19, 1971

4 OF 1969

Limitation of Action - Singapore Limitation Ordinance 1959 - Clayton's case - Part payment - account current - acknowledgment. Practice - Pleadings - Judgment on finding of fact not pleaded - Whether sufficient particulars to remit to Registrar for account to be taken.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE (APPELLATE JURISDICTION)

BETWEEN

BAJAJ TEXTILES LIMITED — Appellants

AND

GIAN SINGH & CO. LIMITED — Respondents

CASE FOR THE APPELLANTS

RECORD

1. This is an appeal by leave of the Federal Court of Malaysia holden at Singapore (Appellate Jurisdiction) from an Order of that Court dated 14th March 1968 dismissing an Appeal from a judgment of Mr. Justice Chua given on 22nd May 1967. By that judgment Mr. Justice Chua ordered that an account be taken by the Registrar of the High Court of Singapore "of all transactions on the running account between Gian Singh & Co. and Bajaj Textiles and Gian Singh & Co. Ltd. (the Respondents) and Bajaj Textiles Ltd. (the Appellants) from the 14th day of May 1951 to the 31st day of December 1962 and kept in the books of Gian Singh & Co. and Gian Singh & Co. Ltd."

p.180

p.179

p.157

RECORD

2. The principal issue in this appeal is whether the learned trial judge and the learned appeal judges were right in rejecting the Appellants' plea of limitation. The Appellants say that the plea was wrongly rejected and that the learned trial judge ought not to have ordered an account to be taken of any transactions which took place more than six years before the issue of the Writ in the Action (i.e. prior to 19th July 1957). There is also a subsidiary issue as to whether or not the learned trial judge ought to have remitted the account to the Registrar when insufficient particulars of the account had been given pursuant to the Appellants' requests and the Order of the Court.

LIMITATION

p. 1-2 3. The limitation issue arises in the following way. On 19th July 1963 the Plaintiffs took out a writ against the Defendants in the High Court of the State of Singapore. The writ was specially indorsed with a claim for $1,336.35 for goods sold and delivered. By their Defence p.7-8 the Defendants admitted that they had purchased the goods but pleaded that they had a set off and counterclaim amounting to more than the Plaintiffs' claim. The Defendants said that "they have been carrying on business with the Plaintiffs and have a running account between themselves". They counterclaimed the sum of $27,570.83 for goods sold and delivered to the Plaintiffs, and gave particulars of seven items. The Defendants subsequently amended their counterclaim so as to counterclaim the sum of $700,319.66 "being the amount due from the Plaintiffs to the Defendants on a running account between themselves"; that figure was itself subsequently further amended so as to substitute the sum of $690,377.66

4. After repeated requests for Further and Better Particulars, the Defendants supplied pp.10-94 particulars of their Amended Counterclaim from which it became clear that a substantial part of their claim arose in respect of matters dating from as long ago as 1951 and 1952.

pp.151-152 5. The background to the matters revealed by

these particulars is summarised as follows in the Judgment of the learned trial judge:

"Hardial Singh, Inder Singh, Hira Singh and "Balwant Singh are brothers. Prior to 1951 "they were all partners in the firm of Gian "Singh & Co., the firm of Bajaj Textiles and "some other firms in Singapore, Malaya and India. "Gian Singh and Co. was the firm which indented "goods from all over the world and had the "necessary banking facilities. In 1951 the "partnership was dissolved. Hira Singh and "Balwant Singh took over and carried on the "business of Gian Singh & Co. and Inder Singh "took over and carried on the business of Bajaj "Textiles as sole proprietor.

