Abdul Hamid J.: This is an *ex-parte* originating motion brought by the Public Prosecutor asking for an order that —

"The applicant be at liberty to issue writ or writs of attachment against the Straits Times (M) Berhad for their several contempts of this Court in publishing in the issue of the newspapers known as The Straits Times for the 25th, 26th and 27th day of August, 1970, articles under the headings of 'Assault on Engineer; I.G.P. Orders Probe', 'To save Robert's life' and 'Engineer hurt in bar assault dies in hospital' respectively and the said Editor do pay to the applicant his costs of and occasioned by these proceedings."

The grounds upon which the relief is sought are that the publication of the said articles contain matters which are tendencious and constitute contempt of court because they were prejudicing and embarrassing the applicant in the exercise of his statutory functions and prejudicing a fair trial concerning the circumstances of the death of one Robert Lee.

I do not propose at this stage to go into the merits of this application as it would seem to this court that the proceedings by way of *ex parte* originating motion is not the proper procedure to be adopted.

I have examined two Singapore cases where application was made for leave to issue writs of attachment for contempt and in both these cases *In re H. E. Kingdon* v. *S. C. Goho*[1] and *Re Run Run Shaw and Runme Shaw, ex parte Republic Pictures International Corporation*[2] the respondents were served with the notice.

My attention is drawn to *Public Prosecutor* v. *Abdul Samad*[3] a Malayan case where Briggs J. expressed the view that the matter is neither criminal nor civil in the ordinary sense and that the proceedings by way of *ex parte* was the correct procedure. In that case, he referred to *Public Prosecutor* v. *Straits Times Press Ltd.*[4] There however, the respondent was served before the application for rule *nisi*. Briggs J. was of the opinion that the procedure adopted in that case was wrong. In coming to the conclusion that the correct procedure to be adopted was by way of *ex parte*, Briggs J. found that the matter forms part of the special jurisdiction of the court conferred by paragraph 1 of Part A of the Second Schedule to the Courts Ordinance, 1948. He also expressed the view that if the matter were purely civil the procedure would presumably be by originating summons under section 472 of the Civil Procedure Code.

I do not propose to comment on the correctness or incorrectness of that decision. It has to be remembered however that the Civil Procedure Code has since been repealed and replaced by the Rules of Supreme Court and Part A of the Second Schedule to the Courts Ordinance, 1948 has also been repealed. While the Courts of Judicature Act, 1964 makes provision under section 13 that —

"Every High Court shall have power to punish any contempt of itself."

certain additional powers of the High Courts were given in the First Schedule. Provision similar to paragraph 1 of Part A no longer appears. In any event, under paragraph 1 of the First Schedule, it would seem that the High Court is given the power to issue to any person writs including writs in the nature of *habeas corpus*, *mandamus* etc. The proviso to subsection (ii) however provides that those additional powers shall be exercised in accordance with the rules of law or rules of court relating to the same. In my opinion, the only written law or rules of court relating to writs of attachment for contempt would be Order 44 of the Rules of the Supreme Court and under r.2, it is provided that —

"No writ of attachment shall be issued without leave of a court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued."

It seems to me that proceedings by way of *ex parte* application for leave to issue writs of attachment for contempt is not the proper procedure to be adopted.

Notice of the motion shall be served on the respondents.

Order accordingly.

LAU CHER HIAN v. COLLECTOR OF LAND REVENUE, MUAR

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.)
September 19, 1970]

[Johore Bahru — Federal Court Civil Appeal No. X.111 of 1969]

Land Laws — Acquisition — Compensation — Offer of collector not accepted — Written objection to be made within six weeks of receipt of notice of award — Application for extension of time — Special grounds — Land Acquisition Act, 1960, ss. 38(3) & (4) and 44(2).

Practice and Procedure — Enlargement of time — Special grounds.

The appellant owned an undivided half interest in a piece of rubber land which was compulsorily acquired by the Government. A notice of award and offer of compensation was served on the appellant in February 1969 and she immediately notified the collector that she did not accept the offer of compensation. Her brother who owned the other half interest was not served with the notice till April 1969. The appellant was waiting to consult her brother on a common line of action after he was served. She then found that the period of 6 weeks provided for the making of the written objection had expired and she applied for extension of time. The notice served on her contained no reference to the requirement for the written objection to be filed within six weeks. Her application was refused and she appealed to the Federal Court.

Held, allowing the appeal: (1) as there was hardship caused in this case to a party who was not in the least at fault, there were special grounds which justified the court in enlarging the time;

(2) there was further the possibility of an adjustment of the appellant's claim by reason of the award to her brother and this too was a material fact to be considered by the court in granting the application.

Per Ong C.J. (Malaya): "When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. 'Special grounds' were not defined

and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere 'ignorance of the law' should be left out altogether when considering special grounds."

