

35 OF 1984 8/85

Appeal No. 76 of 1983

In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

WINFAT ENTERPRISE (HK) COMPANY LIMITED **Appellant**
(Plaintiff)

AND

ATTORNEY GENERAL **Respondent**
(Defendant)

RECORD OF PROCEEDINGS

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London WC2A 3UB

Solicitors for the Appellants)

In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

WINFAT ENTERPRISE (HK) COMPANY LIMITED **Appellant**
(Plaintiff)

AND

ATTORNEY GENERAL **Respondent**
(Defendant)

RECORD OF PROCEEDINGS

RAYMOND TANG & CO.
Solicitors for the Appellant (Plaintiff)

CROWN SOLICITOR
Solicitors for the Respondent (Defendant)

In the Privy Council**ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG****BETWEEN****WINFAT ENTERPRISE (HK) COMPANY LIMITED** **Appellant
(Plaintiff)****AND****ATTORNEY GENERAL** **Respondent
(Defendant)****RECORD OF PROCEEDINGS****INDEX OF REFERENCE**

No.	Description of Document	Date	Page
	IN THE HIGH COURT Miscellaneous Proceedings Action No. 982 of 1982		
1.	Originating Summons (as further re-amended)	1st June, 1982	1
2.	Judgment of High Court	29th April, 1983	5
3.	Order of High Court	29th April, 1983	25
	IN THE COURT OF APPEAL (On appeal from High Court Action No. 982 of 1982)		
4.	Notice of Appeal	8th June, 1983	27
5.	Respondent's Notice	28th June, 1983	31
6.	Judgment of Court of Appeal	14th December, 1983	33
7.	Order of Court of Appeal	14th December, 1983	59
8.	Notice of Motion for Leave to Appeal	21st December, 1983	61
9.	Order of Court of Appeal Granting Conditional Leave to Appeal	12th January, 1984	63
10.	Order of Court of Appeal Granting Final Leave to Appeal		65

EVIDENCES AND EXHIBITS

Item No.	Description of Documents	Page
A 1	Affirmation of Tan Eng Aik dated 28th May 1982	67
A 2	A Plan	75
A 3	Block Crown Lease dated 24th January 1905	77
A 4	Letter from Secretary for the New Territories dated 26th November 1981	85
A 5	Letter from Secretary for the City & New Territories Administration dated 6th February 1982	89
A 6	Valuation Report by Messrs. Collier Petty dated 2nd March 1983	91
A 7	Letter from Messrs. Raymond Tang & Co. to the Secretary for New Territories Administration dated 5th March 1982	99
B 1	Affidavit of Anthony Richard Dicks dated 7th December 1982	101
C 1	Affidavit of Raymond Tang dated 9th December 1982	105
C 2	Convention for Extension of Hong Kong dated 9th June 1898	113
C 3	Advice of Crown Law Officers dated 17th October 1898	115
C 4	Despatch from Secretary of State for the Colonies dated 6th January 1899	117
C 5	Proclamation pursuant to Exportation of Military Stores Ordinance dated 20th March 1899	125
C 6	Proclamation pursuant to Quarantine Regulations dated 28th March 1899	127
C 7	Proclamation pursuant to New Territories Order-in-Council dated 8th April 1899	129
C 8	New Territories Regulation Bill 1899	131
C 9	New Territories Regulation Ordinance, No.12 of 1899	133
C 10	Governor's Proclamation dated 9th April 1899	135
C 11	Despatch from Governor to Secretary of State dated 15th April 1899	137
C 12	Governor's Further Proclamation dated 12th July 1899	139

EVIDENCES AND EXHIBITS

Item No.	Description of Documents	Page
C 13	Appendix V to Supplement to Gazette for year 1900	141
C 14	Despatch from Governor to Secretary of State dated 31st July 1899	143
C 15	Governor's Speech dated 2nd August 1899	145
C 16	Proclamations of San On Magistrate and Viceroy of Two Kwongs from Gazette for year 1899	147
C 17	Debate on Crown Lands Resumption Amendment Bill 1899	149
C 18	New Territories Land Court Bill 1899	153
C 19	Proclamation relating to Boer War dated 27th December 1899	159
C 20	Debate on New Territories Land Court Bill 1899	161
C 21	Land Court (New Territories) Ordinance, No. 8 of 1900	171
C 22	Petition by Mr. T.H. Whitehead dated 24th March 1900	177
C 23	Extracts from Colonial Office File No. 129/298	179
C 24	New Territories Land Court Ordinance, No.18 of 1900	229
C 25	Extracts from Colonial Office File No. 129/300	235
C 26	Notice of Non-Disallowance of Ordinance No.18 of 1900 dated 29th September 1900	245
C 27	New Territories Titles Bill 1902	247
C 28	Debate on New Territories Titles Bill 1902	263
C 29	New Territories Titles Ordinance, No.47 of 1902	265
C 30	New Territories Titles (Repeal) Bill 1903	281
C 31	New Territories Titles (Repeal) Ordinance, No.21 of 1903	283
C 32	Crown Lands Resumption Ordinance, No.23 of 1889	285
C 33	Crown Lands Resumption Amendment Bill 1898	291

EVIDENCES AND EXHIBITS

Item No.	Description of Documents	Page
C 34	Crown Lands Resumption Amendment Ordinance, No.30 of 1899	295
C 35	Crown Lands Resumption Bill 1900	297
C 36	Crown Lands Resumption Ordinance, No.32 of 1900	305
C 37	Crown Lands Resumption Bill 1921	313
C 38	Crown Lands Resumption Ordinance, No.14 of 1921	315
C 39	Crown Lands Resumption Amendment Bill 1922	317
C 40	Notice of Non-Disallowance of Ordinance No.14 of 1921 dated 5th January 1922	321
C 41	Crown Lands Resumption Amendment Ordinance, No.9 of 1922	323
C 42	Notice of Non-Disallowance of Ordinance No. 9 of 1922 dated 9th August 1922	325
C 43	Petition by Landholders dated 29th April 1925	327
C 44	Despatch from Secretary of State to Governor dated 26th November 1925	333
C 45	Gazette Notification relating to the Resumed Land dated 7th October 1981	349
D 1	Affidavit of Patrick Moubray Cadell dated 3rd November 1983	351
E 1	Affidavit of Anthony Richard Dicks dated 17th November 1983	353
E 2	Certified Translation of Proclamation of San On Magistrate	355
E 3	Original Proclamation of San On Magistrate in Chinese	357
E 4	Certified Translation of Proclamation of Viceroy of Two Kwongs	359
E 5	Original Proclamation of Viceroy of Two Kwongs in Chinese	361
E 6	Certified Translation of Governor's Proclamation in Chinese dated 9th April 1899	363
E 7	Original Governor's Proclamation in Chinese dated 9th April 1899	365

**In the Supreme Court of
Hong Kong.**

Miscellaneous Proceedings

**(High Court Miscellaneous Proceedings
Action No. 982/1982).**

NO. 1 ORIGINATING SUMMONS (AS FURTHER RE-AMENDED)

1982 M.P. No. 982.

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

IN THE SUPREME COURT OF HONG KONG

香港最高法院

HIGH COURT

MISCELLANEOUS PROCEEDINGS

高等法院民事訴訟雜案

No. 1
Originating
Summons
(as further
re-amended)
dated 1st
June 1982

10

IN THE MATTER of land described as Lot Nos. 2938, 3103, 3104, 3105, 3106, 3107, 3525, 3526 and 3543 in Demarcation District No.124 in the New Territories Hong Kong (hereinafter referred to as "the resumed land")

and

IN THE MATTER of land described as Lot Nos. 3129, 3130, 3131, 3132, 3362, 3556 and 3561 in Demarcation District No. 124 in the New Territories Hong Kong (hereinafter referred to as "the severed land")

BETWEEN

20

**WINFAT ENTERPRISE (HK)
COMPANY LIMITED**

Plaintiff
原告人

and

THE ATTORNEY-GENERAL

Defendant
被告人

To the Defendant The Attorney-General of Legal Department, Central Government
致 被 告 人

Office, Main Wing, Hong Kong.

地 址

Let the defendant, within 14 days after service of this summons on him,
讓 於 此 傳 票 送 達 後 之 十 四 日 內 ， 以 送 達 之 日 起
counting the days of service, return the accompanying Acknowledgement of Service
計 ， 將 附 於 此 傳 票 之 傳 票 送 達 認 收 書 交 回 高 等 法 院
to the Registry of the Supreme Court.
登 記 處 。

By this summons which is issued on the application of the Plaintiff Winfat
此 傳 票 由 原 告 人 居 於

Enterprise (HK) Company Limited of whose registered office is situate at Ground
Floor, No.11 Cornwall Avenue, Tsimshatsui, Kowloon. 申請發出

No. 1
Originating
Summons
(as further
re-amended)
dated 1st
June 1982
(continued)

The plaintiff claims against the defendant (or seeks the determination of the
原告人其票聲訴被告 (或呈請法庭裁決下列事項
Court on the following questions), namely,
計開)

- (1) A declaration that the resumed land and the severed land (hereinafter collectively referred to as "the said lands") were prior to the Convention dated the 9th day of June 1898 between Her 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. (such rights in property shall hereinafter be referred to as "the said pre-Treaty rights"). 10
- (2) A declaration that Section 15 of the Land Court (New Territories) Ordinance 1900 (Ordinance No.8 of 1900), Section 15 of the New Territories Land Court Ordinance 1900 (Ordinance No.18 of 1900), Section 14 of the New Territories Regulation Ordinance 1910 and Section 8 of the New Territories Ordinance, Chapter 97, Laws of Hong Kong are void as being repugnant to and/or ultra vires of Her Majesty's Order-in-Council providing for the administration of the New Territories dated the 20th October 1898 and/or the Letters Patent and/or the Royal Instructions, insofar as such Ordinances purported to vest the said pre-Treaty rights in the Crown in perpetuity or at all. 20
- (3) Accordingly, a declaration that the Plaintiff is vested with the said pre-Treaty rights and is entitled to the possession of the said Lands.
- (4) Further, a declaration that the purported Lease granted by the Crown to the Plaintiff's predecessors-in-title on 24th January 1905 is void save and except, and only to the extent, that such Lease evidences the ownership of the said lands by the Plaintiff's predecessors-in-title on or before 24th January 1905. 30
- (5) Further, a declaration:
 - (a) That the Crown Lands Resumption Ordinance, Chapter 124, Laws of Hong Kong, has no application to the said lands.
 - (b) That Government Notice No.3080 dated 7th October 1981 and the decision of the Governor-in-Council referred to therein purporting to resume the said lands, are void and of no effect.
 - (c) That the occupation of the said lands by the Crown and/or its agents, licencees or tenants, is unlawful.
- (6) Further and in the alternative to (1) to (5) above, Section 12(b) and 12(c) of the Crown Lands Resumption Ordinance Chapter 124 Laws of Hong Kong are void as being repugnant to and/or ultra vires of Her Majesty's Order-in-Council providing for the administration of the New 40

Territories dated 20th October 1898 and/or the Letters Patent and/or the Royal Instructions.

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

- 10 (7) Alternatively to (1) to (6) above, by a true and proper construction of Sections 13 and 14 of the Land Court (New Territories) Ordinance 1900 (Ordinance No.8 of 1900) and Sections 13 and 14 of the New Territories Land Court Ordinance 1900 (Ordinance No.18 of 1900) and by two Proclamations of the Governor dated 9th April and 12th July 1899, a declaration:
- (a) That the Land Court, in allowing claims under Section 13 of the aforesaid Ordinances had no power to impose restrictions as to user of the said lands or grant a term of less than 99 years.
- (b) That the Crown in granting a title under Section 14 of the aforesaid Ordinances had no power to impose restrictions as to user of the said lands or grant a term of less than 99 years.
- (c) That accordingly, the Lease granted by the Crown to the Plaintiff's predecessors-in-title on 24th January 1905 is void insofar as it purported to restrict user of the said lands and grant a term of less than 99 years.
- 20 (8) Further and in the alternative to (7) above, a 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 1898, and accordingly:
- (a) The Plaintiff is entitled to possession of the said lands on the expiry of 99 years from the 1st day of July 1898, and
- (b) Section 5 of the Crown Lands Resumption Ordinance, Chapter 124, Laws of Hong Kong is of no effect insofar as it purports to extinguish the rights of the Plaintiff beyond the period of 99 years from the 1st day of July 1898.
- 30 (9) Alternatively to (1) to (8) above, a declaration that the said lands were not expressed to be demised as agricultural or garden ground by the said Lease on 24th June 1905.
- (10) Alternatively to (9) above, if which is denied the said lands were demised as agricultural or garden ground, the Plaintiff may use the said lands for any use other than building purposes and in particular for the open storage of motor vehicles.
- (11) Further or other relief.
- 40 (12) That provision be made for the costs of this applicaton.

No. 1
Originating
Summons
(as further
re-amended)
dated 1st
June 1982
(continued)

If the defendant does not acknowledge service, such judgment may be given or order
倘被告不將傳票送達認收書交回時，法庭可於公允及權
made against or in relation to him as the Court may think just and expedient.
宜情況下判汝敗訴或頒佈對汝有關之諭令。

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

Dated the 1st day of June 1982.
一九八二年六月一日。

No. 1
Originating
Summons
(as further
re-amended)
dated 1st
June 1982
(continued)

N. J. BARNETT (L.S.)
Registrar

(Sd.) Raymond Tang & Co.
Solicitors for the Plaintiff:

Note:- This summons may not be served later than 12 calendar months
註：除經法庭飭令予以延展外，此傳票不得於上述日期之
beginning with the above date unless renewed by order of the Court.
十二個月後始行送達。

10

This Summons was taken out by Messrs. Raymond Tang & Co., of 7th floor,
此傳票由原告人（居址如上）之代表律師鄧爾邦律師樓
Chung Nam House, No. 59 Des Voeux Road Central, Hong Kong, Solicitors for the said
地址在香港德輔道中五十九號八樓原告代表律師申請發出，
Plaintiff whose address is as stated above.
原告人之地址如上述。

IMPORTANT
重要事項

Directions for Acknowledgment of Service are given with the accompanying form.
送達認收之明附載於附表內。

JUDGMENT OF HIGH COURT

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

Coram: Kempster, J.

Date: 29th April, 1983.

No. 2
Judgment of
High Court
dated 29th
April 1983

10 The plaintiff in these proceedings is a limited company which, between 1974 and 1976, acquired the Block Crown lease of a number of parcels of land in the New Territories terminating 3 days prior to the expiry in 1997 of the lease by China to Great Britain of such Territories. The meaning of the expression "Block Crown lease" is explained in the reasons for judgment of the Hong Kong Court of Appeal in **Attorney General v. Melhado Investment Ltd.** Civil Appeal 79/82, unreported, given on 13th March 1983. It was hoped, if not expected, that the prohibition on use for building purposes contained in the Block Crown lease might be waived on payment of a suitable premium. On the other hand the plaintiff knew, I would assume, of the compensation and other provisions of the Crown Lands Resumption Ordinance, *Cap.* 124 as amended.

20 On 30th November 1977 the plaintiff submitted to the appropriate District Officer detailed proposals for the potentially profitable development of the land for high-class housing which would appeal to persons employed in executive and managerial roles in Tuen Mun and Yuen Long New Towns. The project did not commend itself to government and the application was refused; on the basis, the plaintiff claims, that the area was inadequately provided with basic services. The plaintiff sought re-assessment of its application. By letter dated the 18th December 1978 the Estate Surveyor for the District Officer again intimated a refusal. He stated that necessary support from other government departments had not been forthcoming. Undeterred the plaintiff tried once more and once more, this time by letter to the plaintiff's surveyor dated the 21st July 1980, the Estate Surveyor refused. "There is no present planning proposal to permit urban development in the general area in which your client's land is situated" he wrote. "The appropriate use is still considered to be

agricultural". He sent a further letter to like effect on the 28th January 1981.

Making the best of a bad job the plaintiff sub-let the greater part of its land for a period of 3 years with an option for renewal for a further 2 years to a firm called New Yick Fung Enterprises Co. which wanted space for the parking of vehicles. As was then thought necessary a short-term waiver was sought from and granted by the District Officer in consideration of the payment of "fees".

On the 7th October 1981 the following Notice No. 3080 appeared in the *Government Gazette*—

"Resumption of Land for Temporary Housing Area Yick Yuen, Yuen Long, New Territories. 10

To the owners and every person interested or having any right or easement in the following lots shown coloured orange on the plan numbered YLR 137 which is deposited in the District Office at Yuen Long in the New Territories and which is available for inspection there."

Then the lot numbers were given.

"Taken notice that the Governor in Council having decided that the above-mentioned lots are required for a public purpose, the Governor has ordered that the above-mentioned lots shall be resumed and revert to the Crown on the expiration of three months from the date of the affixing of the notice to the said land. 20

7 October 1981

A. G. Eason
Secretary for Lands and Works"

The lots described embraced the greater part of the plaintiff's land and may properly be referred to as "the resumed land"; the balance being "the severed land". A letter to the plaintiff from the Secretary for the New Territories to similar effect and dated the 26th November 1981 followed. Paragraphs 2 and 3 of that letter said—

- “2. Government is prepared to offer you for the land that is to be resumed cash compensation at \$15,299,620 (or at a rate, which represents 50% of the prevailing cash compensation for agricultural land acquired by government in an urban area of the New Territories, as at the date of execution of surrender). 30
3. This offer of cash compensation is subject to your surrendering your land to the Crown free of all encumbrances and accepting in writing the offer before the expiry of the period stipulated in the said Government Notice i.e. before 21st January 1982. If you wish to accept the offer, you should call at the District Office, Yuen Long, as soon as possible bringing with you this letter, your Identity Card or Company Seal and the Title documents in respect of the land to be surrendered. The surrender will be taken immediately or the District Officer will make an 40

appointment for you to return at a later date to take the surrender”.

By reason of the sub-lease to which I have referred the plaintiff could not comply with the conditions imposed for cash compensation and, as the Crown had resumed pursuant to ordinance and not to the terms of the lease, was left with the recourse described in paragraph 5 which read—

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

No. 2
Judgment of
High Court
dated 29th
April 1983
(continued)

10

“Under the provisions of the Crown Lands Resumption Ordinance you have the right to claim compensation as a result of your land being resumed by submitting a claim to the Lands Tribunal. If you are not sure of your rights you should inquiry from the District Office, Yuen Long, or seek independent professional advice. The Tribunal on request, must, under sections 10, 11 and 12 of the said Crown Lands Resumption Ordinance, determine the compensation for your land strictly in accordance with the lease conditions. The Tribunal is precluded from awarding any compensation in respect of any expectancy or probability of the grant of land exchanges or licences and they must discount any evidence which shows that the land values have been enhanced by expectation of re-development or of a modification of lease conditions”.

20

This meant that the plaintiff could not base a claim for compensation on the reason for which the land had been acquired namely that it had potential development value for housing purposes.

The attitude of the plaintiff is best expressed in paragraph 13 and in the first sentence of paragraph 14 of the affirmation made by the Chairman of its Board of Directors, Mr. Tan Eng-qik, on the 28th May 1982—

30

“13. The plaintiff is aggrieved by the resumption because it feels that government had taken unfair advantage of the situation, in that government had long known that the said lands, in the light of the development plans put forward by the plaintiff, had development potential but had kept back from allowing the plaintiff to develop the area on the ostensible grounds that there were insufficient facilities, such as electricity, water, drainage, access etc.

40

Yet government had decided to resume the area for temporary housing which required the same facilities but at a much higher level in view of the higher densities of population applicable to such use. Also, government well knew that the plaintiff had a tenancy agreement at a substantial rent with New Yick Fung (which in turn had sub-let at a far higher rent) for the open storage of motor vehicles in the area, and indeed, had stood by when New Yick Fung had expended substantial sums in forming the area and such substantial sums have been reflected by suitable diminution in the rent charged. It is unfair that with the knowledge as aforesaid set out government had chosen to take advantage of resuming the plaintiff's land when there is ample Crown land in the Tuen Mun, Yuen Long Districts.

14. In the beginning of 1982, if the plaintiff were able to continue to collect

rent from New Yick Fung or any other organization for open storage of motor vehicles, it would be able to collect rent by the end of 1997, in the total sum of slightly over \$23 million even assuming there is no increment in the interim.”

The Crown has taken the view that these matters are irrelevant to the issues which the court has to determine and has filed no explanatory or contradictory evidence. This view is correct in law for which reason, together with the absence of Crown evidence, I express no opinion one way or the other.

When submitting claims for compensation on the 5th March 1982 the plaintiff's solicitors wrote—

10

“In submitting these claims, our client would like to make it clear that they do not wish to be taken as having admitted that they are bound by the terms of the Crown Lands Resumption Ordinance, and reserve the right to take such proceedings or advance such arguments as they may be advised. Such proceedings or arguments may involve (but are not necessarily limited to) the validity of the Crown Lands Resumption Ordinance and/or the basis of valuation of the property concerned.”

On the 1st June 1982 the plaintiff issued an Originating Summons against the Crown, by the Attorney General. The first six paragraphs, in their amended form, claimed—

20

- “(1) A declaration that the resumed land and the severed land (hereinafter collectively referred to as “the said lands”) were prior to the Convention dated the 9th day of June 1898 between Her Majesty and His Imperial Majesty the Emperor of China, held by the plaintiff's predecessors-in-title in perpetuity and without restriction as to user thereof. (Such rights in property shall hereinafter be referred to as ‘the said pre-Treaty rights’).
- (2) A declaration that section 15 of the Land Court (New Territories) Ordinance 1900, section 14 of the New Territories Regulation Ordinance 1910 and section 8 of the New Territories Ordinance, Chapter 97, Laws of Hong Kong are void as being repugnant to and/or *ultra vires* of Her Majesty's Order-in-Council providing for the administration of the New Territories dated the 20th October 1898 and/or the Letters Patent and/or the Royal Instructions, insofar as such ordinances purported to vest the said pre-Treaty rights in the Crown in perpetuity or at all.
- (3) Accordingly, a declaration that the plaintiff is vested with the said pre-Treaty rights and is entitled to the possession of the said lands.
- (4) Further, a declaration that the purported Lease granted by the Crown to the plaintiff's predecessors-in-title on 24th January 1905 is void save and except, and only to the extent, that such Lease evidences the ownership of the said lands by the plaintiff's predecessors-in-title on or before 24th January 1905.
- (5) Further, a declaration—

30

40

- (a) That the Crown Lands Resumption Ordinance, Chapter 124, Laws of Hong Kong, has no application to the said lands.
- (b) That Government Notice No. 3080 dated 7th October 1981 and the decision of the Governor-in Council referred to therein purporting to resume the said lands, are void and of no effect.
- (c) That the occupation of the said lands by the Crown and/or its agents, licencees or tenants, is unlawful.
- 10 (6) Further and in the alternative to (1) to (5) above, section 12(B) and 12(C) of the Crown Lands Resumption Ordinance Chapter 124, Laws of Hong Kong are void as being repugnant to and/or *ultra vires* of Her Majesty's Order-in-Council providing for the administration of the New Territories dated 20th October 1898 and/or the Letters Patent and/or the Royal Instructions."

The plaintiff thereby raised issues of profound importance to government and to landholders in the New Territories alike. Mr. Widdicombe, who appeared for the plaintiff, was at pains to demonstrate, as will appear, that these issues, which affect the validity of colonial laws in the courts of Hong Kong rather than their recognition elsewhere, have been canvassed at other times and in other places. No plea based on laches, abandonment or acquiescence has been advanced on behalf of the Crown.

- 20 I necessarily turn to the relevant history of the New Territories starting with the system of land tenure prevailing in the summer of 1898. In this regard I have the advantage of an affidavit, the contents of which are not contested, sworn by Mr. Antony Dicks, a barrister practising in this territory who is conversant with Chinese land law. Paragraphs 7 to 11 of his affidavit read as follows—

"7. Most land (other than land used for public purposes) was in late nineteenth century China held on what is called 'common tenure'. Other forms of tenure such as feudal and quasi-feudal tenure existed but were very rare and there was also military service tenure and 'furnace land'.

- 30 8. Land under the common tenure or 'land of the ordinary people' was an interest in perpetuity held by a proprietor on two principal conditions, namely, payment of the land taxes and performance of labour services. Over the years the labour service fell into disuse particularly in South China and was commuted into additional land tax in lieu of labour were collected as a single annual amount.

- 40 9. Land held under common tenure could be acquired in three ways, viz. by inheritance, by purchase and by the cultivation of unoccupied or waste land. I need not dwell on the first of these. As to the second, the tenure was transferred to the purchaser. Outright sales were not always made, it being possible in many parts of China to dispose of land by creating limited interests of various kinds which were themselves subject to possible alienation.

10. The cultivation of unoccupied or waste land was encouraged by the authorities and a valid title to such lands could be acquired by following a statutory procedure for registration. Land tax did not become payable for

some years. Once land was required in this way it was subject to common tenure and was as freely alienable as such land in general.

11. With a very few specific exceptions mentioned below there appeared to have been no limitations on the use of land held under common tenure. The character of tenure and the tax payable on such land did not change after the erection of buildings on it. It should be remembered that in China at the end of the nineteenth century the great bulk of the land was in agricultural use and could be expected to continue in that use. The need for any comprehensive form of restriction does not appear to have been felt."

In the *Gazette* for 25th November 1899 the objects and reasons given by the Acting Attorney General for the introduction of "A Bill entitled The New Territories Land Court Ordinance" were set out— 10

"It is proposed by this Bill to substitute a certificate of title for a Crown lease because it has been ascertained that the ordinary holding of land in the New Territories is a tenancy in perpetuity and this government could not, under the terms of the Convention with China, grant a lease for more than 99 years from the date of the Convention."

Having considered the terms of the Block Crown lease I am satisfied on the balance of probabilities that the land comprised therein was held by the plaintiff's predecessors in title on the basis of "common tenure" and that the plaintiff is entitled to the first of the declarations sought provided that the words "subject to payment of land taxes" are added. 20

On the 9th June 1898 a Convention, subsequently ratified, was concluded between Great Britain and China in Peking. The material part of that Convention recited—

"Whereas it has for many years past been recognized that an extension of Hong Kong territory is necessary for the proper defence and protection of the Colony, it has now been agreed between the governments of Great Britain and China that the limits of British territory shall be enlarged under lease to the extent indicated generally on the annexed map. The exact boundaries shall be hereafter fixed when proper surveys have been made by officials appointed by the two governments. The term of this lease shall be 99 years. It is further understood that there will be no expropriation or expulsion of the inhabitants of the district included within the extension and that if land is required for public purposes it shall be bought at a fair price." 30

The Convention came into force on the 1st July following. It is on the last sentence quoted together with the terms of two proclamations made by the Governor in Chinese that Mr. Widdicombe founds his submissions in support of the second to sixth declarations sought.

On the 20th October 1898, by Order in Council made at Balmoral, a prerogative act which it is not suggested that this court can question, Her Majesty Queen Victoria made provision for the government of the New Territories during the currency of the 40

lease as follows—

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

No. 2
Judgment of
High Court
dated 29th
April 1983
(continued)

- 10 “(i) The territories within the limits and for the term described in the said Convention shall be and the same are hereby declared to be part and parcel of Her Majesty’s Colony of Hong Kong in like manner and for all intents and purposes as if they had originally formed part of the said Colony.
- (ii) It will 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.
- (iii) From a date to be fixed by proclamation of the Governor of Hong Kong all laws and ordinances which shall at such date be in force in the Colony of Hong Kong shall take effect in the said territories and shall remain in force therein until the same shall have been altered or repealed by Her Majesty or by the Governor of Hong Kong by and with the advice or consent of the Legislative Council.”

20 This document formally vested sovereignty in and dominion over the New Territories in Her Majesty and defined the limits of the authority of the Hong Kong legislature in relation thereto; *prima facie* giving the Governor in Council power to legislate in relation to and to expropriate land. Had the Foreign Jurisdiction Act 1890 been invoked different considerations would have arisen. The words in paragraph (ii) of the Order in Council followed the terms of Article IX of the Letters which had been made patent by Her Majesty on the 19th January 1888 making revised provision for a Governor for the Colony of Hong Kong and at the same time defining the extent of his authority. Articles III, VII, VIII, IX, X, XI and XII of such Letters Patent read—

30 “III. We do hereby authorise, empower and command Our said Governor—to do and execute all things that belong to his said office according to the tenor of these Our Letters Patent and of such Commission as may be issued to him under Our Sign Manual and Signet and according to such instructions as may from time to time be given to him under Our Sign Manual and Signet or by Our Order in Our Privy Council, or by Us through one of Our principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony.

VII. The Executive Council of the Colony shall consist of such persons as We shall direct by any instructions under Our Sign Manual and Signet, and all such persons shall hold their places in the said Council during Our pleasure.

VIII. The Legislative Council of the Colony shall consist of such persons as We shall direct by any instructions under Our Sign Manual and Signet, and such persons shall hold their places in the said Council during Our pleasure.

40 IX. The Governor, by and with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Colony.

X. We do hereby reserve to Ourselves, Our Heirs and Successors, full power and authority to disallow, through one of Our Principal Secretaries of State, any such law as aforesaid. Every such disallowance shall take effect from the time when the same shall be promulgated by the Governor in the Colony.

XI. We do also reserve to Ourselves, Our Heirs and Successors, Our and Their undoubted right, with the advice of Our or Their Privy Council, to make all such laws as may appear necessary for the peace, order and good government of the Colony.

XII. The Governor, in Our name and on Our behalf, may make and execute, 10
under the public seal of the Colony, grants and dispositions of any lands which may be lawfully granted or disposed of by Us. Provided that every such grant or disposition be made in conformity either with some law in force in the Colony or with some instructions addressed to the Governor under Our Sign Manual and Signet, or through one of Our principal Secretaries of State or with some regulations in force in the Colony.”

Further guidance had been given to the Governor both on the same day and on the 7th July 1896 by Instructions from Her Majesty.

Instruction XXII reads—

“The Governor shall not, except in the cases hereunder mentioned, assent in Our name to any ordinance of any of the following classes— 20

(7) Any ordinance the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty—Unless such ordinance shall contain a clause suspending the operation of such ordinance until the signification of Our pleasure thereupon or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such ordinance be brought into immediate operation in which case he is authorized to assent in Our name to such ordinance unless the same shall be inconsistent with any obligations imposed on Us by Treaty.”

It is the plaintiff’s contention that, in relation to the ordinances impugned, successive 30
Governors gave their assent in breach of such instructions and of Article XII of the Letters Patent. The plaintiff concedes that all but one of such ordinances were not subsequently disallowed. That one is the Land Court (New Territories) Ordinance No. 8 of 1900 but, having regard to the terms of a draft letter from the Secretary of State for the Colonies to the Governor dated 25th May of that year, I find, again on the balance of probabilities, that such ordinance was not subsequently disallowed either.

I now turn back to what could colloquially be called “the situation on the ground”. On the 27th March 1899 the magistrate of the San On District of the Kwong 40
Tung Province of China, part of which had by then been incorporated in the Colony of Hong Kong, issued a notice for general information declaring to the inhabitants of the “New Territories” that within the leased area as delimited all fields, land, houses, graves, local customs and usages would remain unchanged. On the 4th April the

Viceroy of the two Kwong Tung Provinces and the Governor of the Kwong Tung Province issued a notice for general information which (in translation) read—

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

“Whereas Kowloon has been leased under the instructions of the Emperor and the boundary has been defined in accordance with the original map forwarded by the Tsung-Li Yamen, the following agreement has been come to with the foreign officials—

No. 2
Judgment of
High Court
dated 29th
April 1983
(continued)

- 10 (i) The people are to be treated with exceptional kindness.
(ii) There can be no forced sale of houses and lands.
(iii) The graves in the leased territory are never to be removed.
(iv) Local customs and habits are to remain unchanged according to the wishes of the inhabitants.”

The translations of both these declarations were laid before the Legislative Council of the Colony on the 4th October 1899.

20 Meanwhile on 8th April 1899 the Governor, expressly pursuant to the terms of the Order in Council of 20th October 1898, made a proclamation in English under the public seal of the Colony fixing the 17th April following as the day when all its laws and ordinances should take effect in the New Territories. From time to time he made other proclamations in English and under seal in relation to military stores and contagious diseases. Like the proclamation made by Sir Edward Youde on 30th March 1983 in relation to the Coinage they were expressed to be made, directly or indirectly, pursuant to the terms of ordinances or Order in Council and the legislative validity of such proclamations is not challenged.

30 At the time of the original occupation of the Island of Hong Kong on behalf of the Crown Captain Charles Elliot, R.N., who, pursuant to section V of “An Act to regulate the Trade to China and India”, [3 & 4 William IV c 93] had been appointed Chief Superintendant of the Trade of Her Majesty’s subjects within the dominions of the Emperor of China and, under the Great Seal, Her Majesty’s Plenipotentiary in such dominions, had issued two proclamations. The first, made jointly with the Commander in Chief British Forces on 1st February 1841, both informed the native inhabitants that they were now the Queen’s subjects and, torture excepted, would continue to be governed according to their own laws and exempted Chinese ships and merchants from liability to duty. The second, made on the following day from his ship then anchored in the harbour, declared that he, Captain Elliot, was responsible for government. As regards the legislative validity of these two documents which came into existence prior to the formal cession of the Island of Hong Kong to the Crown by the Treaty of Nanking on 29th August 1842 I adopt the opinion of Mills-Owens, J. in **Re Tse Lai-chiu, deceased** [1969] HKLR at page 194—

40 “The proclamations were not expressed to have legislative effect and, in any event, were merely interim measures.”

The island was not “erected” into a separate Colony until the Letters of 5th April 1843 were made Patent but certainly since the Kowloon Order in Council dated the 4th February 1861 the Crown has been deemed ultimate owner of all land on the island and in the Kowloon peninsula and Crown leases have been granted in relation

to such land without reference to any particular date in the future.

On the 9th April 1899 the Governor made a proclamation in Chinese, the material parts of which, in translation, read—

“Whereas His Imperial Majesty the Emperor of China has leased to Her Majesty the Queen of Great Britain and Ireland as an extension of the Colony of Hong Kong certain territory situated in the district of San On and certain islands adjacent thereto, the boundaries of which are as hereunder stated—and whereas Her Majesty has been graciously pleased to appoint me as Governor of the said territory and whereas it is desirable that British and Chinese territory should be clearly defined so that friendly relations now existing between the two nations may be always maintained. Now, therefore, I have fixed the 17th April 1899 as the date on which the British flag shall be hoisted and the administration of the territory be taken over by duly authorized British officers—I would also impress upon you that this territory having been leased by His Imperial Majesty the Emperor of China to Her Britannic Majesty the Queen, as subjects of Her Majesty’s empire, your commercial and landed interests will be safe-guarded and that your usages and good customs will not in any way be interfered with. It is the wish of Her Majesty the Queen that all her subjects in every part of the world shall be prosperous and happy and it will be my duty to assist you to improve your position by every means in my power. The most respected of your elders will be chosen to assist in the management of your village affairs to secure peace and good order and the punishment of evil doers. I expect you to obey the laws that are made for your benefit and all persons who break the law will be punished severely. It will be necessary for you to register without delay your titles for the land occupied by you that the true owners may be known. Should any land be required for public purposes it will be paid for at its full value. Remember that as subjects of the Great British Empire your perfect freedom from oppression is assured. Should you have any complaint to make the Governor will always be willing to hear it and to award what is right. There will be no injustice allowed nor any laxity in the administration of justice. All must render implicit obedience.”

Land speculation had already begun in the New Territories and, with varying degrees of intensity, has continued ever since.

On the 12th July 1899 the Governor made a further proclamation in Chinese, the material parts of which, in translation, read—

“I, Sir Henry Arthur Blake, hereby inform you, the land owners in the New Territories, that an officer will visit the sub-district for the purpose of registering land owners on a date due notice of which will be given to you. All you who can show that you have had possession of landed property for some time must fill up a schedule in the following form.”

The nature of the form was described.

“When these schedules are distributed to a village any person who claims land as his property must fill up a schedule and bring it in person to the Visiting

10 Officer when he comes to the village in which such person resides and the
Officer will make an entry in the register that such person is the owner and will
add such other particulars as may be necessary. A list of those who have been
registered as land owners in the village and of their holdings will be posted in
the village for 7 days and afterwards an extract of the entry of each holding
will be made to be handed to the owner. But before it is handed to the owner
he must pay the amount of Crown rent fixed as due by him. If no rent is paid
the land will be forfeited to the government without fail. If there is any
unsettled dispute about property the name of the person in actual possession
will be registered and he must pay the Crown rent, but an extract of an entry
in the register will not be issued until the Squatters Board has ascertained that
the person in possession is the legal owner and the Board's decision has been
approved by me—should it be found at any time that any land owned by any
person has not been reported it will be treated as government land. A survey
will shortly be made of the whole of the leased territory so that the boundaries
of the various holdings may be clearly known and any cases of neglect to
report on the part of owners of land will be easily discovered and will involve
forfeiture of the property to government. Do not say that I have not warned
you. The Crown rent including all charges fixed for the present is given below.
20 You must all without exception obey. Do not be disobedient. A special
proclamation.”

And then are set out the provisions for Crown rent which the Governor had made in
Council on the same day pursuant to section 3 of Ordinance No. 12 of 1899 being
“An ordinance to provide for the better regulation of the New Territories”. That
ordinance had been assented to by the Governor and taken effect on the 18th April.

I return to the proclamation—

30 “The above scale of Crown rent may be altered. When the survey has been
completed permanent certificates of title will be issued. If anyone has been
forcibly deprived of his land or been fraudulently induced to sell land at a
low price he may present a petition to the District Officer if he lives north
of the Kowloon range of hills or, if he lives south of it, to the Registrar General
or the Visiting Officer to be forwarded to the Squatters Board for inquiry.”

40 While the original Chinese versions of the two proclamations are not available they
are not expressed, at least in translation, to be made under seal or pursuant to any
Order in Council or Ordinance. Their legislative validity is challenged. In contrast
with the publication in the *Gazette* on the 19th February 1900, by direction of the
Governor, of the Royal Proclamation of the existence of a state of war as between
the Crown and the South African Republic and the Orange Free State which had
been made at Windsor on the 27th December 1899, 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 WLR 735.

On the 7th October 1899 a bill was introduced into the legislature “to amend
the Crown Lands Resumption Ordinance 1889.” That ordinance, introduced on
account of the insanitary construction of dwelling houses in the City of Victoria, had

empowered the Governor in Council, in the event of a breakdown of negotiations with the leaseholder, to resume lands leased from the Crown on payment both of the value of the land and buildings and of compensation for the severance of such land from adjacent land in the same occupation; the amounts to be fixed by a Board of Arbitrators. It was now proposed that the Governor in Council should be empowered to acquire land for public purposes wheresoever situated in the enlarged Colony since there was doubt as to whether or not land in the New Territories was vested in or leased from the Crown. The bill became law on the 24th of that month as ordinance No. 30 of 1899. By section 15 of the Land Court (New Territories) Ordinance, No. 8 of 1900, to which I have already alluded and which took effect on the 28th March 1900 despite a protest by members of the Legislative Council that the bill violated the provisions of the Convention, any doubt should have been laid to rest. The section declared all land in the New Territories "to be the property of the Crown during the term specified in the Convention of the 9th day of June 1898". The ordinance as a whole provided for a Land Court to hear claims to title and, where a claim was allowed, for the Governor to grant an appropriate title on behalf of the Crown. On the 16th July 1900, following suggestions from the Secretary of State for the Colonies, this ordinance was repealed and replaced by ordinance No. 18 of 1900 which contained a number of changes immaterial for present purposes. However, the New Territories Titles Ordinance No. 47 of 1902 entitled customary land-holders to extracts from the Titles Register and to surrender their rights in exchange for Crown leases. Uncertainty as to the rights of the Crown in relation to land in the New Territories revived. Under objects and reasons for "A bill entitled An Ordinance to Repeal the New Territories Titles Ordinance 1902" published in the *Gazette* for the 20th November 1903 the the Attorney General wrote--

"The object is to repeal the New Territories Titles Ordinance because it has become apparent that the system of title by registration thereby established is unworkable and because it is found that the system, if it could be brought into operation, would clash with the Land Court Ordinance 1900 in a manner contemplated neither by its framer nor by the legislature when it passed the ordinance. The conflict with the Land Court Ordinance arises from the interpretation given in the New Territories Titles Ordinance to the expression 'customary land' and 'customary landholder'. The effect of that interpretation may be to override section 14 of the Land Court Ordinance and to confer 'title' in a manner never intended and impossible to permit. It was never intended and cannot be permitted that title to land in the New Territories should be acquired otherwise than by grant from the Crown as in the case of land in the other parts of the Colony, but it is open to question whether the effect of the interpretation clause of the New Territories Titles Ordinance is not to vest in the Land Court the power to confer title independently of grant from the Crown. It was never intended that the Land Court should have power to do more than investigate claims to land and report thereon to the Governor. It was always intended and that intention still prevails that the ultimate right to grant or to refuse titles should rest with the Governor--an intention which clearly appears in section 14 of the Land Court Ordinance 1900. No inconvenience will thereby be caused to anyone because no land has yet been brought under the operation of the ordinance."

The New Territories Titles Ordinance 1902 was repealed on the 9th December 1903.

To occupiers whose titles had scrupulously been examined and approved by the Land Court, applying Chinese law and custom, the grant of Block Crown leases for a term of 75 years from the 1st July 1898 renewable for a further 24 years less 3 days became standard. Section 14 of the New Territories Regulation Ordinance No. 34 of 1910 read—

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

10 “All land in the New Territories is hereby declared to be and to have been from the commencement of the New Territories (Land Court) Ordinance 1900 the property of the Crown and all persons in occupation of any such land after the commencement of this ordinance shall be deemed to be trespassers as against the Crown unless such occupation is authorized by grant from the Crown or by other title allowed under this ordinance or by licence from the Governor or from some government officer having authority to grant such licence.”

No. 2
Judgment of
High Court
dated 29th
April 1983
(continued)

20 The Crown Lands Resumption and Resumption (Amendment) Ordinances of 1889 and 1899 were repealed and replaced by the Crown Lands Resumption Ordinance 1900 which re-enacted the earlier provisions for compensation. But section 2(c) of the Crown Lands Resumption Ordinance 1921 provided that no compensation should be given in respect of any use of the land which was not in accordance with the terms of the Crown lease under which the land was held. Section 2(c) of the Crown Lands Resumption Amendment Ordinance 1922 added a further restriction on the amount of compensation which might be awarded on resumption. It read—

“No compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance by the Crown or by any person of any licence, permission, lease or permit whatsoever provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed.”

30 On the 29th April 1925 a petition was sent to the Secretary of State for the Colonies, Mr. L. S. Amery, by landholders in the New Territories making virtually the same complaints as those presently advanced by the plaintiff. In his draft letter to the Governor acknowledging receipt of the petition the Secretary of State wrote—

40 “The main allegation made by the petitioners is that the effect of the legislation to which they refer and the policy adopted thereunder amounts in itself to expropriation in breach of the Convention of 1898 for the lease of the New Territories. This is a very big question depending to a great extent upon the right which holders of land possessed under Chinese law and it is quite impossible on the information before me to come to any conclusion upon it. I would only say that the contention of the petitioners does not seem to me to be a frivolous one and that it does appear that the view of the Hong Kong Government as to the rights of the holders of land under Chinese law have become less sympathetic as time progressed and the Convention and the promises made under it receded into the past.”

His opinion had no apparent effect on the land legislation of the Colony.

I turn to legislation current at the time of issue of the originating summons. The relevant sections of the New Territories Ordinance, *Cap. 97* read—

“8. All land in the New Territories is hereby declared to be and to have been from the 23rd day of July 1900 the property of the Crown and all persons in occupation of any such land shall be deemed to be trespassers as against the Crown unless such occupation is authorised by grant from the Crown or by other title allowed under this ordinance or by licence from the Governor or from some government officer having authority to grant such licence.

13. In any proceedings in the Supreme Court or the District Court in relation to land in the New Territories, the court shall have power to recognise and enforce any Chinese custom or customary right affecting such land.” 10

The relevant sections of the Crown Lands Resumption Ordinance, *Cap. 124* read—

“12 (b) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held.

(c) No compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance by the Crown or by any person of any licence, permission, lease or permit whatsoever: provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed. 20

(d) Subject to the provisions of section 11 and to the provisions of paragraphs (a), (b) and (c) of this section, the value of the land resumed shall be taken to be the amount which the land if sold in the open market might be expected to realize.”

Upon the effect of this fasciculus of Ordinances, Orders in Council, Letters Patent, Royal instructions, proclamations and practice the argument turns.

It is common ground between the parties that international obligations such as those imposed by the 1898 Convention have no effect in municipal law as such albeit “sacred and inviolable according to their true intent and meaning” per Lord Mansfield in *Campbell v. Hall* [1774] 1 Cowp at page 208. It is not competent for this court to enquire into an allegation of the breach of or to construe the terms of a treaty concluded between Sovereign States, *Oyekan v. Adele* [1957] 2 All ER at page 788, where the opinion of the Judicial Committee was expressed by Lord Denning as follows— 30

“Their Lordships desire to point out that the Treaty of Cession was an Act of State by which the British Crown acquired full rights of sovereignty over Lagos. In these circumstances, the courts of law will not take it on themselves to construe the treaty. The effect of the Act of State is to give to the British 40

Crown sovereign power to make laws and to enforce them, and, therefore, the power to recognise existing rights or extinguish them, or to create new ones. In order to ascertain what rights pass to the Crown or are retained by the inhabitants, the courts of law look, not to the treaty, but to the conduct of the British Crown. It has been laid down by their Lordships' Board that—

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

‘Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of his predecessors avail him nothing.’

No. 2
Judgment of
High Court
dated 29th
April 1983
(continued)

10 See *Vajesingji Joravarsingji v. The Secretary of State for India* [1924] LR 51, IA 357 at page 360 per Lord Dunedin—In inquiring, however, what rights are recognized, there is one guiding principle. It is this: The courts will assume that the British Crown intends that the rights of property of the inhabitants are to be fully respected. Whilst, therefore, the British Crown, as Sovereign, can make laws enabling it compulsorily to acquire land for public purposes, it will see that proper compensation is awarded to every one of the inhabitants who has by native law an interest in it; and the courts will declare the inhabitants entitled to compensation according to their interests, even though those interests are of a kind unknown to English law.”

20 The plaintiff, accepting the burden of showing what land rights have been recognized by the Crown, relies upon this assumption and contends that it is properly made as regards the inhabitants of the New Territories having regard to the terms of the two “Chinese” proclamations made by the Governor in 1899; of the Order in Council dated the 20th October 1898 and of the Letters Patent and the Royal Instructions. It is submitted that the proclamations had the force of law and, therefore, imported into the municipal law of the Colony overriding provisions that there should be no expropriation of the inhabitants of the New Territories and that any land required for public purposes should be bought at a fair, meaning full market, price. Alternatively it is submitted that the words “it shall be competent for the Governor of Hong Kong,
30 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” found in Article II of the Order in Council of 9th June 1898 did not give the Colonial Legislature power to pass laws in breach of the Convention or of public international law and that legislation having such effect is *ultra vires*. Thus the court is invited indirectly to inquire into allegations of the breach of a treaty.

Ordinances purporting to vest the land of the New Territories in the Crown and to provide for payment of compensation at less than open market value as well as the grant of a leasehold interest less by 3 days than that claimed by the Crown and prohibiting building development into the baragain will, it is further submitted,
40 constitute expropriation.

In the further alternative it is argued that successive Governors had no power to assent to and thereby to validate bills when such assents involved breaches of treaty by the Crown and therefore unlawful grants or dispositions within the meaning of Article XII of the 1888 Letters Patent as well as breaches by the Governor of Instruction XXII (7) of the Royal Instructions. At first blush the court would seem

precluded from entertaining the last of these submissions, the legislative process being complete, by the terms of the 1898 Order in Council and of section 4 of the Colonial Laws Validity Act 1865 which were referred to in **Rediffusion (HK) Ltd. v. Attorney General** [1970] HKLR at page 249—

“No Colonial Law passed with concurrence of or assented to by the Governor of any Colony—shall be deemed to have been void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such Governor by or on behalf of Her Majesty by any instrument other than the letters patent or instrument authorizing such Governor to concur in passing or to assent to laws for the peace order and good government of such Colony even though such instructions may be referred to in such letters patent or last mentioned instrument.” 10

But it is said, if I understand Mr. Widdicombe correctly, that section 4 only validates an ordinance assented to in breach of an instruction specifically referring to the antecedent bill. I cannot accept such a construction and the submission based on Article XII of the Letters Patent and Instruction XXII (7) fails. It is, however, true that section 4 will not of itself save the ordinances in question if they are otherwise *ultra vires*.

