

~~DATE 11.2~~

Judgment
26, 1959

IN THE PRIVY COUNCIL

No.36 of 1958

ON APPEAL

FROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYA

B E T W E E N:

ABERFOYLE PLANTATIONS LIMITED (Defendant) Appellant

- and -

KHAW BIAN CHENG (Plaintiff) Respondent

RECORD OF PROCEEDINGS

SHELTON COBB & CO.,
3, New Court,
Lincoln's Inn,
London, W.C.2.
Appellant's Solicitors.

PEACOCK & GODDARD,
1, Raymond Buildings,
Gray's Inn,
London, W.C.2.
Respondent's Solicitors.

IN THE PRIVY COUNCILNo.36 of 1958ON APPEALFROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYAB E T W E E NABERFOYLE PLANTATIONS LIMITED (Defendant) Appellant

- and -

KHAW BIAN CHENG (Plaintiff) RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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1.

IN THE PRIVY COUNCIL

No.36 of 1958

ON APPEAL
FROM THE COURT OF APPEAL OF THE FEDERATION
OF MALAYA

B E T W E E N:

ABERFOYLE PLANTATIONS LIMITED
(Defendant) Appellant

- and -

KHAW BIAN CHENG (Plaintiff) Respondent

10

RECORD OF PROCEEDINGS

No. 1.

PLAINT

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT IPOH
CIVIL SUIT NO. 106 OF 1956.

In the High
Court at Ipoh.

No. 1.

Plaint.

11th June, 1956.

BETWEEN: KHAW BIAN CHENG of No. 20,
Pykett Avenue, Penang.

Plaintiff

- and -

ABERFOYLE PLANTATIONS, LIMITED
having an office at Hongkong
Bank Chambers, Penang.

Defendant

20

P L A I N T

The Plaintiff above-named states as follows:-

1. The Plaintiff is a landed proprietor and resides at No. 20, Pykett Avenue, Penang.

2. The Defendant is a limited company incorporated in England and carries on business in the Federation of Malaya and has an office at Hongkong Bank Chambers, Penang.

30

3. (i) By an agreement in writing dated the 8th day of November, 1955 and made at Penang between

In the High
Court at Ipoh.

No. 1.

Plaint.

11th June, 1956
- continued.

the Plaintiff and the Defendant Company, the Defendant Company agreed to sell and the Plaintiff agreed to purchase the rubber estate situated at Tanjong Tualang in the State of Perak and known as the Harewood Estate in total area 1,343 acres 1 rood and 12 poles, more or less, together with the buildings and the fixed plant and machinery and rubber utensils at the price of ~~£~~525,000/-.

(ii) Prior to the execution of the said agreement the Defendant Company represented to the Plaintiff that the said estate consisted of several pieces of land, particulars whereof are set out in sub-paragraphs (a) and (b) hereunder, that the Leases of State Land enumerated in sub-paragraph (b) hereunder had expired, that an application for their renewal had been made and that the renewed leases were expected to be issued prior to the 30th day of April, 1956.

10

PARTICULARS:

	<u>Title No:</u>	<u>Lot No:</u>	<u>Area</u>				
			<u>Acres</u>	<u>roods</u>	<u>poles</u>		
(i)	Certificate of Title No. 787	6028	16	2	20		
(ii)	Certificate of Title No. 116C7	31665	92	1	30		
(iii)	Grant for Land No.	3068	1509	92	3	28	
(iv)	- do -	4989	10062	211	1	30	
(v)	- do -	5271	11406	301	0	00	
(vi)	- do -	7447	12852	194	2	38	30
(vii)	- do -	8711	14757	199	1	27	
(viii)	- do -	8955	15135	49	1	05	
(b)							
(ix)	Lease of State Land No.	157	30460	1	0	21.8	
(x)	- do -	158	30461	0	3	20.1	
(xi)	- do -	159	30462	23	1	25	
(xii)	- do -	160	30463	15	1	33	
(xiii)	- do -	161	30464	63	2	10	
(xiv)	- do -	162	30465	2	1	25	40
(xv)	- do -	163	30466	78	2	20	

All the above lands are in the Mukim of Sungei Trap in the District of Kinta, State of Perak.

In the High Court at Ipoh.

4. By the said agreement it was provided, inter alia,

No. 1.

Plaint.

11th June, 1956

- continued.

10 (i) that the Plaintiff should pay to the Defendant Company \$50,000/- upon the execution thereof, \$50,000/- on or before the 1st day of February, 1956 as deposit in part payment of the purchase money and the remainder \$425,000/- on or before the 30th day of April, 1956, being the date fixed for completion of the sale (Clauses 2 and 9);

20 (ii) that upon payment of the whole of the purchase price, the Defendant Company would as soon as possible thereafter execute a proper transfer or transfers of the said estate in favour of the Plaintiff or as he should direct; that until the transfer of the estate is perfected the Plaintiff would be entitled to lodge caveats against the said titles, and that the Defendant Company would, if so required by the Plaintiff, execute an irrevocable power of attorney authorising the Plaintiff to execute such instruments as may be necessary to effectually vest in him the Plaintiff the lands formerly held under Leases of State Land Nos. 157-163 inclusive (Clause 9);

30 (iii) that until the completion of the purchase all profit from the estate should belong to the Defendant Company (Clause 2), but the property shall remain at the Plaintiff's risk, and except as to any moneys that the Defendant Company may recover on any existing policy or policies of insurance effected on the buildings, plant and machinery against loss or damage by fire or by strikes or by acts of bandits, (which the Defendant Company is under no obligation to keep insured), the Plaintiff would not be entitled to any compensation or any reduction in the purchase price by reason of any such loss or damage occurring between the date of the agreement and the date of completion, even
40 though such loss or damage may be due to the negligence or carelessness of the Defendant Company or its employees (Clause 5);

(iv) in the event of the Defendant Company being unable to obtain a renewal of the leases of the 7 pieces of land more particularly described

In the High
Court at Ipoh.

No. 1.
Plaint.

11th June, 1956
- continued.

in paragraph 3 (ii) (b) hereof within the time limited for completion, the Plaintiff could rescind the said contract and thereupon the Defendant Company should repay to the Plaintiff the deposits that may have been made in the meantime in part payment of the purchase price (Clause 4).

The Plaintiff will crave leave to refer to the said agreement at the trial of this suit for the full terms and effect thereof. A copy of the said agreement is hereto annexed and marked "K.B.C.1".

10

5. The Plaintiff paid to the Defendant Company the initial deposit of ~~£~~50,000/-, part of the purchase price, prior to the 8th day of November, 1955. By subsequent agreement between the parties in variation of Clause 9 of the said agreement the Plaintiff paid and the Defendant Company accepted the second deposit of ~~£~~50,000/- as part of the purchase price by 2 cheques of ~~£~~25,000/- each payable on the 30th day of January, 1956 and the 28th day of February, 1956 which cheques were duly met.

20

6. By its Solicitors' letter dated the 2nd day of May, 1956, the Defendant Company required the Plaintiff to pay the balance of the purchase price, namely, ~~£~~425,000/- and undertook to execute a transfer of only those lands held under Certificates of Title and Grants for Land and an irrevocable power of attorney to enable the Plaintiff to vest in himself the lands formerly held under Leases of State Land Nos. 157 - 163.

7. The Plaintiff discovered

30

(i) that prior to the 1st day of May, 1956, the Defendant Company had not acquired title to any of the lands held under Certificates of Title and Grants for Land more particularly described in paragraphs 3 (ii) (a) hereof;

(ii) that the Defendant Company became registered proprietor of the said lands as on 1st May, 1956 but the memorials relating thereto were not signed by the registering authority until some days thereafter;

40

(iii) that the 7 pieces of land formerly comprised in Leases of State Land Nos. 157 - 163 more particularly described in paragraph 3 (ii)(b) hereof had reverted to the State on the 19th day of

June, 1950, the said leases having expired by effluxion of time, and the Defendant Company had not and still has not obtained a renewal of the said leases or any of them.

In the High
Court at Ipoh.

No. 1.

Plaint.

11th June, 1956
- continued.

10 8. By notice in writing dated the 4th day of May, 1956 the Plaintiff required the Defendant Company to produce evidence of its title to the whole of the said estate and of its ability to convey the same to the Plaintiff and to complete the sale in terms of the said agreement within a reasonable time, namely, on or before the 31st day of May, 1956 and further gave notice to the Defendant Company that, in the event of default, the Plaintiff would treat the said agreement as broken by the Defendant Company and cancelled, time being made of the essence of the contract. A copy of the said notice is hereto annexed and marked "K.B.C.2".

20 9. By its Solicitors' letter dated the 30th day of May, 1956, the Defendant Company

(i) renewed its offer to execute in favour of the Plaintiff a transfer of part of the estate comprised in Certificates of Title and Grants for Land;

30 (ii) intimated to the Plaintiff that the 7 pieces of land formerly held under Leases of State Land Nos. 157 - 163 are now recorded in the names of Harewood Rubber Estates Limited and its liquidator Sydney Moore in the Roll of Approved Applicants under Approved Applications Nos. 1 - 7 inclusive of 1956;

(iii) offered to procure an irrevocable power of attorney from the Harewood Rubber Estates Limited and its attorney authorising the Plaintiff to transfer to him the said lands now comprised in the said Approved Application; and

(iv) intimated its willingness to the Plaintiff lodging a caveat against such lands comprised in the Approved Applications.

10. The Plaintiff states:

40 (i) the Defendant Company had, and has, no title to part of the estate formerly comprised in Leases of State Land Nos. 157 - 163 which amount

In the High
Court at Ipoh.

No. 1.
Plaint.
11th June, 1956
- continued.

to 185 acres 1 rood 34 poles in area and form a considerable part of the estate agreed to be sold;

(ii) that no dealings, including a caveat, can be registered against any lands comprised in an approved application and a power of attorney to deal with such lands is inoperative and ineffectual in law;

(iii) the Plaintiff is not, in any event, entitled in law to lodge a caveat against lands which are held by persons not parties to the said agreement; 10

(iv) the Defendant Company has not deduced a good and marketable title to the said estate;

(v) the Defendant Company could not, and cannot, convey the estate to the Plaintiff in terms of the said agreement.

11. The plaintiff was at all times ready and willing to pay the balance of the purchase price and complete the purchase in accordance with the said agreement, but, notwithstanding the said notice pleaded in paragraph 8 hereof, the Defendant Company failed to convey the said estate to the Plaintiff on or before the 31st day of May, 1956 or at all. By notice dated the 4th day of June, 1956, the Plaintiff required the Defendant Company to repay the deposit with interest and to pay the costs of investigation of titles which the Defendant Company refused and still refuses to do. 20

12. By reason of the premises the Plaintiff has lost the use of the money paid by him as deposit aforesaid and has incurred expenses in investigating the title of the Defendant Company and has otherwise suffered damage. 30

The Plaintiff claims:

(1) Repayment of the said deposit of ~~£~~100,000/- with interest at 6% per annum on (a) ~~£~~50,000/- from the 8th day of November, 1955 to the 30th day of January, 1956 and (b) ~~£~~75,000/- from the 30th day of January, 1956 to the 28th day of February, 1956 and (c) ~~£~~100,000/- from the 28th day of February, 1956 to date of judgment. 40

(2) Damages.

- (3) Interest on the total sum adjudged at the rate of 6% per annum from the date of judgment till satisfaction.
- (4) Costs.
- (5) Such further or other relief as the Court may think fit.

In the High Court at Ipoh.

No. 1.
Plaint.
11th June, 1956
- continued.

Sd. DAS & CO.,
PLAINTIFF'S SOLICITORS.

Sd. KHAW BIAN CHENG
PLAINTIFF.

10 I, Khaw Bian Cheng, the Plaintiff above-named, do hereby declare that the above statement is true to my knowledge, except as to matters stated on information and belief and as to those matters I believe the same to be true.

Dated this 11th day of June, 1956.

Sd. KHAW BIAN CHENG
SIGNATURE.

No. 2.

DEFENCE

The Defendant above-named states as follows:-

- 20 (1) The Defendant admits Paragraph 1 of the Plaintiff.
- (2) The Defendant admits Paragraph 2 of the Plaintiff.
- (3) The Defendant admits Paragraph 3(i) of the Plaintiff.
- (4) The Defendant denies Paragraph 3(ii) of the Plaintiff and says that the Plaintiff had notice of and was well aware of the facts appertaining to each and every one of the Certificates of Title, Grants for Land and Leases of State Land detailed in the said Paragraph of the Plaintiff under the Heading of PARTICULARS.
- 30 (5) The Defendant admits Paragraph 4(i) of the

No. 2.

Defence.
27th July, 1956.

In the High
Court at Ipoh.

No. 2.

Defence.

27th July, 1956
- continued.

Plaint and refers to Clause 9 of the Agreement sued upon (hereinafter called THE AGREEMENT) for the exact obligations which fell on each party on completion.

(6) The Defendant admits Paragraph 4(ii) of the Plaintiff and refers to Clause 9 of the Agreement for the full terms and effect thereof.

(7) The Defendant admits Paragraph 4(iii) of the Plaintiff and refers to Clauses 2 and 5 of the Agreement for the full terms and effect thereof. 10

(8) The Defendant denies that Clause 4 of the Agreement bears the construction placed thereon by Paragraph 4(iv) of the Plaintiff and in particular says that no time is provided for in Clause 4 of the Agreement, therefore the Defendant is able to fulfil its full obligations under the Agreement by executing transfers of the said Leases as soon as the Defendant is in a position so to do, as provided for in Clause 9 of the Agreement.

(9) The Defendant admits Paragraph 5 of the Plaintiff. 20

(10) The Defendant in reply to Paragraph 6 of the Plaintiff refers to the letter therein referred to, a copy of which is attached hereto marked "A" and says that the Defendant was at all material times ready and willing to carry out the Promises contained in the said letter (which would have fulfilled the Defendant's obligations under the agreement) but the Plaintiff failed or omitted to pay the balance of the purchase price. Clause 10 of the Agreement therefore came into operation. 30

(11) The Defendant in reply to Paragraph 7 of the Plaintiff says that the Plaintiff had notice of and was well aware of the facts appertaining to each and every one of the Certificates of Titles, Grants for Land and Leases of State Land at all material times and in particular on the day the Agreement was executed.

(12) The Defendant in reply to Paragraph 8 of the Plaintiff refers to the letter therein referred to and says that as time was not initially of the essence of the Agreement (subject always to Clause 13 thereof) the Plaintiff was not entitled to make 40

time of the essence and that the said letter did not have that effect.

(13) Alternatively the Defendant says in reply to Paragraph 8 of the Plaint, that if the letter therein referred to did have the effect of making time of the essence of the Agreement (which is denied), the time fixed was not reasonable having regard to all the circumstances prevailing at the time such notice was given.

10 (14) Further in the alternative the Defendant says that the Plaintiff having failed to pay the balance of the purchase price on the 30th day of April 1956, the Agreement thereupon became null and void and the Plaintiff had no rights thereunder on the 4th day of May, 1956 or at any time thereafter.

20 (15) The Defendant in reply to Paragraph 9 of the Plaint refers to the letter therein referred to, a copy of which is attached hereto and marked "B" and says that the Defendant was at all material times ready and willing to carry out the Promises contained in the said letter, which would have fulfilled the Defendant's obligations under the Agreement.

(16) The Defendant denies Paragraph 10(i) of the Statement of Plaint and says that approved Applications in respect of the said Leases have now been passed by the Ruler of the State.

30 (17) The Defendant denies Paragraph 10(ii) of the Statement of Plaint and says that a Power of Attorney would enable the Plaintiff to deal with the approved Applications in the same way, as if he was the Defendant Company.

(18) The Defendant makes no admission as to Paragraph 10(iii) of the Plaint.

(19) The Defendant denies Paragraph 10(iv) of the Plaint and says that the Defendant was at all material times able and willing to carry out all the Defendant's obligations under the Agreement.

40 (20) The Defendant denies Paragraph 10(v) of the Plaint, repeats the contention set out in Paragraph 19 hereof and refers to Clauses 9 and 13 of the Agreement for the full terms and effect thereof.

In the High
Court at Ipoh.

No. 2.

Defence.

27th July, 1956
- continued.

In the High Court at Ipoh.

No. 2.

Defence.

27th July, 1956
- continued.

(21) The Defendant denies Paragraph 11 of the Plaintiff except and in so far as it is alleged that the letter of the 4th day of June 1956 was sent and in particular says that the Plaintiff failed to pay the balance due under the Agreement, on the 30th day of April, 1956 or at all though specially called on so to do.

(22) The Defendant denies that the Plaintiff is entitled to any of the relief asked for in Paragraph 12 of the Plaintiff and puts in issue all damages claimed by the Plaintiff.

10

WHEREFORE the Defendant prays that this Suit may be dismissed and with costs.

ABERFOYLE PLANTATIONS LTD.

Sd. Hogan, Adams & Allan Sd. ? (Attorney)

DEFENDANT'S SOLICITORS. SIGNATURE OF DEFENDANT COMPANY'S ATTORNEY.

I, JOHN HENDERSON REID Attorney of the Defendant above-named do hereby declare that the above Statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe the same to be true.

20

Dated this 27th day of July, 1956.

ABERFOYLE PLANTATIONS LTD.

Sd. John Henderson Reid

Attorney

SIGNATURE OF DEFENDANT COMPANY'S ATTORNEY.

This Defence is filed for and on behalf of the Defendant by Messrs. HOGAN, ADAMS & ALLAN of and whose address for service is 4-A & B, Beach Street, Penang.

30

JUDGE'S NOTES OF EVIDENCE

Thursday, 14th February, 1957

Judge's Note Book No.1
pp. 38 - 61

Civil Suit No.106 of 1956

Khaw Bian Cheng Plaintiff

vs.

Aberfoyle Plantations Ltd. Defendant

10 For Plaintiff Mr. S.K. Das

For Defendant Mr.R.D. Hume

S.K. Das opens:-

Agreed bundle of documents (saving all just exceptions) handed in. Two further documents handed in by consent.

A.B.D. marked "Exhibit P.1".

Agreement for Sale marked "Exhibit D.1".

Power of Attorney dated 1.11.51 "Exhibit D.2".

Power of Attorney dated 29.5.56 "Exhibit D.3".

20 Hume submits draft of the sale agreement between Plaintiff and Defendant.

Das objects.

Not admitted. Admissibility to be argued later when Hume wishes to put it in.

Das: Agreement, A.B.D. pp. 8 - 12.

Action is under Clause 4 of the Agreement - A.B.D. 9.

No provision for interest.

30 Plaintiff p.6. Claim for interest must be limited to the period from 7.6.56 - the date on which Plaintiff first demanded interest.

Also costs of investigating title.

A.B.D. 21 - 22 (last paragraph on p.22).

Formal demand for interest made on 4.6.56, A.B.D. 29.

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

14th February,
1957.

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

14th February,
1957

- continued.

Das:

Dart Vol. II 8th Edition p. 843.

Plaintiff also entitled to costs of investigating title (Hume does not contest this).

No counterclaim for S.P. or damages.

No plea of legal or equitable set-off.

Action is not for avoidance or rectification.

Agreement Clause 10.

Second deposit was made (by agreement) by two equal instalments. Plaint paragraph 5 refers. Admitted in Defence paragraph 9. 10

4 submissions

1. Contract entered into at Penang. (A.B.D. 12). Under the law of Penang the Statute of Frauds applies. Agreement for sale of land must be in writing.

Evidence Ordinance section 91.

The only evidence that can be given of the Agreement is in the terms of the agreement itself.

Evidence of intention therefore cannot be gathered from alterations etc., to the draft of the document. 20

2. The rights of the parties are governed by the law of Perak. Dacey "Conflict of Laws" 6th Edition page 599.

Relevant law therefore Land Code etc., of F.M.S.

3. This is a whole contract, not divisible. A.B.D. 8. A.B.D. 12.

Vendors could not get S.P. of part of the contract. 30

Purchaser could only get S.P. by abandoning claim to certain titles and paying the whole of the purchase price.

Specific Relief (Malay States) Ordinance 1950 Section 14.

Entirely different from English law.

Das:

59 Indian Appeals 47. Mittra v. Sen.

Dispute here arises out of 7 titles out of the 15 comprising the estate.

Pollock & Mulla 7th Edition 67

4. These are rubber lands - agricultural lands of fluctuating value. Rubber trees are a wasting asset. Greater loss to purchaser.

Agreement Clauses 5 and 11.

10 No obligation on Vendors to keep the property insured.

Position of titles on 8.11.55.

Harewood Rubber Estates Ltd., are strangers to us. We were never in contractual relations with them. They were the registered proprietors of the 8 pieces of land comprised in the Certificate of Titles and Grants.

With regard to the leases, these reverted to the Ruler on 18.7.50.

20 Land Code (F.M.S. Cap. 138) Section 17(a). No other provision for occupation by the Company after the leases had expired. No approved application existed. Section 29.

State of title known to Plaintiff, but not the specific arrangements between Harewood Estate and the Defendants. He knew of the existence of some such agreement, but not the details.

Exhibit D.1 is dated 16.1.51. Agreement for Sale.

30 What are the expired leases? Not covered by Clause 1 of D.1. Merely a right to occupy - not assignable.

Clause 6. The expired leases are neither real nor personal property.

Land held under T.O.L. could not pass under Clause 7.

In the High Court at Ipoh.

No. 3.

Judge's Notes of Evidence.

14th February, 1957

- continued.

In the High
Court at Ipoh.

Exhibit D.2. See last recital and schedule.
Schedule refers to leases already expired which
were State land then.

No. 3.
Judge's Notes
of Evidence.

Power of Attorney to Grumitt and Reid, limited
to transfer of property to Defendant. No power to
substitute.

14th February,
1957

Exhibit D.3. No power of substitution.

- continued.

A.B.D. 17. C.L.R.'s letter is at page 27.
N.B. last line. "Harewood Rubber Estates Ltd." to
be recorded in the Roll of Approved Applications. 10

A.B.D. 18. The leases were not in existence
then.

A.B.D. 19. P/A offered.

30.4.56. No one had any title on that date
to the lands comprised in the leases.

A.B.D. 37. Defendants became registered 1.5.56.
(para. 3).

A.B.D. 23. paragraph 3 - not true. Not Aber-
foyle but Harewood.

A.B.D. 25 -- not true. Not till 16.1.57 that 20
Sydney Moore, Liquidator, was recorded.

Until 14.5.56 the land was State land under
temporary occupation. Land Rule 41. Form of
T.O.L. is in Schedule VI. Revocable. Not an
interest.

What Plaintiff bargained for under Clause 4
of the Agreement was renewed leases, not T.O.Ls.

(1897) I.L.R. 21 Bombay 827 Ibrahimhai v.
Fletcher at page 858.

Land Code section 17(b) N.B. Definition of 30
"State land" in section 2.

Section 18. Merely gives to the approved oc-
cupant a contractual right against the State, but
no title.

Land Code section 246(ii)

Land Rules 9 and 10.

No guarantee as to the area to be alienated.

Rule 12.

Land Code section 22. Sections 14 and 15.

(1934) M.L.J. 142 Johore v. Tan Ah Boon.

If the area cannot be guaranteed you can't have S.P.

What was offered by the Defendants was possession under a Power of Attorney from Harewood Estates.

10 Dart 8th Edition 941.

What Defendants' offer amount to was an offer to assign an approved application without the consent of the Ruler-in-Council (illegal). We would have become trespassers and offenders.

Caveat excluded by Rule 10.

Caveat case may be presented against a registrable interest.

Then it was suggested by Harewood that we should take a Power of Attorney from Harewood.

20 Dart 917.

Mulla 709.

