

~~PC 619 G.2~~

Trinidad

18, 1956

UNIVERSITY OF LONDON  
W.C.1.

-4 JUL 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council.

No. 16 of 1954.

43560

IN THE WEST INDIAN COURT OF APPEAL

BETWEEN

HARRY YOUNG LAI ... .. *Co-Respondent-Appellant*

AND

BENJAMIN CHO FOOK LUN ... .. *Petitioner-Respondent*

AND

ESTELLE CHO FOOK LUN ... .. *Respondent-Respondent.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO—SUB-REGISTRY SAN FERNANDO.			
1	Petition for Dissolution of Marriage ... ..	18th July 1949 ...	1
2	Notice of Petition ... ..	20th July 1949 ...	3
3	Affidavit in support of Petition ... ..	18th July 1949 ...	4
4	Answer of Respondent ... ..	23rd August 1949 ...	5
5	„ Co-Respondent ... ..	26th July 1949 ...	5
<i>Petitioner's Evidence :</i>			
6	Evidence of Benjamin Cho Fook Lun ... ..	... ..	6
7	„ Lawrence Woo ... ..	... ..	15
8	„ Benjamin Cho Fook Lun (recalled) ... ..	... ..	17
9	„ Young Poy ... ..	... ..	17
10	„ Sydney Howard ... ..	... ..	20
11	„ Benjamin Cho Fook Lun (recalled) ... ..	... ..	24
12	„ Young Ping ... ..	... ..	25
13	„ Sydney Howard (recalled) ... ..	... ..	27
14	„ Benjamin Cho Fook Lun (recalled) ... ..	... ..	27
15	„ Lawrence Woo (recalled) ... ..	... ..	27

No.	Description of Document.	Date.	Page.
<i>Respondent's Evidence :</i>			
16	Evidence of Estelle Cho Fook Lun ... ..	...	28
17	„ Milly Yhap ... ..	...	33
<i>Co-Respondent's Evidence :</i>			
18	Evidence of Harry Acham Young Lai ... ..	...	36
19	„ Sam Look Allum ... ..	...	37
20	„ Mary Young Lai ... ..	...	38
21	Closing Speech for Co-Respondent ... ..	...	38
22	„ „ Respondent ... ..	...	40
23	„ „ Petitioner ... ..	...	40
24	Order ... ..	23rd November 1950...	43
25	Judgment ... ..	23rd November 1950...	44
26	Order ... ..	23rd November 1950...	53
IN THE WEST INDIAN COURT OF APPEAL.			
27	Notice of Appeal ... ..	6th January 1951 ...	54
28	Judgment ... ..	30th January 1953 ...	56
29	Order ... ..	30th January 1953 ...	61
IN THE PRIVY COUNCIL.			
30	Order in Council granting Special Leave to Appeal ... ..	1st August 1953 ...	63

## EXHIBITS.

Exhibit Mark.	Description of Document.	Date.	Page.
BCFL. 2	Plan of Locus of Petitioner's Room ... ..	...	65
BCFL. 3	Photograph of Bench and Table from Sitting Room ... ..	...	67
BCFL. 4	Photograph of Bench and Table from back of premises ... ..	...	69

NOTE

BCFL. 5 }  
BCFL. 6 } Translations of these letters are quoted in the evidence at pages 15, 16 and 27  
BCFL. 7 } respectively.

LIST OF DOCUMENTS NOT TRANSMITTED.

1. Marriage Certificate.
2. Appearance of Respondent.
3. Appearance of Co-Respondent.
4. Certificate of Service.
5. Request for Registrar's Certificate.
6. Registrar's Certificate that pleadings are in order.
7. Petition for alimony.
8. Answer to Petition for alimony.
9. Requests for Subpœna.
10. Respondent's first Bill of Costs.
11. Summons by Respondent for security.
12. Order on Summons for security.
13. Copy of Letter written by Respondent in Chinese character—BCFL. 5.
14. Copy of Letter written by Respondent in Chinese character in pencil—BCFL. 6.
15. Copy of Letter written by Respondent in Chinese character in pencil—BCFL. 7
16. Note concerning Soo Soo hands admitted by Respondent—ECFL. 1.
17. Request to set down Petition for trial.
18. Notice of hearing of Alimony Petition.

# In the Privy Council.

No. 16 of 1954.

## IN THE WEST INDIAN COURT OF APPEAL

BETWEEN

HARRY YOUNG LAI - ... .. *Co-Respondent-Appellant*

AND

BENJAMIN CHO FOOK LUN ... .. *Petitioner-Respondent*

AND

ESTELLE CHO FOOK LUN ... .. *Respondent-Respondent.*

## RECORD OF PROCEEDINGS

No. 1.

Petition for Dissolution of Marriage.

This is the Petition referred to in the affidavit of Benjamin Cho Fook Lun, sworn to before me this 18th day of July, 1949.

JNO. DOPSON,  
*Commissioner of Affidavits.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 1.  
Petition for  
dissolution  
of Marriage.  
18th July  
1949.

TRINIDAD,

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
SUB-REGISTRY, SAN FERNANDO.  
(MATRIMONIAL.)

10

No. 14 of 1949.

Dated this 18th day of July, 1949.

To :

His Honour the Chief Justice and Their Honours the Puisne Judges.

The Petition of BENJAMIN CHO FOOK LUN of No. 127 Coffee Street, in the Town of San Fernando in the Island of Trinidad, Shopkeeper, sheweth :—

1.—That Your Petitioner was on the 10th day of February, 1935,  
20 lawfully married to Estelle Cho Fook Lun then Estelle Young Jin Yao,

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

Spinster (hereinafter called the Respondent) at St. George's Cathedral, Georgetown, in the County of Demerara, British Guiana.

2.—That after the said marriage Your Petitioner lived and cohabited with the said Respondent at George town and Bartica in the County of Demerara, British Guiana, and at No. 127 Coffee Street, in the Town of San Fernando in the Island of Trinidad.

3.—There is no issue of the said marriage.

4.—That Your Petitioner resides at No. 127 Coffee Street, San Fernando aforesaid, and is a Shopkeeper, and is domiciled in the said Island of Trinidad.

10

5.—That the Respondent resides at No. 9 Gomez Street in the Town of San Fernando in the Island of Trinidad and is domiciled in the said Island of Trinidad.

6.—That no previous proceedings with reference to the said marriage have taken place in the Supreme Court of this Island by or on behalf of either party to the said marriage.

7.—That the said Respondent has frequently committed adultery with Harry Young Lai at 127 Coffee Street in the Town of San Fernando in the Island of Trinidad.

8.—That on the night of Whit Monday the 6th day of June 1949, 20 the said Respondent committed adultery with the said Harry Young Lai at 127 Coffee Street in the Town of San Fernando in the said Island of Trinidad.

Your Petitioner therefore prays that Your Honours will be pleased to decree :—

- (a) That the marriage of Your Petitioner with the Respondent be dissolved.
- (b) That the sum of One Thousand Dollars be paid by the said Harry Young Lai as damages in respect of the said acts of adultery by him committed with the said Respondent.
- (c) That the said Harry Young Lai and the said Respondent out of her separate estate may be condemned in the costs of these proceedings.
- (d) That Your Petitioner may have such further and other relief as may be just.

30

BENJAMIN CHO LUN,  
*Petitioner.*

No. 2.  
Notice of Petition.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

TRINIDAD,  
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
SUB-REGISTRY, SAN FERNANDO.  
(MATRIMONIAL.)

No. 14 of 1949.

To :

10 ESTELLE CHO FOOK LUN of No. 9 Gomez Street in the Town of  
San Fernando in the Island of Trinidad,  
and

HARRY YOUNG LAI of Reform Estate in the Ward of Pointe-  
a-Pierre in the said Island of Trinidad.

No. 2.  
Notice of  
Petition.  
20th July  
1949.

TAKE NOTICE that you are required within eight days after the  
service hereof upon you, inclusive of the day of such service to enter an  
appearance either in person or by your Solicitor at the Sub-Registry,  
San Fernando, should you think fit so to do, and thereafter make answer  
to charges in this petition, and that, in default of your so doing, the Court  
will proceed to hear the said charges proved and pronounce judgment,  
20 your absence notwithstanding.

Dated this 20th day of July, 1949.

H. L. ROUSSEAU,  
*Sub-Registrar.*

This Petition is filed and this notice to appear is issued by Messrs.  
T. M. Kelshall & Son of No. 9a Harris Promenade, San Fernando, Solicitors  
for the Petitioner. Their address for service is the same.

T. M. KELSHALL & SON,  
*Solicitors for the Petitioner.*

NOTE : Any person entering appearance must at the same time furnish  
30 an address for service within three miles of the Court House, San Fernando.  
This Petition is intended to be served on :—

- (1) Estelle Cho Fook Lun, of No. 9 Gomez Street in the Town of  
San Fernando in the Island of Trinidad.
- (2) Harry Young Lai of Reform Estate in the Ward of Pointe-a-  
Pierre in the Island of Trinidad.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 3.

**Affidavit in support of Petition.**

In the Matter of the Petition of Benjamin Cho Fook Lun for Divorce.

No. 3.  
Affidavit in  
support of  
Petition.  
18th July  
1949.

I, BENJAMIN CHO FOOK LUN of No. 127 Coffee Street in the Town of San Fernando in the Island of Trinidad, Shopkeeper, make oath and say as follows :—

1.—That I am the Petitioner herein.

2.—That the statements contained in paragraphs 1, 2, 3, 4, 5 and 6 of the said Petition dated the 18th day of July, 1949, are true.

3.—That the statements set forth in paragraphs 7 and 8 are true to 10 the best of my knowledge, information and belief.

4.—That there is not collusion or connivance between me and my wife Estelle Cho Fook Lun or the Co-Respondent in any way whatever.

5.—That the Petitioner has not in any manner been accessory to or connived at or condoned the adultery.

Sworn to at No. 9a Harris Promenade, }  
San Fernando, this 18th day of July, } BENJAMIN CHO LUN,  
1949.

Before me,

JNO. DOPSON, 20  
*Commissioner of Affidavits.*



No. 4.  
Answer of Respondent.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

TRINIDAD,  
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
SUB-REGISTRY, SAN FERNANDO.  
(MATRIMONIAL.)

No. 14 of 1949.

		Between					
	BENJAMIN CHO FOOK LUN	...	...	...	...	<i>Petitioner</i>	No. 4
10	ESTELLE CHO FOOK LUN	...	...	...	...	<i>Respondent</i>	Answer of Respondent.
		and					23rd
	HARRY YOUNG LAI	...	...	...	...	<i>Co-Respondent.</i>	August 1949.

The Respondent ESTELLE CHO FOOK LUN by Eldred Basil Jack, her Solicitor in answer to the petition filed in this cause saith :

That she is not guilty of adultery as alleged in the said petition.

WHEREFORE this Respondent humbly prays :

That the Court will reject the prayer of the said petition.

20 Dated this 23rd day of August, 1949.

E. BASIL JACK,  
*Solicitor for the Respondent.*

No. 5.  
Answer of Co-Respondent.

No. 5.  
Answer of  
Co-Re-  
spondent.  
26th July  
1949.

TRINIDAD,  
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
SUB-REGISTRY, SAN FERNANDO.  
(MATRIMONIAL.)

No. 14 of 1949.

		Between					
30	BENJAMIN CHO FOOK LUN	...	...	...	...	<i>Petitioner</i>	
	ESTELLE CHO FOOK LUN	...	...	...	...	<i>Respondent</i>	
		and					
	HARRY YOUNG LAI	...	...	...	...	<i>Co-Respondent.</i>	

ANSWER

Dated the 26th day of July, 1949.

The Co-Respondent, HARRY YOUNG LAI, by his Solicitor Mr. Leonard Cyril Carrington Hobson, in answer to the Petition filed in this  
40 cause saith :—

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

1. That he is not guilty of adultery as alleged in the said Petition.

WHEREFORE the Co-Respondent prays that your Honours will be pleased to dismiss him from the suit and to grant him such further and other relief as may be just.

L. C. C. HOBSON,  
*Solicitor for the Co-Respondent.*  
HARRY YOUNG LAI.

No. 5.  
Answer of  
Co-Re-  
spondent.  
26th July  
1949—  
*continued.*

To : The Sub-Registrar, San Fernando  
and to Messrs. T. M. Kelshall & Son,  
Solicitors for the Petitioner.

10

No. 6.  
Petitioner's  
Evidence.

PETITIONER'S EVIDENCE.

No. 6.

Benjamin  
Cho Fook  
Lun.

Evidence of Benjamin Cho Fook Lun.

TRINIDAD,  
IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
(SAN FERNANDO.)

Matrimonial No. 14 of 1949.

BENJAMIN CHO FOOK LUN ...	...	...	...	...	<i>Petitioner</i>
				<i>v.</i>	
ESTELLE CHO FOOK LUN ...	...	...	...	...	<i>Respondent</i>
				<i>and</i>	
HARRY YOUNG LAI ...	...	...	...	...	<i>Co-Respondent.</i>

20

NOTES OF EVIDENCE OF TRIAL JUDGE.

H. O. B. WOODING K.C. (N. HASSANALI with him) for Petitioner.

WOODING K.C. not present.

R. ARCHBALD K.C. (W. H. AGIMUDIE with him) for Respondent.

K. McMILLAN : Mr. Butt is for Co-Respondent.

N. HASSANALI for Petitioner, calls :

BENJAMIN CHO FOOK LUN, sworn states :

EXAMINED.

I live at 127 Coffee Street, San Fernando. I am a shopkeeper. I am Petitioner in this matter. I was married to Respondent Estelle Cho Fook Lun on the 10th February 1935 at St. George's Cathedral, Georgetown, British Guiana. Her maiden name was Young Jin Yao. This is a certified copy of my marriage certificate. Tendered, marked B.C.F.L.1.

10 After marriage I cohabited with Respondent at Georgetown and at Bartica in British Guiana, and then at 127 Coffee Street, San Fernando. There are no children of the marriage.

I came to Trinidad in 1937 to reside here. My wife came here in 1938. Since 1937 I have started living here for good. My wife lives here in Trinidad. I have made Trinidad my home since 1937.

After my marriage, my wife and I got along well together. I had a business at 127 Coffee Street. I used to be a partner in Shantung Restaurant, Port of Spain. I was a partner up to October, 1948. I still have the business in Coffee Street, San Fernando.

20 I visited Port of Spain and managed Shantung Restaurant from June 1948 to 15th October, 1948. My wife used to see after business in San Fernando, she was assisted by three clerks.

I know the Co-Respondent Harry Young Lai. I knew him since about 1945. We used to speak to each other. Young Lai's father had a dinner. I was invited and I went to the dinner with my wife. Young Lai always came to my shop at 127 Coffee Street, San Fernando.

30 I remember Whit Monday last year 1949. It was June 6th, a Public Holiday. I went to Port of Spain. My wife said she was going to Princes Town, she didn't go with me to Port of Spain. I left my home at about 9 a.m. My wife was at home when I left. I told my wife that I may not come home that night, but I would try and do so.

I reached gate of my home in San Fernando at 127 Coffee Street, at 9.50 p.m. I have a gate to go to the garage. I went to and from Port of Spain by motor car.

I saw the light in the garage. I called to one of my clerks to open the gate for me. He came out and opened the gate for me. I started the engine of the car. I switched off engine of car, the car had then gone down in the garage.

40 The garage entrance is in Coffee Street. Garage is at side of the shop. I put the car in the garage. I came out of the car. I spoke to the clerks.

When I reached by step to go in shop, I discovered that door was locked. It leads from garage. The door can lock from inside and outside. It was not locked from outside. I pulled it but I found it was locked from inside. I knocked on the door. I said "open the door for me." Nobody answered. I turned and then spoke to one of my clerks. He spoke to me.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

—  
No. 6.  
Petitioner's  
Evidence.

—  
Benjamin  
Cho Fook  
Lun.

—  
Examina-  
tion.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 6.

Petitioner's  
Evidence.

Benjamin  
Cho Fook  
Lun.

Examina-  
tion—  
*continued.*

I saw no light in my bedroom. The bedroom window was open. My bedroom is behind the shop. There is a concrete partition between shop and bedroom. The light in my bedroom was not on. I went to the goods room of the shop—I keep drums and goods there. I then put a ladder and I climbed ladder. I looked through window. I did not see my wife on the bed. I then wondered if something had happened to her.

I climbed into the bedroom. There is only one bedroom. There is a sitting room next to the bedroom. I looked in sitting room, saw nobody. Next to sitting room is the customers' No. 2 private room.

By consent ground plan admitted in evidence, and marked B.C.F.L.2. 10

WITNESS *continues*: I have a bed in my bedroom. I went from bedroom into sitting room one light was on in the sitting room. I saw nobody. I passed through sitting room into rumshop.

There is a hole in rumshop wall between rumshop and No. 2 Private Room. I looked through the hole. I saw my wife leaning on a bench. She was leaning on a table backwards. Her back was to the partition of the room. The Co-Respondent Harry Young Lai was on top of her. His hands were around my wife. They were having sexual intercourse on the bench.

I went back towards the garage. I came back with two clerks. Young Ping and Young Poy. I spoke to them. They looked into the No. 2 Private Room. Young Lai got up and ran towards the back door, he passed through the back gate, leading to Drayton Street. My shop is at corner of Coffee Street and Drayton Street. My wife got up and went back to the bedroom. When I saw my wife that night, she had on a night gown, I did not go to bedroom. I went back to garage I went to the police station to make a report. Before I left premises with my car, somebody named Howard called out to me. I then went to the Police Station. I returned back home. I went inside the garage. Young Poy opened the gate. 20

I did not see my wife in the garage. I did not see my wife after my return from police station. My wife left the house before my return. I slept in my house that night.

I saw my wife the next day in the night at about 8.30 p.m. She came, picked up her clothes and went out back.

On the Wednesday she came back, took some more clothes, and went away. On July 6th. 1949, my wife came with police for balance of things. She said the things were old, she didn't like them, and she left them. Since then, she has not come back to my home. She lives in San Fernando.

My wife drives a motor car. In 1948 in May, Howard was her teacher. 40  
Later, when I went to Port of Spain she told me that the Co-Respondent had taught her how to drive, and that she had got a licence.

No previous proceedings in Supreme Court in respect of our marriage by my wife or myself.

## CROSS-EXAMINED BY ARCHBALD, K.C., FOR RESPONDENT.

It was in 1947 when I and others purchased the Shantung Restaurant, Port of Spain. I can't remember if it was in August, 1947. Three of us bought it. Charlie Mansing, Young Soon and I. Mansing was put in charge. At that time Young Soon and I were living in San Fernando. Sometimes we went to Port of Spain and looked at business. After a time I took over Young Soon's share.

10 I went to Port of Spain in June, 1948 not April 1948 to manage the business, I know a lady named Philippa Acham, living at Diego Martin. She used to eat breakfast in the restaurant. She works at David Morrin, in Port of Spain. Miss Acham and I are ordinary friends. It is not true to say that I have got so attached to this lady that I wanted to get married to her. I taught Philippa Acham how to drive a car.

I never told Charlie Mansing that my marriage to Respondent in Demerara was not a lawful marriage, and that I wanted to get rid of her.

From June to October, 1948, I slept at Shantung Restaurant. I came here twice a week or so. My wife I call "Kim." She saw about the business in Coffee Street, San Fernando. Young Ping and Young Poy used to work in shop with her.

20 From October, 1948, I returned to San Fernando to live with my wife at Coffee Street. Same two clerks working and living there. From October, 1948, I never told my wife that I wanted to get married to Philippa Acham.

I know Mrs. Yhap, a Chinese lady in San Fernando. I don't know her as "Millie. After the Whit Monday night, I heard my wife was living at No. 9 Gomez Street. Mrs. Yhap lives at No. 9 Gomez Street.