With regard to the two “Chinese” proclamations it is contended on behalf of the plaintiff that the Crown was thereby exercising a prerogative not available in the United Kingdom [**Case of Proclamations** [1611] 12 Co Rep 74] where, in any event, the document was required to be made under the Great Seal and published [**Keyley v. Manning** [1630] Cro Car 180] to legislate by proclamation for ceded or conquered territory. This prerogative right the Crown had not forfeited or disabled itself from exercising by the grant or solemn promise of sub-ordinate legislative powers to a Governor and assembly as had occurred in the North American Colonies, Malta and Granada. I think I am entitled to take judicial notice of the fact that the assemblies in those colonies were elected or, alternatively, to accept the authority of a distinguished constitutional historian to that effect. **Campbell v. Hall** [1774] 1 Cowp at page 212; **Sammut v. Strickland** [1938] AC 678; “British Rule and Jurisdiction beyond the Seas” by Sir Henry Jenkyns, *Clarendon Press*, 1902, page 7. In **Sammut v. Strickland** the Judicial Committee may well have used the words “representative institutions” with the definition of “Representative Legislature” in section 1 of the 1865 Act in mind. The Hong Kong legislature is neither elective nor fully sovereign as was explained by Lord Diplock when giving the advice of the Judicial Committee in **Rediffusion (HK) Ltd. v. Attorney General** [1970] HKLR at pp. 242 to 244. 30

The Crown contends that the nature of the American and Caribbean assemblies referred to by Lord Mansfield in his judgment in **Campbell v. Hall**, although well-known to him, was not the significant factor in his decision and that, by the grant of an appointed assembly, the Crown had effectively forfeited the right to legislate for this Colony of its own motion. The point of “self-limitation” did not arise in **Lam Yuk-ming v. Attorney General** [1980] HKLR 815. I am therefore free to find, as I do, that in the absence of the grant of an elected assembly and therewith of significant attributes of sovereignty which, I believe, was the basis of Lord Mansfield’s decision, the Crown had not fettered its ancient but apparently dormant powers to legislate for the Colony of Hong Kong by proclamation under the Great Seal; implying the 40

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.

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

10 But did the Sovereign, with or without the advice of the Privy Council or under the Great Seal or howsoever purport so to do? The Governor, not being a Viceroy and having no relevant delegated powers under the Order in Council or Letters Patent, could not legislate of his own motion and was certainly not in possession of the Great Seal. In my view he did not even profess vicariously to exercise the royal prerogative to legislate by the two “Chinese” proclamations nor, apparently, did he apply the seal of the Colony. There is no reason to presume that he did so. It is only necessary to look at the terminology of these proclamations to observe that, in contrast with the sealed proclamations made in English pursuant to ordinance or Order in Council their tenor, like those made by Captain Elliot or described in **Ex-parte Chavasse** [1865] 4 De GJ & S 655 at pp. 662 and 663, was rather promissory, informative and minatory than legislative. “To suppose that by such general statements in a proclamation the Government renounced their right to acknowledge what they thought right and conferred on a municipal court the right to adjudicate as upon rights which existed before cession is—to misapprehend the law—” per Lord Dunedin in
20 **Vajesingji Joravarsingji v. Secretary of State for India** [1924] LR 51, IA 357 at page 367.

No. 2
Judgment of
High Court
dated 29th
April 1983
(continued)

I have been shown no admittedly legislative act pertaining to Hong Kong expressed in the Chinese language. The “Chinese” proclamations were no exception. Her Majesty Queen Victoria did not thereby exercise her residual or reserved powers to legislate for Hong Kong by proclamation under the Great Seal of her own motion or with the advice of the Privy Council.

30 The formula “for the peace, order and good government” of a Colony is, in theory at least, subject to the examination of the court which may hold an ordinance to be beyond the powers so entrusted to the subordinate legislature and void but “such a power has been held ‘to authorize the utmost discretion of enactment for the attainment of the objects pointed to’ and a court will not inquire whether any particular enactment of this character does in fact promote the peace, order or good government of the Colony.” **Chenard & Co. v. Arissol** [1949] AC 127. Less drastically the court will, in the event of ambiguity, seek so to construe an ordinance as to render its provisions consistent with the comity of nations and the established rules of public international law. **Bloxam v. Favre** [1883] 8 PD 101 at p. 107; **Macleod v. Attorney General for New South Wales** [1891] AC at p. 457; **Salomon v. Commissioners of Customs and Excise** [1966] 3 All ER at pp. 874 to 875. Further “a mere change in sovereignty is not to be presumed as meant to disturb rights of private owners and the
40 general terms of a cession are to be construed accordingly. The introduction of the system of Crown Grants which was made subsequently must be regarded as having been brought about mainly, if not exclusively, for conveyancing purposes and not with a view to altering substantive titles already existing—the original native right was a communal right and it must be presumed to have continued to exist unless the contrary is established by the context or circumstances” per Lord Haldane in **Amodu Tijani v. Secretary, Southern Nigeria** [1921] AC at pp. 407 to 410. In my view the contrary is clearly established in the Colony of Hong Kong by the unambiguous

terms of the ordinances already referred to.

It is further submitted that, by parity of reasoning, the words “for the peace, order and good government” of the Colony appearing in the Order in Council, being of uncertain extent, must so be construed as to render legislation in breach of treaty *ultra vires*. These words “connote, in British constitutional language, the widest law making powers appropriate to a sovereign” per Lord Radcliffe in *Ibralebbe v. The Queen* [1964] AC at p. 923 though, in Hong Kong, such powers are subject to the provisions for disallowance expressly reserved to the Crown. In my opinion the words in question, hallowed as they are by long and widespread usage, are clear and unambiguous and must be given effect whether or not they carry out treaty obligations. 10
It has never been held, though it has been suggested, that the laws of a Colonial Legislature in breach of international law are void.

I also find that the ordinances of which the plaintiff complains were ratified by non-disallowance amounting in law to express authorization. Directions given by a Secretary of State pursuant to Article III of the Letters Patent may render unnecessary amendment of the Royal Instructions. In *Inglis v. De Barnard* [1841] 3 Moo PC 425, there fell for consideration an Order in Council made on the 15th January 1829 relating to the Registry of Deeds and Instruments in the Island of St. Lucia: “It may be lawful for the Governor or officer administering the government of the said island with the advice of the Council of Government thereof by ordinances to be by them 20
for that purpose from time to time made, as occasion shall require, to make ordain and prescribe all necessary and proper rules and regulations for the manner of keeping the before mentioned registry—all such rules and regulations being nevertheless subject to be disallowed by His Majesty in whole or in part as to His Majesty shall seem meet.” It was suggested that the ordinance enacted in purported pursuance of the Order in Council went further than the order permitted and was in consequence inoperative and void quoad such excess. It was held, however, that the ordinance having been so passed and a copy transmitted to the government at home without disapproval or alteration, such ordinance must be considered as duly authorized by the order and that the two instruments taken together comprised the law of the land. *Buron v. 30
Denman* [1848] 2 Ex 167 and the somewhat unattractive case of *Phillips v. Eyre* [1870] LR 6 QB at pp. 23 and 24 are authorities to like effect as, in the present jurisdiction, persuasively at least, is *Pong Wai-ting v. Attorney General of Hong Kong* [1925] HKLR 22. There is one qualification to this rule. Non-disallowance, by analogy with the royal consent to a Dominion or Commonwealth statute, cannot give validity to an enactment which is void by Imperial statute or because repugnant to a Constitution; *D’Emden v. Pedder* [1904] 1 CLR at p. 117; *Nadan v. The King* [1926] AC at p. 493.

Seeking to turn this principle of law to advantage the plaintiff points out that translations of the two “Chinese” proclamations were sent to the Secretary of State 40
who did not demur. But the acquiescence of the Crown to documents not having *prima facie* legislative effect is not to be equated with its express authorization. *Cameron v. Kyte* [1835] 3 Kn at p. 342.

The Governor in Council has and at all material times had an unfettered right to legislate in relation to and to expropriate land in the New Territories during the currency of the lease from China.

Since it is not necessary it is not desirable for the court to seek to determine whether or not the matters complained of amounted to expropriation and, if so, whether or not the ordinances recited in the Originating Summons authorized breaches of or were repugnant to the 1899 Convention. An analogous task was undertaken by Carrington, C.J. in *Chau Kwai-chiu & Anor. v. Wong Shin* (1900) HK Daily Press, 30 June ("The Shell Case"), but, since the Full Court was exercising its original jurisdiction, the case does not bind me. It is in any event distinguishable as the proceedings did not involve the Crown as a party. I do not follow the decision of the Chief Justice that the Crown had no power to confer title expropriating existing rights in breach
10 of the Convention.

The ordinances relating to land in the New Territories being valid the declarations sought in paras. 2, 5 and 6 of the Originating Summons are refused. It necessarily follows that the declarations sought in paras. 3 and 4 must also be refused.

The relief claimed in paragraphs 7 to 10 inclusive of the Originating Summons is as follows—

- “7. Alternatively to (1) to (6) above, by a true and proper construction of sections 13 and 14 of the Land Court (New Territories) Ordinance 1900 (Ordinance No. 8 of 1900) and sections 13 and 14 of the New Territories Land Court Ordinance 1900 (Ordinance No. 18 of 1900) a declaration—
20 (a) That the Land Court, in allowing claims under section 13 of the aforesaid Ordinances had no power to impose restrictions as to user of the said lands.
(b) That the Crown in granting a title under section 14 of the aforesaid ordinances had no power to impose restrictions as to user of the said lands.
(c) That accordingly, the Lease granted by the Crown to the plaintiff's predecessors-in-title on 24th January 1905 is void insofar as it purported to restrict user of the said lands.
8. Further and in the alternative to (7) above, a declaration that section 8
30 of the New Territories Ordinance, *Cap. 97* Laws of Hong Kong, is valid only to the extent of 99 years from the 1st day of July 1898, and accordingly—
(a) The plaintiff is entitled to possession of the said lands on the expiry of 99 years from the 1st day of July 1898, and
(b) Section 5 of the Crown Lands Resumption Ordinance, *Cap. 124*, Laws of Hong Kong is of no effect insofar as it purports to extinguish the rights of the plaintiff beyond the period of 99 years from the 1st day of July 1898.
9. Alternatively to (1) to (8) above, a declaration that the said lands were
40 not expressed to be demised as agricultural or garden ground by the said Lease on 24th June 1905.
10. Alternatively to (9) above, if which is denied, the said lands were demised as agricultural or garden ground, the plaintiff may use the said lands for any use other than building purposes and in particular for the open

storage of motor vehicles.”

As regards the seventh declaration sought I am satisfied that the Land Court did not itself do more than “allow” claims to title 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. This declaration is refused.

As regards the Eighth declaration sought 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. Prior to that date land may, as occurred in the case of part of the plaintiff’s land, validly be resumed pursuant to section 3 of the Crown Lands Resumption Ordinance, *Cap.* 124. But whether or not the words in section 5 providing, in relation to resumed land, that “all the rights of the owner, his assigns or representatives and of any other person in or over the land or any part thereof shall absolutely cease” have effect after the 30th June 1997 is not a question upon which I have material or have heard argument warranting a ruling. I am not prepared to make any declaration in relation to land title in the New Territories on or after the 1st July 1997. 10

As regards the ninth declaration sought the plaintiff, reserving rights elsewhere, does not suggest that this court can grant such relief. **Watford Construction Co. Ltd. v. Secretary for the New Territories** [1978] HKLR 410. It is refused accordingly. 20

As regards the tenth declaration sought I grant a modified formula, not opposed by the Crown here, as follows—

“The severed land may be and prior to resumption the resumed land 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.” **Attorney-General v. Melhado Investment Ltd.** Civil Appeal No. 79/82, unreported.

Judgment for the defendant.

30

NO. 3 ORDER OF HIGH COURT

1982, M.P. NO. 982

*In the
Supreme Court
of Hong Kong
Miscellaneous
Proceedings*

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

MISCELLANEOUS PROCEEDINGS

No. 3
Order of
High Court
dated 29th
April 1983

10 IN THE MATTER of land described as
Lot Nos. 2938, 3103, 3104, 3105, 3106,
3107, 3525, 3526 and 3543 in Demarcation
District No. 124 in the New Territories
Hong Kong (hereinafter referred to as "the
resumed land")

and

IN THE MATTER of land described as Lot
Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No. 124 in the New Territories Hong Kong
(hereinafter referred to as "the severed
land")

BETWEEN

20

WINFAT ENTERPRISE (HK) COMPANY LIMITED Plaintiff

and

THE ATTORNEY GENERAL Defendant

BEFORE THE HONOURABLE MR. JUSTICE KEMPSTER IN COURT

ORDER

UPON THE APPLICATION of the Plaintiff by Originating Summons dated the
1st day of June 1982.

AND UPON HEARING Counsel for the Plaintiff and Counsel for the Defend-
ant.

30 AND UPON READING the affirmation of TAN ENG AIK filed herein on the
1st day of June 1982 with all the exhibits therein referred to; the affidavit of

RAYMOND TANG filed herein on the 9th day of December 1982 with all the exhibits therein referred to; the affidavit of ANTHONY RICHARD DICKS filed herein on the 9th day of December 1982; and the affidavits of ROBYN HELANE McLEAN both filed herein on the 15th day of March 1983 with all the exhibits therein referred to.

THIS COURT DOTH DECLARE that:

- (a) the resumed land and the severed land were prior to the Convention dated the 9th day of June 1898 between Her 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, subject to payment of land taxes. 10
- (b) the severed land may be and prior to resumption the resumed land 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.

AND IT IS ORDERED that the declarations sought by the Plaintiff in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of the aforesaid Originating Summons dated the 1st day of June 1982 are refused.

AND IT IS FURTHER ORDERED that there be no order as to costs save that six-sevenths of the costs of hearing to be the Defendant's with Certificate for two counsel for both parties. 20

Dated the 29th day of April 1983.

N.J. Barnett (L.S.)
Registrar

**In the Supreme Court of
Hong Kong**

Appellate Jurisdiction

Civil Appeal No. 76 of 1983

(on Appeal from High Court

Miscellaneous Proceedings

Action No. 982/1982)

NO. 4 NOTICE OF APPEAL

Civil Appeal No. 76/83

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

**IN THE COURT OF APPEAL
(On Appeal from the High Court Miscellaneous
Proceedings No. 982 of 1982)**

No. 4
Notice of
Appeal
dated 8th
June 1983

IN THE MATTER of land described as
Lot Nos. 2938, 3103, 3104, 3105, 3106,
3107, 3525, 3526 and 3543 in Demarcation
District No. 124 in the New Territories
Hong Kong (hereinafter referred to as "the
resumed land")

and

IN THE MATTER of land described as
Lot Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No. 124 in the New Territories Hong Kong
(hereinafter referred to as "the severed
land")

BETWEEN

**WINFAT ENTERPRISE (HK)
COMPANY LIMITED**

Plaintiff

and

THE ATTORNEY-GENERAL

Defendant

NOTICE OF APPEAL

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named Plaintiff on appeal from such part of the judgment herein of the Honourable Mr. Justice Kempster given on the 29th day of April 1983, whereby the Honourable Mr. Justice Kempster refused to grant Declaration Nos. 2, 3, 4, 5, 6, 7, 8 and 9 sought in the Re-amended Originating Summons dated the 18th day of March 1983 and that this Honourable Court doth grant the said Declarations, and that the above-named Defendant may be adjudged to pay the above-named Plaintiff his costs of this appeal and of the proceedings below.

AND TAKE FURTHER NOTICE that the grounds of this appeal are that he had erred in law in that:—

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 4
Notice of
Appeal
dated 8th
June 1983
(continued)

- (1) He was wrong in determining that the Governor's proclamation of 9th April and 12th July 1899 did not constitute an exercise of the Crown's prerogative power to legislate for the New Territories. 10
- (2) He was wrong in deciding that the words "peace, order and good government" were unambiguous, alternatively, he was wrong in so construing the said words as empowering the Legislative Council to make laws which do not carry out treaty obligations between Her Majesty's Government and the Chinese Government, and further alternatively, he was wrong in deciding that a Colonial legislature has powers to legislate in breach of international law. 10
- (3) He was wrong in deciding that Section 15 of the New Territories Land Court Ordinance 1900, Section 14 of the New Territories Regulation Ordinance 1910 and Section 8 of the New Territories Ordinance, Chapter 97, Laws of Hong Kong, together with Sections 12(b) and 12(c) of the Crown Lands Resumption Ordinance, Chapter 124, had been ratified by non-disallowance amounting in law to express authorisation.
- (4) He was wrong in deciding that the Governor was *intra vires* in granting Block Crown Leases shorter in time than the Crown's interest and subject to restrictions. In particular, he had failed to consider the terms of Sections 13 and 14 of the Land Court (New Territories) Ordinance 1900 (Ordinance No. 8 of 1900) and Section 13 of the New Territories Land Court Ordinance 1900 (Ordinance No. 18 of 1900). 20
- (5) He had failed to consider the effect of Section 5 of the Crown Lands Resumption Ordinance in the light of his having accepted that the above-named Plaintiff's predecessor-in-title had held land on the basis of "common tenure" prior to 9th June 1898 (namely, on a perpetual leasehold) and in the light of the fact that the tenure of the Crown was limited to midnight on 30th June 1997.

AND FURTHER TAKE NOTICE that the above-named Plaintiff proposes to set down this appeal for hearing. 30

Dated this 8th day of June 1983.

Mr. Anthony F. Neoh
Counsel for the Appellant

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

(Sd.) Raymond Tang & Co.
Solicitors for the Appellant

No. 4
Notice of
Appeal
dated 8th
June 1983
(continued)

To: The Defendant, The Attorney-General, Legal Department, Central Government
Office, Main Wing, Hong Kong.

NO. 5 RESPONDENT'S NOTICE

Civil Appeal No. 76 of 1983

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

IN THE COURT OF APPEAL

**(On Appeal from the High Court Miscellaneous
Proceedings No. 982 of 1982)**

No. 5
Respondent's
Notice
dated 28th
June 1983

10 IN THE MATTER of land described as
Lot Nos. 2938, 3103, 3104, 3105, 3106,
3107, 3525, 3526 and 3543 in Demarcation
District No. 124 in the New Territories
Hong Kong (hereinafter referred to as
"the resumed land")

and

IN THE MATTER of land described as
Lot Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No. 124 in the New Territories Hong Kong
(hereinafter referred to as "the severed
land")

BETWEEN

20

**WINFAT ENTERPRISE (HK)
COMPANY LIMITED**

Plaintiff

and

THE ATTORNEY GENERAL

Defendant

RESPONDENT'S NOTICE

TAKE NOTICE that the Attorney General, the Respondent in this Appeal, intends upon the hearing of the appeal under the Appellant's Notice of Appeal filed the 8th day of June 1983 from the judgment of the Honourable Mr. Justice Kempster dated the 29th day of August, 1983 to contend that the said judgment should be affirmed on grounds additional to those relied on by the Court below, namely:—

30

- (1) Section 15 of the New Territories Land Court Ordinance 1900, Section 14 of the New Territories Regulation Ordinance 1910, Section 8 of the New Territories Ordinance, Chapter 97 Laws of Hong Kong, and Sections 12(b) and 12(c) of the Crown Lands Resumption Ordinance, Chapter 124

(hereinafter referred to as "the impugned Ordinances") do not appear and/or are not inconsistent with obligations imposed upon Her Majesty the Queen by Treaty.

Thus (1) the assent of the Governor to the impugned Ordinance was not in breach of Royal Instructions; and

(2) there being no breach of treaty obligations or of international law by virtue of the impugned Ordinances, the impugned Ordinances constituted a valid exercise of the power of the Governor by and with the advice of the Legislative Council to make laws for the peace order and good government of the New Territories and of the Colony as a whole.

10

(2) The provisions of the New Territories Land Court Ordinance 1900 cannot be impugned as in breach of Royal Instructions dated 7th July 1896 and/or ultra vires the legislature in that the said Ordinance was enacted upon a specific Royal Instruction transmitted through the Secretary of State.

(3) At the time of the "proclamations" of 9th April 1899 and 12th April 1899, the Crown was without power to legislate for the Colony by proclamation under the Great Seal, having previously granted to the Colony a legislative assembly and not having reserved to itself the power to so legislate. Accordingly the "proclamations" were not of legislative effect.

20

Dated the 28th day of June 1983.

(Sd.) R. A. Osborne
Junior Counsel for the Respondent

To: Messrs. Raymond Tang & Co.,
Solicitors,
7th Floor, Chung Nam House,
59 Des Voeux Road Central,
Hong Kong.

JUDGMENT OF COURT OF APPEAL

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Before: Roberts, C.J., Cons & Fuad, JJ.A.

Date: 14th December, 1983

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983

Roberts, C.J.—

Factual Background

The plaintiff is a real estate development company, which purchased the residue of the leasehold estate of various lots in the Yuen Long area of the New Territories.

These lots are held by the plaintiff, as successor in title to the original grantee, for a term which ends three days before the expiry in 1997 of the lease by China to Great Britain of the New Territories.

The original grant of the lease of the land was contained in a Block Crown Lease. This included a prohibition against the use of such land for building purposes, without the prior consent of the Crown.

It has long been established, as a matter of administrative practice, that the Block Crown Lease may be modified, so as to permit such user, on the payment by the lessee of a suitable premium.

On 30th November, 1977, the plaintiff submitted to the District Office, proposals for the development of its land for high class housing. For various reasons, which are not germane to this appeal, this application was refused. Thereafter, the plaintiff sublet part of its land for a period of three years, with the option of renewal for a further two years, to a firm which required space for the parking of vehicles. Permission to do so was obtained from the District Officer. 10

On 7th October, 1981, the Secretary for Lands and Works published Notice 3080 in the Government Gazette, giving notice that the Governor had ordered the resumption of part of the plaintiff's land, under the Crown Lands Resumption Ordinance, for temporary housing, the Governor-in-Council having decided that the land was required for a public purpose. 20

The area to be resumed comprised the majority of the plaintiff's land ("the resumed land"), leaving a part unresumed ("the severed land").

By a letter dated 26th November, 1981, the Secretary for the New Territories offered to the plaintiff cash compensation of \$15,299,620 (or 50% of the rate for agricultural land acquired in an urban area in the New Territories) for the resumed land.

This offer was subject to the plaintiff surrendering the resumed land free from all encumbrances; a condition which it was unable to meet by reason of the sub-lease referred to above.

The Crown having resumed under the Crown Lands Resumption Ordinance, the plaintiff was left with his remedy thereunder, which was to submit a claim for compensation for the resumed land. It is not disputed that the amount which can be obtained by a claimant under that Ordinance is likely to be significantly less than the price which might be obtained for the sale of such land in the open market. 30

This is because a buyer in the open market would be prepared to pay a price which takes into account the possibility of obtaining a modification of the Crown Lease so as to permit building on the land, whereas section 2 of the Crown Lands Resumption Ordinance obliges the Tribunal in its assessment of compensation, "to discount any evidence which shows that the land values have been enhanced by expectation of redevelopment or of a modification of lease conditions". 40

It is against this background that the plaintiff issued on originating summons

on 1st June, 1982. This was amended on 18th March, 1983 and further amended by leave during the hearing before us, such amendments being underlined. The plaintiff seeks the following ten declarations –

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

- “(1) A declaration that the resumed land and the severed land (hereinafter collectively referred to as “the said lands”) were prior to the Convention dated the 9th day of June 1898 between Her 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, (such rights in property shall hereinafter be referred to as “the said pre-Treaty rights”)
- 10 (2) A declaration that Section 15 of the Land Court (New Territories) Ordinance 1900 (Ordinance No.8 of 1900), Section 15 of the New Territories Land Court Ordinance, 1900 (Ordinance No.18 of 1900), Section 14 of the New Territories Regulation Ordinance 1910 and Section 8 of the New Territories Ordinance, Chapter 97, Laws of Hong Kong, are void as being repugnant to and/or ultra vires of Her Majesty’s Order-in-Council providing for the administration of the New Territories dated the 20th October 1898 and/or the Letters Patent and/or the Royal Instructions, insofar as such Ordinances purported to vest the said pre-Treaty rights in the Crown in perpetuity or at all.
- 20 (3) Accordingly, a declaration that the Plaintiff is vested with the said pre-Treaty rights and is entitled to the possession of the said lands.
- (4) Further, a declaration that the purported Lease granted by the Crown to the Plaintiff’s predecessors-in-title on 24th January 1905 is void save and except, and only to the extent, that such Lease evidences the ownership of the said lands by the Plaintiff’s predecessors-in-title on or before 24th January 1905.
- (5) Further, a declaration:
- 30 (a) That the Crown Lands Resumption Ordinance, Chapter 124, Laws of Hong Kong, has no application to the said lands.
- (b) That Government Notice No. 3080 dated 7th October 1981 and the decision of the Governor-in-Council referred to therein purporting to resume the said lands, are void and of no effect.
- (c) That the occupation of the said lands by the Crown and/or its agents, licencees or tenants, is unlawful.
- 40 (6) Further and in the alternative to (1) and (5) above, Section 12(B) and 12(C) of the Crown Lands Resumption Ordinance Chapter 124, Laws of Hong Kong, are void as being repugnant to and/or ultra vires of Her Majesty’s Order-in-Council providing for the administration of the New Territories dated 20th October 1898 and/or the Letters Patent and/or the Royal Instructions.
- (7) Alternatively to (1) and (6) above, by a true and proper construction of Sections 13 and 14 of the Land Court (New Territories) Ordinance 1900 (Ordinance No.8 of 1900) and Sections 13 and 14 of the New Territories

Land Court Ordinance 1900 (Ordinance No.18 of 1900) and by two Proclamations of the Governor dated 9th April and 12th July 1899, a declaration:

- (a) That the Land Court, in allowing claims under Section 13 of the aforesaid Ordinances had no power to impose restrictions as to user of the said lands or grant a term of less than 99 years.
- (b) That the Crown in granting a title under Section 14 of the aforesaid Ordinances had no power to impose restrictions as to user of the said lands or grant a term of less than 99 years.
- (c) That accordingly, the Lease granted by the Crown to the Plaintiff's precessors-in-title on 24th January 1905 is void insofar as it purported to restrict user of the said lands and to curtail the said term of 99 years by 3 days. 10
- (8) Further and in the alternative to (7) above, a 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 1898, and accordingly:
- (a) The Plaintiff is entitled to possession of the said lands on the expiry of 99 years from the 1st day of July 1898, and
- (b) Section 5 of the Crown Lands Resumption Ordinance, Chapter 124, Laws of Hong Kong is of no effect insofar as it purports to extinguish the rights of the Plaintiff beyond the period of 99 years from the 1st day of July 1898. 20
- (9) Alternatively to (1) and (8) above, a declaration that the said lands were not expressed to be demised as agricultural or garden ground by the said Lease on 24th June 1905.
- (10) Alternatively to (9) above, if which is denied the said lands were demised as agricultural or garden ground, the Plaintiff may use the said lands for any use other than building purposes and in particular for the open storage of motor vehicles." 30

Legislative History (General)

On 9th June, 1898, a Convention was signed between the Governments of Great Britain and China ("the Peking Convention") with the object of extending the area of the Territory of Hong Kong. The material parts of that Convention are as follows –

"No. 14
CONVENTION FOR THE EXTENSION OF HONG KONG.
(Received in Colonial Office, August 6, 1898.)

WHEREAS it has for many years past been recognized that an extension of Hong Kong territory is necessary for the proper defence and protection of the Colony, it has now been agreed between the Governments of Great Britain and China that the limits of British territory shall be enlarged, under lease, to the extent indicated generally on the annexed map* (*not produced). The exact boundaries shall be hereafter fixed 40

when proper surveys have been made by officials appointed by the two Governments. The term of this lease shall be ninety-nine years.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

.....
It is further understood that there will 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.

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

10 This Convention shall come into force on the 1st day of July, 1898, being the 13th day of the 5th moon of the 24th year of Kuang Hsu. It shall be ratified by the Sovereigns of the two countries, and the ratifications shall be exchanged in London as soon as possible.”

On 20th October, 1898, the Queen-in-Council, in the exercise of her prerogative power, the validity of which has not been challenged, enacted an Order-in-Council, (“the New Territories Order-in-Council”) in the following terms –

“At the Court at Balmoral, the 20th day of October,

1898

PRESENT:

The Queen’s Most Excellent Majesty in Council.

20 Whereas by a convention dated the 9th day of June 1898 between Her Majesty and His Imperial Majesty the Emperor of China, it is provided that the limits of British territory in the regions adjacent to the Colony of Hong Kong, shall be enlarged under lease to Her Majesty in the manner described in the said convention.

And whereas it is expedient to make provision for the government of the territories acquired by Her Majesty under the said Convention, during the continuance of the said lease.

It is hereby ordered by the Queen’s most Excellent Majesty, by and with the advice of Her Majesty’s Privy Council, as follows:–

30 1. The territories within the limits and for the term described in the said Convention shall be and the same are hereby declared to be part and parcel of Her Majesty’s Colony of Hong Kong in like manner and for all intents and purposes as if they had originally formed part of the said Colony.

2. 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.

3. From a date to be fixed by proclamation of the Governor of Hong Kong, all laws and ordinances which shall at such date be in force in the Colony of Hong

Kong shall take effect in the said territories, and shall remain in force therein until the same shall have been altered or repealed by Her Majesty or by the Governor of Hong Kong, by and with the advice or consent of the Legislative Council.

4. Notwithstanding anything herein contained the Chinese officials now stationed within the city of Kowloon shall continue to exercise jurisdiction therein, except in so far as may be inconsistent with the military requirements for the defence of Hong Kong.

And the Right Honourable Joseph Chamberlain, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

A.W. FITZROY."

10

On 6th January, 1899, the Secretary of State addressed the Governor in a despatch as to the manner in which jurisdiction in the New Territories should be assumed by the Crown. The despatch contains, among many other matters, a direction to the Governor to publish the New Territories Order-in-Council as soon as possible and emphasizes the need to deal with the land question promptly.

The Governor issued two Proclamations, on which heavy reliance has been placed by the plaintiff, on 9th April and 12th July. The material parts of the English version of these Proclamations are as follows —

[Proclamation of 9th April.]

"Whereas His Imperial Majesty the Emperor of China has leased to Her Majesty the Queen of Great Britain and Ireland, as an extension of the Colony of Hongkong, certain territory situated in the District of San On, and certain islands adjacent thereto, the boundaries of which are as hereunder stated,

20

.....
And whereas Her Majesty has been graciously pleased to appoint me as Governor of the said territory, and whereas it is desirable that British and Chinese territory should be clearly defined so that the friendly relations now existing between the two nations may be always maintained.

.....
I would also impress upon you that this territory having been leased by His Imperial Majesty the Emperor of China to Her Britannic Majesty the Queen, as subjects of Her Majesty's Empire, your commercial and landed interests will be safeguarded, and that your usages and good customs will not in any way be interfered with.

30

.....
It will be necessary for you to register without delay your titles for the land occupied by you, that the true owners may be known. Should any land be required for public purposes it will be paid for at its full value."

[Proclamation of 12th July.]

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

“I, SIR HENRY ARTHUR BLAKE
hereby inform you, the landowners in the New Territories, that an Officer will visit
sub-districts for the purpose of registering landowners on a date due notice of which
will be given to you. All you who can show that you have had possession of landed
property for some time must fill up a schedule in the following form:—

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

- 1. Name of owner.
- 2. Nature of title.
- 3. Date of lease or grant (if any).
- 10 4. Number of years in occupation.
- 5. Description of land.
- 6. Dimensions of land.
- 7. Situation of land.

When these schedules are distributed to a village, any person who claims land
as his property must fill up a schedule and bring it in person to the Visiting Officer
when he comes to the village in which such person resides; and the Officer will make
an entry in the register that such person is the owner and will add such other particulars
as may be necessary. A list of those who have been registered land owners in the village
and of their holdings will be posted in the village for seven days, and afterwards an
20 extract of the entry of each holding will be made and will be handed to the owner.
But before it is handed to the owner he must pay the amount of Crown Rent fixed
as due by him. If no Rent is paid, the land will be forfeited to the Government without
fail.

If there is any unsettled dispute about property, the name of the person in
actual possession will be registered, and he must pay the Crown Rent, but an extract
of an entry in the Register will not be issued until the Squatters' Board has ascertained
that the person in possession is the legal owner and the Board's decision has been
approved by me. In that case an extract will be issued to him and he will be permitted
to remain in possession. But should the Board decide that the property is really not
30 his property, the Crown Rent paid by him will be refunded, and the person who is
adjudged by the Board to be the person who should pay the rent and who is approved
as such by me, must forthwith pay the rent due. All you owners of land must report
all the land in your possession. Should it be found at any time that any land owned
by any person has not been reported it will be treated as Government land. A survey
will shortly be made of the whole of the Leased Territory, so that the boundaries of
the various holdings may be clearly known: and any cases of neglect to report on
the part of owners of land will be easily discovered, and will involve forfeiture of the
property to Government. Do not say that I have not warned you. The Crown Rent
including charges fixed for the present is given below. You must all without exception
40 obey. Do not be disobedient. A special proclamation.”

The latter Proclamation also sets out the Crown rent which will be payable.
These provisions as to rent are the same as those contained in Rules made by the
Governor-in-Council on the same date as this Proclamation, under the New Territories
Regulation Ordinance (No.12 of 1899) which came into force on 18th April, 1899.

On 8th April, 1899, the Governor, in pursuance of the New Territories Order-in-Council, had issued the following Proclamation –

“Whereas by an Order of the Queen’s Most Excellent Majesty in Council, made on the 20th day of October, 1898, after reciting that by a Convention dated the 9th day of June, 1898, between Her Majesty and His Imperial Majesty the Emperor of China, it is provided that the limits of British territory in the regions adjacent to the Colony of Hongkong, shall be enlarged under lease to Her Majesty in the manner described in the said Convention; and after reciting that it is expedient to make provision for the Government of the territories acquired by Her Majesty under the said Convention, during the continuance of the said lease, it was ordered (inter alia) as follows:– 10

1. The territories within the limits and for the term described in the said Convention shall be and the same are hereby declared to be part and parcel of Her Majesty’s Colony of Hongkong in like manner and for all intents and purposes as if they had originally formed part of the said Colony.
2. It shall be competent for the Governor of Hongkong, 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. 20
3. From a date to be fixed by proclamation of the Governor of Hongkong, all laws and ordinances, which shall at such date be in force in the Colony of Hongkong, shall take effect in the said territories and shall remain in force therein until the same shall have been altered or repealed by Her Majesty or by the Governor of Hongkong, by and with the advice or consent of the Legislative Council.

And whereas it is expedient that from the 17th day of April, 1899, all laws and ordinances which shall at such date be in force in the Colony of Hongkong, shall take effect in the said territories and shall remain in force therein until the same shall have been altered or repealed by Her Majesty or by the Governor of Hongkong, by and with the advice or consent of the Legislative Council: 30

Now, therefore, I, Sir HENRY ARTHUR BLAKE, do hereby, in pursuance of the powers reserved to me by the said Order of Her Most Excellent Majesty in Council and of every other power (if any) enabling me by this Proclamation proclaim and direct that from the said 17th day of April, 1899, all laws and ordinances, which shall at such date be in force in the Colony of Hongkong, shall take effect in the said territories and shall remain in force therein until the same shall have been altered or amended by Her Majesty or by the Governor of Hongkong, by and with the advice or consent of the Legislative Council.” 40

Legislative History (Land)

By the Land Court (New Territories) Ordinance, 1900, (No.8 of 1900) which

came into force on 28th March, 1900, provision was made for the establishment of a Land Court, for the settlement of land claims in the New Territories. The material sections are the following –

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

“2. In this Ordinance, unless the context otherwise requires, the following terms and expressions shall have the respective meanings hereinafter assigned to them, that is to say:–

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

‘The Court’ means the Land Court constituted under this Ordinance, and shall include any member thereof acting alone in matters where one member has jurisdiction conferred upon him by this Ordinance:

10 ‘Land’ includes buildings thereon and also land covered with water or within the flow of the sea:

‘Claim in relation to land’ includes a claim to a right of common or other profit or benefit, or to any easement or other interest from, in, upon, or over or in respect of any land:

‘New Territories’ means the additional territories acquired by this Colony under the Convention dated the 9th day of June, 1898, between Her Majesty Queen Victoria and His Imperial Majesty the Emperor of China for the enlargement of the limits of this Colony, including the City of Kowloon.”

20 “13. The Court may allow or disallow any claim in relation to land or allow the same as to part thereof, or for such period or at such rent and on such other conditions as may appear to the Court to be equitable and just.

30 14. In cases where the Court allows the claim or part of the claim, such claim and its allowance shall be reported by the Registrar to the Governor in due course in order that a title appropriate to the case may be granted. If, however, in any particular instance, the Governor deems it inexpedient, having regard to the public interests of the Colony, that such title should be granted, the matter shall be referred back to the Court to decide what compensation shall be paid to the claimant or claimants, and the amount awarded by the Court shall be paid by the Government to such person or persons as the Court may direct. The decision of the Court as to the amount of compensation shall be final.

40 15. All land in the New Territories is hereby declared to be the property of the Crown, during the term specified in the Convention of the 9th day of June, 1898, hereinbefore referred to, and all persons in occupation of any such land, after such date as may be fixed by the Governor by notification in the Gazette, either generally or in respect to any specified place, village, or district, shall be deemed trespassers as against the Crown, unless such occupation is authorized by grant from the Crown or by other title allowed by the Court under this Ordinance, or by license from the Governor or from some Government officer having authority to grant such license, or unless a claim to be entitled to such occupation has been duly presented to the Court

and has not been withdrawn or heard and disallowed.”

“17. Titles to be granted under this Ordinance shall be in such form or forms as may from time to time be directed by the Governor.”

This Ordinance, after assent by the Governor, was forwarded to the Secretary of State, who directed that it repealed and re-enacted with various amendments. The replacement Ordinance, the New Territories Land Court Ordinance (No.18 of 1900) came into force on 23rd July, 1900. The sections of Ordinance No.8 of 1900, quoted above, were reproduced in Ordinance No. 18 of 1900 without alteration.

At the date of the assumption of jurisdiction by the Crown, on 1st July, 1898, resumption of land for public purposes in the territory was governed by the Crown Lands Resumption Ordinance 1889 (No.23 of 1889), the material parts of which read –

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“6. No suit or action shall lie either against the Crown or against any other person for any loss or damage resulting to any person from any resumption of any land as aforesaid but any person claiming compensation whether as owner or otherwise by reason of such resumption shall before the commencement of the sittings of the Board transmit to the clerk of the Board if appointed or if no clerk be appointed to the Colonial Secretary for transmission to the Board a written claim stating the nature of his right or interest in the land and the amount which he seeks to recover.

20

7. Every claim shall be separately considered and adjudicated upon unless the parties otherwise agree.

8. The Board when constituted shall have the following powers and authorities, viz:—

(1) To determine the compensation to be paid in respect of such resumption or in respect of the extinction of any right or easement caused by such resumption regard being had not only to the value of the land taken and any buildings thereon but also to any damage or injury resulting to the owner of the land resumed by reason of the severance of such land from other land of such owner contiguous thereto, and to award compensation in respect of such resumption or extinction to all persons claiming compensation to whom the Board may find compensation to be due.”

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By the Crown Lands Resumption Ordinance 1899, (No.30 of 1899) Ordinance No.23 of 1889 was extended, in its application, to the New Territories as from 24th October, 1899.

The Crown Lands Resumption Ordinance (No.32 of 1900) repealed and replaced the earlier Ordinance, without alteration of the sections quoted above.

Section 14 of the New Territories Regulation Ordinance 1910 (No.34 of 1910) dealt with the vesting of land in the New Territories in these terms –

“14. All land in the New Territories is hereby declared to be and to have been

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from the commencement of the New Territories (Land Court) Ordinance, 1900, the property of the Crown, and all persons in occupation of any such land after the commencement of this Ordinance shall be deemed to be trespassers as against the Crown, unless such occupation is authorised by grant from the Crown, or by other title allowed under this Ordinance, or by licence from the Governor or from some Government officer having authority to grant such licence.”

This section has since been amended and appears today as Section 8 of the New Territories Ordinance (Cap. 97) –

10 “8. All land in the New Territories is hereby declared to be and to have been from the 23rd day of July, 1900, the property of the Crown, and all persons in occupation of any such land shall be deemed to be trespassers as against the Crown, unless such occupation is authorized by grant from the Crown, or by other title allowed under this Ordinance, or by licence from the Governor or from some Government officer having authority to grant such licence.”

By the Crown Lands Resumption (Amendment) Ordinance 1921 (No. 11 of 1921) which came into force on 2nd September, 1921, additional rules were introduced for the assessment of compensation –

20 “2. In the determination of the compensation to be paid under the principal Ordinance:—

- (a) No allowance shall be made on account of the resumption being compulsory;
- (b) Subject to the provisions of section 11 of the principal Ordinance, and to the provisions of paragraph (c) of this section, the value of the land resumed shall be taken to be the amount which the land if sold in the open market might be expected to realize: and
- (c) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held.”

30 Further amendments to the compensation provisions were made by the Crown Lands Resumption Ordinance, 1922, which came into force on 24th March, 1922. The new section 2, replacing that of Ordinance No. 11 of 1921, reads –

“2. In the determination of the compensation to be paid under the principal Ordinance:—

- (a) No allowance shall be made on account of the resumption being compulsory;
- (b) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held:
- 40 (c) No compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance, by the Crown or by any person, of any licence, permission, lease or permit whatsoever, provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed: and
- (d) Subject to the provisions of section 11 of the principal Ordinance, and to the provisions of paragraphs (b) and (c) of this section, the value of the

land resumed shall be taken to be the amount which the land if sold in the open market might be expected to realise.”

Section 12 of the current Crown Lands Resumption Ordinance (Cap. 124) contains the 1922 provisions, unaltered.

The Plaintiff's case in outline

Kempster, J. came to the conclusion that the plaintiff's predecessors in title had held the land on the basis of common tenure before 1st July, 1898, the date from which the New Territories became part of Hong Kong. He also found that it was incident to such a tenure that these predecessors might have used the land for any purpose, without restriction as to user. He accordingly granted the first declaration sought. 10

These findings have not been challenged and seem to us to be justified on the basis of the affidavit of Mr. Dicks, which is referred to in the judgment of the trial judge.

The judge also granted, with his own modification, the tenth declaration sought, which was to the general effect that, but for the resumption, the plaintiff would have been entitled to use the land for any purpose other than for “building purposes”. This finding has not been challenged either.

Before the plaintiff can succeed in obtaining the other declarations which it seeks, it must surmount a number of formidable obstacles, which involve a consideration of fundamental questions affecting the legality of the land law enacted by the Legislature of Hong Kong as applicable to the New Territories. 20

The foundation of the plaintiff's arguments is the following clause in the Peking Convention (“the no-expropriation clause”) –

“It is further understood that there will 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.”

Although the plaintiff conceded that the Peking Convention is not in itself enforceable as part of the domestic law of Hong Kong, it argued that the no-expropriation clause was imported into the constitutional law of Hong Kong, so as to take precedence over any local Ordinances inconsistent with its terms and to be unalterable by them. 30

In order to succeed, the plaintiff concedes that it must establish the following propositions –

- (1) That the no-expropriation clause has been embodied in the law of Hong Kong. This it seeks to do by submitting that the two 1899 Proclamations of 9th April and 12th July had the force of law.

- (2) That there were breaches of the Peking Convention in that –
- (a) the Crown has issued leases which are shorter than the full term of the New Territories lease and contain restrictions on user;
 - (b) compensation for compulsory acquisition has not been awarded at a fair price, since the 24th March, 1922, when the Crown Land Resumption Ordinance, 1922, came into force.
- (3) That the power of the Governor to legislate for the New Territories, does not enable him to legislate in defiance of the Peking Convention.
- 10 (4) That the Governor exceeded his powers by assenting to legislation which had such an effect, since those Ordinances which offended the Peking Convention should have been reserved by the Governor, in accordance with Royal Instructions, for the signification of the Queen's Pleasure, a defect which rendered the Ordinances invalid and could not be cured by a later exercise of the power of non-disallowance.
- (5) That those parts of the Block Crown Lease of the plaintiff's land which impose restrictions as to the tenure of the lease and as to user are themselves ultra vires the Ordinances under which the Crown purported to issue it.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

20 We will consider each of these principal submissions in turn, insofar as this proves to be necessary. Though, as will be seen, an examination of some of them depends upon our finding on others and we shall, in this difficult and delicate area, resist as best we can the temptation to express views on any matter unless this is necessary to our decision on the declarations sought.

The Proclamations

The plaintiff accepted that a treaty is an act of state which cannot be enforced by the courts, unless it has been recognized or adopted as part of the municipal law.

However, it was submitted that the clause in the Peking Convention which dealt with expropriation and fair price was so recognized and adopted by virtue of two Proclamations dated 9th April and 12th July, 1899.

30 We have had before us the two Proclamations as published in English and the original Chinese text, with a certified English translation, of the Proclamation of 9th April, 1899. The Chinese text of the later Proclamation has not been found.

Laws in Hong Kong have always been promulgated in the English language. Insofar as it can be argued that these Proclamations had legislative effect, it is the English version, as published in the Gazette, which should be followed.

The plaintiff drew our attention, in relation to the first Proclamation, to two passages, emphasizing the parts underlined –

“(a) I would also impress upon you that this territory having been leased by His Imperial Majesty the Emperor of China to Her Britannic Majesty the

Queen, as subjects of Her Majesty's Empire your commercial and landed interests will be safeguarded, and that your usages and good customs will not in any way be interfered with.

- (b) It will be necessary for you to register without delay your titles for the land occupied by you, that the true owners may be known. Should any land be required for public purposes it will be paid for at its full value."

The second Proclamation, dated 12th July, 1899 contains instructions as to how claimants to interests in land in the New Territories should advance their claims. At the end of this Proclamation occurs the phrase "when the survey has been completed permanent certificates of titles will be issued."

10

If the two Proclamations are to be regarded as part of the domestic law of Hong Kong, it must be shown that the Governor, in issuing them, was exercising a power to legislate which had been conferred upon him by law, since the Governor of a ceded territory, and it is not in dispute that Hong Kong can be so described, has no inherent power to legislate. His power to do so can only be that which has been conferred upon him by the Crown, as the fount of all legislative power within a ceded territory.

The internal evidence of the Proclamations themselves certainly indicates that they were not intended to have the force of law, but were meant to give to the inhabitants of the New Territories due warning of the Government's intentions.

The Proclamations contain no reference to any authority for their issue. This omission, if not conclusive by itself, is at least highly unusual since Hong Kong laws invariably refer in their preamble to the legal authority for the enactment.

20

It should be noted that important parts of the second Proclamation were reproduced in Rules made by the Governor-in-Council on the same date (12th July) as the Proclamation, under the New Territories Regulation Ordinance, surely an unnecessary duplication if the Proclamation itself had the force of law.

Much of the wording of these Proclamations is wholly inappropriate to a legislative instrument. For example, the wish of Her Majesty that her subjects should be happy or an exhortation to people "not to be disobedient" are odd sentiments to be found in a law.

30

We would have been inclined therefore to find that the Proclamations were never intended to be legislative instruments, from an examination of their terms alone. The same conclusion is reached by an examination of the possible sources of the Governor's power to legislate in such a manner.

His primary source of legislative power was derived from Article IX of the Hong Kong Letters Patent, issued on 19th January, 1888. Article IX is still in force in identical terms –

"IX. The Governor, by and with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Colony."

40

It is not argued, and indeed the form of the Proclamation makes it unarguable, that the Proclamations were made by the Governor, with the advice and consent of the Legislative Council.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Article XI of the Letters Patent states –

“We do also reserve to Ourselves, Our Heirs and Successors, Our and Their undoubted right, with the advice of Our or Their Privy Council, to make all such laws as may appear necessary for the peace, order, and good government of the Colony.”

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

10 This Article clearly reserves to the Queen-in-Council power to make prerogative Orders in Council. It does not reserve to her power to make laws for the territory, whether described as ‘Proclamations’ or otherwise, in her capacity of Sovereign sole, outside her Privy Council.

It was, however, not suggested by the plaintiff that this power of the Queen-in-Council could have been the source of power of the Proclamations. It might well be that the retention of the Prerogative power contained in this Article was meant to be exclusive and that if the Queen intended also to retain her Prerogative sole, she would have said so. We think this argument attractive, though it was not urged upon us by the defendant.

20 The plaintiff could not, in view of the background to the Proclamations and their terms, maintain that they were an exercise of the powers of the Queen-in-Council. He thus had to submit that there was a residuary power in the Sovereign sole to issue, by virtue of the Royal Prerogative, legislative instruments having the effect of law within the territory.

To establish this proposition, we were invited to extend the principle, enunciated in a line of cases, which stems from Campbell v. Hall⁽¹⁾ that the Crown has no further power to legislate in a Colony which has been granted a representative assembly, that is to say one which has an elective element unless such power is specially reserved.

Inherent in these decisions, it is said, is the assumption that the Crown does retain such a power in territories which do not possess such an assembly.

30 Although the point does not seem to have been decided directly, it appears to have been widely accepted by academic writers that the Crown does not lose its prerogative power in a territory which does not possess a representative assembly, and the defendant invited us to find that the principle of Campbell v. Hall⁽¹⁾ should also apply to Hong Kong, which possesses its own legislature, though this is not elective in nature.

40 We have not found it necessary to form any view as to this, because we are satisfied that, even if the Queen does retain a prerogative power to legislate herself, outside her Privy Council, she did not purport to exercise any such power in the case of these Proclamations, which in our opinion cannot possibly be regarded as emanating from her.

(1) [1774] 98 E.R. 1045.

Assuming that it would be open to the Queen, in exercise of such a residuary prerogative power, to direct the Governor to issue as her delegate Proclamations of this kind, there is no indication whatsoever in any of the material put before us that any such direction was issued.