44 Ch.D.218 Bryant and Barningham's Contract.

Green v. Whitehead (1930) 1 Ch. 38.

Power of Attorney from Harewood cannot be thrust upon us.

We cannot even ask for an indemnity against Defendants in case they cannot make title unless provided for by special agreement.

Dart 931.

30 The Agreement. Construction of agreement is the issue between the parties.

Defence. Paragraph (10)

" (15)

In the High Court at Ipoh.

No. 3.

Judge's Notes of Evidence.

14th February, 1957

- continued.

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

14th February,
1957

- continued.

Das:

A.B.D. 26.

Clause 13 of the agreement is the only one in which
time is of the essence of the contract.

Clause 4 is the overriding clause.

Dart Vol. I 531.

Tillay v. Thomas 3 Ch. App. 61

Previously executed Conveyance not necessary,
but a good title must be shown.

Leader v. Tod-Heatly (1891) W.N. 38

10

Moss, Sale of Land in New South Wales, 172

Hogg Registration of Title to Land throughout
the Empire, 306.

If title is not shown the Purchaser is not
obliged to tender the purchase money.

Seaward v. Willock 102 B.R. 1046

No title having been made out, either by
30.4.56 or by the extended date, the option to
rescind lay with the Plaintiff.

Fry Specific Performance 6th Edition, 486,
article 1046

20

Plaintiff here seeks to rescind the contract
under Clause 4.

Notice. Dart Vol. I 434.

25 L.J. Ch. 618 Nott v. Riccard @ 620.

(1887) W.N. 159 King v. Chamberlayer.

12.55 p.m. to 2.30 p.m.

2.30 p.m.

Das applies for leave to interpose some formal
evidence at this stage.

30

P.W.L. - JOHN MELFORD s.s. in English :-

In the High
Court at Ipoh.

C.L.R. Kinta District, Batu Gajah.

No. 3.

Application for renewal of leases 157 to 163 was received in my office on 6.9.51. The issue of the fresh leases was approved at a meeting of Ex. Co. on 23.4.56.

Judge's Notes
of Evidence.

Harewood Rubber Estates Ltd., were recorded as approved applicants on 14.5.56 (A/A's No. 1 - 7 of 1956).

Plaintiff's
Evidence.

John Melford

10 Formal application for assignment by Harewood Rubber Estates Ltd., to their Liquidator Sydney Moore was made on 24.11.56. (Schedule v. Land Rule 12).

14th February,
1957.

In the case of areas exceeding 10 acres the approval of the Kuler in Council has to be obtained.

Examination.

This was given in respect of A/A's 3, 4, 5 and 7 of 1956 was given at Ex. Co. on 17.12.56. The C.L.R. gave approval in respect of A/A's 1, 2, and 6 of 1956 on 21.1.57.

20 Sydney Moore was recorded as the approved applicant in respect of all 7 approved application on 21.1.57.

As far as I am aware no application has been received from Sydney Moore to assign to Aberfoyle Plantations Ltd. So far as I know the lands were surveyed when the original leases were issued.

A requisition for survey was sent to the Survey Department on 26.9.56. Whether there has been an actual survey on the ground, I cannot say.

30 No leases have been issued in exchange for the A/A's.

Cross-Examination: The leases in question expired in 1950. There was an application for renewal in 1951.

Cross-
Examination.

Mr. Love was C.L.R. Kinta in 1952.

I recognise a letter from him to the Manager of Harewood Estate dated 25.11.52. (No. objection - Exhibit D.4).

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

Plaintiff's
Evidence.

John Melford.
14th February,
1957.

Cross-
Examination
- continued.

The question of what rent should be charged for the new leases was held up for some considerable time along with some others.

Application to assign the A/A's to Mr. KHAW BIAN CHENG was made by letter in May 1956 - in the same letter a request was made for permission for an assignment to Mr. Moore and also by him to Mr. Khaw.

I replied on 7.7.56 asking for two certified copies of the resolution appointing Mr. Moore as Liquidator.

On 9.7.56 I received a letter (A.B.D.33) from Defendant's Solicitors withdrawing that application pending the present proceedings.

The application would have had to be signed by both Mr. Moore and Mr. Khaw. If Mr. Khaw had not signed it it would not have been allowed to go forward.

Re-Examination.

Re-Examination: Mr. Love's letter refers to new leases because the former leases had expired.

Witness released.

Intld. D.B.W.G.

Tai Yun Feng.

P.W.2. - TAI YUN FENG. a.s. in English:-

Examination.

Manager of the Penang Branch of the Bank of China since the middle of 1953.

I know the Plaintiff.

He opened an account with my bank about a year after I came to Penang.

I allowed him certain overdrafts, up to a limit of \$150,000/-.

I know him to be a very wealthy man. He owns a lot of houses in Penang.

I know Merchistan Estate, Taiping. He borrowed the money to buy it. It is over 1,000 acres.

He came to arrange an additional overdraft of about \$400,000/-.

10

20

30

That would have been about the end of 1955 or beginning of 1956. I was willing to give him an overdraft of £400,000/-. I would advance him that amount at any time on the security of his properties.

He did not actually take the overdraft of £400,000/-.

In my estimate Plaintiff is more than a millionaire.

10 Cross-Examination: Nil.

Witness released. Intld. D.B.W.G.

DAS resumes his opening address:-

Paragraph 4(iii) of the Plaintiff.

Admitted in paragraph 7 of the Defence.

If anything happened to the property Plaintiff would suffer. Illustration (a) to Section 12 of the Specific Relief (Malay States) Ordinance, 1950.

REASONABLE NOTICE:

In English law, usually 21 days.

20 15 Encye. Forms & Precedents (Atkin) p. 670.

Note (b) - usually 21 days.

Emmet on Title page 85.

Neither on 30.4.56 nor on 31.5.56 could the Defendants compel the State to issue titles in exchange for the A/A's.

Neither could Harewood Estates compel them.

Section 17(b), Specific Relief Ordinance 1950.

30 If a Vendor is not in a position to enforce specific performance he is not in a position to forfeit the deposit.

58 Indian Appeals 392 Low v. Jyoti Prasad (1915) A.C. 386 Stickney v. Keeble @ 415, 416.

Pollock & Mulla p. 711 on "buying a pig in a poke".

In the High Court at Ipoh.

No. 3.

Judge's Notes of Evidence.

Plaintiff's Evidence.

Tai Yun Feng.

14th February, 1957.

Examination - continued.

In the High Court at Ipoh.

No. 3.

Judge's Notes of Evidence.

14th February, 1957

- continued.

Soper v. Arnold (1889) 14 A.C. 429.

- Agreement Clause 3. Under a proper construction there is a guarantee of acreage.
- Clause 4. The only person who is in a position to transfer is the registered proprietor.
- Clause 9. "Completion of purchase" means complete conveyance. This means that you must show a good title. 10

17 L.J. Chancery 8 Denning v. Henderson

Clause 10:

Here it is the Vendor's default for not making title.

19 L.J. Chancery 52 De Visme v. De Visme.

Killner v. France (1946) 2 A.E.R. 83 @ 86.

Under our system it is the Vendor's duty to complete the Purchaser's title by registration.

Wiseman Transfer of Land 411

20

Clauses 7, 8, 11 and 12 provide for certain adjustments between the parties.

Clause 9 - Caveat - this contemplates lodging a caveat against lands of which the Vendors are the registered proprietors.

Clauses 10 and 13 should be read together. Clause 10 gives a right subject to Clause 13. These clauses are not repugnant - they are complementary.

(1922) 1 A.C. 256 Forbes v. Git @ 259

30

Defendants have no right to forfeit the deposit unless they use Clause 13.

Section 74, Contracts (Malay States) Ordinance, 1950.

Where time is not of the essence, reasonable time is to be given.

Dart 950.

P.W.3. - KHAW BIAN CHENG. a.s. in Hokkien:-

Plaintiff in this action. I live in Penang.
I am 51.

I am a property owner and rubber planter.

My property is worth more than ~~RM~~ \$3,000,000/-.
I own about 65 houses in Penang and many vacant
building lots. I also own the Merchistan Estate
near Taiping. I own 3/4 of Merchistan. My mother
owns 1/4. The total acreage is 1950 acres. I have
liabilities too.

10

When I entered into the contract to buy Hare-
wood Estate I had debts to the extent of about
~~RM~~ \$500,000/-. In April/May 1956, i.e. on 30.4.56 I
was indebted ~~RM~~ \$550,000/-.

In the meantime I had paid ~~RM~~ \$100,000/- deposit
to Defendants.

When I entered into the contract in November
1955 I knew that the leases had all expired.

I have inspected the estate myself.

20

About 150 acres of the total area was planted
with trees about 25 years old.

About 90 acres in addition are planted with
rubber 4 - 5 years old.

More than 700 acres are planted with trees 40
- 50 years old.

Particulars were supplied to me by the Defen-
dants' agent showing that the estate would yield
41,000 lbs. rubber a month.

30

I was anxious to complete the purchase of the
estate. I did not do so because about seven leases
had not been renewed.

The Defendants offered me a Power of Attorney
which I did not accept. They have never offered
me a good title to the whole of the property.

My Solicitors wrote to Defendants' Solicitor
on 4.5.56.

Hearing adjourned to 10.00 a.m. 15/2/57.

Intld. D.B.W.G.

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

Plaintiff's
Evidence.

Khaw Bian Cheng.

14th February,
1957.

Examination.

In the High
Court at Ipoh.

Friday, 15th February, 1957.

As before.

No. 3.

P.W.3. - KHAW BIAN CHENG. a.s. in Hokkien:-

Judge's Notes
of Evidence.

Cross-Examined: I live in Penang.

Plaintiff's
Evidence.

I know that Defendant Company is registered in the United Kingdom. I know that they have a registered office in the Hongkong Bank Chambers, Penang.

Khaw Bian Cheng.

15th February,
1957.

The Agreement for Sale was drawn up in Penang. I was represented by Mr. Lim Gim Hoe. He was in Court yesterday and is to-day. 10

Cross-
Examination.

The draft Agreement for Sale was drawn up by the Company and handed over to Mr. Lim Gim Hoe for checking. I think so.

Before the Agreement was drawn up Mr. Lim Gim Hoe did not have all the title deeds.

I did not see any of the grants. My lawyer told me they had been brought there but I do not know whether they were grants or not.

My Solicitors told me that they were in the name of the Harewood Rubber Estates, Ltd. Both he and I were aware of that. We were also aware that part of the land was comprised in leases which had expired some considerable time previously. I knew that Harewood Rubber Estates and Defendant Company had been allowed to remain in possession pending the issue of new leases. 20

The draft Agreement was eventually approved by the Solicitors for both parties.

I see a letter (produced by Counsel for the Defendant Company) dated 2.11.55. With that letter was enclosed the approved draft (two copies). The approved draft is identical with the agreement which I signed. 30

(Das objects to the agreed draft being admitted.

The object is to show what amendments have been made and to draw a conclusion as to the intention. Submit that the draft is inadmissible for any purpose. 40

English v. Buttery 3 A.C. 552.

87 L.J. Ch. 414 Great Western Railway and
Midland Railway v. Bristol Corporation.

Construction of a document is for the Court.

Das:

Hume is trying to find out what was the Plaintiff's intention in agreeing to the alterations.

G.W.R. & M.R. v. Bristol Corporation (supra)
at p. 424.

10

STICKNEY v. KEEBLE (1915) A.C. 386 & 399,
414. It makes no difference that the would-be
purchaser was aware of the difficulties which would
probably beset the Vendor in making title.

Section 24, Specific Relief (Malay States)
Ordinance, 1950.

Hume in reply:

Cases cited by Das are relevant on question
of admissibility of external evidence on question
of construction.

20

Section 92(f), Evidence Ordinance, 1950.

Want to show how the language of Clause 9 of
the Agreement is related to existing facts.

Plaintiff's knowledge is relevant.

Ruling:

I rule that the document is admissible.

Intld. D.B.W.G.

(Letter D.5
Enclosure D.6)

Plaintiff continues:-

30

The draft Agreement was finally approved by
my Solicitor Mr. Lim Gim Hoe.

I was buying the property for myself.

My purpose was to run it as a rubber estate,
but if I found tin so much the better. I was
thinking that there might be tin in it. I wrote
for permission to bore and I was given permission

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

Plaintiff's
Evidence.

Khaw Bian Cheng

15th February,
1957.

Cross-
Examination
- continued.

In the High Court at Ipoh.

No. 3.

Judge's Notes of Evidence.

Plaintiff's Evidence.

Khaw Bian Cheng
15th February, 1957.

Cross-Examination
- continued.

Re-Examination.

to do so (A.B.D.3). It would have been a much better bargain if there was tin in it.

I did cause the land to be bored, but I found that it would not pay to mine the land for tin. It is not true that I decided to take any possible Loop-hole to repudiate the Agreement. I intended to produce rubber from which I would have derived a good income. At the time when the Agreement was signed the price of rubber stood at \$1.07.

In April/May 1956 it was -/87 cents. That was not a reason for my wanting to get out of the Agreement. 87 cents would have paid me because I could have produced the rubber at -/50 cents. It would have more than covered the amount of the interest on the overdraft. 10

I knew before 30.4.56 that the issue of new leases had been approved.

Re-Examined: With rubber at 87 cents my net profit would have been 37 cents. I would have had a profit of about \$14,000/- p.m. Bank interest on my overdraft was 8.4% p.a., or not more than \$3,000/- p.m. 20

I started boring on 23.11.55.

The boring continued until 25.12.55. Results were very poor. The boring was done by my friend Tan Swee Tin.

By the end of December I knew that I was not going to get any minerals out of the land.

On 30.1.56 I sent two cheques for \$25,000/- to the Defendant Company's Solicitors (A.B.D.13). 30

I had experience of rubber planting. I have never done any tin mining.

Intld. D.B.W.G.

Plaintiff's case closed.

HUME:- Not calling evidence.

Most of Das's cases relate to open contracts.

Purchaser not bound to require a good legal title. He may agree to accept a possessory title.

He may know of a defect and risk it.

He may accept such title as the Vendor has.

Killner v. France (1946) 2 A.E.R. 83.

Normally in a case like that the risk is the Purchasers, but it had been guarded against in the contract. The parties contracted out of the rule that at the date of completion the Vendor must give a good title.

In the High Court at Ipoh.

No. 3.

Judge's Notes of Evidence.

15th February, 1957

- continued.

10 In this case Plaintiff and/or his Solicitors had full knowledge of the state of the title.

Das says no Purchaser can rely on a title in another person's name.

Agreement for sale by Harewood to Aberfoyle refers to the sale to Plaintiff.

No objection to Vendor not having title himself if he has entered into a binding contract of sale. He becomes a trustee for the Purchaser.

29 Halsbury 337 paragraph 456.

Exhibit D.1 is a valid agreement to transfer.

20 Paine v. Meller 31 E.R. 1088 @ 1089.

At date of this contract, Plaintiff must have had actual knowledge of the state of the titles. In any event he had constructive notice.

Plaint: Paragraph 3(ii). In fact the applications had been approved before that date.

Paragraph 4(i). "the date fixed for completion"

30 (Struck out in Exhibit D.6). (iv). "within the time limited for completion" (these words do not appear in Clause 4 of the Agreement).

Hume:

It is clear from the facts that Plaintiff knew perfectly well that there was a probability of delay.

Defendants reply strongly on D.6.

In the High
Court at Ipoh.

No. 3.

Judge's Notes
of Evidence.

15th February,
1957

- continued.

Time was never of the essence of the contract.

Agreement clearly contemplated that Defendants might not be in a position to execute these contracts - Clause 9.

Plaintiff accepted mere possession with certain safeguards e.g. provision for a Power of Attorney.

They not only contemplated - they specifically provided for - completion after 30th April.

Defendant Company did everything they agreed to do. If ultimately the transfer could not have been made, the Purchaser would have had his remedy. 10

Time cannot be made of the essence by one party. Where it is contemplated that there might be delay one party cannot unilaterally make time of the essence.

So far as Agreement concerned, English rules of equity apply.

LAI CHOON v. FONG CHOW & ORS. 5 F.M.S.L.R. 233.

20

Contracts (Malay States) Ordinance, 1950, Section 56(2).

Smith v. Hamilton (1950) 2 A.E.R. 928 & 932

Williams v. Greatrex (1957) 1 W.L.R. Vol. 1 p.31.

Alternatively, where one party seeks to make time of the essence, then if he is allowed to do it the time allowed must be reasonable having regard to all the circumstances - Contracts (Malay States) Ordinance, Section 47. Leake (vide infra). 30

In this particular case the Vendors had 27 days' notice. Impossible!

Application made for assignment of A/A's withdrawn after Plaintiff had repudiated.

Leake on Contracts, 8th Edition, 652.

Longest time that can reasonably be fixed.

Either time not essential, or if time essential, it was fixed at 30th April and subsequently waived.

Crawford v. Toogood 13 Ch. Div. 153 @ 157
Manning v. Turner (1957) 1 W.L.R. 91 @ 95

In the High
 Court at Ipoh.

Why should Clause 10 be read with Clause 13?
 Why any further notice after a party has repudiated?

No. 3.

Judge's Notes
 of Evidence.

Plaintiff admits that he expected to find tin.

15th February,
 1957

Hume concludes.

- continued.

DAS:

10 The key lies on the proper construction of the
 contract, uninfluenced by whatever may have been
 the intention as shown by the alterations.

Contract to be construed under Perak law
 (Dicey)

What is the proper construction -

- (a) That Plaintiff must be given the fresh leases;
 or
- (b) That he must be content with approved appli-
 cations belonging to a third party, a caveat
 and a Power of Attorney.

20 What Defendants offered was a substituted
 contract.

If that construction is wrong, Defendants are
 in breach.

Smith v. Hamilton (1950) a A.E.R. @ 933.
 (Fry J. in Green v. Serim)

Clause 4 of the Agreement.

Time not of the essence of Clause 10 there-
 fore reasonable notice must be given by the Defen-
 dants before deposit can be forfeited.

30 Jamshed Khodaram Irani v. Burjorji Dhunjibhai
32 T.L.R. 156.

"Caveat" is used in a strict technical sense
 in Clause 9.

Under our system of land registration a Ven-
 dor is never a trustee for the Purchaser - the re-
 lationship is merely contractual. That is made
 clear in Tan Ah Boon's case.

Power of Attorney is of no value.

In the High Court at Ipoh.

What does Clause 10 mean? It must be given a specific meaning.

No. 3.

Special stress on sections 17(c) and 24(b) Specific Relief Enactment 1950.

Judge's Notes of Evidence. 15th February, 1957 - continued.

Before we paid the money the Vendor was under a duty to show us a title.

27 days was more than ample.

If there was an obligation to show title on 30.4.56, notice of 27 days expiring on 31.5.56 was reasonable.

10

Manning v. Turner (1957) 1 W.L.R. @ 97.

Last line of Clause 9 - how could the Vendor "effectually vest" the leases in the Purchaser when there were no leases.

C. A. V.

Intld. D.B.W.G.

Judge

Federation of Malaya

TRUE COPY

Sd: Ng Yeow Heang
Secretary to Judge,
Ipoh.
19/11/57.

20

No. 4.

No. 4.

Judgment. 21st October, 1957.

JUDGMENT

Khaw Bian Cheng

Plaintiff

- and -

Aberfoyle Plantations,
Limited

Defendants

This is an action instituted primarily for the recovery of \$100,000/- paid by the Plaintiff to the Defendants as a deposit on the proposed purchase of a rubber estate known as Harewood Estate, Tanjong Tualang.

30

The facts are virtually undisputed, but there is some difference between the parties as to the

proper construction to be placed on facts which are agreed.

In the High Court at Ipoh.

The property belonged to a Company known as Harewood Estates, Ltd., but in 1951, in consequence of a merger of a number of enterprises, this Company went into liquidation and the property was acquired by a concern named Aberfoyle Plantations, Ltd., the Defendants in the action.

No. 4.

Judgment.

21st October,
1957

- continued.

10 On the 8th of November, 1955, the Defendants entered into an agreement with the Plaintiff to sell Harewood Estate for \$525,000/-, the arrangement being that the Purchaser would pay \$50,000/- on the signing of the agreement, \$50,000/- on or before the 1st of February, 1956, and the balance on or before the 30th of April, 1956.

20 The estate consisted of two pieces of land held under Certificate of Title, six pieces held under grant, and seven pieces held under lease. It is with the leasehold property that this action is mainly concerned. The leases expired in 1950. Application for the issue of fresh leases was made in 1951. The matter was delayed while the State Government was in the process of deciding questions of policy affecting the leasing of State Land. Meanwhile, the Collector of Land Revenue, Kinta, gave the Defendants' predecessors in title permission to continue in occupation of the lands.

30 The Plaintiff paid the first deposit of \$50,000/- as stipulated in the Agreement. By mutual consent, he paid the second deposit by two cheques of \$25,000/- each, one dated the 30th of January and the other the 28th of February, 1956.

The application by the Defendants for the renewal of the leases was made on the 23rd of April, 1956. The approval of His Highness the Ruler in Council was given on the 17th December, 1956, in respect of four of the leases and on the 21st of January, 1957, in respect of the other three.

40 Meanwhile, when the transfer of the property from the Defendants to the Plaintiff was not effected on the 30th of April, 1956, the Defendants' Solicitors wrote to the Plaintiff's Solicitors, on the 4th of May, 1956, giving notice that if the transaction was not completed by the 31st of May

In the High
Court at Ipoh.

No. 4.

Judgment.

21st October,
1957

- continued.

the Plaintiff would rescind the contract and claim back the deposit. At this point a dispute arose between the parties as to their respective rights under the contract, which led to the present action.

The fundamental question in issue is whether time was of the essence of the contract and, if not, whether the Plaintiff could, by unilateral action, make it so by giving 27 days' notice to the Defendants. It is necessary here to interpolate and comment on the Plaintiff's bona fides, which was attacked by the Defendants' Counsel with the suggestion that the Plaintiff had offered to purchase the estate because he hoped to find tin beneath the soil, but that, after he had, with the permission of the Defendants, bored for tin and found that mining operations would not pay, he decided to back out of the contract and used the delay in the obtaining of title by the Defendants as a pretext for doing so. I think it appropriate to record forthwith that I do not accept the suggestion. I believe the Plaintiff's evidence that his discouraging prospecting operations ended in December, 1955, and it is not disputed that he paid a further ~~£~~50,000/- deposit in January and February, 1956. I therefore find that he paid the second instalment of the deposit after it had become obvious to him that he would not profit by mining the land. He gave figures which showed that he could profitably work it as a rubber estate. He borrowed ~~£~~400,000/- from his Bank at 8.4% interest annually, or ~~£~~2,800/- a month; and with the price of rubber standing at 87 cents a pound, with estimated production costs of 50 cents a pound, he could look forward to making a profit of ~~£~~14,000/- a month. This would have given him a net profit of ~~£~~11,200/- a month which, while probably less than he would have made if he had found rich deposits of tin, is at least sufficient to remove any suspicions as to his bona fides in withdrawing from the deal. His motive in so doing is immaterial, and the case resolves itself into the clear-cut issue: was the Plaintiff within his legal rights in withdrawing from the Agreement on the ground that the Defendants had failed to make out a good title to the leasehold property by the intended date for the completion of the transaction?

Clause 4 of the Agreement reads as follows :-

"4. The purchase is conditional on the Vendor obtaining at the Vendor's expense a renewal

of the sever (7) Leases described in the Schedule hereto so as to be in a position to transfer the same to the Purchaser and if for any cause whatsoever the Vendor is unable to fulfil this condition this Agreement shall become null and void and the Vendor shall refund to the Purchaser the deposit or deposits already made under Clause 2 hereof notwithstanding anything contained in Clause 10 hereof".

