

description sufficient to enable the part to be accurately identified." (emphasis added). It is clear that the expression, "a part only of any alienated land", can apply only to a lease of an undivided part or portion of the land and not to an undivided share therein. Where the meaning of an expression used in one part of a statute is unambiguous, the presumption that the legislature intended an identical expression in another part of the same statute to bear the same meaning is difficult to displace, especially where both those sections relate, as they do here, to the same subject-matter of dealings with land. Neither the context in which the expression is used in Section 214(1)(a), nor the true reason for the prohibition, as demonstrated, afford any valid justification for construing the expression any differently from the clear and unambiguous meaning given to it by Section 221. It is, accordingly, unnecessary for practitioners to resort to the present inelegant device of doubtful validity for the purpose of circumventing an assumed prohibition, which was not in fact intended to strike at the particular transaction which the device was designed to facilitate.

S.T. Chung

REGISTRAR'S CAVEAT
TEMENGGONG SECURITIES LTD. & ANOR
v.
REGISTRAR OF TITLES, JOHORE & ORS¹

The registrar's *caveat* is an innovation introduced by the National Land Code Act, 1965. This *caveat* was not recognised under the previous land law. Sections 166–178 of the F.M.S. Land Code Cap 138 (now repealed by the National Land Code Act) merely dealt with private *caveats*. The F.M.S. Land Code made no mention of a *caveat* for any of the purposes similar to those mentioned in section 320 of the present National Land Code. The effectiveness of this *caveat* was tested before the Federal Court in *Temenggong Securities Limited & Anor. v. Registrar of Titles, Johore & Ors.* The facts of the case are as follows. On 30th August, 1972, the 1st Appellant entered into an agreement with a company incorporated in Singapore, Li-Ta Company Private Limited, for the purchase of lands for a consideration of \$6 million; the transaction to be completed on or about the following 30th September. On 22nd September, 1972, both the

¹ [1974] 2 M.L.J. 45.

Appellants paid Li-Ta Company the full amount of the consideration and on that date the memorandum of transfer was executed, the issue documents of title delivered to the Appellants and the 2nd Appellant was given possession of the lands. On 14th December, the memorandum of transfer was presented to the Land Office for registration but on account of the Registrar's *caveat* having been entered on 11th October, 1972, the Appellants' memorandum of transfer was refused registration. This *caveat* was entered pursuant to a letter dated 2nd October, 1972, from the Inland Revenue Department requesting the Registrar to enter the *caveat* so as to prevent any transfer of lands belonging to Li-Ta Company on account of its income tax liability to the Federal Government. Following the refusal to register the memorandum of transfer, the Appellants sued the Registrar of Titles for the removal of the *caveat*. The High Court having decided against them, the appellants appealed to the Federal Court.

The Federal Court held that a Registrar's *caveat* should not be treated differently from any private *caveat* and that in this case the *caveat* was wrongly entered because (i) Li-Ta Company having parted with the beneficial ownership of the land to the Appellants on the 22nd September, 1972, had in consequence become only a bare trustee for which no valid *caveat* could be entered; and (ii) the purpose of entering this *caveat* was merely to protect the Government's right in recovering income tax from Li-Ta Company, and since that right was only a contingent claim the *caveat* was therefore also invalid.

BARE TRUSTEE

Does the position of the vendor as a bare trustee prevent the creation of a valid *caveat*? It is true that the Torrens system of land administration does not exclude, where appropriate, the application of the normal equitable principles in that where the price for land has been paid and a memorandum of transfer executed, pending registration, the vendor is reduced to a mere bare trustee because his interests have completely passed to the purchaser.² But can it be said that the vendor is subsequently incapable of creating any rights at all in the land which can lead to registration? In the case of *Karuppiah Chettiar v. Subramaniam* ([1971] 2 M.L.J. 116) it so happened that Subramaniam, the first purchaser, having paid the price for the land and executed the memorandum of transfer lodged a *caveat*, and so Karuppiah Chettiar, the second purchaser, who completed the same formality was prevented from registering his memorandum of transfer because of Subramaniam's *caveat*. But what would have been the position if there had been no *caveat* at all lodged by Subramaniam? Would Karuppiah Chettiar have been refused registration? Surely his interests in the land were also equitable just as Subramaniam's

²*Karuppiah Chettiar v. Subramaniam* [1971] 2 M.L.J. 116.

were and in the absence of any *caveat* he should be entitled to have his memorandum of transfer registered and obtain full legal title to the land. Yet if we were to follow the Federal Court's ruling to its natural conclusion, we would arrive at the position that despite the absence of a *caveat* to prevent such registration, Karuppiah Chettiar would still not be able to obtain registration of his memorandum of transfer because the vendor when executing this document had no more interests which he could pass to Karuppiah Chettiar. This could not be correct. Yet the Federal Court in the present case rhetorically asked, "Have the vendors, now bare trustees for the purchasers, any interest in the lands which can be caveated?" (at p. 47). The reply given by the Court at the end of the judgment is that: "the vendors having parted with their interests in the lands to the Appellants are bare trustees and have no interests in the land over which *caveat* can be lodged." (at p. 47).