The instructions of the Secretary of State, which were available to us, contain no such reference. Nowhere does the Secretary of State suggest that the Queen has authorized the Governor to issue Proclamations on her behalf. Indeed, the Secretary of State does not mention the word "Proclamation". Nor does he order the Governor to issue any special form of instrument or to enact any law by such a method.

Breach of Peking Convention

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This Convention, the English version of which is reproduced above in full, was expressed to come into force on 1st July, 1898.

As has been seen the paragraph on which the plaintiff relies reads –

“It is further understood that there will 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.”

The plaintiff argues that the Convention has been broken in the following important respects –

- (a) because there was “expropriation” by virtue of the shortening of the lease and the imposition of conditions in the title granted; 20
- (b) because the land was not bought at a ‘fair price’, under the Crown Land Resumption Ordinance;
- (c) because the land was not required for “an official purpose”, though this submission, argued at first instance, was not pursued on appeal and will be treated as abandoned.

Assuming that the plaintiff were able to establish one or more of these breaches, it would still have to show that it, or its predecessors in title, had conferred upon them thereby rights which are enforceable in law in the courts.

On the authority of Vajesingji Joravarsingji & Others v. Secretary of State of India⁽²⁾ where a Sovereign State acquires territory by conquest or cession, an inhabitant of that territory can enforce in the municipal courts only such proprietary rights as the Sovereign has conferred or recognized. 30

As Lord Dunedin, delivering the judgment of the Privy Council said, at page 360 –

“Any inhabitant of the territory can make good in the municipal Courts

(2) [1924] L.R. 51, I.A. 357.

established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains only with the high contracting parties. This is made quite clear by Lord Atkinson when, citing the Pongoland case of Cook v. Sprigg (L.R. 42 I.A. 229, 268) he says –

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

- 10 ‘It was held that the annexation of territory made an act of state and that any obligation assumed under the treaty with the ceding state either to the sovereign or the individuals is not one which municipal Courts are authorized to enforce.’ ”

In Chau Kwai Chiu and Another v. Wong Shin⁽³⁾ known as “The Shell Case” decided in 1900 but reported only in Vol. 9 Commonwealth International Law Cases, p. 298, the Chief Justice of Hong Kong decided that it was open to him to examine the terms of a grant by the Crown to see whether it accorded with the Peking Convention.

- 20 The Chief Justice, having recognized that the general principle was, following the Secretary of State in the Council of India v. Kamachee Boye Sahaba⁽⁴⁾ that an annexation is an act of state and an obligation assumed under treaty to that effect is not one which municipal courts are authorized to enforce, nevertheless purported to do so, on the basis that it was competent for a municipal court to inquire into and determine private rights, even where this involved an examination of a Convention with another Sovereign. He distinguished Kamachee⁽⁴⁾ and other cases on the basis that they were instances of annexation pure and simple, in which the Crown assumed full sovereignty of the territories, whereas in the case of the New Territories there was only a lease for a term of years conferring a qualified sovereignty on the Crown.

- 30 The lease which was the subject of The Shell Case⁽³⁾ was granted on 20th December, 1899, before the Land Court (New Territories) Ordinance, 1900, came into force on 28th March, 1900. Had the latter Ordinance been in force at the date when the supposed cause of action arose in The Shell Case⁽³⁾, the Chief Justice would surely have come to a different conclusion. Otherwise, even if he was persuaded that the Crown had no inherent power to issue leases which overrode rights undertaken by treaty, he would have had to find, and there is no indication to this effect in his judgment, that a domestic Ordinance in breach of treaty was ultra vires.

Kempster, J. commented on the recent Privy Council decision in Attorney General v. Ng Yuen Shiu⁽⁵⁾ in these terms –

- 40 “. these proclamations were the Governor’s own and an occupier of land in the New Territories at the time might well have been entitled

(3) 9 C.I.L.C. 298.

(4) [1859] 7 Moo Ind. App. 476.

(5) [1983] 2 W.L.R. 735.

to call upon the Colonial Government to redeem the promises which they embodied. Attorney General v. NG Yuen Shiu.”

In that case it was held that a public announcement, made by an appropriate officer of the Hong Kong Government, promising to consider individually the cases of illegal immigrants from Macau, was binding and enforceable, even though no duty to consider the cases in this manner had been imposed by law.

The judge does not give his reasons for saying that the inhabitants of the New Territories might have been able to invoke the principles set out in The Ng Case⁽⁵⁾, which was mentioned before us in passing and without detailed argument. Nor does he suggest that it is open to the plaintiff to rely on that decision now.

10

We do not see how the plaintiff could take advantage of the principles set out in The Ng Case⁽⁵⁾, where the relevant legislation merely provided a general discretion and was neutral as to how it should be exercised. In this instance the legislation itself authorizes the action which is the source of grievance. If there was a promise, it could hardly be enforced as binding in the face of specific legislation to a contrary effect.

Our conclusion is therefore that, even if there were breaches of the Peking Convention, as to which we make no finding, such breaches would not be capable of redress at the instance of the subject in the domestic courts of Hong Kong. So it is not necessary for us to determine whether or not there were any such breaches.

New Territories Order in Council

20

The plaintiff submitted that although treaty obligations do not per se become part of municipal law and confer enforceable rights upon the inhabitants, the power of the Governor to make laws under the New Territories Order in Council did not authorize him to make legislation in breach of the Peking Convention. The submission was put upon two grounds.

The first ground was that paragraph 2 was not to be taken in isolation but that the Order in Council was to be read and construed as a whole, in particular including the words of the preamble; when this was done it became apparent that the purpose of the Order was to implement the Convention, and that read in this context paragraph 2 must necessarily be restricted to laws that did not offend against the Convention.

30

We do not think the words of the preamble require us to restrict paragraph 2 in this fashion. They do no more than recite, by reference to the Convention, the source of Her Majesty's jurisdiction. To give the words any wider effect it would be necessary to turn to the actual terms of the Convention itself, a course which, as well shall see in a moment, is only permissible where the subsequent legislation is unclear or ambiguous.

The second ground of submission requires the plaintiff to establish that the phrase “peace, order and good government” is ambiguous, uncertain or unclear. If this is so, it should be construed as to be consistent with the Peking Convention.

(5) [1983] 2 W.L.R. 735.

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Alternatively, the phrase should be so construed as to implement international law, which holds that treaties are binding.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

The phrase has been used again and again throughout the history of the former British Empire and the Commonwealth when conferring powers of legislation upon the administration of overseas territories.

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

There is abundant authority that these words confer the widest law-making powers upon the subordinate Legislature. For example, in Ibralebbe v. The Queen⁽⁶⁾, Lord Radcliffe, delivering the judgment of the Privy Council, said –

10 “By section 29 there is conferred upon the Parliament power to make laws for the ‘peace, order and good government’ of Ceylon, subject to certain protective reservations for the exercise of religion and the freedom of religious bodies. The words ‘peace, order and good government’ connote, in British constitutional language, the widest law-making powers appropriate to a Sovereign.”

In Riel v. R.⁽⁷⁾, it fell to the Privy Council to consider the effect of a provision in the British North America Act 1871 which conferred upon the Dominion Parliament of Canada power to make provision for the administration, peace, order and good government of any territory not for the time being included in any province.

20 The following passage from the judgment of Lord Halsbury, at p.678, is pertinent –

“ it appears to be suggested a Court of law should come to the conclusion that a particular enactment was not calculated as matter of fact and policy to secure peace, order and good government, that they would be entitled to regard any statute directed to those objects, but which a Court should think likely to fail of that effect, as ultra vires and beyond the competency of the Dominion Parliament to enact.

30 Their Lordships are of opinion that there is not the least ‘colour for such a contention. The words of the statute are apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to. They are words under which the widest departure from criminal procedure as it is known and practised in this country have been authorized in Her Majesty’s Indian Empire. Forms of procedures unknown to the English common law have there been established and acted upon, and to throw the least doubt upon the validity of powers conveyed by those words would be of widely mischievous consequence.”

This decision was referred to in the following passage from the judgment of the Privy Council in Chenard & Company v. Joachim Arissol⁽⁸⁾, in which the Privy Council

- 40 (6) [1964] A.C. 900, 923.
(7) [1885] A.C. 675.
(8) [1949] A.C. 127.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

considered the law-making powers of the Legislature of the Seychelles, then a British dependent territory –

“A power to make ordinances for the peace, order and good government of a colony does not authorize alteration of the constitution or powers of the colonial legislature, but it does authorize the enactment of rights, privileges and immunities whether these be general or in favour of particular persons or classes of persons. Such a power has been held ‘to authorize the utmost discretion of enactment for the attainment of the objects pointed to,’ and a court will not inquire whether any particular enactment of this character does in fact promote the peace, order or good government of the colony. (Riel v. The Queen [10 App.Cas. 675]).”

10

It therefore seems to be established beyond doubt that the phrase “peace, order and good government” is not ambiguous or uncertain in extent but merely so broad in 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 orders in council which are applicable to the territory.

Had the plaintiff been able to establish ambiguity in the phrase, it would have sought to rely upon comments in Saloman v. The Commissioners of Customs and Excise⁽⁹⁾ which suggest that, in such an event, the interpretation which gives best effect to the Peking Convention should be adopted.

In considering the effect of a treaty entered between the United Kingdom and United States, Diplock, L.J. observed –

20

“Where by a treaty Her Majesty’s Government undertakes either to introduce domestic legislation to achieve a specified result in the United Kingdom or to secure a specified result which can only be achieved by legislation, the treaty, since in English law it is not self-operating, remains irrelevant to any issue in the English courts until Her Majesty’s Government has taken steps by way of legislation to fulfil its treaty obligations. Once the government has legislated, which it may do in anticipation of the coming into effect of the treaty as it did in this case, the court must in the first instance construe the legislation, for that is what the court has to apply. If the terms of the legislation are clear and unambiguous, they must be given effect to whether or not they carry out Her Majesty’s treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties (see Ellerman Lines, Ltd. v. Murray (1931 A.C. 126), and any remedy for such a breach of an international obligation lies in a forum other than Her Majesty’s own courts. If the terms of the legislation are not clear, however, but are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a prima facie presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations.”

30

40

This passage might have availed the plaintiff if the enabling powers conferred by the Letters Patent had contained phrases which were capable of two interpretations,

(9) [1966] 3 All E.R. 871.

one in accordance with the aims of the Convention and one which was not. In default thereof 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.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Royal Instructions

The appropriate parts of Article XXII of the Royal Instructions, 1888, which have been in force at all relevant times, read as follows –

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

“XXII. The Governor shall not, except in the cases hereunder mentioned, assent in Our name to any Ordinance of any of the following classes:—

.....

10 7. Any Ordinance the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.

.....

20 Unless such Ordinance shall contain a clause suspending the operation of such Ordinance until the signification of Our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such Ordinance be brought into immediate operation, in which case he is authorised to assent in Our name to such Ordinance, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed on Us by Treaty. But he is to transmit to Us, by the earliest opportunity, the Ordinance so assented to, together with his reasons for assenting thereto.”

Neither the Letters Patent, nor the Royal Instructions attempt to prohibit the local Legislature (i.e. the Governor with the advice and consent of the Legislative Council) in the exercise of the powers conferred to legislate for the peace, order and good government of the territory, from seeking to enact Ordinances of the kind listed in Article XXII (“reserved Ordinances”).

The Governor is, however, prohibited from giving his assent to a reserved Ordinance, an act which completes the legislative process necessary to give life to an Ordinance, until the Queen’s pleasure is signified, save in cases of urgency, though legislation in breach of treaty may not be assented to even in such circumstances.

30 It was agreed between the parties that there was no suspending clause in any of the Ordinances to which objection has been taken by the plaintiff; and that the Governor assented to each of them. We will assume, for the purpose of this aspect of the appeal, that the Ordinances fell within paragraph 7 of Article XXII and that, consequently, the Governor, when giving his assent, was in breach of Article XXII.

Where a Bill is reserved for the Royal Assent, it does not become law until that assent has been given. But if the Governor improperly gives his assent to a Bill which should have been so reserved, the effect is different, since prima facie the legislative process is complete, subject of course to the power of disallowance, which was reserved to the Queen by Article X of the Letters Patent.

To remove doubt, which appeared to have arisen, as to the effect of an Ordinance to which a Governor has assented in contravention of Instructions given to him, section 4 of the Colonial Laws Validity Act, 1865, was passed –

“4. No Colonial Law, passed with Concurrence of or assented to by the Governor of any Colony, or to be hereinafter so passed or assented to, shall be deemed to have been void or inoperative by reason only of any instructions with reference to such Law or the Subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any Instrument other than the Letters Patent or Instrument authorizing such Governor to concur in passing or to assent to Laws for the Peace, Order, and good Government of such Colony, even though such Instructions may be referred to in such Letters Patent or last-mentioned Instrument.”

10

Referring to this section in the Hong Kong appeal of Rediffusion Hong Kong Ltd. v. A.G. and Another ⁽¹⁰⁾, Lord Diplock, delivering the judgment of the Privy Council, observed –

“Thus the breach of prohibitions relating to proceedings in the legislature, contained in Royal Instructions, such as that contained in Clause XXVII of the Royal Instructions to the Governor of Hong Kong does not make the resulting law void.”

It is to be noted that Clause XXVII of the Royal Instructions refers to private Bills, but the same principle would seem to apply to a failure of the Governor to obey instructions with regard to giving his assent.

20

This question has already been considered in the Hong Kong case of Pong Wai Ting v. A.G.⁽¹¹⁾ in which it was argued that the New Territories Regulation Ordinance (No.34 of 1910) and the Crown Lands Resumption Ordinance (No.10 of 1900) were inconsistent with the no-expropriation clause of the Peking Convention.

Consequently, it was there submitted, the Ordinances should not have received the assent of the Governor, unless they contained a suspending clause in conformity with Article XXII, which they did not. Gollan, C.J., sitting at first instance, commented as follows –

30

“If the Governor does not follow instructions, and I read the term as used in s.4 of the Colonial Laws Validity Act, 1865, to include the Royal Instructions, then he may have to answer to the Sovereign for his neglect; but the section appears to me specifically to provide that failure on the part of the Governor is not to affect the validity of any law otherwise properly passed by the Legislative Council and assented to by the Governor.”

The plaintiff sought to argue that section 4 was limited in its effect and was intended to cover only a failure by the Governor to observe specific instructions, not a failure to observe the general directions contained in the Royal Instructions.

(10) [1970] H.K.L.R. 231.

(11) [1925] H.K.L.R. 22.

This would indeed be an odd limitation, since it would validate an Ordinance assented to by the Governor in conflict with a specific instruction about it, yet not one which was in conflict only with the general directions of the Article.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

In any event, the wording of section 4 seems clear. The reference to “instructions with reference to such Law or the Subject thereof” surely contemplates both special and general instructions. And the section itself mentions Instructions being referred to in the Letters Patent, which general Instructions would be but particular ones could not.

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

10 We are satisfied that section 4 validates the various Ordinances which are the subject of controversy even if the Governor’s assent (which it is agreed was given in each case) was in breach of the provisions of Article XXII(7).

The defendant also argued the ground, advanced obiter by the Chief Justice in Pong Wai Ting⁽¹¹⁾, that the exercise of the Crown’s power of non-disallowance, which was notified for each Ordinance, might have cured any defect caused by the Governor giving his assent when he should have reserved an Ordinance.

Kempster, J. accepting this argument found that the Ordinances of which the plaintiff complained were ratified by non-disallowance, amounting in law to express authorization, though this does not seem to have been necessary to his decision.

20 In view of our finding as to the effect of section 4 of the Colonial Laws Validity Act, it is not necessary for us to pronounce a view on this proposition. However, we would not like it to be thought that we agree with it, since there must be grave objections in principle to attributing to the Crown, in its prerogative guise, power to give force to an otherwise invalid law, by the mere act of deciding not to disallow it.

Validity of Block Crown Leases

We must now consider the validity of the conditions, included in the Block Crown Lease dated 24th January, 1905, from which the plaintiff in this action derived its title, as to the length of the demise and the use to which the land might be put.

30 The plaintiff submitted that, if we were to come to the conclusion that the restrictions which are contained in that lease are ultra vires, the improper conditions could be severed from the lease, thus leaving the plaintiff with an original term of 99 years, unrestricted as to use which it could make of its land.

It would then have been entitled to develop the land as it wished, without seeking a modification of the lease to enable it to do so. Consequently, it would receive, under the Crown Lands Resumption Ordinance, full compensation, including an element for the loss of development rights, as opposed to the ordinary rate of compensation which is applicable upon resumption of land where the Crown Lease contains a restriction as to user.

(11) [1925] H.K.L.R. 22.

If we were to come to this conclusion, the plaintiff would be entitled to the seventh declaration which it seeks. Its counsel agreed that, if it were to obtain that declaration, it would need no more.

Whether or not it was open to the Crown in 1905 to grant a lease for less than 99 years and to impose conditions as to user in Block Crown Leases, depended [apart from argument as to the extent to which the Crown was bound in its dealings with New Territories land by the terms of the Peking Convention] upon the appropriate sections of the Land Court (New Territories) Ordinance (No. 8 of 1900), which came into force on 28th March, 1900, and the New Territories (Land Court) Ordinance, 1900 (No. 18 of 1900), which came into force on 23rd July, 1900.

10

Although there were differences of a minor nature between the two Ordinances, sections 13 to 15 and the interpretation section, which are the important ones for our purposes, were unchanged.

Whatever the position with regard to interests in land may have been, between the assumption by the Crown of sovereignty over the New Territories on 1st July, 1898, and the coming into force of Ordinance No.8 of 1900 on 28th March, 1900, it seems to us that, so far as domestic law is concerned, all land in the New Territories became the property of the Crown, for the period of 99 years specified in the Peking Convention, by virtue of section 15 of that Ordinance.

By section 15, any person occupying land in the New Territories, after a date fixed by the Governor by notice in the Gazette, would be deemed to be a trespasser as against the Crown, unless his occupation was authorized by a grant from the Crown, by "another title allowed by the court under this Ordinance", or by licence from the Governor or a government officer.

20

The purpose of the Ordinance was to establish machinery whereby the claims of residents of the New Territories to titles to land could be investigated by a Land Court. Section 13 empowered that Court to allow or disallow in whole or in part any claim to an interest in land.

The same section empowered the Land Court to allow a claim "for such period, at such rent and on such other conditions as may appear to the court equitable and just."

30

This wide measure of discretion might be thought to suggest, if section 13 was read by itself, that it was the Land Court which was intended to decide what ought to be awarded to the individual claimant. The defendant, however, did not put his case that way and section 14, moreover, shows that the Court's power is limited to reporting that it has allowed a claim, or part of it, to the Governor in order that he might grant "a title appropriate to the case". If the Governor considers that it is inexpedient to grant a title, in the public interest, he may refuse to do so and refer the matter back to the Court for the latter to assess compensation.

After the necessary investigation by the Land Court, the device was adopted by the Crown of issuing Block Crown Leases, which set out in a Schedule the name of each owner or district, details of his holding and the rent payable.

40

The narrow point which has been averred is whether the Governor was entitled, by virtue of the provisions of Ordinance No.18 of 1900, to include conditions in a Block Crown Lease of the kind to which the plaintiff objects.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Section 14 authorizes the Governor to grant a title "appropriate to the case". This was achieved by the Block Crown Lease, since no other form of title was issued, though an alternative method, of registration of title, was proposed in the New Territories (Titles) Ordinance (No.47 of 1902) which came into force on 20th December, 1902, but was repealed on 9th December, 1903, before effect had been given to it.

No. 6
Judgment of
Court of
Appeal
dated 14th
December 1983
(continued)

10 The Ordinance imposes a two-stage procedure; firstly, an investigation of claims by a Land Court, which recommends to the Governor as to whether a claim should be allowed and on what terms; and secondly, a decision by the Governor as to what title would be "appropriate to the case" (unless any title at all would be inexpedient in the public interest).

20 We do not read the wording of section 14 as obliging the Governor to issue a title in the terms of the claim allowed by the Land Court. If this had been the intention, we would have expected the section to say so in language which would have clearly imposed such a duty on the Governor, as was in fact originally provided in Clause 11 of the New Territories (Land Court) Bill, published on 25th November, 1899, but not enacted.

Nor is there anything in the Ordinance which suggests that the Governor is obliged to issue an unrestricted title, or a title which must accord with the terms on which the claimant may have owned the land before 1st July, 1898.

30 The restriction on building and the grant of a lease for 75 years, with an option to renew for the remainder of 99 years less three days, appears in a large number of Block Crown Leases. It can therefore be assumed that, at some stage before 1905, the Governor decided, as a matter of policy, that these stipulations should be inserted in Block Crown Leases as a matter of common form. It must not be forgotten that the New Territories were not an isolated jurisdiction. They were expressed to enlarge, and be assimilated into, the then existing Colony of Hong Kong (see paragraph 1 of the New Territories Order in Council) where stipulations such as these had been standard for some time.

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.

40 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 constituted "title" under the Ordinance, to grant leases for any term which he thought fit "during the term specified by the Convention", (to adopt 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.

Footnote

It necessarily follows from the conclusions which we have reached on the main submissions of the plaintiff, that it is not entitled to the declarations sought, with the exception, and in the terms, of the two declarations granted by Kempster, J. – i.e. declarations 1 and 10.

We express no view as to declaration 8, with the agreement of both sides. Nothing which we have said should be regarded as indicating that we have either considered, or formed a view about, that declaration. Nor should it be taken, since the matter was not argued before us, that we endorse the judge's opinion as to the effect of section 8 of the New Territories Ordinance (Cap. 97). 10

The plaintiff very properly did not seek to argue before us with regard to declaration 9, in view of the decision of this Court in Watford Construction Company v. Secretary for the New Territories⁽¹²⁾ in which it was decided that the words of the Block Crown Lease are apt to prohibit the use for building purposes of land which is described in the schedule to the Block Crown Lease as being for agricultural purposes, without the permission of the Governor. Counsel for the plaintiff asked us to note that he reserved this argument in case the matter should go further.

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. 20

For these reasons we dismiss the appeal.

(12) [1978] H.K.L.R. 410.

NO. 7 ORDER OF COURT OF APPEAL

Civil Appeal No. 76 of 1983

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

IN THE COURT OF APPEAL, HONG KONG

(On Appeal from the High Court Miscellaneous
Proceedings No. 982 of 1982)

No. 7
Order of
Court of
Appeal
dated 14th
December
1983

10

IN THE MATTER of land described as Lot
Nos. 2938, 3103, 3104, 3105, 3106, 3107,
3525, 3526 and 3543 in Demarcation
District No. 124 in the New Territories
Hong Kong (hereinafter referred to as "the
resumed land")

and

IN THE MATTER of land described as
Lot Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No. 124 in the New Territories Hong Kong
(hereinafter referred to as "the severed
land")

BETWEEN

20

WINFAT ENTERPRISE (HK) COMPANY LIMITED Plaintiff

and

THE ATTORNEY GENERAL Defendant

BEFORE THE HONOURABLE SIR DENYS ROBERTS, CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE CONS AND
THE HONOURABLE MR. JUSTICE FUAD,
JUSTICES OF APPEAL

O R D E R

30 UPON READING the Notice of Motion dated the 8th day of June 1983 on
behalf of the Plaintiff by way of appeal from the judgment of the Honourable Mr.
Justice Kempster made on the 29th day of April 1983.

AND UPON READING the said judgment of the Honourable Mr. Justice
Kempster dated the 29th day of April 1983.

AND UPON READING the Respondent's Notice of Intention to Contend dated the 28th day of June 1983, contending that the said judgment of the Honourable Mr. Justice Kempster should be affirmed on further grounds.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

AND UPON READING the affidavit of Anthony Richard Dicks sworn on the 17th day of November, 1983 and filed herein, and the exhibits therein referred to.

AND UPON HEARING leading Counsel and Counsel for the Plaintiff and leading Counsel and Counsel for the Defendant.

IT IS ORDERED that the appeal of the Plaintiff be dismissed.

No. 7
Order of
Court of
Appeal
dated 14th
December
1983

(continued)

10 AND IT IS FURTHER ORDERED that the Defendant do have his costs of the appeal. Such costs to be taxed if not agreed.

Dated this 14th day of December 1983.

N. J. Barnett (L.S.)
Registrar

NO. 8 NOTICE OF MOTION FOR LEAVE TO APPEAL

Civil Appeal No. 76 of 1983.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

IN THE COURT OF APPEAL

**(On Appeal from the High Court Miscellaneous
Proceedings No.982 of 1982)**

No. 8
Notice of
Motion for
Leave to
Appeal
dated 21st
December
1983

10

IN THE MATTER of land described as Lot
Nos. 2938, 3103, 3104, 3105, 3106, 3107,
3525, 3526 and 3543 in Demarcation
District No.124 in the New Territories
Hong Kong (hereinafter referred to as
“the resumed land”)

and

IN THE MATTER of land described as
Lot Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No.124 in the New Territories Hong
Kong (hereinafter referred to as “the
severed land”)

BETWEEN

20

**WINFAT ENTERPRISE (HK)
COMPANY LIMITED**

Plaintiff

and

THE ATTORNEY-GENERAL

Defendant

NOTICE OF MOTION

30

TAKE NOTICE that the Court of Appeal will be moved on the 12th day of
January 1984, at ten o'clock, in the fore-noon, or so soon thereafter as Counsel may
be heard on an application by the abovenamed Plaintiff for leave to appeal to Her
Majesty in Council against the judgment of the Court of Appeal given on the 14th
day of December 1983 dismissing the Applicant's appeal against the judgment of
the Honourable Mr. Justice Kempster given on the 29th day of April 1983 pursuant
to the Order-in-Council and for necessary directions pursuant thereto, and that the
costs of this application be costs in the appeal.

Dated the 21st day of December 1983.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

Mr. Anthony F. Neoh
Counsel for the Plaintiff.

No. 8
Notice of
Motion for
Leave to
Appeal
dated 21st
December
1983
(continued)

(Sd.) Messrs. Raymond Tang & Co.,
Solicitors for the Plaintiff.

TO: The Registrar,
Supreme Court,
Hong Kong.

and

The Defendant,
The Attorney-General,
Legal Department,
Central Government Office,
Main Wing,
Hong Kong.

10

**NO. 9 ORDER OF COURT OF APPEAL GRANTING
CONDITIONAL LEAVE TO APPEAL**

Civil Appeal No. 76 of 1983.

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

**IN THE COURT OF APPEAL
(On Appeal from the High Court Miscellaneous
Proceedings No.982 of 1982)**

No. 9
Order of
Court of
Appeal
Granting
Conditional
Leave to
Appeal
dated 12th
January
1984

10

IN THE MATTER of land described as Lot
Nos. 2938, 3103, 3104, 3105, 3106, 3107,
3525, 3526 and 3543 in Demarcation
District No. 124 in the New Territories
Hong Kong (hereinafter referred to as
"the resumed land")

and

IN THE MATTER of land described as
Lot Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No. 124 in the New Territories Hong Kong
(hereinafter referred to as "the severed
land")

BETWEEN

**WINFAT ENTERPRISE (HK)
COMPANY LIMITED**

Plaintiff

20

and

THE ATTORNEY-GENERAL

Defendant

**BEFORE THE HONOURABLE SIR DENYS ROBERTS,
CHIEF JUSTICE, THE HONOURABLE SIR ALAN
HUGGINS, VICE-PRESIDENT, AND THE
HONOURABLE MR. JUSTICE BARKER, JUSTICE OF APPEAL**

ORDER

30

UPON reading the Notice of Motion herein dated the 21st day of December
1983, on behalf of the Plaintiff for leave to appeal to Her Majesty in Council from the
judgment of the Court of Appeal given on the 14th day of December 1983, dismissing
the Plaintiff's appeal against the judgment of the Honourable Mr. Justice Kempster
given on the 29th day of April, 1983.

AND UPON reading the Notice of Intended Application dated the 21st day of December 1983.

AND UPON hearing Counsel for the Plaintiff and Counsel for the Defendant.

IT IS BY CONSENT ORDERED that:—

- (1) the Plaintiff do have leave to appeal to Her Majesty in Council;
- (2) the Plaintiff do pay into Court a sum of HK\$100,000.00 as security for costs within 14 days from the date hereof;
- (3) the time allowed for the preparation and despatch of the Record be 4 months from the date hereof; and
- (4) the costs of this application be costs in the appeal.

10

Dated the 12th day of January 1984.

N.J. BARNETT (L.S.)
Registrar.

**NO. 10 ORDER OF COURT OF APPEAL GRANTING
FINAL LEAVE TO APPEAL**

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

(To be reproduced)

No. 10
Order of
Court of
Appeal
Granting
Final
Leave to
Appeal
dated

*In the
Supreme Court
of Hong Kong
Appellate
Jurisdiction*

No. 10
Order of
Court of
Appeal
Granting
Final
Leave to
Appeal
dated

(continued)

ITEM NO. A1

*Item
No. A1*

AFFIRMATION OF TAN ENG AIK
IN THE SUPREME COURT OF HONG KONG
HIGH COURT
MISCELLANEOUS PROCEEDINGS
ACTION NO.982 OF 1982

Affirmation
of Tan Eng
Aik dated
28th May
1982

10

IN THE MATTER of land described as Lot
Nos. 2938, 3103, 3104, 3105, 3106, 3107,
3525, 3526 and 3543 in Demarcation
District No. 124 in the New Territories
Hong Kong (hereinafter referred to as 'the
resumed land')

and

IN THE MATTER of land described as
Lot Nos. 3129, 3130, 3131, 3132, 3362,
3556 and 3561 in Demarcation District
No. 124 in the New Territories Hong
Kong (hereinafter referred to as 'the
severed land')

BETWEEN

20

WINFAT ENTERPRISE (HK)
COMPANY LIMITED

Plaintiff

and

THE ATTORNEY-GENERAL

Defendant

AFFIRMATION OF TAN ENG AIK

I, Tan Eng Aik, of No.11 Cornwall Avenue, Ground Floor, Tsimshatsui,
Kowloon in the Colony of Hong Kong hereby do solemnly, sincerely and truly affirm
and say as follows:—

30

1. I am Chairman of the Plaintiff Company (hereinafter referred to as "the
Company") and am duly authorised to make this Affirmation. The facts
contained herein are, save as otherwise indicated, true within my own
knowledge.

Item
No. A1

Affirmation
of Tan Eng
Aik dated
28th May
1982
(continued)

2. The properties the subject of these proceedings (hereinafter collectively referred to as "the said lands") were purchased by the Company in 1974, with the exception of Lot 3561, which was purchased in 1976. Historically, the said lands had been occupied and used as a farm known as "Yick Yuen" producing fruits and poultry. After the purchase by the Company, the aforesaid use continued until July 1979 when it was formed for use as an open storage area. The said lands are astride the Districts of Yuen Long and Tuen Mun in the New Territories. Produced and shown to me marked "T-1" are true copies of 2 Plans: Plan A shows the general area in which the said lands are situate, showing the "resumed land" shaded in Pink and the "severed land" shaded in Yellow; and Plan B shows the location of Tuen Mun New Town in relation to the said lands shaded in Pink.

10

3. According to records kept at the District Office (Yuen Long), the Company, apart from the Vendors who sold the said lands to us in 2 parcels, one in 1974 and the other in 1976, had had other predecessors-in-title, going back to the time before the British Government assumed administration over the New Territories. I am advised and verily believe that one of the first acts of administration of the British Government was to undertake an exhaustive survey of the New Territories demarcating the New Territories into various Demarcation Districts and allocating Lot Nos to individual holdings. This exercise was undertaken to coincide with the work of the Land Court which was constituted by the Land Court (New Territories) Ordinance, 1900. The titles granted by the Crown following allowance of claims by land owners in the New Territories by the Land Court were contained in documents of title called Block Crown Leases. Such Block Crown Leases contained schedules in which the owners of the individual Lots were named together with the term of the Lease, the area of the holding and its description, and a Crown rent payable. It would therefore be fair to infer that whoever appeared as an owner in a schedule to a Block Crown Lease would have owned the Lot described therein prior to the adjudication of their claims by the Land Court, and, either by themselves, or through their predecessors-in-title, held such lands at the time of the convention between Her Majesty and His Imperial Majesty of China dated the 9th day of June 1898 (hereinafter referred to as the "the said Convention").

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4. Produced and shown to me marked "T-2" is a true copy of the Block Crown Lease showing the lands owned by the Plaintiff, and the names of the Plaintiff's predecessors-in-title as at 24th January 1905. The Plaintiff says that it is fair to infer from the said document that the owners mentioned therein held the lands prior to adjudication of their claims by the Land Court and either by themselves or through their predecessors-in-title, held such lands prior to the said Convention dated 9th June 1898. I am advised and verily believe that such lands were, prior to the said Convention, held in perpetuity by the owners and their successors concerned without general restriction as to their user. It is therefore the Plaintiff's contention that the grant contained in the Block Crown Lease pertinent to lands owned by the Plaintiff's predecessors-in-title did not reflect in full the rights of the land owners concerned prior to the said Convention. I am advised by my Legal Advisers and verily believe that this abrogates a fundamental principle that where there

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is a cession of territory to the British Crown, the private rights of property of the citizenry would be respected. A fortiori, this principle should apply to leased territory. I am further advised that Her Majesty had not sought to abrogate such fundamental principle by any of the provisions in the said Convention nor by her Orders-in-Council, Acts of her Parliament, nor by the Letters Patent and Royal instructions to the Governor.

Accordingly, Hong Kong's legislature, in enacting laws for the Government of the New Territories, is bound by such fundamental principle.

*Item
No. A1*

Affirmation
of Tan Eng
Aik dated
28th May
1982
(continued)

10 5. The Plaintiff would not have instituted these proceedings but for the unfair treatment which it had received at the hands of the Hong Kong Government, the history of which I will now relate.

20 6. In 1977, the Plaintiff submitted a proposal for the development of the said lands into a housing estate. The said lands were, and are, closely situated to Castle Peak Road where several development projects had been approved only 300 metres away and stretching to a distance of 1 kilometre towards the east of the said lands. Although the said lands were not within the urban layout area of Tuen Mun New Town, it was considered by the Plaintiff that because of the proximity of other approved projects, the proposed project of the Plaintiff would usefully complement such other approved development projects in the vicinity and in Tuen Mun New Town. The Plaintiff's proposed development had been carefully planned to cater for the entrepreneurial and managerial class which would have to reside near to Tuen Mun New Town which had been planned as an industrial city. Included in the proposal were elements which would give Tuen Mun New Town a kind of residential development which had been carried out successfully in other countries, notably the Philippines, Singapore, Malaysia, Indonesia as well as Europe and the United States. On 1st May 1978, the proposals, having been circulated to other Government departments, were turned down. There was an appeal by the Plaintiffs on 8th June 1978 which was again refused on 18th December 1978. At a meeting with Mr. A.K. Paton, Estate Surveyor, held on the 3rd April 1979 at the District Office, Tuen Mun, I was informed by Mr. Paton that the development proposed by the Plaintiff was unacceptable because the District Office considered that the area was not adequately supplied with water and other basic amenities such as electricity, drainage, access to and from main road etc. Having regard to other private development projects in nearby locations, the reasons advanced by the District Office were not convincing and the matter was again resuscitated on 4th June 1979, and on 8th August 1979, the District Officer (Tuen Mun) replied by saying that he was seeking comments from other Government departments. On 4th June 30 40 1980, the Plaintiffs commissioned Planning Consultants to make a further submission to the District Officer who, on 21st July 1980, replied that "There is at present no planning proposal to permit urban development in the general area in which your clients' (the Plaintiff's) lands are situated. The appropriate use is still considered to be agricultural". Produced and shown to me marked "T-3" are true copies, in a bundle, of the relevant correspondence between the Plaintiff, its Planning Consultants and the District Officer (Tuen Mun).

7. In about March 1980, negotiations were conducted between one New

Item
No. A1

Affirmation
of Tan Eng
Aik dated
28th May
1982
(continued)

Yick Fung Enterprise Company (hereinafter referred to as "New Yick Fung") and the District Officer (Tuen Mun) for use of the said lands as an area for the storage of motor vehicles. It was assumed at the time by both parties that the land was restricted to agricultural use only. The results of these negotiations were that a temporary waiver was granted by the said District Officer to New Yick Fung in respect of the said lands with the exception of Lot Nos. 3129, 3130, 3131, 3132, 3362, 3556 and 3561. The said short term waiver therefore applied to 6.89 acres of the said lands, the remaining area being 1.39 acres. The said short term waiver, true copies of which are now produced and shown to me marked "T-6", allowed the bulk of the said lands, i.e. 6.89 acres thereof, to be used for the storage of motor vehicles provided that no buildings were to be permitted except for the existing watchman shed measuring 14.86 square metres in area and 2.9 metres in height, and that such storage shall only be open storage.

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8. When New Yick Fung opened negotiations with the District Officer (Tuen Mun), it, at the same time, entered into a three-year lease of the aforementioned Lots in the said lands with the Plaintiff, with an option for a renewal of a further two years, on condition that the said New Yick Fung Enterprise Company may terminate the lease if short term waivers were not granted. Produced and shown to me marked "T-5" is a true copy of the said Lease.

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9. In anticipation of the grant of the said short term waivers, New Yick Fung formed the said lands part of which later became the subject of short term waivers. The cost for such formation works came to roughly \$800,000.00 which was borne by the said New Yick Fung Enterprise Company and due allowance was made in the amount of rent subsequently agreed between them and the Plaintiff. After New Yick Fung went into possession, they in turn sublet to Dah Chong Hong (Motor Services Centre) Limited (hereinafter referred to as "Dah Chong Hong") at \$224,000.00 per month rising to \$268,800.00 per month, by a Sub-Lease dated 3rd November 1980 for a term of 3 years and 9 months, a true copy of which Sub-Lease is produced and shown to me marked "T-6".

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10. I am advised that even given that the Block Crown Lease applicable to the said lands is valid, the said lands are not restricted to agricultural use by a true and proper interpretation of the said Block Crown Lease. Indeed, I am advised that the said lands were not expressed to be demised as agricultural or garden ground, and therefore, there is no restriction as to building on the said lands. In addition, if, which is denied, the said lands were expressed to be demised as agricultural or garden ground, there is no restriction to the use of the said lands for the open storage of motor vehicles. Accordingly, New Yick Fung had been under a misapprehension that a short term waiver or modification of the Block Crown Lease was required before the lands could be used for the storage of motor vehicles. In fact, no such waiver or modification was required.

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11. On 26th November 1981, a letter was sent on behalf of the Secretary for the New Territories to the Plaintiff company notifying us that a part of the said lands, namely, Lot Nos. 2938, 3103, 3104, 3105, 3106, 3107, 3525,

10 3526 and 3543 (hereinafter referred to as "the resumed land") was being resumed under Government Notice No. 3080 dated 7th October 1981. We were advised that all the Lots listed as aforesaid would revert to the Crown three months from the affixing of the said Notice onto the resumed land. This meant that the resumed land would revert to the Crown on 21st January 1982. In the same letter, the Secretary for the New Territories said that Government was prepared to offer us for the land that was to be resumed exgratia cash compensation at HK\$15,299,620.00, which represented 50% of the prevailing cash compensation for agricultural land acquired by Government in an urban area of the New Territories, as at the date of execution of surrender. Such cash compensation would, however, be only payable upon our company's surrendering the resumed land to the Crown free of all encumbrance and accepting in writing the offer before the expiry of the reversion date of 21st January 1982. Produced and shown to me marked "T-7" is a true copy of the said letter.

20 12. The Plaintiff was unable to accept Government's offer of cash compensation upon the terms stated in "T-7" herein, for the following reasons:—
(a) The rate of compensation was substantially below what the Plaintiff would be able to get in the market.
(b) Even if the Plaintiff were able to accept the cash compensation, it was unable to accept the terms imposed, namely, that the land shall be surrendered free of all encumbrance, because, at that time, the Plaintiff, as the Government well knew, had leased the said lands to New Yick Fung for a period of three years (renewable for a further two years) from March 1979, and New Yick Fung had in turn sub-let to Dah Chong Hong.

30 13. Furthermore, the Plaintiff is aggrieved by the resumption because it feels that Government had taken unfair advantage of the situation, in that Government had long known that the said lands, in the light of the development plans put forward by the Plaintiff, had development potential but had kept back from allowing the Plaintiff to develop the area on the ostensible grounds that there were insufficient facilities, such as electricity, water, drainage, access, etc. (see paragraph 6 above). Yet Government had decided to resume the area for temporary housing which required the same facilities but at a much higher level in view of the higher densities of population applicable to such use. Also, Government well knew that the Plaintiff had a tenancy agreement at a substantial rent with New Yick Fung (which in turn had sub-let at a far higher rent) for the open storage of motor vehicles in the area, and indeed, had stood by when New Yick Fung had expended substantial sums in forming the area and such substantial sums have been reflected by suitable diminution in the rent charged. It is unfair that with the knowledge as aforesaid set out Government had chosen to take advantage of resuming the Plaintiff's land when there is ample Crown land in the Tuen Mun Yuen Long Districts.

40 14. In the beginning of 1982, if the Plaintiff were able to continue to collect rent from New Yick Fung or any other organisation for open storage of motor vehicles, it would be able to collect rent by the end of 1997, in the total sum of slightly over \$23 million even assuming there is no increment in the interim.

Item
No. A1

Affirmation
of Tan Eng
Aik dated
28th May
1982
(continued)

Indeed, a valuation of the part of the said lands leased to New Yick Fung, of the open market value thereof, undertaken by Messrs. Collier Petty, was \$21,050,000.00 as at 21st January 1982. This, of course, does not include the loss in value due to the severance of the resumed land from the said lands. In the Plaintiff's estimate, the loss due to severance would be in the region of \$2 million, based on the value of \$51.50 per square foot for the unresumed part of the said lands with an area of 40,945 square feet. These aforesaid figures are based on use of the said lands for storage of motor vehicles or the general market price for agricultural land in that area. It is the Plaintiff's contention that the said land is not necessarily agricultural land even based upon the assumption that the Block Crown Lease is valid. If the said lands were not restricted to agricultural use, then its value should be substantially more. Accordingly, the Plaintiff feels that the Government's offer of compensation of \$15 million was totally inadequate and unfair in the circumstances. 10

15. Upon the purported reversion of the part of the said lands mentioned in Government Notice No. 3080, on 21st January 1982, the Plaintiff, by their Solicitors, submitted compensation claims in the forms provided by the Secretary for the City and New Territories Administration. Produced and shown to me marked "T-8" are true copies of the said forms duly completed by the Plaintiff's Solicitors and submitted to the said Secretary. These compensation claims dealt with the land purported to be resumed in two parcels, namely, Lot No. 3525, which undisputably was building land, and the other Lots named in the said Government Notice No. 3080 which, the Government asserts to be agricultural land. As for the building land, the Plaintiff's claim was \$1,050,000.00. As for the land which the Government claimed was agricultural land, the claim was \$21,050,000.00 for the land actually resumed and \$2,000,000.00 for loss due to severance of the land resumed from the remaining lands, making a total of \$23,000,000.00. The compensation rate claimed in respect of that part of the land claimed by the Government to be for agricultural use only, had been based on a valuation by Messrs. Collier Petty, on the basis of the operation of market forces in the New Territories, namely, possible enhancement in value of the property which was attributable to market speculation that the short term waiver in respect of storage of motor vehicles would be renewed by Government, and that a modification of the Crown Lease Conditions then governing use and development of the Lots might be obtained from Government to permit development of the Lots as envisaged in the proposals put forward by the Plaintiff in 1977, or such like. This would, in fact, have been the criteria for any buyer wishing to buy the lands from the Plaintiff had it not been for the resumption. Produced and shown to me marked as "T-9" is a true copy of a Valuation Report by Messrs. Collier Petty on the value of the lands resumed. 20 30 40

16. Whilst the Plaintiff would be satisfied with the sums claimed in the forms contained in "T-8" herein, the Plaintiff is advised that the quantum of compensation should only be gone into when the questions of law which form the subject of the declarations now sought from this Honourable Court, had been determined as between the Plaintiff and the Crown. Accordingly, the Plaintiff, in submitting the forms contained in "T-8" herein had specifically

reserved its position by stating that it did not wish to be taken as having admitted that it was bound by the Crown Lands Resumption Ordinance, which I am advised, will undoubtedly produce the unjust result of a quantum of compensation which will be even less than the ex-gratia cash compensation offered by Government by its letter exhibited as "T-7" hereto when it has been consistently assumed by Government that the said lands (save for the minor portion of building land) was restricted to agricultural use. Produced and shown to me marked "T-10" is a true copy of my Solicitors' covering letter to "T-8".

*Item
No. A1*

Affirmation
of Tan Eng
Aik dated
28th May
1982
(continued)

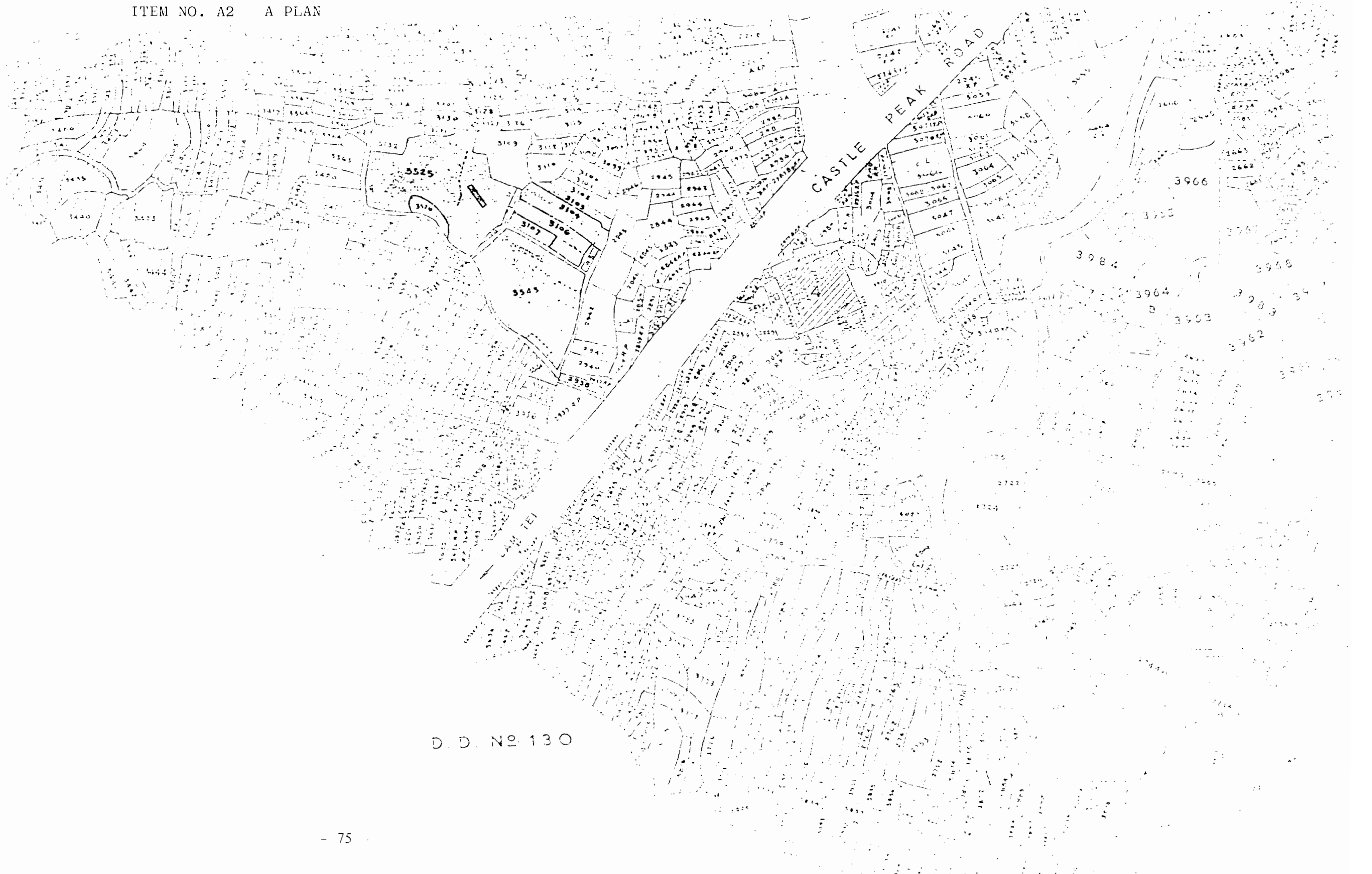
10 AFFIRMED at 2nd Floor,)
)
 Chung Nam House, Des)
)
 Voeux Road Central, Hong)
)
 Kong, this 28th day of)
)
 May 1982.)

(sd.) Tan Eng Aik

Before me,

20 (Sd.) Leonard K. L. Heung
 Solicitor, Hong Kong.