In the High
Court at Ipoh.

No. 4.

Judgment.

21st October,
1957

- continued.

10

20

30

In the original draft of the Agreement, after the words "to transfer the same to the Purchaser, the words "before the date hereinafter fixed for completion" were included. Counsel for the Plaintiff objected to this evidence being admitted, but his arguments seemed to me to be directed to a different point, namely, the variation of the terms of the written contract by parole evidence. I considered that it was open to the Defendants, under Section 92(f) of the Evidence Ordinance, 1950, to prove a fact (by the production of the draft agreement) showing in what manner the language of the document was related to existing facts. The existing fact was the wording of Clause 4, which is the form in which the Agreement was executed said nothing about time; but the Plaintiff submitted that time was of the essence, and it seemed to me that the Defendants were entitled to submit, contra, that this had originally been in the contemplation of the parties, but had been abandoned by them.

It is, however, necessary to consider the agreement as a whole in order to gather the true intention of the parties, Clause 2 reads:

40

"2. The price for the said purchase is the sum of Dollars Five hundred and twenty-five thousand (/\$525,000/-) of which the sum of Dollars Four hundred and fifty thousand approximately shall be for all the said land and buildings thereon known as HAREWOOD ESTATE described in the Schedule hereto at the date of taking over, and the balance shall be for the fiscal value of the plant and machinery and utensils capable of manual delivery. To account of this sum of \$525,000/- the Purchaser shall pay to the Vendor the sum of \$50,000/- on the signing of this Agreement a further sum of \$50,000/- on or before 1st February, 1956,

In the High
Court at Ipoh.

No. 4.

Judgment.

21st October,
1957

- continued.

"and to pay the balance on or before 30th April, 1956. The Purchaser shall only be entitled to enter into possession of the Estate after the purchase money of ~~£~~525,000/- has been paid in full, and all profits earned prior to that time shall belong to the Company".

It will be observed that this, the vital operative clause in the Agreement, makes no stipulation for the transfer of the property by any particular date; it operates in the other direction, and provides for the payment of the balance of the purchase money by the Plaintiff on or before the 30th April, 1956.

10

Clause 9 provides for completion of the purchase on or before the 30th of April, 1956. The wording of the Clause is as follows :-

"9. Completion of the purchase shall take place at the offices of Messrs. Grumitt, Reid & Co. Ltd., on or before the 30th day of April 1956, and upon the Purchaser paying the balance of the purchase price to the Vendor, the Vendor shall as soon as possible thereafter execute a proper transfer or transfers of the property to the Purchaser or as he shall direct, such transfer or transfers to be prepared and perfected, save as to the execution thereof by the Vendor, by and at the expense of the Purchaser and in the meantime the Vendor agrees to allow the Purchaser to lodge a caveat against all the lands pending the execution of the said transfer or transfers. And the Vendor shall if the Purchaser so requires execute in favour of the Purchaser an irrevocable power of attorney authorising the Purchaser to execute all such transfers and documents as shall be necessary for effectually vesting in the Purchaser the said Mining Leases".

20

30

The intention of this Clause seems to me perfectly clear: the balance of the purchase money was to have been paid on or before the 30th of April, but it was not stipulated that the Defendants would necessarily execute a transfer on that date: they engaged to do so "as soon as possible thereafter", for the very good reason that both parties well knew that the Defendants might not be in a position to dispose of the leasehold on the date fixed for

40

the payment of the purchase price. It is in my opinion immaterial whether the safeguards designed to protect the Purchaser, by way of caveat and power of Attorney, were of any practical value or not. One must seek the intention of the parties, which manifestly was directed to the execution of a transfer at a date later than that on which the purchase was completed by the payment of the balance of the purchase money by the Plaintiff.

In the High Court at Ipoh.

No. 4.

Judgment.

21st October, 1957

- continued.

10 Clause 10 of the Agreement reads:

"10. If from any cause other than the Vendor's default the purchase shall not be completed on the 30th April 1956, or the second deposit of \$50,000/- shall not be made on or before the 1st February 1956 as herebefore provided then this Agreement shall become null and void and the deposit or deposits already made will be forfeited".

20 The meaning of the words "If the purchase shall not be completed" is important. Looking back to Clause 9, it is clear that what is meant is, "If the balance of the purchase money shall not be paid", because the words "the Vendor shall as soon as possible thereafter execute a proper transfer or transfers of the property to the Purchaser" show that a distinction was deliberately drawn in the minds of the parties between the completion of the purchase by the payment of the balance of the purchase money, and the conclusion of the transaction by the transfer of the property. This view of the intention of the parties is fortified by the wording of Clause 11, which reads (so far as it is relevant to the question under consideration):

40 "11. Upon actual completion of the purchase the Purchaser shall be entitled to possession of the property hereby agreed to be sold, and shall as from that day be liable for all outgoings and shall repay to the Vendors all moneys expended by it in complying in whole or in part with any requirements of the Government or of any local authority in respect of the property or any roads, ways, sewers adjoining the same or otherwise, of which notice may be given to the Vendor after the date of this agreement"

In the High
Court at Ipoh.

No. 4.

Judgment.

21st October,
1957

- continued.

This clause is clearly designed to make transitory provisions to bridge the period between the payment of the purchase price and the transfer of the property. As Mr. Hume for the Defendant Company aptly said, the parties contracted out of the rule that at the date of completion of the purchase the Vendor must give a good title. The Plaintiff did so with his eyes open, knowing that the Defendants might not, and in all probability would not, be in a position to assign the leases by the date agreed as the date of purchase.

10

In short, therefore, I hold that the parties intentionally and willingly avoided making time of the essence of the contract.

It remains to be considered whether, after the contract was made, one party could without the reciprocal consent of the other, make time of the essence. The rule is clear. Reasonable notice must be given to the other party. Was 27 days' notice reasonable in the circumstances of this case? Manifestly it was not, since the Plaintiff must have been well aware that the Defendants could not control the proceedings of the Ruler in Council, with whom lay the decision to issue fresh leases. We know that in fact eight months elapsed between the date stipulated in the Agreement and the date on which the approval of the statutory authority was obtained. This was provided for by mutual consent, and, whatever his reasons for withdrawing from the bargain, the Plaintiff is bound by Clause 10 of the Agreement.

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I accordingly dismiss the claim and give judgment for the Defendants, with costs.

Sd: D.B.W. Good
JUDGE
FEDERATION OF MALAYA.

Ipoh,
21st October, 1957.

TRUE COPY

Sd: Ng Yeow Heang,
Secretary to Judge,
Ipoh. 19/11/57.

40

No. 5.

ORDER.

Khaw Bian Cheng of No. 20
Pykett Avenue, Penang Plaintiff

- and -

Aberfoyle Plantations Ltd. Defendants

BEFORE THE HONOURABLE MR. JUSTICE GOOD

IN OPEN COURT

10

This Suit coming on for hearing on the 14th and 15th days of February 1957 in the presence of Counsel for the Plaintiff and for the Defendants, upon reading the pleadings and upon hearing the evidence adduced by the parties and what was alleged by Counsel THE COURT DID ORDER that this Suit should stand for Judgment AND this Suit coming on for Judgment this day in the presence of Counsel as before THE COURT DOTH ORDER AND ADJUDGE that the Plaintiff's claim be dismissed with costs to be taxed and when taxed to be paid by the Plaintiff to the Defendants or to their Solicitors.

20

Given under my hand and the seal of the Court this 8th day of November 1957.

Sd: E.E. Sim

SENIOR ASSISTANT REGISTRAR
SUPREME COURT
FEDERATION OF MALAYA,
IPOH.

L.S.

No. 6.

NOTICE OF APPEAL

30

TAKE NOTICE that Khaw Bian Cheng being dissatisfied with the decision of the Honourable Mr. Justice Good given at Ipoh on the 8th day of November, 1957, appeals to the Court of Appeal against the whole of the said decision.

Dated this 8th day of November, 1957.

Sd: Khaw Bian Cheng
APPELLANT

Sd: Das & Co.
SOLICITORS FOR APPELLANT

In the High
Court at Ipoh.

No. 5.

Order.

8th November,
1957.

In the Court
of Appeal.

No. 6.

Notice of
Appeal.

8th November,
1957.

In the Court
of Appeal.

No. 6.

Notice of
Appeal.
8th November,
1957
- continued.

To,
The Senior Assistant Registrar,
Supreme Court, Ipoh.

and to:
Messrs. Hogan, Adams & Allan,
Solicitors for the Respondent,
4 A & B, Logan's Building,
Penang.

The address for service of the Appellant is at the
office of Messrs. Das & Co., of No. 8-10, Station Road, Ipoh. 10

No. 7.

Memorandum of
Appeal.
3rd January,
1958.

No. 7.

MEMORANDUM OF APPEAL

KHAW BIAN CHENG, the Appellant above-named, appeals to the Court of Appeal at Ipoh against the whole of the decision of the Honourable Mr. Justice Good given at Ipoh on the 8th day of November, 1957, on the following grounds:-

1. The Contract for sale by the Respondents and purchase by the Appellant, which is the subject matter of this appeal, is contained in the Agreement in writing (hereinafter called "the said Agreement") made between the Respondents and the Appellant on the 8th November, 1955. By the said Agreement the Respondents contracted to sell and the Appellant to purchase for the sum of \$525,000/- the 15 pieces of land described in the Schedule thereto and known as Harewood Estate. Of these 15 pieces of land 7 were comprised in Leases Nos. 157 - 163 (both inclusive), which are hereinafter called "the said Leases". 20 30

2. The learned Judge was wrong in admitting in evidence Exhibit D.6 (the draft of the said Agreement) by virtue of Section 92 proviso (f) of the Evidence Ordinance, 1950, or at all, and was wrong in using the said Exhibit in any way for the interpretation of the said Agreement.

3. The learned Judge was wrong in making the following findings of fact :-

"The application by the Defendants for the renewal of the leases was made on the 23rd day of 40

April, 1956. The approval of His Highness the Ruler in Council was given on the 17th of December, 1956, in respect of four of the leases and on the 21st of January, 1957, in respect of the other three".

In the Court
of Appeal.

No. 7.

Memorandum of
Appeal.

3rd January,
1958

- continued.

10 4. The learned Judge was wrong in regarding Harewood Rubber Estates Ltd., as the Respondents' predecessors in title and did not appreciate that neither that Company nor the Respondents had any title to the lands comprised in the said leases at any material time.

5. The following findings by the learned Judge are wrong:-

(a) "The fundamental question in issue is whether time was of the essence of the contract and, if not, whether the Plaintiff could by unilateral action, make it so by giving 27 days' notice to the Defendants";

20 (b) "Was 27 days' notice reasonable in the circumstances of this case? Manifestly it was not, since the Plaintiff must have been well aware that the Defendants could not control the proceedings of the Ruler in Council, with whom lay the decision to issue fresh leases. We know in fact eight months elapsed between the date stipulated in the Agreement and the date on which the approval of the statutory authority was obtained. This was provided for by mutual consent, and, whatever his reasons for withdrawing from the bargain, the Plaintiff is bound by Clause 10 of the Agreement".

30

6. The learned Judge was wrong in holding that:

(a) Clause 2 is the vital operative Clause in the said Agreement;

(b) it is immaterial whether the safeguards designed in Clause 9 of the said Agreement to protect the Appellant, by way of caveat and power of attorney, were of any practical value or not;

40

(c) the parties to the said Agreement contracted out of the rule that at the date of completion of the purchase the Vendor must give a good title.

In the Court
of Appeal.

No. 7.

Memorandum of
Appeal.

3rd January,
1958

- continued.

7. The Learned Judge was wrong in his interpretation of Clauses 2, 4, 9, 10 and 11, and was wrong in not taking into consideration any of the provisions of the Land Code and the Land Rules and also in not taking into consideration the full contents and effect of Clauses 4, 9 and 11 of the said Agreement and in ignoring Clause 13 entirely.

8. The learned Judge misinterpreted the provisions in the said Agreement relating to completion of the purchase and did not give any effect to the words "as soon as possible thereafter" in Clause 9 of the said Agreement. 10

9. The learned Judge did not take into consideration the facts as known to the Appellant on the 8th November, 1955, and did not appreciate the true nature of the contract contained in the said Agreement.

10. The learned Judge did not take into consideration the facts as known to the Appellant and his Solicitors on the 30th April, 1956, and did not appreciate the full contents and effect of the letter written by the Appellant's Solicitors to the Respondents' Solicitors dated the 4th May, 1956, and was wrong in ignoring entirely the contents and effects of the letters written by the Respondents' Solicitors to the Appellant's Solicitors and dated as follows :- 20

- (i) 26th April, 1956;
- (ii) 30th April, 1956;
- (iii) 2nd May, 1956;
- (iv) 5th May, 1956;
- (v) 30th May, 1956.

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11. The learned Judge ought to have held that:

(i) The Appellant was aware at the time when the said Agreement was made that the said Leases originally had been in the name of Harewood Rubber Estates Ltd., but had all expired some considerable time previously, and was also aware that, pending the issue of new leases, Harewood Rubber Estates Ltd., had been allowed to remain in possession of the 7 pieces of land subject to the said Leases and that the Respondents were in actual occupation of the said 7 pieces of land; 40

(ii) there was never at any time any contractual relationship between the Appellant and Harewood Rubber Estates Ltd., or its liquidator Sydney Moore;

In the Court
of Appeal.

No. 7.

(iii) the terms and conditions of the contract contained in the said Agreement are clear and unambiguous, and the proper law of the said contract is the law of the State of Perak;

Memorandum of
Appeal.

3rd January,
1958

- continued.

10

(iv) the provisions of the said Agreement relating to the payment of deposits by the Appellant were varied mutually by subsequent agreement between the Appellant and the Respondents and the Appellant duly complied with the said provisions as so varied;

(v) the Appellant was ready and willing to complete the purchase under the said Agreement;

20

(vi) the exact position of the Respondents in relation to the property contracted to be sold and purchased under the said Agreement was not known to the Appellant or his Solicitors until the 3rd May, 1956, when the latter ascertained that the 7 pieces of land comprised in the said Leases were State Lands incapable of transfer on that day or any other material day;

30

(vii) the contract contained in the said Agreement was subject by Clause 4 thereof to the condition that the Respondents should themselves obtain at their own expense a renewal of the said Leases so as to be in a position to transfer the same to the Appellant, failing which for any reason whatsoever the said Agreement should become null and void and the Respondents should repay to the Appellant any deposit or deposits already paid by him under the said Agreement;

40

(viii) the Respondents contracted by Clause 9 of the said Agreement to be in a position to transfer the property on the 30th April, 1956, and the provisions contained in the said Clause with regard to a caveat and a power of attorney would be meaningless by reason of the provisions in the Land Code and Land Rules, if the Respondents were not in such a position;

In the Court
of Appeal.

No. 7.

Memorandum of
Appeal.

3rd January,
1958

- continued.

(ix) the Respondents did not fulfil the condition in Clause 4 of the said Agreement, which accordingly became null and void;

(x) the Respondents were not in a position to transfer the property on the 30th April, 1956, or any other material day, but endeavoured to substitute a different contract from that contained in the said Agreement;

(xi) by his Solicitors' letter dated the 4th May, 1956, the Appellant elected to rescind the contract, as stated in the said letter, and, if it was necessary to make time the essence, then in all the circumstances of the case the said letter was effectual to do so. 10

Dated this 3rd day of January, 1958.

Sd. Das & Co.,
SOLICITORS FOR THE APPELLANT.

To,

The Senior Assistant Registrar,
Supreme Court, Ipoh. 20

and to,

Aberfoyle Plantations, Limited,
or their Solicitors,
Messrs. Hogan, Adams & Allan,
4 A & B, Logan's Building,
Penang.

The address for service of the Appellant is care of Messrs. Das & Co., of Nos. 8-10, Station Road, Ipoh.

No. 8.

Judgment of
Thomson, C.J.

26th March,
1958.

No. 8.

JUDGMENT OF THOMSON, C.J.

30

Khaw Bian Cheng

Appellant

v.

Aberfoyle Plantations Ltd. Respondents

Cor: Thomson, C.J., F.M.
Sir John Whyatt, C.J., Singapore.
Syed Sheh Barakbah, J.

JUDGMENT OF THOMSON, C.J.

This is an appeal from a decision of Mr. Justice

Good in proceedings arising from a contract which was entered into on 8th November, 1955, for the sale of a rubber estate known as the Harewood Estate.

In the Court
of Appeal.

No. 8.

Judgment of
Thomson, C.J.

26th March,
1958

- continued.

10 At all material times the Harewood Estate comprised about 1,154 acres held under Certificates of Title or Grants of which the registered proprietor was Harewood Rubber Estates, Ltd. It also comprised some 182 acres of land which had been held by Harewood Rubber Estates Ltd., under leases from the State which expired on 19th June, 1950, and the titles of which were destroyed on 30th August, 1951. Harewood Rubber Estates, Ltd., had applied for new leases in respect of this land and had remained in occupation of it with the approval of the Collector of Land Revenue and had every reason to believe that new leases would in due course be granted. The strict legal position, however, at the time of the contract in the present case was that no party except the State had any right, title or interest of any sort in the land in question.

20 Some time in 1951 arrangements were made to amalgamate a number of rubber companies including Harewood Rubber Estates, Ltd., with Aberfoyle Plantations Ltd., the present Respondents. I do not think it is necessary to deal with these arrangements in detail beyond observing that they involved the liquidation of Harewood Rubber Estates Ltd. and the appointment of a Mr. Sydney Moore as liquidator and that they gave the Respondents very considerable powers of dealing with the property of Harewood Rubber Estates Ltd., although they did not actually transfer to the Respondents the land owned by Harewood Estates Ltd., which formed the greater portion of the Harewood Estate.

30 On 8th November, 1955, the Respondents entered into a contract with the Appellant which was in writing for the sale by the Respondents to the Appellant of the Harewood Estate.

40 The material portions of that contract are contained in Clauses 1, 2, 4, 9 and 10.

The material portion of Clause 1 reads as follows :-

"Subject to the condition contained in Clause

In the Court
of Appeal.

No. 8.

Judgment of
Thomson, C.J.
26th March,
1958
- continued.

4 the Vendor will sell and the Purchaser will buy ALL THOSE pieces of land, known as HAREWOOD ESTATE, hereinafter described in the Schedule hereto free from incumbrances"

By Clause 2 it is provided that the purchase price which was to include the land, buildings and plant of the Estate was to be \$525,000. The Purchaser was to pay \$50,000 on the signing of the Agreement, a further sum of \$50,000 on or before 1st February, 1956, and the balance on or before 30th April, 1956.

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Clause 4 reads as follows :-

"The purchase is conditional on the Vendor obtaining at the Vendor's expense a renewal of the seven (7) Leases described in the Schedule hereto so as to be in a position to transfer the same to the Purchaser and if for any cause whatsoever the Vendor is unable to fulfil this condition this Agreement shall become null and void and the Vendor shall refund to the Purchaser the deposit or deposits already made under Clause 2 hereof notwithstanding anything contained in Clause 10 hereof"

20

The material portions of Clause 9 read as follows :-

"Completion of the purchase shall take place on or before the 30th day of April 1956, and upon the Purchaser paying the balance of the purchase price to the Vendor, the Vendor shall as soon as possible thereafter execute a proper transfer or transfers of the property to the Purchaser and in the meantime the Vendor agrees to allow the Purchaser to lodge a caveat against all the lands pending the execution of the said transfer or transfers. And the Vendor shall if the Purchaser so requires execute in favour of the Purchaser an irrevocable power of attorney authorising the Purchaser to execute all such transfers and documents as shall be necessary for effectually vesting in the Purchaser the said Mining Leases".

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Clause 10 reads as follows :-

"If from any cause other than the Vendor's default the purchase shall not be completed on

the 30th April 1956; or the second deposit of ~~£~~50,000 shall not be made on or before the 1st February 1956 as herebefore provided then this Agreement shall become null and void and the deposit or deposits already made will be forfeited".

In the Court
of Appeal.

No. 8.

Judgment of
Thomson, C.J.

26th March,
1958
- continued.

10 The two instalments of ~~£~~50,000 were paid by
the Appellant on the due dates and the Solicitors
who were acting both for the Respondents and for
Harewood Rubber Estates Ltd., continued negotia-
tions with the Collector of Land Revenue for the
issue of fresh leases in place of those which had
expired in June, 1950. On 21st April, 1956, the
Collector informed these Solicitors that the issue
of fresh leases to Harewood Rubber Estates Ltd. had
been approved and that that Company would be re-
corded in the Roll of Approved Applications (under
Rule 7 of the Land Rules, 1930) on payment of some
20 ~~£~~41,000 for premium, quit rent, survey expenses
and so forth.

On 26th April, 1956, the Respondents' Solici-
tors wrote to the Appellant's Solicitors informing
them that the issue of fresh leases had been ap-
proved and asking them "as the date for completion
is April 30th" to send draft transfers for approval.

30 On 28th April the Appellant's Solicitors asked
to see the titles and leases so that they could
prepare the draft transfers and the Respondents'
Solicitors replied to that letter on the 30th of
April. With regard to the Certificates of Title
and the Grants they said that these were with the
Registrar of Titles for registration of the trans-
mission and transfer from Harewood Rubber Estates
Ltd., to the Respondents and they dealt with the
leases as follows :-

"In respect of the new leases the Registrar
of Titles has informed our Mr. Phipps that no
transfer can be yet made now in respect of them
until they shall have been issued.

40 Our clients are willing as provided for in
the Agreement for Sale to execute in your
Clients' favour an irrevocable Power of Attor-
ney to execute the transfer of the new leases
for effectually vesting the same in your Cli-
ents".

In the Court
of Appeal.

No. 8.

Judgment of
Thomson, C.J.
26th March,
1958
- continued.

Two days later on 2nd May they wrote a further letter demanding payment of the balance of the purchase price.

The Appellant's Solicitors replied to these letters on 4th May. With regard to the Certificates of Titles and the Grants they said that steps should have been taken earlier to have these transferred from Harewood Rubber Estates Ltd., to the Respondents so that the Respondents would have been in a position to transfer on 30th April. With regard to the leases they pointed out that the Respondents were not then in a position to convey the lands formerly comprised in the old leases. Their client was not prepared to accept the Conveyance of a portion of the Estate nor was he prepared to go into possession of the rest as a licensee. They referred to the terms of Clause 4 of the Agreement and gave the Respondents until 31st May to produce issue documents of title in respect of all the lands contracted to be sold and to satisfy them that they were in a position to give a good title and a registrable transfer. 10 20

No useful purpose would be served by a recital of the further stages of this correspondence. Ultimately on 4th June, 1956, the Appellant's Solicitors took up the attitude that the Respondents had broken their contract and demanded repayment of the two deposits of £50,000 each with interest and £150 for costs of investigating title. This demand was not complied with and on 11th June the Appellant commenced the present proceedings in which he claimed the return of his deposits with interest, damages and costs. The Respondents in due course filed their Defence but did not counterclaim for the balance of the purchase price. Their defence in brief was that at all material times the Appellant was well aware of the state of the titles of the lands, that the Respondents were at all material times able and willing to carry out all their obligations under the contract, that it was the Appellant who was in breach and that by reason of Clause 10 of the agreement the deposits were forfeited. 30 40

I pause here to observe that it is thus clear on the pleadings that neither party was asking for performance but that each party was regarding the contract as rescinded by a breach on the part of the other.

