

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

HOLDEN AT SINGAPORE

(APPELLATE JURISDICTION)

B E T W E E N

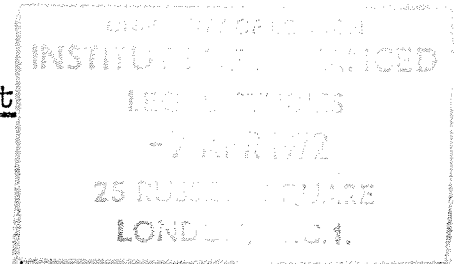
RAMOO S/O ERULAPAN

Appellant

- and -

- 1. GAN SOO SWEE
- 2. ONG AH HO

Respondents



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CASE FOR THE APPELLANT

(1) This is an Appeal from the Judgment and Order of the Federal Court of Malaysia (Appellate Jurisdiction) dated 7th November 1968 pursuant to final leave of that Court dated 10th March 1969 whereby the said Court allowed the Appeals of the Respondents (Defendants) against the Judgment and Order of the High Court in the Republic of Singapore dated 31st May 1968

p.42

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(2) By the said Judgment dated 31st May 1968, the said High Court ordered that Judgment be entered for the Appellant (Plaintiff) against both Defendants for the sum of \$30,000 with costs and that as between each other the first Defendant should contribute 75% and the second Defendant should contribute 25% of such damage and costs

p.26

PLEADINGS

(3) In paragraph 1 of the Statement of Claim the Plaintiff (now the Appellant) alleged that he was travelling as a passenger in a motor taxi driven by the second Defendant (now the second Respondent) along Dunearn Rd. in the direction of Singapore when at or near the junction of Whitley Road the said motor

p.3

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Record

the junction of Whitley Road the said motor taxi came into collision with a motor lorry which was being driven by the first Defendant along Whitley Road in the direction of Stevens Road.

(4) In paragraph 2 of the Statement of Claim the Plaintiff alleged that the said collision was caused by the negligence of one or the other or both the Defendants. The Plaintiff therein specified the following particulars of negligence against the Defendants

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p.2,3

PARTICULARS OF NEGLIGENCE AGAINST  
THE FIRST DEFENDANT

(a) Failing to keep any or any proper lookout

(b) Driving at an excessive speed in the circumstances

(c) Driving from a minor road on to a major road when it was unsafe so to do and without regard for traffic on the major road

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(d) Failing to give any or any proper warning of his approach of his intention to drive on to the said major road

(e) Failing to give way to vehicles travelling on his right

(f) Failing to apply his brakes in time or at all or so as to steer or control his lorry as to avoid the said collision

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(g) Driving against the traffic lights

PARTICULARS OF NEGLIGENCE AGAINST THE  
SECOND DEFENDANT

- (a) Failing to keep any or any proper  
lookout
- (b) Driving at an excessive speed in the  
circumstances
- (c) Failing to give any or any proper  
warning of his approach p. 3
- (d) Driving against the traffic lights
- 10 (e) Failing to apply his brakes in time  
or at all or so as to steer or  
control his taxi as to avoid the said  
collision
- (5) In paragraph 3 of the Statement of Claim  
the Plaintiff alleged that he had suffered  
injuries, had endured pain and suffering  
and had been put to loss and expense, and  
accordingly claimed damages against both  
Defendants. p. 3
- 20 (6) In paragraph 2 of his Defence, the  
first Defendant denied that the said collision  
was caused by his negligence and alleged that  
the said collision was solely caused or  
alternatively contributed to by the negligence  
of the second Defendant. He relied upon the  
particulars of negligence set out in the  
Statement of Claim and further alleged that  
the second Defendant had failed to take any  
or any sufficient precaution for the safety  
30 of his passengers when entering the junction  
of Dunearn Road and Whitley Road p.8
- (7) In paragraph 4 of his Defence, the first  
Defendant said that if he was held liable to  
the Plaintiff he would claim an indemnity or  
alternatively a contribution against the  
second Defendant in respect of such claim p.8, 9
- (8) In paragraph 1 of his Defence the second  
Defendant denied that the said collision was  
caused by the alleged or any negligence on his  
40 part p. 6

Record

p.7

(9) In paragraph 2 of his Defence, the second Defendant alleged that the collision was caused solely by or contributed to by the negligence of the first Defendant. Thereupon the second Defendant repeated the particulars of negligence alleged against the first Defendant in the Statement of Claim

DAMAGES

p.26

(10) The trial judge estimated that the Plaintiff was entitled to \$30,000 by way of damages. No complaint was made against this estimate by either Defendant in their respective Grounds of Appeal or on Appeal. Accordingly the Appellant contends that this is the sum to which he is entitled if he can establish that either or both of the Defendants were negligent

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THE FACTS OF THE COLLISION IN BRIEF

p.46-56

(11) The plan, EXHIBIT P1, together with the key to the plan indicates how and where the collision took place.