"Prior to the dissolution of the partnership "large quantities of goods had been ordered from "all parts of the world by Gian Singh & Co. and "confirmed letters of credit through the banks "had been established and firm contracts "entered into. Under the Deed of Dissolution "of the partnership these goods when they were "received by Gian Singh & Co. were to be divided "in these proportions - 27½% to Hardial Singh, "25% to Inder Singh, 23¾% to Hira Singh and "23¾% to Balwant Singh. The brothers were to "pay to Gian Singh & Co. for the goods delivered "to them. After the dissolution of the "partnership, Gian Singh & Co. delivered the "goods to the brothers as and when they arrived. "

"In January 1952, Gian Singh and Co. Ltd., the "Defendants, were established, which took over "all the assets and liabilities of the firm of "Gian Singh & Co., and Balwant Singh became and "is still the managing director. On the 17th "September 1951, Bajaj Textiles Ltd., the "Plaintiffs, were incorporated and Inder Singh "became and still is the managing director. "One of the objects of the Plaintiff company was "'to acquire the business and the goodwill of "the business carried on at Singapore under the "name or style of Bajaj Textiles, or any part or "parts thereof and the assets and property or "any part of the assets and property of such "business and for this purpose to enter into and "carry into effect with or without modification "any necessary agreement or agreements'".

RECORD

6. From the Further and Better Particulars supplied by the Respondents, it was evident that by far the largest debit items against the Appellants in the alleged running account dated from the time of the events described above by the learned trial judge. It appeared in particular that the largest single item in the alleged account, amounting to $395,382.95 and dating from 31st December 1952, was arrived at by striking the balances on various accounts between Gian Singh & Company on the one hand and Inder Singh and Bajaj Textiles on the other hand, for the purpose of settling the affairs of the brothers at the time of the partition of their former partnership. According to the Further and Better Particulars supplied by the Respondents, the balance at the end of 1952 (which included the items relating to the partition of the partnership) already amounted to $611,725.86 in favour of the Respondents: whereas, by 1st January 1962, the date at which the Respondents purported to close the account for the purpose of their counterclaim, the balance had risen to no more than $688,877.66 (over a total period of nine years).

pp. 13, 75, 76, 77, 85-92

p.15

7. The Appellants accordingly amended their Defence to Counterclaim so as to plead "that the Counterclaim is barred by limitation". It was argued on their behalf at the trial that the balance of the transactions taking place within the limitation period was in their favour, and that the Respondents had amended their claim to frame the action as a claim on a running account solely in order to overcome the plea of limitation and to revive statute-barred debts.

p.9

p.140

p.138

8. The learned trial judge rejected the plea of limitation, and the learned appeal judges upheld his decision on substantially the same grounds. The Appellants submit that the learned judge's decision was wrong and will respectfully refer to three matters referred to in the decision: part payment, running account, and acknowledgment. Since the questions of part payment and the running account are closely connected, the Appellants will deal with them altogether, and will then deal with the question of acknowledgment, on which the learned trial

judge found in favour of the Appellants.

9. PART PAYMENT AND RUNNING ACCOUNT. The Appellants submissions are, firstly, that the learned trial judge decided the case on a finding that there had been a part payment, although the question of part payment was not in issue on the pleadings, and consequently had not been the subject of proper evidence or argument, and although the finding of part payment was contrary to the weight of the evidence, and, secondly, that the judge therefore reached an erroneous conclusion as to the effect of the law on the facts of this case.

10. The learned trial judge dealt with the issues of part payment and the running account in the following terms :-

"It is next submitted that part of the claim of "the Defendants is barred by limitation and that "the Defendants can only recover in respect of "dealings which took place during the six years "prior to the 25th March 1964, when the original "counterclaim was filed". p.154, 155

The Appellants now accept that the relevant date is the date of the issue of the writ.

/The learned judge then referred to a plea of acknowledgment, which is dealt with below/ "Section 26 (2) of the Limitation Ordinance "1959, provides as follows :-

"Where any right of action has accrued to "recover any debt or other liquidated pecuniary "claim, or any claim to the personal estate of "a deceased person or to any share or interest "therein, and the person liable or accountable "therefor acknowledges the claim or makes any "payment in respect thereof, the right shall be "deemed to have accrued on and not before the "date of the acknowledgment or the last "payment ...."

Then there is a proviso which is not relevant to the case.

"Section 26 (2) is similar to Section 23 (4) of "the English Limitation Act, 1939.