ITEM NO. A2 A PLAN



D. D. NO 130

Item
No. A2

A Plan

ITEM NO. A3

BLOCK CROWN LEASE

Item
No. A3
Block
Crown
Lease

THIS INDENTURE made the 24th day of January one thousand nine hundred and five BETWEEN OUR SOVEREIGN LORD EDWARD VII, by the GRACE of GOD, of the United Kingdom of GREAT BRITAIN and IRELAND and of the BRITISH DOMINIONS beyond the Seas King, Defender of the Faith, Emperor of INDIA, of the one part, and the several persons, clans, families and "tongs" whose names are set out in the Schedule hereunder written or in any Schedule which may hereafter be substituted therefor and may be certified by the Governor of
10 Hong Kong to embody the same awards of the Land Court of the New Territories as are embodied in the Schedule hereunder written, or in any Supplemental Schedule signed by the said Governor which may hereafter be attached hereto (which original Schedule, Substituted Schedule and Supplemental Schedule are hereinafter included in the expression "the Schedule hereto") and each of whom and whose respective Heirs, Executors, Administrators, Managers and Assigns are where not inapplicable hereinafter included under the designation of "the Lessee" of the other part: WHEREAS Sir MATTHEW NATHAN, Knight Commander of the most Distinguished Order of Saint Michael and Saint George is now the duly constituted and appointed
20 Government and Commander-in-Chief of the Colony of Hong Kong and its Dependencies and is duly authorized to enter into these presents in the name and on behalf of His said Majesty: NOW THIS INDENTURE WITNESSETH that in consideration of the yearly rents and covenants and stipulations hereinafter reserved and contained, by and on the part and behalf of each Lessee respectively to be paid, done and performed, His said Majesty KING EDWARD VII DOTH hereby grant and demise unto each Lessee ALL that piece or parcel of ground situate, lying and being in Survey District No. 124 in the New Territories in the Colony of Hong Kong set out and described in the Schedule hereto opposite to the name of such Lessee AND which
30 said piece or parcel of ground is more particularly delineated and described on the plan or plans of Survey District No. 124 attached hereto according to the lot number set out in the Schedule hereto opposite to the name of such Lessee and marked on the said plan Together with the messuages, erections and buildings thereon and all the easements and appurtenances whatsoever to the said demised premises belonging, or in anywise appertaining; EXCEPT AND RESERVED unto His said Majesty, His Heirs, Successors and Assigns all Mines, Minerals, and Quarries of Stone in, under and upon the said premises, and all such Earth, Soil, Marl, Clay, Chalk, Brick-earth, Gravel, Sand, Stone and Stones, and other Earths or Materials, which now are or hereafter during the continuance of this demise shall be under or upon the said premises, or any part or parts thereof, as His said Majesty, His Heirs, Successors or Assigns may require for the Roads, Public Buildings, or other Public Purposes of the said Colony of Hong Kong;
40 with full liberty or Ingress, Egress, and Regress, to and for His said Majesty, His Heirs, Successors and Assigns, and His and their Agents, Servants, and Workmen at reasonable times in the day during the continuance of this demise, with or without horses, carts, carriages, and all other necessary things, into, upon, from and out of all or any part or parts of the premises hereby expressed to be demised to view, dig for, convert and carry away, the said excepted Minerals, Stone, Earths and other things respectively or any part or parts thereof respectively, thereby doing as little damage as possible to the Lessees; AND ALSO SAVE AND EXCEPT full power to His said Majesty, His Heirs, Successors and Assigns, to make and conduct in, over, along, through or under the said

Item
No. A3

Block
Crown
Lease
(continued)

premises, all and any Public or Common sewers, drains, or water-courses, water or other mains, telegraph and telephone lines with full power at all times to enter into and upon the said demised premises for the purpose of making, laying, erecting, inspecting or repairing the same or otherwise in connection therewith TO HAVE AND TO HOLD unto each Lessee the said piece or parcel of ground and premises hereby expressed to be demised to such Lessee, with their and every of their appurtenances from the first day of July One thousand eight hundred and Ninety-eight for and during and unto the full and of the term of Seventy-five years except in the case of those lots opposite which a different term of years or tenancy is stated in the Schedule hereto which lots shall be held for the term of years or tenancy so stated Subject nevertheless to all existing Public or Private rights and easements, in, over, along, through or under the said demised premises or any part or parts thereof respectively or in any wise appertaining thereto and subject also to such mortgages, incumbrances, tenancies, estates and interest (if any) as are mentioned in the Schedule hereto or are duly entered against the same premises in the registers thereof in the Land Office and subject to all existing rights of all persons occupying the said premises as tenants or mortgages of the lessee; YIELDING and paying therefor yearly and every year the sum stated in the Schedule hereto against the said Lot number or such other sum as may hereafter be fixed in lieu thereof under the provisos next hereinafter contained in Current Money of the said Colony of Hongkong, on the thirtieth day of June in every year free and clear from all Taxes, Rates, Charges, Assessments and Deductions whatsoever, charged upon or in respect of the said premises or any part thereof, payment of the said Rent, for the current year becoming due on the thirtieth day of June One thousand nine hundred and five; PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that on the expiration of the first ten years of the term hereby granted the rent hereby reserved shall cease and thereafter such rent shall be paid and become payable in respect of the said premises for the residue of the term hereby granted as shall be fairly and impartially fixed by the Surveyor to His said Majesty, His Heirs, Successors or Assigns (now the Director of Public Works) as the fair and reasonable rental value of the ground at that date, PROVIDED ALSO that in the event of any building being erected on any premises expressed to be demised as agricultural or garden ground the rent payable in respect of such premises shall be such sum as shall be specified in the licence for the erection of such building to be granted in manner hereinafter appearing; AND each Lessee for himself and herself and for his and here own acts and deeds only and not the one for the other of them doth hereby covenant with His said Majesty, His Heirs, Successors and Assigns by these presents in manner following, that is to say, that the Lessee shall and will yearly, and every year, during the said term hereby granted, well and truly pay or cause to be paid to His said Majesty, His Heirs, Successors and Assigns, the said yearly Rent stated in the Schedule hereto opposite the Lot Number of the premises demised to him or her or such other rents as shall become payable under the provisos herein before contained clear of all deductions as aforesaid on the several days and times and in the manner herein before reserved and made payable: AND ALSO that the Lessee shall and will during all the said term hereby granted, bear, pay and discharge all taxes, rates, charges and assessments whatsoever, which now are or shall be hereafter assessed or charged upon, or in respect of, the said premises hereby expressed to be demised to him or her or any part thereof: And will pay the said taxes, rates, charges and assessments for each and every year by annual payments in advance with the rent hereinbefore reserved on the thirtieth day of June in every year: AND ALSO that the Lessee shall and will, from time to time, and at all times hereafter when, where, and as

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often as need or occasion shall be and require, at his or her and their proper costs and charges, well and sufficiently Repair, Uphold, Support Maintain, Pave, Purge, Scour, Cleanse, Empty, Amend and keep the messuage or tenements, and all other erections and buildings, now or at any time hereafter standing upon the said pieces or parcels of ground hereby expressed to be demised, and all the Walls, Rails, Lights, Pavements, Private, Sinks, Drains, and Water-courses thereunto belonging and which shall in anywise belong or appertain unto the same, in, by, and with all and all manner of needful and necessary reparations, cleansing and amendments whatsoever, the whole to be done to the satisfaction of the Surveyor of His said Majesty, His Heirs, Successors or Assigns, and the said messuage or tenement, erection, buildings and premises being so well and sufficiently repaired, sustained and amended, at the end or sooner determination of the said term hereby granted shall and will peaceably and quietly deliver up to His said Majesty, His Heirs, Successors or Assigns: And further it shall and may be lawful to and for His said Majesty, His Heirs, Successors or Assigns, by His or their Surveyor, or other persons deputed to act for Him or them, twice or oftener in every year during the said term, at all reasonable times in the day, to enter and come into and upon the said premises hereby expressed to be demised to view, search, and see, the conditions of the same, and of all decays, defects and wants of reparation and amendments, which upon every such view or views shall be found, to give or leave notice or warning in writing, at or upon the said premises or some part thereof, unto or for the Lessee to repair and amend the same within Three Calendar Months then next following, within which said time or space of Three Calendar Months, after every such notice or warning shall be so given, or left as aforesaid, the Lessee will repair and amend the same accordingly: AND FURTHER that the Lessee or any other person or persons shall not, nor will, during the continuance of this demise, use, exercise or follow, in or upon the said premises, or any part thereof, any noisy, noisome or offensive trade or business whatever, nor convert any ground hereby expressed to be demised as agricultural or garden ground into use for building purposes other than for the proper occupation of the same ground as agricultural or garden ground without the previous Licence of His said Majesty, His Heirs, Successors or Assigns, signified in writing by the Governor of the said Colony of Hongkong, or other person duly authorized in that behalf: AND FURTHER that the Lessee or any other person or persons shall not nor will at any time during the said term erect or construct any building or structure of any description on the said demised premises or any part thereof whether demised as agricultural or garden ground or otherwise without first having obtained the approval thereto of the Surveyor to His said Majesty, His Heirs, Successors or Assigns, or other person duly authorized by the Governor of the said Colony of Hongkong, in that behalf; AND ALSO that the Lessee shall not, nor will, assign, demise, mortgage, or otherwise part with, all or any part of the said premises hereby expressed to be demised for all or any part of the term hereby expressed to be granted without forthwith registering such alienation in the Land Office, or such other Office as may hereafter be instituted for the purposes of Land Registration in the said Colony of Hong Kong, and paying all reasonable fees and other expenses thereon: PROVIDED always, and it is hereby agreed and declared, that in case the said yearly rents hereinbefore reserved, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days next over, or after any or either of the said days whereon the same ought to be paid as aforesaid (whether lawfully demanded or not) or in case of the breach or non-performance of any or either of the covenants and conditions herein contained, and by or on the part and behalf of the Lessee to be kept done and performed, then, and in either of the said cases, it shall and may be lawful to and for

Item
No. A3
Block
Crown
Lease
(continued)

His said Majesty, His Heirs, Successors or Assigns, by the Governor of Hongkong, or other person duly authorized in that behalf, in and upon the said premises hereby expressed to be demised in respect of which such rent shall be in arrear or such breach or non-performance shall have occurred or any part thereof in the name of the whole, to re-enter, and the same to have again, retain, re-possess, and enjoy, as in His or their first or former estate, as if these presents had not been made, and the Lessee and all other occupiers of the said premises thereout and thence utterly to expel, put out and amove, this Indenture or anything contained herein to the contrary notwithstanding: PROVIDED also, and it is hereby further agreed and declared that His said Majesty, His Heirs, Successors and Assigns, shall have full power to resume, enter into, and re-take possession of all or any part of the premises hereby expressed to be demised, if required for the improvement of the said Colony of Hongkong, or for any other public purposes whatsoever, Three Calendar Months' notice being given to the Lessee of its being so required, and full and fair compensation for the said Land and the Buildings thereon, being paid to the said Lessee at a valuation, to be fairly and impartially made by the Surveyor of His said Majesty, His Heirs, Successors or Assigns, and upon the exercise of such power the term and estate hereby created shall respectively cease, determine and be void: PROVIDED also, and it is hereby further agreed and declared that each Lessee shall in such cases where the premises are demised for a term of Seventy-five Years be entitled on the expiration of the said terms of Seventy-five Years to a renewed Lease of the premises respectively demised to him or her for a further term of twenty-four Years less three days without payment of any Fine or Premium therefor and at the Rent hereinafter mentioned; AND His said Majesty, His Heirs, Successors or Assigns shall and will at the request and cost of such Lessee grant unto him or her on the expiration of the said term of Seventy-five Years hereby granted a new Lease of the said premise for the term of twenty-four Years Less three days at Such Rent as shall be fairly and impartially fixed by the Surveyor of His said Majesty, His Heirs, Successors, or Assigns as the fair and reasonable rental value of the ground at the date of such renewal: And in all other respects such new Lease shall be granted upon the same terms and under and subject to the same reservations, covenants, stipulations, provisos and declarations as are contained in this present Lease with the exception of this proviso for renewal which shall not be contained in such new Lease. In WITNESS whereof the said SIR MATTHEW NATHAN duly authorized by His said Majesty as aforesaid hath executed these presents, and hereunto set the Public Seal of the Colony of Hongkong aforesaid, in the name and on behalf of His said Majesty.

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(signed) Matthew Nathan

Examined and certified to be correct,

(Signed) C. Clementi
Member Land Court

(Seal of District Land Office,
Yuen Long)

Certified True Copy

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Assistant Land Officer

SCHEDULE OF CROWN LESSEES

DISTRICT NO. 124

Lot No.	Term of lease in years	Area	Description of Lot	Name of Owner		Address	Crown Rent			Remarks
				Chinese	Transliteration		Class	\$	¢	
2938	75	.10	Padi	鄧澤善堂 鄧美祿司理	TANG Trak Shin Tong TANG Mi-luk (Trustee)	屏山坑尾 ”	1st		30	
3103	”	.21	Dry Cultivation	陳聯芳 陳華芳	CHAN Lun-fong CHAN Wa-fong	屯門田心 ”	2nd		42	
3104	”	.51	”	陳餘興	CHAN Yu-hing	”	”	1	02	
3105	”	.04	”	鄧傳岩	TANG Fu-ngam	厦村西山村	”		08	
3106	”	.43	”	”	— Do —	”	”		86	
3107	”	.19	”	”	— Do —	”	”		38	
3129	”	.03	Padi	鄧根培	TANG Kan-pui	屏山坑頭	1st		09	
3130	”	.20	”	鍾成德	CHEUNG Mo-tak	鍾屋村	1st		60	Mortgaged to Tang Ut Chiu Tso (鄧悅沼祖) (T.) Tang Fo Po (鄧大伏司理) for \$21.00 interest 1 shek yearly
3131	”	.50	”	陳陶氏	CHAN Toa Shi	屯門田心	”		15	Mortgaged with lots (3145, 3410 黃 (3420 to WONG 雲 冕 Wan-fong for (interest 8.6 \$82.00 (sheks yearly

(Seal of District Land Office, Yuen Long)

(Seal of District Land Office, Yuen Long)

Item
No. A3

Block
Crown
Lease
(continued)

SCHEDULE OF CROWN LESSEES

DISTRICT NO. 124

Lot No.	Term of lease in years	Area	Description of Lot	Name of Owner		Address	Crown Rent			Remarks
				Chinese	Transliteration		Class	\$	¢	
3132	75	.31	Padi	鄧觀音會 鄧植亭司理	Tang Kun Yam Wui TANG Trik-ting (Trustee)	厦村新圍	1st		93	
3362	75	.08	„	„	- Do -	„	„		24	
3525	„	2.90	„	鄧傳岩	TANG Fu-ngam	厦村西山村	3rd	2	90	
3526	„	.18	„	鄧啓瑞	TANG Kai-sui	„	1st		54	
3543	„	2.33	Orchard	鄧傳岩	TANG Fu-ngam	„	3rd	2	33	
3556	„	.09	Dry Cultivation	謝大壽	TRA' Fo Shau	順風圍	2nd		18	
3561	„	.18	„	鍾福順堂 鍾鈞記司理	CHUNG Fuk Shun Tong CHUNG Tiu Ki (Trustee)	鍾屋村 „	2nd		36	

(Seal of District
Land Office, Yuen
Long)

(Seal of District
Land Office,
Yuen Long)

Item
No. A3

Block
Crown
Lease
(continued)

ITEM NO. A4

LETTER FROM SECRETARY FOR THE NEW TERRITORIES

Item
No. A4

Letter from
Secretary
for the
New
Territories
dated 26th
November
1981

Letter NR2
(WITHOUT PREJUDICE)

Item 1.

File reference: LNT 150/YRN/60 A

To: Winfat Enterprise (H.K.) Co., Ltd.
of No. 11, Cornwall Avenue, G/F., Kowloon.

The lessee(s) of:

10

26 NOV 1981

D.D.	Lot No.	Land Status	Registered Area of Lot	Area affected
124	2938	1st	0.10 ac.	404.7 m ² (4,356 s.f.)
124	3103	2nd	0.21 ac.	849.8 m ² (9,148 s.f.)
124	3104	2nd	0.51 ac.	2 063.9 m ² (22,216 s.f.)
124	3105	2nd	0.04 ac.	161.9 m ² (1,742 s.f.)
124	3106	2nd	0.43 ac.	1 740.1 m ² (18,731 s.f.)
124	3107	2nd	0.19 ac.	768.9 m ² (8,276 s.f.)
124	3525	3rd	2.83 ac.	11 452.6 m ² (123,275 s.f.)
20	124	3526	3rd	728.4 m ² (7,811 s.f.)
	124	3543	3rd	9 429.2 m ² (101,495 s.f.)

Dear Sir/Madam,

CROWN LANDS RESUMPTION ORDINANCE
(Chapter 124)
Resumption of land at Yuen Long, New Territories
(G.N. 3080)

30 According to my land records, you are the registered landowner(s) of the lot(s) listed above. I have to inform you that the land is required by Government for a public purpose, namely Temporary Housing Area, Yick Yuen, Yuen Long, New Territories. The land is being resumed under Government Notice No. 3080 dated 7-10-1981 a copy of which is attached hereto in English and Chinese. You are advised that all the lots listed in this notice will revert to the Crown 3 month(s) from the date of affixing of the notice onto the lots concerned.

2. Government is prepared to offer you for the land that is to be resumed cash compensation at \$15,299,620.00 (or at a rate, which represents Fifty percent of the prevailing cash compensation for agricultural land acquired by Government in an urban area of the New Territories, as at the date of execution of surrender).

Item
No. A4

Letter from
Secretary
for the
New
Territories
dated 26th
November
1981
(continued)

3. This offer of cash compensation is subject to your surrendering your land to the Crown free of all encumbrances and accepting in writing the offer before the expiry of the period stipulated in the said Government Notice i.e. before 21st January, 1982. If you wish to accept the offer, you should call at the District Officer, Yuen Long as soon as possible bringing with you this letter, your Identity Card or Company Seal and the Title documents in respect of the land to be surrendered. The surrender will be taken immediately or the District Officer will make an appointment for you to return at a later date to take the surrender.

4. You should also note that the rates per square foot of cash compensation referred to in paragraph 2 hereof are subject to review by Government twice a year on 1st April and 1st October. The date which determines the rate at which you will be compensated for the purposes of paragraph 2 hereof will be the date on which you execute the Surrender document.

10

5. Under the provisions of the Crown Lands Resumption Ordinance you have the right to claim compensation as a result of your land being resumed by submitting a claim to the Lands Tribunal. If you are not sure of your rights you should inquire from the District Office Yuen Long or seek independent professional advice. The Tribunal on request, must, under Sections 10, 11 and 12 of the said Crown Lands Resumption Ordinance, determine the compensation for your land strictly in accordance with the lease conditions. The Tribunal is precluded from awarding any compensation in respect of any expectancy or probability of the grant of land exchanges or licenses and they must discount any evidence which shows that the land values have been enhanced by expectation of redevelopment or of a modification of lease conditions.

20

6. This letter is personal to you and is not negotiable or transferable.

7. A Chinese translation of this letter is enclosed. In the event of any doubt or dispute arising in the interpretation of these letters, Government's intentions as expressed in the English version shall prevail.

Yours faithfully,

(Sd.) HO Hang-kwong
for Secretary for the New Territories

30

To: Secretary for the New Territories

I/We accept the offer made in the above letter and hereby agree and undertake to surrender my/our land described in the above letter free of all encumbrances to the Crown before the expiry of the period stated in G.N. No. _____ dated _____ i.e. before _____.

Dated the _____ day of _____ 19_____.

Item
No. A4

Letter from
Secretary
for the
New
Territories
dated 26th
November
1981
(continued)

Signature

Signed/Acknowledged by the said _____

in the presence of _____

10 Name _____

Address _____

(Note: Please do not detach this docket from the letter)

ITEM NO. A5

LETTER FROM SECRETARY FOR THE CITY &
NEW TERRITORIES ADMINISTRATION

Item
No. A5

Letter from
Secretary for
the City &
New
Territories
Administration
dated 6th
February 1982

Letter 'NR4'

To: Winfat Enterprises (HK) Co. Ltd. of No. 11, Cornwall Avenue, G/F., Kowloon;
New Yick Fung Enterprises Company of No. 79B, Wing Fong Road, G/F.,
Ha Kwai Chung, New Territories;
Dah Chong Hong of 25 Westlands Road, Quarry Bay, Hong Kong.

The Former Lessee(s)/Mortgagee(s)/Tenant(s) of:

10

6 FEB 1982

D.D.	Lot No.	Land Status	Registered Area of Lot	Area Affected	
	124	2938	1st	0.10 ac.	404.7 m ² (4,356 sq. ft.)
	124	3103	2nd	0.21 ac.	849.8 m ² (9,148 sq. ft.)
	124	3104	2nd	0.51 ac.	2 063.9 m ² (22,216 sq. ft.)
	124	3105	2nd	0.04 ac.	161.9 m ² (1,742 sq. ft.)
	124	3106	2nd	0.43 ac.	1 740.1 m ² (18,731 sq. ft.)
	124	3107	2nd	0.19 ac.	768.9 m ² (8,276 sq. ft.)
	124	3525	3rd	2.83 ac.	11 452.6 m ² (123,275 sq. ft.)
20	124	3526	3rd	0.18 ac.	728.4 m ² (7,841 sq. ft.)
	124	3543	3rd	2.33 ac.	9 429.2 m ² (101,495 sq. ft.)

Dear Sir/Madam,

CROWN LANDS RESUMPTION ORDINANCE
(Chapter 124)
Resumption of Land at Yuen Long, New Territories
(G.N. 3080)

I have to inform you that a Notice under Section 4(1) of the Crown Lands Resumption Ordinance, Cap. 124, in respect of the land described above was published in the Government Gazette of 7.10.1981 (G.N. 3080) and that, in accordance with the provisions of Section 5 of the said Ordinance, the said land reverted to the Crown on 21.1.1982.

2. According to the Land Office records you were the *lessee(s)/~~*mortgagee(s)/~~
*lessee-tenant(s) of this/these lot(s) immediately prior to the resumption.

3. Pursuant to Section 6(1)(b) of the said Ordinance you are hereby required to submit in writing, within ~~twenty-eight~~ (28) days from the date hereof, your claim for compensation in respect of such resumption. This must be done by completing and returning the enclosed form to me within the said time limit of twenty-eight (28) days.

* Delete as appropriate

Item
No. A5

Letter from
Secretary for
the City &
New
Territories
Administration
dated 6th
February 1982
(continued)

4. If you are in any doubt about your rights and interests in this matter you should seek independent professional advice or alternatively you are welcome to make enquiry at the District Office, Yuen Long.

Yours faithfully,

(Sd.) HO Hang-kwong
for Secretary for the City & New Territories
Administration

ITEM NO. A6

VALUATION REPORT BY MESSRS. COLLIER PETTY

Item
No. A6

Valuation
Report by
Messrs. Collier
Petty dated
2nd March
1983

VALUATION REPORT

ON

Lots No. 2938, 3103, 3104, 3105,
3106, 3107, 3525, 3526 and 3543
in D.D. 124, Yick Yuen,
New Territories.

Item
No. A6

Valuation
Report by
Messrs. Collier
Petty dated
2nd March
1983
(continued)

of the leasehold property situate and known as Lots 2938, 3103, 3104, 3105, 3106, 3107, 3525, 3526 & 3543 in Demarcation District 124; Yick Yuen, off Castle Peak Road, Tuen Mun, New Territories
Made this Second day of March One thousand nine hundred and eighty-two for and on behalf of Messrs. Raymond Tang & Company, Solicitors, Seventh Floor, Chung Nam House, 59 Des Voeux Road Central, Hong Kong.

Your
Instructions

Your instructions to us in this matter are to prepare a report and open market valuation of the property under consideration as at each of 7th October 1981 and 21st January 1982 on the basis that as at each of the two relevant dates the property was immediately available for sale in the open market subject to the then existing tenancy and with the benefits of the Short Term Waivers granted by Government for the purposes of open storage of new motor vehicles but with its title being otherwise free of all material legal encumbrances and defects.

10

Our valuation is our opinion of the open market value which we would define as intended to mean "the best price at which an interest in a property might reasonably be expected to be sold at the date of valuation assuming:

20

- (i) a willing seller,
- (ii) a reasonable period within which to negotiate the sale, taking into account the nature of the property and the state of the market,
- (iii) values will remain static throughout the period,
- (iv) the property will be freely exposed to the market,
- (v) no account is to be taken of an additional bid by a special purchaser."

Tenure

The property under consideration comprised, as at each of 7th October 1981 and 21st January 1982, the Crown Leasehold interests of and in Lots 2938, 3103, 3104, 3105, 3106, 3107, 3525, 3526 & 3543 in Demarcation District 124. Prior to the property under consideration reverting to Government on 21st January 1982 each of the nine lots comprises an entitlement to a lease from the Crown for a term of 75 years from 1st July 1898 renewable for a further term of 24 years less the last three days. The first term expired in 1973 and each lease was automatically renewed under the provisions of the New Territories (Renewable Crown Leases) Ordinance. Use and development of each of the nine lots was governed by the Block Crown Lease of Demarcation District 124 dated 24th January 1904 which classified the lots under consideration as follows:

30

40

	<u>Lot</u>	<u>Registered Area</u>	<u>User</u>	<u>Class</u>	<u>Annual Crown Rent</u>	<u>Item No. A6</u>
	2938	0.10 acre	Padi	1st	\$0.30	Valuation Report by Messrs. Collier Petty dated 2nd March 1983 (continued)
	3103	0.21 acre	Dry Cultivation	2nd	\$0.42	
	3104	0.51 acre	Dry Cultivation	2nd	\$1.02	
	3105	0.04 acre	Dry Cultivation	2nd	\$0.08	
	3106	0.43 acre	Dry Cultivation	2nd	\$0.86	
	3107	0.19 acre	Dry Cultivation	2nd	\$0.38	
	3525	2.83 acre	Padi	3rd	\$2.83	
10		0.07 acre	House	—	\$7.00	
	3526	0.18 acre	Padi	1st	\$0.54	
	3543	2.33 acres	Orchard	3rd	\$2.33	
	Total:	6.89 acres			\$15.76 per annum	

Situation

The property under consideration is situated approximately 60 metres off the northwestern side of Castle Peak Road approximately 400 metres southwest of its junction with Tin Ha Road in the northwestern part of the New Territories. This is a principally rural location between the two New Towns of Tuen Mun and Yuen Long with developments in the vicinity comprising mainly 2/3-storey village-type houses and various temporary industrial developments surrounded by agricultural land.

A variety of public transport is available along Castle Peak Road and a full range of community and shopping facilities are available in the two New Towns of Tuen Mun and Yuen Long. Star Ferry in the Kowloon Peninsula is approximately 36 kilometres to the southeast of the property under consideration.

Description

To the best of our knowledge, prior to their reversion to Government, the nine lots were situated close to each other off Castle Peak Road. They extended to a total registered area of

27,882.80 SQUARE METRES (300,129 SQUARE FEET) OR THEREABOUTS

comprising 283.30 square metres (3,049 square feet) or thereabouts of land classified as for "house" purposes and 27,599.5 square metres (297,080 square feet) or thereabouts of land classified as for agricultural purposes.

We have not been able to delineate clearly the exact boundaries of the lots. However, from a superficial inspection the lots occupied an irregular stretch of formed level land, at an average level of approximately 12 metres above Colony Principal Datum, accessible by vehicles from Castle Peak Road via a surfaced access road.

<p>Item No. A6</p> <hr/> <p>Valuation Report by Messrs. Collier Petty dated 2nd March 1983 (continued)</p>	<p><u>Ownership</u></p> <p><u>Short-Term Waiver</u></p> <p><u>Tenancy</u></p> <p><u>Town Planning</u></p> <p><u>Basis of Valuation</u></p>	<p>Prior to their reversion to Government the registered Crown Leaseholder of the lots under consideration was WINFAT ENTERPRISES (HK) COMPANY LIMITED in District Office, Tuen Mun and District Office, Yuen Long.</p> <p>Prior to their reversion to Government the lots under consideration were held with the benefits of two Short Term Waivers No. 197 in District Office, Tuen Mun and No. 771 in District Office, Yuen Long permitting the lots to be used for the purpose of open storage of new motor vehicles only at a total waiver fee of \$11,734.25 per quarter and such Waiver could be terminated by either party upon serving a one-month written notice to the other party.</p> <p>As at each of the two relevant dates the nine lots under consideration, together with Lots 3129, 3130, 3131, 3132, 3362, 3556 & 3561 in Demarcation District 124 which extend to a total registered area of 3,804 square metres (40,946.40 square feet) or thereabouts of land classified for agricultural purposes, were subject to a Tenancy Agreement dated 18th March 1980 in favour of New Yick Fung Enterprise Company for a term of three years from 16th July 1979 at a monthly rent of \$110,000 exclusive of Rates with an option for the tenant to renew for a further term of two years at a monthly rental of \$132,000 exclusive of Rates (subject to the provision that the further term of two years could at any time be terminated upon serving a three-month written notice by either party to the other). It is our opinion that the tenant was, at both the two relevant dates, not under the protection of Parts I & II of the Landlord & Tenant (Consolidation) Ordinance.</p> <p>To the best of our knowledge there was no statutorily approved Outline Zoning Plan for this locality as at each of the two relevant dates.</p> <p>We have, in accordance with the terms of your instructions, prepared our valuation on the basis that as at each of the two relevant dates the property was immediately available for sale in the open market subject to the then existing tenancy and with the benefits of the Short Term Waivers granted by Government for the purpose of open storage of new motor vehicles but with its title being otherwise free of all material legal encumbrances and defects. In adopting this basis of valuation we have taken into consideration the possible enhancement in value to the property which was attributable to the market speculation that the Short Term Waivers would be renewed by Government and that a modification of the Crown Lease conditions then governing use and development of the lots might be obtained from Government so as to permit development of the lots for purposes which would increase the value of the lots, such as for low/medium density residential purposes.</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
--	--	--	---

Valuation
\$22,100,000

WE ARE OF THE OPINION that the open market value of the property as at 7th October 1981 was in the sum of TWENTY-TWO MILLION ONE HUNDRED THOUSAND DOLLARS subject to the above basis of valuation.

Item
No. A6

Valuation
Report by
Messrs. Collier
Petty dated
2nd March
1983
(continued)

\$21,300,000

WE ARE OF THE OPINION that the open market value of the property as at 21st January 1982 was in the sum of TWENTY-ONE MILLION THREE HUNDRED THOUSAND DOLLARS subject to the above basis of valuation.

10 Remarks

For your information, we have set out below our assessment of each of the building land portion and agricultural land portion comprised within the property under consideration as at each of the two relevant dates:

<u>Date of Valuation</u>	<u>Open Market Value of Building Land Portion</u>	<u>Open Market Value of Agricultural Land Portion</u>
1) 7th October 1981	\$1,050,000	\$21,050,000
2) 21st January 1982	\$1,020,000	\$20,280,000

20

Whilst we have taken every care to investigate the title to the property including the examination of the Crown Lease or other document of title and have checked encumbrances registered against the title, we do not accept a liability for any interpretation which we have placed on such information which is more properly the sphere of your legal advisers. Neither have we verified the correctness of any information supplied to us concerning this property whether in writing or verbally by yourselves or by any party referred to in this report.

30

No allowance has been made in our report for any charges, mortgages or amounts owing on any property nor for any expenses or taxation which may be incurred in effecting a sale. Unless otherwise stated, it is assumed that all properties are free from encumbrances, restrictions and outgoings of any onerous nature which could affect value.

In accordance with our standard practice, we must state that this report and valuation is for the use only of the party to whom it is addressed and no responsibility is accepted to any third party for the whole or any part of its contents.

Conversion factors used in this report are:

1 square metre = 10.764 square feet

Item
No. A6

1 metre = 3.2808 feet

Valuation
Report by
Messrs. Collier
Petty dated
2nd March
1983
(continued)

(Sd.) Cheung Ping Keung, A.R.I.C.S., A.C.I. Arb.
Collier Petty
Chartered Surveyors
27/F., Wing On Centre,
111 Connaught Road C.,
Hong Kong.

**Item
No. A6**

**Valuation
Report by
Messrs. Collier
Petty dated
2nd March
1983
(continued)**

Item
No. A6

Valuation
Report by
Messrs. Collier
Petty dated
2nd March
1983
(continued)

ITEM NO. A7

LETTER FROM MESSRS. RAYMOND TANG & CO.
TO THE SECRETARY FOR
NEW TERRITORIES ADMINISTRATION

LNT/150/YRN/60E

RT/298/77

5th March 1982

The Secretary, for the City & New Territories Administration,
H.K. Housing Authority Headquarters Building,
4th floor & 5th floor,
10 101 Princess Margret Road,
Kowloon.

BY HAND

Dear Sir,

Re: Lots Nos. 2938, 3103, 3104, 3105,
3106, 3107, 3525, 3526 and 3543
in D.D. 124

We act for Winfat Enterprise (HK) Co. Ltd. the owners of the above-mentioned property and enclose herewith their claims for compensation on the forms provided by the District Officer (Yuen Long).

20 In submitting these claims, our clients would like to make it clear that they do not wish to be -taken as having admitted that they are bound by the terms of the Crown Lands Resumption Ordinance, and reserve the right to take such proceedings for advance such arguments as they may be advised. Such proceedings or arguments may involve (but are necessarily limited to) the validity of the Crown Lands Resumption Ordinance and/or the basis of valuation of the property concerned.

Yours faithfully,

(Sd.) Raymond Tang & Co.

RT:ff
Encl:

Item
No. A7

Letter from
Messrs.
Raymond
Tang & Co.
to the
Secretary
for New
Territories
Administration
dated 5th
March 1982

ITEM NO. B1
AFFIDAVIT OF ANTHONY RICHARD DICKS
1982, M.P. No. 982
IN THE SUPREME COURT OF HONG KONG
HIGH COURT

Item
No. B1

Affidavit
of Anthony
Richard
Dicks
dated 7th
December
1982

MISCELLANEOUS PROCEEDINGS

10

IN THE MATTER of land described
as Lot Nos. 2938, 3103, 3104, 3105,
3106, 3107, 3525, 3526 and 3543
in Demarcation District No. 124
in the New Territories Hong Kong
(hereinafter referred to as "the
resumed land")

and

20

IN THE MATTER of land described
as Lot Nos. 3129, 3130, 3131,
3132, 3362, 3556 and 3561 in
Demarcation District No. 124 in the
New Territories Hong Kong
(hereinafter referred to as "the
severed land")

BETWEEN

WINFAT ENTERPRISE (HK) COMPANY LIMITED Plaintiff

and

THE ATTORNEY-GENERAL Defendant

I, ANTHONY RICHARD DICKS, of 703 Prince's Building, Hong Kong,
Barrister, make oath and say as follows:

1. I was called to the Bar by the Honourable Society of the Inner Temple in
Easter Term 1961 and I was admitted to practise at the Bar of the Supreme Court
of Hong Kong on 6th February 1965.

30

Item
No. B1

Affidavit
of Anthony
Richard
Dicks
dated 7th
December
1982
(continued)

2. I am a Master of Arts and a Bachelor of Laws of the University of Cambridge.

3. I was from 1970 to 1974 a Lecturer in Oriental Laws in the Department of Law of the School of Oriental and African Studies in the University of London where inter alia I lectured on Chinese law including the Chinese law and custom which forms part of the law of Hong Kong. I was previously for a period of two years a Fellow and Director of Studies in Law of Trinity Hall, in the University of Cambridge an Assistant Lecturer in the Faculty of Laws and a member of the Faculty of Oriental Studies in the University of Cambridge, and I was previously a Research Fellow in Chinese Law of the British Institute of International and Comparative Law and of the Institute of Current World Affairs. I am conversant with the Chinese written language and since 1962 in the course of my employment as aforesaid and of my practice at the Bar I have made a careful and thorough study of various aspects of Chinese law, including both the statutory and customary laws relating to property and succession which were generally in force in the former Chinese Empire during the Qing (or Tsing) dynasty.

10

4. By reason of the foregoing I believe myself to be competent to give expert evidence as to Chinese statutory and customary laws as they related to questions of property in land, with which I am conversant. Expert evidence given by me as to the nature and effect of various aspects of traditional Chinese law and custom has been accepted on numerous occasions by this Honourable Court, by the High Court of Justice in England and by various courts of record in the United States of America.

20

5. I have been asked to advise the Plaintiff in this action as to the law relating to land holding in the former Chinese Empire at the time of the Convention between the United Kingdom and China dated 9th June 1898 whereby the area known as the New Territories was leased by China to Great Britain for 99 years. In particular I have been asked to advise about the duration of interests in land and whether there were any restrictions on user.

6. The law of property in traditional China was a law of tenure. There is general agreement among the authorities on this subject that historically speaking the ownership of land vested in the Emperor, and that individuals and families held it from him. However in practice tenurial rights were bought and sold freely. By the beginning of the Qing Dynasty (1644-1911) it was clearly accepted that land was an alienable commodity. The provisions of the Da Qing Luli (Laws and Regulations of the Qing Dynasty) so far as they related to land were to a great extent concerned with the regulation of such transactions.

30

7. Most land (other than land used for public purposes) was in late 19th Century China held on what is called "common tenure". Other forms of tenure, such as feudal and quasi-feudal tenure existed but were very rare, and there was also military service tenure and "furnace land".

40

8. Land under the common tenure, or "land of the ordinary people" (mintian 民田) was an interest in perpetuity held by a proprietor on two principal conditions, namely payment of the land taxes and performance of labour services. Over the years, the labour service fell into disuse, particularly in South China, and

was commuted into additional tax payments. The land tax and the additional land tax in lieu of labour were collected as a single annual amount.

Item
No. B1

9. Land held under common tenure could be acquired in three ways viz. by inheritance, by purchase and by the cultivation of unoccupied or waste land. I need not dwell on the first of these. As to the second, the tenure was transferred to the purchaser. Outright sales were not always made, it being possible in many parts of China to dispose of land by creating limited interests of various kinds which were themselves subject to possible alienation.

Affidavit
of Anthony
Richard
Dicks
dated 7th
December
1982

10. The cultivation of unoccupied or waste land was encouraged by the authorities, and a valid title to such lands could be acquired by following a statutory procedure for registration. Land tax did not become payable for some years. Once land was acquired in this way, it was subject to common tenure and was as freely alienable as such land in general.

(continued)

11. With a few specific exceptions mentioned below, there appear to have been no limitations on the use of land held under common tenure. The character of tenure, and the tax payable on such land, did not change after the erection of buildings on it. It should be remembered that in China at the end of the 19th Century the great bulk of the land was in agricultural use, and could be expected to continue in that use. The need for any comprehensive form of restriction does not appear to have been felt.

12. The specific instances in which there were either statutory or customary restrictions on land use were applicable to the following types of land:

- (i) Land on which there were public buildings, temples, public monasteries and similar public buildings.
- (ii) Land on which there were ancestral halls and land with tombs on it.
- (iii) Certain wooded lands were protected in order to preserve sacred sites or avoid the disturbance of "fengshui".
- (iv) Public roads.
- (v) Land subject to water rights.
- (vi) The establishment of private salt pans was illegal as an infringement of the state monopoly.
- (vii) Mining of any sort was subject to licensing and royalties were payable to the state.

SWORN at Sun Hung Kai Centre,)
32nd floor, Hong Kong)
this 7th day of December,) (sd.) ANTHONY RICHARD DICKS
1982.)

Before me,

(Sd.) A. H. FORSYTH
Solicitor
Hong Kong

ITEM NO. C1

Item
No. C1

AFFIDAVIT OF RAYMOND TANG

1982 M.P. NO. 982

Affidavit
of
Raymond
Tang
dated 9th
December
1982

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

MISCELLANEOUS PROCEEDINGS

IN THE MATTER of land described
as Lot Nos 2938, 3525, 3526 and
3543 in Demarcation District No.
124 in the New Territories, Hong
Kong (hereinafter referred to as
“the resumed land”)

10

and

THE MATTER of land described
as Lot Nos 3129, 3130, 3131,
3132, 3362, 3556 and 3561 in
Demarcation District No.
124 in the New Territories,
Hong Kong (hereinafter referred
to as “the severed land”)

20

BETWEEN

WINFAT ENTERPRISE (HK) COMPANY LIMITED Plaintiff

and

THE ATTORNEY-GENERAL Defendant

AFFIDAVIT OF RAYMOND TANG

I, Raymond Yee Bong Tang, of 7th Floor, Chung Nam House, 59 Des Voeux Road, Central, Hong Kong, hereby make oath and say as follows:

Item
No. C1
—
Affidavit
of
Raymond
Tang
dated 9th
December
1982
(continued)

1. I am the principal of Raymond Tang & Co., Solicitors, and have the conduct of these proceedings on behalf of the Plaintiff. I am duly authorised by the Plaintiff to make this Affidavit.

2. In or about April 1982, before the issue of these proceedings, I embarked upon certain researches relating to the annexation of the New Territories as part of the Colony of Hong Kong. In the course of such researches, I went to the Public Records Office at Kew, England, and took copies of the public records relating to the discussions which took place between the Colonial and Foreign Office and the Law Officers at the time. I have also looked into the origins of the New Territories Ordinance and the Crown Lands Resumption Ordinance. The purpose of this Affidavit is to set out, in the hope that I may assist the Court, some of the discoveries I made in the course of the aforesaid researches. 10

3. Of the public records of the period between 20th June 1898 and 20th August 1900, the Colonial Office had printed the most relevant records relating to the extension of the boundaries of the Colony of Hong Kong as a collection entitled Eastern No. 66. Eastern 66 comprises 396 pages from which I shall presently allude to the most relevant documents which are now produced and shown to me in a bundle marked "T-1" and individually numbered as in the ensuing sub-paragraphs:

(a) Serial No. 14, which is a copy of the Convention for the Extension of Hong Kong received in the Colonial Office on August 6, 1898. 20

(b) Serial No. 41, which contains the advice of the Law Officers of the Crown tendered to the Colonial Office on October 17th 1898, regarding Her Majesty's Order-in-Council relating to the extension of the Colony under the said Convention.

(c) Enclosure 3 to Serial No. 159 which is a copy of the Governor's proclamation circulated in the New Territories. This proclamation was published in the Supplement to the Hong Kong Government Gazette, and was therein dated 17th April 1899.

(d) Serial No. 222, which is another Opinion of the Law Officers of July 17th 1899, in which the Law Officers advised on British jurisdiction within the leased Territories. 30

(e) Enclosure 2 in Serial No. 235 in which the Governor made a further proclamation relating to the registration of land titles in the New Territories, dated 12th July 1899. This proclamation was also published in the Hong Kong Government Gazette.

(f) Enclosure 1 in Serial No. 243 which is a speech made by the Governor on 2nd August 1899, in which the Governor indicated that Certificates of Registration of Titles would be issued.

(g) Serial No. 278 which is a further Opinion by the Law Officers relating to the Kowloon City Order-in-Council, dated November 29th 1899. 40

(h) Serial No. 286 which is a further Opinion by the Law Officers dated January 1900 relating to the foreshore rights in Mirs Bay and Deep Bay.

Item
No. C1

4. Within the period covered by the documents in Exhibit "T-1" it will be seen that considerable care was exercised by the Law Officers as well as the Governor to ensure that the terms of the said convention should be strictly complied with, and each document from "T-1(b)" onwards represented a specific instance of such attitude:

Affidavit
of
Raymond
Tang
dated 9th
December
1982

(continued)

10

(a) As to "T-1(b)", note the changes made by the Law Officers in italics, which plainly indicated that they regarded that the terms of the said Convention were to be incorporated in the Order-in-Council.

(b) As to "T-1(c)", note that the Governor in his Proclamation made the following among other promises: "I would impress upon you that these Territories having been leased by His Imperial Majesty, the Emperor of China, to Her Britannic Majesty the Queen as subjects of Her Majesty's Empire, your commercial and landed interests will be safeguarded, and that your usages and good customs will not in any way be interfered with".

20

(c) As to "T-1(d)", where the Law Officers when they were called upon to advise on a question of jurisdiction, were careful to distinguish between the general jurisdiction exercised by Britain over the New Territories and the special jurisdiction of the Chinese Officers in the City of Kowloon guaranteed by the said Convention.

(d) As to "T-1(e) and (f)", it will be noted that the Governor in a further Proclamation stated that a survey of the whole of the Leased Territory would be conducted. This survey was in fact completed with the result that boundaries have since completion of such survey been defined by Demarcation Districts and Lot Numbers.

30

(e) As to "T-1(g)", note the changes made by the Law Officers italics where again the Law Officers were punctilious in their efforts to ensure that the Kowloon City Order-in-Council complied with the said Convention.

(f) As to "T-1(h)", the Law Officers in a further Opinion observed thus:—
"Of course, it is conceivable that there may be on the foreshore in question — as on the rest of the ceded Territories — rights of private property, and perhaps also rights of access over the Chinese Territories above high-water mark, which will require consideration before any fresh rights are granted".

40

5. The exercise to register land held in private hands prior to the annexation of the New Territories and the granting of new titles upon annexation took place between the period 1899 and 1910, during which period a series of Ordinances was passed. I have made a search of all the relevant Bills, Ordinances and the associated records of debates in the Legislative Council, and produced and shown to me marked "T-2", in a bundle, are true copies of the relevant documents taken from the Hong Kong

Item
No. C1

Government Gazette and records at the British Public Records Office. Each item appearing in bundle "T-2" are individually marked as in the ensuing sub-paragraphs:—

Affidavit
of
Raymond
Tang
dated 9th
December
1982
(continued)

- (a) A New Territories Land Court Bill, which was gazetted on 25th November 1899.
- (b) Hansard for the period 1895 to 1902 relating to the debate on the New Territories Land Court Bill.
- (c) The Land Court (New Territories) Ordinance, published in the Gazette as Ordinance No. 8 of 1900.
- (d) A formal protest lodged under the then provision of Rule 32 of the Standing Rules and Orders of the Legislative Council, by the Honourable Mr. T.H. Whitehead, against the passing of the amended Bill into law. 10
- (e) A petition by the Honourable Mr. Whitehead to the Secretary of State for the Colony on the same subject.
- (f) Minutes of the Colonial Office relating to the reception given to the Honourable Mr. Whitehead's said petition.
- (g) The New Territories Titles Bill, gazetted on 7th November 1902.
- (h) Hansard of 1902 relating to the debate of the New Territories Titles Bill.
- (i) The New Territories Titles Ordinance, enacted as Ordinance No. 47 of 1902.
- (j) The Bill to repeal Ordinance No. 47 of 1902. 20
- (k) Ordinance No. 21 of 1903, which repealed Ordinance No. 47 of 1902.
- (l) The New Territories Regulation Bill.
- (m) The New Territories Regulation Ordinance enacted as Ordinance No. 34 of 1910.

6. As part of the exercise to register land titles in the New Territories, the Land Court (New Territories) Bill was introduced into the Legislative Council and published in the Gazette on 25th November 1899 ("T-2(a)"). In the "Objects and Reasons" of this Bill, it was stated that "It is proposed by this Bill to substitute a Certificate of Title for a Crown Lease because it has been ascertained that the ordinary holding of the land in the New Territories is a tenancy in perpetuity and that this Government could not under the terms of the Convention with China grant a lease for more than 99 years from the date of the Convention". In the Legislative Council's debates, the Attorney-General, in moving the 2nd Reading of the Bill, made inter alia, exactly the same point ("T-2(b)"). 30

7. The Land Court (New Territories) Bill, after the 2nd Reading, was consigned

to Committee and received the Governor's assent on 28th March 1900; it was published in the Gazette as Ordinance No. 8 of 1900 ("T-2(c)") on 31st March 1900. It will be noted that certain major changes have been made since its 2nd Reading in the Legislative Council, in particular, Section 15 of the Ordinance which declared all land in the New Territories to be the property of the Crown. It is perhaps interesting to note that a Legislative Councillor of the day, the Honourable Mr. T.H. Whitehead, lodged a formal protest under the then Rule 32 of the Standing Rules and Orders of the Legislative Council ("T-2(d)"), and petitioned the Secretary of State for the Colonies ("T-2(e)"). So far as I can ascertain, no action was taken following receipt of the Honourable Mr. Whitehead's Petition at the Colonial Office as the minutes in Colonial Office File No. 12603, kept at the British Public Records Office ("T-2(f)") said that the File was to be "put by", which I would take to mean "put away". However, the New Territories Titles Ordinance, Ordinance No. 47 of 1902 ("T-2(g)-(i)"), may have been inspired by the Honourable Mr. Whitehead's action. By this Ordinance, perpetual titles (called "customary titles") without restriction as to user were to be granted to land holders in the New Territories who did not choose to take Crown Leases. However, this Ordinance was short-lived because by Ordinance No. 21 of 1903 ("T-2(j)"), it was repealed.

8. The Land Court (New Territories) Ordinance became the main vehicle through which Crown Leases, now known as Block Crown Leases, were granted to owners of property. The Block Crown Leases, however, purported only to grant a term of 75 years renewable by a further term of 25 years less 3 days from 9th June 1898 and in the case of agricultural land contained a restriction to agricultural use. This period of grant was, and is, of course, shorter than the perpetual title which New Territories land owners held (see paragraph 6 above). The Land Court (New Territories) Ordinance became spent when the Land Court had completed the work of determining claims by persons who had, prior to annexation, owned land in the New Territories. Accordingly, in 1910 the New Territories Regulation Bill ("T-2(k)") was introduced into the Legislative Council and was passed with very little amendment as Ordinance No. 34 of 1910 ("T-2(l)"). The New Territories Regulation Ordinance was slightly amended by the Law Revision Ordinance, 1910 and underwent various changes, (not relevant to the present proceedings) until it assumed its current form under the title of New Territories Ordinance, Chapter 94 of the Laws of Hong Kong.