Cases referred to:-

(1) *Re Ong Leong Seng* [1958] M.L.J. 179.

(2) *Chia Yew Siang* v. *Collector of Land Revenue, Singapore* [1930] S.S.L.R. 149.

(3) *Evans* v. *Bartlam* [1937] A.C. 473, 479, 480.

FEDERAL COURT.

Chin Hon Ngian for the appellant.

Hamzah bin Salleh (Legal Adviser, Johore) for the respondent.

Ong C.J. (Malaya): The appellant, who resides in Singapore, owns an undivided half interest in a piece of rubber land situate near Muar in Johore. The whole area, except for 1 acre thereof, was compulsorily acquired by Government. A notice of award and offer of compensation, dated February 16, 1969, was served on the appellant about February 19 or 20. It was in the prescribed Form H, which, at the foot thereof, requires the party served to inform the collector whether or not the offer is accepted. The appellant immediately notified the collector that she did not.

Her brother, who owns the other half-interest, was not served the same notice until April 1 or 2. The appellant in the meantime was waiting to consult the brother on a common line of action after he was served. When this took place she found to her dismay, upon consulting solicitors, that she was a few days too late. Under section 38(3) of the Land Acquisition Act, 1960, written objection to the award had to be made within 6 weeks of the receipt of the notice. She accordingly applied to the court for extension of time, on the grounds abovestated.

On the hearing of the application, counsel for the appellant pointed out that Form H, on the face of it, does not say that, after notice of objection, a written application in Form N was necessary and had to be filed within 6 weeks. It is to be observed that Form H contains no reference whatsoever to the provisions of section 38. Sub-section (3) lays down 6 weeks from receipt of the notice as the time within which Form N has to be filed. Sub-section (4) then goes on to provide for extension of time as follows: —

"(4) The period of six weeks prescribed by paragraph (a) of sub-section (3) and the periods of six weeks and six months prescribed by paragraph (b) of sub-section (3) shall not be capable of enlargement by any court, except in such special circumstances as the court may think fit."

The Legal Adviser opposed the application. He argued that "ignorance of law is no excuse" and he cited a case decided by the Court of Appeal in Singapore, *Re Ong Leong Seng*,[1] in which the landowner's objection had been made out of time and it was held that the statutory requirement could not be waived by the collector. I regret to say that the case cited as an authority appears to have been read in the most casual manner, overlooking this material passage: —

"Sub-section (4), which does not appear in the corresponding section of the Indian Act, but which was added here in 1933 presumably in consequence of the decision of the court in *Chia Yew Siang* v. *Collector of Land Revenue, Singapore*,[2] which I shall discuss at a latter stage, reads as follows: 'The period of six weeks prescribed by paragraph (a) of sub-section (3) and the periods of six weeks and twelve months prescribed by paragraph (b) of sub-section (3) shall not be capable of enlargement by any court.' "

I do not think it is necessary to explain further. Nor do I commend too facile recourse to the so-called maxim "ignorance of the law is no excuse". In this connection it is well to remember the words of Lord Atkin in *Evans* v. *Bartlam*[3]: —

"For my part I am not prepared to accept the view that there is in law any presumption that any one, even a judge, knows all the rules and orders of the Supreme Court. The fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application."

Of an appeal against the exercise of discretion Lord Atkin went on to say: —

"Appellate jurisdiction is always statutory: there is in the statute no restriction upon the jurisdiction of the Court of Appeal: and while the appellate court in the exercise of its appellate power is no doubt entirely justified in saying that normally it will not interfere with the exercise of the judge's discretion except on grounds of law, yet if it sees that on other grounds the decision will result in injustice being done it has both the power and the duty to remedy it."

The judge dismissed the application on the ground that there were no "special circumstances" to justify enlargement of time. He conceded that "it may be that the provisions of section 38(3)(b) of the Act operate harshly on the applicant in this case, but it is the law of the land and it has to be applied". He could not "introduce exceptions which are not recognised by law. The court has no general discretion outside the limits of section 38(4) of the Act to dispense with its provisions or to relieve the applicant from the operation of the Act even in a case of hardship, mistake or indifference". Then he went on: —

"It may be that where the award by the collector is in favour of several persons having no separate and distinct interests in the property acquired all of them may be said to be interested in the objection raised by one or more of them to the award made by the collector. It may be that in such a case the objection may be deemed to have been made on behalf of all. If one of the several persons having only a joint and undivided interest in the property acquired is competent to represent the interests of all of them the objection by him to the award and the consequent reference to the court could enure to the benefit of all of them. That aspect of the matter is not before me and I am not saying it one way or the other at this juncture."