"It is clear from the case of Re Footman Bower & "Co. Ltd. (1961) Ch. 443, that where there is a "running account and a payment is made on account "generally it is a payment on account of the "whole balance outstanding at the date of the "payment and therefore the payment is 'in "respect of' that balance for the purposes of "section 26 (2) of the Limitation Ordinance, "1959, so that time started to run afresh on "the occasion of each payment.

"For these reasons I have come to the conclusion "that the claim of the Defendants is not barred "by limitation."

11. The learned judge's conclusion was based on the following findings of fact made by him earlier in his judgment:-

p. 154 "From the evidence I find that the dealings "between the parties consisted mainly of goods "sold and delivered by the defendants to the "plaintiffs and of loans from one to the other. "The account between them was kept in the ledger "of the defendants and the defendants debited "the plaintiffs with the costs of the goods as "and when they were supplied and with the amount "of the loans as and when they were made. The "plaintiffs from time to time made payments to "the defendants on account generally and credit "was given in the ledger for these payments as "they were made. The payments were made in "varying sums and clearly were not made in "respect of any particular debit. The "plaintiffs also kept an account in the name of "the defendants in which there was a series of "credits and debits. The account between the "parties is in fact a running account which to "the knowledge of both parties is of that kind "and kept in that way ...."

12. The Appellants challenge those findings of fact on three main grounds :-

(1) The learned trial judge's finding that

there had been a part payment by the Appellants was made in defiance of the fact that part payment was not in issue on the pleadings, was not argued by the Respondents, and was not the subject of evidence or cross-examination.

(2) If the issue of part payment had been in issue on the pleadings and had been argued by the Respondents, the Appellants would have adduced rebutting evidence, to the effect that no such part payment had ever been made.

(3) The learned trial judge failed to give any or any proper consideration to the evidence given on behalf of the Appellants, and failed to draw the proper inference from the evidence given by both parties, namely, that the only account between the parties was that contained in the Appellants' ledger, and that the payments made by the Appellants in that account were not made on account generally but were appropriated to specific items due by the Appellants to the Respondents.

13. The Appellants' first contention is that the learned trial judge decided the case on a finding of fact which was not in issue on the pleadings and not argued, namely, a finding of part payment. The Appellants had directed no argument, evidence, or cross-examination to this issue, and in the circumstances the Appellants submit that the learned trial judge's decision constituted a violation of the principles of judicial procedure.

14. The only pleading served by the Respondents by way of Reply to the Appellants' plea of limitation was as follows :- p.95

"(1) The Defendants join issue with the Plaintiffs on their reply and defence to counterclaim, and in further answer thereto will say that if the claim is otherwise barred by limitation which is denied, the Plaintiffs by their affidavit of the 20th August, 1963, have claimed pp. 3-4

that the Defendants' debt if it arises, arises on a running account which of itself is an acknowledgment of the said debt and a promise to pay.

(2) Further from the year 1952 up and until the year 1963, when the proceedings herein were commenced, on numerous occasions the Plaintiffs herein met the Defendants and acknowledged the debt and promised to pay same but repeatedly asked for time." 10

15. Mr. Justice Ambrose, who delivered the leading judgment in the Federal Court, dealt pp.175-6 with the issues raised on the pleadings in these terms :-

"It is true that the part payments made by the "plaintiffs to the defendants on account "generally are not expressly pleaded in the "defendants' reply to the defence to counter- "claim. But it seems to me that in relying on "a running account, which was admitted by Inder 20 "Singh, the managing director of the plaintiff "company, in his affidavit of the 20th August, "1963, the defendants were clearly relying on "the part payments to be found in the running "account, particulars of which were supplied to "the plaintiff .... In my opinion, the "plaintiffs were fully aware that the defendants "were relying on these part payments."

16. The Appellants respectfully submit that the learned appeal judge's conclusion is erroneous, 30 and that the Respondents in their pleading were not relying upon the payments made in the running account, or upon any payments made. They were relying upon a reference in an affidavit which they said constituted an <u>acknowledgment</u>.