30 I went with Marshal to serve petition. It was served on my wife at Mr. Aleong's house. Mrs. Yhap is Mr. Aleong's mother-in-law. Aleong was the Town Engineer. I never told Mrs. Yhap that I wanted to marry Philippa Acham. My wife asked to take a trip with her to China. She wanted to go there. Since 1947 or 1948 she has so wanted. If I had the money I would have gone together with her. I never told my wife that if she gave me a divorce I would give her \$5,000. but she must go to China and not stop in Trinidad.

40 I had a photograph of Philippa Acham for a driving learner's permit. I was teaching Philippa to drive. The photograph was on the learner's permit. My wife took up the permit on which there was the photograph I asked her for it. She gave it to me. I never told my wife that if she didn't give up the photograph I would damage her face. I couldn't understand why my wife took up the permit and that is why I asked her about it. I had the permit on the table in my sitting room that is my office. At the time I had already sold out my interest in Shantung Restaurant.

I keep on good terms with everybody. I did not finish teaching Philippa to drive, so I was returning permit to Philippa. I feel my wife was jealous about Philippa. I brought Philippa Acham down to San Fernando to see if she would pass here in her driving. My wife ask me to

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 6.  
Petitioner's  
Evidence.

Benjamin  
Cho Fook  
Lun.

Cross-exam-  
ination for  
Respond-  
ent.

*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 6.  
Petitioner's  
Evidence.

Benjamin  
Cho Fook  
Lun.

Cross-exam-  
ination for  
Respond-  
ent.  
*continued.*

teach her. I said "Alright," but I couldn't. I was in Shantung Restaurant then. Not true that from October, 1948 quarrels between my wife and myself about Philippa.

Sometimes I lay down and sleep in sitting room. I did not stop sleeping with my wife. There is a little small cot in sitting room. I went to bed at nights with my wife. I never told my wife that I was not sleeping with her any more.

I have not manufactured this case.

On Whit Sunday 5th June, 1949, my wife and I went to a christening at Diego Martin. I drove car there and back. I slept home that Sunday night in my bedroom. My wife and I slept in the same bed that night. The next day, Public Holiday, shop was closed. I was dressing, I told my wife I had to go to town. That was on Monday morning—to pick up "Sou-Sou" and see one or two friends. I ask her if she wanted to come with me—I invited her. She said she was going to Princes Town way, not going to join me to go to Port-of-Spain way. I offered to drop her first at Princes Town, she said no, she would take a taxi. It was out of the way but she was my wife. She didn't tell me where she was going in Princes Town, I didn't ask. I did not know if my wife had any friends in Princes Town. I didn't refuse to tell my wife where I was going. I didn't tell her that she could follow me, if she wanted to find out. 10

Young Ping and Young Poy live in one room on the premises by the side of the garage. There is a galvanised gate at Coffee Street and one at Drayton Street. There are two or three keys to the gate at Coffee Street. The two clerks have one key which they keep for themselves in their room— whoever goes out locks gate from outside and carries away the key.

On Whit Monday 1949 I collected four hands at \$100, sou-sou money from four people. There are nine people in Port-of-Spain re sou-sou. There were hands in San Juan, Santa Cruz and three in Port-of-Spain, one in Diego Martin (I went there). I forgot to ask the man at Diego Martin for the sou-sou on the Whit Sunday. It was afternoon when I reached home on Whit Sunday from Diego Martin Christening. If I had to sleep in Port-of-Spain I would have slept at Toon Chong's place in Diego Martin. I came back from Port-of-Spain alone. 30

I did not see Philippa Acham on Whit Monday. I know the road and the house where she lives. I did not go to her house on the Whit Monday. I went to Toon Chong's place at about 6 p.m. on Whit Monday 1949. Mr. & Mrs. Toon Chong were at home at Diego Martin. You have to pass Philippa's house first before you reach Toon Chong's. I had dinner at Toon Chong. I left his house at 8.20 p.m. I drove straight on to San Fernando alone. 40

I usually take one beer at a time. I can't remember what I drank on Whit Monday 1949.

Garage has concrete floor, and galvanised roof; at side is clerk's room. Provision shop is where door and steps are. Whoever is at home keeps the key to that door. When I reached home on Whit Monday night, Coffee Street gate was locked inside. I saw light on, in clerk's room. I didn't knock hard, I called out. I couldn't tell you that anyone in Private Room could hear a knock at Coffee Street gate.

I reached my house alone at 9.50 p.m. The gate is a galvanised gate. I saw a light in the clerks' bedroom. I called out to Young Poy, he is the one that more remains in the shop.

I remember one time I missed some money out of my pocket—can't remember how much. My pants were hanging up in sitting room. I was tired and I had slept. I ask about my money. I said "Nobody comes into my place. Only my wife and Young Poy." I ask my wife and also Young Poy. Poy said he had not taken the money. My wife said the same. Young Poy, as far as I know, didn't tell my wife that she told me that he had taken the money. My wife and Young Poy continued talking after I had lost the money.

Young Poy opened the gate for me. I started up motor car engine, I started car and went down into garage. I came out of car and talked to Young Poy and Young Ping. I was outside—Ping was in clerks' room. Poy was outside.

Door from garage to provision shop was closed. I did not ask Poy or Ping for key to that door. That door is locked from the inside. I knocked and called out "Open the door for me." The clerks' room is not far from the steps. When I called out "Open the door" I can't tell if anybody in No. 2 Private Room could hear—40 feet away. I knocked twice and I called out twice. I heard no sound inside. I went into the store room. Bulb in the store room—the light was off.

Bedroom window swings into the store room, when it is opened. I got a ladder from inside the store room, it was leaning in some part of corner. I put it on a goods box. One of the clerks, Young Poy had told me my wife was inside. This was when I was rapping on door and got no answer. I thought my wife was asleep inside the bed. I saw the window open. Sometimes window half way open, open or closed—not always closed. I self put the ladder. I went through window, saw nobody in bedroom.

Light was on in the sitting room. Nobody there. I didn't call out to my wife at all.

I have toilet and sewerage. I did not look in toilet for my wife ; it is in back of bedroom. From sitting room I went to the rumshop. From sitting room you ordinarily go to provision department—telephone in the corner there. Partition between rum and provision department inside—outside is open. In rumshop section there is a frigidaire. It is not true that I met my wife standing in front of the frigidaire taking out a cold aerated drink. It is not true that I went home that night to make a bogus charge against my wife. I did not hear telephone ringing or my wife's voice talking on telephone while I was at the door. My wife can take a sweet drink from frigidaire at night, if she wants. My wife had a machine, it was in sitting room, it was a foot machine.

Q. Did you not say to your wife, "Who is the man you were speaking to?"—A. No.

I have a meat block in provision department.

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando.

No. 6. Petitioner's Evidence.

Benjamin Cho Fook Lun.

Cross-examination for Respondent.

continued.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 6.  
Petitioner's  
Evidence.

Benjamin  
Cho Fook  
Lun.

Cross-exam-  
ination for  
Respond-  
ent.  
*continued.*

Q. Did you not rush to meat block, bring something in your hand and say you going to mash her ass tonight?—A. No.

It is not true that, at the frigidaire I called young Poy saying, "Come, look man here." Poy and Ping did not rush with sticks to me at the frigidaire. I was not there. I never spoke to my wife that night. I went in motor car to police station. I don't know my wife rang up Mrs. Yhap. I made a report to police. I think No. is 2253 Springer. I didn't tell him I saw a man lacing up his boots. I told him I looked through a hole and saw the man.

In June, 1948, I wrote my wife's cousin in Hong Kong about my wife. 10  
She wanted me to send her home for a trip—that is why I wrote the letter. She wanted me to give her money to go home. My wife was born in Canton, China. I was born in Hong Kong. I wrote my wife's cousin about how my wife is going on.

I looked through a hole. I saw my wife. There was a bench, and there was a table. Leaning on table, and back jamming against partition of room—partition inside the room, not a concrete partition, board partition. Bench was at side of table. Table is a little higher than bench. She was sitting leaning. I made no noise I called Poy and Ping to come and have a look. No tables in the private room. One of tables is always 20  
jamming to partition where there is the little hole. The other table is on left looking through hole, Drayton Street side. Poy and Ping went and saw, too. They looked. They did not call out. I said "You don't have to run, what you running for?" I spoke to my wife and Harry Young Lai.

I would have to pass through counter to get to private room. I went inside private room afterwards. My wife not there then. Poy and Ping went back to their room. They never said one word to my wife. After making report I went back to my home. The two clerks were there. Young Poy told me, "a lady inside." I told him to call the lady. The lady came from inside. She was Mrs. Yhap. I can't remember asking her 30  
what she doing here so late. She never said my wife rang her up to ask her to come, and that was why she was here. She asked me what happened. I told her what I had seen between my wife and Young Lai. She said, "O God, oh God" and she got excited right away. I was not tipsy that night. I had no rum in my head. I don't know if my wife was in house when I was talking to Mrs. Yhap. I could not say if my wife left that night with Mrs. Yhap. I don't know who brought Mrs. Yhap in car that night. I don't know when she left. I wanted to get some advice from the police as to whether I should go back in house that night. I told her I was going to Police Station and I left her there. The next day Mrs. Yhap and my 40  
wife came after 8 p.m. My wife didn't speak to me. Shop was closed. I was having my dinner. Mrs. Yhap spoke, she said my wife came to take up her clothes. I said all right.

It is not true that I didn't give up my wife her clothes, or that I put a few old pieces for her.

I did see Young Lai on top of my wife on Whit Monday night.

I saw Howard that night. He was in Drayton Street coming up.

## CROSS-EXAMINED BY BUTT FOR CO-RESPONDENT.

The bench and table were in same place that they usually were : they are, however movable. No light in the rumshop. Lights in No. 2 private room were not on, they were off. One window in No. 2 private room.

Young Lai got up from the bench and ran through back door, then down three or four steps, to the gate. He said nothing at all to me.

Young Lai had on a white shirt, and greenish colour pants (a little lighter colour than Mr. Butt's barrister gown) a sort of greyish. I don't know if the pants had a stripe.

10 When I looked I didn't say anything at the time. I opened the hole, I looked in the window hole and I saw. It is a hatch for serving glasses. Hole is open, it has no door. It was very quiet in the room. They were very quiet.

When I looked, they did not know I was there. Where I stood up to look was very dark. Young Lai was on top of her, his hand on her shoulder. I saw Young Lai's back on top of her. Ping and Poy should know Lai, as he always visits the place. When they came I looked. I said to them "Look." They looked through the hole. Partition was on right side as I looked through hole, partition against which my wife's back was. Left

20 side on table, back on partition. Partition about 2 feet from the hole. Table about a foot below the hole, bench one and a half feet lower than the table.

The table is the table against which my wife was leaning. My wife was sitting, left side on table, back against partition, lying a little on the bench. Young Lai was on top of her, the heads and legs were together. I can't say if they were kissing.

When I said "Look" I was looking through the hole. Young Lai got up and started to run out. Nothing knocked over. Door half way open. Gate leads to Drayton Street. Young Lai ran out into the yard.

30 The No. 2 Private room has one door leading to the sitting room. If you stand in No. 2 Private room looking through that door, the hinge is on the left. When the door is opened, it comes into the private room. That door was opened on Whit Monday night—it was open in full.

The private room has a window—that window has a shutter. The shutter was shut that night, it has a hook. The window is a board window, closed that night.

I saw the colour of the pants when Young Lai got up. The sitting room had one door to the bedroom. It was open on Whit Monday night. Door from sitting room to kitchen was open. I didn't go so far to observe

40 the door from kitchen to the yard.

## RE-EXAMINED.

I made this plan B.C.F.L. 2 myself. I draw with a pencil the route I took that night before I got to the hole in the wall. I draw this on plan B.C.F.L. 2. The hole is marked with a "circle." The door between bedroom and sitting room is marked with a "cross."

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 6.  
Petitioner's  
Evidence.  
Benjamin  
Cho Fook  
Lun—  
*continued.*

Cross-exam-  
ination for  
Co-Re-  
spondent.

Re-exam-  
ination.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 6.  
Petitioner's  
Evidence.  
Benjamin  
Cho Fook  
Lun.

Re-examin-  
ation—  
*continued.*

I first went into store-room : the light there was not on. I then went into bedroom : light there was off. I then went into bedroom light there was off. I then went into sitting room : One light there on, other light there was off, the one nearer bedroom was the one that was on.

In private room No. 2 the light was off. In rumshop lights were off. Board partition between private room and sitting room. It does not go right up, wire netting at the top one and a half feet high. Light in sitting room that was on, is on a cord. You can switch it on and off by raising your hand. It reflects in bedroom and also in No. 2 private room—not brightly, but a little. 10

When I came home that night, I had no reason to believe that Young Lai was there, or that my wife and another man were hiding in a room. I went into rumshop because at that time I felt that something had happened to me. I did not know what was happening. I had been told by the clerks that my wife was in, but I couldn't find her in bedroom or in sitting room.

I take photographs myself. I took some pictures of rooms in my shop. This picture shows part of private room the table, the bench and the hole. The table and the bench are what my wife was on that night. Picture tendered admitted, marked B.C.F.L.3. This picture, taken from 20 yard and looking through back door of No. 2 private room. It shows concrete steps. When you come down those steps you come into back yard, then to a gate leading to Drayton Street. This picture shows also same table and same bench. Picture tendered, admitted, B.C.F.L.4.

Witness shows manner in which wife was lying, with left hand on table and in a half-reclining position. Witness also demonstrates how Young Lai was, lying on "she."

WITNESS *continued* : My wife came from Canton. She writes her family in Chinese. She keeps copies of her letters. I see these two documents now handed to me, they are in my wife's handwriting, they are in Chinese. 30 Tendered, admitted marked "B.C.F.L. 5 and B.C.F.L.6." They have been translated by Mr. Woo. No dates on B.C.F.L.5 and 6. They were written in 1947 and June 1948.

Frigidaire was in rumshop part, no light was in that room on Whit Monday night. When door to frigidaire opened, light shines. I saw no such light that night.

Cross-examination for Respondent. CROSS-EXAMINED BY ARCHBALD, K.C. for RESPONDENT (with permission of Court).

Between sitting room and rumshop, there is a door to go from sitting room to rumshop. That night that door was open. Light from sitting 40 room would reflect in provision department, but not in rumshop part. Frigidaire is in rumshop part.

CROSS-EXAMINED BY BUTT FOR CO-RESPONDENT (with permission of Court).

I looked at B.C.F.L.3. Wire netting is dark part at the top. It is true that I saw Young Lai in my private room that night. I saw him myself. From hole, you can get into private room by opening up or climbing over counter.

RE-EXAMINED.

My father was here. He left Trinidad in 1947 to go back to China. Chin Cheong from British Guiana spent 2 weeks with me. I can't remember when he went back to China.

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando. No. 6. Petitioner's Evidence. Benjamin Cho Fook Lun—continued. Cross-examination for Co-Respondent. Re-examination—

10

No. 7.

Evidence of Lawrence Woo.

EXAMINED.

LAWRENCE WOO, Sworn, States :

I carry on a restaurant in San Fernando. I was born in China. I can speak, write and read Chinese. I have been in Trinidad over 30 years. I speak English as I have been writing. I write English a little.

No. 7. Lawrence Woo.

I was asked to translate B.C.F.L.5 and B.C.F.L.6. I did so. Letter to brother and sister-in-law—B.C.F.L.5—from a sister. Writer's name is Kim You B.C.F.L.5 is as follows when translated : " My dearest brother  
20 " and sister-in-law. I have received your letter with a photograph of you  
" recently drawn. By seeing your photograph it seems to me as though  
" I see you in person. Mr. Rupert Chow has returned from China a month  
" ago. He spoke of the present situation in China. He said that you  
" intended to sell out your present business, and to do some other business :  
" I don't know whether that is true.

Examination

20

" I have left China for over 10 years. I have been through many  
" hard times. In Trinidad it has become harder since after the war.  
" I have now decided to take a trip to China. As China is not quite settled  
" now. I am still bearing up to now. I am thinking of China every day.  
30 " I have no desire to stay in Trinidad much longer. Maybe, in a short time,  
" I may travel with my father-in-law. I don't know what you think about  
" it, whether you think that it is good, please advise me.

" I wrote you this. I hope when the time comes, you would do  
" your best.

" Now there is one Chin Cheong coming to China. I am giving him  
" shirt and tie (one each). I hope you will receive it safely. Brother

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

“ when you see Mr. Chin and you wish to know all our living conditions,  
“ surely he will tell you everything. He is quite a gentleman. I hope  
“ brother you will treat him as a friend. When he arrives in Hong Kong,  
“ he may be strange to the place. I hope brother you will take care of  
“ him. Do your best as a good friend.

I couldn't finish saying everything. I close now. Hope the best of  
“ everything.

“ Your Younger sister  
“ Kim You.”

No. 7.  
Petitioner's  
Evidence.

The letter B.C.F.L.5. is not dated.

10

Lawrence  
Woo.

I now translate B.C.F.L.6 which is also not dated. Close of letter  
has no signature at the end.

“ Dear Father-in-law. As though I am seeing you. Since you are  
“ away, time flies as an arrow. The wink of an eye, over a month.

Examina-  
tion—  
continued.

“ We received your letter and know that you arrived safely. I am  
“ very happy. From the time you eft,our business carried on as usual.  
“ Do not worry your mind.

‘ Regarding Shantung Restaurant, business seems difficult to solve.  
“ Chin Poy has agreed to become a shareholder, and has agreed to work  
“ together with Mansing, but was surprised that Mansing do not co- 20  
“ operate. He seeks only his own interest, he cares nothing concerning  
“ the whole business. Chin Poy thinks of the future that he alone could  
“ not save the situation. Now, Afook (meaning the petitioner) was  
“ forced to see after this business at the moment. We don't know what  
“ may be the future. Heaven knows.

“ Being in partner with Mansing, I believe he done more injury than  
“ good. Our own business needs a proper person to carry on, though  
“ Alim come back to work for about two weeks. But no difference to  
“ before. Has no business ability makes no effort, gives no help to the  
“ business. He is only called a person, that's all. 30

“ I now, in this state of affairs, am much worried.

“ The present food control such as rice, milk has cut down 50 per centum.  
“ Rice is only  $\frac{1}{2}$  pound. Beforetime each person  $\frac{3}{4}$  pound. Milk, our  
“ quota is 20 cases, now 9 cases.

“ Therefore business has dropped a good deal. And yet, price of  
“ goods is going up. If lack of capital would be harder to make any profit.  
“ I could not say everything. I hope you know that. Should you have  
“ spare time, write and let me know about home.

“ I always feel living outside China. I get tired and no good hope  
“ of the future. I hope to come back to China for a change. 40

“ N.B.:—Regarding Alim, if Auntie do not understand, don't say  
much.”

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CROSS-EXAMINED BY ARCHBALD, K.C. AND BUTT. NIL.

No. 8.

Evidence of Benjamin Cho Fook Lun (recalled).

RECALLED—States.

Alim is my sister's husband. He worked in my shop at Coffee Street. He has left. Chin Poy is one of my family. He is also a friend. He never worked in my shop. I am Afook.

CROSS-EXAMINED BY ARCHBALD, K.C. AND BUTT. NIL.

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando.

No. 8. Petitioner's Evidence.

No. 9.

Evidence of Young Poy.

10 LAWRENCE WOO, sworn as a Chinese-English, and English-Chinese, interpreter.

EXAMINED.

YOUNG POY Sworn (through interpreter Woo) states in English :—

I was born in Canton. I have been in Trinidad since 1936. I now work for Benjamin Cho Fook Lun for about 2 years as a clerk. Young Ping also work there. We sleep in the shop, in same room. Shop is at corner of Coffee and Drayton Streets. Our room on Drayton Street. My room next to where cars drive into garage.

