoked Rubber RSS3	"	"	24.5.1959	"	"
"	200 bundles Milled Bark Scrap	"	"	"	"	"
"	270 bundles Smoked Rubber RSS3	"	"	11.6.1959	"	"
"	150 bundles Milled Bark Scrap	"	"	"	"	"

<u>Vessel</u>	<u>Description of Goods</u>	<u>Shipper</u>	<u>Consignee</u>	<u>Date of Shipment</u>	<u>Goods delivered to</u>	<u>Mate's Receipt Endorsed by</u>
M.V. "Hua Heng"	400 bundles Smoked Rubber RSS3	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	11.6.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	300 bundles R.S.S. No. 3	"	"	3.6.1959	"	"
"	450 bundles Smoked Rubber RSS3	"	"	"	"	"
"	500 bundles Milled Bark Scrap	"	"	"	"	"
"	500 bundles Milled Bark Scrap	"	"	18.7.1959	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	345 bundles Smoked Rubber	"	"	"	"	"
"	300 bundles Milled Bark Scrap	"	"	7.8.1959	"	"
"	150 bundles Smoked Rubber RSS3	"	"	"	"	"

In the High Court of the State of Singapore, Island of Singapore

No.5

Particulars delivered under paragraph 6A of the Further Amended Defence

(Undated)
(continued)

In the High Court of the State of Singapore, Island of Singapore

No.5

Particulars delivered under paragraph 6A of the Further Amended Defence

(Undated)
(continued)

<u>Vessel</u>	<u>Description of Goods</u>	<u>Shipper</u>	<u>Consignee</u>	<u>Date of Shipment</u>	<u>Goods delivered to</u>	<u>Mate's Receipt Endorsed by</u>
M.V. "Hua Heng"	100 bundles Smoked Rubber RSS3	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N:- Tiang Seng Chan (S) Ltd.	7.8.1959	Tiang Seng Chan (S) Ltd.	Oversea-Chinese Bank
"	300 bundles Milled Bark Scrap	"	"	"	"	"
"	200 bundles Smoked Rubber RSS3	"	"	"	"	"
"	300 bundles Milled Bark Scrap	"	"	"	"	"
"	220 bundles Smoked Rubber RSS3	"	"	"	"	"
"	120 bundles Milled Bark Scrap	"	Hongkong & Shanghai Banking Corporation O/N: Tiang Seng Chan (S) Ltd.	20.11.1959	"	Tiang Seng Chan (S) Ltd.
"	120 bundles Milled Bark Scrap	"	"	9.12.1959	"	"

<u>Vessel</u>	<u>Description of Goods</u>	<u>Shipper</u>	<u>Consignee</u>	<u>Date of Shipment</u>	<u>Goods delivered to</u>	<u>Mate's Receipt Endorsed by</u>
M.V. "Hua Heng"	500 bundles Milled Bark Scrap	Tiang Seng Chan (S) Ltd.	O.C.B.C. O/N: Tiang Seng Chan (S) Ltd.	13.1.1960	Tiang Seng Chan (S) Ltd.	Tiang Seng Chan (S) Ltd.
"	154 bundles Milled Bark Scrap	"	"	6.9.1960	"	"
"	200 bundles Milled Bark Scrap	"	"	29.1.1960	"	"
"	120 bundles Milled Bark Scrap	"	"	6.1.1961	"	"
"	200 bundles R.S.S. No. 3	"	"	26.3.1961	"	"
"	200 bundles R.S.S. No. 3	"	"	8.4.1961	"	"
"	200 bundles Milled Bark Scrap	"	"	24.4.1961	"	"
"	200 bundles Milled Bark Scrap	"	"	13.6.1961	"	"

In the High
Court of the
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No.5

Particulars
delivered
under para-
graph 6A of
the Further
Further
Amended
Defence

(Undated)
(continued)

In the High Court of the State of Singapore, Island of Singapore

No. 6

FURTHER FURTHER AMENDED REPLY dated 3rd April 1964

Suit No. 1284 of 1961

Between

No.6

Further Further Amended Reply

3rd April 1964.

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Limited
- ... Plaintiffs

And

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- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Company Limited
- ... Defendants

And

- 1. Tiang Seng Chan (Singapore) Limited
- 2. Lee Chin Tian
- 3. Lee Teow Keng
- 4. Lee Peng Koon
- ... Third Parties

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1. The Plaintiffs join issue with the Defendants on their Defence save in so far as the same consists of admissions.

2. The Defendants are estopped from saying that they have no knowledge of the matters alleged in paragraphs 5, 7 and 8 of the Amended Statement of Claim and from denying the Plaintiffs' right to have the goods delivered to them or to their order by reason of the following facts.

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Particulars of Conduct raising Estoppel

The 1st and/or 2nd Defendants issued the said "Mate's Receipts" stating that the goods were consigned to the 2nd Plaintiffs and/or to their order thus representing that the goods thereby covered were consigned and deliverable only to the 2nd Plaintiffs and/or to their order and/or only against the delivery up of the said Mate's Receipts". The 1st and/or 2nd

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Defendants made this representation knowing that both Plaintiffs were banks and that money would or might be advanced or allowed to remain outstanding on the face faith of this representation and in reliance upon the possession of the said "Mate's Receipts".

10 The 1st and/or 2nd Defendants intended that this representation should be relied upon and the 1st and 2nd Plaintiffs did in fact rely upon this representation and upon the possession of the said "Mate's Receipts" ~~and did in fact advance~~ by advancing money to the Shippers as set out in the schedule to the Further Amended Statement of Claim and/or allowing such money to remain outstanding.

In the High Court of the State of Singapore, Island of Singapore

No.6

Further
Further
Amended Reply
3rd April
1964
(continued)

20 3. Further and/or in the alternative when the "Mate's Receipts" were delivered to the 1st and 2nd Plaintiffs as the 1st and/or 2nd Defendants at all times realised would or might happen in the ordinary course of business of the Shippers and the consignees named therein the 1st and/or 2nd Defendants impliedly attorned to the 1st Plaintiffs as principals of the 2nd Plaintiffs and/or to the 2nd Plaintiffs in respect of the goods and in the premises held them as bailees for the 1st and/or 2nd Plaintiffs and not otherwise.

30 4. Further or alternatively the 1st and/or 2nd Defendants acted wrongfully in delivering the said goods to the Shippers (a) without production of the "Mate's Receipts" and (b) without the knowledge or consent of the 1st or 2nd Plaintiffs of whose interest in the goods the Defendants had notice by reason of the facts that:

(i) the "Mate's Receipts" expressly consigned the said goods to the 2nd Plaintiffs or to their order;

40 (ii) all or virtually all prior "Mate's Receipts" issued by the Defendants in this form and ultimately returned to the Defendants by the Shippers bore the stamp of the 1st Plaintiffs and the endorsement of the 2nd Plaintiffs;

(iii) the Defendants knew or ought to have known when delivering the said goods to the Shippers without the production of

In the High Court of the State of Singapore, Island of Singapore

No.6

Further
Further
Amended Reply
3rd April
1964
(continued)

the "Mate's Receipts" that the "Mate's Receipts" covering the said goods were held by the 1st or 2nd Plaintiffs; and
(iv) the Defendants knew at all material times that the 1st Plaintiffs were the Bankers of the Shippers in Sibiu.

In the premises the 1st and 2nd Defendants cannot rely upon the said wrongful delivery as a ground for failing to deliver the said goods to the 2nd Plaintiffs when the 2nd Plaintiffs demanded their delivery as set out in paragraph 11 of the Further Amended Statement of Claim.

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Dated this 3rd day of April, 1964.

(Sd.) Allen & Gledhill

Solicitors for the 1st and 2nd
Plaintiffs

To: the abovenamed Defendants and their Solicitors
Messrs. Laycock & Ong,
Singapore.

To: the abovenamed Third Parties and their
Solicitor,

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S.K. Lee, Esq.,
Singapore.

Amended as underlined in red ink pursuant to Order of Court dated the 11th day of October 1963.

Dated this 15th day of October 1963.

(Sd.) T.C. Cheng

Dy. Registrar.

No. 7

AMENDED STATEMENT OF CLAIM BY THE SECOND
DEFENDANT AGAINST THE THIRD PARTIES
dated December 1963

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.7

Suit No. 1284)
of 1961.)

Between

Amended State-
ment of Claim
by the Second
Defendant
against the
Third Parties

December
1963

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Limited
- ... Plaintiffs

And

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Company Limited
- ... Defendants

And

- 1. Tiang Seng Chan (Singapore) Limited
- 2. Lee Chin Tian
- 3. Lee Teow Keng
- 4. Lee Peng Koon
- ... Third Parties

1. The Plaintiffs' claim against the Second Defendant herein, as appears by the Statement of Claim, a copy whereof was delivered to the Third Parties on the 18th day of November, 1961, is for delivery up of 20 consignments of rubber and/or pepper or for \$595,000/- their alleged value, and for damages, and for interest.

2. The Second Defendant disputes the Plaintiffs' claim on the grounds appearing in its Defence, but in the event of its being held liable to the Plaintiffs it claims and is entitled to be indemnified by the Third Parties abovenamed against the Plaintiffs' claim of any liability it may be under to the Plaintiffs under the following circumstances.

3. The said 20 consignments were delivered by the Second Defendant to Tiang Seng Chan (Singapore) Limited the first named Third Party, without production of the relevant bills of lading or other

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.7

Amended State-
ment of Claim
by the Second
Defendant
against the
Third Parties

December
1963
(continued)

shipping documents in consideration of all the Third Parties herein executing four indemnities and guarantees dated respectively the 24th May, 20th June, 26th June and 4th July, 1961 in favour of the Second Defendant by which all the said Third Parties undertook and agreed to indemnify the Second Defendant fully against all consequences and/or liabilities of any kind whatsoever directly or indirectly arising from or relating to the said deliveries and immediately on demand against all payment made by the Second Defendant in respect of such consequences and/or liabilities including costs as between solicitor and client.

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3A. Further or alternatively, early in 1961 it was orally agreed at the offices in Singapore of the First Third Party between the First Defendant on behalf of himself and/or of the Second Defendant on the one hand, and the Third Parties on the other hand, that should the Second Defendants thereafter from time to time release to the Third Parties on their request goods to be carried by the Second Defendant's vessels, the Second Third and Fourth Third Parties respectively would in consideration thereof personally indemnify the Second Defendant on demand against all consequences and liabilities whatsoever which might arise therefrom, and would further on demand add their respective signatures to any formal indemnity signed on behalf of the First Third Party for the purpose of evidencing such agreement and/or of personally joining in such indemnity. In the premises upon delivery thereafter of the said twenty consignments against the said four formal indemnities the Second Third and Fourth Third Parties respectively became obliged to indemnify the First and/or Second Defendants in respect thereof; further in or about summer of 1961 the Second Third and Fourth Third Parties at the said offices of the Third Parties at the request of the First Defendant on behalf of himself and/or of the Second Defendants duly added their respective signatures to the said respective formal indemnities and thereby bound themselves personally to indemnify the Defendants as aforesaid in respect of the goods covered thereby.

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4. The Second Defendant claims against the Third Parties:-

- (a) A declaration that it is entitled to be indemnified as aforesaid.

- (b) Judgment for any amount that may be found due from the Second Defendant to the Plaintiffs or to either of them.
- (c) Judgment for the amount of any costs it may be adjudged to pay to the Plaintiffs or either of them, and for the amount of its own costs as between solicitor and client in any way arising out of the said claim by the Plaintiffs.

In the High Court of the State of Singapore, Island of Singapore

No.7

Amended Statement of Claim by the Second Defendant against the Third Parties

10 Dated and Re-delivered this day of December 1963.

Solicitors for the Second Defendant

December 1963 (continued)

No. 8

No.8

RE-AMENDED DEFENCE AND COUNTERCLAIM OF THE THIRD PARTIES dated 11th September 1963

Re-Amended Defence and Counterclaim of the Third Parties

Suit No. 1284)
of 1961.)

Between

11th September 1963

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- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Limited
- ... Plaintiffs

And

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Company Limited
- ... Defendants

And

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- 1. Tiang Seng Chan (Singapore) Limited
- 2. Lee Chin Tian
- 3. Lee Teow Keng
- 4. Lee Peng Koon
- ... Third Parties

1. As to paragraphs 1 and 2 of the Statement of Claim by the Second Defendants against the Third

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 8

Re-Amended
Defence and
Counterclaim
of the Third
Parties

11th
September
1963
(continued)

Parties, the Third Parties adopt the Defendants' Defence and will contend that the Plaintiffs' Statement of Claim discloses no cause of action in that by inspection of the Mate's Receipts therein referred the Plaintiffs are precluded from alleging that the Second Defendants as carriers had notice that the Third Party Company as consignee was not entitled to accept delivery in the ordinary course of business, and/or from alleging that the Mate's Receipts should be treated as a document of title.

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2. As to paragraph 3 of the Statement of Claim by the Second Defendants against the Third Parties, the Third Parties deny that the consignments therein referred to were delivered to the Third Party Company in consideration of all Third Parties executing the 4 indemnities therein referred to on the 24th May, 20th June, 26th June, and 4th July 1961 as alleged, the Third Parties will refer to the said documents at the hearing of this action as to the full terms and legal effect thereof.

20

3. After delivery of the consignment to the Third Party Company against 4 indemnities executed by the Third Party Company on the said dates, the Second Defendants by the First Defendants as Managing Director requested the Third Party Lee Chin Tian who is aged 87 years to sign the said 4 indemnities on the misrepresentation that it was to acknowledge the receipt of the goods stated in the said 4 indemnities and to assist the First Defendant in his Defence, as pleaded in paragraph 7 hereof, and after the said Lee Chin Tian had signed the 4 indemnities on the 10th day of July 1961 the Second Defendants by the First Defendants as aforesaid induced the Third Parties Lee Peng Koon and Lee Teow Keng to sign the 4 indemnities on 11th day of July, 1961 and on the 30th day of August, 1961 respectively.

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4. The Third Party Lee Chin Tian states that he executed the 4 indemnities under a total mistake and in the bona fide belief that he was executing merely an acknowledgment of the receipt of the goods stated in the said 4 indemnities as pleaded in paragraph 7 hereof.

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5. As a matter of construction by reason of the averments made in paragraphs 3 and 4 hereof the

Third Parties will contend that the said documents are meaningless and unintelligible and of no legal effect, and that the appendage of the signatures after delivery as aforesaid was not supported by any consideration and that the claim as pleaded against them is misconceived.

In the High Court of the State of Singapore, Island of Singapore

No.8

Re-Amended Defence and Counterclaim of the Third Parties

11th September 1963
(continued)

10 6. Save as is herein expressly admitted each and every allegation contained in the Statement of Claim by the Second Defendants is denied as if each were separately set out and traversed seriatim.

20 7. The Third Party Lee Chin Tian signed the said four documents referred to as indemnities only on behalf of Tiang Seng Chan (Singapore) Limited and not on the basis of incurring any personal liability thereon. When this Third Party signed the said 4 indemnities at the request of the First named Defendant and his son Chan Kim Yam, the First named Defendant and his son informed this Third Party that they were in trouble with the First named Plaintiffs and thereby further falsely and fraudulently induced this Third Party to assist them by signing the said 4 indemnities in order as was then falsely represented to indicate that the goods had been received by Tiang Seng Chan (Singapore) Limited and to assist him in his trouble for no other purpose. This Third Party agreed to sign the said 4 indemnities on this basis in order to assist the First named Defendant and his son with their case by showing actual receipt of the goods. This
30 Third Party did not intend to render himself personally liable by signing the said 4 indemnities, and such indeed was never the suggestion, and this Third Party was mistaken such mistake having been induced fraudulently as aforesaid.

40 8. By reason of the matters pleaded in paragraph 5-7 hereof the Third Party Lee Chin Tian will contend that his signature to the said 4 indemnities was obtained by fraud, and in the alternative and without derogation from the foregoing will rely on the plea of "Non est Factum" never having intended to render himself personally liable thereon and/or will further contend that the First named Defendant unduly influenced him to sign as aforesaid.

9. The Third Parties Lee Teow Keng (who is the son of the Third Party Lee Chin Tian) and the Third Party Lee Peng Koon (who is the grandson of

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.8

Re-Amended
Defence and
Counterclaim
of the Third
Parties

11th
September
1963
(continued)

the Third Party Lee Chin Tian) signed the said 4 indemnities at the request of Lee Chin Tian on ~~or about the 11th~~ 30th day of ~~July~~ August 1961 ~~or~~ and the ~~30th~~ 11th day of ~~August~~ July 1961 respectively, on the oral representation made by the First named Defendant on each respective occasion that their signatures were only required in order to assist the First named Defendant, ~~and~~ without in any way appreciating the nature or quality of their acts and subject only to the insistent request of Lee Chin Tian as aforesaid who had already signed. Neither of these Third Parties intended to render themselves personally liable by signing the said 4 indemnities and only signed the same pursuant to insistence of the Third Party Lee Chin Tian who had been fraudulently misled as to the nature and quality of his own acts as aforesaid and in the premises these Third Parties will also rely on the plea of "Non est Factum" never having intended to render themselves personally liable on the said 4 indemnities and these Third Parties were mistaken. The Second named Defendants, by the First named Defendant having been guilty of fraud, misrepresentation and/or undue influence vis-a-vis Lee Chin Tian as aforesaid, actively induced the said Lee Chin Tian whom they had misled or influenced as aforesaid to use his paternal and grand paternal influence of authority over the said Lee Peng Koon and Lee Teow Keng to induce them to append their signatures as aforesaid, and/or well knowing that the said Lee Chin Tian had been unduly influenced and/or misled as aforesaid, stood by and allowed such misapprehension to affect the conduct of Lee Peng Koon and Lee Teow Keng without informing them that by the appendage of their signatures it was sought to render them and each of them personally liable and/or thereby unduly influenced the Third Parties Lee Teow Keng and Lee Peng Koon to sign as aforesaid.

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COUNTERCLAIM

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~~10. The Third Parties Lee Chin Tian, Lee Teow Keng and Lee Peng Koon repeat paragraphs 2 to 9 (inclusive) of the amended Defence and will contend that the 4 documents herein referred to as indemnities should be set aside on the grounds of fraud and/or "Non est Factum".~~

~~AND the Third Parties Lee Chin Tian, Lee Teow~~

~~Kong and Lee Peng Keen Counterclaim~~

- ~~1. Rescission of the said 4 Indemnities~~
- ~~2. Further or other relief~~
- ~~3. Costs~~

~~DATED and REDDELIVERED this 22nd day of March 1962.~~

~~(Sd.) Boswell, Hsieh & Lim~~

~~Solicitors for the Third Parties.~~

In the High Court of the State of Singapore, Island of Singapore

No.8

Re-Amended Defence and Counterclaim of the Third Parties

11th
September
1963
(continued)

10 10. The Third Parties (other than the Third Party Company) repeat paragraphs 2-9 (inclusive) of their Defence as re-amended and will contend:-

- a) that the said purported indemnities were not supported by any consideration and are void.
- b) that the said indemnities (if avoidable) were obtained by fraud, misrepresentation and/or undue influence on the part of the First named Defendant.
- 20 c) that their mind did not go with the act of signing having regard to the nature of the documents and will rely on the plea "Non est Factum".
- d) that as a matter of construction the said documents purporting to be indemnities are unintelligible and should be construed "contra perferentem" and are of no legal effect.

11. The Third Party Company will rely on the contention set forth in paragraph 10(d) hereof.

AND THE THIRD PARTIES COUNTERCLAIM :-

- 30 1. A declaration that each of the said purported indemnities is "Nudum Factum".
2. Rescission of each of the said indemnities.
3. Further or other relief.

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.8

Re-Amended
Defence and
Counterclaim
of the Third
Parties

11th
September
1963
(continued)

DATED and REDELIVERED this 11th day of
September 1963.

(Sd.) Boswell, Hsieh & Lim
Solicitors for the Third
Parties.

Amended the 11th day of September 1963
pursuant to Order of Court dated the
22nd day of September, 1963.

Dated this 11th day of September 1963.

(Sd.) T.C. Cheng
Ag. Registrar.

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No.9

Reply and
Defence of
the second
Defendant to
Amended
Defence and
Counterclaim
of Third
Parties

27th March
1962

No. 9

REPLY AND DEFENCE OF THE SECOND DEFENDANT TO
AMENDED DEFENCE AND COUNTERCLAIM OF THIRD
PARTIES dated 27th March 1962

Suit No. 1284 of 1961

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Limited
... Plaintiffs

20

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company
Limited ... Defendants

And

1. Tiang Seng Chan (Singapore)
Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon
... Third Parties

30

1. The Second Defendants join issue with the Third parties on their Defence except in so far as the same consists of admissions and the adoption of the Defendant's Defence against the claim of the Plaintiffs herein.

As to the Counterclaim.

2. The Defendants deny having made any misrepresentation either as alleged in Paragraph 3 of the Defence and Counterclaim or at all. On each occasion when the first of the Third Parties signed the Indemnities it was agreed between the First Defendant on behalf of the Second Defendants and the second Third Party for himself and on behalf of the first third and fourth Third Parties that he and the third and fourth Third Parties would sign the indemnities and the subsequent signing of the Indemnities by the second third and fourth of the Third Parties was in fulfillment of the aforesaid verbal agreements made prior to the said goods being delivered and in consideration of which the Second Defendant allowed the goods to be delivered on each of the four occasions. The reason why the Second Defendant insisted on having the personal guarantees of the second third and fourth Third Parties was because of the delay of the first Third Party in settling its drafts which raised doubts as to its financial standing.

3. The Second Defendant denies that the Third Party Lee Chin Tian executed the four indemnities under any mistake or in the belief that he was acknowledging receipt of the goods.

4. The consideration for the execution by the second third and fourth Third Parties of each of the said indemnities was the release of the goods on the verbal agreement made by the second third Party on behalf of himself and the third and fourth Third Parties on the dates of each respective delivery of the goods that they would execute such indemnities.

5. The Second Defendants deny the whole of the allegations contained in Paragraph 7 of the Defence and Counterclaim. Neither the Second Defendants, nor the First Defendant, nor the said Chan Kim Yam ever made the false representations alleged in Paragraph 7 or any other false representation to

In the High Court of the State of Singapore, Island of Singapore

No.9

Reply and Defence of the second Defendant to Amended Defence and Counterclaim of Third Parties

27th March 1962
(continued)

In the High
Court of the
State of
Singapore,
Island of
Singapore

No.9

Reply and Def-
ence of the
second Defend-
ant to Amended
Defence and
Counterclaim
of Third
Parties

27th March
1962
(continued)

the Third Parties or any one of them. The Second Defendants repeat that the indemnities were signed by the second third and fourth Third Parties in pursuance of an agreement to do so made prior to the release of the said goods.

6. As to Paragraph 8 of the said Defence and Counterclaim the Second Defendants deny that the signature of the said Lee Chin Tian was obtained by fraud either as alleged or at all or that the defence of "Non Est Factum" is open to him. 10

7. The Second Defendants deny each and every the allegations contained in paragraph 9 of the said Defence and Counterclaim.

8. The Second Defendants deny that the Third Parties are entitled to the relief claimed in their Counterclaim.

9. Except in so far as the Amended Defence and Counterclaim consists of admissions and denials the Second Defendants deny each and every the allegations contained in the Amended Defence and Counterclaim as though the said had been set out in detail and specifically denied. 20

Dated and Delivered this 27th day of March
1962.

(Sd.) Laycock & Ong

Solicitors for the Second
Defendants

No. 10

REPLY OF THE THIRD PARTIES TO DEFENCE OF THE
SECOND DEFENDANT dated 3rd April 1962

Suit No. 1284 of 1961

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited

... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ...

Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon.

... Third Parties

In the High Court of the State of Singapore, Island of Singapore

No. 10

Reply of the Third Parties to Defence of second Defendant

3rd April 1962
(continued)

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The Third Parties as to the Defence of the Second Defendants say that :-

1. The Third Parties deny that there was any such agreement as alleged in paragraph 2 of the said Defence to the counterclaim.

2. The Third Parties deny that there was any delay on the part of the first Third Party in settling the drafts to raise doubts as to its financial standing.

30 3. The Third Parties join issue with the First and Second Defendants on the fourth paragraph of their defence to the counterclaim.

4. Save as is herein expressly admitted each and every allegation contained in the said Defence to the counterclaim is denied as if each were separately set out and traversed seriatim.

DATED and DELIVERED this 3rd day of April, 1962.

(Sd.) Boswell, Hsieh & Lim

Solicitors for the Third Parties

In the High Court of the State of Singapore, Island of Singapore

To: the abovenamed Defendants and their Solicitors

Messrs. Laycock & Ong, Singapore.

To: the abovenamed Plaintiffs and their Solicitors

Messrs. Allen & Gledhill, Singapore.

No. 10

Reply of the Third Parties to Defence of second Defendant

3rd April 1962 (continued)

No. 11

No. 11

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants

INTERROGATORIES ON BEHALF OF THE PLAINTIFFS FOR THE EXAMINATION OF THE DEFENDANTS dated 31st October 1961

10

Suit No. 1284 of 1961

Between

31st October 1961

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Limited
- ... Plaintiffs

And

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Company Limited ... Defendants

20

Interrogatories on behalf of the abovenamed First and Second Plaintiffs for the examination of the abovenamed First and Second Defendants.

- 1. Is it not a fact that the First Defendant Chan Cheng Kum as at the respective dates when the goods forming the subject matter of this action were shipped on board the Motor Vessels Hua Heng and Hua Li, namely the 19th May and the 13th, 20th

30

and 29th June, 1961, was the owner of the said motor vessels?

2. Is it not a fact that the First Defendant Chan Cheng Kum was the owner of the said motor vessels when the goods forming the subject matter of this action were discharged from the said motor vessels in Singapore?

3. (a) On what dates were the said goods respectively discharged in Singapore;

10 (b) To whom were they respectively delivered; and

(c) Upon whose instructions?

4. (a) Is it not a fact that the goods were not delivered to the Oversea-Chinese Banking Corporation Limited as the consignee named in the Mate's Receipts issued in respect of the said goods?

20 (b) Why were the goods not delivered to the Oversea-Chinese Banking Corporation Limited?

5. (a) What is the relationship between the First Defendant and the Second Defendants?

(b) Are there charter parties or other agreements of hire of the said motor vessels between the First Defendant and the Second Defendants?

(c) When were the said charter parties or other agreement of hire if any made and were they made verbally or in writing?

30 6. Were the goods delivered against any letter of indemnity or shipping guarantee?

7. Is it not a fact that the First Defendant now or formerly carried on business under the name of Hua Siang Steamship Company?

8. (a) Is it not a fact that the following Mate's Receipts were issued at Sibul in the name of Hua Siang Steamship Company in respect of the goods therein mentioned shipped on

In the High Court of the State of Singapore, Island of Singapore

No. 11

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants

31st October 1961
(continued)

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 11

Interrogatories
on behalf of
the Plaintiffs
for the
examination
of the
Defendants

31st October
1961
(continued)

board the motor vessel Hua Heng for shipment
to Singapore consigned to Oversea-Chinese
Bank Order/notify Tiang Seng Chan (S) Ltd.?

	<u>Mate's Receipt Number</u>	<u>Date</u>
--	------------------------------	-------------

1.	03879	6th June 1961
2.	03881	7th June 1961
3.	03887	12th June 1961
4.	03893	12th June 1961
5.	03894	12th June 1961
6.	2602	13th June 1961
7.	2607	22nd June 1961

10

- (b) Do these Mate's Receipts bear the signature of the Chief Officer of the Motor vessel Hua Heng and if not whose signature do they bear?
- (c) Is it not a fact that these Mate's Receipts were properly signed and issued by a person authorised so to do.
- (d) Is it not a fact that these Mate's Receipts were issued for and on behalf of the First Defendant. 20
- (e) If the answer to the last mentioned interrogatory is in the negative then for and on whose behalf were these Mate's Receipts issued?
9. (a) Is it not a fact that the following Mate's Receipts were issued at Sibu in the name of Hua Siang Steamship Company Limited in respect of the goods therein mentioned shipped on board the motor vessel Hua Heng for shipment to Singapore consigned to Oversea-Chinese Bank Order/notify Tiang Seng Chan (S) Ltd.? 30

	<u>Mate's Receipt Number</u>	<u>Date</u>
--	------------------------------	-------------

1.	2619	28th June 1961
2.	2629	29th June 1961

- (b) Do these receipts bear the signature of the Chief Officer of the motor vessel Hua Heng and if not whose signature do they bear?

(c) Is it not a fact that these Mate's Receipts were properly signed and issued by a person authorised so to do?

(d) On whose behalf were they so signed and issued?

In the High Court of the State of Singapore, Island of Singapore

10. (a) Is it not a fact that the following Mate's Receipts were issued at Sibu in the name of Hua Siang Steamship Company in respect of the goods therein mentioned shipped on board the motor vessel Hua Li for shipment to Singapore consigned to Oversea-Chinese Bank Order/notify Tiang Seng Chan (S) Ltd.?

No. 11

Interrogatories on behalf of the Plaintiffs for the examination of the Defendants

	<u>Mate's Receipt Number</u>	<u>Date</u>
1.	03782	15th May 1961
2.	03787	16th May 1961
3.	03791	17th May 1961
4.	0101	19th May 1961
5.	0133	20th June 1961
6.	0134	20th June 1961
7.	0137	20th June 1961
8.	0138	20th June 1961

31st October 1961
(continued)

and that the following Mate's Receipts were issued at Sibu as aforesaid consigned to the Oversea-Chinese Bank/Tiang Seng Chan (S) Ltd.

	<u>Mate's Receipt Number</u>	<u>Date</u>
1.	03781	15th May 1961
2.	03786	16th May 1961
3.	03795	17th May 1961

1.	03781	15th May 1961
2.	03786	16th May 1961
3.	03795	17th May 1961

(b) Do all the abovementioned eleven Mate's Receipts bear the signature of the Chief Officer of the motor vessel Hua Li and if not whose signature do they bear?

(c) Is it not a fact that these Mate's Receipts were properly signed and issued by a person authorised so to do?

(d) Is it not a fact that these Mate's Receipts were issued for and on behalf of the First Defendant Chan Cheng Kum?

(e) If the answer to the last mentioned interrogatory is in the negative then for and on

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 11

Interrogatories
on behalf of
the Plaintiffs
for the
examination
of the
Defendants

31st October
1961
(continued)

whose behalf were these Mate's Receipts
issued?

11. Is the Chief Officer or other the person
signing the Mate's Receipts in the name of Hua
Siang Steamship Co. the servant of the First
Defendant or of the Second Defendants?

12. Is the Chief Officer or other the person
signing the Mate's Receipts in the name of Hua
Siang Steamship Co. Ltd. the servant of the
First Defendant or of the Second Defendants?

10

Dated and Delivered the 31st day of October
1961.

(Sd.) Allen & Gledhill

Solicitors for the 1st & 2nd
Plaintiffs

The First Defendant is required to answer all the
above interrogatories.

The Second Defendants are required to answer all
the above interrogatories by their Managing Director
or other their proper officer to the best of his
knowledge information and belief.

20

To: The First Defendant and/or his Solicitors,
Messrs. Laycock & Ong, Singapore.

The Second Defendants and/or their Solicitors,
Messrs. Laycock & Ong, Singapore.

No. 12

DEFENDANTS' ANSWERS TO THE PLAINTIFFS'
INTERROGATORIES sworn 22nd November 1961

Suit No. 1284 of 1961

Between

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Limited
- ... Plaintiffs

And

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Company Limited ... Defendants

In the High Court of the State of Singapore, Island of Singapore

No. 12

Defendants' Answers to the Plaintiffs' Interrogatories

22nd November 1961
(continued)

10

The answers of the abovenamed First and Second Defendants to the interrogatories for their examination by the abovenamed Plaintiffs.

20

In answer to the said interrogatories I, the abovenamed Chan Cheng Kum, both in my personal capacity and as Managing Director of the Second Defendants affirm and say as follows :-

- To the first Interrogatory I say, yes.
- To the second Interrogatory I say, yes.
- To the third Interrogatory I say
 - (a) A few days after the date when each respective consignment was shipped.
 - (b) To Tiang Seng Chan (Singapore) Limited.
 - (c) On the instructions of Tiang Seng Chan (Singapore) Limited.

To the fourth Interrogatory I say

30

(a) and (b) The goods were not delivered to the Oversea-Chinese Banking Corporation Limited because prior to the arrival or on arrival of each respective consignment at Singapore the shippers, the said Tiang Seng Chan (Singapore) Limited had

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 12

Defendants'
Answers to
the Plain-
tiffs' Inter-
rogatories

22nd November
1961
(continued)

ordered that the goods should be delivered to themselves.

To the fifth Interrogatory I say

(a) The First Defendant is the Managing Director of the Second Defendant.

(b) There is an agreement by which the two motor vessels are hired by the First Defendant to the Second Defendants.

(c) Such hiring agreement was made verbally at the date when the Second Defendants were incorporated.

10

To the sixth Interrogatory, I say, yes.

To the seventh Interrogatory I say that prior to the incorporation of the Second Defendants, but not subsequent thereto, the First Defendant carried on business under the name of Hua Siang Steamship Company.

To the eighth Interrogatory I say

(a) The printed form of Mate's Receipts bore the name of Hua Siang Steamship Company but the shippers Tiang Seng Chan (Singapore) Limited, were fully aware that the contract of carriage was made between them and the Second Defendants. The goods were consigned to Oversea-Chinese Bank Order/Notify Tiang Seng Chan (Singapore) Limited but subsequent to shipment and before or on the arrival of the vessel at Singapore the said Tiang Seng Chan (Singapore) Limited ordered the Second Defendants to deliver the goods to the said Tiang Seng Chan (Singapore) Limited.

20

(b) Yes

(c) Yes

(d) No

(e) On behalf of the Second Defendants.

30

To the ninth Interrogatory I say

(a) Yes

- (b) Yes
 (c) Yes
 (d) On behalf of the Second Defendants.

To the tenth Interrogatory I say

10 (a) The Printed form of Mate's Receipts bore the name of Hua Siang Steamship Company but the shippers Tiang Seng Chan (Singapore) Limited were fully aware that the contract of carriage was made between them and the Second Defendants. The eight shipments were consigned to Oversea-Chinese Bank/Notify Tiang Seng Chan (S) Limited but subsequent to shipment and on or before the arrivals of the vessel at Singapore the said Tiang Seng Chan (Singapore) Limited ordered the Second Defendants to deliver the said goods to the said Tiang Seng Chan (Singapore) Limited. The three shipments were consigned to Oversea-Chinese Bank/Tiang Seng Chan (S) Limited but subsequent to shipment and on or before the arrivals of the said vessels at Singapore the said Tiang Seng Chan (Singapore) Limited ordered the Second Defendants to deliver the said goods to the said Tiang Seng Chen (Singapore) Limited.

20

- (b) Yes
 (c) Yes
 (d) No
 (e) On behalf of the Second Defendants.

30 To the eleventh Interrogatory I say the Chief Officer signing the Mate's Receipts in the name of Hua Siang Steamship Company is the servant of the Second Defendants.

To the twelfth Interrogatory I say that the Chief Officer signing the Mate's Receipts in the name of Hua Siang Steamship Company Limited is the servant of the Second Defendants.

Sworn to at Singapore this 22nd day of November 1961

Before me,

(Sd.) M.J. Namazie

A COMMISSIONER FOR OATHS.

In the High Court of the State of Singapore, Island of Singapore

 No. 12

Defendants' Answers to the Plaintiffs' Interrogatories

22nd November 1961
 (continued)

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 13

INTERROGATORIES ON BEHALF OF THE DEFENDANTS FOR
THE EXAMINATION OF THE PLAINTIFFS dated 23rd
November 1961

Suit No. 1284 of 1961

No. 13

Between

Interroga-
tories on
behalf of the
Defendants
for the
examination
of the
Plaintiffs

- | | |
|--|-------------------|
| 1. Wah Tat Bank Limited | |
| 2. Oversea-Chinese Banking Corporation Limited | |
| ... | <u>Plaintiffs</u> |
| And | |
| 1. Chan Cheng Kum | |
| 2. Hua Siang Steamship Company Limited | |
| ... | <u>Defendants</u> |

10

23rd November
1961

Interrogatories on behalf of the abovenamed First and Second Defendants for the examination of the abovenamed First and Second Plaintiffs:

1.(a) Have the First Plaintiffs either directly or through their agents received any payments to account of the alleged advances totalling \$595,000/- which are set out in the Statement of Claim?

20

(b) If the answer is in the affirmative what payments have been received?

2.(a) Have the First Plaintiffs either directly or through their agents received any security for the alleged indebtedness to them of Tiang Seng Chan (Singapore) Limited?

(b) If the answer to the last mentioned interrogatory is in the affirmative what security have the First Defendants or their agents received?

30

3.(a) Have the First Plaintiffs either directly or through their agents received any guarantee or indemnity by a third party for the payment of the indebtedness of the said Tiang Seng Chan (Singapore) Limited?

(b) If the answer to the last Interrogatory

is in the affirmative who gave such guarantee or indemnity and what is the date of it?

4. Do the Memorandum and Articles of Association of the First Plaintiffs authorise the First Plaintiffs to make advances on the security of Mate's Receipts?

5. On what dates did each of the Mate's Receipts referred to in the Statement of Claim come into the possession of the First Plaintiffs?

10 6. On what dates did each of the Mate's Receipts referred to in the Statement of Claim come into the possession of the Second Plaintiffs?

7. Has Tiang Seng Chan (Singapore) Limited either in Singapore or in Sarawak or elsewhere paid any moneys or assigned any securities to the First Plaintiff or its agents either before or after the commencement of this action?

20 8. If the answer to the last interrogatory is in the affirmative what payment or payments were made and what security or securities were assigned?

9. Has Tiang Seng Chan (Singapore) Limited either in Singapore or in Sarawak or elsewhere paid any moneys or assigned any securities to the Second Plaintiff or its against either before or after the commencement of this action?

10. If the answer to the last interrogatory is in the affirmative what payment or payments were made and what security or securities were assigned?

Dated this 23rd day of November 1961.

30

(Sd.) Laycock & Ong

Solicitors for the First and
Second Defendants

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The First Plaintiff is required to answer interrogatories numbers 1 to 5 inclusive and numbers 7 and 8 by their Managing Director or other their proper officer to the best of his knowledge information and belief. The Second Plaintiff is required to answer interrogatories numbers 6, 9 and 10 by their Managing Director or other proper officer to the best of his knowledge information and belief.

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 13

Interrogatories on behalf of the Defendants for the examination of the Plaintiffs

23rd November
1961
(continued)

(sic)

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 14

PLAINTIFFS' ANSWERS TO THE DEFENDANTS'
INTERROGATORIES sworn 4th December 1961
and 6th December 1961

Suit No. 1284 of 1961

No. 14

Between

Plaintiffs'
Answers to
the Defen-
dants' Inter-
rogatories

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Limited

... Plaintiffs

10

And

4th December
1961 and
6th December
1961

1. Chan Cheng Kum
2. Hua Siang Steamship Company
Limited ... Defendants

The answers of the abovenamed First and
Second Plaintiffs to the respective interrogatories
for their examination by the abovenamed Defendants.

In answer to the said interrogatories required
to be answered by the First Plaintiffs I Chew Geok
Lin the Managing Director of the said First
Plaintiffs affirm and say as follows:-

20

To the first interrogatory I say, No.

To the second interrogatory I say, No.

I object to answer the third interrogatory as
to do so would amount to a breach of secrecy of the
relationship of banker and customer.

To the fourth interrogatory I say, Yes.

To the fifth interrogatory I say as follows:

(a) Mate's Receipts numbered 0101, 03781,
03782, 03786, 03787, 03791 and 03795
came into the possession of the First
Plaintiffs on the 20th day of May 1961.

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(b) Mate's Receipts numbered 2602, 03879,
03881, 03887, 03893, and 03894 came into
the possession of the First Plaintiffs
on the 14th day of June 1961.

- (c) Mate's Receipts Numbered 0133, 0134, 0137 and 0138 came into the possession of the First Plaintiffs on the 21st day of June 1961
- (d) Mate's Receipts numbered 2619 and 2629 came into the possession of the First Plaintiffs on the 29th day of June, 1961.
- (e) Mate's Receipt numbered 2607 came into the possession of the First Plaintiffs on the 30th day of June 1961.

In the High Court of the State of Singapore, Island of Singapore

No. 14

Plaintiffs' Answers to the Defendants' Interrogatories

To the seventh interrogatory I say, No.

In answer to the said interrogatories required to be answered by the Second Plaintiffs, I, Ong Seng Chew an officer of the Second Plaintiffs being duly authorised by the said Second Plaintiffs to answer the said Interrogatories for and on their behalf affirm and say as follows:-

4th December 1961 and 6th December 1961
(continued)

To the sixth interrogatory I say as follows:-

- (a) Mate's Receipts numbered 0101, 03781, 03782, 03786, 03787, 03791 and 03795 came into the possession of the Second Plaintiffs on the 23rd day of May 1961.
- (b) Mate's Receipts numbered 2602, 03879, 03881, 03887, 03893 and 03894 came into the possession of the second Plaintiffs on the 16th day of June 1961.
- (c) Mate's Receipts numbered 0133, 0134, 0137 and 0138 came into the possession of the Second Plaintiffs on the 22nd day of June 1961.
- (d) Mate's Receipts numbered 2607, 2619 and 2629 came into the Second Plaintiffs' possession on the 3rd day of July 1961.

To the ninth interrogatory I say, No.

Sworn to at Sibü, Sarawak)
by the abovenamed Chew Geok Lin) (Sd.) Chew Geok Lin
this 4th day of December 1961.)

Before me,
(Sd.) Illegible
Magistrate

Seal of District Court
Sibü
Stamp \$2.50
Sarawak

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In the High Court of the State of Singapore, Island of Singapore

Sworn to at Singapore by the)
above named Ong Seng Chew this) (Sd.) Ong Seng Chew
6th day of December, 1961.)

Before Me,

(Sd.) N. Niranjana Singh

A Commissioner for Oaths

No. 14

Plaintiffs' Answers to the Defendants' Interrogatories

4th December 1961 and 6th December 1961 (continued)

No. 15

Letter Plaintiffs' Solicitors to Defendants' Solicitors requesting Further and Better Particulars of Defence

4th May 1962

No. 15

LETTER PLAINTIFFS' SOLICITORS TO DEFENDANTS' SOLICITORS REQUESTING FURTHER AND BETTER PARTICULARS OF DEFENCE dated 4th May 1962

10

MK/DO/652/61

CHS

4th May, 1962.

Messrs. Laycock & Ong, Singapore.

Dear Sirs,

Suit No. 1284 of 1961
Wah Tat Bank & anor.

v

Chan Cheng Kum & anor.

20

and

Tiang Seng Chan (Singapore)
and three others.

We write to inform you that we will shortly be making an Application to Court for an amendment to the Statement of Claim herein.

In the meantime, we shall be obliged if you will in accordance with Order 20 rules 7 and 8 furnish us with further and better particulars of paragraph 4 of the Defence as follows:

- 1) Whether the alleged altered directions as to delivery were given by the Shippers orally or in writing, and, if orally, when and by whom on behalf of the Shippers and to whom they were given.
- 10 2) Who on behalf of the 2nd Defendants complied with the alleged altered directions.

We shall be obliged if the above particulars are delivered to us in the form of pleadings within seven days from the date of this letter.

Yours faithfully,

(Sd.) Allen & Gledhill.

In the High Court of the State of Singapore, Island of Singapore

No. 15

Letter Plaintiffs' Solicitors to Defendants' Solicitors requesting Further and Better Particulars of Defence

4th May 1962 (continued)

No. 16

PARTICULARS OF PARAGRAPH 6 OF THE FURTHER AMENDED DEFENCE dated 8th October 1963

20

Suit No. 1284 of 1961

Between

1. Wah Tat Bank Limited
 2. Oversea-Chinese Banking Corporation Limited
 ... Plaintiffs

And

30

1. Chan Cheng Kum
 2. Hua Siang Steamship Company Limited ... Defendants

And

1. Tiang Seng Chan (Singapore) Limited
 2. Lee Chin Tian
 3. Lee Teow Keng
 4. Lee Peng Koon
 ... Third Parties

No. 16

Particulars of Paragraph 6 of the Further Amended Defence

8th October 1963

In the High Court of the State of Singapore, Island of Singapore

No. 16

Particulars of Paragraph 6 of the Further Amended Defence

8th October 1963
(continued)

1. The said altered directions were given by the Shippers orally to the Second Defendants. Such altered directions took the form of a request by the Shippers sometimes orally over the telephone and sometimes at a direct personal meeting requesting delivery of the goods to the Shippers. Such altered directions were given by Mr. Lee Chin Tian or by Mr. Lee Teow Keng to Mr. Chan Cheng Kum or to Mr. Chan Kim Yam and were given shortly before the goods arrived at Singapore or about the time of such arrival.

10

2. The said directions were complied with by Mr. Chan Kim Yam, the Manager of the Second Defendant Company on behalf of the Second Defendants and who issued the relevant delivery orders.

Dated and delivered this 8th day of October, 1963.

(Sd.) Laycock & Ong

Solicitors for the Defendants.

No. 17

Court Notes of Counsels' Speeches and of the Evidence

2nd December 1963

No. 17

COURT NOTES OF COUNSELS' SPEECHES AND OF THE EVIDENCE dated 2nd December 1963

Suit No. 1284/61

Between

1. Wah Tat Bank Limited
 2. Oversea-Chinese Banking Corporation Ltd.
- ... Plaintiffs

And

1. Chan Cheng Kum
 2. Hua Siang Steamship Co.Ltd.
- ... Defendants

30

And

1. Tiang Seng Chan (Singapore) Ltd.
 2. Lee Chin Tian
 3. Lee Teow Keng
 4. Lee Peng Koon
- ... Third Parties

Coram: Kulasekaram J.

2nd December, 1963.

In the High
Court of the
State of
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Singapore

Mr. Michael Emanuel Kerr, Q.C.,
with Mr. Green and Mr. M. Karthigesu for Pltfs.

Mr. Alexander MacGrindle, Q.C.,
with Mr. C.H. Smith for Defts.

Mr. R.S. Boswell with
Mr. Lim Seow Beng for Third Parties.

No. 17

NOTES OF EVIDENCE

Court Notes
of Counsels'
Speeches and
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Evidence

Mr. Kerr Opens

10 Hua Siang Steamship Co. Ltd. Incorporated
on 1.1.61. Relationship of 1st and 2nd Defts. is
in issue. Hua Siang Steamship Co. - the partners
were 1st Deft. and his son.

2nd December
1963
(continued)

Shippers - incorporated in 1955.

Mid. May and July 1961 - narrates events.

4 voyages ..

20 shipments.

Long relation between 1st 3rd party and 1st
Pltf.

Plaintiffs'
Counsel's
Opening
Speech

20 Whether the agreement between shippers and
Wah Tat made a pledge to Wah Tat. To give O.C.B.C.
possession of the goods through the shipping
documents.

The shippers say that though the shipping
documents were given to Wah Tat they were still
able to change their directions and say to whom
it should be delivered.

Carriers delivered on indemnities - carriers
consent conversion.

30 States and customary documents -
"Mate's Receipt".

(1) After delivering the documents to a
Bank can the shippers directly alter the
directions by asking the carriers to deliver
it to them.

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Court Notes
of Counsels'
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2nd December
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Plaintiffs'
Counsel's
Opening
Speech
(continued)

- (2) Can the carriers deliver the goods to the shippers validly without the documents without the consent of their own consignee.

No means of control - documentary control while in the custody of the carriers. The expressed undertaking by the carrier to deliver to their named consignee explicitly while it is a bank. The carriers have disregarded the consignees O.C.B.C. and delivered to the shippers. Indemnities.

10

Defts. say all the consequence follow from the words "Mate's Receipt" - mate's receipt as we know are different from those.

Classic Mate's Receipt - for Bill of Lading.

In the first case there was no intention of any of the parties that Bills of Lading were to be issued.

Carriers have never carried this trade under any Bill of Lading.

"Mate's Receipt" to be treated as document of title.

20

Mate's Receipt - Bundle of Documents (x).

Page 23. Not Negotiable has no bearing on the rights of the named consignee.

Order

Notify purely contractual obligation.

Named consignee in mate's receipt.

Only one case.

Back of Page 53. Bill of Lading.

The document incorporates -

- (1) All the terms of the Bill of Lading.
(2) Contains other terms as well.

30

Unique features of these "Mate's Receipt".

- (1) No intention to issue Bill of Lading.
 (2). D. contained a known consignee.
 (3) Most.
 (4) The documents contained the terms and conditions of carriage. Additional terms of carriage.
 (5) Incorporates the Hague Rules.
 (6) D.s. refer to themselves as Bills of Lading.
 (7) D.s. are endorsed by the named consignee and bear the endorsement of the Bank - Wah Tat Bank.
 (8) All parties treated the D.s. as documents of title.

In the High Court of the State of Singapore, Island of Singapore

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Court Notes of Counsels' Speeches and of the Evidence

2nd December 1963

Plaintiffs' Counsel's Opening Speech (continued)

In absence of D.s. Indemnity was reqd.

Refers to Indemnity at Page 12 of (X).

- (1) Shippers in other cases offered Trust Receipts or paid the amount due and took the
 (2) Mate's Receipt
 (3) Without knowledge of the Bank on Indemnities.

The shippers would draw on consignees in order to purchase goods. Shippers draw on their Bank payable to Wah Tat and then the shippers.

Delivery of documents to the Bank

Temporary receipts Page 72 (X)

Bills Receipt

Policy of Insurance Page 78

Refers to (Y) Page 9-11.

(y) Page 3-8.

Singapore end.

Shippers usually asked for a few days deferred payments. Period of shippers deferred payment

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Counsel's
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(continued)

varied. After 1961 the period became longer - perhaps about 2 weeks.

2 ways - Payment or Trust Receipt.

Refers to (Z). Pages 1 - 18. - Trust Receipts.

3rd way release of the goods.

In the 4 cases shippers asked for more and more time. Up to beginning of 1961 Wah Tat had given credit to the shippers ---

Clean Bills - what they mean.

At the beginning of 1961 because of delays in payment Wah Tat called the shippers and said that no more clean bills will be allowed.

10

Delays in payment in 1961 worried Wah Tat - Managing Director of Wah Tat flew to Singapore. In the plane he met 1st Deft.

In Singapore Chan Cheng Kum - Manager of Wah Tat and Lim Chin Tian. 3 partite conference.

Mr. K. Puts in Schedule - 'S'.

Ref. to X. Pages 1 - 8. Cables and correspondence.

20

9 - 12. Indemnities.

13 - 20. Manifest for 4 voyages.

21 - 50. Documents relating to other documents not sued upon.

51 & 52. Std. Bills of Lading.

53 - 149. All documents relating to the shipments sued on.

30

Order. M.R., Notes, Temporary receipts.
Insurance

150 - 198. Indemnities.

Adj'd. 2.30 P.M.

Hearing resumed.

2.30 p.m.

Mr. K.

M.R. which were disclosed over the week end.

Submits a schedule 'S' and a bundle of M.R.

(1) and (1(a)) (44 M.R. - 1A
of Schedule (+ 4

(2) of Schedule consigned to K.L. Bk.
Similar transactions.

10 (3) 7 documents - H.S. Bk. Corporation.

(4) 13 " consigned to selves.

Distinction between named consignee and "selves"
on the other hand.

In one case the carriers are dealing with the
shippers only and in the other case with the named
consignees. The 2 endorsements of the Banks on
the named Ms.R.

Bundle of Correspondence - A.

Refers to pages 12 - 16.

20 Refers to P.19.

Refers to P.29 - 30.

which of the 2 defendants are liable?

Page (5).

Page (10).

Page 31.

Value of Goods.

Pleadings.

Custom.

30 (1) M.Rs. in this form were treated as D. of
Titles. Bills of Lading not used. The voyage

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Plaintiffs'
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(continued)

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(continued)

3rd December
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is a short one and the issue of the Bs. of L.
will be cumbersome.

Page 8 of pleadings.

Substitute new figures in para 14 at page 8.

Mr. K. puts in further amended S. of C.
The claim is now for \$623,186.64.

Adjd. to 10.30 a.m. on 3/12/63.

(Sd.) T.K.

Tuesday, 3rd December, 1963.

10.30 Hearing resumed.

10

Mr. K. continues his opening address.

Mr. K. wishes to amend the reply.

Had a further amended reply.

Mr. M. has no objection.

Amendment allowed.

K. Reads reply.

Mr. MacCrindle applies to amend the S. of C. to
3rd party.

Wishes to add a new paragraph 3A.

Mr. Mac. Reads Defence at P. 30.

20

Mr. Mac. reads the proposed amendment - para. 3A.

Mr. B. objects to this amendment.

1st wants to know more particulars.

2nd ground. Refers to Page 170 of S.S.P.

3rd Gd. If amendment was allowed there would
be contradiction between S. of C.

and reply.
Refers to para 2 of Reply.

4th Gd. Notice was served on 30/XI/63.

On 29th Nov. at about 8 plm. the son of 1st Deft. and his younger brother went to 3rd parties' house and asked them to agree that there was this meeting in 1961. In fact a written document was prepared and he was asked to sign it. 3rd Defts. asked for a copy which was referred.

10 Mr. M. Replies.

Amendment of Deft. para 3A allowed.

Mr. K.

3 matters in 3rd party pleadings.

All arise in para 3A

1st practice. clean bills ceased early 1961.

2nd 3A para. no reference to non-production of mate's receipt by the 3rd parties.
If M.R. could be produced no question of indemnities.

20 3rd. Which of the defendants are liable? First Defendant from 3A quite clearly arranged this. He arranged for the delivery. He has priority here. 1st Deft. is a joint tortfeasor with and he was personally privy to it.

Mr. K.

Interrogatories P. 40 of Pleadings.

Interrogatories at P. 49

Mr. K.

30 Outlines the submissions on the law.

Two alternative submissions.

(1) Custom.

and (2) Attornment.

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Court Notes of Counsels' Speeches and of the Evidence

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Plaintiffs' Counsel's Opening Speech
(continued)

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By custom of the trade between S & Singapore
M.Rs. were documents of title so that the delivery
of M.R's resulted as a constructive delivery of
the goods and transferred the constructive posses-
sion to the transferee. They are in the same
position as B. of L.

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Plaintiffs'
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(continued)

Question of fact on the evidence.

Practice of (1) St. Steamship Co.

(2)

(3) Heap Eng Moh Steamship Co.

10

(4) Sam Bee Steamship Co.

(5) Hwa Seng Steamship Co.

M.R. has been put through many Banks,

(1) O.C.B.C.

(2) Hongkong & Shanhait

(3) Chartered Bank

(4) -

(5) Sze Hai Tong Bank

(6) Wah Tat Bank.

By using M.R. to say goods were consigned to OCBC
or the order the defts. represented to OCBC their
agents and principal that the defts. held the
goods for O.C.B.C. (or to the order).

20

When Wah Tat or O.C.B.C. obtained the M.R.
the statement operated in law as an attornment by
the Defts. as bailees for the OCBC and gave to Wah
Tat and OCBC an undeniable right of possession
against the Defts and for them a right to sue for
conversion if the goods were wrongly delivered.

Where goods are in the possession of a bailee
(the defts.) and he attorns to a 3rd person (pltfs)
by representing th the pltfs. that the defts. holds
the goods for the pltf. the pltf. obtains a right

30

to the possession of the goods as against the defts. and the deft. is estopped from denying the pltf's right to possession of the goods and is liable in conversion for the goods if after the attornment he deals with the goods inconsistently with the pltf's right to possession arising as a result of the attornment.

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(Bailment) Hals. Vol. 2.139. Art. 265

2 Lines of Case.

Court Notes of Counsels' Speeches and of the Evidence

10 Estoppel arising against the bailee.

Estoppel arising against the seller.
At the moment ships gave M.R. to the Bank.

3rd December 1963

There is an attornment by carriers to OCBC and to the principal Wah Tat.

2nd consequence is that the 1st 3rd party acknowledges a pledge of the goods to the Bank - Complete appropriation by the Bank - undeniable - 3rd party has no right to alter direction.

Plaintiffs' Counsel's Opening Speech (continued)

20 The full or special property in the goods can be transferred if the transferor and transferee so intended although the goods are in the possession of a 3rd party and this is so even where the goods are in the possession of a carrier by sea and there is no transfer of any bill of lading covering the goods.

Carvey's Carriage of Goods by Sea 10th Ed.
P. 737.

30 Where an owner of goods has agreed to transfer the full or sp. property in the goods to another or has represented to such person that he or his bailee holds such goods for that person then the right to the possession of the goods as between representator and representee passes to the representee and the representor cannot thereafter deal with goods inconsistently with the representee's right to possession.

40 In particular where the goods are in the possession of 3rd party (carrier) the representator cannot thereafter validly instruct the carrier to deliver the goods to any one other than the pltf's.

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Plaintiffs'
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(continued)

An attornment to X where X is the agent of Y where Y is a disclosed or undisclosed principal may be relied upon by Y as an attornment.

Hals. Vol. 35. Page 339. P. 484.

Evans v. Nichol 1st. 3M & O.614.

1st Ed. Vol. 36 - P. 103 The same para... applies ...?

2nd Ed. Vol. 30 page.

The effect of word Not negotiable.

In this case the words do not affect where the word 'order' appears then the word prevails and should not be disregarded.

10

Where a document is marked not negotiable but also to order and if effect is to be given to both words then the document operates in favour of the named party and his agents and principals only.

Refers. Bills of Exchange Act 1882.

Sec. 8 Page 27 of Chalmer's

Hibernian Bank Ltd. vs. Gysin.

20

1939 1. K.B. 483.

Page 488.

Which of the 2 defts. liable.

1st wrongful delivery by the officers and crew of ships was a conversion by the servant of the 1st Deft. and not of the 2nd deft. because the 1st Deft. was owner of the ship and the crew were his servants.

William Dorman.

1935 41 @ C Cases at P. 224.

30

Pages 227, 237.

Adjd. 2.30 p.m.

Customs.

In carriage from Singapore outwards the B. of Lading is issued. If B. of L. is issued it is done on surrender of M.R. Both documents will not be circulating at the same time. M.R.'s here are contractual documents.

The ordinary M.R. is not a document of title. It is purely preliminary to issue of B. of L. Here there is no intention of issue of B. of L.

10 If the pltfs. had no remedy against the Defts. against the Indemnities, etc. then the law would be an ass.

The Defts. now lie on their indemnities.

If the document had no "M.R." there would be no defence whatsoever.

The defence is with no merits at all and no legal merits either.

The Defts. is liable on attornment.

20 Even if the person who delivering the goods to the shippers were not the servants of 2nd Deft. and not the 1st Deft. then nevertheless such delivery took place under the direction and control of the 1st Deft. and he was privy to such delivery.

1923 1 KB. P.14 and 15.

Mr. Boswell asks that 2nd 3rd Party be excused as he is ill.

Mr. K. Calls.

P.W. 1.

30 Chew Choo Sing a.s. in Hokkien. My address in Sibu is 12, Old Street. I am the manager of the Wah Tat Bank. I held that position since 1955 when it became an incorporated company. It was a sole proprietorship before that. My father was the proprietor and I was then in charge of current account. Since incorporation my father was managing director. Tiang Seng Chan (S) Ltd. have

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Plaintiffs' Counsel's Opening Speech (continued)

Plaintiffs' Evidence

Chew Choo Sing

Examination

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Plaintiffs'
Evidence

Chew Choo Sing

Examination
(continued)

been dealing with us since the end of the last war. They became a Ltd. Company in 1955. They have branches in Sarawak at Sibu and another branch in Kuching. After it became a Ltd. Co. the 2 directors executed a document of guarantee, continuing to give guarantee to our Bank.

The document in pages 1 & 2 of 'Y' is that guarantee.

Apart from this guarantee Bills of Exchange and M.R's were pledged with us. This process of pledging M.R. has gone on since the end of the last war. About ten years before the incorporation of the Co. The pledging of M.R's applies for other firms as well.

10

I know that this practice is also adopted by other banks. Even after this case started this process is still going on.

There is no written document between Wah Tat Bank and Tiang Seng Chan. There was an oral agreement between my father and myself on behalf of Wah Tat and the manager of Tiang Seng Chan.

20

The agreement was that we shall finance for the purchase of goods first. The goods so purchased will be pledged with us. I mean the goods that are to be sent to Singapore. The agents in Singapore for us are the O.C.B.C.

Q. How are the goods to be pledged to the Bank?

A. Before the goods are pledged with us they had to make a cheque to the produce merchant. Tiang Seng Chan had to deliver to us the B. of Exchange, the Insurance Cert., the temporary receipt and the M.s. Receipt.

30

First Tiang Seng Chan draws a cheque on Wah Tat to the produce merchant. The cheque when presented will be met and Tiang Seng Chan's account will be debited by the Bank. The goods will be kept in a Government go-down. As Govt. does not accept cheques drawn by produce exporters Tiang Seng Chan will make out a cheque in favour of that a/c. The Bank will make a cheque in favour of the Government as custom duty.

40

Near the time of shipment Tiang Seng Chan will deliver to us a Bill of Exchange, a Temporary Receipt and an application for an Insurance certificate.

Wah Tat as agent for the Commercial Union Insurance Co. prepares the policy. After the policy is prepared the manager of Tiang Seng Chan signs the policy on the back and puts its seal on the back and the Bank keeps the policy.

10 Witness is referred to P. 72 of 'X'. This document is referred by us as a document relating to shipment - on board vessels. This is the temporary receipt. These temporary receipts were handed to the Bank before the goods were loaded on the vessels.

 The temporary receipts will have the name of the vessels, the weight of the goods, the description of the goods, the quantity of the goods and the amount and number of the Bill of Exchange.
20 After the goods were loaded on the ship we received the M.R.s.

 When I received the M. Receipts I would credit to the account of Tiang Seng Chan to the extent of the amount in the B. of Exchange. I would not credit Tiang Seng Chan's account if I did not receive the M.R.s.

 I see P. 53 of 'X'.

 It has the stamp of Wah Tat Bank "B.E.P." means Bill of Exchange Payment. The number
30 61/106 - 110 is our number relating to the Bill of Exchange.

 I see the words "Consigned to Overseas Chinese Bank Order". The word order is there, written in that manner, so that our agents in Singapore would have control of the goods. I know what a "clean bill" is. By clean bill, is meant a bill which has no M.R.s., no insurance and no temporary receipt.

 When I received a clean Bill I would credit
40 their account as a matter of trust. I would allow clean bill to the extent of 10% of the shipment. I would only allow clean Bills in respect of

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Plaintiffs' Evidence

Chew Choo Sing

Examination (continued)

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Chew Choo Sing

Examination
(continued)

shipments. They took a long time to make payment against bills and as from 1961 (from 1/1/61) we ceased to allow them to draw clean bills. I received M.R.'s as pledges from the advances made. I received M.R.'s from other steamship companies as well besides Hua Siang Steamship Co. Sarawak Steamship Co. was the other. I have never seen a proper Bill of Lading in respect of shipments from Sarawak to Singapore. I have seen Bills of Lading covering transshipment to England. Between the Banks and the shippers the M.R.'s. are treated as documents of title. By document of title I mean that the person holding them is entitled to the delivery of the goods named in them. If the M.R.'s. is held by a party other than the named consignee in it then the named consignee is entitled to delivery.

10

I have never before this case heard that a shipping company will not regard these M.R.'s as documents of title. I have had a number of discussions with Chan Cheng Kum after the trouble had arisen with the shippers. Mr. Chan Cheng Kum never suggested that these documents - M.R.'s were not documents of title. Mr. Chan Cheng Kum never said that it was proper for him to deliver the goods without the production of the M.R.'s.

20

Adjd. to 10.30 a.m. on 4/XII/63.

Intld. T.K.

4th December
1963

Wednesday, 4th December, 1963. Coram: Kulasekaram, J.

Suit No. 1284/61

30

Counsel as before.

Hearing resumed 10.30 a.m.

P.W.1.

Chew (on former affirmation).

My bank has signed indemnities to enable goods to be released without production of the shipping documents.

The shipping companies have standard forms of indemnity for this purpose. The Sarawak

Steamship Co. have their own office in Sibü. They use the same sort of form. I now produce one of those forms marked P.1. The form has to be stamped by the Customs in order to get receipt of the goods.

Harper Gilfilan (Borneo) Ltd. carry other things, are agents for shipping firms. I now produce one of the forms of guarantee that they use.

Marked P.2.

10 My Bank signs these forms as guarantor.

Rejang River Kintau Shipping & Trading Co. - they are agents of Hua Siang S. Co. in Sibü.

They have also a similar form of Guarantee. I now produce a standard form of this Company. Marked P.3.

20 One signature on P.3 is mine and the other is of my client Yu Ming Co. who are importers and they received those goods. It has the customs chop on it. When the shipping documents arrive the consignee will deliver to the shipping firm and get the letter of guarantee from the shipping firm. The consignee returns the L. of G. to us to show it is null and void. I see P.3.

When P.3 is returned to us we put the words "Returned" and the cancellation and my signature.

The receivers of the goods will have to pay interest to the bank for the L. of Guarantee. We would normally ask the receivers to return the L. of G. within a week.

30 When I knew that Tiang Seng Chan was delaying payment I boarded a plane for Singapore and went to see the manager of Tiang Seng Chan. I boarded the plane on 9.7.61. In the plane I saw Chan Cheng Kum. I knew him before. He often went to our Bank when in Sibü.

40 He often met the representative of Tiang Seng Chan in our bank. Chan Cheng Kum knew that Tiang Seng Chan was my client. During the flight to Singapore I was seated by the side of Chan Cheng Kum.

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Plaintiffs' Evidence

Chew Choo Sing

Examination (continued)

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1963

—————
Plaintiffs'
Evidence

—————
Chew Choo Sing

Examination
(continued)

I told him that Tiang Seng Chan had not made payment in respect of the first lot of goods.

He just smiled. Chan Cheng Kum said the old proprietor of Tiang Seng Chan was in business for a long time and that his health was good. Mr. Chan thought that he will pay for the goods. The name of the old man is Lee Chin Tian.

I told Chan Cheng Kum that I was going to see Lee Chin Tian. He (Chan) kept quiet.

I did not know then that the shippers had taken delivery of the goods. The day after I arrived in Singapore I learnt that the shippers had taken delivery of the goods. 10

On the day following my arrival I went to the office of Tiang Seng Chan. When I arrived there I saw that Chan Cheng Kum and his son were already there. After a while Lee Chin Tian arrived and invited us to his house. Mr. Chan's son also went to Mr. Lee's house. After arrival at Lee's house Mr. Chan told Mr. Lee that he (Mr. Lee) should make payment for the goods. There was no mention of the amount. The amount due was \$190,000/-. It was told in Mr. Chan's presence. I did not expect to see Chan when I went to Lee's house. 20

I did not learn before this that Tiang Seng Chan was getting delivery of the goods without production of the M.R.

I see P.150 at register of 'X'. In these indemnities I don't see the Banker's signature which is rather unusual. The shipping firm would ask the firm taking delivery of the goods to have the letter of Indemnity signed by a Bank. If Tiang Seng Chan had asked O.C.B.C. to sign a Letter of guarantee without production of M's.R. I would not expect the O.C.B.C. to inform us. 30

I see Page 195 and Page 197 of 'X'. I see Tiang Seng Chan went to the Chartered Bank to get the Indemnity signed.

At the meeting Lee suggested that my bank at Sibul trust him and give further credit. He said he would purchase more goods and when they were 40

sold in Singapore he would repay in respect of the 1st lot. I did not agree to his suggestion. I asked him to pay first and then I will continue to trust him.

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Examination (continued)

Cross-examination by Defendants' Counsel

10 Very rarely did we make advances to Tiang Seng Chan after this. Chan Cheng Kum did not express surprise that M.R's were held by the Bank. Before we left Lee's home Chan Cheng Kum made a telephone call. He rang his son who works in his office and told him that he should not make any delivery of goods without M's. R. He spoke to Chan Kim Yan. The youngest son of Chan Cheng Kum was with him at Lee's house. On 10/7/61, the date of the meeting, we held other M's. R. for goods which had been shipped recently by Tiang Seng Chan. I see on P.11 of Y the item 61/140.

20 Payment was made against M.R. in respect of this item. I didn't think the practice went on of Hua Siang releasing goods without M.R. after this meeting.

4 Bundles of M.R. the subject of this action put in and marked P.4 A - D.

I see a bundle of notes. There is a chop on them. "DP". This chop is put in by our Bank. It means Payment against Documents.

Bundles of Notes put in and marked P5 A - D.

I see a bundle of insurance policies. It was the practice for the shippers to endorse the insurance policies - Marked P.6.

30 XX'd by Mr. MacCrindle.

My bank carried on since 1929.

40 It performs all the normal Banking business for its customers. If a Sibiu merchant asked me to open a L/C in favour of a seller abroad my bank would do it. If subsequently the Bills are accompanied by proper shipping documents the bank will make payment. They should be clean bills of lading. A foreign bank has asked my bank to open a L/C. in favour of a Sarawak exporter. I will inform the Sarawak exporter. I would act according to the L/C. If the L/C requires production

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of B. of L. then I shall act on them.

If a L/C is opened in a foreign country then such a clause will be included. The Bank loans money on securities. I would consider the value of the security. I would loan money on a deposit of title deeds.

My bank has not lent money on the deposit of share certificates but I know other banks do. My bank has not lent on the deposit of godown receipt.

My bank would collect on behalf of a Sibuan seller money through a foreign bank on production of the necessary documents.

In Sibuan the Bank will buy their bill and the shipping documents. Our agents in Singapore will collect payment from the buyer and give release of the shipping documents.

I charge my customers a commission for such a service. M.R. will name the Wah Tat Bank or its agent as consignee of the goods.

The M.R. regarding this action named the O.C.B.C. as the consignee.

I know they are M.R. and not bills of lading. I see Page 3 of Y. I see the small column on the right and agree that B.L. has been altered to "M.R." In page 5 of Y somebody forgot to alter B.L. to M.R. I don't know if the usual shipping document is a B/L and not a M.R. The bank belongs to my father. As far as I know M.R.s are exchanged for B. of L.

Do you know the holder of B.L. gets the property in the goods by consignment or endorsement has a contract between the shipowner and himself. Question not pursued.

The M.R's in this case are all for freight which has been prepaid.