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p.23 1.43  
-45

(12) Dunearn Road along which the motor taxi was travelling towards the city is an important one-way major road taking virtually all the traffic north of the junction into the city. Whitley Road is a dual carriage-way.

p.19  
1.21-25

(13) To the west of Dunearn Road and off the plan on the right hand side is a canal spanned by a bridge and beyond the bridge is a parallel junction, known as the Bukit Timah and Stevens Road junction.

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p.19  
1.30-32  
p.11  
1.4-10

(14) Both these junctions were controlled by the same set of traffic lights. At the time of the collision both these sets of lights were malfunctioning. The lights facing Whitley Road along which the motor lorry (first Defendant) was approaching were changing from green to amber and from amber back to green. The green lights remained longer than the amber lights. The lights facing Dunearn Road along which the motor taxi (second Defendant) was travelling were changing in the correct sequence but at a

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very fast rate.

(15) The traffic lights in both directions were visible for a long way off and traffic approaching the junction from Dunearn Road could clearly be seen by motorists approaching it from Whitley Road and vice versa.

10 (16) The collision took place at approximately 8 a.m. on a Sunday morning when there was no traffic other than the two vehicles involved in the collision.

MAIN POINTS ARISING ON THIS APPEAL.

- 20 (17) (a) Were the Court of Appeal justified in upsetting the finding of fact by the trial judge that the first Defendant was guilty of negligence
- (b) Were the Court of Appeal justified in upsetting the finding of fact by the trial judge that the second Defendant was guilty of negligence. and arising out of and subsidiary to these two main points
- (c) Were the lights facing Whitley Road so malfunctioning that a driver approaching the junction along Whitley Road should have observed that they were malfunctioning.
- 30 (d) Were the lights facing Dunearn Road so malfunctioning that a driver approaching the junction along Dunearn Road should have observed that they were malfunctioning.
- (e) In any event at an open junction with no other traffic about should both or either of the drivers of the motor taxi and the motor lorry have seen each other in time to avoid a collision.
- 40 (f) Whether the case of JOSEPH EVA LIMITED v. REEVES 1938 2 K.B.D. page 393 is relevant when deciding whether either Defendant was guilty of negligence.

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(18) The action came on for hearing before Honourable Mr. Justice Buttrose in the said High Court on the 27th May 1968.

EVIDENCE

(19) The Plaintiffs Exhibits P1 - P3 were put in and admitted.

p.10  
1.15-25

(20) On the issue of liability, the Plaintiff only called two witnesses. The first witness on liability was ABDULLAH BIN RAHMAT, police corporal, who went to the scene of the collision. In examination-in-chief he gave evidence as to the damage caused to the two vehicles. The front offside mudguard of the motor lorry was dented and the front offside lamp was broken. The front near side door of the motor taxi was ripped off and the rear near side door was dented.

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(21) The defective state of the traffic lights was first mentioned in the cross-examination of this witness. There is set out hereunder the trial judges note of the rest of the evidence.

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"Cross-examination by Mr. Yap (Counsel for the motor lorry)

Traffic lights control the whole intersection

p.11

I arrived at 8.45 a.m. Traffic lights not in good order and defective.

Lights facing Whitley Road were turned from green to yellow and back to green without turning to red.

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Changes of lights from green to yellow and red were very quick as you proceeded down Dunearn Road towards the city.

At one stage at junction all traffic lights showing green.

Taxi had been moved, I learnt this from taxi driver - some 82 feet 6 inches from where displaced door of taxi was on road.

Brake marks made by taxi.

I met both Defendants and 2nd Defendant pointed out brake marks as his.

No stop line at Whitley Road but there was at Dunearn Road.

Cross-examination by Mr.Hilborne (Counsel for the motor taxi)

10 I made no report of faulty traffic lights -  
another constable did. He was not at scene  
when I arrived, P.C.480. When I got to  
Orchard Road Police Station I found that  
he had made a report. A P.C. arrived with  
me and took over control of traffic. P.C.  
7319 of 'B' Division. P.C.7002 of 'E'  
Division.

p.11

Re-examination

20 Lorry driver told me lights were green  
neither of the Defendants made any  
complaint to me of faulty traffic lights.