20 I knew Mrs. Cho Fook Lun. She used to live in the shop. Not now. She stopped living there in 1949 on 6th June. It was a holiday, a Monday. That day Petitioner was out, he went in morning time. I stopped in shop. Young Ping went out. Mrs. Cho Fook Lun went out. She returned at about 7.30 p.m. Young Ping came in at about 8.15 p.m.

I know Co-respondent Young Lai, from time I started to work for Petitioner. I knew him in shop, he used to come there and talk to Petitioner. Petitioner and Co-respondent were friends. Sometimes Young Lai cam. and spoke to Respondent when Petitioner was not there.

30 Young Lai has a motor car. Petitioner returned about 10 p.m. in a motor car. I didn't see him until he was inside. He came in, and he called to open the gate for him. I opened the gate, and he brought car inside. Young Ping was in the bed.

Cho Lun put away car in garage. He went by inside. The door there was closed. It was locked inside. He called Mrs. Cho Lun, he knocked at the door. No one came.

Benjamin Cho Fook Lun. (Recalled.) Re-examination.

No. 9. Young Poy.

Examination.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 9.  
Petitioner's  
Evidence.

Young Poy.

Examina-  
tion—  
*continued.*

Cho Lun saw window open, and he climbed through the window. I went back to my room, on the bed. Cho Lun came out and called me, soon, soon after he climbed through window. He said "Come." Young Ping went first, I after. We went inside by the rumshop. Cho Lun said "Look" (that is, through the hole from rum shop to private room). I looked. Young Ping looked. I see Young Lai get up and run. I saw Mrs. Cho Lun. Young Lai was on the bench and he got up. Mrs. Cho Lun was sitting down on bench. I first saw Young Lai when he was getting up to run. Young Lai ran to private room door which leads to yard, which goes to gate leading to Drayton Street. I didn't see Young Lai any more. 10  
Mrs. Cho Lun went back inside, by the bedroom.

Petitioner said nothing, neither did Mrs. Cho Fook Lun nor Young Lai. Cho Lun said "Don't run, don't run." Cho Lun, after that, went in his car to Police Station to make a report. Nobody came. Cho Lun came back. A lady Mrs. Yhap was then with Mrs. Cho Fook Lun. Mrs. Yhap came after Petitioner had gone to Police and before his return from Police Station. I went back into my bed in the room of Young Ping and myself.

Cross-exam-  
ination for  
Respond-  
ent.

CROSS-EXAMINED BY AGIMUDIE FOR RESPONDENT.

I am still working with Petitioner. He pays me by the month. I am 20  
not Petitioner's friend. We eat together.

Mr. Cho Fook Lun lost money. I didn't take it. His wife did not tell Cho Lun that I take the money—I don't know that she told Cho Lun so.

Toilet inside the house—sewerage. I use it. Young Ping uses it. I can get to it, by night or by day. I can't get to it at 11 o'clock in the night time. There is one toilet in the house. It is next to the kitchen, between kitchen and bathroom. Young Ping and I use the same W.C. To get to W.C. from my room I pass through shop, into sitting room, then kitchen, then to W.C. In kitchen there is a door opening into back yard. I and Young Ping can go into toilet any time we like. 30

In night time door to shop (provision shop) is locked. Cho Fook Lun locks door at night. I have no key to that door. I didn't see any lock, it is shut with a bolt. On 6th June, 1949 the door of the provision shop was open, it was not locked in the day. On 6th June, 1949, I was home all day long. I was alone. The door to the provision shop was opened that day, the whole day. I was going out at 6 p.m. and I locked the door. I locked the gate and put the key to the gate in my pocket. Young Ping went out also.

I came back at about 7 p.m. I closed the gate, I didn't lock it. When 40  
Mrs. Cho Lun came, I opened the gate for her. She got into house through the door. She passed by the garage. She passed through the provision shop. I opened the provision shop door with a key, and I let Mrs. Cho Lun in.

Young Poy states through interpreter Lawrence Woo.

CROSS-EXAMINED.

The lock is a padlock. I left the key and the padlock in my bedroom. When Cho Lun called to me to come, I was in my bedroom. He came out from the shop. I did not hear bolt pulled from the door leading to shop. I was not sleeping. I did not hear Cho Lun say, "Come, a man is inside."

I saw Mrs. Yhap the next day at shop. Mrs. Yhap didn't ask me what had happened the night before. I never told her "The boss call me last night to see a man with Mrs. Cho Lun but I really didn't see a man." Mrs. Yhap never asked me anything. I had no conversation with Mrs. Yhap.

10 The door to the provision shop is in two halves, upper and lower. Padlock affixed to a hasp and staple.

The telephone did not ring a single time that evening. When Cho Lun came in his motor car, I cannot say that Mrs. Cho Lun was speaking at the telephone. When Cho Lun came and called Ping and myself, I walked last. Young Ping walked second.

Mrs. Cho Lun was not by the frigidaire. Cho Lun gave a look when he got back. He was dressed, he had on his shoes. No light in the rum shop or provision shop. There was light in the drawing room. The sewing machine is in Mrs. Cho Lun's bedroom. I heard nothing like sewing that night.

20 When I first put key and padlock in my room, the door was not left open. Mrs. Cho Lun shut it from inside. I didn't then know if she had locked it from inside. When Cho Lun came, then I knew.

Cho Lun's car does not make a big noise when going to the garage. The car rolls down easily an incline from the garage.

Cho Lun knocked at the door twice. If a person was nearby, he would hear. Cho Lun didn't pull at the door. I didn't pull at the door.

30 On the 6th June, 1949 the club which used to be kept upstairs had been closed down—no members came there at all. The staircase from upstairs leads down into the yard facing Drayton Street, about 12 feet from the Drayton Street gate. A high paling on the Drayton Streets side—galvanised sheet.

Not usual for Cho Lun to climb through bedroom window to get into his bedroom I was not with Cho Lun when he climbed—I was in my room. I didn't say this morning that I saw Cho Lun climb in. I didn't see Cho Lun climb through the window. I was told so. When Cho Lun arrived, I did not pay attention to lights.

CROSS-EXAMINED BY BUTT FOR CO-RESPONDENT.

40 When I looked through the hole, the back door to private room was half closed—1 foot to 1½ feet. When I looked through the hole, Young Lai was about 10 feet from the back door. He was ready to run.

Q. The door into sitting room was it opened or closed?—A. It was open.

It was open in full. Young Lai was wearing coloured pants, half way black half way white, seemed to be grey. I walked very easy but I did not

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando.

No. 9. Petitioner's Evidence.

Young Poy.

Cross-examination for Respondent—*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

tip-toe to the hole. We did not speak to each other, when going to the hole. The door from the sitting room to provision shop was open. We could have gone through that door, but we didn't.

One light in sitting room. I can switch that light on. I know how to do so. I stretch my hand above me and switch-squeeze at top of bulb. Light is not very high. Lamp has no lamp shade or light shade.

I look at B.C.F.L.3. Wire mesh in room, but I can't make it out in the picture.

When I looked into the private room it had enough reflection of light.

No. 9.  
Petitioner's  
Evidence.

It is true that I did see Young Lai going to run, that night. As soon as I saw him, he got up and he ran. I did not see his face. Cho Lun told me it was Young Lai. 10

RE-EXAMINED.

Young Poy.  
Cross-exam-  
ination for  
Co-Re-  
spondent.  
ent—  
continued.

I always see Young Lai every week. At that time, I knew him well. I saw person running. It was Young Lai. At the moment I didn't see his face. I knew it was Young Lai, because Cho Lun said so. He said so at the same time, as soon as Young Lai had run Cho Lun said so. While the man was still running. Cho Lun said " You need not run, you no need run."

Re-exam-  
ination.

The door to provision shop has a padlock and key. There is a door between my bedroom and provision shop. That is door I use to go to the w.c. It has padlock and key. The hasp and staple are on provision shop side. The bolt is on provision shop side. You go up same steps and arrive at door leading to shop. Padlock is outside door. Bolt is inside the door. 20

Cross-exam-  
ination for  
Co-Re-  
spondent.

CROSS-EXAMINED BY BUTT FOR CO-RESPONDENT (with permission of Court).

When Cho Lun told me it was Young Lai, Young Lai had already gone.

BY COURT: When Cho Lun told me it was Young Lai, Young Lai was then outside of the private room. 30

No. 10.  
Sydney  
Howard

No. 10.  
Evidence of Sydney Howard.

Examina-  
tion.

EXAMINED.

SYDNEY HOWARD, sworn states :

I live at La Brea. I am a chauffeur. I drive a hired car. In June 1949 I was driving a hired car HA 4499. I plied for hire between San Fernando and Port-of-Spain. I then lived at 5 Upper Hillside Street, San Fernando. Car kept at nights home at me. I know Cho Lun's shop at Coffee and Drayton Streets. I know Young Lai for past 12 years. He

owns a car, he drives it himself. In June 1949 he had a Vauxhall car PA 4683. That car is sold. He now drives a Morris car P. 8688 or PA 8688.

I remember Whit Monday, 1949—6th June 1949. At about 10 p.m. I was coming up Drayton Street approaching Coffee Street from back of shop. I was going home. Coffee Street is a major road. I was driving very slowly. As I was approaching Coffee Street I recognised car PA 4683 belonging to Co-Respondent Young Lai. It was parked in front of back gate of the shop in Drayton Street on same side of Drayton Street  
10 as the shop. I saw the car while I was approaching.

Harry Young Lai the Co-Respondent was driving the car. I saw him come out of back gate of shop, open door of his car get into car, start up engine, and drive away in front of me. He came out of gate in a very fast manner, as if he were running away.

I know him very well. He used to live at Reform Village. I don't know if he still lives there. I am quite sure that it was the Co-Respondent Harry Young Lai.

CROSS-EXAMINED BY ARCHBALD, K.C. FOR RESPONDENT.

I have known Petitioner since 1942. At that time my work was  
20 driving of a goods vehicle, a truck, at the Base. I was living at No. 5 Upper Hillside Street at the time. I used to buy at Petitioner's shop in Coffee Street when I was in San Fernando.

There was a period of time when I used to work for Benjamin Cho Fook Lun in his shop in Coffee Street. That was around 1949. I worked for Petitioner in his shop around three months.

Q. Name the three months in 1949 ?—A. I worked between January to March 1949. I worked for Petitioner, selling as a clerk in the shop. I was not a handyman, assisting in unloading goods from truck. During the three months I worked there, no truck brought goods there. Goods  
30 brought by cart. I did not assist in off-loading goods from the cart. I was really authorised to sell goods in the shop. It is not true that I was not allowed to go to the money drawer to put money in, or to make change.

After my 3 months there in Petitioner's shop, I did driving up to now. It is not true that the reason why I ceased to work in Petitioner's shop was because I treated my friends to drinks without paying for the same. I never heard Mrs. Cho Lun telling her husband so.

I was paid \$9 a week. After leaving employment of Petitioner, I started to drive HA 5121, the car of Baldeosingh. Last year, he lived in Rio Claro. I drove his car in San Fernando. It was a Plymouth hired  
40 car, I used to keep it with me. Baldeosingh didn't pay me a flat salary per month. I worked on a percentage. Baldeosingh would come down to San Fernando for me to account in week ends. I worked Baldeosingh's car around 4 or 5 months. My taxi run was from San Fernando to Port-of-Spain and back.

I was on Point Fortin to San Fernando after Baldeosingh took away

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 10.  
Petitioner's  
Evidence.

Sydney  
Howard

Examina-  
tion—  
*continued.*

Cross-exam-  
ination for  
Respond-  
ent.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 10.  
Petitioner's  
Evidence.

Sydney  
Howard.

Cross-exam-  
ination for  
Respond-  
ent.—  
*continued.*

the car from me. He stopped me working for him. After I ceased to be employed by Baldeosingh I was unemployed for 3 or 4 days. I then drove a taxi belonging to H. Bunsee, HA 1285. I ran that taxi on the San Fernando to Point Fortin route. I worked this taxi for about 2 months. After that I worked several taxis.

In month of June 1949 I was driving HA 4499. I was not employed by Baldeosingh regularly. After I had completed driving HA 4499, I started to drive the taxi of Baldeosingh regularly. Last year Harry Ramlogan of Tunapuna was the owner of HA 4499. I ran that taxi on the San Fernando to Port-of-Spain route. I was paid by Ramlogan on a percentage basis. 10  
I kept car home at me at No. 5 Upper Hillside Street, San Fernando. I worked that taxi around 2 or 3 months, April, May and June 1949. During those months I was working solely for Ramlogan, and for nobody else.

After I had ceased working for Petitioner in his shop, I used to do casual work, casual transport work as driver of a goods vehicle for Lazzari, driving a truck from San Fernando to different parts. I didn't work very long with Lazzari—only for 2 or 3 weeks.

I then went to Pointe-a-Pierre where I used to go in the mornings to see whether there was any vacancy for drivers. I would go to the Labour 20  
Bureau—there was no vacancy. I can't remember how often I went there—it was on not more than 5 or 6 occasions. I can't remember all the different persons I worked for. I drove trucks and hired cars. Several persons' trucks I drove, but I can't remember their names. I can remember names of owners of hire cars—Ramlogan, Bunsee, Baldeosingh, and Insam Ally.

I was driving Baldesingh's car around the ending of June 1949. I stopped working for Baldeosingh about the end of October; it was not near to Christmas when I so stopped. I can't remember if it was 4 or 5 months I worked. It was a couple of months. In 1950 I was not driving 30  
Baldeosingh's Plymouth car.

I worked for Petitioner in his shop from January to March 1949.

I have worked for various people on various vehicles at various times. I am conversant with the numbers of the vehicles.

On 6th June 1949—I remember the date well, the car which I was driving had an almanac—I had a job for that day, I had it marked on the almanac. I marked it. I had met the almanac in the car. I remember who was the person for whom I did job on that day. Every holiday I have jobs. When I get a job, I put down person's name. The job for 6th June 1949 was from San Fernando, which I left at 6 a.m. for Piarco. Passengers 40  
went to Piarco. I went then to Port-of-Spain to do my ordinary routine taxi work between San Fernando and Port-of-Spain.

I was alone in the car when I saw Young Lai get into his car on night of 6th June and drive off.

My last trip to San Fernando I reached San Fernando at 10 o'clock p.m. I brought passengers. Full trip. It was strangers whom I brought up. I am not supposed to know their names. Three of them dropped at corner

of Rushworth and Marryat Streets. I continued up Drayton Street and reached by Petitioner's place. Young Lai was walking fast when he came out.

Car pulled from one side of road to another. I saw Young Lai when he was coming out of gate. I did not look at him when he got into the car. I already knew the person was Young Lai. Reflection of light of car I was driving caused me to recognise Young Lai. I knew the car in which Young Lai went. Young Lai's car went down Drayton Street. I turned right from Drayton Street into Coffee Street. I went as far as Carib Street—just a block. At time I was living at No. 5 Upper Hillside Street.

10 From Library going on Coffee Street to Princes Street, Upper Hillside Street is on left and Lower Hillside Street is on right. The very next Street you go to is Drayton Street which is on the right. Petitioner's shop is at corner of Coffee Street and Drayton Street. I did not turn left to get me near home, but turned right to go to Carib Street. After Drayton Street, I don't know name of next Street after Drayton Street off Coffee Street.

I went up Marryat Street. I turned left along Carib Street. I eventually came to the old Pillared Spanish building. I was then at junction of Upper Hillside and Carib Streets. I then turned left into Upper Hillside Street. I drove into landlord's yard and parked the car.

20 I locked the car, went into my house, didn't come out again for the night.

The next morning I did not go down to Petitioner's shop. I left for Port-of-Spain on a trip. I saw Cho Lun about this business on Thursday the 10th June 1949—I am speaking of 1949. Thursday was the 9th June. I saw Petitioner at his shop, in the day around 11.30 a.m. I had just come back from Port-of-Spain. I went to shop to purchase goods for my house—flour, rice and other necessaries. Young Ping attended to me. I bought and paid for my goods. I went away with the goods that I had purchased. I saw Cho Lun the very Thursday at the shop before I left shop with the goods. I saw him in the shop, he was attending to customers.

30 I had been already attended to. Petitioner told me he wanted to see me before I left the shop. I had not received any message from the Petitioner, from the Monday night to the Thursday, that he had wanted to see me. I didn't know what he wanted to see me about: I had no idea in my mind as to what it was.

When I worked with Petitioner as a clerk, I lived at No. 5 Upper Hillside Street about 2 minutes walk from Coffee and Drayton Streets. I never slept on the premises like the Chinese clerks. Petitioner knew where I was living.

40 When Petitioner had finished serving his customer, I went to him in rumshop. He spoke to me. Nobody heard. He didn't place rum bottle in front of me, or offer me a drink. It doesn't agree with me—from time I was small. Petitioner told me "Madam not here again." I say "What happen." Petitioner said "Madam leave and gone" (this in answer to question whether Petitioner said Madam leave and gone) I asked Petitioner what was the cause. I had known they were getting on all right. Petitioner told me the cause.

I was not on terms of personal friendship with Petitioner. His wife took me on. Petitioner did not invite me into his sitting room and discuss his private affairs with me. When I was employed at the shop.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 10.  
Petitioner's  
Evidence.

Sydney  
Howard.

Cross-exam-  
ination for  
Respond-  
ent—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 10.  
Petitioner's  
Evidence.

Sydney  
Howard.

Cross-exam-  
ination for  
Respond-  
ent—  
*continued.*

**Q.** After Petitioner told you the cause, did you leave the shop and go away with your goods?—**A.** Yes.

I did not see Petitioner after that Thursday the 9th June 1949. I remained at No. 5 Upper Hillside Street up to early part of this year 1950. I then went to live at La Brea, where I now live. On the 6th June 1949 I saw the Petitioner. I saw him closing his garage. I was at Major road at corner of Coffee and Drayton Streets. Nobody was with him. Cholun's car was on side of road, parked and Petitioner was closing his garage. His car was facing Library way. It was parked on Coffee Street.

Frontage on Coffee Street of Petitioner's shop is 50 to 65 feet. There is a garage gate, a galvanised gate, opening to Coffee Street. I turned to the right and saw Petitioner closing the garage gate. I have always known Petitioner to drive his own car. He does not have a chauffeur. I did not see Young Poy or Young Ping at the garage gate. That was first time I had seen Petitioner close his garage gate at the hour at which I saw him. I didn't go up to him and speak to him. I called out to Petitioner. I said "David" (I call him David) "where are you going this time of night, be careful." He told me he was going to the Police Station. I did not go with him to the Station. My evidence is not a pack of lies as to the 6th June 1949 events. I don't know what Petitioner was going to Police Station about. I had no idea. It was not until 9th February 1950 that Petitioner spoke to me. I have not up to present received any witness money. I have not spoken to Petitioner about money. I know I have to be paid by Petitioner. I have received from him no money of any kind.

CROSS-EXAMINED BY BUTT. Nil.

RE-EXAMINED BY N. HASSANALI. Nil.

No. 11.  
Benjamin  
Cho Fook  
Lun.  
(Recalled.)

No. 11.

**Evidence of Benjamin Cho Fook Lun (recalled).**

RE-EXAMINATION.

Re-exam-  
ination.

**BY COURT:** I was 16 years of age when I left Hong Kong on my first trip. I went to British Guiana in 1926, I remained there for 4 years. I went to Hong Kong in 1930. I returned to British Guiana in 1932. I got married to Respondent on the 10th February 1935 in British Guiana. My wife came out to get married to me in British Guiana. We were married there. My wife was 20 years of age, and an order had been obtained from Supreme Court for solemnisation of marriage. My wife has always assisted me in my business in Trinidad. In British Guiana she did not do much work.

CROSS-EXAMINED BY ARCHBALD, K.C. FOR RESPONDENT.

I came here to work and try and make some money. I do not intend to go back to China.

CROSS-EXAMINED BY BUTT. Nil.

No. 12.  
Evidence of Young Ping.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

EXAMINED.

YOUNG PING, Sworn (through Chinese Interpreter Lawrence Woo) states in English :—

No. 12.  
Petitioner's  
Evidence.