I see P. 81 of 'Y' has not the chop "Freight prepaid". If the M.R. has not the stamp "Freight prepaid" then it is up to the shipowner to collect the freight. If I am to receive the goods then I shall have to pay the freight if it has not already been paid.

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40

I don't know of any case where a named consignee has been asked to pay freight on goods on M.R.

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Cross-examination by Defendants' Counsel (continued)

I agree with what has been suggested that in the Sarawak Singapore trade Bills of Lading are now issued. Bills of Lading are only issued in cases of transshipment at Singapore. I mean cases where a major shipping company has undertaken to carry goods from Singapore to a foreign port and has engaged a local shipping company to carry the goods from Sarawak to Singapore. The major shipping company will insist on a proper Bill of Lading from the local shipping company. The local shipping company will have proper B/L forms which they will issue against M.R. if asked to do so.

Q. If I or the shippers had taken the M.R. to the shipping company and asked for a B/L would you expect to get one?

A. I think so.

But nobody asked for a B/L in any of the shipments in this case. In the Sarawak/Singapore trade goods are carried in the majority of cases on a M/R and in the rarer cases on a B/L. The B/L and M/R in my view has the same value. There is no use in asking for a B/L.

The same could be said of the Singapore Sarawak trade. In such cases in Singapore/Sarawak trade goods were shipped against B/L.

I have seen such B/L. Most European firms insist on having B/L.

Q. In your view is that insistence entirely without purpose?

A. I don't know.

Q. Can you suggest or explain why they insist on a B/L?

A. That may be their wish or the policy of that particular firm.

Q. If a Shipper in Sarawak ships under a M.R. with someone else named as consignee. Yesterday in evidence you said if M.R. held by a person other than the named consignee, the named consignee is nevertheless entitled to

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the goods?
A. If the consignee authorises the third party to receive the goods then he can receive it. If A is the shipper and B is the named consignee then B will only be able to take delivery on production of M.R. If B cannot produce the M.R. then he cannot take delivery even though he is named as consignee in M.R. The M.R. is evidence of the contract between shippers and shipowners.
If the M.R. was still in the possession of the shipper then he can vary his instructions to the shipowners.
If it is not in his possession he cannot do so.

10

Adjd. to 2.30 p.m.

2.30 p.m. XX (continued)

Referred to para 8A of S. of C. at page 8.
The passage marked in green is correct. The named consignee cannot get delivery without production of M.R.

20

If a shipper shipped some goods and named a third person as consignee in the M.R. and if the shipper keeps the M.R. then the named consignee will not be able to take delivery as he is not in possession of the M.R. The named consignee would still be concerned in the goods as he is named in it. He can't get the goods as he has not the M.R. The named consignee can't insist in delivery as he has not the possession of the M.R.

If the shipper sells the goods to another and that persons sells it again then the M.R. will not be endorsed from one buyer to another.

30

I have not seen a M.R. endorsed from one buyer to another. In the case of M.R. in the named consignee I know of no shipper challenging the receipts of the named consignee when the shipper has not the M.R. I have never heard of any named consignee challenging the rights of the shippers to alter the destination of the goods. I know of no case where the named consignee in possession of M.R. has claimed against shipowners for delivering to the shippers.

40

Suppose a customer of mine came to me to advance money to import goods from Europe and as security for such advance he offered to pledge the shipping documents of the goods from Europe to Sarawak. In such a case if the only documents offered were the M.R. I would not accept in the case of an importation.

In the present case the words "Not Negotiable" in M.R. I consider them not important.

10 The named consignee can take delivery of the goods. The words "Not negotiable" appear on every M.R.s. As far as I know they appear in all M.R. issued from Sarawak.

20 The M.R. without these two words would be different. If the words "N...N....." appear then the named consignee can take delivery of the goods if he has the M.R. According to the Bank's view when "Not Negotiable" appears the named consignee can transfer his rights provided the M.R. are with the named consignee. Even if the M.R. were not negotiated I say the same as above.

I produced P.3 this morning. I signed that on behalf of Wah Tat Bank. It covered shipment on a vessel called "Amerita". The document refers to shipping documents and gives certain numbers.

I don't know if the shipping documents named in P.3 are the B. of L. or the M.R.

P.3 refers to a shipment from Taiwan. I don't know what customs obtain in Taiwan.

30 The giving of an indemnity by a person not in possession of the shipping documents to take delivery of the goods is a common thing. It is particularly so where the voyage is a short one.

It is a matter for the shipowner to decide who should sign this indemnity but the shipowner must hold himself responsible. On 9/7/61 I boarded the plane at Sibiu. Mr. Chan also boarded the plane at Sibiu.

40 I sat with Mr. Chan in the flight from Kuching to Singapore. My father sent for Mr. Chan the day before this flight. I was present for a short while at this meeting. When Mr. Chan met

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my father they greeted each other. The meeting took place at my father's office. My father sent for Mr. Chan. I was at the meeting for about 3 minutes. My table was in front of my father's table and so I ushered him there. My father told me he sent for Chan. My father wanted him to advise him of shipping facilities in Singapore.

The meeting was not to discuss the shippers' affairs in this case. My father asked Mr. Chan what was the practice in Singapore regarding the delivery of goods.

10

My father inquired if persons taking delivery were not in possession of the shipping documents or if they were with the bank what would the practice be. My father was interested in these matters because Tiang Seng Chan had not paid the bills for a long time.

My father did not say so because matters between the shippers and the Bank are secret. My father did not give any explanation to Chan for asking these questions.

20

During the 3 minutes I was there I heard Mr. Chan give an explanation about the procedure. I heard Mr. Chan tell my father that he would insist on a Banker's Guarantee in the absence of a M.R. before delivery. I did not hear him say anything else as my telephone was ringing. My table was facing my father's table, between the 2 tables there was a partition. Anyone coming to see my father had to pass me if he were coming from the main entrance.

30

I saw Chan leave my father's place. I went to attend to a call and when Mr. Chan left I was still at the phone. The meeting must have taken about 10 minutes. I saw my father after he left. My father said that they discussed unimportant matters.

At the meeting with Mr. Chan, I do not think my father would have told him that the shippers owed the Bank money. We have secrecy regarding these matters.

40

My father and I discussed the position of the shippers after the meeting and before I left for

Singapore. My father asked me to see uncle Chien Tian in Singapore and to tell that if payment for the first lot of goods were made to OCBC then he will continue to help them at Sibiu.

I called Chin Tiang as uncle Chin Tiang as a mark of respect because my maternal grandfather had left China with Chin Tiang. I and my father knew Chin Tiang for a very long time. My families were very old friends.

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Cross-examination by Defendants' Counsel (continued)

5th December 1963

10 The meeting was on a Saturday and I left on a Sunday. The meeting was at about 10 a.m. My father gave me the instructions to go to Singapore and see Chin Tiang before he met Mr. Chan.

My father told me that if I should meet Chin Tiang I should ask him to pay the first \$190,000/- and after he had done that we will continue to help him in Sibiu.

20 Hearing resumed 10.30 a.m.

5/11/63. (sic)

I did not say to Chan on 9/7/61 that the shippers owed the Bank money.

What I said was that the shipper had not made payment in respect of a previous shipment. I mentioned the shipper as Tiang Seng Chan. I mentioned that Tiang Seng Chan Co. owed money on the 1st shipment involved in this case but did not mention the amount.

30 The mere mention that Tiang Seng Chan owed money to Bank I consider not a breach of the secrecy that Bankers observe.

We cannot tell others that so and so owes us money. I still maintain that it was not improper for me to have told Chan what I said. I said those engaged in Banking business would not say that.

I don't think it is possible for my father to have made that statement.

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I did not say Tiang Seng Chan owed us money. I merely said they had not paid for the goods.

I say secrecy was kept. I and my father have the same standards of secrecy.

My father-in-law accompanied me to Singapore on 9/7/61. He joined the plane together with me at Sibü. He is Ho Ah Kim. He flew with me on instructions of my father to keep me company. He is a retired man. Prewar he worked in the Bank as an English clerk. There was no necessity to sit next to my father-in-law. Between Sibü and Kuching I sat next to a friend Lim Wee Sin. Lim was going on a pleasure trip to Singapore. When we got to Singapore I went with my father-in-law to Hua Siang Steamship Co. I went there on Monday 10/7/61. I went to uncle Chin Tian's premises first. I met Mr. Chan there. It was after I went to Uncle's house that I went to Hua Siang Steamship Co. At Uncle's house we sat in the front hall. The meeting lasted about $\frac{1}{2}$ hour. I did not hear Chan ask uncle where the 4 M.R.s. in respect of the shipment were. I did not hear Mr. Chan mention the M.R.s. I did ask Uncle Chin Tian to make payment for the bill and that would include the delivery of the M.R.

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20

I did not specifically mention the M.R. Unless payment is made the M.R.s. will be held by us.

If Uncle Chin Tiang paid the first bill of \$190,000/- in respect of the 1st lot we will continue to help their branch in Sibü. To give him overdraft. If uncle had made payment I would advance money on further shipment. I did mention the sum of \$190,000/- to Uncle Chin Tiang at the meeting. I mentioned the amount for Uncle Chin Tian's information. Chin Tiang had been informed of the amounts due. I mentioned the amount because I wanted him to pay this amount. The conversation was in Hokkien. His son Chan Kim Sing stood on one side. I don't know if he spoke Hokkien. There was a screen and the telephone was on the other side of the screen. It was at the end of the room and it was partitioned off by a wooden wall. I sat with Uncle while Chan telephoned. I did not speak to Uncle Chin but I was drinking a cup of Ovaltine.

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I heard the telephone conversation that Chan had. I do say that Chan told that no more goods were to be released without the M.R. He spoke to his son on the other end. I did not hear the son's voice. The telephone conversation lasted a short while. Chan left together with me. I travelled with Chan in Uncle Chin Tian's car and we went to Uncle Chin Tiang's Office. There were also Uncle Chin Tiang and Chan's son.

10 All four went to the house together and left together. After reaching Chin Tiang's office I left with my father-in-law. I left my father-in-law in Chin Tiang's office when I went to Chin Tiang's house. I and my father-in-law went to Hua Siang to pay them a social call - to Mr. Chan. I did not discuss the delivery of the goods in Singapore. There was no one else present except the two of us and my father-in-law. After inquiring about Chan's health I sat there for a while.

20 The meeting lasted slightly more than five minutes. When we were making advances to Uncle's firm we assessed the value of the goods on the basis of current prices of the commodities. The value of the bills represent roughly the current value of the goods. I would not know at what price. Tiang Seng Chan bought these goods. By looking at Tiang Seng Chan's bill we would to some extent know what Tiang Seng Chan paid for the goods. But we did not pay much attention to them. The

30 cheques are still there. The bills and the cheques did not tally. The bills and the total cheques that cover the bills are not the same in most cases. I shall see that the cheques are not destroyed.

Tiang Seng Chan applied for insurance cover to us as agents for the Commercial Union. The applications were in writing. There is a printed application form for such purposes. The policies were made out in the terms of the written application. I think the 4 applications for these

40 policies are still available. I shall produce a standard form and I shall look for the 4 applications.

I see Page 145 of X.

This document is made out by Tiang Seng Chan. The number of bill is written by the Bank on the chop. I mean the number inside the chop. The rest of the document is made out by the shippers.

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Cross-examina-
tion by Third
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The Bank also took a Guarantee from 2 of the individual members of the shippers - Lee Chin Tian and Lee Teow Keng. The Bank has claimed from those 2 guarantors in respect of these shipments. In respect of our dealings we have claimed against the guarantors and it is in respect of other monies and not the monies stated in these bills. It was in respect of the overdraft account with our bank. Apart from the M.R.s we did not hold any other securities regarding these shipments.

10

We caused a shop belonging to the shippers at Sibü to be sold by order of court due to the shippers' indebtedness to us. We caused the shippers' office in Kuching to be sold in the same circumstances.

My bank has a warehouse in Sibü. We hired it out to other people. We did not use it to store goods belonging to our customers.

We advance money on M.R.s to other shippers as well. The volume of business of this class was not as large from other shippers. Tiang Seng Chan was our biggest shipper in this class of business. Lee Chin Tian and family were old friends of my family.

20

It is not true that we trusted old family friends and did not ask for a bill of lading. We did not take any risk.

XX'd by Mr. Boswell.

Before I came to Singapore on 9/7/61 I did not know that the shippers had taken delivery of the goods without surrendering the M.R.s. When I was in Lee Chin Tian's house on 10/7/61 I came to know for the 1st time that the shippers had taken delivery of the goods without production of M.R.s. The meeting took place a little after 9 a.m. on 10/7/61. My instruction from my father was to ask Mr. Lee to pay \$190,000/- for the 1st shipment and they will be allowed to continue their business in Sibü. I knew that shippers had taken delivery because Mr. Chan insisted that Uncle Chin Tiang paid that sum of money. The sum of \$190,000/- had not been mentioned yet at the meeting. I told Lee then what my father had told me. Lee asked for

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further financing by us for produce from Sibu to Singapore. I asked for payment of the 1st lot and said then the Bank would continue further advance for produce. At that time I knew the shippers had taken delivery of the goods. I was not aware of the practice that shippers were taking delivery of goods in Singapore without M.R.s.

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10 At the meeting Mr. Chan insisted on payment by Lee. He further told Lee that if he was not going to pay he would be placing him in a difficult position. Mr. Chan did not continue further. He did not explain what the difficulty would be. The conclusion was that the goods were no longer in his hands. Nobody said anything about delivery without M.R. I also derived the inference from that part of the telephone conversation that I heard when Mr. Chan phoned his son. The business part of the meeting was over when Mr. Chan phoned his son.

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20 We instructed our agents in Singapore to make inquiries from the shipping firm where the goods were. I gave oral instructions on the same day after the meeting. I gave these instructions to Ng Tiang Swee an Assistant General Manager of the O.C.B.C.

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At the meeting in Lee's house nothing was said about the delivery of the goods. I could not see if Mr. Chan was worried.

Cross-examination by Third Parties' Counsel (continued)

Adjd. to 2.20 p.m.

30 2.20 p.m.

Hearing resumed.

When I send the shipping documents to Singapore I send the M.R., T.R., Insurance policy, Bill of Exchange and Instruction Sheet.

40 I see Page 3 of (Y). That is the instruction sheet. It has the number of B of E, the other documents that accompany it and the instructions following those shipping documents. These instructions are to our agents, the O.C.B.C. These instructions accompany every shipping document. I expect the agents to consider these instructions as sufficiently important to be followed by them.

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They have no authority to depart from them unless the matter is referred to us.

The instructions to be followed are marked with an 'X' at the particular square. The first instruction is "Payment may be deferred pending arrival of vessel carrying merchandise". The payment refers to bills above. Such instructions followed all shipping documents in this case.

The B. of E. are all payable on sight. By these instructions we allow the agents to accept deferred payment. According to the past payment was made between 10 days to 2 weeks of the vessel leaving Sibiu. I am referring to payment at Singapore. I will be notified by O.C.B.C. by letter. I expect payment within a week to 10 days of the arrival of the vessel in Singapore. I would not know where the goods were in Singapore between arrival and date of payment.

10

In the first seven months of 1961 the shippers asked for more time to make these payments. In all cases during these months the period of payment was irregular. I see Page 98 of Z. The date of the BEP is 6/1/61. It bears the chop that it has been paid and the date as 17/2/61. The Bill at 97 of Z was dated 6/1/61 and paid on 17/2/61.

20

2 Bills of Exchange produced and marked TP1 and TP2. The O.C.B.C. would credit our accounts with the amounts received on or about the date they received them. We would be notified sometime later. During this period I would not know where the goods were. I did not find out. It would not be necessary for us to find out. It would be kept in the custody of the shipping firm. The shipping firm should keep the goods as the M.R.s are with us. I did not give them instructions. It was their duty to keep the goods until such time as the M.R.s are delivered to them.

30

M.R. can be exchanged only on payment of B.E. Those were our instructions. In respect of TP1 and TP2 I don't know when the M.R.s were exchanged. The O.C.B.C. will be able to tell that. I did not know that shippers would take delivery of the goods soon after its arrival in Singapore. I did not allow the shippers to take delivery of the goods

40

before payment. I see Pages 77, 78 & 79 of Z.

3 PEP's corresponding to these produced and marked TP3, TP4 and TP5.

10 I see TP5. This is a B of E for \$40,000/- dated 24/3/61. I don't know whether payment was made. It may be payment was made on 3/5/61. It would then be six weeks after the arrival of the goods. If this is true then we would know about the payment. Whenever the shipper wanted more time to pay the O.C.B.C. will inform us. The shipper on arrival asks for a week and if at the end of the week he wants more time then he will ask the O.C.B.C. and they will keep on informing us. We will be told of this request invariably by letter from the O.C.B.C. Usually we do not give them any reply.

20 When we don't reply we tacitly accede to the request for one week. A normal voyage between Singapore and Sibiu would take about 3 days. I would expect O.C.B.C. to notify about any deferred payment in about 2 weeks from the vessel sailing from Sibiu. From week to week the O.C.B.C. informed us about requests for deferred payment.

I see Pages 9, 10 & 11 of Y.

30 I see the last column named Remarks. Against those bills that have been paid the word "paid" is shown in that column. The date of payment is also shown in the register but does not appear in the photostat copy. I guessed entry showing date of payment would be there. I agree that date of payment is not shown in the register of "outward bills for collection". We get a commission for the bills that are purchased. The amount for May is about \$3,800/-. It is a substantial sum. For the month of June the amount is \$3,400/- and all except one bill was purchased from the shippers in this case. At P11 the business in relation to collection of bills dropped sharply.

40 We wanted to keep the good relationship between shipper and bank as far as possible.

Between.

4.00 p.m.

Adjd. to 10.30 a.m. on 6/11/63.

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10.30 a.m.

Hearing resumed.

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This practice of the shipper getting delivery of the goods without M.R. from 1955 was not known to me. In 1955 Tiang Seng Chan more often shipped his goods through Sarawak Steamship Co. I think Hua Siang acted as ship-owners from 1955. During these years when they did business the amount of goods that Tiang Seng Chan shipped was in the region of 8 to 10 million dollars a year approximately. I had not worked out the figures. On this amount I was drawing a commission of $\frac{3}{4}\%$. I charged my other clients the same rate. It is not true that I charged them $\frac{1}{2}\%$. Occasionally and in sp. circumstances I charged them $\frac{1}{2}\%$. I based the different rates of commission on the time taken by the shippers to meet the bills. I charged the shipper a lower rate if he took a shorter time to meet the bills. The rates I charged were similar to those charged by other banks. Since 1955 I have been charging Tiang Seng Chan $\frac{3}{4}\%$.

In addition to charging commission on the bills I was also drawing commission as agents for Commercial Union on the Insurance Policy.

I see pages 77 and 78 of 'X'. I see the originals relating to these 2 pages. This is a usual printed form of our Insurance Policy. I am not familiar with the terms printed on the Policy. I am the agent of the C. Union and I am authorised to issue these policies and my bank's signature appears on each of these policies. Insurance covers the safe voyage from Sibü to Singapore. If the vessel sinks then the firm is liable for the goods carried.

One clause below the paragraph in Red in the Insurance Policy says liabilities cease after 24 hours of arrival in Singapore. I am not familiar with the Insurance policy. Please put these questions to the person who appears for the Insurance Co. The policy covers the goods from the time they leave the warehouse in Sibü till the time they are delivered to the consignee or any place named in the policy. When the goods are in

the possession of the consignee there is no further coverage.

I see page 3 of Y and the instruction 4 on it. These instructions are contained in Page 3 to 8 of Y. I expect my agents to carry out those instructions. If our agents did not carry out our instructions they shall be responsible to us. I would consider a breach of our instructions as a serious matter. But the agents have always carried out our instructions. I would be surprised that the goods were not stored by the O.C.B.C. The goods are to be stored and insured. If not the agents should notify us. I was never informed that the goods were not stored in respect of all the shipments in this case. The fact is the O.C.B.C. did not take delivery of these goods. Otherwise the M.R.s would not be in their hands.

After the goods had arrived in Singapore and if Tiang Seng Chan refused to meet the bill at Singapore for one reason or other as if the goods are not up to specifications, it is only under these circumstances that O.C.B.C. will take delivery of the goods and store them in their godowns. Having done that O.C.B.C. will inform us of the state of affairs. If Tiang Seng Chan did not refuse to accept the goods then he would get another bank to sign an indemnity to take delivery of the goods.

On 10/7/61 after the meeting at Lee's house, we all 4 went to Lee's office in his car. We all got off the car at Lee's office. Mr. Lee went into his office upstairs and I followed him into his office. I don't know if Chan followed us into office. I don't know if Mr. Chan left with me.

It was between 10 & 11 in the morning when I left Lee's Office. I am not an inspector of the Wah Tat Bank.

Mr. K.

4 Bundles of M.R. disclosed by defendants as covering 1st 4 months of 1961 issued to Tiang Seng Chan marked P. 7 -

P. 7A - 44 Receipts to O.C.B.C.

P. 7B - 7 Receipts to Kwong Lee Bank as consingees.

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Chew Choo Sing

Cross-examination by Third Parties' Counsel
(continued)

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Chew Choo Sing

Cross-examin-
ation by
Third Parties'
Counsel
(continued)

Harry Twist
Examination

P. 7C - 7 Receipts consigned to order.

P. 7D - 13 Receipts consigned to self or Tiang
Seng Chan Ltd.

Mr. K. Refers to Para 8A of Pleadings, applies
to strike out the 1st or in the 6th line
from the bottom of this page. No
objections. Allowed.]

Mr. K.

Applies to interpose a witness who would soon
be leaving Singapore. No objection. Application 10
allowed.

Mr. Godwin holds a watching brief on behalf of the
Sarawak Steamship Co.

P.W.2.

Harry Twist s.s. I live at Auby Reservoir
Road, Kuching. I am the General Manager of
Sarawak Steamship Co. at Kuching. I am in overall
charge of the company under the direction of the
B. of Directors. I have been holding this posi-
tion since Sept. 1963. I joined the Blue Funnel 20
Line in Liverpool in 1932 and I was employed by
them till 1945 when I joined Mansfield & Co. Ltd.,
Singapore and Mansfield are the managers of the
Straits Steamship Co. Ltd. In 1952 I became the
manager of the Straits Steamship Co. and I was with
them for 11 years when I became manager of the
Sarawak Steamship Co. The Sarawak Steamship Co.
Ltd. is a subsidiary of the Straits Steamship Co.
I have since 1945 been in close contact with the
shipping trade between Singapore and other places 30

in South E.A. They include Malaya, N. Borneo, Sarawak and Indonesia.

I have had very close relations with the Sarawak/Singapore and Singapore/Sarawak Shipping Trade from 1947. I am here on a subpoena from this court. The main lines engaged in this trade in this area were Sarawak Steamship Co.
Hua Siang Co.
Heap Eng Moh Co.

- 10 Straits Steamship Co. did not operate between Sarawak/Singapore and Singapore/Sarawak. In the port of Singapore the Straits Steamship Co. acts as the agents of the Sarawak Steamship Co. in the trade between Sarawak and Singapore. In Sarawak the Sarawak Steamship Co. have their own offices in all the parts in Sarawak. Soon Bee Steamship Co. and Heap Eng Moh Co. have some connection but I don't know what it is. They both trade under the Red Funnel Line. From Sarawak to Singapore there is only one shipping document and that is the M.R. I mean for the local trade.
- 20

Between Sarawak/Singapore trade the M.R. is treated as entitlement to the goods. By entitlement I mean that the person holding the M.R. and the person mentioned in M.R. as consignee can demand delivery of the goods.

- 30 In this trade nobody is entitled to demand delivery of the goods without production of the M.R. I would add there is one other document against which delivery will be granted and that is the indemnity signed by a Bank. The shipper has the choice as to whether to grant delivery or not on production of such a letter of Indemnity.

The ship owners insist on a bank guarantee as there is considerable risk in giving delivery on anything but the M.R.

- 40 In 1947 when I got to know this trade I found the M.R. then obtaining as a document of title in this Trade. This custom started before my time. In my experience I cannot see any difference in this Trade between M.R. and a Bill of Lading. I can't remember ever having seen a B. of L. covering a local shipment from Sarawak to Singapore.

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—————
Harry Twist

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Harry Twist

Examination
(continued)

This custom started long before my arrival and is lost in antiquity. I have never before this case heard any one suggest that in this Trade the M.R. is not a document of title. It is only a matter of weeks since I heard that in this case it is being suggested the M.R. is not a document of title.

I have not and do not contemplate making any changes in our practice. In this trade in my experience a shipping co. which has only issued M.R.s would consider itself under the exactly the same liability as if it had issued a Bill of Lading.

Adjd. 2.30 p.m.

2.30

I think the reason for carrying on this Trade by M.R. instead of B. of L. is historical. Before the advent of airmail the documents might take ten days or longer to reach Singapore whereas the cargo would arrive there in about 48 hours. The issue of B. of L. will prolong the time before the shipping documents reach Singapore - possibly by a day by which time the ships might have sailed and the documents could not accompany the ship. If B. of L. have to be issued in the S/Singapore trade the procedure would be to surrender M.R. to the Shipping Co. and the Shipping Co. will compile a B. of L. from the details of the M.R. The Shipping Co. would then retain the M.R. I can't conceive of any situation where both the B. of L. and M.R. would be in circulation for the same cargo.

To my knowledge my company has never been asked to issue a Bill of Lading in this Trade. My company from Sarawak has never delivered goods at Singapore without production of a M.R. or a Banker's Guarantee.

I see Page 53 of X.

A shipping company would not deliver the goods comprised in P. 53 of X without production of M.R. or a Banker's Guarantee. If the O.C.B.C. manager arrived at the quay and said he is the manager of the named consignee my company will not deliver the goods without production of M.R. or a Banker's Guarantee.

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If Tiang Seng Chan went to the shipowners after the issue of P. 53 of X and asked for the delivery of goods to themselves instead of the O.C.B.C. without production of M.R. then the shipowners will not be bound to deliver to Tiang Seng Chan. The shipping company will not be entitled to deliver to Tiang Seng Chan without the production of the M.R.

I see P. 7A.

10 I see from the chop that the documents had been negotiated by the shipper through the Wah Tat Bank, Sibu, who had forwarded them to the O.C.B.C. in Singapore. This is usual procedure. I have on numerous occasions come across the same sort of transactions.

20 I see a file containing M.R.s of Sarawak Steamship Co. for the period April and May 1961. A bundle of photostat copies from this file produced and marked P.8 - Sarawak Steamship Co.'s M.R. I see No. 29 of P.8. The consignee is Order notify United Asia Trading. The endorsements behind are as follows. The shipper in Sarawak has endorsed it and obviously passed to a Bank at Sarawak. The Bank in Sarawak has passed it to the Chartered Bank in Singapore who have endorsed it be delivered. The Chartered Bank has endorsed it United Asia Trading and this would have been done when United Asia paid the Bank and obtained the M.R. United Asia would then take
30 the M.R. to the shipowners and demand delivery and they will get delivery and they will stamp the M.R. and hand it to the shipowners as a receipt for the delivery of the goods. I have also experience of trade being carried on by B. of Lading. The transactions by B. of L. are the same as that by M.R.

I see M.R. No. 49 of P.8.

The shipper has negotiated the document through the Hongkong and Shanghai Bank.

40 The document is the security for the Bank over the goods. When the consignee pays the price the Bank delivers the M.R. to the consignee who will in turn deliver to the shipowners and collect the goods.

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(continued)

I see P.8. M.R. No. 29.

I see L/G. No. 442. That is the letter of guarantee number. This rectangular chop indicates the cargo was delivered to the consignee without production of M.R. on a Banker's Guarantee. On receipt of the M.R. by the shipping company they will return the L. of G. and put the chop on the M.R. Primarily the same procedure would take place if B. of L. were issued instead of M.R.

I see P.7A and P.7D.

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In the case of P.7D they have not negotiated through a Bank.

When Tiang Seng Chan named the consignee as O.C.B.C. they intended to negotiate through the Bank. Anybody connected with shipping would understand it that way. I can't think of any other reason why the O.C.B.C. should be the consignee. If a shipping line in the Sarawak Singapore Trade issued M.R. in 1961 in which the named consignee was a Bank and that line has been trading for some years then I would not believe the Managing Director of that line, if he were to say that he did not realise that such mate's receipts were customarily treated as documents of title.

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I see P.1.

That is a standard form of our letter of guarantee. It refers to delivery of goods without production of B. of L. or M.R. as customary. This form to my knowledge has been in use for the last 14 years. Our printed forms of M.R. have the words Not Negotiable printed on top as in P.8.

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As far as my company is concerned these words make no difference. So far as the practice is concerned these words could be left out.

I see Page 55 of X.

I see "Consigned to Overseas Chinese Bank/ Tiang Seng Chan (S) Ltd." I would interpret this document has been negotiated through a Bank.

The named consignee is the O.C.B.C. Delivery

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would be granted to Tiang Seng Chan provided the O.C.B.C. had endorsed the document first. M.R. would be required before delivery of course. If the endorsement was O.C.B.C. order/notify Tiang Seng Chan the procedure would be the same. I have said about the Sarawak Singapore Trade. There would be no difference in the Singapore/Sarawak Trade. On local cargo there will be B. of Lading to a greater extent from Singapore to Sarawak. European firms to a large extent tend to use bills of lading. 5 to 10 per cent of the goods moving from Singapore to Sarawak will be on Bills of Lading. Movement from Sarawak to Singapore is mainly rubber and pepper. There is no movement of produce from Singapore to Sarawak. By produce I mean the national product of the country of shipment. I have had discussion with a representative of Tiang Seng Chan regarding shipment of produce from Sarawak to Singapore. I don't know the name exactly but I think it is with Mr. Lee the proprietor of Tiang Seng Chan. He was a very elderly gentleman. This took place sometime during the last 2 months of 1960. The occasion was a Chinese Dinner Party in Singapore. He was guest in the party but it was not given by the Sarawak Steamship Co.

I was anxious to secure his cargo for shipment in our ships. I asked him what I must do to secure his cargo. He said he only had one requirement. That is to deliver the cargo in Singapore to him without production of Documents by him. I refused to comply with this request. The discussion ended with that and so did our trade connection.

As far as I know the bulk of the cargo then was carried by the Hua Siang Steamship Co.

Adjd. to 10.30 a.m. Monday.

10.30 a.m. Monday, 9th Dec., 1963.

Hearing resumed.

Parties as before

Harry Twist (on his former oath).

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Mr. K.

(Quantum of damages to be settled later. If
need be by the Registrar.)

XX'd by MacCrindle.

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Cross-exam-
ination by
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Counsel

About 1954 the Sarawak Steamship Co. had
virtual monopoly of the Sarawak/Singapore Trade.
Rajah of Sarawak was interested in company but not
financially. The Heap Eng Moh is the Red Funnel
Co. Heap Eng Moh and Hua Siang came sometime
after 1954. Prior to 1954 Tiang Seng Chan shipped
his goods from Sarawak through our company. Tiang
Seng Chan stopped shipping through our company
sometime in 1958 (approximately). I am not aware
if they shipped anything through our company. For
all practical purposes they had stopped shipping
through our company. Thereafter they shipped
through our rivals Hua Siang and Heap Eng Moh. I
agree that I supplied the Pltf.'s counsel with a
statement. From my file a few documents were
photostated and they have been marked P8.

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All except the last one in P8 are stamped with
the L/G chop. The 1st 16 of our documents are not
stamped with a L/G chop. The consignee was unable
to produce the M.R.s in P8 and that is why it was
released against L/G. This sort of transaction
happens in about every voyage.

These documents in P8 are not marked M.R. but
they are M.R. and not Bills of Lading. Anyone
will recognised it as a M.R. and not a Bill of
Lading.

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M.R. always contains particulars to whom the
goods are consigned. This answer applies to
shipping generally. Our M.R. as well as Hua
Siang's incorporate the conditions that are usually
found in a B. of Ld. This does not necessarily
appear in general shipping. My opinion is that
this does not appear in Alfred Holl's M.R. I have
heard of Messageries Maritimes. I am not
familiar with French shipping. I have heard of
the Kee Hock Shipping Co. Their M.R.s if it says
that it is subject to terms and conditions in our
B. of L. will not surprise me. At present they
sail to a great many ports outside Malaysia. But

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hitherto they have been engaged in coastal shipping. Kee Hock traded in this area but about 2 years ago they traded with countries outside Malaysia. I am not experienced in shipping firms all over the world. My experience is chiefly in this part of the world. I have heard of the Teck Hwa Steamship Co. For conditions there it says on the M.R. please see overleaf. In the M.R. is stated "it is expressly stated that these goods are received expressly on the conditions set out in B. of L. On occasional voyages they had shipped goods to South Africa, Fiji, New Zealand, Australia and Ceylon. The Bill of Lading is normally made out from the M.R.s. I am not aware of what goes on in other parts of the world. It is the same ships that ply back and forward between Sarawak and Singapore. It is the same trade. My company will be prepared to issue B. of Lading if called upon to do so by the shippers. We keep Bills of Lading forms for this purpose. Singapore to Sarawak some of the goods have B. of L. The people who take out a B. of L. on each voyage from Singapore to Sarawak are European firms who are used to dealing with B. of Lading. The Chinese from Singapore to Sarawak and from Sarawak to Singapore operate on Mate's Receipts and they continue to do so. I can't say what it is at the back of the European firm's mind. I don't know Kek Seng, a firm of rice dealers. I do not know of any Chinese firm insisting on Bill of L. between Singapore/Sarawak and Sarawak and Singapore. If often happens that cargoes of the ships had been sold by the shippers to buyers and the buyer pays by the letter of credit. I have never seen L. of C. and I don't know when this one was issued.

I gave a reason why cargo moved on a Mate's Receipt in my evidence on last Friday. When the M.R. is not assigned to a banker it follows the ship. The M.R. in most cases goes on the same ship as the cargo. When the M.R. is assigned to "Order" it is not accompanying the goods in the same ship. If the M.R. is to a named consignee (buyer) it may accompany the goods in the same ship. I can't give a percentage of how many such transactions take place. The shipper will hand the M.R. in a sealed envelope to the ship's clerk or Chin Chei for delivery to the named consignee.

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ination by
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(continued)

In such a case the shipper would have no record of the fact that carrier had the goods on board. He will be left with no document from the carrier in respect of the goods. I can't hazard a guess as to the percentage. I cannot say what the other companies in this trade. The Hague Rules apply in Sarawak since 1931. A M.R. can be posted as quickly as a B. of Lading. To exchange a M.R. for a B. of Lading may take a day more. Many shippers do not care to wait. Through cargo will move from Sarawak to Singapore sometimes on a M.R. and sometimes on a B. of L. Even through cargo on its voyage from Sarawak to Singapore moves on a Mate's Receipt. For practical purposes I see no difference between B. of L. and M.R. in this trade. When B. of L.s only are issued they are usually in sets. This is general shipping practice. The usual practice is to have 3 originals and a number of copies made "Not Negotiable". I don't know why this happens. There may be some legal explanation. The "Non-Negotiable" copies are not signed and hence no shipping company will deliver on these documents. I say this practice is universal as far as I am aware. I am not familiar with all shipping companies. I am unable to say if all the copies are stamped "Not Negotiable".

I see Page 53 of X. It is a M.R. If I saw Page 53 I would say that it was the intention of the shippers to negotiate through a Bank. By negotiation I mean that shipper would deliver the document to Bank at the Port of shipment and that Bank would pass it to another Bank at Port of Destination. I am not aware if O.C.B.C. had a branch in Sibiu. It would make no difference if the Bank in Sibiu had a branch in Singapore. In that case it will be handled by one Bank through 2 branches would come into play. When a shipper handed the M.R. to the Bank he would be negotiating it. I have not heard of shipping documents being forwarded to a buyer with the B. of E. attached. I don't know the procedure about B. of Ex. and it is not a shipping document. The naming of a consignee as a Bank would mean that the Bank had financed for the goods. I don't know how they collect the draft. It is quite common for a Bank to render such service to its customers. I see Page 55 of X. I said the Bank could not endorse the M.R. to anyone but Tiang Seng Chan as it is named in it. Tiang Seng Chan of course can

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endorse it further to somebody else. My answer would be the same if the words were "O.C.B.C./ Notify Tiang Seng Chan". The M.R. in the form at Page 55 of X if presented at the Port of Destination endorsed by the Bank to somebody else other than Tiang Seng Chan then my company will not deliver the goods to that 3rd party. My answer would be the same if the M.R. were in the form as at Page 53 of X. My answer would be the same if it was a B. of Lading with the consignee named in that manner. In page 55 of X. If Tiang Seng Chan having the endorsement of the Bank, subsequently endorsed it to John Smith & Co. then I would consider John Smith as having a good claim for the goods and as carrier I would deliver it to them. I don't think the words "Not negotiable" would preclude us from acting in this manner. I have experience of this trade from 1947. I can't remember of any such case where a named consignee who is in possession of the M.R. had presented it to the shipowners and found that the goods had been delivered to somebody else. This is the first time that I have heard of a named consignee making any claim against carrier for non-delivery.

In Page 55 of X. If the shipper came with the original M.R. and wanted the named consignee altered I would agree to that. In such a case I would not want any endorsement. My attitude will be the same if it was a Bill of Lading providing he had the complete set. I would require the complete set most definitely. One original will not do. In the Port of Destination I would only require the holder of B. of L. to produce just one of the original of the B. of L.

Very often the M.R. issued to a shipper will be consigned to the buyer as the named consignee. I have been asked by the seller to stop the goods in transit. When it is a named consignee such action is very rare. This has happened about 4 times in my case in the last 8 years. In these cases where the shippers-sellers have asked to stop in transit goods to a named consignee under one of their M.R. I have stopped the goods at such request and refused to deliver the goods to the named consignee. I cannot say in such cases if the named consignee held the M.R. If the named consignee held the M.R. I don't think we would have right to stop delivery. In most cases when this

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ination by
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has happened the goods have been returned to port of shipment and not landed at port of destination. In other cases the consignee has not demanded the goods. I cannot remember of any case where we had withheld delivery from a named consignee who has held the M.R. and demanded delivery even though the seller has sought to stop it in transit. In those cases where the goods were taken back to port of shipment I cannot recollect of any case where the named consignee/buyer demanded delivery with M.R. If a shipper requested me to stop in transit against a named consignee buyer holding the M.R. I would not meet his request unless the shipper is prepared to sign an Indemnity. The answer would be the same even if it was a B. of L. instead of a M.R.

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Mr. Lee the elderly gentleman who I met in the party was about 70 years old. That was the first time I met him. I was introduced to him at the party. Since 1957 or so Tiang Seng Chan had ceased to ship their cargo through our company. This elderly gentleman was introduced as the proprietor of Tiang Seng Chan. One of my company's directors introduced him to me. It was a small informal dinner party. There were about 6 persons in this party. It was in a house in Tanjon Rhu, the home of our director. I conversed with him in English with a translator. The director of my company translated. The someone in whose house it was. His name is Wee Keng Chan. The conversation in the matter I mentioned in my examination in chief lasted about 10 minutes. I was anxious to get back Tiang Seng Chan's shipments. I did not discuss freight rates. At that time my recollection is that he was not making any shipments with us; perhaps one or two. I say he said that only requirement necessary for shipping through us was delivery without presentation of shipping documents. Wee Keng Chan was there. I don't know if anybody else heard this. I refused his request. Banker's indemnity may have been mentioned but I don't remember now. I would have delivered to anybody with a suitable Banker's Guarantee whether or not he held the documents. My trade connections had ended years before this party with Lee. There may be trade connections without any cargo. It was this trade connection that ended. After 1960 there was no chance of resuming trade connections. In 1960 the policy of our company was the same as before. All that I wanted to say was that I took his attitude as final.

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Hearing resumed.

XX'd by Mr. Boswell.

At the dinner party Mr. Lee Teow Keng (id.) was present. One purpose of the dinner party was to see if we can get back the business with Tiang Seng Chan which we had lost. I don't know if cheaper freight was discussed. It may have been discussed in Chinese. I certainly have no recollection of a rebate of 10 to 12 per cent being discussed. I have no recollection of rebates being mentioned. It would not surprise me if it cropped up in the Chinese discussion as all 3 lines were rebating in various manner. The third item discussed was taking delivery of goods without production of shipping documents. This was on an indemnity from Tiang Seng Chan without a Bank joining in it.

I have recollection that I agreed on everything except on the Indemnity from Tiang Seng Chan which was to be redeemed within 1 week. I have no recollection that Tiang Seng Chan asked for longer period to redeem the indemnity.

My company will not deliver goods in Singapore without an Indemnity signed by a Bank. The general position is the same with the Straits Steamship Co. but there have been deviations from it. The deviations were several years ago about 3 years when they released goods on personal guarantees when they delivered goods from Indonesia.

That is not so now. The position between Sibul/Kuching and Singapore was that goods were delivered against M.R. or Banker's Indemnity. Deviations did not apply to this trade. That position was the same in 1961 as far as I am aware.

(Document handed to witness.)

I see this document.

It is a document of our company and it is headed "Indemnity and Guarantee. Delivery without B. of L." It has the date when it was redeemed.

I was not aware this was being done. I was not in Singapore then.

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ation by
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(continued)

Re-examina-
tion

(Document put in marked TP.6)

I am not aware of such an arrangement when on L. of G. without Bank joining in goods were released on short term. I am not aware that this was the arrangement with Straits Steamship before Straits Steamship Co. lost their business.

When the goods arrive in Singapore the consignee takes delivery of the goods between a few hours and 2 days of its arrival. It is a short trip from Sibul to Singapore, and the ship stays in Singapore about a week before it returns to Sibul.

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I see P7A.

On all these M.R. on the reverse there is an endorsement by O.C.B.C. to deliver to Tiang Seng Chan on payment of our charges. If delivery was granted against this document the chop on the back will be put on soon after arrival before a delivery order was prepared. If however delivery was granted against a Banker's Guarantee or some other Guarantee then it may be weeks or months after arrival.

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Re X'd by Mr. Kerr.

I see P.8.

I see the conditions in para. 3 on the reverse of the M.R. There is reference to a B. of L. To my knowledge this would not be usual on a M.R. but I am not conversant with M.R. throughout the world. I draw a distinction between M.R. and a shipping order. A shipping order is an authority from the shipping co. to the shipper to ship goods on a particular vessel belonging to the company, and it is an instruction to the Chief Officer or Mate to accept that cargo. On the other hand a M.R. is the ship's actual signed receipt that ship has received on board the cargo. My company uses shipping orders as well as M.R. I was referred to

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a document from "Messageries Maritime". I see the document. I should say this was a shipping order.

(3 sets of documents put in and marked D.1)

10 I will only issue a B. of L. on the surrender of the M.R. As far as the trade is concerned it is the general practice and not that of any firm. M.Rs. are documents of title. Even if B.L. are issued on the exchange of M.R.'s my answers would not in any way be affected.

I have never heard in this trade that the B. of L. is a better title than M.R. I see P.8. I can't say if any of the documents in P.8 travelled with the ship. The receipts may not have travelled as mail with the goods. Whether the M.R. travels with ship or not the shipping company will regard them as documents of title.

20 A shipper will negotiate through a Bank to ensure that he is paid for the goods and to receive at least part of the money as soon as possible. When the shipper receives money it is from the consignee through the Bank.

The named consignee in the M.R. if it is a bank will collect the money from the consignee.

I see Page 53 of X.

30 From this document I infer that O.C.B.C. will be receiving payment from Tiang Seng Chan Singapore Ltd. for the value of the goods. If O.C.B.C. received payment for the goods from Tiang Seng Chan they will endorse the M.R. and deliver it to Tiang Seng Chan. Tiang Seng Chan are the shippers and the consignee. If the Bank is not paid they will not deliver the document to Tiang Seng Chan. If Tiang Seng Chan went bankrupt the Bank will probably deliver a stop notice to the shipping co. not to deliver the goods to Tiang Seng Chan. In such a case O.C.B.C. should take the goods and store it in one of their godowns.
40 If O.C.B.C. demanded delivery of the goods on production of the M.R. the shipping co. can refuse to give delivery.

I have no legal qualifications; none whatsoever.

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If instead of M.R.s the words B. of L. had appeared in these documents my answers would still remain the same. When the shipper has asked for the goods to be delivered to somebody else other than the named consignee he has produced the M.R. In very rare occasions this has been made without production of M.R. The shipowner will not in such a case accede to the request without taking an Indemnity from the shipper.

In this trade goods are delivered with M.R. or a Banker's guarantee. The same applies in the case of B. of L. There have been cases where goods have been delivered against a Banker's Guarantee when the M.R. was held by a Bank. In such a case my company will hold itself liable to the Bank holding the M.R.

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I see Page 53 of X.

If Tiang Seng Chan came to me and asked for delivery of goods with M.R. I would not consider that a stoppage in transit. I have never heard of a stoppage in transit when the named consignee is a bank. I know of no such arrangement where my company will allow delivery of goods without production of M.R. when the Letter of Guarantee is not signed by a Bank but the term of L/G. is limited to

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I see TP.6. I don't know much about this document.

I see Page 53 of 'X'. If O.C.B.C. did not hold the M.R. then they will not be entitled to demand delivery if they did not hold the M.R. A person not named as consignee but holding the M.R. can demand delivery provided the named consignee has endorsed the M.R. to the holder. My answer would be the same if it was a B. of Lading.

30

(Witness released).

Adjd. to 10.30 a.m. on 10/XII/63.

10th December, 1963.

10.30 a.m. Hearing resumed.

Parties as before.

P.W.1. Chew Choo Sing (reaffirmed).

Re X'd by Mr. Kerr.

When L/C are issued they will call for a B. of L. The Sarawak/Singapore trade is very rarely carried on by L/C. I am not aware of the issue of B. of L. in any case which is not the case of a through shipment from Sibu to Singapore. I never heard that in the Sarawak/Singapore trade the B. of L. is a better security than the M.R. I have never in this trade asked a customer to deposit a B. of L. instead of M.R. I see Pages 3 to 8 of Y. I see the 3rd column from the right of P.3. The letters B.L. are in the printed form. In relation to the Sarawak/Singapore trade we usually make an amendment to M.R. In Page 5 this alteration is not there probably due to an oversight of the clerk who prepared the document. We have seen 3 types of consignees description in the M.R.

- (1) Named consignee.
- (2) Order with no named consignee.
- (3) The name of the shippers themselves.

Irrespective of which one of these applies for a shipment no one without a M.R. can demand payment.

When we take a pledge on a M.R. we name O.C.B.C. as consignee so that shipping company can be informed that the M.R. is in the hands of the named consignee and in my case the O.C.B.C.

I see Page 53 of X.

'B.E.P.' stands for Bill of Exchange Purchase. Collection does not have in this type of transaction over produce. If I am asked to collect on behalf of a customer I would have a different chop from what appears in Page 53. The stamp in such a case has the letters B/C meaning Bills for Collection. In cases where O.C.B.C. is named as

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the consignee in the M.R. the O.C.B.C. has never taken delivery of the goods.

I have never heard of goods shipped from Sibul to Singapore with B. of L. I have never seen B. of L. to cover shipment from Sibul to Singapore. I have never heard where a shipping company has delivered goods without taking a Letter of Indemnity or the surrender of the M.R.

I see Page 15 of P. para 6 & 6A. Chan Cheng Kum never told me that he delivered the goods to Tiang Seng Chan & Co. because he thought he had to do so. I have never heard it suggested that in this trade the M.R. is not a document of title.

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I see P.3. I signed P.3.

I have signed this form of Guarantee when the shipping documents were M.R.

Before Chan Cheng Kum came to see my father in Sibul on 8/7/63 my father had told me to go and see Lee Chin Tian at Singapore. The decision was already made by my father before he saw Chan Cheng Kum. I said in the plane after Kuching.

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I sat next to Chan Cheng Kum at Kuching. We both changed planes at Kuching. I told Chan that Tiang Seng Chan had not paid for a previous shipment. Lee did not express any annoyance at the mention of the figure of \$190,000/-. Chan Cheng Kum did not at any stage say he had delivered the goods to Tiang Seng Chan Ltd. Lee Chin Tian did not tell me that his company had taken delivery of the goods. The wall between the room and the telephone was a thin wall. I usually check the balance owing to us against the total amount of the bill. Produce was bought from time to time until the ship was about to sail for Singapore. The bills were delivered to us with M.R. and the accounts were credited with the sums. When the produce is bought we meet their cheques on the personal guarantees and require the production of the M.R. in due course. The selling of the shipper's property in Sibul under court order was in respect of indebtedness due on current account. This indebtedness did not include any sums in respect of shipments sued on in this action. I

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advanced money on M.R. not as family friends of the 3rd party but as a purely business transaction.

I see bundle of 'Z' at Pages 97 and 98. They are marked 61/1 and 61/2 (Page 98 and Page 97).

I see Page 4 of Z.

10 I see a Trust receipt issued to O.C.B.C. by the shippers. I see "Wah Tat Bank Ltd., Sibubep. 1 & 2". The trust receipt is handed to the Bank to enable the shippers to take delivery of the goods. This goes to show that this amount of money is payable to us by Tiang Seng Chan and if Tiang Seng Chan is unable to pay the O.C.B.C. is responsible to us.

20 I did not know at any time before this case that O.C.B.C. was accepting Trust Receipts from Tiang Seng Chan in exchange for M.R. So far as our bank is concerned we do that. Pages 1 - 18 are Trust receipts. Before this case started I did not see any of these documents. When O.C.B.C. obtained such T. Receipts they did not inform us.

I see Page 78 of X.

This policy is prepared by us from what appears in the application form. The application is prepared by us and the applicant checks it and signs it.

My Bank considered the O.C.B.C. as the consignees.

30 I see Page 78 of X. The wording is "Order of O.C.B.C. Consigned to Tiang Seng Chan". We held the policy and it was signed by Tiang Seng Chan and so it did not occur to me that the reference of T.S.C. has any bearing on duration of the cover of the policy.

Re X'd.

40 On 10/7/63 I knew that shipping firm was handing the goods to T.S.C. I did not know under what circumstances this happened. I knew that from the conversation between Lee Chin Tian and Chan Cheng Kum. I did not ask Chan Cheng Kum where the goods were as I felt it was a matter for the

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O.C.B.C. to find out. I felt I should find out from the O.C.B.C. how the matter stood before deciding what action I should take.

Q. What harm could have occurred by asking Chan where the goods were?

A. At that time Mr. Chan was not happy about the whole thing.

P.W.3.

Chieng Hie
Koong
Examination

Chieng Hie Koong s.s. in English. I am the manager of the Hock Hua Bank Ltd. in Sibü. This Bank was incorporated on 1st March, 1952. I was then the Asst. Manager. I have been Manager of the Bank for 16 months. We have a branch office in Kuching. My Bank provided the normal facilities to our customers. Our corresponding Banks in Singapore are the Sze Hai Tong Bank and the Bank of America. We offered overdraft and credit facilities to produce exporters. When such exporters ship goods to Singapore they used to give us the M.R. issued by a carrier as a pledge with us. Since inception of our Bank this has been the normal practice in Sibü. I don't know what happened before 1952. The goods in the M.R. are consigned to a consignee as instructed by the Bank. Sometimes the goods are consigned to our own order and sometimes to our corresponding Banks in Singapore.

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(Bundle of M.R. issued by Singapore Red Funnel Lines and marked P9 (to be proved).)

I see M.R. No. 13698 of 4/4/61 in P. 9.
I see the stamp of our Bank. The letters "BEP"
meaning "Bill of Exchange Purchase". SK stands
for Sarawak and 10/10 is our serial number. Hua
Hin Trust Co. and Agents Ltd. is one of our
clients and the shipper in this document.

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SHTB stands for Sze Hai Tong Bank. It is
consigned to this Bank. Aik Cheng is the importer.
The endorsement on reverse reads "Deliver to the
order of Aik Cheng For Sze Hai Tong Bank Ltd.
..... Asst. Exchange Manager." When the
importer pays the Bank this Endorsement as above
is put on by the Bank. The Sze Hai Tong Bank on
receiving payment credits the money to our account.
Our Bank has purchased the documentary bill and the
money belongs to the Bank. Our Bank purchased the
Documentary Bill from the shipper. The shipper
pledges the M.R. for the amount we advanced. We
give the shipper an overdraft. The documentary
bill is the Bill of Exchange together with shipping
documents - M.R. or B. of L. When we collect on
behalf of our customer from the importer in
Singapore we use a different stamp. We then use
the stamp "B/C" which means Bill sent for collec-
tion. In the Sarawak Singapore trade we more
often purchase Bills rather than collect bills.
I have never asked my customers to deposit a B. of
L. instead of M.R.

In the case of local cargo from Sarawak to
Singapore I have never seen a Bill of Lading. We
treat the M.R. issued by a carrier as good as a
bill of lading because the validity of a M.R.
issued by a carrier has never been questioned by
anyone. I instruct my customers to name our bank
or our corresponding Bankers as consignees to
assure ourselves that we have control of the goods
so shipped. In my opinion no one can demand
delivery of the goods without production of M.R.
unless they give a L. of G. from a Bank.

I see M.R. dated 4/4/61 No. 13847 of P.9.

Hiap Heng Heng Co. Ltd. is one of our
customers, the shipper here. Lim Hup Choon is
the importer in Singapore. We have used a
rectangular stamp. The endorsements here are
similar to the ones I have described earlier.

Adjd. to 2.30 p.m.

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(continued)

Cross-Exam-
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Defendants'
Counsel

2.30 p.m.

The practice of pledging goods by M.R. is the general practice amongst Bankers in Sibiu. My Bank is concerned with L/C. From Sibiu to Singapore in the case of export I have rarely come across L/C. In the case of import too, it is seldom used. To my knowledge only in import from Singapore we use L/C.

XX'd by MacCrindle.

As far as my bank is concerned I have never come across L/C for the export to Singapore of rubber and other produce. My Bank has never issued L/C for the export of any other goods from Sibiu to Singapore. As far as I can remember L/C has not been issued for export from Sibiu. If they don't know the credit worthiness of the importer in Singapore then the exporter in Sibiu may use a L/C. I have not had occasion to open a L/C for a Sibiu importer. I had no Banking experience before 1952. The Wah Tat Bank was carrying on business in 1952. It has only its Sibiu office. It is the general practice of Bankers in Sibiu to advance money on M.R. to produce exporters. I would be prepared to take M.R. to the order of the shipper if the shipper would endorse it to the Bank. So far I have not done this. I would be prepared to do this depending on the worthiness of the shipper. Sometimes we collected for our clients

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bills. This is generally for small amounts. In such cases we will not insist that the M.R. be endorsed to us or our corresponding Bank in Singapore. I treat all M.R. of the various companies as the same. I have not seen a M.R. endorsed from one buyer to another.

I see P.9 - M.R. No. 13698.

10 When I used the word negotiating Bank I meant my own Bank. When the shipper hands the M.R. with B.E. attached to the Bank I would regard the M.R. as having been negotiated through my bank. Even the named consignee will have to produce the M.R. to take delivery of the goods.

20 I have never taken delivery on behalf of my bank. I have never heard of a shipper asking the shipowner for delivery when the M.R. were with some other person. I have never heard of a shipper being allowed delivery in such a case. Apart from this case I have never heard of a named consignee claiming against shipowner for non-delivery. In the rare case of a L/C in this trade it customarily calls for a B. of L. We have printed forms for our L/C and they contain amongst other things "Clean on Board B/L". The shipper has to exchange the M.R. for Bill of Lading so as to get the necessary credit.

XX'd by Mr. Boswell.

I see Page 60 of X.

30 That is a draft payable on sight to the O.C.B.C. I expect the Bill to be forwarded a few days after the arrival of the ship. In some cases they pay at sight. "On sight" the Bank will present the Bill to the importer and he would pay. If he does not pay on sight we normally allow him time to do so. I would allow about 3 to 4 days to make payment.

40 If the Bill is not paid after 3 or 4 days the collecting Bank will instruct the negotiating Bank. If the Bill was not paid after 3 weeks then we would still await instructions from the negotiating Bank. On receiving instructions from the

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Cross-examination by Third Parties' Counsel

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Cross-exam-
ination by
Third Parties'
Counsel
(continued)

negotiating Bank we will act accordingly. If the negotiating Bank instructed us to store and insure the goods we would act accordingly and claim delivery from the shipping company.

I have in some cases allowed payment to be extended over 3 weeks. I will only take instructions from the negotiating Bank. If I had not been able to take delivery of the goods as instructed then I would inform the negotiating Bank that I had not taken delivery of the goods. I would make inquiries to find out where the goods are from the shipowners. If the shipowners informed me that the goods had been released on an indemnity I would so inform the negotiating Bank. Normally we do not find out where the goods are. We ask for payment and if we fail then we would inquire for the goods. These inquiries may commence about a month after the arrival of the goods. During that month we do not care where the goods are. If the goods in the meantime had been sold we would inform the negotiating Bank. When a ship arrives from Singapore at Sibul it may remain for 4 or 5 days. Usually the goods are stored in Government Godowns.

I see Page 3 of Y.

If I received a similar document with the instructions as at the lower half of the page in particular "Store and insure for us". We have to follow the instructions but not carry them out. If payment is not had then we would inform the negotiating Bank and ask for instructions. Informing the negotiating Bank is obligatory if payment is not made and I am unable to get delivery of the goods. First I would inform the N. Bank about non-payment and this may be any time from 3 or 4 days to 3 weeks from the arrival of vessel. It is not the collecting Bank's duty to look after the goods. Having informed the negotiating Bank about non-payment we will await their instructions. It is obligatory on my part to inform the N. Bank about non-payment. If at a later stage the N. Bank were to instruct me to take delivery and if I am unable to do so then it is obligatory for me to inform the N. Bank.

If I received a M.R. with the named consignee

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as my bank with notify Tiang Seng Chan then I would ask Tiang Seng Chan to make payment and if they did I would endorse the M.R. to deliver to Tiang Seng Chan or order.

In my view it makes no difference if the consignee is named as a Bank or the consignee is named as a Bank order/notify X Co.

Re X'd by Mr. Kerr.

10 I have never heard a case of goods shipped on L/C from Sibu to Singapore. The fact that the exporter in Sibu did not know the importer in Singapore was merely an assumption. I have never heard of a shipping company delivering goods without production of a M.R. or L. of G. I have no legal qualifications. I have never dealt with Tiang Seng Chan with O.C.B.C. as collecting Bank.

I see Page 59 of X.

20 If the consignee was only named as a Bank then from the 'BEP' number on the M.R. we can trace the importer from the Instructions from the N. Bank and the other documents bearing the same BEP number. When the named consignee is a Bank it is usual to have the name of the party to be notified.

(Released).

11th Dec. 1963. 10.30 a.m.

P.W.4.

30 Teo Kui Seng a.s. in English. I am the minister for Natural Resources in the State of Sarawak. Since 1st Oct. 1963 when the first State Govt. of Sarawak was formed. I am here on subpoena. I joined the Sarawak Steamship Co. in March 1927. I left the company on 30th Sept. 1963. I joined the company as a general clerk and I was Managing Director of the company when I resigned. From January 1948 I was the Manager of the Sibu Office and the Rejang Office. I became Managing Director

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Re-examination

Teo Kui Seng Examination

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in Nov. 1962. The head office is in Kuching. We have an agent in Singapore, the Straits Steamship Co. In 1927 between Kuching and Singapore only our vessels plied but in Sibü there was another Steamship Co. called Soon Bee Co. Soon Bee continued until about 1931. After that they came to an understanding not to run the vessels in that area. We in effect bought them out. The Sarawak Steamship Co. was alone in the trade until 1951. The Hua Siang Steamship Co. started in the trade. After Heap Eng Moh S. Co. Moller Shipping Co. functioned for about a year. Heap Eng Moh S. Co. started about 1955 or 1956. Since I have been in this trade there have been no differences in the practice of this trade regarding shipping documents by way of the Steamship Companies. In 1927 in the local trade the M.R. was regarded as a document of title. Since 1927 up to now that position has not changed. I cannot remember seeing any B. of L. being issued in this trade from Sarawak to Singapore. When I was manager of the Sibü and Rejan Office if B. of L. were issued I was responsible for signing them. During my term of office I have never signed a B. of L. for local cargo from Sarawak to Singapore. I have signed B. of L. for transshipment cargo - through cargo. Between Singapore Sarawak there have been odd occasions when European firms have taken B. of L. but never Chinese firms. In my approximation at the very most 5% of the trade from Singapore to Sarawak went on B. of L. I have never heard in this trade that a M.R. is not a document of title. I have never heard in this trade that B. of L. is a better security than a M.R. I have never heard in this trade of a shipowner delivering cargo without a M.R. or L. of G.

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I see P7A.

By the goods being assigned to the O.C.B.C. in the M.R. I would deduce that this cargo is mortgaged to the Bank. I would further deduce that the shipper had got an advance from the Bank to buy the cargo and is now surrendering the M.R. as a sort of security. The surrender of the M.R. as a security to the Bank is a very usual transaction in my experience.

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I see the first M.R. of P7A.

I see the stamps on the documents. I would deduce that the transaction was originally made with the Wah Tat Bank in Sibiu and the settlement of this transaction was made in Singapore through the O.C.B.C. I would believe the O.C.B.C. Singapore was acting as agents or correspondents of the Wah Tat Bank in Sibiu. I would imagine that the transaction was an advance from the Wah Tat Bank to shippers to buy the cargo.

10 I see Page 55 of X.

I see the words against "Consigned to".

I see Overseas Chinese Bank/Tiang Seng Chan Ltd." I would regard this as an abbreviation for the normal "order/notify". I know of few occasions when the cargo has been delivered against an Indemnity and a Bank subsequently appeared as holder of the M.R. The Shipping Co. considers itself responsible for any claims made by the Bank. Because we should only deliver against M.R. I draw
20 no distinction in this trade between M.R. and B. of L. I would ask for payment of freight before delivery of cargo from the holder of the M.R. if the M.R. is not stamped Freight prepaid. In such cases the holder of the M.R. paid the freight.

I see P8. These are a few M.R. issued by our Company. The form as I remember is the same since I joined the company in 1927. The words "Not Negotiable" was there when I joined the company. I don't think we paid any attention to
30 these 2 words.

I see P1.

The wording in P1 is the same as when I joined the company in 1927.

I see P7A - the first M.R.

If Tiang Seng Chan Co. had come to me and said deliver the goods to us in Singapore I would ask him to produce the original M.R. for amendment of the consignee. If he produced the M.R. I would ask to give me letter asking me to amend the name
40 of the consignee to somebody else or himself. I would then amend the M.R. and return it to him. After amending all the documents. If he asked for

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delivery without production of M.R. I would regard myself as not entitled to deliver the goods. It is not common for goods to be delivered on a L. of G. without a M.R. but has happened only occasionally.

In my company's experience we have not had a L. of G. without a Bank's signature as Guarantors.

I see first M.R. in P7A.

If Tiang Seng Chan asked for delivery against a L. of G. then I would expect the M.R. to be in the possession of the O.C.B.C. Tiang Seng Chan (S) Ltd. did ship this cargo from Sibu to Singapore through us. Until Hua Siang Steamship company appeared on the scene we got 100% of the cargo from Tiang Seng Chan. Round about 1959 some of Tiang Seng Chan's cargo was shipped by the Hua Siang Steamship Co. We began to lose ground and the position reversed. We were getting about 10% and Hua Siang S. Co. about 90% of the cargo. I had a discussion when this happened with the manager of the Sibu Branch of Tiang Seng Chan. His name is Wee Soon Beng. This conversation took place about the end of 1959. It took place on several occasions. Sometimes in my office and sometimes in his office. I was initiating these discussions. I asked him to give me his cargo as before. He was rather evasive in the beginning but he did not agree. I asked him if his new agreement had anything to do with Freight Rates. He told me there was no difference in F. Rates between my company and Hua Siang.

Ultimately he told me that if my company wanted his cargo we had to agree to deliver cargo in Singapore to Tiang Seng Chan without production of the M.R. nor a Letter of Guarantee. Wee Soon Bee wanted us to deliver the goods to Tiang Seng Chan on a L. of G. signed only by Tiang Seng Chan. I would not accept a L. of G. signed only by the person demanding delivery of the goods. Mr. Wee did not say anything about where the M.R.s were. I knew that his M.R.s were always sent through the Bank. I mean that his cargo would be mortgaged to the Bank. Mr. Wee did say during the discussions that Hua Siang Steamship offered that privilege. I mean the privilege of delivering cargo without

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production of M.R. He did not mention of what L. of G. Hua Siang was expecting. At the end of these discussions we could not accept his terms and we dropped off the negotiations. I retained about 10% of the trade of Tiang Seng Chan but these were unattached cargo which did not go through a Bank and which was shipped by them to themselves. In such cases against the words "Consigned to" in the M.R. would be "Selves".

10 After that I think I got no cargo from Tiang Seng Chan naming a Bank as Consignee. I see Page 150 and the subsequent pages of X. They are all Indemnity and Guarantee.

I have never before seen such L. of Indemnity where a Bank has not joined as a guarantor of the Indemnity. As manager it was part of my job to get as much trade as possible for my company. In my opinion I lost 90% of Tiang Seng Chan's cargo to Hua Siang because they were prepared to deliver

20 without production of M.R.

XX'd by MacCrindle.

I have been over 30 years with the Sarawak Steamship Co. That is the whole of my working life. I have no experience of any other shipping company. I have only handled Sarawak Steamship Co. documents.

Sarawak Steamship Co. has standard forms of M.R. From what I have seen of other shipping firms I would say they were in the same form. I would not come across a M.R. other than one from a local company. The ships go up and down between Sarawak and Singapore. This shuttle service is one and the same trade.

30

If a shipper demanded a B. of L. I will give it for the exchange of a M.R. If he offered the M.R. and asked for a B. of L. I would consider he had the right to do so. In shipments from Singapore to Sarawak a number of shippers exercise that right and call for B. of L. I would agree that in any

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Teo Kui Seng

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ination by
Defendants'
Counsel
(continued)

one voyage from Singapore to Sarawak there will be at least one B. of L. against some cargo on it. A number of European firms in Singapore insist on a B. of L. That was the standard requirement of the majority of European firms. From Singapore to Sarawak no Chinese firms asked for B. of L. It would surprise me if I know that Chinese firms had asked for B.L. in this trade. I have not heard of any B. of L. being issued for cargo from Sarawak to Singapore. I would say such B. of L. are never issued for cargo from Sarawak to Singapore. It would surprise me if I saw B. of L. for cargo from Sarawak to Singapore.

10

I am unable to say why some firms ask for B. of L. for cargo from Singapore to Sarawak. If my opinion is asked the M.R. is the same as a B. of L. I would say it is a waste of time and money to ask for the issue of a B. of L. On a M.R. they put on a ten cents stamp but on a B. of L. they put on a 25 cts. stamp. I am speaking of the position in Sarawak. I don't know the position in Singapore. It would require the taking of the M.R. to the shipping office and exchanging for a B. of L. which will have to be prepared. The details in the B. of L. are taken from the M.R. In Sarawak this process takes longer than in Singapore. This is due to limited staff and limited persons with authority to sign a B. of L.

20

I don't think that is the reason why many people are satisfied with a M.R. and do not exchange it for B. of L.

30

In the case of cargo for transhipment from Singapore on a major line they will always insist on a B. of L. I don't know if carriers who are not usually plying in this trade would pick up cargo on a B. of L. Some carriers who do not ply regularly on this route do pick up some cargo from Sarawak to Singapore. I don't know if they issue B. of L.

A shipper in Sarawak who sells goods to a buyer in Singapore may use a Bank to collect the B. of E. In cases where the Bank is loaning the money for the cargo and in cases where the Bank is collecting money, its name may appear in the M.R. as consignee. In either case the name of the Bank

40

may appear/notify shipper (name of shipper).

I say there is no significance in the words "Not Negotiable" that is printed on the M.R. They have been there for so many years they have lost all significance. I had no occasion to think about what they meant. It is quite purposeless to put them there. When we issue B. of L. we issue them in sets. There are either 2 or 3 copies in a set. The copies are not signed. I don't know if the copies are marked "Not Negotiable".

10

I see Page 53 of X.

If a M.R. issued by my company is consigned in terms of this document and if O.C.B.C. endorsed it in favour of John Smith I would ensure that it was also endorsed by Tiang Seng Chan. I would not deliver to John Smith unless I knew that Tiang Seng Chan knew about this transaction. If only the Bank's endorsement appeared I would give delivery to the Bank. I have come across M.R. consigned to shipper's order, endorsed by the shipper and to subsequent buyers. I have come across that with M.R. of my company. In such cases I give delivery to the last endorsee buyer. I would consider myself obliged to do that even if the shipper asked me not to do so.

20

My company will deliver goods on a L. of G. This L. of G. is not always signed by a Bank.

30

I will insist on a guarantor for a L. of G. but it need not be a Bank. I will exercise my discretion as to the standing of the Guarantor. I am not aware of Straits Steamship Co. delivering on the Guarantee of the deliverer (receiver) only.

40

If the cargo is released to a person without payment of freight I have a claim against the receiver for the freight. By receiver I mean a named consignee or an endorsee. I would treat a named consignee as in the same position as an endorsee. If the receiver delays in taking delivery and there are storage charges etc. I think I would have a good claim against the receiver for such charges. I have come to regard these M.R.'s exactly the same as B.L.'s.

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I have been asked by the shippers to stop goods in transit. Sometimes goods are sold C.I.F. Singapore. In my career at most a dozen times I have been asked to stop goods while on transit. It will be the shipper or his agents who will make this request. I have complied with such requests. The receivers in the M.R. were named consignees. Because the named consignee could not produce the receipt I carried out the instruction of the shipper to hold the cargo. If the named consignee produced the M.R. then I will be within my right to deliver the cargo to him. I would deliver even if I was informed the Consignee was insolvent. I know of no case where a named consignee had claimed against a carrier in legal proceedings or otherwise. If it is an endorsee instead of a named consignee I would still give the same answer as above. On any demand from such endorsee.

10

Sarawak Steamship Co. is not a member of a shipping conference. M/s. Moller & Co. operated for about a year. I have seen some shipping documents of this firm. They were in the same form as ours. I cannot remember if they were marked "Not Negotiable".

20

I was not present in a dinner attended by Twist and Lee Chin Tian in Singapore in 1960.

I reported the result of my discussions with Wee Soon Bee in 1959 to my head office at Kuching. I don't think Mr. Twist was in Kuching then.