I did call their attention to the faulty  
state existing at the time of my arrival  
but neither of them could see them -  
they made no complaint and did not  
attribute faulty lights as the cause of  
the accident. Green lights remained  
longer than yellow facing Whitley Road."

30 (22) The only other witness on liability was  
the Plaintiff himself. His evidence on the  
issue of liability is brief and there is set  
out below the judges note thereon

Examination in chief

"On 10.7.66 - a Sunday - I was in a taxi  
travelling down Dunearn Road going towards  
City. I was seated in the front seat  
beside the driver. There were two other  
passengers in the taxi. An accident  
happened.

p.13  
1.1-16

A lorry was coming from Whitley Road on

Record

my left side. Lorry collided with the taxi. There were traffic lights.

I looked at traffic lights - they were green. Lorry was coming at 40 m.p.h. and taxi doing 40 m.p.h. The lorry maintained its speed.

I thought an accident was going to happen. I lifted my hands over my head and crouched down. That is the last thing I remember.

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As I approached intersection, I noticed nothing unusual about the lights. They were green."

Cross-examination by Mr. Yap (Counsel for motor lorry)

"I only noticed the green light - for about a minute. I was 15 yards away when I first saw green light. When I ducked my head and put my hands over my head the light was still green.

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p.13 l.29  
to p.14  
l.7

Dunearn Road is a straight road.

I did not see the lights in any other colour before I saw them green.

Lorry was very near and inside the intersection when I first saw it. Accident happened very quickly after I saw lorry.

When I heard sound of lorry I looked out and saw it. I only guess the speed of both vehicles.

Taxi maintained the same speed.

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Lorry was about 10 yards from the junction when I first saw it.

I saw the lorry before the accident".

(23) This concluded the Plaintiff's case. The first Defendant thereupon called 2 relevant police witnesses on the state of the traffic



lights and himself gave evidence.

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10 (24) The first witness was P.C.480 SAY LIP BUCK who stated that he had reported to Orchard Road Police Station that the traffic lights at Dunearn Road and Whitley Road junction were out of order at about 7 a.m. He then came back and found all the traffic jammed up. The judges note of the evidence in cross-examination by Mr.Hilborne is set out hereunder.

p.15  
1.3-10

"Cross-examination by Mr.Hilborne.

I arrived at 7 a.m. going home. I came along Stevens Road to Wayang Satu Barracks.

On Stevens Road lights changed from green to amber then back to green. Cars were tangled up at that junction.

p.15  
1.13.23

20 On Bukit Timah side lights functioning in sequence but faster than normal. I phoned up at about 7 a.m.

I then controlled traffic on Bukit Timah Road. Police mobile van came at 7.30 to 8 a.m. and took over from me".

(25) The second police witness was P.C.7319 MICKEY LEE. He merely confirmed that at about 8.40 a.m. the traffic lights were going from green to amber and amber back to green facing Whitley Road, at the said junction.

p.16  
1.19-23

30 (26) The first Defendant then gave evidence. Once again as the evidence is so brief, the judges note thereon is set out hereunder.

"On 10.7.66 I was driving motor lorry K 2338 along Whitley Road towards Dunearn Road.

I had an accident with a taxi at junction at 8 a.m. Traffic lights there.

When I was 40 to 50 feet away from junction I noticed traffic lights - they were green facing me. I slowed down a little as I approached

Record

and when 15 feet from traffic lights I noticed it was still green. I accelerated across this junction - traffic light was still green.

p.17 to  
p.18 l.13

When I was 12 feet inside Dunearn Road I heard sound of a strong blast of wind - (and applied my brakes immediately) - coming from my right - it was the sound of a coming vehicle.

I also swerved to the left.

My speed when I entered intersection I was travelling at was 15 m.p.h. I had a load of sand.

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No xxn. by Hilborne.

Cross-examination by Mr. Cashin (for Plaintiff)

I saw both the traffic lights - one set on Whitley Road side, the other set near junction of Bukit Timah Road.

I was 40 to 50 feet away from traffic lights on left of Whitley Road.

I was approaching a double junction. I had travelled that road before.

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I only began to look at traffic lights when I was 40 to 50 feet away.

Traffic lights were normal.

I could see traffic coming from my right down Dunearn Road for a distance of 40 feet

The front of my lorry was 12 feet inside Dunearn Road - that was the point at which I first saw the taxi. I swerved one foot and accident happened.

