

8/85

IN THE PRIVY COUNCIL

No. 32 of 1983

O N A P P E A L
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

WINFAT ENTERPRISE (HK)
COMPANY LIMITED

Appellant
(Plaintiff)

and

ATTORNEY GENERAL

Respondent
(Defendant)

CASE FOR THE RESPONDENT

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Introduction

1. This is an appeal from a judgment of the Court of Appeal of Hong Kong (Roberts C.J., Cons and Fuad J.J.A.) dated 14th December 1983, dismissing with costs the Appellant's appeal from a judgment of Kempster J. in the High Court of Hong Kong dated 29th April 1983, whereby the Appellant was refused declaratory relief relating

p.33-p.58

p.5-p.24

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to certain lands situate in the New Territories of Hong Kong.

2. The questions for decision involve -

- p.135-p.136
p.139-p.140
- (a) the constitutional and legislative status of certain proclamations of the Governor of Hong Kong dated respectively 9th April 1899 and 12th July 1899;
 - (b) the construction of the phrases "the peace order and good government of the Colony" and "the peace order and good government of the said territories" in the Letters Patent and in the New Territories Order in Council dated 20th October 1898;
 - (c) the construction of Article XXII(7) of the Royal Instructions dated 19th January 1888;
 - (d) the construction of section 4, Colonial Laws Validity Act, 1865;
 - p.232 1.5 -
p.232 1.14 (e) the construction of section 14, New Territories Land Court Ordinance, No. 18 of 1900;
 - (f) the effect of the Sovereign's non-disallowance of laws enacted by the Governor of Hong Kong with the advice and consent of the Legislative Council of Hong Kong;

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- (g) the construction of instructions issued by the Secretary of State to Governor of Hong Kong on or about 25th May 1900; p.219 1.15 -
p.220 1.8
- (h) the construction of section 8, New Territories Ordinance, Chapter 97 Laws of Hong Kong;
- (i) the construction of the Block Crown Lease, dated 24th January 1905, granted to the predecessors in title of the Appellant; p.77 1.1 -
p.81
- (j) whether, any discretionary relief should be granted to the Appellant in all the circumstances.

3. The points raised by this appeal are whether - section 15, Land Court (New Territories) Ordinance, No. 8 of 1900; section 15, New Territories (Land Court) Ordinance, No. 18 of 1900; section 14, New Territories Regulation Ordinance, 1910; section 8, New Territories Ordinance, Chapter 97 Laws of Hong Kong, sections 12(b) and 12(c), Crown Lands Resumption Ordinance, Chapter 124 Laws of Hong Kong are, and at all material times have been, void.

The convention of Peking and the New Territories Order in Council

4. By a convention for the extension of Hong Kong dated 9th June 1898 (known as "the Peking Convention") the governments of Great Britain and p.113 1.1 -
p.113 1.28

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China agreed that the limits of the British Territories of the Colony of Hong Kong should be enlarged, under lease, to include areas indicated generally on a map annexed thereto, the area subsequently known as "the New Territories" constituting the extension. The Peking Convention provided, inter alia, -

p.113 1.24 - "It is further understood that there will
p.113 1.27 be no expropriation or expulsion of the inhabitants of the district included within the extension, and that if land is required for public offices, fortifications, or the like official purposes, it shall be bought at a fair price."

This clause is hereinafter referred to as "the non-expropriation clause".

5. The lands the subject-matter of the proceedings herein (hereinafter "the lands") are situate within the New Territories.

6. On 20th October 1898, the Queen in Council enacted an Order in Council (known as "the New Territories Order in Council") which provided, inter alia, that the New Territories were -

"part and parcel of Her Majesty's Colony of Hong Kong in like manner as if they had originally formed part of the said Colony."
and -

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"It shall be competent for the Governor of Hong Kong, by and with the advice and consent of the Legislative Council of the said Colony, to make laws for the peace, order and good government of the said territories as part of the Colony."