The subpoena was received by me in Kuching through the Kuching High Court. I have had discussions with the pltfs.' lawyers of what I was going to say. I am prepared to speak the truth.

30

2.30 p.m.

Cross-exam-
ination by
Third Parties'
Counsel

XX'd by Mr. Boswell.

I see Ex. TP.6.

That is an Indemnity and Guarantee of the Straits Steamship Co. It is dated 1/5/61. It is signed by Tiang Seng Chan. My company in Sarawak handled this consignment of Rubber mentioned in TP6.

40

The Guarantee is not signed by any Banker or by any other person other than the deliverer (receiver). In the light of what I have said I would say that this is the first time I have seen such a document. I had no knowledge that my agents in Singapore did this. I have no knowledge of this practice where the deliverer received the goods without production of M.R. and on the Guarantee of the deliverer only.

(Mr. Boswell puts in a new document).

10 I see this document. It is a similar Indemnity and Guarantee of the Straits Steamship Co. Marked TP.7. My company would have handled the consignment mentioned in TP.7. from Sibu.

Consignee is named as Tiang Seng Chan. There is no Banker's signature against that space. It is dated 15/6/49. I must again say that this is the first time I have set eyes on this document. I must say it is most unshipping practice.

20 (Bundle of documents in Chinese with Translations put in by Mr. Boswell and marked TP.8.).

I see the first document of TP.8. This appears to be Letter of Guarantee or Indemnity. I have never seen such a Guarantee before. It is not countersigned by any Bank. All the documents in TP.8 do not bear the signature of a Bank or the signature of any other firm or person as guarantor other than Tiang Seng Chan. S.S. "Augby" is a ship belonging to the Sarawak Steamship Co. S.S. "Bentang" was a Straits Steamship vessel on charter to Sarawak Steamship Co. S.S. "Belaja" was a vessel of the Straits Steamship Co. and on charter to Sarawak Steamship Co.

I have never seen these indemnities before. This is the first time I have seen such documents.

(Bundle of documents produced and marked "TP.9" for (id.)).

40 I see TP.9. This is the first time I have seen such documents. These are Letters of Guarantee given by Tiang Seng Chan to M/s. Moller Malaya Ltd. a shipping firm. These documents do not bear the signature of any Bank or any person as

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Re-examina-
tion

Guarantor other than Tiang Seng Chan & Co. I have never released goods when the M.R. was delayed in arriving on the undertaking of the consignee or the deliverer on his personal undertaking. I would not trust a consignee even for a matter of a day or two when he does not produce the M.R. even if the consignee is a man of substance.

Re X'd by Mr. Kerr.

If shippers were to demand B. of L. in exchange for M.R. there will be delay. Usually the vessel sails from Sibu on Saturdays. Loading will be completed after midday on Saturday. Saturday being a half day and Sunday not a working day the shippers will not be able to get the B. of L. at the earliest before Monday morning by which time the carrying vessel would probably be in Singapore. I have never heard that the M.R. was the second best thing to a B. of L.

10

If the Bank is a named consignee in a M.R. I would expect the Bank to rely on the possession of the M.R. and expect the shipping company to protect the Bank's interest. A copy of the M.R. is always forwarded through the master of the vessel to our Singapore agents.

20

After the cargo is loaded the shipper is only given the original of the M.R.

In our company we do not issue a shipping order. We give to the shipper 2 M.R. forms. One would say "received from" and the other will say "please receive". We fill up the forms with the details but the forms are not signed. The cargo is then loaded on the vessel. The original copy will be signed by the Chief Officer the mate and handed to the shipper and the other copy will be retained by the Chief Officer as a record. It is this copy which is retained by the Mate that travels with the ship. I know Mr. Cook. I don't know about Singapore matters on this end.

30

I see Page 53 of X.

I have had no legal training. If the Mate Receipts were headed B. of L. my answers to MacCrimdale's questions in respect of M.R. would have been the same.

10 I would not deliver to a named consignee or the last endorsee without production of the M.R. In the cases where I mentioned I had requests to stop the cargo in transit, the named consignee was not a Bank but the M.R. was in the hands of a Bank. In those cases the named consignee and the shipper were different persons.

I see Page 53 of X.

XX'd by Ct.

When the name of Bank appears in M.R. against "Consigned to" it may be that Bank has advanced the money for the cargo or the Bank has been asked to collect on behalf of the seller in Sibiu. I cannot distinguish the 2 transactions by looking at the M.R.

20 In this trade more frequently the Banks advance money on cargo rather than collect on behalf of sellers. Take the case of - M.R. in page 53 of X. When I have released goods against a Letter of G. I have not heard the named consignee Bank producing the M.R. and asking for the cargo. The shipping company will go after the persons who signed the L. of G. and the Guarantor and get them to redeem or whatever they had to do to get back the M.R.

30 The receiver will get the M.R. from the Bank and return it to the shipping co. who will then release the guarantee.

I never heard of a shipping company not insisting upon the return of the M.R. either before or after delivery of the cargo. I have not spoken to Mr. Twist since he gave evidence in this case. I don't know what Mr. Twist told this court about the discussion he had with Mr. Chin Tian.

Adj'd. to 12/12/63 at 10.30 a.m.

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10.30 a.m. on 12/12/63.

Re X'm of Teo continued.

I can't say if by looking at M.R. I could say that the Bank was advancing money or collecting on behalf of the seller.

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I see P7A.

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tion
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Looking at it now with the chop of Wah Tat Bank on the face of it and the endorsement at the back of O.C.B.C. I would come to the conclusion that this cargo was shipped through an advance from the Bank in Sibiu. My reason for the conclusion is that I can't think of a Bank collecting for a shipper from Sibiu. If the bill is to be collected by the Bank then I would expect the shipper in the M.R. to be different from the party to be notified in M.R. In all the M.R. in P7A and in all the M.R. in this action I see that shipper and the party to be notified are Tiang Seng Chan and the named consignee is the O.C.B.C. In all these cases the transactions were made through the Bank in Sibiu who will advance the money to the named shipper to buy the cargo on the understanding of the condition that the M.R. should be made out consigned to the Sibiu Bank's agent in Singapore in this case it is the O.C.B.C. and that after the loading of the cargo such M.R. will be handed to the Bank as security.

10

20

I see TP6 and TP7.

There was no guarantor in both cases. It does surprise me. I have had no one working under my authority who had ever done that in my experience.

30

I see TP.8.

In all these Chinese L. of G. there is nothing to show that they had been through the St. Steamship Co. I see the 2nd last document in TP.8. Usually I put a tag on and cancel the stamp. My firm never used L. of G. which were wholly in Chinese. I see the translation to TP.8 first document. The word Bill of L. in the translation should read Mate's R. In the Chinese business if they are referring to the B. of L. then they use Big M.R. There is one more reference to B. of L. and I would say the same remarks apply in this case.

40

With leave of ct. Mr. Boswell xx's this witness.

Q. Please write out the Chinese characters for M.R. and those for B. of L.

A. Witness writes out the characters.

The writing marked as TP.10.

(Released)

P.W.5.

Ong Seng Chew a.s.

10 I am the sub-accountant with the O.C.B.C. I have been with the Bank for 13 years. I was in 1961 directly in charge of receiving bills for collection. It is also called the Inward Bills Department. I started in this department in 1955. O.C.B.C. are the agents of the Wah Tat Bank in Sibu.

I see Pages 3 to 8 of Y.

20 From Wah Tat we received the instructions in the form as set out here. The documents that I received are shown in P3 - P8. Miscellaneous refers to Temporary Receipts. Page 5 is a carry forward of Page 4. When I receive these documents we record them in a register and we put our endorsements on the Bills and M.R.

Page 12 of Y is an extract from our register. The 1st column records the date when we received the Bills.

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Ong Seng Chew Examination

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I see P7A.

As soon as we receive these M.R. we put our endorsement on the reverse and retain them.

I see Page 53 of X. The word "cancelled" is chopped over this endorsement. This is because the action started and we wanted to hand the original M.R. to our solicitors. My bank is suing on 20 M.R. which are in bundle X and have "cancelled" chopped over the endorsement. In all other cases the M.R. were delivered to Tiang Seng Chan at some time. In the case of these 20 M.R. they were not delivered to T.S.C. because they had not paid for them. We also made out a debit note for the Bill amount.

10

I see Page 76 of X.

That is a Debit Note of the 1st shipment for \$190,000. We present the debit note to T.S.C. for payment. The bill collector presented all the documents to T.S.C. After receipt of the documents we will present them to T.S.C. on the next day. T.S.C. deferred payment pending arrival of steamer. They always did this. As the documents were drawn on sight they were presented on the next day after receipt. When T.S.C. asked for time till arrival of vessel we wait for one week after the 1st presentation before presenting the documents again. We did not inform Wah Tat about this because of their instruction in Page 7 of Y which says "Allow payment pending arrival of vessel".

20

30

When the documents were presented again to T.S.C. they wanted to defer payment for a further week. This usually happened. It applied equally for the years 1959, 1960 and 1961. We then advised Wah Tat Bank Ltd. I see Page 1 of X. This is a cable advice. We either advised by cable or by airmail. If we thought it urgent we cabled. When T.S.C. was presented the documents for payment they usually asked for deferment of ; payment for a week. Sometimes they asked for less time. Usually we received no replies from Wah Tat. We will present the bills again for the 3rd time and they were usually paid in 1960. If they did not pay they would ask for further time

40

either for 3 days or a week. Between 1959, 1960 and 1961 there was a difference in time as required for payment by T.S.C. In early 1960 payment was made between 2 to 3 weeks of first presentation. In Dec. 1960 and from then onwards payment was made within 3 weeks to a month. When T.S.C. asked for time we informed Wah Tat. Wah Tat did not usually reply to these notifications. I did not during this time take any steps in connection with the goods. We never previous to this case inquire from the shipping company where the goods were because the shipping documents were in our possession. O.C.B.C. have never been asked by T.S.C. to sign a L. of G. for release of goods without presentation of M.R. When a receiver wants to take delivery of goods without getting back the M.R. from the bank they offer Trust Receipts to the Bank. The receiver can get the goods with a Banker's Guarantee. They may either come to our Bank or to another bank. T.S.C. never came to our Bank for such a Bank Guarantee. Banks usually charge a commission. T.S.C. has offered Trust Receipts to O.C.B.C.

The O.C.B.C. accepted 35 T. Receipts in 1960 from T.S.C. The total amount of the Trust Receipts is \$2,740,000/-. In the first half of 1961 O.C.B.C. accepted 18 T.R. amounting to \$1,420,000/-. When T.S.C. wanted to offer a T.R. they will see our Asst. General Manager. If the Bank was going to accept the T.R. then I will be informed.

One of the forms as in Page 1 of Z would be completed by the Bank and they will be signed by Lee Teow Keng on behalf of the receivers and personally. The 3rd column at the bottom of Page 1 of Z shows the date when T.S.C. had to pay the amount shown on the T.R. When T.S.C. paid the money the T.R. was handed to T.S.C.

T.S.C. had to pay interest on the T.R. to the Bank. T.S.C. would pay interest on the amount shown in the T.R. from the date of T.R. until redemption. T.S.C. paid these interests by cheque. We did not inform Wah Tat that we had accepted T.R. When we received the T.R. we credited Wah Tat's account with the total amount of the bills. It may be the Bills were for \$100,000/-. Then we will ask T.S.C. to pay \$20,000/- deposit and give a T.R. for \$80,000/-. We would also advise Wah

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Tat that we had credited their account with this money (\$100,000/-). Wah Tat will not be able to say from the advice whether O.C.B.C. had accepted T.R. or not. In such cases we handed the M.R. to T.S.C. and the insurance policy as well. In effect we exchanged T.R. for M.R.

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ination by
Defendants'
Counsel

Throughout the period I was with the Bank, Wah Tat has never asked O.C.B.C. to store any goods or take out insurance cover for any goods shipped by T.S.C.

I see Page 150 of X.

Before this case I was not aware that T.S.C. was obtaining goods from the shipowners without production of M.R.

XX'd by Mr. MacGrindle.

I am in charge of the Inward Bill Dept. Our Bank have acted as the correspondent Bank to collect Bills for Banks abroad. In the shipments we are concerned with here my bank acted as correspondent for the Wah Tat Bank. In these shipments my bank never advanced money and never purchased the goods. If our Bank was able to collect the money then it would have been credited to Wah Tat with the money. Most of the Bills of Exchange that we collected were accompanied by shipping documents etc. The case of purely collecting a B. of E. was rare. I mean here B. of E. generally and not merely the one from Wah Tat. When I get documents for collection other than from Sarawak it will include the B. of Lading.

From Sarawak we only get for collection Bills from Wah Tat and from our branch in Kuching. We have never got a B. of Ex. with a B. of L. for collection from Sarawak.

I see Pages 12 - 16 of Z.

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20

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We refer in these letters as Bill of Lading. No B. of L. would have been issued between Sarawak and Singapore and so we treated the M.R. as bill of lading.

In Summer of 1961 my bank consulted our lawyers.

I see Page 19 of Z. I don't know how our lawyers got the impression that B. of L. were issued here.

10 In my experience that M.R. with which we are concerned cannot be confused with B. of L. I don't see outward Bills. In the case of inward bills I would not know whether the other bank has made advances or purely for collection. It would not be normal for my Bank to be named as consignee in the shipping documents. It would normally be that they are endorsed to the shipper's order. In about 5% of the cases my bank will be named as consignees in the M.R. There will be a party to be notified in the B. of L. or the M.R. There is 20 no way to know whether the Bank is arranging for collection or has advanced money.

In the documents from Sarawak there are occasions when amongst the documents that are for collecting will include an invoice. The amount of the invoice I would not know whether it tallies with the B. of Ex. I have seen invoices addressed to the buyer giving the prices as so much C.I.F. Singapore. So far my bank has not advanced any 30 money on M.R. We advance money on B. of L. My experience has included paying against documents on a L/C.

I have never seen a L/C calling for a M.R. instead of a B. of L. I have seen a good many L/C calling for B. of L.

Adjd. to 2.30 p.m.

2.30 p.m.

40 My experience of M.R. is of those emanating from Sarawak to Singapore. Only 5% of the Shipping Documents name our Bank as consignees. I did not in this estimate include M.R. from Sarawak. Most of M.R. from Wah Tat Bank concerned with Tiang

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Seng Chan named us as consignees. We only received M.R. from the Wah Tat Bank and not from any other Bank. From our Kuching Branch we never received any M.R. We received through Bill of L. with transshipment at Singapore. We have only received M.R. from the Wah Tat Bank. We act as agents for only the Wah Tat Bank. All the M.R. from Wah Tat Bank named us as consignees.

I have never seen a M.R. from some other Bank apart from the Wah Tat and which did not name us as consignee. I have never seen a M.R. where the O.C.B.C. was not named as a consignee. I have not seen any M.R. consigned to order and endorsed by the shipper to the O.C.B.C.

10

I don't endorse M.R. on behalf of our Bank though I am concerned with the endorsement. Before they come to me some other department of our Bank would have endorsed the documents. They are endorsed in favour of a particular person. I have received M.R. from the Wah Tat Bank where some other shipper other than T.S.C. is involved. When they come into my hands they will have been endorsed by somebody else in favour of the shipper. We only endorse in favour of the party mentioned in the M.R. and nobody else. I mean the party to be notified who may or may not be the same party as the shipper. The notifying party will usually be the person who will be paying the bill. It is up to shippers to name themselves if they want to be notified. I will present the draft to the drawee of the draft. I noticed that all the M.R. that I received were marked "non negotiable". I have received M.R. from Heap Eng Moh. I did not notice if they were marked "Non Negotiable" or not. I have not paid any attention whether they are marked non-negotiable or not. I have not considered the words "Not negotiable".

20

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I see Page 3 of Y. and the bottom left hand corner. If the drawee refuses to pay we interpret this instruction as requesting us to ask Wah Tat whether we should insure or store.

40

T.S.C. did not pay on presentation. We did not ask Wah Tat if we should store. I have never asked Wah Tat where we should store or insure. We take it as a standard guide that the steamer will arrive one week after we get the shipping documents.

The first shipment in this case should have arrived about 30/5/61. We informed Wah Tat only on 23/6/61. We kept on pressing for payment from T.S.C. We would probably have presented these documents on more than 3 occasions. T.S.C. gave as a reason that they could not get delivery of the goods as yet because the goods were discharged in lighters which had some other goods on top. I am referring to draft 106-108. It was to this draft that the excuse was given. On each occasion when these drafts were presented the same excuse was given by the T.S.C. After 24/6/63 they gave no explanation but asked me to wait for a few days.

By the end of July it did not occur to me that the goods had already been delivered. I thought the shipping company had to be responsible for that. The carrier I thought would be happily paying these charges of the lighters. It did not cross my mind that goods had been delivered to the shippers. It is to my knowledge that the carriers would not deliver to persons without production of M.R. or a letter of Indemnity. It ... the person must be the named consignee.

I see Page 53 of X.

If T.S.C. goes to the carriers and ask for delivery without M.R. but with a L. of G. then carriers will give delivery. This is common knowledge and happens from time to time.

It did not cross my mind during these long delays between Dec. 1961 and July 1961 that T.S.C. was receiving the goods from the carriers on a letter of Guarantee.

I don't know if the O.C.B.C. lent T.S.C. money. I don't know if our bank held any security from any of the third parties for the indebtedness of T.S.C. to the O.C.B.C.

I see Page 1 of Z.

Court to Kerr: Are you calling any of the O.C.B.C. witness? Kerr says does not know whom to call since Third Parties have not alleged any particular person in O.C.B.C. had knowledge. MacCrindle says he will not object if no other O.C.B.C. witness is called. Kerr says he will consider whether to call another witness.

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Plaintiffs' Evidence

Ong Seng Chew

Cross-examination by Defendants' Counsel
(continued)

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Plaintiffs' Evidence

Ong Seng Chew Cross-examination by Third Parties' Counsel

13th December 1963

XX'd by Mr. Boswell.

In 1955 T.S.C. was a customer of the Bank. I am familiar with the dealings of this company T.S.C. from then. We were the agents to collect the payment on B. of Ex. on behalf of Wah Tat from T.S.C. Invariably T.S.C. deferred payment of the B. of E.

The Bank has continuous course of business in this line with T.S.C. In 1959 the time of payment since 1st demand was very much shorter. The time began to extend since December 1960. I have a record of the T.R. issued in 1959 and I can produce them if they are still available.

10

Adjd. to 10.30 a.m.

10.30 a.m. on 13th Dec. 1963.

In 1959 41 T.R. were issued by T.S.C. to O.C.B.C. amounting to \$3,200,000/-.

I see 'Z' Page 1.

This is a T.R. for 1960. In 1961 18 T.R. were issued. The last T.R. was issued on 4/7/61 which is missing from the Bundle 'Z'. The T.R. on 4/7/61 was issued against the BE. 113, 114, 116. The total amount of these Bills was for \$80,000/-.

20

The T.R. on 4/7/61 matured on 11/7/61. For each shipment the O.C.B.C. was prepared to advance to T.S.C. up to the extent of \$80,000/- provided the 3rd parties found the difference between the total amount of the shipment and \$80,000/-. At no time will the Bank advance to T.S.C. more than \$80,000/-. The rest of the money required for the shipment on each voyage will have to be found by T.S.C. I will retain only the B. of E. covering the T.R. until the T.R. is redeemed. In rest of the B. of E. and all M.R. receipts will be released.

30

As we released the M.R. on the T.R. we will notify our principals in Sibu that the amount against the M.R. had been collected.

I see the original trust receipts BEP 117

to 119 and the original T.R.- . Marked TP.11. BEP 117 to 119, total \$80,000/-. On 24/6/61 would retain the 3 BEP No. 117 to 119 and inform my principals that the BE have been met. This was the same position during the 1st 7 or 8 months of 1961. The payment will be made after issue of T.R. but on or before the maturity.

I see P.18 of Z.

10 For this trust T.S.C. paid \$30,000/- on 26/6/61 and the balance \$80,000/- on 3/7/61. The date of cancellation of the T.R. was 3/7/61 two days after the date of maturity.

(Bundle of B.E. and corresponding Trust Receipts put in and marked TP 12.)

We take a trust receipt and release the shipping documents to the shipper. That is the object of a T.R.

I see Page 1 of X.

20 On 24/6/61 the BEP 106 to 111, 113, to 116 and 117 - 119 were with us. Bills 106 to 111 referred to one shipment. I may have at any one time BE relating to more than one shipment. The practice of shipowners accepting L. of I. and releasing goods is known to the Bank. The Bank is also aware of the practice that the receiver would be able to obtain delivery of the goods very shortly after the acceptance of the L. of I.

30 The bank accepts one week as a standard time for a ship to arrive from Sibiu to Singapore. M.R. are released on payment of M.R. or on the acceptance of the trust receipts.

Q. Do you see any risk in accepting a T.R. after 3 to 5 weeks after the ship has arrived?

A. No. We are in possession of the Shipping Documents. We have the right to take delivery from the carrier.

40 I am aware of the practice that shipowners released goods on indemnities. It is up to the carriers when he releases the goods and on what sort of indemnity. I am not aware immediately after the

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Re-examina-
tion

arrival of the ship the goods were discharged. I regard a ship from Sibu to take anything from 3 days to a week to arrive in Singapore.

XX'd.

If the shipper gives a T.R. after 3 weeks we presume the goods have been discharged and are in the godowns of the shipowners. I don't know if Hua Siang had godowns to store goods. What we know is that shipping firms have facilities to store their goods. It is not the interest of the Bank to find out where the shipowners stored the goods.

10

At the time when the Bank accepts the Trust receipts they do not find out where the goods are.

Boswell says in all cases the goods were delivered to T.S.C. and sold by T.S.C. before Trust Receipts were signed. MacCrindle says that having previously conceded when he saw T.R.'s that "invariably" in Para 6A of Points of Defence was wrong he stands on "invariably" remaining. Court to Kerr: Is another O.C.B.C. witness being called? Boswell says he does not rely on knowledge of any particular person but only that Bank should have known from course of business. Kerr says he will call Assistant General Manager.

20

Re X'd by Mr. Kerr.

If O.C.B.C. received shipping documents from Wah Tat Bank it will finally come to me and I will see them. As far as I know the O.C.B.C. has never been asked to advance money on M.R.

30

As for the Sarawak Singapore trade is concerned I have never heard it said that M.R. is not as good as document of title as a B. of L.

The Sarawak Singapore trade is carried on by drawing B. of E. which are collected in Singapore and not by L. of C. The party to be notified in the M.R. is always the same as the drawee of the Bill of Exchange.

I see Pages 3 & 4 of X.

In page 4 we have cabled Wah Tat asking for instructions if we should protest. This has never happened before.

10 In page 3 of X we ask Wah Tat instruct. He had not done that before. I have never heard that a shipping company will release goods with Banker's Guarantee when the shipping documents are not produced. T.S.C. if it wanted to take delivery of the goods without documents will have approached their Bank. T.S.C. had an account with O.C.B.C.

A person offers a T.R. to a Bank to obtain the M.R. He wants the M.R. to take delivery of the goods. I have never heard of any person offering a T.R. to a Bank in order to obtain the s. documents when that person has already taken possession of the goods and disposed of it. I was not aware that when T.S.C. offered the O.C.B.C. T.R. that the goods in question has previously been taken delivery of by them and sold by them.

20 On 4/7/61 we informed Wah Tat that BEP 113 to 116 had been paid. In fact no payment was received but a T.R. had been accepted.

BEP 115 is not included in the T.R. as it had been paid in cash. If we hold the M.R. we can claim from the shipowners for the delivery of the goods and if they have already released the goods then we can claim against them. That is our security.

Adj'd. to 2.30 p.m.

30 2.30 p.m.

Rx'm (continued).

(2 Bundles produced by Mr. K. and marked P10 M.R. 29742 and P11 ; M.R.)

I see P.10.

I see Page 1 of P.10. This is a M.R. dated 30/1/61. I say from my records that I received BEP on 3/2/61.

40 (A few of the letters of P10 read to the witness by Mr. K.) When I answered the questions this morning I knew about this case.

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Re-examination
(continued)

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XX'd by Mr. MacCrindle.

I have not received any M.R. from Wah Tat where my Bank is not named as consignee.

(MacCrindle puts in a bundle of documents (M.R.) marked D2.)

No. 17

I see D2.

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It went through my department and it came through the Wah Tat Bank. The named consignee in most of them in D2 is "Selves" and went through our Bank. My bank's endorsement is in all but one of the M.R. in D2. My bank is not named as consignee. I agree that some M.R. went through our Bank endorsed by the Shippers though we were not the named consignee.

10

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Plaintiffs' Evidence

Ong Seng Chew Re-Cross-examination by Defendants' Counsel

Further Re-examination

Further Rx'd by Mr. Kerr.

There was a very low percentage of such M.Rs. where O.C.B.C. was not named as the consignee.

Goh Leh Examination

Mr. K. calls.

P.W.6.

Goh Leh s.s. in English. I am the manager of the Heap Eng Moh S. Co. Ltd. I am here on a subpoena and have indicated to the pltf's solicitors what my evidence will be. I have disclosed certain documents.

20

I have been manager of this from since 1955. I have been concerned with shipping since 1949. Heap Eng Moh S. Co. has operated in the Sarawak/Singapore trade since 1959.

(Bundle of Shipping Documents of the Singapore Red Funnel Line produced by K and marked P.12.)

I see P.12.

This is a set of shipping documents in the Sarawak/Singapore trade. They consist of 6 documents all bearing the same number on the R. Hand top corner.

10 When anybody wants to ship cargo this form is completed by my firm (shipowners). There will be carbon paper between these documents when it is filled up. It takes the same time to fill all these documents. I sign the 1st form the shipping order and give the first five documents to the shipper keeping only the 6th document which is the office copy of the Shipping Order. He then takes the shipping order and the other documents to ship. When the cargo has been loaded the Chief Officer will endorse how many packages have been received. 20 The Chief Officer will sign all the five copies. The Chief Officer will keep the Shipping Order on board. He will give the shipper the original M.R. and a duplicate copy. The office copy comes to me and the agents copy goes to our agents. These forms are used for Sarawak as well. We strike out Singapore and substitute Sarawak in such cases. In the original M.R. there are not the words "Not Negotiable" but in the 3 copies the words are there.

30 When we went into the Sarawak trade we understood that it is customary in the Sarawak trade to effect delivery on a M.R. instead of B. of L. These words are on the copy because we wished to make it clear that the duplicate is not good for delivery. The original M.R. will almost certainly in some instances be passed through a Bank. I understand Banks may advance money on receipt of a M.R.

40 I have a file of returned M.R. I see P.9. The M.R.s in P.9 came from this file. I see the first document of P.9. When I see the M.R. consigned to a named Bank I know the Hong Kong and Shanghai Banking Corporation, the named Bank, has an interest in the cargo. The shippers are Tai

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Examination
(continued)

Liang & Co. Ltd. If Tai Liang Co. Ltd. came to us after the goods had been shipped and said deliver to us, I would demand the M.R. If the shipper cannot produce I would know that the original M.R. had gone to a Bank. I see a form of Indemnity of my firm. I now produce it marked P.13. If Tai Liang Co. Ltd. came to me and asked for delivery against a L. of Indemnity and if we had delivered the goods then we would consider ourselves liable to the Bank, if it produced the original M. Receipts. The delivery of the goods against a L. of I. is a matter between the receiver and the shipowner. It has nothing to do with the rights of the person holding the shipping documents. There have been cases where our firm had released goods without production of M.R. and the bank holding the M.R. has appeared and claimed against the shipowners. Where this has happened my company has considered itself liable to the Bank.

10

I see P.10 and P.11. They relate to certain shipments from Sibiu on 27/1/61 and 17/3/51.

20

I see P.10.

The M.R. No. 29742 is in respect of a cargo on Guing Ann. It arrived on 29th or 30th January 1961. The party to be notified Ang Chia Lim was unable to produce the M.R. and we refused delivery and discharged the cargo into one of our lighters.

As soon as the ship arrives with the cargo the party to be notified is informed and asked to take delivery. If they do not produce a B.G. or the M.R. then we told that cargo will be discharged into one of our lighters., This happened about the 31st of January 1961 in this case. The O.C.B.C. inquired about the goods and finally we confirmed on 13/3/61 that the goods were still in our lighters. On 20/3/61 we wrote to the O.C.B.C. to say consignees were not interested in taking delivery.

30

The cargo from the correspondence can be seen that we had custody of the cargo for over 3 months. The person who produces the M.R. pays the charges (if any) for keeping the cargo.

40

Monday, 16th December, 1963

Counsel as before

10.30 a.m.

Goh Leh (on former oath).

The Bank denied liability. Heap Eng Moh asked on what ground they denied liability. Wah Tat said that lighterage fees should have been paid when deliverer took. We replied it had not been delivered. This dispute was overtaken by another dispute.

I see P.11.

The first document the M.R. Letter of 30th March in P.11 is referred.

We replied on 21/4/63 as in P.11. We delivered to the person to be notified. On arrival of vessel we advised the notifying party to take delivery. They did not have the M.R. Alternatively we asked them to produce a L. of I. from O.C.B.C.

I see P.13. That is our form of L. of I. We asked them to get O.C.B.C. to sign such a letter of I. They were unable to produce the L. of I. Finally they offered to pay us a cash security of \$1,700/- plus their own L. of I. Faced with the unhappy experience of the last shipment of P.10 we had to choose the least of the 2 evils. Knowing that the cash security may not be sufficient we however delivered. I say not sufficient in the shippers bill to the Bank. When we deliver goods without M.R. when the Bank holds the M.R. we are liable to the Bank to the extent of the value of the goods.

We then sent \$1,700/- to the O.C.B.C. and asked for the return of the M.R. On 25/4/61 replied. Next letter is on 30/5/61. The \$420/- is the difference between the \$1,700/- and the insurance value of the goods.

Next letter is 22/6/61. Our suggestion was they settled this dispute. I refer to our letter of 15/7/61. We failed in collecting the money

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Cross-exam-
ination by
Defendants'
Counsel

₹420/- from the receivers. We would have considered ourselves liable if we did not receive payment. The second part of this letter refers to P.10.

Referred P.10. The Malacca cane was found to be valueless. We had to remove this sock and destroy it. After certain period of time we gave up the issue of pressing for payment of the lighterage charges. I tried to recollect and find out if there were any cases where we had issued B. of Lading instead of M.R. for cargo from Sarawak to Singapore but I had not been able to find any. We are still carrying on this trade on M.Rs. and not B. of L. in spite of this case.

10

About 10% of our total number of goods and shipment from Singapore to Sarawak are covered by B. of L. When the Banks advance money on goods from Singapore to Sarawak they always insist on a B. of Lading.

XX'd by Mr. MacGrindle.

20

My last answer is in relation to my experience of our firm. A few of the European firms sending goods from Singapore to Sarawak for transshipment insist on Bills of Lading. I cannot find any example in my file of issuing B. of L. for shipment of local cargo by European firms from Singapore to Sarawak.

I say the 10% when B. of L. were issued were goods where Banks were interested.

Quite often a shipper after shipping the cargo on our steamer and obtained a M.R. on which the Banks are interested the shipper will produce the M.R. to us for counter signature. The Bank will only recognise in Singapore the M.R. with an authorised signature of the shipping firm. The shipping firm puts its chop and is signed again. After a couple of days this M.R. is returned to us with a request for issue of B. of L. When so

30

requested we comply with that request and retain the M.R. The shipper makes out the B. of L. on our forms. We get the original M.R. with the B. of L. forms duly completed for our signature. The shippers apply to our firm for the B. of L. forms and is always supplied on request. If a shipper who does not go through a bank applies for a B. of L. we will issue one.

10 Our agents in Sarawak keep a record of the B. of L. issued whenever anyone wanted one. The general understanding is that they issue a B. of L. if requested by the shipper on return of M.R. B. of L. in Singapore are requested when the goods go through a Bank.

I see P.12.

These forms have been in use in our other trades as with Indonesia. About 1955 these forms have been used. I revised these forms so that they were suitable for typing.

20 After we entered the Sarawak Trade we issued the original M.R. and a "duplicate" not negotiable M.R. as well to the shipper. This was not done before. I decided to mark the Duplicate "Not Negotiable". Only one M.R. is considered good to take delivery - i.e. the one without the words "not negotiable". The copy was marked "Not negotiable" to show that it was not good to take delivery. The original was not marked "Not negotiable" because it was supposed to be good for delivery.

30 By consignee I mean the name of the party that appears after the words "Consigned to". If the Bank is so mentioned then the shipowners learns the Bank is interested in the goods. We only know the Bank has an interest. What that interest is we are not concerned with it. It is a financial interest. It may be the interest of the Bank employed by a shipper seller to collect the amount of his draft or it may be money advanced by a Bank. When the M.R. comes through a Bank they have the Bank's chop on them. I don't know what "BEP" or "BC" used by
40 the Banks stand for. Apart from this named consignee the M.R. will also have a party to be notified. The party to be notified is the person whom the shippers want to be informed when the goods reach port of destination. The party to be

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notified is the person who eventually takes delivery.

I see P.11. The shipper was Ho Tee Ling and the party to be notified is Oriental Cane Trading Co. In fact we delivered to O.C.T.Co. We did not get in touch with the shippers. We did not have the time. The shipper had not changed his instructions. If the shippers want the goods to be delivered to some-one other than the named consignee then he will have to produce the M.R. or the order of the named consignee. I have never heard before this case of the named consignee and holder of the M.R. claiming against the shippers or the ship owners for delivering the goods to someone else because of the changed instructions of the shippers.

10

In P.11 we collected from the party to be notified the amount to be paid to the named consignee. In the past too we had succeeded to collect from the P to Nd. In P.10 it was a lighterage fees. In the normal way we have succeeded in collecting these fees by holding to the goods. As the Malacca Cane was not smoked it soon became bad and of no value. The cargo was stored on contract lighters.

20

I see P.9. I refer the M.R. No. 29950 dated 2/3/61. The named consignee is Lim Hup Choon. I see M.R. 29591. The consignee is Joo Hin Co. Here there are endorsements from the Banks.

When a M.R. comes to me with several endorsements I will take the precaution of making the delivery order in the name to the party to be notified as shown in the original M.R. I would only deliver to anybody else if the delivery order is endorsed by the party to be notified.

30

A party in possession of a M.R. must get the co-operation of the party to be notified and get his endorsement on the delivery order before he can secure delivery from us. This is our standard practice and my instructions to my subordinates.

Cross-examination by Third Parties' Counsel

XX'd by Mr. Boswell.

I can write Chinese.

40

Q. Please write the Chinese characters for M.R.

Witness writes the Chinese characters.

Q. Will you write the Chinese characters for B. of L.

Witness does it.

(This document is to be marked TP.13).

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Cross-examination by Third Parties! Counsel (continued)

Re-examination

10 I am not aware of P. to be N. not taking delivery of the goods during 1950 and 1960. The cases in P.10 and P.11 are only two cases I am aware of where P. to be N. did not take delivery of the goods. I have sometimes delivered goods at my own risk without M.R., L. of I. or cash deposit.

I can't remember of a case where I delivered on my own risk to T.S.C.

(Document produced and marked TP.14 dated 24.6.60).

I see TP.14.

20 The signature is that of my superintendent ships cargo. He is Mr. Lim Teck Seng and is still with our firm. T.S.C. will take delivery of the goods on the strength of TP.14. When M.R. is handed to the shipowners then TP.14 is cancelled and returned to the T.S.C. This is a matter between T.S.C. and Mr. Lim Teck Seng. Mr. Lim has no power to do so.

Rx'd by Mr. K.

30 I was referring to local shipments when I said about 10% cases were shipped on B. of L. or Banks were interested in the cargo. When goods are from outside Singapore to Sarawak these may be through B. of L. or a B. of L. to Singapore and then another B. of L. from Singapore to Sarawak.

In these 10% cases where B. of L. are issued from Singapore to Sarawak I would not know if such cargo is coming from outside Singapore and is being transhipped to Sarawak. The file of

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original M.R.'s in respect of the Singapore/Sarawak Trade would be with our agents in Sarawak. I have issued B. of L. without surrender of M.R. but in such a case the B. of L. will be stamped with the words "Issued without M.R. and goods will be delivered if on board". In such a case a B. of L. was issued before the goods were shipped to help the shipper meet some requirement. We were not taking any risk because of the stamping on such bill of lading as indicated above. We have never issued a M.R. before the cargo is on board as otherwise the M.R. will be fraudulent. If a shipper who has received a M.R. asks for B. of L. I will not issue these unless he surrenders the M.R. I will not issue the B. of L. as one shipment can only have one valid document. 10

I see P.12.

Before our company went into the Sarawak Trade my firm did not issue to a shipper a duplicate M.R. with the words "not negotiable" on it accompanying the original M.R. 20

When we know that the Bank has an interest in the goods then we know that if we deliver the goods without the original M.R. or B. of L. we are liable to a claim by the Bank. In this trade we will never have in circulation an original M.R. and an original B. of L. covering the same cargo. I am not familiar with the exact meaning of Bankers collecting drafts.

Adjd. to 2.30 p.m. 30

2.30 p.m.

I see P.9 and M.R. 29775.

This is shipped by Tai Lueng Co. Ltd. consigned to order of Hong Kong & Shanghai B. Corp. and notify Aik Cheong Co. If Aik Cheong Co. came along with Bank G. and without M.R. I will not ask Tai Lueng & Co. but would give delivery. This happens quite often.

I see P.11.

If Oriental Cane Trading produced a Bank 40

Guarantee we will deliver without referring to shippers. If they produced the M.R. we would deliver without reference to the shippers. In fact there was no need here to refer to shippers as there was no change of instructions.

I see P7A.

10 Shippers or T.S.C. consigned to order of O.C.B.C. and notify T.S.C. If T.S.C. had produced a Bank Guarantee and not M.R. I would have delivered to them. If I know the people I have occasionally delivered on a personal guarantee.

If T.S.C. asked to deliver to them without a M.R. or any Guarantee then we will have to judge the case on its own merits because by delivering we do so at our own risk. By its own merits I mean the standing of the person or firm, their record with us and their past behaviour.

20 If O.C.B.C. turned up later with M.R. and asked for delivery we would be responsible. If T.S.C. in any of P7A turned up and asked for delivery without production of M.R. or any Indemnity, then no shipping company will deliver to them. We had delivered on a satisfactory L. of G. without the production of M.R. This has happened often. It has occasionally happened for a Bank to later appear with the M.R. and ask for delivery. In such a case we have always claimed against the Guarantee and we have often succeeded. If we are unable to recover on the Guarantee we still are liable to
30 the Bank, the holder of the M.R. We rarely carried cargo for T.S.C.

I see TP.14.

I have not seen this particular document before. As far as my company is concerned Lim Teck Seng delivered the cargo without the company's authority. He is therefore responsible to obtain the M.R. from T.S.C. upon receipt of which the company will give a delivery order for completion of the formalities.

I have no legal qualifications.

40 (Witness released).

In the High Court of the State of Singapore, Island of Singapore

No. 17

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Plaintiffs' Evidence

Goh Leh

Re-examination (continued)

In the High
Court of the
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Island of
Singapore

No. 17

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Evidence

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Plaintiffs'
Evidence

Ng Tiong Swee
Examination

Mr. K. calls.

P.W.7.

Ng Tiong Swee a.s. in English. I am an assistant General Manager of the O.C.B.C. I am one of 2 Asst. G.M. in that Bank. I am in charge of the Chulia St. Branch of the Bank which is the Head Office. All dealings connected with T.S.C. was dealt with at the Head Office of the Bank. In Sept. 1957 I was aware of the dealings of T.S.C. with our bank.

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P.W.5. (Ong) has told us that for a considerable time T.S.C. has offered T.R. which had been accepted by the Bank. I see Z pages 1 - 18. At the last stage the T.R. limit for T.S.C. was \$80,000/- with our Bank. In 1961 T.S.C.'s T.R. limit was \$80,000/-.

At the beginning of 1960 the limit was about \$170,000. Towards the end of 1960 or early 1961 it was \$80,000/-. The Bank always exercised its discretion in fixing this amount at any time.

20

T.S.C. Singapore has been customers of the Bank for many years. T.S.C. will normally approach me first. I will decide if it is within my capacity; otherwise it will go to the management. I mean the G.M. or the Managing Director. When T.S.C. offered a T.R. for \$80,000/- or less when the limit was \$80,000/- it would then be within my right to decide. T.S.C. in such a case will first see Ong (PW.5). P.W.5. then writes this in a book for my approval. He writes it in an exercise book.

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I see P.15 of Z dated 26/5/61.

I have the particulars of the T.R. in this book. The particulars are dated 26/5/61 from Sibü; amount \$80,000/-; duration one week; customer is T.S.C. Singapore Ltd. I have initialled against this entry signifying that I have approved it. I never see the T.R. I am only particular about the amount.

I see Pages 63, 64, 65 of Z. These B. of E. refer to the Trust R. at Page 15 of Z. These 3 B. of E. and nearly all others are dated a month

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earlier than the T.R.s. When I authorise the acceptance of a T.R. I don't know the date of the B. of E. I would not know when the ship arrived or when the goods were charged when I accepted the T.R. I have never made enquiries where the goods were before accepting the T.R.

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Ng Tiong Swee Examination (continued)

10 When a person offers a T.R. to the Bank we will give him the B. of L. or T.R. in exchange so that he can take the goods and sell them as trustee for the Bank. I have never had the slightest knowledge where a customer who had already taken delivery of the goods and sold them had afterwards come and offered us a T.R. If I knew that a customer had taken delivery of the goods and then comes and offers a Trust R. I would not deliver the M.R. against a T.R. I would subject him to a stiff examination as to why he wants us to accept a T.R. when he had the goods already. If T.S.C. in all cases where T.R. had been offered and accepted by the Bank had received the goods and sold them before and if we had known this we would not have accepted the Trust Receipts but we would have notified the Wah Tat Bank and the shipping co. If T.S.C. says they had taken delivery then we ask the shipping co. about it as we are the holders of the M.R.

20

I see Pages 150 of X.

30 In all these cases T.S.C. had no Bankers Guarantee. I was not aware that the Hua Siang Steamship Co. was delivering goods to T.S.C. on this sort of Guarantee.

It is a matter for the shipping co. to release goods with or without a Banker's Guarantee when M.R. was not produced. As long as we hold the M.R. we are not concerned where the goods are. When we hold the M.R. we expect the shipping company to keep the goods for us or to refer to us.

40 If we hold the M.R. and the shipping company has released against Indemnity then we will take steps to claim for the value of the goods. In the Sarawak/Singapore trade I do not think the M.R. is different from the B. of L. These coastal steamers usually issue M.Rs. If a M.R. and a B. of E. were tendered to our Bank in this trade for Sarawak/Singapore we would have accepted it as security for negotiation.

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Ng Tiong Swee
Cross-examina-
tion by
Defendants'
Counsel

17th December
1963

XX'd by MacGrindle.

By negotiation I mean we advance money or credit their account. None of our customers have sent us M.R. and B. of E. We have a branch in Kuching. If this branch accepted M.R. and B.E. it would have gone to Mr. Ong (PW.5). In our Singapore Branches in the trade from Singapore to Sarawak before we accept a M.R. or B.E. we will study the standing of the customer. If we are not happy with the standing of the customer then we advance either 75% or 50% of the B. of E. We have had no occasion where a customer handed a M.R. and B. of E. and asked for an advance on the Singapore Sarawak Trade. This has never happened with our Bank. Even B. of L. and B.E. I have not had knowledge of anyone asking for an advance on the Singapore/Sarawak Trade. From Singapore to Sarawak in my experience with my Bank there were no B. of Collection or B. of E. for advance of money during the past few years. I don't remember this happening at all.

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10.30 a.m. on 1/12/63 (sic)

(Mr. Chan Lim Seng produces the applica-
tions for Insurance Policy. Marked D3)

The schedule provided by Mr. B. marked TP.15.

XX'm continued by Mr. MacGrindle.

Witness states.

When I went home yesterday afternoon I made inquiries from the Sub-Manager Mr. Low Liang Quee and he said there were a few items of Bills of E. supported by M.Rs. from Singapore to Kuching and Sibu and these Bills of E. were sent by us for collection at the request of the drawers.

30

XX'd

We were asked to collect these Bills. We did

not advance money on these Bills. In one case we credit a client's account on production of B. of L. and B. of E. I found this from my sub-manager. My knowledge of the facts of the case comes to me from the details in the note book. When a T.R. is offered particulars are set out in a note book and sent to me by the Sub-Accountant for approval. If approved in the note book a corresponding entry will be made in the T.R. D.A. (Document against acceptance). I am not concerned when the Bank received the B. of E. I am only concerned with the amount of T.R. and the duration of the T.R. I don't know how old the B. of E. is when I approve the T.R. I would be under the impression that the B. of E. has just arrived and the goods too have just arrived. I mean within the last few days. If the B. of E. had arrived 3 or 4 weeks ago and had been presented 3 or 4 times without payment I would ask the drawee why he has delayed payment. At the beginning we allowed T.S.C. T.R. to the extent of \$170,000/- but gradually this amount was reduced to \$80,000/-. We acted in our discretion. If a T.R. is for 7 days then on maturity it must be met in full. If the customer comes and only pays a part of it or defers payment for a couple of days then we may reduce the amount of the limit of T.R. and withdraw the facility. We do so because our customer hasn't kept his word (promise). We had reduced the limit because T.S.C. had deferred payment or only made part payment on the maturity date. There were no instructions to my subordinates that they must not send up the note on T.Rs. for approval if the B.E. was say over 4 weeks old. It is not my practice to make enquiries as to how old the B.E. was. I also do not make any inquiries to find out if the B. of E. had been presented and refused. I do not make any inquiries to find out when the carrying vessel arrived in Singapore. If I knew the B.E. was 4 weeks old I would have asked the department head to make inquiries as to whether the goods had been delivered to the customer. My duty was to see that amount of the limit was not exceeded. I can't be bothered about the minor details.

XX'd by Mr. Boswell.

We accepted T.Rs. from T.S.C. for a few years. Up to date of this action all T.Rs. had been honoured. In respect of T.R. between our Bank and

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Ng Tiong Swee

Cross-examination by Defendants' Counsel
(continued)

Cross-examination by Third Parties' Counsel

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Ng Tiong Swee
Cross-exam-
ination by
Third Parties'
Counsel
(continued)

Re-examination

T.S.C. there has been no breach of faith in that all T.Rs. have been settled. Against the T.R. the Bank did not hold any other security.

I see Page 53 in X.

From looking at it "BEP" would indicate that "Bill of Ex. Purchased". But I would not know any more about this transaction. When we accept a T.R. we hand the M.R. to T.S.C. and credit Wah Tat straight away. But we will retain the B. of Exchange. Even if we know Wah Tat Bank had advanced money on the goods we would still accept T.S.C. T.R. and release the M.R. The responsibility there is ours. I never made inquiries to find out how old these drafts were. To the best of my knowledge no officer in the bank made any inquiries as to how old the B. of Ex. was.

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A person can get delivery from the ship on a Banker's guarantee. Having got delivery he can sell the goods. He can do anything with the money. He can pay off even an earlier shipment with this money.

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It is not necessary for me to find out how old the B. of E. was.

When the Bank acts as a Collecting Agent on behalf of a customer it charges a commission. Even when the Bank advances money they charge him a commission. It is more expensive to the customer when the Bank originally advances money. If we are asked to advance money on the M.R. we will have to be satisfied about the soundness of the customer. If the customer asked me to advance on the B. of L. my inquiries would be the same as on a M.R.

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If I was asked to advance money on a B.E. accompanied by a M.R. and agree to advance say 70% after considering the standing of the customer then even if he said he would produce a B. of L. instead of the M.R. I would still advance him only 70%. I would ask for T.R. because I can take

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Criminal Action. The customer takes delivery of the goods and the proceeds of the goods if wholly or partially sold are held in trust for the Bank and if they did not carry out the terms of the trust as laid down in the T.R. document they will commit a breach of trust. By criminal action I was relating to an action for Criminal Breach of Trust. If I knew the customers had taken delivery and sold the goods then I would never have accepted a T.R. as there would be no purpose at all. If a customer offers a T.R. our intention in accepting it is to help the customer take delivery of the M.R. and get the goods. He could then sell the goods and pay the proceeds to redeem the T.R. We don't make inquiry about the age of the B.E. because that would involve too much work for the Bank. I am not aware of any Bank making inquiries about the whereabouts of the goods of a particular shipment and when the shipment arrived.

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Ng Tiong Swee
Re-examination
(continued)

Tan Khiang Khoo
Examination

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O.C.B.C. accepted T.R. from T.S.C. because he had been an old customer and as a Banker whenever our customers want help we try and help them. When the limit was \$80,000/- I doubt if T.S.C. owed the Bank at any one time more than \$80,000/-. If Ong sent up the book and the \$80,000/- limit was not exceeded and everything had been paid up I would automatically initial the book.

(Released).

Mr. K. calls.

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P.W.8. Tan Khiang Khoo s.s. I am the Chief of the Bills department for of Sze Hai Tong Bank. I have been in that department for 15 years. I have been the head for 1 year. I am here on a subpoena. I am familiar with the Singapore Sarawak trade. Our Bank acts as the correspondent to the Hock Hua Bank of Kuching and Sibiu. As such we habitually receive Bills of Exchange accompanied by shipping documents from that Bank. As regards local shipments from Sarawak to Singapore the Shipping D. that we receive are mostly M.R.

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I have never seen a B. of L. in respect of local cargo from Sarawak to Singapore. These shipping documents came from different shippers in Sarawak but through the Hock Hua Bank. The B.E.

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Tan Khiang
Khoo

Examination
(continued)

relating to these cargoes are also drawn on different importers in Singapore. The volume of trade in this line runs to several millions St. dollars per year.

Most of the Bills that we receive are "BEP" i.e. Bills of Exchange Purchased. Hock Hua Bank must have bought the Bills from the customers. More than 95% of the Bills from Sarawak are "BEP". There are some marked "B/C" i.e. Bills for Collection. There are no other markings.

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When we get a M.R. from the Hock Hua Bank it will show the BEP number on it. I see M.R. 13684 of P.11 dated 4.3.61. When we received M.R. from the Hock Hua Bank, Sibul we have the kind of chop that is seen in this M.R. It bears the BEP number. I can't remember seeing "B/C" on M.R. from Hock Hua Bank. My bank will not release the M.R. without obtaining payment or acceptance of the B. of E. We treat the M.R. in the Sarawak/Singapore trade as any other Bill of Lading. Our Bank has been asked to confirm a L/C on behalf of a Sarawak Importer. Hock Hua Bank in Kuching was asked to establish a L/C on behalf of somebody in Singapore. Hock Hua Bank asked us to notify the person beneficially interested. It was for about \$50,000/-. It does not often happen in this trade that it is carried on by confirmed L/C. In this letter of C. that I referred the goods to be shipped were frozen fish. Part shipments were allowed. The printed forms here required as shipping documents B. of L. The beneficiary was not a customer of the S.H. Tong Bank. Under that L/C he presented a M.R. It happened on several occasions. We negotiated the documents, paid the beneficiary and sent the documents to the Hock Hua Bank. We debited the Hock Hua Bank account with us. They never questioned us for having done so. This happened on a number of past shipments under this credit.

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Adjd. to 2.30 p.m.

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2.30 p.m.

From Singapore to Sarawak I have seen M.R. and sometimes one or 2 B. of L. We receive some bills as for collection, sometimes we advance money

on them and sometimes we purchase them outright. When we advance we pay only a percentage but when we purchase we pay the full amount of the bills. Our bank in the Sarawak trade makes no distinction between documentary bills accompanied by M.R. and documentary bills accompanied by B. of L. In relation to the Sarawak trade I have never heard it said that a M.R. is worse security than a B. of L. and I have always treated in this trade a M.R. as the same as a B. of L. I have come across M.R. issued by Sarawak Steamship, Hua Siang, Heap Eng Moh. Since this case I have come across M.R. from a new line. I can't remember the name. It is the Teck Wah Line. I came across documents issued by this line on the Sarawak Trade. They also use M.R. as the shipping documents. In the case of shipments from Japan to Sarawak with transshipment at Singapore and the otherway too I have seen B. of L.

20 In the case of cargo from Singapore to Sarawak I have seen very few B. of L. In the Singapore/Sarawak trade 90% is by M.R. and 10% is by Bills of L.

XX'd by Mr. MacGrindle.

I can't say why in some cases there is a B.L. and in other cases M.R. I had yesterday from one of the big shippers, M/s. Paterson Simons who sent us a M.R. for collection. I agree somebody took the trouble to exchange a M.R. for a Bill of Lading.

30 In the case of an outright purchase, we credit the customer straight away and charge interest up to payment in Sib. In 70% it is Bill for Collection, about 10% advance and 20% Bill purchased. In 20% of the cases we will purchase the Bill outright from the customers and we will charge the customers an interest. The Bill of Ex. in such a case has never failed to be met by the drawee. We do this class of transactions for customers. We know very well. I have no experience of any other bank. I do not know of any other Singapore Bank advancing money against M.R. All the M.R. from Sarawak here come with B. of E. attached from

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Tan Khiang Khoo

Examination (continued)

Cross-examination by Defendants' Counsel

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Tan Khiang
Khoo

Cross-exam-
ination by
Defendants'
Counsel
(continued)

Hock Hua Bank for collection. The M.R. are con-
signed to the order of Hock Hua Bank who will
endorse to our Bank. If we collect the draft we
will endorse it to acceptor of the draft. Some
are consigned to the order of S.H.T. Bank/notify
somebody else. My Bank has no occasion to take
delivery of the goods in Singapore. I have
never seen a delivery order in respect of cargo
shipped from Sarawak to Singapore. My Bank has
not had a case of non-payment. I have not had
experience of delayed payment of the draft. My
experience is that they all pay on demand. I was
speaking about the L/C this morning. It took
place during the last 2 months, Oct. & Nov. 1963.
At the request of Hock Hua Bank, Kuching we noti-
fied the existence of the credit to the beneficiary.
The beneficiary is one Liang Sang Huat. We did
not confirm that credit. We also notified that
the drafts would be negotiated through us. In
the case of shipping documents it specified that
B. of L. was required. It said full set of clean
on board B. of L. to order - endorsed. There were
about 4 part shipments here. M.R. were presented
in all those occasions. The M.R. were made out to
order - endorsed. I did not raise any objection
when the M.R. was brought to me. I did not raise
any objection because in the Sarawak Trade I
thought a M.R. was as good as a B. of L. The
Hock Hua Bank did not say that M.R. would do but
they did not raise any objection. I have not
seen a L/C calling for a M.R. instead of a B. of L.
In all events I permitted the shipper to negotiate
these M.R. and no trouble arose. I don't remember
if any of the M.R. were marked "not negotiable".
Those of the shipments relating to the L/C were by
the Rajah Brook, one by Orby. If the M.R. were
marked "Not negotiable" it would not affect my
course of conduct. I never had occasion to
consider what they meant.

This was the only one where M.R. were tendered
under a Bill of Lading.

Mr. Boswell

No questions.

Re-examination Rx'd by Mr. K.

When we advance or purchase outright we put
chops on the M.R. When we advance we use a chop

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10 A.B. i.e. Advance Bill, and on outright purchase we use BEP. Bill of Exchange Purchase. In the case of Bills for collection we use the chop B/C, i.e. Bill for Collection. This is in connection with Singapore/Sarawak Trade. Whether we advance or purchase the Bill depends on the standing of the customer and not on whether he brings a B/L or M/R. In the Sarawak Trade I never refused to accept a M.R. and applied for a B. of L. I don't know what the other Banks do. I only know what happens in our Bank. 15 years ago we were not in the Sarawak Trade. We went in the Sarawak Trade about 3 years after I joined the Bank. We received very few L/C from Sarawak. I have seen about 2 or 3 L/C in the Sarawak trade per year during the last 15 years. I have been with the Bank.

I see Ex. P.8. M.R. No. 68. It is consigned to Sze Hai Tong Bank. I notify

20 I see Ex. P.9. M.R. No. 13669. It is consigned to S.H.T.B./notify Aik Cheong. I have seen similar M.R's before.

Released.

Mr. K. calls.

30 P.W. 9. Yap Keng Soon a.s. in English. I am the Chief Clerk of the Straits Steamship Co. Ltd. I held that position since 1936. Apart from the Japanese occupation I have been employed by Mansfield and Company since 1928. Cargo carried by Sarawak or Straits Shipping Co. can be delivered without production of shipping documents against L/G signed by Banks.

I see T.P. 6 and P.1.

40 I am familiar with TP.6. When goods are delivered against L/G the L. of G. will come to me first. I check the contents and check the Bank's signature if any against the specimen and initial them and pass them to the manager. This is my chief duty. I have never been presented with letter of guarantee in Chinese and not in English. My firm has never used L/G forms which were in Chinese. I don't read Chinese.

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Tan Khiang Khoo

Re-examination (continued)

Yap Keng Soon Examination

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Yap Keng Soon
Examination
(continued)

I see TP.8. I have never previously seen these documents. As far as I can see this document TP.8 has never gone through the offices of the St. Steamship Co. If delivery was demanded on such documents I would have to refer it to the manager. About 30 years ago there was a manager who could read Chinese. I have never referred a Chinese I/Indemnity to the manager for approval.

In special cases of personal effects a letter of g. on our form but not signed by a Bank will be accepted. When my company accepts an indemnity and subsequently releases this document there will be date of the delivery order and the manager initials it.

On TP.8 I don't see the date of the Delivery Order or the initials of the manager.

I see TP.6.

The manager's initials are there (and witness points out the initials). There are 2 managers - the operation manager and the office manager who are entitled to approve Indemnities. Every Indemnity must be initialled by one of them. Shipments from Sarawak would be mostly on M.R.

Adj'd. to 10.30 a.m.

Cross-exam-
ination by
Defendants'
Counsel

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Cross-exam-
ination by
Third Parties'
Counsel

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XX MacCrindle.

TP.8. I checked on our records and I am unable to identify these matters in TP.8. Our records go only as far as 4 years back. I am unable to help the ct. about the cargo mentioned in TP.8. We came across a B. of L. once in every other month - Our own form of B. of L. That is for carriage of local cargo from Sarawak to Singapore.

XX'd by Mr. Boswell.

I see TP.8. I do not read Chinese. The translations are attached to these documents. The S.S. Angby is our ship.

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The Chinese document is a printed document. The words "Steamship Company" are in print. The word "Straits" is handwritten. (Chinese interpreter assists.) There are similar entries in handwriting in all documents of TP.8.

Between 1936 and 1950 my company had monopoly of the cargo trade between Sarawak/Singapore - Except for the war years. Even before the war my duties would include the inspection of these documents.

Between 1936 and 1941 we had our own printed indemnities. The printed form will contain the signature of the manager and my own signature. I have never seen the Indemnity forms as TP.8. Our company would not have accepted the form of indemnity as at TP.8 even it was signed by our manager. It would have to be in our form. I say there is no exception to this rule. If T.S.C. said he received delivery of the goods by production of TP.8 I would not believe it. From the translation of TP.8 it looks like an Indemnity. Even if this document was handed it will not act on it. Two of my direct assistants were dealing with Indemnities. From 1949 to 1955 I was solely in charge.

Rx'd by Mr. Kerr.

These documents TP.8 could not have gone through the Straits Steamship Co. in the normal and proper way without my having seen them. I have never seen a printed form such as TP.8 (translation) which did not have a space for the Guarantor's signature.

(Chinese Interpreter Mr. Leong. The two Chinese characters mean carriage documents or shipping documents)

(Released)

Mr. K. calls

P.W.10. Abdul Hamid bin Rahman a.s. I am the Dy. Shipping Master of the Port of Singapore. There are deposited in Master Attendant's office the

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Yap Keng Soon
Cross-examination by Third Parties' Counsel
(continued)

Re-examination

Abdul Hamid bin Rahman
Examination

In the High Court of the State of Singapore, Island of Singapore

articles of crew of ships registered in Singapore after the articles closed in six months' time. I now produce the articles in relation to Hua Lee for period 21/3/61 to 20/9/61 and for Hua Heng from 20/3/61 to 27/9/61. Marked P.14 and P.15 respectively. Attached to P.14 and P.15 are the official log books covering the same period.

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No XX'm by Mr. MacGrindle and Mr. Boswell.

(Released).

18th December 1963

Plaintiffs' Evidence

Abdul Hamid bin Rahman

Examination (continued)

William John Victor Cooke

P.W.11.

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Examination

William John Victor Cooke s.s. in English. I am the Office Manager of the Straits Steamship Co., Singapore. I am in charge of the overall management of the company under the directions of the Board of Management. I am appearing here on a subpoena. In 1949 I spent a year in the various depts. of the Glen Line in London. In Feb. 1950 I joined Mansfield & Co., Singapore. I have worked there since then. Mansfield are General Shipping Agents and Managers of St. Steamship Co. Ltd. Apart from a year spent in Blue Funnel Line of the same firm I have been with Mansfield as agents of the Straits Steamship Co. I am very familiar with the trade in SEA and particularly between Sarawak and Singapore. St. Steamship Co. have always acted as the agents of the Sarawak Steamship Co. in Singapore. Sarawak Steamship Co. has no agent in Singapore.

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In the local trade between S/Singapore and Singapore/S. in 1950 the M.R. were regarded as documents of title to the cargo referred in it. It was not regarded as different from B. of Lading in the other trades where B/L is a document of title. This method has not changed since then. I have never before this case heard any one say that it is not the case. I have never heard it said in this trade that a Bill of Lading was a better title than M.R. Since this case our company has not made any alteration in the method of carrying on business but I can only speak for my Company. I have not heard that any other Company has altered its practice. For purely local cargo I have never seen a Bill of Lading in Sarawak/Singapore Trade. We do from time to time issue Bill of Lading but most of the cargo moves on M.R. in Singapore/Sarawak Trade. In the Singapore/Sarawak Trade it was 80% M.Rs. 20% B. of Lading. Normally we are asked for B. of L. by the European Business Houses who prefer B. of L. in as much as they can obtain more than one copy. They prefer this for their own filing system.

My company will never issue a B. of L. without the surrender of the M.R. I see P7A and the M.R. No. 1078. I would understand from the fact that it is consigned to O.C.B.C. that money had been lent on this shipment in Sibiu by a Bank. From the round chop on the face of each of this document chopped Wah Tat Bank Ltd., Sibiu and from the chop on the reverse deliver to the Or. T.S.C. upon payment to O.C.B.C. From the round chop on the fact of M.R. I would deduce the Bank in Sibiu which had lent money to the shippers was in fact the Wah Tat Bank. From the chop on the reverse of the M.R. by the O.C.B.C. I would deduce that payment of the money lent in Sibiu had been made to the O.C.B.C. in Singapore by T.S.C. Singapore Ltd. This type of transaction that I have described above is quite usual and quite common. It has been so for the last 13 years from the time of my arrival here. If on arrival of the ship in Singapore the M.R. is not produced when delivery of the goods is asked for I would expect the M.R. to be with the O.C.B.C. It has happened in our company where we have released goods on a L. of I. and subsequently the Bank has appeared on the scene and provided the M.R. relating to this cargo. In such a case we would consider ourselves liable to the extent of

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the value of the cargo. Because the Bank held the M.R. which we would consider as a document of title.

In this M.R. No. 1078 if T.S.C. came and asked the shipping firm to deliver the goods to them on alteration of their original instructions then the shipping company will not consider itself entitled to follow the instructions. If the shippers produced the M.R. then I would deliver it to them provided it was suitably endorsed by the O.C.B.C. If T.S.C. came and asked for delivery without the M.R. we will be entitled to do so but will be liable to the holder of the M.R. By the holder of the M.R. I imply the O.C.B.C. but it is conceivable that O.C.B.C. might transfer it to somebody else. In this trade the practice of our company treating M.R. as documents of title is no different from trades where B. of L. are treated as documents of title. The company has never considered its position any different in M.R. in this trade from what it would be if B. of L. were issued. I am not a lawyer - no legal qualifications.

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Since I have been with the company we have used a printed form of Indemnity and Guarantee.

I see TP.6. This is one of those forms but there have been minor amendments. I am surprised that there is no Banker's counter signature on TP.6. This is unusual. The 1st May was a holiday in 1961. The initial on TP.6 is that of one of our managers.

I see TP.8.

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To my knowledge my firm has never accepted any L. of Indemnity in Chinese. My company has never released goods without production of M.R. on a Chinese Letter of Indemnity. It is impossible for a L/I against which goods have been delivered by our office not to bear certain signatures or chops. I don't think the transactions purported in these documents TP.8 ever happened.

I see P.1.

The practice of my firm and the Sarawak Steamship Co. is exactly the same as regards M.R. and B. of L. and the releasing of goods.

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TP.6 is used for delivery in Singapore. I have no direct experience of documents in Sarawak but I believe in P.1.

Banks have appeared on the scene with M.R. Sometimes several weeks after he had delivered on a L. of Indemnity. In such a case the Bank would understand that delivery has been made against a letter of Indemnity.

10 If in a M.R. the shipper is A and the party to be notified is B I shall on B producing a Bank Guarantee deliver the goods to B without reference to A.

(2 M.R.s forms put in as P.16).

These are M.R. issued by shipping firms. Harrisons & Crosfield (Singapore) Ltd. as agents for a number of shipping companies. It is not usual to have a named consignee on a M.R. in trades where Bills of Lading are automatically issued.

XX'd by Mr. MacGrindle.

20 I have supplied a statement to the plaintiff's lawyers. In South East Asia Trade in which our company is engaged the same form of M.R. is used with a spare to indicate to whom the goods are consigned to. In such cases that form is used as a preliminary to the issue of a B. of L. In the coastal trade via Singapore it is fairly common thing for the M.R. to be in the above form with a named consignee. I am including besides the Singapore/Sarawak trade, trade between Indonesia.
30 In such cases too it frequently happens that no B. of L. is issued.

I don't recall a major shipping firm (or ocean going shipping firm) use M.R. with a space for the name of the person to whom it is consigned.

I see D.1.

All the forms have a space "Consigned to".

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There are only 2 ocean going lines here viz. Messageries Maritimes and "K" line. Messageries Maritimes are also engaged in coastal trade between Singapore and Saigon. I consider Guan Guan as essentially a Coastal Line but they have extended to the ocean going level. Messageries Maritimes only trade from Singapore to Saigon and that we would consider coasting. I consider Tack Wah as a coastal steamship company though they also go up to S. Africa.

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Kie Hock also has vessel, going up to China, Hong Kong, Japan, but we regard them as coastal vessels. It would be perfectly natural for a M.R. to have this spare "Consigned to" as the B. of L. will be made out from it.

The B. of L. will always have a space as to whom the goods are consigned. It is customary for M.R. in any trade to have an expressed incorporation of the terms of the standard B. of L.

Anyone seeing a document in the form of P7A would realise it is a M.R. and not a B. of L. I worked for about a year with the Glen Line in London as a trainee. I was trained for the purpose of coming out to the Straits Steamship Co.

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In an Ocean going company like the Glen Line they will not take the M.R. as a document of title. I have however no knowledge of the companies engaged in the coastal trade in London. I agree if one walked across the Baltic it will be difficult to find someone who considered the M.R. as a document of title.

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The Singapore - Sarawak - Singapore local trade is from the shipping point of view normally regarded as one trade.

Adjd. to 2.30 p.m.

2.30 p.m.

If a shipper from Singapore/Sarawak or Sarawak/Singapore asked for a B. of L. I would issue him with one. I would only do that in exchange for a M.R. but he would be entitled to the B. of L. All shipping documents from S/Singapore do not go through me in the Company. It is my duty to look

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into cargo from S/Singapore but I delegate my duty. I do it from time to time.

I would personally see about 10% of the shipping documents that come through our company. If Yap had said that a B. of L. cargo arrived once in every other month I would be surprised. I think it was local cargo but for transshipment to other ports though it would appear on the face of it as a cargo for Singapore. The consignee in Singapore will endorse it to a new carrier or agent and it will proceed as required.

As far as my company is concerned it is a carriage from Sarawak to Singapore on a B. of L. About 5 years ago this sort of B. of L. would have occurred every week. Most of the sago is now sent to Japan. I haven't seen a B.L. of this sort during the course of this year. I saw one before December 1959. I was away from Singapore from Dec. 1959 to Dec. 1961. Before that I had seen such B. of L. I was with the company in Jakarta. I had not seen one as far as I can see in 1962. Before 1958 it was a regular feature to have such B. of L. I would assume that if sago was carried from Sarawak to Singapore on a B/L that it was for transshipment to elsewhere. I would recognise the consignees of the sago flour and I would know it was for transshipment. There were only 2 of them. They were Paterson & Simons and MacAlister. I don't know whether they buy the sago from Sarawak and resell it. They in fact contract to send it to Europe. Sometimes ocean going vessels pick up cargo at Sarawak and drop in in Singapore. They will issue the B. of L. because I think they will have the M.R. as P.16.

With Sarawak Steamship and Straits Steamship the decision as to whether or not a B. of L. is taken out rests with the shipper. But in an Ocean trade such as the Singapore London trade I imagine the shipping co. such as P & O. would insist on a B. of L. being issued. As the ship-owners will not deliver save against B. of L. it is in the interest of the shipper to get the B. of L. I suppose an ocean going carrier will only deliver against a B. of L. and not a M.R. as they are not one of this trade. They do this so very rarely that probably they would have no knowledge of the system we use.

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The M.R. is printed in Book form and there is duplicate available. I see P.12. It may be that in the case of Hiap Eng Moh some duplicate M.R. are available. They do not ask for B. of L. It may well be that large business houses with branches throughout the world lay down a procedure from which the local branch cannot deviate. Not my experience that when B/L were asked for a Bank was usually involved. I believe there is one Chinese shipper who asks for B. of L. but I can't recall who he is. I have had Kuek Bros. who ship through us. I believe they ask for B. of L. I have had cargo shipped by Joo Seng. I don't know if they asked for B. of L. I would regard Kuek Bros. and Joo Seng as local firms. Apart from the two reasons I have given I can't see why people prefer B. of L. to M.R. in this Sarawak/Singapore trade or Singapore/Sarawak trade. The M.R. are regarded as documents of title by the shipping community, the Banking community and the produce community. This is the custom that they are so regarded. When the M.R. as in P.7A named the bank as a consignee is presented to the Chief Officer. I think of 2 roles that the Bank was playing. The 1st possibility is that the Bank at the port of destination is acting as a collector for payment by consignee to shipper and the 2nd possibility is that the bank named as consignee is acting at the port of destination as agents for a bank at port of shipment who it is intended should lend money on the shipment. The 3rd possibility is that buyer is prepared to pay through his Bank if the documents are addressed to his own bank.