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Near-side door of taxi came into contact with off-side bumper of my lorry - door got entangled with my off-side bumper.

Just before accident happened there was no traffic jam at all and no traffic around at all - it was a Sunday".

(27) Counsel for the second Defendant submitted that there was no case to answer and called no evidence

Record  
p.18  
1.18-24

(28) During the course of the hearing the learned trial judge stated that he was familiar with the scene of the collision.

JUDGEMENT OF BUTTROSE J.

10 (29) The learned trial judge found that at the time of the collision the lights were malfunctioning in the manner described in the evidence and accepted the fact that at brief periods both lights would be showing green

p.20  
1.21-23

20 (30) He rejected the submission of Counsel for the first Defendant that in these circumstances no negligence should be attributed to either Defendant having regard to the decision in Joseph Eva Limited. v. Reeves. He stated "that was a case of a motor vehicle entering a crossing against the appropriate traffic lights when they were showing red and the Court of Appeal held that a motorist entering a crossing when the appropriate lights were green in his favour owed no duty to traffic entering the crossing in disobedience to the lights beyond a duty that if he in fact saw such traffic he ought to take all reasonable steps to avoid a collision.

p.21

30 (31) He further made the following findings of fact.

(a) That the traffic lights controlling the entire junction was defective and not functioning properly was palpably obvious to anyone approaching it be he pedestrian or motorist, and therefore a situation had arisen which called for the utmost care and caution.

p.22  
1.1-11

40 (b) That the traffic lights at the junction were visible from a long way off in either direction and also traffic approaching the intersection down Dunearn Road could clearly be seen for

p.22 1.26-  
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Record

a considerable distance by motorists approaching it along Whitley Road and vice versa

p.22 l.  
36, 37

(c) That he did not believe or accept the evidence of the first defendant

p.23 l.33  
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(d) That both the Defendants were guilty of negligence in failing to keep any or any proper look-out and in failing to drive with that degree of care and caution which the circumstances of the case obviously required.

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p.24  
p.1-5

(e) In attributing the major blame to the first Defendant he stated, "He (the first Defendant) was not concerned therefore with any traffic coming from his left but only from his right to which it was his duty to give way and on his own showing he never saw the taxi until the collision had to all intents and purposes taken place".

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p.43

(32) Both the Defendants appealed on the issue of liability and the appeal came on for hearing in the Federal Court of Malaysia (Appellate Jurisdiction) on the 9th September 1968 before Hon.Mr.Justice WEE CHONG JIN, Chief Justice of the High Court of Singapore, the Hon.Mr.Justice TAN AN TAH, Judge of the Federal Court, Malaysia and the Hon.Mr. Justice F.A.CHUA, Judge of the High Court Singapore. By a reserved judgment dated 7th November 1968, the said Court allowed the appeals of both the Defendants. The judgment of the Court was signed by all the three learned Judges.

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JUDGMENT OF THE FEDERAL  
COURT

p.39 l.11-  
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(33) The Court of Appeal agreed with the finding of the trial judge that at the time of the said collision the traffic lights controlling the junction were defective in the manner described by the police witnesses.

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(34) The Court of Appeal then considered the case against the first Defendant. The said Court found as a fact that the second Defendant did not know that the lights were defective because he was only 40 to 50 feet away from the junction when he first saw the traffic lights and the lights were then green and remained green until he had passed the said lights. The Court of Appeal then went on to hold that it was not possible on the evidence to say that if the first Defendant had kept a proper look-out he could have seen or been aware that the lights were not functioning properly.

Record

p.39  
1.19-32

p.40  
1.25-32

(35) The Court of Appeal further held that the first Defendant could not be found guilty of negligence in failing to keep a proper look-out because he never saw the motor taxi "until the collision had to all intents and purposes taken place". In arriving at this decision, the said Court relied on the case of Joseph Eva Ltd. v. Reeves 1938 2 K.B.D. page 393 as authority for the proposition that the first Defendant was under no obligation to look to his left at the open junction; and his failing to do so could not therefore constitute negligence.

p.39 1.33  
to p.40  
1.6

(36) The Court of Appeal then considered the case against the second Defendant. The said Court pointed out that the second Defendant did not give evidence and that therefore there was no evidence when he first saw the traffic lights when approaching the junction. The said Court further held that there was not sufficient evidence that the lights were changing so quickly that he should have noticed that they were defective. The said Court stated :-

p.40 1.34  
to p.41  
1.13

"The only evidence is that the lights changed rapidly in the proper sequence. How rapid the change was at the material time no one knows and it would be idle and wrong to speculate".

