tor has incurred qualifying expenditure". The weakness of this argument lies in the fact that sub-paragraph (a) of paragraph 41 of Schedule 9 speaks merely of the definition of "mining asset" in paragraph 6 of Schedule 2 and does not refer to the rest of the provision of that paragraph.

It was contended on behalf of the respondents before the Special Commissioners that paragraph 13(1) of Schedule 2 is not applicable as there was no transfer of the mine in accordance with the provisions of section 215 of the National Land Code. The respondents construed the words 'transfer of the mine' appearing in paragraph 13 to mean a transfer which has been registered under the relevant provisions of the National Land Code. That contention, however, was rejected by the Special Commissioners on the ground that on the facts of the present case and considering the tax legislation involved, there was a transfer within the meaning of paragraph 13(1). Their reason for holding that paragraph 13(1) of Schedule 2 was irrelevant and inapplicable, even though they have not stated it, would appear to be obvious. That reason is that the "total qualifying mining expenditure incurred by the transferor in respect of the mine" as specified in that paragraph was unknown, so that the only evidence they had before them was the evidence of the expenditure incurred by the respondents in relation to the transfer to them of the mine.

The last ground of appeal is that the Special Commissioners, in deciding that the respondents were entitled to deduction in respect of the capital expenditure of $2.5 million, completely overlooked the provisions of paragraph 3 of Schedule 2 which lays down the formula to be applied in ascertaining the amount to be allowed as a deduction. With that ground of appeal I entirely agree. The assessments, which are the subject matter of this appeal were assessments for income tax for the years of assessment 1968, 1969 and 1970. That in itself shows the residual life of Batu Tiga mine to be at least 3 years. In all the circumstances of the case, I would agree with counsel for the appellant that it would be reasonable to take 4 years as the residual life of the mine. Applying the formula laid down in paragraph 3 of Schedule 2, on the basis that the total qualifying mining expenditure incurred by the respondents in respect of Batu Tiga mine was $2.5 million and that the estimated life of the mine on the date of its purchase was 4 years, a sum of $625,000 should be deducted from the gross income of each of the years of assessment for the purpose of ascertaining the adjusted income.

For the reasons I have stated, I would allow this appeal with costs. The deciding order of the Special Commissioners would be set aside and there would be an order that the additional assessments of income tax for the years of assessment 1968, 1968 and 1970 as per the three notices of additional assessments dated 24th March, 1971, be amended so as to allow a sum of $625,000 as qualifying mining expenditure in respect of each of those years.

Appeal allowed.

Solicitors: *Skrine & Co.*

A

NADIMUTHU v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) December 18, 1972]

[Kuala Lumpur — Selangor Criminal Appeal No. 25 of 1972]

Bribery and corruption — Medical certificate — Use of false medical certificate to deceive — When such certificate a "document" — Prevention of Corruption Act, 1961, s. 4(c).

B A medical certificate must be construed as coming in the category of receipt, account, etc. and for the purposes of section 4(c) of the Prevention of Corruption Act, 1961, the words "other document" include such medical certificate.

Cases referred to:-

(1) *Public Prosecutor* v. *Kyle-Little* [1971] 1 M.L.J. 125.

(2) *Hashim* v. *Public Prosecutor* [1967] 1 M.L.J. 251.

C MAGISTRATE' CRIMINAL APPEAL.

Datuk S. P. Seenivasagam for the appellant.

Yusoff Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Abdul Hamid J.: The appellant was convicted by the Kuala Lumpur magistrate on 14 February 1972 on D the following charges —

First charge:

That you between 5.8.68 at Sentul Works, Malayan Railways, Sentul, in the district of Kuala Lumpur, in the State of Selangor, being an agent of a public body, namely, employee of the Malayan Railways did knowingly use with intent to deceive your principal, a document, to wit, sick certificate dated 5.8.68 purported to be from the LUM DISPENSARY, E Kuala Lumpur, in respect of which your principal is interested and which contained statements which are false in material particulars, in that, you were examined and found to be unfit for duties for one (1) day by Doctor LUM WENG SONG — M.B.B.S. Hong Kong, and which to your knowledge is intended to mislead your principal, and thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act No. 42 of 1961.

Second charge:

F That you between 7.8.68 and 8.8.68 at Sentul Works, Malayan Railways, Sentul, in the district of Kuala Lumpur, in the State of Selangor, being an agent of a public body, namely, employee of the Malayan Railways, did knowingly use with intent to deceive your principal, a document, to wit, sick certificate dated 7.8.68 purported to be from LUM DISPENSARY, Kuala Lumpur in respect of which your principal is interested and which contained statements which are false in material particulars, in that, you were examined and found G to be unfit for duties for one (1) day by Doctor LUM WENG SONG — M.B.B.S. Hong Kong, and which to your knowledge is intended to mislead your principal, and that you have thereby committed an offence punishable under section 4(c) of the Prevention of Corruption Act No. 42 of 1961.

He was fined $25 on each charge. The appellant, an employee of the Malayan Railways, submitted two false medical certificates to obtain leave. On the H strength of those certificates, he was paid wages for the two days. Subsequently it was discovered that the certificates were false and, as such, the two days' wages paid were recouped from him for reason that he absented from work without leave.