17. Secondly, on the issue of part payment, the Appellants will say that if part payment had been properly pleaded and argued as an answer to the plea of limitation, the Appellants would have adduced evidence to the effect that the 40 payments were appropriated to specific items and not made on account generally. In point of fact it can be demonstrated, from any analysis of

the entries recorded in the Respondents' Further and Better Particulars for the six years prior to the issue of the writ, that, with very few exceptions which can be explained by special circumstances, every entry can be attributed to a specific item of "temporary accommodation".

18. Thirdly, in support of their contention that the learned trial judge's finding of part payment was contrary to the weight of the evidence, the Appellants will respectfully refer your Lordships to the judge's note of the evidence, and in particular will rely on the following matters :-

(1) In Support of the Appellants' assertion in their Reply to Counterclaim that -

"the running account between the Plaintiffs and the Defendants is a separate and distinct issue altogether from the Plaintiffs' claim and has no bearing whatsoever with the Plaintiffs' cause of action", p.9

Inder Singh Bajaj gave evidence to the effect that the only account between the parties was that recorded in the Appellants' ledgers; that the entries in those ledgers were with minor exceptions items of mutual loans, described as "temporary accommodation"; that the earliest available ledger was for the year 1956, and showed an opening balance of $8,786.40 in favour of the Respondents (as against a balance of $639,096.59 claimed at that date by the Respondents); and that the account kept by the Appellants showed a balance in their favour at 1st January 1962 of $11,846.00. pp.127-128 p.126 pp.220-237 p.237

(2) This evidence was wholly consistent with the evidence given by Balwant Singh for the Respondents to the effect that -

(i) cash sales of goods were not entered in the alleged "running account" pp.107-8, 113, 117, 119.

p.102

(ii) the account contained transactions of money lent, most if not all done by cheques

(iii) the items originally claimed by the Respondents, although they appear in the particulars are not recorded in the Respondents' ledger.

(3) It was also wholly consistent with the fact -

(i) that the particulars given by the Respondents for the period after the partition of the partnership, and particularly in the six years before the issue of the Writ, consisted almost wholly of entries in respect of payments of round sums by cheque.

(ii) that the few entries in the Respondents' ledger after 1952 (i.e. after the partition) which are for irregular amounts, are almost invariably itemised as relating to specific transactions, and are principally year-end adjustments, whereas the majority of items are simply described as "By Cheque" or "To Cheque", consistently with their character as loans.

(4) The learned trial judge ought to have drawn from these matters the only proper inference, namely that the only account between the parties which could in any sense be called a "running account" was that kept in the Respondents' ledger, and that the items dating from the partition of the partnership had nothing whatever to do with that account, which related almost exclusively to mutual loans.

(5) There was no evidence whatever to show that the Appellants had at any time assented to the account being kept in the manner in which the Respondents kept it in their books. There was no evidence whatever that the Appellants had at any

time assented to any transactions other than loans (with minor exceptions) being entered in a so-called "running account" between the parties. In particular, there was no evidence whatever that the Appellants had assented to any transactions relating to the partition being kept in such an account.

(6) The learned trial judge wholly failed to discuss any of these matters, except to refer to Inder Singh's evidence (which had taken almost a day and a half) in one page of his judgment. The learned judge gave no reasons whatever for preferring the evidence of Balwant Singh to that of Inder Singh. P.153

(7) In holding that the Appellants made payments "on account generally" the learned judge made no mention whatever of the fact that Balwant Singh had admitted in cross-examination that the Respondents had brought an action for an individual item in the account, which was a loan by the Respondents to the Appellants. P.111 This admission was wholly inconsistent with the Respondents' assertion, which the learned judge accepted, that the only amount due on the account was the general balance due from time to time, that the individual items in the account had no separate existence, and that therefore the payments in the account were not made in respect of particular items but were made on account generally.

19. Having made these submissions as to the learned trial judge's findings of fact, the Appellants further submit that the learned judge was led by his erroneous view of the facts to take a wrong view of the application of the law to the circumstances of the present case.

20. The learned trial judge and the Federal Court both held that there is a claim known to the law as a claim on a running account, and relied on In re Footman Bower & Co. Ltd. (1961) p. 154, p.172

RECORD

Ch. 443 as authority for this proposition. The Appellants submit that there is no such cause of action, and that a claim pleaded simply as "for the amount due on a running account", such as the present claim, could properly have been struck out for want of particularity.