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In the ocean trade a bank may be named as consignee for the same reason. If a person is named as to be notified there is no means of telling whether he is a buyer, forwarding agent or what function he is performing. If a holder of M.R. with a number of endorsements presents it and asks for delivery I will issue a delivery order to that holder provided the last endorsement is to him. I would say I accept an endorsement "please deliver to bearer" though it is an unorthodox one. I don't worry about the number of endorsements provided the last one is to the holder of the M.R.

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In the case of the B. of L. there may be 3 original signed copies and the rest will be marked "Not negotiable". I don't know the legal import.

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The copies are not signed. I have had a shipper demanding delivery without the production of the M.R. and always insist on a letter of guarantee. Whenever the Bank produced the M.R. after release of goods we have in this trade managed to collect the money. In the Indonesia trade we failed to collect on the Bill of Lading. There have been many cases reported in the press of where the named consignee has demanded against the carrier who has delivered to someone else but whether on B. of L. or M.R. I don't know.

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XX'd by Mr. Boswell.

There is only one form of L. of I. which we use for release of goods when M.R. are not produced. I have never accepted any other forms. Our general rule is that they should be signed by a Bank but from time to time I have accepted personal guarantee. I have accepted L/G signed by a chop. I have never released cargo on such a document as TP.14. I would authorise delivery against a personal indemnity without a guarantor firstly if the cargo is worthless such as consignments of Personal Effects, scientific specimens, and cargo of no commercial value. Consigned to somebody whom we know extremely well and when we deem it not politic to insist that we do so. Secondly we will deliver without guarantor under special specific circumstances for operational convenience. If a

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Re-examination Rx'd by Mr. Kerr.

ship arrived on Saturday afternoon and was to go to dry dock empty on Monday, we would require the cargo to be delivered before the Banks opened again. The value of the goods will be taken into consideration when we make this decision.

As for delivering goods in 1954 without a Bank Guarantee to personal guarantors we would not do so as we were the only persons on that line and we could have insisted on a Banker's Guarantee. As for the specific delivery for operational convenience we would have regarded T.S.C. in as favourable a light as any other merchant. Between 1950 to 1954 I do not know if we delivered to T.S.C. without a Guarantor. After 1954 our policy changed but not generally and not immediately.

I see TP.6 and TP.7. I agree they don't bear the Banker's signature. I know of no such policy where our company accepted from T.S.C. L. of G. without Banker's signature for release of goods.

I regard Teck Hwa as a Coastal Shipping Co. because they have in the main been engaged between Singapore and Indonesia and latterly Sarawak. In the Sarawak trade Teck Wah's goods move on M.R.

When I was speaking of B. of L. as a weekly feature from Sarawak to Singapore before 1959 I was referring to shipments of sago flour from Sarawak to Singapore destined for transshipment to European Ports. Other than that I have not come across B. of L. from Sarawak to Singapore trade. Though I only see about 10% of the shipping documents I can say my company does not issue large amounts of B. of L. in the trade from Sarawak to Singapore. It is impossible to happen without my knowledge because I make it my business to know what is going on in our office.

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10 In the sago trade I have never issued a B. of L. without surrender of a M.R. To my knowledge over 15 years I am aware of only one or two cases where ocean going vessels picked up cargo from Sarawak to Singapore on a B. of L. I would not believe and would think he was talking nonsense if an executive director in a shipping line in this trade for about 10 years were to say that he thought that when a shipper wanted to have a document of title he exchanges his M.R. for a B. of L. and when he does not need a document of title then he does not exchange the M.R. for a B. of L.

I see P.7A.

When the party to be notified is the same as the shipper I would not expect the Bank to be acting as collecting agent.

I have never heard of in this trade of a buyer asking his bank to be named as consignee so that he could pay through them.

20 If I see in P.7A the named consignee as a Bank I would expect that document to come into the possession of the Bank. I would expect the Bank to place reliance on its possession of the M.R. as against the shipping company. My answers in XX'm regarding endorsements on M.R. would have been the same even if the questions referred to B. of L.

30 In the M.R. trade whether we can collect on our guarantee or not makes no difference vis-a-vis the Bank. The answer will be the same in the B. of L. trade.

Released.

Adjd. to a date to be fixed by the Registrar.

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Examination

Coram: Kulasekaram, J. Tuesday, 31st March, 1964.

Mr. M.E. Kerr, Q.C.,
with Mr. M. Karthigesu for Pltfs.

Mr. A. MacCrindle, Q.C.
with Mr. C.H. Smith and Mr. J.F. McWilliam
for Defts.

Mr. Peter Lee for Third Parties.

Mr. Kerr desires to call 2 more witnesses.

Calls:

P.W.12. Roger Walker s.s. I am Manager of
the Chartered Bank in Sibü. I held this appoint-
ment since August, 1961. Before that I have
served in other sub-branches in South East Asia and
have had 12 years banking experience.

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The Chartered Bank is one of the largest banks
in S.E. Asia. In Sibü each of the Banks maintains
accounts with each other Bank in order to facilitate
daily clearance of cheques.

The practice was the same before and since I
took over. It was our practice to purchase
documentary bills. It also collected documentary
bills for its customers. By documentary bills I
mean Bills of Exchange covered by the shipping
documents, invoices and insurance policies. The
purchase of documentary bills was a major part of
our service to our customers in Sibü.

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In the Sarawak/Singapore trade the documents
attached to the Bills are Mate's Receipts, Insurance
Policy and Invoices. Having agreed to purchase
the bills and the terms it is registered in our
books in terms we have agreed. A schedule is made
out giving details of Bill of Exchange, details of
attached documents and a consecutive number.

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If we agree on the straight purchase then we
credit the account the moment the shipping
documents, etc. are delivered to us. We sometimes
purchase the bill out-right at its full value and
sometimes only on a percentage of the value of the

bill. We have never agreed to advance more money on a bill just because it is accompanied by a Bill of Lading and not a Mate's Receipt. I have never asked for a Bill of Lading from my customers because I was not satisfied with a Mate's Receipt. It is not in my experience.

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We do roughly 90% purchase of bills and the rest collection of bills. We purchase or collect bills. We use chops B.P. or I.B. when we purchase bills. They mean Bill Purchased or Inland Bills. When we collect we use 'B/C' - Bills for Collection.

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In relation to the Sarawak/Singapore trade in my experience my Bank has never purchased a Bill with the Bill of Lading attached. In the Singapore/Sarawak trade I have come across Bills of Exchange purchased or accepted for collection by our Singapore Branch.

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In this direction there will be more for collection than for purchase. We rarely see Bills of Lading even in this trade. In my experience I have seen about half a dozen Bills of Lading. I have also been engaged in other trades in S.E.A. other than Sarawak/Singapore. There it was the Bill of Lading.

Roger Walker

Examination (continued)

The practice of Mate's Receipt in the Sarawak/Singapore trade and vice versa is the same as the practice on Bill of Lading in the other trades in S.E.A. area.

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When we purchase Bills we generally ask the Mate's Receipt to be consigned to the Chartered Bank. We don't ask for this requirement when we deal with new customers, when the documents are already made out. When the Mate's Receipt is made out we don't request him to alter it but we advise him in future that the Mate's Receipt should indicate that it be consigned to the order of the Chartered Bank. We do this to receive as much protection as we can.

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In the Sarawak/Singapore trade there is no difference whatsoever between the Mate's Receipt and the Bill of Lading. I have never heard it said in this trade that a Bill of Lading gives a better title than a Mate's Receipt. I first became aware that this case was pending when I first arrived in Sibiu. The practice of the Chartered Bank has not been altered since because this case is pending.

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XX'd by Mr. MacGrindle.

By purchase I mean I will discount the bill and credit his account.

In practice there is no difference between discounting the bill and making an advance on the bill. We merely charge a commission when we discount the bill. Whether we discount or collect the Bills of Exchange will be accompanied by shipping documents.

For the most part there will be Mate's Receipt and other documents. It is always Mate's Receipt but the other documents differed from case to case.

If it was a Bill of Lading I will be pleased to take it. The fact that it is a Mate's Receipt would not affect the transaction and make one inquire about the credit worthiness of the customer. It is not within my knowledge that Bills of Lading were used from time to time in the Sarawak/Singapore trade I have never heard it happening. The only occasion I see a shipping document is when it is attached to a Bill for collection or purchase. In either case my Bank will prefer that it is named as the consignee in the Mate's Receipt.

It is not a rigid rule and we have accepted Mate's Receipt made out to order and endorsed to us but where we can, we prefer to be named. We are prepared to accept the Mate's Receipts irrespective of the shipping company that issues them. For cargo from Singapore to Sarawak we will collect for our Bank in Singapore. In such cases the function of my Bank at Sibü is merely collecting. We do this for our Bank and other Banks in Singapore.

The Banks in Singapore may have purchased or merely accepted for collection. In the case of such documentary bills the Bank has more often accepted for collection than purchased the Bills. When a Singapore Bank other than our Bank sends a documentary Bill of collection that Bank may have purchased or accepted for collection of the Bill. In such cases the Bill may be merely "to order" or to the order of the Bank.

When the customer at Sibü presents the documentary bills it will be accompanied by the invoices.

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The invoice may show a price which is the C.I.F. price. It is normally F.O.B. Sarawak Port. Mostly F.O.B., sometimes C.I.F. and sometimes C. & F. but not "arrived Singapore".

We have once received a credit from Singapore which was at our request. I don't know if the credit called for Bill of Lading.

Goods from Sarawak/Singapore for transshipment are carried on Bill of Lading.

10 I have seen Letter of Credit where they say that Mate's Receipts are acceptable. Most of the parties in Letter of Credit ask for Bill of Lading.

My experience of Mate's Receipt in Letter of Credit is in the trade between Cambodia and Hong Kong. As a Bank we may accept documents not in strict conformity with the Letter of Credit if we know the standing of the customer and on a Letter of Guarantee.

I see P.195 of X.

20 This is a form signed by our customer and often countersigned by the Bank. The form refers to Bill of Lading. We use the same form unamended for Mate's Receipt.

In the Sarawak/Singapore trade our bank has had no occasion when the drafts had not been met. We have never been left holding the shipping documents with the draft having been dishonoured. I never had to claim against a shipper on a Mate's Receipt which I had taken.

30 The general rules of the Bank say that we should have Bill of Lading where possible. On ocean shipments we invariably took Bill of Lading. It has never occurred to me to consider a Bill of Lading stamped "not negotiable". I probably would not take such a Bill of Lading. I would ask for original Bill of Lading which will have to be signed and not a copy.

40 In Sarawak we advance money to customers on various forms of security - deposit of title deeds to property and lands. Not deposit of share certificates - very rarely. Personal guarantees sometimes.

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Re-examina-
tion

There is no confusion between the Mate's
Receipt in this case and the Bill of Lading.
Anyone can distinguish between them.

I would not know if from every voyage from
Singapore to Sarawak there will be one Bill of
Lading. I don't know why people have Bill of
Lading in the Singapore/Sarawak trade. In the
case of 6 to 10 Bills of Lading that I have seen
in this Singapore/Sarawak trade I can offer no
explanation why they were used instead of Mate's
Receipts.

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No XX'm by Mr. Peter Lee.

Rex'd by Mr. Kerr.

In Sarawak the trading community knew of the
practice of purchase of Bills of Exchange with the
Mate's Receipts attached. When we buy we do ask
our customers to endorse the Mate's Receipts in all
cases. We also ask them to endorse all documents
attached to the draft.

We will always ask them to endorse the shipp-
ing documents whatever they may be - Bill of
Lading or Mate's Receipt. I have seen Mate's
Receipts in this trade with the words "N.N."
printed on them. I have not made any distinction
between Mate's Receipts with N.N. printed on them
and other Mate's Receipts.

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In this trade it is normal practice that Mate's
Receipts are accepted as Bills of Lading and that
is why I did not ask for Bill of Lading.

(Released).

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P.W.13. Michael Wynne Jervis s.s. Manager of the Shipping Department of the Borneo Co. Ltd., in Sibü.

I have held this appointment since September 1963. Between 1958 - 1962 I held a similar post in Kuching with the company.

10 The Borneo Co. are agents in Sarawak for the Heap Eng Moh Steamship Co. We act as the agents both in Kuching and Sibü. In this capacity I am concerned with the shipping trade between Sarawak/Singapore and Singapore/Sarawak. The Borneo Co. is also one of the main importers of manufactured merchandise into Sarawak.

There is no difference regarding Mate's Receipt in the practice at Sibü and the practice at Kuching. The ships go - Singapore, Kuching, Sibü, Singapore.

20 From Sarawak/Singapore my company at Sibü as agents of Heap Eng Moh will issue the shipping documents for cargo from Sarawak/Singapore on their vessel. That is done by my department. In the Singapore/Sarawak trade my department will arrange for the delivery of the goods against the necessary shipping documents.

30 In the Singapore/Sarawak trade the main shipping document is the Mate's Receipt. Very infrequently Bills of Lading are used. On an average shipment from Singapore/Sarawak there are about 170 Mate's Receipts to about 10 Bills of Lading.

Frequently cargo shipped from Singapore to Sarawak is consigned to a bank. The fact that it is consigned to a bank has no bearing on whether a Mate's Receipt or a Bill of Lading is being used.

Cargo from Singapore/Sarawak is sometimes consigned "to order". In such cases too no distinction is made between cargo moving on Mate's Receipt or Bill of Lading.

40 Before delivery of the goods on Mate's Receipt we would look for the authority of the named consignee on it which is usually the Bank chop. I would expect a similar endorsement on the Mate's

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No. 17

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Plaintiffs'
Evidence

Michael Wynne
Jervis

Examination
(continued)

Receipt consigned to order also. Mate's Receipt consigned to order usually goes through a bank.

Malayan Breweries, Fraser & Neave, I.C.I. (Malaya) Ltd. and our own company move goods from Singapore to Sarawak on Mate's Receipts. There are other European firms besides these which follow the same procedure. I don't know why in a few cases Bills of Lading are used. It may be that in ocean-going trade Bills of Lading are used and the organisation may be geared to such a practice.

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I have never seen any distinction being made between Mate's Receipts and Bills of Lading in the Sarawak/Singapore and Singapore/Sarawak trades. I as a shipping agent have not drawn any distinction on the responsibility of the shipping company on cargo moving on Mate's Receipt or on Bill of Lading.

Apart from cases of Letters of Guarantee, I will not release goods carried from Singapore to Sarawak without production of Mate's Receipt.

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I will never issue a Bill of Lading without the surrender of the Mate's Receipt in respect of the cargo.

I have never heard it said in this trade that a Mate's Receipt is an inferior document of title than a Bill of Lading. In this trade from Sarawak/Singapore to my knowledge we have never issued a Bill of Lading. I have never heard it mentioned that if a shipper wanted a document of title then he would ask for a Bill of Lading and that otherwise he would be content with the Mate's Receipt. In this trade Mate's Receipts are used as documents of title.

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When goods are shipped from Singapore to Sibu delivery is made against Mate's Receipt and no delivery order is made out. The Customs stamp this Mate's Receipt and it is sent to us. In Kuching we have delivery orders and so I believe it is in Singapore.

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XX'd by Mr. MacCrimdale.

I know Mr. Goh Leh. I don't agree that 10% of the cargo from Singapore to Sarawak moved on Bills of Lading and always when the Banks are interested in them.

10 Goh Leh is the Shipping Manager of Heap Eng Moh. I disagree on his percentage that Mr. Goh Leh gave as 10%. I do disagree even with the figure of Mr. Cook of 20%. I say it is 10 out of 180. I also don't agree with Goh Leh that Bill of Lading was used when a Bank was interested in the cargo. I am speaking from the documents that I hold in my Sibul Office regarding this trade. The procedure is the same in Sibul as in Kuching.

20 When there is a Mate's Receipt on goods shipped by John Smith & Co. consigned 'to order' and if someone came to me in Sibul with the Mate's Receipt endorsed by John Smith and demanded delivery I would deliver the goods. I was wrong here earlier when I said I would expect the bank's endorsement in such a case.

In the previous question if a bank chop appeared on it even then I would not require the Bank's endorsement for delivery.

I only required the Bank's endorsement when the Mate's Receipt showed the Bank as named consignee or consigned to the order of the Bank. Usually there is only just one endorsement on a Mate's Receipt.

30 In the ocean trade the general practice is to use Bill of Lading. They may not be prepared to alter this practice for just this one trade.

40 I do regard the Mate's Receipt as a document of title as it is required in this trade. I keep a stock of the printed Bills of Lading of Heap Eng Moh Steamship Co. They are different from the Mate's Receipts that are used. There is no risk of confusing these two. If a shipper came to me with a Mate's Receipt and asked in exchange a Bill of Lading I would consider myself obliged to give him one.

Anyone who wants a Bill of Lading must bring

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the Mate's Receipt to the office and then the Bill of Lading is prepared from the contents of the Mate's Receipt and signed by me. I cannot recollect ever issuing a Bill of Lading but I have issued Bills of Lading on cargo for transshipment. It is quite possible that my firm may have issued a Bill of Lading for cargo from Sibu to Singapore before my time there. The same would apply to the Kuching office.

There will be a number of copies of the Bill of Lading and I will keep at least one marked "N.N.". It is kept in a file. I have not looked at the files to see how many. In copies of the Bills of Lading it is printed across them as "N.N.". They must be marked in one way or other as "N.N.". The copies marked "N.N." are not signed. Only 3 copies without "N.N." are signed. 10

I have named 4 European companies. We are the Sarawak agents for all these 4 companies. Taking delivery on behalf of these companies will be done by the Import Department of our company. I don't know if our company keeps these goods or holds them in consignment for sale. To my knowledge these companies do not ship on Bills of Lading. 20

The Borneo Co. ships condensed milk to Sarawak from Singapore.

Adjourned to 2.30 p.m.

2.30 p.m. (Hearing resumed).

Mr. W. Jervis (on former oath). 30

I thought Nestle's shipped condensed milk to Sarawak from Singapore on Bills of Lading. We take delivery from other shipping companies as well in Sibu.

I have noticed that Heap Eng Moh's Mate's Receipts have not the words "N.N." on them but the other 2 companies have. I have never considered if there was any difference between these 2 classes of documents. We issue a good many of Heap Eng Moh's Mate's Receipts. The shipper gets the original and copy in Singapore and so does he 40

in Sarawak. We use the same forms in Sarawak as we use in Singapore for Heap Eng Moh. Original is not marked but the copy is marked "N.N."

I believe Heap Eng Moh are new to the trade from Indonesia. I suppose cargo moved from Indonesia only on Bills of Lading.

10 I had no part in the decision to mark the copy "N.N." and not the original. Heap Eng Moh was in this trade from 1959. They still mark the copy "N.N." and not the original.

Only the original is signed by the officer of the ship. We only issue the shipping order. If an importer produced one of these copies marked "N.N." I would not give delivery.

20 My company does not export goods from Sarawak but we merely return empty F. & N. bottles. From Sibü to Singapore my company only ships returns of product. In those cases nobody pays for the cargo. I had no occasion to sell any products to anybody in Singapore.

No XX'm by Mr. Peter Lee but he says he adopts the XX'm of Mr. MacGrindle.

Rex'd by Mr. Kerr.

30 Heap Eng Moh has no office in Sibü or Kuching. They do everything through us. During my time in Kuching I don't recollect having issued a Bill of Lading for local cargo moving from Sibü to Singapore. From the time I was in Sibü I have not issued any Bill of Lading in such cases as above. I have been asked to produce Mate's Receipts from my firm but the older ones have been destroyed. We have Mate's Receipts from January 1962. I have looked before giving evidence at Mate's Receipts that we have got. I have not noticed from my records of any Bill of Lading being issued for Sarawak/Singapore trade.

When the Mate's Receipt is consigned to order it is endorsed by the shipper. It may be general or special.

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Re-examination

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Re-examina-
tion
(continued)

If the shipper has a Mate's Receipt con-
signed to the Chartered Bank I would not deliver
to the shipper without the endorsement of the
Chartered Bank on the Mate's Receipt. My practice
would be the same if it was a Bill of Lading instead
of a Mate's Receipt. I have no legal qualifications.

I see P.12.

The whole set is made out by us. We give to
the shipper all the copies except the Office Copy
of the Shipping Order.

10

The Chief Officer writes on the original Mate's
Receipt the actual number of packages received and
he signs the Mate's Receipt and gives it back to
the shipper. He also gives to the shipper the
duplicate copy marked "N.N." but to my knowledge it
is not signed.

The Borneo Co. Ltd. act as agents for a larger
number of companies that export goods from Singapore
to Sarawak. I don't think there is any connection
between the Borneo Co. acting as their agents and
the fact that they ship on Mate's Receipts and not
Bills of Lading. The cargo from the exporters in
Singapore for which Borneo Co. acts as agents is
shipped on all the lines and not exclusively on
Heap Eng Moh Steamship Co. Heap Eng Moh gives
delivery of goods shipped to Sibu in the same way
as all other shipping lines that go to Sibu. The
procedure in Kuching of Heap Eng Moh is the same
as all other shipping lines there. I have come
across no difference between the Hua Siang Steam-
ship Co. and the other shipping companies in the
procedure in which this trade is carried on.

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(Released).

Plaintiffs'
Counsel's
Closing
Speech

Mr. Kerr addresses on the law.

They fall under 2 heads.

- (1) Custom
- (2) Attornment.

Custom

By custom of the trade relating to shipment
of goods from Sarawak/Singapore and if material

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from Singapore/Sarawak Mate's Receipt were at all material times treated as documents of title in the same way as Bills of Lading so that by the custom of the trade possession of the Mate's Receipt was regarded as equivalent to possession of the goods in the same way as possession of Bill of Lading is equivalent to possession of goods in the Bill of Lading trade in ocean-going trade. It is a pure question of fact. If that is right subject to 2 points ...

10

The position is that delivery to the shipper or anyone else other than against Mate's Receipt or to the holder of Mate's Receipt is a conversion of the goods as against the holder of Mate's Receipt.

In the present case the Mate's Receipts were delivered by Tiang Seng Chan to the Wah Tat Bank with the intention of creating a pledge on the goods. The Wah Tat Bank were entitled to the possession as in Bill of Lading.

20

The defence is wholly artificial and is legalistic; sham defence; and clearly ignores the custom of trade.

Although all the plaintiffs' witnesses have been XX'd in this case to seek to destroy the evidence of custom not a single Bill of Lading covering local cargo shipped from Sarawak to Singapore has been put to them although if such a document existed there was ample opportunity to put it to them.

30

Secondly in our submission the custom upon which we rely does not rest upon the total non-existence of Bill of Lading.

If Bills of Lading are issued as for Singapore/Sarawak they are only issued against the surrender of Mate's Receipts. The evidence has not been challenged. There is no case of the 2 documents being in circulation at the same time.

The fact that in Singapore/Sarawak trade Mate's Receipts are in a minority of cases exchanged for a Bill of Lading does not prevent the Mate's Receipt being documents of title by the custom of the trade if they are not exchanged for Bills of Lading.

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If what is submitted above is right there is only one point of law. Para 6A of the defence of 3rd Party Page 15 of P.

Implied or ostensible authority.

On the allegation that Bank knew that T.S.C. was getting the goods and the Bank laid no complaint and made no claim to the goods.

The facts

On the evidence there is nothing to show that the Bank knew of delivery against Indemnity. T.S.C. acted fraudulently to conceal that they had in fact taken delivery. I rely on the Trust Receipts. The conduct in respect of Trust Receipts is designed to conceal the fact from the Bank that they had already taken possession of the goods.

10

The aim of concealment is inconsistent with the Bank knowing that T.S.C. had taken delivery of the goods.

Why should T.S.C. have taken the trouble of getting the Mate's Receipt by this procedure if the Bank knew that goods had been delivered to T.S.C. Why did T.S.C. give the Trust Receipt? The Bank would not have given the Mate's Receipts on receiving the Trust Receipts if it had known that the goods had gone. Either the Bank would have extended the time on the Bill of Exchange or sued on the Bill of Exchange. There was no need to bring in more documents.

20

Implied or ostensible authority

This is quite untenable. The Bank did nothing to clothe the T.S.C. with implied or ostensible authority to take delivery without Mate's Receipt. If there was any authority to T.S.C. by the Bank to take delivery why not give the Mate's Receipts to T.S.C. There was no implied authority.

30

Ostensible authority

There must be representation by word or conduct by O.C.B.C. on which they rely and by holding out that the 3rd parties had authority to

take the goods without the Mate's Receipts. There was no complaint and no claim can't be relied upon. It also depends on knowledge. There can be no estoppel unless the defendants rely on the alleged holding out by O.C.B.C. of the 3rd parties. There was no reliance by the defendants. Defendants delivered to the 3rd Party because of the Letter of Guarantee.

1929 35 LL. Reports 163.

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Plaintiffs' Counsel's Closing Speech (continued)

10 Wednesday, 1st April, 1964.

Counsel as before.

Mr. Kerr.

On the question of custom I refer to para 6A of the defence. For defendants to succeed here he must show 3 elements:-

- (1) Knowledge.
- (2) Act by plaintiff amounting to a representation that the 3rd parties
- 20 (3) Reliance by the defendants upon that representation.

None of the 3 elements present here. There should be conscious knowledge.

Refers Thor v. Tyrer 35 LL.R.163, page 171. Our case is stronger than this case.

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In 3 Mate's Receipts the goods are consigned to OCB/Tiang.

- (1) If defendants are right, delivery would have to be given to both consignees.
- (2) Alternatively on a true construction of Mate's Receipt where '/' stroke is used without order/N the '/' is merely an abbreviation for O/N.

Quotation from Lord Denning M.R. 1963 1 Ll.R.359 at 360 in Penarth Dock Company v. Pounds. In interpreting words I am entitled to have regard to the facts and circumstances "known to the parties and in contemplation of which the parties must be deemed to have used them". (Quoting Lord Wright from Inland Revenue Commissioners v. Raphael and others (1935) A.C. 96 at p. 143).

10

Attornment

- (1) When goods are in possession of a bailee (defendant) and he attorns to a 3rd person (plaintiff) by representing to the plaintiff that the defendants hold the goods for the plaintiff or will deliver the goods to the Plaintiff then the plaintiff obtains a right to the possession of the goods as against the defendant and the defendant is estopped from denying the plaintiff's right to possession. If the defendant thereafter deals with the goods inconsistently with the plaintiff's right to possession the defendant is liable to the plaintiff in conversion.
- (2) A bailee attorns to a 3rd person whenever he makes a statement oral or written or by conduct to the effect that the goods in question are held for the plaintiff by the bailee or will be delivered to the plaintiff by the bailee in circumstances where the bailee knows or ought as a reasonable man to know that this statement is likely or liable in the course of things to be communicated to the plaintiff and to be relied upon by the plaintiff.

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- (3) Where a bailee so represents that the goods will be delivered to A then the statement will take effect as an attornment to A and to A's principal or agents.

We respectfully ask you to make a finding that when issuing Mate's Receipts stating that the goods were consigned to the order of OCBC or to OCBC the defendants knew (or should have known) that in the ordinary course of things the Mate's Receipts would or were likely to or might (liable to) come into the possession of OCBC or their principals Wah Tat Bank and that Wah Tat and OCBC would or were likely to or liable to rely on the statement that the goods were consigned to OCBC.

To find as a fact that Wah Tat & OCBC relied upon the statements in the Mate's Receipts that the goods were consigned to OCBC by giving credit to the shippers.

Attornment is a _____ of estoppel.
Hal. Vol. 2. Art. 265.

- (4) Submissions on the question of pledge. The general or special property in goods can be transferred if the transferor and transferee so intend although the goods are then in the possession of a 3rd party, and this is so even if the goods are in the possession of a carrier by sea and there is no transfer of the Bill of Lading covering the goods.

Carver 10th ed. 737.

- (5) Where an owner of goods (defendants) has agreed to transfer the general or special property to another (plaintiff buyer or pledgee) or has represented to the plaintiff that he or his bailee holds the goods for the plaintiff and the plaintiff relies on that representation then the defendant has finally appropriated the goods to his contract with the plaintiff and the right to the possession of those goods as between the plaintiff and defendant has passed to

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the plaintiff. The defendant cannot thereafter deal with the goods inconsistently with the plaintiff's right to possession, e.g. by refusing to give the plaintiff possession or by instructing a bailee to deliver the goods to anyone other than the plaintiff. There is one exception to the rule. Stoppage in transit.

Carver Page 750.

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- (6) Where there is an agreement to advance money upon a pledge of goods or documents of title the pledge takes effect when the delivery of the goods or documents of title is made pursuant to the contract even if the advance is made previously.

Hilton & Tucker 1888 39 Ch.D.669.

Carries on submissions on (2) & (5).

Hals. 35 Page 339 Art.484. vide Evans vs. Nicholas.

20

- (1) 1810 170 E.R. 1178 Stonard v. Dunkin.
Hawes v. Watson 1824 107 E.R. 484.
Attornment by a 3rd party by delivering a note.

Holl v. Griffin 1833 (131) E.R.898.

Two reasons: (1) advance of money against documents which were not held to be documents of title.

- (2) Where a bailee says "I will deliver the goods to plaintiff then that operates as an attornment even if the bailee was then not in possession of the goods.

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Knights v. Wiffen 1870 5 Q.B. L.R. 660.

4 reasons: (1) Defendant can make a representation via 3rd party.

- (2) Test of whether a statement operates as an attornment is objective. The test is whether the defendant as a reasonable man should have realised that the plaintiff may have acted upon that representation.
- (3) A plaintiff acts or relies upon a statement if "he rests satisfied" having heard the statement. It is sufficient if money is allowed outstanding.
- (4) Once a vendor or pledger has represented to the plaintiff that the goods are to be held for the plaintiff by the bailee then he cannot thereafter give fresh instruction to the bailee not to deliver to the plaintiff.

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Page 665.

Grigg vs National Guardian 1891 3 Ch.D. 206.

Laurie vs Dudin 1925 2 K.B. 388 & 389.
1926 1 K.B. 223 & 237.

Adjourned to 2.30 p.m.

2.30 p.m.

Should the defendants who issued these Mate's Receipts with words "consigned to OCBC or Order" in all the circumstances of this trade and in the course of business and so forth be taken to have realised that these Mate's Receipts would or liable to be delivered to OCBC or their principals and that the statement "c. to OCBC" would be relied upon by OCBC or their principals. If the answer is "yes" then the issue of the Mate's Receipts constitutes an attornment by the defendants to OCBC and Wah Tat as the principals which operates where the Mate's Receipts were delivered to Wah Tat or to OCBC and these words are relied upon the plaintiffs.

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II Group of cases.

Mate's Receipts here different from Mate's

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Receipts in the Bill of Lading cases.

- (1) In all those cases Bills of Lading were issued as well as Mate's Receipts and both documents were in circulation. They were all in the Bills of Lading trade.
- (2) In none of those cases did the Mate's Receipts name a consignee. No discussion about attornment.
- (3) None except in one was an allegation of custom raised. 10

In 2nd group there was no Bill of Lading but a document, in one case a Mate's Receipt in a named consignee.

1891 2 Q.B. 653 at 663 Fry, J.

If dates in column 15, 16 & 17 of the schedule were removed it will not make any difference.

II. Group of cases. Craven v. Ryder. (1816) 128 E.R. 1103

A carrier acts wrongly in giving a Bill of Lading except in exchange for a Mate's Receipt. 20

Ruck v. Hatfield (1822) 106 E.R. 1321
 Bruce v. Wait (1837) 150 E.R. 1036
 Chalmers Sale of Goods Page 76. para 19.
 Ryans v. Nix (1839) 150 E.R. 1634
 (Parke B, at 1641)

Adjourned to 10.30 a.m. on 2/4/64.

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Plaintiffs' Evidence

Plaintiffs' Counsel's Closing Speech (continued)

Thursday, 2nd April, 1964.

Hearing resumed. 30

Counsel as before.

Evans v. Nichol 1841 133 E.R. 1286.
 Mitchell v. Ede 113 E.R. 651.

The case went the other way because there was no appropriation.

At page 657,

(2) Wolff v. Horncastle (1798) 126 E.R. 924
at page 928.

What is a consignee?

A consignee

Cork Distillers Co. v. Great Southern
1874 L.R.

7 H.L. (English & Irish Appeals) 269
at page 277.

Cowasjee v. Thompson 13 E.R. 454
pages 457 & 458.

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- (1) Thompson plaintiff, Cowasjee defendant.
- (2) The shipment was made by the seller as agent for the buyer and the real shipper was the buyer.
- (3) The Mate's Receipt did not name anyone.
- (4) The Bills of Lading were issued to buyers i.e. the shippers. (Buyer Bob Taylor). pages 457 & 458.

20

Schuster v. McKellar (1857) 119 E.R. 1407
Schuster was the seller and shipper and the plaintiff McKellar was the master of the ship (carriers). The Bill of Lading was fraudulently obtained from the shippers by the buyers.

Head Note; facts at 1408 at 1411 & 1413.

Hathesing v. Laing 1873 L.R. 17 Eq. 92

Hathesing was plaintiff and traded under a name Harbord.

30

Plaintiff firm was the agent of a firm Harbord Co. - referred in Mate's Receipt as H. & Co. H. & Co. are the shippers and the only persons named in the Mate's Receipt. The Bills of Lading were issued to H. & Co. At that time Hathesing, the plaintiff held the Mate's Receipt.

- (1) The Court treated it as of vital importance whether or not there had been

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a transfer of the property by a final appropriation (endorsement of Mate's Receipt) before the carriers issued the Bill of Lading to Harbord & Co.

(2) The Court treats as all important whether or not the master before issuing the Bill of Lading had notice that someone else other than Harbord & Co. had any interest. Facts no interest.

(3) Distinguished the other cases at Page 106. 10

Nippon v. Ranjiban (1938) A.C. 429.

Appellants were the shipowners and the defendants. The respondents were the plaintiffs and were the sellers in a string of sales. The export company were the shippers of the goods, owners of the goods, buyers of the goods and the persons named in the Mate's Receipt. They were the persons to whom the Bills of Lading were issued. The plaintiffs were again only the agents. There had been a final appropriation to the export company. Ranjiban had physical possession of the Mate's Receipt. 20

No named consignee.

No attornment.

No plea of custom

Mack v. Burns (1944) 77 Ll. L.R. 377.

Carver page 208 Art. 6.

Carriage of Goods by Sea Ord.
Sarawak. Section 2. 30

Mate's Receipts are not "Bills of Lading" but are similar documents of title. Mate's Receipts incorporate the Hague rules in compliance with Sec. 4 of C. of Goods by Sea Ord.

Friday, 3rd April, 1964.

Counsel as before.

Mr. Kerr.

Mack v. Burns 77 LL. R.651 Page 383.

No argument as to document of title.

C.J.'s comments were directed to the dissimilarities between that document and the Bill of Lading.

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(1) They are not applicable to this document and (2) whether this is a document of title.

(3) No decision as to the custom.

Carver Page 722 Note 2. Warlborough Hill (1921). 1 AC. 444.

On the 3rd submission - Boustead on Agency.

Sec. 4 Page 239.

Art. 106.

Art. 107.

20

(1) Plea of custom - This is a question of fact.

(2) The crucial question is then when the Mate's Receipts were delivered by 3rd parties to Wah Tat was there an unconditional appropriation of the goods on the Mate's Receipts to the contract so that the special property in the goods passed to Wah Tat. There can be no doubt that when Mate's Receipts were delivered to Wah Tat with no conditions there was unconditional appropriation. The contract was that Wah Tat will credit the account of the 3rd party, i.e. they will advance money in consideration of a pledge of the goods. There was no reservation of the right of disposal after the handing of the Mate's Receipts. There had thereafter no right of altering.

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Plaintiffs' Counsel's Closing Speech (continued)

Refers to Sec. 18 Sub-Sec.5(1)&(2) }
& Sec. 19 }

Chalmers
Page 70,
71.

The rules here which apply to sales and are codified appear to apply to pledges in Common Law but are not codified. Sec. 19(1) & (2).

In all the cases where the plaintiff succeeded there was final appropriation to the contract. Where there was no final appropriation the plaintiff failed. There has been no case where a shipper who did not hold the Mate's Receipt has succeeded against the carrier in respect of the delivery of the goods by the carrier to someone to whom the shipper has transferred the general or special property in the goods.

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There has been no case that either the Bill of Lading or the goods can properly be delivered by the carrier to the shipper where the carrier has implied notice of someone else's interest in the goods. Finally there has been no case where the court has distinguished between a refusal by a bailee to deliver to a plaintiff who has the general or special property in the goods from a prior delivery to someone else.

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Not negotiable.

(1) The word 'order' is written and it is intended to be document of title and prevails over 'Not Negotiable' which is printed in because of the custom.

(2) Where 'Not Negotiable' and order appears in a document then it is still a document of title between the immediate parties, i.e. the Defendants and the O.C.B.C.

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Hibernian Bank v. Gysin (1939) 1 K.B. 483 at 489.

Henderson v. Comptoir d' Escompte (1873) L.R.5 P.C.253 at top of 260 & 261.

Even a "N.N." Mate's Receipt or Bill of Lading is effective in hands of a named consignee even though he cannot transfer his rights to a 3rd party. The non-transferability of the document is widened by addition of the word 'order'. If there was a wrongful conversion which of the defendants is liable. 1st Defendant the shipowner is clearly liable. The crew are the servants of the shipowner. Chan Cheng Kum was the owner of the ship. Chan Cheng Kum was also the Chairman of the Board of Directors.

Scrutton 16th Ed. Page 485.

Mr. Kerr puts in an amended Reply (Further Further Reply). The amendments are Para. 4 Mr. MacGrindle has no objection.

Intld. T.K.

Adjourned to 2.30 p.m.

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Plaintiffs' Evidence

Plaintiffs' Counsel's Closing Speech (continued)

10

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2.30 p.m. Hearing resumed.

Mr. Kerr calls P.W. 1 with leave of court.

No objection from Mr. MacGrindle and Mr. Lee.

P.W.1 Chew Choo Sing a.s. in Hokkien.

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Plaintiffs' Evidence

Chew Choo Sing recalled Further Examination.

30

I remember meeting Chan Cheng Kum in the Sibü office of Tiang Seng Chan. The manager of Tiang Seng Chan is Mr. Wee Soon Beng. This was about 4 years ago. Mr. Wee introduced me as the financial supporter of Tiang Seng Chan to Mr. Chan Cheng Kum. I had seen Chan Cheng Kum on many occasions before this meeting. There were a number of occasions when I met Chan Cheng Kum in the company of Mr. Wee before this meeting. There were a number of occasions when Mr. Wee and I were travelling in a car when we saw Mr. Chan walking by.

My father was and still is the President of the Chinese Chamber of Commerce in Sibü.

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(continued)

My father became President of the Chinese Chamber of Commerce since pre-war days.

I had seen Mr. Chan with my father on many occasions before I met him in the airport. Mr. Chan often visited Sibü. When I saw Mr. Chan with my father he was after paying respects making social calls. I and my wife flew to Singapore on our way to Hong Kong. We met Mr. Chan on the plane from Sibü to Singapore. It was during the first week of March, 1961. I fixed my time by associating it with my pleasure tour of Japan, Hongkong and Formosa. I went to Hong Kong to participate in a conference with the American International Insurance Association. The conference was held on or about 9/3/61. My wife and I met Mr. Chan on the flight from Kuching to Singapore. Mr. Chan asked me whether I expected to have any one to meet me at the airport.

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20

I told him that Mr. Lee Teow King and Mr. Ong Poh Tiong would meet me at the airport in Singapore. Mr. Lee Teow Keng (id.) is a director of Tiang Seng Chan and is the son of the old Mr. Lee and the 3rd party here. Mr. Chan told me that he would invite me to a dinner that night after our arrival in Singapore. He told me that he would also invite Mr. Lee Teow Keng and Ong Poh Tiong. When I arrived in Singapore I did not meet Mr. Lee Teow Keng and Mr. Ong Poh Tiong. Mr. Chan offered to take me to my hotel but I declined the offer.

30

As Mr. Lee was not at the airport Mr. Chan said that he would ring up Mr. Lee and ask him to meet me at the Cathay Hotel where I was staying and to ask him to go for dinner with me. Mr. Lee Teow Keng and Mr. Ong Poh Tiong later met me at Cathay Hotel. Later that evening they, my wife and I had dinner with Mr. Chan. Besides us there were Mr. Chan's 2 sons. In all there were seven in the party.

40

We had dinner at the Peking Restaurant. Ong Poh Tiong was a relative of Mr. Lee, a customer of ours and is a trader who travels between Sibü and Singapore. My impression was that Mr. Chan had met Lee Teow Keng before.

Cross-examination by Mr. MacCrindle.

10 I happened to go to Tiang Seng Chan's office and there I saw Mr. Chan who was already there. This meeting was before 4 years. It was between 4 and 5 years ago. On that occasion the meeting lasted a short while, long enough for me to drink my tea or coffee that was served. At that time the Hongkong & Shanghai Bank was not in existence in Sibü. In any case Tiang Seng Chan dealt with us mostly. I don't know that Tiang Seng Chan was putting through Mate's Receipts as early as January 1961 through the Hongkong & Shanghai Banking Corporation.

I can't remember when Hongkong & Shanghai Bank started business in Sibü. I should not think the Hongkong & Shanghai Bank started as early as 1959.

(Document passed up by Mr. MacCrindle.)

20 This document is a Mate's Receipt and has the chop of the Hongkong & Shanghai Bank, Sibü on it. It is dated December 1959. I agree that the Hongkong & Shanghai Bank was functioning in Sibü in 1959.

(Mate's Receipt - marked D4 for id.)

The meeting with Mr. Chan took place after the Hongkong & Shanghai Bank started business in Sibü.

30 Shortly after Hongkong & Shanghai Bank started business in Sibü I was aware that Tiang Seng Chan was sending small shipments through Hongkong & Shanghai Bank. Kwong Lee Bank and Chartered Bank had been in business in Sibü long before Hongkong & Shanghai Bank.

40 I can easily find out when Tiang Seng Chan was sending shipments through Kwong Lee Bank and Chartered Bank. At the time of the meeting with Mr. Chan I knew that T.S.C. was sending shipments through Hongkong & Shanghai Bank. I also knew that T.S.C. was sending small portions of their goods through Kwong Lee Bank and Chartered Bank. I don't think at that time T.S.C. was putting shipments

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Further Cross-examination by Defendants' Counsel.

(Exhibit D4)

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Further Cross-
examination by
Defendants'
Counsel
(continued)

through any other Banks in Sibü.

I have spoken to Mr. Chan before this meeting. At least more thantimes before that meeting. On that occasion Mr. Wee stood up and introduced me to Mr. Chan. I agree I knew Mr. Chan before that introduction. After the introduction he stood up and I shook hands with Mr. Chan.

I did not indicate to Mr. Wee that I knew Mr. Chan. Mr. Wee was serious when he introduced me to Mr. Chan as their financial supporter. We did not discuss financial matters on that occasion. Mr. Chan asked Mr. Wee how much goods he had shipped by the last vessel from Sibü.

10

As far as I was concerned at that meeting I did not discuss any business matters either with Mr. Chan or Mr. Wee. I was there for about 10 minutes. I saw Mr. Chan before embarkation but I did not speak to him. I first spoke to him during the flight from Kuching to Singapore. Mr. Chan was with his second son. I do not know his name. It is not true that Mr. Chan Cheng Kum, Mr. Chan Kim Yam and Mr. Chan Kim Lim and the shippers did not ever dine with me. I say there were in all seven of us as stated by me. I have often dined with members of T.S.C. It happened on most occasions when I visited Singapore. In most cases other persons were also present at dinner. In some of those occasions we did not dine at the Peking Restaurant. Mr. Chan introduced one son in the aeroplane and the other son in the ground floor of the Cathay Hotel. I knew Mr. Chan's two sons since that trip in March 1961.

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30

I was introduced to Mr. Chan Kim Yam in the Cathay Hotel. Mr. Chan and his sons came to the Cathay Hotel. Mr. Ong and Mr. Lee also came to the Cathay Hotel. Mr. Lee and Mr. Ong arrived first. They rang me from the lounge at the Cathay Hotel. Later I and my wife came down and met them. Mr. Chan and his 2 sons arrived there shortly after me. I informed that Mr. Chan had met Mr. Lee Teow Keng before because Mr. Chan told me that he would telephone Mr. Lee and ask him for dinner and also because

40

when Mr. Chan met Mr. Lee at the Cathay Hotel they greeted each other without any introduction.

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Further Cross-examination by Defendants' Counsel (continued)

.....

Cross-examined by Mr. Lee for 3rd parties.

Further Cross-examination by Third Parties Counsel

I used the word "Chay Sua" which was interpreted as financial supporter. This word is not used between friends. As far as I know it is only when there is business relationship or financial relationship that this word "Chay Sua" is used. a retailer would refer to his wholesaler as his "Chay Sua" but it cannot be used by the wholesaler to refer to the retailer. Probably the wholesaler may have given credit to the retailer.

10

My meeting with Mr. Chan could not be as early as 1956.

4.15 pm.

Intld. T.K.

Adjourned to 10.30 a.m. on 6.4.64.

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recalled

Further Cross-
examination by
Third Parties'
Counsel
(continued)

6/4/64. S.1284/61.

10.30 a.m. Hearing resumed.

Parties as before.

Chew Choo Sing (reaffirmed).

Cross-examined by Mr. Lee (continued).

Ong Poh Tiong is my cousin, Before July 1961 I came rarely to Singapore. When I am in Singapore it is not true that I used to ring up Lee Teow Keng. I only rang up Lee Teow Keng once. I mean when I arrived in July 1961 I cannot remember very well if I had informed Mr. Lee Teow Keng before my arrival in Singapore before the period July 1961. I did not directly inform Lee Teow Keng about my arrival in March 1961. It was Ong Poh Tiong who said he would inform Lee Teow Keng about our arrival. I don't know if he did so. Ong Poh Tiong was in Singapore when I came to Singapore in March 1961. Ong Poh Tiong informed me about this in Sibul when we were both in Sibul before our trip to Singapore.

10

20

Lee Teow Keng and his people had entertained me in Singapore on a number of occasions. More often than not it was I who went to pay respects to old uncle Lee (Lee Chin Tian). I don't know if the manager of T.S.C. in Singapore had informed his head office in Singapore about my arrival. I did not inform Mr. Lee Chin Tian about my arrival. In July 1961 too I did not inform T.S.C. about my arrival.

30

It is not true that I met Mr. Chan and Mr. Lee Teow Keng for the first time in July 1961. It is not true that Mr. Lee Teow Keng did not meet me at the Cathay Hotel in March 1961.

There was an occasion when Lee Teow Keng and his wife and relations entertained me and my wife at the Cathay Restaurant and later on we adjourned to a Night Club. This happened a year before March 1961. It is not true that this happened in March 1961. My wife came to

40

Singapore in 1960.

Lee Teow Keng and his people had entertained me before 1961 at the Cathay Restaurant and not the Peking Restaurant. It is not true that Lee Teow Keng and Mr. Chan together had never had any dinner with me before July 1961.

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Further Cross-examination by Third Parties' Counsel (continued)

.....

Re-examined by Mr. Kerr.

Further Re-examination.

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T.S.C.'s main bankers in Sibu was our Bank since Hua Siang Steamship Co. started in the Sarawak/Singapore trade. The meeting between Mr. Wee and Mr. Chan in T.S.C.'s Sibu Office was between 1959 and 1960. It was one year before my trip. I say this meeting was in 1959 or 1960. Except for the incident in March 1961 I have never had a meal with Mr. Chan. Before that incident I have never been to the Peking Restaurant. I have since been there twice or thrice. On that first occasion it was Mr. Chan who suggested the Peking Restaurant. He made that suggestion of going to the Peking Restaurant at the Cathay Hotel before that dinner.

20

When we went to the Peking Restaurant no table was reserved for the party. Mr. Chan Cheng Kum paid for the dinner.

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Defendants Counsel's opening Speech.

Mr. MacGrindle.

It is not a claim for breach of contract. It is not suggested.....neither is it claimed as assignee. Even if the documents had been Bills of Lading there would be no claim on a contract. The Bank's claim at the highest is that it was a pledgee and therefore Sec. 1 of Bill of Lading act will not apply. This is a claim therefore in tort and it is put forward basically as a claim in conversion. What is plaintiff's case on trover? The plaintiffs must show:

10

- (a) that they have title - absolute title; actual possession would do. Neither suggested here. Constructive possession will also do.

Constructive possession - an immediate right in law to possession. Winfield 6th Ed. Page 372. Right to possession.

- (b) It must be a title at law. 1938 Appeal Cases 429 Nippon v Ranjiban at Page 449.
- (c) is to establish that the carrier has done some act which amounts to a denial of that legal title.
- (d) that the title of the plaintiffs who are claiming on a misdelivery must be a title capable of prevailing over any title which is vested in the person to whom delivery was given.

20

30

At Common Law there are 4 methods of transferring proprietary interest in goods :

- (a) sale
- (b) mortgage
- (c) gift
- (d) pledge

All 4 modes then has one thing in common, that the transferee will get either absolute property or a special property in the goods.

In (a) and (b) there is no necessity for possession to be transferred. In relation to

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(c) and (d) it is essential to have possession transferred. In a pledge it is essential that the bank should have possession (actual or constructive possession of the goods). It is not enough that the owner of the goods has solemnly said to the Bank "I hereby pledge these specific goods to you as security for an advance that you give me in exchange". Even if this provision was contained in any bit of paper and however solemn or serious it may look it still is not sufficient.

10

1935 A.C. 53 Official Assignee vs
Mercantile Bank at page 58 to 60.

"By the arguments advanced

At Common Law"

Factors Act - Agents - includes all sorts of documents. Documents like M.R.; Railway receipts etc. as set out in Sec. 114 of the Factors Act.

At Common Law Mate's Receipts can never be documents of title. What then is the distinction at common law between Mate's Receipt such as we have before this court and the Bill of Lading. Both have two characteristics in common.

20

(1) They are both receipts.

(2) They are both evidence of the terms of the contract with the shipper.
They both incorporate a number of terms of the carriers.

30

Scrutton 173 - 174.

(The Mate's Receipt incorporates the conditions of the Bill of Lading even though not shown on Mate's Receipt and the shipper can claim on those conditions even though no Bill of Lading has yet been issued, e.g. a fire causing damage to goods before issue of Bill of Lading.)

A Bill of Lading will grant to the transferee of the Bill of Lading a prima facie right to sue the shipowners and claim for the goods in their possession. But a Mate's Receipt does not have this characteristic.

40

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Unless there are more specific features whereby a pledge of the Mate's Receipt is deemed to be a pledge of the goods the bank will not be a pledgee. At all events it will not be a pledgee at law. In equity it may be regarded as an equitable pledge. The Bank will be able to claim equitable remedies against the shipper or persons who stand in his shoes. Injunction to restrain the shippers from dealing with goods contrary to the existing pledge.

10

When T.S.C. shipped the goods a contract of bailment came into being. The shipowners were the bailees and the shippers were the bailors. At that stage the carriers held the goods on behalf of the shippers. That is so even though at the same time a Mate's Receipt was issued that the shippers had consigned the goods to the OCBC. If the shipper had 2 hours later changed their mind the carriers would have to comply with the shippers' order.

20

The carriers at that stage held the goods for and on behalf of (on account of) the shippers unless either (a) a specific form of Mate's Receipt is taken recording expressly that the goods are being held for the account of somebody else (Sec.13 E.R.454) or (b) there is a situation in which in law the person physically delivering by himself or by the stevedore is deemed to be acting as the agent for somebody else. That position arises even if the shipowner issues a Mate's Receipt where someone is named as a consignee.

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11 Ch. D. 68 Ex parte Cooper.

Distinction between warehousemen and bailees who have not only to hold the goods but do something else as well. The latter class includes amongst others carriers. The essence of the warehouseman bailment is storage. The essence of the carriers bailment is carriage from one place to another.

40

When a warehouseman holds goods deposited by A and if A gives a delivery order on the warehouseman in favour of B and B takes the delivery order to the warehouseman and the warehouseman signifies assent by accepting it then there is an attornment. The only

conceivable purpose of A in naming B is to transfer possession to B and the only conceivable purpose of the warehouseman in assenting by writing over delivery order accepting is to recognise the right to transfer possession to B.

10 This does not apply to a carrier, because if A delivers goods to a carrier and says at the same time I am consigning these goods to B the essential purpose of so doing is to record the terms of the carrier's contract. There is a purpose in so doing for there is a direction to the carrier to carry to B and not to hold for B. Ex parte Cooper (13 E. R.) When the goods were shipped in the present case they were held by the carrier for the account of T.S.C. and nobody else.

20 Supposing after a Mate's Receipt had been issued to T.S.C. in the form here and supposing the next day the shippers had gone to carriers in Sibu office without the Mate's Receipt and asked for a Bill of Lading, in my submission, the situation will precisely be that of the Nippon Case, because he would have had a shipper, the shipper would have been named as such in the Mate's Receipt and the shipper would have been the owner of the goods. The shipowner issued a Bill of Lading and it was
30 held that he was entitled to do so because once the carrier has determined the shipper and if he is satisfied that the shipper is the owner of the goods he is entitled if not bound to deliver the Bill of Lading to that Shipper.

Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

Mr. MacCrindle.

No attornment merely by issue of Mate's Receipt.

40 (1) Attornment

(2) Estoppel.

Attornment:- Argument on attorney derives mainly

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Defendants Counsel's Opening Speech (continued)

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from the phraseology of the Mate's Receipt. The carrier never saw the Bank; never agreed with the Bank and the only question is whether by issuing this document the carrier has attorned to the Bank.

2 things to be noted:-

(1) The name of Wah Tat nowhere appears on it. If there was an attornment it was at most to OCBC. Undisclosed principal - normally contract alone. It does not apply outside contract. 10

(2) The whole of argument on attornment derives from the words "consigned to". These words are a reference to the intention of the shipper rather than an undertaking by the carrier. Carrier cannot consign, only the shipper can. The goods are consigned through the carrier. The person effecting it is the shipper. 20

These words can be an acknowledgment by the carrier. At most they record by the carrier an acknowledgment that the shipper has given these instructions.

Supposing both those two points are wrong then is there anything that amounts to an attornment to OCBC? It is contractual consent. It is sometimes called a triangular agreement. 30

Pollock & Wright on Possession P. 73.

Godtz v Rose 25 L.J. (C.P.) 61 at Page 63.

Farina v. Home 153 E.R. 1125

Dublin Distillery v Doherty (1914) A.C.
A.C. 843 at page 847.

Attornment depends on agreement.

Estoppel depends on representation.

Attenborough v. St. Katherine's Docks
1877 3 C.P.D. 450

Henderson v Williams (1895) 1Q.B. 521
page 534.

Estoppel.

At best an estoppel may arise in favour of OCBC but nothing against Wah Tat. It is a representation by the carrier that he has received certain goods which the shipper has consigned to OCBC. It is not a representation that those instructions are irrevocable. It is not a representation as to the carrier holding the goods on behalf of the named consignee. It is at best a record that the carrier has agreed with the shipper to deliver the goods to the consignee. It is on any view a much less stronger formula than that in Attenborough v St. Katherine's Docks.

The necessary representation must be established and further that they acted on that representation. I submit both these have not been established.

How did OCBC act on this document at all? OCBC did not advance even a penny. It acted as the corresponding Bank. It acted merely as collector of the corresponding Bank.

There is no room for estoppel in this case in favour of OCBC in as much as the document was marked "Not Negotiable" thus conveying that the mere transfer of the document will not clothe the transferee with any rights in the goods.

Adjourned to 10.30 a.m. on 7/4/64.

7th April, 1964.

10.30 a.m. Hearing resumed.

Parties as before.

133 E.R. 1286 Evans v Nicol
5 Jurist 1110
4 Scott N.R. 52 & 53
11 L.J.C.P. 6 - (9-10)

If Clapham had changed his directions then the decision would have been different - ag page 1289.

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11 J.C.P.6.

No revocation of the instructions. If there is estoppel against the carrier he is nevertheless not estopped from saying that the shipper had changed the instructions. Otherwise why do these judges refer to no revocation.

Notice to the carrier.

Nippon Case.

Equitable title and a legal title. Equitable pledge without actual or constructive possession. If a so called pledgee does not have actual or constructive possession then he is at law an equitable pledgee. 2 consequences follow from that :

10

- (1) He can enforce his rights by equitable remedies. (He might have legal contractual rights.) Those equitable rights can never include a claim for damages through conversion. Because damages are not an equitable remedy.
- (2) As equitable rights can only lead to equitable remedies it will not be enforceable against anyone save against one with notice.

20

Page 434

Whether or not the defendant had notice of his claim at the material time he can never claim damages for conversion.

In the assignment of a chose in action one who seeks to claim as assignee of a chose in action not only must he show that notice has been given to the party to be charged but he must also join the assignor either as plaintiff or as defendant.

30

(Chose in action) Hatesing v. Liang
- Sh\$pper was joined as a defendant there.

What is the position where plaintiff is in a position to claim on a legal title?

Where a claim is made against a carrier or other bailee for conversion and the claim is based on misdelivery the carrier or other bailee is prima facie not liable if the delivery was to person from whom he has originally received the goods.

In the High Court of the State of Singapore, Island of Singapore

Hollins v. Fowler L.R. 7 H.L. 757, 766-767.

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44 L.T. National v. Rymill 767
Hollins v. Fowler 766.

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10 Two more things on notice :

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(1) Notice of a possibility of title in somebody else is not enough.

Glyn v. East India Dock Co.
(1882) 7 A.C. 591 at 596.

Defendants Counsel's Opening Speech
(continued)

(2) Notice that something may have happened in respect of prior transaction is not notice that the same thing may have happened in the present transaction.

1935 A.C. 53 at 56.

20 No need to accept that this was followed in the present case.

Custom.

The custom must be to the effect that in the circumstances of this trade the assignee of the chose in action is entitled to claim in his own name. This Mate's Receipt by custom has the effect of transferring the right of possession in law.

30 In order to establish that by custom the evidence that can be entertained on a proposition of that width is evidence that it was custom under the general law merchant. That is so : Common Law says that only a party to a contract can sue on it. An assignee of a chose in action cannot sue in his own name and no more trade custom could negative those two propositions.

Negotiable instruments cannot be created by trade custom. It can only be

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Defendants Counsel's Opening Speech (continued)

created by statute or by the general law merchant.

Picker v London & County Banking 1887 18 Q.B.D. 515 at 517.

Crouch v Credit Foncier 1873 L.R. 8 Q.B.374 at pages 386 - 387.

Edelstein v Schuler 1902 2 K.B. 144 at 154.

You cannot create negotiability. You cannot assign a chose in action save by the general law merchant.

10

Vol. 11 of Hals. Pages 189 - 190.

Partridge v Bank of England 1845 15 L.J. Q.B. 395 at 401.

- (1) Carriers in this trade usually deliver to the named consignee or the endorsee.
- (2) Release goods on indemnity.
- (3) Some Banks are prepared to loan money against Mate's Receipts. It is merely an equitable security. The question is whether it is a legal security.

20

It is put forward that the holder of the Mate's Receipt is vested with possessing interests in the goods. This is brought about by a local trade custom. The whole of that document can claim by virtue of it for an infringement of that possession interest and claim against one with whom he has no contract, collision with an ocean going vessel where the coastal cargo is damaged.

Adjourned to 2.30 p.m.

30

2.30 p.m.

A mere trade practice cannot attach to a document a character whereby the mere transfer of the instrument would clothe the transferee in law with the rights evidenced by the document.

Carver 10th Ed. page 377.

Custom and what is customarily done. Custom cannot override the law.

Hathesing v Laing at page 96 L.R. 17
Eq. 92 at 104 & 105.

10 An argument was directed by reference to the wording on the back of the Mate's Receipt. Because the Sarawak Ordinance was incorporated in the back on the Mate's Receipt the parties must have had in mind that Mate's Receipt was a similar document of title. The ordinance that they incorporate in the 1927 S.S. Ord. and the Sarawak Ord. is the 1931 Ordinance. They certainly incorporate the Hague rules but so does every Mate's Receipt in the world issued by a carrier when usual form of Bill of Lading is carried by it.

Scrutton on Charter Parties - P.467

Explanation of similar documents of title.

Custom

20 In order that any custom can be of legal validity it must be universal.

It must be certain; extent of operation.

It must not be unreasonable.

First it is unreasonable because it seeks to permit a claim in tort, i.e. a claim against one who is not contractually liable by contract which impliedly incorporates the custom.

30 Second. Any custom must be unreasonable which seeks to vest in the holder of a document rights which the document itself provides that it is not transferable.

A party claiming under a document draws its rights from that document and they must be limited by the terms of the document. Here the documents are marked "N - N". The transfer accordingly cannot clothe the transferee with any of the rights evidenced by the document.

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Defendants Counsel's Opening Speech (continued)

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Defendants Counsel's Opening Speech (continued)

Not Negotiable.

- (1) An instrument may create or evidence right, contractual or proprietary, enforceable at the suit of a given person X against another person Y.
- (2) Those rights will usually be assignable in equity and in appropriate case by statute.
- (3) The instrument will not however be negotiable unless it is of a class which enables X or any subsequent holder by transferring the instrument itself to clothe the transferee with power to enforce at least some of those rights in his own name against Y. (Negotiable means transferable in that sense.)

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Page 96 of Hathesing v. Laing.

- (4) In the case of a fully negotiable instrument such transfer may vest such rights in the transferee even though the transferee himself did not have them. In the case of a quasi negotiable instrument, i.e. a Bill of Lading dat quod non Labet. (sic)
- (5) (a) In the case of a Bill of Exchange, which creates....., X is the payee, Y is the acceptor; only X can sue on the instrument originally (i.e. the drawer cannot).

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X can transfer the instrument with the consequences mentioned in (3) above so far as all his rights thereunder are concerned.

(b) In the case of a Bill of Lading, which evidences the rights, X is the shipper, Y is the carrier. Only X can sue on the instrument originally (i.e. a named consignee cannot). At common law X can transfer the instrument (to a named consignee or an endorsee) with the consequences mentioned in (3) above so far as his proprietary rights to

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call for the delivery of the goods concerned.

Page 711 Carver

By statute X can also transfer his contractual rights against Y in this way.

(c) In the case of a Mate's Receipt which evidences rights X is the shipper, Y the carrier. Only X can sue on the instrument originally and neither by common law nor by statute nor by the law merchant can he transfer that instrument with the consequences mentioned in (3) above so far as any of the rights are concerned.

(6) The general universal custom of merchants (i.e. the law merchant) may qualify an instrument to fall within the class mentioned in (3) above. A trade custom cannot.

(7) No custom can prevail against expressed wording to the contrary effect. Rights said to be derived from a document must be governed and limited by the terms of the document. Hence if an instrument is by expressed provision therein not negotiable, X cannot transfer the instrument with the consequences of (3) above. This applies even if it would be a fully negotiable instrument like the Bill of Exchange and a fortiori if it will only be quasi negotiable.

Re { Walford - 1918 2 KBD 498
 { at 503 or 507
 { Scrutton J at ... 508
 { 1919 A.C. at Page 801
 { at 808.

Hibernian Bank Ltd. v. Gysin 1938
 2 K.B. 384 Cases on Bills of Exchange are ambiguous which must be used with some caution. The position there is

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now regulated by statute. Hibernian
Bank Ltd. at Pages 388 & 390.

Mack v. Burn's 77 Ll. L.R. 377
Page 383 L.C.,1.

- (8) In the case of a cheque though not an ordinary bill of exchange the words "Not Negotiable" have a special statutory meaning. Sec. 81 of Bill of Exchange Act, i.e. X can transfer but the transferee cannot get a better title than the transferor. This has no application though relevant to an instrument which could not be fully negotiable any way nor indeed has it any relevance to an ordinary Bill of Exchange

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See Hibernian v. Gysin.

Adjourned to 10.30 a.m. on 8/4/64.

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Defendants
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Speech
(continued)

Wednesday, 8th April, 1964.

Parties and Counsel as before.

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10.30 a.m.

Not Negotiable

Documents are shipping.

It is a contract to carry.

He can't transfer the contractual rights.

Thompson v Dominy 153 E.R. 534

Scrutton Page 495

(1) What are the rights conferred by the instrument?

(2) At whose suit were they originally enforced?

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If the document is "Not Negotiable" those rights are not transferable by that person so as to be enforceable by the transferee on any subsequent holder.

The banks got the rights if any by transfer of the document. By that you are saying the document is negotiable.

On the banks' own case :

(a) a right (i.e. a right to claim possession) was on shipment vested in the shippers and enforceable against the carrier only by them.

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(b) the bank says that right was transferred to it by the shippers.

(c) the bank says that the right to claim in its own name was so transferred by the transfer of the documents.

(d) the document evidences the existence of the original right in the shipper. That being the reality of the situation the bank says the documents were negotiable.

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The bank could have asked for a Bill of Lading endorsed to or consigned to Wah Tat or it could have asked the carrier to attorn to it, or it could have asked T.S.C. to arrange for Wah Tat to be named as shippers in the Mate's Receipt or it could have served a stop notice on the carrier and if the carrier had refused to obey it could have obtained the equitable relief of injunction against the carrier.

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In law while a donor cannot revoke a completed gift in the absence of a binding contract to the contrary a promisor can revoke the promise, a bailor can terminate a bare bailment and a licensor can terminate a licence.

(1) If goods are deposited by the owner A with the bailee X, A can grant to B a right to possess the goods which are in the possession of X.

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(2) B will not get actual possession unless he takes the goods physically. He may get contractual possession, i.e. the right to immediate possession.

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(3) B will not get the right to immediate possession unless there is either (a) an attornment by X to B or (b) in the case where X is carrier by sea the transfer to B of the Bill of Lading consigned or endorsed to B. If either of these happens X will hold for B against all save a person entitled in law as against B to demand the goods immediately.

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(4) Even if B holds such a Bill of Lading this is not the same as actual possession of the goods themselves. Everything depends upon the legal relationship of B to the shipper or the last endorsee re B.

Ref: Sewell & Nephew v. James Burdick
10 A.C. 74 at page 82-83.

If there is no relationship of pledge, sale, mortgage or gift B will have a bare right to possess.

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(5) A Bill of Lading consigned or endorsed to B can in no circumstances give C (sic) an immediate right to possess in law. As with any negotiable instrument recording an obligation to a named person or his order the action must be brought in the name of that named person or his endorsee and not of a person for whom in truth he may hold.

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Chalmers on Bills of Exchange Page 122
Page 65 Sec. (23).

The same doctrine must apply to quasi Bill of Exchange.

Scrutton Page 514.

In any event in the absence of a contract between B and the carrier or shipper there can be no question of legal agency permitting C to claim against the carrier or shipper as undisclosed principal of B.

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(6) In the absence of attornment by the

carrier to C or the transfer of a Bill of Lading to C as named consignee or endorsee C can at most get from A an equitable right to possess or a contractual licence to take possession enforceable against A or anyone in his shoes.

Nippon Case A.C. at 444/445 - 449.

1935 A.C. Official Assignee at 64/66/67.

- 10 (7) Thus even if C has loaned money to A there will not in such circumstances be a pledge in Law in favour of C. At most there will be an equitable pledge.

(1935 A.C.)

- 20 (8) Thus C will have no immediate right of possession in law against the bailee X. Its right if any is not immediate but mediate for it must be exercised through B if the Bill of Lading is consigned to B.

- (9) Even if contrary to my submission B can in law be regarded as agent in the legal sense for an undisclosed principal C, X can avail itself as against C of all defences which it would have against V (See Boustead on Agency Page 289).

- 30 (10) An awareness by X that C or someone else may have been interested in many prior similar transactions is not notice that C is interested in any particular transaction.

(1935 A.C. Page 56).

Notice of a possibility will not do.

(7 A.C. at 596).

Unless X has notice that C has an equitable title in the particular goods it can never be liable to C.

- (11) Even if X knew of C's equitable interest this merely renders him subject to

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equitable remedies.

Nippon Case at 444/445/449/450

- (12) If C has taken as security for an advance to A a Bill of Lading consigned to B and handed over to B, B will obtain a right to possession against the carrier X but as there is no contract between B and X or even between B and A it will be a bare right to possession as in (4) above.

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- (13) The carrier X cannot convert the goods vis a vis B if he delivers on the demand of one having a right to possession capable of prevailing against B's right to possession. The question is whether B has an immediate right to possession as against the deliverer.

1938 A.C. 443.

"At any rate" in Mitchell v. Ede 113
E.R. 657.

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- (14) B's right to possession is a bare right which is terminated as soon as A calls for the goods. Since A has no contractual or other relationship to B, A can terminate that right at will as against B by calling for possession of the goods. (even if B had the physical possession of goods themselves).

- (15) If A in such circumstances demands delivery from the carrier X he is entitled to do it. He has ipso facto revoked the licence to possess.

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Evans v Nicol

If both B & A had claimed delivery from the carrier simultaneously and the carrier had interpleaded A would have won as against B.

- (16) B is not the bailor of X but even if he were X will be entitled to the defence that he had delivered on the demand of A, the true owner, who subsequent to the

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bailment had validly terminated these rights. Delivery to the true owner will always be a defence to the bailee.

(Salmond on Tort - Page 280)
(when the jus tertii may be pleaded)

A is TSC
X is Hua Siang
B is OCBC
C is Wah Tat.

10 Wah Tat had no immediate right to possess in law. It had no contract with the carrier. There was no attornment by the carrier to Wah Tat at least. There was no legal pledge.

The position of Wah Tat was this. It was an equitable pledge with a right to restrain by injunction TSC or anyone in its shoe contrary to the terms of the agreement to pledge. As equitable pledgee it could never have any rights to claim damages for conversion.

20 The position of OCBC would have been as follows if it was a Bill of Lading. It had a bare right to possess by virtue of the Bill of Lading. It had no title legal or equitable. Had no contract with the carrier. In my submission there is no attornment by the carrier. Even if there had been an attornment O.C.B.C. would have been in no better position than if it had received the physical goods from T.S.C.

30 It had no contract with T.S.C. It had no right to continue the possession as against T.S.C. As against T.S.C. there was no legal relationship precluding T.S.C. from claiming delivery of the goods immediately.