The appeal is against conviction on the ground I that reads as follows —

"The learned president ought to have held that the medical certificate was not a 'document' within the meaning assigned to it under section 4(c) of the Prevention of Corruption Act, 1961."

Datuk S.P. Seenivasgam counsel for the appellant cited two cases in support of his argument — *Public*

Prosecutor v. *Kyle-Little*[1] and *Hashim* v. *Public Prosecutor*.[2]

In *Kyle-Little's* case, *supra*, I said that the words "other document" should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account, e.g. "bills, cheques, indents, payroll and invoices." The examples cited therein were never meant to be exhaustive. In that light I held that a "pipe" was not a document within the meaning assigned to it under section 4 (c) of the Act.

In the instant case I am asked to construe that a medical certificate is not a document within the meaning stipulated by that section. Whilst it is clear that a "pipe" does not possess the character of paper writing a medical certificate such as the one in the instant case does.

The essence of section 4(c) is the *use*, knowingly and with intent to deceive his principal, *of any receipt, account or other document in respect of which the principal is interested* and as I said in *Kyle-Little's* case a distinct genus apparent from the words used is that it possesses this character of paper writing dealing with money matters. Since a medical certificate unlike a pipe is paper writing the next thing to consider is whether such certificate possesses that other character. For this purpose it is essential to consider the facts of the present case. When the appellant absented himself for two days he made use of two certificates which purported to certify he was sick. That entitled the appellant to two days paid leave and on the strength of the certificates he was indeed paid two days' wages. On those facts it would be unreasonable to construe that such certificates do not deal with money matters and evidently these certificates are documents in respect of which the appellant's principal was interested.

To my mind, such certificates must be construed as having come in the category of receipt, account, etc., and for purposes of section 4(c) of the Prevention of Corruption Act, 1961, the words "other document" shall include such medical certificates.

I would for reasons which I have stated dismiss the appeal.

Appeal dismissed.

Solicitors: *Datuk Seenivasagam & Co.*

FATIMAH & ORS. v. SAFETY INSURANCE CO. SDN. BHD.

[O.C.J. (Abdul Hamid J.) December 15, 1972]

[Kuala Lumpur — Civil Suit No. 1066 of 1971]

Insurance — Damages award — Repudiation by insurers.

Road Traffic — Public service vehicle — Whether there is distinction between a taxi cab and a public hire car — Road Traffic Ordinance, 1958, s. 93(2).

As a result of a fatal accident, the plaintiffs obtained judgment against one Tay and Bu in the sum of $30,000 and costs. The deceased was travelling in a motor taxi driven by Tay and owned by Bu. The vehicle was at the relevant date insured by the Safety Insurance Co. Sdn. Bhd. The plaintiffs claimed against the insurers to be indemnified in the sum due. The insurers repudiated liability contending Tay was not a person in the employ of Bu. They also contended that in this case the vehicle was used as a taxi cab and not as a public hire car as limited by the policy.

Held: (1) on the evidence, Tay drove the vehicle not only for the owner's purposes but also with his consent or permission. Therefore, he was a driver in the insured's employ and was driving with the insured's permission;

(2) insofar as the statutory requirement of compulsory insurance cover for a public service vehicle is concerned it is immaterial whether that public service vehicle is a hire car or a taxi cab.

Cases referred to:-

(1) *New Zealand Insurance Co. Ltd.* v. *Sinnadorai* [1969] 1 M.L.J. 183.

(2) *Letchumi & Anor.* v. *The Asia Insurance Co. Ltd.* [1972] 2 M.L.J. 105.

(3) *Ormrod & Anor.* v. *Crosville Motor Services Ltd. & Anor.* [1953] 1 W.L.R. 409.

(4) *Ormrod & Anor.* v. *Crosvilee Motor Services Ltd. & Anor.* [1953] 1 W.L.R. 1120, C.A.

(5) *Rambarran* v. *Gurrucharran* [1970] 1 All E.R. 749, P.C.

CIVIL SUIT.

M. Sivalingam for the plaintiffs.

S. Krishnalingam for the defendants.

Abdul Hamid J. On September 26, 1971 the plaintiffs obtained judgment against one Tay Ah May and Bu Teang Teck in the High Court Muar for damages in the sum of $30,000 and costs. The injured Osman bin Haji Alias (deceased), husband of the first plaintiff, was at the time of the accident travelling in motor taxi No. BE. 5871 driven by Tay Ah May and owned by Bu Teang Teck. The owner was insured at the relevant date against third party risks with the Safety Insurance Company Sendirian Berhad. The plaintiffs now claim against the Safety Insurance Company to be indemnified in the sum of $30,000.

The insurers repudiate liability contending that Tay Ah My was not a person in the employ of Bu Teang Teck. They further contend that in this case the vehicle was used as a taxi cab and not as a public hire car as limited by the policy.

As for the insurers' second contention that the vehicle was not covered by the policy as it was used as a taxi Mr. S. Krishnalingam argues that there is a distinction between a taxi cab and public hire car under section 93(2) of the Road Traffic Ordinance, 1958.

I fail to see any merit in the argument. Section 93 of the Ordinance merely classifies the category or