In the event the learned trial Judge gave judgment for the Respondents. He treated the contract of 8th November, 1955, as a straightforward contract for the sale of land by the Respondents to the Appellant. He took the view that time was not of the essence of the contract and that the Appellant's letter of 4th May, 1956, did not succeed as an effort to make time of the essence because the notice given was too short. He took the view that the contract contemplated the execution of transfers some time after the payment of the purchase price and he considered that the time fixed for transfer was "as soon as possible" after the payment of the purchase money, the expression "as soon as possible" being construed in the light of the knowledge which he held both parties possessed as to the state of the titles.

In the Court
of Appeal.

No. 8.

Judgment of
Thomson, C.J.

26th March,
1958
- continued.

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I find myself in agreement with much of the learned Judge's reasoning, but with great respect I think he has attributed insufficient importance to Clauses 1 and 4 of the contract.

30

The substance of the agreement is contained in Clause 1. "The Vendor will sell and the Purchaser will buy". The rest of the contract is ancillary to that and that is expressed in terms to be "subject to the condition contained in Clause 4". For myself I do not see how the parties could have made it clearer that the condition contained in Clause 4 is a condition precedent of the whole contract.

And what is that condition?

By Clause 4 the Purchase is conditional on the Vendor obtaining a renewal of the leases "so as to be in a position to transfer the same" and if the Vendor is unable to fulfil this condition "this Agreement shall become null and void and the Vendor shall refund the Purchaser the deposit already made notwithstanding anything contained in Clause 10".

40

It is to be observed that that condition is not for transfers of the leases or of any rights connected with the leases. It is that the leases must have been renewed in such a way that the Vendor is in a position to transfer them.

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of Appeal.

No. 8.

Judgment of
Thomson, C.J.

26th March,
1958

- continued.

The question then arises as to the date on which one has to enquire whether or not the condition has been fulfilled. The answer is clearly to be found in the words of Clause 9 which says "completion of the purchase shall take place on or before the 30th day of April, 1956," although by reason of the correspondence that has been recited that date was later extended to 31st May, 1956.

I do not think it is necessary to indulge in any detailed exegesis as to the meaning of the words "completion of the purchase". These words clearly do not include the transfer of the property because that is to take place "as soon as possible" after payment of the purchase money whatever these words may mean. But whatever the words "completion of the purchase" may mean they clearly include payment of the purchase money and on that point what is clear is made more clear by the provisions of Clause 10 "if from any cause other than the Vendor's default the purchase shall not be completed on the 30th April, 1956, or the second deposit of £50,000 shall not be made on or before 1st February 1956 then this Agreement shall become null and void and the deposit or deposits already made will be forfeited". All the Purchaser had to do under the contract was to pay the purchase price and according to Clause 10 if he had not paid that on 30th April, 1956, the Agreement was at an end and the deposits already made were forfeited.

What Clause 4 means, then, is that if on 30th April, 1956 (subsequently extended to 31st May, 1956) the Leases had not been renewed and the Vendor was not in a position to transfer then the contract became null and void and the Purchaser was entitled to have his deposits refunded.

The truth is that on 31st May, 1956, the leases had not been renewed at all and so there could be no question of the Respondents being in a position to transfer them. Nor indeed were they even in a position to take steps to transfer such rights by way of expectation as they possessed by reason of Harewood Rubber Estates Ltd., having had their applications for the leases placed on the Roll of Approved Applications. This is clear from the following letter addressed to the Respondents' Solicitors by the Collector of Land Revenue on 7th July, 1956 :-

"Harewood Rubber Estate Ltd.
Application for Assignment of
rights in Approved Applications.

In the Court
of Appeal.

No. 8.

Judgment of
Thomson, C.J.

26th March,
1958

- continued.

10

I have the honour to refer to your letter No. OLP/CYL dated 25.5.56 which was handed by Mr. Phips at my office on the same day and to inform you that Mr. Phips was requested to submit to this office 2 certified copies of the Company's resolution appointing Mr. Sydney Moore as Liquidator and 2 certified copies of the Agreement entered into with Mr. Khaw Bian Cheng, the prospective Purchaser before the application for assignment of rights in Approved Application can be considered. He was also requested to furnish information about the financial position etc., of Mr. Khaw Bian Cheng".

20

Shortly, then, the whole contract was subject to a condition. That condition was not fulfilled. In the circumstances I am of the opinion that the Appellant was entitled to treat the contract at an end and to have his deposits returned. I would therefore allow the appeal with costs.

Sgd. J.B. Thomson
CHIEF JUSTICE,
Federation of Malaya.

Kuala Lumpur,
26th March, 1958.

TRUE COPY

Sd/- Tneh Liang Peng
Ag. Private Secretary
to Chief Justice.

MAR. 28 1958

(TNEH LIANG PENG)

In the Court
of Appeal.

No. 9.

JUDGMENT OF WHYATT, C.J., Singapore

No. 9.
Judgment of
Whyatt, C.J.
31st March,
1958.

Khaw Bian Cheng Appellant

v.

Aberfoyle Plantations Ltd. Respondents

CORAM: Thomson, C.J., F. of M.
Whyatt, C.J., S.
Syed Sheh Barakbah, J.

JUDGMENT OF WHYATT, C.J., S.

This is an appeal from a judgment of Mr. Justice Good in which the learned judge held that the Plaintiff was not entitled to the return of a deposit which he had paid to the Defendants under the terms of an Agreement for the sale of a rubber estate situated in the State of Perak. The Agreement for the sale of this rubber estate was entered into between the Plaintiff and the Defendants on the 8th November 1955 and for reasons which will presently appear, it contained a number of unusual provisions.

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Two broad issues are raised in this appeal: first, the true construction of the agreement for sale, and secondly, the performance by the parties of their obligations under the agreement. The two issues are, of course, quite distinct and in my opinion a good deal of difficulty and confusion has arisen in this case owing to the failure of the parties to observe this distinction in the conduct of the controversy which has arisen between them. The issues, therefore, are twofold: construction of the Agreement and performance of the Agreement, but before proceeding to consider them in detail, it will be convenient to summarise the background of events which preceded the signing of this Agreement on the 8th November 1955.

30

The history of this matter may be said to begin in 1950. At the beginning of that year the whole of the land comprised in this Agreement was vested in the Harewood Rubber Estates Ltd. It consisted of approximately 1,340 acres of rubber plantation, of which 1,160 acres were held by direct grant from the Ruler of Perak and the remaining 180 acres were held under seven separate

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leases also from the Ruler of Perak. On the 18th June 1950, these seven leases expired but Harewood Rubber Estates Ltd., nevertheless remained in possession of the 180 acres pending the completion of arrangements for the renewal of the leases by the Ruler of Perak. On the 18th December 1950, the Harewood Rubber Estates Ltd., went into voluntary liquidation for the purpose of amalgamating with Aberfoyle Plantations Ltd., the Defendants in the present suit. A liquidator named Sydney Moore was appointed and on the 16th January 1951, Harewood Rubber Estates Ltd., and the liquidator entered into an Agreement with Aberfoyle Plantations Ltd., whereby they agreed to transfer all their lands, buildings, business and goodwill with the full benefit of all contracts and agreements to Aberfoyle Plantations Ltd., in exchange for the allotment of shares in Aberfoyle Plantations Ltd., to the shareholders of Harewood Rubber Estates Ltd. On the 6th September 1951 an application was made to the Collector of Land Revenue in the name of Harewood Rubber Estates Ltd., for the renewal of the seven leases but apparently nothing further happened for about a year. Consequently, on the 7th October 1952 and again on the 13th November, 1952, the applicant addressed further letters to the Collector on this matter and as a result the Collector wrote a letter addressed to the "Manager, Harewood Estate" on the 25th November 1952, which, after expressing regret for the delay in replying continued as follows :-

"The position is, as you are aware, that leases of State land 157-163 have expired, and that your application for new leases to replace those former leases is under consideration. The latter is unavoidably held up pending a decision of the State Government on the terms of alienation in cases of such renewals. Pending a decision, you have been permitted to continue in occupation of the land in question, and it is clear that when new leases are issued, an adjustment will be necessary to cover the period between the expiry of the old leases and the date of registration of the new leases. I suggest, therefore, that you may care to make a deposit for the year 1952 equivalent to the amount of quit rent imposed on the old leases which will be adjusted in due course. The quit rent formerly payable on leases 157-163 totalled \$558-90 and I suggest a deposit of this figure".

In the Court
of Appeal.

No. 9.

Judgment of
Whyatt, C.J.

31st March,
1958

- continued.

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The quit rent, or rather the deposit in lieu of quit rent, was duly paid to the Collector for the year 1952 and further payments of the same amount were made every subsequent year for the years 1953, 1954 and 1955 because there was still no decision during this period by the State Government as to what the quit rent for the renewals should be. Throughout this time, Harewood Rubber Estates Ltd., (In liquidation) and their liquidator, Sydney Moore, of Salisbury House, London Wall, London were the persons "permitted to continue in occupation", - to adopt the expression used in the Collector's letter of the 25th November 1952 - of the land comprised in the seven separate leases, but the actual running of this rubber estate was the responsibility of Aberfoyle Plantations Ltd., the present Defendants, who, as already mentioned, had agreed in 1951 to take over, as part of a scheme of amalgamation, the whole of the business of the Harewood Rubber Estates Ltd.

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If a decision had been reached by the State Government as to the terms for renewals during this period, the next step would have been to regularise the position by issuing new leases at the new quit rental in accordance with the Land Code and the Land Rules of the State of Perak. In the first place, the applications for the renewal of the leases would have had to be approved under Rule 5 of the Land Rules and an entry made, under Rule 6, in the Roll of Approved Applications. After recording the approval in the Roll of Approved Applications, the applicant might then be authorised, under Rule 7, to enter into occupation of the land "in expectation of registration of title" and subsequently he might have applied, under Rule 12, to assign his rights "by way of expectation of title". If the Collector had agreed, a transfer of such rights might have been effected by the cancellation of the original application and the approval of a new application lodged by the person to whom the rights had been assigned. The next and final step would have been for the Registrar of Titles to prepare the Leases and when this task was completed, it would have been the duty of the Collector to send a notice, pursuant to Section 72 of the Land Code, to the person entitled to receive the documents, requiring him to attend at the Land Office within three months in order to receive them and pay the necessary fees. Alternatively, instead

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of assigning his rights "by way of expectation of title", the applicant might have waited until his leases had been registered by the Registrar of Titles and then transferred his leases by executing a memorandum of transfer in accordance with the provisions of Section 112 of the Land Code. Therefore the position in 1955 with regard to the 180 acres which had been comprised in the seven expired leases was that the following action had to be taken before any title could be registered: first, a policy decision had to be made by the State Government as to the terms of new leases; secondly, the application lodged in 1951 had to be approved; and lastly, the processes prescribed by the Land Rules and the Land Code of Perak had to be completed to enable the leases to be registered.

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It was towards the end of 1955 that the Plaintiff first began to take an interest in this rubber estate. On the 20th October 1955 he wrote to the Penang Agents of the Aberfoyle Plantations Ltd., offering to purchase "Harewood Estate including all buildings and other fixed assets" for \$525,000 and after an exchange of letters, a formal agreement was drawn up and signed by the Plaintiff and the Defendants, by their attorney, on the 8th November 1955. This is the agreement which governs the rights of the parties in these proceedings, but before proceeding to examine its terms in detail, it will be convenient to summarise the surrounding circumstances which were known to the parties on the 8th November 1955 since it is in the light of those circumstances that the contract must be construed. The Plaintiff admitted in cross-examination that he was aware when he signed the Agreement that part of the land was comprised in leases which had expired some considerable time previously and that the Harewood Rubber Estates Ltd., and Aberfoyle Plantations Ltd., had been allowed to remain in possession of this land pending the issue of new leases. He was also aware, as appears from the agreement itself, that Harewood Rubber Estates Ltd., was owned by Aberfoyle Plantations Ltd. In other words the Purchaser knew the Vendors had at that date no title to this particular piece of land which they were selling but that the owner of the land, namely the State Government, had allowed the Vendors and Harewood Rubber Estates Ltd., to occupy the land for some considerable time past and was considering giving new leases to Harewood Rubber Estates Ltd., which was a company wholly owned by

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Aberfoyle Plantations Ltd. The same facts were, of course, known but in greater detail to the Vendors. It was contended on behalf of the Defendants that there was yet another fact to be treated as a surrounding circumstance, namely, an earlier draft of the agreement which contained certain words and phrases which had been omitted from the final draft when it was executed by the parties. In my view this argument is unsound and indeed, if it were accepted, it would result in the Court attempting to ascertain the intention of the parties, not from the words used by them in the instrument which they signed, but from the words used in a document which they decided not to sign. Therefore, although the learned Judge treated this earlier draft as a surrounding circumstance, I exclude it entirely from my consideration when embarking upon the construction of this agreement, which I now proceed to do.

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The first point which strikes one on reading the agreement is that it does not provide expressis verbis, that the Purchaser's obligation to pay the balance of the purchase price and the Vendor's obligation to transfer the title to the land shall be inter-dependent obligations to be performed on the same day. On the contrary it stipulates that the Purchaser's obligation is to pay the balance of the purchase price on or before a specified day, namely the 30th April 1956, and that "the Vendor shall as soon as possible thereafter execute a proper transfer ... of the property to the Purchaser ...". This is, of course, quite different from the normal provision in a contract for the sale of land where the contract almost invariably provides that the payment of the purchase price and the execution of the transfer of title shall be performed at one and the same time. The reason for this departure from common form in the present contract was, no doubt, due to the fact, well-known to both parties to the Agreement, that the title to 180 acres out of the total 1,340 acres comprised in the sale was awaiting a decision by the State Government regarding the terms for the issue of new leases. The Vendor knew that this question had been pending since 1951 and the Purchaser was aware that it had been pending for "some considerable time". To expect that a matter which had been pending with the State Government for the past six years would be decided within the next six months might be regarded as optimistic and to contract on the basis that it would be so decided,

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might be said to be unrealistic. Hence, with this knowledge of the surrounding circumstances in their minds, the parties provided in Clause 9 of the Agreement, not that the title should be transferred on the day the balance of the purchase money was paid, namely, on or before the 30th April 1956, but "as soon as possible thereafter". The Agreement, thus construed, does not appear to me to be an unreasonable or improbable bargain for the parties to make in the circumstances existing at the date of the contract.

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The Plaintiff, however, challenged this construction on two grounds. First, he contended that Clause 4 of the Agreement imposed an obligation on the Vendors additional to that imposed under Clause 9, namely, an obligation "to be in a position to transfer" on the 30th April 1956; and secondly, remarkable though it may seem, he contended that as the date, the 30th April 1956 had been omitted from Clause 4, the Court should supply the missing term. In view of the importance of Clause 4 to the Plaintiff's argument, it is desirable to set it out in detail:

"4. The purchase is conditional on the Vendor obtaining a renewal of the seven leases so as to be in a position to transfer the same to the Purchaser and if for any reason whatsoever the Vendor is unable to fulfil this condition, this Agreement shall become null and void and the Vendor shall refund the deposit or deposits already made under Clause 2

This clause, like the other provisions of the Agreement, must be construed in the light of surrounding circumstances. On the 8th November 1955, when the Agreement was signed, the policy of the State Government regarding the renewal of leases had not been decided and there was, therefore, always a possibility, though doubtless remote, that the State Government might decide not to renew them at all or that there might be some change in the law or some other event might supervene for which the Vendors were in no way responsible but which would, nevertheless, frustrate the fulfilment of the Agreement. The contract might have remained silent as to what was to happen if the Agreement was frustrated in this way, in which case it would have been for the Courts to decide whether the

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Vendors' obligation under Clause 9 "to execute a transfer as soon as possible" was an absolute promise, a breach of which rendered them liable to damages, or whether the occurrence of the frustrating event discharged the parties from further liability on the contract; but instead of remaining silent, the parties made express provision for this possibility and agreed in Clause 4 that the contract should, in the event of the Vendors being unable to obtain a renewal of the seven leases, become null and void. It is important to observe that the parties used the expression "if ... the Vendor is unable to fulfil this condition", not, "if ... the Vendor fails to fulfil this condition". The latter would, of course, have been appropriate if the Vendors had bound themselves by a promise to fulfil the condition but the former is appropriate to cover the inability of the Vendors to fulfil the condition owing to the refusal of the State Government to grant new leases or to some other cause, over which they were not able to exercise any control. In other words, Clause 4 is dealing with the possibility that the performance of the contract might become impossible and is not dealing with a wilful breach of the contract by the Vendors. It is in Clause 9 that the obligation of the Vendors to transfer this property is to be found and it is a misconception, in my view, to regard Clause 4 as imposing additional obligations on the Vendors in connexion with the transfer of this property; on the contrary, it provides for the release from their obligations if, owing to the occurrence of some event outside their control, they are unable to obtain a renewal of the leases and are thus unable to fulfil their promise under Clause 9 of the Agreement.

It is a further misconception, in my opinion, to suggest that the Court can or should imply in Clause 4 the words "on the 30th April 1956" so that the clause, with this added term, would read: "the purchase is conditional on the Vendor obtaining a renewal of the seven leases so as to be in a position to transfer the same on the 30th April 1956". It is, of course, well-established that a Court may imply a term in order to give business efficacy to a contract but as Jenkins, L.J. said in *Sethia Ltd. v. Rameshwar* 1950 A.E.R. 51, the Court will not do so "unless it is clear beyond a peradventure that both parties intended a given term to operate, although they did

not include it in so many words". It is to be observed that Jenkins, L.J. emphasised that both parties, not one party, must intend that the term should be implied. In the present agreement, there is an express term that the Vendors shall execute the transfer of the property, not on the 30th April but as soon as possible after the date of payment, which might be "on the 30th April or before the 30th April". How then can it be said that it is clear beyond a peradventure that both parties intended that the Vendors should be in a position to execute a transfer of the property on the 30th April? If the suggested implied term were written out in extenso in this Agreement, the resulting document would present a strange appearance for there would be one clause requiring the Vendors "to be in a position to transfer the property on the 30th April" and another clause requiring the Vendors "to execute a transfer of the property as soon as possible after the 30th April or as soon as possible after some date prior to the 30th April, if the Purchaser paid the purchase money prior to the 30th April". The parties might, I suppose, have drafted and agreed such a contract if they had wished but to suggest that it is clear beyond a peradventure that they intended to do so, is, in my view, an untenable proposition. Furthermore, if the Plaintiff wished to rely upon such an implied term, he should have pleaded it, instead of which he alleged as the Defendants' breach that they "failed to convey the said estate to the Plaintiff on or before the 31st May or at all". Nowhere is it alleged in the pleadings that the Defendants were to be in a position to transfer the property on the 30th April 1956. This contention appears for the first time in the Plaintiff's memorandum of appeal. It is, in effect, a new contention raised for the first time on appeal and in my view, it is an unsound one.

In my opinion, the obligations imposed on the parties by this Agreement may be conveniently summarised as follows: The Purchaser was obliged to pay a deposit of £50,000 on the 8th November 1955 and a further deposit of £50,000 on the 1st February 1956, and the balance of the purchase price, namely £425,000, on or before the 30th April 1956. The Vendors, for their part, were obliged (a) to give possession on payment of the balance of the purchase price, (b) to execute a transfer of the leases "as soon as possible" after receiving the

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purchase price, and (c) to perform certain subsidiary obligations such as giving the Plaintiff a Power of Attorney and permitting the Plaintiff to enter caveats against the land. There was some argument as to the meaning of "as soon as possible" in this context. The phrase has frequently been considered by the Courts and may be taken to mean within a reasonable time, with an undertaking to do it in the shortest practicable time. In my opinion, when the parties used this phrase on the 8th November 1955, at which date a decision regarding the terms of the new leases had been outstanding for six years, they must have contemplated that it might be several months after the 30th April 1956 before the leases could be issued and transferred to the Plaintiff; in other words, "as soon as possible" in this context might well be several months after the 30th April 1956.

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Such being the construction I place upon this Agreement, I now turn to consider the important and entirely separate question of the performance of the Agreement during the months which followed its execution on the 8th November 1955. First, I will consider the performance of the Plaintiff. He paid a deposit of £50,000 on the signing of the Agreement and a further deposit of £50,000 during February 1956 but he did not pay the balance of the purchase money "on or before the 30th April, 1956" although the Defendants were ready and willing to deliver possession of the land and chattels in accordance with the Agreement. Instead, his Solicitors wrote a letter on the 4th May requiring the Defendants to give a registrable transfer by the 31st May and stating that "such time must be deemed to be of the essence of the contract". The Plaintiff's Solicitors were no doubt intending to follow the procedure, long recognised by Courts of Equity, whereby a party guilty of undue delay in completing a contract for the sale of Land is notified by the other party that unless performance is completed within a reasonable time, the contract will be regarded as broken. But such a procedure was, in my view, entirely inappropriate in the present case as no date was named in the Agreement for the completion of the contract by the Vendors, the obligation of the Purchaser to pay the purchase price being quite different, as regards date and time, from the obligation of the Vendors to execute a transfer. In any case I agree with the learned judge in the Court below that the period of 27 days

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specified in the Plaintiff's Solicitors' letter was an unreasonably short notice, having regard to all the circumstances of this case. On 4th June 1956, the Plaintiff's Solicitors wrote a letter to the Defendants' Solicitors purporting to treat the failure to give a registrable transfer by the 31st May as a fundamental breach of the contract and a week later on the 11th June 1956 issued the plaint in these proceedings.

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31st March,
1958

- continued.

10 The performance of the Defendants was as follows: They were, at all times, ready and willing to give possession of the lands and chattels. On the 25th April 1956, the long-awaited policy decision regarding the leases was communicated to the Defendants' Solicitors by the Collector and on the next day, the 26th April 1956, the Solicitors passed on this news to the Solicitors for the Plaintiff. On the 16th May 1956, the Solicitors for the Defendants paid to the Collector the new rent in respect of these leases for the year 1956, namely \$1,108, the arrears of back rent amounting to \$5,255 for the years whilst waiting for a decision as to the new rent, a premium of \$200 per acre amounting to \$37,250 for the new leases and a deposit of \$950 for survey, making a total of \$44,563, and in consideration for these payments the name of Harewood Rubber Estates Ltd., was recorded on the Roll of Approved Applications. On the 23rd May 1956, the Defendants' Solicitors wrote to the Collector concerning the transmission of the approved applications of Harewood Rubber Estates Ltd., and on the 25th May 1956, a further letter was written by the Defendants' Solicitors to the Collector on the same subject but the replies to these letters did not issue from the Collector's Office until the 22nd June 1956 and 7th July 1956 respectively, by which time the Plaintiff had already commenced these proceedings. I might add that the Defendants' Solicitors were ready and willing on the 30th May 1956 to give the Plaintiff a power of attorney in accordance with the Agreement.

It will be seen from the foregoing that the Defendants were throughout seeking to fulfil their obligations under the Agreement, construed in the manner I have outlined earlier in this judgment. First, they were always ready and willing to give possession of this estate, secondly, from the 25th

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1958

- continued.

April 1956, when the State Government gave its decision, onwards and throughout May, the Defendants, through their Solicitors, were taking appropriate action with the Collector's Office with a view to executing proper transfers of the property as soon as possible, and thirdly, they were ready and willing to give the power of attorney. At no time were they in default, at no time did they evince an intention not to be bound by the Agreement. The Plaintiff, on the other hand, misconceiving his rights and duties under the Agreement, defaulted in payment of the balance of the purchase money on the 30th April 1956 and thus committed a fundamental breach of the Agreement which became final and irrevocable when he issued his plaint on the 11th June 1956.