Which of the defendants liable?

40 The 2 vessels were owned at the material time by the individual defendant. The vessels were operated throughout by the Ltd. Company. The masters and crew had since January 1961 been employed and paid by the Ltd. Co. The Ltd. Co. had received all freights and had not accounted to the individual defendant. The Ltd. Co. had discharged all outgoings in relation to the vessel (stevedoreage, repairs,

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bunkers, insurance). The company did not have a Bank account of its own until 8th February, 1961 though it had applied for one in the first half of January. The Bank required certified resolutions, etc.

From that date (8/2/61) virtually all cheques were drawn on the company's account. This was a private company and director controlled. The controlling director maintained a current account with the company. The company operated ships which were not owned by the company. The vessels remained in the ownership of the individual. In return for Mr. Chan allowing the company to use the vessel for its own profit or loss the individual defendant received an amount by way of hire - \$500 a month or so. The hire was paid year by year by setting off the amount of hire against the indebtedness of the individual to the company on current account.

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We say there was a demise charter party, i.e. to say there was an arrangement whereby for return of remuneration the owners of a vessel hand it over lock, stock and barrel to someone else to operate for that person's own benefit, that other person supplying the crew, paying all the outgoings and retaining all the profits.

Cory v. Dorman Long 41 Com. Cases.

It is wrong, unfounded in principle and without justification. Why no oral demise charter party? Whether you call it a demise charter party or not, it was the company who was operating the vessel whose employees were the crew. Whose servants were operating these ships? An attempt to hold liable a director of the company for the actions of the servants of the company acting on behalf of the company would be utterly contrary to the most fundamental doctrines of company law. It has been said again and again it does not matter who controls the company, it does not matter if 99% of the shares are held by one, the company is a separate legal entity. The servants of the company are servants of the company and not of the directors. There is perhaps one exception. If the

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court forms the view in relation to the acts in question that it was directed or procured by the director in question so that in doing it the company was acting as agent for the director the director can be held liable on the ordinary principle that he who directs a tort to be committed by another has committed the tort himself.

1921 2 A.C. Page 465, 475/476-488

10 1924 1 K.B. at 14.

Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

On a number of documents there was a slackness and there is no proper stamping that the Co. was Ltd. Circulars were sent out that Co. has now been Ltd. Page 5 of Agreed Bundle.

20 It is agreed by all parties that evidence called on behalf of the defendants or the 3rd parties in support of the defence against the plaintiff's claim all evidence given by such witnesses in cross examination will not be evidence for the purpose of 3rd party proceedings.

Mr. MacCrindle calls:

30 D.W.l. Chan Cheng Kum a.s. in English. I am the owner of the vessels "Hua Li" and "Hua Heng". I have been connected with ships since 1926. We have been trading vessels since 1926. I was the sole managing proprietor of Hua Siang Co. till 1960. These two vessels were operated by the firm up to 1960. From 1954 these vessels traded with Sarawak. It was a round voyage from Singapore to Kuching, Sarikei, Binatang, Sibiu and then back to Singapore. The only other company operating then when we started was the Sarawak Steamship Co. Ltd. It was the only company then. In 40 1954 when I started I appointed agents in Sarawak. Chop Hock Kee were the agents. They were agents till June 1955. We appointed "Rejang River United Shipping & Trading Co.Ltd.

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Chan Cheng Kum. Examination.

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(Exhibit D5)

Sibu" as our agents after that. They acted as agents until 1961. They were negligent in their duties and they owed us lots of money. That is why they ceased to be our agents. We terminated their agency. Sime Darby (Borneo) Ltd., Sibu are our agents since then.

These vessels were trading as general ships and we accepted cargo from many shippers.

I see P.51 & 52 of X. They are Bills of Lading of Hua Siang Steamship Co. and Hua Siang Steamship Co. Ltd. 10

Before formation of the Ltd. Co. my agents in Sibu had supplies of forms as in P.51 of X. After the Ltd. Co. was formed we supplied our agents in Sibu with the new forms of Bill of Lading as at Page 52 of X.

Before the formation of the Ltd. Co. in Singapore the old forms as at Page 51 of X were in use and after the formation of the Ltd. Co. forms as at Page 52 of X are and have been in use. I now produce a set of shipping forms - marked D5. 20

The same forms are used in Singapore and Sarawak. They have been used by the Ltd. Co. since its incorporation. Local shipments from Sarawak to Singapore are carried on Mate's Receipts and sometimes on Bills of Lading.

Our agents in Sibu have been instructed to issue Bills of Lading in exchange for Mate's Receipts if required. Local cargo is from Sarawak to Singapore only and through cargo is to a destination beyond Singapore. My firm will also carry the goods from Sibu to Singapore for transshipment to other ports. We use Bills of Lading on through cargo. Only in very few cases are cargoes from Sarawak to Singapore carried on Bills of Lading. When the cargo comes to Singapore somebody presents the shipping documents and ask for delivery of the cargo. I don't normally see these shipping documents when presented at our office. Chan Kim Yam and Cheah Wee Hock deal with these documents. Chan is a director and one of my sons. Mr. Cheah is in charge of issuing delivery orders and shipping orders. I have 30 40

not always seen Bills of Lading for cargoes from SibU to Singapore. Perhaps once a year.

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10 I have seen Mate's Receipts from Sarawak to Singapore for local cargo. I have also seen Bills of Lading for cargoes from Sarawak to Singapore. I have seen about half a dozen of Bills of Lading over a period of 2 or 3 years. The Mate's Receipts are retained in our office after delivery between 6 to 12 months. The Rejang Co. in SibU as our agents have issued Bills of Lading for cargo from Sarawak to Singapore.

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Chan Cheng Kum Examination (continued)

20 In 1958 my agents Rejang Co. of SibU issued 2 copies of Bills of Lading from SibU to Singapore for local cargo. They issued 2 sets of Bills of Lading. I put those 2 sets of Bills of Lading in my personal file. As agents for my ship they should use my Bills of Lading. They used the Rejang Co.'s own forms for cargoes on our ship. I took the Bills of Lading to SibU and confronted them with these 2 sets of Bills of Lading. They agreed not to use these forms in future. The Rejang Bills can still be recovered if anybody wants to do so. The Rejang Co. used our forms of Bills of Lading after that. I took steps to see that they were doing so.

The voyage from SibU to Singapore takes about 48 hours in good weather.

30 Approximately 20% or more of the cargo is carried from Singapore to SibU on Bills of Lading. The same people from Singapore exchange a Mate's Receipt for Bill of Lading. It is not limited to European firms. Chinese firms also take such action. Keck Seng, Jin Hoe, Kuok Bros, all demand Bills of Lading for local cargo from Singapore to Sarawak. My company has been asked to carry through cargo from Singapore to Sarawak. Those cargoes are carried under Bills of Lading. My company never carries such goods under Mate's Receipts. From Singapore to Sarawak always some cargo is carried under Bills of Lading. Sometimes a carrier not normally engaged in this trade will carry cargo from Sarawak to Singapore. I recollect a Japanese Line. I think it is the "Tino" Line. I have seen shipping documents

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in relation to cargo coming from Sarawak to Singapore on that line. They were Bills of Lading. When our ships arrive at Singapore from Sarawak our company had no means of knowledge whether the Sarawak agents have issued a Bill of Lading or not. The ship's manifest will not tell us that information.

My ships also go to other countries other than Singapore/Sarawak. My ships used to go to Indonesia, Saigon, Phnom Peng, Bangkok in 1961. They arrive in Singapore with cargo from these places.

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It happens from time to time that a person claiming the cargo is unable to produce the shipping documents. In such cases we ask for an Indemnity before giving delivery of the goods. My company has its own printed forms for such indemnities. We use the same form for cargo from Sarawak as well as cargo from other ports.

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My co-director Chan Kim Yam will decide whether the cargo is to be released against indemnities. People sometimes telephone and sometimes call at the office regarding cargoes to be released against indemnities. They do not call on me at the office. I don't have any discussions with them.

I have a private room. Some of the people who telephoned spoke to me. I always referred them to Chan Kim Yam. I look after the finance, freight rates and repairs to vessels, etc.

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When the Ltd. Co. was formed in December 1960 it took over the operation of the "Hua Li" and "Hua Heng". There were other vessels in the same position. They were the "Hong Tat", "Giang Seng" and "Soon Huat" renamed the "Selamat".

The crew of the Hua Li and Hua Heng were engaged on 6 months' articles. We renewed the articles at the end of the 6 months term. The masters of the vessels are paid monthly salaries. At the end of 1960 when the Ltd. Co. was formed the masters of the Hua Li and Hua Heng were Capt. Said and Capt. Kerr-Gordon

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respectively. Capt. Said is in Mecca on a pilgrimage and Capt. Kerr-Gordon is in Singapore now.

Adjourned to 10.30 a.m. on 9/4/64.

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Chan Cheng Kum Examination (continued)

Thursday, 9th April, 1964.

Counsel and Parties as before.

Mr. Chan Cheng Kum (on former oath).

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Chan Cheng Kum Examination (continued)

(Exhibits D6 and D7.)

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At the present time I only own these 2 vessels. When cargoes are carried to Singapore in my vessels I would see the shipping documents if there were claims against the shipments. I mean shortage of cargo or damage to cargo. There have been shortage and damage in cargo from Rejang Bills. (2 Bills of Lading produced by Mr. MacCrindle and marked D6 and D7.) D6 and D7 are the 2 Bills of Lading of Rejang Co. issued as our agents. There are also the inward manifests. It is difficult to say whether the manifest refers to Bill of Lading or Mate's Receipt. Usually they are Mate's Receipts. From the manifest I will not be able to say whether the cargo is covered by Mate's Receipt or Bill of Lading. I took all those documents to Sibiu. Prior to these 2 Bills of Lading the Rejang Co. also issued their own Bills of Lading. I was told of this by Chan Kim Yam.

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He told me about these 2 bills and brought them to my attention. He told me they have issued again. I was flying to Sarawak the next morning. So I put them in my personal file. I saw the Rejang people with these when I got to Sarawak. I told them they cannot use their own Bills of Lading. They are our shippers and they should use our Bills of Lading. They agreed to do so.

I did not after that see any other Rejang Bill of Lading. They carried out the promise and after that used our Bill of Lading forms. Chan Kim Yam showed me later on. It may be one or two months after I saw the agents. Those Bills of Lading are no longer kept by my firm. I don't even have any Mate's Receipts issued about that time.

My vessels trade between ports on the coast of Malayan Peninsula. We trade with Penang, Malacca and Port Swettenham from Singapore and back.

Bills of Lading are used when we trade with these ports. In my experience between these ports Bills of Lading are invariably issued. They are issued in exchange for Mate's Receipts. The Mate's Receipts are the same as we have seen in this case. We have used this form of Mate's Receipts for over 20 years, well before I went into the Sarawak Trade. These are marked "Mate's Receipt" and "N.N.". I was responsible for both these markings. I did that because the Mate's Receipt is only a receipt. I say in the Sarawak trade the Mate's Receipt is not regarded as a document of title. The Mate's Receipt in this trade merely shows that the goods had been loaded on the ship. If there is a named consignee it is a contract between my company and the shipper. When goods are shipped by T.S.C. consigned "to O.C.B.C. order" my company regards as holding the goods for the shipper. It has happened where the shipper has changed his mind and asked us to deliver it to someone else other than the named consignee. It has happened in some cases where the Mate's Receipt is in the hands of the named consignee.

Sometimes in 1960 Fraser & Neave on behalf of Malayan Breweries shipped to Chop

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Tiang Aik in Sibiu from Singapore. Mate's Receipts were the shipping documents issued in that case. The shippers after the cargoes had been shipped and on their way to Sibiu, instructed us not to deliver to the named consignee but to deliver to Borneo Co. The Mate's Receipt was then with Chop Tiang Aik. I instructed the agents not to deliver to Tiang Aik but to Borneo Co. The shippers Fraser & Neave gave me no reasons. I did not ask for any reasons. I obeyed the shippers' instructions because our contract was with the shippers. Tiang Aik or anybody holding the Mate's Receipt did not make any claim on the Mate's Receipt.

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Our company received stop notices in respect of cargo carried on its vessels. Normally these matters are attended by Chan Kim Yam. When we receive these stop notices we waited for the Bank's instructions. Stop notice is a notice from the Bank to inform us that they are interested in the cargo - that they have a claim or something like that. Normally the Banks telephone and find out when the ships are coming and they inform us that they have cargo on board that ship. They follow it with a written stop notice.

When that happens we inform the Bank when the ships arrive and deliver the cargo according to the Bank's instructions. If after the Bank's notice a named consignee or an endorsee claimed then I would seek legal advice.

I have seen Banks being mentioned as named consignees on Mate's Receipts and Bills of Lading.

In this case the claim is based on 20 Mate's Receipts. I saw these Mate's Receipts after the claim had been made against us. The O.C.B.C. wrote to us in July and August 1961 claiming that they held the Bills of Lading in respect of the cargoes now claimed in this case. It is only after the letters that I saw the Mate's Receipts that are shown in this case.

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If I had seen the Mate's Receipts as are in this case it could be that O.C.B.C. is the collecting agent for the shipper. It might be the buyers' bankers and accept the documents and pay them.

I don't know if the Bank was loaning money on those documents. I don't inquire from the Banks when they are named as consignees. If the Bank is interested they would inform us. I have never inquired of Bank which was named as consignee in the Mate's Receipt, what part it was playing.

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After this case I noticed that Mate's Receipts from Sarawak sometimes have chops on their face. They have the customs chop and in the 20 Mate's Receipts here there is also the chop of the Wah Tat Bank. Since this case I also noticed the chop has the words BEP and number written in. I did not know what that meant before this case. I did not know what "B.C." meant on a Mate's Receipt before this case. When a Mate's Receipt or Bill of Lading is presented at our Singapore office for delivery we would look for the chop and the signature of the receiver. We look for this on the back of the document. On the face of the document we will have to see who is named as consignee and the party to be notified. We also look for the particulars of the cargo and the number of packages.

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My office would not consider the various chops on the face of the Mate's Receipt. I may have seen during the years 1960-1961 about one or two Mate's Receipts a year. The delivery department is looked after by Chan Kim Yam and Cheah. As managing director I have not given them any specific instructions. Cargo is released by our company on indemnities. At the Singapore end it is at the discretion of Chan Kim Yam whether to release any cargo on an indemnity. Early in 1961 Chan Kim Yam reported to me about deliveries to T.S.C.

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He reported the delay between the delivery and the receipt of the shipping documents. As a result I went to Singapore offices of T.S.C. A certain promise was made to me. I went to T.S.C. office to see

the old Towkay. That is the person who has been referred to as Uncle Lee Chin Tian. I was concerned about the delay in giving us the return of the shipping documents. I was concerned because the Mate's Receipt might have been exchanged for Bill of Lading.

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Chan Cheng Kum Examination (continued)

10

The Ltd. Company was incorporated on 30th December, 1960. I and Chan Kim Yam were the 1st directors. The 1st secretary was Mr. T.S. Tay. The first meeting of the company took place on 31/12/60. Chan Kim Yam, T.S. Tay and myself were present at that meeting. We discussed the use of the 2 vessels "Hua Li" and "Hua Heng". It was agreed that the Hua Li and Hua Heng be given to the company on a bare boat charter and pay to me \$500 per month per ship. There is a minute to that effect in the company's minute book.

20

I see Page 5 of A.

This is a copy of a certain letter saying the Company is taking over the assets and liabilities of the old firm. It is dated 1/1/61. It was sent out about 3 or 4 days later. Hundreds of these circular letters were sent out to various people.

I see Page 9 of A.

30

I think it was typed on printed form. It was typed in my hotel room at Sibul. I drafted the letter. I was going to type it but a friend who was there and who is a typist said he would type it for me. He did the heading and the ending of the letter. Before signing I noticed I was named as Managing Proprietor. As we were going out I signed the letter. I thought it was my printed note paper.

I see pages 10 & 11 of A.

40

I remember sending these letters at these pages to Rejang. Rejang have not put the words "Ltd." and it was due to slackness.

The company had its own bank accounts from 8/2/61. The Bank required certain formalities to be completed before they opened the

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account. The delay was due to this. I mean
the Hongkong & Shanghai Bank.

(Copies of letters from Bank to Company
put in and marked D8.) (Exhibit D8)

D8 are copies of letters from the Bank
to my company regarding the opening of the Bank
account and which I got from the Bank
recently.

For five weeks when the company did
not have an account money received by the
company was paid into the old firm's account
and all payments by the company were also paid
for the old firm's account. Records were kept
of all receipts and payments.

10

After the company had its bank account
on 8/2/61 all freights received were paid into
the company's account and operating expenses
were also paid from the company's account.
Bunkers, repairs, salaries, ship stores, etc.
were all paid from the company's account.
They were all paid by cheques drawn on that
account. Salaries of the crew were also paid
from the company's account. Most of these
things were done by Chan Kim Yam.

20

We draw a cheque to the master of the
ship and he pays the crew members. When the
company was formed in December 1960 I took
steps to inform the masters of the vessels
about the incorporation of the company.

About the first week of January 1961
I asked Chan Kim Yam to inform the masters
that our company has now been incorporated
as Limited Liability Company and they would
be employed by the Ltd. Co. on the same terms
and conditions as before. Later Chan Kim
Yam told me that they were quite happy.

30

I was in Sarawak on 6th July 1961.
I went to Sibul on 7th July 1961. I stayed in
a hotel in Sibul. While at that hotel I got
a message. The message was from Mr. Chew
Geok Lin to me asking me to see him. I had
met this gentleman before. I have seen him
in 1954. He was the president of the Chinese
School and also at the time the president of

40

the Chinese Chamber of Commerce. I have seen him between 1954 and July 1961. I saw him quite often when I went to Sibü. I saw him regarding donations given by my firm to the schools. My firm gave donations to the schools. On the next day after receiving the message I went to see Mr. Chew Geok Lin. It was 8th July 1961. I saw him at his Bank. It was in an office at the back of the Bank. I saw Chew Choo Sing on that occasion. He was at his desk. Mr. Chew Geok Lin and Mr. Chew Choo Sing were both seated at their respective tables when I went in. Their tables are close to each other. I did not speak to Mr. Chew Choo Sing. Mr. Chew Geok Lin got up and took me to a table at back of this office behind a wall. Mr. Chew Choo Sing did not come with us. I was with Mr. Chew Geok Lin for more or less 10 minutes. He asked me "What about the last few shipments from Sibü to T.S.C.?" I told him I believe the shippers had taken delivery of them. He did not seem to be surprised. He told me the shippers owe them money. I had never heard of that. I was surprised. He asked me when I was going back to Singapore. I told him I was going back on the following day, i.e. 9th July, 1961. He merely said the shippers owed him money but did not mention any figure. He did not make any complaint against our company. We did not discuss any other matter. I saw Chew Choo Sing again. He was at his desk but I did not talk to him.

I left Sibü for Singapore on the 9th July, 1961. It was a Sunday. I took the plane at Sibü and we first came to Kuching. I saw Chew Choo Sing and his father-in-law. I saw them on board the aeroplane. They were seated in a different part of the plane from me. We greeted each other. We did not have any discussion. On arrival in Singapore we did not have any discussion with Mr. Chew Choo Sing. It is not true that Mr. Chew Choo Sing spoke to me and told me that the shippers owed him \$190,000/-. I knew Chew Choo Sing before but under a different name. I knew him as Chew Ping Ann. I knew him as Chew Choo Sing when we came to this court.

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(Exhibit D9)

On Monday 10/7/61 after arrival in Singapore I went to the offices of T.S.C. I went there with my son Chan Kim Siang. He was then working in my office but he is now studying in Australia. At the shippers' office I met Lee Teow Keng. I also soon after met Chew Choo Sing and his father-in-law. I think I arrived there first. Uncle Lee came later. About 10 minutes after my arrival.

Adjourned to 2.30 p.m.

10

2.30 p.m.

As far as I can recollect Mr. Chew Choo Sing arrived after me with his father-in-law. We remained in T.S.C.'s office for about 5 minutes or less. Lee Chin Tian came to the office. Lee Chin Tian invited Mr. Chew Choo Sing, myself to go to his house. We all went in his car to his house. I was with my son. When we got to his house we were asked to sit around a marblatable in the front of the house.

20

(Plan produced showing the house and marked D9.)

I was seated at the table. Besides me at the table were Lee Chin Tian, Chew Choo Sing, Kim Siang, Chew's father-in-law was left in T.S.C.'s office. We had a discussion. We discussed in Hokkien which Kim Siang did not understand.

I asked Mr. Lee Chin Tian for the Mate's Receipts or Bills of Lading for the four shipments. Mr. Lee Chin Tian said "give me time". Next Mr. Chew Choo Sing spoke to Lee Chin Tian. He asked Mr. Lee Chin Tian to pay the first draft. I had not heard about the first draft or any draft before that.

30

I could recollect no sum was mentioned. Mr. Lee Chin Tian told Mr. Chew Choo Sing to continue helping his Sibuo office and he will pay gradually. Mr. Chew Choo Sing replied he must pay for the first draft before he could give any more help. Nothing more was said.

40

This discussion took about 15 minutes. Mr. Chew Choo Sing was repeatedly pressing for the payment. No decision was reached. The meeting ended and we got into Lee Chin Tian's car and went to his office.

10 I did not telephone anybody from Mr. Lee Chin Tian's house. The wall between the table where we sat and the telephone is of brick and mortar. It goes right up to the ceiling. We all had a cup of ovaltine each there, but I did not telephone. We all left the house and went back in the same car to T.S.C.'s office. From there I get into my car and went back to my office. I did not give any instructions to Kim Yam when I got to my office. Later in the day Mr. Chew Choo Sing came to my office with his father-in-law and told me that Lee Chin Tian cannot pay. He sat there for a little while and then left.

20 I remember Chew Choo Sing gave evidence that in 1959 or 1960 I met Chew Choo Sing in the office of the shippers in Sibul and that one Wee Soon Beng was present. I don't recollect this occasion. I don't recollect any occasion about 5 years ago when Chew Choo Sing was introduced to me as the Chay Sua of the shippers.

30 Chay Sua means a friend and or a person whom you respect. I don't recollect any occasion when Chew Choo Sing was introduced to me and that expression "Chay Sua" was used.

I remember in the first week of March 1961 I flew from Sibul to Singapore and during the flight I met Mr. Chew Choo Sing. My son Chan Kim Lim was with me on the plane. Mr. Chew Choo Sing was with a young lady. I spoke to Mr. Chew Choo Sing. I asked him if he was going to Singapore and he replied in the affirmative.

40 When we got to Singapore I did not offer to send Mr. Chew Choo Sing and his wife to his hotel. I did not tell Mr. Chew Choo Sing that I would ring Lee Teow Keng and ask him to meet Chew Choo Sing at the Cathay Hotel.

The plane arrived some time in the evening.

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I and my son called for a taxi and went straight home from the airport in Singapore. I don't recollect going to the Cathay Hotel that evening. I was very tired. I don't recollect dining at the Peking Restaurant that evening. I don't recollect having ever dined with Chew Choo Sing.

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Chan Cheng Kum Examination (continued)

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Cross-examined by Mr. Kerr.

Cross-examination by the Plaintiffs Counsel.

I have not been in court every day since the case started. I have been present when witnesses gave evidence in this case and then Mr. MacCrindle opened the defence case.

10

I have been in business since 1926. Except during the war I have always been in Singapore. I have no general business experience. I have always been a shipowner. I have a small business as shipowner. I only knew about the Sarawak/Singapore trade since 1954. In the previous 28 years I knew nothing about the Sarawak/Singapore trade.

20

(Mr. Kerr refers to the defence in pleadings 'A').

I see page 15 of A.

Mr. Kerr reads to witness para 6A of the Defence.

"The said Mate's Receipt relating thereto."

That whole sentence is correct.

I see Page 29 of A.

10 I see para 3a amended Statement of Claim by 2nd Defendant against the 3rd parties. I agree with first sentence of that paragraph. I agree that I made that agreement in early 1961. The 3rd parties agreed to be personally liable to me. That was the promise of Lee Chin Tian. The indemnities continued to be signed on behalf of the company T.S.C. but by the oral agreement in early 1961 the 2nd, 3rd & 4th 3rd party would be personally liable on indemnities by the Company thereafter.

20 Because I got this personal agreement of the 3rd parties I went on delivering against indemnities without production of Mate's Receipts. Even if I had not got this personal promise of the 3rd parties I would have continued to deliver unless other parties claimed.

During years before 1961 I have been delivering to T,S,C. against indemnities. Every time before 1961 when a shipment was made by T,S,C, consigned to O.C.B.C. I delivered against an indemnity without production of Mate's Receipts. After the meeting with the 3rd parties in early 1961 the position went on exactly the same as before until this case started.

30 Even if I did not get their personal promise I would have continued to deliver as before without the production of a Mate's Receipt and without an indemnity signed by a bank. I did not tell the 3rd Parties anything.

I see page 36 of A and the last sentence of para. 2.

Q. Is this sentence correct?

40 A I was only concerned with delay in return of the shipping documents. I heard Mr. Chew Choo Sing gave evidence that T S.C. during later part of 1960 and early 1961 delayed more and more in paying their

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(continued)

drafts. I also heard Chew and Ong Seng Chew say in evidence that T.S.C. took longer and longer to redeem the shipping documents from the bank.

Q. You understood perfectly well that the reason why T.S.C. were delaying in returning the Mate's Receipt was because they were delaying in settling their draft.

A. It was quite possible.

Q. I suggest that the pleading of the last sentence in para 2, page 36 of A is true.

10

A. I was only concerned with the return of the shipping documents. I was not concerned with the financial position of T.S.C. There were no circumstances that gave me any doubt about the financial position of T.S.C. in early 1961.

Adjourned to 10.30 a.m. on 10th April 1964.

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(continued)

Friday, 10th April, 1964.

Counsel as before. 10.30.a.m.

Cross-examination by Mr. Kerr (continued)

Mr. Chan Cheng Kum o.f.a.

Q. The last sentence of para 2 of Page 36 of A.

A. I say that is not the truth. I think there is a misunderstanding. I was not concerned that T.S.C. was delaying in meeting these drafts. The first time I knew of the drafts was after Chew Choo Sing's visit to Lee Chin Tian's house on 10/7/61.

30

When I said yesterday that it was quite possible that reason for delay in returning the shipping documents was because they were delaying in meeting the drafts I misunderstood

the question.

Q. Why were you concerned about the delay in returning the shipping documents after delivering the goods?

A. I was concerned that Bill of Lading may have been issued and I think of the precaution of safety first. I am seriously giving that answer on oath.

Q. I suggest that this answer is untrue.

10 A. I say it is true.

I don't know if for the last 4 shipments T.S.C. have exchanged Mate's Receipts for Bills of Lading because the documents have not been presented. I mean the 4 shipments in this case. I know now that all shipments of T.S.C. were made on Mate's Receipts which were not exchanged for Bills of Lading. Up to now all shipments of T.S.C. were on Mate's Receipts which were not exchanged for Bills of Lading. The mere delay in not returning the Mate's Receipts gave me the fear that Mate's Receipts were being exchanged for Bills of Lading by T.S.C.

20

30

(sic)
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In 1954 when I went into the Sarawak trade one of the most important shippers there was T.S.C. Sarawak Steamship was the only line on this trade. Sarawak Steamship started a freight war in this trade and after about 12 months the freight war was over. After 1955 my firm charged the same freight rates as Sarawak Steamship Co. Sometime after that Heap Eng Moh came into this trade as well. When they did they did not charge the same freight rates as my firm and Sarawak Steamship Co. They were quoting lower rates. Between 1955 and 1959 I was competing with only Sarawak Steamship Co. which was the only other line then on this trade. I managed to get a good portion of T.S.C.'s goods from Sarawak Steamship Co. I am unable to say what % I took over. It is not true that I got this cargo from T.S.C. because I was prepared to deliver the cargo without production of Mate's Receipt and without a guarantee countersigned by a bank. I wish to make it

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clear that T.S.C. was a shareholder and director of Rejang Co. My agents in Sibu Rejang Steamship Co. ceased to do business in 1961 after this case started because we withdrew our agency.

The other reason why I got T.S.C.'s business was because Sarawak Steamship were dictatorial in that they were a monopoly business.

Many of the shippers could not get space for their cargo both in Singapore and Sarawak on the Sarawak Steamship Co. vessels. The merchants in Singapore and Sarawak asked me to put my vessels on this run. It is true that I always delivered to T.S.C. without a bank guarantee because they were the shippers. We acted under their instructions and so I did not ask for a Bank guarantee. I asked for a letter of guarantee because my policy was safety first. T.S.C. were the shippers and I used my discretion in accepting a letter of indemnity not countersigned by a Bank. It is not true that it is the reason why I got T.S.C.'s trade.

10

20

If a shipper can get delivery of the goods without production of Mate's Receipt and without producing a letter of indemnity countersigned by a bank he would save a good deal of money over the years.

It is quite possible for a shipper to obtain an advance from the bank on cargo which they shipped. In such a case the Bank will require the shipping document to be delivered to the Bank. The shipper can only obtain delivery by redeeming the shipping documents from the bank by paying off the advance or by persuading the shipowner to deliver on a letter of guarantee. I knew this long before the case has started. It is easier for a shipper to get delivery on a letter of guarantee not countersigned by a bank.

30

I don't agree that T.S.C. saved thousands of dollars over the years by my giving him delivery on a letter of guarantee which was not countersigned by a bank or without production of shipping documents.

40

I have carried hundreds of cargoes for T.S.C. on Mate's Receipts where the Mate's Receipt shewed consignee to be a bank. In every one of these cases I delivered the goods to T.S.C. without the Mate's Receipt and on a letter of indemnity not countersigned by a bank.

It is not true I made such deliveries because I had an arrangement with T.S.C. that I would do

business on those terms. We did so because we acted under the shippers' instructions.

In every single case where cargo was consigned to a bank the shippers altered their instructions as to delivery and we complied with them. In all these cases we got instructions not to deliver to the Bank but to T.S.C. All this time we never heard from the bank that they were interested in the cargo.

10 Q. In all these hundreds of cases where you delivered cargoes to T.S.C. without the Mate's Receipts where did you think the Mate's Receipts were?

A. I can't say.

There have been cases where the named consignee on the Mate's Receipts was a bank but they never went through a bank.

20 I know when it goes through a bank because the Mate's Receipt has the bank's endorsement on the back.

(Mr. MacCrindle desires to interpose a witness who has specially come from Sarawak. Mr. Kerr and Mr. Lee have no objection. Mr. MacCrindle allowed to interpose this witness.)

30 D.W.2 Thomas Patrick Flynn s.s. I am the Manager in Sarawak of M/s. Sime Darby (Borneo) Ltd. We import consumer goods and heavy equipment and sell them throughout the territory. We also act as ship's agents and operate mixing plants for fertilizers. We employ about 110 persons under me. From April 1960 to March 1963 I was the manager of the shipping and insurance department. I am the convenor of the Sarawak Guild Chamber of Commerce Shipping Committee. I am a member of the Kuching Port Authority. We act as shipping agents for:

- (1) Royal Interocean Lines.
- (2) K.P.M.
- (3) Hua Siang Steamship.

40 We handle the vessels of these lines when ever they are in Sarawak. In the course of acting as ships' agents we handle the delivery from the vessels in Sarawak and shipment to the vessels in Sarawak. I have personally seen and handled shipping documents relating to

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(continued)

these cargoes. In the inward local cargo from Singapore to Sarawak they are normally carried on Mate's Receipt but occasionally Bills of Lading are used. Approximately 20 to 25% of the cargo move on Bills of Lading and the balance on Mate's Receipt.

From Sarawak to Singapore on local cargo they move generally again on Mate's Receipt but on occasions I have seen Bill of Lading. I am referring to local cargo. As manager of the shipping department I was responsible for issuing shipping documents from Sarawak to Singapore. I used to see very many shipping documents. During the 3 years I was in this department perhaps I came across about a dozen a year of Bills of Lading for local cargo from Sarawak to Singapore. Through cargo from Sarawak to Singapore on one of our vessels and then for transhipment at Singapore the cargo in our vessels would invariably be carried under Bill of Lading. I have also come across shipping documents of through cargo from other ports to Singapore and those from Singapore to Sarawak. In these cases too they were always Bills of Lading

10

20

I knew outside lines have carried local cargo from Sarawak to Singapore. I have personally seen shipping documents issued in such cases. They were Bills of Lading.

Suppose a shipper in Sarawak wants to ship cargo from Sarawak to Singapore and if he produces the Mate's Receipt and asks for a Bill of Lading in exchange I shall issue a Bill of Lading in such a case. We keep stock of Bill of Lading forms for the respective lines we handle.

30

I see D5.

That is the Mate's Receipt form of Hua Siang Steamship Co. It is a typical Mate's Receipt form. There is a space against the words "Consigned to". There is nothing unusual about it.

40

In our office for export cargo we treat the Mate's Receipt as purely a receipt that cargo has been loaded on the vessel. For inward

cargo it is an indication to whom the shipper wishes us to deliver the cargo.

I have come across the expression "document of title". I do not in this trade treat the Mate's Receipt as a document of title. I would regard the Bill of Lading as a document of title.

I would not say that in this trade Mate's Receipts are regarded as good as Bills of Lading.

10 It is true many shippers do not exchange Mate's Receipt for Bill of Lading. It is a question of expediency.

There have been cases where the shipper who has named one consignee in his Mate's Receipt has since altered his instructions and called for delivery to someone else. I am thinking of both inward and outward cargo.

20 In the case of inward cargo to Sarawak where my records show that a cargo has been consigned to X and if the shipper asks the cargo to be delivered to Y and if the shipper has not the Mate's Receipt I would still comply with the shipper's request. I have though very rarely had cases of this nature.

When cargo is carried on a Mate's Receipt the carrier holds the goods for the shipper and we consider ourselves as acting for shipper.

30 I have had instructions not to deliver to a particular individual. It comes to me from the port where the cargo is loaded. It may be the agents or the shippers. In such a case I would not issue a delivery order to the named consignee or the person producing the Mate's Receipt.

40 I see the words "N - N" on the form D5. In shipping circles it is a common expression "negotiating a shipping document" and I have commonly heard people say "negotiating a shipping document through a banker to buyer". Such expressions are used in my office. By this expression I understood a shipper would take the document to the Bank and possibly ask the Bank for an advance against such documents or ask the Bank to collect the money for

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Thomas Patrick
Flynn
(Interposed)
Examination
(continued)

the goods and remit it to them - the bank acting as their agent.

The "N.N." is a common expression in shipping documents. This is meant to mean that the person having the document may not necessarily have the right to cargo described in the document. By necessarily I mean that if the person holding the document was one and the same person as the shipper had instructed us to deliver the goods then this document will identify the person as the person entitle to the goods. If the shipper has changed his instructions then this is purely a receipt that the cargo is on board the vessel.

10

When a person in Sarawak produces a Mate's Receipt relating to a cargo shipped to Sarawak from Singapore I look in the Mate's Receipt to check the name of consignee given to the ship by the shipper. This is not necessarily a named consignee. We may instead of a named consignee have "to order/Notify". "To order" may be endorsed on the back to a bank or a named person.

20

If there is named consignee we see that he is the holder of the Mate's Receipt. If it is "to order" on Mate's Receipt and if a person came along with such a Mate's Receipt and asked for delivery I would deliver to him. I would not look at the back of the Mate's Receipt. We would not give delivery without his signature. We would get his signature on the front of the Mate's Receipt. It may be on the back.

30

A Mate's receipt presented in that manner may have a number of chops on the front of it. I would not investigate those chops. I have not heard the expression "BEP Number".

Cross-
examination by
the Plaintiffs
Counsel

Cross-examined by Mr. Kerr.

My company are now agents for the Hua Siang Steamship Co. I am manager of that company. My company became agents of Hua Siang in, I believe, June 1961. It was on 5th June,

40

1961 at Kuching. In Sibü my company began to act as agents in September, 1961. I am based in Kuching now as well as then. Before my company took over as agents for Hua Siang my company to my knowledge did not act as agent for any other line engaged in the local trade. Before that they had acted for Ocean carriers. So my experience of local trade began in June 1961 in Kuching and in Sibü in September 1961. My shipping experience dates from April 1960. I had before April 1961 a little experience of shipping at Port Swettenham. I am 31 years old.

Until Hua Siang came to us I have not been concerned with the local trade. I am afraid I shall not be able to produce any Bill of Lading carrying cargo from Sarawak to Singapore. I don't think I would have seen a Bill of Lading during the period April 1960 to June 1961 in respect of local cargo from Sarawak. After June 1961 I saw Bill of Lading of Hua Siang very rarely. I would say since June 1961 I would have seen about a dozen Bills of Lading of Hua Siang in respect of local cargo from Sarawak to Singapore. During this period I would have seen hundreds or even thousands of Hua Siang's Mate's Receipts for local cargo from Sarawak to Singapore. Taking the trade as a whole between Sarawak and Singapore cargo moves on Mate's Receipt.

When we have an ocean carrier the practice would be for the ocean carrier to issue Bill of Lading for all cargoes whether it goes to Singapore or further on from Sarawak.

Adjourned to 2.30 p.m.

2.30 p.m.

I see D5.

If the consignee came later at Sibü and asked for cargo shipped to him from Singapore he will have to pay storage charges and take delivery.

I see P.16.

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Counsel
(continued)

These are the forms of Mate's Receipt on the ocean going lines. My company acts for K.P.M. and Royal Interocean Shipping. K.P.M. are not in the local trade. I have the forms of Mate's Receipt in Kuching but I haven't any here. Based on a request by the shipper I issued Bills of Lading in about 12 cases. I have only seen Hua Siang Bill of Lading in the local trade. There is also "Ino" line which is trying to break into this trade. My company does not act as agents for "Ino" lines. It is a Japanese line. I believe they are "tramps". I have known of their activities purely as competitors in this trade. I asked the shippers to show me the shipping documents. They attempted to run a regular service from Sarawak to Singapore then to Hong Kong and back to Sarawak. They have not been successful and have since withdrawn. They ran for about 4 months. It was sometimes after my company began to act for Hua Siang. There would have been about 4 voyages from Sarawak to Singapore during that period.

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I signed the 12 or so Bills of Lading myself. I adopted the usual practice of issuing Bills of Lading only on surrender of Mate's Receipts. I would not issue a Bill of Lading in this trade without the surrender of the Mate's Receipt. I may have released cargo without production of Mate's Receipt on their giving a letter of Indemnity.

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If a Bill of Lading is not produced cargo is released on an Indemnity. I have released cargo in Sarawak without Bill of Lading, without Mate's Receipt and without any indemnity. When a ship arrives in Kuching we would have received by then copies of Mate's Receipts from Singapore which come by airmail. Based on those copies we deliver to the named consignee. That is the practice with Hua Siang. The original Mate's Receipt may or may not be returned to me. I checked it in the trade and drew the conclusion that was the practice in the trade. If the Mate's Receipts are not produced then I release cargo as stated above. It happens quite frequently.

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I checked the practice of the trade from shippers and consignees around the trade and our own practice when we took delivery of our

own cargo from Sarawak Steamship Co.

I found that cargo consigned to Sime Darby was released by Sarawak Steamship Co. without production of Mate's Receipt. Sime Darby & Sarawak Steamship Co. knew each other very well.

10 I was told by Hua Siang from Singapore that the shippers had changed their instructions about delivery to the named consignee and not to deliver it to them. This has happened about once a month approximately. I am unable to recollect any of the parties now. I cannot say off-hand who the shippers were. These instructions reached me by cable or if there was time by letter. I am unable to produce any cable or letters. I received these instructions while the ship was on its way. If I received these instructions from
20 the Singapore office of Hua Siang, I will carry that out as a matter of course.

I can't remember if the named consignee was a bank in those cases. In those cases the shipping documents were invariably the Mate's Receipt. I can't say for certain that they were always Mate's Receipts. I knew Sarawak Bankers will advance money on the security of Mate's Receipt. It is possible the bank will ask that it be named or its corresponding
30 bank in Singapore as the named consignee in the Mate's Receipt. I have now heard it reported to me that when shippers wanted to negotiate Hua Siang's Mate's Receipt through a Bank the Bank has required Sime Darby's endorsement on the Mate's Receipt. If this happened in Sibu I would not know about it and they probably would not have reported the matter to me.

I see P7A-D.

40 In some Mate's Receipts the bank is named as a consignee because the bank may be acting on behalf of the shipper to collect payment for the goods from the buyer. The bank may have been nominated by the buyer to pay for the goods. The bank may have advanced money to the shipper against the goods. It may well be that in the majority of the cases

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the bank has advanced money to the shippers against these cargoes. I have been asked similar questions before by somebody else before I came to give evidence here.

When a bank advances money against these documents I would expect the bank to rely upon the possession of the documents. If I had issued Mate's Receipts like those on P7A I would not deliver the goods to anyone other than the named consignee O.C.B.C. or order unless the shipper changed his instructions subsequently to writing the Mate's Receipt. 10

If having issued a Mate's Receipt in the form of P7A and if the shipper later came to me without the Mate's Receipt and asked for delivery to him, I would deliver it to the shipper. It is a possibility that the bank advanced money on this Mate's Receipt.

I would still give delivery to the shipper. I can't recall having done this. I am carrying for the shipper. He has given me certain instructions of delivery. If he changes these instructions I will be bound to act on those changed instructions. I would deliver to him without requiring him to give an indemnity or guarantee and without production of Mate's Receipt. My view would be that it is too bad for the bank. 20

If it happened like that on hundreds of occasions to the same shipper consigning it to a bank, I would still do the same. I never asked for any indemnity. I don't know what the practice of the trade is. I am giving my personal opinion. I hold this opinion because in this trade I don't hold the Mate's Receipt as document of title. 30

The Mate's Receipts are marked "N.N.". The Mate's Receipt contains the instructions and is a receipt that the goods are on the vessel. In the case of a Bill of Lading he cannot change his instructions unless the shipper surrenders the old Bill of Lading. I said how I will act from my personal opinion of the value of the Mate's Receipt. 40

Suppose the shipper in the Mate's Receipt

has consigned to the order of O.C.B.C. and if those instructions are not altered I would deliver to the order of O.C.B.C. If O.C.B.C. endorsed it to deliver to X and if X came along with it I will deliver to X. If the named consignee were somebody and not a bank the answer above will still remain the same.

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10 In the case of Bill of Lading the person holding the Bill of Lading is the person entitled to goods named in them.

If the shipper does not alter this instructions I would consider myself bound to deliver the goods to the named consignee or the endorsee of the named consignee.

20 If I had a Mate's Receipt consigned to X or order I would look for an endorsement by X in favour of the holder of this document. I would want to be satisfied that the person holding the document has the authority of X to receive it.

Adjourned to 10.30 a.m. on 13/4/64.

Monday, 13th April, 1964.

13th April 1964

10.30 a.m.

D.W.2 Thomas Patrick Flynn o.f.o.

Cross-examination by Mr. Kerr continued.

30 Suppose cargo shipped by A consigned to B a bank and Notify A the likely commercial inference is that the bank is advancing money or acting as the shippers' agent.

The party to be notified is probably the party who is going to take delivery of the goods. It is a frequent practice of the bank who advances money to request the shipper to name the bank or its corresponding bank as

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the named consignee in the Mate's Receipt.

Suppose I received a notice from the bank to stop delivery as it held the Mate's Receipt and it was named as the consignee in it I would not act on it but would contact the shipper. If the shipper asked me to take no notice but to deliver to him (the shipper) I would act accordingly and deliver to the shipper.

Suppose I were the shipowner and if O.C.B.C. the named consignee had asked me to stop delivery and if T.S.C. the shipper had asked for delivery without the Mate's Receipt I would have complied and delivered to T.S.C. Therefore if cargo is covered by Mate's Receipt as opposed to Bill of Lading stop notices are useless. In my opinion Mate's Receipts are Mate's Receipts and radically different from Bills of Lading.

I have read books in this matter and from practice the distinction I draw between Bill of Lading and Mate's Receipt is not based on anything other than my personal opinion and instructions from Hua Siang.

Re-examined by Mr. MacCrindle.

The practice of our shipping department is not different from my own personal opinion. Sime Darby has also had to handle shipping documents as importers besides acting as ship's agents. We had occasion to give instructions to carriers about giving delivery. My practice in this department does not conflict with the views I have given here. I had knowledge of the local trade before getting the agency in June 1961 of Hua Siang. I had investigated in the town in Sarawak as to the practice of operating such a trade, the documentation in order to assess what I would need in staff to act as agents in such a trade. I personally investigated this matter.

The Japanese line which I said was

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trying to break into this trade acted as general ships. They offered a service of approximately once a month. I have never heard of a carrier insisting on a Bill of Lading. I saw Mate's Receipt of Harrisons & Crosfield and P. & O. Harrisons & Crossfield were like ourselves importers and exporters.

(Mr. MacGrindle refers to D1.)

10 I see D1 and the Mate's Receipts there. There is nothing unusual about them. Some run a coasting trade. M.M., K. line and Guan Guan are ocean lines. K.P.M. and Royal Intercean Lines' Mate's Receipts have a space for "consigned to". Whether the shippers or Hua Siang informed me about the change of directions for delivery I will act on them.

20 I have been informed by a Sarawak shipper to alter the instructions on a Mate's Receipt. I have been asked to do so by a shipper who did not produce the Mate's Receipt when he gave these instructions.

I have contacted the port of destination if the ship was at sea as quickly as possible and advised Hua Siang about the altered instructions. When we started the agency for Hua Siang I gave instructions that the shippers' instructions must be followed.

30 The 4th possibility when bank is named as consignee would be where the shipper has not actually sold the goods prior to shipping and has nominated the bank to collect the money for the goods should he have sold the goods whilst afloat. If he had not sold the goods whilst afloat then the bank would act on shipper's behalf and collect the goods for storage. Export duty on goods changes in Sarawak once a week.

40 If a bank had advanced money on Mate's Receipt I would expect the bank to rely on the Mate's Receipt to this extent that the goods are in existence.

If A is shipper and O.C.B.C. is the

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named consignee who endorses the Mate's Receipt to X then I would deliver to X as I consider myself bound to do so. I am bound to A. As those are the shipper's instructions I would consider myself bound to X to deliver it to him. If the bank advanced money on Mate's Receipt when on the shippers' altered instructions I deliver to him I said it was too bad for the Bank. I don't know on what collateral security they advanced the money. It was no concern of the shipowner.

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Cross-examined by Mr.Kerr with leave.

About the 4th possibility that I spoke of I can't recollect any bank having so acted. I was saying it was a possibility.

(Released).

Cross-examination of Mr. Chan Cheng Kum by Mr. Kerr.
(continued).

In every one of the cases where T.S.C. altered the instructions, the instructions came over by phone from Mr. Lee Chin Tian or Lee Teow Keng which I referred back to Chan Kim Yam and also during my social visits to T.S.C. The instructions were received before the goods were delivered. I can't say if the instructions were given before or after the Mate's Receipts were issued. They told us, either to me or Chan Kim Yam and when it was to me I referred to Chan Kim Yam. They told me the goods were arriving by certain vessel,

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10 either the Hua Heng or Hua Li, and to deliver the goods to them. In everyone of the cases where banks were named as consignees I had instructions to deliver to T.S.C. and in all these cases we delivered to T.S.C. In everyone of these cases we delivered against an indemnity given by T.S.C. In none of those cases did I ask for a bank guarantee. I asked for an indemnity to ensure in the event of Bill of Lading having been issued I am covered. That was the only reason.

20 In early 1961 I asked the 3rd parties to give their personal guarantee as a result of the delay between delivery and the return of the shipping documents. The shipping documents may be Mate's Receipts or Bills of Lading. The delay in fact was the return of the Mate's Receipt. In everyone of these cases ultimately the Mate's Receipt was returned by T.S.C. to our company. Against the return of the Mate's Receipt in each case the indemnity was cancelled.

Q. The Mate's Receipts were issued in Sarawak and when the ship arrived T.S.C. offered a letter of guarantee and took delivery.

A. They always requested the delivery of the goods and they always offered a letter of indemnity.

30 Q. In all cases where the bank was named as consignee you knew that the bank held the Mate's Receipt?

A. We would not know that.

Q. Why do you think in everyone of these cases T.S.C. did not come with the Mate's Receipt and ask for delivery in the normal way?

40 A. They are the shippers. We acted on their instructions. May be they had not received the Mate's Receipt.

Q. Why do you think the named consignee in those hundreds of Mate's Receipt was the bank?

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A. They might be the shipper's collecting agents to collect for the buyer in return for a commission. It could be the buyer's bank to whom the documents have been sent for payment.

I see P7A - D.

P7A contains 44 Mate's Receipts like the one sued on in this case. They relate to the first 4 months of 1961. All the Mate's Receipts have the chop of Wah Tat Bank. I did not know that the Wah Tat Bank were the shippers' bankers in Sibiu. I know some banks do advance money on the security of a Mate's Receipt. I knew the Wah Tat Bank before this case came up. 10

I knew the owner of Wah Tat Bank P.W.l's father very well. I knew Wah Tat Bank had no office in Singapore and that their correspondent in Singapore was the O.C.B.C. Amongst other banks the Wah Tat Bank were bankers for T.S.C. Before 8/7/61 I did not know that T.S.C. banked with the Wah Tat Bank. I refer to the interview with Lee Chin Tian on 8/7/61. He asked me about the last 4 shipments. I did not know that Wah Tat Bank had advanced money on the cargo to T.S.C. 20

I don't generally deal with these Mate's Receipts and I did not take the trouble to see what these chops are for.

After listening to this case so far I agree that Wah Tat Bank advanced T.S.C. money on the security of Mate's Receipt. I did not know about this before the case. 30

Q. Why do you think it was necessary to change the instructions in every case?

A. That is the business of T.S.C. It never occurred to me to wonder why this happened. If the banks were interested in the cargo they should tell us. But the banks never told us. If I don't hear from the bank the bank is not interested in the cargo. 40

Q. Why is it you know less about the practice than most other witnesses

who have given evidence?

A. I do my business in the proper manner.

Q. Do you agree that in the Sarawak trade the Mate's Receipts were regarded as document of title just as Bills of Lading?

A. Nonsense.

10 I knew Teo Kui Seng for many many years. I heard his evidence here and also about what he said regarding Mate's Receipt. I say that is nonsense. If the same question was asked regarding the other witnesses' evidence on Mate's Receipt I would say that is nonsense.

20 I say they were and are my strongest competitors. They spoke this nonsense on oath in order to hurt me. They even said if Hua Siang is finished they would have the monopoly in this trade. Everyone was deliberately lying regarding this matter of Mate's Receipt.

I see Bundle 'A'.

I see P5 of A.

When we went into this trade in 1954 Wee Tien Hock was the Chairman of Rejang. He had some experience of the Sarawak/Singapore trade.

I see P1, P2 and P3.

30 All the three forms refer to "without production of the Bill of Lading for Mate's Receipt as customary".

Q. Why do all these forms also speak of the Mate's Receipt?

A. It depends on their own way of running this business.

I agree if a Bill of Lading is issued in this trade then it would be issued on the surrender of the Mate's Receipt. A shipowner will not issue Bills of Lading unless the Mate's

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receipts were surrendered. I don't agree the shipowners required the surrender of Mate's Receipts before issue of Bill of Lading because they do not want 2 documents of title relating to the same goods to be in circulation. The Mate's Receipt is a receipt as proof that goods had been loaded on the ship.

If the shippers did not return the Mate's Receipt we will not release the indemnity. If they had not changed the Mate's Receipt for a Bill of Lading then we will accept the Mate's Receipt. 10

In the cases here weeks went by between delivery of the goods and the return of the Mate's Receipt. I did not know that no Bill of Lading had been issued by my agents in Sarawak.

Mate's Receipt and Bill of Lading are treated in the same way for release of the indemnity but I don't consider them of the same value. If a Mate's Receipt has not been exchanged for a Bill of Lading then I will deliver on Mate's Receipt as I would do on a Bill of Lading. 20

Q. Can you point to anything in the Sarawak/Singapore-Singapore/Sarawak trade which is in fact done differently by shipper, shipowner or bank where the document is a Mate's Receipt and not a Bill of Lading?

A. I think it will depend on individual people.

Q. Before this case started what difference had you or your company drawn between Mate's Receipt and Bill of Lading? 30

No answer.

Q. Did Mr. Goh Leh Lie when he said Mate's Receipts are treated in this trade as documents of title?

A. I can't say. He is a competitor of mine in this trade. He is either lying or doing it to hurt me.

Q. Why does it take number of weeks before the delivery of the goods and the return 40

of the Mate's Receipt?

A. It depends on the shippers. I don't know why there was delay. I don't know what was happening to the Mate's Receipt. I did not inquire what was happening to the Mate's Receipt from the shippers.

Q. Did it not occur to you to ask them?

A. No.

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Adjourned to 2.30 p.m.

2.30 p.m.

Cross-examination of Mr. Kerr

I see P.53 of X.

I don't agree that the shipper and the party notified being the same it may be that the bank was advancing money on the Mate's Receipt.

20

The possibility could be the O.C.B.C. being the bank collecting for the shipper or the buyer's bank. The party to be notified is the person to take delivery of the goods.

When A is named consignee and B is the party to be notified then I would not agree that B can take delivery subject to A's interest being satisfied. I don't agree that O.C.B.C. has an interest.

30

It is quite common to have goods consigned to order of a bank in Bill of Lading and it is quite common to have a person to notify some commercial firm and that may be the shipper or somebody else.

In that case until the bank has endorsed nobody can get delivery of the goods. I agree it is to give the bank control over the cargo.

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Q. Is that not equally the purpose in any of these Mate's Receipts?

A. Not the same.

Q. Why?

A. I cannot explain why shippers sometimes ask us to say "consigned to selves" and sometimes "consigned to a bank/notify shippers".

After 38 years in shipping I still say I don't know. I am a small business man. When the bank is acting for the buyers then if the notified person is the shipper that is because he would know when the goods arrive and the money is to be paid. 10

The party to be notified is the person who is supposed to take delivery of the goods.

Where the shipper is the seller and there is a buyer at the port of destination then the party to be notified is the buyer, The Bill of Lading will be made out to the seller's order or a banker's order. In such a case the named bank will be collecting for the shipper/seller from the buyer. In such a case the ship will notify the buyer if they pay the money. The Buyer will go to the bank, pay for the goods and take the Bill of Lading and receive the goods. 20

In a Bill of Lading if the shipper and the party to be notified are the same even then the goods may have been sold. I don't agree that the Bill of Lading does not represent a sale. Bank can only collect for the shipper or act as agent for the buyer only where the transaction is one of sale. I would not agree that where the shipper and the party to be notified are the same then there is no sale. 30

I see P.53.

Q. I suggest that document in that form is to give the bank control of the goods and if the bank's interest is satisfied then the bank will release the goods. 40

A. I don't agree.

Q. Surely people do things for a reason.

A. I am not conversant with trading matters. I am the shipowner.

We get T.S.C. cargo because they were shareholders of Rejang, our agents in Sibiu. I can't say if T.S.C. had a majority of shares in Rejang. Mr. Wee Soon Beng as manager of T.S.C. in Sibiu went to the meetings of Rejang.

10 I know Reddi & Co. of Sibiu who are the agents of my solicitors in Singapore. I maintain that T.S.C. are shareholders of Rejang Co. I am speaking the truth in this matter.

20 Since 1954 Wee Soon Beng has been the manager of T.S.C. in Sibiu and I have known him since then. T.S.C.'s office in Sibiu is by the river. I have often been there and have often see Wee Soon Beng in his office. I have been going to Sibiu about once a month. When I do I would visit the shippers in Sibiu generally. I would regularly go and see Wee Soon Beng. I would also more or less regularly call at P.W.1's father at the Bank.

I would discuss with Wee Soon Beng about shipments and with old Mr. Chew trade in general and sent the school donations. It never came to my knowledge over those years that Wah Tat Bank financed T.S.C.

30 Sibiu is a small place but it all depends if everybody knew what everybody else was doing. I did not on any occasion meet Mr. Chew Choo Sing in T.S.C.'s office in Sibiu and he was not introduced to me as the financial supporter of T.S.C. It is all invention.

40 On 8/7/61 I told P.W.1's father that the shippers had taken delivery of the goods. I did not tell him that the shippers had given fresh instructions. I heard P.W.1's evidence regarding this conversation in the aeroplane on 9/7/61. I say that is mere invention and there is no truth in it. I went to see T.S.C. on 10/7/61 because Chow

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Geok Lim told me that T.S.C. owed him money. I went to see Lee Chin Tian because I was worried whether they will be able to pay the freights. The actual fact is that though the Mate's Receipts are stamped "Freight prepaid" my agents did that even when freight was still due. On 10/7/61 I asked Lee Chin Tien privately "What about my freight?" He said "give me time, don't worry." In my examination-in chief I did not mention about this discussion on freight. It was because that matter was not discussed in the hearing of Mr. Chew Choo Sing. I was only speaking in my examination about the discussion with all at the table.

10

I asked for the return of the Mate's Receipt or Bill of Lading in respect of the 4 shipments. I asked him because he had taken delivery of the goods. I did not know then that the Mate's Receipts in respect of these 4 shipments were with the bank. By that time I had some indications. I did not press Lee Chin Tian to pay Wah Tat Bank. I did not say anything about payment. There were other shipments from T.S.C. in my ships after the 4 shipments which are subject matter of this case. I was worried that these further shipments should not be released on T.S.C.'s indemnities without their production of Mate's Receipts. This was from 8/7/61.

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It is true that on 10/7/61 I realised that T.S.C. could not pay Wah Tat Bank and I advised my son over the phone not to release further shipments to T.S.C. without Mate's Receipt. It is true that after 10/7/61 I did not release any goods to T.S.C. without the Mate's Receipt or without a letter of indemnity guaranteed by a bank. After that date T.S.C. got letters of indemnities signed by the Chartered Bank and other banks for the release of goods.

40

Q. Before this case got to the lawyers did you say to anybody that a Mate's Receipt is not a document of title?

A. It is a well known fact. I did not tell anybody. I did not say to anybody that I delivered the goods because T.S.C. altered the instructions

247.

It is our business.

Adjourned to 10.30 a.m. on
14/4/64.

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10.30 a.m.

Counsel as before.

Cross-examination of Mr. Chan Cheng Kum by Mr.
Kerr (continued)

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10

- Q. If you were concerned about the delay between delivery and return of Mate's Receipt why did you not say to T.S.C. that you will not deliver unless they produced the Mate's Receipt or Bill of Lading?
- A. I had no reason to say that because they were the shippers and I acted on their instructions.
- Q. Are you saying that you were compelled

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to deliver to them?

A. On their demand I had to deliver to them. They had also to give me an indemnity.

Q. When you demanded their personal promise of guarantee in early 1961 had they to do so?

A. They gave me the promise. If they did not do so I would still continue to deliver the goods. 10

Q. You were entitled to refuse to deliver without the production of the shipping documents.

A. No.

I was prepared to deliver on a letter of indemnity from them which they have in every single occasion. If they did not give the letter of guarantee I would have refused to deliver to them. 20

When I was concerned about the delay in returning Mate's Receipt I was worried of the delay in settling the draft. There was a misunderstanding when I said that it was not on every occasion but only on one occasion in early 1961. I knew nothing about drafts until 10/7/61.

I refer to para (21) last sentence of page 36 of A. It is not correct. The whole of that sentence is untrue. There has been a misunderstanding. It is possible I did not make it clear to my lawyers. It is not possible that that sentence represents the truth. 30

Q. What drafts were you speaking of in this sentence?

A. I can't say.

I knew some banks will advance money on Mate's Receipt but not all. My own bank was H. & S. B.C. I don't if my own bank advanced money on my own Mate's Receipt. 40

I see P7C.

I don't deal with deliveries. I did not know about it. I only came to know about this after this case. I am a shipowner and not a banker. Mr. Twist, Mr. Goh Leh, Mr. Cook and Mr. Teo Kui Seng are all ship-owners and not bankers. I can't give any explanation why they knew about this and not me.

10 If the Banks advanced money on the security of Mate's Receipt it may be possible they required the deposit of the Mate's Receipt. It is a matter between the client and the bank.

20 During the first 5 or 6 years when we carried T,S,C,'s goods I was the sole proprietor of the firm. Each one of those hundreds of delivery were not made on my authority. Chan Kim Yam authorised the deliveries, I knew this was going on i.e. T.S.C. was getting delivery on a letter of indemnity without production of Mate's Receipt or shipping documents.

30 Between 1954 and the end of 1960 I controlled the policy of the firm. It was the policy of the firm between 1954 and 1960 to deliver to T.S.C. against indemnity without production of Mate's Receipt. After the formation of the company this policy did not change. I was the Chairman of the Board of Directors and the Managing Director and I was also the manager of the Ltd. Co.

40 In early 1961 when I got worried about the delay I went and saw T.S.C. Having got their personal promises I was prepared to go on delivering as before. From 1954 to 1960 it was my personal decision to deliver to T.S.C. After 1960 it was in the discretion of Chan Kim Yam. He was one of the directors. I did not give him that discretion. I went and saw T.S.C. because Chan Kim Yam was busy in the office.

I can't remember if there were any other shippers who shipped cargo consigned to a bank and then altered the instructions

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and got delivery of the cargo without produc-
tion of a Mate's Receipt or a letter of
guarantee.

I produced 2 Bills of Lading of Rejang.
I am unable to produce any more because the
Bills of Lading and Mate's Receipts were des-
troyed after 6 to 12 months. I was able to
produce the Mate's Receipt covering the first
half of 1961 in December 1963 because it was
in connection with this case.

10

Chan Kim Yam signed the affidavit of
documents because he is the man handling this
case.

A Mate's Receipt dated 21/12/59 was
put in as D4. I don't know why this Mate's
Receipt D4 was not destroyed. The cargo
covered by D6 and D7 was Kutch. Kutch is
a local cargo. My firm or company has
received stop notices from bank. I don't
deal with that and so I cannot produce such
a notice. I will refer this matter to Chan
Kim Yam who handles these matters. I heard
of them. I might have seen a stop notice
but I don't deal with them. I don't know
if the stop notices quoted the number of the
Mate's Receipt.

20

I frequently have dinner at the Peking
Restaurant. I have never had dinner with
Lee Teow Keng and I have never had dinner
with Chew Choo Sing. I did not invite Chew
Choo Sing to dinner on the aeroplane.

30

I formed the Ltd. Co. at the end of
1960 because my business was expanding. 950
shares of a \$100 each were issued. I hold
830 shares. At first I held 600 shares and
Chan Kim Yam 60 shares and my 4th son held
40 shares. I had 3 ships in 1960. I kept the
ships in my own name and did not transfer them
to the company. The ships always remained
under my own name. After the company had been
formed we chartered the ships to the company.

40

I have between 1926 and 1960 chartered
my ships to others. It was on time charter.
I know something about charter parties. Some-
times there was a written charter party and

sometimes by letter. I have not chartered a ship without a written charter party or letters. Because it was a private company there was no charter party or a letter. It is recorded in the minutes of the company. I am looking at the records of the 1st meeting of the company which is in the minute book of the company. It is not true that this minute book was written up a year after the company was formed. It is not true that the vessels should be under my control but managed by the company for me. It is not true that company would operate the vessels but I would own them.

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I see P31 in A.

Q. Why is that there is no reference to the charter party in this document?

A. This is an agreement between myself personally and the company.

I was not personally responsible for the operation of these 2 vessels. They were operated by the company. The freights earned by the ships belong to the company. I can't say how much freight the vessels earned each year.

Q. What happened to money earned as freights in 1961?

A. It remained with the company.

I had a current account with the company. The claim in this case is over \$600,000/-. I don't know if the company can meet the judgment if it went against the company. The company though it earned freight has also to meet expenses. I can't say that I will make a judgment against the company valueless.

I see page 10 of A.

I wrote this letter because Rejang may have had old stocks of the Mate's Receipts and Bills of Lading.

Q. If they had new stocks of Mate's Receipts and Bills of Lading as you

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stated in your evidence in chief then
why send this letter?

A. We had new stocks but we wanted to
finish the old stock.

I refer to page 9 of A.

I had the old firm's paper in my bag
and so I used it. The ship was chartered to
the company and the master and crew of the
vessels were controlled by the company.

I have seen a contract of bare-boat
charter. I have seen printed forms. I
have never been concerned in one of the
forms. It is not a rare form of charter
party. The masters and crew were employed
by the company and not by me. I don't
know if there is a record of this happening.
I have seen the crews articles. The court
have seen the articles for the period March
to September 1961

10

Q. Has the shipping master or anyone
concerned with the registration of
vessel been informed that master
and crew are no longer your employees.
but of the company?

20

A. We sent out the circular letter of
the incorporation of the company.

Q. Was any letter sent out saying the
master and crew were now the servants
of the company?

A. I told Mr. Chan Kim Yam to write to
the master and I don't know if any
letter was sent out.

30

It may be shipowners have managing agents to
operate their ships. It is possible the
managing agents pay the masters and crew
from the managing agents' bank account.
If the company manages the ships for the
shipowner these masters and crews would
be paid from the company's bank account.
I had a current account with my company
and I could take money out from the company
whenever I wanted.

40

Re-examined by Mr. MacCrindle.

I don't know at the end of 1962 whether my account with the company was in credit or debit.

10 Before going into the Sarawak trade in 1954 I investigated the trade from the shippers and the people who were going to be my agents. I discovered shipments were made by Mate's Receipts and the shippers do not exchange for Bills of Lading. I discussed this from the shippers that they do not go and exchange the Mate's Receipt for Bill of Lading. No one suggested to me that a Mate's Receipt was as good as a Bill of Lading.

I see para 2 on page 25/26 of A, and the last sentence there.

20 This was not correct. I asked for the promise of the personal securities in early 1961. I got the personal signatures after Chew Choo Sing's visit to Singapore on 10/7/61. That was the first time I learnt about the drafts. It was only after I knew about the draft that I got the individual signature on the 4 indemnities. This was after 10/7/61.

30 After this case was started I have made deliveries to T.S.C. but only on indemnities countersigned by banks without Mate's Receipt. Chan Kim Yam decided that after discussion with me. We came to know that the banks had held the drafts.

40 No carrier will issue a Bill of Lading without it being exchanged for a Mate's Receipt. We have to see the Mate's Receipt for any clause on it or any remarks by the chief officer. We keep it for record purposes in case of any claim. The clause or remarks on a Mate's Receipt will not appear on the copies that we keep. The cases or bags may be broken or torn. These matters will be recorded on the Mate's Receipt by the chief officer. This remark will not appear in any other copy of the Mate's Receipt.

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We operate and have operated in a number of other trades, trades where cargo is only carried on Bill of Lading. In all these trades we require the surrender of the Mate's Receipt before issue of the Bill of Lading.

Adjourned to 2.30 p.m.

2.30 p.m.

On releasing goods on indemnities my company drew no distinction between Bill of Lading and Mate's Receipt. On Mate's Receipt we have to take instructions from the shipper for any changed instructions whereas in a Bill of Lading the shipper will have to produce the Bill of Lading before changing the instructions. I would not accept the instructions of the shippers if it had been a Bill of Lading.

10

I have not seen the words consigned to in a Bill of Lading. In cases where the Bank had an interest the Bill of Lading might be consigned to the order of the shipper and then shipper endorses it to a bank or it might be consigned to a bank and the bank may be the party to be notified. I have come across the case where the bank is the party to be notified in the Bill of Lading. I don't know of any practical difference between Bill of Lading to order and one to a bank and Bill of Lading consigned to a bank. My company will not treat them differently.

20

30

When the Bank is the named consignee in a Mate's Receipt it may be the bank is collecting agent for the shipper from the buyer. The bank has the staff and the facility and in that case if the Bill of Exchange has not been paid the bank will take the necessary legal action.

Q. If a shipper in Sarawak was naming a bank in Singapore as consignee in the Mate's Receipt and suppose the shipper had an office in Singapore why in such a circumstance would the shipper want to pay commission to do this job?

40

A. It may be the shipper has sold the goods to upcountry buyers in the Federation and the shipper has no office where the buyer is. But the bank has the office and staff there. They could handle the collection on the spot. To my knowledge it has happened but I can't speak of any case. I will not be concerned in carrying it upcountry. I would deliver to the shipper.

10

I still believe that some of the directors of T.S.C. were directors or shareholders of Rejang. It was the gossip of the people in Sibü that T.S.C. being directors and shareholders of Rejang should support our ships.

During my visits to Sibü from 1955 I was asked to attend meetings of the Rejang Co. I attended about 10 meetings in a year. The manager of Rejang Co. informed about the meetings. I was telephoned at my hotel and if I was out they would leave a message and I would go to the meeting. About 10 or more persons were present. Mr. Wee Soon Beng was often there. He took part in the discussions. We would discuss normally about freight rates, cargo for our ships and generally other matters about competition. Mr. Wee Soon Beng attended these meetings over a period of years.

20

30

(It is now agreed that Mr. Lee Teow Keng held and still holds 10 shares of \$100 each in the Rejang Co..)

The total issued shares were 2001 shares. Mr. Wee Soon Beng was a director in 1955 and 1959. He is no longer a director. It is not known when he ceased to be a director.)

40

When the company was formed on 30/12/60 we instructed our staff to put the word "Ltd." on the old firm's stock of stationery. The old firm's note paper was in my brief case which I usually carried to Sarawak which I used for scribbling and rough use.

I attended the first meeting of the company on 31/12/60. Chan Kim Yam and the

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secretary P.S. Tay were present. We discussed our vessels. Chan Kim Yam proposed that the vessels be chartered to the company on bare-boat charter and I be paid at \$500 per vessel per month.

There is minute in the company minutes book of this meeting which was signed by me. I signed it a few days after the meeting, Normally after the meeting notes were taken by the secretary and they were typed and sent to me for signature.

10

I see Page 31 of A and para (2) thereof. The statement there is correct. I did not give any instructions to my accountants as to the way they should be kept. We handed to the accountants the bills, receipts, bank paying-in-books, bank statement of accounts and other documents the accountant may require from time to time.

After 31/12/60 some freight earned by the company had not been credited to the company's account. All freights received after 31/12/60 were accounted for to the company. I have not removed any of the company's assets or taken them. I have not purchased any of the company's assets.

20

The company were not managers of my vessels, they were charterers. I have not heard of a management company paying a ship-owner a fee.

30

My company's accounts were audited annually and the details submitted to the Income Tax Department. None of the creditors of the company have gone unpaid.