9. I now pass on to the origins of the Crown Lands Resumption Ordinance as it applied to the New Territories and the problems which, over the years, have surfaced as a result of various amendments to this Ordinance. Produced and shown to me marked "T-3" are true copies, in a bundle, of the various Bills, Ordinance, and documents highlighting the problems which have arisen. Each item appearing in bundle "T-3" are individually marked as in the ensuing sub-paragraphs:

- 40
- (a) The Crown Lands Resumption Bill, appearing in the Hong Kong Government Gazette of 20th October 1900.
 - (b) The Crown Lands Resumption Ordinance, enacted as Ordinance No. 32 of 1900.
 - (c) The relevant extracts from the various amending Bills and Ordinances to Ordinance No. 32 of 1900, between the period 1900 and 1921.
 - (d) A copy of a petition dated 29th August 1925, to the Secretary of State for the Colonies regarding "Land Resumption as in the New

Item
No. C1

Affidavit
of
Raymond
Tang
dated 9th
December
1982
(continued)

- Territories”.
- (e) A copy of certain correspondence and Minutes of the Colonial Office, in Colonial Office File No. 18677 kept in the Public Records Office.
 - (f) A copy of a newspaper clipping in the South China Morning Post of a statement made by Her Majesty’s Prime Minister following her visit to China in September 1982.

10. On 20th October 1900, a Bill was published in the Gazette, purporting to enable the Crown to resume land in the New Territories any public purpose. Land, in that Bill, was defined as “Crown land of whatever description (whether held under Crown Lease or other title recognised by the Crown) or any part or section thereof which is situated within the limits of the Colony as enlarged by the Convention dated 9th June 1898 between Her Majesty the Queen and His Imperial Majesty, the Emperor of China, including the City of Kowloon and includes buildings (if any) erected on such land or any part or section thereof”. This Bill (“T-3(a)”) was passed into law as Ordinance No. 32 of 1900 (“T-3(b)”). It will be observed that Section 3(1)(iii) purports to enact that “on the expiration of 4 months from publication of the resumption in the Gazette, the land in question shall revert to the Crown and all rights of the owner, assignee or representative, of any other person, in or over the land or any part thereof, shall absolutely cease”. The enactment of this ordinance insofar as it purported to apply to the New Territories was and is, I am advised, contrary to the terms of the said Convention, specifically the following article thereof: “It is further understood that there will be no expropriation or expulsion of the inhabitants of the Districts included within the extension, and that if land is required for public office fortification or the like official purpose, it shall be bought at fair price”. Although a resumption under this Ordinance may have amounted to abrogation of the Convention at least it allowed the determination of a fair price. However, in rapid succession, a number of Ordinances between 1900 and 1921 (“T-3(c)”) reduced the scope of compensation to such an extent that a fair price was no longer paid on resumption. Then and now, the market price of land in the New Territories is governed by what a willing buyer is prepared to pay on the basis of possible redevelopment of the land in question. For more details, see Exhibit “T-9” in Mr. Tan Eng Aik’s Affirmation filed herein on 1st June 1982. Sections 11 and 12 of the Crown Lands Resumption Ordinance as they appear in Chapter 124 of the 1974 Edition of the Laws of Hong Kong have remained essentially the same since 1921.

11. The question that the Crown Lands Resumption Ordinance (and indeed the New Territories Ordinance and its predecessors) contains provisions amounting to abrogation of the Convention has since the annexation of the New Territories, been a bone of contention between the land-owners in the New Territories and the Hong Kong Government. As early as 1925, the Secretary of State for the Colonies received a detailed Petition from land owners in the New Territories complaining of the abrogation of the Convention by virtue of the Crown Lands Resumption Ordinance. I have consulted Colonial Office File No. 18677, kept in the Public Records Office, which showed that the Secretary of State was much exercised by this Petition, as will be seen from the correspondence and minutes the said Colonial Office File (“T-3(e)”) for the said File and “T-3(d)”) for the said Petition). I have also found from the said File, a Minute by Sir S. Wilson, the then permanent Under-Secretary of State of the Colonial Office, stating that he was unwilling to go to the Law Officers as he felt that they would advise against the Colonial Office on the point of law, which was whether

the policy of the Hong Kong Government on land resumptions as reflected in the legislation which was then, and now, in force was in consistent with the terms of the said Convention. It was Her Majesty's Government's view at the time that an Inquiry should be undertaken into this and related questions. This Inquiry was not, as far as I can ascertain, conducted at the time.

Item
No. C1
Affidavit
of
Raymond
Tang
dated 9th
December
1982
(continued)

12. In 1925, as indeed throughout the period leading to the enactment by Her Majesty-in-Council of the two Orders in Council relating to the New Territories, it has always been Her Majesty's Government's professed intention to abide by the terms of the Convention. A more modern exposition of this policy may be found in the Prime Minister's recent statement in the press that Britain abides by her treaties. She was specifically referring to the said Convention and the other two treaties concerning the cession of Hong Kong Island and Kowloon Peninsula ("T-3(f)"). The question for this Honourable Court is whether the Hong Kong legislation to which I draw attention in this Affidavit is consistent with that intention or whether, as I truly believe and am advised, it breaches the Convention in both letter and spirit.

10 SWORN at the Offices of)
Messrs. Leonard K.L. Heung)
& Co., of 1 st Floor, Chung)
Nam House, No. 59, Des) (Sd.) Raymond Yee Bong Tang
20 Voeux Road Central,)
Hong Kong this 9th day)
of December 1982)

Before me,

(Sd.) Chan Chue Kai
Solicitor, Hong Kong

ITEM NO. C2

CONVENTION FOR EXTENSION OF HONG KONG

(Signed in Peking on 9th June, 1898)

(Received in Colonial Office on 6th August, 1898)

Item
No. C2

Convention
for Extension
of Hong Kong
dated 9th
June 1898

10 WHEREAS it has for many years past been recognized that an extension of Hong Kong territory is necessary for the proper defence and protection of the Colony, it has now been agreed between the Governments of Great Britain and China that the limits of British territory shall be enlarged, under lease, to the extent indicated generally on the annexed map. The exact boundaries shall be hereafter fixed when proper surveys have been made by officials appointed by the two Governments. The term of this lease shall be ninety-nine years.

It is at the same time agreed that within the city of Kowloon the Chinese officials now stationed there shall continue to exercise jurisdiction except so far as may be inconsistent with the military requirements for the defence of Hong Kong. Within the remainder of the newly leased territory Great Britain shall have sole jurisdiction.

Chinese officials and people shall be allowed as heretofore to use the road from Kowloon to Hsin-an.

20 It is further agreed that the existing landing-place near Kowloon city shall be reserved for the convenience of Chinese men-of-war, merchant and passenger vessels, which may come and go and lie there at their pleasure, and for the convenience of movement of the officials and people within the city.

When hereafter China constructs a railway to the boundary of the Kowloon territory under British control, arrangements shall be discussed.

It is further understood that there will 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.

30 If cases of extradition of criminals occur they shall be dealt with in accordance with the existing Treaties between Great Britain and China and the Hong Kong Regulations.

The area leased to Great Britain, as shown on the annexed map, includes the waters of Mirs Bay and Deep Bay, but it is agreed that Chinese vessels of war, whether neutral or otherwise, shall retain the right to use those waters.

This Convention shall come into force on the 1st day of July, 1898, being the 13th day of the 5th moon of the 24th year of Kuang Hsü. It shall be ratified by the Sovereigns of the two countries, and the ratifications shall be exchanged in London as soon as possible.

In witness whereof, &c.

ITEM NO. C3

ADVICE OF CROWN LAW OFFICERS

Royal Courts of Justice,
October 17, 1898.

Item
No. C3
—
Advice of
Crown Law
Officers
dated 17th
October 1898

Sir,

10 WE were honoured with your commands, signified to us in Mr. Bertram Cox's letter of the 11th instant, stating that he was directed by you to transmit to us a copy of a draft proclamation which had been prepared for the purpose of annexing to the colony of Hong Kong certain territories leased to Her Majesty by the Emperor of China.

That it would be seen from the Convention of the 9th June, 1898 (a copy of which was enclosed in Mr. Bertram Cox's letter), that the limits of British territory in the regions in question, adjacent to the colony of Hong Kong, were described as being enlarged under lease to Her Majesty for the term of 99 years.

That the Draft Order in Council had been framed on the model of a similar Order dated February 4th, 1861 (a copy of which was transmitted to us), which had been previously approved by the Law Officers on January 21st of that year. (A copy of their Report of that date was enclosed in Mr. Bertram Cox's letter.)

20 That it would be seen from the Order in Council of February 4th, 1861, that the territories then annexed to the colony of Hong Kong, though originally leased to Mr. Harry Parkes, had subsequently, prior to the date of the Order in Council, been ceded by the Emperor of China to Her Majesty to hold as a dependency of the colony of Hong Kong. That, in the present case, the territory proposed to be annexed is only held by Her Majesty on lease for 99 years.

That it was not proposed in the present Order in Council to define the boundaries of the lands leased. That this was a matter which, as would appear from the terms of the Convention, must be dealt with subsequently.

That Mr. Bertram Cox was to request us to take these papers into our consideration and to advise you.

30 1. Whether the terms of the Draft Order in Council were sufficient and proper for the purpose proposed.

2. If not, what amendments should be made therein.

We have taken the papers into our consideration, and, in obedience to your commands, have the honour to

Report —

That the Draft Order in Council, as amended and initialled by us, is sufficient

Item
No. C3

and proper for the purpose proposed.

Advice of
Crown Law
Officers
dated 17th
October 1898
(continued)

The Right Hon. J. Chamberlain, M.P.,
&c., &c., &c.

We have, &c.,
RICHARD E. WEBSTER.
ROBERT B. FINLAY.

ITEM NO. C4

DESPATCH FROM SECRETARY OF STATE FOR THE COLONIES

(Confidential)

SIR,

Downing Street, January 6, 1899.

Item
No. C4

Despatch from
Secretary of
State for the
Colonies
dated 6th
January 1899

10 WITH reference to my confidential despatch of the 23rd ultimo, I am now in a position to communicate to you the views of Her Majesty's Government as to the future administration of the territory which, under the Convention between the United Kingdom and China of the 9th June last, has been added to the Colony of Hong Kong, and to convey to you their instructions as to the steps to be taken for its formal occupation in the name of Her Majesty the Queen.

2. I have in the first place to enclose an Order of Her Majesty in Council, dated the 20th October last, and declaring the territories within the limits and for the term described in the above Convention to be part and parcel of the Colony of Hong Kong. You will cause this Order in Council, which has not at present been made public, to be published in the Colony at as early a date as possible.

30 3. You have already become acquainted with the general aspects of the questions involved in the transfer of this territory, and it is unnecessary, therefore, that I should here dwell upon them at any length. You will have gathered from the correspondence enclosed in my previous despatch, that there are three points which Her Majesty's Government have regarded as of special importance in the preliminary stages of the negotiations. They relate to Kowloon City, the northern boundary of the leased territory, and the collection of the Chinese duties on opium.

30 4. The questions of the civil administration of Kowloon City and of the extension of the northern frontier so as to include the town of Sham Chun will require no immediate action on your part pending negotiations with the Chinese Government, and the action already taken by Her Majesty's Government is sufficiently explained in the correspondence; but, while such negotiations are pending, no time should be lost in giving attention to the third question, that of the prevention of smuggling into China and the collection of the Chinese Customs duties on opium. You will see that Her Majesty's Government have come to the conclusion, which, if I understand right, is your own conclusion also, that the only satisfactory solution of this question will be the establishment of some system whereby the Chinese Customs duties on opium imported into China from Hong Kong, including the newly added territory, shall be actually collected by the Government of Hong Kong. The details of such an arrangement must be settled on the spot, and it will be one of your earliest duties to consider the best means for carrying the decision into effect.

40 5. I do not attempt, at present, to give you any definite instructions on this subject; I should only fetter you if I did so. I prefer to leave it to you to devise a scheme upon the lines indicated, to be submitted to me for approval. You will receive valuable assistance in this from Mr. Lockhart, a copy of whose report on his recent visit to the new territory is enclosed herewith, and from other members of the Executive and Legislative Councils, and you will doubtless also consult with the leading

Item
No. C4

Despatch from
Secretary of
State for the
Colonies
dated 6th
January 1899
(continued)

merchants, and possibly with representative members of the Chinese community.

6. If the Chinese Government accept the offer which has been made to them, I do not anticipate that you will experience any great difficulty in organising a suitable machinery for dealing with the question, and I am confident that you will shortly be in a position to submit to me detailed proposals.

7. I now come to other questions, which are not treated of in the correspondence with the Foreign Office, inasmuch as they are matters not of foreign policy, but of internal administration, but which are nevertheless of great importance.

8. A considerable portion of Mr. Lockhart's most interesting and valuable report is devoted to the question of the future administration of the new territory, and this difficult question has for some weeks past occupied my attention. Here, again, I do not propose to enter much into detail, but I should wish you to understand that in my opinion the new territory should from the outset be regarded as an integral part of the Colony of Hong Kong, and, as such, should be brought under the general administration of the Colony at as early a date as possible. It appears to me that future difficulties will be obviated by taking this course, and that it will be found to be at once more effective and more economical than treating the leased district as separate from the old Colony. While, therefore, I thoroughly appreciate the value of Mr. Lockhart's report, and am prepared to concur in many of his recommendations, I am not prepared to accept, as a general principle, his conclusions that it will be expedient to place the new territory under a new and separate administration, corresponding, to a certain extent, to that of a Protectorate. It has, therefore, become necessary to consider whether and in what manner the existing laws of Hong Kong may be adapted to the circumstances of the new territory, and this question, as I need hardly observe, presents many features of great difficulty. On the principle that the new territory shall be taken to be and, so far as possible, be treated as an integral part of the Colony, it is desirable that as many of the existing laws of Hong Kong as are applicable to its circumstances should be at once applied, the administration of the laws being carried out with fact, discretion, and sympathy with native custom and prejudice; but there are some laws which are inapplicable, and they require some special notice.

9. I have taken advantage of the presence in this country of Mr. Goodman, Attorney-General of Hong Kong, and he has drawn up a memorandum on the subject, together with a draft Ordinance, copies of which are enclosed. This memorandum has been of great use to me in considering the question, and the conclusions at which I have arrived as regards the various Ordinances therein referred to are as follows:—

Ordinance 3 of 1844. Land, &c.; registration of deeds, &c., relating to real property.

10. I concur in Mr. Goodman's opinion that for the reasons given by him this Ordinance need not be excluded. The land question, however, is one which must be dealt with promptly, especially if, as you have stated in your telegram of the 24th of December, land is being bought up by Chinese in anticipation, and one of the first steps to be taken must be the appointment of a Land Commissioner, with a staff of native surveyors. To this subject I refer in a later paragraph of this despatch.

Ordinance 3 of 1897. Probate, &c.,

11. On the whole I am of opinion that this Ordinance should be excluded for the present, and therefore be added to the Schedule to the draft Ordinance.

Ordinance 16 of 1896. Registration of births and deaths.

12. I concur in Mr. Goodman's opinion that this Ordinance should for the present be excluded. Registration of births and deaths should, however, be carried out as soon as possible, and might be entrusted to the Village Councils and Elders, working under the supervision of an Assistant Registrar-General or other European officer.

Ordinance 14 of 1875. Marriage registrations.

10 13. I agree with Mr. Goodman that this Ordinance need not be excluded.

Ordinance 16 of 1886. Stamps.

14. On the whole I am of opinion that it will be best to exclude this Ordinance for the present.

Ordinance 1 of 1887. Post Office.

20 15. I agree with Mr. Goodman that this Ordinance need not be excluded. But it has been pointed out to me by Mr. Lockhart that, owing to the known habits of the Chinese in the matter of correspondence, there may be considerable difficulties in carrying it into operation, and I should wish you to use considerable discretion in the matter. You may possibly find it desirable to come to some arrangement with the Chinese sub-post offices, such as is in force in the Straits Settlements, and in that case the Governor of that Colony would doubtless be able to give you every information.

Ordinance 21 of 1887. Licensing, consolidation.

16. I concur in Mr. Goodman's opinion that it would be as well not to extend this Ordinance to the new territory for the present.

Ordinance 24 of 1887. Public health – and amending Ordinances.

30 17. I regard this as one of the most important, and at the same time one of the most difficult, questions to be considered in connection with the new territory. I entirely agree with Mr. Goodman that the new district must not be left without any sanitary laws, but I consider that it would not be advisable to extend to it without any modification the sanitary laws of Hong Kong. It has been represented to me by Mr. Lockhart that they are too complicated and too advanced for the circumstances of the new territory; and that, although the Sanitary Board may be the best machinery for dealing with the sanitary affairs of Hong Kong, which is in the main a city and a seaport, it is not suited for the direction of sanitary matters in a territory extending over 376 square miles. Mr. Lockhart is of opinion that the Village Councils and Elders should be held responsible for maintaining their villages in a sanitary condition, subject to the inspection and control of an officer of health and his staff, who should be held

Item
No. C4

Despatch from
Secretary of
State for the
Colonies
dated 6th
January 1899
(continued)

Item
No. C4

Despatch from
Secretary of
State for the
Colonies
dated 6th
January 1899
(continued)

directly responsible to the Government. By this means the Village Councils and Elders will constitute the Sanitary Board in each village or group of villages, the influence of the leading men will be enlisted on the side of sanitation, and matters will work more effectively and smoothly than they would under any other system. The expense, moreover, of applying the sanitary laws of Hong Kong would, I am informed, probably be very great, whereas under the alternative system proposed it would be comparatively trifling.

18. I am of opinion, therefore, that these laws should be excluded; but you should lose no time in procuring the enactment of a simpler law on the lines above suggested. And here, again, you may possibly find it desirable to consult the Governor of the Straits Settlements as to the system under which Sanitary Boards are working in the Federated Malay States.

10

Ordinance 21 of 1886. Spirit licenses.

19. I concur in Mr. Goodman's opinion that this Ordinance should be excluded for the present. It has been suggested by Mr. Lockhart that a spirit farm might be substituted in its place. I am loth to suggest or to sanction any extension of the farming system, unless exceptional reasons are shown to the contrary, but I recognise that the present case is exceptional, that revenue must be raised, and that it may probably be raised more effectively and with less friction through the medium of a farm than by a system of direct licenses. I commend the proposal, therefore, to your consideration.

20

Ordinance 15 of 1888. Rating Ordinance.

20. I am of opinion that this Ordinance should not be extended to the new territory until it has been visited and carefully examined by an assessor, who would be able to report as to the advisability of raising road or other rates. This Ordinance should therefore be added to the Schedule to the draft Ordinance.

Ordinance 15 of 1889. Building Ordinance and amending Ordinance.

21. I concur in Mr. Goodman's opinion that these Ordinances should be excluded, unless the Director of Public Works reports that they can be satisfactorily carried out in the new territory.

30

Ordinance 5 of 1890. Vaccination.

22. I agree that this Ordinance may properly be included.

Ordinance 7 of 1891. Gambling.

23. This is a subject which presents even greater difficulties as regards legislation than that of Public Health. You will see that Mr. Goodman is, on the whole, in favour of not excluding this Ordinance from the new territory; and he points out in a forcible manner the consequences that might be expected to result from its exclusion. On the other hand, to carry out the provisions of the existing Hong Kong gambling laws would require a very large police force, and an expenditure which the

new territory is unable to afford: and recent experience has shown that even in Hong Kong, where the population is easy to supervise and control, as being contained within a small area, and where there is a strong and well-organised police force, it is impossible to prevent corruption and to stop gambling.

24. It may be, therefore, that instead of attempting to prevent gambling, the best plan will be to limit and control it, as is done elsewhere, in such a manner as to prevent its being so prevalent as to constitute a serious evil. I can see no reason why such control should not be exercised effectively without an extension of the elaborate gambling laws now in force in Hong Kong, and without rendering necessary the
10 creation of an expensive police force. I have therefore come to the conclusion that it will be best not to extend this Ordinance to the new territory, but to substitute in its place some simpler and less stringent enactment, and I shall be glad if you will give the subject your careful consideration. Whatever law is passed must be administered most carefully, and I cannot too strongly urge that the officers who will more especially deal with the new territory at the outset should be selected for discretion even more than for zeal, and should take as standing instructions to use every effort to conciliate and win the confidence of the people.

Ordinance 26 of 1891. Merchant shipping.

25. As a new Merchant Shipping Consolidation Ordinance is about to be
20 introduced, it may be advisable to exclude the existing Ordinance from the new territory.

26. There is no question as to the “waters of the Colony,” the limits being clearly marked in the map attached to the Convention, a copy of which is annexed, and which should be closely followed in any definition in the proposed new Ordinance.

The Opium Ordinances.

27. It will be necessary to exclude these Ordinances from the new territory until you have been able to formulate the scheme for the collection of the Chinese Customs duties in Hong Kong to which I have referred in the earlier part of this despatch. Some modification of the existing Ordinances will no doubt be necessary,
30 and the contract of the opium farmer will require revision; but as the draft Ordinance provides that existing contracts shall not apply to the new territory, I see no reason why there should be any difficulty in this respect in the meantime.

Ordinance 17 of 1887. Cattle Disease – and amending Ordinances.

28. Before deciding whether this Ordinance should be extended to the new territory, the Colonial Veterinary Surgeon might with advantage be called upon for a report of any recommendations he may be able to make after a full and careful consideration of all the circumstances of the case. But I agree with Mr. Goodman that sections 4 and 5 of Ordinance 23 of 1890, dealing with the sale and importation of unwholesome food, should be extended at once.

29. As all Ordinances not specified in the Schedule attached to Mr.
40 Goodman’s draft Ordinance will apply to the new territory, you should carefully

Item
No. C4

Despatch from
Secretary of
State for the
Colonies
dated 6th
January 1899
(continued)

consider whether there are any others, not alluded to in his memorandum, which it might be also desirable to exclude.

30. I have now given you my views upon this branch of the subject in detail, and I trust that you will clearly understand the general principles by which I have been guided in so doing. It would be contrary to sound principle to introduce laws which it is obviously impossible to enforce; and although, as I have said before, it is of importance that the new territory should from the first be regarded as an integral part of the Colony of Hong Kong, it is equally important to bear in mind that the country, regarded as a British possession, is in its infancy, and that it must be some time before its inhabitants can become accustomed to the incidents of a British administration. Whatever laws, therefore, are extended to the new territory must be administered with the utmost circumspection, and every allowance must be made for local circumstances and local prejudices. I feel satisfied, however, that you will realise the importance of a gradual and cautious policy in the task set before you, and that I may safely leave the matter in your hands. 10

31. There are various other questions to be considered in connection with the new territory, which will require your careful consideration, and some of which have doubtless already received your attention. I do not propose, however, to do more than refer to them generally at the present moment, as their ultimate decision must depend in a great measure on the course of events. 20

32. You will have gathered from my previous remarks that I am not prepared to accept Mr. Lockhart's recommendation that the new territory should be treated as separate from the existing Colony, and that I am in favour of utilising the existing machinery of government in Hong Kong as far as local circumstances will allow. This principle should therefore be borne in mind in considering all questions connected with expenditure and taxation. Whatever expenditure is incurred should appear on the Hong Kong Estimates, and whatever revenue is collected should go into the Hong Kong Exchequer.

33. It will be seen from p. 16 of Mr. Lockhart's report that the total revenue from taxation of the new territory is estimated at about £16,000, and this may be regarded as the income which you will have at your disposal for the first year or two, at any rate. It should amply suffice to defray the initial cost of a simple administration which at first will amount to little more than supervising local bodies and protecting life and property, unless there is a large outlay on public works. Some expenditure on public works will no doubt be necessary from the very first, and as the territory progresses this expenditure may naturally be expected to increase. To meet it Mr. Lockhart has recommended that recourse should be had to a loan; but while I am in principle not averse to borrowing for the purpose of developing a district, a province, or a colony which promises to be remunerative, I must keep in view the present state of the finances of Hong Kong, and if the new territory can be developed without having recourse to a loan, it will no doubt be preferable. I shall expect to receive your recommendations on this point after you have considered it in all its bearings. It would, however, I think, under any circumstances be desirable that the Director of Public Works, possibly with other expert assistance, should consider and make suggestions as to what public works, in the nature of roads, bridges, police stations, &c., should be undertaken at once, and also to advise as to future undertakings. Whenever money is 30 40

available for the purpose, it will be desirable to secure the services of a mining expert to make a detailed geological report, and I shall be glad if you will bear this latter point especially in mind.

Item
No. C4

Despatch from
Secretary of
State for the
Colonies
dated 6th
January 1899
(continued)

10 34. I have in my previous remarks adverted to the importance of an early survey of the new territory, and no time should be lost in setting this on foot. The expense of a thorough and complete survey, however desirable, will probably at present be too great, and it may be necessary to do more at first than is necessary for the settlement of titles to land. It will be necessary, however, as I have already observed, to create a temporary office of Land Commissioner, assisted by a staff of native surveyors. The latter can, in all probability, be obtained from Ceylon, and a despatch has been addressed to the Governor on the subject, while as regards the Commissioner or Settlement Officer himself, I would suggest that if you have no officer in the Colony who has had experience in the work of land settlement, you should communicate with the Governor of the Straits Settlements, who will, I doubt not, be able to place at your disposal the services of a duly qualified officer with the necessary experience, from either the Colony or the Federated Malay States. I have intimated to Sir Charles Mitchell that he may expect to receive a communication from you on the subject.

20 35. I entirely agree with Mr. Lockhart that the question of titles to land should be settled as early as possible, and, in order to expedite the work of registration, holders of land should be allowed to register their titles at an office in the new territory, instead of having to waste time by coming to an office in Victoria. The officer, moreover, who is entrusted with the duty of settling the land titles should within reason be given for the time being full powers to deal with all questions of the kind that may come before him. When all the land titles have been settled, and proper surveys made, the principal land office will be in Hong Kong itself. The examination into titles should not be of too technical a nature, and where lengthened occupation or improvements can be shown, with no adverse claims from private individuals, a Government title should be granted, even if no other is forthcoming. Security for all reasonable rights in regard to land will be a great inducement to content and loyalty, and to the popularising of British rule.

30 36. The land question, however, by no means ends here, and there will be much left to consider after the preliminary survey is completed. The land tax will no doubt be at first the principal source of revenue, and it should be distinctly understood from the first that, as the land becomes more valuable, the tax will be subject to revision at intervals of years. It will also be necessary to consider what shall be the tenure of Crown land. Seeing that the territory is held under lease for ninety-nine years, the question of freehold grants does not arise, and the land should be leased for stated periods, not exceeding the term which I have laid down in the case of the present Colony, with powers of resumption on fair terms if the public service requires it.

40 37. In dealing with the question of what laws of Hong Kong should be extended to the new territory I have not made any reference to the administration of the criminal law. In this matter I should wish you to be guided generally by the recommendations made by Mr. Lockhart at p. 14 of his report. I agree with Mr. Lockhart that the existing village organisations should be maintained and utilised, and I approve of the immediate appointment of an itinerant magistrate, as suggested. I shall

Item
No. C4

Despatch from
Secretary of
State for the
Colonies dated
6th January
1899
(continued)

be glad if you will at once select an officer for provisional appointment in this capacity. An appeal should lie to the itinerant magistrate from the village tribunals, and from him to the Governor, this latter course being preferable, in my opinion, to an appeal to the Supreme Court. An Ordinance will be necessary, framed on the lines of the Ceylon Ordinance No. 24 of 1889, to legalise and define the powers of the village and district councils or tribunals.

38. I have now touched upon what appear to me to be the most important questions for your immediate consideration. You will gather from what I have said that while I differ from some of the conclusions at which Mr. Lockhart has arrived, I nevertheless concur generally in the recommendations which he has made in his report. Although I am unable to entertain the idea of a separate administration of the new territory under a Resident Commissioner, I consider it highly desirable that Mr. Lockhart should be generally associated with its administration; and with this object in view, he should, for the next six months at any rate, be relieved as far as possible from the ordinary duties of Colonial Secretary and Registrar-General. It will probably be desirable that he should be permanently relieved of the duties of the latter office, but on this subject I will address you later. 10

39. Whatever other provisional appointments may be rendered necessary by these arrangements, I must leave for the present in your hands.

40. You will take care in fixing by Proclamation under clause 3 of the Order in Council the date from which the laws of Hong Kong are to be in force in the new territory to give time for the enactment of the Ordinance excluding such of these laws as it is intended to exclude. You will necessarily be guided by your communications with Her Majesty's Minister at Peking and by other circumstances in fixing the date for publishing the Order in Council; and whenever the date is actually decided upon, you should inform me by telegraph, so that the Order in Council may be published simultaneously in this country. It will then only remain for you to formally enter upon the occupation of the new territory, and I enclose a copy of a draft Proclamation which has been drawn up by Mr. Lockhart, and which, if you see no objection, it would be desirable to publish in every district. 30

41. I hope that in the foregoing observations I have succeeded in conveying to you a general expression of my views on this important and interesting subject. But there is much that must necessarily be left to yourself, and I feel that I have been unable to do more than give you an outline of the policy which it is desirable that you should pursue. I have, however, every confidence in your ability to carry the undertaking to a successful issue; and I will conclude with an expression of my congratulations to you on finding yourself in the position of the representative of Her Majesty the Queen on the occasion of the assumption of jurisdiction over this most important addition to Her Majesty's dominions.

42. This despatch, like Mr. Lockhart's report which it encloses, is confidential, but should you wish to publish portions of it, I give you discretion to do so. 40

I have, &c.,
J. CHAMBERLAIN.

ITEM NO. C5

PROCLAMATION PURSUANT TO EXPORTATION OF
MILITARY STORES ORDINANCE

(Taken from "The Hongkong Government Gazette",
25th March, 1899)

PROCLAMATION.

[L.S.] HENRY ARTHUR BLAKE,
Governor.

Item
No. C5

Proclamation
pursuant to
Exportation
of Military
Stores
Ordinance
dated 20th
March 1899

10 By His Excellency Sir HENRY ARTHUR BLAKE, Knight Grand Cross of the
Most Distinguished Order of Saint Michael and Saint George, Governor and
Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-
Admiral of the same.

20 Whereas, by Ordinance No. 3 of 1862, entitled An Ordinance to authorise His
Excellency the Governor by Proclamation to prohibit the Exportation of Military
Stores and other Articles, as amended by Ordinance 3 of 1884, entitled An Ordinance
to amend Ordinance 3 of 1862, it is enacted that it should be lawful for His Excellency
the Governor, by and with the advice of the Executive Council by Proclamation to be
published in the Hongkong Government Gazette or in any Extraordinary Gazette, to
prohibit, for such period as should be mentioned in such Proclamation, either to be
exported from the Colony of Hongkong, or to be carried coastwise within the said
Colony, (amongst other things) Arms, Ammunition, Gunpowder, and Military and
Naval Stores, subject to any permission that may be obtained under the last mentioned
Ordinance.

And whereas, by Proclamation dated 18th day of November, 1898, such
exportation and carriage coastwise were prohibited for a period of four months from
and including the 28th day of November, 1898, and whereas, I have determined with
the advice of the Executive Council of this Colony, that it is expedient to continue and
extend such prohibition for the period hereinafter mentioned;

30 Now, therefore, I, Sir ARTHUR HENRY BLAKE, Knight Grand Cross of the
Most Distinguished Order of Saint Michael and Saint George, Governor and
Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-
Admiral of the same, by and with the advice of the Executive Council of this Colony,
do, by this Proclamation, prohibit for a further period of four months from and
including the 28th day of March, 1898, either to be exported from the Colony of
Hongkong, or to be carried coastwise within the said Colony, Arms, Ammunition,
Gunpowder, and Naval and Military Stores, unless this Proclamation shall, in the
meantime, be revoked, or unless permission shall have been obtained under Ordinance
3 of 1884.

By His Excellency's Command,

40 J. H. STEWART LOCKHART,
Colonial Secretary.

GOD SAVE THE QUEEN.

Given at Government House, Victoria, Hongkong, this 20th day of March, 1899.

ITEM NO. C6

PROCLAMATION PURSUANT TO QUARANTINE REGULATIONS

(Taken from "The Hongkong Government Gazette",
28th March, 1899)

PROCLAMATION.

Item
No. C6

Proclamation
pursuant to
Quarantine
Regulations
dated 28th
March 1899

[L.S.] HENRY ARTHUR BLAKE,
Governor.

10 By His Excellency Sir HENRY ARTHUR BLAKE, Knight Grand Cross of the
Most Distinguished Order of Saint Michael and Saint George, Governor and
Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-
Admiral of the same.

Whereas, by Regulation No. 1 of the Quarantine Regulations made by the
Governor-in-Council on the 18th day of March, 1897, under section 25 of Ordinance
No. 26 of 1891, it is provided that the term "port or place at which any infectious or
contagious disease prevailed" means a port or place proclaimed to be such by Order of
the Governor-in-Council, published in the *Gazette*, from the date of such proclamation.

And whereas the said Quarantine Regulations were duly notified to take effect
as from the 1st day of May, 1897.

20 And whereas the Governor-in-Council has ordered that Tai Wan Foo and its
port Anping should be proclaimed as ports or places at which an infectious or
contagious disease prevails.

Now, therefore, I, Sir HENRY ARTHUR BLAKE, Knight Grand Cross of the
Most Distinguished Order of Saint Michael and Saint George, Governor and
Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-
Admiral of the same, do, hereby, with the advice of the Executive Council, proclaim
that Tai Wan Foo and its port Anping are ports or places at which an infectious or
contagious disease prevails.

By His Excellency's Command,

30 J. H. STEWART LOCKHART,
Colonial Secretary.

GOD SAVE THE QUEEN.

Given at Government House, Victoria, Hongkong, this 28th day of March, 1899.

ITEM NO. C7

PROCLAMATION PURSUANT TO NEW TERRITORIES
ORDER-IN-COUNCIL

(Taken from "The Hongkong Government Gazette",
8th April, 1899)

PROCLAMATION.

Item
No. C7

Proclamation
pursuant to
New Territories
Order-in-
Council
dated 8th
April 1899

[L.S.] HENRY ARTHUR BLAKE,
Governor.

10 By His Excellency Sir HENRY ARTHUR BLAKE, Knight Grand Cross of the
Most Distinguished Order of Saint Michael and Saint George, Governor and
Commander-in-Chief of the Colony of Hongkong and its Dependencies, and Vice-
Admiral of the same.

20 Whereas by an Order of the Queen's Most Excellent Majesty in Council, made
on the 20th day of October, 1898, after reciting that by a Convention dated the 9th
day of June, 1898, between Her Majesty and His Imperial Majesty the Emperor of
China, it is provided that the limits of British territory in the regions adjacent to the
Colony of Hongkong, shall be enlarged under lease to Her Majesty in the manner
described in the said Convention; and after reciting that it is expedient to make
provision for the Government of the territories acquired by Her Majesty under the said
Convention, during the continuance of the said lease, it was order (*inter alia*) as
follows:—

1. The territories within the limits and for the term described in the said
Convention shall be and the same are hereby declared to be part and
parcel of Her Majesty's Colony of Hongkong in like manner and for all
intents and purposes as if they had originally formed part of the said
Colony.
2. It shall be competent for the Governor of Hongkong, 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.
3. From a date to be fixed by proclamation of the Governor of Hongkong,
all laws and ordinances, which shall at such date be in force in the Colony
of Hongkong, shall take effect in the said territories and shall remain in
force therein until the same shall have been altered or repealed by Her
Majesty or by the Governor of Hongkong, by and with the advice or
consent of the Legislative Council.

40 And whereas it is expedient that from the 17th day of April, 1899, all laws and
ordinances, which shall at such date be in force in the Colony of Hongkong, shall take
effect in the said territories and shall remain in force therein until the same shall have
been altered or repealed by Her Majesty or by the Governor of Hongkong, by and with

Item
No. C7

Proclamation
pursuant to
New Territories
Order-in-
Council
dated 8th
April 1899
(continued)

the advice or consent of the Legislative Council:

Now, therefore, I, Sir HENRY ARTHUR BLAKE, do hereby, in pursuance of the powers reserved to me by the said Order of Her Most Excellent Majesty in Council and every other power (if any) enabling me, by this Proclamation proclaim and direct that from the said 17th day of April, 1899, all laws and ordinances, which shall at such date be in force in the Colony of Hongkong, shall take effect in the said territories and shall remain in force therein until the same shall have been altered or repealed by Her Majesty or by the Governor of Hongkong, by and with the advice or consent of the Legislative Council.

By His Excellency's Command,

10

J. H. STEWART LOCKHART,
Colonial Secretary.

GOD SAVE THE QUEEN.

Given at Government House, Victoria, Hongkong, this 8th day of April, 1899.

ITEM NO. C8

NEW TERRITORIES REGULATION BILL 1899

A BILL

ENTITLED

An Ordinance to provide for the Better Regulation
of the New Territories.

Item
No. C8

New Territories
Regulation
Bill 1899

BE it enacted by the Governor of Hongkong, with the advice and
consent of the Legislative Council thereof, as follows:—

10 1. This Ordinance may be cited as the New Territories
Regulation Ordinance, 1899. Short title.

2. The expression “new territories” as used in this Ordinance shall mean the additional territories acquired by this Colony under the provisions of a Convention, dated the 9th day of June, 1898, between Her Majesty Queen Victoria and His Imperial Majesty the Emperor of China for the enlargement of the limits of this Colony. Interpretation clause.

3. It shall be lawful for the Governor-in-Council from and after the date of the passing of this Ordinance to do all or any of the following matters to take effect within the new territories, namely:— Power to Governor-in-Council to make Rules for revenue, &c.

20 (1) To make Rules for the farming out or licensing for revenue purposes in the new territories of the right to sell or otherwise deal in spirits, opium, salt, or any other commodity whatever; and to make Rules for the levying, collection, recovery by legal proceedings, and safe custody of the revenue accruing from such farming or Licensing and for the keeping of accounts thereof.

30 (2) To make Rules for the levying, collection, recovery by legal proceedings, and safe custody of such rates, taxes, and contributions, from the new territories as the Governor-in-Council may in his absolute discretion think fit, and for the keeping of accounts thereof.

4. — (1) All Rules made by the Governor-in-Council under this Ordinance shall be published in the Gazette in English and Chinese, and shall thereupon become as valid and binding as if inserted in this Ordinance. Rules to be gazetted and publicly notified locally.

(2) Such Rules shall be publicly notified in Chinese by the Colonial Secretary in the Districts and Sub-districts subject to their operation, and copies in English and Chinese, certified by him as correct, shall be duly recorded in such Districts and Sub-Districts, in such manner

Item
No. C8

New Territories
Regulation
Bill 1899
(continued)

as he shall direct.

Punishment
for breach of
Rules.

5. Any person committing a breach of any Rule made under this Ordinance shall be liable for any such breach, upon summary conviction before a Magistrate, to the payment of a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding six months, with or without hard labour.

Duration of
Ordinance.

6. This Ordinance shall remain in force for a period of one year from the date of its coming into operation and for such further period or periods as may from time to time be determined by resolution of the Legislative Council.

10

Objects and Reasons.

The object of this Bill is to confer temporarily power upon the Executive Council of this Colony of making Rules for the collection of revenue from the new territories which have recently been added to this Colony.

This measure is introduced as a temporary expedient in order to remove the difficulties which must necessarily be experienced in dealing with certain sources of revenue which are new to this Colony, and in order to obviate the necessity for, and the delays which would be occasioned by, passing numerous Ordinances and amending Ordinances through the Legislative Council.

20

HENRY E. POLLOCK,
Acting Attorney General.

ITEM NO. C9

NEW TERRITORIES REGULATION ORDINANCE,
NO. 12 OF 1899

An Ordinance to provide for the Better Regulation
of the New Territories.

Item
No. C9
New Territories
Regulation
Ordinance,
No. 12 of
1899

LS

HENRY A. BLAKE,
Governor.

[18th April, 1899.]

10 BE it enacted by the Governor of Hongkong, with the advice and
consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the New Territories
Regulation Ordinance, 1899.

Short title.

2. The expression “new territories” as used in this Ordinance
shall mean the additional territories acquired by this Colony under the
provisions of a Convention, dated the 9th day of June, 1808, between Her
Majesty Queen VICTORIA and His Imperial Majesty the Emperor of
China for the enlargement of the limits of this Colony.

Interpreta-
tion clause.

20 3. It shall be lawful for the Governor-in-Council from and after
the date of the passing of this Ordinance to do all or any of the following
matters to take effect within the new territories, namely:—

Power to
Governor-in
Council to
make Rules
for revenue,
&c.

(1) To make Rules for the farming out or licensing for revenue
purposes in the new territories of the right to sell or
otherwise deal in spirits, opium, salt, or any other
commodity whatever; and to make Rules for the levying,
collection, recovery by legal proceedings, and safe custody
of the revenue accruing from such farming or licensing and
for the keeping of accounts thereof.

30 (2) To make Rules for the levying, collection, recovery by legal
proceedings, and safe custody of such rents, rates, taxes, and
contributions, from the new territories as the Governor-in-
Council may in his absolute discretion think fit, and for the
keeping of accounts thereof.

4. — (1) All Rules made by the Governor-in-Council under this
Ordinance shall be published in the Gazette in English and Chinese, and
shall thereupon become as valid and binding as if interested in this
Ordinance.

Rules to be
gazetted
and publicly
notified
locally.

(2) Such Rules shall be publicly notified in Chinese by the

Item
No. C9

New Territories
Regulation
Ordinance,
No. 12 of
1899
(continued)

Colonial Secretary in the Districts and Sub-districts subject to their operation, and copies in English and Chinese, certified by him as correct, shall be duly recorded in such Districts and Sub-Districts, in such manner as he shall direct.

Punishment
for breach of
Rules.

5. Any person committing a breach of any Rule made under this Ordinance shall be liable for any such breach, upon summary conviction before a Magistrate, to the payment of a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding six months, with or without hard labour.

Duration of
Ordinance.

6. This Ordinance shall remain in force for a period of one year from the date of its coming into operation and for such further period or periods as may from time to time be determined by resolution of the Legislative Council.

10

Passed the Legislative Council of Hongkong, this 18th day of April, 1899.

J. G. T. BUCKLE,
Clerk of Councils.

Assented to by His Excellency the Governor, the 18th day of April, 1899.

J. H. STEWART LOCKHART,
Colonial Secretary.

20

ITEM NO. C10

GOVERNOR'S PROCLAMATION

(Taken from the Supplement to "The Hongkong Government Gazette"
for the year 1900)

*Translation of the Chinese Proclamation issued by His Excellency Sir Henry A.
Blake, G.C.M.G., Governor and Commander-in-Chief of the Colony of
Hongkong and its Dependencies and Vice-Admiral of the same.*

Item
No. C10

Governor's
Proclamation
dated 9th
April
1899

10 Whereas His Imperial Majesty the Emperor of China has leased to Her Majesty the Queen of Great Britain and Ireland, as an extension of the Colony of Hongkong, certain territory situated in the District of San On, and certain islands adjacent thereto, the boundaries of which are as hereunder stated, viz.:—

The Northern boundary commences at the point of high water mark in Mirs Bay where the meridian of 114° 30' East bisects the land, and follows that high water mark to a point immediately to the West of Sha-t'au-kok, and then follows the road along the Northern edge of this town till the middle of a stream becomes the boundary as far as the road to Kang Hau. From Kang Hau to about a quarter of a mile West of Kang T'ó the Northern edge of the road is the boundary. From this point to the mouth of the Shamchun river the Northern bank of the Shamchun river forms the boundary. From the mouth of the Shamchun river the boundary follows the high water mark along the coast of Deep Bay till the point where the meridian of 113° 52' bisects the land.

The Eastern boundary is 114° 30' East Longitude.

The Western boundary is 113° 52' East Longitude.

The Southern boundary is 22° 9' North Latitude.

All the islands situated within those boundaries are within the leased area as are all the waters of Mirs Bay and Deep Bay.

30 And whereas Her Majesty has been graciously pleased to appoint me as Governor of the said territory, and whereas it is desirable that British and Chinese territory should be clearly defined so that the friendly relations now existing between the two nations may be always maintained.

Now therefore I have fixed the 17th day of April, 1899, as the date on which the British Flag shall be hoisted and the administration of the territory be taken over by duly authorized British Officers.

To remove any cause for suspicion in your minds as to the good intentions of the British Government and to prevent you from being deceived and misled through ignorance by false reports disseminated by lawless persons who may seek to further their own interests by thus causing trouble, it is right for me to warn you against such persons and to assure you that all the inhabitants residing within the limits of British

Item
No. C10

Governor's
Proclamation
dated 9th
April
1899
(continued)

territory will be permitted to follow undisturbed their lawful occupations, whatever they may be.

I would also impress upon you that this territory having been leased by His Imperial Majesty the Emperor of China to Her Britannic Majesty the Queen, as subjects of Her Majesty's Empire, your commercial and landed interests will be safe-guarded, and that your usages and good customs will not in any way be interfered with.

It is the wish of Her Majesty the Queen that all her subjects in every part of the world shall be prosperous and happy, and it will be my duty to assist you to improve your position by every means in my power. The most respected of your elders will be chosen to assist in the management of your village affairs, to secure peace and good order and the punishment of evil-doers. I expect you to obey the laws that are made for your benefit, and all persons who break the law will be punished severely. 10

It will be necessary for you to register without delay your titles for the land occupied by you, that the true owners may be known. Should any land be required for public purposes it will be paid for at its full value.

Remember that as subjects of the Great British Empire your perfect freedom from oppression is assured. Should you have any complaint to make the Governor will always be willing to hear it and to order what is right. There will be no injustice allowed, nor any laxity in the administration of justice. All must render implicit obedience. 20

Dated this 9th day of April, 1899.

ITEM NO. C11

DESPATCH FROM GOVERNOR TO SECRETARY OF STATE

Item
No. C11

Despatch from
Governor to
Secretary
of State
dated 15th
April 1899

SIR,

Government House, Hong Kong, April 15, 1899.

REFERRING to my despatch, No. 88, of the 7th instant, I have the honour to inform you that up to the 12th instant everything appeared to proceed quietly in the neighbourhood of Tai Po Hui, where the erection of matsheds was being proceeded with, presumably under the protection ordered by the Viceroy after his interview with me on the 2nd instant.

10 2. On the 10th instant I received an intimation from the Secretary of Legation at Peking that he had, in accordance with instructions received from Her Majesty's Government, informed the Chinese Government that their Customs could not function (*sic*) in the territory or waters of this Colony.

3. On the 11th instant I received from Her Majesty's Consul at Canton the despatch addressed to him by the Viceroy, of which, with my reply, I enclose a copy. A reference to my despatch, No. 87, will show how extremely improbable it is that the viceroy could have misunderstood my statement about the Customs.

20 4. On Wednesday, the 12th instant, nine of the elders of the Tai Po Hui district came in to *kow tow* to me, and present a petition, a translation of which I enclose, praying for clemency. I said in reply that the property destroyed must be paid for, to which they agreed. I promised that if that were done I should accept their statement that the people had been led astray by some designing people, and were sorry for what had occurred, and that no further action would be taken in the matter. They expressed themselves as being satisfied with the cession of the territory to England, and I explained to them fully the system of local government that I proposed to adopt, which seemed to please them. I also informed them of the proposed arrangements for hoisting the flag at Tai Po Hui on the 17th, and expressed a hope that the elders and people of the district would attend and hear what I had to say to them.

30 5. The reports from the district were that everything was quiet, the people civil, and the work of erecting the matsheds was progressing rapidly, so that they would be ready for occupation on Monday next.

6. I had arranged all the details of the force to be stationed in the new territory for the present, Major-General Gascoigne co-operating most cordially. The 20 police who are to be stationed at Tai Po Hui were to proceed to-day, and take up their quarters so as to be in readiness for Monday's ceremony, and a company of the Hong Kong Regiment was also to proceed to-day, and remain under canvas, while on Monday half the battalion will proceed and encamp in the neighbourhood on an excellent camping ground, where they will go through their annual military training.

40 7. Yesterday morning the Director of Public Works had an intimation from one of the respectable inhabitants of the district that a number of rowdy characters had collected in the valley, and as there was no protection at all now given to the matsheds he was afraid that if left unprotected they might be burnt before Monday.

Item
No. C11

Despatch from
Governor
to
Secretary
of State
dated 15th
April 1899
(continued)

On hearing this, I at once despatched Mr. May, the Captain Superintendent of Police, with the party who are to be stationed at Tai Po Hui, to occupy the quarters, the Commodore kindly sending them to Mirs Bay by a torpedo destroyer. When they arrived they found but the smouldering remains of the matsheds, which some of the villagers declared were burnt during the morning by a number of bad characters from over the border. On the summit of the hills to the north Mr. May saw about 150 men, with two flags, one of them apparently a Japanese flag, who exploded bombs and crackers. Mr. May and the party returned.