The Appellant's lands

7. Legislation (hereinafter referred to) was enacted to facilitate the hearing, determination and settlement of land claims in the New Territories and an interest in the lands the subject matter of the appeal was on 24th January 1905 granted by Block Crown Lease to the various predecessors in title of the Appellant. pp.77-83
8. Between 1974 and 1976 the Appellant acquired the Block Crown Lease in respect of the lands the subject-matter of these proceedings. p.68 1.1 - 1.8
The said lands historically had been occupied and used as a fruit and poultry farm and so continued until July 1979. p.68 1.3 - 1.6
9. Between 1977 and 1980 the Appellant unsuccessfully endeavoured to obtain the approval of the Crown to depart from the agricultural user of the lands, namely to develop the lands into a housing estate. p.69 1.12 - 1.46
10. By Government Notice No. 3080 dated 7th October 1981 the Crown gave notice of the resumption of certain of the lands namely Lots Nos. 2938, 3103, 3104, 3105, 3106, 3107, 3535, p.70 1.44 - p.71 6 and p.85-p.87

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3526 and 3543 (hereinafter "the resumed land") for public purposes, under the Crown Lands Resumption Ordinance. The resumed land reverted to the Crown on 21st January 1982.

11. The Appellant, after the said 21st day of January 1982, continued to hold the remaining Lots, namely Lots Nos. 3129, 3130, 3131, 3132, 3362, 3556 and 3561 (hereinafter "the severed land") under the Block Crown Lease.

pp.1-4

12. The Appellant sought declaratory relief in the High Court in respect of several related issues, following the resumption as aforesaid.

Nature of interest of predecessors in title

p.2 1.9 -
I:14

13. The first declaration sought was "that the resumed land and the severed land were prior to the Convention dated 9th June 1898 between the Majesty and His Imperial Majesty the Emperor of China, held by the Plaintiff's predecessors in title in perpetuity and without restrictions as to user thereof". The Plaintiff adduced evidence to support the said proposition.

p.101-p.103

p.10 1.18-
1.22 and
p.26 1.6-
1.10

14. Kempster J. granted the first declaration, subject to addition of the words "subject to payment of land taxes".

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15. This declaration was not the subject of subsequent appeal and is not of direct concern to your Lordships.

The Proclamations

16. The Appellant argued before Kempster J. that although a treaty is an act of state and is not enforceable in the Courts of Hong Kong unless recognised or adopted as part of the municipal law, the non-expropriation clause in the Peking Convention had been so recognized or adopted and that such recognition or adoption was contained in two Proclamations of the Governor dated 9th April 1899 and 12th June 1899 respectively.

pp.135-136
and
pp.139-140

17. The Respondent challenged the proposition that the proclamations had or were intended to have legislative effect. For the Respondent it was argued that

(a) the proclamations were not derived from statutory authority;

(b) the proclamations could not be proclamations issued under the prerogative since -

(i) there no longer remained in the Crown the prerogative to legislate for Hong Kong;

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(ii) in any event, Proclamations under the prerogative must be under the Great Seal and published as proclamations;

(iii) the Governor of Hong Kong, not being a Viceroy, has no power to issue proclamations unless expressly authorized in that regard;

(c) the proclamations were not on their true construction intended to be of legislative effect;

(d) the proclamations, even if of legislative effect (which was denied), could be and had been superseded by subsequent legislation.

(e) the proclamations were informative and minatory;

18. Kempster J. concluded that the proclamations were not of legislative effect and had not imported into the municipal law of Hong Kong the non-expropriation clause in the Peking Convention. His Lordship said the tenor of the
p.21 1.11 - proclamations was "rather promissory, informative
16 and minatory than legislative". On the Respondent's specific submissions at paragraph 17(b) above, His Lordship said -

p.20 1.45 - "..... the Crown had not fettered its
p.21 1.4 ancient but apparently dormant powers to legislate for the Colony of Hong Kong by

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proclamations under the Great Seal; implying the advice of a known responsible minister Jephson v. Riera (1835) III Kn. 130. In any event Article XI of the Letters Patent had expressly reserved to the Crown a concurrent right to legislate, whether by proclamation or otherwise, with the advice of the Privy Council.

..... The Governor, not being a viceroy and having no delegated powers under the Order in Council or Letters Patent, could not legislate and was certainly not in possession of the Great Seal." p.21 1.6 - 1.9

His Lordship also noted that there was no reason to believe that the Governor applied the seal of the Colony to the Proclamations. p.21 1.10 - 1.11

19. Before the Court of Appeal the Appellant introduced in evidence a copy of the original Chinese text of the proclamation dated 9th April 1899. The Appellant and Respondent otherwise relied on the same arguments as before Kempster J.