With the greatest respect I am unable to share these views. This was not a case of "indifference" or an applicant sleeping upon his rights. The appellant had done all that she was advised by the notice to do. It may be observed that Form H has this footnote: —

"I, the undersigned ..... hereby acknowledge receipt of the above offer.

2. I am prepared to attend the Land Office on any appointed day to receive payment in cash.*

I request that the amount due be sent to me by cheque/money order at the above address.*

I do not accept the above offer.*

Dated this ..... day of ..... 19.....

* Delete as appropriate".

Three paragraphs were devoted to acceptance, but only a single one to refusal of the offer. Might another not have helped, advising what should be done when an objection is made? The advice was rather liberal in relation to accepted offers. It seems to me that those in authority should have more tender regard for the fundamentals of fair procedure. When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. "Special grounds" were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, *bona fide* mistake or mere "ignorance of the law" should be left out altogether when considering special grounds. What are special grounds must be decided according to the facts of each case. Section 44(2) I think affords an example of what should be considered a special ground, viz.: —

"(2) The court shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not."

The judge had the provisions of this sub-section in mind in the passage quoted from his judgment. With respect it seems to me that if there was the possibility of an adjustment of the appellant's claim by reason of the award made to her brother, it was a material fact not to be brushed aside merely because the question was then premature.

For these reasons the appeal was allowed with costs and the enlargement of time granted as prayed.

Gill and **Ali F.JJ.** concurred.

Appeal allowed.

Solicitors: *Yeow & Chin.*

JOGINDER KAUR & ANOR. v. MALAYAN BANKING LTD. & ANOR.

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.)
October 3, 1970]

[Ipoh — Federal Court Civil Appeal No. 19 of 1970]

Negligence — Res ipsa loquitur — Maxim not applicable where cause of accident is known — Cyclist crossing road knocked down by motor car — Whether driver of motor car negligent in not taking evasive action.

Damages — Fatal accident — Apportionment of liability.

In this case the learned trial judge had dismissed an application for damages arising from a fatal road accident in which the bicycle ridden by the deceased came into collision with a motor car driven by the second respondent. The learned trial judge held that the collision took place when the bicycle was crossing the road and he held that the deceased was wholly responsible for the accident. The plaintiffs appealed.

Held, allowing the appeal: in this case the respondent driver had seen the bicycle and should have taken proper precautions against the cyclist not keeping his machine under control. The driver should have reduced his speed and if this had been done the accident could have been avoided. In the circumstances the driver must be held to be four-fifths responsible for the accident. In the circumstances general damages was assessed at $25,000, four-fifths of which would represent the award to the plaintiffs.

Cases referred to:-

(1) *Lai Kuit Seong* v. *Public Prosecutor* [1969] 1 M.L.J. 182, 183.

(2) *Barkway* v. *South Wales Transport Co. Ltd.* [1950] 1 All E.R. 392, 399.

(3) *Roe* v. *Minister of Health* [1954] 2 Q.B. 66, 68.

(4) *Powell & Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243.

(5) *Benmax* v. *Austin Motor Co. Ltd.* [1955] 1 All E.R. 326.

FEDERAL COURT.

Atma Singh Gill for the appellants.

P. P. Dharmananda for the respondents.

Cur. Adv. Vult.

Ong C.J. (Malaya): The first appellant, a young widow with four infant children, lost their breadwinner in a fatal road accident when his bicycle came into collision with a Pontiac motor-car driven by the second respondent, a bank manager. The widow suffered the further misfortune of losing her claim for damages under the Civil Law Ordinance 1956 and she now appeals against that decision of the High Court in Ipoh.

According to the statement of agreed facts the accident occurred at about 8.15 p.m. in good weather at the 43½ milestone, on a straight road which is 20 feet wide. The spot was approximately half-a-mile south of Bidor, on the Kuala Lumpur-Ipoh trunk road. The second respondent was driving the Pontiac northward towards Ipoh, while the deceased was cycling south from Bidor, that is to say, they were travelling towards each other.

In the statement of claim it was alleged that the deceased was cycling on his own proper side of the road when the motor-car driven along its wrong side knocked him down. The defence was that, on the contrary, the deceased had been riding along his own right-hand side of the road before the accident, but, as the motor-car approached, he attempted to cross the road from his right to his left, to return to his proper side, and in doing so failed to get clear of the path of the oncoming car.

The first and crucial question, of course, was whether or not the deceased had in truth attempted to cross the road over to his proper side, as alleged by the defence. If it were so, which the trial judge found as a fact, the deceased certainly had contributed to his own misfortune. On the other hand, if on the evidence, he should have found that the deceased was travelling along his own side of the road when he was knocked down, then judgment should have been in the appellants' favour.

As proof of the respondent driver's negligence counsel for the appellants relied on the doctrine of *res ipsa loquitur*, and it was so pleaded in the statement of