21. In the Appellants' submission there are a number of ways in which a claim loosely framed as "for the amount due on a running account" might properly have been pleaded and proved, but that on the facts of this case none of these possibilities was open to the Respondents. In the Appellants submission the possibilities are as follows :-

(1) Account stated. The claim could conceivably have been put as representing moneys due on an account stated. But there are a number of objections to this. The account emanates from the Respondents and not from the Appellants; there was no evidence of any agreement by the Appellants to pay any fixed sum in the nature of the final balance of the account after mutual set-off of debits and credits, such as is required to found an action on an account stated: Siqueira v. Noronha (1934) A.C.332; moreover, not only was account stated not pleaded, but it was expressly disclaimed by Counsel on behalf of the Respondents. p.122

(2) Clayton's case. Alternatively, the claim might have been framed as the accumulation of a large number of separate causes of action for the individual items in the account. But at least half the debit items in the account (i.e. those before 19th July 1957) are statute barred. The Respondents would therefore be compelled to say that the payments made by the Appellants were appropriated to the earliest debts, so that each separate item in the account was discharged by payment before it became statute-barred. The Respondents would no doubt rely on Clayton's case (1816) 1 Mer. 572, 35 E.R. 781, as authority for the proposition that the earliest payments are to be appropriated against the earliest debts in the account.

(3) But the rule in Clayton's case only applies where there is a current account "where all the sums paid in form one blended fund, the parts of which have no longer any distinct existence" (1 Mer.572 at 608, 35 E.R. 781 at 793). The rule is in any case no more than a presumption as to the intention of the parties in appropriating the payments, which can be rebutted by evidence of a contrary intention, or of circumstances from which a contrary intention may be inferred: Cory Bros. & Co. v. Owners of Turkish S.S. "Mecca" (1897) A.C.286. The Appellants say that the account in the present case was not such an account current, and that the circumstances in which the payments were made by the Appellants were such as to exclude the application of the rule in Clayton's case.

(4) The Appellants also note that, although the claim might have been framed as a claim for the individual items in the account, Counsel for the Respondents appears to have disclaimed this way of putting the case, at least so far as the account is said to have consisted of goods sold and delivered. p.145-146

(5) Promise to pay balance due. A third possible way of putting the Respondents claim would be on a promise for good consideration to pay the balance from time to time generally owing to them on an account current. Neither any such promise nor any such consideration was pleaded, nor was there any evidence or argument directed to this aspect of the case. But in relying on Re Footman Bower, the judgments of Mr. Justice Chua and the Federal Court both appear to have been based on the following three passages in that case :-

"In the case of a current account, where "the debtor-creditor relationship of the "parties is recorded in one entire account,

"into which all liabilities and payments are "carried in order of date as a course of "dealing extending over a considerable "period, the true nature of the debtor's "liability is, in my judgment, a single "and undivided debt for the amount of the "balance due on the account for the time "being, without regard to the several "items which, as a matter of history, "contribute to that balance .... (p.450)

"When, as in the present case, there is an "account running between the parties which "to the knowledge of both parties is of "that kind and kept in that way, then, if "the debtor makes a payment 'generally on "account', it appears to me that he must "be taken to be making it on account "generally of whatever is owing on the "balance of the account. A payment "'on account' imports an acknowledgment of "a liability for a larger sum: see "Friend v. Young (1897) 2 Ch.421, per "Stirling J. When a payment is merely "stated to be 'on account' without the "liability on account of which it is made "being specified, one must first inquire "what liabilities on the part of the payer "to the recipient exist. If on inquiry "it is found that the only liability is in "respect of a balance due on current "account, the natural conclusion to reach "is, in my judgment, that the payment is "made on account of that balance generally, "not on account of any particular items "contributing to that balance .... (p.451).