Cross-
examined by
the Court.

Cross-examined by Court.

When T S.C. changed their shipping instructions we have never asked if they had exchanged the Mate's Receipt for Bill of Lading. I merely accepted the letter of indemnity. If we had got an answer there is no means of checking on it.

40

D.W.3 Chan Kim Yam a.s. I am a director of the defendant company and I have been a director since its formation. I am 35 years old. I was the manager for the old firm and I had been with the old firm since 1951. I was present at the 1st Directors' meeting of the company on 31/12/60. There was a discussion at first and then I made a proposal regarding the future use of the Hua Li and Hua Heng. My proposal was that since the company has just started we wanted to give it the best possible chance to start with and that was a bare boat charter at \$500 per vessel per month.

10

Present at the meeting besides my father D.W.1 was the secretary. The secretary said the decision must be ours but that he will look after the entries, etc.

I see the minutes of this meeting in the Minute Book of the company. The paragraph dealing with bare boat charter is an accurate reflection of what took place there. At the meeting it was decided that the crew should be given a chance to carry on as before and be employed by the Ltd. Company on the same terms and conditions. I was to inform each master as to this change. At that time the ships were not in Singapore. Shortly after the boats arrived I notified the master of Hua Heng Capt. Kerr Gordon in the first week in January 1961. Usually when the ship comes in the captain comes and sees me for instructions. I told him as from 1/1/61 the Ltd. Co. had been formed. He saw me at my office, the present office of the company. There was a notice outside to the effect that company has taken over from the firm. When I spoke to Capt. Kerr Gordon, his first reaction was what about his contract. He was paid an all in salary per month. I told him that he need not worry since the directors of the company had decided to offer him and his crew the jobs with the conditions as before. He said he would accept the proposal and would inform his other senior members.

30

40

The chief officer, officers and crew are all on a monthly salary. The only difference is that the officers have a month's notice either side and the crew only 24 hours' notice also either side. The crew sign articles which run for 6 months and they work for 6 months unless terminated by 24 hours' notice in the case of the crew members.

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The articles in both these ships expired in March 1961 and new articles were entered into then for a further period of 6 months. In both ships some men signed off and new men signed on in their places. It is quite common for ordinary crew members to give 24 hours notice and leave. I also saw the Captain of the other vessel Hua Li. He was Captain Said. He also came to see me in my office and it may well be about 10 days after Capt. Kerr Gordon. I had a similar discussion with Capt. Said as I had with Capt. Kerr Gordon. He also agreed to serve the company. I generally see the captains of these vessels when they are in port. I often go to the vessels when they are in port. I usually go down to the boats when in port for some reason or other.

10

Adjourned to 10.30 a.m. on 15/4/64.

Wednesday, 15th April, 1964

Parties and Counsel as before.

10.30 a.m. Hearing resumed.

20

D.W.3 Chan Kim Yam o.f.a.

After the formation of Ltd. Co. the crew were all paid by the Ltd. Co. through me. They were paid by cheques. For each vessel I would draw 3 cheques (1) to the master, (2) to the Engineer-in-charge and (3) to the Compradore Dept. The cheques represented the particular salary of that department and the people in each department were paid in cash by the head of the department. Before 8/2/61 when the Ltd. Co. had no bank account, we were using the existing bank account of the old firm. I understand from my accountant that the details were taken down and adjusted in the books of the Ltd. Co. After 8/2/61 all payment for the crew came from the Ltd. Co.'s bank accounts - one of it. The cheques were sometimes signed by me

30

and sometimes by Chan Cheng Kum. All outgoing, i.e. stevedorage, bunkers, stores, repairs, etc. in fact all the expenses of the vessels were paid from the company's account. The office staff in Singapore were notified of the formation of the company and they were told they would be paid and held on the same terms and conditions. They were engaged on a monthly basis but paid twice a month and they were also paid from the company's bank account. The demise charter was my proposal. I had read publications on shipping matters and I was aware of the demise charter. The oil companies do that. The main reason was to give the Ltd. Co. the best start possible. We were only paying Chan Cheng Kum \$500/- per vessel per month and all freights went to the company's account. They had a better chance of earning more. Long before the company was formed I had a captain by the name of Owen. He was a master in the Standard Vacuum Oil Co. He wanted me to build a small oil tanker and give it on demise charter to Standard Vacuum Oil Co. I am not sure whether demise charter is used in this area but I think Sarawak Steamship Co. operates on a demise charter from Straits Steamship. We usually sent out invoices to the shippers for freight. They were sent out in January 1961 for outstanding bills on the old firm's name and for freight after 1/1/61 it was in the name of the Ltd. Co.

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I think in February 1961 we were still trying to use up the old firm's forms and so we chopped the word Ltd. on those forms. I expect my accountants to have a good many of these forms and invoices. It is not true that the company was managing the ships for the shipowner. If we had been the managers we would have asked for a managing fee from the shipowners. There was no question of accounting to the shipowner for the profits made or freights collected. The amount of \$500/- for each vessel was paid to Chan Cheng Kum. The old firm's stationery was used for scribbling and as rough pads but where the new forms were not available we used the old forms with the stamp "Ltd." on them. The first forms of the Ltd. Co. were used sometime in April or May 1961 in our Singapore office.

When we were delivering cargo in Singapore from other ports we will be receiving shipping documents. In the early part of the year they

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were in the old forms but altered by the addition of the Ltd. stamp. There was a general slackness in altering the old forms from outside ports. The Rejang people had been slack. The old firm did not trade after the end of December, 1960.

In the case of outward shipments from Singapore to Sarawak, for local cargo from Singapore to Sarawak we usually issued Mate's Receipt. There were some Bills of Lading. Roughly 20 to 25% on Bills of Lading and the rest on Mate's Receipt. When we issue a Bill of Lading we require the recall of the shipping order. In the Singapore end the shipping order is signed by the freight department of my company.

10

When a shipowner comes to our office to ship goods he gives us an export permit. Then we fill in the details on a set of forms as D5. It is completed in my office. On the yellow form the total number of packages is left blank. On the white shipping order the total of the packages is filled in and signed by one of the officers in this department. The yellow one "Mate's Receipt" is retained in our office and the white shipping order and the pink ship's copy are given to the shipper which he takes to the vessel. When the cargo is loaded the tally clerk who tallies the cargo into the ship will initial the white shipping order that the cargo is on board. The shipper leaves the pink form on the ship and brings back the white shipping order.

20

The shipper brings the white shipping order to our office and we compare it with the yellow Mate's Receipt which we have initially filled in. The Mate's Receipt is then signed in the office by me or Chua and handed to the shipper in exchange for the shipping order. If the tally clerk has clausured that these packages were broken or any alteration of that kind on the shipping order then that also goes in on the Mate's Receipt before it is issued to the shipper.

30

In the Sarawak end the Mate's Receipt is signed by the Chief Officer. The shipper is given all these forms in the first instance but he returns the shipping order.

40

If the shipper in Singapore demanded a Bill of

Lading then I would ask for the return of the Mate's Receipt. The procedure is the same whether the ship is going to Sarawak or Bangkok or Phnom Pheng. We retained the Mate's Receipt so that we have the record of what was actually shipped on board and in case of claim we have the proof.

Some firms in Singapore do insist on Bills of Lading. They are not all European firms.

10 For shipments from Sarawak when the vessel arrives in Singapore - Normally before the ship arrives we have a rough copy of the manifest which arrives by post or by the ship. The people come to our office and ask for delivery. Normally they will present to us a shipping document which may be a Mate's Receipt or a Bill of Lading. When the shipping document is first presented to our office we compare the named consignee with the rough manifest; also we check the number of packages and the endorsement on the back of the named
20 consignee or last endorsee. In some cases there is no named consignee but "to order" or "selves". In those cases we look for the shipper's endorsement.

We took no notice of the rubber stamp chops on the body of the Mate's Receipt. Sometimes when a ship comes from Bangkok or Phnom Pheng we have chops on the Bill of Lading but we do not take any notice of them. For cargo carried from Sarawak to Singapore we see mostly Mate's Receipt. Sometimes on odd occasions a Bill of Lading. The Hua Heng
30 is in port today and is discharging cargo. From Sibu and Bintang I have seen seventeen Bills of Lading. This number is quite unusual. All this refers to local cargo. These could be produced. In relation to through cargo in all cases the shipping documents will be Bills of Lading.

For local cargo Mate's Receipts are regarded as proof of loading. We regard ourselves for cargo on a Mate's Receipt as holding for the shipper. Never until this case arose did anyone suggest that
40 a Mate's Receipt is as good as a Bill of Lading.

My attitude is that on a Mate's Receipt the shipper can alter his instructions at any time without producing the Mate's Receipt. In the case of Bill of Lading the shipper in altering his instructions will have to produce a full set of

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Bills of Lading for amendment by us. I now produce 3 letters marked D9 relating to altered instructions by the shippers in Malayan Breweries Ltd. which were referred to in D.W.1's evidence.

I have seen shipping documents from which I guessed the banks may be interested in the cargo. When the documents came to me they had the banks' chop at the back. If the bank is the named consignee then I would expect the bank's chop at the back of the Mate's Receipt.

10

If I saw a shipping document with the bank named as the consignee and was asked what role the bank played it could be that the bank was acting as collecting agent for the shipper. It could be acting as the buyer's bank. I have heard of shipping documents being negotiated through a bank in return for an advance. From the shipping point of view negotiating means the shipper transferring his rights to someone else. I mean the rights to the goods. It is an expression which has been used from time to time in my office. I have also heard it used in shipping circles outside my office. A shipper uses a bank as collecting agent because it is easier for the bank to collect as it has the facilities.

20

Stop notices usually come from the big banks like the Hong Kong & Shanghai Bank, the Chartered Bank, the Bank of China. In the Sarawak section they usually telephone us because the voyage is short and when we get the information that they are interested in the cargo the vessel is probably in port and discharging cargo. In the longer voyages we get a written "stop notice". Our company carried goods for T.S.C. for a number of years. I saw shipping documents presented by them for delivery. They were Mate's Receipts. T.S.C. were most irregular shippers. They named themselves, order, or a bank as the named consignee.

30

On a number of occasions delivery was given to them without production of Mate's Receipt on a letter of indemnity. I used my own discretion in doing that. When a vessel carrying T.S.C.'s cargo arrived in Singapore they (T.S.C.) demanded delivery from us. Sometimes even before we had information that a vessel had left Sibu they had cable information. They got in touch with my

40

10 assistant Mr. Chia or myself. They got in touch
 with me usually by telephone and sometimes by Mr.
 Lee Teow Keng calling at my office and seeing me.
 They asked for delivery and on occasions they said
 they required the goods urgently as they had sold
 forward. I would grant the delivery. I produce
 the four delivery orders relating to the 4 ship-
 20 ments in this case - marked D10. In 3 of them
 the signature on the bottom right-hand corner is
 that of my assistant Mr. Cheah and on the other one
 is mine. In one of them Ltd. appears but on the
 other 3 it does not. It is due to slackness in
 our office. The documents are addressed to our
 Chief Officer. A stage arrived in early 1961
 when I was concerned over the delivery relating to
 T.S.C. T.S.C. was getting the goods on their
 indemnities without production of Mate's Receipt
 and there was a period of delay before we got back
 30 the shipping documents. I was having a feeling
 they may have exchanged the Mate's Receipt for Bill
 of Lading. Normally I used my discretion but here
 I thought I should not act personally and so I asked
 my father what I should do. He told me "the
 department is run by you and you use your
 discretion". I suggested we asked for their
 personal guarantee to test what their reaction
 would be. I had always to be in the office to
 attend to deliveries, etc. and so my father
 volunteered to do this. After early 1961 regarding
 40 delivery to T.S.C. it was still the same. I used
 my discretion. I did not know anything about
 drafts in early 1961. I knew about drafts for the
 first time after 10/7/61 when my father met Chew
 Choo Sing in T.S.C.'s office. I did not receive
 any telephone call from my father on 10/7/61 from
 T.S.C.'s house. I can't remember the time but
 Mr. Chew Choo Sing called at our office with
 another elderly gentleman. Mr. Chew did not speak
 to me. I have never dined with Mr. Chew Choo Sing.
 It is untrue that I dined with Mr. Chew Choo Sing
 and a number of people in March 1961 at the Peking
 Restaurant. My father often goes to Sibuan and
 Sarawak. Every time he comes back I meet him
 personally at the airport. On that occasion he was
 accompanied by my other brother and I think he
 arrived a day earlier than his intended itinerary.
 I was away at a dinner. When I came back there
 was a message that my father came back and was
 looking for me.

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 of Counsels'
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Defendants'
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Chan Kim Yam

Examination
 (continued)

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Chan Kim Yam
Cross-exam-
ination by
Plaintiffs'
Counsel

XX'd by Mr. Kerr.

I have been in this court since the hearing started of this case. I heard the evidence of my father.

The purpose of forming the company was to have continuity in case something happened to him (my father).

There was a discussion about a long term charter. My father was the owner of the ships and he was also the major shareholder of the company.

10

Q. Why did you think a bare-boat charter was the best?

A. I thought that was the best arrangement. There was no necessity to have a written agreement regarding this bare boat charter arrangement.

I have had no previous experience of bare boat charter. I had experience of long term charter. I knew about bare boat charter between oil companies in 1960 and not after December 1961. I have used - time charter. Capt. Owen told me the oil company was interested to have a small oil tanker on bare boat charter basis. I have heard of an oral time charter. It is not necessary for the charter to be reduced to writing.

20

I say the company employed the crew and not my father. The thing has happened and it cannot be changed. I did not keep minutes of the meeting. It was the secretary. At the meeting it was decided that I should ask the crew if they wanted to serve the Ltd. Co. I am speaking the truth. The first ship to arrive was Hua Heng.

30

I see Pages 155, 156, 157, 158 of X.

I still say I spoke. The members had no written contract of service. Capt. Kerr Gordon has been in our service for over 10 years. He was employed by my father till 1960. When the company was formed he was working for the shipowner. The captains were working not for a shipowner but someone else and that someone had no written charter with the shipowner.

40

There were no written letters to the masters that from 1/1/61 they were the employees of the company and not Chan Cheng Kum.

Adjourned to 2.30 p.m.

2.30 p.m.

10 At the meeting there was an understanding if we wanted to vary the agreement or terminate either party would give notice of 6 months in writing. It was agreed at the meeting. I am quite sure about it. I am unable to say whether there is a record in the minutes. I have signed some of the minutes. I agree now (after seeing the minute book) that there is no record of it. I am unable to say why this is not recorded. I don't keep the minutes. There is no reference to a bare boat charter. We rely on our secretaries to write up the minutes. We intended the bare boat charter to be for an indefinite period. We agree for 6 months' written notice but there was no written agreement.

20

I see Page 5 of A and paragraph 3 of the letter. I say that it is a true statement.

I see D8.

When the account of company was opened with the bank the account of the firm was not closed on 8/2/61.

By all assets and liabilities I meant the new company will collect all the moneys due to the firm and collect all the debts.

30 After the first meeting I think there was no other meeting until November 1961. My father had a current account with the company. I did not have a current account with the company. My father was able to draw out money from the company for his own purposes. There is nobody other than my father who can draw money on the company's account for his own purpose.

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The Ltd. Co. would have asked Chan Cheng Kum for a fee if the Ltd. Co. acted as managers of the vessels. The question did not arise as we were not acting as managers.

When the company was formed new forms were printed and sent to its agents including Rejang Co., in Sibiu.

I see P10 of A.

There may be some slackness and we may not have informed Rejang about the incorporation. I may or may not have signed the letter P10 of A.

10

In Singapore the shipper takes shipping order to the ship where it is initialled by the tally clerk with clausing if necessary. I said we ask for the Mate's Receipt for purposes of a record. We don't also want the shipper to have the Mate's Receipt when we issue him with a Bill of Lading. We know that if the Mate's Receipt is in our possession then a Bill of Lading is in circulation. If the Mate's Receipt is not with us then it is in circulation. In my office I have never allowed a Mate's Receipt and a Bill of Lading to be in circulation at the same time. The Mate's Receipts in Singapore are signed sometimes by me and sometimes by Cheah, my assistant. By the side of the words "Chief Officer" a chop is put and I sign. That has been the practice both of the firm and the company in Singapore. The documents Mate's Receipts issued from Singapore are not signed by the Chief Officer.

20

I see Page 13 of X.

I see the entry against 03791. The consignee is described O.C.B.C. Tiang Seng Chan. From this I would say it is consigned to both parties.

I see Page 57 of X.

It is Mate's Receipt 03791 consigned to Overseas Chinese Bank Order/Notify T.S.C. Co. Ltd.

I see Page 55 of X. OCBC/TSC against "consigned to". This is different from OCBC order/N. T.S.C. At page 55 I took it that either party could take delivery. I delivered the goods

40

to TSC because they asked for the goods.

I see Page 54 of X.

The corresponding entry in Page 13 of X the consignee is "selves" though at Page 54 of X it has been altered to OCBC/TSC. I don't know why "selves" was crossed out if either OCBC or TSC were to get delivery of the cargo.

10 From the manifest it is not possible to say whether a Mate's Receipt or a Bill of Lading was issued. Bills of Lading have no numbers. Manifests from Singapore show whether there is a Bill of Lading or a Mate's Receipt. From Sarawak to Singapore only the Mate's Receipt number appears on the manifest even though a Bill of Lading may have been issued. I can't produce any Bill of Lading issued for cargo from Sarawak to Singapore. In December 1963 I produced the Mate's Receipt for the 1st 4 months of 1961 issued to T.S.C. We pay 20 T.S.C. a rebate of 2½% on the total nett freight if it exceeded \$15,000 for a year. That is why we kept the Mate's Receipt. All shippers were given this rebate if they shipped more than \$15,000.

I see Page 13 of X.

The consignees are described as "K.L. BK. Lim Hup Choon". Where consigned to Bank/ - it may well mean - B. order /N -.

30 I see Page 13 of 'X' and other manifest. I did not notice the column of consignee. I do look at this column but I don't pay much attention to it. When we deliver we see that the consignees have endorsed the Mate's Receipt. So long as the Mate's Receipt and manifest had the same consignee we delivered.

40 I see Page 14 of X first item. The consignee is named KL Bk. Hoe Bee Trading Co." Suppose the consignee on Mate's Receipt is "Chartered Bank ..." then I would check if the K.L. Bk has been struck out on Mate's Receipt and endorsed by our agent. If the Mate's Receipt has been endorsed by Chartered Bank then I will deliver to Hoe Bee Trading Co. If the Mate's Receipt has been endorsed by a number of persons then I will see that the person asking for delivery is the last endorsee. The same applies to Bill of Lading.

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I always before making delivery checked the named consignee in the manifest. When the holder of the Mate's Receipt comes we always check them.

When a person asks for delivery on indemnity without a Mate's Receipt I also check the named consignee from the manifest.

Generally cargoes are delivered on indemnities to the person shown as the person to be notified in the shipping documents.

10

Adjourned to 10.00 a.m. on 16/4/64.

Thursday, 16th April, 1964.

Parties and counsel as before.

D.W.3. Chan Kim Yam o.f.a.

XX'm by Mr. Kerr (continued)

I was under the impression that Wee Soon Beng was a director of Rejang.

When T.S.C. consigned goods to a bank the goods were delivered against an indemnity. This happened hundreds of times.

20

I or my assistant must have seen about 3000 Mate's Receipts covering cargo by T.S.C. I must have exercised my discretion in accepting an indemnity in about 3000 cases. I exercised my

discretion on every single occasion before accepting the indemnity.

Q. I suggest to you that you were following a policy which had become a routine.

A. There was no fixed policy.

10 In the beginning when we got T.S.C.'s cargo Lee Teow Keng came to ask me for this facility. We know we could deliver direct on their instructions but as a matter of practice we asked for the indemnity. He at first produced to me their own letter of indemnity. This document was in Chinese. I told him I don't read Chinese and so I can't accept it. He produced a bundle of these Chinese documents which he said had passed through other shipping companies. I had my clerk to translate them and it appeared they were coming through Sarawak Steamship. I was not prepared to accept that and that the least I could do was for them to accept my form of indemnity. So all along I have delivered the goods against indemnity on our forms after they had approached me.

20

As they never failed to return the shipping documents I continued to allow delivery on indemnity. That is the discretion I used. The normal indemnity is countersigned by a bank. I agreed with Lee Teow Keng not to ask for the bank's counter-signer of the indemnity. The agreement was reached in 1955 with our firm of which my father was the sole proprietor. I was left in charge of this department and I did not consult him. I don't know if my father was aware that T.S.C.'s cargo was being released on an indemnity which was not countersigned by a bank. I am speaking the truth in this matter. I was the manager and I used my discretion. It is not true that it was this agreement that got me T.S.C.'s business.

30

I gave them more facilities like unloading even on Sundays or working overtime. When T.S.C. consigned cargo to a bank in every case the instructions were altered by T.S.C. and we were asked to deliver to them.

40

I see Page 53 of X.

These so called varied instructions by Lee Teow Keng to me were - please let us have our

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cargo as quickly as possible.

I see Page 13 of X and D10.

A clerk from T.S.C. comes to our office with an indemnity. T.S.C. had a stock of our indemnity forms. I see Page 12 of X. The clerk brings this indemnity completed by them. I check it against the rough manifest. If it is correct a delivery order will be made out in my office.

The cargo shown in the indemnity, the delivery order and the manifest may not be the same as for some of the cargo they may have Mate's Receipt to take delivery. There may be more than one delivery order. One delivery order will cover the goods in the indemnity and there may be another delivery order to cover the goods which are to be delivered against Mate's Receipt.

10

I see Page 15 of P. (amended final pleadings). In all cases where goods were consigned to O.C.B.C. they were delivered to T.S.C. against indemnity. There were cases where T.S.C. got the Mate's Receipt from the bank and obtained delivery. In the vast majority of cases T.S.C.'s goods were consigned to O.C.B.C. I issued a second delivery order to cover the cargo for which they had the Mate's Receipt.

20

I never gave it any thought as to where the Mate's Receipts were in the case of goods consigned to O.C.B.C. I did not know that it was the practice of the banks to advance money on Mate's Receipt and when they so did to require themselves to be named as consignees and require the Mate's Receipt to be delivered to them. I only knew of it now after hearing the evidence in this case.

30

The above answer will also apply to a Bill of Lading.

We felt that once the shipping documents got back to us then our obligations are finished. It all depends if we have any obligation to the person who holds the documents. I am responsible for the person to whom I issued the document in the first instance. I am an aircraft engineer holding a degree. I obtained this degree in 1951.

40

I worked for a short while with Malayan Airways.
Then I started working with my father.

I see Page 150 of X.

10 We release the indemnity when all the Mate's Receipts covering the indemnity are returned to us. If all Mate's Receipts are not returned to us then we do not release the indemnity. Sometimes we get some of the Mate's Receipts at a time but not all of them covered by an indemnity. Then the indemnity is not released until all Mate's Receipts have come in.

I see P7A.

I did not know that O.C.B.C. were Wah Tat's correspondents in Singapore. I have noticed the Wah Tat Bank's chop on T.S.C.'s Mate's Receipts as in P7 but it made no impression on me.

20 I did not know that Mate's Receipts of cargo from T.S.C. which were consigned to O.C.B.C. when not produced at time of delivery were with the O.C.B.C. I never gave any thought to where the Mate's Receipts were.

I see D10.

30 This vessel "Hua Li" sailed on 19/5/61 and arrived on 22/5/61 and the delivery order is dated 24/5/61. Airmail leaves Sibiu for Singapore every day of the week. If a shipping document is posted at Sibiu for Singapore it takes an average 2 days. I never considered why the shipping documents were not with T.S.C. The chop and signature on the back of D10 is the receipt of T.S.C. for having received the goods.

The chops of T.S.C. appears on the back of the Mate's Receipt because they completed the chain of endorsement. If the documents had been Bills of Lading exactly the same things would have been done.

40 In D10 at the right hand corner over my signature or that of Cheah the word Ltd. does not appear by the side of Hua Siang Steamship Company. I knew about the difference between Mate's Receipt and Bill of Lading a long way back.

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When Malayan Breweries asked me to alter the instructions I asked my solicitors and they told me that I am permitted to do so, as they were Mate's Receipts. We had several firms of solicitors acting for us and I don't know from which solicitor I got this advice.

I see D9.

In this case Malayan Breweries telephoned me. I can't swear who the consignees were in the Mate's Receipt. It is reasonable to think that Tiang Aik were the consignees. The ship had already gone. I asked them for the Mate's Receipt. They said they had already sent it to Tiang Aik. I don't know if Tiang Aik is the shorter form of Tiang Aik (1955) Sarawak Ltd. I was not aware that Tiang Aik was wound up round about this period. I asked Malayan Breweries why they wanted to alter deliveries and they told me to just stop delivery. I then sent the cable. They did not ask me to send the cable.

10

20

I understood that Tiang Aik was going to sue us for delivering to Borneo Co. and not to them. They never did sue, however. These documents D9 have survived because they are special cases where there was possibility of a claim. I will see if I can produce any other documents where similar things happened. I made the telephone call to my solicitors before I sent the telegram. I sent the telegram as a result of the legal advice.

I don't know of a Federation buyer buying rubber or pepper from Sarawak for delivery in the Federation.

30

I will look for stop notices and I shall produce them if available.

In the case of the Sarawak/Singapore trade I don't think there would be written notices as the ships would be here most of the time before the notices. I have received telephone stop notices regarding cargo from Sarawak to Singapore. On occasions when the banks telephone we get in touch with the named consignee or the party to be notified and ask them if they have got the Mate's Receipts. If the Mate's Receipts are with the named consignee we ask them to give them to us and

40

on getting them we inform the bank that we have got the Mate's Receipts and we intend to release the goods and the banks says it is all right.

Stop notices have happened both in the case of Mate's Receipt as well as Bill of Lading. We act in the same way whether they are Bills of Lading or Mate's Receipts.

10 It is my view that when a bank has interest in any goods carried by sea it will inform the ship-owner. A bank may be interested in the cargo and would not give a stop notice if they don't want to stop the cargo.

If the bank had advanced money on the goods and is interested in the goods then they should inform us.

From the document I would not be able to say what part the bank is playing.

I had no occasion to find out why many Mate's Receipts were consigned to a named bank.

20 Towards the end of 1960 and early 1961 the delay in returning the Mate's Receipt after delivery was getting greater. By early 1961 it was 3 to 4 weeks. Before that it was about 2 to 3 weeks. I was concerned because of the delay I could not complete the voyage report, the accounting was held up and the finalising of other matters were held up. There was no other worry about the delay. I told my father about it.

30 I thought if we asked for their personal indemnities they will return the documents quickly. My father reported that they agreed to give their personal indemnities. During 1961 as the year progressed there was no improvement in the delay.

40 I can't remember of any other reason for my concern over the delay of the return of the Mate's Receipt other than delay in the office in completing the paper work. I now remember that there was a possibility of Bills of Lading being exchanged for Mate's Receipts. The delay in replying was because the questions were confusing.

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Re-examination Rex'd.

2.30 p.m.

I see Page 38 of P1, and the last sentence of paragraph 2. I cannot give an explanation how this came to be pleaded. Maybe it is a misunderstanding in the instructions given to my solicitors. I don't know the legal position why the fear that Bills of Lading may have been issued is not pleaded.

There would for most of the time be only 2 delivery orders. There may be more than 2 delivery orders. The indemnity will cover only certain of the Mate's Receipts on the manifest. 10

Sometimes Mate's Receipts consigned to O.C.B.C. were produced by T.S.C. to take delivery though Mate's Receipts had no chop of Wah Tat or O.C.B.C. on the back. If a Mate's Receipt goes through a bank it will have the bank's chop on it. I turn over the back of every Mate's Receipt before delivery. If there was no bank chop on the Mate's Receipt then I would know that it did not go through the bank. 20

When we deliver on indemnities and subsequently receive the Mate's Receipts as long as the total of the goods in the indemnity and the Mate's Receipts tallies we don't look at the endorsement.

We did not at the 1st meeting of directors of the Ltd. company on 31/12/60 consider the transfer of the vessels to the Ltd. Co. I preferred the bare boat charter to a long time charter. That point was discussed. 30

In a bare boat charter where we employed the master and operated the crew the masters do not see the bare boat charter. We did not draw up a contract because the meeting decided on the bare boat charter. If I was asked to manage a vessel without paying anything for such services then I

would think that something funny is going on. The company got nothing from my father by way of commission or other. The freight collected by the Ltd. Company was not accounted to my father.

I see Page 13 of X.

10 This manifest is prepared by our Sibü agent at his office. These manifests are prepared from the shipping orders. The numbers on the left hand column correspond with the number on the shipping order. In Sibü the manifest is made out before the cargo is loaded. Later if a shipper asks for a Bill of Lading then the number in left hand column is not altered. For through cargo a separate manifest is prepared.

I refer to D6.

The number of the Bill of Lading is not shown in the manifest. Sometimes the amount shown in the shipping order is not shipped.

20 When I agreed to release cargo on an indemnity to Lee Teow Keng without the Bank's countersignature it was an agreement for that indemnity only. Subsequent cargoes were released on similar indemnities on subsequent applications.

To our regular clients who apply for the release of cargo we gave each a small quantity of indemnity forms. At the beginning we gave them a few sheets but as they were regular clients later we gave them a small supply. We have the same practice for regular shippers in the other trades.

30 My father when I told him about the delays in the return of the Mate's Receipts asked me if I had considered the possibility of the issue of Bill of Lading. I had not considered this possibility. After he had made the suggestion I thought it was possible. It was after that that I suggested that we ask T.S.C. for their personal guarantees to test them.

40 I have seen Bills of Lading in other trades bearing an endorsement of the bank on the back. In these Bills of Lading sometimes it is to order, others consigned to a bank and yet others bank is the notifying party. I would not know what the

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differences were. We draw no distinction between where the bank is a named consignee and where the bank is the endorsee.

In 1960 and 1961 when Hua Siang acted as agents for Polish Ocean Lines we regularly got written stop notices from the big banks. These vessels were coming from Europe. I cannot say how many stop notices we received but it was quite regular. They were cargoes covered by Bills of Lading.

I was apprenticed in Malayan Airways in 1948. In 1957 I sat for my examination and passed it. The examination was held in Singapore but marked in London by the Air Registration Board.

XX'd by Court.

We could not find out from Rejang if Bills of Lading were being exchanged for Mate's Receipts because we were having trouble with them. We could not break away because of our shippers were directors of Rejang.

I think Ee Chung Huang and Quek Swee Choon and Tai Liong.

(Released).

Tan Chia Kee
Examination

D.W.4. Tan Chia Kee s.s. I am the supply and traffic manager of the Singapore Tobacco Co. Ltd. I have held this post since 1961. I have been with the company for the last 14 years. My company imports and exports goods to and from Singapore by sea. I am in charge of the shipping side of the business. We export cigarettes and smoking tobacco. From Singapore we only export to the Borneo coast - Sarawak, Brunei and Sabah.

10

20

30

With Sarawak, Brunei and Sabah we allowed them a week's credit to the local distributor.

10 When we ship goods and the goods are on board we obtain a Mate's Receipt from the master or mate of the ship. We then make out Bills of Lading in our office, and we sent the Mate's Receipts and the Bills of Lading to the shipowners. We get one original and one duplicate of the Bill of Lading signed by the shipowner. Both are signed. The Mate's Receipt is exchanged for the signed Bill of Lading from the shipowner.

We have in our office the Bill of Lading forms for all the shipping companies with whom we deal. When we ship to Sarawak we use Sarawak Steamship Co., Heap Eng Moh Steamship Co. and the Hua Siang Steamship Co. In our office we have copies of the Bill of Lading forms of all these companies.

20 I have not shipped to Sarawak on a Mate's Receipt alone - not even to any other place. We ask always for Bill of Lading because we consider it a more prudent practice to do so. In cases of claims for shortages or damages we think a Bill of Lading is more valid than a Mate's Receipt. We have goods coming to Singapore from other countries by sea. We import from U.K., Europe, and Scandinavian countries. We pay for these goods against Bills of Lading. In very rare instances we have goods coming back from Sarawak. Monthly returns from our distributors - we don't pay for the returns. They have been shipped back on a Mate's Receipt. Those are the only documents I have seen under which these returns come back to Singapore.

If I am importing from Sarawak and the seller presented a "Non Negotiable" Mate's Receipt then I will ask for a Bill of Lading or a negotiable Mate's Receipt.

40 With a non-negotiable Mate's Receipt I would not be able to exchange it for a delivery order because it is marked "Not Negotiable". I would consider a Mate's Receipt as a receipt that goods had been shipped.

Before I got on to the shipping side I was in the company on the sales side. In our supply and traffic departments we speak of negotiating

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shipping documents. By negotiating I mean the transferring of the relevant shipping documents to a bank or buyer so as to give the transferee a claim against the shipping company for delivery of the goods. I have seen the words "not negotiable" on the bottom copies of the Bill of Lading and on Mate's Receipts of certain shipping companies. I have not seen it on an original Bill of Lading.

XX'd by Mr. Kerr.

10

My company is part of British American Tobacco Co. Our head office is in London. In Singapore we are the only branch of British American Tobacco Co. The company was really controlled at all times from London and our commercial procedure regarding buying, selling and shipping was similar to the practice in London.

There had been a European Manager before me and I carry on the same procedures he had been using and there have been executives from British American Tobacco Co. who came and ran departments of my company. The Singapore Tobacco Co. was running its shipping department on procedures based on B.A.T.'s practice.

20

I spent 3 weeks in London in the shipping department to be trained for this job before I took over the present post.

Adjourned to 10.00 a.m. on 17/4/64.

Friday, 17th April, 1964.

Parties and Counsel as before.

D.W.4 Tan Chia Kee o.f.o.

XX'm by Mr. Kerr continued.

10 In my office I don't have specimen signatures of persons authorised to sign Bills of Lading of the various shipping companies. I know that the shipping companies only allow a limited number of persons to sign Bills of Lading. I know the signatures of the persons in the 3 companies who are authorised to sign Bills of Lading. I can recognise the signatures of the authorised persons of these 3 companies. I don't know the signatures of the Mates or Chief Officers who sign Mate's Receipts. If I send a Mate's Receipt to a buyer it does not mean that I am transferring my right on the shipowner and carrier to the buyer or transferee. My answer : It is not my experience on the Singapore/Sarawak trade but it is based on
20 general practice.

I did not know that banks will advance money on the local Sarawak/Singapore trade on Mate's Receipt as they would on a normal Bill of Lading.

30 In the case of a sale of a consignment to a buyer in Sabah we make out a Bill of Lading to order of a bank. We sent all the shipping documents to a bank. We ask the banker to collect from the buyer in Sabah. It is usually by demand drafts. We don't pledge shipping documents with a bank for an advance but merely use the bank as collectors.

40 We sell goods to our agents in the Borneo coast and the sales to Sarawak are not done by confirmed Letter of Credit. The Borneo Co. Ltd. who are our distributors are the consignees in the Bill of Lading. All our sales are to the Borneo Co. in Sarawak. I don't know Mr. Jorvis. I have never had occasion to consider if Mate's Receipts are treated as documents of title in the Singapore/Sarawak trade.

I am not aware that a number of European companies ship goods to Sarawak and Borneo and

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Tan Chia Kee

Cross-examination by Plaintiffs' Counsel (continued)

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ination by
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(continued)

treat Mate's Receipts as documents of title. I have never bought goods from Sarawak and shipped them to Singapore. I have no experience of this trade.

We have had returns shipped under Mate's Receipt and we have obtained delivery of the goods but we do not pay for these returns. If I were buying from Sarawak I would not be happy with a Mate's Receipt because I might not be able to obtain delivery order from the carriers. Even if I insist I may not as the Mate's Receipt is not a document of title.

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In the case of returns they are shipped by the Borneo Co. and consigned to Singapore Tobacco Co. With these Mate's Receipts I have always been able to get delivery orders and obtain delivery of the goods. I have no practical experience for saying that if I bought from Borneo Co. and shipped to Singapore I would be refused delivery on a Mate's Receipt. I have not enquired from Borneo Co. why they ship on Mate's Receipt as these are rare occasions. I am not aware that Borneo Co. in Sarawak ship all their goods whether bought or returned on Mate's Receipt.

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The opinions that I have expressed are based on the ocean trade generally and not on the local trade between Sarawak and Singapore.

I file the duplicate of the Bills of Lading. We always get a duplicate of a shipping document for our files.

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I would not expect to get a Bill of Lading without giving up the Mate's Receipt. The ship-owner would like to have the Mate's Receipt before issuing a Bill of Lading.

Re-examination Rex'd by Mr. MacGrindle.

The last answer applies generally and to whichever part of the world I am sending goods. We type out 3 copies of the Bills of Lading in our office - 3 bits of paper. The second one is marked "Duplicate". When we import goods on Bill of Lading we get one original and 6 duplicate copies. The original is not marked but the other

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copies are marked "not negotiable". With a Mate's Receipt even if it is unmarked the carrier is not bound to give me a delivery order. He might give it to me but there is no guarantee. During the time I have been shipping to the Borneo coast I have not heard anyone say that a Mate's Receipt is as good as a Bill of Lading. I have never shipped any goods to Sarawak or anywhere else on a Mate's Receipt.

10

(Released).

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Tan Chia Kee
Re-examination
(continued)

D.W.5. Kuek Ho Yao a.s. I am the manager of Kwok Bros. who are importers and exporters of rice, sugar and wheat flour. It is a Malayan firm. I have been with them since 1958. In the course of my business I export goods from Singapore. We export to the Middle East, Europe and Malaysia. We sell goods to Sarawak.

Kuek Ho Yao
Examination

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When we sell goods we do it usually by drawing on Letter of Credit and sometimes by drawing through banks. The Letter of Credit will stipulate for some form of shipping documents. They will stipulate for invoices, Bills of Lading, Insurance and drafts. They all will have to be presented before I can collect on a Letter of Credit. Normally no Letters of Credit are used when selling to Sarawak. Frequently it is D.P. (Documents against Payment) and sometimes collection through banks. By D.P. the banks will surrender the documents against payment. When it is on a collection basis we will surrender the documents to a local bank

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(Singapore bank) who will collect it for us. The main difference is whether we are willing to extend credit to a buyer or not. In the second case where the bank surrenders the documents it gets payment in due course. In the second case there will be a Bill of Exchange involved.

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Kuek Ho Yao
Examination
(continued)

Sometimes we do ask the bank for an advance on the documents. In such a case the documents will comprise the Bill of Lading and if it calls for insurance certificate and our invoices. We do not ship on Mate's Receipts alone. Even when we do not ask advance from a bank but merely selling we always hand the bank amongst other documents a Bill of Lading. It has been the practice ever since I joined the firm in 1958. It is the accepted practice and that is why I exchange a Bill of Lading for a Mate's Receipt. Frequently we do the typing of the Bill of Lading ourselves. Normally we type 3 to 5 copies of the Bill of Lading. The carrier invariably signs only the original. To my knowledge a Mate's Receipt will not be acceptable to a bank. I am speaking from my own experience. I have never shipped to Sarawak on a Mate's Receipt in my experience.

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We don't import from Sarawak but from various other countries. We pay against shipping documents. These shipping documents are Bills of Lading, invoices, insurance and a Bill of Exchange. I have never paid against a Mate's Receipt. I have been trading in Singapore since 1958. Before that I was in Johore Bahru. If a seller from Sarawak were to tender a "Not Negotiable" Mate's Receipt I would not pay on it. I will not pay on such a Mate's Receipt as I will not be able to take delivery of the cargo.

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I have not been in this court before today.

Cross-exam-
ination by
Plaintiffs'
Counsel

XX'd by Mr. Kerr.

I have not discussed with Mr. Chan Cheng Kum and Chan Kim Yam anything about my evidence. I had a call from Mr. Chan asking me to give evidence. Before 1958 I had experience of the shipping trade in and out of Singapore. Since 1958 my only experience is that of the procedure adopted by my firm.

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We import about as much as we export. The bulk of our export goes out of Malaysia. I would say our exports to Sarawak amount to 1/5th of the exports to other countries.

Our company has a pretty much similar standard procedure wherever the goods are exported to when we sell goods that have been exported from other countries. We don't buy from exporters on C.I.F. to Sarawak.

10 We often ship to Sibü and sometimes to Kuching. We ship on Hua Siang and Straits Steamship. We don't use Heap Eng Moh. We have mainly used Hua Siang.

20 Only certain persons in a shipping company are allowed to sign Bills of Lading. My firm has a shipping department and there is a manager of that department. I am really the office manager of the firm. I am not a director of the company. I sell to quite a small number at Sarawak. It is not particularly my job to concern with shipping. My main job is to supervise the running of the office. I have about 50 of them working for in this capacity. Decisions in shipping and trading are not taken by me personally. It would be my job to decide whether a certain type of shipping should be accepted or rejected. There is a clerk in charge of shipping documents. He refers to me when he has any difficulty.

30 It is a standard practice in my office when we export to ask for Bills of Lading and keep them in my office. This is done automatically irrespective of the destination of the shipment. We sell on a Letter of Credit or a Bill of Exchange. I am not very familiar with the documentation regarding sales. When we sell to Sarawak we don't use Letter of Credit. We use a Bill of Exchange drawn on the buyer. The type of Bill of Exchange depends on the arrangement with the buyer.

40 I have not asked a bank to accept a Mate's Receipt as part of the documents in the Sarawak trade. When we ask a bank to collect from Sarawak we use the O.C.B.C. or the Overseas Union Bank. The practice of both these banks is the same. We have sometimes when we sell goods to Sarawak asked the banks to buy our Bills of Exchange

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ination by
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Re-examination Rex'd by Mr. MacCrindle.

and in such cases pledge the shipping documents with the bank. We do so in a minority of cases. We do so only for the Sarawak trade. I have never asked these 2 banks if they would accept Mate's Receipt and I have never asked any other bank to advance money against Mate's Receipt.

In our company we always take Bills of Lading whatever the trade may be to bank. I don't know if Singapore bank will accept Mate's Receipt in the Sarawak trade as document of title. I have never had to consider this point. We have marked a bank as consignee when we ship goods to Sarawak and when we have had an advance from the bank. It is my experience when a bank advances money on a shipping document it will require itself to be named as consignee in the shipping document.

When we ask the bank to collect on a Bill of Lading the Bill of Lading will be consigned to my order and the Bill of Lading will also say notify so and so which is the buyer. When the bank acts as collecting agents the bank will not be named as the consignee.

It is very rarely that we get advances from the bank.

From previous files I knew what was going on when I took over in 1958. I looked at files in the shipping department. I saw copies of shipping documents in the files. I saw copies of shipping documents between Singapore and Sarawak. They were Bills of Lading. I am the immediate superior of the clerk in charge of the shipping department.

I sometimes sign the invoices, insurance, etc. when the accountant is not in. The Bill of Lading comes along with it but is not signed by me.

The rare cases of advances when we export are cases of export to Sarawak. I took it for granted that a bank will not accept a Mate's Receipt for an

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advance. I understand that a Mate's Receipt is not negotiable. By negotiation I mean I may convey the goods to another party by merely transferring the documents. When I sell to Sarawak the Bill of Lading will be made out to my order in certain circumstances. When the goods are sent on D/P when the buyer in Sarawak wants credit and asks us to present the documents to a bank in Singapore then we ship the goods and in the Bill of Lading the named consignee is the bank with the buyer as the party to be notified. I take it for granted that it is the banks' requirement to have them as named consignee. I take the signed Bill of Lading to the bank. We hand the documents and in return we get a cheque from the bank. If they discount at the expense of the buyer then we get the full amount. When we get direct payment from the buyer we name him as the consignee in the Bill of Lading.

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20 XX'm by Mr. Kerr (with leave).

I have never had occasion to consider whether there is a custom in the Sarawak trade in relation to Mate's Receipt. That is why I said I take it for granted that a Mate's Receipt will not be accepted by a bank.

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When a bank is named on a Bill of Lading it is the bank's requirement that it be so named. My understanding of the situation is that then it is a matter of arrangement between the bank and the paying party. Possibly in such a case the bank has made an advance on the goods. The banks ask that they be named as consignees because they want to secure their money.

Rex'd by Mr. MacCrindle.

I have heard that in the Sarawak/Singapore trade Mate's Receipts are sometimes accepted in place of Bills of Lading. But we have never done so.

(Released).

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Re-examination
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Further Cross-examination by Plaintiffs' Counsel

Further Re-examination

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Cheng Liang
Song
Examination

D.W.6. Cheng Liang Song s.s. I am in charge of shipping in Lindeteves-Jacoberg (Far East) Ltd. It is a subsidiary of a Dutch firm in Amsterdam. I have been in the Shipping Department for about 10 years. I have had shipping experience in Singapore of 20 years. We import and export from Singapore. We import European and general goods into Singapore and we export the same goods to Borneo and Sarawak. We usually sell goods to Sarawak calling for payment on a draft. When that happens we send the shipping documents to the bank. Sometimes our company chooses the bank and sometimes the buyer chooses the bank. We in such circumstances send a Bill of Lading to the bank along with other documents. We prepare the Bill of Lading in our office. We ask for a Bill of Lading because it is a deed of title but a Mate's Receipt is not one. It is merely a receipt that the goods are on board. We sometimes send the goods to Sarawak without selling them. To some customers who have credit with our company we send goods direct and they don't go through the bank. The customers pay later according to the period of credit. We send them the Mate's Receipt. He has a credit with us and he has nothing to do with the bank. It may be that the customer in Sarawak will ask for a particular kind of shipping document.

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Shell Company (Sarawak) always demand that they want a Bill of Lading for goods sent to them. We have sold them "Dokkein" Pumps, Electric Motors and other engineering goods. We receive goods from Sarawak. They send it to us for replacement or repairs. They came under Mate's Receipt and very very seldom under a Bill of Lading. I think I have seen one or two Bills of Lading for cargo from Sarawak to Singapore. We don't buy anything from Sarawak. I am responsible for all the documents when we send goods to Sarawak. By negotiating I mean transferring the shipping documents to a bank or the buyer.

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Cross-exam-
ination by
Plaintiffs'
Counsel

XX'd by Mr. Kerr.

My company has dealings with the Hua Siang Steamship Co. We also use Sarawak Steamship Co. and Heap Eng Moh. I know Chan Cheng Kum and Chan Kim Yam.

My company has printed forms when it wants banks to collect drafts from buyers. In Singapore when we sell goods to a buyer in Sibiu and we want a bank to collect the money from the buyer we have printed forms for that. We have always had such printed forms since I have been with the company. The forms enumerate the documents that the buyer has to present to the bank and I have merely to fill in the numbers. When we sell goods to a buyer in Sarawak to be collected through a bank the firms require the Draft, the Bill of Lading, the invoices and insurance policies. The printed form shows as the documents to be produced Bill of Lading/Mate's Receipt. My company's form always against shipping documents referred to the production of Bill of Lading/Mate's Receipt.

(A document is handed to witness by Mr. Kerr).

This is a document which is signed by our Managing Director - marked P17.

Lindeteves & Jacobson van den Berg merged in late part of 1958 or early 1959. I was with Lindeteves before the merger. The form we are looking at is that of Jacobson. This form could have been issued after the merger by over-printing in the old form the name of the new firm.

Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

I now produce the new forms of the new firm. Marked P18.

Item 3 is new form is B. of L/M.R. No. whereas in the old form it is only M.R. No. When we ship under a Mate's Receipt in the new form we strike out Bill of Lading. After the merger when they used the old form like P17 they over-printed the new firm's name.

I can't remember when we started using the new forms.

It is clear from P17 that it was the bank's obligation to deliver the Mate's Receipt and the

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Cheng Liang Song

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other documents mentioned there. The bank's duty is to get the draft accepted by the buyer. The bank having got the acceptance would be obliged to hand over all the documents to the buyer. The buyer will be able to get the delivery order from the shipping office provided it is endorsed. The bank will endorse it in favour of the buyer. The buyer will surrender the Mate's Receipt and obtain the delivery order. On the maturity of the draft he will be obliged to pay for the goods. It would be a typical transaction of what takes place in a sale to Sarawak.

10

In the Sarawak/Singapore and Singapore/Sarawak trade if they want to take it that way they could, viz. the Mate's Receipt be treated as document of title. If they do not issue Bill of Lading then they treat Mate's Receipt in exactly the same way as Bill of Lading.

In my experience if shipping companies have not issued Bills of Lading then in this trade they treat Mate's Receipts as equivalent to Bills of Lading. If we deal with Hua Siang Steamship Co. and if we put the documents through a bank we will always use Bill of Lading. At first Sarawak Steamship Co. issued Bill of Lading but later only issued Mate's Receipt. At first when they sent goods to Sarawak they exchanged Mate's Receipt for Bill of Lading. Since then when our company shipped goods to Sarawak they only used the Mate's Receipt. That is the position today. In Heap Eng Moh too we ship to Sarawak on Mate's Receipt.

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When we ship goods from Singapore to Sarawak through Hua Siang my company's instruction to me was to ship through Hua Siang with Bill of Lading. Mr. Janze is the man in charge of out-board motor department, and the person in charge of the technical department gave me these instructions. I have not had these instructions in respect of Sarawak Steamship and Heap Eng Moh. The persons did not give me any reasons why they were giving these instructions. I got these instructions when we started to ship with Hua Siang. We started to ship with Hua Siang in 1961. These instructions were given and apply to those cases when we ship through a bank.

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In relation to shipments by Sarawak Steamship

& Co. and Heap Eng Moh if the documents go through a bank my company relies on Mate's Receipt to the bank because I have had no instructions such as I have had in relation to Hua Siang. When we ship through Hua Siang but we do not go through a bank then we use only Mate's Receipt.

Shell Co.'s instructions are on a printed form requiring us to ship on Bill of Lading.

10 (Mr. Kerr produces a letter - marked P19).

I see P19.

I agree that Petroleum Transport & Services Inc. send goods to Sarawak on Mate's Receipt. We sell goods to Shell. I don't know what the terms of payment are. I get a printed form from Shell which specifies the documents that are to be sent to them. We also sell to Shell Brunei and we use the same order forms.

20 When we sell to a Sarawak buyer we always send to a Sarawak bank for collection. We use various banks in Sarawak for collection from customers. We send the Mate's Receipt. The Mate's Receipt will have against the space "consigned to" the words "Order notify Messrs. ~~the buyers~~" as in P8. That is so when the bank collects for us as sellers. When the shipment is through Sarawak Steamship Co. or Heap Eng Moh and when we collect through a bank I have had no instructions to exchange the Mate's Receipt for a

30 Bill of Lading.

In the last few months when we sent goods through Sarawak Steamship or Heap Eng Moh and when we had to collect through a bank we sent the bank in Sarawak Mate's Receipt.

In the last few months we have not shipped through Hua Siang to Sarawak. In early 1963 when we shipped to Sarawak through Hua Siang and we sent the documents to a Sarawak bank for collection we sent them Bills of Lading.

40 I asked for Bill of Lading because of the instructions I received in 1961 regarding Hua Siang. I received instructions that for anything we shipped

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ination by
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Re-examination Rex'd by Mr. MacCrindle.

through Hua Siang and we required a bank to collect then we should have Bill of Lading and not Mate's Receipt. In all other shipping firms we shipped only on Mate's Receipt to Sarawak.

Before 1961 all shipments to Sarawak leaving out the Shell Co. were always on Mate's Receipts and not Bills of Lading. We got these instructions when we began to ship through Hua Siang and these instructions only applied to Hua Siang

In the Sarawak trade shipping companies treat Mate's Receipt as a document of title where no Bills of Lading have been issued. I have known no shipping company do anything different in respect of Mate's Receipt from what it would be in the case of Bill of Lading in the Sarawak trade. That is my experience over the whole 20 years of my experience.

10

When we ship through Hua Siang and the documents go through a bank then we exchange Mate's Receipt for Bill of Lading. In 1960 or 1961 when we started shipping through Hua Siang my company had an arrangement for exclusive shipment of out-board motors through them. I have been shipping through Hua Siang almost every week. We had frequent requests for Bill of Lading. I don't know why I got these instructions. Now when we ship through other lines we don't ask for a Bill of Lading.

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(Released).

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D.W.7. Captain Alestair Kerr-Gordon s.s. I am a Master Mariner and I hold a British Certificate. I have approximately been at sea for 34 years. I started with Hogarth & Co., Glasgow. Straits Steamship Co. of Singapore from 1940 - 1954. In 1954 I became the master of the "Hua Heng" and I was still the master of this vessel in 1961.

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10 Almost invariably during that period the Hua Heng was engaged in the same trade. It was Singapore to Sarawak and back to Singapore. The round voyage took about a fortnight - 2 voyages a month.

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20 Up to 1960 I was engaged by the Hua Siang Steamship Co. I was informed in the first week or the first 10 days of 1961 that the company ceased to trade and became a Ltd. liability company. Mr. Chan Kim Yam told me this. The question of my employment was mentioned in a general fashion and the terms and conditions of service will be the same as before but I would be employed by the Ltd. Co. I accepted it. He told me if there was any correspondence I should be careful and not use the old forms but use the word Ltd. He did not say anything about the ownership of the vessel. He told me to warn the crew that the old company had ceased to trade and it was now a Ltd. Co. and if they had any objection to serving with the Ltd. Co. they could raise a complaint and sign off if they wished.

Defendants' Evidence

Captain Alestair Kerr-Gordon Examination

30 I told the senior men of each department. I explained the situation to them and asked them to explain it to their departments. Nobody raised any objections - none whatsoever. The officers only asked whether they will continue as the same.

40 I did not consider about the ownership of the vessel. I was interested in my salary. I was on a monthly salary. The ratings are employed directly by myself on articles. They are on a monthly salary but on 24 hours notice for resigning or dismissal which is written in the articles. I do pay them. I pay them once a month or once a fortnight, purely for the convenience of the local men as we are trading. During the months that followed I drew the money as usual from the office by cheque. Either Chan Cheng Kum or Chan Kim Yam signed the cheques on behalf of the Ltd. Co. I

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cashed the cheque at the Hongkong & Shanghai Bank and took the money and paid the crew. In March of that year the articles expired and had to be renewed. I opened the new articles with my signature. I was signing on behalf of Hua Siang Steamship Co. Ltd. One or two signed off but the bulk of the crew stayed on. When a person signed off I wrote 2 letters one to the Immigration and the other to the Shipping Master. I used the company note paper of the Hua Siang Steamship Co. Ltd.

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Adjourned to 10.00 a.m. on 20/4/64.

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Counsel as before.

Captain Kerr-Gordon o.f.o. x'd by Mr. MacCrindle
(continued).

From February 1961 if anyone asked by whom they were employed they would have said by the Ltd. Co. When the vessel is in Singapore I make it a point to call at the office every morning. I called at the office in January after the first meeting when the vessel was in port next. I saw Chan Kim Yam. I talked to him. I asked Chan Kim Yam if there was any actual change in the ownership of the vessel and he said no. He told me the vessel was under demise charter which I had assumed. I did not ask to see any demise charter. I did not think it affected me in the slightest. If I was travelling on a voyage or time charter

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I would have liked to see the charter. In this particular case my employers were also the charterers - Hua Siang Steamship Co. Ltd. I have heard of demise charter out here. When I was with the Straits Steamship Co. some of their vessels were periodically on demise charter to the Sarawak Steamship Co. I was unfortunate on not being one of the ships in the Sarawak Steamship Co. They were paid in Kuching or Sarawak and they paid no income tax there. When I was with Straits Steamship Co. I was paid in Singapore and paid Singapore tax. I never saw a demise charter document for any of their ships but it was common gossip amongst the masters employed by them. (Mr. Kerr objects to this portion of the evidence as hearsay. I allowed the questions to be put but with leave for Mr. Kerr to recall any witness he likes.)

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Captain Alestair Kerr-Gordon
Examination (continued)

XX'D by Mr. Kerr.

I got my master's certificate in 1940. I started as an apprentice with Horgath and went up to 2nd Officer when I got the master's certificate. I then joined the Straits Steamship Co. I was with Straits Steamship till 1952 and then I spent 2 years with South East Asia and then I joined Hua Siang in 1954. South East Asia is part of Lee Rubber organisation, a Chinese set up in Singapore. When I was with Hogarth I was on vessel of world-wide tramping. They probably were trading on successive charters. I was not concerned with the charter party as I was only 2nd Officer. It was the duty of the master. With Horgath I would not inquire if the vessels were on demise charter. I have never seen a voyage or time charter nor have I seen a demise charter.

Cross-examination by Plaintiffs' Counsel

The demise charter party is very rare compared

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to a time or voyage charter party. A demise charter and a bare boat charter are the same things. A bare boat charter is the hiring of the hull with its machinery. The mate and crew in a time or voyage charter party are employed by the shipowner whereas in a demise charter party crew are employed by the charterers. Before 1961 in every ship I served my employer was the shipowner. In a very normal sense in about 99% of the ships all over the world the crew are employed by the shipowner. Masters and officers normally refer to their employers as "my owners". From 1954 to 1960 I was in the usual position of being employed by the owner who was Chan Cheng Kum. He was trading as Hua Siang Steamship Co. but the owner and employer was Mr. Chan Cheng Kum. When I originally joined the Hua Siang Steamship Co. I got a letter of employment on a probationary basis. I did not get any further letter but I take it my employment was confirmed and I was receiving a monthly salary. I received nothing in writing and I wrote nothing about my change of employment. In this part of the world it is not the practice to have written evidence as to who one's employer is. I had nothing in writing when I was employed by the Straits Steamship Co. or South East Asia.

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When I arrived in Singapore I signed on the vessel of Straits Steamship Co. as 2nd Officer. Some years later I became a master. When I joined Straits Steamship I was interviewed at Liverpool and then I got my ticket to Singapore but I can't recollect receiving any letter setting out my terms of employment. I have never had a letter of employment all the while I was with Straits Steamship. My engagement with South East Asia was also done on a purely oral basis. Every officer except the master serves on a written document called the articles. Out of Singapore I would say it is usual for a master to have a written document of his terms of service but out here in Singapore I would say no.

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I was told by Mr. Kim Yam that the Ltd. Co. had taken over all the assets of the old firm. I did not infer that the Ltd. Co. had taken over the ships of the old firm. There was no need of a charter. On the first occasion when I met Kim Yam in January 1961 I was not told about the ownership of the vessel. It was not mentioned and

I was not concerned. I thought it over during the next voyage and questioned him on my return. The ship's register I keep. There was no change in the owner. In past I deposited the ship's register in the office and on the next voyage the register was not changed as regards the shipowner and I queried them on my return. That led me to assume there was a bare boat charter. Mr. Kim Yam had told me that there was a bare boat charter before we sailed in the first week of January 1961.

I did not mention about bare boat charter last Friday. I knew from Kim Yam's statement that the ownership had not changed. I did not query but I brought it up in ordinary conversation. I was not interested to see the terms of the bare boat charter. If I was the master of a vessel on a time charter I would be interested to see the terms of the charter because I will have to carry out some of the terms of the charter.

When I am on a bare boat charter I shall have to perform the terms of the charter party vis-a-vis the owner on behalf of the charterers.

I have never seen a bare boat charter though I have seen a form in my early days at sea. With the time charter or a voyage charter there is divergence clause.

Q. If you had been told you were serving on a ship on demise charter you would have asked to see the demise charter or asked what the terms of such a charter were.

A. In this case I would not. I did not know there was no written agreement about the demise charter.

I agree that charter parties would normally be in writing. I would have expected that it to be so in this case. I assumed there was a written document though I did not ask to see one. I thought it was the normal thing.

My ship was in Singapore on the 1st and 3rd week of January 1961. I will accept my ship was in Singapore on 11/1/61. Apart from the 1st 2 conversations on the 1st and 2nd voyage in 1961 everything went on exactly as before. The person who gave me orders remained exactly the same as

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Cross-examination by Plaintiffs' Counsel (continued)

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(continued)

Re-examination Rex'd by Mr. MacCrindle.

before. The formation of the company had no effect on the persons who controlled my activity. When I came to open the articles in March 1961 after the formation of the company.

I see P14.

I agree the last one paragraph of page 1 is not quite correct.

The register will give the name of the owner and the master of the vessel. When a master is appointed to a vessel his appointment must be endorsed on the register and that is his authority to sail the vessel. The master will open the articles on behalf of the shipowners. The master and crew will be paid by the managers if they are managing the ship on behalf of the owners. I thought the Ltd. Co. was managing the ships on behalf of Chan Cheng Kum.

10

If I was serving on a vessel on time or voyage charter I expected to receive instructions on some items from the charterers and for other items from the owners. I would expect the time or voyage charter to define which was the responsibility of whom. If I was serving on a vessel on a demise charter I would expect to receive instructions from the charterers.

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When I was signing P14 I signed the articles and I expected I was engaging the crew on behalf of Hua Siang Steamship Co. Ltd. I was told in January 1961 that the vessel was on a demise charter to Hua Siang Steamship Co. Ltd.

30

Q. Is that why you regard the company as managing the ships for Chan Cheng Kum?

A. Yes.

Q. Had you any other reason for saying that you assumed the Ltd. Co. was managing the vessel?

A. No.

I should think that on every demise charter the charterer manages the vessel for the owner. I am not quite sure about that.

10

(Released).

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Re-examination (continued)

D.W.8. Cheah Wee Hock a.s. I am employed by the Hua Siang Steamship Co. Ltd. as an office Assistant. I am in charge of the freight department. This department deals with delivery. I was employed by the Hua Siang Steamship Co. Ltd. from the moment it came into existence.

Cheah Wee Hock Examination

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Before the end of 1960 I was employed by the Hua Siang Steamship Co. the old firm. I joined the firm about 1954 or early 1955. I recollect that in early 1961 Mr. Chan Kim Yam told me and the rest of the staff that the old company had ceased to trade and that a new Ltd. Co. had been formed and if we are willing we would be employed on the same terms by the Ltd. Co. I was willing and so were the rest. At the outer door of the office there was a sign of the Ltd. Co. put up. This was the old sign board appropriately altered. Mr. Chan Kim Yam told us that the old stationery must be used up and that when we used them they must be

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Examination
(continued)

altered by stamping Ltd. on them. We did afterwards get new stationery. It was after some time, round about March 1961 that we got new stationery. When a receiver wants delivery I or my clerk will usually deal with him. We normally asked from them for Mate's Receipt or Bill of Lading. If they produced then I will examine the document. We look for whether it is consigned to order or selves or whether there is a named consignee. If it is consigned to order or selves we look for the shipper's endorsement on the back of the document. If there is a named consignee we look for the consignee's endorsement on the back of the document. I have seen several of the shipping documents with a number of rubber stamp chops on the face of them. Sometimes scribbling or signs or numbers on them besides.

10

There are sometimes certain chops on them and sometimes the foreign exchange chops and sometimes bank chops. If nothing is mentioned in the text of the document we have no reason to be interested in the chops.

20

When one of the ships of the company either the Hua Li or Hua Heng is in Singapore I may handle anything up to 50 or 60 shipping documents on a day. If I am satisfied with the documents I will deliver a delivery order. My clerk writes out the delivery orders and I usually sign them.

I see D10.

The signature on these documents are mine, while the signature on the first document is that of Chan Kim Yam.

30

Most of the shipping documents from Sarawak to Singapore are Mate's Receipts but sometimes I also see Bills of Lading. In 1960 I might have come across about half a dozen Bills of Lading in the local trade. Through cargo is usually on Bill of Lading. I am also in charge of the department which issues shipping documents for cargoes from Singapore to other ports. I am in charge of inward and outward freight. For local cargo from Singapore to Sarawak about 25% go on Bills of Lading and the rest on Mate's Receipts. We treat Mate's Receipts differently from Bills of Lading. A Mate's Receipt is not a negotiable document.

40

That means a shipper cannot negotiate, i.e. he cannot transfer the document so as to give rights of title to the transferee to claim for non-delivery. On a Bill of Lading a shipper can negotiate. We issue Bill of Lading in sets. Normally the shipper will ask for 2 or 3 signed copies. We also give them unsigned copies. The copies are marked "Not Negotiable". The copies are the negotiable copies. It is the further copies that are marked "Non-negotiable".

10

I don't know what "B.E.P. No." on bank chops are. I don't know what B.C. stamps for. People ask for delivery without being able to produce shipping documents. When that happens I always refer the matter to Chan Kim Yam. I never refer the matter to Chan Cheng Kum. I seldom refer or discuss any matter with Chan Cheng Kum. I don't think he looks at shipping documents because he is not dealing with my department.

20

Normally when referred to Mr. Chan Kim Yam he would tell me to ask for an indemnity.

30

I remember giving deliveries to T.S.C. This was for several years before 1961. Sometimes I used to phone up. Sometimes I answered the phone. They would say they are from T.S.C. They demanded delivery without shipping documents. I would first refer the matter to Chan Kim Yam. Chan Kim Yam asked them for an indemnity. It was a letter of indemnity signed by the firm. They will produce the document, a signed indemnity. I always referred such cases to Chan Kim Yam.

40

Sometimes I receive phone calls not to deliver. Sometimes I get written notices not to deliver. On the Sarawak run it is normally phone calls. At one time my company were agents for the Polish Ocean Lines. I was told by Mr. Chan Kim Yam on Friday to look for stop notices. I have a bunch of written stop notices which I now produce - marked D11. I was not able to find any written stop notices for the Sarawak run.

XX'd by Mr. Kerr.

As far as I am concerned Mr. Chan Kim Yam is my chief. I did not know that Chan Kim Yam and

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Chan Cheng Kum are directors of the company employ-
ing me. There are 5 or 6 persons working in the
office. Chan Cheng Kum has a room in the office.
Mr. Chan Kim Yam has also a room in the office
from some months back. There is besides these a
general office space where I am seated. Before
Chan Kim Yam got his room he was also sitting in
the general office space. There were besides me
five or six others in the office. I have besides
me two clerks in the freight department and the
rest are general typist and peons. I deal only
with cargo. Besides me there is no one else in
charge of a department. At the end of 1960 the
Ltd. Co. was formed. I carried on as before.
I don't know any other change besides what I have
said. I was told to use Ltd. on all forms.
I did as required.

10

I see D10.

Only one of the 4 delivery orders have Ltd. on
the top but none of them have Ltd. on the right
hand corner. I would say the matter has been over-
looked by me owing to the pressure of my work.
I must have issued hundreds of delivery orders in
1961. It was my duty to stamp the word 'LTD' but
I have overlooked this fact. Mr. Chan Cheng Kum
owned the ships before 1961. From 1961 Mr. Chan
Cheng Kum still owned the ships. When we applied
for clearance we will have to declare who the
owner is. It is not my duty but that of the
general clerk. Sometimes I assist him when he is
busy. A form is filled up. We keep a stock of
these forms in office. I shall produce them after
the lunch adjournment.

20

30

The applicant's name was different after
January 1961. I sometimes sign these forms. When
we submit a completed form to the Master Attendant's
Office they will issue the Port Clearance. The
person who takes the completed form to the Master
Attendant's Office will bring the P.C. from them.

I was not told by Chan Kim Yam that Mr. Chan
Cheng Kum would remain as the owner of the ships as
before after the formation of the company. I was
not told of any charter party between Chan Cheng Kum
and the Ltd. Company about the Hua Heng and Hua Li.
I know nothing now about any charter party between
Chan Cheng Kum and the Ltd. Co. about the Hua Heng

40

and the Hua Li. I have never heard it mentioned.

Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

I now produce the application for a Port Clearance which is used when the Hua Heng or Hua Li sails from Singapore. These new forms came out about 6 or 7 years ago. In 1960 this was in use - marked D12. I completed the form and signed as or for agent and crossed out the Master. In 1961 I put the firm's chop and then signed.

Against owners named in the form I would fill in Chan Cheng Kum and give his home address. Against "Charterers - Name and Address" I leave it blank or put a dash. It is correct to say that this column has never been filled in. Under "Agents in Singapore" I put down Hua Siang Steamship Co. Ltd. At all times since this form has been in use under "Owner Name and Address" I put Chan Cheng Kum and his home address. Against charterers nothing has been put except a dash and against agents I have put the Ltd. Co. whenever I remembered to do so. After the formation of the Ltd. Co. the form was filled in exactly the same form as before except Ltd. was added in the space against agents and the chop with Ltd. was included in the chop before I signed the form. The general clerk in the office may sign this form and sometimes I sign this form. I don't think Chan Kim Yam ever signed this form. Nor did Chan Cheng Kum.

When the Ltd. Co. was formed I was given no instructions to put anything against "Charterers" in this form. I have looked for the endorsements on the Mate's Receipt as given in my examination in chief. It applies in the same way to Bills of Lading as it would apply to Mate's Receipt. As far as delivery is concerned I do exactly the same thing whether it is a Mate's Receipt or a Bill of Lading. If the person asking for delivery has not the Mate's Receipt or Bill of Lading and not authorised to produce a guarantee then I will refer to Chan Kim Yam. When there is a named consignee then I would not give delivery unless the Mate's Receipt or the Bill of Lading has the

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endorsement of the named consignee. The named consignee in Bill of Lading or Mate's Receipt may be either merchants or banks. If the named consignee is a merchant different from the shipper then I would expect him to be the buyer of the goods. If the named consignee is a bank they can be a collecting agent for the payment of the goods, they can be the buyers' bank. I can't think of anything else. I don't know if they can be the people who advanced money on the security of the documents. Whenever I have seen the bank named as consignee I have always known them as collecting agents for the sellers or as acting for the buyers.

10

As regards Bill of Lading I know the banks may take all the signed copies of the Bill of Lading in order to exercise control over the cargo and advance money. In such cases the bank may be the named consignee or endorsee. I have not heard in Singapore of banks accepting a Mate's Receipt. They ask for a Bill of Lading. No bank has asked me for a Bill of Lading. I don't know whether banks in Kuching will accept a Mate's Receipt or ask for Bill of Lading.

20

A Mate's Receipt is not negotiable. I did not know that when a bank was named as consignee in a Mate's Receipt it may have advanced money just as it would be if it is the named consignee in a Bill of Lading. I have heard for years and I know that a Mate's Receipt is not negotiable. I knew this even before 1961.

30

Since I have been in this office many shipments have been made by T.S.C. T.S.C. is one of the biggest shippers on the Hua Heng and Hua Li. Many of their Mate's Receipts named banks as consignees. I can't recollect if the O.C.B.C. was the most frequent bank to be named as consignee. Practically every shipment was released to T.S.C. without production of a Mate's Receipt on indemnity (sic) ties but I referred the matter to Chan Kim Yam.