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The last question is, what are the consequences of this breach by the Plaintiff? It is provided in Clause 10 of the Agreement that "if from any cause other than the Vendor's default, the purchase shall not be completed on the 30th April 1956 then the deposits already made will be forfeited". The Plaintiff, although the point was not mentioned in his pleadings, argued that this forfeiture clause could not operate unless 14 days notice had been given under Clause 13 which provides that "upon any default of the Purchaser to observe any stipulations on their part hereinbefore contained, the Vendor may by notice in writing limit a time not less than fourteen days for making good such default or neglect, and if the same shall not be made good within seven days may by a like notice rescind this Agreement and forfeit the deposit as agreed liquidated damages". It is, in my view, plain that this Clause is dealing with the breach of stipulations other than those mentioned in Clause 10; furthermore, it is clearly inapplicable when the Plaintiff commits a fundamental breach and thus repudiates the entire contract. It follows that the argument based on Clause 13 fails and that the deposits are forfeited under Clause 10.

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For these reasons I would affirm the judgment in the Court below and dismiss this appeal.

Sd. JOHN WHYATT
CHIEF JUSTICE, SINGAPORE.

SINGAPORE, 31st March, 1958.

Certified true copy,

Sd. Illegible

Private Secretary to the Hon. the Chief Justice,
Supreme Court,
Singapore, 6.

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In the Court
of Appeal.

will buy ALL THOSE pieces of land, known as
HARWOOD ESTATE, hereinafter described in the
Schedule hereto free from encumbrances

No.10.
Judgment of
Barakbah, J.
27th March,
1958
- continued.

Now, according to Clause 4 "The purchase is conditional on the Vendor obtaining a renewal of the seven (7) Leases described in the Schedule hereto so as to be in a position to transfer the same to the Purchaser and if for any cause whatsoever the Vendor is unable to fulfil this condition this Agreement shall become null and void and the Vendor shall refund to the Purchaser the deposit or deposits already made under Clause 2 hereof notwithstanding anything contained in Clause 10 hereof".

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Clause 9 states as follows :-

"Completion of the purchase shall take place on or before the 30th day of April 1956, and upon the Purchaser paying the balance of the purchase price to the Vendor, the Vendor shall as soon as possible thereafter execute a proper transfer or transfers of the property to the Purchaser"

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The date was later extended by the Plaintiff to the 31st May, 1956.

Clause 10 states as follows :-

"If from any cause other than the Vendor's default the purchase shall not be completed on the 30th April 1956, or the second deposit of ~~50,000/-~~ shall not be made on or before the 1st February 1956 as hereinbefore provided then this Agreement shall become null and void and the deposit or deposits already made will be forfeited".

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The language of these Clauses, as I interpret it, is that the Appellant should pay the balance of the purchase price and the Respondents should be in a position to transfer the leases on or before the 31st May, 1956. But on that date the leases were not registered in the name of the Respondents. Therefore, they (the Respondents) were not in a position to transfer the leases to the Appellant on that date. The actual transfer itself need not take place immediately but "as soon as possible thereafter".

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The Respondents alleged that there was a breach of Clause 10 and that in consequence the Agreement became null and void and the deposit already made should be forfeited. On the contrary, in my opinion, the Respondents had failed to fulfill the conditions of Clauses 1 and 4 of the said Agreement and the Appellant was entitled to the refund of his deposit. Therefore, the appeal should be allowed with costs.

In the Court
of Appeal.

No.10.

Judgment of
Barakbah, J.

27th March,
1958

- continued.

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Sgd. S.S. BARAKBAH,
JUDGE,
FEDERATION OF MALAYA.

Ipoh, 27th March, 1958.

TRUE COPY,
Sd. Illegible
Secretary to Judge,
Ipoh.

No. 11.

No.11.

ORDER

Order.

2nd June, 1958.

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BETWEEN: Khaw Eian Cheng of No.20,
Pykett Avenue, Penang Appellant

- and -

Aberfoyle Plantations Limited,
having an Office at Hongkong
Bank Chambers, Penang Respondents

(In the Matter of Civil Suit No. 106 of 1956

BETWEEN: Khaw Eian Cheng of No.20,
Pykett Avenue, Penang Plaintiff

- and -

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Aberfoyle Plantations Limited,
having an Office at Hongkong
Bank Chambers, Penang Defendants)

ORDER

This appeal coming on for hearing on the 24th, 25th and 26th days of February, 1958 before The Honourable Mr. Justice Thomson, Chief Justice,

In the Court
of Appeal.

No.11.

Order.

2nd June, 1958
- continued.

Federation of Malaya, The Honourable Sir John Whyatt, Chief Justice, Singapore and The Honourable Mr. Justice Syed Sheh Barakbah, Judge of the Supreme Court of the Federation of Malaya in the presence of Sir Roland St. John Braddell (with him Mr. S.K. Das) of Counsel for the Appellant and Mr. R.D. Hume of Counsel for the Respondents and upon reading the appeal record filed herein and upon hearing Counsel for the parties aforesaid.

THIS COURT DID on the 26th day of February, 1958, order that this Appeal should stand adjourned for judgment. 10

AND this Appeal coming on for judgment the 18th day of April, 1958 in the presence of Counsel for the parties aforesaid.

THIS COURT DOTH ORDER that this appeal be allowed and that the decision of the Court below given on the 8th day of November, 1957, be and is hereby set aside.

AND THIS COURT DOTH ORDER AND ADJUDGE that the Appellant do recover from the Respondents the sum of \$100,000/- with interest thereon at the rate of 6% per annum from the 7th day of June, 1956 till the date of this judgment and \$150/- being the Appellant's costs of investigating the titles and with interest on the aggregate sum hereby adjudged at the rate of 6% per annum from the date of this judgment till satisfaction. 20

AND THIS COURT DOTH FURTHER ORDER that the Respondents do pay to the Appellant his costs of the suit in the Court below and of this appeal to be taxed by the proper officer of the Court. 30

AND THIS COURT DOTH LASTLY ORDER that the sum of \$500/- deposited by the Appellant as security for the costs of the Appeal be paid out to the Appellant's Solicitors.

AND the application of the Appellant to this Court for a certificate for two Counsel in respect of the costs of this Appeal coming on for hearing the 2nd day of June, 1958 by consent of parties before The Honourable Mr. Justice Thomson, Chief Justice, Federation of Malaya and The Honourable Mr. Justice Syed Sheh Barakbah, Judge, Federation of 40

Malaya and upon reading the Notice of Motion dated the 28th day of April, 1958 and the Affidavit of Sudhir Kumar Das affirmed on the 23rd day of April, 1958 and filed herein and upon hearing Sir Roland St. John Braddell of Counsel for the Appellant and Mr. O.L. Phipps of Counsel for the Respondent.

In the Court
of Appeal.

No.11.

Order.

2nd June, 1958
- continued.

10 THIS COURT DOETH hereby certify that fees for two Counsel be allowed to the Appellant on the taxation of his costs of the Appeal as hereinbefore directed.

AND THIS COURT DOETH FURTHER ORDER that the Respondents do pay to the Appellant the costs of this Motion to be taxed by the proper officer of the Court.

Given under my hand and the seal of the Court this 2nd day of June, 1958.

Sd. T.V. Mahadevan
for Registrar,
Court of Appeal,
Federation of Malaya.

20 L.S.

No. 12.

ORDER GRANTING FINAL LEAVE TO APPEAL

BETWEEN: Khaw Bian Cheng of No.20,
Pykett Avenue, Penang Appellant
- and -

Aberfoyle Plantations Limited
having an Office at Hongkong
Bank Chambers, Penang Respondents

(In the Matter of Civil Suit No.106 of 1956)

30 BETWEEN: Khaw Bian Cheng of No.20,
Pykett Avenue, Penang Plaintiff
- and -

Aberfoyle Plantations Limited
having an Office at Hongkong
Bank Chambers, Penang Defendants

Before the Honourable Mr. Justice SYED SHEH

No.12.

Order granting
Final Leave to
Appeal.

2nd October,
1958.

In the Court
of Appeal.

BARAKBAH sitting as a single Judge in the
Court of Appeal

No.12.

Order granting
Final Leave to
Appeal.

2nd October,
1958
- continued.

In open Court

UPON MOTION made unto the Court this day by Counsel for the Respondents above-named and upon reading the Affidavit of Oliver Lyons Phipps sworn on the 16th day of September 1958 and filed herein, and upon hearing what was alleged by Counsel for the Respondents and for the Appellant IT IS ORDERED that final leave is hereby granted to the Respondents to appeal to His Majesty the Yang Di-Pertuan Agong from the Judgment of the Court of Appeal herein dated the 18th day of April 1958.

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DATED this 2nd day of October 1958

By the Court

Sd. E.E. Sim
Senior Assistant Registrar

13/10.

(L.S.)

E X H I B I T S

D.1. - AGREEMENT WITH NOTARY PUBLIC
CERTIFICATE ATTACHED

I, FELIX WILLIAM GRAIN, of the City of London
Notary Public duly admitted and sworn practising
in the said City DO hereby Certify and Attest

10 THAT the hereunto annexed Document is a true
and faithful copy of an original Agreement made
the sixteenth day of January One thousand nine hun-
dred and fifty-one between HAREWOOD RUBBER ESTATES
LIMITED, the Vendor Company, and SYDNEY MOORE, the
Liquidator thereof, of the one part and ABERFOYLE
PLANTATIONS LIMITED, the Purchasing Company, of
the other part; the said copy having been duly
examined by me with the original Agreement afore-
said which has been unto me this day produced for
the purpose of such examination

20 IN TESTIMONY WHEREOF I have hereunto set my
hand and affirmed my Seal of Office in the
City of London aforesaid this 12th day of
February One thousand nine hundred and fifty-
one.

Sgd. F.W. Grain,

NOTARY PUBLIC,
LONDON.

(L.S.)

(Stamp)
(10/-)

STAMP OFFICE,
PENANG.
Impd. Stamp 5/-
25. 4. 51.

30 A N A G R E E M E N T made the Sixteenth day
of January One thousand
nine hundred and fifty-one B E T W E E N HARE-
WOOD RUBBER ESTATES LIMITED whose Registered Of-
fice is 411/419 Salisbury House, London Wall, Lon-
don, E.C.2. (hereinafter called "the Vendor
Company") and SYDNEY MOORE of 411/419, Salisbury

Exhibits

D.1.

Agreement with
Notary Public
Certificate
attached.

16th January,
1951.

H. De PINNA
and
JOHN VENN.
Incorporating
COMERFORD & CO.

NOTARIES PUBLIC
LONDON.

38 GRESHAM HOUSE
OLD BROAD ST.
E.C.2.

and at
WHITEHALL HOUSE
WHITEHALL,
S.W.1.

TELEPHONES:
LONDON WALL 2906
WHITEHALL 1496

JOHN VENN
F.C. GILES
F.W. GRAIN
JOHN M. DIMOND
S.C. CROWTHER-
SMITH.

Solicitors and
General Type-
writing Co. Law
Stationers and
Lithographers,
3, New Square,
Lincoln's Inn,
E.C.2.
23, College Hill,
Cannon Street,
E.C.4.
10, Union Court,
Old Broad St.,
E.C.2., and at
1, Albemarle
Street, W.1.

Exhibits

D.1.

Agreement with
Notary Public
Certificate
attached.

16th January,
1951

- continued.

House London Wall in the City of London the Liquidator thereof (hereinafter called "the Liquidator" which expression shall, where the context so admits include the Liquidator for the time being of the Vendor Company) of the one part and ABERFOYLE PLANTATIONS LIMITED whose registered office is 411/419 Salisbury House, London Wall aforesaid (hereinafter called "the Purchasing Company") of the other part

W H E R E A S the Vendor Company was incorporated in the year One thousand nine hundred and twenty-five under the Companies Act 1908 to 1917 and has an authorised share capital of One hundred and ten thousand pounds divided into One million one hundred thousand shares of Two shillings each all of which have been issued and are fully paid up

10

AND WHEREAS by a Special Resolution of the Vendor Company passed at an Extraordinary General Meeting of the Company held on the Eighteenth day of December One thousand nine hundred and fifty it was resolved

20

That it is desirable to amalgamate the undertakings of ABERFOYLE PLANTATIONS LIMITED; CHUNGLOON RUBBER ESTATE (1932) LIMITED; DURIAN SEBATANG RUBBER ESTATES (1931) LIMITED; EAGLEHURST RUBBER ESTATES LIMITED; HAREWOOD RUBBER ESTATES LIMITED; JABI RUBBER PLANTATIONS (1932) LIMITED; JOHORE RUBBER LANDS LIMITED; MERAH RUBBER ESTATES (1931) LIMITED; SUNGAI GETAH RUBBER ESTATES LIMITED and TONGHURST RUBBER ESTATES (1932) LIMITED and accordingly that (i) the Company be wound up voluntarily and that Mr. Sydney Moore of 411-419, Salisbury House, London Wall, London, E.C.2. be and he is hereby appointed Liquidator for the purpose of such winding up and (ii) the draft Agreement submitted to this meeting and expressed to be made between this Company and its Liquidator of the one part and Aberfoyle Plantations Limited of the other part be and it is hereby approved and the said Liquidator be and he is hereby authorised and directed pursuant to Section 287 of the Companies Act, 1948 to enter into an Agreement with Aberfoyle Plantations Limited in the terms of the said draft and to carry the same into effect with such (if any) modifications as may be thought expedient.

30

40

AND WHEREAS the Purchasing Company was incorporated in the year One thousand nine hundred and thirty four under the Companies Act 1929 and at the date of this Agreement has an authorised share capital of Two hundred and fifty thousand pounds divided into Two million five hundred thousand shares of Two shillings each having increased its capital for the purpose (inter alia) of acquiring the undertaking of the Vendor Company

Exhibits

D.1.

Agreement with Notary Public Certificate attached.

16th January, 1951

- continued.

10 NOW IT IS HEREBY AGREED as follows :-

1. THE Vendor Company and the Liquidator shall transfer and the Purchasing Company shall take over as on the Eighteenth day of December One thousand nine hundred and fifty all and singular the lands, buildings, concessions, patents, goods, chattels, moneys, insurances, credits, debts, bills, notes and things in action of the Vendor Company and the undertaking, business and goodwill thereof with the full benefit of all contracts and agree-
20 ments and of all securities in respect of the said things in action to which the Vendor Company is entitled and all other the real and personal property of the Vendor Company whatsoever and where-
soever

2. IN addition to the matters specified in the last preceding clause the Vendor Company and the Liquidator shall transfer to the Purchasing Company all claims under War Risks (goods) Insurance and all claims for War Damage and Rehabilitation
30 lodged by the Vendor Company or to which it may be entitled and the right to make and pursue all or any such claims and to receive any or all compensation or monies due or payable to the Vendor Company in respect thereof

3. THE Vendor Company shall pay all the costs and expenses of and incidental to the said Winding up and the carrying of the said transfer into effect. Subject thereto the Purchasing Company shall undertake, pay, satisfy, and discharge all the
40 debts liabilities and obligations of the Vendor Company whatsoever and shall adopt perform and fulfil all contracts and engagements now binding on it and shall at all times keep the Vendor Company and its contributors and the Liquidator indemnified against such debts, liabilities, contracts and engagements and against all actions, proceedings, costs, damages, claims and demands in respect thereof.

Exhibits

D.1.

Agreement with
Notary Public
Certificate
attached.

16th January,
1951

- continued.

4. AS the residue of the consideration for the said transfer the Purchasing Company shall allot to the Liquidator or his nominees One hundred and ninety eight thousand two hundred and ten shares of Two shillings each credited as fully paid up in the Purchasing Company to the intent that such shares may be distributed among the members of the Vendor Company as nearly as may be in accordance with their rights and interest

5. AS regards the proportion of the shares in the Purchasing Company to be allotted under paragraph 4 hereof which but for their dissent would have been claimable by those members of the Vendor Company who shall effectually dissent from the Special Resolution aforesaid in accordance with the provisions of Section 287 of the Companies Act 1948 the Liquidator shall use his best endeavours to sell the same for what they will fetch and the proceeds of sale thereof after deducting all expenses of and incidental to the sale shall be applied in or towards payment of the amounts which shall become payable to such dissentient members in accordance with Section 287 of the said Act and in so far as the same shall be deficient the Purchasing Company shall make up the deficiency

6. THE Purchasing Company shall accept without investigation such title as the Vendor Company has to all the real and personal property and premises hereby agreed to be transferred

7. THE Vendor Company and the Liquidator shall as soon as conveniently may be execute and do all such assurances and things as shall be reasonably required by the Purchasing Company for vesting in it the said property hereby agreed to be transferred or any part thereof and giving to it the full benefit of this Agreement

8. UNTIL the dissolution of the Vendor Company the Purchasing Company shall at its own expense produce and show at such times and to such persons and in such places as the Liquidator shall require all the books, documents and papers of the Vendor Company agreed to be hereby sold

9. THE Purchasing Company shall subject to the consent of the Offices and to the completion of the transfer hereunder be entitled to the benefit of the current insurances of the premises

10. THE Purchasing Company shall cause this Agreement and also a sufficient contract constituting the title of the allottees to the allotments of shares under paragraph 4 hereof, to be duly filed with the Registrar of Companies pursuant to Section 32 of the Companies Act 1948.

Exhibits

D.1.

Agreement with Notary Public Certificate attached.

16th January, 1951

- continued.

10 IN WITNESS whereof the Vendor Company and the Purchasing Company have caused their respective Common Seals to be hereunto affixed and the Liquidator has set his hand and seal the day and year first before written

THE COMMON SEAL OF HAREWOOD)
RUBBER ESTATES LIMITED was) (SEAL)
hereunto affixed in the) (of)
presence of :-) (Company)

S. Moore Liquidator

SIGNED SEALED AND DELIVERED)
by the before named SYDNEY) S. MOORE (L.S.)
MOORE in the presence of :-)

20 E.W. Foster,
64, Pagehurst Road,
Addiscombe.

Coy. Accountant.

THE COMMON SEAL OF ABERFOYLE)
PLANTATIONS LIMITED was here) (SEAL)
unto affixed in the presence) (of)
of :-) (Company)

P.J. Burgess,
Director.

30 On behalf of the Secretaries
E.B. RIDSDALE & CO., LTD.

W.W. Halliday,
Director.

Secretary

Exhibits

D.2. - POWER OF ATTORNEY WITH NOTARY PUBLIC
CERTIFICATE ATTACHED

D.2.

Power of
Attorney with
Notary Public
Certificate
attached.

PENANG
Impd. Stamp
100 Cents
27.11.51.

1st November,
1951.

I, JOHN MARTYN DIMOND of the City of London
Notary Public duly admitted and sworn practising
in the said City Do hereby Certify and Attest that
on the day of the date hereof the Common Seal of
Harewood Rubber Estates Limited (in voluntary
liquidation) was affixed in my presence and in that
of SYDNEY MOORE who is known to me to be the duly
appointed Liquidator of the said Company, who
thereupon in my presence signed the said Power of
Attorney as witnessing the affixing of the said
Seal.

10

H. De PINNA
and
JOHN VENN
Incorporating
COMERFORD & CO.
NOTARIES PUBLIC
LONDON.

38, GRESHAM
HOUSE,
OLD BROAD ST.,
E.C.2.

AND I DO FURTHER CERTIFY that at the same
time the said Power of Attorney was signed, sealed
and delivered in due form of English law in my
presence by the said SYDNEY MOORE.

20

and at
WHITEHALL HOUSE
WHITEHALL,
S.W.1.

AND I DO LASTLY CERTIFY that the said Power
of Attorney thus sealed and signed validly binds
the said Company according to law

TELEPHONES:
LONDON WALL
2906
WHITEHALL 1496

IN TESTIMONY WHEREOF I have hereunto set my
hand and affixed my Seal of Office in the City of
London aforesaid this first day of November One
thousand nine hundred and fifty-one.

JOHN VENN
F.C. GILES
F.W. GRAIN
JOHN M. DIMOND
S.C. CROWTHER-
SMITH.

(N.S.)

Sgd. John M. Dimond
Notary Public

30

A POWER OF ATTORNEY created the first day of
November One thousand nine hundred and fifty-one
by the HAREWOOD RUBBER ESTATES LIMITED having its
registered office at Numbers 411/419, Salisbury
House, London Wall, London, E.C.2. England (herein-
after called "the Vendor Company") acting by Sydney
Moore of the same address, the Liquidator of the
Vendor Company (hereinafter called "the Liquida-
tor")

WHEREAS by a Special Resolution of the Vendor

40

Exhibits

D.2.

Power of
Attorney with
Notary Public
Certificate
attached.

1st November,
1951

- continued.

10 Company passed at an Extraordinary General Meeting of the Vendor Company held at Winchester House, Old Broad Street, London, E.C.2. England on the Eighteenth day of December One thousand nine hundred and fifty IT WAS RESOLVED inter alia that it was desirable to amalgamate the undertakings of Aberfoyle Plantations Limited; Chungaloon Rubber Estate (1932) Limited; Durian Sebatang Rubber Estates (1931) Limited; Eaglehurst Rubber Estates Limited; Harewood Rubber Estates Limited; Jabi Rubber Plantations (1932) Limited; Johore Rubber Lands Limited; Merah Rubber Estates (1931) Limited; Sungei Gettah Rubber Estates, Limited; and Tonghurst Rubber Estates (1932) Limited and accordingly that (1) the Vendor Company be wound up voluntarily and that the Liquidator be and he was thereby appointed Liquidator for the purpose of such winding up and (2) the draft agreement submitted to the meeting and expressed to be made between the Vendor Company and the Liquidator and the
20 said Aberfoyle Plantations Limited (hereinafter called "the Purchaser Company") be and it was thereby approved and the Liquidator was thereby authorised to enter into the said Agreement with the Purchaser Company hereinafter recited and to carry the same into effect.

30 AND WHEREAS by an Agreement dated the Sixteenth day of January One thousand nine hundred and fifty-one between the Vendor Company and the Liquidator of the one part and the Purchaser Company of the other part IT WAS AGREED (inter alia) for the consideration therein stated that the Vendor Company and the Liquidator should transfer to the Purchaser Company (inter alia) all and singular the lands and buildings of the Vendor Company.

AND WHEREAS the Vendor Company is the registered proprietor of the lands and hereditaments more particularly described in the Schedule hereto all of which are situate in the Federation of Malaya

40 NOW THIS DEED WITNESSETH that the Vendor company and the Liquidator and each of them hereby appoint CORRIE GRUMITT and JOHN HENDERSON REID both of Penang in the Federation of Malaya jointly and each of them severally to be the Attorneys and Attorney of the Vendor Company and of the Liquidator and each of them in the names or name of the Vendor Company and of the Liquidator or either of

Exhibits

D.2.

Power of Attorney with Notary Public Certificate attached.

1st November, 1951

- continued.

them to do and execute all or any of the acts deeds and things following, that is to say :-

1. Generally to do all acts and things which may be necessary or desirable for effectually completing the transfer of the said lands and hereditaments described in the Schedule hereto and of all other lands and hereditaments which the Vendor Company may be entitled to, to the Purchaser Company and for effectually vesting the same in the Purchaser Company

10

2. To sign and execute or cause to be signed executed and registered all such transfers assurances and documents and to do all such things as may be requisite or desirable for transferring to and vesting in the Purchaser Company all or any of the said lands and hereditaments and all the estate right title and interest of the Vendor Company therein

3. To cause these presents or a certified copy hereof to be registered in the Supreme Court of the Federation of Malaya in accordance with the Powers of Attorney Ordinance and in such Land Offices and other Government Offices as may be requisite or desirable.