20. The Chief Justice, Sir Denys Roberts, in delivering the judgment of the Court of Appeal, held that the Governor had no inherent power to legislate and that any power to legislate must be conferred by the Crown. The proclamations could not be argued to have been made by the Governor, with the advice and consent of the Legislative Council (under Article IX of the Letters Patent of 19th January 1888). It had not been suggested by the Plaintiff that the proclamations were p.46 1.11 - 1.16 p.46 1.35 - p.47 1.3 p.47 1.4 - 1.18

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proclamations of the Queen in Council (under Article XI of the said Letters Patent). The Chief Justice noted the contention that there remained in the Sovereign a residuary power to issue legislative instruments but the Court did not form any view on the issue, as their Lordships were satisfied that, even if the Queen does retain such a power outside her Privy Council, she did not purport to exercise such power in the case of these Proclamations. There was no indication in the material before the Court that there had been a Royal direction to the Governor to issue (as delegate) the Proclamations, assuming that such

p.46 1.17 - delegation is possible. Furthermore, the internal
1.20 evidence of the Proclamations themselves indicates they were not intended to have the force of law, but were meant to give warning of the Government's

p.46 1.31 - intentions. The Court would therefore have been
1.34 inclined to find the Proclamations were never intended to be legislative instruments, from an examination of their terms alone, although the same conclusion was reached by the examination of the possible sources of the Governor's power to legislate in such manner.

Legitimate expectation

21. A distinct approach to the nature of the proclamations was taken by Kempster J. although the point was not argued in terms by the parties. His Lordship stated -

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".....These proclamations were the Governor's own and an occupier of land in the New Territories at the time might well have been entitled to call upon the Colonial Government to redeem the promises which they embodied. Attorney General v. NG Yuen-shiu [1983] 2 W.L.R. 735." p.15 1.39 - 1.42

22. Before the Court of Appeal the Appellant did not seek to support the above approach with detailed argument. For the Respondent, it was argued, in skeleton, that the principles in the above case did not apply to the present case inasmuch as p.50 1.7 - 1.10

- (i) the principles have limited application and are particularly concerned with the rules of administrative law, relating to natural justice,
- (ii) the principles have no application where there is specific legislation to a contrary effect, as in this case.

23. The Court of Appeal accepted the second argument of the Respondent and made no comment upon the first. p.50 1.11 - 1.15

"Peace Order and Good Government"

24. The Appellant further argued before Kempster J. that the power of the Governor with the advice p.22 1.2 - 1.5

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and consent of the Legislative Council to make laws for the "peace order and good government" of the New Territories (existing under the New Territories Order in Council and the 1888 Letters Patent) did not authorize legislation in breach of the Peking Convention. It was argued that the phrase "peace order and good government" is ambiguous, uncertain in extent and/or unclear, and that it should be construed so as to require that legislation be consistent with international law, which holds treaties binding.

25. The Respondent argued that the phrase "peace order and good government" was unambiguous and clear, and connoted the widest law-making powers.

26. Kempster J. accepted the Respondent's above submission and found that "the words in question, hallowed as they are by long and widespread usage, are clear and unambiguous, and must be given effect to whether or not they carry out treaty obligations. It has never been held, though it has been suggested, that the laws of a Colonial legislative in breach of international law are void".

27. Before the Court of Appeal, the Appellant extended the reasoning of its argument by submitting that the phrase "peace, order and good government" must also be construed so as to be

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consistent with the preamble to the New Territories Order in Council which, it was said, makes it clear that the purpose of the said Order in Council was to implement the Peking Convention.

p.50 1.20 -
1.36

28. The Court of Appeal rejected the new argument, stating that the preamble did no more than recite, by reference to the Convention, the source of Her Majesty's jurisdiction.

In rejecting also the Appellant's first argument (as to international law) the Chief Justice said that "it seems to be established beyond doubt that the phrase 'peace, order and good government' is not ambiguous or uncertain in its extent but merely so broad in its scope that it has no boundaries, save those which are imposed upon it by the constitutional instruments of the territory itself or by imperial enactments or by Orders in Council which are applicable to the territory this seems to us to be an attempt, not to interpret the scope of Article IX, but to limit it by the imposition of conditions upon clear words."

p.52 1.11 -
1.15

p.58 1.2 -
1.3

The Royal Instructions

29. The Appellant submitted before Kempster J. that provisions in certain Ordinances were invalid because they were in breach of Article XXII of the Royal Instructions, 1888, which specifies certain classes of legislation to which the Governor is

p.19 1.41 -
1.45

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p.20 1.13-
1.15 not to assent. In particular, the Appellant alleged that the legislation in question had been inconsistent with the non-expropriation clause in the Peking Convention. Such inconsistency, it was argued, was not cured by the provisions of s.4 Colonial Laws Validity Act, 1865, which were intended to cover only the failure of a Governor to observe specific instructions, not a failure to observe general directions contained in the Royal Instructions.