T.S.C. has shipment on every ship from Sarawak. Sometimes T.S.C. brings receipts to obtain delivery of the cargo. Quite often they produce Mate's Receipt where the bank is a named consignee. It happened with other banks but not with O.C.B.C. With O.C.B.C. they did not produce Mate's Receipt when the O.C.B.C. was the named consignee.

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I see Page 150 onwards of 'X'.

I have often seen indemnities signed by banks. Most of the indemnities have the bank's signature on them.

10 I don't recollect which of T.S.C.'s indemnities have been countersigned by a bank. T.S.C. has been always getting delivery of shipment without production of shipping documents and on indemnities not countersigned by a bank. No other shipper has got his goods on every occasion without Mate's Receipt or a bank guarantee. I agree T.S.C. has always been in a special position.

It was not a regular routine. Every time I referred the matter to Chan Kim Yam and every time the answer I got from Chan Kim Yam was the same.

I see P7A.

20 In the text of the Mate's Receipt there was nothing about the Wah Tat Bank and so I ignored their chops on the Mate's Receipt. I have seen and noticed it but I ignored it. The O.C.B.C. was named consignee in a number of cases.

Q. When T.S.C. came without production of the Mate's Receipt and on an Indemnity asked for delivery where do you think the Mate's Receipts were?

A. I don't know if Bills of Lading were issued.

30 I have seen no Bill of Lading in respect of cargo shipped by T.S.C. from Sibiu. At the end of six months we destroyed our Mate's Receipts. I can't produce any Bills of Lading which were issued about 6 months back. It may be that Mate's Receipts were with the bank. It may be with the shippers or in the port.

40 Mate's Receipts consigned to O.C.B.C. where T.S.C. were the shippers were only delivered 2 or 3 weeks after delivery of the goods. I knew the Mate's Receipts were probably with the O.C.B.C. It took T.S.C. 2 or 3 weeks or more to return the Mate's Receipts because it took them that long to pay the bank. In the case of Mate's Receipts there will be only one signed copy whereas in the issue of Bill of Lading there will be more than one signed copy as is required by the shipper.

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When shippers ask for Bill of Lading in exchange for Mate's Receipt in some cases they say that they want to negotiate. When they ask for Bill of Lading there is no written application. Mr. Chan Kim Yam is mostly in the office. I have very seldom spoken to Chan Cheng Kum about office matters. I always spoke to Chan Kim Yam.

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These stop notices which I produced D11 are of about 1960. As they relate to Polish Ocean Lines we keep them longer. They cover shipments from different parts of the world to Singapore. They all relate to Bills of Lading.

10

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Q. I suggest to you that in everyone of these cases in D11 the Bill of Lading is the order of the shipper.

Defendants' Evidence

A. I don't agree. The bank may be the named consignee, though they may be a party to be notified.

Cheah Wee Hock
Cross-examination by Plaintiffs' Counsel (continued)

I would not deliver to the notifying party without the endorsement of the named bank. I have heard of cases where the shippers have asked the ship-owners to deliver to a person other than the named consignee. This can only happen in the case of a Mate's Receipt. If they want to change instructions in a Bill of Lading then the shippers must produce all the signed copies of the Bill of Lading.

20

In all the cases the shipper T.S.C. was also the party to be notified and the O.C.B.C. was the named consignee.

Q. In such cases what was the role of the bank?

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A. The bank might be collecting agent for the shippers themselves, when the shipper is the same as the party to be notified.

It may well be the bank holds the Mate's Receipt because it has not been paid and it holds the Mate's Receipt even for weeks to have control over the goods.

Re-examination Rex'd by Mr. MacCrindle.

I see D12. All the details are filled in except name and address of charterers. Before the formation of the Ltd. Co. I also had to fill in D12

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for the old firm. I then filled against "Agents in Singapore" "Hua Siang Steamship Co." which we now fill in as "Hua Siang Steamship Co. Ltd." I signed Hua Siang Steamship Co." and now "Hua Siang Steamship Co. Ltd.". In both cases the name of the owner was the same.

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Adjourned to 10.00 a.m. 21st April, 1964.

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Counsel as before.

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10 10.00 a.m. Hearing resumed.

I have traced all the Bills of Lading covered by the stop notices D11. I now produce the bundle of Bills of Lading - marked D11A. In 4 of the Bills of Lading the bank is the named consignee, 8 to the shipper's order and 1 to a named consignee, a merchant.

Cheah Wee Hock
Re-examination
(continued)

20 Where the bank is the named consignee I would not deliver without the bank's endorsement. I see Bill of Lading No. 15 "Nehoca" which is shipped to "order". I see the endorsement on the back of the Bill of Lading. The shipper has endorsed it "to the order of the chartered Bank" and the Chartered Bank has endorsed it to some other merchant. After the endorsement of the shipper I would have delivered to the Chartered Bank. The practice would be the same if the Chartered Bank was the named consignee or endorsed to the Chartered Bank as here.

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30 I see D12. As a matter of routine the general clerk fills in and the peon of Hua Siang Steamship Co. Ltd. takes it to the Master Attendant's office. If the general clerk is away I may fill it. I don't know whether there is a charter party but the port office has always issued a clearance everytime even though it is left blank in D12.

The ships' agent deals with all the requirements

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of the ships. In the case of Hua Siang Steamship Co. Ltd. they were their own agents and there was no need to employ anybody else.

The banks don't ship cargo and they never ask for shipping documents but it has frequently happened that a shipper or his clerk asked me to issue a Bill of Lading and has explained to me that they require it to negotiate through a bank.

When T.S.C. was taking delivery in Singapore I did not know if Bill of Lading had been issued which T.S.C. may have transferred or sold to someone. But if T.S.C. did not exchange Mate's Receipt for a Bill of Lading and if the Mate's Receipt was with the O.C.B.C. the O.C.B.C. would have a lower extent of control not amounting to full control of the goods. The O.C.B.C. can produce the Mate's Receipt to us and ask for delivery which we would normally do unless we receive a contrary instruction from the shipper. I would never regard them as having a right to insist on delivery. I would not do so because it is not a negotiable document which means that the carrier will only recognise the shipper; even though it is not claimed "non-negotiable" the Mate's Receipt is not like a Bill of Lading. I never heard during my employment that Hua Siang Steamship Co. Ltd. were managers of the vessel.

XX'd by Mr. Kerr with leave.

Q. If we were able to look at all the Bills of Lading that came to our office would we not find a large number of Bills of Lading where the named consignee is the Bank?

A. I agree.

Q. But if we look at all the cases where the bank is the named consignee in a Bill of Lading then frequently we get stop notices but not in all cases.

A. That is so.

Even if the named consignee is to order we would get stop notices from the bank.

I would agree that I have heard many cases where the banks are named as consignees in a shipping

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document where no stop notices from the bank have been received by us. The answers would be the same if the shipping documents were Bills of Lading or Mate's Receipts.

10 From time to time where shipments are only covered by a Mate's Receipt we would get verbal stop notices. The bank may be named consignee or shipped to order in such cases. Where bank is named consignee in a Mate's Receipt in more cases I would get a stop notice in comparison to cases where the bank is named consignee in a Bill of Lading.

XX'd by Mr. Kerr. (?)

I base this answer on the verbal instructions that I have received. Where the bank is a named consignee in a Mate's Receipt I often get verbal stop notices from the Bank.

20 I have never had a stop notice from the O.C.B.C. be it a Bill of Lading or a Mate's Receipt where it was the named consignee. The Hongkong & Shanghai Bank will in all cases where they are named consignees in a Mate's Receipt issue a verbal stop notice. I would get a telephone call from the inward bill department. The Hongkong & Shanghai Bank are our bankers. I mean of Hua Siang Steamship Co. Ltd. I think the Chartered Bank too issues verbal stop notices where it is named consignee in a Mate's Receipt. I am always dealing with this matter. I am unable to produce
30 any written records of the verbal stop notices.

I make a note of the verbal stop notice in the rough manifest which is destroyed. I work on a rough manifest which is now destroyed. I see pages 23, 26, 29, 35 of X. They are not the manifest on which I work. I had a rough copy. If everything is all right I destroy my rough manifest.

I make out rough copy of the manifest either from the agents' copy which is sent to us or from the Ship's copy when the ship is in port.

40 In most cases soon after I get the telephone call of a stop notice from a bank the Mate's Receipt is produced and when I telephone the bank they say it is all right.

(Released)

Intld. T.K.

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Tay Tiang Song
Examination

D.W.9. Tay Tiang Song s.s. I am an A.M. of the Australian Society of Accountants, an A.M. of the Corporation of Certified Secretaries and Member of the Singapore Society of Accountants. I am a public accountant. I left government service in 1959 and started with Goh & Co. as a partner till 1960. Since December 1960 I have been on my own as T.S. Tay & Co. When I was with Goh & Co. I had occasion to audit the books of Hua Siang Steamship Co. The books of Hua Siang Steamship Co. were kept by my firm. A couple of months before the close of 1960 I had discussions with Chan Cheng Kum about the function of a Limited Co. He asked me what the advantages and disadvantages were of a Ltd. Co. and I told him about them. As a result of the discussion he asked me to go ahead and form the Ltd. Co. and the Ltd. Co. was incorporated on 30/12/60. I was the first secretary of this company.

10

I attended the 1st directors meetings on 31st December 1960. I wrote up the minutes of this meeting. At the meeting while the discussion was on I jotted down the points on a pad and I took these notes back. It was then redrafted by me and sent for typing. My normal practice was to do this immediately or the day after. After this was typed I checked it to find if it was in order. After that I pasted the minute on the minute book and sent it back to the company for the signature of the chairman. The book is then kept in the registered office of the company. We are secretaries for about 70 companies at the moment and I draft the minutes of the meetings of the various companies. I maintain the same practice in keeping all these minutes. I remember a discussion about the operating of the vessels that belonged to the old firm.

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30

Mr. Chan and Mr. Kim Yam put forward 2 methods of chartering the vessels. Mr. Chan Cheng Kum proposed the time charter method and Mr. Chan Kim Yam proposed the bare boat charter or demise charter method. I did not understand these terms and so I asked them to explain to me.

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Mr. Chan Cheng Kum told me in the first method certain expenses like crew's wages and repairs had to be borne by the owner himself and other expenses such as stevedorage, pilotage etc. would

be borne by the company.

10 In the case of the demise charter all the expenses including the crew's wages and repairs would be borne by the charterers - the company. I stated my view and said that in the first method the accounting would be difficult as some expenses had to be against the owner while the others against the company. I therefore expressed the view that the demise charter was preferable as it was clear cut for accounting purposes. They agreed to the 2nd method and that was recorded in my minute. They agreed to pay \$500/- per month per vessel during the term of the charter. They also said that for termination of this arrangement either party must give 6 months' notice on either side. We also went on to discuss the purchase of the vessel in case Mr. Chan Cheng Kum wanted to dispose of it. In the demise charter the crews would be employed by the company. I got no special instructions about writing up that minute. I only submitted to the company one draft. I now produce a copy of the minutes of this meeting - marked D13. The paragraph about termination relates to the earlier paragraph.

20

XX'd by Mr. Kerr.

30 This was by no means the first case where a firm was converted to a Ltd. Co. When we are not auditing we keep the secretarial post. It is usual to send out circulars regarding the formation of the Ltd. liability Co. In this case a circular was sent out.

I see Page 5 of A.

40 This is a copy of the circular letter that went out. Paragraph 3 of that letter is not correct. The company did not take over all the assets of the firm in particular the vessels. This circular was not shown to me before it was sent out. I had given Mr. Chan Cheng Kum a copy of a circular as an example. In the example there was no mention of assets and liabilities. I don't quite remember what the example circular contained. In most cases the circular states

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that all assets and liabilities of the firm are taken over by the company. I was not consulted about this circular. That statement is an important statement and should be correct. Otherwise it is likely to mislead the public. When I received a copy of this circular I told Mr. Chan Cheng Kum that the 3rd paragraph is not correct. He told me that the circular has already been sent out.

I told him there was no point in issuing a 2nd circular because it would be confusing. The circular would have to say the vessels have not been taken over by the company. It would be confusing because one was sent out about 1st January 1961 and to send out a second within 2 or 3 days would be confusing. I would agree by far the most important asset of the old firm was the ships. The value of the 3 vessels was put at \$500,000/- (Malayan currency). The motor vehicles were the next most important asset and it was worth \$15,000/- (Malayan currency).

There was no creditor who was misled by that circular letter. I agree that this circular was sent out to hundreds of business houses. Any trader who wanted fresh business would look into the matter. He would look up the registration at the port authority. I say it does not matter if this circular is incorrect, provided no one has been deceived by it. I am also saying that nobody in this case could have been deceived by it.

I also attended subsequent meetings of the Board of Directors. The second meeting of the Board of Directors was on 5/11/61. At that meeting I officiated as secretary. The next was on the 27th November 1961 which was the Annual General Meeting.

At the discussion regarding function of the Ltd. Co. before 1st meeting of Directors Mr. Chan Cheng Kum told me that he wanted to keep the vessels. Mr. Chan Cheng Kum even before the meeting said that the vessels were to be chartered by the company. He must have told me this about one or two months before incorporation. In what way the ships were to be chartered was only discussed at the 1st Directors' meeting.

Mr. Chan Cheng Kum was in control of the new company. It is common for private persons to own ship which is managed by companies.

Q. If a company is to manage ships on behalf of the owner then it would present no accounting problem.

A. Yes, but the company will have to render account to the shipowners.

10 Q. If the relation of the owner and the company were so close as to require owner not to pay any management fees or commission then the accounting would present no difficulty.

A. Then on what would the company live on. The accounting will be the same except the heading of the accounts will be different.

I have heard of a charter party. It is an agreement between the shipowner and the charterer of a ship. I have never seen a charter party though I have heard of it.

20 I thought it was quite unnecessary in this case to have a written charter party. It was agreed at the meeting that there should be nothing in writing regarding the charter. I did make the suggestion that there should be something in writing as I thought it would be the usual thing to do. Because Mr. Chan Cheng Kum would be signing for both parties it was agreed it would be useless to have any written agreement. I think it is correct and I did accept that view. I am not
30 saying that any agreement whether oral or written would be a farce. I have never seen an agreement or letters between the Chairman of the Company and the company. I have never even seen service agreements.

Q. If this agreement had any reality why not have a written record of it?

A. The minutes of the 1st Directors' meeting is quite elaborate and detailed regarding this agreement.

40 Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

There was no discussion at the 1st meeting about the employment of the crew by Hua Siang

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Steamship Co. Ltd. If it had been discussed and any decision taken I would have recorded it in the minutes.

Q. Why is it that these minutes does not say that vessels were let out to the company by Chan Cheng Kum on a bare boat charter basis?

A. I did not quite understand the term and I did not see any difference. By using the words "Bare boat charter" I was stressing the agreement.

I say this minute is a true and faithful record of what took place at the meeting. It was not written up much later.

10

I would regard it as improper to write up a minute a long time after the meeting. The wording of this minute was not suggested by anybody else. At the end of the meeting I made up my own mind as to what to minute. There was no question of any management at the meeting. The phrase "management" was never used at that meeting.

20

The words "bare boat charter" and "demise charter" were used but they used more "bare boat charter" and that is why I used that in the minute. I don't know if ship management agreements are in writing or not.

In the case of a management agreement various expenses will be incurred. Some of them will be in relation to the vessel. I would expect these

to be debited to the agency account of the owner.

Some of the expenses of the managers like office overheads, etc. will have nothing to do with the vessels. That will be the company's expenses. In other words the expenses of the managers will not be entered together as they will be of different categories.

10 In the demise charter all expenses will be that of the company and we need not have decided on what account to charge the expenses.

I would not regard it as proper for a trading company to give away a good part of its services for nothing.

The meetings of the directors recorded in the minute book were more than what a normal company holds. The minutes of this company's meeting are in greater detail than that of a company of this size.

20 They told me that the difference between the time charter and the demise charter was that in time charter the crew will still be in the employment of the owner and will be paid by the owner but in demise charter the company took over everything and paid for the crew.

30 When I left the meeting I was under the impression that it was agreed that the vessels are still owned by Chan Cheng Kum. The company agrees to pay Chan Cheng Kum a hire of \$500/- p.m. per vessel for an unspecified period under bare boat charter agreement.

40 D.W.10. Chan Kim Lim a.s. At the moment I am the manager of the Hua Siang Steamship Co. Ltd. and I am one of the assistants of Chan Kim Yam. I have been with the company since November 1963. I was not in shipping before that. I was a civil servant in the Inland Revenue Department. I remember returning from Sibu in an aeroplane in March 1961 with my father. I do not know Chew Choo Sing. (Witness is pointed out Chew Choo Sing and he says he does not know him.) I was one morning in court last December and again on Friday when I came to

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see my brother. I don't remember my father talking to Chew Choo Sing either on the plane journey or afterwards. I would say we arrived in Singapore about 8 p.m. that evening. We went straight home from the airport.

We had our dinner at home that night. That night we did not dine at the Peking Restaurant with Mr. Chew Choo Sing, Mr. Chan Cheng Kum, Mr. Lee Teow Keng and others.

I have never dined at the Peking Restaurant in the company of Mr. Chew Choo Sing and others.

10

XX'd by Mr. Kerr.

In March 1961 I was a civil servant attached to the Inland Revenue Department. It was a full time job. I had accumulated leave. It was a holiday trip for me. That was the only time I went to Sibiu.

I am positive I have never seen him (witness is referred to Mr. Chew Choo Sing) before

I and my father were seated together in the plane. I was seated next to my father. My father did not greet any passenger as an acquaintance during the flight. I knew Lee Teow Keng by sight since December 1963. I have never seen him before that. I have had dinner with my father at Peking Restaurant on less than 10 occasions over the last 3 years. It is possible there may have been business associates present when I dined with my father at Peking Restaurant.

20

I remember doing what I said above but it would be rather rare.

30

(Released)

Mr. Kerr calls:

P.W.12. Ernest Alfred John Clark s.s. I am the export manager of Fraser & Neave and Malayan Breweries. They are associate companies.

(I produce a set of photostat documents relating to D9 - marked P.20.)

"Rice" is the telegraphic name for Tiang Aik & Co. Sarawak Ltd. in Sibul and has since gone into liquidation.

10 Goods were shipped to Tiang Aik by the Hua Li on 17/3/60. On 19/3/60 in the morning I knew Tiang Aik's cheque was dishonoured by the bank. The shipping documents covering this cargo were Mate's Receipts. The named consignees in the Mate's Receipts were Tiang Aik one at Sibul and the other to Sarikit.

20 When I heard the cheque was dishonoured I rang up Chan Cheng Kum of Hua Siang Steamship Co. Ltd. I mentioned we had certain difficulties over payment in relation to goods consigned to Tiang Aik at Sibul and Sarikit. I asked Mr. Chan Cheng Kum to cable his agents at Sibul and Sarikit to remove the shipment and bond it until further instructions. Mr. Chan asked me if I had despatched the documents. That was his immediate reaction. I said I had unfortunately. He said with the documents in the hands of the buyers he will find it extremely difficult to withhold delivery from the buyer. I told him the circumstances surrounding the request for the holding up of delivery were very legal and he should have no difficulty in withholding delivery. I told him of the non-payment of the goods that had been ordered. Mr. Chan still insisted that I was putting him on the spot because by legal right the consignee could demand delivery by having the documents in his hands. I told him he should have no difficulty and if anything should come out by his withholding delivery then Malayan Breweries would stand by them. Mr. Chan then agreed to cable his agents in Sibul. Fraser & Neave & Malayan Breweries are companies having a capital of over 40 \$100,000,000/- each. Malayan Breweries and Fraser & Neave have previously shipped on Hua Siang's ships. We are very strong supporters of the Hua Siang Steamship Co. Ltd. Mr. Chan Cheng Kum is the only

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person I have ever dealt with in his company. By and large before and since this incident. I can't remember having dealt with Chan Kim Yam. I was in constant touch with Mr. Chan Cheng Kum about this from 19/3/60 to 5/4/60.

Mr. Chan used to ring me to find out what had happened to the cargo and when I had news from the Borneo Co. I used to ring up to reassure him.

Tiang Aik though they quoted the number of a cheque, the second cheque never arrived. 10

I rang Mr. Chan Cheng Kum and said we had made a final decision in the matter. The second cheque had been dishonoured as well. And would he ask his agent in Sibu to hand the goods to the Borneo Co. Mr. Chan Cheng Kum agreed to do but he wanted it confirmed in writing because he said he was being threatened with legal action by the buyers. I then confirmed it in writing. (Photostat copies of letters marked P20).

Tiang Aik eventually went into forced liquidation. 20

Adjourned to 10.00 a.m. on 22/4/64.

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Wednesday, 22nd April, 1964.

Counsel as before.

P.W.14. Ernest Alfred Clark o.f.o.

XX'm by Mr. Kerr (continued)

The second cheque of Tiang Aik was honoured. The 3rd party came to mitigate on behalf of Tiang Aik for the restoration of the agency. As I saw it as the goods remained unpaid it was a breach of contract by Tiang Aik and I thought it was legally all right. 30

If the cheque had been honoured then I would not have considered it as legal, providing the shipping documents were in the hands of the consignee. Mr. Chan Cheng Kum's main concern was that the documents had been mailed to the buyer. It has happened occasionally my department, when goods are shipped from Sarawak to Singapore, has been asked to take delivery of them without production of Mate's Receipt. When that has happened my department has dealt with Chan Cheng Kum's son. It would be dealt with by one of my subordinates in the office. The goods would be our own bottles and cases - empties. The reason why we did this was because postage time for Mate's Receipt was longer than sailing time of the vessel.

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XX'd by Mr. MacCrindle.

Cross-examination by Defendants' Counsel

I would not have to pay for the empties. We started to ship with the Hua Siang for the past 12 years at least. I was instrumental in shipping through Hua Siang Steamship Co. Prior to that they did not have a service to Sibiu. It may well be 10 years and not 12 years. Mr. Chan Cheng Kum and his father before had been agents for Fraser & Neave in selling for the last 30 years in Jambi, Indonesia.

Mr. Chan between 1952 and 1954 came to our office with a certain amount of Straits dollars that had been buried during the Japanese occupation. Mr. Chan Cheng Kum went to see Mr. Lewis

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my general manager and director. He had together with money a statement of account with Fraser & Neave which I understand had \$3,000/- in Mr. Chan's favour. Mr. Chan asked Mr. Lewis if it was possible to get the money back from Fraser & Neave and our reply was owing to the war and the general losses all round we could not bring ourselves to reimbursing Mr. Chan to the full.

As a gesture Mr. Chan asked our company to give cargo to a service which he has inaugurated with Sarawak. It was at this point that I was brought into the picture. I was introduced to Mr. Chan by Mr. Lewis. I was asked to hold him in cargo support and to negotiate with Mr. Chan for the credit balance he had pre-war. A successful conclusion was arrived at over the credit balance and he accepted a small sum as ex-gratia payment.

10

When I deal with Mr. Chan's company I usually ask to speak with him. We had to split our cargo naturally. At that time there were only 2 lines. Sarawak Steamship Co. and Hua Siang Steamship Co. and we distributed the cargo between them.

20

We got 2 cheques from Tiang Aik. One of the cheques was honoured subsequently on representation. Tiang Aik went into liquidation in 1961. It was after the last cheque was honoured. When I asked Chan Cheng Kum not to deliver to Tiang Aik I would not have said anything about the cheques bouncing as that would have reflected on my agents. I am sure I said there were difficulties over payment. I did not discuss anything about non-payment. I said there were difficulties over payment. I did not say about non-payment as it is a dangerous thing to discuss that people are not paying for the goods they take.

30

The letter of 6/4/60 to Hua Siang Steamship Co. was the written first confirmation of our instructions. Everything previously had

40

transpired on the phone and Mr. Chan asked me to give a final confirmation of my instructions in writing to deliver to the Borneo Co. as he would have no recourse.

He did not ask me to confirm in writing the reasons for the change of instructions. There is no written record of any reasons for doing so.

10 It is difficult for me now to say that if I considered the reasons important then I would have stated them in my letter. I have clerks in the office to deal with the business when I am away. It is not possible that one of the clerks telephoned Hua Siang about this. I did it myself.

Rex'd by Mr. Kerr.

20 When I asked Chan Cheng Kum to stop delivery to Tiang Aik, he asked me why I was making this request and what had gone wrong. Hua Siang Steamship had been carrying our cargo to Tiang Aik from the inception of the shipping service without any incidence. When he asked what has gone wrong I told him to be precise there was trouble over payment. I have no legal qualification, none whatsoever. There has been no instance of stoppage of cargo in transit.

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The question of Fraser & Neave standing behind Hua Siang Steamship Co. rose later when Tiang Aik proved unduly obstructive and threatened legal action. Legally Tiang Aik had every right to the goods the documents being at hand.

At the last stages I may have told Mr. Chan "Don't worry. The man hasn't paid for the goods. The goods are ours". I feel sure that I said that because I had decided to terminate his agency and I did not care. Throughout my discussion with Mr. Chan about the stoppage I think he was satisfied that we had a pretty good case.

(Released).

(It is agreed by all parties that the clearing applications D12 after they are completed by Mr. Cheah or the general clerk they are handed or collected by the peon who takes them to ask for a cheque to a director of the company. On all or virtually all occasions there will be a cheque and a director signing the cheque will put his initials on the form against the company's signature on the form. This application is made approximately once a fortnight in respect of each vessel when they are trading. In every one of these applications the space against the "Name of charterers" is either left blank or filled in with a dash.)

10

20

Mr. MacGrindle.

Putting in an agreed document - marked D14.

Mr. Lee: I say that:

- (1) At all material times T.S.C. were the owners of the goods in question.
- (2) On each occasion goods were delivered by Hua Siang Steamship to T.S.C. on T.S.C.'s direction or order.
- (3) That whatever rights Wah Tat Bank may have against T.S.C., Hua Siang Steamship was entitled to and obliged to deliver the goods as T.S.C. directed.
- (4) T.S.C. therefore adopt every contention put forward by Hua Siang Steamship in its defence against the plaintiffs and in so defending Hua Siang Steamship does so with the full authority of T.S.C.

10

Refers:

S.S.L.R. 1934 Page 114 RM.NL.L.
Chettiar vs. A.L.V.A. Chettiar.

20

At this stage 3rd parties do not wish to call any evidence.

Mr. MacGrindle:

Attornment and Estoppel.

Henderson vs. Williams 1895 1 Q.B. 521 & 534.

Distinction between the bailee stating goods are deliverable to or to be delivered to and the classes where bailee says goods are held for or held on account of or at the disposal of the claimant.

30

Stonard v Dunkin 170 E.R. 1178 Claim against a deft. bailee. The plaintiff claimed that bailee should deliver the goods and relied upon a written document in which the bailee acknowledged that he held for the plaintiff's account.

Hawes v. Watson 107 E.R. 484.

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Defendant bailee. Here there is a chain of sales. Someone in the chain had sold on to a buyer and had directed the bailee to hold the goods for the account of that buyer. The bailee then issued a document terms of which appear at bottom on 484 recording that by virtue of instructions from intermediate sellers the goods were "This day transferred to your account." While you can attorn to A via a 3rd party you cannot by attorning to a 3rd party attorn to A. Questions of property, no questions of agency.

10

Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

Holl v. Griffin 131 E.R. 898.

The defendant bailee wharfinger. The plaintiff had advanced money on a Stockton receipt. The goods were on way to London from Stockton. Wilson directed a London wharfinger defendant to deliver to the plaintiff. The plaintiff went to wharfinger, the defendant and the London wharfinger agreed with him that when he got the goods he will deliver to the plaintiff.

20

Knights v. Wiffen 1870 L.R. 5 Q.B. 660.

The defendant was the bailee. He sold some barley to M. who in turn sold to plaintiff. M gave to plaintiff a delivery order on the station master and plaintiff sent it to the station master and plaintiff also asked station master to confirm the instructions and send him a sample. Station master showed to defendant the delivery order and the letter and the defendant said "All right." and he delivered samples.

30

Grigg v. National Guardian 1891 3 CH.D. 206.

The plaintiff borrowed money from the defendants offering some furniture as security. The furniture was in a warehouse. Plaintiff gave delivery order to warehouseman in favour of the defendants' secretary. The plaintiff failed to pay the money which he owed and the defendants collected the furniture from warehouse. The defendants were about to sell furniture when plaintiff asked for an injunction.

40

Laurie v. Dudin 1925 2 K.B. 388
1926 1 K.B. 223 at 236-237

*Scrutton J.

*Farina v. Home 153 E.R. 1124.

Dublin Distillery v. Doherty 1914 A.C. 843 at 847.

(1) 862 & 863
(2) 847

10 2 passages - a document merely recorded that
bailee who issues the document has promised
to A that the goods will be delivered to B
(or are deliverable to B or consigned to B or
to be carried to B). It does not amount to
an attornment to B. The bailee holds the
goods as the agent for A until he has
attorned to B in some way and agreed to hold
the goods for him. 2 persons had control of
the whisky.

20 An attornment is an acknowledgment by a
bailee professing to be made in favour of the
alleged attorney and made either directly to
him or another for communication to him,
whereby the bailee expressly or impliedly
promises to hold for the alleged attorney or
on his account or to deliver to him on demand
and the attorney accepts that promise -
consensual - meeting of 2 minds must be there.

30 Estoppel is a representation of fact (a
mere promise to deliver in future will not do)
whereby the bailee declares (expressly or
impliedly) that he holds the goods for or on
account of or at the disposal of the claimant
and the claimant acts on that representation.

40 There is nothing in the Mate's Receipt
which professes to be a promise or a repre-
sentation in favour of Wah Tat Bank. It is
not addressed to Wah Tat Bank and it is not
issued to Wah Tat Bank. In relation to both
Wah Tat Bank and O.C.B.C. there is no agree-
ment, no meeting of minds, no communication
between the two. The Mate's Receipt merely
records that the carrier has been instructed
by the shipper to carry to O.C.B.C. or to

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deliver to O.C.B.C.

By implication the goods have not yet
been delivered to O.C.B.C.

1914 A.C. 862. 11 Ch.D. 68.

The goods were held for the shipper.

The words "consigned to" are not a
representation of the carriers' position or
intention but of the shipper. They must be
in relation to the shippers' intention.

Estoppel

1st. There is no representation to Wah Tat
Bank at all.

2nd. There is no representation in the docu-
ment as to the capacity or character in
which the carrier holds the goods. It
is consistent with the carrier holding
the goods for the shipper.

Mitchell v. Ede 113 E.R. 651

It is at most a representation that the goods
will be delivered and not that it has been
delivered.

So far as O.C.B.C. is concerned it did
not act on any representation in the document.
It would have acted exactly the same if the
document had been a delivery order to collect
payment from the customer. It never loaned
any money. It did throughout what it was
asked to do by Wah Tat Bank.

If there was a representation it was an
Evans v. Nichol representation, viz. a repre-
sentation that so long as the shippers'
instructions remained unrevoked the carrier
will deliver to O.C.B.C.

Ex parte Cooper

That if this document imports a representation
as is alleged it will be enough for the plain-
tiffs to show that the documents had been
shown to them.

10

20

30

Craven v. Ryder 128 E.R. 1103.

Defendant carrier. Plaintiff shipper and he had shipped goods on defendant's vessel and received mate's Receipt which said that he had received goods "for and on account of the plaintiff".

Adjourned to 10.00 a.m. on 24th April 1964.

Wednesday, 24th April, 1964

10 Counsel as before.

10.00 a.m.

Ruck v. Hatfield 106 E.R. 1321

Defendant bailee.

Seller shipper claimed against carrier.

Receipt on account of plaintiff.

Bruce v. Wait 150 E.R. 1036

Defendant not bailee.

Transaction rested on contract.

Byans v. Nix 150 E.R. 1634 at 1642

20 Defendant not bailee.

Plaintiff and defendant claimed through a 3rd party.

In 604 there was only one boatload.

In 54 there was a second boat load.

Change of mind here.

The boats were both hired and the boatmen paid by Tempany. "in care for and shipped to"

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No change of mind notified to carrier. The carrier held for the nominee. Mitchel Ede, a later case with this 1642.

Evans v. Nichol 133 E.R. 1286.

Claim against carrier bailee.

Carrier refuses to deliver.

There has been no change of mind notified by the shipper.

Mitchell v. Ede 113 E.R. 651 at 657

Wolfe v. Horncastle 126 E.R. 924

10

(1) This is a decision on the word "consignee" in a statute concerned with insurance policy.

It is not a decision on the words "consigned to" in a shipping document.

(2) The Bill of Lading there named "to be delivered to Cudbear & Co. or order".

Cork Distillers v. Great Southern 1874 L.R.

That in the case of land carriage where (a) goods are delivered by a seller to a carrier for carriage to the buyer, (b) this is done with the authority or instructions of the buyer, (c) the name of the buyer is given to the carrier there is a prima facie inference of law that the contract of carriage is made with the buyer.

20

Cowasjee v. Thompson 13 E.R. 454.

The plaintiffs/respondents were FOB seller to - . The defendants/appellants were owners of the vessel. The sellers claimed the goods; stoppage in transit. The carrier refused.

30

Claim failed because the sellers were not the shippers. It failed even though the sellers held a Mate's Receipt.

Schuster v. McKellar 119 E.R. 1407

Schuster was the plaintiff, owner/shipper.

Defendant was the carrier.

Explains on those lines in Hathesing & Laing.

In no case against a carrier has one who is not the shipper or owner succeeded except in Evans v. Nichol where the shipper has never revoked his instructions and the carrier was seeking to hold the goods for himself.

10

Cases like Cowasjæ and Hathesing v. Laing show that the mere holding of a Mate's Receipt by one who is not the shipper gives no claim against the carrier.

Hathesing v. Laing 1873 L.R. 17 Eq. 92

Custom at 104 and 105.

Assignment in the

Nippon Case 1938 A.C. 443

The person named in the Mate's Receipt is the defendant.

20

Hathesing v. Laing ⁴⁴⁶/₄₄₈ } Repeated reference to
446 } shippers.

Mack v. Burns 77 Ll.R. 377.

Henderson v. Comptoir d'Escompte 1873 L.R. 5 P.C.

This is not a claim in contract. It is a claim where the plaintiff seeks to assert - a property right. Thompson v. Dominy.

30

If A arranges for a consideration to enter into a contract on behalf of B, A will be an agent and B can claim on the contract even though B is not named nor known.

B may arrange for a consideration with A for a legal right to property to be assigned to or granted to A wholly or partly for the benefit of B.

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A is either a trustee for B or (2) A may be a bailee for B or (3) is an assignee with a right to possess.

On the assumption that we are dealing with a Bill of Lading:

Take Wah Tat Bank.

Not named in Bill of Lading.

(1) In practice and in law Wah Tat Bank could not get delivery from the carrier without O.C.B.C.'s endorsement. 10

(2) The position if Wah Tat Bank has a claim would be extraordinary.

Supposing a Bill of Lading is made out to A's (the shipper) order. A comes along with the Bill of Lading endorsed by Wah Tat Bank, not endorsed by the shipper.

(3) The position of Wah Tat Bank is then it had no contract with the carrier. It had a contract with the shipper and it had a contract with O.C.B.C. whereby in return for remuneration O.C.B.C. was to present the documents once or more often to T.S.C. and to collect the payment and to remit the proceeds to Wah Tat Bank. 20

The purpose of this Act was prior to this Act the transfer of a Bill of Lading by the general law merchant transferred the property in the goods. It was felt to be inconvenient because no contractual rights or liabilities were transferred. The purpose of this Act was to ensure that wherever the property passed the contractual rights and liabilities should also pass to the transferee. The property could pass by endorsement or consignment. 30

Page 214 Scrutton Para (1).

If an agent, then he should endorse it to the principal to sue.

A person not named in a Bill of Lading and not the shipper or an endorsee of it can have no claim in law under it against the carrier. If 40

he has an equitable right to the goods he may be able, given the right conditions e.g. timeous notice or joinder of the assignor, to get equitable relief but not damages for conversion or detinue.

10 In no case has a claim under a Bill of Lading been allowed where the claimant is not named in the Bill of Lading or the true shipper. In no case of attornment or estoppel has the plaintiff succeeded without pointing to an agreement by the bailee purporting to be made with him by name or a representation by the bailee purporting to the effect that the goods were held for him by A.

Adjourned to 2.30 p.m.

2.30 p.m.

We now come to O.C.B.C. on the assumption it is a Bill of Lading.

20 The mere holding of a Bill of Lading is nothing. It is not like holding the goods itself. Everything depends on the legal relation of the person holding to the person from whom he got it.

10 A.C. P.74 at 82 & 83.

O.C.B.C. is neither pledgee nor buyer here.

It has neither of those rights.

Suppose this is a Bill of Lading and O.C.B.C. is a mere nominee has it a better prima facie right than T.S.C.

30 Prima facie T.S.C. are the owners of the goods unless they have precluded by some legally binding contract to do so. But as between T.S.C. and O.C.B.C. there is no legally binding contract or anything at all precluding T.S.C. from claiming their own goods. The owners can even call for the goods if O.C.B.C. were the bailees. Supposing I have machinery which I desire to sell abroad in Germany and therefore I go to a local firm who has an agency in Germany and I contract with the local

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firm that I will ship the machinery to those distributors, that the local firm will arrange with the distributors that the latter will sell the goods and remit the proceeds to the local firm. Finally the local firm will take a commission out of the proceeds from which they will remunerate the distributors. Pursuant to that contract I ship the machinery to Germany under bills of lading naming the distributors as consignees. I send the Bill of Lading to the distributors. Before the goods arrive I have changed my mind and I call on the carrier to deliver to me. Suppose the distributors also call for delivery. If the carrier interpleads who has the better right to the goods, I submit I am entitled to delivery of the goods.

10

In the present case we delivered to the true owner, that we made satisfaction to the true owners. We were ordered or authorised by the true owners to deliver to them and we defend this claim by the authority of the true owners.

20

Notice

It is not quite but almost irrelevant. It would be relevant as assignee in a chose in action or if it was claiming equitable relief. O.C.B.C. is not claiming either of these things. It seems to claim under a legal title for negligence or detinue and for which a legal title will do.

The defendants did not know of Wah Tat Bank's interest. Did not know that Wah Tat Bank had loaned on the relevant cargo (or on previous cargo). They had no reason any more than any other carrier to investigate the various chops or rubber stamps (not being endorsement) but they certainly did not know what "BEP" meant. That they did not know what role O.C.B.C. played and they could never be certain if they were asked for delivery in Singapore without shipping documents that a bill of lading had not been issued.

30

Customs

It is said to be a trade custom. From a shipping view it is a shuttle service but from a banking view point it may be a different. One has to look at the trade as a whole.

40

10 In the great majority of cases Mate's Receipts are used. But in some cases people ask for Bills of Lading. One would be a little surprised to find in the same trade there were two separate classes of document of title, one having to be issued in exchange for the other. When people ask for Bills of Lading and they certainly do in Singapore and they do for reasons which are perhaps varied. This however involves times and effort and some people do it as a matter of policy. They do it because it is felt there is some purpose for doing it. It may have more value. It is only suggestive of the fact that confidence of some people in Mate's Receipt is not what one might expect if they were sure that in this trade a Mate's Receipt is a document of title.

20 There is a great temptation if one is seeking to prove a custom to all people who simply say "In our opinion it is a document of title. We always treat it as a document of title." That is not evidence of a custom. The opinion of merchants is not the custom of merchants.

To establish a custom one has really got to show what the actions of merchants are and to show that those actions are consistent only with the alleged custom. If the actions are as consistent with the non-existence of the custom as they are with its existence

Page 29 of Scrutton.

30 There should be a number of continuous cases where a parallel situation has occurred and it has been resolved in favour of the named consignee in the teeth of the shippers' instructions. We have had none here.

40 This is an alleged custom which seeks to enable a party to contract to confer rights to someone who is not a party to a contract and has no legal relationship whatsoever with the carrier. It can't be done by a mere trade custom - either negotiability or a right in an assignee to sue in his own name because that is not something the parties can do themselves by contract.

You can only establish that either by statute or by the general law merchant.

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Hals. Vol. 11 Page 189 - 190

Hathesing v. Iaing

S.S.L.R. 1934

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- (1) It is not sufficient to show that it is locally adopted.
- (2) Amongst the trade it must be universally adopted.

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Custom has to be certain and reasonable. If custom seeks to make a Mate's Receipt negotiable it is simply not a custom that can be operated if the document itself says it is not negotiable.

10

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Affreteurs Reunis v. Walford 1918 2 K.B. 498

Birkenhead 1919 A.C. 808, 809.

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Page 507 - 508 Scrutton.

Adjourned to 10.00 a.m. on 27/4/64.

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Monday, 27th April, 1964.

Counsel as before.

"Not Negotiable" document by custom it will be unreasonable.

20

The words "Not Negotiable" on a cheque have a different meaning. The statutory provisions regarding cheques, sec. 80 & 81 a transferer cannot transfer a better title than he had". This does not apply to a Bill of Lading, Bill of Exchange or Mate's Receipt.

Hibernian Bank Ltd. v. Gysin 1938 2 K.B.
1939 1 K.B.

By not transferable is meant not physically transferable so as to confer a right of suit in his

30

own name. Not negotiable means not transferable - that the transferee cannot claim on the document in his own name. Transferor is someone who initially having the right to claim on the document transfers it. In Bill of Lading the initial right to sue is in the shipper.

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10 In civil law the only right you transfer by a Bill of Lading is the property right and when it is "Not Transferable" the shipper cannot transfer the property right to a named consignee or transferee to confer a right to sue in his own name.

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Thompson v. Dominy 153 E.R. Page 534.

Mack v. Burns 77 Ll. L.R. Page 383.
- 'N.N.' is on this document a transfer

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(1) Copy of Bill of Lading marked "Not Negotiable".

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(2) Mack v. Burns - a single named consignee and no words like order. The document 2 times marked "Not Negotiable".

20 (3) Virtually no instructions of shippers negotiating the document for advance from a bank.

Defendants' Counsel's Closing Speech (continued)

Lastly Goh Leh of Heap Eng Moh who devoted his mind to it. If the original Mate's Receipt was good for delivery then how could he mark it "Not Negotiable".

30 Endorsement is not essential to negotiate, e.g. Bearer Bill of Exchange. Named consignee and an endorsee are put in the same position. Bill of Lading consigned to X or Bill of Lading to the order of shipper and endorsed to X. In both cases there is negotiation.

There is a plea in para 6A of the defence to the effect that on countless occasions in the past delivery was taken without documents. The documents were never redeemed from the bank after a substantial period when they must have known the vessels had arrived and that the banks never complained, so that the banks held out that T.S.C. had the right to do this or alternatively estopped themselves from complaining.

40 If the banks knew that a great many deliveries

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must have been taken without documents having been redeemed and if they by their conduct lead the carrier to believe that they have no objection that would be an estoppel by conduct precluding them from raising it now.

If any defendant is liable which one is liable? The principle is enumerated in Salmond On Tort P.113 of 12th Ed. Page 121 of 13th Ed.

Performing Rights Society 1924 1 K.B. 114.

(1) In May and June 1961 by whom were Chan Kim Yam, the Chief Officer of vessel and the crew who gave delivery were employed and paid?

10

(2) Was the Ltd. Co. merely an agent of Chan Cheng Kum or did it trade independently on its own account?

Clearly the Ltd. Co. employed the named individuals. Salaries paid by the company. Mr. Chan Cheng Kum has never been debited with the wages and he has never personally paid these wages. The employees regarded themselves as engaged by the company. No evidence to the contrary. Chan Cheng Kum had a current account with the company.

20

In all articles the master gives the undertaking. The master had no authority to engage crew on behalf of the owner. He was acting on behalf of the Ltd. Co.

From 4 witnesses Mr. Tay, Mr. Chan Kim Yam, Mr. Chan Cheng Kum and Capt. Kerr Gordon - all spoke of the vessel having been on demise charter from 1961.

30

Port clearance forms where charterers left blank or with a dash. It was a routine matter. Can it prevail against the testimony of 4 persons? Nothing inconsistent with a demise charter in the company's accounts. No indication of agency here. Slackness in adding the word Ltd. to all documents. No plea of estoppel or holding out here. The letter (circular) was unhappily worded.

1924 1 K.B.

40

1921 2 A.C. 465, 475, 476, 488, 479.
 Chan Cheng Kum is a joint tort feasor? In the
 absence of a relationship of company or master and
 servant then there must be common design,
 purpose

1924 Probate Division Page 155.
 Salmond Page 96 of 14th Ed.

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10 Was there common enterprise or design by Chan Cheng
 Kum? The actual tort was committed without Chan
 Cheng Kum. There was no design or common purpose.
 The correct inference is that the question of
 delivery was left to Chan Kim Yam. That Cheng
 Cheng Kum did not interfere with delivery, but that
 he knew that the company at the discretion of
 Chan Kim Yam released goods from time to time. In
 the case of these particular shippers he had been
 responsible in early 1961 in arranging with the
 parties that if the goods were released after the
 beginning of 1961 the individual directors of
 20 T.S.C. would also be bound by the indemnity but
 thereafter Mr. Chan Cheng Kum gave no direction as
 to delivery and he did not give delivery order.
 There is no evidence that he knew the goods were
 delivered until the claim was made in this case.

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- (1) No joint act.
- (2) No agreement between him and company as
 to enable this being done.
- (3) There is no common design, purpose or
 enterprise.

30 Acts by Chan Cheng Kum were as a superior servant
 of the company.

Mr. Kerr.

The defendants - the emphasis has been on
 points of law. The plaintiffs put their emphasis
 without disregarding any points of law on the facts
 and on the commercial common sense of this case.

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The 3 basic differences:

- (1) The defendants seek to knock the documents

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as not documents of title as not being
part of the law merchant.

- (2) Draw a pure artificial distinction
between O.C.B.C. and Wah Tat Bank.
- (3) They construe the words "consigned to
O.C.B.C. or order" and "Not Negotiable"
as though the effect of these 4 Mate's
Receipts will have to be considered in
isolation.

They cite cases which deal with isolated matters. 10

We are right for 3 reasons:

- (1) Custom.
- (2) Attornment.
- (3) Evans v. Nichol.

By the custom (usage) of the trade Mate's
Receipts such as these are documents of title
which represent the goods so that a delivery of a
Mate's Receipt covering certain goods operates as
a symbolic delivery of the goods just like the
delivery of the Bill of Lading or the goods them- 20
selves. There is nothing in law which excludes
the operation of this custom.

Even if these Mate's Receipts are not docu-
ments of title by custom of the trade, by the
custom of the trade the issue of Mate's Receipts
consigning goods to the order of a named consignee
operates as a representation that if the Mate's
Receipts are delivered to the consignee the goods
comprised therein would thereupon be held by the 30
carrier or shipowners for the account of or at the
disposal of the named consignee, and will only be
delivered against surrender of the Mate's Receipt.
What does the representation mean to a reasonable
man in the trade?

On the facts of this case it is indistinguish-
able from Evans v. Nichol and distinguishable from
Mitchel v. Ede.

- (1) There was a final and unconditional
appropriation of the goods covered by the
Mate's Receipts when T.S.C. delivered the 40
Mate's Receipts to Wah Tat Bank pursuant

to the contract to pledge the cargo. The pledge like a sale is completed by a final appropriation.

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(2) A final appropriation is irrevocable in law and it is quite wrong to suggest that the reference to Evans & Nichols to change of mind can be explained on a basis which involves saying that a final unconditional appropriation can be revoked.

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(3) The delivery of the Mate's Receipts to Wah Tat Bank constituted a final, unconditional and therefore an irrevocable appropriation of the goods to the contract of pledge and any subsequent dealing of the goods by T.S.C. inconsistent with the rights of Wah Tat Bank was a conversion by T.S.C.

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(4) The defendants were parties to this wrongful conversion.

Plaintiffs' Counsel's Reply (continued)

20

Redelivery of the goods to T.S.C. by the shipowners instead of the plaintiffs does not excuse the defendants for either of 2 reasons :

(a) The plaintiffs had a better right to possession than T.S.C. who had none.

(b) Because the defendants had implied notice of the plaintiffs' interest in the goods and were therefore "mere wrongdoers".

30

1891 2 Q.B. 653

The Defendants seek to escape the mere label of wrongdoers by saying that they acted under the direction of T.S.C. altering their instructions and they complied with such instructions. Even if there was a right (which is denied) to alter the destination of the goods after delivering the Mate's Receipt to Wah Tat Bank by giving directions to Hua Siang it is quite untrue that they ever gave such directions or that Hua Siang complied with any such directions. It is a mere

40

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legal artificiality. If one has notice of someone else's interests then by complying with instructions you became a wrongdoer.

3 main headings of fact findings :

- (1) Custom of the trade.
History of the trade.
- (2) Procedure as between T.S.C. and Wah Tat Bank and as between Wah Tat Bank and O.C.B.C.

Dealings between T.S.C. and the banks.
- (3) Relationship between T.S.C. and the defendants.

10

Chapter 2.

Law as to custom

On the assumption by the custom of trade relating to shipments from Singapore/Sarawak in either direction Mate's Receipts are documents of title.

What is said against me is that they are not negotiable by the law merchant. They confuse "negotiable documents" with documents of title which represent goods. Documents of title have nothing to do with the law merchant.

20

A document which purports to give rights to a holder inconsistent with the Common Law will not be recognised by the courts unless it is recognised by the law merchant or by statute.

A "negotiable" document is inconsistent with the Common Law in 2 respects.

30

- (1) It enables a transferor to transfer to a transferee a contractual right against the maker of the document, e.g. a Bank note, cheque, or Bill of Exchange.
- (2) A "negotiable" document is inconsistent with the Common Law in that a transferee can obtain a better title than the transferor.

Adjourned to 2.30 p.m.

2.30 p.m.

10 But none of this has anything to do with documents of title to goods, i.e. documents which represent the goods so that a transfer of the document operates as a symbolic delivery of the goods. Such documents are not "negotiable" in either of the 2 senses referred to above and are not inconsistent with the common law. There is no question of transferring Contractual Rights when transferring such documents. And there is no question of giving the transferee a better title than what the transferor had. Therefore it is not necessary for such documents to be recognised by the law merchant or the statutes.

Custom is sufficient.

- 20 (1) Difference between custom by law merchant and other customs. A custom of the law merchant is one of which the courts take judicial notice and which therefore has not to be proved. A local or trade custom has to be proved.
- (2) Although the Courts of England will not treat a document as "negotiable" in England unless it is covered by a statute or by the law merchant English law recognises that documents governed by a foreign system of law may be "negotiable" in the country where that system of law is in force.

30 Bill of Lading

It fulfills 3 functions, viz:

- (1) It represents receipt of the goods.
- (2) It is a document of title which represents the goods, i.e. a symbol of the goods so that a transfer of the documents operates in the same way as a transfer of the goods.

10 A.C. P.83.

40 The transferability of the Bill of Lading in this sense is not contrary to the Common Law and can therefore be established

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by a local or trade custom but it has now
come part of the Law Merchant and
therefore the custom need no longer be
proved.

- (3) "Negotiable character" of the Bill
Lading, i.e. a transferable contract.
This is contrary to the Common Law and
therefore requires statute - Bill of
Lading Act 1935.

Carver 10th Ed. Page 48.

10

The preamble to Bill of Lading Act
suggests:

Carver 10th Ed. Page 177.

It is not correct to suggest a Mate's
Receipt is not a document of title at
Common Law. It is not a document of
title by the Law Merchant so that proof
of a trade custom is necessary.

Halsbury Vol. II Page 110 art. 298.

Page 189 art. 351.

20

Halsbury Vol. II Page 185.

8 Law Reports Chancery Appeals

Page 520.

at 522.

527.

534.

All cases cited by defence deal with negotiable
documents.

153 E.R. 532.

When suing on a Bill of Lading we are not suing on
the contract but for conversion.

30

Partridge v. Bank of England 1845 L.J.Q.B.

No document of title but negotiable instruments.

Crouch v. Credit Foncier 1873 L.R. 8 Q.B. 374.

A document alleged to be a negotiable instrument
by local custom. Held contrary to the general
law and not part of the Law Merchant. They did

not refer to goods but purported to transfer contractual rights.

Merchant Banking Co. Ltd. & Phoenix (sic)
 Passenger Steel Co.
 Law Reports
 5 Chancery Div. 205
 at 217
 Coventry Sheppard & The Great Eastern Railway
 11 Q.B.D. 776

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10 Estoppel

18 Q.B.D. 515
 Picker v. London & County Banking
 A case on a negotiable instrument.

Bechuanaland Exploration Co. v. London Trading
 Bank 1898 2 Q.B. 669 - 671.
 674 - 676.

"On Negotiable Instrument"

Edelstein v. Schuler 1902 2 K.B. 144

Hathesing v. Laing 1.R. 17 Eq. 92

20 The custom there alleged and which failed
 was a custom between merchants in the market
 at Bombay. It was not alleged that it was
 custom binding upon shipowners and masters
 and all the remarks relating to the custom
 in the judgment must be read with that in
 mind.

Mack v. Burn's 77 Lloyd Reports.

Not alleged that a Mate's Receipt was a
 document of title to goods.

30 1934 S.S. L.R.

It was concerned with a negotiable instrument,
 not document of title.

Where cargo is damaged in a collision the owner or
 pledgee has a right of action. How he establishes
 the general property or special property in the
 goods is purely a matter of evidence.

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Such an action will be action in negligence
and for such an action it is not necessary to prove
property rights. It is sufficient to show a
financial or contractual interest in the goods.

Carver 10th Ed. 953 - 955

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Principles of Construction

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(1) Inland Revenue v. - 1935 A.C. 142-143.

(2) Carver Page 362 - 363.

(3) Glynn Margetson 893 A.C. (sic)

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on 28/4/64.

10

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9.30 a.m. Hearing resumed.

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Mr. Kerr (continues).

Hathesing v. Laing

Mack v. Burn's 77 LL.R. Page 377. Example
of collision of ships.

(1) In so far as damage to property rights
as a result of the collision the plain-
tiff has only to prove he had some
property right and it is by evidence he
has to establish this right. If there
is any conflict as to in whom the property
right lies the carrier will interplead.

20

(2) Where a person sues in negligence for
damage due to a collision at sea the
course of action is not confined to
injuries to property rights (full owner-
ship or special property) but extends to
any financial damage the plaintiffs have
sustained on his contractual rights.

30

Carver Page 953 - 955.

Chapter 3 Evidence of Custom.Chapter 4 "Not Negotiable".

Whereas in a strict legal analysis he is right by what the witnesses have said.

As a matter of strict legal analysis the contract is with the shipper alone in the first instance. Therefore the word "negotiable" refers to negotiation by the shipper and it is not permissible as a matter of strict law to treat those words as restricting negotiation by a named consignee - That is the defence.

10

Negotiation

I say he fails to give the strict legal analysis to the words "Not Negotiable". As a matter of strict law an instrument is "Not Negotiable" if it has neither of two characteristics:

- (1) if it does not enable the holder to transfer contractual rights against the maker of the instrument;
- 20 (2) if it does not enable a bona fide transferee to obtain a better title than the transferor.

I say transfer of the documents operates as a transfer of the goods. He goes further and says the commercial men mean by "Not Negotiable" not transferable. How does commercial man treat this "Not Negotiable"?

- (1) All 3 independent witnesses say that the words "Not Negotiable" are ignored in practice.
- 30 (2) The word "negotiation" was not used by witnesses when they were merely dealing with a named consignee.
- (3) The 'order' as when consigned to OCBC or order". the word order helps to construe the meaning of "Not Negotiable" in these documents.

The point I am making is put in Carver - Page 208.

"Not Negotiable" on a Mate's Receipt I submit means the following:

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(continued)

- (1) The shipper shall not be entitled to transfer the contract contained in or evidenced by this document to anyone else, i.e. the carriers' contractual obligations are owed to the shipper and the shipper alone.

As a matter of strict law that is the meaning of "Not Negotiable". It does not matter here as the plaintiffs are not suing on contract.

Walford 1919 Appeal Cases.

10

This is not a contract. The shipper can pledge the goods or sell the goods. Cargoes are always sold while afloat. "Not Negotiable" does not mean the shipper cannot pledge or sell the goods by means of this document.

He says the custom is unreasonable because the shipowner cannot contract out of it. The shipowner is not concerned in the property of the goods. He is concerned with his obligations as to delivery. "Not Negotiable" as a matter of law does not mean that the document cannot be a symbol representing goods so that the delivery of the document operates as a delivery of the goods.

20

Away from strict law :- What would a reasonable commercial man in this trade do? He would take into consideration the following circumstances.

He would see the surrounding circumstances in which these documents and say that these are used a document of title for a minimum purpose or for a wider purpose.

30

Minimum purpose - Transfer by a shipper to a named consignee.

Wider purpose in which these are used as documents of title is the further transfer by the named consignee to further 3rd parties.

The document has an expressed statement for naming the consignee in the printed form and therefore it envisages 3rd parties, the shipowners, the shipper and the consignee. These words appear in print in a printed form intended to be completed

40

in a number of ways.

If concerned with construction then it must be to construe the printed words "Not Negotiable" in the context of the written words "Consigned to OCBC order/notify shippers". The word "order" is the classic word for denoting either transferability or negotiability by the person to whose order delivery is to be made.

1935 A.C. Page 96 at 142 & 143. (sic)

12 A.C. Page 490

Carver Page 362 & 363

1893 A.C. 351 at Page 357.

I would invite to disregard "Not Negotiable" as is the practice of the trade or at most to limit the effect of the word order in the way it was done in the Hibernian Bank case.

If a Bill of Lading were marked "Not Negotiable" then although it would be transferable between the shipper and the named consignee it would not be transferable by the named consignee to third parties.

Scrutton Page 192.

1939 1 K.B. 483 at 489.

Chapter 3

Carver 750.

Adjourned to 2.30 p.m.

2.30 p.m. Hearing resumed.

Not a single shipper has been produced by the defendants from Sarawak to say that Mate's Receipts are not documents of title. Not a single bank has been called, not even the Hongkong & Shanghai Bank (the defendants' bank) by the defendants.

The practice of bank advancing money for shipment from Sarawak/Singapore is on a much greater proportion than from Singapore/Sarawak. The reason is that Singapore banks for export purposes do not get asked to extend these facilities as Sarawak banks.

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There is no greater proportion of cases where banks give stop notices in the Sarawak trade under Mate's Receipts than in the normal Bills of Lading trade in other areas.

Mr. Flynn.

- (1) He was defendant's agents and came into the local trade in June 1961 as agents for Hua Siang.
- (2) Evidence not based on experience of the trade but of his personal opinion and what he did on Hua Siang's instructions.
- (3) He had acted on instructions of shippers to transfer the destination of the goods. No examples given. If it happened it happened after this case.

10

-- and his position since the case started disqualified him.

Mr. Tan Chia Kee of Singapore Tobacco Co.

Taught in standard English procedure.

Mr. Kuek

20

His evidence does not go far.

Mr. Cheng.

-

This submission of the existence of the custom does not depend upon no Bills of Lading are used in this trade. It merely shows that documents which were documents of title were exchanged for a more conventional document.

Why do they do this?

- (1) Because it is a standard procedure.
- (2) You can get more than one signed copy.

30

Bills of Lading are signed only by certain persons in the office of shipping agents. Banks have their signatures. Here only Chan Cheng Kum and

Chan Kim Yam are authorised to sign Bills of Lading.

Chapter 5.

It would make no difference if it was a Bill of Lading.

Wah Tat.

If it was a Bill of Lading can Wah Tat claim on conversion? I submit yes.

10 If A delivers to B a Bill of Lading consigned to B's agent at the port of delivery with the intention of pledging the cargo to B by consigning it to B's agent at the destination then this creates a valid pledge of the cargo in favour of B.

A pledge requires:

- (a) an agreement to pledge goods as security for some advance;
- (b) delivery of possession to the pledgee actually or constructively.

20 Where pursuant to the agreement to pledge goods are held for the account of or to the order of the pledgee, the pledgee has been given constructive possession of the goods wheresoever the goods may be.

30 When a Bill of Lading makes the goods deliverable to a named consignee the transfer of the Bill of Lading without any endorsement will transfer the right to possession to the named consignee if the transferor so intended. If the named consignee then holds the Bill of Lading as agent for a principal then principal is in constructive possession of the goods. In the present case if T.S.C. had delivered the goods to O.C.B.C. as agents for Wah Tat so that O.C.B.C. held possession for Wah Tat, then Wah Tat would have constructive possession of these goods.

The position is exactly the same if instead of delivering the goods to O.C.B.C., T.S.C. consigned the goods to O.C.B.C. as the named consignee to O.C.B.C. at Wah Tat's instructions pursuant to an agreement to

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pledge. Have O.C.B.C. a right to claim if they have the Bill of Lading.

One can test it this way. Who has the better right for immediate possession? Here T.S.C. has pledged the goods to Wah Tat for an advance on a Bill of Lading consigned to O.C.B.C.

Suppose the shipowners had delivered the goods to X without Bill of Lading. Would T.S.C. be able to sue X in conversion for having received T.S.C.'s goods? No, because T.S.C. has lost its right to immediate possession. 10

Salmond - Page 277,
Page 300.

Part II.

Chapter VI Attornment & Estoppel.

Written submission.

Laurie v. Dudin 1926 1 K.B. 223.
1914 A.C. 823, 852, 857.

The cases cited by the defence.

That in none of them was there any discussion as to what the document meant in the trade. These were all isolated transactions. 20

(1) 131 E.R. 894.

(2) L.R. 5 Q.B. 660 at page 665.

Adjourned to 9.30 a.m. on 29.4.64.

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9.30 a.m. Hearing resumed.

Mr. Kerr.

To a commercial man there is no difference between consigned to and deliverable to or to be delivered to a carrier's document. 30

Dublin Distillery case.

This trade proceeds on the basis that when a carrier issues a Mate's Receipt stating the goods are consigned to a named consignee or order then the carrier anticipates that the Mate's Receipt is likely to be delivered to the named consignee and that the statement consigned to him will be relied by him.

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All 4 cases cited by defence -

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10 Godtz v. Rose
Farina v. Home
Henderson v. Williams
Attenborough

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All relate to isolated incidents and do not refer to what is the practice in this trade. What do they do according to the trade?

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Carver Page 374.

Ex parte Cooper 11 Ch.D. at 75

Plaintiffs' Counsel's Reply (continued)

Was the transit at an end or not? That was the only point decided here.

20 Here we need not worry whether the carrier has ceased to be such. It was vital in that case but not here.

Attornment or estoppel.

If a carrier or banker represents that he holds goods for X, X being O.C.B.C. can X's principal rely upon that representation against the carrier or can X only rely on it? As a matter of practice the principal can rely on this representation.

- 30
- (1) A principal is bound by the representation made by the agent (acting in the course of his employment).
 - (2) A notice to the agent is notice to the principal.
 - (3) Knowledge of the agent is the knowledge of the principal.

Boustead Arts. 106 & 107

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No case I have come across.

If Wah Tat cannot rely on goods held for O.C.B.C. then O.C.B.C. relied on the representation themselves. They acted on it as agents of Wah Tat. They rested satisfied. Gave time, did not give stop notices.

Chapter VII

Evans v. Nicol and appropriation :

Should not be misled by latter not having changed his mind. 10

It was decided on 2 grounds.

(1) estoppel

(2) that plaintiffs were pledgees. There has been a final appropriation as pledgee.

On he gets Mate's Receipt (1) estoppel operated and (2) there would be a final appropriation.

Therefore the remarks of the shipper altering his instructions must be similar to Bruce v. Wait.

You cannot disturb an appropriation once made. 20

If I can satisfy you that once the appropriation has taken place then shipper cannot alter his instructions - The Evans & Nichol.

In a contract of sale of the pledgee of unascertained or future goods the general or special property passes to the buyer or pledgee.

The only remaining right is then the unpaid seller's right of stoppage in transit.

An appropriation is an election and like all elections is irrevocable. Once the property has passed the seller or pledgor cannot cause it to revert or pass back by any revocation or change of mind. The unconditional delivery to a buyer or pledgee in pursuance of the contract of the document controlling the goods is an irrevocable appropriation. 30

Benjamin on Sales.

Chapters 5 & 6 of 8th Ed. Page 327
on C.I.F. Contracts.

3rd Ed. Page 138.

Carver Page 710.

Mitchel & Ede

Ruck v. Hatfield 106 E.R. 1321.

10 The present case is stronger than Evans & Nichol. Here we submit the Mate's Receipt was as good as a Bill of Lading. It was intended then to be a Bill of Lading shipment. Notwithstanding that it was held to produce a pledge or it operated as an estoppel against the shipowner.

20 Why should a shipowner when a Mate's Receipt is consigned to a 3rd party accept the directions of the shipper without production of the Mate's Receipt. If he does so he does it at his peril and the peril is covered by the indemnity. It is not a matter of any sense of justice for the defendants to say you should have asked for a Bill of Lading.

Chapter 9.

Alteration of Instructions and Notices.

Did the defendants in fact deliver these goods to T.S.C. because T.S.C. altered their original instructions to deliver to O.C.B.C. or order and therefore Hua Siang complied with it.

30 He had no right to alter the instructions. There was no altered instructions here to vary the original destination of the cargo. The phrase used is request (from the pleadings). No directions have been proved in respect of the 4 shipments in question. They took delivery under a standing understanding. In cases where shippers altered their instructions it was not to go through the transaction with A but to switch to B. If we apply this to the hundreds of transactions here there was never any change of mind. If in the present 4 cases there was any change of mind then

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how is it to be reconciled with the past course of conduct.

By arrangement with the shipping company T.S.C. prematurely got possession of the goods. The evidence supports there was such a course of dealing between the parties over the years.

3 A.C. Page 193 at 197 and at 207

Universal Cargo Carriers Corp. v. Citati.

1958 2 K.B. 254

Adjourned to 2.15 p.m.

10

2.15 p.m.

Reads submission on evidence and reasonable inferences to be drawn.

Nippon case 1938 A.C. 447.

One transaction in isolation. No adverse inference to be drawn. This case did not deal with a course of dealings.

Notice

Defence relies on absence of notice.

"Therefore I redelivered to shipper on his instructions." Are the bailees wrongdoers? Did they have notice? In all cases the question of notice was investigated in each case where goods were delivered or Bill of Lading issued without production of Mate's Receipt. In each of these cases wherein defendants succeed they had no knowledge of anybody else's interest. The reason why notice has been investigated in every case is because the issue of a Bill of Lading or the delivery of goods without production of Mate's Receipt is prima facie wrongful.

20

30

Nippon at P.445.

Altered instructions imply the interests of others and put the carrier in notice of their interest.

7 House of Lords Cases Page 757 at 766-767.

National Mercantile 44 L.T. 767

No notice at all - mere conduit pipe.

Glyn v. East India 7 A.C. at P. 596

Official Assignee Madras

1935 A.C. 53 at Page 56.

This sentence is no authority. The question of notice is not investigated. The case did not turn on that point.

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Plaintiffs' Counsel's Reply (continued)

- 10 Actual notice can be expressed or implied. It can be implied from all the circumstances. Can the defendants here say they were mere "conduit pipes" or were they in some way principals? Were they acting in concert with T.S.C.

Chapter X.

Which defendant is liable or both defendants are liable?

- 20 That Chan Cheng Kum expressly or impliedly directed or procured or aided or counselled the delivery to T.S.C. He was a party to it and was responsible for it to happen. But for some action by him it would not have happened. He is a tortfeasor.

No company has committed a tort by itself but only as joint tortfeasor. There is only one novelty here. The shipowner is saying though it happened to my ship I am not liable. If there is bare boat charter, this may happen. This is unique.

Bare-boat charter.

- 30 Where the crew or members of the vessel commit a tort either the owner of the ship or the bare boat charterers are liable because the liability is of the person in possession and having control over the ship.

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The burden is on the owner to show he has parted with all control. The test is not who appoints and pays the crew. In so many cases the crew are appointed and paid by managing agents. They manage the ship of the owner but crew remain the servants of the owner of the ship and the shipowner is liable. Who had possession and control of the ship in May, June, 1961? Was it Chan Cheng Kum or the Ltd. Co. The answer must be Mr. Chan Cheng Kum unless there was a bare boat charter party. 10

The defence must satisfy me on a balance of probabilities that there was a genuine, binding, charter party with the Ltd. Co.

None of the accounting evidence can assist at all in this case. No accounts were in existence in May and June 1961 showing what the true position was. What independent evidence is there to show the real relationship of Chan Cheng Kum and the Ltd. Co.

- (1) The company was in existence. 20
- (2) A circular had been sent out - page 5 of 'A'.
- (3) The company though in existence, no shares allotment had been issued until November 1961 - D13.
- (4) The position of the company during the material time was fluid.
- (5) Out of 20 Mate's Receipts 18 signed on behalf of the firm.
- (6) Letter to Rejang - Page 10 of 'A'. 30

May be slackness but rather odd. It suggests there was a fluid situation. No agreement at all between Chan Cheng Kum and the company. There was not crystallised binding agreement about the material time regarding the ships.

This oral bare boat charter came into existence. An oral bare boat charter is unusual. Page 31 of 'A'. On 22nd September, 1961 the notice of bare boat charter party had not been ...

Pages 43 and 48 of Pl.

The affidavit of documents of defendants does not refer to the minute of the Ltd. Co. - D13. This may be slackness but the affidavit is on oath. The first time when we knew about this was in December 1963. No previous reference anywhere.

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10 Every time a ship sailed from Singapore a Port Clearance Application form had to be filled up - D12. The forms say there is no charter party. It would appear they did not think in their minds that there was a bare boat charter.

Furniture of the company.

Meeting on 30/12/60 - Minute D13.

Chan Kim Yam - employment of the crew.

Tay - discussion on employment of crew in a general way - when discussing bare-boat charter.

No document in existence of the existence of the oral bare boat charter party.

20 Chan Kim Yam did not speak about bare-boat charter to the Master.

Capt. Kerr-Gordon spoke of the bare-boat charter party.

The whole thing looks extremely vague.

On this I am asked to hold that there was a bare-boat charter-party and a complete diverging of the possession and control of the ships by Chan Cheng Kum.

I say the defendants are asking the court to assume too much.

30 If there is an oral bare-boat charter court would require substantial proof - something real and binding.

There may have been discussion of a bare-boat charter party. Nothing was concluded. There was slackness and the position was fluid.