20

AND the Vendor Company and the Liquidator hereby agree to ratify and confirm whatsoever the said Attorneys or either of them shall lawfully do or cause to be done in or about the premises under or by virtue of these presents

30

IN WITNESS whereof the Vendor Company has caused its Common Seal to be hereunto affixed and the Liquidator has hereunto set his hand and seal the day and year first before written

TIE SCHEDULE ABOVE REFERRED TO

SCHEDULE OF TITLE DEEDS

STATE OF PERAK

<u>TITLE NOS:</u>	<u>LOT NO.</u>	<u>MUKIM</u>	<u>DISTRICT</u>	<u>AREA</u>		
				<u>A.</u>	<u>R.</u>	<u>P.</u>
Certificate of Title No.787	6028	Sungei Trap	Kinta	16	2	20
" No.11607	31665	"	"	92	1	30
Grant for Land	3063 1509	"	"	92	3	28

40

SCHEDULE (Contd.)Exhibits

		<u>LOT</u>	<u>MUKIM</u>	<u>DIS-</u>	<u>AREA</u>			<u>D.2.</u>	
<u>TITLE NOS:</u>		<u>NO.</u>		<u>TRICT</u>	<u>A.</u>	<u>R.</u>	<u>P.</u>	Power of Attorney with Notary Public Certificate attached.	
	Grant for		Sungei						
	Land	4989	10062	Trap	Kinta	211	1	30	
	"	5271	11406	"	"	301	0	00	
	"	7447	12852	"	"	194	2	38	
	"	8711	14757	"	"	199	1	27	
	"	8995	15135	"	"	49	1	05	
10	Lease	157	30460	"	"	1	0	21	
	"	158	30461	"	"		3	20	
	"	159	30462	"	"	23	1	25	
	"	160	30463	"	"	15	1	33	
	"	161	30464	"	"	63	2	10	
	"	162	30465	"	"	2	1	25	
	"	163	30466	"	"	78	2	20	
						<u>1,343</u>	<u>1</u>	<u>12</u>	

20 THE COMMON SEAL OF HAREWOOD)
 RUBBER ESTATES LIMITED was)
 hereunto affixed in the)
 presence of :-)
 EMBOSSED SEAL OF HAREWOOD RUBBER ESTATES LIMITED

Sd. S. Moore,
 Liquidator.

30 SIGNED SEALED AND DELIVERED)
 by the above-named SYDNEY)
 MOORE in the presence of :-)
 Sd. S. MOORE (L.S.)

Sd. John M. Dimond,
 Notary Public
 London,
 England.

Registered No. P/A. 671/51
 True Copy deposited in the Supreme Court,
 Penang, on 14th December, 1951.

(L.S.) Sd. J. Loo Clerk.
 Sd. J.W.D. Ambrose,
 Senior Asst. Registrar,
 Supreme Court, Penang.

Exhibits

D.4.

D.4. - LETTER COLLECTOR OF LAND REVENUE TO
HAREWOOD ESTATE

Letter,
Collector of
Land Revenue
to Harewood
Estate.

25th November,
1952.

No.5 in KLO. 1208/52.

Manager,
Harewood Estate,
Batu Gajah.

KINTA DISTRICT OFFICE,
BATU GAJAH,
25th November, 1952.

QUIT RENT

I refer to your letters of 7th October and 13th November on the above subject, and regret the delay in replying. The position is, as you are aware, that Leases of State Land 157 - 163 have expired, and that your application for new leases to replace these former leases is under consideration. The latter is unavoidably held up pending a decision of the State Government on the terms of alienation in cases of such renewals. Pending a decision, you have been permitted to continue occupation of the land in question, and it is clear that when new leases are issued, an adjustment will be necessary to cover the period between the expiry of the old leases and the date of registration of the new leases. I suggest, therefore, that you may care to make a deposit for the year 1952 equivalent to the amount of quit rent imposed on the old leases, which will be adjusted in due course. The quit rent formerly payable on Leases 157 - 163 totalled \$558.90, and I suggest a deposit of this figure.

10

20

30

Sd. J. Love,

COLLECTOR OF LAND REVENUE,
KINTA.

P.1.(1) - LETTER PLAINTIFF TO DEFENDANTSExhibits

P.1. (1)

Khaw Bian Cheng
No.20 Pykett Avenue,
PENANG.

Letter
Plaintiff to
Defendants.

20th October, 1955.

20th October,
1955.

Messrs. Grumitt, Reid & Co., Ltd.,
Agents, ABERFOYLE PLANTATIONS LIMITED,
Hongkong Bank Chambers,
Penang.

10 Dear Sirs,

I hereby make an offer of Dollars Five hundred and twenty five thousand (/\$525,000/-) for the purchase of HAREWOOD ESTATE, Batu Gajah, including all buildings and other fixed assets - this offer to hold good until 1st November 1955, so as to give you time to submit same to the Directors of Aberfoyle Plantations Ltd.

20 If this offer is accepted by your Board, then I will deposit the sum of \$50,000/- (Dollars fifty thousand) with the Company on 1st November 1955, and a further sum of \$50,000/- on the 1st February 1956, and to pay the balance of the purchase money on or before 30th April 1956. Should these payments not be made by me to the Company on the due dates, then the Company will have the right to cancel the sale and to retain the deposits already made; the Estate only to be handed over to me when the purchase money has been paid in full, and all profits earned by the Estate prior to such date of completion to be for account of Aberfoyle Plantations Ltd.

30

Yours faithfully,

Sd. K. Bian Cheng.

Exhibits

P.1.(2) - LETTER DEFENDANTS TO PLAINTIFF.

P.1. (2)
Letter
Defendants to
Plaintiff.
31st October,
1955.

GRUMITT, REID & CO., LTD. HONGKONG BANK CHAMBERS,
(3rd Floor)
P.O. Box No. 537.
PENANG.
31st October, 1955.

Khaw Bian Cheng, Esq.,
No. 20 Pykett Avenue,
Penang.

Dear Sir,

10

Harewood Estate

With reference to your letter of the 20th instant, we have received advice from London to accept your offer dated 20th October for the purchase of the above Estate.

We shall be obliged if you will kindly call at this Office to complete the necessary papers, and at the same time, let us have your cheque for \$50,000/--.

Yours faithfully,
ABERFOYLE PLANTATIONS LIMITED,
Grumitt, Reid & Co., Ltd., Agents.

20

Sd. Illegible,
Director.

P.1. (3)

P.1.(3) - LETTER DEFENDANTS TO PLAINTIFF

Letter
Defendants to
Plaintiff.
31st October,
1955.

31st October, 1955.

Khaw Bian Cheng, Esq.,
20, Pykett Avenue,
Penang.

Dear Sir,

30

Harewood Estate

Pending your completion of purchase of the above Estate, we hereby give you permission to do boring for minerals on the above property, provided no damage is done to the rubber trees, and if any damage is caused, the Company will be duly compensated.

Yours faithfully,
ABERFOYLE PLANTATIONS LIMITED
Grumitt, Reid & Co., Ltd., Agents.

40

Director.

P.1.(4) - LETTER DEFENDANTS TO PLAINTIFF

Exhibits

P.1. (4)

1st November, 1955

Khaw Bian Cheng, Esq.,
20, Pykett Avenue,
Penang.

Letter
Defendants to
Plaintiff.

1st November,
1955.

Dear Sir,

We confirm that we will not make any forward sales applicable to Harewood Estate subsequent to 30th April 1956.

10

Yours faithfully,

ABERFOYLE PLANTATIONS LIMITED,
Grumitt, Reid & Co., Ltd., Agents

Director.

P.1.(5) - LETTER PLAINTIFFS SOLICITORS TO
DEFENDANTS SOLICITORS

P.1. (5)

2nd November, 1955

Messrs. Hogan, Adams & Allan,
Advocate & Solicitors,
Penang.

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.

2nd November,
1955.

20 Dear Sirs,

Re: Harewood Estate

We send you herewith Agreement for Sale (in duplicate) for your clients' signature together with the approved draft for comparison.

30

Enclosed herein is our client's two cheques for the aggregate sum of \$50,000/- being payment of deposit and to account of the agreed purchase price. Please hold the cheques on our behalf until the agreement has been duly signed and returned to us for our client's execution.

Yours faithfully,

Sd. Eng Cheng & Gim Hoe.

Exhibits

D.5.

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.
2nd November,
1955.

D.5. - LETTER PLAINTIFF'S SOLICITORS TO
DEFENDANT'S SOLICITORS

EXHIBIT D.5 in C.S. 106/56

ENG CHEANG & GIM HOE
Advocates & Solicitors.

53, Beach Street,
Telephone: 4230

Our Ref: LGH/OCS

Penang, 2nd November, 1955.

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
Penang.

10

Dear Sirs,

Re; Harewood Estate

We send you herewith Agreement for Sale (in duplicate) for your clients' signature together with the approved draft for comparison.

Enclosed herein is our client's two cheques for the aggregate sum of \$50,000/- being payment of deposit and to account of the agreed purchase price. Please hold the cheques on our behalf until the agreement has been duly signed and returned to us for our client's execution.

20

Yours faithfully,

Sd. Eng Cheang & Gim Hoe.

Encls:

TRUE COPY

Sd. Ng Yeow Heang,
Secretary to Judge,
Ipoh.

D.6.

Draft Agreement
for Sale.
8th November,
1955.

D.6. - DRAFT AGREEMENT FOR SALE

Approved Sgd. R.D. Hume. 2/11/55.

AN AGREEMENT made the 8th day of November 1955, BETWEEN ABERFOYLE PLANTATIONS LIMITED (owning HAREWOOD ESTATES) a Company incorporated in England and having its registered office at No. 411 - 419 Salisbury House, London Wall, London, E.C.2. (hereinafter called the "Vendor") of the one part and KHAW BIAN CHENG of No. 20 Pykett Avenue, Penang, Merchant (hereinafter called the "Purchaser" which expression shall where the context so admits include his nominee or nominees) of the other part

30

WHEREBY IT IS AGREED as follows :-

Exhibits

D.6.

Draft Agreement
for Sale.

8th November,
1955.

- continued.

10 1. Subject to the condition contained in Clause 4 the Vendor will sell and the Purchaser will buy ALL THOSE pieces of land, known as HAREWOOD ESTATE hereinafter described in the Schedule hereto free from incumbrances Together with all the buildings erected thereon and the fixed plant and machinery and rubber utensils, but exclusive of all moveable property in or about the said pieces of land which is not directly connected with the present working of the Estate, and also exclusive of all refunds of cesses by the Rubber Industry (Replanting) Board to be made by the Board in respect of cesses paid by the Vendors on or before the date of completion of the sale

20 2. The price for the said purchase is the sum of Dollars Five hundred and twenty five thousand (₹525,000/-) of which the sum of Dollars Four hundred and fifty thousand approximately shall be for all the said land and buildings thereon known as HAREWOOD ESTATE described in the Schedule hereto at the date of taking over, and the balance shall be for the fiscal value of the plant and machinery and utensils capable of manual delivery. To account of this sum of ₹525,000/- the Purchaser shall pay to the Vendor the sum of ₹50,000/- on the signing of this Agreement, a further sum of ₹50,000/- on or before 1st February 1956, and to pay the balance on or before 30th April 1956. The Purchaser shall only be entitled to enter into possession of the Estate after the purchase money of ₹525,000/- has been paid in full, and all profits earned prior to that time shall belong to the Company.

30 3. According to the records kept by the Vendor the following is the acreage of the said pieces of land :-

40	Mature Rubber	...	...	1,055.75	acres
	Immature Rubber	...	...	87.50	"
	Building Site	...	...	6.00	"
	Land suitable for planting			48.50	"
	Land unsuitable for planting			<u>145.50</u>	"
				<u>1,343.25</u>	acres

The Vendor, however, does not guarantee the correctness thereof and the Purchaser must accept the same as correct.

Exhibits

D.6.

Draft Agreement
for Sale.

8th November,
1955

- continued.

The Purchaser must also accept as correct the areas mentioned in the several documents of title in which the said pieces of land are comprised.

The description contained in the Schedule hereto of the said pieces of land be accepted as correct in all respects and any error, omission or misdescription therein contained shall not invalidate the sale nor shall either party require compensation of the other in respect thereof.

4. The purchase is conditional on the Vendor obtaining at the Vendor's expense a renewal of the ^{seven (7)} ~~eight (8)~~ mining Leases described in the Schedule hereto so as to be in a position to transfer the same to the Purchaser and if for any cause whatsoever the Vendor is unable to fulfil this condition this Agreement shall become null and void and the Vendor shall refund to the Purchaser the deposit or deposits already made under Clause 2 hereof notwithstanding anything contained in Clause 10 hereof

10

5. The land hereby agreed to be sold is sold subject to all quit and other rents, incidents of tenure, rights of way, leases, tenancies agreements, permits, water rights, easements etc., (if any) and the Purchaser must be satisfied with the order and condition of the plantations and premises and the buildings, factory plant and equipment thereof and the appurtenances thereto and no objection shall be made and no compensation nor reduction in the purchase price shall be claimed by the Purchaser in respect thereof and the sale shall in no way be affected by reason of any loss or damage by fire to any buildings and/or machinery or by strikes, or by the acts of bandits or any cause whatsoever beyond the control of the Vendor before completion of the sale even though such damage shall be due to the negligence or carelessness of the Vendor or its employees but the Vendor shall pay to the Purchaser any sums recovered under existing insurances in the event of any such damage being recovered by insurance.

20

30

40

6. The sale shall not be affected by any action of the Government or other local authority taking or having taken to acquire or requisition or otherwise deal with either the whole or any portion or part of the property hereby agreed to be sold.

7. The Purchaser shall take over, purchase and

before the date hereinafter fixed for completion.

pay for at cost to the Vendor all rice, grain, foodstuffs, provisions and other consumable stores, tools, utensils, manure, fertilisers and other estate stocks as at midnight on the day immediately

Exhibits

D.6.

Draft Agreement
for Sale.8th November,
1955

- continued.

8. All rubber harvested and on hand as at midnight on the day immediately preceding the date of completion of sale, including rubber (if any) then unfinished and in warehouse or elsewhere in the land comprised in the sale and all rubber (if any) in process of preparation and treatment shall belong to and remain the property of the Vendor and the Purchaser shall at cost complete and finish to a saleable condition any rubber belonging to the Vendor and as and when such rubber shall be finished and ready for packing consign the same at the cost and expense of the Vendor to the Agents of the Vendor for sale on behalf of the Vendor

9. Completion of the purchase shall take place at the offices of Messrs. Grumitt, Reid & Co. Ltd. on or before the 30th day of April 1956, and upon the Purchaser paying the balance of the purchase price to the Vendor, the Vendor shall as soon as possible thereafter execute a proper transfer or transfers of the property to the Purchaser or as he shall direct, such transfer or transfers to be prepared and perfected, save as to the execution thereof by the Vendor, by and at the expense of the Purchaser and in the meantime the Vendor agrees to allow the Purchaser to lodge a caveat against all the lands pending the execution of the said transfer or transfers and the Vendor shall if the Purchaser so requires execute in favour of the Purchaser an irrevocable power of attorney authorising the Purchaser to execute all such transfers and documents as shall be necessary for effectually vesting in the Purchaser the said Mining Leases.

10. If from any cause other than the Vendor's default the purchase shall not be completed on the 30th April 1956, or the second deposit of \$50,000/- shall not be made on or before the 1st February 1956 as herebefore provided then this agreement shall become null and void and the deposit or deposits already made will be forfeited.

11. Upon actual completion of the purchase the Purchaser shall be entitled to possession of the property hereby agreed to be sold, and shall as

Exhibits

D.6.

Draft Agreement
for Sale.8th November,
1955

- continued.

from that day be liable for all outgoings and shall repay to the Vendors all moneys expended by it in complying in whole or in part with any requirements of the Government or of any local authority in respect of the property or any roads, ways, sewers adjoining the same or otherwise, of which notice may be given to the Vendor after the date of this Agreement.

The Vendor shall give the Purchaser immediate notice of any such requirements, and shall only expend money in compliance therewith upon the Purchaser neglecting so to do within the time limited by the notice from the Government or the Local authority.

10

The Vendor shall not be liable for any deterioration of the property after the time fixed for completion.

All necessary apportionments shall be made of rents, profits and outgoings for the purposes of this clause.

20

12. The Vendor shall hold all policies of assurance against loss or damage by fire to the property in trust for the Purchaser if the insurance companies consent and the Purchaser shall repay to the Vendor on completion of an apportioned part of the current premiums from the date hereof, and the purchase shall be duly completed.

13. Upon any default of the Purchaser to observe any stipulation of their part hereinbefore contained the Vendor may by notice in writing limit a time not less than fourteen days for making good such default or neglect, and if the same shall not be made good within seven days from the date of such notice may be a like notice rescind this Agreement and forfeit the deposit as agreed liquidated damages. In connection with this clause time shall be deemed to be of the essence of the contract.

30

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written

40

THE SCHEDULE ABOVE REFERRED TOExhibits

		Acres	Roads	Poles	D.6.
	Certificate of Title No. 787	16.	2.	20	Draft Agreement for Sale.
	- do - 11607	92.	1.	30	
	Grant No. 3068	92.	3.	28	8th November, 1955 - continued.
	do. 4989	211.	1.	30	
	do. 5271	301.	0.	00	
	do. 7447	194.	2.	38	
	do. 8711	199.	1.	27	
10	do. 8995	49.	1.	05	
	Lease No. 157	1.	0.	21	
	do. 158	-	3.	20	
	do. 159	23.	1.	25	
	do. 160	15.	1.	33	
	do. 161	63.	2.	10	
	do. 162	2.	1.	25	
	do. 163	78.	2.	20	
Total		1,343.	1.	12	

20 SIGNED for and on behalf of)
 ABERFOYLE PLANTATIONS LIMITED)
 by its Attorney in the)
 presence of :-)
 ABERFOYLE PLANTATIONS
 LIMITED
 By its Attorney
 (C. Grumitt)

SIGNED by the said KHAW BIAN)
 CHENG in the presence of :-)

P.1.(6) - AGREEMENT BETWEEN DEFENDANTS
 AND PLAINTIFF

P.1. (6)

30 AN AGREEMENT made the 8th day of November, 1955
 BETWEEN ABERFOYLE PLANTATIONS LIMITED (owning
 HAREWOOD ESTATE) a Company incorporated in England
 and having its registered office at No. 411 - 419
 Salisbury House, London Wall, London, E.C.2. (here-
 inafter called the "Vendor") of the one part and
 KHAW BIAN CHENG of No.20 Pykett Avenue, Penang,
 Merchant (hereinafter called the "Purchaser" which
 expression shall where the context so permits in-
 clude his nominee or nominees) of the other part

Agreement
 between
 Defendants
 and Plaintiff.
 8th November,
 1955.

WHEREBY IT IS AGREED as follows :-

1. Subject to the condition contained in Clause

Exhibits
P.1. (6)
Agreement
between
Defendants
and Plaintiff.
8th November,
1955.

4 the Vendor will sell and the Purchaser will buy ALL THOSE pieces of land known as Harewood Estate, hereinafter described in the Schedule hereto free from incumbrances Together with all the buildings erected thereon and the fixed plant and machinery and rubber utensils, but exclusive of all moveable property in or about the said pieces of land which is not directly connected with the present working of the Estate, and also exclusive of all refunds of cesses by the Rubber Industry (Replanting) Board to be made by the Board in respect of cesses paid by the Vendors on or before the date of completion of the sale 10

2. The price for the said purchase is the sum of Dollars Five hundred and twenty five thousand (₹525,000/-) of which the sum of Dollars Four hundred and fifty thousand approximately shall be for all the said land and buildings thereon known as HAREWOOD ESTATE described in the Schedule hereto at the date of taking over, and the balance shall be for the fiscal value of the plant and machinery and utensils capable of manual delivery. To account of this sum of ₹525,000/- the Purchaser shall pay to the Vendor the sum of ₹50,000/- on the signing of this Agreement, a further sum of ₹50,000/- on or before 1st February 1956, and to pay the balance on or before 30th April 1956. The Purchaser shall only be entitled to enter into possession of the Estate after the purchase money of ₹525,000/- has been paid in full, and all profits earned prior to that time shall belong to the Company 20 30

3. According to the records kept by the Vendor the following is the acreage statement of the said pieces of land:-

Mature Rubber	...	...	1,055.75	acres	
Immature Rubber	...	...	87.50	"	
Building Site	...	...	6.00	"	
Land suitable planting	...	...	48.50	"	
Land unsuitable for planting			<u>145.50</u>	"	
			<u>1,343.25</u>	acres	40

The Vendor, however, does not guarantee the correctness thereof and the Purchaser must accept the same as correct

The Purchaser must also accept as correct the areas mentioned in the several documents of title in which the said pieces of land are comprised

The description contained in the Schedule hereto of the said pieces of land shall be accepted as correct in all respects and any error, omission or misdescription therein contained shall not invalidate the sale nor shall either party require compensation of the other in respect thereof.

Exhibits

P.1. (6)

Agreement
between
Defendants
and Plaintiff.

8th November,
1955

- continued.

10 4. The purchase is conditional on the Vendor obtaining at the Vendor's expense a renewal of the seven (7) Leases described in the Schedule hereto so as to be in a position to transfer the same to the Purchaser and if for any cause whatsoever the Vendor is unable to fulfil this condition this Agreement shall become null and void and the Vendor shall refund to the Purchaser the deposit or deposits already made under Clause 2 hereof notwithstanding anything contained in Clause 10 hereof

20 5. The land hereby agreed to be sold is sold subject to all quit and other rents, incidents of tenure, rights of way, leases, tenancies, agreements, permits, water rights, easements etc., (if any) and the Purchaser must be satisfied with the order and condition of the plantations and premises and the buildings, factory plant and equipment thereof and the appurtenances thereto and no objection shall be made and no compensation nor reduction in the purchase price shall be claimed by the Purchaser in respect thereof and the sale shall in no way be affected by reason of any loss or damage by fire to any buildings and/or machinery or by
30 strikes, or by the acts of bandits or any cause whatsoever beyond the control of the Vendor before completion of the sale even though such damage shall be due to the negligence or carelessness of the Vendor or its employees but the Vendor shall pay to the Purchaser any sums recovered under existing insurances in the event of any such damage being recovered by insurance

40 6. The sale shall not be affected by any action of the Government or other local authority taking or having taken to acquire or requisition or otherwise deal with either the whole or any portion or part of the property hereby agreed to be sold.

7. The Purchaser shall take over, purchase and pay for at cost to the Vendor all rice, grain, foodstuffs, provisions and other consumable stores, tools, utensils, manure, fertilisers and other estate stocks as at midnight on the day immediately preceding the date of completion of sale.

Exhibits

P.1. (6)

Agreement
between
Defendants
and Plaintiff.
8th November,
1955
- continued.

8. All rubber harvested and on hand as at mid-night on the day immediately preceding the date of completion of sale, including rubber (if any) then unfinished and in warehouse or elsewhere in the land comprised in the sale and all rubber (if any) in process of preparation and treatment shall belong to and remain the property of the Vendor and the Purchaser shall at cost complete and finish to a saleable condition any rubber belonging to the Vendor and as and when such rubber shall be finished and ready for packing consign the same at the cost and expense of the Vendor to the Agents of the Vendor for sale on behalf of the Vendor.