p.174 1.15-
1.26 30. The impugned provisions were section 15 Land Court New Territories Ordinance, No. 8 of 1900 (declaring all land in the New Territories to be the property of the Crown)

p.232 1.15-
1.26 section 15 New Territories (Land Court) Ordinance, No. 18 of 1900 (of like effect); section 10 New Territories Regulation Ordinance 1910 (of like effect); section 8 New Territories Ordinance, Chapter 97 Laws of Hong Kong (of like effect); and sections 12(b) and 12(c) Crown Lands Resumption Ordinance, Chapter 124 Laws of Hong Kong (respectively excluding certain considerations from calculation of compensation payable under the Ordinance).

31. The Respondent submitted before Kempster J. that even were there inconsistency, between the impugned legislation and the non-expropriation clause (which was denied), the clear provisions of section 4, Colonial Laws Validity Act, 1865 apply to validate the legislation.

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Alternately it was submitted each impugned ordinance had not been disallowed, and such non-disallowance operated as an antecedent authorisation, validating the legislation in question.

Alternately it was submitted in respect of the New Territories (Land Court) Ordinance, No. 18 of 1900 that there having been an express instruction from the Secretary of State to the Governor directing the enactment of the said Ordinance no question of a breach of instructions arose. pp.219-220 and p.237

32. Kempster J. said of the Appellant's submission on the said section 4 - "I cannot accept such a construction and the submission based on Instruction XXII(7) fails." His Lordship further held that the impugned Ordinances had been ratified by non-disallowance amounting in law to express authorisation. His Lordship did not deal with the Respondent's specific submission on Ordinance No. 18 of 1900. His Lordship expressly refrained from determining whether or not the non-expropriation clause had been breached as not necessary for his judgment. p.20 1.15 - 1.18 p.23 1.1 - 1.4

33. Similar arguments were before the Court of Appeal on these points. The Court of Appeal also dismissed the Appellant's argument as to section 4, finding the said section to be clear, contemplating both special and general instructions. Their Lordships viewed it as unnecessary for them to pronounce a view on the Respondent's proposition p.55 1.4 - 1.8 p.55 1.19 - 1.24

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that the Ordinances had been ratified by non-disallowance but stated that they did not wish to be thought to be agreeing with it. The specific submission of the Defendant as to Ordinance No. 18 of 1900 was not dealt with by the Court. Their p.50 1.16-Lordships expressly refrained from making any 1.19 finding as to whether there had been breaches of the terms of the Peking Convention.

33A Should it be necessary before your Lordships' Board the Respondent will present detailed argument on the question not required to be dealt with in the judgment below namely whether there had been breaches of the terms of the Peking Convention. It will be submitted that the non-expropriation clause was not nor was it intended to constitute a binding agreement between the High Contracting parties but recorded an understanding having less than legal effect. It will be further submitted that that which amounts to "fair price" is not the highest open-market price, as the Appellant contends, but a price which is fair having regard not merely to the landowner's interest in maximising his compensation but also having regard to the interests of the community as a whole. What amounts to "expropriation" must be construed against that background. When all relevant considerations are taken into account, there cannot be established any breach of the terms of the Peking Convention.

Validity of Block Crown Lease

34. Before Kempster J. the Appellant submitted that on a true construction of the New Territories

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(Land Court) Ordinance, No. 18 of 1900, and having regard to the fact that the Appellant's predecessors in title had held the lands without restriction as to user, the Governor in issuing the Block Crown Lease in respect of the Appellant's lands was not authorised to impose a restriction as to user and that the Block Crown Lease is pro tanto invalid. In particular, the Appellant submitted that the Block Crown Lease so granted was not "a title appropriate to the case" on the true construction of section 14 of the said Ordinance, and that the Governor was required either to issue a title in terms of the aware of the Land Court or to refer the matter back to the said Court (under section 14).

p.232 1.5-
1.14

35. In reply, the Respondent submitted that the Block Crown Lease could not be said to have been an inappropriate title, on the facts of the case, and against the background of the facts that

- (a) by section 15 all New Territories land had been declared Crown land;
- (b) there were commonly restrictions as to user in usual English leasehold practice, which had been substituted for the land-holding system in operation in the New Territories prior to the Peking Convention; and

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- (c) land was a traditional source of revenue income in Hong Kong, as elsewhere.