8. Having obtained from the General the loan of the necessary number of tents, I have sent Mr. May and his party back to-day, with the Company of the Hong Kong Regiment, to encamp on the ground, and have the flagstaff erected. I have directed the Director of Public Works to proceed without delay with the erection of the permanent buildings. I do not think there is any probability that this force will be attacked. They will not take notice of any demonstration on the opposite hills, except an attack be made, pending the formal assumption of jurisdiction on Monday. After that we shall make our jurisdiction respected. 10

9. The Viceroy having undertaken to protect those matsheds, I submit that the Chinese Government is responsible for the damage done, and should be called upon to make good the amount. The district is well known in Canton to be turbulent, that to the north-east of Mirs Bay being noted for piracy, and so ill-disposed that I am informed that no Customs official dares to land there except with the support of a revenue cruiser. 20

10. I regret this occurrence very much, and I cannot help connecting it with the letter of the 11th instant written by the Viceroy to Her Majesty's Consul at Canton. Up to that date the relations with the people were most friendly. I apprehend that with the large population of Sham Chun and its neighbourhood marching with our borders and unrestrained by the Chinese officials, there may be difficulties ahead. We must only be patient and forbearing, at the same time suppressing at once any active opposition to our jurisdiction under the terms of the Convention of the 9th June, 1898. 30

I have, &c.,
HENRY A. BLAKE.
Governor, &c.

I have the honour to enclose herewith a copy of a proclamation issued by me and circulated in the leased area.

ITEM NO. C12

Item
No. C12

GOVERNOR'S FURTHER PROCLAMATION

Governor's
Further
Proclamation
dated 12th
July 1899

I, Sir Henry Arthur Blake, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief of the Colony of Hong Kong and its Dependencies, and Vice-Admiral of the same, hereby inform you, the landowners in the New Territories, that an officer will visit the sub-districts for the purpose of registering landowners on a date due notice of which will be given to you. All you who can show that you have had possession of landed property for some time must fill up a schedule in the following form:—

- 10
1. Name of owner.
 2. Nature of title.
 3. Date of lease or grant (if any).
 4. Number of years in occupation.
 5. Description of land.
 6. Dimensions of land.
 7. Situation of land.

20

When these schedules are distributed to a village, any person who claims land as his property must fill up a schedule and bring it in person to the Visiting Officer, when he comes to the village in which such person resides; and the Officer will make an entry in the register that such person is the owner and will add such other particulars as may be necessary. A list of those who have been registered as landowners in the village and of their holdings will be posted in the village for seven days, and afterwards an extract of the entry of each holding will be made to be handed to the owner. But before it is handed to the owner he must pay the amount of Crown rent fixed as due by him. If no rent is paid, the land will be forfeited to the Government without fail.

30

If there is any unsettled dispute about property, the name of the person in actual possession will be registered, and he must pay the Crown rent, but an extract of an entry in the register will not be issued until the Squatters' Board has ascertained that the person in possession is the legal owner and the Board's decision has been approved by me. In that case an extract will be issued to him, and he will be permitted to remain in possession. But should the Board decide that the property is really not his property, the Crown rent paid by him will be refunded, and the person who is adjudged by the Board to be the person who should pay the rent, and who is approved as such by me, must forthwith pay the rent due. All you owners of land must report all the land in your possession. Should it be found at any time that any land owned by any person has not been reported, it will be treated as Government land. A survey will shortly be made of the whole of the Leased Territory, so that the boundaries of the various holdings may be clearly known; and any cases of neglect to report on the part of owners of land will be easily discovered, and will involve forfeiture of the property to Government. Do not say that I have not warned you. The Crown rent including all charges fixed for the present is given below. You must all without exception obey. Do not be disobedient. A special proclamation.

- 40
- (i) For land draining in a southerly direction to the sea between Lyemun Point on the east and the pier in the bay west of Lai Chi Kok on the

Item
No. C12
Governor's
Further
Proclamation
dated 12th
July 1899
(continued)

west per half *mau* or portion thereof as follows:—

- (a) For first class land 25 cents, or at the rate of \$3.30 per acre per annum.
 - (b) For second class land 20 cents, or at the rate of \$2.64 per acre per annum.
 - (c) For third class land 10 cents, or at the rate of \$1.32 per acre per annum.
- (ii) For all land (except land draining in a southerly direction to the sea between Lyemum Point on the east and the pier in the bay west of Lai Chi Kok on the west) per half *mau* or portion thereof as follows:— 10
- (a) First class land 15 cents, or at the rate of \$1.98 per acre per annum.
 - (b) Second class land 10 cents, or at the rate of \$1.32 per acre per annum.
 - (c) Third class land 5 cents, or at the rate of 66 cents per acre per annum.

The above scale of Crown rent may be altered.

When the survey has been completed permanent certificates of titles will be issued. If anyone has been forcibly deprived of his land or been fraudulently induced to sell land at a low price, he may present a petition to the District Officer if he lives north of the Kowloon range of hills, or if he lives south of it to the Registrar-General or the Visiting Officer, to be forwarded to the Squatters' Board for enquiry. 20

Dated 12th day of July, 1899.

ITEM NO. C13

APPENDIX V TO SUPPLEMENT TO GAZETTE
FOR YEAR 1900

Item
No. C13
Appendix V to
Supplement
to Gazette
for year
1900

Form to be filled up by occupiers of land and landowners.

Claim No.

NEW TERRITORY.

VILLAGE OF

CLAIM OF

- I. Name of Owner or Occupier
- 10 II. Nature of Title
- III. Date of Lease (if any)
- IV. Number of years in occupation
- V. Description of land
- VI. Area of land in *Maus*
- VII. Situation

名 村

- 七 該業坐落在何處
- 六 該業四至界限畝數
- 五 該業是何等田地
- 四 營業若干年
- 三 批約及契券內是
- 二 契券款式
- 一 業主姓名

年

月

日

ITEM NO. C14

DESPATCH FROM GOVERNOR TO SECRETARY
OF STATE

Item
No. C14

Despatch
from Governor
to Secretary
of State
dated 31st
July 1899

SIR, Government House, Hong Kong, July 31, 1900.

10 WITH reference to paragraph 4 of my despatch, No. 53, of the 10th March last, I have the honour to transmit for your information a copy of the rules made by the Governor in Council under section 3 of Ordinance 12, of 1899, on the 12th instant, fixing the Crown rent payable on agricultural land in the "New Territories" together with a copy of a translation of a Chinese Proclamation issued by me on the same date on the subject of registration of land titles and the payment of Crown rent.

2. Steps are now being taken in the above direction, and it is hoped that the collection of rents will proceed satisfactorily.

3. You will observe that different scales of rent have been fixed for land north and south of the Kowloon range of hills. The reason for this difference is that it is considered equitable that land owners on the southern side of those hills should pay the same rent as their immediate neighbours in the district hitherto known as British Kowloon, and the Kowloon hills form a natural and well defined boundary line.

20 4. So far as I can ascertain, the Chinese inhabitants in the New Territory are satisfied with the amount of Crown rent fixed in the regulations referred to above, and, as you will observe, they have been told in the Chinese proclamation issued by me that the present scale is subject to revision.

I have, &c.,
HENRY A. BLAKE,
Governor, &c.

ITEM NO. C15

GOVERNOR'S SPEECH

Item
No. C15

Governor's
Speech
dated 2nd
August
1899

His Excellency (the Hon. J. H. Stewart Lockhart translating) then said:—
Now that this territory has been divided into districts and the sub-district
committeemen have been selected from the elders and gentry I wish to meet you and
to explain to you the principles upon which the government of this portion of the
Colony of Hong Kong will be conducted. I desire that you, who have been officially
appointed, shall cooperate with the Government in regulating the local affairs of your
villages so that the people shall enjoy security and that there shall be no disorder. The
10 Government has appointed officials who will advise you as to sanitary improvements in
the villages so that the health of the people may be preserved, for the Queen of England
wishes that all Her Majesty's subjects shall be healthy and prosperous. In giving you the
position of Committeemen I rely upon you to discharge your duties in a faithful and
upright manner and would call your attention to the fact that one of our most
stringent laws is that if as much as one cash is taken from the people except the rates
and taxes levied under authority the person extorting it will be rigorously punished by
fine and imprisonment and be dismissed in disgrace from his position. I wish to
interfere as little as possible with your good customs, but there is one principle of
British law that must be observed. All punishment for injuries must be inflicted by the
20 appointed authority under the law. Therefore in case of injury the proper authority
must be appealed to and the punishment must not be undertaken by private
individuals. The time has now come when all occupiers of land must register their titles
with the Land Officer. When application is made giving the exact area of land
occupied, a notice will be posted in the village so that if another claims the land he can
apply to the Land Officer, when the claims will be considered by the Land Court. No
certificate of registration will be issued until the Crown rent has been paid. There
should be no delay in registering your titles. The occupier will, in the absence of
another claimant, be accepted as owner, but if the person in occupation is decided not
to be the proper owner the amount paid by him will be returned, and the rent will be
30 collected from the person decided to be the lawful owner. A few days ago some ill-
advised people assembled near Un Long and behaved in a riotous manner, assaulting a
party who were examining certain lands. I warn you against such unlawful proceedings,
as this was taking the law into their own hands. They should, if they objected, have
applied to the Land Officer, who would have examined into the matter, and decided
upon their objections. Under the powers given to me by the law, I could have placed a
station of Police upon that land and compelled the villagers who created the
disturbance to pay the entire cost of building the station and paying the Police. But I
have determined not to do so on this first offence, but to warn the people through you
that such illegal rioting will be severely punished in future. The elders of a village can
40 always prevent such disorder by giving timely information to the Police. If they do not
prevent it, then they and the villagers will be held responsible. All persons of whatever
nation must be free to move about without danger of molestation. You must
understand from what I have said that clan fights cannot be allowed. The law is strong
enough to protect the rights of every man, and must be appealed to in cases of dispute
that cannot be settled by the local committees. I am sorry to find that robberies by
armed gangs have been frequent, and against such violence you have hitherto not been
adequately protected. I have established Police stations in different parts of the
territory for the purpose of preventing such robberies and protecting your lives and

Item
No. C15

Governor's
Speech
dated 2nd
August
1899
(continued)

property. Since the territory was taken over three months ago many of those robbers have been arrested, the stolen property has been restored to the owners, and a large number of the robbers are now in gaol undergoing sentences of imprisonment for five and seven years. I am determined that such robberies shall be put down, and that law-abiding and peaceable people shall enjoy security that has hitherto been denied them. You have all heard of the cruel murders of innocent men that took place at Un Loong in April last. For the murder of one of those men two of the principals in that brutal crime, after a fair and patient trial, have paid the penalty with their lives. I hope that if any bad characters remain in the territory, they will take warning and cease from evil ways. I have directed that the law against gambling shall be rigidly enforced. The Chinese law against gambling is very strong, but the officials have neglected it. In British territory all laws must be equally respected. You have seen by my proclamation the amount of Crown rent that has been decided upon as the land rent for the present. In considering what taxes are to be levied on you, you must remember that all the money paid by you to the Government is money that is paid for your protection and for the improvement and development of your property. The money paid for public works is paid to your own labourers for their labour and comes to the traders in the ordinary course of business. Up to the present over ten thousand dollars have been paid in wages to the working people of this district, and now that gambling has been stopped, this money will be spent in the purchase of land for farms or of food and clothing from the shops, while the main road from Kowloon to Taipo will enable the people to send in their produce to market in any weather. There will be a license tax on all business houses, but you have been relieved from the payment of all customs duties and monopolies that raised the price of everything that you consumed. Do not object to strangers coming to the district. They will all bring money and increase the wealth and comfort of the people. I know that many people from this district have travelled to other countries. They must have seen there how capital employs labour and produces wealth. With the introduction of fresh capital into this district that I hope to see one day some who are now driven to evil courses for want of occupation will find within their reach employment that will enable them to live respectable lives. I have appointed you to the responsible position of Committeemen because you have been recommended to me by your villagers. Do not forget that your responsibility is very real, as I look to you to preserve the peace and good order of your villages, and to report to the authorities all bad characters and persons who endeavour to stir up strife. With the support of the sub-district Committees and the villagers, I look for the firm establishment of internal peace and prosperity, and I undertake that you shall be fully protected by the Government from any interference from without. I wished to add a few more words on the subject of land. It has been reported to me that as soon as the Convention between the Emperor of China and the Queen of Great Britain was signed certain people were induced to sell their lands at a low value by being told that the British Government would take possession of the land without payment when they came into the territory. I take this opportunity of telling you, the elders and gentry of all the villages, that if any man has been induced to sell his land by these false misrepresentations, and he is not satisfied, he can give notice to the Land Officer, who will register the title until the real question at issue has been looked into and decided. I have mentioned all this before by proclamation, but I wish to emphasize it more strongly now that I see the gentry and elders before me, as I am determined that if any man has been improperly induced to give his land away under its value I won't accept the sale as valid.

ITEM NO. C16

PROCLAMATIONS OF SAN ON MAGISTRATE
AND VICEROY OF TWO KWONGS

(Taken from "The Hongkong Government Gazette",
7th October, 1899)

Item
No. C16
Proclamations
of San On
Magistrate
and Viceroy
of Two Kwongs
from Gazette
for year 1899.

10 CHIU, Magistrate of the San On District, &c., hereby issues this notice for general information. A despatch having been received from His Excellency T'AM, Viceroy of the Two Kwong Provinces, instructing both Civil and Military Officers to attend in person for the purpose of delimiting the Kowloon Extension, the following boundary has been agreed to in accordance with the decision of the Tsung-li Yamên.

From Deep Bay across to Sham Chun and thence to Kang T'ó the Northside of the river shall be the boundary. From Kang T'ó to Kang Hau the mountain path shall be the boundary. From Kang Hau to Tung Wo market town the middle of the small stream shall be the boundary. From the North-East of the Tung Wo market town to the South-West the road shall be the boundary, and from thence to the shore terminating at Mirs Bay. All waterways and roads are included within the leased area but are always to be open to the use of the people of both nations.

20 You inhabitants are hereby notified that within the leased area as delimited all fields, lands, houses, graves, local customs and usages will remain unchanged. You need not, therefore, be alarmed or suspicious and you must be careful not to create trouble.

Those villages not included in the leased territory will continue to be within Chinese territory and the people living in them are not in any way concerned.

Should any one dare to avail themselves of pretexts to excite or mislead the minds of the people with a view to create trouble, they will most certainly be punished without leniency.

A special notice.

Dated 16th of the 2nd Moon the 25th year of Kwong Sü (27th March, 1899).

T'AM, Viceroy of the Two Kwong Provinces, &c., and LUK, Governor of the Kwong Tung Province, &c., issue this notice for general information.

30 Whereas Kowloon has been leased under the instructions of the Emperor and the boundary has been defined in accordance with the original map forwarded by the Tsung-li Yamen, the following agreement has been come to with the foreign officials:—

- (1) The people are to be treated with exceptional kindness.
- (2) There can be no forced sale of houses and lands.

Item
No. C16

Proclamations
of San On
Magistrate
and Viceroy
of Two Kwongs
from Gazette
for year 1899

- (3) The graves in the leased territory are never to be removed.
- (4) Local customs and habits are to remain unchanged according to the wishes of the inhabitants.

In these respects, therefore, the villages and market towns in the leased territory will not differ from those within Chinese territory.

Wherefore this notification is issued to let all know that whatever occurs in the villages and market towns of China has now nothing to do with you (who live in the leased territory). No one must under any pretext excite or mislead the minds of the people. You who live in the villages and market towns of the leased territory should follow your occupations and abide by the law as heretofore.

10

If in disobedience to the Imperial decree you dare to create strife or avail yourselves of any pretext to stir up trouble, there is now a large military force in the territory which will arrest and deal with the guilty without mercy.

Let every one tremble and obey.
An important and special notice.

24th day 2nd Moon 25th year of KWONG SÜ (4th April, 1899).

ITEM NO. C17

DEBATE ON CROWN LANDS RESUMPTION
AMENDMENT BILL 1899

(Taken from the "Hongkong Hansard" for the Session 1898–1899)

Item
No. C17
—
Debate on
Crown Lands
Resumption
Amendment
Bill 1899

QUESTIONS AND ANSWERS.

The Hon. T. H. WHITEHEAD – I rise to ask the questions of which I have given notice.

The questions were as follow:—

10 Has the attention of the honourable the Colonial Secretary been directed to a leading article in the *China Mail* of Wednesday, August 9th, and will the honourable member inform the Council:—

(1a.) – Is it the intention of the Government to appoint a Commission to enquire into and report on the alleged land jobbery in the Colony's recently acquired territory, referred to in the said article and widely and publicly spoken about?

(2.) – Was the late Tung Cheong entrusted by the Government on or about the 17th April last with certain Government proclamations to be conveyed into the New Territory to be posted and placarded in the various villages and towns therein?

(3.) – If so, under whose direction did the deceased undertake the mission without an armed escort?

20 (4.) – Is it true that on the said mission at or near the village of Un Loong on 17th or 18th April last the said Tung Cheong was foully and brutally murdered?

(5.) – What remuneration, if any, has been paid to the deceased's family?

(6.) – Will the Government lay upon the table a copy in English of the Proclamation issued by the Canton and the Colonial Governments previous to the 17th April last and posted and placarded in the villages and towns throughout the New Territory informing the people and the inhabitants as to the effect the change of Government would have on their lives, liberties, and possessions, and state the dates when such proclamations, if any, were posted and placarded?

30 (7.) – What satisfaction, if any, has been obtained from the Chinese Government for the assault by the Chinese on the Honourable the Captain Superintendent of Police before our New Territory was taken over, and in respect of the resistance by thousands of armed Chinese to the British entering into possession of the area leased by the Imperial Chinese Government to Great Britain per the Convention of June, 1898, the quelling of which resistance resulted in considerable and lamentable loss of life and which forced upon the colony a substantial amount of extra and avoidable expenditure?

(8.) – Has the attention of the Honourable the Director of Public Works been directed to the *China Mail's* leading articles of 15th and 23rd August alleging the existence of jerry buildings in Hongkong; will the Honourable Member inform the Council whether the said allegation is well founded; and if so, will he state what powers his Department possesses to prevent the erection of such buildings; what action has been taken by his Department in the matter; and if his powers are insufficient, is he taking any steps to get increased powers?

THE COLONIAL SECRETARY replied as follow:—

The answer to Question I is in the negative.

In reply to Question 1A, I beg to refer the Honourable Member to paragraph 52 of the correspondence laid upon the table at the last meeting of Council. 10

The answer to Question 2 is that at the instance of the Colonial Secretary one of the gentry of the New Territory undertook to have copies of the Proclamation posted and he entrusted the duty of posting some of them to Tang Chueng.

In reply to Question 3 I beg to refer the Honourable Member to the answer to the last question.

The answer to Question 4 is in the affirmative. The murderers have been convicted and have suffered the extreme penalty of the law.

In answer to Question 5, I beg to state that the Government is taking care of one of the sons of the deceased. 20

In reply to question 6, I beg to refer the Honourable Member to page 21 of the published correspondence for a translation of the Proclamation issued by His Excellency the Governor, and I now lay upon the table a translation of the Proclamations issued by the Magistrate of the San On District and the Viceroy of the Two Kwong Provinces. So far as can be ascertained the dates of posting the Proclamations were as follows:—

The Proclamation of the San On Magistrate was posted between the 27th and the 30th March; the Proclamation of the Viceroy was posted about the 5th April; the Proclamation of His Excellency the Governor was posted between the 10th and 15th April. 30

The answer to Question 7 is, "I cannot say."

The DIRECTOR OF PUBLIC WORKS, replying to the eighth question, said:— I have read the articles referred to and think there is foundation for the allegations. The powers possessed by my department are defined in the Ordinances 15 of 1889 and 25 of 1891. As officer of the department, assisted by an overseer, inspects building works in progress. The exceptional amount of such work in the colony at present makes an increase in the staff necessary if this work of supervision is to be thoroughly performed. The matter is engaging the attention of the Government.

(Taken from the "Hongkong Hansard" for the Session 1899 – 1900)

Item
No. C17

CROWN LANDS RESUMPTION ORDINANCE.

Debate on
Crown
Lands
Resumption
Amendment
Bill 1899
(continued)

10 The ACTING ATTORNEY-GENERAL – I beg to move the second reading of the Bill entitled an Ordinance to amend the Crown Lands Resumption Ordinance, 1899. Honourable members will see from the "objects and reasons" attached to the Bill that the object of clause 2 of this Bill is to amend the preamble to Ordinance 23 of 1899 in such a way as to make it clear that the acquisition or resumption of land or buildings may be effected for any "public purpose" as defined by clause 3 of this Bill. The object of the amendment introduced by sub-section (i.) of clause 3 of this Bill is to make it clear that the expression "land" includes buildings, and also to clear up any possible ambiguity as to Ordinance 23 of 1899 being capable of application to the New Territories. The object of sub-section (ii.) of clause 3 of this Bill is – (a.) to make it clear that resumption includes acquisition, and (b.) to define what is meant by a "public purpose." Clause 4 of this Bill introduces a small amendment in the language of section 3 of Ordinance 23 of 1889 which is required for the purpose of bringing the wording of that section into line with section 14. Clause 5 of the Bill introduces a small amendment in section 14 of Ordinance 23 of 1889 with the object of bringing that section into line with the definition contained in clause 3 of this Bill.

20 The COLONIAL SECRETARY seconded, and the motion was carried.

The Bill having been considered in committee clause by clause was read a third time and passed.

THE RESUMPTION OF CROWN LANDS.

The ATTORNEY-GENERAL proposed the second reading of the Bill entitled An Ordinance to facilitate the resumption by the Governor of Crown Lands required for a certain purpose. The objects and reasons of the Bill are given as follow:— No. 30 of 1899 was passed to amend The Crown Lands Resumption Ordinance, 1899. It, however, left the title of the principal Ordinance unaltered, although it dealt not merely with the resumption of Crown Lands, but also with the acquisition by the Governor of land of any description, for public purposes. It appears unnecessary to mix the two subjects and it is certainly desirable to consolidate in one Ordinance the law relating to the resumption of Crown lands. The present Ordinance incorporates, with some few slight alterations, the amendments introduced into the Crown Lands Resumption Ordinance by Ordinance No. 30 of 1899, so far as they relate to the resumption of Crown lands. It should be borne in mind that all land in the New Territories is declared by the New Territories Land Court Ordinance, 1900, to be the property of the Crown during the term specified in the Convention of 9th June, 1898. Thus the resumption of any part thereof from the occupiers, if necessary, would come within the terms of this Ordinance. Under the heading "resumption for public purpose" in section 2 a new clause is added, viz. clause (ii) relating to "obstructive buildings." This is based upon section 38 of the Imperial Act known as "The Housing of the Working Classes Act, 1890." The whole of section 9 is also new and deals with certain points connected with the assessment of compensation; while its last paragraph makes special provision in cases where insanitary property is resumed. This section follows in the main the provisions of section 21 of the Imperial Act previously mentioned. Section 18 makes it clear that the alternative mode of proceeding provided by this Ordinance does not annul any power of resumption contained in Crown Leases.

10

20

The COLONIAL SECRETARY seconded and the motion was carried.

The Bill was then considered in committee and some slight alterations made. On the Council resuming, the third reading was accordingly held over.

THE RESUMPTION OF CROWN LANDS.

30

On the motion of the ATTORNEY-GENERAL, seconded by the COLONIAL SECRETARY, the Bill entitled An Ordinance to facilitate the resumption by the Governor of Crown Lands required for a public purpose was read a third time and passed.

The Council then adjourned sine die.

ITEM NO. C18

NEW TERRITORIES LAND COURT BILL 1899

A BILL

ENTITLED

The New Territories Land Court Ordinance, 1899.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Item
No. C18

New Territories
Land Court
Bill 1899

- 10 1. This Ordinance shall be called the Land Court Ordinance, 1899, and shall only apply to the owners and occupiers of land in the New Territories, that is to say, in the additional territories acquired by this Colony under the provisions of a Convention, dated the 9th day of June, 1898, between Her Majesty Queen Victoria and His Imperial Majesty the Emperor of China for the enlargement of the limits of this Colony.
- 20 2. Claims by owners and occupiers of land in the New Territories to titles or certificates of title from the Crown shall, subject to the provisions of this Ordinance, be heard and determined by a Land Court hereinafter referred to as the Court which shall consist of the persons respectively filling the offices of Puisne Judge, Director of Public Works and Deputy Land Officer for the time being.
- 30 3. The Puisne Judge, or, in his absence, the Director of Public Works shall be the president of the Court and two members thereof shall form a quorum. In the case of an equal division of opinion the president shall have a casting vote. There shall be a Registrar to the Court to be appointed by the Governor (hereinafter referred to as the Registrar), whose duty it shall be to keep a record of all proceedings and decisions of the Court, to receive all claims and communications to the Court, and to issue all orders and directions of the Court.
4. The Court shall, for the purposes of this Ordinance, have the following powers:—
- 30 (1.) To determine within what time claims to land in any specified village or district in the New Territories shall be presented to the Court, and in what form and manner such claims are to be presented.
- (2.) To cause to be notified in any village or district in the New Territories and in such manner as the Court may direct, notice of the time within which claims to land must be made, and the form and manner of making such claims.
- (3.) To fix the dates and times and places for the hearing of such

Short title
and applica-
tion.

Claims to
titles to be
heard by
Court.
Composition
of Court.

President.
Quorum.

Governor to
appoint
Registrar.

Powers of
Court.

Time, form,
and manner
of presenting
claims.

Notification
to be made
in village.

Time and

<p>Item No. C18</p> <hr/> <p>New Territories Land Court Bill 1899 (continued)</p>	<p>place of hearing claims.</p>	<p>claims to land, and to cause notice of such dates and times and places to be notified to claimants in such manner as the Court may direct.</p>	
	<p>Deputy Land Officer may report title can be admitted.</p>	<p>5. If in any case it shall appear to the Deputy Land Officer before the hearing that a title or certificate of title to land can be admitted or granted to any claimant without further investigation, he shall report the same to the Court accordingly and it shall not be necessary for the claimant or his witnesses to appear before the Court unless the Court shall so order.</p>	
	<p>Further powers of Court respecting witnesses, the production of documents and enfor- cing any order of Court.</p>	<p>6. For the purpose of the hearing of any claim to land the Court shall have powers similar to those vested in the Supreme Court of this Colony on the occasion of any suit or action in respect of the following matters, viz:—</p> <p>(1.) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise.</p> <p>(2.) Compelling the production of documents.</p> <p>(3.) Punishing persons guilty of contempt of the Court or of any order of the Court.</p> <p>(4.) Ordering inspection of property.</p> <p>(5.) Making and enforcing any order which may be necessary to the proper hearing and determination of any question before the Court, and the Court may exercise all or any of such powers for the purposes of any claim before the Court to the same extent as the Supreme Court might exercise them or any of them for the purposes of any suit or action.</p>	<p>10</p> <p>20</p>
	<p>Power of entry.</p>	<p>7. Any member of the Court shall, for the purposes of any enquiry made by the Court, have power to enter and view any premises or property, and the Court shall have power to authorize any person nominated by the Court to enter and view any premises or property for the like purpose.</p>	<p>30</p>
	<p>Power of Court with respect to any witness committing perjury.</p>	<p>8. If in any claim to land it shall appear to the Court that any witness has committed wilful and corrupt perjury the Court may, for the purpose of punishing such perjury, exercise powers similar to and to the same extent as those conferred on the Supreme Court by section 23 of Ordinance 12 of 1873 for the punishment of perjury in any cause, suit, or action.</p>	
	<p>Summons, warrant, etc. to be signed by</p>	<p>9. Any summons, order, warrant, or direction of the Court shall be deemed to be duly made with the authority of the Court if signed by the Registrar, and any such summons, order, warrant, or direction so issued in connection with and for the purposes of any claim to land shall</p>	

	be equivalent to any form of summons, order, warrant, or direction issued in any action or suit in the Supreme Court for enforcing the attendance of witnesses, or compelling the production of documents or otherwise for the purposes of any suit or action.	Registrar.	Item No. C18
	10. The Court may allow or disallow any claim to land or allow the same as to part of the claim or subject to such conditions as it may think fit.	Court may allow or disallow claim.	New Territories Land Court Bill 1899 (continued)
10	11. In cases where the Court allows the claim or part of the claim a title or certificate of title in such terms as the Court shall order shall be admitted or granted by the Governor within such time as may be convenient.	When claim allowed title or certificate to be granted.	
	12. After the passing of this Ordinance occupation by any person without licence, or certificate of title, or without any grant of any estate or interest from the Crown, of land a certificate of title for which has been disallowed by the Court or for which no claim has been made under this Ordinance shall be deemed to be a trespass, and the person so occupying without having such licence, certificate of title or grant as aforesaid may be dealt with as a trespasser accordingly.	Occupier when to be deemed trespasser.	
20	13. An appeal shall lie within fourteen days to the Full Court (and from thence to the Privy Council) from any decision of the Court in any case where the value of the land in dispute is certified by the Court to be over ten thousand dollars.	Appeal.	
	In any case, however, where the value of the land in dispute is certified by the Court under the hand of the Registrar to be under ten thousand dollars, no appeal shall lie from its decision, nor shall its proceedings in such case be liable to revision or removal to the Supreme Court of the Colony by writ of <i>certiorari</i> or other legal process.		
30	14. Certificates of title to be granted under this Ordinance shall be in such form or forms as may from time to time be directed by the Court, and shall be signed by the Registrar and countersigned by the Governor.	Form of certificates of title.	
	15. In any case of any land in the New Territories being held under an agreement to pay rent in produce, it shall be lawful for the tenant of such land to pay a rent in money instead of such rent in produce, according to a rate, which shall be fixed each year by the Court, and published in the <i>Government Gazette</i> during the month of January in each year, as the fair commutation price of such produce.	Payment of rent in money instead of in produce.	
40	16. In any case where land in the New Territories is held under an agreement to pay a rent in produce in perpetuity, it shall be lawful for the person who is liable to pay such rent, with the consent of the Court, to redeem his liability to pay such rent by paying to such person as the Court may direct such capital sum of money as the Court may, under	Redemption of rent in produce.	

Item
No. C18

New Territories
Land Court
Bill 1899
(continued)

No rent in
produce to
be reserved
after certain
date.

Rents may
be fixed by
Court where
ownership
disputed.

all the circumstances of the case, consider to be fair and reasonable.

17. On and after the 31st day of January, 1900, no rent in produce shall be reserved in any agreement for the occupation of land in the New Territories. If any rent in produce is so reserved after the said date, then such rent shall not be recoverable in any Court of law or by any legal process or proceedings.

18. In any case of disputed ownership of any land in the New Territories where no rent has been fixed, it shall be lawful for the Court to order that a certain rent for such land, being such rent as the Court considers under all the circumstances of the case to be fair and reasonable, shall, from such date as the Court thinks fit, be paid in respect of such land. Every order made by the Court under this section shall be final and conclusive upon every person whatever and without appeal.

10

Objects and Reasons.

This Bill is framed to a considerable extent upon the lines of the Squatters' Ordinance, 1890, (Ordinance 27 of 1890), which has been found to work satisfactorily.

The chief aim of this Bill is to provide owners and occupiers of land in the New Territories with a tribunal to which they can appeal, without incurring the expense of resorting to the Supreme Court, and to arrange amicably questions of disputed title and land and rent disputes generally.

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It is proposed by this Bill to substitute a certificate of title for a Crown lease, because it has been ascertained that the ordinary holding of land in the New Territories is a tenancy in perpetuity, and this Government could not, under the terms of the Convention with China, grant a lease for more than 99 years from the date of the Convention.

Clause 15 of the Bill contains special provisions for the commutation of rent in produce into a payment of rent in money, calculated upon the fair price of such produce. Provision for such commutation appears to be necessary in order to avoid friction between landlord and tenant and to induce the tenant to cultivate the land to the best advantage.

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Clause 16 of the Bill provides for the redemption of rent in produce, when such rent is payable in perpetuity, by the payment of a capital sum of money.

Clause 17 provides that, in any agreement made on and after the 31st day of January, 1900, (which is the first day of the next Chinese year), no rent in produce shall be reserved.

The object of clause 18 is to settle disputes in cases (*inter alia*)

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where a man, who is adjudged to have no proper title, has been occupying and improving land and where he appears to be equitably entitled to continue to occupy such land upon his paying such a rent as is fair and reasonable, having regard to such improvements.

HENRY E. POLLOCK,
Acting Attorney General.

Item
No. C18
—————
New Territories
Land Court
Bill 1899
(continued)

ITEM NO. C19

Item
No. C19

PROCLAMATION RELATING TO BOER WAR

Proclamation
relating to
Boer War
dated 27th
December 1899

(Taken from "The Hongkong Government Gazette", 19th February, 1900)

His Excellency the Governor directs the publication of the following Proclamation of Her Majesty the Queen, dated the 27th day of December, 1899, for general information.

By the QUEEN.

A PROCLAMATION.

VICTORIA, R.

- 10 WHEREAS a state of war exists between Us and the South African Republic, and also between Us and the Orange Free State:

And whereas it is therefore expedient and necessary to warn all Our subjects of their duties and obligations towards Us, Our Crown, and Government:

- 20 Now, therefore, We do hereby warn all Our subjects not to enlist or engage themselves in the military service of the Government of either of the said Republics, or in any way to aid, abet, or assist either of the said Republics, in the prosecution of hostilities, and not to carry on any trade with, or supply any goods, wares, or merchandise to either of the said Republics, or to any person resident therein, or to supply any goods, wares, or merchandise to any person for transmission to either of the said Republics, or to any person resident therein, and not to carry any goods, wares, or merchandise destined for either of the said Republics, or for any person resident therein.

And We do hereby further warn all persons that whoever, in contravention of the law, shall commit any of the aforesaid acts, will be liable to such penalty as the law provides.

Given at Our Court at *Windsor*, this twenty-seventh day of *December*, in the year of our Lord one thousand eight hundred and ninety-nine, and in the sixty-third year of Our reign.

GOD save the QUEEN.

ITEM NO. C20

DEBATE ON NEW TERRITORIES LAND COURT BILL 1899

(Taken from the "Hongkong Hansard" for the Session 1899 – 1900)

FIRST READINGS.

Item
No. C20
—
Debate on
New Territories
Land Court
Bill 1899

The following Bills were read a first time:—A Bill entitled an Ordinance to amend and consolidate the law relating to the carriage and possession of arms and ammunition. A Bill entitled The New Territories Land Court Ordinance, 1899.

THE NEW TERRITORIES LAND COURT ORDINANCE.

10 The ACTING ATTORNEY-GENERAL—I beg to move the second reading of the Bill entitled the New Territories Land Court Ordinance, 1899. Honourable members will see from the objects and reasons attached to the Bill that:—

“This Bill is framed to a considerable extent upon the lines of the Squatters’ Ordinance, (Ordinance 27 of 1890), which has been found to work satisfactorily.

“The chief aim of this Bill is to provide owners and occupiers of land in the New Territories with a tribunal to which they can appeal, without incurring the expense of resorting to the Supreme Court, and to arrange amicably questions of disputed title and land and rent disputes generally.

20 “It is proposed by this Bill to substitute a certificate of title for a Crown lease, because it has been ascertained that the ordinary holding of land in the New Territories is a tenancy in perpetuity, and this Government could not, under the terms of the Convention with China, grant a lease for more than 99 years from the date of the Convention.

“Clause 15 of the Bill contains special provisions for the commutation of rent in produce into a payment of rent in money, calculated upon the fair price of such produce. Provision for such commutation appears to be necessary in order to avoid friction between landlord and tenant and to induce the tenant to cultivate the land to the best advantage.

“Clause 16 of the Bill provides for the redemption of rent in produce, when such rent is payable in perpetuity, by the payment of a capital sum of money.

30 “Clause 17 provides that, in any agreement made on and after the 31st day of January, 1900 (which is the first day of the next Chinese year), no rent in produce shall be reserved.

“The object of clause 18 is to settle disputes in cases (*inter alia*) where a man, who is adjudged to have no proper title, has been occupying and improving land and where he appears to be equitably entitled to continue to occupy such land upon his

Item
No. C20

Debate on
New Territories
Land Court
Bill 1899
(continued)

paying such a rent as is fair and reasonable, having regard to such improvements.”

The COLONIAL SECRETARY seconded, and the motion was carried.

THE NEW TERRITORIES LAND COURT ORDINANCE.

The ACTING ATTORNEY-GENERAL then moved that the Council do go into Committee on this Bill.

The COLONIAL SECRETARY seconded.

The Hon. T. H. WHITEHEAD—I beg to move as an amendment that the Bill in question be referred to the Law Committee for further consideration and report. A number of amendments and suggestions have reached me a few minutes before coming into the Council, and I think the time of the members would be saved and business would be facilitated if the matter was referred to the Standing Law Committee. 10

The Hon. Dr. HO KAI—I beg to second that amendment. This is a most important measure, and I think it would be well to defer it for further consideration.

The ACTING ATTORNEY-GENERAL—I am prepared to accept the amendment of the honourable member.

His EXCELLENCY THE GOVERNOR—I quite agree that this is an important Bill and that it is desirable that it should be considered by the Standing Law Committee, but it is very important indeed that the Standing Law Committee should meet and consider it at once and let us have their report as soon as possible—if possible before the next Council meeting. 20

The Hon. T. H. WHITEHEAD—I will endeavour to have the amendments suggested sent to the Law Committee without delay.

The COLONIAL SECRETARY—The only question is the absence of Mr. Keswick, who is a member of the Law Committee.

The ACTING ATTORNEY-GENERAL—When does he come back?

The Hon. T. H. WHITEHEAD—I understand next week.

His EXCELLENCY—Is it necessary to wait for Mr. Keswick? He is not a legal man.

The ACTING ATTORNEY-GENERAL—The Bill would have to be read through in committee of Council unless all the members of the Standing Law Committee were present. However, it is only a very short Bill, and it does not make much difference. 30

His EXCELLENCY THE GOVERNOR—I do not think it very much matters.

I think it is better the lawyers should get at this and consider it at once instead of waiting for Mr. Keswick.

Item
No. C20

The Bill was accordingly referred to the Standing Law Committee.

Debate on
New Territories
Land Court
Bill 1899
(continued)

THE NEW TERRITORIES LAND COURT BILL.

The ATTORNEY-GENERAL laid on the table his report as Chairman of the Standing Law Committee on the New Territories Land Court Bill. The report read as follows:—

10 The Chairman of the Standing Law Committee regrets that, owing to the indisposition of one of the members, he is unable to give the certificate which would enable this Bill to be dealt with in the same manner as a Bill reported on by a Committee of the whole Council, under Stand Order No. 42. The Committee recommended a number of amendments, and the Attorney-General accordingly drew a revised Bill incorporating in the main those amendments as well as some others which he thought desirable. All the members of the Committee, except one, thereupon met again and went through the Bill as amended, clause by clause, and while approving of the amended Bill generally, recommended a further amendment of clause 16 so as to enable applications for leave to appeal to be made to the Chief Justice, leaving the appeal, when such leave is granted, to be heard by the Full Court as provided in the Bill. The Committee, moreover, did not like the wording of the clause as to fixing rents in cases of disputed ownership and wished this clause to be omitted or amended. The Attorney-General has, accordingly, incorporated such further amendments in the Bill hereto annexed, omitting the clause in question. It will, however, be necessary for the Bill to be considered by the Committee of the whole Council, and the Attorney-General will propose in such Committee that the clauses so altered in the Bill as now amended be substituted for those in the original Bill.

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40 The ATTORNEY-GENERAL—If the Standing Law Committee had had the advantage of having all the members present, then under the Standing Orders we should have reported upon this Bill, and unless the Council was desirous it would have been unnecessary for the Council to go through the Bill clause by clause in committee. As I have pointed out in my report, owing to the indisposition of one of the members, the Standing Law Committee were unable to report that the Bill had been considered in its present form clause by clause in the presence of all the members of the committee. Therefore it will be necessary that the whole Council in committee should consider the original Bill and its amendments. This is a very important Bill. It was brought forward for a first reading in the latter part of November. After this it was read a second time and referred to the Standing Law Committee. The Standing Law Committee had several sittings and they proposed a number of amendments. Some of those amendments necessitated the renumbering of the clauses of the Bill. Just at this stage of the proceedings Sir John Carrington returned to the colony, and I resumed my duties as Attorney-General. I thought it would facilitate matters if I set to work and went through the Bill myself and, having the advantage of the amendments proposed by the Standing Law Committee, endeavoured to redraft the Bill with the suggestions incorporated. I incorporated all these suggestions as far as

Item
No. C20
—
Debate on
New Territories
Land Court
Bill 1899
(continued)

possible and made some other alterations which I thought would improve the Bill. I then called another meeting of the Law Committee, and they went through the Bill in its then form and approved of it generally. I beg to move that the Council go into Committee to consider the original Bill clause by clause.

The Acting COLONIAL SECRETARY seconded.

The Hon. T. H. WHITEHEAD—I rise to order. I submit that this Bill is a totally new Bill in principal and in substance as compared with the Bill introduced, which passed a second reading in the autumn of last year. The old Bill stipulated that there should be three members composing the Land Court and that the Puisne Judge should be the presiding member of that court. Now it is proposed that only two members compose the court, and there is no provision that either one or the other should have any legal knowledge. The scope of this Bill is much wider than that of the previous Bill and I submit that instead of the Council going into committee on the Bill it should be read a first time and translated into Chinese so that the Chinese may have the opportunity of making any suggestions which might occur to them, as the Bill very directly affects them.

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The Council then went into committee to consider the original Bill clause by clause.

The Hon. T. H. WHITEHEAD—I rise to move that the Council resume in order that members may have the opportunity of considering this new Bill. Honourable members have not had reasonable time to consider the important alterations now incorporated in the Bill. I have carefully read over the Convention between the Governments of China and Great Britain, and it appears to me that section 15 is entirely at variance and contrary to the provisions of section 6 of that convention, and I submit that reasonable time should be allowed members in which to consider this Bill very carefully.

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The Hon. C. P. CHATER seconded, but on being put to the vote the motion was lost. •

The Hon. T. H. WHITEHEAD—Then I rise to give notice that I shall lay my protest on the table against the ruling of this Council.

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The ATTORNEY-GENERAL—It will not be necessary for me to repeat the remarks I made before the Council went into committee. I was not here the first or second time the Bill was read. In answer to what the honourable member opposite said as to the Bill now before the Council not being the Bill which was read a first time on the 23rd of November, the Bill which has been handed round to honourable members is the Bill containing, for convenience, amendments I propose to move, but honourable members have also before them the original Bill. One course, but not at all a convenient course, would be to take the old Bill clause by clause and say that instead of certain words such and such words should be substituted or added. I have no objection to that course except that unless one sees also the Bill with proposed amendments on, it will lend to complication and difficulty. To abandon the original Bill and bring it forward again for the first reading because the amendments suggested by the Law Committee are somewhat extensive is, I think, a course which the honourable

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member will see is not a proper course to pursue, and I think he will see on consideration that the fact that there have been a good many amendments is no reason why a Bill read a first and second time should be abandoned. But we are going through the different amendments, and if the honourable gentleman has any objection to them I will endeavour to the best of my ability to explain the reason why these amendments were considered necessary, and I have great hopes of entirely converting him to my views before the afternoon is over. As to the difference between the old Bill and the amended Bill, the heading of the old Bill was somewhat defective, because it did not give the full scope of the Bill, and this the new Bill does, namely, "An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes." The first section of the new Bill, is practically the same as the first section of the old Bill, except that we say now "This Ordinance may be cited as the Land Court (New Territories) Ordinance, 1900, and it shall apply only to the New Territories, and to claims in relation to land therein." Coming to the second clause it was similar to the second clause of the Bill in its old form but which had not interpretation clauses attached to it. Those who had had experience in drafting Bills considered it very necessary to have an interpretation clause to facilitate the understanding of the Bill and pin down words and phrases to their proper meaning. The interpretation to the Bill was contained in the second clause and was as follows:—"The Court means the Land Court constituted under this Ordinance, and shall include any member thereof acting alone in matters where one member has jurisdiction conferred upon him by this Ordinance. Land includes buildings thereon and also land covered with water or within the flow of the sea. Claim in relation to land includes a claim to a right of common or other profit or benefit, or to any easement or other interest from, in, upon, or over or in respect of any land. New Territories means the additional Territories acquired by this Colony under the Convention dated the 9th day of June, 1898, between Her Majesty Queen Victoria and His Imperial Majesty the Emperor of China for the enlargement of the limits of this Colony, including the City of Kowloon." The marginal notes explain the various clauses. The only one I need trouble to explain to you is No. 3. In case of small claims it would be simply a waste of time to employ two or three judges, consequently one member of the Land Court sitting alone will have jurisdiction to hear and finally determine the following:—(a.) Any undisputed claim, and (b.) Any disputed claim in which the value of the claim shall not, in the opinion of such member, exceed two hundred dollars, and (c.) Any disputed claim in which the parties consent to have such claim determined by one member. Provided also, that in case of a difference of opinion when both members are sitting together, the decision of the President shall prevail. As regards clause 15 I may just say a word. There is nothing contrary to the convention in it. They will find that the new clause 15 is practically the same as clause 12 in the old Bill. Clause 15 says:—"All land in the New Territories is hereby declared to be the property of the Crown, during the term specified in the Convention of the 9th day of June, 1898, hereinbefore referred to, and all persons in occupation of any such land, after such date as may be fixed by the Governor by notification in the *Gazette*, either generally or in respect to any specified place, village, or district, shall be deemed trespassers as against the Crown, unless such occupation is authorized by grant from the Crown or by other title allowed by the Court under this Ordinance, or by license from the Governor or from some Government officer having authority to grant such license, or unless a claim to be entitled to such occupation has been duly presented to the Court and has not been withdrawn or heard and disallowed." It must be clearly understood that I, as Attorney-General of this colony, maintain, in spite of

Item
No. C20
Debate on
New Territories
Land Court
Bill 1899
(continued)

any suggestions which may be made by any other people, that the whole of the land in the New Territories belongs without a doubt to Her Majesty, subject to the terms of the Convention. It belongs to Her Majesty during the term of 99 years mentioned in the Convention, and during that term she has sole jurisdiction in the New Territories. It is so stipulated in the Convention. Sole jurisdiction means that nobody also has any jurisdiction—the Emperor of China or anybody else. Consequently during that 99 years there can be no title held except from the Crown. If a person had a title from the Emperor of China at the time the territory was taken over, the Land Court would recognise that title and recommend that a suitable title by Her Majesty should be given. The kind of title would be for your Excellency to decide.

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The Hon. T. H. WHITEHEAD—May I refer to section 6 of the Convention?

The ATTORNEY-GENERAL—I am most familiar with it. I have studied the matter most carefully.

His EXCELLENCY THE GOVERNOR—The honourable gentleman misunderstands the position. The Bill before the Council at the present time is the Bill that has been read a second time. The new Bill which the honourable member has had placed in his hands is simply the Bill with the proposed amendments, which for the convenience of members have been printed and circulated, so that they may study them instead of having them sprung upon them. But it must be remembered that these amendments have been recommended by every member of the Law Committee except one, who, unfortunately, was unable to attend. Therefore I take it that every amendment will receive a great deal of respectful consideration from the Council, because if that one member had been present at the meeting of the Standing Law Committee, and had agreed to the amendments, this Council could have accepted the Bill en bloc as amended by the Law Committee and without consideration clause by clause.

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The Hon. T. H. WHITEHEAD proposed that clause 3 of the Bill should stand over for further consideration until the Government had made up its mind who the two members who should compose the court should be. He suggested that it was desirable that some provision should be made to guarantee that one of the members, the senior one should have some legal knowledge.

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His EXCELLENCY THE GOVERNOR—I think it is very desirable that one of the members should have some legal knowledge. I may say at once that it is the intention of the Government that one member should have some legal knowledge. At the same time I do not know that it is desirable to tie us down. It is quite possible that small claims might be looked by a person without what you may call any legal qualification but with a considerable amount of common-sense and considerable knowledge of land.

The Hon. T. H. WHITEHEAD—That being the intention of the Government, would it not be well to have it inserted in the Ordinance that the senior member of the court shall be a duly qualified legal practitioner.

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The COLONIAL TREASURER—It is also important we should have a man with a knowledge of Chinese.

His EXCELLENCY the GOVERNOR (to the Attorney-General)—Do you see any objection?

Item
No. C20

The ATTORNEY-GENERAL—I think it could very safely be left to the Government. I would advise the Government to appoint a proper person. I think it is rather a reflection on the Government to suggest that they would appoint an improper person to the Land Court.

Debate on
New Territories
Land Court
Bill 1899
(continued)

10 The Hon. T. H. WHITEHEAD—I can hardly follow the Attorney-General's logic and reasoning. If it is the intention of the Government to have a gentleman with legal knowledge at the head of this Land Court, why not put it in the Bill? We shall then know what we are doing.

His EXCELLENCY THE GOVERNOR—I would point out that theory is very fine, but an ounce of practice is worth a pound of theory. Supposing the legal member of the court was going on leave and we wanted to get a gentleman to do the business for a few months. Is there a legal man in the colony more capable of dealing with cases that would come before the Land Court than Mr. Bruce Shepherd if he were appointed? And yet if the honourable member's suggestion were adopted it would deprive the Government of the power to appoint someone to act, who was perfectly competent to do so, because he was not a legal practitioner.

20 The ATTORNEY-GENERAL—It must be borne in mind in addition that the court will sit on the other side, and it is not always possible to get, for instance, the Puisne Judge over there, as, if he went over to the other side to the Land Court the business of the court on this side would be hanging fire.

The Hon. T. H. WHITEHEAD proposed that the further consideration of Clause 3 be postponed until the next meeting of the Council, but the proposal was not carried, himself, the Hon. Wei A Yuk and the Hon. Dr. Ho Kai being the only members who voted for it.