10

9. Completion of the purchase shall take place at the offices of Messrs. Grumitt, Reid & Co. Ltd. on or before the 30th day of April 1956, and upon the Purchaser paying the balance of the purchase price to the Vendor, the Vendor shall as soon as possible thereafter execute a proper transfer or transfers of the property to the Purchaser or as he shall direct, such transfer or transfers to be prepared and perfected, save as to the execution thereof by the Vendor, by and at the expense of the Purchaser and in the meantime the Vendor agrees to allow the Purchaser to lodge a caveat against all the lands pending the execution of the said transfer or transfers. And the Vendor shall if the Purchaser so requires execute in favour of the Purchaser an irrevocable power of attorney authorising the Purchaser to execute all such transfers and documents as shall be necessary for effectually vesting in the Purchaser the said Mining Leases

20

30

10. If from any cause (other than the Vendor's default the purchase shall not be completed on the 30th April 1956, or the second deposit of \$50,000/- shall not be made on or before the 1st February 1956 as herebefore provided then this Agreement shall become null and void and the deposit or deposits already made will be forfeited

11. Upon actual completion of the purchase the Purchaser shall be entitled to possession of the property hereby agreed to be sold and shall as from that day be liable for all outgoings and shall repay to the Vendors all moneys expended by it in complying in whole or in part with any requirements of the Government or of any local authority in respect of the property or any roads, ways, sewers adjoining the same or otherwise, of which notice

40

may be given to the Vendor after the date of this Agreement.

Exhibits

P.1. (6)

The Vendor shall give the Purchaser immediate notice of any such requirements, and shall only expend money in compliance therewith upon the Purchaser neglecting so to do within the time limited by the notice from the Government or the local authority.

Agreement between Defendants and Plaintiff.

8th November, 1955

- continued.

10 The Vendor shall not be liable for any deterioration of the property after the time fixed for completion.

All necessary apportionments shall be made or rents, profits and outgoings for the purposes of this clause.

20 12. The Vendor shall hold all policies of assurance against loss or damage by fire to the property in trust for the Purchaser if the insurance companies consent and the Purchaser shall repay to the Vendor on completion of an apportioned part of the current premiums from the date hereof, and the purchase shall be duly completed

30 13. Upon any default of the Purchaser to observe any stipulation on their part hereinbefore contained the Vendor may by notice in writing limit a time not less than fourteen days for making good such default or neglect, and if the same shall not be made good within seven days from the date of such notice may by a like notice rescind this Agreement and forfeit the deposit as agreed liquidated damages In connection with this clause time shall be deemed to be of the essence of the contract

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written

THE SCHEDULE ABOVE REFERRED TO

			<u>Acres - Roods - Poles</u>		
	Certificate of Title No. 787		16.	2.	20
	do. 11607		92.	1.	30
	Grant No. 3068	...	92.	3.	28
40	do. 4989	...	211.	1.	30
	do. 5271	...	301.	0.	00
	do. 7447	...	194.	2.	38
	do. 8711	...	199.	1.	27
	do. 8995	...	49.	1.	05

<u>Exhibits</u>	<u>SCHEDULE (Contd.)</u>			<u>Acres - Roads - Poles</u>		
P.l. (6)	Lease No.	157	...	1.	0.	21
Agreement	do.	158	...	-	3.	20
between	do.	159	...	23.	1.	25
Defendants	do.	160	...	15.	1.	33
and Plaintiff.	do.	161	...	63.	2.	10
8th November,	do.	162	...	2.	1.	25
1955	do.	163	...	78.	2.	20
- continued.			Total	1,343.	1.	12

SIGNED for and on behalf of)
 ABERFOYLE PLANTATIONS LIMITED)
 by its Attorney in the pres-) Sd. C. Grumitt.
 ence of :-)

Sd. R.D. Hume,
 Solicitor,
 Penang.

SIGNED by the said KHAW BIAN)
 CHENG in the presence of :-) Sd. Khaw Bian Cheng

Sd. Lim Gim Hoe,
 Solicitor,
 Penang.

This is the copy of the Exhibit marked "K.B.C.1." referred to in the Plaint of Khaw Bian Cheng dated day of June, 1956.

P.l. (7)
 Letter
 Plaintiff's
 Solicitors to
 Defendants'
 Solicitors.
 9th November,
 1955.

P.l.(7) - LETTER PLAINTIFF'S SOLICITORS TO
 DEFENDANTS' SOLICITORS

9th November, 1955

Messrs. Hogan, Adams & Allan,
 Advocates & Solicitors,
 PENANG.

Dear Sirs,

Re: Harewood Estate.

We send you herewith for your retention counterpart of the Agreement for sale in connection with the above property duly stamped.

Please acknowledge receipt.

Yours faithfully,
 Sd. Eng Cheang and Gim Hoe.

10

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30

P.1.(8) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

Exhibits
P.1. (8)

HOGAN, ADAMS & ALLAN,
Advocates & Solicitors.

4 A & B, Logan's Building,
Penang.

Our Ref: RDH/CYL.

Your Ref: LGH/SW.

9th November, 1955.

Dear Sirs,

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
9th November,
1955.

Re: Harewood Estate

10

We thank you for your letter of today's date
returning one copy of the Agreement for Sale in
this matter.

Yours faithfully,

Sd. Hogan, Adams & Allan.

Messrs. Eng Cheang & Gim Hoe,
Penang.

P.1.(9) - LETTER PLAINTIFF'S SOLICITORS
TO DEFENDANTS SOLICITORS

P.1. (9)

30th January, 1956.

20

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
PENANG.

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.

Dear Sirs,

30th January,
1956.

Re: Harewood Estate

30

Pursuant to paragraph 2 of the Agreement for
Sale dated the 8.11.55 in respect of the above
property we are instructed by the Purchaser Mr.
Khaw Bian Cheng to send you herewith cheque for
~~£~~25,000/- and another cheque for also ~~£~~25,000/-
but post-dated to the 28.2.56 being further payment
to account of the agreed purchase. We understand
your clients have agreed to accept payment in this
manner.

Please acknowledge receipt.

Yours faithfully,

Sd. Eng Cheang & Gim Hoe.

Exhibits

P.1.(10)

P.1.(10) - LETTER PLAINTIFF'S SOLICITORS
TO DEFENDANTS SOLICITORS

8th February, 1956.

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.

Messrs.Hogan, Adams & Allan,
Advocates & Solicitors,
Penang.

Dear Sirs,

Re: Harewood Estate

8th February,
1956.

We refer you our letter dated the 30th ultimo
and shall be glad if you will send us your clients'
receipt for the two cheques amounting to ~~£~~50,000/-
in further payment to account of the purchase
price of the above property.

10

Kindly let us have the favour of an early
reply.

Yours faithfully,
Sd. Eng Cheang & Gim Hoe.

P.1.(11)

P.1.(11) - RECEIPT BY DEFENDANTS SECRETARIES
TO PLAINTIFF FOR ~~£~~50,000/-

Receipt by
Defendants
Secretaries
to Plaintiff
for ~~£~~50,000/-.

9th February,
1956.

GRUMITT, REID & CO., LTD.,
(Incorporated in the Federation
of Malaya)

20

And at
Medan, Sumatra.

HONGKONG BANK CHAMBERS
(3rd Floor),
P.O. Box No. 537.
Penang.
9th February, 1956.

RECEIPT

Harewood Estate

30

Received from Mr. Khaw Bian Cheng two cheques each
for ~~£~~25,000/- being the instalments payment in re-
spect of purchase of the above Estate due on 1st
February 1956, as follows :-

Cheque dated 30th January 1956 for ~~£~~25,000/-.

" " 28th February 1956 for ~~£~~25,000/-.

GRUMITT, REID & CO., LTD.,
Sd. Illegible,

Stamp
6 cents
Penang.

Director.

40

P.1.(12) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

Exhibits
P.1.(12)

HOGAN, ADAMS & ALLAN,
Advocates & Solicitors.

4 A & B, Logan's Building,
Penang.

Our Ref: RDH/BBW

10th February, 1956.

Your Ref: LGH/SW.

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
10th February,
1956.

Dear Sirs,

Harewood Estate

10 As requested in your letter of the 8th instant we enclose receipt for the two cheques of \$25,000/- further to account of the purchase price of the above estate.

Yours faithfully,

Sd. Hogan, Adams & Allan.

Messrs. Eng Cheang & Gim Hoe,
Advocates & Solicitors,
Penang.

Encl.

20 P.1.(13) LETTER COLLECTOR OF LAND REVENUE
TO DEFENDANTS SOLICITORS

P.1.(13)

No.(33) in
KLO. 907-51

KINTA LAND OFFICE,
BATU GAJAH.

To:
Messrs. Hogan, Adams & Allan,
Nos. 4 A & B, Beach Street,
PENANG.

25th April, 1956.

Letter
Collector of
Land Revenue
to Defendants
Solicitors.
25th April,
1956.

Harewood Rubber Estates Limited

Gentlemen,

30 With reference to your application for the renewal of Leases of State Land 157 to 163 in the Mukim of Sungei Trap, I have to inform you that the Ruler in Council has approved the issue of fresh leases on the following terms and conditions:-

(a) Period: 35 years each from the date of expiry of the former leases i.e. 20.6.50.

(b) Premium: \$200 per acre.

Exhibits

P.1.(13)

Letter
Collector of
Land Revenue
to Defendants
Solicitors.

25th April,
1956

- continued.

- (c) Special Premium: ~~£~~5,255.65 being arrears of back rent
- (d) Rent: ~~£~~6 per acre per annum for Lots 30462, 30463, 30464, 30466 and ~~£~~4 per acre per annum for Lots 30460, 30461 and 30465.
- (e) Svy.fees: Schedule rates.
- (f) Express: 1. No rubber tree shall be planted or cultivated or permitted to grow on the land hereby alienated except material of the species Heavea Braziliensis (or other species of rubber producing plant) approved by the State Agricultural Officer, Perak. 10
- 2. The leases shall pay and discharge all taxes rates, assessments and charges whatsoever which may or become payable or be imposed upon or in respect of the land hereby leased or any part thereof or may be or become payable or be imposed upon or in respect of any building now erected or hereafter to be erected thereon whether levied or imposed by a Town Council, Town Board or any other lawful authority. 20

2. Upon payment of the sum of ~~£~~41,769.15 made up as follows :-

Premium	£ 37,250.00	
Special premium	5,255.65	30
Rent for 1956	1,108.00	
Deposit for survey (estimated)	<u>950.00</u>	
	44,563.65	
Less amount deposited against rent from 1952 to 1956	<u>2,794.50</u>	
Amount due	<u>£41,769.15</u>	

Your name will be recorded in the Roll of Approved Applications.

I am, Gentlemen,
Your obedient servant,
Sd. Illegible
COLLECTOR OF LAND REVENUE,
KINTA. 40

P.1.(14) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

Exhibits
P.1.(14)

HOGAN, ADAMS & ALLAN,
Advocates & Solicitors.

4 A & B, Logan's Building,
Penang.

Our Ref: RDH/BBW
Your Ref: LGH/SW.

26th April, 1956.

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
26th April,
1956.

Dear Sirs,

Re: Harewood Estate

10

The Collector of Land Revenue, Kinta, informs us that the Ruler in Council has approved the issue of fresh leases in respect of Leases of State Land Nos. 157 to 163, Mukim of Sungei Trap, for the period of 35 years each from the 20th June 1950 at a rent of \$6/- per acre per annum for Lots 30462, 30463, 30464 and 30466 and \$4/- per acre per annum for Lots 30460, 30461 and 30465.

20

As the date for completion is April 30th will you kindly let us have the draft transfers for approval.

Yours faithfully,
Sd. Hogan, Adams & Allan.

Messrs. Eng Cheang & Gim Hoe,
Advocates & Solicitors,
Penang.

P.1.(15) - LETTER PLAINTIFF'S SOLICITORS
TO DEFENDANTS SOLICITORS

P.1.(15)

RDH/BBW
LGH/SW.

28th April, 1956.

30

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
Penang.

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.
28th April,
1956.

Dear Sirs,

Re: Harewood Estate

We acknowledge receipt of your letter dated the 26th instant.

Please forward the titles and leases to us to enable us to prepare the draft transfers for your approval.

40

Yours faithfully,
Sd. Eng Cheang & Gim Hoe.

Exhibits
P.1.(16)

P.1.(16) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
30th April,
1956.

HOGAN, ADAMS & ALLAN,
Advocates & Solicitors.

4 A & B, Logan's Building,
Penang.

Our Ref: KHK/BBW

30th April, 1956.

Dear Sirs,

Re: Harewood Rubber Estates Ltd.

We acknowledge receipt of your letter dated the 28th instant. 10

The eight Certificates of Title and Grants are now in the office of the Registrar of Titles, Ipoh. On the 27th instant in your Mr. Lim Gim Hoe's interview with our Mr. Khoo Heng Kok the latter asked him whether he wanted to see the Certificates and Grants again as we were going to send the same through our Mr. Phipps to the Registrar of Titles, Ipoh, Perak, for registration of a transmission and a Transfer to our clients of the said eight Certificates of Title and Grants. 20

Mr. Gim Hoe said that it was not necessary for him to see them again as he had checked the same when the Agreement was made.

In respect of the new leases the Registrar of Titles has informed our Mr. Phipps that no transfer can be yet made now in respect of them until they shall have been issued.

Our clients are willing as provided for in the Agreement for Sale to execute in your clients' favour an irrevocable Power of Attorney to execute the transfer of the new leases for effectually vesting the same in your clients. 30

We enclose herewith for your reference and immediate return Transfer of the said land comprised in the said eight Certificates of Title and Grants executed by our Clients on the 28th instant and duly stamped to-day. We are sending it for registration to-day.

Please acknowledge receipt. 40

Yours faithfully,
Sd: Hogan, Adams & Allan.

To:

Messrs. Eng Cheang & Gim Hoe,
Advocates & Solicitors, Penang.

P.1.(17) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

Exhibits
P.1.(17)

HOGAN, ADAMS & ALLAN,
Advocates & Solicitors,
PENANG.

2nd May, 1956.

Our Ref: KHK/BBW
Your Ref: LGH/SW

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.

2nd May, 1956.

Dear Sirs,

Re: Harewood Rubber Estates Ltd.

10

With reference to our letter of the 30th day of April 1956 we shall be obliged if you will send us a cheque for the balance of the purchase price and Transfer of the land comprised in the eight Certificates of Title and Grants and the irrevocable Power of Attorney to execute the transfer of the new leases for effectually vesting the same in your clients.

20

On payment of the said balance of purchase price our clients will execute the said Transfer and Power of Attorney and will deliver possession of the land and chattels according to the said Agreement.

Yours faithfully,

Sd. Hogan, Adams & Allan.

Messrs. Eng Cheang & Gim Hoe,
Penang.

P.1.(18) - LETTER PLAINTIFF'S SOLICITORS
TO DEFENDANTS SOLICITORS

P.1.(18)

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.

4th May, 1956.

30

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
PENANG.

4th May, 1956.

Dear Sirs,

Re: Harewood Estate

We are in receipt of your letters of 30th April and 2nd May 1956.

Our Ipoh agents inspected the titles at the Registry of Titles at Ipoh on 3rd May, 1956 and the result of their search is as follows :-

Certificates of Titles Nos. 787 and 11607 and

Exhibits

P.1.(18)

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.

4th May, 1956
- continued.

Grants Nos. 3068, 4989, 5271, 7147, 8711 and 8995 are registered in the name of Harewood Rubber Estates Limited.

Leases Nos. 157 - 163, both inclusive, expired on 19th June 1950 and were cancelled and the issue documents of title were destroyed on 30th August, 1951. These lots, since the cancellation of the leases, became and are still State land.

We note that the transfer of the C.Ts. and Grants in the name of your clients is pending registration at the Registry of Titles and your clients may be in a position to convey the same in a few days' time. Your clients ought to have taken steps before 30th April, 1956 so that by that date they should have been in a position to convey a good title. We need hardly say that we are surprised that such steps were not taken earlier.

10

It would appear to be clear that your clients are not in a position to convey the lands formerly comprised in Leases Nos. 157 - 163.

20

Our client is not prepared, and we cannot advise him, to accept a conveyance of a portion of the estate which he contracted to buy. A Power of Attorney, irrevocable or otherwise, to deal with lands, which are now State land, is useless. At best your clients are mere licensees of the lands formerly comprised in the leases and our client never bargained for the purchase of licence or to wait indefinitely for completion.

The question of payment of the balance of purchase price cannot arise until your clients have a registered title to all the lands and are in a position to transfer a registrable title thereto.

30

Our client is not willing to take possession of the estate in the present circumstances and thus find himself in a compromising position later on.

We refer you to Clause 4 of the Agreement under which our client is entitled to rescind the contract and claim back the deposit. But, before doing so, our client is prepared to give your clients time till the 31st day of May, 1956 by which date they should produce to us the issue documents of title in respect of all the lands contracted to be sold and satisfy us that they are in a position to make a good title and give a registrable transfer. It must be understood that the extension hereby granted is the utmost that our client agrees

40

to and such time must be deemed to be of the essence of the contract. If a good title to convey all the lands capable of registration is made out by 31st May, 1956 our client will pay over the balance of purchase price and complete the transaction. Otherwise, the contract will stand cancelled and your clients must pay back the deposit with interest together with our client's costs of investigating the title.

Exhibits

P.1.(18)

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.

4th May, 1956
- continued.

10

Yours faithfully,

Sd. Eng Cheang & Gim Hoe.

P.1.(19) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

P.1.(19)

HOGAN, ADAMS & ALLAN,
Advocates & Solicitors.

Our Ref: RDH/CYL
Your Ref: LGH/SW.

4 A & B, Logan's Building,
Penang.

5th May, 1956.

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.

5th May, 1956.

Dear Sirs,

Re: Harewood Estates

20

We thank you for your letter of the 4th instant. The transfer of Certificates of Title Nos. 787 and 11607 and Grants Nos. 3068, 4989, 5271, 7447, 8711 and 8995 from Harewood Rubber Estates Ltd., to Aberfoyle Plantations Ltd., was executed on the 28th April and sent for registration on the 30th day of April 1956. If our clients were to execute the Transfer thereof on the 30th April to your client both will be registered in their order.

30

With regard to the leases, as we informed you on the 26th April, the Ruler in Council has approved the issue of fresh leases by way of renewal for the period of 35 years from the 20th June 1950. The premium and adjusted rents have been paid by our clients, and they have been recorded in the Roll of Approved Applications.

40

You will recall that the Agreement for Sale specifically provided for delay in the renewal of the leases, and for that purpose the Vendors agreed to allow the Purchaser to lodge a caveat after payment of the balance of the purchase price, and

Exhibits
P.1.(19)

the Vendors undertook to give an irrevocable Power of Attorney to the Purchaser to enable him to effectually vest the leases in him.

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
5th May, 1956
- continued.

We must therefore call on you to pay the balance of the purchase price as agreed. Our clients will of course execute the transfers of the lands comprised in the Certificates of Title and Grants, and give the Power of Attorney in accordance with their undertaking.

Yours faithfully,

10

Sd. Hogan, Adams & Allan.

Messrs. Eng Cheang & Gim Hoe,
Advocates & Solicitors,
Penang.

P.1.(20)

P.1.(20) - LETTER PLAINTIFF'S SOLICITORS
TO DEFENDANTS SOLICITORS

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.
8th May, 1956.

RDE/CYL
KEC/SW

8th May, 1956.

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
PENANG.

20

Dear Sirs,

Re: Harewood Estates

We now have our client's instructions to reply to your letter of the 5th instant.

We do not agree that the Agreement for sale specifically, or at all, provides for delay in the renewal of the leases. No caveat can be registered against non-existent titles nor can an effective Power of Attorney be given in respect of bare expectation of title. We can only repeat what is stated in our letter of the 4th instant.

30

Yours faithfully,

Sd. Eng Cheang & Gim Hoe.

D.3. - POWER OF ATTORNEY FROM HAREWOOD RUBBER ESTATE AND ITS LIQUIDATOR TO CORRIS GRUMITT & J.H. REID.

Exhibits

D.3.

Impressed Stamp,
Stamp Office, Penang.
4.6.56.

Power of
Attorney from
Harewood Rubber
Estates and its
Liquidator to
Corris Grumitt
and
J.H. Reid.

29th May, 1956.

I, FREDERICK CAMPBELL GILES of the City of London, Notary Public duly admitted and sworn, practising in the said City

10 DO HEREBY CERTIFY AND ATTEST:

THAT the Power of Attorney hereunto annexed was this day signed, sealed and delivered, in due form of English law, in my presence and in that of Eric Woodward, the subscribing witness thereto, by SYDNEY MOORE, of 411/419 Salisbury House in the said City of London

H.DE PINNA
AND
JOHN VENN

Incorporating
COMERFORD & CO.

NOTARIES PUBLIC
LONDON

38, GRESHAM
HOUSE,
OLD BROAD ST.,
E.C. and at
WHITEHALL HOUSE,
WHITEHALL,
S.W.1.

20 THAT at the same time the Common Seal of HAREWOOD RUBBER ESTATES LIMITED, of this City, was affixed at foot of the said Power of Attorney, in my presence and in that of the said SYDNEY MOORE, the duly appointed Liquidator of the said Company, who thereupon signed in my presence at foot of the said Power of Attorney as witnessing the affixing of the said Seal.

TELEPHONES:
LONDON WALL 2906
WHITEHALL 1496

JOHN VENN
F.C. GILES
F.W. GRAIN
JOHN M. DIMOND
S.C. CROWTHER-
SMITH
BRIAN G.O.
BROOKS.

AND THAT the said Power of Attorney, so sealed and signed, is duly executed in accordance with the regulations of the said Company insofar as they apply and with the provisions of English law relating to Joint Stock Companies.

30 IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Seal of Office, in the City of London aforesaid this twenty-ninth day of May One thousand nine hundred and fifty-six

Sd. F.C. Giles
NOTARY PUBLIC,
LONDON.

Exhibits

D.3.

Power of
Attorney from
Harewood Rubber
Estates and its
Liquidator to
Corris Grumitt
& J.H. Reid.

29th May, 1956
- continued.

Impressed Stamp \$5/-

STAMP OFFICE, PENANG.
4.6.56.

A POWER OF ATTORNEY created the 29th day of May 1956 by HAREWOOD RUBBER ESTATES LIMITED whose Registered Office is at Nos. 411/419 Salisbury House, London Wall, London, E.C.2. England (hereinafter called "the Vendor Company") and SYDNEY MOORE of the same address the Liquidator (hereinafter called "the Liquidator")

10

W H E R E A S :-

1. By an Agreement dated the 16th day of January 1951 and made between the Vendor Company and the Liquidator of the one part and Aberfoyle Plantations Limited of Nos. 411/419 Salisbury House, London Wall, London, E.C.2. England (hereinafter called "the Purchaser Company") of the other part IT was agreed that the Vendor Company and the Liquidator should transfer to the Purchaser Company ALL those pieces of land hereinafter mentioned in the First Schedule and the Second Schedule hereof and the buildings, chattels and choses in action whatsoever to which the Vendor Company were entitled.

20

2. The Leases hereinafter mentioned in the Second Schedule hereto have expired and the Company and the Liquidator as aforesaid have applied to the proper authority having jurisdiction in respect thereof for renewals of the said Leases or new leases in place thereof.

3. By a letter dated the 25th day of April 1956 the Collector of Land Revenue, Kinta, Perak, notified us that our application for the renewal of the said leases had been approved by the Ruler in Council by the issue of fresh leases on the terms and conditions thereof, and the payment of the sum of \$41,769-15.

30

4. On the 26th day of April 1956 we, through our Solicitors, Messrs. Hogan, Adams & Allan, sent a cheque for the said sum of \$41,769-15 to the said Collector of Land Revenue, Kinta, Perak.

40

5. We have been informed by the said Collector of Land Revenue through our said Solicitors that it would be some time before the fresh leases could be issued to us.