The Respondent further submitted that it would be inappropriate for the Court, in its discretion, to grant the declaration sought by the Appellant, the parties (or their predecessors in title) having acted on the Block Crown Lease for a period of over eighty years.

36. In reply the Appellant argued that there was no time limitation for the application for declaratory relief and that the Respondent had not in any event shown any detriment from delay.

37. Kempster J. dismissed the Appellant's submissions in these words -

p.24 1.2-
1.6

"..... I am satisfied that the Land Court did not itself do more than allow claims and that the Governor was acting *intra vires* in granting consequential leasehold titles shorter in time than the Crown's interest and subject to restriction, pursuant to valid Ordinances. The lease acquired by the Plaintiff was wholly valid."

His Lordship did not deal with the question of the delay of the Appellant (and its predecessors in title) in making application for declaratory relief.

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38. Before the Court of Appeal the Appellant elaborated upon its previous argument on this point. In particular, it was asserted additionally that the deduction of three days from the ninety-nine years (in total) term of the Block Crown Lease was not valid, since the Appellant's predecessors-in-title had previously held the lands in perpetuity.

39. The Respondent maintained its previous submissions, adding that restrictions as to term were also a common feature of the English leasehold system. The question of whether declaratory relief should be given to the Plaintiff in view of the delay in applying for such relief was reserved.

40. The Chief Justice, in delivering the judgment of the Court, said -

"The vesting of all land in the Crown by section 15 had the effect of conferring upon the Governor, as the representative in Hong Kong of the Crown, power to deal as he thought fit with the land so vested, for the term therein described.

p.57 1.33 -
1.43

This unrestricted power would have to be taken from him by clear words. In our judgment, section 14 did not do that, but left the Governor with authority to insert any term which he thought appropriate to the case. This includes a power to insert conditions generally, and thus, when issuing the Block Crown Lease which

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constituted 'title' under the Ordinance, to grant leases for any term which he thought fit 'during the term specified by the Convention', (to use the phrase which appears in section 15 of Ordinance No. 18 of 1900), and to include a prohibition against use of the land for building purposes, without the permission of the Crown."

The Court also noted -

p.58 1.18 -
1.23

"Nor was any argument addressed to us although we agreed to hear it at a later stage if our conclusions on the other issues made it appropriate - as to whether or not an equitable remedy of this nature, which lies within the discretion of the Court, ought to be granted to the successor in title of a person who suffered the grievance, which is the subject matter of the declarations sought, if indeed such a grievance could be established, over 80 years ago."

Vesting of Crown land

41. The Appellant framed, but has not pursued in either court below, an eighth declaration that section 8 of the New Territories Ordinance, Chapter 97 Laws of Hong Kong, is valid only to the extent of 99 years from the 1st day of July, and the

Plaintiff sought two declarations consequential thereto.

42. Notwithstanding the lack of argument on this matter, and although Kempster J. was not prepared to make any such declarations, his Lordship stated -

"..... I am satisfied that, subject to any leases granted, section 8 of the New Territories Ordinance Cap. 97, following earlier legislation, was apt to vest all land in the Territories in the Crown until and only until the expiry at midnight on the 30th June 1997 of the lease by China to the Crown."

p.24 1.7-
11

43. Again, no argument was addressed to the Court of Appeal on the subject matter of the eighth declaration and the Court expressed no view on it, by agreement.

p.58 1.5 -
1.10

44. Should the matter be raised in argument before your Lordships the Respondent reserves its right to present argument showing that on the true construction of section 8 New Territories Ordinance there is no limitation therein upon the term during which all land in the New Territories is vested in the Crown.

Demise of lands as agricultural or garden ground

45. The Appellant seeks a ninth declaration, namely that the Appellant's lands were not

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expressed to be demised as agricultural or garden ground by the Block Crown Lease on 24th June 1905.

46. The consideration of this question necessitates looking the Block Crown Lease and at one particular authority namely, the decision of the Court of Appeal of Hong Kong in Watford Construction Co. Ltd. v. Secretary for New Territories [1978] H.K.L.R. 410, and authority against the Appellant and one which the Appellant p.24 1.19-21 accepted required it is reserve the argument on p.58 1.11-77 this point until before Your Lordships' Board.