I was born in Canton, China. I came to Trinidad in 1931. I work at Petitioner's shop as a clerk. I have worked there for 2½ years. Young Poy also works there. I and Young Poy sleep there in the same room. Petitioner's shop is at the corner of Coffee and Drayton Streets. My  
10 sleeping room is by the garage. I know the Respondent. She lived with Petitioner on shop premises. She is not living there now—since June 6th 1949 night time. That day was a Monday, a holiday. In morning Petitioner was not in shop. I did not see him there that morning in the shop. I don't know when he went out. On Sunday night I went out. I came back on Monday evening time, after 8 o'clock. I went into my room, after I came back. Young Poy was there.

Young Ping.

Examina-  
tion.

I know Young Lai. I have known him for more than seven years. Sometimes, he came to the shop, and sometimes I saw him on the road driving his car. When he came to the shop, he would talk to Petitioner  
20 and his wife.

On Monday night 6th June 1949 Cho Lun came home at 10 minutes past 9, in night time. I and Young Poy were in bed talking. He came with car, and went inside. I saw Cho Fook Lun. He saw door locked from inside, when he go to go inside. That door is the door to shop, shop door. Petitioner knocked and called twice. Two knocks, two calls. Petitioner climbed over a window—I heard him say so. I saw Petitioner go into store room. Petitioner open shut door, and beckoned me to come. We went, Petitioner first. I next, then Young Poy. We went by rumshop. There is a hole. I saw Young Lai and Mrs. Cho Lun holding together.  
30 I was in rumshop. Young Lai and Mrs. Cho Lun was sitting down on a table and bench in a private room. Mrs. Lun was sitting down.

WITNESS *continues through interpreter* : Mrs. Cho Lun was sitting against the partition on the bench. Young Lai and Mrs. Cho Lun were sitting down together outside, facing the partition. They were "stick up." His hands were round the madam's shoulders. They were face to face. I only see them hug up together.

1.30 p.m. Young Ping, still on oath, states. Further examined by Mr. Hassanali : Young Lai went away (witness motions with his hands). He went by the yard. He passed behind the door. I don't know name of  
40 street yard leads to. There is a gate leading to that street. Mrs. Cho Fook Lun went by her bedroom. Cho Lun told Young Lai "no go, no go." I went by my room. Young Poy did likewise. Cho Lun took his car and went out.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.  
—  
No. 12.  
Petitioner's  
Evidence.  
—

Young Ping  
—continued.

Cross-exam-  
ination for  
Respondent.

CROSS-EXAMINED BY AGIMUDIE FOR RESPONDENT.

Young Poy opened gate from garage. He shut the gate, after Cho Lun left. I started to work with Petitioner in 1948. I was there in December, 1948 and January 1949 and up to now. Three men employed in Petitioner's shop from January to March 1949—Young Poy, a creole man and myself. When I work there I never see Sidney Howard work. Padlock outside a door leading to provision shop. I don't keep key to that padlock Young Poy keeps the key. W.C. is next to kitchen. If I want to go to W.C. in day time when shop is open, I pass through sit-down room and then to W.C. Door to provision shop not locked with a padlock when Mr. & Mrs. Cho Fook Lun have gone to sleep. I was in my room when Cho Lun put down motor car. Young Poy went in. Cho Lun said "Open the door, open the door." A person in private room ought to hear. I didn't hear when Cho Lun jumped down on floor from window. No light in Cho Lun's bedroom. Light in sitting room—can be switched on with hand. No shade on light. About 5 minutes after arrival of Cho Lun at his shop he called to Young Poy and me "Come, come." I heard a door opened. I didn't know what I was going to see. We had a light in room of Young Poy and myself. I thought it was a thief. Cho Lun said "Look." I looked. On top of room had a wire. No light was burning in that room. I looked first. As soon as he see me, he Young Lai started to go. I didn't tell Cho Lun anything. He didn't tell me the man was Young Lai. My evidence is true talk. I am not frightened of losing my job. I don't know of Mrs. Cho Lun being at frigidaire that night. Next morning Mrs. Yhap came to the shop. I never told her that I saw no man. Mrs. Yhap said "You sure you see him?" I didn't tell her that I went but saw no man. On Thursday 9th June the shop was not closed. Shop was closed on the Monday. I didn't hear Cho Lun say "Someone in the house walking and talking."

Cross-exam-  
ination for  
Co-Re-  
spondent.

CROSS-EXAMINED BY BUTT FOR CO-RESPONDENT.

Young Lai's pants were light blue in colour (show colour, grey, of Mr. Butt's trousers). He had on a white shirt, no tie. When I looked through he was sitting down. Young Lai's right arm round Mrs. Cho Lun. He sit on bench. His face was to Madam's face. When Young Lai got up, his back was to me. Cho Lun said: "no go, no go." He didn't say the man was Young Lai. I saw the man was Young Lai. No light in private room. I saw Young Lai. Young Lai was facing Madam, right arm around her. Young Lai was there that night.

RE-EXAMINED.

Nil.

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No. 13.

Evidence of Sydney Howard (recalled).

CROSS-EXAMINED BY ARCHIBALD, K.C. FOR RESPONDENT.

SIDNEY HOWARD, recalled, still on oath, says :

I went to Cho Lun's shop on Thursday the 9th June 1949. I don't know the Thursday was a Public Holiday and I cannot remember.

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando.

No. 13. Petitioner's Evidence.

Sydney Howard. (Recalled.) Cross-examination for Respondent.

No. 14.

Evidence of Benjamin Cho Fook Lun (recalled).

RE-EXAMINED.

10 BENJAMIN CHO FOOK, LUN, recalled, states :

I know my wife's handwriting in Chinese. The document shown to me is in her handwriting. It was in her ladies' handbag. I saw it there before the 6th June 1949—4 or 5 months before. When I saw it I read it. I didn't say anything at the time—I just kept it in mind. I kept letter in my iron chest.

Tendered, admitted, marked " B.C.F.L. 7."

CROSS-EXAMINED BY ARCHIBALD, K.C. AND BUTT.

Nil.

No. 14. Benjamin Cho Fook Lun. (Recalled.)

Re-examination.

No. 15.

Evidence of Lawrence Woo (recalled).

RE-EXAMINED BY WOODING, K.C. FOR PETITIONER.

20

LAWRENCE WOO, recalled, still on oath, states :

The translation of B.C.F.L. 7 is as follows :

B. Cho Lun,  
127 Coffee Street,  
San Fernando.

No. 15. Lawrence Woo. (Recalled.)

Re-examination.

" . . . as though I am seeing you. Long time that we have not seen it has been over a month. Hoping that you have been very fine.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

“ Everything to your wish. Your business earning good profit. Machuck is in your favour. And I pray sometimes ago I got message from you really makes me think very hard and could not understand. Now thank God I have got my wish. I know who is the true, and who is untrue. I know who the news is from. Very sorry you also in it. I especially wrote this to you beg you to come on Sunday to my house so that easy to go on . . . hope you will not disappoint (this appears to be so from context but a word is missing here) nothing more now. For I am worried. Forgive me. So short. Until we see.”

No. 15.  
Petitioner's  
Evidence.

No name to whom addressed. Writer is Young Kim Yao, same 10  
writer as writer of other letters.

Lawrence  
Woo.  
(Recalled.)

CROSS-EXAMINED BY ARCHBALD, K.C.

CROSS-EXAMINED BY BUTT.

Nil.

Re-exam-  
ination—  
*continued.*

Case for Petitioner closed.

No. 16.  
Respond-  
ent's  
Evidence.

**RESPONDENT'S EVIDENCE.**

No. 16.

**Evidence of Estelle Cho Fook Lun.**

Estelle  
Cho Fook  
Lun.

RUPERT ARCHBALD, K.C. FOR RESPONDENT calls.

Examina-  
tion.

20

ESTELLE CHO FOOK LUN, sworn, states :

On 10th February 1935 I was married in British Guiana to Benjamin Cho Fook Lun. I had come from Canton, China. We had travelled together. In China he and I were married according to the Chinese custom. We arrived in British Guiana in 1932. In 1935 we got married at the Church. In 1937 my husband left British Guiana for Trinidad. He left me in British Guiana. I came to Trinidad in the year 1938, and I joined him. He was then living at 138 Coffee Street. San Fernando: he was carrying on a provision shop business there, not a rum shop. After a time we moved from there, went to Mucurapo Street no business carried on there. 30  
We then moved to Marabella where we opened a little shop there. From Marabella we moved to 127 Coffee and Drayton Streets, there he carried on a provision shop, and from about 1943, 1944 or 1945 a rum shop business also. Business grew very good. I help in shop, just as a clerk would. At first my husband and I got on very well. Since 1948 my husband met Phillippa Acham in Port-of-Spain—at that time my husband was part owner of Shantung Restaurant in Port-of-Spain (he had become a part-

owner in 1947). He was part owner until the 15th October 1948. He used to be in Port-of-Spain and San Fernando up and down. Sometimes he went to Port-of-Spain once or twice a week. It was sometime in 1948 I think July, that I first heard about Phillippa Acham and my husband. I spoke to my husband. Bad living started. My husband started to say that I never had a child for him. I have never had a child. Then, he asked me if I would give him his freedom, that he wanted to get married again, he said that my marriage was not legal. He said that if I would agree he would make a Chinese paper which would be like a divorce, he would

10 marry somebody else. I refused to agree. I said that I would do no such thing. My husband said he wanted to marry Phillippa Acham. I asked him what will happen to me. He said in China, a man usually has more than one wife. I didn't agree to sign any Chinese paper. We always had quarrels over my never having had a child, and over his wanting to marry Phillippa Acham. In Coffee Street we have one bedroom and one sitting room. I and my husband used to sleep in the bedroom. In sitting room there is a small little bed which my husband used when he had quarrels with me. When no quarrel he slept in my bedroom. My husband and I spoke about Phillippa's photograph. It was a Monday morning, he asked me,

20 "Where is Phillippa's picture." I said, "I don't know anything about it." He said if I didn't return the picture within a few minutes, he would damage my face. I did not have the picture. I knew nothing about it. When the few minutes had expired he went off in his motor car. I received a telephone message from Mrs. Yhap.

On Whit Sunday 1949 my husband and I went to a christening at Diego Martin. We returned to Coffee Street at about 5 p.m. On Sunday night, my husband and I both slept at Coffee Street—I can't remember whether he slept in my bedroom or the sitting room. The next day I saw my husband early in the morning dressing. I spoke to him, "So early, where you

30 "dressing to go"—in a joke to him. He asked me if I am his mother. He didn't tell me where he was going. He didn't ask me if I wanted to go with him. I never told him I was going to Princes Town. I have no friends by Princes Town way. My husband had told me that if I wanted to know where he was going, I was to follow him. After he had gone away. I went down to Port-of-Spain by taxi. I went to a few places there that he goes to—taxi dropped me at Queen Street. Then I walked to Park Street to Green Corner. I didn't find him. I went by taxi to where the girl lived at Diego Martin. The girl is Phillippa Acham. I didn't see him. I got back to San Fernando at about 6.00 p.m. The Coffee Street gate was

40 locked. The gate was locked on the outside, so I knew nobody was there. I went to look for Young Poy whom I had left in the place. I did not find him. I went somewhere else looking for him. I didn't find him. Eventually, I went home. When I reached, I saw a light, in the clerks' bedroom.

I called. Young Poy opened the street gate and let me in. I passed through the gate. I then passed through a door, which was open into the shop. I went into sitting room, and into my bedroom. After that,

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 16.  
Respond-  
ent's  
Evidence.

Estelle  
Cho Fook  
Lun.

Examina-  
tion—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 16.  
Respond-  
ent's  
Evidence.

Estelle  
Cho Fook  
Lun.

Examina-  
tion—  
*continued.*

I changed into a home-dress, had some dinner, and then did some sewing. My sewing machine was in sitting room. At about 9.15 p.m. the telephone rang. It is in the shop. I went and answered it. Young Soon was speaking: at the time he had a shop at corner of Harris and Sutton streets, San Fernando, he is same Young Soon who at one time had a share in Shantung Restaurant. I returned to my sewing. At about 9.30 p.m. the telephone rang again. Henry Yee Chung, Young Soon's clerk spoke. After I had finished speaking, I decided to turn in to sleep. I went round by rumshop to frigidaire there to get a sweet drink. I went to open it. I saw my husband next to me. I said "Eh, Eh. You come already?" He said "Come, come, my ass." He pointed his hand to me and said: "Where's the man you were talking to?" He rushed down by the meat block. He picked up something in his hand, and said "Tonight I shall finish up your ass." He is a man of bad temper. After that I saw two clerks Young Poy and Young Ping with him. I was just by the frigidaire. I then went into my bedroom from sitting room first. While in bedroom I heard Petitioner's voice speaking to his clerks, but I could not make out what was said. After that I heard Petitioner say he was going to make a report, and when he came back he would finish up my ass. I had never seen him get on like that before. I came out to front to ring for help. At that time my husband was still in garage. When I had rung up, I heard the Petitioner's motor car, it had started out. I rang to home of Mr. Mooksang. I spoke to Mrs. Yhap. She came there, right away in a car. Mr. Chon-a-Sing drove the car. Mrs. Yhap came inside. She spoke to me. I spoke to her. 10

My husband came back, shortly after Mrs. Yhap came. Young Ping came and called out Mrs. Yhap saying that my husband wanted to see her. He must have been in the garage then. Mrs. Yhap went out to my husband. I did not hear the talk between the two of them. My husband then left. Mrs. Yhap returned to me in sitting room. We both spoke. I decided to go to charge room of Police Station to make a report too. I left with Mrs. Yhap, in Chon-a-Sings' car to Police Station in San Fernando. I saw my husband's car outside. He was inside the Police Station. My husband came out. I then spoke to the Police there. From Police Station I and Mrs. Yhap went to Mrs. Yhap's home, and I slept there the night. Next morning I went back home together with Mrs. Yhap. Two clerks there, but my husband not there. Later that day at night time I went back home, met my husband, he was taking dinner. Mr. Chon-a-Sing and Mrs. Yhap went with me, others also. We spoke to Cho Lun, he wouldn't answer. My husband got up and walked out of shop. Mrs. Yhap spoke to him. After that I went back on Wednesday. I saw my husband. He said to Mrs. Yhap "Take her away from the shop." I took two home-dresses and a pair of sandals. I left. My clothes are still at his place. I have tried to get them. He told me to come back on Thursday. That was a holiday. My husband telephoned that he was going to town. I never went back for clothes. I never got them. I brought up my husband in the Magistrate's Court for maintenance. Order made by Magistrate to pay me \$10 a week. I have no other means of support. It is not true 20 30 40

that I was in private room on the night of 6th June 1949 with Young Lai or that he had to run away or that he was at my place that night at all.

November 6, 1950, at 9.30 a.m.

CROSS-EXAMINED BY WOODING, K.C., FOR PETITIONER.

When I was by frigidaire, I saw my husband just as I turned. I was not surprised to see him. I said "Eh, eh, you come back already." I was vexed because I knew where he went, not because he came back too soon. I had not heard my husband before I turned round. I don't know which part of house he came out from. I didn't hear the car. My husband was quarrelling. He called the two clerks, not by name. I saw them coming up step as if they were coming in shop. I went into my bedroom. The clerks had a long stick. I closed in the door. I wondered what was going to happen. No one came into my bedroom. My husband got on bad that night. Before that night he never got on like saying "Where is the man you were talking to." Before that night, he had never accused me of having anything to do with a man. After that night, my husband refused to have me in the house. He told Mrs. Yhap that if she did not take me away, he would do me so and so. He told her to tell me to take my clothes and go. My husband went to police station on Whit Monday night. I saw his car by Police Station. I waited outside until he came out. I didn't want to see him. I knew he had gone to make a report about me. My husband had told me that if he made a report, he would finish up with my ass. I went to Police Station to see if my husband had gone. I told Corporal Springer what my husband had done. He came outside with me by door of station. I don't know if he wrote it down. I told him I would like to know what report my husband make. Springer was coming out. Springer told me my husband said that if he had a gun in hand he would shoot me. I asked him if I should go home or stay out. He advised me to stay with Mrs. Yhap, if I am afraid. I told Police Corpl. Springer that my husband had threatened me. Springer never told me my husband had said he found Young Lai in shop. I have seen Phillipa Acham a few times in San Fernando and Port-of-Spain. My husband used to teach her to drive. My husband never told me he was teaching her to drive. I believed there was something between her and my husband. I can't remember when I commenced so to believe. Young Lai helped to teach me to drive. My husband never objected. I knew Young Lai and his family for years. Young Lai sometimes came alone to visit—sometimes my husband not there. He never came there at night. He would come in the sitting room if my husband was there. Young Lai is a business man. He sells sugar, cocoa and other things. Majority of Chinese gamble. I never play Machack. I have heard that Chinese played that game. Most of my husband's family play it. Chinese play it. I write my family at home and abroad. Exhibit B.C.F.L. 7 is written by me. Where are the names? The name of the person to whom the letter was written ought to be there. It is so long that I can't remember to whom I wrote it. The name of the

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 16.  
Respond-  
ent's  
Evidence.

Estelle  
Cho Fook  
Lun—  
*continued.*

Cross-exam-  
ination.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 16.  
Respond-  
ent's  
Evidence.

Estelle  
Cho Fook  
Lun.

Cross-exam-  
ination—  
*continued.*

person has been torn off. I can't remember when I wrote the letter Exhibit B.C.F.L. 7. Both my husband and I wanted to go back to China. Business was making plenty of money. I was in charge of shop when my husband was at Shantung Restaurant. Things were not so hard after the war, in Trinidad. When my husband's father was here my husband said he had no money to go, but if I wanted to go I could go. I was anxious to go. I wrote to my brother and sister-in-law to tell them. I did say "Maybe in a short time I shall travel with my father-in-law." What I wrote about Trinidad being harder was true. I didn't go with my father-in-law. I had not the money. My father-in-law was living in Marabella. My husband's shop was then at Marabella. 10

Exhibit B.C.F.L. 6 is partly in my handwriting. Part about control is not in my handwriting. Part about partner with Mansing is not in my handwriting. Part about profits of restaurant business not in my handwriting. I told my father-in-law that time has flown very quickly, that business was carried on as usual, and that he was not to worry his mind. The balance of the letter was not mine. I had not finished writing the letter. I was not fed up with Trinidad. I was hoping to go back to China for a change. After a time Cho Lun sold out his share in the restaurant. He did not discuss his Shantung business with me. On Whit Monday 6th June 1949 I saw my husband dressing to go out. He didn't tell me when he was coming back or where he was going. He went out in his motor car. When he is going out, he does not tell me where he was going, sometimes. I would make a joke and ask him. Sometimes he would tell me. My husband comes in at any time—not necessarily before 9 p.m. He did not get to see the girl Phillippa on the Sunday. So I believed he went to see her on the Monday. My husband and I went to a christening on the Sunday. My husband did not tell me on Sunday "Let us go and see Phillippa." I had seen Phillippa at a meeting. She came with her mother and my husband, once to my home. My husband did not invite me on Whit Monday to go to Port-of-Spain with him. I believed he went there, specially to see the girl. Phillippa lives at Diego Martin. I went to Restaurant by Green Corner—he would go to see his friends first before going to her. I did not find him. I was sewing on a foot machine. When I decided to turn in to sleep, I didn't lock up yet. The door leading to provision shop not locked by me. It is controlled by clerk outside. Padlock on outside and I think a bolt on the inside. Who ever goes out last locks padlock on the outside. When my husband and I are home at night, door locked with a bolt on inside sometimes. When clerk is not there, I lock it. That is entrance for clerks to get to the shop—to drink tea, to go to sewerage. Chinese clerks always drinking tea. My husband lost \$35 in sitting room. After this, I can't say if the door was not locked on inside with bolt. On Whit Monday night I expected my husband any time. He usually called me in, and I would get up and open big gate. If clerks are in, they would open it. I can't remember ever opening the door for him to come in the house. 20 30 40

I got \$10 from my husband a week as maintenance from Magistrate's

- Court (Agimudie, Counsel for respondent admits that order was an interim order.) I had no moneys belonging to my husband. He says that I had over \$1000 sou-sou money for him, but it is not so. The handwriting in Chinese now shown to me is not in my handwriting. The document now shown to me is in my handwriting. The year and the month are in my husband's handwriting. It says that I took from him \$100 then \$300, nothing more. My name is signed. I took this money when I was in shop. It was long before Whit Monday 1949. My husband put April 1949 on the document. Tendered, admitted, marked E.C.F.L. 1. My
- 10 husband had a hand in sou-sou of Mr. Woo, the interpreter. I did not draw my husband's hand from Mr. Woo. My husband has sent me to collect money from Mr. Woo. Sometimes he has paid a few hundred dollars and always by cheque. It is not true that in 1949 I had more than \$3,000 for my husband. I settled E.C.F.L. 1 by myself. Business must have accounts. I have an uncle or cousin in Trinidad: his name is Young Ping of Young Brothers. He is one of the brothers. He is carrying on a big wholesale provision business opposite Railway in Port-of-Spain. He has helped me. He has never told me he would pay for me to go to China. I never asked him to do so. I am on good terms with Young Ping. After
- 20 leaving Coffee Street, I went to Mrs. Yhap's place in Gomez Street. Young Lai visited Mrs. Yhap's family not specially to see me. I can't say how often he visited. I have seen his car parked outside the house. I can't remember when last he visited the place. Young Lai didn't tell me that he had stopped coming. On Whit Monday night 6th June 1949 I told my husband that I was talking but over the telephone. I did not tell him whether I was talking to a man, or to a woman. I went inside Police Station. I didn't tell Police anything while I was in charge room. I enquired what my husband had said to the Police.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 16.  
Respond-  
ent's  
Evidence.