In the case of *Karuppiah Chettiar v. Subramaniam*, the inability of the second purchaser to obtain registration was not due to the fact that his vendor was reduced to be a bare trustee but because the first purchaser had lodged the *caveat*. It was this *caveat* (not the vendor's status or position) which prevented the second purchaser from obtaining the registration. To illustrate further the unwarranted extension of this concept let us now assume that the vendor executed three memoranda of transfers to three different purchasers on three different occasions but only the second purchaser lodged the *caveat*. Would the *caveat* so lodged be held to be invalid against the first and third purchasers because the vendor after transferring his equitable ownership to the first purchaser had become a bare trustee? Again the answer here, it is submitted, is that the *caveat* must and should be held to be valid. If so, the truth is that the concept of bare trusteeship which is a concept used to regulate the relationship between vendor and purchaser for the purpose of compelling the former to complete the sale transaction has no application in the determination of issues between equitable interests arising between purchasers. It does not prevent the bare trustee vendor from selling his land again to other innocent purchasers. If this happens, the priority of their interests must be determined by the *caveat*. This is what the Torrens system is all about. Pending registration, only the interests of the purchaser who has lodged the *caveat* will be protected even though the *caveat* was lodged after the vendor, as a result of earlier transactions, had become the bare trustee.

CONTINGENT CLAIM

In this case the Federal Court appreciated that the Registrar's *caveat* was entered at the instance of the Inland Revenue Department as a measure to facilitate the recovery of income tax from the Li-Ta Company and was therefore aware that the issue was one of priority of claims between *bona*

vide purchasers for value (the Appellants) and the Federal Government's interests in safeguarding the payment of income tax by Li-Ta Company (the vendor). However, the Court rejected this issue because in the Court's opinion the Federal Government's interests relating to the recovery of income tax was merely a contingent claim and therefore could not be preferred over those of innocent purchasers for value. The Court regarded the interests of the Appellants as being complete, which could not be defeated by the Federal Government's interests relating to income tax even though the Government had a *caveat* to rely upon. To sustain the integrity of the interests of the innocent purchasers the Court had to declare that the *caveat* was invalid because the Government's interests relating to income tax was a contingent claim. Is the view taken by the Court on the nature of the Government's income tax interests as being contingent a valid one having regard to the provisions of sections 103 and 106 of the Income Tax Act, 1967?

Section 103(1) of the Income Tax Act, 1967, clearly says that tax assessed shall on the service of a Notice of Assessment on a taxpayer become due and payable at the place specified in the notice whether or not the taxpayer appeals against the assessment. In other words, the tax assessed becomes a liquidated debt. In view of the clear wording of this section, is it tenable to hold that the assessed income tax is a contingent claim? Further, section 106(1) of the same Act merely provides for the manner or procedure as to how or in which way the tax so due can be recovered i.e. by civil proceedings in the High Court. This procedural provision does not mean, however, that until a judgment is obtained against him in the High Court, the taxpayer's liability is merely contingent. Surely his liability does not depend upon the judgment of the Court. Only if his liability is contingent upon the Court's judgment can we speak of the Government's interest to recover income tax as a contingent claim. These two sections, however, do not support this view. What the two sections merely lay down is that the tax assessed becomes a debt due on the service of the Notice of Assessment and that the recovery of this debt is to be pursued by a judicial proceeding. The Inland Revenue Department is not empowered to resort to self-help measures. Further, whilst it is true that the Income Tax Act makes provisions for an appeal by the taxpayer to the Special Income Tax Commissioners against the assessment, these provisions in no way render the liability of the taxpayer and the interests of the Federal Government in respect of income tax contingent. If these interests are contingent, one may ask contingent upon what? Surely the contingency is not the subsequent judgment obtained against the taxpayer since the judgment merely provides a method of recovering the tax.

Secondly, even if these interests are contingent, where is it provided in the National Land Code that the Registrar's *caveat* cannot be entered to protect such interests? Contingent or not, are they not the interests of the

Federation? It is submitted that they are and as such the *caveat* entered to protect them should be valid.

PRIVATE CAVEAT v. REGISTRAR'S CAVEAT

Another reason upon which the Federal Court based its decision is that a private *caveat* and a Registrar's *caveat* should not be treated differently. The significance of this ruling is as follows. As the two types of *caveat* are to be treated alike, the interests which are to be protected by the Registrar's *caveat* should pertain to land. In this case the interests which the Government had in the collection of income tax did not pertain to land.