"Before 1939, it was established that, "where a debtor made a part payment on "account of an unascertained balance owing "by him to the payee in such circumstances "that the payment amounted to an "acknowledgment on the part of the debtor "of an account pending between himself and "the payee on which a balance in excess of "the amount of the payment would prove to "be payable, a promise to pay the balance "when ascertained ought to be inferred: "see Friend v. Young (1897) 2 Ch. 421,

"Walker v. Butler (1856) 25 L.J.Q.B.377,
"Banner v. Berridge (1881) 18 Ch.D.254,
"per Kay J., ibid. 274. Since the
"enactment of the Limitation Act, 1939
"such a payment, in my judgment,
"constitutes a payment 'in respect of' the
"balance for the purposes of section 23 (4)
"of that Act ... (p.452)."

(6) The Appellants submit that the present case is distinguishable from In Re Footman Bower, and from the line of authority cited by Mr. Justice Buckley. The account in the present case was not "one entire account, into which all the liabilities and payments are carried in order of date" (see p.450); nor did the Appellants make any payment "generally on account" (see p.451); nor was any payment made "in such circumstances that the payment amounts to an acknowledgment on the part of the debtor of an account pending between himself and the payee, (etc.)" (see p.452).

(7) Of the three authorities cited by Mr. Justice Buckley two cases, namely Friend v. Young and Walker v. Butler, were cases where the payment was made expressly "on account" of a larger debt in an unsettled account, and the third case, Banner v. Berridge, was not a case of part payment at all but of an express acknowledgment of an unsettled pending account. The present case, in the Appellants' submission, contains neither of these features, and is therefore distinguishable from In re Footman Bower and the authorities there cited.

(8) The Respondents cited two Indian cases in support of their argument, Fink v. Buldeo Dass (1899) 26 I.L.R. Cal.716, and Ganesh v. Gvanu (1898) 22 I.L.R. Bom. 606. The Appellants submit that both these cases turn on the special provisions in the Indian Limitation Act relating to actions for the balance due on a mutual, p. 145

open and current account, where there have been reciprocal demands between the parties, and that they are distinguishable.

p.145 (9) Similarly, the case of Catling v. Skoulding (1795) 6 Term Rep. 189, 101 E.R. 504, relied on by the Respondents in argument, turns on mutual items of account and is distinguishable.

22. Acknowledgment. The learned trial judge dealt with the plea of acknowledgment as follows :- 10

p.155 "It is said by the defendants that the "plaintiffs have acknowledged the claim of the "defendants within section 26 (2) so as to "prevent time running under the Limitation "Ordinance, 1959. I need only say that the "evidence before me does not disclose that "there was any such acknowledgment."

pp.174-175 The finding of fact was accepted by the Federal Court, and indeed it was not appealed from by the Respondents. The Appellants submit that the learned trial judge's finding was correct, for the following reasons :- 20

p.95 (1) The acknowledgment relied on in paragraph (2) of the Reply to Further Amended Defence to Counterclaim (see paragraph 14 above) was not in writing as required by section 27 (1) of the Limitation Ordinance, 1959. Section 27 (1) reads in part as follows:-

"Every such acknowledgment as is referred "to in section 26 .... shall be in writing "and signed by the person making the "acknowledgment." 30

pp.3-4 (2) The only other matter relied on by the Respondents as constituting acknowledgment is the Affidavit of 20th August 1963. The relevant passage in the Affidavit is as follows (see end of paragraph 4 in the Affidavit):-

"With regard to the remaining four items 40

"(in the Defendants counterclaim before "amendment) I say that these items were "already in the running account between "the Plaintiffs and the Defendants. On "this running account there is a debit "balance of $11,846.00 against the "Defendants."

(3) In the Appellants' submission the reference to "this running account" is clearly a reference to the account kept in the Respondents' ledger, which shows just this balance of $11,846.00. This account does not go back earlier than 1956, and the Respondents' reference to this account cannot therefore amount to an acknowledgment of any earlier account such as is relied on by the Appellants. pp.220-237

(4) The Appellants further submit that the alleged acknowledgment was not made to the Respondents as is required by section 27 (2) of the Limitation Ordinance, but being contained in an Affidavit, was made to the Court. Section 27 (2) provides in part as follows :-

"Any such acknowledgment .... as is "referred to in section 26 .... shall be "made to the person, or to an agent of "the person, whose title or claim is "being acknowledged".