Estelle  
Cho Fook  
Lun.

Cross-exam-  
ination—  
*continued.*

- 30 CROSS-EXAMINED BY BUTT (AGIMUDIE HOLDING FOR HIM).  
Nil.

RE-EXAMINED.

Re-exam-  
ination.

Young Ping of Young Brothers is not a blood relation of mine. I stay at Mrs. Yhap's place. I am very friendly with Mrs. Yhap. My husband is also very friendly with her. My husband called the clerks. The door at the time was open. My bedroom has a lock from inside. We close bedroom when we are in it. Shop cash kept inside the bedroom.

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No. 17.

Evidence of Milly Yhap.

No. 17.  
Milly Yhap.

Examina-  
tion.

EXAMINED.

- 40 I am a widow residing at 9 Gomez Street, San Fernando. I know Mr. and Mrs. Cho Lun very well. I know them from time they were in business at Coffee Street. They were struggling. I was always at their

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 17.  
Respond-  
ent's  
Evidence.

Milly Yhap.

Examina-  
tion—  
*continued.*

Cross-exam-  
ination for  
Petitioner.

place, sometimes 2 or 3 times a day. On Whit Monday 6th June, 1949, I got a phone call from Mrs. Cho Lun in the evening, telling me to come quickly. I went. I saw Young Ping, he opened the gate. I went in. I went in a motor car. I saw Mrs. Cho Lun. I spoke to her. Cho Lun sent Young Ping to call me. I went to him. Cho Lun told me "What did Kim (his wife) told me." I said "Just as I arrived, you called me, what happened." Cho Lun asked me if she didn't tell me that she was only talking. I said that she did not have the chance to tell me anything. Cho Lun told me that he came to the garage way, he listened for a time and he heard a talking over his bedroom window, when he listened, he jumped 10 over the window, looked at the bed, it was neatly made up untouched, then he got into the sitting room, from there he saw his wife in the shop, and he Cho Lun asked her where was the man she was talking to, and she said that she was talking over the telephone. I told Cho Lun "What you "want me to say, a man was talking to your wife in your house? Are you "drunk, are you crazy?" Cho Lun then said he was going to the Police Station to make a report. What report, I asked, are you going to make; let us go inside, I told him. I told him, "Discuss the matter with your wife." I insisted, I begged him to go inside. Cho Lun refused. I further told him "you promised to give her some money to go to China: if you give her the 20 "money I'll see that she goes." Cho Lun and his wife always lived very well, when I first knew them. I know Young Lai. He is also friendly with me. He visits my home. I have known Young Lai for a few years. I also know his family. I am as friendly with them as I was with the Cho Luns.

CROSS-EXAMINED BY WOODING, K.C., FOR PETITIONER.

Cho Lun looked a bit tipsy, and a little annoyed when I saw him the Whit Monday night. I did not investigate what Cho Lun told me. He did not tell me that he saw a man in the house. I understood him to mean that he heard voices and when the voices were dying then he went through bedroom window. I didn't say "voices," I said "voice." He didn't 30 tell me that he saw and heard somebody, apart from his wife. I wanted everything to end up peacefully. It was for that reason that I made the suggestion that he give her the money to go to China.

I lived in Panama. I came here several years ago while my husband was still alive. My husband never came to Trinidad, and I never went back to Panama. He died several years after I came here to Trinidad.

Cho Lun didn't mention Young Lai's name at all the Whit Monday night. He never said he had seen a man. He said he had called his clerks to see. He said he had made an uproar of 'Thief,' he suppose a thief was there. I don't know what he had called his clerks to see. Cho Lun said 40 his wife was talking to a man. He said he asked her "who was the man you were talking to?" Cho Lun said he was going to Police to report. I saw Cho Lun's car outside Station. I and Mrs. Cho Lun went there. I saw Cho Lun came out. After he came out, I saw Constable Springer. He had a bit of paper in his hand. I can't remember if I went in Station or Springer came out.

Mrs. Cho Lun and Springer spoke. I can't remember if she asked Springer what Cho Lun had reported. Springer had a piece of paper which he showed her, as containing what her husband had reported. She did not read it. Springer said Cho Lun had made a report, told him not to enter it, and that he would return and tell him what to do. Mrs. Cho Lun told Springer that she was afraid to go back to sleep and that she would sleep at my house. Springer said it was alright if she was afraid but she must go back home in the morning.

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando.

10 Mrs. Cho Lun did not make a report. I did not hear her ask what her husband had said. I don't know that on Whit Monday night Cho Lun had told Police that Young Lai had been to his place and was seen in No. 2 Private Room. Cho Lun never at any time told me any thing about Young Lai.

No. 17. Respondent's Evidence.

I went back next (Tuesday) morning. Cho Lun not there. I went back in evening. I spoke to Cho Lun. He didn't answer. He took no notice of his wife either. He went into rum shop. I went to him. I asked him for 2 pounds of groundnuts, he said it was after closing hours: his wife not with me then.

Milly Yhap.

Cross-examination for Petitioner. —continued.

20 I went back Wednesday. I went with Mrs. Cho Lun. I had intended to leave her there. I thought it would be wrong to keep her with me. I didn't enquire first of Cho Lun if he was willing to have her back. Cho Lun, when I went, refused to have his wife back. He said that if I left Kim there, he would finish with her now. He begged me to take her away. He said he would give me something to keep her, if I took her away. He give me no money to keep her.

Young Lai visited my home before and after Mrs. Cho Lun came to live with me. I can't remember when he last visited. It must have been last week. Young Lai talks to everybody in house. He at times comes with his wife. I can't remember when was the last time.

30 Nil. CROSS-EXAMINED BY BUTT.

RE-EXAMINED.

Nil.  
Case for Respondent closed.



## CO-RESPONDENT'S EVIDENCE

No. 18.

Evidence of Harry Acham Young Lai.

ERIC BUTT, FOR CO-RESPONDENT, CALLS.

EXAMINED.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 18.  
Co-Re-  
spondent's  
Evidence.

Harry  
Acham  
Young Lai.

Examina-  
tion.

HARRY ACHAM YOUNG LAI, Sworn, states :

I live at Reform Village. I have known Petitioner 6 or 7 years. I have known Respondent, and the whole set of Petitioner's family for 6 or 7 years. They have lived at 127 Coffee Street all the time that I have known them. I always go there at 127 Coffee Street, he had to purchase sugar from me, and we had sou sou transactions. Apart from business dealings, I was friendly with Petitioner, his father and his wife. I would see Petitioner once or twice a week. If clerks are home and Cho Lun not in, I would go in : otherwise, I would speak to Mrs. Cho Lun always over the counter. 10

On Whit Monday, 1949, I spend whole day at Wah Nam at 6 Coffee Street, San Fernando. It was a holiday—games. I left at 6, 6.30 or 7 p.m. with Sam Look Allum. I left in my car for Allums house at Malgre Tout, Princes Town. I reached there after 7 p.m. I went in his house. I stayed there a good time. I left there after 8 p.m. and I went to my home at Reform Village. My wife was at home, and she knew when I came in. I did not go out again that night. I was not in the premises of Petitioner and Respondent at any time on Whit Monday, the 6th June, 1949. 20

Cross-exam-  
ination for  
Petitioner.

CROSS-EXAMINED BY WOODING, K.C., FOR PETITIONER.

HARRY ACHAM YOUNG LAI. Still on Oath, states :

I know Mrs. Cho Lun for 6 or 7 years.

Q. Do you like her ?—A. I claim the privilege.

I have been on friendly and business terms with her husband. We are very friendly. We play Machuck together. He has never seen me going into a room with his wife, even to have a chat. I taught his wife to drive, I did so openly. Cho Lun raised no objection. It is a lie for Cho Lun to say that I was in his private room with his wife on Whit Monday, the 6th June, 1949. I was at home with my wife on that night. 30

Q. Why did Petitioner pick you out as being the man ?—A. Ask Petitioner that question.

I visited Mrs. Yhap's house since the 6th June, 1949. I always leave car in front of house. In June, 1949, I had a Vauxhall car PA 4683. When I went to see Mrs. Cho Lun I put car in Coffee Street. I parked car in Drayton Street on one occasion. Shop is at Drayton Street corner. Coffee Street is a very busy street. I am always in San Fernando. Drayton Street may be less busy than Coffee Street. My car is a Vauxhall. I can't 40

put it in my pocket book. I know numbers of some cars of my friends, Chinese friends, but how many of them have cars? I read Chinese.

Q. Was there any occasion on which anyone carried news about you and Mrs. Cho Lun?—A. Sometime ago my brother-in-law stuck some Chinese papers about the two of us—after this case started.

I never received any letters from Mrs. Cho Lun. Cho Lun played Machuck at the Shantung Restaurant. I didn't see Cho Lun on Whit Monday last year. I know Young Ping. We never had any row.

10 My wife and all the children were with me at home. How can I remember what time I went to San Fernando? It would take me 20 minutes to drive the distance of 6 miles from Reform Village to San Fernando. My wife went to bed first. I remained up reading. My children went to bed.

I do not do business with Cho Lun. I stopped week after Whit Monday. I went on that Tuesday to Congolam Grocery. Mr. Rupert Chow in charge, he told me Cho Lun came to town and told him that I was in his shop with his wife. I asked him on what day I was surprised. He told me, Whit Monday. I came back home, told my wife and all the Chinese. I did not tell Cho Lun. I would not go to his premises. I sent people to collect sou-sou money.

20 Nil. CROSS-EXAMINED BY AGIMUDIE.

RE-EXAMINED.

I know Drayton Street gate, it is about 60 feet from Coffee Street corner.

No. 19.

Evidence of Sam Look Allum.

EXAMINED.

SAM LOOK ALLUM, sworn, states :

30 I live at Malgre Tout. I know Harry Acham Young Lai. I saw him on Whit Monday 6th June 1949 at Wah Nam. I left about 7 p.m. I went to my house. Harry with me. We got there about 7.30 p.m. to 8 p.m. We sat down talking. He left at about 8.30 p.m. He went away.

CROSS-EXAMINED BY WOODING, K.C. FOR PETITIONER.

My wife is family to wife of Young Lai. I went in Harry's car to Malgre Tout. I went to the Wah Nam by bus. He gave me a lift home in his car. Young Lai had on a white shirt and a pants. I can't remember the colour.

40 Nil. CROSS-EXAMINED BY AGIMUDIE.

RE-EXAMINED.

Nil.

In the Supreme Court of Trinidad and Tobago—Sub-Registry San Fernando. No. 18. Co-Respondent's Evidence. Harry Acham Young Lai. Cross-examination for Petitioner —continued.

No. 19. Sam Look Allum.

Examination.

Cross-examination for Petitioner.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 20.  
Co-Re-  
spondent's  
Evidence.

Mary  
Young Lai.

Examina-  
tion.

Cross-exam-  
ination for  
Petitioner.

**No. 20.**

**Evidence of Mary Young Lai.**

**EXAMINED.**

MARY YOUNG LAI, sworn, states :

I live at Reform Village with my husband Harry Young Lai. On Whit Monday 1949 my husband came home before 9 o'clock that night. He did not go out again that night after he came home.

**CROSS-EXAMINED BY AGIMUDIE.**

Nil.

**CROSS-EXAMINED BY WOODING, K.C. FOR PETITIONER.**

10

When my husband came home, he talked, he spoke of Machuck. My husband was nice and happy. I went to bed after 10 p.m. He was reading a book. When he came to bed, I wake yet. I had not yet slept. He came to bed about half an hour after me.

He goes out in car. I heard no car. He goes out every day. He comes home every night before 9 o'clock. About 2 weeks after, my husband told me that Cho Lun was saying that he was with Cho Lun's wife. I did not believe that he was. I was married 20 years I love him plenty. On Whit Monday night he had on a shirt, trousers ; I don't remember colour of shirt or trousers. He did not have on a jacket.

20

**RE-EXAMINED.**

Nil.

Case for Co-respondent closed.

No. 21.  
Co-Re-  
spondent.  
Closing  
Speech.

**No. 21.**

**Closing Speech for Co-Respondent.**

**ERIC BUTT, FOR CO-RESPONDENT.**

The Co-respondent's case is that there is no truth in Petitioner's allegation that he was at premises of Petitioner on Whit Monday night 1949, or that he committed adultery with Respondent. The whole story is a complete fabrication. The co-respondent can only speak to events within his own knowledge. He was not there. Even if Court inclined to believe that something was happening that night, the Co-respondent was not a party to it. Could Court be satisfied that adultery was being committed, or that there is any reliable evidence that the Co-respondent was there ? Identification of person there, even assuming evidence to be

30

true, is not satisfactory. Onus of proof in adultery is that case must be proved beyond reasonable doubt.

*Ginesi v. Ginesi*: No evidence of undress or of parts of persons involved.

Bedroom avoided—open room—on a bench in private room. That is the evidence of the Petitioner. Table under hatch—bench a little lower—right arm of Co-respondent around shoulder—no evidence that trousers down or unbuttoned. Colour of pants only seen when Co-respondent jumped up.

10 How could people see if looking through the hatch as alleged by the witnesses? They look through hatch into a dark room, through which it is said a light reflected from sitting room. Any such light would not reflect on any persons who would be on a bench. Wire grille on top of partition. Light in sitting room quite a low light. It would not be sufficient for persons to be illuminated, especially where sight-seeing persons suddenly come from light into darkness. It is said that Young Lai jumped up and ran away. Evidence insufficient to establish adultery, or that Young Lai was a party to it. Witnesses agreed on colour of trousers—impossible for them.

20 Evidence of Sydney Howard—under cross-examination not as convincing as he was in examination in chief. Ex-clerk of Petitioner. Extraordinary that he should have been present at particular point of time. Evidence a mass of contradictions. He did not see Cho Lun until Thursday 9th June. He saw Cho Lun on 6th June when turning into Coffee Street from Drayton Street. He then saw Petitioner who called out to him.

30 How could Sydney Howard have seen Cho Lun outside gate in Coffee Street with car, if he had just seen Young Lai in Drayton Street? That is a fabrication. Howard has been introduced into case to provide corroboration. Even if there was anybody in the room, they could not have known who it was.

The introduction of Howard goes to root of whole question, and makes it impossible to believe Petitioner's story. If Howard did see Petitioner that night, he did not see Young Lai on that night, no matter how slowly he went up Coffee Street. Petitioner's story is fantastic, and cannot be believed. If Petitioner trying to get rid of his wife, the frame-up is a probable and likely one. Only place where excuse for not apprehending the man.

40 Door of private room is said to half open, door leading to yard. So Petitioner says Young Lai could not be caught. No noise made by Petitioner when he first arrived. No cause for any suspicion on his part then, no reason for not making noise.

Co-respondent should be dismissed from this case.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 21.  
Co-Re-  
spondent.  
Closing  
Speech—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.  
—  
No. 22.  
Respond-  
ent.  
Closing  
Speech.

## No. 22.

## Closing Speech for Respondent.

W. H. AGIMUDIE FOR RESPONDENT.

The case of the Petitioner is a complete fabrication in order to enable him to obtain dissolution of his marriage.

Paragraph 7 of petition (read). It is alleged that adulterous intercourse frequently took place at No. 127 Coffee Street, San Fernando. No evidence to support allegation.

Paragraph 8 of petition (read). Three witnesses seek to prove adultery on Whit Monday, 1949. Two of them were then and still are in employ of 10 Petitioner. One of them was an ex-clerk of Petitioner, left employment three months before Whit Monday, 1949. Howard is familiar with Petitioner, he calls Petitioner "David." Witnesses are interested parties. Their evidence should not be accepted as truthful evidence. The motive or reason for fabricating case against the Respondent was that the Petitioner is on friendly terms with Philippa Acham. She boarded at Petitioner's restaurant in Port-of-Spain. Domestic trouble over Philippa. Petitioner would like to change his wife. He was inducing Respondent to go to China.

Evidence of Petitioner and others: Young Ping thought there was a thief in house. Young Lai's name not called at all. Evidence of 20 Respondent natural thing that happened that night—should be believed. Petitioner thought a man was in the house. There was no man. Hopes frustrated. Young Poy told afterwards that the man was Young Lai.

Evidence of Howard: Travelling north in Drayton Street going to Coffee Street. He did not turn left, he turned right—why did he do so? No inquiry by Howard of Cho Lun as to what happened that night. Thursday following Whit Monday 1949 was a Public Holiday. Howard's evidence should be discarded completely. He is an ad hoc witness.

Letters in Chinese handwriting, put in by Petitioner as a last resort to try and strengthen a weak case. Letters written long before Whit 30 Monday 1949, and have no relation to Young Lai.

Door leading to yard half open. Is it reasonable to believe that illicit intercourse was proposed or committed in No. 2 Private room?

Petition should be dismissed.

No. 23.  
Petitioner.  
Closing  
Speech.

## No. 23.

## Closing Speech for Petitioner.

H. O. B. WOODING, K.C. FOR PETITIONER

*Ginesi v. Ginesi* laid down no rule of law that was new. The fact that no previous-illicit association puts Court on its guard in considering evidence of Petitioner. 40

Has the case been proved with moral certainty? If so, Petitioner entitled to a decree. Damages awarded against Co-Respondent may be settled on a guilty wife, paid into Court settlement after decree nisi. Maintenance of Respondent is another question, to be dealt with later if necessary.

Issue now is whether adultery has been committed.

One does not expect evidence that fly of Co-Respondent's trousers was unbuttoned. True that the room was a shady room. When he ran away he went across the beam of light.

10 Why was private room selected? If Co-Respondent slipped through Drayton Street gate, the back gate, ordinarily he would go into Private Room. Wife would get back into bedroom with an excuse, if there were questions. If story of Petitioner and his witnesses is substantially correct, the only possible inference is one of adultery.

Paragraph 7 of petition is a general allegation found in most petitions. No notice taken of it, unless evidence is given. Only one specific allegation, relating to Whit Monday the 6th June, 1949, of adultery.