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Plaintiffs' Counsel's Reply (continued)

Defendants' Counsel Addresses the Court

Assuming there was a bare boat charter party. -

1921 2 A.C. Page 465.

1924 1 K.B. at P.14 & 15.

Joint tort feason 1924 Probate P.140.

at P.155 and at 156 and at 159.

If not satisfied about bare boat charter party then Chan Cheng Kum is solely liable. Otherwise the company is liable. Whether the directing mind was Chan Cheng Kum either on policy or routine matters. Then he is liable also.

10

Para 6A.

Skib Thor v. Tyrer 1929

35 Ll. L.R. 163.

Mr. MacCrindle.

L.R. 8

5 Ch. Div. 205

11 Q.B. Div. 776.

Not one of these cases has the law recognised a document as a document of title merely because a trade custom or local trade practice regarded it as such. That a trade practice can be relied upon to assist in the interpretation of a wording in a document which in relation to a given set of acts is either ambiguous or neutral.

20

8 Chancery Appeals 520 (530 to 533).

Reputed ownership depended on repute. A common usage is very relevant on common understanding. It is not a decision on a document.

5 Ch. Div. 205 - 220.

- (1) Defendants accepted the charge subject to lien was there a lien.
- (2) The original bailors had never changed their instructions to defendants.
- (3) The case did not expressly decide whether the Iron Warrant was a document of title at Common Law - Page 215.
- (4) It is a decision that the word "deliverable" in Iron Warrant construed in the light of the practice of the trade is to be interpreted "deliverable free from lien".

10

Page 216 - 217 a matter ...

Chancery Judge not Common Law Judge.

- (5) The bailee there was a holding bailee and not a carrier.

11 Q.B. Div. 776.

- (1) Another estoppel case.
- (2) No trade custom or any trade practice was alleged and not basis of the decision.
- (3) Held to order

20

Pages 779 - 780

1935 A.C.

Court: Order. C.A.V.

Monday, 15th June, 1964. Coram: Kulasekaram, J.

Suit 1284/61

Mr. Goh Heng Leong for Plaintiffs.

Mr. McWilliams for Defendants.

Mr. Peter Lee for 3rd Party.

30

Mr. McWilliams:- This claim by the defendants against 3rd parties has been settled.

Mr. P. Lee on behalf of all 3rd parties withdraws all allegations of fraud, misrepresentation and undue influence.

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Defendants' Counsel Addresses the Court (continued)

Third Party Proceedings

Counsel for the Defendants Addresses the Court

15th June 1964

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Court: Order By consent judgment against Tiang Seng Chan (Singapore) Ltd. with costs agreed at \$2,000/- to be paid to the defendants or their solicitors; no order against 2nd, 3rd and 4th members of the 3rd parties and also no order as to costs against them.

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Intld. T.K.

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Third Party
Proceedings

Consent Order
for Judgment
against 1st
Third Party

15th June
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Written
Judgment
delivered
30th December
1965

Thursday, 30th December, 1965. Coram: Kulasekaram, J.

Mr. M. Karthigesu for Plaintiffs.

Mr. C.M. Smith with Mr. McWilliam for Defendants. 10

Mr. Hoo Chun Hee for 3rd parties.

Written judgment delivered today.

T. Kulasekaram.

J U D G E

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FOUNDATIONS OF JUDGMENT OF KULASEKARAM, J.Coram: Kulasekaram, J. Date: 30th December, 1965.

Mr. M.E. Kerr, Q.C.,
with Mr. R.H. Green and Mr. M. Karthigesu
for Pltfs.

Mr. A. MacCrindle, Q.C.,
with Mr. C.H. Smith for Defts.

10 Mr. R.S. Boswell with
Mr. Lim Seow Beng for Third Parties
and subsequently Mr. S.S. Lee in place of
Mr. R.S. Boswell.

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Grounds of
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FOUNDATIONS OF JUDGMENT

The first plaintiffs are and were at all material times a bank having its head office at Sibn, Sarawak, and incorporated in accordance with the laws of Sarawak.

20 The second plaintiffs were at all material times allegedly acting as the agents of the first plaintiffs.

The first defendant was at all material times the owner of the motor vessels "Hua Heng" and "Hua Li".

The second defendants were allegedly at all material times the charterers of the "Hua Heng" and "Hua Li" or alternatively persons who had booked space therein.

30 The first third party namely Tiang Seng Chan (Singapore) Limited (who shall hereinafter be referred to as the shippers) from time to time shipped goods from Sarawak to Singapore.

This action arises out of 20 consignments of rubber and/or pepper shipped on board the "Hua Heng" and "Hua Li" for carriage from Sibn, Sarawak, to Singapore by the shippers.

Before everyone of these 20 shipments, the

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shippers in each case obtained advances from the first plaintiffs for the purchase of the goods involved in these shipments and having subsequently shipped these goods on the defendants' said vessels received Mate's Receipts from them for such shipments. These Mates' Receipts were handed to the first plaintiffs who treated them as some form of security for the advances they had made. These Mates' Receipts were sent to the second plaintiffs in Singapore and it was expected that the obligations of the shippers to the first plaintiffs would be met and the Mates' Receipts redeemed from the second plaintiffs.

10

The shippers, however, obtained delivery of these 20 consignments of goods from the defendants without producing the Mates' Receipts or any other shipping document but on their issuing letters of indemnity.

The plaintiffs now claim against the defendants for the alleged wrongful delivery of these 20 consignments to the shippers in Singapore without their producing any shipping documents whilst they (the second plaintiffs) were holding the Mates' Receipts in respect of these shipments.

20

The total value of the 20 consignments of goods is in the region of \$600,000/- and that is what the plaintiffs are claiming now.

It was agreed during the course of the trial that the issues between the plaintiffs and the defendants be heard first and subsequently the issues between the defendants and the third parties.

30

Later however, the defendants and the third parties to this action have apparently reached some sort of a settlement so that, as far as this court is concerned, there is now merely a straight contest between the plaintiffs and the defendants.

I shall append to this judgment the list of authorities that I have been invited to consider regarding this action.

With this brief outline of the case I shall proceed to make my observations and findings regarding the issues involved.

40

All the parties in this action knew what was going on. Each party took certain risks to gain some advantage or other. This being so no party can now be heard to say that he was unaware of what had actually taken place.

10 It is true that most persons, engaged in this trade, looked upon the Mates' Receipts as documents of title and some of them if not most of them, acted in the belief that they were documents of title. There is evidence that most of them doing this type of trade in this area under consideration still treat the Mates' Receipts as documents of title and carry on the trade under this belief. But the main question is whether these Mates' Receipts are in fact documents of title and the answer to this, in my view, is a clear and emphatic "no".

20 It is also my view that no amount of custom as that described in this case can change the character of this document so as to confer any additional rights and thus made the Mates' Receipts equivalent to documents of title. A local custom however strong can never achieve this effect. If a contrary view is taken that such a well recognised local custom can achieve this end, and, in fact change the character of the document, then what would be the position of a new carrier who comes to this trade and is not aware of this local custom? Should it be said that when he comes into this trade he ought to familiarise himself with the local trade, or suffer the consequences if he does not know or take the trouble to make himself aware of the existence of such a custom? In my view no custom can grow in a matter like this to have a binding effect in law unless it be of universal application. Of course, if there are local laws that have been enacted on this matter in this area, then however strange they may appear to be, full effect would be given to such enactments and a plea of ignorance of such enactments will be of no avail. The position here is not governed by any such enactments and indeed the pleadings do not lead to any such conclusions.

40 The plaintiffs' case is merely that a local custom has grown up and everyone who comes into the local trade is bound by such a custom. I do not accede to this proposition of the plaintiffs' case.

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The Mates' Receipts can never become documents of title unless there is clear expressed legislation in the local area, or the custom in this particular trade has been proved to be applicable all over the world so that it would without a doubt acquire the force of law.

This disposes the question as to whether the Mates' Receipts, such as were issued here, are in fact documents of title.

The next question that I have to deal with is whether the defendants had in any way attorned to the plaintiffs so as to make them liable. It is true that in most of the Mates' Receipts in question, the Mates' Receipts say "Consigned to order O.C.B.C./notify Tiang Seng Chan" but in the case of a few, the abbreviated form "Consigned O.C.B.C./Tiang Seng Chan" has been used. On the evidence I accept that there is no difference between the two types of Mates' Receipts and I shall treat all Mates' Receipts in this case as reading "Consigned to order O.C.B.C./notify Tiang Seng Chan". The defendants may have anticipated or even known that such Mates' Receipts were intended to be deposited or in fact deposited with the first plaintiffs who are the principals of the second plaintiffs (O.C.B.C.) The plaintiffs contend that by issuing such Mates' Receipts the defendants held out that they were holding the goods for the first plaintiffs (as principals) or at least directly for the second plaintiffs. They say that on the authorities cited the proper test is whether the first plaintiffs and in any event the second plaintiffs or both of them "rested satisfied" that the defendants were holding the goods for them and thereby putting themselves in liability to one or either of the plaintiffs or both of them as soon as the Mates' Receipts reached the first plaintiffs or in any event the second plaintiffs. My own view is that this test is not sufficient in itself to arrive at a decision as to whether the conduct of the defendants amounted to any attornment by the defendants to the first plaintiffs or the second plaintiffs or both of them. The real test in such a case, in my opinion is whether the first and second plaintiffs or both of them were "justified in resting satisfied". Mere knowledge that these Mates' Receipts would be

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deposited with the first or second plaintiffs or any of them for advances of money would not do. There must have been a clear understanding between the defendants and the first and second plaintiffs or either of them that the defendants would be holding the goods for them to constitute an attornment by the defendants in favour of one or other or both the plaintiffs. There is no evidence whatsoever that there was any such understanding between the defendants and any of the plaintiffs. That being so the Plaintiffs' plea of attornment also fails.

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I wish to pause here to refer to the form of the Mates' Receipts "Consigned to the order of O.C.B.C. etc.". One should bear in mind that these Mates' Receipts were marked "Not negotiable". The word order in the phrase above at most could have qualified the non-negotiability of the document but in my view did not in any way make the defendants liable as persons who had attorned to any of the plaintiffs. It would of course be different if there was an agreement between any of the plaintiffs and the defendants that the defendants without such documents would not part with the goods without the expressed consent or knowledge of any of the plaintiffs. The defendants may well have known by the course of conduct that one or other of the plaintiffs were in possession of the Mates' Receipts when they released the goods to the shippers.

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As far as the defendants were concerned they looked upon the shippers as the owners of the goods and had no obligation to any of the plaintiffs to withhold delivery of the goods from the shippers. The defendants knew that the shippers were the owners of the goods and had every right of delivery to them. The defendants were at no stage told by any of the plaintiffs that they had any interest in these goods and that they should not deliver them to the shippers; any such intimation was only made after delivery had actually taken place. It is true that these goods were delivered by the defendants to the shippers without production of the Mates' Receipts but the moment the defendants were satisfied that the persons claiming delivery were the shippers they were justified in delivering the goods to them. By the sheer deposit of these Mates' Receipts with someone else or the non-production of them, the defendants were not bound to refuse delivery to the

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In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 18

Grounds of
Judgment of
Kulasekaram,
J.

30th December
1965
(continued)

In the High
Court of the
State of
Singapore,
Island of
Singapore

No. 18

Grounds of
Judgment of
Kulasekaram,
J.

30th December
1965
(continued)

shippers when so requested. It is true that if in the meantime the Mates' Receipts had been exchanged for Bills of Lading then the defendants would have been liable. In fact to protect themselves against such an eventuality they took letters of indemnity before the goods were delivered.

As far as this case is concerned it does not matter what the defendants knew. If the goods were properly pledged to one or other or both the plaintiffs then the defendants would be clearly liable but here the goods were not so pledged. Further, as I had said earlier, the defendants had not in any way attorned to any of the plaintiffs that they would hold these goods for them.

10

That being so the claim of both the plaintiffs against the defendants fails and is dismissed with costs.

In passing I would like to add that there were various ways open to the plaintiffs to protect their interests. They could have easily informed the defendants of their interests and asked the defendants not to part with the goods and if the defendants had agreed to do so then that would have been an end to this matter. This was not done here.

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The plaintiffs could have asked for proper documents of title namely Bills of Lading to protect their interest but this too they did not do.

The Plaintiffs carried on their activities in this matter on the basis of trust and not in a regular businesslike manner and they have been let down. While my sympathies are entirely with them I cannot possibly see how they can expect any redress from this court for their actions. They have only to blame themselves for their misplaced trust.

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Having disposed of this matter in this manner I do not propose to deal with the consequential effects of how each of the defendants would have been liable had I held the plaintiffs to have succeeded in this action. These matters were thoroughly canvassed before me and are fully on the record of these proceedings. In view of my decisions on the main issues I do not consider it necessary to deal with them at all.

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(Sgd.) T. KULASEKARAM

J U D G E

No. 19

FORMAL JUDGMENT dated 30th December 1965In the High
Court of the
State of
Singapore,
Island of
Singapore

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited

...

Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Company Limited ...

Defendants

And

1. Tiang Seng Chan (Singapore) Limited
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon

...

Third Parties

No. 19

Formal
Judgment30th December
1965

10

30th day of December 1965

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This action coming on for trial before the Honourable Mr. Justice T. Kulasekaram on the 2nd, 3rd, 4th, 5th, 6th, 9th, 10th, 11th, 12th, 13th, 16th, 17th and 18th days of December 1963, 31st day of March 1964, 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 24th, 27th, 28th and 29th days of April 1964, 15th day of June 1964 and this day in the presence of Counsel for the abovenamed Plaintiffs and for the abovenamed Defendants and upon reading the pleadings and hearing the evidence adduced and what was alleged by Counsel as aforesaid THIS COURT DOTH ADJUDGE that the claim of the abovenamed Plaintiffs be dismissed with costs AND THIS COURT DOTH FURTHER ADJUDGE that the costs of this action be taxed on the Higher Scale of Costs as between Party and Party and paid by the abovenamed Plaintiffs to the abovenamed Defendants AND THIS COURT DOTH CERTIFY that the abovenamed Defendants be allowed the costs for two Counsel.

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Entered this 19th day of January 1966 in
Volume XCVI Page 25 at 11.00 a.m.

(Sgd.) Ho Kian Ping

Dy. REGISTRAR.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 20

NOTICE OF APPEAL dated 15th January 1966

Civil Appeal No: Y 2 of 1966

No. 20

Between

Notice of
Appeal

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Limited ... Appellants

15th January
1966.

And

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. ... Respondents

10

(In the Matter of Suit No: 1284 of 1961 in the High Court in Singapore

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking Corporation Ltd. ... Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. ... Defendants

20

And

1. Tiang Seng Chan (Singapore) Ltd.
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon ... Third Parties

NOTICE OF APPEAL

TAKE NOTICE that the abovenamed Appellants being dissatisfied with the decision of the Honourable Mr. Justice T. Kulasekaram given at the High Court, Singapore, on the 30th day of December, 1965, appeal to the Federal Court against the whole of the said decision.

30

Dated the 15th day of January 1966.

(Sgd.) Allan & Gledhill

Solicitors for the Appellants

To: The Registrar,
The Federal Court,
Malaysia.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

and to: The Registrar,
The High Court in Singapore at Singapore.

and to: Messrs. Laycock & Ong,
Solicitors for the Respondents,
Singapore.

No. 20

Notice of
Appeal

10 and to: Mr. S.K. Lee,
Solicitors for the Third Parties.

15th January
1966
(continued)

No. 21

No. 21

MEMORANDUM OF APPEAL dated 25th August 1966

Memorandum of
Appeal

Civil Appeal No: Y 2 of 1966

25th August
1966

Between

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Ltd. ... Appellants

And

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Co. Ltd. ... Respondents

(In the Matter of Suit No: 1284 of 1961 in the High Court in Singapore

Between

- 1. Wah Tat Bank Limited
- 2. Oversea-Chinese Banking Corporation Ltd. ... Plaintiffs

and

- 1. Chan Cheng Kum
- 2. Hua Siang Steamship Co. Ltd. ... Defendants

And

- 1. Tiang Seng Chan (Singapore) Ltd.
- 2. Lee Chin Tian
- 3. Lee Teow Keng
- 4. Lee Peng Koon ... Third Parties

MEMORANDUM OF APPEAL

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 21

Memorandum of
Appeal

25th August
1966
(continued)

Wah Tat Bank Limited and the Oversea-Chinese Banking Corporation Limited, the Appellants above-named appeal to the Federal Court against the whole of the decision of the Honourable Mr. Justice T. Kulasekaram given at Singapore on the 30th day of December, 1965 on the following grounds:-

1. That the learned trial Judge was wrong in deciding that a local or trade custom, however strong, whereby Mates' Receipts are treated as documents of title can never be effective in law, because such a custom requires to be of "universal application". 10
2. That the learned trial Judge failed to consider the evidence led by the Appellants at the trial with a view to establishing that there existed a custom or practice in the trade between Singapore and Sarawak whereby merchants, bankers and carriers by sea acknowledged and accepted that Mates' Receipts were documents of title and thus failed to make any finding whether or not such a custom or practice existed in fact. The learned trial Judge should have found as a fact that the Appellants had proved the existence of a custom or practice in the trade between Singapore and Sarawak whereby merchants, bankers and carriers by sea acknowledged and accepted the Mates' Receipts were documents of title. 20
3. That the learned trial Judge not having found as a fact that there existed a custom or practice in the trade between Singapore and Sarawak whereby merchants, bankers and carriers by sea acknowledged and accepted Mates' Receipts as documents of title was wrong in law to have decided that the Appellants plea of attornment failed. 30
4. That the learned trial Judge having found as a fact that the Respondents knew that the Mates' Receipt would be deposited with the Appellants was wrong in law in deciding that the Appellants could not "rest satisfied" that the goods in question were held by the Respondents for the Appellants and that the proper test was whether the Appellants were "justified in resting satisfied". 40

5. That the learned trial Judge was wrong in fact and in law in holding that the goods in question were not pledged to the Appellants.

6. That the learned trial Judge arrived at wrong conclusions in law for the reason that he failed to consider and/or draw the proper inferences from all the evidence adduced at the trial.

Dated the 25th day of August, 1966.

(Sgd.) Allan & Gledhill

Solicitors for the Appellants

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 21

Memorandum of
Appeal.

25th August
1966
(continued)

10

To: (1) The Registrar,
The Federal Court,
Malaysia.

And to: (2) The Registrar,
The High Court in Singapore at
Singapore.

And to: (3) Messrs. Laycock & Ong,
Solicitors for the Respondents/Plaintiffs,
Singapore.

20 And to: (4) Mr. S.K. Lee,
Solicitors for the Third Parties,
Singapore.

The address for service on the Appellants is
care of Messrs. Allen & Gledhill, 59/61 The Arcade,
Singapore.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 22

REASONS FOR JUDGMENT
dated 7th July 1967

Civil Appeal No. Y 2 of 1966

No. 22

Between

Reasons for
Judgment

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Ltd. Appellants

7th July 1967

And

1. Chan Cheng Kum 10
2. Hua Siang Steamship Co. Ltd.
Respondents

(In the Matter of Suit No. 1284
of 1961 in the High Court in
Singapore)

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Ltd. Plaintiffs

And

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. Defendants

And

1. Tiang Seng Chan (Singapore) Ltd.
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon Third Parties)

CORAM: Wee Chong Jin, C.J.
Tan Ah Tah, F.J.
Chua J.

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Wee Chong
Jin, C.J.

JUDGMENT OF WEE CHONG JIN, C.J.

The appellants in this appeal are two banks, one in Sarawak and the other in Singapore. The Singapore bank, The Oversea-Chinese Banking Corporation, are the second appellants, and were at all material times the Singapore agents of the Sarawak bank, Wah Tat Bank Ltd., the first

appellants. The first respondent, Chan Cheng Kum was at all material times the owner of two motor vessels "Hua Heng" and "Hua Li" plying between Singapore and Sarawak ports. The second respondents, Hua Siang Shipping Company Ltd. were alleged to be at all material times the charterers of the "Hua Heng" and the "Hua Li" or alternatively persons who had booked space therein.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 22

10 The appellants sued the respondents in the High Court of Singapore for damages for wrongful conversion of rubber carried on the vessels "Hua Heng" and "Hua Li" on four voyages between May and June 1961 from Sibü, a port in Sarawak to Singapore. The material facts relating to these four shipments of rubber and which facts were never in dispute are briefly these.

Reasons for
Judgment

7th July 1967

Wee Chong
Jin, C.J.
(continued)

20 The shippers of all the four consignments of rubber were a Company, Tiang Seng Chan (Singapore) Ltd. which had its head office in Singapore and a branch office in Sibü. This Company had over a substantial period of years bought produce in Sibü for export to Singapore. At the material times there were three regular shipping lines operating between Sarawak ports and Singapore and vice versa, of which the second respondents were one, the other two being Sarawak Steamship Co. Ltd. and the Singapore Red Funnel Lines. The bulk of Tiang Seng Chan (Singapore) Ltd.'s exports from Sibü to Singapore were carried on vessels operated by the
30 respondents.

40 The four consignments of rubber in question, of the estimated value of \$600,000, were delivered by Tiang Seng Chan (Singapore) Ltd. to the second respondents at Sibü for carriage on board the vessels "Hua Li" and "Hua Heng" to Singapore. Twenty receipts entitled "Mate's Receipt", which acknowledged receipt of these four consignments in apparent good order and condition for shipment to Singapore and named the second appellants as consignees, were issued to Tiang Seng Chan (Singapore) Ltd. by or on behalf of the second respondents. These receipts were signed by the Chief Officer of one or other of the two vessels. No Bills of Lading were issued in respect of these four consignments.

Tiang Seng Chan (Singapore) Ltd.'s principal

In the Federal
Court of
Malaysia
(Appellate
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No. 22

Reasons for
Judgment

7th July 1967

Wee Chong
Jin, C.J.
(continued)

bankers at Sibu were the first appellants with whom they had overdraft facilities and over the years, by means of such overdraft facilities, the first appellants financed shipments of the goods of Tiang Seng Chan (Singapore) Ltd. for carriage to Singapore against the latter's Bills of Exchange and/or Notes in favour of the second appellants and against "Mates Receipts" on condition that the goods so carried were consigned to the second appellants as agents for the first appellants and with the intention that such goods would be pledged or treated as having been pledged to the first appellants as security for the said financing by the first appellants of such shipments.

10

The four consignments in question were so financed by the first appellants and the twenty "Mates Receipts" were duly delivered by Tiang Seng Chan (Singapore) Ltd. to the first appellants who sent them on to their Singapore agents, the second appellants, together with Bills of Exchange or Notes drawn on Tiang Seng Chan (Singapore) Ltd. and payable to the order of the second appellants.

20

While these twenty Mates Receipts were held by the second appellants, all the goods covered by these Mates Receipts were released by the second respondents to Tiang Seng Chan (Singapore) Ltd. shortly after the arrival of the vessels at Singapore without production of and surrender of the relevant Mates Receipts and only against indemnities signed by Tiang Seng Chan (Singapore) Ltd. and three of its directors. These indemnities were not Bank Guarantees in the sense that they were not countersigned by a bank.

30

Unfortunately Tiang Seng Chan (Singapore) Ltd. were unable to meet their obligations and as a consequence the appellants commenced this action against the respondents, who joined as Third Parties Tiang Seng Chan (Singapore) Ltd. and its three directors who signed the indemnities.

Had these twenty Mate's Receipts been Bills of Lading the transactions we are concerned with here would have been similar to thousands of other transactions daily carried on all over the world and this case would have been no different from the cases that have so often been dealt with by

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the courts. But it is urged upon us by the appellants that the result should be the same for the Mate's Receipts we are concerned with are in every respect, except the heading, Bills of Lading. It is said the Sarawak - Singapore trade uses the Mate's Receipt in exactly the same way as international trade uses the Bill of Lading and that this has been so for forty years.

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 22

10 They thus put their case at the trial in this way namely, that by the custom (usage) of the trade relating to the shipment of goods by sea between Sarawak and Singapore and Singapore and Sarawak, Mates Receipts (such as those to which the action relates) are treated as documents of title to the goods thereby covered, in the same way as Bills of Lading.

Reasons for
Judgment

7th July 1967

Wee Chong
Jin, C.J.
(continued)

20 In the alternative, they say that by reason of the usage and practice of the trade relating to the shipment of goods by sea between Sarawak and Singapore (and vice versa), the respondents, by issuing these Mates Receipts which consign the goods to the order of the second appellants, represent to the second appellants that they hold the goods to their order and are estopped from denying their right to the possession of the goods.

30 In the further alternative, they say that once the respondents had issued Mate's Receipts in the form in which they were issued and once the shippers Tiang Seng Chan (Singapore) Ltd. had unconditionally appropriated the goods referred to in these Mate's Receipts to a contract of intended pledge between the shippers and the first appellants, the shippers lost any right to give to the respondents instructions to deliver the goods to themselves or to any one else, so that the delivery of the goods to the shippers in these circumstances constituted a wrongful conversion both by the shippers and the respondents.

40 There was a further issue at the trial as the shipowners had denied liability on the ground that both vessels were the subject matter of an oral bareboat charterparty at all material times. The appellants disputed the existence of the alleged bareboat charterparty and also claimed that in any event the first respondent was liable as he was personally concerned with the release of the goods

In the Federal
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Malaysia
(Appellate
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Reasons for
Judgment

7th July 1967

Wee Chong
Jin, C.J.
(continued)

to Tiang Seng Chan (Singapore) Ltd. on the indemnities. The further issue therefore was, if the appellants are entitled to damages for wrongful conversion, which of the respondents are liable, or are both liable.

As was to be expected on the issues raised, the trial was a long and protracted one occupying thirty four hearing days spread over a few months and a great deal of evidence was given on the issues relating to custom, estoppel and on whom the liability, if so found, would fall. At the conclusion of the hearing the trial judge reserved judgment and some months later delivered judgment dismissing the action.

10

On the first issue, the issue of custom, the trial judge held that a document of title could only come into existence as a result of a universal custom or by legislation and that as the appellants' case was merely that a local trade custom had grown up which was applicable to everyone engaged in the trade relating to the shipment of goods by sea between Sarawak and Singapore and Singapore and Sarawak to the effect that Mates Receipts (such as those to which the action relates) are treated as documents of title to the goods thereby covered, in the same way as Bills of Lading, the appellants' case on custom must necessarily fail.

20

The trial judge made no findings of fact on this issue though a considerable number of witnesses were called to prove the existence or non-existence of the alleged custom or usage of the trade.

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On the second issue, the issue of estoppel, the trial judge found that the respondents had in no way attorned to the appellants so as to make the respondents liable. He held that in order to constitute an attornment by the respondents in favour of one or other of the appellants, "there must be a clear understanding between the defendants (respondents) and the first and second plaintiffs (appellants) or either of them that the defendants would be holding the goods for them". He did find however that "all the parties in this action knew what was going on" but in his opinion "as far as this case is concerned it does not matter what the defendants (respondents) knew".

40

The trial judge would appear therefore to have considered the appellants' case on estoppel not made out because they had failed to make out their case on custom.

The trial judge did not deal with the third issue at all and on the fourth issue he held it was unnecessary to decide it.

10 The questions to be decided in this appeal are, first, whether or not there was at all material times a custom (usage) of the trade relating to the shipment of goods by sea between Sarawak and Singapore and Singapore and Sarawak and effective in law that Mate's Receipts are treated as documents of title to the goods thereby covered, in the same way as Bills of Lading; secondly, whether or not the respondents are estopped by reason of the usage and practice of the trade from denying the appellants' right to the possession of the goods; thirdly, whether or not the delivery of the goods to the
20 shippers by the respondents amounted to a wrongful conversion once the respondents had issued Mate's Receipts covering these goods in the form in which they were issued and once the shippers had unconditionally appropriated these goods to a contract of intended pledge between them and the first appellants. Both the appellants and the respondents are agreed that the fourth issue namely on whom should the liability, if proved, fall could not be properly dealt with in this appeal as its
30 determination depended almost entirely on the credibility of the witnesses who gave evidence relevant to this issue.

40 With this brief introduction I now deal with the first question. Mr. Kerr for the appellants contends that the trial judge was wrong in deciding that a local or trade custom, however strong, whereby Mate's Receipts are treated as documents of title can never be effective in law, because such a custom requires "universal application" i.e. applicable all over the world. He submits that the trial judge was led into this error by a misconception as between negotiable instruments on the one hand and documents of title to goods on the other hand and that the true position is that over the decades going back to 120 years or so a number of documents have achieved the status of documents of title to goods as a result of local or trade

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

No. 22

Reasons for
Judgment

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Jin, C.J.
(continued)

In the Federal
Court of
Malaysia
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No. 22

Reasons for
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7th July 1967

Wee Chong
Jin, C.J.
(continued)

usage, or have failed to achieve that status because the alleged local or trade usage (custom) was not proved to the satisfaction of the Court. In each case the question is one of fact, whether custom has been proved or not, although with increasing standardisation and modernisation, the point has become rare in modern times.

The confusion, he submits, has arisen because of three things namely:-

- (1) The difference between documents of title to goods and negotiable instruments; 10
 - (2) The special historical position of the bill of lading because it has been recognised by statute as a quasi-negotiable instrument in that the Bill of Lading Act 1855 provides that endorsement or naming of the consignee in the bill of lading was capable of transferring contractual rights but did not provide that a bona fide transferee could get a better title than the transferor had; 20
- and
- (3) The Law Merchant, which is a kind of collection of customs which are universal; the only difference between the Law Merchant and other customs being that the Court takes judicial notice of customs which are customs by the Law Merchant whereas local custom must be proved by evidence. A local or trade custom may after a while become so internationalised and so widely recognised and established in the courts that the courts will take judicial notice of it and then it can be said that it has become part of the Law Merchant. At one stage this was the position of the bill of lading. 30

As regards (1) namely, the difference between documents of title to goods and negotiable instruments, Mr. Kerr says the former are those documents which, by the custom of any trade or locality or by the Law Merchant or by Statute, represent goods so that the transfer of the documents operates as a symbolic delivery of the goods 40

10 if the intention is to pass the general or special property in the goods, whereas the latter are those documents, the transfer of which, by the Law Merchant or by Statute, first, is capable of transferring contractual rights and secondly, enables the holder in good faith to obtain better rights than his transferor had. As regards a document of title to goods, it can exist at common law but a negotiable instrument can only exist at common law in so far as the common law adopts and recognises the Law Merchant because at common law a transfer of a document cannot transfer contractual rights except by novation or assignment and because at common law a holder in good faith cannot obtain better rights than his transferor had unless the transfer took place in market overt.

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 22

Reasons for Judgment

7th July 1967

Wee Chong Jin, C.J.
(continued)

20 As regards (2) namely, the special historical position of the Bill of Lading, he says that over the centuries by the general acceptance of merchants all over the world, it had become a document of title to goods but it was not until 1855 by Statute, namely the Bill of Lading Act 1855 that it became a quasi-negotiable instrument in that it acquired the first characteristic of a negotiable instrument namely, its transfer operated as a transfer of contractual rights i.e. the holder acquires contractual rights against the carrier. A Bill of Lading is accepted by the Courts as a document of title to goods because of the universal custom of merchants without proof being required of this custom whereas for other documents to be documents of title to goods the Courts will require proof of the alleged trade or local custom to that effect. Mr. Kerr submits that although inter-
30 nationally the only document of title is the Bill of Lading, there is no reason in principle why in local trade other documents may not by virtue of a local or trade custom be similar to Bills of Lading and have one of the characteristics of a
40 true Bill of Lading namely, being a document of title to goods the transfer of which would amount to a transfer of the goods.

He says that the Mates Receipts in the present case, except for their heading "Mates Receipts" have all the three characteristics of a Bill of Lading namely (a) a receipt for the goods; (b) a document of title to the goods; and (c) evidence of a

In the Federal
Court of
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Reasons for
Judgment

7th July 1967

Wee Chong
Jin, C.J.
(continued)

contract of carriage of goods. In so far as the second of these three characteristics are concerned the Mates Receipts are documents of title if he can prove to the satisfaction of the Court that by the custom of the trade relating to the shipment of goods between Sarawak ports and Singapore Mates Receipts such as those to which the action relates are treated as documents of title to the goods thereby covered, in the same way as Bills of Lading.

It is not in dispute that there is a difference between a document of title to goods and a negotiable instrument or a quasi-negotiable instrument but it is disputed that a mere local or trade custom not universally recognised can change a document which is not a document of title to goods at common law into one which is.

10

The first issue to be decided therefore is whether a trade custom not universally adopted can create a document of title to goods. Mr. Kerr submits that in principle there is no reason why a trade custom should not create a document of title to goods and that there is nothing unreasonable or inconvenient in holding that it can do so. He also submits that no authority can be cited which says it cannot and that there are indeed a number of cases which could or should not have been dealt with in the way they were dealt with unless the submission is right. Mr. MacCrindle, counsel for the respondents, on the other hand says that there is no authority in English Law which says a document of title to goods can be created by a trade custom. He submits it would be contrary to one of the principles of the common law, that to create a pledge in law there must have been a transfer of possession in law of the subject matter of the pledge. In other words there must be delivery which must be - apart from constructive delivery where goods are in the possession of a bailee and where the goods are covered by a bill of lading - actual delivery of the goods. In the present case however solemn the agreement is between all those who participate in the trade the transfer of mere bits of paper can never under the common law amount to the transfer of possession of the goods referred to therein. Mr. MacCrindle therefore submits that the alleged custom, similarly cannot have the effect in law of a transfer of possession of the goods because that would be a circumvention

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of the common law which requires transfer of possession to create a pledge.

Numerous cases were cited by both counsel in support of their respective contentions but as none of them deal expressly with this point in issue I do not propose to attempt to show their relevance, usefulness or otherwise to this point I have to decide.

10 In my opinion Mr. Kerr is right that in principle there is no reason why a trade custom should not create a document of title to goods so that the transfer of the document operates to pass the property in the goods which it was the intention of the transferor to pass. I apprehend that in the case of the bill of lading at one period of time its transfer did not operate in law as a transfer of possession of the goods. I further apprehend that for purposes of convenience and to facilitate and expand trade, merchants began to accept and to honour among themselves this characteristic and this in course of time became so widely accepted and honoured among merchants as to become customary among them. I apprehend again that there must have been many occasions when some merchants refused to honour this trade usage and the question then came before the courts to decide whether a bill of lading had this particular characteristic and if so was it a characteristic the law would give effect to.

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30 I apprehend again that whenever such a question came before the courts the alleged trade usage had to be proved and as it had in fact been customary among merchants, this trade usage was easily found proved and it was not until the case of *Lickbarrow v. Mason* which was finally decided in 1794 that thereafter the courts took judicial notice of this custom or trade usage so that thereafter no evidence was necessary to prove it and this custom or trade usage, having been adopted as settled law by the courts, became part of the Law Merchant.

40 I have endeavoured to show that this usage or custom relating to Bills of Lading is the foundation on which the transfer of a Bill of Lading is effective in law to transfer the property in the goods and this usage or custom as found by a jury is set out in *Lickbarrow v. Mason* 101 E.R. 380 at 382 as follows:-

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"And then the jury found that, by the custom of merchants, bills of lading, expressing goods or merchandises to have been shipped by any person or persons to be delivered to order or assigns, have been, and are, at any time after such goods have been shipped, and before the voyage performed, for which they have been or are shipped, negotiable and transferable by the shipper or shippers of such goods to any other person or persons, by such shipper or shippers indorsing such bills of lading with his, her, or their name or names, and delivering or transmitting the same so indorsed, or causing the same to be so delivered or transmitted to such other person or persons; and that by such indorsement and delivery, or transmission, the property in such goods hath been, and is transferred and passed to such other person or persons"

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The effect of this usage or custom in relation to the common law is thus described by Cockburn C.J. in *Goodwin v. Roberts* 10 Ex. Cases 337 at 352:-

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"..... bills of lading may also be referred to as an instance of how general mercantile usage may give effect to a writing which without it would not have had that effect at common law. It is from mercantile usage, as proved in evidence, and ratified by judicial decision in the great case of *Lickbarrow v. Mason*, that the efficacy of bills of lading to pass the property in goods is derived."

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The bill of lading is thus, in my opinion, one example and one pertinent to the present case, of how by "the custom of merchants" - which are the exact words in *Lickbarrow v. Mason* - a particular effect is given to a document which without it would not have had that effect at common law. If by so doing the result is one which is incompatible with the common law as it then was, then notwithstanding such a result the courts of that period at first, on proof of the "custom of merchants", and later, by taking judicial notice of it, have consistently given legal effect to the custom.

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In any event a document of title to goods can and does exist at common law and all that the custom pertaining to a bill of lading is doing, in

my opinion, is to accept a document, which prior to the custom is not a document of title to goods, as a document which is a document of title to goods. the custom merely attaches that character to a bill of lading and the common law then takes over and decrees what legal consequences follow from it being a document of title to goods.

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10 I therefore see no reason in principle, and indeed the case of the bill of lading indicates otherwise, why a local trade usage or custom cannot create a document of title to goods.

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20 Having so decided, I now have to decide whether on the evidence the appellants have proved the custom (usage) they rely on. I might have felt disinclined, sitting on an appellate court, to attempt to do so except that counsel for both parties are agreed that all the available evidence appears in the Record, that the credibility of the witnesses who gave evidence on the usage is involved to only a very small extent and that in all the circumstances of the case, none of the parties would suffer any injustice if this court should deal with this issue of fact.

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30 The evidence reveals that historically this particular trade by ocean going vessels was originally carried on before 1927 by only one shipping concern known as the Sarawak Steamship Co. In 1927 another shipping company called Soon Bee Co. started to operate vessels between Sibul, a port in Sarawak and Singapore until 1931 when it was bought over by the Sarawak Steamship Co. From then on the Sarawak Steamship Co. was alone in the trade until about 1951 when Hua Siang Shipping Co. started business. Soon after, another shipping concern, Heap Eng Moh Shipping Co. came into the trade and a short while later joined in with yet another shipping concern to carry on in this trade under the name or style of Red Funnel Line.

40 At the material times, the main lines that operated vessels between Sarawak and Singapore and vice versa were the Sarawak Steamship Co., the Red Funnel Line, and the Hua Siang Shipping Co. Ltd. which were the successors of Hua Siang Shipping Co.

From before 1927 the trade between Sarawak and Singapore had been carried on on the basis of the

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Mate's Receipt being the only shipping document issued by the carrier. The undisputed evidence is that in very rare instances only were Bills of Lading issued. With regard to the trade between Singapore and Sarawak in twenty-five per cent of the cases, Bills of Lading were issued and the reason for this was that where goods were shipped from Singapore to Sarawak, a fair proportion of European firms were involved in these shipments and as a matter of normal practice they required the issue of bills of lading so as to have copies for filing purposes. All the witnesses are however agreed that they have never known of an instance where there was a Mate's Receipt and a Bill of Lading issued and outstanding at the same time in respect of a particular shipment and that the carrier, if a Bill of Lading is requested, would only issue it on surrender of the relevant Mate's Receipt.

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In this particular trade, no carrier would give delivery of goods carried under Mate's Receipts save on production of the relevant Mate's Receipt or against an indemnity and where the carrier has delivered goods against an indemnity, then he will not release the indemnity except against the surrender to him of the relevant Mate's Receipt.

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Again, in this trade it was the regular practice to consign goods covered by Mate's Receipts, only to the order of a person. The order would be either to the order of the shipper or to the order of a consignee other than the shipper. If, however, there was no intention on his part to transfer the property, general or special, in the goods whilst afloat, the shipper would not ask the carrier to make the Mate's Receipt deliverable to order but "to selves" i.e. to shipper.

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Next, in this trade it was the regular practice of banks to advance money on the security of Mate's Receipts in exactly the same way as if they were Bills of Lading and when they did so, the bank or its correspondent at the port of destination would, in the Mate's Receipt, be the named consignee to whose order the goods were consigned. It was known to all engaged in this trade that if one saw in a Mate's Receipt the words "Consigned to the order of" a named bank, one knew that the goods were pledged to that named bank.

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10 There was also a practice among banks in this trade to convert the Mate's Receipts to Trust Receipts or Letters of Hypothecation. This practice was indulged in where a bank holds the Mate's Receipt and the owner of the goods wants to take delivery from the carrier. The bank would in such cases hand over the Mate's Receipt to the owner in exchange for a Trust Receipt executed by the owner whereby the goods are charged to the bank together with the proceeds of sale.

Again, there was also a practice of endorsing Mate's Receipts issued in this trade in the same way as Bills of Lading are endorsed in the international shipping trade.

Finally there have been instances where carriers in this trade have accepted liability to the holder of a Mate's Receipt on the same basis as his liability to the holder of a Bill of Lading.

20 Mr. Kerr, on all this evidence, which I see no reason not to accept, submits that he has sufficiently proved the existence of the local trade usage (custom) at least so far as the trade between Sarawak ports and Singapore is concerned. Mr. MacCrindle on the other hand submits that this evidence is insufficient to prove the alleged local trade custom because before the courts will find a custom proved, it must be clearly shown that the alleged custom is universally acquiesced in or adopted by the relevant class of persons habitually engaged in the particular trade and in this case 30 the fact that some people in the trade do ask for Bills of Lading shows that some people do think that it is better and safer to get a Bill of Lading and do not treat a Mate's Receipt as a document of title.

40 The undisputed evidence, so far as the trade between Sarawak ports and Singapore is concerned, is that it was very rarely that Bills of Lading were issued and no evidence was called to show in those instances why they were issued and I am of the opinion that these rare exceptions are not such as to disentitle one from coming to the conclusion that Mates Receipts were universally adopted by all those in the trade between Sarawak ports and Singapore as documents of title, in the same way as Bills of Lading. The evidence

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relating to these rare exceptions was given by a witness who was the manager of a company which became the Sarawak agents of the Hua Siang Shipping Co. in June 1961 and whose shipping experience dated from April 1960. He was not concerned with local trade until the company which employed him became agents of Hua Siang Shipping Co. and he readily admits he is unable to produce any Bill of Lading relating to cargo carried from Sarawak to Singapore, nor had he seen a Bill of Lading during the period April 1960 to June 1961 in respect of local cargo from Sarawak to Singapore.

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I would hesitate long before accepting the evidence of this not disinterested witness as sufficiently cogent as against the evidence of other witnesses, whose impartiality is beyond doubt, that the trade treated Mates Receipts as documents of title in the same way as Bills of Lading.

Mr. MacGrindle also submits that the most satisfactory way to prove the alleged custom is to show an established course of business, at first contested but ultimately acquiesced in (see *Bettany v. Eastern Morning Hull News Co. Ltd.* 16 T.L.R.401) and this the appellants had failed to do. In my opinion while it may be one way to prove the custom it does not necessarily follow that unless a plaintiff produces such evidence he can never succeed in proving a custom.

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Mr. MacGrindle also submits that because the documents are all plainly marked "Mate's Receipt" which is a classic document known the world over in contra distinction to the Bill of Lading and that they are all marked "Not Negotiable" must lead one to the obvious conclusion that the Mate's Receipts in this trade are, like Mate's Receipts in the international trade, to be distinguished from Bills of Lading which alone are documents of title, and are negotiable and confer on the transferee a title to the goods. The answer, in my opinion, to the point raised as to the heading "Mate's Receipt" is that a document so headed is both a Mate's Receipt in the sense that it is a receipt issued by the carrier to the shipper evidencing delivery to the carrier by the shipper of the goods described therein, and at the same time, by the usage and practice of the trade, treated as similar to a Bill of Lading.

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The other point raised by Mr. MacCrindle is that because of the words "Not Negotiable" which are printed in these Mate's Receipts and which must be given their ordinary meaning, any attempt to prove custom must fail on the ground of unreasonableness. He says that for a usage to amount to a custom binding on the trade it must be shown that it is reasonable and it would he submits be clearly unreasonable for a usage which seeks to vest in the holder of a document rights which the document itself provides is not transferable. I find however on the evidence that everybody connected with this trade has ignored these printed words.

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I am accordingly of the opinion that the appellants have proved that it is a custom of the trade relating to shipment of goods between Sarawak ports and Singapore that Mate's Receipts such as those to which this present action relates are treated as documents of title to the goods thereby covered, in the same way as Bills of Lading.

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The next question to be considered is whether or not by reason of the usage and practice of the trade relating to the shipment of goods by sea between Sarawak and Singapore, the respondents by issuing the Mate's Receipts in question which consign the goods to the order of the second appellants, represent to the second appellants that they hold the goods to their order and are estopped from denying their right to the possession of the goods. If the respondents are so estopped then they are liable to the appellants for wrongful conversion of those goods.

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I will proceed to deal with this issue of estoppel by first accepting as a correct statement of the law, the passage contained in paragraph 338 of Halsbury's Laws of England 3rd Ed. Vol. 15 at page 169 which runs thus:-

"Estoppel by matter in pais. Where one has either by words or conduct made to another a representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or has so conducted himself that another would, as a reasonable man, understand that a certain representation of fact was intended to be acted on, and that the other has acted on the representation and thereby altered his position to his prejudice,

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an estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be."

For the appellants to succeed on this issue they must first prove that each of the twenty Mate's Receipts contained a representation of fact by the carrier to them, the representation being that the carrier holds the goods covered by the Mate's Receipt to the order of the second appellants.

The goods were not shipped by the second appellants and the Mate's Receipts were issued by the carriers and handed over to the shippers and not to the second appellants and the statement in the Mate's Receipts was "consigned to OCBC" or "consigned to OCBC order". The appellants contend however that where a bailee (in this case the carrier) who has received goods from A (in this case the shipper) for delivery to B (in this case OCBC) issues a document (in this case a Mate's Receipt) in circumstances in which the bailee (carrier) knows that in the ordinary course of business the document (Mate's Receipt) is likely to be delivered by A (shipper) to B (OCBC) and relied upon by B (OCBC) and the document contains a statement which amounts to a representation, then the bailee must be held to have made the representation to B.

I accept this contention and I find on the evidence that the course of dealings between the parties to this action over a long period of time has been such that the first respondents i.e. the carriers knew that in the ordinary course of business the Mate's Receipts we are concerned with would be delivered by the shippers i.e. the first Third Party Tiang Seng Chan (Singapore) Ltd. to the second appellants as Singapore agents of the first appellants via the first appellants.

Next the appellants must prove that the statement in the Mate's Receipts "consigned to OCBC" or "consigned to OCBC order" amounts to a representation that the carrier holds the goods to the order of OCBC. They contend they have established on the evidence that by the usage or practice of the trade relating to shipments of goods between Sarawak and Singapore, the recognised meaning of the statement in a Mate's Receipt "consigned to B" or "consigned to B's order" is that the carrier holds the goods to the order of B.

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Having come to the conclusion earlier on in this judgment that the appellants have on the evidence established a custom in this trade that Mate's Receipts are documents of title to the goods covered thereby in the same way as Bills of Lading it necessarily follows that I am of the opinion that on the evidence it is the usage and practice of this trade that where goods are stated in a Mate's Receipt to be "consigned to B" or "consigned to B's order", the carrier represents to B that he holds the goods to the order of B.

It is argued however by Mr. MacGrindle that even though it amounts to such a representation, there is still no representation that the carrier holds for B irrevocably but only amounts to a representation that the carrier holds the goods for B unless the shipper, on whose instructions alone the carrier acts, changes his mind and that in this present case the shipper has changed his mind and revoked his instructions by requiring delivery of the goods to himself. I am unable to accept this argument. There is no evidence whatsoever during the lengthy trial that the first third party (the shippers) ever gave any instructions to the first respondents (the carriers) not to hold to the order of OCBC but to deliver to them (the shippers) the goods covered by any of the twenty Mate's Receipts. Indeed, the fact that the shippers, on taking delivery without production of the relevant Mate's Receipts, gave indemnities to the carriers indicates clearly that both the shippers and the carriers were well aware of and conducted their shipping transactions in accordance with the trade usage I have found established and furthermore that both knew that the appellants had an interest in the goods covered by these Mate's Receipts. That both were thus well aware is clearly brought to light by the evidence relating to the request by the first respondents to the shippers that two other directors of the shippers should personally sign the indemnities.

Next, on the evidence I find, and this is not seriously disputed before us, that the carriers knew that the second appellants would rely upon and act on the representation and that they did rely upon and act on the representation contained in all the twenty Mate's Receipts in question.

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It follows therefore that in my judgment the carriers are estopped from denying the second appellant's right to the possession of the goods covered by these twenty Mate's Receipts.

Here again many cases were cited both here and in the Court below but as none of them have been relied on as a direct authority I do not propose to refer to any of them. It is sufficient for me to say that while it is true that there have been very few reported cases where a plaintiff has succeeded in conversion on the basis of estoppel by representation the fact remains that the Courts have never hesitated to so uphold a plaintiff's claim where the evidence establishes that there was a statement made by the defendant in such circumstances as to amount to a representation to the plaintiff that the defendant holds goods for the plaintiff and which the plaintiff as a reasonable man understood was intended to be acted or relied upon and accordingly acted or relied upon it so as to alter his position to his prejudice. One such instance is *Knights v. Wiffen* (1870) 5 L.R.Q.B. 600 where the representation was contained in a statement made by Wiffen, the defendant, to a third party, an agent of Knights, the plaintiff. In that case although in law the property in the goods had not passed in respect of a sale by Wiffen an unpaid vendor to one Maris, who had in turn sold a part of the goods to Knights and received payment therefor, as there had as yet been no appropriation from a larger quantity belonging to Wiffen, the Court held that Wiffen was estopped, by reason of a statement to a third party which amounted to his telling Knights the plaintiff "I have sixty quarters of barley to Maris' order, I will hold it for you", from denying that the property had passed to the plaintiff. In his judgment Blackburn, J. said (at page 664):-

"In the present case the plaintiff altered his position, relying on the defendant's conduct when the delivery order was presented. The plaintiff may well say, I abstained from active measures in consequence of your statement, and I am entitled to hold you precluded from denying that what you stated was true".

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I now turn to deal with the second alternative way in which the appellants claim the respondents are liable. The appellants' case is that once the respondents had issued Mate's Receipts in the form in which they were issued and once the shippers, Tiang Seng Chan (Singapore) Ltd. had unconditionally appropriated the goods referred to in these Mate's Receipts to a contract of intended pledge between the shipper and the first appellants, the shippers lost any right to give to the respondents instructions to deliver the goods to themselves or to anyone else, so that the delivery of the goods to the shippers in these circumstances constituted a wrongful conversion both by the shippers and the respondents.

The Proposition of law relied on by Mr. Kerr for the appellants is that where a carrier issues a shipping document such as a Mate's Receipt to a shipper which makes the goods deliverable to a named consignee or to his order and the shipper transfers that document to the named consignee (or his principal) with the intention of transferring to him either the general or a special property in the goods covered by the document so as to appropriate those goods unconditionally to the contract between the shipper and the consignee, then (a) the shipper has lost his right to revoke or otherwise disturb the appropriation which is final and (b) if the shipper and/or the carrier thereafter deal with the goods inconsistently with the rights of the consignee this is a wrongful conversion of the goods as against the consignee.

Mr. Kerr cites two cases which he submits are directly in point and are authorities in his favour. The first case is Bryans v. Nix 150 E.R. 1634. The facts of that case in brief are these. Miles Tempany, a corn merchant at Longford, Ireland, trading under the style of Gethins and Tempany had been in the habit of consigning grain to the plaintiffs as his factors for sale in Liverpool and from time to time drawing bills of exchange upon them against such consignments. He was also in the habit of making similar consignments to the defendant, as his factor for sale in London, and from time to time drawing bills upon him in the same manner. These consignments were shipped from Longford in boats or barges by canal to Dublin where on their arrival they were unshipped and

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warehoused by Miles Tempany's brother John Tempany who managed the business of Gethins and Tempany there and who also superintended the re-shipment of them for their place of destination at Liverpool or London as the case may be, in vessels procured by the firm of John & Thomas Delany, who were the shipbrokers and agents of Tempany at Dublin.

On 31st January 1837 Miles Tempany shipped on board canal boat No. 604 a full cargo of oats, 480 barrels, and obtained from the master a document in this following terms:-

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"Shipped in good order and condition, by Gethins and Tempany (in and upon the good ship called the) boat 604, whereof is master for this present voyage Thomas Murtagh, and now riding at anchor in the canal harbour, Longford, and bound for Dublin, 480 barrels of oats, marked and numbered as in the margin, and are to be delivered in like good order and condition, at the aforesaid port of Dublin (the danger of the seas, fire, rivers, and navigation of whatever nature and kind excepted) unto Messrs. John and Thomas Delany, in care for and to be shipped Messrs. Bryans, Herd, & Co., Liverpool, (or to assigns, he or they paying freight for the said goods) with primage and average accustomed. In witness whereof, the master or purser of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the other two to stand void. Dated in Longford, 31st day of January, 1837.

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THOMAS MURTAGH."

On the same day, Miles Tempany obtained from the master of another canal boat No. 54 a similar document for 530 barrels, but no oats were then on board, although a cargo was being prepared for that purpose. On the 2nd February 1837 Miles Tempany wrote to the plaintiffs a letter enclosing both these documents together with a bill of exchange for £730 dated 1st February drawn on the plaintiffs. The letter and the documents were received on 4th February by the plaintiffs who accepted the bill of exchange and on 7th February

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returned it so accepted in a letter which Miles Tempany received on 9th February.

In the meantime the defendant, to whom Miles Tempany was indebted to a considerable amount, sent a Mr. Walker, an agent, to Longford. Walker arrived on the 6th February and pressed Miles Tempany for security as a result of which Miles Tempany on the same day gave him an order addressed to John Tempany, his brother and agent in Dublin, entrusting John Tempany to deliver to Walker, for the defendant, the cargo for boat No. 604, which had then sailed for Dublin, and four other cargoes including that of boat No. 54 (which was stated to be 560 barrels). On the 6th February boat No. 54 was only partially loaded and the loading was completed on 9th February whereupon the master was induced by Miles Tempany to issue another document for the cargo, in the same terms as the former, except that it made the cargo deliverable to the defendant instead of to the plaintiffs. This latter document was transmitted to Walker who received it the next day at Dublin. Both boat No. 604 and boat No. 54 were hired by Miles Tempany and the boatmen paid by him. Walker having obtained an agreement by John Tempany in Dublin to hold the oats for him when they arrived afterwards got possession of both cargoes by legal process.

The plaintiffs sued the defendant in trover but the defendant contended that under all the circumstances the property in neither cargo vested in the plaintiffs; first, because the documents were not regular bills of lading and could give no title; and secondly, if they were, they could not operate to give the plaintiffs a title because they, being factors, could acquire no lien without actual possession.

It was held that the property in the cargo on board boat No. 604 was in the plaintiffs but not the property in the cargo on board boat No. 54. Parke, B. who delivered the opinion of the Court said at page 1641:-

"We think it unnecessary to decide whether the instruments were regular bills of lading, so as to have all the properties which the custom of merchants has attached to those

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documents. We need not say, whether like bills of lading, they are the symbols of property, so that their transfer by indorsement is equivalent to an actual delivery of the goods, which they represent, in specie; nor whether they have the privileges which by the factors' act are given to such instruments. These are matters wholly collateral to the present inquiry. The true question here is, what is the meaning and effect of the two documents, by whatever name they are called, coupled with the letter from Tempany, of the 2nd of February, followed by the acceptance by the plaintiffs of Tempany's draft? It seems to us to be clearly this, - that Tempany agrees that the oats therein specified, shall be held from that time by the boat-masters, for the plaintiffs, in their own right, provided they accept the bill, as a security for its payment - that the masters agree so to hold them, and that, by the plaintiffs' assent and acceptance of the bill, the conditional agreement becomes absolute. The transaction is in effect the same, as if Tempany had deposited the goods with a stakeholder, who had assented to hold them, for the plaintiffs, in order to indemnify them. As evidence of such a transaction, it is wholly immaterial whether the instruments are bills of lading or not; and it might equally be proved through the medium of carriers' or wharfingers' receipts, or any other description of document, or by correspondence alone. If the intention of the parties to pass the property, whether absolute or special, in certain ascertained chattels, is established, and they are placed in the hands of a depositary, no matter whether such depositary be a common carrier, or ship-master, employed by the consignor, or a third person, and the chattels are so placed on account of the person who is to have that property; and the depositary assents; it is enough: and it matters not by what documents this is effected; nor is it material whether the person who is to have the property be a factor or not; for such an agreement may be made with a factor, as well as any other individual.

In the present case we are of opinion that

10 this is satisfactorily made out, with respect to the first boatload: and the fact that the instrument signed by the master, specifies that the goods are to be carried to and delivered at Dublin, to an agent of the plaintiffs, is decisive to shew that the plaintiffs are to take immediately in their own right, and are not mere consignees of Tempany, who are to have their lien when the goods arrive, as factors. And this case is distinguishable, on this ground, from *Kinlock v. Craig*, *Bruce v. Wait*, and *Nichols v. Clent*, in none of which was there any documentary or other evidence to prove that the intention of the consignors was to vest the property in the consignee from the moment of delivery to the carrier:".

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20 The second case is *Evans and Evans v. Nichol and Nichol* 133 E.R. 1286. In that case the plaintiffs sued in trover in respect of 50 hogshead of alkali. The plaintiffs were chemists and dry-salters as well as factors and brokers carrying on business in London. They acted as factors and brokers for one Clapham, an alkali manufacturer at Newcastle, who was in the habit of consigning alkali to the plaintiffs in London for sale on his account, he being allowed to draw on them to the extent of two-thirds of their supposed value, but sometimes drawing, in fact, for the full amount.

30 The defendants were the London agents of Nichol, Ludlow & Co. who carried on business at Newcastle as shipowners and wharfingers.

40 On 2nd May 1840 Clapham wrote to the plaintiffs that he had drawn on them at four months date for £500, adding "I hope to be able to ship 20 tons of soda and alkali the beginning of the ensuing week per "Hudgill". I have not been able to send you any this week in consequence of the manufactory undergoing certain repairs". On the same day the bill of £500 was negotiated by Clapham. On 4th May the plaintiffs, upon receipt of the letter, replied to Clapham. The material portions of the reply were as follows: "We hand you account of sales for the past month the balance due to us (is) £1671.18.9d. You are now drawing considerably above the value of the stock which we hold, either in the warehouse or by bills of

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Reasons for
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(continued)

lading The bill presented today will be accepted. This is wholly beyond the value of your stock, and we shall be obliged by your forwarding goods without delay."

Clapham, through an agent, having arranged with the plaintiffs that 20 tons alkali and 20 tons soda would be sent to meet their last acceptance, on the 19th May sent 20 hogshead and two tierces of alkali to the defendants to be shipped in Clapham's name for London. A bill of lading having been prepared the defendants refused to sign it and refused to accept payment of the freight, claiming a general lien on the alkali to cover a debt owing to them by Clapham in respect of freight of former shipments made by Clapham on board their vessels.

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In the meanwhile however, the keelman who had taken the alkali from Clapham's works and put it on board the defendants vessel "London", had obtained from the mate of the "London" the following receipt:-

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"Newcastle-upon-Tyne, 5 mo. 19th, 1840.

"Received on board the 'London' the under-mentioned goods from Anthony Clapham, to be delivered as below directed.

"No. 467 to 488 E.

"Twenty hogsheads and two tierces alkali, for Evans, Brothers.

"London.

"WILLIAM ROBSON, Mate."

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On arrival of the vessel at London, the plaintiffs, to whom Clapham had forwarded the mate's receipt, requested delivery of the alkali but were referred by the captain of the vessel to the defendants, to whom the shipowner had directed him to deliver the alkali. The plaintiffs accordingly demanded from the defendants the alkali and at the same time tendered the freight. The defendants refused delivery and at the trial contended inter alia that the plaintiffs had not established possession in the goods. The trial

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judge held that as the alkali had, at the time of the shipment, been appropriated to the £500 bill, the property in the goods was vested in the plaintiffs and entered a verdict for the value of the alkali, leave being reserved to the defendants to move to enter a non suit.

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10 A rule nisi having been granted upon the application of the defendants, the case came before a Court comprising Tindal C.J., Coltman J. and Maule J. The plaintiffs, having to show cause, relied upon the fact of there being a specific appropriation of the alkali, at the time of the shipment, to the payment of their acceptance. The defendants contended on the other hand that the goods, whilst on the voyage were under the disposition of the consignor and were at his risk and that the intention of the consignor to allow the proceeds of the alkali to be applied in part payment of the acceptance for £500 was not, of itself, sufficient
20 to pass the property in the alkali.

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Jin, C.J.
(continued)

The court discharged the rule nisi being of the opinion that the plaintiffs were entitled to retain their verdict. Tindal C.J. in his judgment said at page 1289:-

30 "Here, the bill was accepted before the alkali was shipped; and it appears to me that the consignor not having manifested any intention to alter the destination of the goods, the defendants are estopped, by the receipt signed by their agent, from disputing the title of the plaintiffs to have the goods delivered to them agreeably to the terms of that receipt."

Coltman J. in his judgment said at page 1289:-

40 "Here, the consignor has not attempted to disturb the specific appropriation made by him, of this alkali, to the plaintiffs. The parties contesting this appropriation are strangers. They are mere wrongdoers; and against them, slight evidence of property is sufficient."

Maule J. in his judgment, said at page 1289:-

"Upon the shipment of the goods on board the "London", upon the terms of being delivered to

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(continued)

the plaintiffs, and the acceptance of the goods by the ship-owners upon those terms, the property vested in the plaintiffs to the extent of their interest, which was - the interest of persons with whom goods are pledged; *Bryans v. Nix*. It is admitted that if the plaintiffs had been vendees, instead of pawnees, of these goods, their right to recover could not have been disputed. The goods having been shipped by Clapham for the purpose of meeting the plaintiffs' acceptance of the £500 bill, and the shipowners having accepted those goods for the purpose of delivering them to the plaintiffs, it appears to me that the plaintiffs acquired such a property and right of possession as to entitled them to maintain trover against the defendants."

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I have dealt with these two cases at length because, on the facts of the present case, these cases are in my judgment directly applicable to the present case. It seems to me that the material facts in *Evans v. Nichols* so closely resemble the material facts in the present case as to make them indistinguishable. Mr. MacCrindle has not attempted to show that *Evans v. Nichol* has been subsequently overruled or held to have been wrongly decided. As I understand his argument on the point I am now dealing with he contends that when the two cases relied on by Mr. Kerr were decided the notion of pledge had as yet not been fully developed. His argument is that it is now settled law that a pledge could not be created at common law except by a delivery of possession of the thing pledged, either actual or constructive. There must be a change of possession, either by actual delivery of the thing pledged or by constructive delivery. Where goods were represented by documents the transfer of the documents did not change the possession of the goods save for one exception, which was the case of bills of lading the transfer of which by the Law Merchant operated as a transfer of the possession of, as well as the property in, the goods. In English law a pledge of the documents (except a bill of lading) is merely a pledge of the ipsa corpora of them and not in general to be deemed a pledge of the goods (see *Official Assignee of Madras v. Mercantile Bank of India Ltd.* 1935 A.C. 53). The appellants here sue in conversion, a tort, and to

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succeed they must show in this case that they have a special property in the goods and until they can show that possession of the goods, as distinct from the documents representing the goods, has been transferred to them in law, they have no special property in the goods to enable them to succeed in conversion. In this case the appellants have merely shown a transfer of possession of the documents representing the goods. The transfer of the documents did not change the possession of the goods, which remained in law in the shippers, the physical possession being in the carriers. The appellants had at most an equitable pledge and it is an indisputable principle of law that an equitable pledge is not sufficient to entitle pledgees to sue in conversion.

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Wee Chong
Jin, C.J.
(continued)

So that as it may in *Evans v. Nichol* it was held that the plaintiffs had a sufficient property in the alkali shipped and covered by the mate's receipt in question to enable them to succeed in trover against the shipowners and similarly it was held in *Bryans v. Nix* that the plaintiffs had a title to the goods shipped in boat No. 604 and covered by the mate's receipt in question to enable them to succeed in trover against the defendants who having obtained delivery of them had refused the plaintiffs' demand for them. Similarly I would hold that in the present case the appellants are entitled to succeed in conversion against the carriers for having delivered them to the shippers.

For all these reasons, in my judgment, the appeal should be allowed with costs here and in the Court below and the judgment of *Kulasekaram J.* set aside. The appellants are entitled to judgment against the second respondents for damages to be assessed. There should also be an order for the re-trial of the issue whether or not the first respondent is also liable for damages for wrongful conversion.

(Sgd.) WEE CHONG JIN.

CHIEF JUSTICE,
SINGAPORE.

SINGAPORE, 7th July, 1967.

Between

- 1. Wah Tat Bank Limited
 - 2. Oversea-Chinese Banking Corporation Ltd.
- Plaintiffs

and

- 1. Chan Cheng Kum
 - 2. Hua Siang Steamship Co. Ltd.
- Defendants

and

- 1. Tiang Seng Chan (Singapore) Ltd.
 - 2. Lee Chin Tian
 - 3. Lee Teow Keng
 - 4. Lee Peng Koon
- Third Parties)

In the Federal Court of Malaysia (Appellate Jurisdiction)

No. 23

Order of the Court of Appeal

7th July 1967 (continued)

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CORAM: The Honourable Mr. Justice Wee Chong Jin, Chief Justice, Singapore;

The Honourable Mr. Justice Tan Ah Tah, Judge, Federal Court, Malaysia; and

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The Honourable Mr. Justice Frederick Arthur Chua, Judge, High Court, Singapore.

IN OPEN COURT

This 7th day of July 1967

O R D E R

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THIS APPEAL coming on for hearing on the 6th, 7th, 8th, 13th, 14th, 15th, 16th, 20th, 21st, 22nd and 23rd days of February 1967 in the presence of Mr. M.R.E. Kerr, Q.C., and Mr. M. Kathigesu of Counsel for the abovenamed 1st and 2nd Appellants and Mr. R.A. McGrindle, Q.C. and Mr. C.H. Smith of Counsel for the abovenamed 1st and 2nd Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment and the same coming on for judgment this day in the presence of Mr. M. Karthigesu of Counsel for the abovenamed 1st and 2nd Appellants and Mr. J.F. McWilliam of Counsel for the abovenamed 1st and 2nd Respondents IT IS ORDERED that the Appeal by the abovenamed 1st and 2nd Appellants be allowed and

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In the Federal
Court of
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(Appellate
Jurisdiction)

No. 23

Order of the
Court of
Appeal

7th July 1967
(continued)

the judgment of the Trial Judge set aside AND IT IS ADJUDGED that judgment be and is hereby entered for the abovenamed 1st and 2nd Appellants against the abovenamed 2nd Respondents for damages to be assessed by the Registrar AND IT IS FURTHER ORDERED that the remaining issue as to whether the abovenamed 1st Respondent is also liable in conversion be remitted for a re-trial AND IT IS FURTHER ORDERED that there be a stay of execution limited only to the damages until the abovenamed 1st and 2nd Respondents shall have applied to this Honourable Court for leave to appeal to the Judicial Committee of the Privy Council AND IT IS FURTHER ORDERED that the costs of this Appeal and in the Court below be taxed and paid by the abovenamed 1st and 2nd Respondents to the abovenamed 1st and 2nd Appellants AND IT IS FURTHER ORDERED that there be a Certificate of two Counsel for the abovenamed 1st and 2nd Appellants AND IT IS FURTHER ORDERED that the sum of \$500/- lodged in Court as security for costs of this Appeal be paid out by the Accountant-General to the abovenamed 1st and 2nd Appellants or their Solicitors Messrs. Allen & Gledhill AND IT IS LASTLY ORDERED that the abovenamed 1st and 2nd Appellants shall have liberty to apply.

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GIVEN under my hand and the seal of the Court
this 7th day of July 1967.

(Sgd.) K.W. Tay

DY. REGISTRAR,
FEDERAL COURT,
MALAYSIA.

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No. 24

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
dated 9th September 1968

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

Federal Court Civil Appeal No. Y 2 of 1966

No. 24

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Ltd. Appellants

and

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. Respondents

Order granting
Final Leave to
Appeal to the
Judicial
Committee of
the Privy
Council

9th September
1968

(In the matter of Suit No. 1284
of 1961 in the High Court in
Singapore

Between

1. Wah Tat Bank Limited
2. Oversea-Chinese Banking
Corporation Ltd. Plaintiffs

and

1. Chan Cheng Kum
2. Hua Siang Steamship Co. Ltd. Defendants

and

1. Tiang Seng Chan (Singapore) Ltd.
2. Lee Chin Tian
3. Lee Teow Keng
4. Lee Peng Koon Third Parties)

30 CORAM:

THE HONOURABLE MR. JUSTICE
WEE CHONG JIN, CHIEF JUSTICE,
SINGAPORE;

THE HONOURABLE MR. JUSTICE
TAN AH TAH, JUDGE, FEDERAL
COURT;

In the Federal
Court of
Malaysia
(Appellate
Jurisdiction)

THE HONOURABLE MR. JUSTICE
CHUA, JUDGE, HIGH COURT,
SINGAPORE.

IN OPEN COURT
THE 9th DAY OF SEPTEMBER, 1968

No. 24

O R D E R

Order granting
Final Leave to
Appeal to the
Judicial
Committee of
the Privy
Council

9th September
1968
(continued)

Upon Motion made unto the Court this day by
Mr. J. Grimberg of Counsel for the Respondents and
upon reading the affidavit of Seah Chye Soon filed
on the 31st day of August, 1968, and upon hearing
Counsel for the Respondents and Mr. M. Karthigesu
of Counsel for the Appellants THIS COURT DOTH
ORDER that final leave to appeal to the Judicial
Committee be granted to the Respondents AND IT IS
ORDERED that notwithstanding the time limited for
the despatch of the Record to England the said
Record be despatched to England at the same time as
the transmission of this Order.

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Given under my hand and the seal of the Court
this 9th day of September, 1968.

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(Sgd.) Tay Chin Chye.

DEPUTY REGISTRAR.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 6 of 1969

ON APPEAL FROM
THE FEDERAL COURT OF MALAYSIA
HOLDEN AT SINGAPORE
(Appellate Jurisdiction)

B E T W E E N :

1. CHAN CHENG KUM
2. HUA SIANG STEAMSHIP CO. LTD. Appellants
(Defendants)

- and -

1. WAH TAT BANK LIMITED
2. OVERSEA-CHINESE BANKING
CORPORATION LIMITED Respondents
(Plaintiffs)

RECORD OF PROCEEDINGS

VOLUME I

(Pages 1 to 402)

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Respondents.