The rest of the clauses were then gone through and the Bill passed through the committee stage.

The Council then adjourned until next Thursday.

30 _____
THE HON. T. H. WHITEHEAD'S PROTEST.

The Hon. T. H. WHITEHEAD, pursuant to notice, laid on the table his protest in connection with the New Territories Land Court Bill.

THE NEW TERRITORIES LAND COURT BILL.

The ATTORNEY-GENERAL proposed the third reading of a Bill entitled an Ordinance to facilitate the hearing, determination, and settlement of land claims in the

Item
No. C20

New Territories, to establish a Land Court, and for other purposes.

Debate on
New Territories
Land Court
Bill 1899
(continued)

The COLONIAL TREASURER seconded.

The Hon. T. H. WHITEHEAD—I beg to move as an amendment that the Bill be re-committed. I have most carefully considered the remarks made by the Attorney-General at the last meeting of the Council, and I have seen no reason whatever to change the views I then entertained. I have given in my protest my reasons for dissenting from the measure. Your Excellency's ruling at the last meeting in connection with the Bill is, I am afraid, scarcely correct. Since the last meeting I have studied carefully May's Parliamentary Practice, which shows—

His EXCELLENCY THE GOVERNOR—To what ruling do you refer?

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The Hon. T. H. WHITEHEAD—When I submitted that the Bill be recommitted and read a first time and translated into Chinese for the information of the Chinese.

His EXCELLENCY THE GOVERNOR—It has escaped my recollection. Perhaps the honourable member will remind me.

The Hon. T. H. WHITEHEAD—I said that as the Bill was an entirely new Bill in substance and principle I submitted that it be recommitted and read a first time. Your Excellency ruled that, I was out of order. I have carefully studied May's Parliamentary Practices, and the course I suggested was in accordance with the practice at home.

The ACTING COLONIAL SECRETARY—My recollection is that the honourable member moved that the Council adjourn.

20

The ATTORNEY-GENERAL—There appears to be some misapprehension. The Bill was before Committee, and to move that a Bill be recommitted when it was before committee was out of the question.

His EXCELLENCY THE GOVERNOR—My recollection is that the honourable member did make some observations on the lines of those which he has now made, but I do not think he moved any amendment. At my suggestion he did make a motion to the effect that the Council resume. That motion was put and lost, as I assume the other that the Council adjourned would have been.

As no one seconded the honourable member's amendment it fell to the ground and the Bill was read a third time and passed.

30

The council adjourned until Thursday next.

FIRST READINGS.

The following Bills were read a first time:—

A Bill entitled An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes.

A Bill entitled An Ordinance to amend The Liquor Licenses Ordinance, 1898, and to repeat Liquor Licenses Amendment Ordinance, 1899.

A Bill entitled An Ordinance to authorise the Appropriation of a Supplementary Sum of Four hundred and Eighty-one thousand Three hundred and Thirty-five Dollars and Thirty-five Cents, to defray the Charges of the Year 1899.

THE PROPOSED LAND COURT.

10 The ATTORNEY-GENERAL proposed the second reading of a Bill entitled
An Ordinance to facilitate the hearing, determination, and settlement of land claims in
the New Territories, to establish a Land Court, and for other purposes. He said that
this Bill as brought before the Council was nothing more nor less than the Bill which
was passed in March last. When this Bill was sent home for the approval of the
Secretary of State and had been duly considered, two or three slight amendments in
minor details were suggested by the Secretary of State, and rather than have two Bills
they thought it better to have the Bill re-enacted with the amendments. This course
would meet any objections of a technical kind as regards procedure with respect to
Ordinance No. 8 of 1900. As regards, however, Mr. Whitehead's protest that the
20 Ordinance No. 8 of 1900 was a violation of the Convention of 9th June, 1898, the
Secretary of State has said he sees no reason for adopting the honourable member's
view on that point. The "objects and reasons" of the Bill were as follow:—"Ordinance
8 of 1900, providing for a Land Court for the purpose of hearing and determining
claims in relation to land in the New Territories, was assented to by the Governor on
28th March, 1900. It was duly submitted for Her Majesty's directions, and the
Ordinance, generally, was approved; but the following amendments, on minor points,
were suggested by the Secretary of State as desirable:—

30 "(a.) The substitution, in section 18, of the words "by the Governor in
Executive Council" for the words "by the Court," in relation to the fixing the rate of
money rent on substitution of rent in produce. This is because the Court is not
intended to be a permanent institution. (b.) Provision being made, in section 19, for
allowing payment of an annual money rent as an alternative to the payment of a
capital sum, in cases of the redemption of a produce rent payable in perpetuity. (c.)
The addition of a section providing that the Court shall be brought to an end as soon as
the work for which it is appointed has been performed.

40 "Ordinance 8 of 1900 is repealed by this Ordinance and re-enacted with the
amendments mentioned. One other amendment has been made, at the suggestion of
the Members of the Land Court. They thought it desirable that the value of disputed
claims, which might be dealt with by one member of the Court, should be raised, with
a view to expediting the business of the Court. The maximum has, accordingly, been
raised from two hundred to five hundred dollars. Appointments made under Ordinance
8 of 1900 have been continued as valid, and, in order to prevent any confusion in

Item
No. C20

citing Ordinance 8 of 1900 and the present Ordinance by their short titles, the short title to the present Ordinance has been changed to The New Territories Land Court Ordinance, 1900.”

Debate on
New Territories
Land Court
Bill 1899
(continued)

The Council then went into committee to consider the Bill clause by clause, and on the Council resuming the Bill was read a third time and passed.

ITEM NO. C21

Item
No. C21

LAND COURT (NEW TERRITORIES) ORDINANCE, NO. 8 OF 1900

Land Court
(New Territories)
Ordinance,
No. 8 of
1900

An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes.

LS

HENRY A. BLAKE,
Governor.

[28th March, 1900.]

10 BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Land Court (New Territories) Ordinance, 1900, and it shall apply only to the New Territories, and to claims in relation to land therein.

Short title
and applica-
tion.

2. In this Ordinance, unless the context otherwise requires, the following terms and expressions shall have the respective meanings hereinafter assigned to them, that is to say:—

Interpreta-
tion.

20

“The Court” means the Land Court constituted under this Ordinance, and shall include any member thereof acting alone in matters where one member has jurisdiction conferred upon him by this Ordinance:

“Land” includes buildings thereon and also land covered with water or within the flow of the sea:

“Claim in relation to land” includes a claim to a right of common or other profit or benefit, or to any easement or other interest from, in, upon, or over or in respect of any land:

30

“New Territories” means the additional territories acquired by this Colony under the Convention dated the 9th day of June, 1898, between Her Majesty Queen Victoria and His Imperial Majesty the Emperor of China for the enlargement of the limits of this Colony, including the City of Kowloon.

3. All claims in relation to land in the New Territories shall, subject to the provisions of this Ordinance, and notwithstanding any previous registration, be heard and determined by a Land Court which shall consist of two members, namely, a President and one other member, to be appointed by the Governor:

Claims to
titles to be
heard by the
Land Court.
Composition
of the Court.

Provided always that one member of such Land Court sitting alone shall have jurisdiction to hear and finally determine,—

Item
No. C21

Land Court
(New Territories)
Ordinance,
No. 8 of
1900
(continued)

- (a.) Any undisputed claim, and
- (b.) Any disputed claim in which the value of the claim shall not, in the opinion of such member, exceed two hundred dollars, and
- (c.) Any disputed claim in which the parties consent to have such claim determined by one member:

Provided also, that in case of a difference of opinion when both members are sitting together, the decision of the President shall prevail.

- | | | |
|--|---|----|
| Governor to appoint Registrar. | 4. There shall be a Registrar of the Court (hereinafter referred to as the Registrar), to be appointed by the Governor. Such Registrar shall keep a record of all proceedings and decisions of the Court, receive all claims and communications to the Court, and issue all orders and directions of the Court. | 10 |
| Powers of Court. | 5. The Court or any member thereof shall, for the purposes of this Ordinance, have the following powers:— | |
| Time, form, and manner of presenting claims. | (1.) To direct within what time claims in relating to land in any specified place, village, or district in the New Territories shall be presented to the Court, and in what form and manner such claims are to be presented. | |
| Notification to be made in village. | (2.) To cause to be advertised or publicly notified in any place, village, or district in the New Territories and in such manner as the Court may direct, notice of the time within which such claims must be made, and the form and manner of making such claims. | 20 |
| Time and place of hearing claims. | (3.) To fix the dates and times and places for the hearing of such claims and to cause notice of such dates and times and places to be given to claimants in such manner as the Court may direct. | |
| General additional powers. | (4.) And generally to do all such things as appear to the Court to be necessary for the enforcement of its orders and for the better and more effectual carrying out of the purposes of this Ordinance. | 30 |
| Further powers of Court respecting witnesses, the production of documents and enforcing any order of | 6. For the purposes of this Ordinance, the Court or any member thereof shall have powers similar to those vested in the Supreme Court of this Colony in any suit or action in respect of the following matters, viz:—

(1.) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise.

(2.) Compelling the production of documents. | |

- (3.) Punishing persons guilty of contempt of the Court or of any order of the Court.
- (4.) Ordering inspection of property.
- (5.) Making and enforcing any order which may be necessary to the proper hearing and determination of any question before the Court.

Court.

Item
No. C21

Land Court
(New Territories)
Ordinance,
No. 8 of
1900
(continued)

10 The Court may exercise all or any of such powers for the purposes of any claim before the Court to the same extent as the Supreme Court might exercise them or any of them for the purposes of any suit or action.

7. The Court may, if it thinks fit, approve and give effect to any compromise or arrangement arrived at with reference to any claim in relation to land irrespective of the strict rights and obligations of the parties.

Compromise
of claim.

20 8. Where the circumstances of the case are such that the Court deems it right and expedient that the expenses of any party or witness should be paid by any other party making or opposing any claim heard and determined under this Ordinance, the Court may fix the amount of such expenses and may order payment thereof to be made by such other party accordingly. Such order may be enforced in the same manner as a similar order of the Supreme Court can be enforced.

Expenses of
witnesses.

9. Any member of the Court shall, for the purposes of any enquiry, have power to enter and view any premises or property, and also to authorize any person nominated by such member to enter and view any premises or property for the like purpose.

Power to
enter and
view.

30 10. If it shall appear to the Court that any witness has committed wilful and corrupt perjury the Court may, for the purpose of punishing such perjury, exercise powers similar to and to the same extent as those conferred on the Supreme Court by section 23 of Ordinance 12 of 1873 for the punishment of perjury in any cause, suit, or action.

Power of
Court with
respect to
any witness
committing
perjury.

11. Any summons, order, warrant, or direction of the Court shall be deemed to be duly made with the authority of the Court if signed by the Registrar, and any such summons, order, warrant, or direction so issued in connection with and for the purposes of any claim shall be equivalent to any form of summons, order, warrant, or direction issued in any action or suit in the Supreme Court for enforcing the attendance of witnesses, or compelling the production of documents or otherwise for the purposes of any suit or action.

Summons,
warrant,
etc. to be
signed by
Registrar.

40 12. No barrister, procter, attorney, or solicitor shall be permitted to appear on behalf of any party in any case before the Court, except by the special permission of the Court.

Legal
practitioners.

<p>Item No. C21 <hr/>Land Court (New Territories) Ordinance, No. 8 of 1900 (continued)</p>	<p>Court may allow or disallow claim.</p> <p>Title where claim allowed.</p>	<p>13. The Court may allow or disallow any claim in relation to land or allow the same as to part thereof, or for such period or at such rent and on such other conditions as may appear to the Court to be equitable and just.</p>	
		<p>14. In cases where the Court allows the claim or part of the claim, such claim and its allowance shall be reported by the Registrar to the Governor in due course in order that a title appropriate to the case may be granted. If, however, in any particular instance, the Governor deems it inexpedient, having regard to the public interests of the Colony, that such title should be granted, the matter shall be referred back to the Court to decide what compensation shall be paid to the claimant or claimants, and the amount awarded by the Court shall be paid by the Government to such person or persons as the Court may direct. The decision of the Court as to the amount of compensation shall be final.</p>	<p>10</p>
	<p>Land declared property of the Crown. Who to be deemed trespassers.</p>	<p>15. All land in the New Territories is hereby declared to be the property of the Crown, during the term specified in the Convention of the 9th day of June, 1898, hereinbefore referred to, and all persons in occupation of any such land, after such date as may be fixed by the Governor by notification in the <i>Gazette</i>, either generally or in respect to any specified place, village, or district, shall be deemed trespassers as against the Crown, unless such occupation is authorized by grant from the Crown or by other title allowed by the Court under this Ordinance, or by license from the Governor or from some Government officer having authority to grant such license, or unless a claim to be entitled to such occupation has been duly presented to the Court and has not been withdrawn or heard and disallowed.</p>	<p>20</p>
	<p>Appeal.</p>	<p>16. In case any claimant shall be dissatisfied with the decision of the Court and the Court shall certify that the value of the claim is over five thousand dollars he may, within fourteen days from the date of such decision, apply to the Chief Justice of the Supreme Court for leave to appeal to the Full Court, and the Chief Justice may grant such leave on such terms as to notice, costs and other matters as he may in his discretion think fit. If leave to appeal is granted, such appeal shall be heard by the Full Court. The procedure to be followed on appeals and the hearing thereof shall be, as nearly as may be, the same as is from time to time laid down by law in the case of appeals from the Puisne Judge to the Full Court. No writ of <i>certiorari</i> shall be with regard to the proceedings of the Court.</p>	<p>30</p>
	<p>Form of title.</p>	<p>17. Titles to be granted under this Ordinance shall be in such form or forms as may from time to time be directed by the Governor.</p>	<p>40</p>
	<p>Payment of rent in money in- stead of in produce.</p>	<p>18. In any case of any land in the New Territories being held under an agreement to pay rent in produce, it shall be lawful for the tenant of such land to pay a rent in money instead of such rent in produce, according to a rate, which shall be fixed each year by the Court, and published in the <i>Gazette</i> as the fair commutation price of such</p>	

produce.

19. In any case where land in the New Territories is held under an agreement to pay a rent in produce in perpetuity, it shall be lawful for the person who is liable to pay such rent, with the consent of the Court, to redeem his liability to pay such rent by paying to such person as the Court may direct such capital sum of money as the Court may, under all the circumstances of the case, consider to be fair and reasonable.

Redemption
of rent in
produce.

Item
No. C21
Land Court
(New Territories)
Ordinance,
No. 8 of
1900
(continued)

10 20. From the date of the coming into operation of this Ordinance, no rent in produce shall be reserved in any agreement for the occupation of land in the New Territories. If any rent in produce is so reserved after the said date, then such rent shall not be recoverable in any Court of law or by any legal process or proceedings.

No rent in
produce to
be reserved
after certain
date.

21. The Governor shall have power, from time to time to appoint such other officers as he may deem necessary to assist the Court in the execution of its duties, power, and authorities, and shall also have power to revoke any appointment made under this Ordinance at any time, and also, if he deems it necessary, to make any new appointment in lieu thereof.

Appoint-
ments,
revocation
and new
appoint-
ments.

20 Passed the Legislative Council of Hongkong, this 22nd day of March, 1900.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 28th day of March, 1900.

F. H. MAY,
Acting Colonial Secretary

ITEM NO. C22

PETITION BY MR. T. H. WHITEHEAD

Legislative Council Chambers,
Hongkong, 24th March, 1900.

To The Right Honourable
Joseph Chamberlain,
Secretary of State for the Colonies,
&c, &c, &c,

Item
No. C22

Petition
by Mr.
T. H.
Whitehead
dated
24th March
1900

Sir,

10 I have the honour to hand you herewith copy of my Protest laid by me upon the table of the Legislative Council of Hongkong at its last meeting under the provisions of Rule 32 of the Standing Rules and Orders of the Council.

20 This Protest embodies a statement of my reasons for dissenting from the proceedings of the Council in connection with a Bill entitled "An Ordinance to facilitate the hearing determination and settlement of land claims in the New Territories to establish a Land Court and for other purposes." There were certain technical objections to proceeding with the Bill in its present form which are of little practical importance and with reference to which I would not trouble you if I had no more substantial objection to the Bill, but after careful consideration and after taking the best advice available, I am so fully convinced that the provisions of the Bill are unjust to the Chinese population of the New Territories and are a violation of the provisions of the Convention under which those Territories have been leased to the Crown that I deem it my duty to call your attention to them, to pray you to have it examined and reported on, and to direct its suspension or amendment.

The constitution of the Legislative Council at the present time is such that it is entirely under the control of the local Government and it is extremely difficult if not impossible to obtain an intelligent examination or discussion of any Government measure. I have therefore to have recourse to extraordinary measures to secure adequate consideration of objections.

30 I have the honour to be,

Sir,

Your most obedient humble servant,

(Sd.) T. H. WHITEHEAD

ITEM NO. C23

EXTRACTS FROM COLONIAL OFFICE FILE NO. 129/298

**Item
No. C23**

**Extracts
from
Colonial
Office
File No.
129/298**

HONG KONG

No. 13316

DESPATCH

S.O.
13316
30 APR 00

134

No. 126
1900
20 Mar
Previous Paper:
No. 12603
This is the 19th in the series and is the 25th in the series.
2270 (Date)
Next Paper:
No. 12613

(Subject.)
Order 8. 1900
Land Court (New Territories)

submit also proposals and constitution of the Court
& hold by 2 H. Whitehead against the Order: request to be made.

Three copies to be made (Minutes) See also ^{Article 25th of} 12603.

Mr Udall This Ordinance establishes a Land Court to deal with all claims to land, or to any rights in connection with land, in the New Territory at Hong Kong.

Par 3 practically provides that the Court shall be a three-man tribunal except in disputed cases where more than \$200 value is in question, when a President is added.


It is true that according to this Ordinance, either member can sit alone, but it is not intended (see para 3 & 4 of draft) that the junior member shall ordinarily sit alone. Mr. Lockhart had originally proposed a one-man court, and this par. is a compromise between that proposal and the original

DESPATCH

HONG KONG
No. 1 3 3 1 6

C.O.
13316
RECD
RECD 30 APR 00

134

Governor Blake	No. 126	(Subject)
1900 30 Mar		Ordce 8. 1900 Land Court (New Territories)
(illegible) previous Papers. N/12603		submits - also proposals (illegible) constitution of the Court & protest by <u>T.H. Whitehead</u> agst the Ordce: <u>requests telc reply:</u>
<div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 20px;">  </div> <div style="display: flex; flex-direction: column; align-items: center;"> <div style="margin-bottom: 10px;">19 May</div> <div style="margin-bottom: 10px;">150 25 May</div> <div style="margin-bottom: 10px;">Further ansd</div> </div> <div style="margin-top: 20px;"> (illegible) (Ordce) (illegible) </div> </div>		Spare copies to Library (Minutes) Noted (illegible) See also 12603 <u>Mr Udal</u> This Ordinance establishes a Land Court to deal with all claims to land, or to any rights in connection with land, in the New Territory at Hong Kong. <u>Par 3</u> practically provides that the Court shall be a one-man tribunal except in disputed cases where more than \$200 value is in question, when a President is added. It is true that according to this section of the ordinance, <u>either</u> member can sit alone, but it is (illegible) intended (see pars 3 & 4 of desp) that the junior member shall ordinarily sit alone. Mr. Lockhart had originally proposed a one-man court; and this par is a comprom- ise between that proposal and the original
Subsequent Paper. (illegible) 21513		

Bill, which gave three members.

There is no provision in this section
elsewhere for either member being legally
qualified. Mr. Lockhart, whom Mr. Johnson
consulted about this ordinance, thought
it unnecessary, holding that it was not so
much a case for lawyers as for experienced
men who could detect the truth in a mass
of confused lying. The original Bill provided
for one legal member (the Puisne Judge -
President), and two laymen - Director of
Public Works & Deputy Land Officer.
I gather from Mr. Lockhart that this
idea was abandoned because of the
difficulty of getting public officials to
leave their regular duties to sit on a
land court, and especially if one was only
an acting officer. The Governor proposes,
however, that the two members shall
in the first instance be lawyers. Mr.
Gompertz is a barrister & civil servant, and,
I believe, knows Chinese. He will do most of
the work. Mr. Pollock, the President, is
well qualified in this respect - see far

Par 4 provides for a Registrar of the
Court, who, according to Par 6, ^{is to be}
Mr. Seth, Deputy Registrar of the Supreme
Court.

Par 5 tells relate to the powers and
procedure of the Court. I see nothing special
to note, except that they can give a
time, within which claims must be made.
Mr. Lockhart tells us this is very
important in dealing with (Chinese), and

X Yes.

3 desk

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I gather from Mr. Lockhart that this idea was abandoned because of the difficulty of getting public officials to leave their regular duties to sit on a land court, and especially if one was only an Acting Officer. The Governor proposes, however, that the two members shall in the first instance be lawyers. Mr. Gompertz is a barrister & Civil Servant, and, I believe, knows Chinese. He will do most of the work. Mr. Pollock, the President, is well qualified in this respect - see par 3 desp

X Yes
(sd.)
(illegible)

Par 4 provides for a Registrar of the Court, who, according to par 4 ^{of despatch} is to be Mr. Seth, Deputy Registrar of the Supreme Court.

Pars 5 to 11 relate to the powers and procedure of the Court. I see nothing special to note, except that they can fix a time within which claims must be made. (Mr. Lockhart tells me this is very important in dealing with Chinese), and

n. 5 (2)

ss. 6, 9, 10.

[2. 7]

8.

can advertise it in villages. They have the usual powers as to summoning witnesses, deposing, and the like, entering and viewing, punishing, seizing, etc.; they can approve and give effect to a compromise, and order payment of witnesses' expenses by the other side.

Section 12 forbids the appearance of counsel in cases, except by special permission.

Section 13 gives the Court power to allow or disallow a claim wholly or in part, or for such period & rent as they decide is just.

Section 14. The Governor is to grant a title if the claim (or part) is allowed, unless he considers it inconsistent in the public interests to do so, when the Court is to assess compensation to the claimant, in lieu of title.

This seems an extraordinary provision, but it is explained in the Attorney General's report, and should, I think, be sustained.

Section 15 declares all land in the N.T. the property of the Crown. Gov't is to fix a date after which all occupants, without title grant or licence, who have not ^{got} a claim awaiting hearing, are to be trespassers.

I do not think it is sufficient that this date should be notified in the Gazette. It should be published throughout the New Territory, either generally or in any specified place, etc.

Section 16 provides an appeal to the

s. 5

ss. 6, 9, 10.

s. 7

s. 8

can advertise it in villages. They have the usual powers as to summoning witnesses, dealing with contempt, entering and viewing, punishing perjury, etc.; they can approve and give effect to a 135 compromise, and order payment of witnesses' expenses by the other side.

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Section 16 provides an appeal to the

Supreme Court, when the value of a claim is over \$5,000. The Chief Justice may grant leave to appeal, if application is made to him within 16 days of the Land Court's decision.

Section 18 makes it lawful for produce-rents to be paid in money at a rate fixed annually by the Court.

I do not understand this. The Governor's Ord. contemplates - see § 2 of Ord. - that the Court shall be abolished when its work is done, though there is no provision for its cessation ~~when~~ in the Ord. But this section seems to contemplate its existing forever - a very undesirable state of things? For "Court" substitute "Governor in Executive Council" B

Section 19 provides for the redemption of a perpetual produce rent by payment of a sum of money, to be fixed by the Court.

Section 20 provides that from the date when this Ord. comes into operation, no rent in produce shall be reserved in any agreement for the occupation of land; if any such rent is, it shall not be recoverable at law.

The Ordinance has presumably already come into operation, as there is no reservation clause. Unless it has been widely published in the D.T., this provision - which, in any event, seems unnecessary - may be a distinct hardship. C

Supreme Court, when the value of a claim is over \$5,000. The Chief Justice may grant leave to appeal, if application is made to him within 14 days of the Land Court's decision.

Section 18 makes it lawful for produce - rents to be paid in money, at a rate fixed annually by the Court.

I do not understand this. The (illegible) Governor clearly contemplates -see § § 3/ of desp - that the Court shall be abolished when its work is done, though there is no provision for its cessation in the Ordce. But this section seems to contemplate its existing for ever - a very undesirable state of things? For "Court" substitute "Governor in Executive Council".

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Mr. Lockhart strongly supports the Governor's view, as to the necessity for an early settlement of land claims in the New Territory. 136

The salaries proposed are, I think, not unreasonable. Mr. Pollock, the occasional President, will get \$50 a sitting (not more than \$6,000 in all), and \$60 a month for travelling expenses. Mr. Gumpertz is to get \$6,000, & the same travelling allowance. Mr. Seth, the Registrar, is to have \$5,600. Nothing is said about a travelling allowance, but I suppose he will get it too.

Mr. Tsai (who has done good work in the New Territory) is to be Interpreter, apparently on his present salary. A Translator is to be employed at \$75 a month.

Dr. Ho Kai is to be retained at \$1,000 a year to advise the A.C. in questions of Chinese land tenure, so long as the Land Court exists.

I do not think this expenditure at all excessive, if it is. H. B. Lake has got the right end of it.

Mr. Whitehead's protest is based on the contention that the Bill as it left the Law Committee is "totally different" from the Bill as it entered that Committee. The Law Committee, he says, had no authority to alter the Bill; the amended Bill was never gazetted or

Mr. Gumpertz is to get \$6,000 & \$5600
Seth is to get \$5,600
Pollock is to get \$600 & \$600
Tsai is to get \$750 & \$750
Ho Kai is to get \$1,000 & \$1,000
Lake is to get \$1,000 & \$1,000

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Registrar, is to have \$5,400. Nothing is said about a travelling allowance, but I suppose he will get it too.

Mr. Tsoi (who has done good work in the New Territory) is to be Interpreter, apparently on his present salary. A Translator is to be employed at \$75 a month.

Dr. Ho Kai is to be retained at \$1,000 a year to advise the A.G. in questions of Chinese land tenure, so long as the Land Court exists.

I do not think this expenditure at all excessive, if Sir H. Blake has got the right sort of men.

Mr. Whitehead's protest is based on the contention that the Bill as it left the Law Committee is "totally different" from the Bill as it entered that Committee. ^{The}~~that~~ Law Committee, he says, had no authority to alter the Bill; the amended Bill was never gazetted or

X Mr Gompertz is
Asst. Col. Sec. (Salary
\$4800 to \$5400).
At present he is actg.
Police Magte. (salary
(illegible) \$6000 to \$7200)
X Present salary,
\$3600 to \$4200.

B&L (X)-12435-2000-1-99
16155-2000-1-99

published in the U. T. it seriously affects
existing private rights, and is a
violation of the provisions of the Convention.

I do not think that the
Bill was "essentially" or "in substance
totally different" in its original and
final shape. It is a question of
determining what private rights exist,
I do not think the claim that
"all parties affected" have the right
to be heard by Council against it can
possibly be sustained. The argument
that the Ord. violates the Convention
apparently refers to part of that
document, but as this Ord. ~~is~~
provides neither for "expropriation" nor
for "expulsion of the inhabitants" of
the leased territory, nor provides for
the ~~annexation~~ ^{concession} without compensation
of land for public purposes, I think
the objection cannot be sustained.

Whether the amended Bill
not to speak of the original draft or the
Ord. as passed - ought not to have
been translated into Chinese and
published in the New York, is
another question, in which I think there
is some force.

Mr Cox
Mr Lucas

A.F. 12/5

Mr. Diddis has dealt very
fully with his Advices & Concerns
in his letter to ~~the~~ ^{particular} ~~the~~
at A. B. & D. He gave his sug-

D
(C-908)
herewith

I

published in the N.T.; it seriously affects existing private rights, and is a violation of the provisions of the Convention.

I do not think that the Bill was "essentially" or "in substance totally different" in its original and final shape. As it is a question of determining what private rights exist, I do not think the claim that "all parties affected" by it "have the right to be heard by Counsel" against it can possibly be sustained. The argument that the Ordce violates the Convention apparently refers to par 6 of that document; but as this Ordce ~~(illegible)~~ provides neither for "expropriation" nor for "expulsion of the inhabitants" of the leased territory, nor provides for the ^{confiscation} ~~annexation~~ without compensation of land ^{required} / for public purposes, I think the objection cannot be sustained.

Whether the amended Bill — not to speak of the original dft or the Ordce as passed - ought not to have been translated into Chinese and published in the New Territory is another question, in which I think there is some force

Mr. Cox (sd.) A.F.

Mr. Lucas 12/5

Mr. Fiddian has dealt very fully with this Ordinance & I concur particularly in his comments ~~(illegible)~~ at ~~XX~~- A.B. & D. I leave his sug-

D

(-908)
(herewith)

II

otions at C & S. for consideration

I doubt whether anything could
be done now.

137

Sanctions, & schedule
for Schedule 1st, in terms
of his address minute

J. B.

12.5
to A. I think the point
aimed at by Mr. Fiddian
would be met without amending the
Ordinance by directing that the
notification to be issued under s. 5(2)
should be so worded as to make it
clear that if claims are not put in
before the date named, ~~that~~
occupants will hereafter be regarded
under s. 15 as trespassers.

to B. I agree with previous
minutes that the clause must be
amended.

to C. I amend s. 18 & 19
by making the commutation compulsory
in all cases, and not merely permissive;
and amend section 10 by altering
"from the date of the coming into
operation of this Ordinance" into
"from a date to be hereafter fixed
by proclamation of the Governor in
Council" such date to be fixed after
the Bill has issued its first notice.

Agree HBC
CPE

Agree HBC
CPE

I should leave
this permissive
- compulsory commutation
if produce for money in
writing cases might
be handled by CPE

the same to
HBC

B. L. (1) - 12645 - 2000 - 1-19
22317 - 1000 - 10-90

gestions at C & E for your consideration.

I doubt whether anything can be done now.

137

? Sanction & acknowledge Mr. Whitehead's protests in terms of Mr. Fiddian's minute.

(sd.)(illegible)

12.5

As to A, I think the point arrived at by Mr. Fiddian would be met without amending the Ordinance by directing that the notification to be issued under s.5(2) should be so worded as to make it clear that if claims are not put in before the date named, the occupants will hereafter be regarded under s.15 as trespassers.

I agree (sd.)H.B.L. C.P.L.

As to B, I agree with previous minutes that the clause must be amended.

I agree (sd.)H.B.L. C.P.L.

As to C, amend ss. 18 & 19 by making the commutation compulsory in all cases, and not merely permissive; and amend section 10 by altering "from the date of the coming into operation of this Ordinance" into "from a date to be hereafter fixed by Proclamation by the Governor in Council"; such date to be fixed after the Gov't has issued its first notific-

I should leave this permissive -compulsory commutation of produce for money in existing cases might work hardship

(sd.) C.P.L.

(illegible) minute (sd.) H.B.L.

section under s. 18 (as amended).

But as to s. 19, I do not understand why a producer rent in perpetuity should in all cases be commuted for a capital sum; and this section should, I think, be further amended by allowing as an alternative an annual money rent, as in s. 18. f. to D,

Jay
HRC
CPT

I agree.
f. to E, I think the greatest ~~should~~ ^{should be given to} this Ordinance and to others of a similar nature; and we should say that we have no doubt that the notification issued by the Controller s. 5 f. will fully explain to the people the nature of the Ordinance and give them ample time to take what steps they may wish.

Jay
HRC
CPT

I think that we may accept the Gaon's proposals as to personnel and pay.

Jay
HRC
CPT

added to the Ordinance to bring the Court to an end when its work is done.

internal
HRC

Telegraph: - a pronouncement
Mr. 126. ^{proposals} ~~approved~~ but ^{follows} ~~described~~ ^{marketing} ~~as~~ ^{to} ~~be~~ ^{immediately} ~~sent~~ ^{to} ~~the~~ ^{concerned} ~~authorities~~ ^{to} ~~be~~ ^{considered} ~~in~~ ^{the} ~~light~~ ^{of} ~~the~~ ^{present} ~~circumstances~~ ^{and} ~~to~~ ^{be} ~~acted~~ ^{upon} ~~thereon~~ ^{as} ~~soon~~ ^{as} ~~possible~~ ^{practicable}.

3 15 hrs
Recd. 19/3
TW

all 1/16/5

ation under s.18 (as amended).

But as to s.19, I do not understand why a produce rent in perpetuity should in all cases be commuted for a capital sum, and this section should, I think, be further amended by allowing as an alternative an annual money rent, as in s.18.

I agree
(sd.) H.B.L.
C.P.L.

As to D,

I agree.

As to E, I, think the greatest ~~(illegible)~~-Mr.

~~Leekhart-on-the-e~~ publicity possible should be given to this Ordinance and to others of a similar nature; and we should say that we have no doubt that the notification issued by the Court under s.5(2) will fully explain to the people the nature of the Ordinance, and give them ample time to take what steps they may wish.

Yes
(sd.) H.B.L.
C.P.L.

I think that we may accept the Governor's proposals as to personnel and pay.

Yes
(sd.) H.B.L.
C.P.L.

And a clause should be added to the Ordinance to bring the court to an end when its work is done.

Certainly
(sd.) H.B.L.

Telegraph:-
daylanding apronman
Your desp. No. 126 Proposals
dutolote
approved, but desp. follows by
associable (illegible)
mail as to amending Ordce on
moisure
certain minor points.

3.15 p.m.
Sent 19/3
(sd.) T.W.

(sd.)(illegible)
14/5

Mr Cox

I attach a letter from ¹³⁸ Mr. Lockhart, to whom I send a copy of the Ordinance with some notes.

As regards the absence of opinion for the cessation of the Court when its work is done, I cannot agree with him. It is an extraordinary Commission vested with judicial powers for the purpose of giving ~~authoritative~~ valid titles to bona fide tenants & owners of land in the New Territory.

By clause 3 of the Ordinance, however, it is empowered to hear and determine all claims in relation to land in the New Territory. Claims to land with, I presume, still arise, even after the present owner and occupier of every square inch of land and every easement in connection therewith have been authoritatively determined by this Court. It is important that such claims should be settled, as the Governor says, "by the regular Court or the Squatters' Board." Under this Ordinance, it seems to me that such claims would have to be heard by this Court.

1876

27 of desk,

177- 184-20
1876- 200-1-2

I agree.
Please see marginal notes.

A.F. 16/5

20/5
16/5
I am not quite satisfied

Mr. Cox

I attach a letter from Mr. Lockhart, to whom I send a copy of the Ordce with (illegible)(illegible) notes.

As regards the absence of provision for the cessation of the Court when its work is done, I cannot agree with him. It is an extraordinary commission vested with judicial powers for the purpose of giving ~~authoritat~~ valid titles to bona fida tenants & owners of land in the New Territory. By clause 3 of the Ordce, however, it is empowered to hear and determine all claims in relation to Land in the New Territories. Claims to land will, I presume, still arise, even after the present owner and occupier of every square inch of land and every easement in connection therewith have been authoritatively determined by this Court. It is important that such claims should be settled, as the Governor says, "by the regular Court or the Squatters' Board." Under this Ordinance, it seems to me that such claims would have to be heard by this Court.

1

I agree
(sd.) H.B.L.

(illegible) of desp,

12435-2000-1-99
16199-2000-1-99

(sd.) A.F.
16/5

I agree.
(illegible)

Mr. Lucus

Please see marginal notes. I am not quite certain

that I follow Mr Johnson's argument as to
the amend^t of § 20. If no amend^t is
made any aspects as to rent payable in
produce since the order came into force
will be void. If we alter that as Mr Johnson
proposes ^{sub-optimal, by max} during the interval between
the coming into operation of the order -
the former proclamation will presumably be
valid, or else no receiving further or
difficult questions might arise as to the
validity of such aspects. I'd prefer not
present advised to leave this clause alone.
? Subject to above & minor amendments
proceed as before.

I agree
CP.

13 C
May 17

There is a certain amount of risk
in a law of this kind but there is
more risk of evil from delay.

Telegraph as proposed & in a despatch
Sanction but direct amendments as above
& suggest that - to meet Mr Whitehead's
technical objections - the whole law with
the amendments should be reintroduced.

Mr Compt
to this

Add words emphasising the necessity of
giving full notice and ample explanation
to the villagers

CPD
18 May above

18 May 1907

that I follow Mr. Johnson's argument as to the amendt of §20. If the amendt is made any agreeets as to rent payable in produce since the Ordce came into force will be void. If we alter that as Mr Johnson proposes / ^{such agreeets, if any, made} during the interval between the coming into operation of the Ordce - the Govn proclamation will presumably be valid, & I see no necessity for this & difficult questions might arise as to the validity of such agreeets. I wd prefer as at present advised to leave this clause alone.

I agree
(sd.)C.P.L.

Subject to above & marginal notes proceed as proposed.

(sd.) H.B.L.

May 17

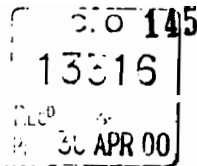
There is a certain amount of risk in a law of this kind but there is more risk of evil from delay.

Telegraph as proposed & in a despatch Sanction but direct amendments as above & suggest that-to meet Mr. Whitehead's technical objections - the whole law with the amendments should be reintroduced. Add words emphasising the necessity of giving full notice and ample explanation to the villagers.

Mr. Cox agrees
to this

(sd.) C.P.L. I agree
18 May at once

(sd.) (illegible) May 19



ATTORNEY GENERAL'S OFFICE,

.....24th. March1900.

Report on Ordinance *to S.* of 1900.

I have examined the accompanying Ordinance, entitled
**An Ordinance to facilitate the hearing, determina-
tion, and settlement of land claims in the New
Territories, to establish a Land Court, and for
other purposes.**

and I am of opinion that the Ordinance is one which is not contrary to the

Governor's Instructions.

Objects and Reasons.

By Her Majesty's Order in Council of 20th.
October 1898, it was ordered that the territories
within the limits and for the term described in the
Convention of the 9th. June 1898, should be and the
same were thereby declared to be part and parcel of
Her Majesty's Colony of Hongkong in like manner and
for all intents and purposes as if they had originally
formed part of the said Colony.

It

It was understood by the Convention that there would be no expropriation or expulsion of the inhabitants and it, therefore, became necessary to constitute some tribunal which should have authority to deal with the numerous claims in relation to the land in the new territories which were certain to be made on behalf of those inhabitants, ^{as well} as by others. It seems clear that for the term mentioned in the Convention, namely 99 years, (from I presume the 1st. July 1898, when the Convention came into force) the land in the New Territories belongs to the Crown, subject to the allowance of bona fide titles existing when the new Convention came into force. Now, although, as pointed out in the Secretary of State's Despatch of the 6th. January 1899, "the examination into the titles should not be of too technical a nature and where lengthened occupation or improvements can be shown with no adverse claims from private individuals, a Government title should be granted even if no other is forthcoming," yet it is clear that claims must be looked into, to see if they are bona fide.

I should not be surprised to find claims asserted to nearly all the land, claims some of which would not have been allowed by the Chinese Authorities, if they had remained in possession.

It seems to me that the best way will be to deal liberally with bona fide claims, but it is not at all unlikely that there will be also some utterly groundless pretensions advanced to right over large tracts of land and especially of foreshore; nor, from what I already hear, is it unlikely that, in some cases, forged Chinese documents will be forthcoming. Not only will simple rustics have to be dealt

dealt with but also various designing persons capable of appreciating the rise in the value of various parts of the land certain to take place in the near future when roads are completed and communication with Hongkong proper, becomes easy.

The Ordinance is drawn, to a considerable extent, upon the lines of the Squatters Ordinance, 1890 (No. 27 of 1890) which has, I think, worked satisfactorily, but which could have worked more expeditiously had the Board been composed of fewer members. It is not always easy to get a quorum of at least three very busy men together from different departments, for a fairly long sitting.

Bearing this in mind, section 3 confers considerable jurisdiction on one member sitting alone. But, as there will also be some cases involving important principles or where the claims advanced are of considerable value, the addition of the second member viz a President will give additional weight to the decisions of the Court when it is necessary for both members to sit together.

Section 4 provides for the appointment of a Registrar. If he has tact and knows the ways of the Chinese and their language he will greatly facilitate the successful working of the Ordinance.

Section 5 and 6 are very similar to sections 4 and 6 of the Squatters Ordinance.

Section 7 sanctions friendly compromises of disputed rights.

Section 8 empowers the Court to make those who, by false claims or improper opposition, put the other side to unnecessary expense, pay the costs of witnesses, &c.

Sections

Sections 9, 10 and 11 are similar to sections 7, 8, and 9 of the Squatters Ordinance.

Section 12 is intended to prevent Chinese in the New Territories who are not accustomed to lawyers, being compelled either to pay what, to them, would be very large fees or else to find themselves at a disadvantage as compared with rival claimants who had long purses and had engaged legal assistance. Section 13 will give an opportunity of dealing fairly with people who have squatted on land without any title and improved it and are willing to pay a small rent.

Section 14. I think it important that all the inhabitants should feel that during the 99 years, they are holding from the Crown and not from the Emperor of China or the Chinese Authorities, but this clause leaves the Governor to settle the appropriate form of title.

Some Chinese may claim perpetual titles but I have grave doubts whether these titles would have been recognised in China as lasting any longer than during such time as the rent was duly paid and the land cultivated or occupied.

The latter part of section 14 (compare with section 12 of the Squatters Ordinance) is intended to meet such cases as for instance, a man producing a sort of title from the Sun On Magistrate giving him vague fishery and foreshore rights for which his grandfather, as he alleges, paid some trifling sum. The use he makes of his claim is to "squeeze" the poor fishermen if they fish near his preserves and "squeeze" them again if they dry their nets on what he would call his foreshore. He alleges that his rights go

to

to the top of the hill and I noticed that, in December 1899, he appears to have sold his rights to two Europeans in Hongkong. Of course this will develop shortly into a claim to land and also large and valuable foreshore rights put forward by Europeans. The man in question not long ago let out his right for \$9 a year. It would certainly be to the public interest to clear the foreshore and waters of claims of this kind even if trifling compensation had to be given.

Section 15, When, in any District the Land Court has got in and decided on all claims, persons occupying without any title may fairly be treated as trespassers from such date as may be notified by the Governor. Section 16 gives a right of appeal when the value of the claim is over \$5000.

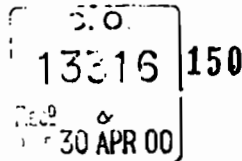
Section 17 leaves the settlement of the forms of title to be granted, to the Governor.

Section 18, 19 and 20 deal with the numerous cases where the occupier has to pay in produce instead of money. This form of payment is undesirable and leads to unfair treatment of money of the occupiers and dissatisfaction.

Section 21 enables the Governor to make from time to time, all such appointments as may be necessary for the proper efficiency of the Court.

(Sd.) W. Meigh Goodman,
Attorney General.

Enclosure 2



PROTEST BY THE UNDERSIGNED MEMBER OF THE LEGISLATIVE COUNCIL
OF HONGKONG MADE UNDER THE PROVISIONS OF RULE 32 OF THE
STANDING RULES AND ORDERS OF THE COUNCIL.

1. WHEREAS at the meeting of the Council held on March 15th, 1900, the Attorney General moved that the Council go into Committee to consider clause by clause a Bill entitled—

“ An Ordinance to facilitate the hearing, determination and settlement of land claims in the New Territories, to establish a Land Court and for other purposes.”

2. AND WHEREAS I opposed the said motion on the grounds that the said Bill was a totally different Bill from that read a second time on the 30th November last, and I submitted that it should be treated as a new Bill, re-introduced, read a first time and published in the *Gazette*, AND WHEREAS the majority of the Council was of another opinion, and the Council went into Committee, AND WHEREAS in Committee I moved that the consideration of the Bill in Committee be adjourned to allow the important alterations in the Bill to be considered by Honourable Members, AND WHEREAS the majority of the Council was of another opinion, AND WHEREAS I thereupon desired to have my dissent recorded, and gave notice that I would at the then next meeting of Council lay upon the table the reasons for my dissent, under Rule 32 of the Standing Rules and Orders of the Council: Now, therefore, I lay upon the Council table a statement of my said reasons.

3. On the 23rd November last a Bill entitled “The New Territories Land Court Ordinance, 1899” was introduced and read a first time and was, on the 25th November last, published in English only in the *Gazette*. The same Bill was read a second time on the 30th November last, and was referred to the Law Committee.

4. The Bill considered in Committee on the 15th March instant is in substance a totally different Bill from that read a first and a second time and referred to the Law Committee, and the Law Committee had no instructions or authority from this Council so to alter the said Bill.

5. The essential differences are as follows:—

- (a.) The original Bill proposed the constitution of a Court to consist of three Members designated in the Bill by their offices, one of whom was the Puisne Judge of the Supreme Court, and another of them an experienced Solicitor. The amended Bill proposes to constitute a Court of two members only, to be appointed by the Governor without any restriction or provision to secure the appointment of any person as a member thereof possessed of legal knowledge or training.
- (b.) The original Bill gave the proposed Court power to determine solely as to the right of existing owners and occupiers of land in the New Territories to obtain certificates or recognition of their titles from the Crown. The amended Bill gives the proposed Court power to hear and determine ALL claims to land of any kind whatsoever in the New Territory notwithstanding any previous registration and whether arising between the Crown and the occupiers or between owners, occupiers, or others.

- (c.) The original Bill was framed for the purpose of enabling existing titles to be verified and authenticated by certificate from the Crown, and for preventing occupation of land after refusal of such certificate without a fresh grant from the Crown. (See section 12.) The amended Bill by section 15 confiscates to the Crown all the land in the New Territories, disregards all former titles, however old or well founded, and declares all occupants of land in the New Territories trespassers from a date to be hereafter defined by the Governor unless they obtain fresh titles from the Crown.
- (d.) The original Bill was in accordance with the provisions of Article 6 of the Convention of the 9th June, 1898, for the cession of the New Territories. The amended Bill disregards and sets aside the provision of the said Convention against expropriation or expulsion of the inhabitants of the district included in the cession and declares the whole soil to be the property of the Crown.
- (e.) The original Bill permitted parties to be represented by Counsel and Solicitor before the Court thereby constituted. The amended Bill takes away that right.

6. The amended Bill has not been published in the *Gazette*; has never been translated into Chinese nor published anywhere in the New Territory. It is a Bill that seriously affects existing private rights and against which all parties affected have the right to be heard by Counsel. No opportunity has been afforded them of even knowing that such a Bill is under consideration.

7. For the above reasons I protest against the further proceeding with this amended Bill. It should be re-introduced and read a first time. It should be translated into Chinese, duly published in the New Territory, and ample time given the owners and occupiers of land there to consider it and if need be oppose it.

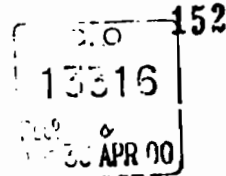
8. I further protest against the Bill as a whole and on its merits as being in violation of the provisions of the Convention of the 9th June, 1898, relating to the New Territories.

W. Whitehead

LEGISLATIVE COUNCIL CHAMBERS,
HONGKONG, 22nd March, 1900.

Enclosure 3.

COPY.



Memorandum on the Protest of Mr. Whitehead, by

• Mr. Goodman A.G.

On the 23rd. November 1899, a Bill entitled "the New Territories Land Court Ordinance" was read a first time, and on 30th. November, 1899; it was read a second time after being published in the Gazette of 25th. November 1899. It was then referred to the Standing Law Committee, consisting of the Acting Attorney General as Chairman, and Messrs. Keswick, Bellios, Ho Kai, and Wei A Yuk as other members.

The Standing Law Committee had suggested a good many amendments, and at that point I resumed office as Attorney General, having been acting for 10 months as Chief Justice during the absence of Sir John Carrington.

I at once considered the Bill and had a Print of it struck off with the amendments embodied, so that we might conveniently see the effect of the amendments with some others I thought desirable to submit to the Law Committee. Accordingly, the Law Committee again met, but unfortunately Mr. Keswick, being indisposed, was unable to attend.

The amendments in the amended edition of the Bill were approved, with 2 slight further amendments, suggested, and I had a further print of the Bill containing the whole of the amendments, struck off, so that Honourable Members of Council might be able to see what the effect of all the proposed amendments might be when incorporated in the Bill.

I then reported to the Council as Chairman of the Committee. (Report annexed.)

Had Mr. Keswick been able to attend the last meeting of the Law Committee I should have been able to give the

the Certificate mentioned in Standing Rules and Orders, No. 41; in which case, the amendments might, if the Council so desired, have been adopted en bloc.

The Orders of the day were sent to Members on 12th. March for the meeting on 15th., and I suggested the desirability of sending with the original Bill, a print of the Bill containing the proposed amendments, to each Member with the Orders of the day, so that they might, beforehand, have an opportunity of considering what would be the total effect of the amendments which I proposed to suggest in the original Bill. I was not aware that there was likely to be any opposition to any of those amendments. The title of the original Bill was "The New Territories Land Court Ordinance". This had been amended by the Law Committee into "An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court and for other purposes".

In the Orders of the day, the two Bills being sent to Members, the amended title was inserted by inadvertence. I did not myself notice it as I probably ought to have done, but my Report referred ^{to} the original Bill and by its original title, and the original Bill was the one brought on for the consideration of the Council as indeed was specially pointed out by His Excellency the Governor. (See p.3 Local Hansard Report, annexed.)