20 Evidence given by and on behalf of Respondent and Co-Respondent is strongest possible corroboration of the Petitioner's case. Husband usually called in to the wife to let him in when he comes home late at nights. Wife never heard husband go in garage or enter the premises until he suddenly appeared before her. Wife said "Eh, eh, you come already." This remark shows that she did not expect her husband back at the time when she saw him.

Husband's behaviour on that night was different from what it had always previously been. He showed resentment in house, made a report to Police, and refused to have wife live any more in house.

30 When husband came in he did not go into Private room from sitting room. He went from sitting room into the rumshop. Husband might normally expect to find his wife in the rumshop at the frigidaire.

Having seen her, when he was alone, Petitioner called his clerks so that they might see. Husband, shortly after incident, went and made a report to the Police. Suggestion made to witness as to contents of report. No evidence called by Respondent to prove what was suggested. Evidence of details of report uncontradicted. It induces Court to say that if it could be contradicted it would have been.

Consistency in conduct of Petitioner that evening.

Husband Petitioner refused to have her in his house as from that night.

40 MRS. YHAP'S EVIDENCE: Bears out evidence of Petitioner. Consider what she says Petitioner told her that night—practically everything Petitioner deposed to in witness box. They diverge only from the time the Petitioner and wife reach rum shop. Petitioner said, 'Come and see'—this to his clerks.

Respondent suggests husband wanted to get rid of his wife in favour of Philippa Acham—suggestions made about Petitioner wanting to get rid of wife by sending her to China not supported by the letters alleged to have been written. Respondent says she was anxious to go back to

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 23.  
Petitioner.  
Closing  
Speech—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.  
—  
No. 23.  
Petitioner.  
Closing  
Speech—  
*continued.*

China. Petitioner said he could not afford passages for his father and his wife at one and the same time. If relations between husband and wife strained because of Philippa, how comes it that Mrs. Yhap, the friend and confidante of both, said that Petitioner and his wife always lived well, but were struggling in business.

Respondent suggests that wife was talking over telephone that night, two telephone calls, innocent conversation overheard, husband got into a jealous rage and he behaved as he did. Husband didn't know who was on other end of telephone. Why should it have been a man? Why not, Mrs. Yhap?

Husband never had any cause known or observed by him, for suspicion against wife. He himself says only cause for suspicion was B.C.F.L.7 which he found in Respondent's hand-bag, and kept. That letter proves nothing directly or expressly, but terms of letter, plus wife's complete pretended ignorance of letter, and her agitation which she evinced when letter was produced and shown to her Counsel, shows that case for Petitioner is clear beyond dispute.

Respondent story is fantastic. That very night, Respondent and Mrs. Yhap knew that Petitioner had considered that Respondent had committed adultery. Respondent went to Police Station merely to find out the report that was made by the husband. Nothing said by wife as to who had rung her up on telephone or any suggestion that the persons be rung up or seen to ascertain whether the wife's story was true or not. Henry Ah Chang, person with whom wife says she was speaking, not called as a witness. Mrs. Yhap came in instantly summoned by wife by telephone. She was speaking to wife. Mrs. Yhap called by Petitioner. She spoke to Petitioner. Why did she make suggestion "Send her back to China"? Was it in consequence of something Respondent had told her. That suggestion was to avoid scandal, great and grave: wife unable to answer allegation of the husband.

Young Poy's evidence: Young Poy didn't recognise Young Lai. Shows honesty and bona fides of Young Poy. He was told afterwards that the person was Young Lai. He saw a person, said by him in examination in chief, to be Young Lai. He gave that evidence from information received from the Petitioner.

Attack on evidence of Sydney Howard. Attack on numerous details as to which he would not expect to be cross-examined. What do we know of what Young Lai did after he left private room. His trousers would have to be undone, his dress would have had to be arranged for exit to Drayton Street, a public Street. Petitioner saw Sydney Howard and Sydney Howard saw Petitioner. Every reason why Petitioner would have a conversation with Sydney Howard on the Thursday following Whit Monday or on some other date.

Defence of Co-Respondent: It is an alibi supported by his wife. Reform Village is 20 minutes only from San Fernando. Young Lai could have gone to San Fernando before going home or gone after. Co-Respondent stopped going to Petitioner's place without requesting some explanation—

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merely because of what he had heard in Port-of-Spain from Rupert Chow. He sends somebody else to collect "sou-sou" money. Co-Respondent agrees that his behaviour, in so far as it could be observed by husband, was impeccable. Co-Respondent always left a counter between, when he went to Petitioner's house. But he taught wife to drive a car. Why should Petitioner pick on his business and social friend, Young Lai ?

Evidence of Petitioner is clear beyond shadow of doubt and there is moral certainty that adultery committed.

10 Damages : Compensatory and not punitive. Matters to be taken into consideration. Value of wife to husband managing business, keeping home, injury to husband's feelings (friendship between Petitioner and Co-Respondent).

Butterworth's case, 89 L.P.J. 151 (1920) p. 126.

Petition should be granted.

November 23rd, 1950.

Written judgment read.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.  
No. 23.  
Petitioner.  
Closing  
Speech—  
*continued.*

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No. 24.

Order.

No. 24.  
Order,  
dated 23rd  
November  
1950.

1.—Petition for dissolution of marriage, together with the claim against  
20 Harry Young Lai for damages is dismissed.

2.—Petitioner to pay the costs of the Respondent and of the Co-Respondent.

3.—The sum of money deposited into Court by the Petitioner as security for the Respondent's costs, or so much thereof as is required to satisfy such costs, is to be paid out to the Respondent's solicitor.

4.—Stay of proceedings, in relation to recovery of Co-Respondent's costs, for the period of six weeks from the date of this judgment, and if during that period an appeal is filed by the Petitioner, such stay will be continued until such appeal is heard and determined or is otherwise finally  
30 disposed of, or until further order of the Court or a Judge.

E. MORTIMER DUKE,

*Puisne Judge.*

23rd November, 1950.

No. 25.  
Judgment.

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

TRINIDAD

IN THE SUPREME COURT OF TRINIDAD AND TOBAGO  
(SAN FERNANDO).

Matrimonial No. 14 of 1949.

BENJAMIN CHO FOOK LUN	...	...	...	...	...	<i>Petitioner</i>
						<i>vs.</i>
ESTELLE CHO FOOK LUN	...	...	...	...	...	<i>Respondent</i>
						and
HARRY YOUNG LAI	...	...	...	...	...	<i>Co-Respondent.</i>

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(Petition for dissolution of marriage and for damages heard before  
DUKE, J., on the 1st, 2nd, 3rd, 6th and 7th days of November, 1950.)

Mr. H. O. B. WOODING, K.C., and Mr. N. HASSANALI appeared for the  
Petitioner.

Mr. R. ARCHBALD, K.C., and Mr. W. H. AGIMUDIE appeared for the  
Respondent.

Mr. ERIC BUTT appeared for the Co-Respondent.

The judgment of the Court was delivered on the 23rd day of November,  
1950, as follows :

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On the 18th July, 1949, Benjamin Cho Fook Lun filed this petition  
against his wife Estelle Cho Fook Lun for dissolution of marriage. In the  
petition he alleged that his wife had frequently, and in particular on the  
night of Whit Monday, the 6th June, 1949, committed adultery with Harry  
Young Lai at No. 127 Coffee Street, San Fernando, and the Petitioner  
claimed that the sum of \$1,000 be paid by the Co-Respondent Harry  
Young Lai as damages in respect of the acts of adultery as aforesaid. The  
Petitioner further asked for an order that his costs be paid by the  
Co-Respondent, and by his wife the Respondent out of her separate estate.

In the year 1932, the Petitioner and the Respondent travelled together  
from China to British Guiana : it was given in evidence that they had  
been married, according to the Chinese custom." They lived and cohabited  
together in British Guiana, and on the 10th February, 1935, they were  
married, according to the rites of the Church of England and in conformity  
with the Laws of British Guiana, in the Cathedral Church of St. George,  
Georgetown, Demerara, British Guiana. At the time of such marriage,  
the Respondent was only twenty years of age, and a judge of the Supreme  
Court of British Guiana authorised the solemnisation of the marriage.

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In the year 1937, the Petitioner left British Guiana and came to  
Trinidad to reside here. In the year 1938, the Petitioner's wife joined him  
in Trinidad. The Respondent at all times assisted the Petitioner in the

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No. 25.  
Judgment,  
dated 23rd  
November  
1950

carrying on of his business in Trinidad, and for several years the Petitioner has been carrying on a provision shop, and a rumshop, business at No. 127 Coffee Street, San Fernando. The Petitioner has made this Colony his home, and he is domiciled here.

- Up to June, 1948, the marriage life of the Petitioner and the Respondent was quite happy. In June, 1948, he became the proprietor of two-thirds of the Shantung Restaurant in Port-of-Spain and he commenced to manage the restaurant. For this purpose, he took up residence at the restaurant, and his wife managed the provision shop, the rumshop, business at No. 127 Coffee Street, San Fernando. The Petitioner visited San Fernando once or twice a week. He sold his interest in the Shantung Restaurant on the 15th October, 1948. Between June and October, 1948, he became acquainted with one Philippa Acham, a clerk working in a Port-of-Spain office and residing at Diego Martin. Philippa Acham used to eat at the Shantung Restaurant. The Petitioner instructed Philippa Acham in the art of driving a motor car, he brought her to San Fernando for the prescribed driving tests, and he brought Philippa Acham and her mother to see his house and his wife at No. 127 Coffee Street, San Fernando. The Respondent did not like the attention which was being paid by the Petitioner to Philippa Acham and she spoke to her husband on the matter.

- There has never been any issue of the marriage between the Petitioner and the Respondent. Up to the time when the Petitioner went to Port-of-Spain to manage the Shantung Restaurant, the circumstance that the marriage was childless never worried the Petitioner. However, after the Petitioner became acquainted with Philippa Acham he reminded the Respondent that she had never had a child for him and stated that he wanted to marry Philippa Acham. This happened on several occasions and, whenever the petitioner mentioned these matters to the Respondent, there would be a quarrel between them. On one occasion, the Petitioner, believing that the Respondent was hiding or had destroyed a photograph of Philippa Acham which he used to have in his possession at No. 127 Coffee Street, threatened to damage the Respondent's face.

It has never been the custom for the Petitioner, when he left his house alone to tell his wife where he was going. Such a state of affairs would not tend to erase the feeling in the mind of the Respondent that whenever the Petitioner went to Port-of-Spain alone, he would go to see Philippa Acham, the person whom the Petitioner, as he told his wife on several occasions, wished to marry.

- The business of the Co-respondent is that of selling sugar, cocoa, and other things. The Petitioner used to purchase, for the purposes of his business, sugar from Young Lai who would go to the Petitioner's premises from time to time, for the purpose of selling sugar to him. There were occasions when, if the Petitioner was there, Young Lai went into the sitting room.

The Respondent had been learning to drive a motor car. Sometime after June 1948, the Co-respondent Young Lai gave her lessons in the art of driving a motor car, and she obtained a driving permit. The Petitioner

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

never at any time objected to his wife obtaining such lessons from Young Lai.

On Whit Sunday the 5th June, 1949, the Petitioner and his wife left San Fernando in the Petitioner's motor car and attended a christening at Diego Martin. They returned together to San Fernando on the same day. The Petitioner did not see Philippa Acham on that day. Philippa Acham resides at Diego Martin.

On Whit Monday morning the 6th June, 1949, the Petitioner left San Fernando alone in his car for Port-of-Spain. There is a great conflict between the evidence of the Petitioner and the evidence of the Respondent 10 in respect of the events which occurred before the Petitioner left his house. The evidence of the Respondent is, in my view, the more probable, and I believe it. The Petitioner was dressing in the early morning. The Respondent said to him in a joke: "So early, where you dressing to go?" The Petitioner then asked the Respondent whether she was his mother, and told her that if she wanted to know where he was going, she could follow him. The Petitioner didn't tell the Respondent where he was going, and he didn't ask the Respondent whether she wished to go with him.

After the Petitioner had left his house at No. 127 Coffee Street, San Fernando, the Respondent travelled by taxi, to Port-of-Spain and Diego 20 Martin, seeking to ascertain where her husband had gone. She didn't find him. She left for San Fernando which she reached at about 6 p.m. According to the Petitioner, he did not reach Diego Martin until 6 p.m. The Petitioner says that he paid a visit to one Toon Chung at Diego Martin: he would pass the house of Philippa Acham on his way to the house of Toon Chung.

The Petitioner's shop is situate at the corner of Coffee and Drayton Streets, San Fernando. Prior to the 6th June 1949, the Petitioner and the Respondent lived together on the premises. Two Chinese clerks, Young Poy and Young Ping, also lived on the premises. There is a galvanised 30 gate leading to Coffee Street. Through this gate, access is obtained to the Petitioner's garage, the sleeping quarters of the clerks, and the portion of the Petitioner's premises used by the Petitioner as his residence. Access to the Petitioner's residence is obtained through a door leading to the provision shop. This door can be locked by a padlock on the outside, and it appears that it can be bolted from the inside. The clerks have access through this door to get to the toilet, for the purpose of making tea, and for other purposes. There is a frigidaire in the shop. There is a door between the Petitioner's bedroom and his sitting room and there is a door 40 between the Petitioner's sitting room and the No. 2 Private Room. There is a door leading from the No. 2 Private Room into the back yard of the Petitioner's premises, but there was no evidence as to whether it is locked with a key, or whether it is bolted from inside. There is a galvanised gate leading from the back of the yard into Drayton Street.

When the Respondent left No. 127 Coffee Street on Whit Monday morning, 1949, Young Poy was there. Young Ping had gone out on the previous evening and had not returned. Young Poy went out about

6 p.m. The Respondent arrived at No. 127 Coffee Street shortly afterwards, and found the Coffee Street gate locked from the outside, indicating that Young Poy was out. The Respondent went in search of Young Poy, but did not find him. She returned to No. 127 Coffee Street and she observed a light in the clerk's room. She called out to Young Poy who opened the Coffee Street gate and let her in. The door leading to the provision shop was open, she passed through that door into the shop, then into her sitting room, and then into her bedroom, changed into a "home dress," and had some dinner.

10 Young Ping returned to No. 127 Coffee Street at about 8.15 p.m.

After her dinner, the Respondent did some sewing in her sitting room. Her foot sewing machine was in that room. A telephone is in the shop. It rang at about 9.15 p.m. and the Respondent answered it. The Respondent returned to the sitting room, and resumed her sewing. The telephone rang again at about 9.30 p.m. and the Respondent answered it. She then decided to do no more sewing that night.

20 No evidence whatever was led to show that, prior to the night of Whit Monday the 6th June, 1949, there were any acts of familiarity or of affection between the Respondent and the Co-Respondent. The letter Exhibit B.C.F.L.7 written in Chinese characters by the Respondent and extracted by the Petitioner in January or February, 1949, from his wife's hand-bag proved nothing. The Petitioner never asked his wife anything about the letter, and the name of the person to whom the letter was addressed has been removed from the letter. There is no evidence that, prior to the night of Whit Monday the 6th June, 1949, the Respondent had, in any way, indicated that she was a woman who was likely to be unmindful of her marriage vows. There is no evidence in support of the allegation in paragraph 7 of the petition that the Respondent frequently committed adultery with Young Lai at No. 127 Coffee Street, San Fernando.

30 The main question for determination is whether on the evidence adduced at the hearing, the Court is satisfied that on the night of Whit Monday the 6th June, 1949, the Respondent Estelle Cho Fook Lun committed adultery with the Co-Respondent Harry Young Lai at 127 Coffee Street, San Fernando.

40 The Petitioner relies on the evidence of Young Poy, Young Ping, Sydney Howard and himself to prove that on the night of Whit Monday the 6th June, 1949, his wife committed adultery with Young Lai. It is alleged that the adultery took place in the No. 2 Private Room of the rumshop carried on by the Petitioner at No. 127 Coffee Street, San Fernando. Young Poy and Young Ping are employed by the Petitioner as clerks and Sydney Howard was employed by the Petitioner from January to March, 1949, as a store assistant.

The Petitioner deposed in evidence that at 8.20 p.m. he left Diego Martin in his motor car for San Fernando; that he arrived at No. 127 Coffee Street at 9.50 p.m.; that he saw a light in the garage; that he called out to one of his clerks to open the Coffee Street gate for him; that Young Poy came and opened the gate; that he started the engine of the car; that he drove the car into the garage and switched off the engine; that he went

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

to the door leading to the provision shop ; that the door was locked from the inside ; that he knocked twice on the door and said twice. “ Open the door for me ” ; that nobody answered ; that the bedroom window was open, but no light was in the bedroom ; that he thought that his wife was asleep ; that he climbed a ladder which he placed on a box in the storeroom ; that he looked through the window but did not see his wife on the bed ; that he then wondered if something had happened to her ; that he climbed into the bedroom and then went into the sitting room where there was one electric light burning, but saw nobody ; that he did not call out to his wife at all ; that he did not go into the toilet or into the room where the frigidaire is ; that he did not go into the No. 2 Private Room which adjoins the sitting room, although the connecting door was open ; that there was no light in No. 2 Private Room ; that he passed through the sitting room into the rumshop ; that he went into the rumshop because at that time he felt that something had happened to him ; that there was no light in the rumshop ; that he looked through a hole in the wall between the rumshop and No. 2 Private Room and saw his wife committing adultery with the Co-Respondent Harry Young Lai ; that he went back towards the garage, and returned with Young Ping and Young Poy ; that he looked through the hole and said “ Look ” : that Young Ping and Young Poy looked ; that Young Lai got up, ran towards the back door and passed through the back gate leading to Drayton Street ; that the Respondent was wearing a night gown, and she went back to the bedroom ; that he went back to the garage ; that he got out his car ; that he then saw one Sydney Howard who called out to him ; that he then went to the Police Station ; that on his return from the station Mrs. Yhap was in the house but he did not know whether his wife was still there, that Mrs. Yhap spoke to him and he told her what had happened ; that he didn't know whether Mrs. Yhap and his wife left the house together ; and that his wife did not sleep in his house that night. 10 20 30

The evidence of Young Poy was that the Petitioner returned at about 10 p.m. and called to open the Coffee Street gate for him ; that he Young Poy opened the gate and the Petitioner brought his car inside ; that at the time Young Ping was in bed ; that the Petitioner put away the car in the garage and went to the door leading to the provision shop ; that the door was locked inside ; that the Petitioner knocked at the door twice and called for the Respondent, but nobody came ; that if any person was nearby he would hear ; that neither he nor the Petitioner pulled at the door to ascertain whether it would open ; that the Petitioner saw the bedroom window open and climbed through it ; that he Young Poy went back to his room and went to bed ; that “ soon soon after ” he had climbed through the window, the Petitioner came to his (Young Poy's) room and said to Young Poy and Young Ping, “ Come ” ; that Young Ping went behind the Petitioner, followed by Young Poy ; that the Petitioner, Young Ping and Young Poy went inside by the rumshop ; that the Petitioner said “ Look,” meaning look through the hole from the rumshop to the private room ; that Young Ping looked ; that the Young Poy looked and saw the 40

Respondent sitting on the bench ; that the Co-Respondent Young Lai who was on the bench got up ; that he first saw Young Lai when he was getting up to run ; that Young Lai ran to the private room door which leads to the back yard and the Drayton Street gate ; that the Petitioner said " Don't run, don't run " ; that the Respondent went back inside, by the bedroom ; that the Petitioner said nothing further and the Respondent and Co-Respondent said nothing ; that the Petitioner went in his car to the Police Station to make a report ; that Mrs. Yhap arrived at No. 127 Coffee Street after the Petitioner had gone to the Police Station and before his

10 return home. In the course of his cross-examination by counsel for Young Lai and his re-examination by counsel for the Petitioner Young Poy said that he did not see the face of the man who was running out of the No. 2 Private Room, and that he knew the man was Young Lai because the Petitioner, while the man was still running, told him so. In the course of his cross-examination by counsel for Mrs. Cho Fook Lun, Young Poy said that he was in his room when the Petitioner climbed through the window ; that he didn't see the Petitioner climb through the window ; and that he was told that the Petitioner did climb through the window.