47. In the Watford case it was held by the Court of Appeal, on an appeal from a determination of the Lands Tribunal, that the proposition now advanced by the Appellant is fallacious. For the Defendant it had been argued, as it will be for the Respondent before Your Lordships' Board, that where in a Block Crown Lease such as that in the instant case, contains in the Schedule a "Description of Lot" as agricultural or garden land, the said land is "demised as agricultural or garden ground" within the meaning of those words as they appear in the following covenant of a Block Crown Lease :-

"AND FURTHER that the Lessee or any other person or persons shall not, nor will, during the continuance of this demise convert any ground hereby expressed to be demised as agricultural or garden ground into use for building purposes other than

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for the proper occupation of the same ground as agricultural or garden (ground) without the previous Licence of His said Majesty."

48. It is unknown to the Respondent whether the Appellant will adopt before your Lordships' Board the unsuccessful arguments in the Watford Case or other arguments but the Respondent respectfully intends to adopt the reasoning and conclusion of the Court of Appeal in the Watford case.

User of land

49. The Appellant was granted by Kempster J. (unopposed by the Respondent) the tenth declaration in amended form, namely that "the severed land may be and prior to resumption might lawfully have been used for open storage of motor vehicles or any other purpose apart from building purposes inconsistent with the proper occupation of the said lands as agricultural or garden ground or from any noisy, noisome or offensive trade or business".

50. This declaration, as with the first, was not the subject of subsequent appeal and is not of direct concern to your Lordships' Board.

Conclusion

The Respondent accordingly submits that the decision of the Court of Appeal ought to be affirmed with costs for the reasoning contained here in and/or in the Judgment of Kempster J. and the following (among other)

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R E A S O N S

(1) BECAUSE section 15 Land Court (New Territories) Ordinance, No. 8 of 1900; section 15 New Territories (Land Court) Ordinance, No. 18 of 1900; section 14 New Territories Regulation Ordinance, 1910; section 8 New Territories Ordinance Chapter 97 Laws of Hong Kong and section 12 (b) and (c) Crown Lands Resumption Ordinance Chapter 124 Laws of Hong Kong were and are not void since -

(a) the two proclamations dated 9th April 1899 and 12th July 1899 did not incorporate into the municipal law of Hong Kong the Peking Convention and thereby invalidate the aforesaid legislation because -

(i) they were not themselves of legislative effect (there being no power in the Sovereign or her Governor thus to legislate for Hong Kong and the documents, in any event, not being intended to have legislative effect); and

(ii) the aforesaid legislation superseded the legislative effect (if any, which is denied) of the proclamations.

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- (b) the aforesaid legislation constituted a valid exercise of the Legislature of Hong Kong to make laws for the peace order and good government of the Colony, including the New Territories.

- (c) the aforesaid legislation was not void by virtue of inconsistency with the Peking Convention and disobedience of Article XXII Royal Instructions 1888, because
 - (i) there was no inconsistency;

 - (ii) if there were such inconsistency (which is denied) such breach of the instructions does not invalidate the legislation (section 4 Colonial Laws Validity Act, 1865);

 - (iii) if there were such inconsistency (which is denied) the subsequent non-disallowance of the legislation amounts to ratification and validates the same; and

 - (iv) (in respect of Ordinance No. 18 of 1900) a specific instruction relating to the enactment of that particular legislation overrode the provisions of the said Article XXII.

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- (2) BECAUSE it was accordingly right to deny the Appellant the relief sought in declarations (2) to (6).
- (3) BECAUSE the Appellant's predecessors in title were granted a title appropriate to the case, by the Block Crown Lease dated 24th January 1905, and if the title had been inappropriate (which is denied) declaratory relief ought not to be granted after the effluxion of 80 years.
- (4) BECAUSE it was accordingly right to deny the Appellant the relief sought in declaration (7).
- (5) BECAUSE section 8 New Territories Ordinance Chapter 97 Laws of Hong Kong is not limited in application to the date 99 years from 1st July 1898 and the Appellant has not pursued argument in this respect.
- (6) BECAUSE it was accordingly right to deny the Appellants the relief sought in declaration (8).
- (7) BECAUSE the Appellant's lands were demised as agricultural or garden ground.
- (8) BECAUSE it was accordingly right to deny the Appellant the relief sought in declaration (9).

JOHN C. GRIFFITHS Q.C.
R.A. OSBORNE

No. 76 of 1983
IN THE PRIVY COUNCIL

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FROM THE COURT OF APPEAL OF
HONG KONG

B E T W E E N :

WINFAT ENTERPRISES (HK)
COMPANY LIMITED Appellant
(Plaintiff)

- and -

ATTORNEY GENERAL Respondent
(Defendant)

CASE FOR THE RESPONDENT

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