(5) The Appellants further submit that the claim alleged to have been acknowledged was not of a liquidated amount, in the sense of being capable of ascertainment by calculation or by extrinsic evidence without further agreement of the parties, as is required under the similar wording of the English Limitation Act 1939: Good v. Parry (1963) 2 Q.B. 418 (C.A.)

(6) Finally, the Appellants submit that the reference to a running account in the Affidavit was not an acknowledgment that the Appellants were liable but an assertion that the Respondents were liable.

RECORD

PARTICULARS

23. The Appellants now turn to their second main ground of appeal, namely that the learned trial judge ought not to have admitted evidence of matters of which no, or no sufficient particulars had been given by the Respondents, and that the learned trial judge ought for the same reason to have refused to remit the Respondents' claim to the Registrar for an account to be taken

24. The history of the pleadings in this respect is succinctly set out in the judgment of the learned trial judge. The learned judge dealt with the question of particulars in these terms:-

pp.149-150

p.156

"It is submitted by the plaintiffs that the "account should not be remitted to the "Registrar as the defendants cannot adduce "any evidence on it because they have failed "to file further and better particulars as "ordered by the Court on the 18th February, "1966. It seems to me that the further and "better particulars filed by the defendants in "answer to the plaintiffs' solicitors' letter "of the 11th March 1967, was sufficient "compliance with the order of 18th February "1966".

The Federal Court upheld the learned trial judge's decision on this matter without expressing any reasons for doing so.

p.178

25. The Appellants will respectfully refer your Lordships to the relevant passages in the pleadings which they say are defective for want of particularity; but in particular they rely on two exceptionally large unitemised amounts, both appearing in the Particulars served pursuant to Plaintiffs' solicitors' letter dated 11th March 1967. The first is dated 31st December 1952 and is described as "To textiles purchased $156,625.81". The second is of the same date, described as "To various remittances made by Hardial Singh & Co. Kuala Lumpur $143,000.00."

pp.181-182

p.74

p.76

26. The Appellants submit that the judgments of the learned trial judge and of the Federal Court were wrong and should be set aside for the following amongst other

R E A S O N S

1. BECAUSE the learned trial judge and the Federal Court were wrong in rejecting the Appellants' plea of limitation.

2. BECAUSE the learned trial judge violated the principles of judicial procedure in deciding the case on a finding of part payment, when part payment had not been pleaded or argued by the Respondents and consequently no evidence on that issue had been adduced by the Appellants.

3. BECAUSE the learned trial judge erred in finding that there had been a part payment so as to take the Respondents' claim out of the Singapore Limitation Ordinance 1959, and in finding that the Respondents had made payments on account generally, and in finding that the account between the parties was in the nature of a running account of the kind described in In re Footman Bower & Co. Ltd. (1961) 1 Ch.443.

4. BECAUSE the learned trial judge and the Federal Court erred in law in allowing a claim pleaded simply as a claim for "the amount due on a running account".

5. BECAUSE the learned trial judge and the Federal Court erred in applying In re Footman Bower & Co. Ltd. (1961) 1 Ch. 443 to the facts of the present case.

6. BECAUSE the learned trial judge and the Federal Court rightly decided that the Respondents plea of acknowledgment was not established.

7. BECAUSE the learned trial judge and the Federal Court ought not to have remitted the Respondents' claim to the Registrar

for an account to be taken, when the Respondents had failed to comply with an order for further and better particulars of their claim.

8. BECAUSE the judgments of the learned trial judge and the Federal Court were wrong and ought to be set aside.

STEWART BOYD.

4 OF 1969

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT SINGAPORE (APPELLATE JURISDICTION)

B E T W E E N

BAJAJ TEXTILES LIMITED Appellants

AND

GIAN SINGH & CO. LIMITED Respondents

CASE FOR THE APPELLANTS

LINKLATERS & PAINES,
Barrington House,
59/67 Gresham Street,
London E.C.2.

Agents for the Appellants.