Young Ping deposed in evidence that the Petitioner returned at

20 9.10 p.m. ; that he and Young Poy were in bed, talking ; that the Petitioner came with his car and went inside ; that when the Petitioner went to go inside the shop, he (the Petitioner) saw that the door leading to the provision shop was locked from inside ; that the Petitioner knocked twice, and called twice, " open the door, open the door " ; that a person in the private room ought to have heard the Petitioner ; that he heard the Petitioner say that he had climbed over a window ; that he saw the Petitioner go into the store room ; that the Petitioner opened a door and beckoned to him to come ; that he Young Ping went behind the Petitioner, and was followed by Young Poy ; that they all went by the rumshop ; that, while in the rumshop, he

30 looked through a hole ; that he saw the Respondent and Co-Respondent holding together and they were " stick up " ; that they were sitting down on a table and bench in a private room ; that the Respondent was sitting against the partition on the bench ; that the Respondent and Co-Respondent were face to face ; that the Co-Respondent's hand was round the shoulder of the Respondent, and that he only saw the Respondent and Co-Respondent " hug up together " ; that the Co-Respondent passed behind the door and went by the yard ; that the Petitioner told the Co-Respondent, " No go, no go " ; that the Respondent went in the direction of her bedroom ; that he Young Ping and Young Poy went to their room ; and that the Petitioner

40 took his car and went out.

The Petitioner, according to his evidence, arrived at about 9.55 p.m. at the door leading to the provision shop, he pulled the door, and found that it was locked from the inside. Young Poy stated that the door was locked inside, but he further stated that neither he nor the Petitioner pulled at the door. Young Poy was the person who opened the Coffee Street gate for the Petitioner to enter his premises with his motor car, and Young Ping was in bed at the time. Young Ping stated that the Petitioner saw that the door was locked from the inside. The Respondent denied

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

that she had locked the door. I am satisfied that the door was not locked from the inside.

According to the Petitioner, he climbed a ladder which he placed on a box in the store-room, and thus obtained entry to the bedroom, then to the sitting room, and then to the shop. Young Poy said that the Petitioner saw the bedroom window open and climbed through it, but under cross-examination by counsel for the Respondent he stated that he was in his room when the Petitioner climbed through the window, that he didn't see the Petitioner climb through the window but that he was told that the Petitioner did so. Young Ping stated that he heard the Petitioner say that he climbed through the window. The door was not locked from the inside. There was no necessity for the Petitioner to go into the store-room get a ladder, put it on a box, and climb through the bedroom window. I am satisfied that the Petitioner did not climb through the bedroom window. 10

The evidence of Sydney Howard was that at about 10 p.m. on Whit Monday the 6th June, 1949, he was driving taxi HA4499 in Drayton Street approaching Coffee Street: that he was driving very slowly; that as he was approaching Coffee Street he saw motor car PA4683 parked in front of the back or Drayton Street gate of the Petitioner's shop; that he knows Young Lai well; that he recognised that car as being the car of the Co-respondent Young Lai; that he saw Young Lai come out of the back gate walking in a very fast manner as if he were running away; that Young Lai opened the door of motor car PA4683, started up the engine and drove away in front of him (Sydney Howard); that he (Sydney Howard) did not look at Young Lai when Young Lai got into the car; that from the reflection of the lights from his car HA4499 he had already known that the person was Young Lai; that Young Lai's car went down Drayton Street; that while he (Sydney Howard) was at the major road stopping place at the corner of Coffee and Drayton Streets he saw the Petitioner's car parked in Coffee Street facing west (in the direction of the Library) and the Petitioner closing his garage; that nobody was with the Petitioner; that the back or Drayton Street gate of the Petitioner's premises is fifty to sixty-five feet from Coffee Street; that he called out to the Petitioner, "David" (meaning the Petitioner) "where you going this time of night, be careful"; that the Petitioner said that he was going to the Police Station. According to Sydney Howard he had seen Young Lai walking out of the Drayton Street gate of the Petitioner's premises in a very fast manner as if he were running, and immediately after, he saw the Petitioner at the Coffee Street gate of his premises with his car parked in Coffee Street facing the direction of the Library Corner and the Petitioner told him he was going to the Police Station. 30 40

From January to March 1949, Sydney Howard was employed by the Petitioner as a salesman in his shop at No. 127 Coffee Street, San Fernando. In examination-in-chief he said that at 10 p.m. on Whit Monday the 6th June, 1949, he was driving taxi HA4499 in Drayton Street, San Fernando in the direction of Coffee Street. He was carefully cross-examined. I have considered his evidence, together with his demeanour in the witness-box,

and I am not satisfied that at about 10 p.m. on Whit Monday the 6th June, 1949, Sydney Howard was driving a taxi in Drayton Street or at the corner of Coffee and Drayton Streets. The Petitioner deposed in evidence that, before he left the premises in his car to go to the Police Station, Howard called out to him. I do not believe that such was the case. I do not believe that on the night of Whit Monday the 6th June, 1949, Howard saw either Young Lai or the Petitioner. Further, he did not see the Petitioner on Thursday the 9th June, 1949, as alleged by him (Sydney Howard).

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

- 10 In her evidence the Respondent stated that, after she had decided to do no more sewing on the night of Whit Monday the 6th June, 1949, and to go to sleep, she went round by the rumshop to the frigidaire to get a sweet drink ; that she went to open the door of the frigidaire and suddenly she saw her husband next to her : that she said, “ Eh, eh, you come already,” and that he replied, “ Come, come my ass ” ; that he pointed his hand to her and said, “ Where is the man you were talking to ? ” that she told him that she had been talking but over the telephone ; that her husband rushed down by the meat block, picked up something in his hand and said “ To-night “ I shall finish up your ass ” ; that the Petitioner called Young Ping and  
20 Young Poy ; that they came with long sticks ; and that she then went into her bedroom.

No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

The Petitioner denied that he saw his wife at the frigidaire. Young Poy said that he did not see the Respondent by the frigidaire, and Young Ping stated that he doesn't know of the Respondent being at the frigidaire on the night of Whit Monday the 6th June 1949. I am satisfied, notwithstanding the denials of the Petitioner and of Young Poy and Young Ping, that an incident between the Petitioner and the Respondent did occur by the frigidaire and that the Petitioner had it in his mind seriously to assault the Respondent.

- 30 The Petitioner said that he never spoke to his wife, and that his wife never spoke to him on Whit Monday night 1949. Such evidence was not true. It is of some importance that the Petitioner made one inquiry of his wife, and one inquiry only, as to what she had been doing and that inquiry was, “ Where is the man you were talking to ? ”

- If the Petitioner did in fact see his wife committing adultery in the No. 2 Private Room, such adultery must have immediately preceded the conversation which took place by the frigidaire between the Petitioner and the Respondent. If such adultery was in fact committed by the Respondent, then, after such act of adultery, she passed from the No. 2 Private Room,  
40 through the open door, to the sitting room, and thence to the frigidaire. The Respondent deposed that she was not in the private room on the night of 6th June, 1949, with Young Lai, that Young Lai did not have to run away from No. 127 Coffee Street on that night, and that Young Lai was not at 127 Coffee Street at all on the night of the 6th June, 1949.

When the Respondent was by the frigidaire, the Petitioner did not, for instance, tell her : “ You are saying to me, ‘ Eh, eh, you come already.’ ” “ You are a bold and brazen woman. Why, I just saw you in the private

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 25.  
Minutes of  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

‘ room having sexual intercourse with Young Lai. You now run round  
“ quick to the frigidaire to try and make it look as if nothing has happened.”

The Co-Respondent stated in his evidence that at the material times on  
Whit Monday, the 6th June, 1949, he was at his residence at Reform Village,  
and his wife supported his testimony. He further stated that he was not  
on the premises of the Petitioner and the Respondent at any time on Whit  
Monday, the 6th June, 1949; and that the statement that he was in the  
Petitioner’s private room with the Respondent on the night of Whit Monday,  
the 6th June, 1949, was a lie.

The evidence of the Petitioner and of Young Poy and Young Ping was 10  
that, although there was no light in the No. 2 Private Room or in the  
rumshop, they were able to see the Respondent and the Co-Respondent,  
and what they were doing, in the Private Room, by reason of the reflection  
from an electric light which was burning in the sitting room. That electric  
light hangs from a cord, and the Petitioner stated that the light reflected  
in the Private Room “ not brightly but a little.” There is wire mesh at the  
top of the partition between the sitting room and the private room. The  
Co-Respondent, according to the evidence, did not speak at all.

If I were to find that the Respondent committed adultery on the night  
of Whit Monday, the 6th June, 1949, in the No. 2 Private Room immediately 20  
before she had the conversation with her husband at the frigidaire, I could  
not, having regard to Young Lai’s alibi and the little light which would  
reflect in the Private Room, find that the man with whom she committed  
such adultery was the Co-Respondent Harry Young Lai.

The basis of the Petitioner’s evidence was that his wife prepared herself  
for the act of adultery by locking from the inside the door leading to the  
provision shop so that, in the event of the Petitioner returning home before  
the act of adultery was committed or completed, her paramour would have  
an opportunity to get away through the door leading from the private room  
to the back yard before she unlocked the door to admit her husband. 30  
However, the Petitioner did not speak the truth when he said that the door  
by which he sought to enter his premises was locked from the inside, and he  
uttered an untruth when he said that he got into the bedroom by climbing a  
ladder. As a result, so much doubt is cast on his evidence as to the act of  
adultery which he says he saw committed that I am not satisfied that the  
Petitioner did in fact see his wife committing adultery. I do not believe  
that either Young Poy or Young Ping looked through the hole between the  
rumshop and the No. 2 Private Room. I am satisfied that they were called  
by the Petitioner when the Respondent was by the frigidaire and not before.  
There, the Petitioner spoke to his wife, but he did not accuse her of adultery, 40  
he merely asked her who was the man to whom she had been talking.

Having considered all the evidence (including evidence not specifically  
referred to in this judgment) given by the Petitioner, the Respondent, the  
Co-Respondent, and the witnesses examined on their behalf, and the  
submissions made by counsel, I find that the Respondent Estelle Cho Fook  
Lun did not commit adultery with the Co-Respondent Harry Young Lai  
or any other person on the night of Whit Monday, the 6th June, 1949, and

that she did not commit adultery with Harry Young Lai at any other time at No. 127 Coffee Street, San Fernando.

The petition for dissolution of marriage, together with the claim against Harry Young Lai for damages, is dismissed, and the Petitioner will pay the costs of the Respondent and of the Co-Respondent. The sum of money deposited into Court by the Petitioner as security for the Respondent's costs, or so much thereof as is required to satisfy such costs, is to be paid out to the Respondent's solicitor. There will be a stay of proceedings, in relation to the recovery of the Co-Respondent's costs, for the period of six weeks from the date of this judgment, and if during that period an appeal is filed by the Petitioner, such stay will be continued until such appeal is heard and determined or is otherwise finally disposed of, or until further order of the Court or a Judge.

Dated the 23rd day of November, 1950.

(Sgd.) E. MORTIMER DUKE,  
*Puisne Judge.*

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.  
—  
No. 25.  
Judgment,  
dated 23rd  
November  
1950—  
*continued.*

---

No. 26.  
Order

No. 26.  
Order,  
dated 23rd  
November  
1950.

TRINIDAD.

20 IN THE SUPREME COURT OF TRINIDAD AND TOBAGO.  
SUB REGISTRY, SAN FERNANDO.

No. 14 of 1949.

Between  
BENJAMIN CHO FOOK LUN ... .. *Petitioner*  
and  
ESTELLE CHO FOOK LUN ... .. *Respondent*  
and  
HARRY YOUNG LAI ... .. *Co-Respondent.*

Entered the 23rd day of November, 1950.

30 On the 23rd day of November, 1950.

Before His Honour Mr. Justice EDGAR MORTIMER DUKE.

The Judge having taken the oral evidence of the Petitioner and of the witnesses produced on his behalf in support of the Petition filed in this cause, and the oral evidence of the Respondent and Co-Respondent and of the witnesses produced on their behalf in support of their answer, and having heard Counsel thereon on behalf of the Petitioner, Respondent and Co-Respondent, and the said Judge having ordered that this matter should stand for Judgment and this matter standing for Judgment in the paper this day, the said Judge pronounced that the Petitioner had not sufficiently proved the contents of the said petition and ORDERED that the said petition for dissolution of marriage solemnised on the 10th day of

In the  
Supreme  
Court of  
Trinidad  
and  
Tobago—  
Sub-  
Registry  
San  
Fernando.

No. 26.  
Order,  
dated 23rd  
November  
1950—  
*continued.*

February, 1935, at the St. George's Cathedral, Georgetown, in the County of Demerara, British Guiana, and the claim of the said Petitioner, Benjamin Cho Fook Lun against Harry Young Lai the Co-Respondent for damages be and the same are hereby dismissed and condemned the Petitioner in the costs incurred and to be incurred on behalf of the Respondent and Co-Respondent in this cause.

AND IT IS ALSO ORDERED

That the sum of money deposited into Court by the Petitioner as security for the Respondent's costs, or so much thereof as is required to satisfy such costs, be paid out to the Respondent's Solicitor. 10

AND IT IS ALSO FURTHER ORDERED

That there be a stay of proceedings, in relation to the recovery of the Co-Respondent's costs for the period of six weeks from the date of this order, and if during that period an appeal is filed by the Petitioner, such stay to be continued until such appeal is heard and determined or is otherwise finally disposed of, or until further order of the Court or a Judge.

H. L. ROUSSEAU,  
*Sub-Registrar,*  
San Fernando.

In the West  
Indian  
Court of  
Appeal.

No. 27.  
Notice of  
Appeal,  
dated 6th  
January  
1951.

No. 27.  
Notice of Appeal.

20

TRINIDAD.

IN THE WEST INDIAN COURT OF APPEAL.

No. 1 of 1951.

BENJAMIN CHO FOOK LUN	Between	<i>Petitioner—Appellant</i>
	and	
ESTELLE CHO FOOK LUN ...	... ..	<i>Respondent—Respondent</i>
	and	
HARRY YOUNG LAI ...	... ..	<i>Co-Respondent—Respondent.</i> 30

TAKE NOTICE that the West Indian Court of Appeal will be moved at its next sitting in Port-in-Spain on such date and at such time as the Registrar shall gazette and inform the parties or as soon thereafter as Counsel can be heard by LOUIS E. WHARTON, Esq., K.C., of Counsel for the Petitioner—Appellant, Benjamin Cho Fook Lun for an order that the Judgment of His Honour Mr. Justice Edgar Mortimer Duke bearing date the 23rd day of November, 1950 dismissing the Petitioner—Appellant's petition for dissolution of marriage together with his claim against the Co-Respondent—Respondent for damages and ordering the said Petitioner—Appellant to pay the costs of the Respondent—Respondent 40 and the Co-Respondent—Respondent, and that the sum of money deposited

into Court by the Petitioner-Appellant as security for the Respondent-Respondent's costs, or so much thereof as is required to satisfy such costs, is to be paid out to the Respondent-Respondent's Solicitor, be reversed and set aside and that Judgment be entered for the Petitioner-Appellant with costs here and in the Court below.

In the West  
Indian  
Court of  
Appeal.

No. 27.  
Notice of  
Appeal,  
dated 6th  
January  
1951—  
*continued.*

AND FURTHER TAKE NOTICE that the Petitioner-Appellant appeals against the whole of the said judgment which is erroneous for the following among other reasons :—

1.—The learned trial Judge misdirected himself and/or wrongly allowed  
10 his mind and/or his decision to be influenced in the following among other matters and respects that is to say :

- (a) The Petitioner's friendship with Philappa Acham.
- (b) The fact that the learner's driving permit (confusedly referred to in the judgment as a photograph) of the said Philippa Acham was in the Petitioner's possession and/or that its loss was of concern to the Petitioner.
- (c) The Respondent's unreasoning suspicions about the Petitioner's relationship with the said Phillipa Acham and of his alleged failure upon his leaving the house to inform the  
20 Respondent of where he was going.
- (d) In rejecting arbitrarily the evidence of the witnesses Young Poy and Young Ping with particular reference to the fact that
  - (i) the door leading to the shop was locked from the inside :  
and
  - (ii) the said witnesses looked through the hole in the partition between the rumshop and the No. 2 Private Room.
- (e) In unreasonably rejecting the evidence of the witness Sydney Howard.
- (f) In rejecting the identification of the Co-Respondent Young  
30 Lai by the Petitioner and his witnesses.
- (g) In coming to the conclusion that the basis of the case for the Petitioner was that his wife prepared herself for the act of adultery by locking from the inside the door leading to the provision shop.

2.—The learned Judge failed to consider and/or properly to appreciate and/or to give due effect to the whole of the evidence in the case and in particular to the following among other matters.

- (a) The discrepancies between the evidence of the witness Milly  
40 Yhap and that of the Respondent as to the incident of the night of the 6th June, 1949.
- (b) As to the Respondent's alleged presence in the unlighted rumshop at the time of the two alleged telephone conversations.
- (c) As to the fact that the so-called photograph was part only of the learner's driving permit of Phillipa Acham as aforesaid.

In the West  
Indian  
Court of  
Appeal.

No. 27.  
Notice of  
Appeal,  
dated 6th  
January  
1951—  
*continued.*

3.—The decision was against the weight of the evidence and/or was unreasonable and/or cannot be supported having regard to the evidence and in particular to the following :

- (a) The absence of corroboration of the Respondent's alleged telephone conversations of the night of the said 6th day of June.
- (b) The rejection of the evidence of the Petitioner and his witnesses to the effect that the door of the provision shop was fastened on the inside.
- (c) The failure to appreciate that it was common ground that 10 the said door was habitually so fastened for the night.
- (d) The fixing and assessing of the evidence upon the act of adultery charged on the conclusion that the door was not in fact fastened on the inside.

4.—There was no evidence on which the learned Judge could reasonably have found that the Petitioner's testimony was untrue and/or insufficient and/or unsupported and/or unreasonable.

Dated this 6th day of January, 1951.

T. M. KELSHALL & SON,  
*Solicitors for the Petitioner—Appellant.* 20

To : The Registrar and Mr. E. Basil Jack,  
Solicitor for Respondent—Respondent,  
Harris Promenade, San Fernando.

Mr. L. C. C. Hobson, Solicitor for the  
Co-Respondent—Respondent, Harris  
Promenade, San Fernando.

No. 28.  
Judgment,  
30th  
January  
1953.

### No. 28.

### Judgment.

This is an appeal by the Petitioner—Appellant Benjamin Cho Fook Lun 30 from a decision dismissing his petition for the dissolution of his marriage with the Respondent—Respondent Estelle Cho Fook Lun and dismissing his claim for damages against the Co-Respondent—Respondent Harry Young Lai and ordering the said Petitioner—Appellant to pay the costs of the Respondent—Respondent and Co-Respondent—Respondent. The appeal also seeks the reversal and setting aside of the learned Judge's order that

the sum of money deposited into Court by the Petitioner as security for the Respondent's costs (or so much thereof as is required to satisfy such costs) should be paid out to the Respondent's solicitor.

10 The Petitioner and the Respondent were married on the 10th February, 1935, in British Guiana. The Petitioner came to Trinidad in 1937 and the Respondent in 1938 and since that time they have lived and co-habited in San Fernando. The Petitioner carried on a provision and rum shop business in San Fernando at 127 Coffee Street ; in 1948 he became a partner in the business known as The Shantung Restaurant, Port of Spain. From June 1948 to October 1948 he managed that business, and the Respondent looked after the business in San Fernando.