A private *caveat*, according to the National Land Code, may be expressed to bind the land itself or to bind a particular interest in the land but a Registrar's *caveat*, however, has no such limitation. So long as its purpose is covered by section 320 of the National Land Code, the *caveat* is valid. One of the purposes of the Registrar's *caveat*, as occurred in this case, is to protect the interests of the Federation. Surely the interests of the Federation need not be confined to bind the land or to bind an interest in the land. These must extend to the implementation of Government policies and the enforcement of law, and also to any measures taken with a view to prevent any frustration in the implementation of policies and enforcement of law. If the collection of income tax by the Department of Inland Revenue is not interests of the Federation, then what does the expression "interests of the Federation" in section 320 of the National Land Code mean? Further, the National Land Code provides a clear difference of treatment between the private *caveat* and the Registrar's *caveat* in that the Registrar's *caveat* is effective against any instrument "notwithstanding that it was presented for registration before the *caveat* was entered" (section 319 (2)). Thus, even if the *caveat* was entered after the execution or presentation of the memorandum of transfer for registration, it is still effective to prevent the registration of that instrument. This clearly shows the overriding public policy element in the Registrar's *caveat*, and in view of this, i.e. section 319(2) of the National Land Code, the *caveat* should be allowed to stand. Yet the Court passed over this provision by holding it to be invalid because the Government's interests were contingent. The real issue which should occupy the Court's attention is whether a *caveat* entered with the express purpose of ensuring payment of income tax by a taxpayer against whose land the *caveat* is entered is invalid because the entering of such *caveat* to ensure payment of income tax is not an interest of the Federation. Surely any step taken to ensure payment of money due to the Government will be interests of the Federation.

A Registrar's *caveat*, according to the National Land Code, is entered by the Registrar for the prevention of fraud and improper dealing, for the

protection of interests of the Federation or for any person suffering from legal disability, or it may be entered because of some error or for the purpose of ensuring the correctness and accuracy of the land records maintained by the Registrar. It is obvious that looking at any of these purposes the principle underlying the Registrar's *caveat* is based on consideration of public interest and surely the prevention of that fraud and improper dealings and ensuring accuracy of public records are just as much public interest, if not more, as are the safeguarding of the interests of the Federation. Unlike the Registrar's *caveat*, a private *caveat* operates when no public interest is involved. Until the passing of the National Land Code, a *caveat* only operated on the level of private rights and interests.

It is indeed very difficult to understand the logic of the Court's decision in saying:

"What 'interests of the Federation' that need protection must and can only be concerned with interests the Federation had, as against the person or body against whom such protection is sought. Have the vendors any further rights in the land in respect of which the *caveat* has been lodged which can prevail over the rights of the purchasers who have paid the full consideration therefor and obtained possession thereof further prior to the lodgement of the *caveat*?" (at p. 46).

It is submitted that to say the Registrar's *caveat* can only be good if the vendor has rights in the land would seem to run contrary to sections 319(2) and 320(1) of the National Land Code. These sections, clearly contain no such limitation. The interests of the Federation for the purpose of the Registrar's *caveat* are in no way limited to interests in land, still less limited by the situation that a person has or has no rights in the land.

CONCLUSION

The justice of the case here, it seems, is the dilemma with which the Court was confronted of making a choice between the interests of a *bona fide* purchaser for value and the interests of the Federal Government in recovering income tax which the Registrar's *caveat* sought to protect. Between these two issues the Court preferred the interests of the *bona fide* purchaser for value to those of the Federal Government. This is borne out by the language and the structure of the judgment itself which consists of the following progression. First, as regards the relationship between the vendor and the *bona fide* purchaser, the vendor having done everything concerning the sale of his lands became a mere bare trustee. Secondly, as regards the relationship between the vendor and the Government no valid *caveat* could be created out of such bare trusteeship; and finally as regards the relationship between the Government and the purchaser, because of the invalidity of the *caveat* the interests of the *bona fide* purchaser remained unimpeached and the appellants were therefore entitled to the

judgment. Whilst the first step of this progression is undoubtedly correct, the second and the final steps are wrong. The effect of this judgment is that the statutory provisions relating to the Registrar's *caveat* have become completely meaningless and the legislature's intention of protecting public interests and public policy by the enactment of those provisions is defeated.

Tan Sri Datuk Mohamed Salleh bin Abas

Claims Arising From Mine Disasters

Hiap Lee Brickmakers Ltd.

v.

*Weng Lok Mining Co. Ltd.*¹

The decision of the Privy Council in *Hiap Lee (Cheong Leong and Sons) Brickmakers Ltd. v. Weng Lok Mining Co. Ltd.* illuminates the inadequacies of the common law in dealing with claims arising from mine disasters. The material facts were that the respondents held a mining lease over land which was adjacent to the appellant's brickworks. As the respondents used the hydraulic system of mining, they stored vast quantities of water in reservoirs on the land. Sand and clay bunds were built to retain the water and the height of these bunds were raised whenever necessary to prevent any escape of water. In April 1965, the appellant's premises were flooded and they subsequently brought an action against the respondents, alleging that they had suffered serious damage as a result of a large quantity of water escaping from the respondent's land on to their land. The trial judge, Raja Azlan Shah J. (as he then was), held the respondents liable in negligence, nuisance and under the rule in *Rylands v. Fletcher* ((1868) L.R. 3 H.L. 330). The respondent's appeal to the Federal Court ([1972] 1 M.L.J. 156) was allowed principally on the ground that since the height of the water level in the mining pool on or before the date of the flood had not been ascertained, the Court could not disregard the possibility of the flood being caused by water flowing from other directions. This was a rejection of the trial judge's finding of primary fact that there was overwhelming evidence indicating that the damage caused was the result of the escape of water from the respondent's land. As the

¹ [1974] 2 M.L.J. 1