THE APPELLANT'S CONTENTION

(37) In the first place the Appellant contends

Record

that the case of Joseph Eva Limited v. Reeves 1938 2 K.B.D. p.393 is not relevant on the facts of this case. The Defendant in that case had entered a junction controlled by lights in defiance of the red light. He was not visible to the Plaintiff against whom an allegation of contributory negligence was made until the accident was inevitable. It was in this context that the Court decided what duty, if any, this particular Plaintiff owed to this particular Defendant. The judgment of Sir Wilfred Greene, Master of the Rolls concluded with the following passage :-

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"It is true that, notwithstanding that the light was in his favour, Reeves (the Plaintiff) owed a duty to anyone lawfully on the crossing; but negligence is the breach of a duty owed to the person who complains of it; and the fact that in different circumstances a duty would have been owed to the appellants or to some other person does not lead to the conclusion that a duty was owed to the appellants in the circumstances as they actually existed".

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(38) The Appellant contends that this was a collision at an open junction when each driver had the other in sight for a long distance and when there was no other traffic to distract the attention of either driver. Accordingly the Appellant contends that in the absence of a satisfactory explanation by either driver, the presumption is that each such driver had been guilty of negligence. The first Defendant admitted that he did not see the motor taxi until the collision had virtually happened. The second Defendant did not give evidence.

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FURTHER CONTENTIONS AGAINST FIRST DEFENDANT

(39) The Appellant contends that it was the duty of the first Defendant to keep the lights under continuous observation from the moment that they became visible and the evidence is that they were visible from a long way off. The trial judge who was familiar with the

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crossing was entitled to hold as he did, that, if the Defendant had kept a proper look-out, he would have observed that the lights were changing from green to amber and from amber back to green.

10 (40) This Appellant further contends that the evidence of the Defendant that he only noticed the lights when he was 40 to 50 feet away would, if accepted, be the strongest evidence that the Defendant was guilty of negligence in failing to keep a proper look-out. But it is further contended that this evidence is so intrinsically incredulous that the trial judge was entitled as he did to reject the evidence of the witness.

20 (41) Further the Appellant contends that the Court of Appeal was wrong in accepting the evidence of the Defendant when the trial judge who had the advantage of hearing and seeing the witness had rejected his evidence.

FURTHER CONTENTIONS AGAINST SECOND  
DEFENDANT

30 (42) The Appellant contends that the Court of Appeal were wrong in stating that there was no sufficient evidence on which the trial judge could hold that the second Defendant should have observed that the lights were defective. The evidence was that the lights were changing so rapidly as to warrant the epithet that they were defective or malfunctioning. Since the lights were visible from a long way off and there was no other traffic on the road the Appellant contends that there is an irresistible conclusion that a careful driver would have observed the defective condition of the lights and driven accordingly.

40 (43) Accordingly the Appellant hereby contends that this Appeal should be allowed and that the Judgment of the Federal Court of Malaysia be reversed and that Judgment should be entered for the Appellant for the sum quantified by the trial judge for the

RECORD

following among other

R E A S O N S

- (A) that the trial judge was justified in holding that the First Defendant was guilty of negligence.
- (B) that the Court of Appeal was wrong in upsetting the above finding of fact by the trial judge.
- (C) that the trial judge was justified in holding that the Second Defendant was guilty of negligence. 10
- (D) that the Court of Appeal was wrong in upsetting the above finding of fact by the trial judge.
- (E) that the Court of Appeal was wrong in their interpretation of the case of Joseph Eva Limited v. Reeves 1938 2 K.B.D. p.393.
- (F) that neither Defendant gave a satisfactory explanation why he was unable to avoid a collision. 20
- (G) that the trial judge was justified in holding that the First Defendant should have observed that the lights facing Whitley Road were malfunctioning and have driven accordingly.
- (H) that the trial judge was justified in holding that the Second Defendant should have observed that the lights facing Dunearn Road were malfunctioning and have driven accordingly 30

IAN BAILLIEU



No.22 of 1969

IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF  
MALAYSIA

HOLDEN AT SINGAPORE

(APPELLATE JURISDICTION)

B E T W E E N:-

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- and -

1. GAN SOO SWEE      Respondents  
2. ONG AH HO

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C A S E   F O R   T H E   A P P E L L A N T

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