While the Petitioner was managing the Shantung restaurant he became acquainted with one Phillipa Acham who used to have her meals at that restaurant, and the Respondent became of the opinion that the Petitioner was paying too much attention to her.

There is not and never has been any issue of the marriage and the Respondent was of opinion that the Petitioner for that reason wanted to "get rid of her" and marry Phillipa Acham.

20 The Petitioner's shop is situate at the corner of Coffee and Drayton Streets, San Fernando, and at the material time the Petitioner and Respondent lived together on the premises. The two clerks Young Poy and Young Ping also lived on the premises. There is a galvanised gate leading to Coffee Street and through this gate access is obtained to the Petitioner's garage, the sleeping quarters of the clerks and the portion of the Petitioner's premises used by him as his residence. Access to the Petitioner's residence is also obtained through a door leading to the provision shop ; this door can be locked by a padlock on the outside and can be bolted on the inside. There is a door between the Petitioner's bedroom and his sitting room ; there is also a door between the Petitioner's sitting room and the No. 2 private room, and there is a door from No. 2 private room into the back yard, and there is a galvanized gate leading from the back yard into Drayton Street.

30 Between the No. 2 private room and the shop there is a hatch through which drinks can be handed and this hatch was referred to in the evidence as the hole.

40 The Petitioner's case is that on the 6th June, 1949, he left his premises in the morning, leaving the Respondent there and that he told her he may not come home that night but would try and do so, that he returned home about 9.50 p.m., that one of the clerks Young Poy opened the gate, and he drove his car in the garage, that he went to the door leading to the provision shop which he found locked, he pulled it and could not open it, called out and nobody answered. He saw the bedroom window open and he placed a ladder on a box in the store-room, climbed that ladder, got into the bedroom, went into the sitting room, and saw no one ; he then passed from the sitting room into the rum-shop and then he looked through the hatch between the rumshop and No. 2 private room and saw the Respondent committing adultery with the Co-Respondent. He returned towards the

In the West  
Indian  
Court of  
Appeal.

No. 28.  
Judgment.  
30th  
January  
1953—  
*continued.*

In the West  
Indian  
Court of  
Appeal.

No. 28.  
Judgment.  
30th  
January  
1953—  
*continued.*

garage, called his two clerks who both looked through the hatch and saw the Respondent and Co-Respondent and that as they did so the Petitioner called out, "Look" and the Co-Respondent got up and ran. At that time the Respondent was wearing a nightgown. The Petitioner stated that he told the Respondent that he was going to make a report at the Police Station. The Respondent then telephoned to a mutual friend one Mrs. Yhap who arrived immediately.

Mrs. Yhap gave evidence and stated that she spoke to the Petitioner and attempted to dissuade him from making a report but he insisted. The Petitioner left to go to the Station and as he got outside his premises he saw Sydney Howard in a car and Howard spoke to him. The Petitioner went on to the station and made a report. The Respondent and Mrs. Yhap also went to the station, it is said, to find out what report the Petitioner made. 10

The defence of the Respondent was that the story was untrue and that it was a fabrication made up in order to "get rid of her" so that the Petitioner would be able to marry the woman Phillipa Acham. This defence is based on the fact that the Petitioner taught Phillipa Acham to drive that he is supposed to have told both Mansing and Mrs. Yhap that he wanted to marry Phillipa Acham. It is to be observed that Mansing although alive was not called and Mrs. Yhap though called gave no such evidence. 20

The defence of the Co-Respondent was an alibi.

The decision of this appeal involves the application of the proper principles to be applied by an appellate Court when it is asked to take a different view of the facts from those taken by a Judge sitting without a jury. Those principles were clearly enunciated by Lord Thankerton in three propositions when delivering judgment in *Watt (or Thomas) vs. Thomas* (1947) 1 A.E.R. 582. The case of *Yuill vs. Yuill* (1945) 1 A.E.R. 183 is also in point dealing, as it does, with the matter of the demeanour of witnesses. 30

In deciding whether this case falls within any, and if so which of those three propositions we have carefully examined the evidence in the light of the critical analysis of it which was made by each of the Counsel who argued this appeal and of the several submissions made by each Counsel, keeping clearly in mind the contention of Counsel for the Respondent and Counsel for the Co-Respondent that:—

"It can of course only be on the rarest occasions, and in  
"circumstances where the Appellate Court is convinced by the  
"plainest considerations, that it would be justified in finding that 40  
"the trial Judge had formed a wrong opinion" (*Yuill v. Yuill*).

The trial Judge stated that he was of opinion that the Petitioner did not speak the truth when he said (a) that the door by which he sought to enter his premises was locked from the inside and (b) that he got into the bedroom by climbing a ladder, and as a result of the above declared that so much doubt is cast on his evidence as to the act of adultery which the

Petitioner says he saw committed that he the Judge is not satisfied that the Petitioner did in fact see his wife committing adultery. The Judge has also stated, without giving any reason that he did not believe that either Young Poy or Young Ping the Chinese clerks of the Petitioner who gave evidence that they looked through the hole between the rum shop and the No. 2 private room and saw the adultery being committed did in fact look through that hole. It is to be noted that the Judge nowhere comments unfavourably on the demeanour of either of these clerks or of any other witness with the single exception of Sydney Howard.

In the West  
Indian  
Court of  
Appeal,  
—  
No. 28.  
Judgment.  
30th  
January  
1953—  
*continued.*

10 We have asked ourselves what is the evidence that (a) the door in question was secured and (b) the Petitioner entered by climbing a ladder. After an examination of the evidence on those points we can find no justification for the Judge's disbelief of the Appellant's story on those two matters. We are satisfied that the door was secured that night from the inside and that the Petitioner did obtain access through the window; that being so the grounds for the Judge's disbelief of the Petitioner's evidence on the other matters fail and consequently we are of opinion that the matter is at large.

We are satisfied that the Respondent and the Co-Respondent did  
20 commit adultery in the No. 2 Private Room as alleged.

In coming to that conclusion we have paid particular attention to the subsequent conduct of the Petitioner on that night for we consider that conduct to be entirely consistent with his version of the events. Immediately after the Petitioner saw what he has said he saw he went to the Police Station despite the attempts of Mrs. Yhap to dissuade him and made a report to the police. What was the nature of that report? In cross-examination he stated that he told the police "that he looked through the "hole and saw the man," it was suggested that he made no report of that nature to the police; but the Respondent went to the Station with Mrs.  
30 Yhap and spoke to Corporal Springer. The best method of proving what report the Petitioner made to the policeman would be to call the policeman. The Petitioner could not do so but the Respondent could. Why did she not call the policeman? The answer seems obvious—because his evidence would be likely to support the Petitioner's case and discredit hers. To us it is a matter of extreme significance that the policeman was not called by either the Respondent or Co-Respondent. Although as stated the contents of the report have not been disclosed its ominous nature can be gauged by the following reply given by the Petitioner to Mr. Archbald, under cross-examination :—

40 "I went in motor car to police station. I don't know my  
" wife rang up Mrs. Yhap. I made a report to the police. I think  
" No. is 2233 Springer. I didn't tell him I saw a man lacing up  
" his boots. I told him I looked through a hole and saw the man."

And by the reply given by the Respondent under cross-examination to Mr. Wooding :—

"I told Cpl. Springer what my husband had done. He  
" came outside with me by door of Station. I don't know if he

In the West  
Indian  
Court of  
Appeal.

No. 28.  
Judgment.  
30th  
January  
1953—  
*continued.*

“ wrote it down. I told him I would like to know what report  
“ my husband made. Springer was coming out. Springer told  
“ me my husband said that if he had a gun in hand he would shoot  
“ me. I asked him if I should go home or stay out. He advised  
“ me to stay with Mrs. Yhap if I am afraid. I told Police Corporal  
“ Springer that my husband had threatened me. Springer never  
“ told me my husband had said he found Young Lai in shop.”

It has been submitted in effect by Counsel for the Respondent and Counsel for the Co-Respondent that Mrs. Yhap was a friend of both the Petitioner and the Respondent ; that she was a completely neutral witness, 10 and one upon whose character no attack was made ; that it was open to the Judge to accept her testimony and that if it was accepted it was quite inconsistent with the adultery having taken place. The trial Judge has nowhere in his judgment commented upon the evidence given by Mrs. Yhap or given any indication as to what reliance he placed upon her evidence. We have come to the conclusion that Mrs. Yhap's whole behaviour is suggestive of the fact that she was well aware that the Petitioner had cause for grave displeasure with his wife on the night of the 6th June, 1949, but that she was anxious to persuade him not to pursue the matter. We 20 have considered her evidence against the rest of the evidence in this case in coming to our conclusion that the adultery complained of was in fact committed. We have had regard to all that has been said by way of criticism of the evidence of Sydney Howard and it does not appear to us to be open to serious objection. We believe that he made a genuine mistake as regards the date he gave for his conversation with the Petitioner ; but even if his evidence is put aside as it was put aside by the Judge the adultery of the Respondent and the Co-Respondent is established on the rest of the evidence.

The Judge without expressly stating whether or not he believed it has allowed the alibi put forward by the Co-Respondent to influence him in 30 deciding that even if adultery was committed on the night of the 6th June, 1949, by the Respondent it was not committed with the Co-Respondent. We are of the opinion that the alibi is open to serious criticism in that it is not co-extensive with and does not cover the entire material time. The Co-Respondent is vague as to the times and the evidence of his wife does not disclose that she had any reason to pay particular attention either to the time of his return on that night or his movements on that night and in fact it was not until two weeks after the alleged act of adultery that she knew that her husband was suspected. How can she throw her mind 40 back two weeks and remember with certainty in these circumstances what her husband did that night ?

We are of the opinion that the evidence establishes with all the certainty that can be required that the Respondent did commit adultery with the Co-Respondent as alleged and it follows that this appeal is allowed. There will be a decree nisi and the Co-Respondent will pay the costs of the Petitioner and Respondent here and in the Court below. As the question

of damages was not argued at the trial or before us we make no order thereon.

The sum of money deposited in Court by the Petitioner as security for his wife's costs will be paid out to him.

In the West Indian Court of Appeal.

J. L. MATHIEU-PEREZ,  
Chief Justice, Trinidad and Tobago.

E. A. COLLYMORE,  
Chief Justice, Barbados.

PETER BELL,  
Chief Justice, British Guiana.

No. 28.  
Judgment.  
30th  
January,  
1953—  
*continued.*

10  
30th January, 1953.

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No. 29.  
Order.

No. 29.  
Order.  
30th  
January  
1953.

TRINIDAD.

IN THE WEST INDIAN COURT OF APPEAL.

No. 1 of 1951.

Between

BENJAMIN CHO FOOK LUN ... .. *Petitioner-Appellant*

and

20 ESTELLE CHO FOOK LUN ... .. *Respondent-Respondent*

and

HARRY YOUNG LAI ... .. *Co-Respondent-Respondent.*

Entered the 30th day of January, 1953.

Dated the 30th day of January, 1953.

Before Their Lordships : MR. JUSTICE J. L. MATHIEU-PEREZ, Chief Justice of Trinidad and Tobago, President.

SIR ALLAN COLLYMORE, Chief Justice of Barbados, and

MR. JUSTICE PETER BELL, Chief Justice of British Guiana.

30

Upon Motion made unto the Court on the 6th, 7th and 8th days of January, 1953, by Counsel for the above-named Appellant by way of appeal against the Judgment of the Honourable Mr. Justice Edgar Mortimer Duke, dated the 23rd day of November, 1950, made herein, upon reading

In the West  
Indian  
Court of  
Appeal.

No. 29.  
Order.  
30th  
January  
1953—  
*continued.*

the Record of Appeal in this matter, upon hearing what was alleged by Counsel for the Appellant, Counsel for the first-named Respondent and Counsel for the second-named Respondent,

THE COURT DID ORDER

That this matter should stand for Judgment, and this matter standing for Judgment in the paper this day.

THE COURT DOTH ORDER

That the said Judgment of The Honourable Mr. Justice Edgar Mortimer Duke dated the 23rd day of November, 1950, be and the same is hereby set aside.

10

AND THE COURT DOTH DECREE AND DECLARE

That the marriage had and solemnised on the 10th day of February, 1935, at St. George's Cathedral, Georgetown, in the County of Demerara, British Guiana, between Benjamin Cho Fook Lun, the Appellant, and Estelle Cho Fook Lun (then Estelle Young Jin Yao, Spinster) the first named Respondent, be dissolved by reason that since the celebration thereof the said first-named Respondent had been guilty of adultery with Harry Young Lai, the second-named Respondent unless sufficient cause be shown to the Court why this decree should not be made absolute within six months from the making thereof.

20

AND THE COURT DOTH FURTHER ORDER

That the said second-named Respondent be condemned in the costs incurred and to be incurred on behalf of the said Appellant and first-named Respondent in this cause here and in the Court below.

AND THE COURT DOTH FURTHER ORDER

That the sum of money deposited into Court by the Appellant as security for his wife's costs be paid out to him without further order.

No order as to damages.

NEIL FITZWILLIAM,  
*Principal Registrar,*  
West Indian Court of Appeal.

30

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## No. 30.

## Order in Council granting Special Leave to Appeal.

AT THE COURT OF BUCKINGHAM PALACE.

The 1st day of August, 1953.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD CHANCELLOR.  
LORD PRESIDENT.MR. SECRETARY LYTTTELTON.  
SIR THOMAS DUGDALE.

CHANCELLOR OF THE DUCHY OF LANCASTER.

10

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 21st day of July, 1953, in the words following, viz. :—

20

30

40

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Harry Young Lai in the matter of an Appeal from the West Indian Court of Appeal between the Petitioner (Appellant) and Benjamin Cho Fook Lun and Estelle Cho Fook Lun (Respondents) setting forth (amongst other matters) : that the Petitioner prays for special leave to appeal to Your Majesty in Council from the Judgment of the West Indian Court of Appeal dated the 30th January 1953 whereby the decision of the Supreme Court of Trinidad dismissing with costs the petition of the first Respondent for a dissolution of his marriage with the second Respondent on the ground of the second Respondent's adultery with the Petitioner was set aside and the first Respondent was granted a decree nisi on the ground of the said adultery and the Petitioner was ordered to pay the costs of both Respondents in both Courts : that the first Respondent's case was that the second Respondent frequently committed adultery with the Petitioner at the first Respondent's home at 127 Coffee Street San Fernando Trinidad and that on the night of Whit Monday 6th June 1949 the second Respondent committed adultery with the Petitioner at the said home : that the Petitioner submits (inter alia) that the decision of the Supreme Court was a possible reasonable and proper one on the evidence before the Court and that the West Indian Court of Appeal exceeded their legitimate functions as an appellate tribunal in rejecting the findings of fact made by the Supreme Court and in substituting therefor their own view of the evidence on which those findings were made : And humbly praying Your Majesty in Council to grant the Petitioner

In the Privy  
Council.

—  
No. 30.  
Order in  
Council  
granting  
Special  
Leave to  
Appeal.  
1st August  
1953.

In the Privy  
Council.

No. 30.

Order in  
Council  
granting  
Special  
Leave to  
Appeal.  
1st August  
1953—  
*continued.*

special leave to appeal against the Judgment of the West Indian Court of Appeal dated the 30th January 1953 and for such further and other relief as to Your Majesty in Council may seem meet :

“ THE LORDS OF THE COMMITTEE in obedience to His late Majesty’s said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the West Indian Court of Appeal dated the 30th day of January 1953 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs :

“ AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for same.”

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 20

Whereof the Governor or Officer administering the Government of the Colony of Trinidad and Tobago for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

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**EXHIBITS.**

**Exhibit—B.C.F.L. 2.**

**Plan of Locus of Petitioner's Room.**

Exhibits.

—  
Exhibit,  
B.C.F.L.2.  
Plan of  
Locus of  
Petitioner's  
Room.

DRAYTON

STREET

Gate on Drayton St  
No 1

No 2 Private Room  
10 ft. No 2

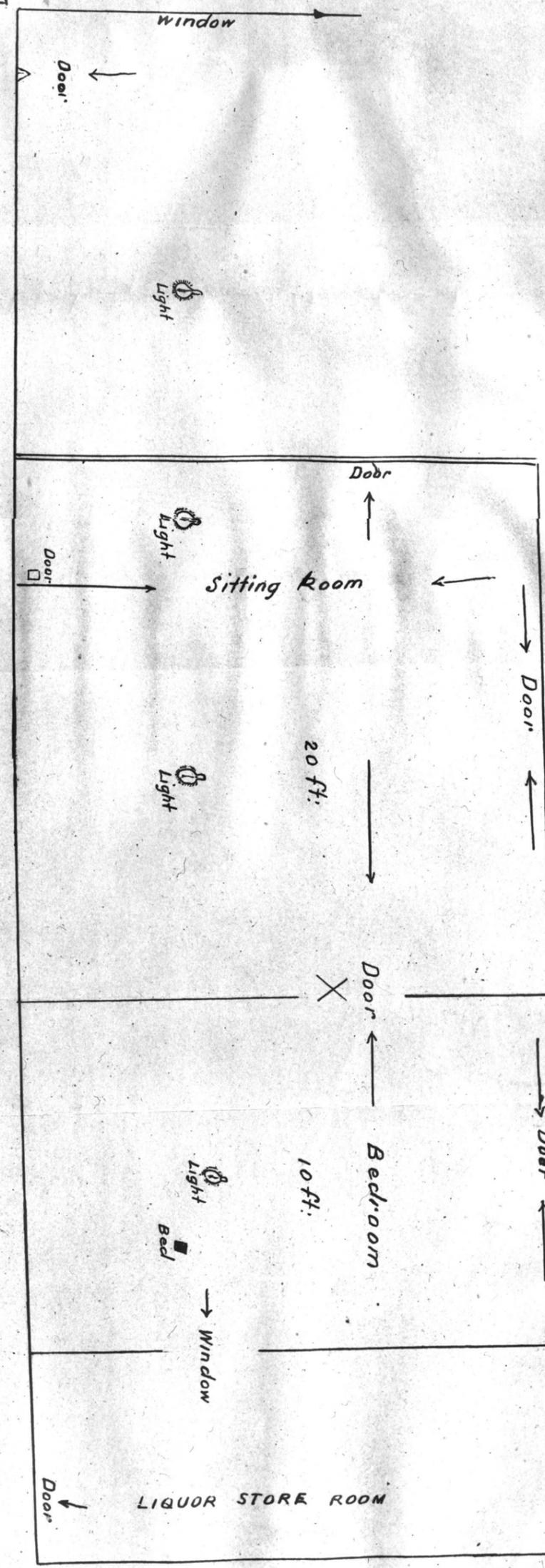
Kitchen Room

W C Room

Bath Room

No 6

Garage



Shop

No 3

No 4

No 5

Shop

Clerks' sleeping Room

Complete Shop  
COFFEE STREET

No 7

Room.

**Exhibit—B.C.F.L. 3.**

**Photograph of Bench and Table from Sitting Room.**

Exhibits.

Exhibit,  
B.C.F.L.3.  
Photo-  
graph of  
Bench and  
Table from  
sitting  
room.





**Exhibit—B.C.F.L. 4.**

**Photograph of Bench and Table from back of the Premises.**

Exhibits.

Exhibit,  
B.C.F.L.4.  
Photo-  
graph of  
Bench and  
Table  
from back  
of the  
Premises.



In the Privy Council.

No. 16 of 1954.

ON APPEAL FROM THE WEST INDIAN COURT  
OF APPEAL.

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BETWEEN

HARRY YOUNG LAI

*Co-Respondent-Appellant*

AND

BENJAMIN CHO FOOK LUN

*Petitioner-Respondent*

AND

ESTELLE CHO FOOK LUN

*Respondent-Respondent.*

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RECORD OF PROCEEDINGS

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J. N. MASON & CO.,

41/44 Temple Chambers,

Temple Avenue, E.C.4,

*Appellant's Solicitors.*

HY. S. L. POLAK & CO.,

20-21 Tooks Court,

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