6. We have been in occupation of the land comprised in the said Leases and have paid quit-rents therefore since the expiration thereof and are still in occupation thereof with the permission of the said Collector under the approved application in expectation of registration of title

7. The Purchaser Company has agreed to sell ALL the land comprised in the First Schedule and the Second Schedule hereof to Khaw Bian Cheng of No.20, Pykett Avenue, Penang.

8. We have duly transferred to the Purchaser Company the land mentioned in the First Schedule hereto.

9. At the request of the Purchaser Company we have agreed to assign all our rights in respect of our approved application for the said fresh leases to the said Khaw Bian Cheng.

10. We have been recorded in the Roll of Approved Applications.

20 NOW THIS INDENTURE WITNESSETH that the Vendor Company and the Liquidator hereby appoint CORRIE GRUMITT and JOHN HENDERSON REID both of Penang in the Federation of Malaya jointly and each of them severally to be the Attorneys and Attorney of the Company and the Liquidator as aforesaid in their names to do and execute all or any of the acts deeds and things, that is to say :-

30 1. For the interest of the said Company in the Approved Applications and the lands comprised therein to be transmitted to the said Liquidator if so required by the said Collector

40 2. To request the said Collector of Land Revenue to cancel the said Approved Application or Applications the number or numbers of which the said Collector of Land Revenue has agreed to supply to our said Solicitors soon and to record in place thereof a fresh Approved Application or Applications in the name of the Purchaser-Company or in the name of the said Khaw Bian Cheng as the Attorneys and/or Attorney shall in their or his absolute discretion think fit or be advised.

3. To do all acts and things that the said Collector of Land Revenue may require the Attorneys

Exhibits

D.3.

Power of Attorney from Harewood Rubber Estates and its Liquidator to Corris Grumitt & J.H. Reid.

29th May, 1956
- continued.

Exhibits

D.3.

Power of Attorney from Harewood Rubber Estates and its Liquidator to Corrie Grumitt & J.H. Reid.

29th May, 1956
- continued.

and/or Attorney to enable him to comply with the said request.

AND the Company and the Liquidator hereby agree to ratify all that the said Attorneys and/or the Attorney shall lawfully do or cause to be done in the premises and hereby promise to indemnify the Attorneys and Attorney against all charges and expenses and losses which they or he may incur by reason of any acts or things done in the due execution of the powers hereby conferred upon them jointly and severally.

10

IN WITNESS whereof the Company's Common Seal has been hereunto affixed and the Liquidator has hereunto set his hand and seal the day and year first above written

THE FIRST SCHEDULE ABOVE REFERRED TO

		<u>Acres - Roods - Poles</u>			
Certificate of Title No.	787	16	2	20	
do.	11607	92	1	30	
Grant No.	3068	...	92	3	28
do.	4989	...	211	1	30
do.	5271	...	301	0	00
do.	7447	...	194	2	38
do.	8711	...	199	1	27
do.	8995	...	49	1	05

20

THE SECOND SCHEDULE ABOVE REFERRED TO

<u>Old Title</u>	<u>Mukim</u>	<u>District</u>	<u>Area</u>	<u>Remarks</u>	
Lease No.	Sungei	Kinta	1. 0.21	Now approved application No. 1/56 for Lot 30460	
157	Terap				
do.	158	do.	do.	- 3.20 Now approved application No. 2/56 for Lot 30461	30
do.	159	do.	do.	23. 1.25 Now approved application No. 3/56 for Lot 30462	
do.	160	do.	do.	15. 1.33 Now approved application No. 4/56 for Lot 30463	40
do.	161	do.	do.	63. 2.10 Now approved application No. 5/56 for Lot 30464	

	<u>Old Title</u>	<u>Mukim</u>	<u>District</u>	<u>Area</u>	<u>Remarks</u>	<u>Exhibits</u>
	Lease No. 162	Sungei Terap	Kinta	2. 1.25	Now approved application No. 6/56 for Lot 30465	D.3. Power of Attorney from Harewood Rubber Estates and its Liquidator to Corrie Grumitt & J.H. Reid.
	do. 163	do.	do.	78. 2.20	Now approved application No. 7/56 for Lot 30466	29th May, 1956 - continued.
10	SIGNED SEALED AND DELIVERED) by the said SYDNEY MOORE) in the presence of :-				Sd. S. Moore (L.S.)	
	Sd. E. Woodward, 81, Valley Drive, Kingsbury, London, N.W.9. Company Secretary.					
20	THE COMMO SEAL of HAREWOOD) RUBBLR ESTATES LIMITED (in) Voluntary Liquidation) was) hereunto affixed in the) presence of :-				(The Common Seal of Harewood Rubber Estates Limited)	
	Sd. S. Moore, Liquidator.					

P.1.(21) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

<p>HOGAN, ADAMS & ALLAN, Advocates & Solicitors. Our Ref: KHK/TSP.</p> <p>Messrs. Eng Cheang & Gim Hoe, Advocates & Solicitors, 53, Beach Street, PENANG.</p>	<p>4 A & B, Logan's Building, PENANG. May, 30th, 1956.</p>	<p>P.1.(21) Letter Defendants Solicitors to Plaintiff's Solicitors. 30th May, 1956.</p>
---	--	---

Dear Sirs,

Re: Harewood Estate

We enclose herewith the following documents:-

1. Certificate of Title No. 787
2. " " " No. 11607
3. Grant No. 3068.
4. " " 4989.
- 40 5. " " 5271.

- Exhibits
P.1.(21)
- Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
- 30th May, 1956
- continued.
6. Grant No. 7447
7. " " 8711
8. " " 8995
9. Two (2) Quit-rent receipts for the year 1956 both dated 11.1.56, one (No.E.911966) for £3,915.15, and one (B.No.360442) for £558.90.
10. Memorandum and Articles of Association of Aberfoyle Plantations Ltd.

We have to inform you that Leases Nos. 157, 158, 159, 160, 161, 162 and 163 mentioned in the Schedule to the Agreement dated 8th November 1955 have been replaced by -

Approved Application No.	1/56	for Lot	30460	
"	"	"	"	30461
"	"	"	"	30462
"	"	"	"	30463
"	"	"	"	30464
"	"	"	"	30465
"	"	"	"	30466

These seven Approved Applications are in the name of Harewood Rubber Estates Ltd., and its Liquidator, Sydney Moore.

The seven pieces of land referred to as comprised in the Lease mentioned in the Schedule to the Agreement and in the Approved Applications have been in the continued occupation and are still in the occupation of the said Harewood Rubber Estates Ltd., and its said Liquidator and they have paid to the Collector of Land Revenue the quit-rents in respect thereof from 1952 to 1956 (inclusive) as well as the Premium, Special Premium, Rent for 1956 and Deposit for survey amounting to £44,653-65.

We enclose herewith for your reference and return the original letter (No.33 in KLO. 907.51) dated 25th April, 1956 of the Collector of Land Revenue to us.

We also enclose herewith the original letter (No.5 in KLO. 1208/52), dated 25th November 1952 of the Collector of Land Revenue Kinta to the Manager, Harewood Estate, permitting him to continue occupation of the land comprised in the said Leases No. 157 - 163 and the said Approved Application.

We also enclose herewith four (4) receipts all dated 16th May 1956 for £950/-, £2,461.15, £37,250/- and £1,108/- (total = £41,769.15) Nos. C727101, B No. 360900, B. No. 360899 and F 486636.

10

20

30

40

Our clients will execute the Transfer of the seven pieces of land already vested in them by a Power of Attorney which we shall deliver to you in the course of to-day.

10 On completion your client is at liberty to file a Caveat against any dealings with the lands comprised in the said seven Approved Applications Nos. 1/56 to 7/56 and if so required by him our clients will obtain for him an irrevocable Power of Attorney by Harewood Rubber Estates Ltd., and its said Attorney to transfer to himself the lands comprised therein when Leases shall be duly issued.

Please acknowledge receipt and submit for our approval your draft Transfer and Caveat and irrevocable Power of Attorney.

Yours faithfully,
Sd. Hogan, Adams & Allan.

Exhibits

P.1.(21)

Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
30th May, 1956
- continued.

P.1.(22) - LETTER DEFENDANTS SOLICITORS
TO PLAINTIFF'S SOLICITORS

20 HOGAN, ADAMS & ALLAN,
Advocates & Solicitors.

4 A & B, Logan's Building,
PENANG.

Our Ref: KHK/BBW

30th May, 1956.

P.1.(22)
Letter
Defendants
Solicitors to
Plaintiff's
Solicitors.
30th May, 1956.

Dear Sirs,

Re: Harewood Estate

30 Further to our letter of this morning we enclose herewith the original Power of Attorney by Aberfoyle Plantations Limited to Messrs. Grumitt and Reid jointly and severally as well as a certified copy thereof, dated 1st December 1955 (Registered P/A 205/56).

Please acknowledge receipt.

Yours faithfully,
Sd. Hogan, Adams & Allan.

Messrs. Eng Cheang & Gim Hoe,
Beach Street,
Penang.

Encl.

Exhibits

P.1.(23) - LETTER PLAINTIFF'S SOLICITORS
TO DEFENDANTS SOLICITORS

P.1.(23)

Letter
Plaintiff's
Solicitors to
Defendants
Solicitors.
4th June, 1956.

KHK/BBW
LGH/SW

4th June, 1956.

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
PENANG.

Dear Sirs,

Re: Harewood Estate

We are in receipt of your two letters dated 30th May, 1956 and the documents forwarded there- 10
with and have seen our client thereon.

It is quite clear that your clients have no title to any of the lots formerly held under Leases Nos. 157, 158, 159, 160, 161, 162 and 163. In the circumstances we do not see how a transfer can be prepared. We do not quite understand your reference to caveat against the approved application contained in the penultimate paragraph of your letter. No dealings in land comprised in an approved application can be registered. We do not 20
see how an irrevocable power of attorney can be of any assistance either. In any event our client contracted to buy the whole estate and your clients are not in a position to convey the same.

As your clients have failed to complete the contract for the sale and purchase of the above-named property dated the 8th day of November 1955 within the specified time in our notice dated the 4th day of May, 1956 by which the date of completion was made a material term of the said contract, we hereby notify you that our client regards the said contract as having been broken by your clients. 30

We are instructed to and do hereby call upon your clients to repay on or before 7th June, 1956, the deposit of \$100,000/- together with interest at 6% per annum (i) on \$50,000/- from 8th November, 1955, (ii) on \$25,000/- from 30th January, 1956 and (iii) on \$25,000/- from 28th February, 1956 till 40
date of payment and costs of investigating titles which we estimate at \$150/-.

Failing compliance with the above our client will take such steps as he may be advised.

We return herewith all the documents forwarded by you, namely:-

- | | | |
|----|---|--|
| | 1. Certificate of Title No. 787. | <u>Exhibits</u> |
| | 2. " " " 11607. | P.1.(23) |
| | 3. Grant No. 3068. | |
| | 4. " " 4989. | Letter |
| | 5. " " 5271. | Plaintiff's |
| | 6. " " 7447. | Solicitors to |
| | 7. " " 8711. | Defendants |
| | 8. " " 8995. | Solicitors. |
| 10 | 9. Two (2) Quit-rent receipts for the year 1956 both dated 11.1.56 one (No. E. 911966) for £ 3,915.15, and one (B. No. 360442) for £ 558.90. | 4th June, 1956
- continued. |
| | 10. Memorandum and Articles of Association of Aberfoyle Plantations Ltd. | |
| | 11. Original Power of Attorney by Aberfoyle Plantations Limited to Messrs. Grumitt & Reid and a Certified copy thereof dated 1st December, 1955 (Registered No. P/A. 205/56). | |
| 20 | 12. Original letter (No.33 in KLO. 907-51) dated 25th April 1956 from Collector of Land Revenue, Kinta to you. | |
| | 13. Original letter (No.5 in KLO. 1208/52) dated 25th November 1952 from the Collector of Land Revenue, Kinta, to the Manager, Harewood Estate, Batu Gajah. | |
| | 14. Four receipts all dated 16th May 1956 for £ 950/-, £ 2,461.15, £ 37,250/- and £ 1,108/- (total = £ 41,769.15) (Nos. C727101, B. No. 360900, B. No. 360899 and F. 486636. | |
| | Kindly acknowledge receipt. | |
| 30 | Yours faithfully,
Sd. Eng Cheang & Gim Hoe. | |
| | <hr/> | |
| | P.1.(24) - <u>LETTER COLLECTOR OF LAND REVENUE TO DEFENDANTS SOLICITORS.</u> | P.1.(24) |
| | Kinta Land Office,
Batu Gajah.
22nd June, 1956. | Letter
Collector of
Land Revenue
to Defendants
Solicitors.
22nd June, 1956. |
| | Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
Logan's Building,
Penang. | |
| 40 | Reference your letter CLP/E dated 23.5.56, I am returning herewith your application for transmission of seven approved applications held by | |

Exhibits

P.1.(24)

Letter
Collector of
Land Revenue
to Defendants
Solicitors.

22nd June, 1956
- continued.

Harewood Rubber Estates Limited as I have not received the approval of the Mentri Besar nor the certified copy of resolution appointing Mr. Sydney Moore as Liquidator.

2. The sum of \$74/- is returned herewith in cheque. Please acknowledge receipt.

Sd. Illegible

Collector of Land Revenue,
Kinta.

P.1.(25)

Letter
Collector of
Land Revenue
to Defendants
Solicitors.
7th July, 1956.

P.1.(25) - LETTER COLLECTOR OF LAND REVENUE
TO DEFENDANTS SOLICITORS

10

No.(3) in KLO 909/56

Kinta Land Office,
Batu Gajah.
7th July, 1956.

To,
M/s. Hogan, Adams & Allan,
P.O. Box 263,
Penang.

Gentlemen,

Harewood Rubber Estates Ltd.

Application for Assignment of rights in
Approved Applications

20

I have the honour to refer to your letter No. OLP/CYL dated 25.5.56 which was handed by Mr. Phipps at my office on the same day and to inform you that Mr. Phipps was requested to submit to this office 2 certified copies of the Company's resolution appointing Mr. Sydney Moore as Liquidator and 2 certified copies of the Agreement entered into with Mr. Khaw Bian Cheng, the prospective purchaser before the application for assignment of rights in Approved Application can be considered. He was also requested to furnish information about the financial position etc. of Mr. Khaw Bian Cheng.

30

2. I should be glad to know when the documents asked for may be expected.

I have the honour to be,
Gentlemen,
Your obedient servant,

Sd. Illegible.

Collector of Land Revenue,
Kinta.

40

CCC/LPK.

P.1.(26) - LETTER DEFENDANTS SOLICITORS
TO COLLECTOR OF LAND REVENUE

Exhibits
P.1.(26)

OLP/SCE

3 in KLO. 909/56

9th July, 1956.

The Collector of Land Revenue,
Kinta Land Office,
Batu Gajah.

Letter
Defendants
Solicitors to
Collector of
Land Revenue.
9th July, 1956.

Dear Sir,

Re: Harewood Rubber Estates Ltd.

10 We thank you for your letter of the 7th instant.

As Mr. Khaw Bian Cheng has instituted proceedings to rescind the sale we will not be pursuing our application to assign the rights to him pending the disposal of the suit.

May we thank you for the kindness and courtesy shown our representative on the many occasions he attended at your office.

Yours faithfully,

20 Sd. Hogan, Adams & Allan.

P.1.(27) - LETTER DEFENDANTS SOLICITORS
TO COLLECTOR OF LAND REVENUE

P.1.(27)

OLP/SC/BBW.

30th July, 1956.

The Collector of Land Revenue,
Kinta Land Office,
Batu Gajah.

Letter
Defendants
Solicitors to
Collector of
Land Revenue.
30th July, 1956.

Dear Sir,

3 In KLO. 909/56

Re: Harewood Rubber Estates Ltd.

30 Further to our letter of the 9th instant (in reply to yours of the 7th instant) we are to inform you that we now desire to proceed with our clients' application to assign the rights in the "Approved Applications" herein to Mr. Khaw Bian Cheng.

2. The particulars and documents asked for by you (vide your letter of the 7th instant) will be furnished to you in the course of this week.

Yours faithfully,
Sd. Hogan, Adams & Allan.

Exhibits
P.1.(28)

P.1.(28) - LETTER DEFENDANTS SOLICITORS
TO COLLECTOR OF LAND REVENUE

Letter
Defendants
Solicitors to
Collector of
Land Revenue.
11th August,
1956.

OLP/SC/TSP.

August, 11th 1956.

The Collector of Land Revenue,
Kinta Land Office,
BATU GAJAH.

Dear Sir,

Re: Harewood Rubber Estates Ltd.

Further to the correspondence herein and to our Mr. O.L. Phipps' interview with you, we are now in a position to supply you with details of Mr. Khaw Bian Cheng's financial position, which, as far as we have been able to ascertain upon diligent enquiry, appears to be as follows :-

10

2. Mr. Khaw Bian Cheng is a member of an old Penang Chinese family and a prominent property and land owner. To the best of our information his properties alone in the Settlement of Penang are worth not far short of \$500,000/-. He also owns The Merchison Estate, Taiping which Rubber Estate is worth, even at a most conservative estimate, about \$400,000/-.

20

3. Should you require any more details, we will endeavour to obtain them.

4. Please acknowledge receipt and let us know in due course what further action is being taken.

Yours faithfully,

Sd. Hogan, Adams & Allan.

P.1.(29)

P.1.(29) - LETTER PLAINTIFF'S SOLICITORS
TO REGISTRAR OF TITLES

Letter
Plaintiff's
Solicitors to
Registrar of
Titles.
17th December,
1956.

MESSRS. DAS & CO.,
Advocates & Solicitors.

8-10, Station Road,
Ipoh.

Our Ref: BKD/LCC/1560/56.

17th December, 1956.

The Registrar of Titles,
Ipoh.

Sir,

Ipoh High Court Civil Suit No. 106 of 1956
Khaw Bian Cheng vs. Aberfoyle Plantations, Ltd.

We have the honour to request you to let us have the following particulars of the lands held

30

40

under Certificates of Titles Nos. 787, 11607, Grants for Land Nos. 3068, 4989, 5271, 7447, 8711 and 8995 for Lots Nos. 6028, 31665, 1509, 10062, 11406, 12852, 14757 and 15135 in the Mukim of Sungei Trap. The particulars required are :-

Exhibits

P.1.(29)

Letter
Plaintiff's
Solicitors to
Registrar of
Titles.

17th December,
1956

- continued.

- 10 (i) the name of the registered proprietor and the incumbrances, if any, as at the end of 30th April, 1956;
- (ii) the name of the registered proprietor on or after 1st May, 1956, and, if there has been subsequent dealings, the nature and effect of such dealings.

20 Will you please also confirm that Leases of State Land Nos. 157, 158, 159, 160, 161, 162, and 163 for Lots Nos. 30460, 30461, 30462, 30463, 30464, 30465 and 30466 in the Mukim of Sungei Trap expired on 19th June, 1950, and no new titles in respect of these lots had been issued on or prior to 11th June, 1956? Please let us have the name of the registered proprietor of the leases as at the date of their expiry. Will you also please let us know if any new titles in respect of any of these lots have since been issued and, if so, the full particulars of such new titles?

The above information is required for the purposes of the suit now pending in the High Court. If you supply us information it may be possible to dispense with the formal production of the registers in evidence at the trial.

30 We undertake to pay the necessary charges.

We have the honour to be,
Sir,

Your obedient servants,

Sd. DAS & CO.

Exhibits

P.1.(30)

P.1.(30) -- LETTER REGISTRAR OF TITLES TO
PLAINTIFF'S SOLICITORS

Letter
Registrar of
Titles to
Plaintiff's
Solicitors.

21st December,
1956.

No.(106) in R.T.Pk. 7/56.

Registry of Titles,
Ipoh.

21st December, 1956

To,
Messrs. Das & Co.,
8-10, Station Road,
Ipoh.

With reference to your letter, BKD/1560/56 10
dated the 17th December, 1956, I have to inform
you that Certificates of Titles Nos. 787, 11607,
Grants for Land Nos. 3068, 4989, 5271, 7447, 8711
and 8995 for Lot Nos. 6028, 31665, 1509, 10062,
11406, 12852, 14757 and 15135 respectively in the
Mukim of Sungei Trap, were registered in the name
of SYDNEY MOORE as Liquidator of Harewood Rubber
Estates Limited (in liquidation) as on the 30th
day of April 1956. All these said titles were 20
transferred to ABERFOYLE PLANTATION LIMITED on the
1st day of May 1956. There are no encumbrances
registered against the lands.

2. Grant No. 8955 mentioned in your letter should
read as Grant No. 8995.

3. Leases of State Land Nos. 157, 158, 159, 160,
161, 162 and 163 for Lot Nos. 30460, 30461, 30462,
30463, 30464, 30465 and 30466 respectively, Mukim
of Sungei Trap, which expired on 18.6.50, were
registered in the name of HAREWOOD RUBBER ESTATES 30
LIMITED at the date of expiry.

4. I regret I am unable to trace from my records
whether new titles have been issued in place of the
above Leases as applications for renewals of the
Leases (if any) were dealt with by the Collector
of Land Revenue, Kinta.

5. Please be good enough to remit a sum of ~~19~~9.00
being search fees for 9 Registers.

Sd. ? ? ?

Registrar of Titles,
Perak.

P.1.(31) - LETTER COLLECTOR OF LAND REVENUE TO
DEFENDANTS SOLICITORS

Exhibits
P.1.(31)

No.(17) in KLO. 909-56.

Kinta District Office,
Batu Gajah.

5th January, 1957.

To,
M/s. Hogan, Adams & Allan,
P.O. Box 263,
PENANG.

Letter
Collector of
Land Revenue
to Defendants
Solicitors.

5th January,
1957.

10 Gentlemen,

With reference to your application for assign-
ment of rights in A.As. 1/56 to 7/56 for Lots 30460
to 30466 respectively from Harewood Rubber Estates
Limited to Mr. Sydney Moore has been approved.

2. Will you please forward a sum of \$70 being fee
for recording change of ownership in the Roll of
Approved Applications.

I have the honour to be,
Gentlemen,

Your obedient servant,

Sd. Illegible.

COLLECTOR OF LAND REVENUE,
KINTA.

20

Date Received - 9 Jan. 1957.

P.1.(32) - LETTER DEFENDANTS SOLICITORS TO
COLLECTOR OF LAND REVENUE

P.1.(32)

OLP/SC/C
17 in KLO/909/56

8th January, 1957.

Letter
Defendants
Solicitors to
Collector of
Land Revenue.

30

The Collector of Land Revenue,
District of Kinta,
BATU GAJAH.

REGISTERED

8th January,
1957.

Dear Sir,

Assignment of rights in Approved
Applications to Mr. Sydney Moore

Re: HAREWOOD RUBBER ESTATES LTD.

Further to the phone conversation the writer
had with you this morning, we now enclose our
cheque for \$70/- as requested, being the fees pay-
able in respect of the above.

40

Please acknowledge receipt and let us hear
from you early. Thank you.

Yours faithfully,
Sd. Hogan, Adams & Allan.

Encl.

IN THE PRIVY COUNCIL

No.36 of 1958

ON APPEAL

FROM THE COURT OF APPEAL OF THE FEDERATION OF MALAYA

B E T W E E N:

ABERFOYLE PLANTATIONS LIMITED (Defendant) Appellant

- and -

KHAW BIAN CHENG (Plaintiff) Respondent

RECORD OF PROCEEDINGS

SHELTON COBB & CO.,
3, New Court,
Lincoln's Inn,
London, W.C.2.

Appellant's Solicitors.

PEACOCK & GODDARD,
1, Raymond Buildings,
Gray's Inn,
London, W.C.2.

Respondent's Solicitors.