The original Bill was then considered, Clause by Clause and amended in Committee of the whole Council, so that when amended it assumed the shape of the print of the amended Bill.

To suggest that, because the amendments suggested by the Law Committee are somewhat numerous, the original Bill ^{be} must ^A be abandoned and a new Bill incorporating such amendments be read a first time, is a somewhat extraordinary suggestion, and such a course would lead to great delay

delay.

As regards the essential differences" pointed out by Mr. Whitehead in his Protest, I should remark:-

As to (a) It was found that, if the Court had to sit in the New Territories, it would be impossible for the Puisne Judge to attend without causing great delay to suitors in the Summary Jurisdiction of the Supreme Court in Hongkong. I am not aware that it was proposed to appoint any Solicitor at all. If Mr. Bruce Shepherd is referred to, he is not a Solicitor - It is, I understand, the intention of the Governor to appoint at least one Barrister if not two.

As to (b) The change was made with the full approval of Mr. Bruce Shepherd the experienced Deputy Land Officer. There are claims by persons who allege they are entitled to receive rents from perpetual ^(or so called perpetual) leasees, who do not even know where the Land which has to pay the rent is situated. There are claims to be entitled to cut wood, There are claims to fishery rights, indeed a strange variety of claims including profits ~~a prendre~~, and these will all have to be dealt with. As to registration, the Land Officer has no power to refuse to register deeds brought to him for registration under Ordinance 3 of 1844, if the terms of the Ordinance are complied with. Such Registration confers no title, and it is better, to prevent any misconceptions on the part of Chinese in the New Territory, that this should be made known. It is known quite well in Victoria by the legal fraternity. The object of the Land Court is to afford to Chinese in the New Territories, a cheap and convenient tribunal which can settle all their claims in relation to land there.

As regards (c). In Hongkong, Land is held from the Crown. The Queen has sole Jurisdiction for 99 years in the New Territories, which for that term "were", by the Queen's Order in Council, "declared" "to be part and parcel of Her Majesty's Colony" of Hongkong in like manner and for all in-

tents

"rents and purposes, as if they had originally formed "part of the said Colony". (See Order No. 10 of 1899.) Now although the Land Court will not expropriate or dispossess persons having, at the time the New Territories were ceded, bona fide titles, yet they must have these titles verified, and, during the 99 years, all persons must be made to understand they hold from the Queen and not from the Chinese Government. It is to the Queen, rent must be paid, not to the Emperor of China; and my own view is that, if a person claiming to be a perpetual lessee at a rent to the Chinese Government at the time of the Convention, has his claim allowed, a Lease for the 99 years the land belongs to the Queen, would be the appropriate title. In theory, when the 99 years have expired and the land reverts to China (if it ever does) the descendants of the "so called" perpetual lessees can fall back on the title they possessed prior to the Convention.

What Mr. Whitehead apparently would like would be a Certificate that the claimant has "a title from the Chinese Government". If not, I do not understand his meaning - Clause 15 of the Bill, as passed, appears to me in no way to disregard the Convention.

The preceding remarks apply to (d) as well as (c) of the Protest.

As regards (e), the Law Committee including the two Chinese Members were strongly in favour of preventing lawyers from practising in the Land Court. Some of the Chinese clerks or interpreters of some of the Hongkong lawyers are not desirable people to send to the New Territories if simple and cheap and speedy settlement of land claims is the object in view. There are no lawyers heard in Chinese Courts and, as a rule, it would be undesirable to allow them to practise in the New Land Court.

Court. The Court can allow it, however, by giving "Special permission" (See Section 12). This meets the requirements of any exceptional case.

The only plausible reason for the Protest that I can see, is the technical one, that both Bills being sent to Members for their convenience the title of the amended Bill was by mistake inserted in the Order of the day.

I annex copy of the Original Bill marked A
Copy of the Bill (as amended) B
Copy Report Chairman Law Committee.
Copy Hansard's Report of Leg. Council Meeting.

Note:-

I may add that I have spoken of "so called" perpetual lessees, because I have little doubt that if they failed to pay the rent and allowed the lands to fall out of cultivation for a long time, the Chinese Authorities would speedily terminate the "perpetuity" and substitute some desirable tenants. Nor do I think that the Chinese Authorities would be incapable of readjusting the rent if the necessities of revenue required it.

(Sd.) W. Meigh Goodman.

27.3.1900.

Gov
13316

Hong Kong

167

DRAFT.

00

Hong Kong No. 150
The S.A.S.
Gouverneur Sir Henry A. Blake

JWB

25th May 00

A.F. 2/5

Mr Udall. 21.5

Sir W. Hamilton 22

Mr. Lucas 21 f

Order sent 8270

Sir,

I have the honour
to inform you that Her
Majesty will not be
advised for exercise her
powers of disallowance
in respect of Ordinance
No. ~~126~~⁸ of ~~the 30th~~
~~of~~ 1900: of the Legislature
of Hong Kong, entitled,
"An Ordinance to
facilitate the hearing,
determination, and settlement
of land claims in the

Gov
13316
00

Hong Kong

(sd.) (illegible)

DRAFT.

Hong Kong No.150

The C.A.G.

Governor Sir Henry A. Blake

25th May 00

A.F. 21/5

Mr. Udal, 21.5.

Sir W. Hamilton 22

Mr. Lucas 21 (illegible)

Ordce sent 28270

Sir,

I have the honour
to inform you that Her
Majesty will not be
advised to exercise her
powers of disallowance
in respect of Ordinance
No. ⁸~~126~~ of ~~the 30th~~
(illegible) 1900 of the Legislature
of Hong Kong, entitled,
"An Ordinance to
facilitate the hearing
determination, and settlement
of land claims in the

New Territories, to establish
a Land Court, and for
other purposes," a transcript
of which accompanied
^{the 4th of March}
your despatch No. 126
of the 30th March
last.

2. I am of opinion,
however, that ~~it~~ it will be
necessary to
~~make~~ ~~some~~ amendments
~~to~~ ~~be~~ ~~made~~ in the
Ordinance in certain
respects.

3. It is clear from the
last part of paragraph
^{#3}
7 of your despatch above
referred to that it is
intended that the Land
Court established by
the Ordinance shall
cease to sit when its

New Territories, to establish
a Land Court, and for
other purposes," a transcript
of which accompanies
Sir H. A. Blake's
~~your~~ despatch No.126
of the 30th March
last.

2. I am of opinion,
however, that ~~the~~ ^{it} will be
~~necessary~~ ^{to} ~~following~~ amendments
~~should-be-made-in~~ the
Ordinance in certain
respects. (1)

3. It is clear from the
last part of paragraphs
^{& 3}
2/ of your despatch above
referred to that it is
intended that the Land
Court established by
the Ordinance shall
cease to sit when its

work has been done.
Section 18 of the 168
Ordinance, however,
provides for the
payment, in place of
a produce rent, of a
money rent to be fixed
annually by the Court.
The words "by the Governor
in Executive Council"
should be substituted
for "by the Court" in this
section; and a section
should be added to
the Ordinance providing
that the Court shall
be brought to account
as soon as the work for
which it is appointed
has been performed.

4. I do not under-
stand why it ~~has~~

work has been done.

Section 18 of the 168

Ordinance, however,

provides for the

payment, in place of

a produce rent, of a

money rent to be fixed

annually by the Court.

The words "by the Governor

in Executive Council"

should be substituted

for "by the Court" in this

section; and a ~~illegible~~ section

should be added to

the Ordinance providing

that the Court shall

be brought to an end

as soon as the work for

which it is appointed

has been performed.

4. I do not under-
is
stand why it ~~has-been~~

considered advisable that
a produce rent payable
in perpetuity, should in
all cases be commuted
for a capital sum,
and Section 19 should
accordingly, be amended
by allowing as an
alternative an annual
money rent, to be fixed
as provided in section
18, amended as directed
in the foregoing paragraph of
this despatch.

5. I would suggest
that, in order to meet
the objections ^{which have} ~~are~~ ^{been} ~~presented~~ ^{presented} ~~in~~ ⁱⁿ the Whitehead
~~on technical grounds of~~ ^{on technical grounds}
~~procedure~~ ^{proceedings} ~~of~~ ⁱⁿ the
barring of this
Ordinance, enclosed
in your despatch,
the Ordinance should

considered advisable that
a produce rent payable
in perpetuity should in
all cases be commuted
for a capital sum,
~~and~~ Section 19 should
accordingly be amended
by allowing as an
alternative an annual
money rent, to be fixed
as provided in section
18, amended as directed
in the foregoing paragraph of
this despatch.

5. I would suggest
that, in order to meet ^{on technical grounds of}
the objections ^{which are put forward in Mr. Whitehead's}
~~raised~~ ^{protest}
~~on-technical-grounds-of-~~
~~procedure~~ ^{against} ~~to~~ the
passing of this
Ordinance, enclosed
in your despatch,
an
~~the~~ Ordinance should

DRAFT.

be introduced into ¹⁶⁹
the Legislative Council
repealing Ordinance
No. 8 of 1900, and
re-enacting it with
~~the~~ the amendments
directed in this
despatch.

6. I have
considered the ^{fully} other
objections to the
Ordinance put forward
in Mr. Whitehead's
protest, viz. that
it is a violation of
the Convention for the
Extension of the Colony
of Hong Kong, of the 9th
Jan, 1898, but I see
no reason for
adopting his view on
this point ^{and I}
I ~~submit~~ ^{submit}

and he should
be so informed

DRAFT.

be introduced into
the Legislative Council¹⁶⁹
repealing Ordinance
No. 8 of 1900, and
re-enacting it with
(illegible) the amendments
directed in this
despatch.

6. I have further
considered the ~~other~~
objections to the
Ordinance put forward
in Mr. Whitehead's
protest, viz. that
it is a violation of
the Convention for the
Extension of the Colony
of Hong Kong, of the 9th
June, 1898, but I see
no reason for
adopting his views on
this point.

and he should
be so informed

whc-I

I-telegraph

~~by you on the 19th~~
~~instant, stating~~
~~that~~ approve
generally the proposals
as to the personnel and remuneration
of the Court and its
assistants, as put
forward in your despatch
8. I telegraphed

by you on the 19th
instant, informing
you that these proposals
were approved, but that
I was addressing you in
a despatch as to
amending the Ordinance
on certain minor points.

9. In addition
to the above amendments,
I desire to emphasize

~~to you on the 19th~~
~~instant stating~~
~~that~~ approve
generally the proposals
as to the personnel and remuneration
of the Court and its
assistants, as put
forward in your despatch.

8. I telegraphed
to you on the 19th
instant, informing
you that ^{your} ~~these~~ proposals
were approved, but that
I was addressing you in
a despatch as to
amending the Ordinance
on certain minor points.

9. In addition
to the above amendments,
I desire to emphasize

the necessity for ¹⁷⁰
giving full and
ample notice of
the provisions of this
Ordinance, and of
the proceedings to be
taken under it, to
all parties affected
thereby. The notific-
ations to be issued
under section 5 (2),
in particular, should
fully explain the
effect of section 15,
making it clear that
if claims are not put
in before the date
named in each case,
occupants will after
that date be regarded
as trespassers against
the Crown. They should
also set forth the

the necessity for giving full and ¹⁷⁰ ample- timely notice of the provisions of this Ordinance, and of the proceedings to be taken under it, to all parties affected thereby. The notifications to be issued under section 5(2), in particular, should fully explain the effect of section 15, making it clear that if claims are not put in before the date named in each case, occupants will after that date be regarded as trespassers against the Crown. They should also set forth the

Facts and functions
of the Court; and
should be as widely
posted and circulated
as is necessary ^{to bring them}
~~to bring them~~ ~~under~~
~~to bring them~~ to the
notice of every
~~business~~ ~~land~~
inhabitant concerned.

Full time should be
given to the people
to take what steps

they may deem
necessary to substantiate
their claims.

Before and

powers and functions
of the Court, and
should be as widely
posted and circulated
as is necessary ~~in-order~~ ^{to bring} them
~~be brought~~
~~to-bring~~ to the
notice of every
~~landowner---~~ ~~tenant~~
inhabitant concerned.
Full time should be
given to the people
to take what steps
they may deem
necessary to prepare and substantiate
their claims.

ITEM NO. C24

NEW TERRITORIES LAND COURT ORDINANCE, NO. 18 OF 1900

Item
No. C24

New Territories
Land Court
Ordinance,
No. 18 of
1900

An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes.

LS

HENRY A. BLAKE,
Governor.

[23rd July, 1900.]

10 BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as The New Territories Land Court Ordinance, 1900, and it shall apply only to the New Territories, and to claims in relation to land therein.

Short title
and applica-
tion.

2. In this Ordinance, unless the context otherwise requires, the following terms and expressions shall have the respective meanings hereinafter assigned to them, that is to say:—

Interpreta-
tion.

20 “The Court” means the Land Court constituted under this Ordinance, and shall include any member thereof acting alone in matters where one member has jurisdiction conferred upon him by this Ordinance:

“Land” includes buildings thereon and also land covered with water or within the flow of the sea:

“Claim in relation to land” includes a claim to a right of common or other profit or benefit, or to any easement or other interest from, in, upon, or over or in respect of any land:

30 “New Territories” means the additional territories acquired by this Colony under the Convention dated the 9th day of June, 1898, between Her Majesty Queen Victoria and His Imperial Majesty the Emperor of China for the enlargement of the limits of this Colony, including the City of Kowloon.

3. All claims in relation to land in the New Territories shall, subject to the provision of this Ordinance, and notwithstanding any previous registration, be heard and determined by a Land Court which shall consist of two members, namely, a President and one other member, to be appointed by the Governor:

Claims to
titles to be
heard by the
Land Court.
Composition
of the Court.

Provided always that one member of such Land Court sitting alone shall have jurisdiction to hear and finally determine —

Item
 No. C24

 New Territories
 Land Court
 Ordinance,
 No. 18 of
 1900
 (continued)

- (a.) Any undisputed claim, and
- (b.) Any disputed claim in which the value of the claim shall not, in the opinion of such member, exceed five hundred dollars, and
- (c.) Any disputed claim in which the parties consent to have such claim determined by one member:

Provided also, that in case of a difference of opinion when both members are sitting together, the decision of the President shall prevail.

Governor to appoint Registrar.	4. There shall be a Registrar of the Court (hereinafter referred to as the Registrar), to be appointed by the Governor. Such Registrar shall keep a record of all proceedings and decisions of the Court, receive all claims and communications to the Court, and issue all orders and directions of the Court.	10
Powers of Court.	5. The Court or any member thereof shall, for the purposes of this Ordinance, have the following powers:—	
Time, form, and manner of presenting claims.	(1.) To direct within what time claims in relation to land in any specified place, village, or district in the New Territories shall be presented to the Court, and in what form and manner such claims are to be presented.	
Notification to be made.	(2.) To cause to be advertised or publicly notified in any place, village, or district in the New Territories and in such manner as the Court may direct, notice of the time within which such claims must be made, and the form and manner of making such claims.	20
Time and Place of hearing claims.	(3.) To fix the dates and times and places for the hearing of such claims and to cause notice of such dates and times and places to be given to claimants in such manner as the Court may direct.	
General additional powers.	(4.) And generally to do all such things as appear to the Court to be necessary for the enforcement of its orders and for the better and more effectual carrying out of the purposes of this Ordinance.	30
Further powers of Court respecting witnesses, the production of documents, inspection,	6. For the purposes of this Ordinance the Court or any member thereof shall have powers similar to those vested in the Supreme Court of this Colony in any suit or action in respect of the following matters, viz:— (1.) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise. (2.) Compelling the production of documents.	

- (3.) Punishing persons guilty of contempt of the Court or of any order of the Court.
- (4.) Ordering inspection of property.
- (5.) Making and enforcing any order which may be necessary to the proper hearing and determination of any question before the Court.

and enforcing any order of Court.

Item
No. C24
New Territories
Land Court
Ordinance,
No. 18 of
1900
(continued)

10 The Court may exercise all or any of such powers for the purposes of any claim before the Court to the same extent as the Supreme Court might exercise them or any of them for the purposes of any suit or action.

7. The Court may, if it thinks fit, approve and give effect to any compromise or arrangement arrived at with reference to any claim in relation to land irrespective of the strict rights and obligations of the parties.

Compromise of claim.

20 8. Where the circumstances of the case are such that the Court deems it right and expedient that the expenses of any party or witness should be paid by any other party making or opposing any claim heard and determined under this Ordinance, the Court may fix the amount of such expenses and may order payment thereof to be made by such other party accordingly. Such order may be enforced in the same manner as a similar order of the Supreme Court can be enforced.

Expenses of witnesses.

9. Any member of the Court shall, for the purposes of any enquiry, have power to enter and view any premises or property, and also to authorize any person nominated by such member to enter and view any premises or property for the like purpose.

Power to enter and view.

30 10. If it shall appear to the Court that any witness has committed wilful and corrupt perjury, the Court may, for the purpose of punishing such perjury, exercise powers similar to and to the same extent as those conferred on the Supreme Court by section 23 of Ordinance 12 of 1873 for the punishment of perjury in any cause, suit, or action.

Power of Court with respect to any witness committing perjury.

11. Any summons, order, warrant, or direction of the Court shall be deemed to be duly made with the authority of the Court if signed by the Registrar, and any such summons, order, warrant, or direction so issued in connection with and for the purposes of any claim shall be equivalent to any form of summons, order, warrant, or direction issued in any action or suit in the Supreme Court for enforcing the attendance of witnesses, or compelling the production of documents or otherwise for the purposes of any suit or action.

Summons, warrant, etc., to be signed by Registrar.

40 12. No barrister, proctor, attorney, or solicitor shall be permitted to appear on behalf of any party in any case before the Court, except by the special permission of the Court.

Legal practitioners.

<p>Item No. C24 New Territories Land Court Ordinance, No. 18 of 1900 (continued)</p>	<p>Court may allow or disallow claim.</p> <p>Title where claim allowed.</p>	<p>13. The Court may allow or disallow any claim in relation to land or allow the same as to part thereof, or for such period or at such rent and on such other conditions as may appear to the Court to be equitable and just.</p>	<p>10</p>
<p>Land declared property of the Crown. Who to be deemed trespassers.</p>	<p>15. All land in the New Territories is hereby declared to be the property of the Crown, during the term specified in the Convention of the 9th day of June, 1898, hereinbefore referred to, and all persons in occupation of any such land, after such date as may be fixed by the Governor by notification in the Gazette, either generally or in respect to any specified place, village, or district, shall be deemed trespassers as against the Crown, unless such occupation is authorized by grant from the Crown or by other title allowed by the Court under this Ordinance, or by license from the Governor or from some Government officer having authority to grant such license, or unless a claim to be entitled to such occupation has been duly presented to the Court and has not been withdrawn or heard and disallowed.</p>	<p>20</p>	
<p>Appeal.</p>	<p>16. In case any claimant shall be dissatisfied with the decision of the Court and the Court shall certify that the value of the claim is over five thousand dollars, he may, within fourteen days from the date of such decision, apply to the Chief Justice of the Supreme Court for leave to appeal to the Full Court, and the Chief Justice may grant such leave on such terms as to notice, costs and other matters as he may in his discretion think fit. If leave to appeal is granted, such appeal shall be heard by the Full Court. The procedure to be followed on appeals and the hearing thereof shall be, as nearly as may be, the same as is from time to time laid down by law in the case of appeals from the Puisne Judge to the Full Court. No writ of <i>certiorari</i> shall lie with regard to the proceedings of the Court.</p>	<p>30</p>	
<p>Form of title.</p>	<p>17. Titles to be granted under this Ordinance shall be in such form or forms as may, from time to time, be directed by the Governor.</p>	<p>40</p>	
<p>Payment of rent in money in- stead of in produce.</p>	<p>18. In any case of any land in the New Territories being held under an agreement to pay rent in produce, it shall be lawful for the tenant of such land to pay rent in money instead of such rent in produce, according to a rate, which shall be fixed each year by the Governor in Council and published in the Gazette, as the fair commutation price of</p>	<p></p>	

such produce.

Item
No. C24

19. In any case where land in the New Territories is held under an agreement to pay a rent in produce in perpetuity, it shall be lawful for the person who is liable to pay such rent, either to pay an annual rent in money, instead of in produce, at a rate to be fixed in the manner provided by section 18 or, with the consent of the Court, to redeem his liability to pay such rent by paying to such person as the Court may direct such capital sum of money as the Court may, under all the circumstances of the case, consider to be fair and reasonable.

Redemption of perpetual rent in produce, or substitution of annual rent in money.

New Territories Land Court Ordinance, No. 18 of 1900
(continued)

10 20. From the date of the coming into operation of this Ordinance, no rent in produce shall be reserved in any agreement for the occupation of land in the New Territories. If any rent in produce is so reserved after the said date, then such rent shall not be recoverable in any Court of law or by any legal process or proceedings.

No rent in produce to be reserved after certain date.

20 21. The Governor shall have power, from time to time, to appoint such other officers as he may deem necessary to assist the Court in the execution of its duties, power, and authorities, and shall also have power to revoke any appointment made under this Ordinance at any time, and also, if he deems it necessary, to make any new appointment in lieu thereof.

Appointments, revocation, and new appointments.

22. When, in the opinion of the Governor, the work for which the Court was constituted has been performed, the Governor may, by Notification to be published in the Gazette, declare that the Court shall cease to exist from such date as may be specified in such Notification, and, thereupon, the Court shall cease to exist accordingly, and all appointments made under this Ordinance then existing shall cease and determine.

Dissolution of the Court when no longer required.

30 23. Ordinance No. 8 of 1900 is hereby repealed, but all appointments made thereunder shall remain valid and be henceforward deemed to be made under this Ordinance.

Repeal.

Passed the Legislative Council of Hongkong, this 16th day of July, 1900.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 23rd day of July, 1900.

F. H. MAY,
Acting Colonial Secretary.

ITEM NO. C25

EXTRACTS FROM COLONIAL OFFICE FILE NO. 129/300

**Item
No. C25**

**Extracts
from
Colonial
Office
File No.
129/300**

NO. 28270

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
28270
REC'D
DEC 23 1900

No. 342
000
1/4

(Subject.)

Order 18, 1900.
New Territories Land Court

1/1
Paper.

submit

3 copies to Library (Alonso's)

11/28
P. D.
31/8

Mr. Cox

Mr. Lucas

The amendments directed in the order 13314 have been embodied in this order, and the S.O.S.'s instructions as to repealing and re-enacting the old order with these amendments, have been carried out.

A new provision, introduced at the instance of the members of the Court, raises the limit of value in cases which may be tried by one member alone, from \$200 to \$500.

P.T.O.

? Sanctions F. A. F. 1/2

107
22
Paper

HONG KONG
 NO. 2 8 2 7 0

DESPATCH
 (illegible)
 C.O.
 28270
 RECD.
 RECD.20 AUG 00

No. 342	(Subject)
1900 July	Ordce 18. 1900 New Territories Land Court
(illegible) Paper (illegible)	Submits
	Spare copies to Library (Minutes) (sd.) (illegible) 31/8 Mr. Cox
(illegible)	Mr. Lucas The amendments directed in the desp on 13316 have been embodied in this <u>Ordce</u> , and the S. of S's instructions as to repealing & re-enacting the old <u>Ordce</u> , with these amendments, have been carried out. Anew provision, introduced at the instance of the members of the Courts, raises the limit of value, in cases which can be tried by one (sd.) T.D. member alone, from \$200 to \$500.
307/02 (illegible)	
Subsequent Paper (illegible)	? Sanction (sd.) A.F. P.T.O. (illegible) 7/8

Conclusion

To proceed

$\frac{1103 \text{ e}}{29 \text{ amp}}$

C.P.d. 29
at once

1103

Sir,

1103
and 5
1103

1103
1103

J.S.Z

Mr. Lucas

? So proceed

(sd.) H. B. L.

29/Aug.

(sd.) C.P.L. 29

at once

.

227

Government House.

Benares, 28th July, 1900

Sir,

With reference to your despatch No.150 of 25th. May last,

I have the honour to transmit for the signification of Her

Majesty's pleasure the following Ordinance entitled:—

"An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes." - No.18 of 1900.

The customary Report by the Attorney General is annexed.

I have the honour to be,

Sir,

Your most obedient

Public Servant.

Henry A. White

GOVERNOR, &c.

Right Honourable

JOSEPH CHAMBERLAIN, M.P.

for for for

Vertical line with circular marks and handwritten notes: "18/10/1900", "19/10/1900", "20/10/1900", "21/10/1900", "22/10/1900", "23/10/1900", "24/10/1900", "25/10/1900", "26/10/1900", "27/10/1900", "28/10/1900", "29/10/1900", "30/10/1900", "31/10/1900", "1/11/1900", "2/11/1900", "3/11/1900", "4/11/1900", "5/11/1900", "6/11/1900", "7/11/1900", "8/11/1900", "9/11/1900", "10/11/1900", "11/11/1900", "12/11/1900", "13/11/1900", "14/11/1900", "15/11/1900", "16/11/1900", "17/11/1900", "18/11/1900", "19/11/1900", "20/11/1900", "21/11/1900", "22/11/1900", "23/11/1900", "24/11/1900", "25/11/1900", "26/11/1900", "27/11/1900", "28/11/1900", "29/11/1900", "30/11/1900", "1/12/1900", "2/12/1900", "3/12/1900", "4/12/1900", "5/12/1900", "6/12/1900", "7/12/1900", "8/12/1900", "9/12/1900", "10/12/1900", "11/12/1900", "12/12/1900", "13/12/1900", "14/12/1900", "15/12/1900", "16/12/1900", "17/12/1900", "18/12/1900", "19/12/1900", "20/12/1900", "21/12/1900", "22/12/1900", "23/12/1900", "24/12/1900", "25/12/1900", "26/12/1900", "27/12/1900", "28/12/1900", "29/12/1900", "30/12/1900", "31/12/1900".

C.O. 129 300
REPRODUCED PHOTOGRAPHICALLY WITH
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Seal
(illegible)

(illegible)

Government (illegible)

Hongkong, 28th July, 1900.

Sir,

With reference to your despatch No.150 of 25th.May last,

I have the honour to transmit for the signification of Her

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'An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes.' - No.18 of 1900.

The customary Report by the Attorney General is annexed.

Enclosure 1
23rd July 1900
(illegible) spare copies

Enclosure 2
25th July, 1900.

I have the honour to be,

Sir,

Your most obedient

Humble Servant,

(sd.) Henry A. Blake

GOVERNOR, & C.

Right Honourable

JOSEPH CHAMBERLAIN, M.P.

&c., &c., &c

Attorney General's Office.

July 25th., 1900.

REPORT ON ORDINANCE 18 OF 1900.

I have examined the accompanying Ordinance, en-

closed -

'An Ordinance to facilitate the hearing, deter-
mination, and settlement of land claims in the New Terri-
tories, to establish a Land Court, and for other purposes.'

It is my opinion that the Ordinance is one which is not
contrary to the Governor's Instructions.

Ordinance 8 of 1900, providing for a Land Court for the purpose of hearing and determining claims in relation to land in the New Territories, was presented to Her Majesty's Government on 28th March, 1900. It was duly submitted for Her Majesty's directions, and the Ordinance, generally, was approved; but the following amendments, on minor points, were suggested by the Secretary of State as desirable:

- (a.) The substitution, in section 18, of the words "by the Governor in Executive Council" for the words "by the Court," in relation to the fixing the rate of money rent in substitution of rent in produce. This is because the Court is not intended to be a permanent institution.
- (b.) Provision being made, in section 19, for allowing payment of an annual money rent as an alternative to the payment of a capital sum, in cases of the redemption of a produce rent payable in perpetuity.
- (c.) The addition of a section providing that the Court shall be brought to an end as soon as the work for which it is appointed has been performed.

Ordinance 8 of 1900 is repealed by this Ordinance and amended with the amendments mentioned. One other amendment has been made, at the suggestion of the Members of the Land Court. They thought it desirable that the value of disputed claims, which might be dealt with by one member of the Court, should be raised, with a view to expediting the business of the Court. The maximum has, accordingly, been raised from two hundred to five hundred dollars. Appointments made under Ordinance 8 of 1900 have been continued as valid, and, in order to prevent any confusion in citing Ordinance 8 of 1900 and the present Ordinance by their short titles, the short title to the present Ordinance has been changed to "The New Territories Land Court Ordinance, 1900."

W. MEXTON GOODMAN,
Attorney General

RECEIVED
JUL 26 1900
OFFICE OF THE ATTORNEY GENERAL
LONDON

Attorney General's Office.

July 25th, 1900.

REPORT ON ORDINANCE 18 OF 1900.

I have examined the accompanying Ordinance, entitled -

'An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes.'

I am of opinion that the Ordinance is one which is not contrary to the Governor's Instructions.

Objects and Reasons.

Ordinance 8 of 1900, providing for a Land Court for the purpose of hearing and determining claims in relation to land in the New Territories, was assented to by the Governor on 28th March, 1900. It was duly submitted for Her Majesty's directions, and the Ordinance, generally, was approved; but the following amendments, on minor points, were suggested by the Secretary of State as desirable:—

- (a.) The substitution, in section 18, of the words "by the Governor in Executive Council" for the words "by the Court," in relation to the fixing the rate of money rent in substitution of rent in produce. This is because the Court is not intended to be a permanent institution.
- (b.) Provision being made, in section 19, for allowing payment of an annual money rent as an alternative to the payment of a capital sum, in cases of the redemption of a produce rent payable in perpetuity.
- (c.) The addition of a section providing that the Court shall be brought to an end as soon as the work for which it is appointed has been performed.

Ordinance 8 of 1900 is repealed by this Ordinance and re-enacted with the amendments mentioned. One other amendment has been made, at the suggestion of the Members of the Land Court. They thought it desirable that the value of disputed claims, which might be dealt with by one member of the Court, should be raised, with a view to expediting the business of the Court. The maximum has, accordingly, been raised from two hundred to five hundred dollars. Appointments made under Ordinance 8 of 1900 have been continued as valid, and, in order to prevent any confusion in citing Ordinance 8 of 1900 and the present Ordinance by their short titles, the short title to the present Ordinance has been changed to "The New Territories Land Court Ordinance, 1900."

W. MELCH GOODMAN,
Attorney General.

ITEM NO. C26

NOTICE OF NON-DISALLOWANCE OF ORDINANCE NO. 18 OF 1900

(Taken from "The Hongkong Government Gazette",
29th September, 1900)

GOVERNMENT NOTIFICATION.—No. 498

It is hereby notified that Her Majesty has not been advised to exercise her power of disallowance with respect to the following Ordinance:—

Ordinance No. 18 of 1900, entitled—An Ordinance to facilitate the hearing, determination, and settlement of land claims in the New Territories, to establish a Land Court, and for other purposes.

10

By Command,

J. H. STEWART LOCKHART,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 29th September, 1900.

Item
No. C26

Notice of
Non-
Disallowance
of Ordinance
No. 18 of
1900
dated 29th
September
1900

ITEM NO. C27

NEW TERRITORIES TITLES BILL 1902

A BILL

ENTITLED

The New Territories Titles Ordinance, 1902.

Item
No. C27

New Territories
Titles Bill 1902

10 WHEREAS it is expedient to declare the law relating to rights in customary land in the New Territories and to make provision for the transfer of the right of use and occupancy in customary lands in the New Territories and for the registration of mutations in titles thereto:

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the New Territories Titles Ordinance, 1902, and shall apply only to the New Territories and to land therein.

2. In this Ordinance, unless the context otherwise requires:— Definitions.

20 (a.) “Customary land” means land as to which a claim has been allowed by the Land Court constituted under Ordinance 18 of 1900 or land expressly granted to be held from the Crown under local customary tenure: but shall not include land as to which a Crown Lease has been issued.

(b.) A “Customary Mortgage” means a mortgage redeemable at any time by the mortgagor on repayment of the loan—the rents and profits of the estate being received in the meantime by the mortgagee in satisfaction of the interest without account.

30 (c.) “Customary Land-holder” means any claimant whose claim to land has been allowed by the Land Court constituted under Ordinance 18 of 1900 and every person to whom land is expressly granted to be held from the Crown under local customary tenure and includes any person deriving title by transfer or transmission from such claimant or grantee from the Crown but shall not be deemed to include any person who shall have surrendered his rights to the Crown under section 22 of this Ordinance, nor any person deriving title through such person.

(d.) “Titles Register” means the Register kept under the provisions of this Ordinance.

Item
No. C27

New Territories
Titles Bill 1902
(continued)

- (e.) "Transfer" used in connection with land or any interest therein means the passing of such land or interest by the act of the parties: but does not include mortgage.
- (f.) The "Titles Office" means the branch of the Land Office established for the New Territory.
- (g.) The "Registrar" means the Registrar of Titles appointed for the purpose of carrying into effect the provisions of this Ordinance.
- (h.) "Transmission" used in connection with land or any interest therein means the passing of such land or interest by the operation of law. 10
- (i.) "Land" includes buildings thereon and also land covered with water or within the flow of the sea.
- (j.) "New Territories" means the additional territories acquired by this Colony under the Convention dated the 9th day of June, 1898, between Her late Majesty Queen Victoria and His Majesty the Emperor of China for the enlargement of the limits of this Colony, but does not include that portion of the Territories which is defined as New Kowloon by Ordinance 30 of 1900. 20

3. Every customary land-holder at the time of this Ordinance coming into force shall be entitled to have issued to him an extract from the Titles Register. Such extract to be in the form prescribed in Form II in the Schedule to this Ordinance under the seal of the Titles Office and signed by the Registrar.

Rights of
customary
land-holder.

4. A customary land-holder shall be deemed to have a permanent heritable and transferable right of use and occupancy in his customary land subject only:—

- (a.) to the payment of all such Crown rent, land tax, or assessment as may from time to time be imposed in respect of customary land; 30
- (b.) to the reservation in favour of the Crown of all mines and mineral products and of all buried treasure: with full liberty to work and search for the same, paying to the customary land-holder such compensation for any damage occasioned thereby as may be assessed by the Registrar;
- (c.) to the reservation in favour of the Crown of the right of making roads, drains and sewers and laying down water-pipes and gas pipes, carrying electric, telephone and telegraph wires and using, repairing and maintaining the same paying to the 40

customary land-holder such compensation for any damage occasioned thereby as may be assessed by the Registrar;

Item
No. 27

New Territories
Titles Bill 1902
(continued)

(d.) to the payment to any persons of such rent charge if any as the Land Court shall have decided to be payable out of such customary land;

(e.) to the right of the Crown to take possession of such land upon paying to the customary land-holder full and fair compensation: such compensation to be fixed by the Registrar: should the land-holder be dissatisfied with such compensation he may appeal to the Supreme Court in the matter provided in section 20 hereof;

10

(f.) to the enjoyment by any persons of all rights of way or other easements or profits to which the Land Court may have decided the land to be subject.

5. All mutations in titles to customary land in the New Territories whether by transfer, or mortgage, shall be effected and registered and all mutations to such titles by transmission shall be registered in accordance with the provisions of this Ordinance and not otherwise.

Registration
of mutations
in title.

20

6. – (1.) The parties to any transfer shall attend at the Titles Office either in person or by an agent authorised in writing attested by at least two witnesses whose addresses shall be stated in the attestation, and shall make application for registering the transfer producing the extract from the Titles Register issued in respect of the land which is the subject of transfer or accounting to the satisfaction of the Registrar for its non-production.

Transfers.

30

(2.) As security against personation and fraud the Registrar may decline to register any transfer unless an elder of the division or district in which the customary land is situate or two other respectable witnesses shall attend and identify the parties.

(3.) The Registrar, on proof being made to his satisfaction that the transferee is entitled to be registered shall enter particulars of the transfer in a Register of Transfers and shall draw up and sign a declaration in the form prescribed in Form B in the Schedule hereto and shall cause the same to be signed in his presence by the transferor (or his agent authorised as aforesaid) and shall deposit the same in his office and shall also deposit the extract from the Titles Register if produced.

40

(4.) As soon as the necessary entries have been made in the Register of Transfers the Registrar shall proceed to note the transfer in the Titles Register and shall issue to the transferee an extract from the said Titles Register showing him to be the registered holder of the land transferred.

Item
No. C27

New Territories
Titles Bill 1902
(continued)

Mortgages.

7. – (1.) Every customary land-holder may charge his interest in such land by way of customary mortgage with the payment of any principal sum of money or by way of mortgage with the repayment at an appointed time of any principal sum of money with interest.

(2.) For the purpose of effecting such a mortgage the registered holder and the proposed mortgagee shall attend at the Titles Office either in person (or by an agent authorised in writing attested by two witnesses whose addresses shall be stated in the attestation) and shall make application for registering the proposed mortgage producing the extract from the Titles Register issued in respect of the land which is to be charged or accounting to the satisfaction of the Registrar for its non-production.

10

(3.) As security against personation and fraud the Registrar may decline to register any mortgage unless an elder of the District in which the customary land is situate or two other respectable witnesses shall attend and identify the registered holder.

Registration
of mortgages.

8. – (1.) The Registrar on being satisfied that the proposed mortgagee is entitled to have the charge registered as a mortgage, shall draw up and sign a declaration in the form prescribed in Form *D* in the Schedule hereto and shall cause the same to be signed in his presence by the registered holder of the land (or his agent authorised in writing) and deposit the same in his office and shall enter the particulars of the mortgage in the Titles Register.

20

(2.) As soon as the necessary entries have been made the Registrar shall endorse on the extract from the Titles Register the particulars of the mortgage and shall hand the extract so endorsed to the mortgagee.

Implied
covenants
in customary
mortgage.

9. In every customary mortgage the following covenants shall be implied between the parties:—

30

- (1.) that the mortgagee shall be at liberty to enter into possession of the land immediately the transaction has been registered;
- (2.) that the mortgagee shall while in possession be entitled to receive and retain for his own use all the rents and profits of the said land without account;
- (3.) that the mortgagor may at any time give six months' notice of his intention to repay on an appointed day the principal mortgage money;
- (4.) that no interest shall be receivable by the mortgagee in respect of the principal mortgage money.

40

Implied

10. In every mortgage other than a customary mortgage the

following covenants shall be implied between the parties:—

covenants
in ordinary
mortgage.

Item
No. C27
New Territories
Titles Bill 1902
(continued)

- (1.) that the mortgagor shall be at liberty to retain possession;
- (2.) that the mortgagor will on the appointed day pay to the mortgagee the stated principal mortgage money and will in the meantime and thereafter if and so long as the principal mortgage money or any part thereof remains unpaid pay to the mortgagee the interest as provided for in the said mortgage;
- (3.) that should the mortgagor make default in payment of principal or interest the mortgagee shall be at liberty to enter upon the land and receive the rents and profits thereof.

10

11. In case default be made in payment of the principal sum due by virtue of a mortgage other than customary registered under this Ordinance or in the payment of any interest or periodical sum agreed to be paid in respect thereof the mortgagee may apply to the Registrar for a summons calling upon the mortgagor on a day named therein to show cause why the mortgaged property or any part thereof should not be sold for the payment of the mortgage debt. If without reasonable excuse the mortgagor fails to show cause as aforesaid the Registrar may if he thinks fit make an order for the sale of the mortgaged property or any part thereof: Provided always that no such order shall be made unless and until —

Sale of
mortgaged
property.

20

- (i.) notice requiring payment of the principal mortgage money has been served on the mortgagor or one of any joint or several mortgagors and default has been made in payment of the mortgage money or any portion thereof for three months after such service; or
- (ii.) some interest or periodical sum under the mortgage is in arrear and unpaid for three months after becoming due.

30

Summonses and notices under this section may be served either personally or by leaving the same at the last known residence of the mortgagor.

12.—(1.) For the purposes of this Ordinance the Registrar shall have powers similar to those vested in the Supreme Court of this Colony in any suit or action in respect of the following matters, viz:—

Powers of
Commis-
sioner.

- (a.) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise.
- (b.) Compelling the production of documents.
- (c.) Punishing persons guilty of contempt of any order of the

40

Item
No. C27

New Territories
Titles Bill 1902
(continued)

Registrar.

(d.) Ordering inspection of property.

(e.) Making and enforcing any order which may be necessary to the proper hearing and determination of any question before the Registrar.

(2.) If it shall appear to the Registrar that any witness has made on oath a statement which is false, the Registrar may commit such witness to prison for any period not exceeding three months with or without hard labour or may fine such witness in any sum not exceeding one hundred dollars.

Sale to take
place at the
Titles Office.

13. Every sale of customary land under an order of the Registrar for the payment of a mortgage debt shall be held at the Titles Office or at such other convenient place and at such time and after such notice as the Registrar may direct.

10

Satisfaction
to be
recorded.

14. The Registrar shall on due proof of the satisfaction of the mortgage, record such satisfaction on the Titles Register and thereupon the mortgage shall be deemed to have been extinguished.

15. No sale or mortgage of any interest in any customary land in the New Territories shall be valid unless made in accordance with the provisions of this Ordinance.

Transmis-
sion.

16.—(1.) Any person claiming to be entitled to any customary land by transmission shall attend at the Titles Office either in person or by his agent authorised in writing attested by at least two witnesses whose addresses shall be stated in the attestation and shall make application to be registered as the customary holder of such land and shall produce the extract from the Titles Register last issued in respect of the land claimed or account to the satisfaction of the Registrar for its non-production.

20

The Registrar, if it appears to him, after a notice of such application has been published for such period and in such manner as he may prescribe and after such enquiry as he may think fit to make, that the applicant is so entitled, shall make an order to that effect and furnish the applicant with a copy of such order.

30

(2.) Every application for registration on transmission by way of inheritance shall be accompanied by a statutory declaration in the form prescribed in Form *E* in the Schedule hereto and the order of the Registrar shall be in the form prescribed in Form *F* in the said Schedule.

Every transmission shall be noted in the Titles Register and an extract from the said Register shall be issued to every person entitled thereto.

Leases.

17.—(1.) When any land is intended to be leased for a life or lives

10 or for any term exceeding one year, the registered holder and the proposed lessee shall attend at the Titles Office either in person (or by an agent authorised in writing attested by two witnesses whose addresses shall be stated in the attestation) and shall make application for registering the proposed lease producing the extract from the Titles Register issued in respect of the land which is to be leased or accounting to the satisfaction of the Registrar for its non-production. As security against personation and fraud the Registrar may decline to register any transfer unless an elder of the Division or District in which the customary land is situate or two other respectable witnesses shall attend and identify the parties.

(2.) The Registrar on being satisfied that the proposed lessee is entitled to have the lease registered, shall draw up and sign a declaration in the form prescribed in Form I in the Schedule hereto and shall cause it to be signed in his presence by the lessor and the lessee or his agent authorised as aforesaid and shall deposit the same in his office and shall make a note of the particulars of the lease in the Titles Register.

20 (3.) As soon as the necessary entries have been made the Registrar shall endorse on the extract from the Titles Register the particulars of the lease and shall hand the extract so endorsed to the lessee.

(4.) In every lease there shall be implied the following covenants by the lessee with the lessor, that is to say:—

Covenants
implied in
lease.

(i.) that he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property, during the continuance of the lease;

(ii) that he will keep and yield up the demised property in good and tenantable repair, reasonable wear and tear excepted;

30 and similarly there shall also be implied the following powers in the lessor, that is to say:—

(iii.) power to distrain according to law;

(iv.) that he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof;

40 (v.) that in case the rent, or any part thereof, shall be in arrear for the space of three months, although no demand shall have been made thereof, or in case default shall be made in the fulfilment of any covenant, whether expressed or implied in such lease, on the part of the lessee, and shall be continued for the space of three months, it shall be lawful for the lessor to re-enter upon and take possession of the leased premises;

Item
No. C27

New Territories
Titles Bill 1902
(continued)

18. The Registrar upon proof to his satisfaction of re-entry by the lessor, in manner prescribed by the lease, or under the power in the last sub-section of the last preceding section provided for, or of recovery of possession by a lessor, by any proceeding in law, shall note the same by entry in the Titles Register and the estate of the lessee in such land shall thereupon determine, but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar shall cancel such lease if delivered up to him for that purpose.

Registration
to be con-
clusive
evidence
of title.

19.—(1.) The registration of all mutations in title to customary land effected and registered in accordance with this Ordinance shall be conclusive evidence that the person whose name is entered on the Titles Register is absolutely and indefeasibly entitled to be registered and the title of such person shall not be subject to be questioned on the ground of adverse possession or otherwise except in the case of fraud or misrepresentation to which such person is proved to have been a party. 10

(2.) A certified extract from the Titles Register if signed by the Registrar and sealed with the seal of his office shall be received in evidence in the same manner as the original.

Appeals.

20. Every order or award and every entry in the Register made by the Registrar under this Ordinance shall be binding on all parties and shall not be set aside, varied or expunged except in the manner in this Ordinance expressly provided. 20

Provided always that any person who is aggrieved by any order, award or entry in the Register made by the Registrar may move the Supreme Court within one month after the registration of such order or the making of any such award or entry to set aside, vary or expunge the same.

Except as in this Ordinance expressly provided no Court shall exercise jurisdiction as to any matter relating to land within the jurisdiction given by this Ordinance to the Registrar of Titles. 30

Rules.

21. Subject to the provisions of this Ordinance the Governor in Council may from time to time make Rules in respect of all or any of the following matters:—

- (a.) the form of the Titles Register;
- (b.) the form of the Register of Transfers and the mode in which such Registers are to be kept;
- (c.) the mode in which registration is to be conducted;
- (d.) the fees to be taken by the Registrar;
- (e.) the custody of the Registers and other documents connected

with the business of registration;

- (f.) generally in relation to any matters whether similar or not to those above-mentioned as to which it may be expedient to make Rules for carrying into effect the provisions of this Ordinance.

Item
No. C27
—
New Territories
Titles Bill 1902
(continued)

All such Rules shall be published in the Gazette.

- 10 22. It shall be lawful for any customary land-holder to notify to the Registrar his desire to surrender his rights in his customary land to the Crown: and to receive in exchange a Crown lease. Such notification shall be in the form prescribed in Form G in the Schedule hereto: and on receipt of such notification duly signed by the applicant the Registrar shall forward the same to the Colonial Secretary with a report: and it shall then be lawful for the Governor to order that a Crown lease for such period and on such terms as he shall think fit be issued to the applicant in respect of such land: and such land shall from the date of the issue of such Crown lease be exempt from the provisions of this Ordinance and shall become subject to the general law in force in the Colony with regard to land held upon lease from the Crown.

Issue of
Crown lease.

- 20 23. The Registrar may by a notice in writing duly served in the manner prescribed in Rule 3 of the Rules made under section 21 of this Ordinance require any customary land-holder to erect boundary marks where necessary for the purpose of defining the limits of his customary land or to repair any boundary marks already existing; and if such land-holder fails to comply with this requisition within a period to be specified in the notice may cause the work to be done and recover the cost thereof as if it were an arrear of revenue due in respect of the land.

Boundary
marks.

- 30 24.—(1.) Nothing contained in this Ordinance shall derogate from any Rights of Way or other Easements now or hereafter acquired by the public in over along or across any customary land or shall be deemed to confer on the registered holder of any customary land a right to interfere with or obstruct the public use of any way or other easement so acquired or enjoyed as aforesaid.

Easements.

- 40 (2.) In case the registered holder of any customary land shall interfere with or obstruct the public use of any way or any easement now or hereafter acquired or enjoyed by the public in over along or across the land of which he is the registered holder any person aggrieved or damnified by such interference or obstruction may apply to the Registrar for a summons calling upon such registered holder on a day named therein to show cause why an order shall not be made requiring him to abate such interference or remove such obstruction.

In case the registered holder shall fail to show cause as aforesaid the Registrar may if he thinks fit make an order requiring him to abate the interference or remove the obstruction within such limit of time as the

Item
No. C27

New Territories
Titles Bill 1902
(continued)

Registrar may deem reasonable and if the registered holder fails to comply with the terms of the order within the specified period the Registrar may cause the necessary steps to be taken to that end and recover the cost thereof as if it were an arrear of Revenue due in respect of the land.

Caveats.

25.—(1.) Any person claiming to be interested at law or in equity, whether under an agreement, or under an unregistered instrument, or otherwise however in any land may lodge a caveat with the Registrar forbidding the registration of any dealing with such land, either absolutely or unless such dealing shall be expressed to be subject to the claim of the caveator, or to any conditions conformable to law expressed therein: 10

A caveat may be in the form prescribed in the Form *J* in the Schedule hereto, and shall be under the hand and verified by the declaration of the caveator or an agent duly authorised in writing as aforesaid, and shall contain an address to which notices may be sent or at which proceedings may be served.

Upon the receipt of a caveat the Registrar shall make a memorandum thereon of the date and hour of the receipt thereof and shall enter a memorandum thereof in the Titles Register and shall forthwith send a notice of such caveat to the person against whose title such caveat shall have been lodged. 20

So long as any caveat shall remain in force the Registrar shall not, contrary to the requirements thereof, register any dealing with the land in respect of which such caveat shall have been lodged.

(2.) The registered proprietor or any other person claiming estate or interest in the land may, by summons, call upon any caveator, to attend before the Registrar to show cause why the caveat should not be removed; and the Registrar may upon proof that the caveator has been summoned, and upon such evidence as the Registrar may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just. 30

Fees.

26.—All fees payable under this Ordinance or under any Rules or Regulation made thereunder may be recovered in a summary manner before a Police Magistrate.

THE SCHEDULE.

Item
No. C27

New Territories
Titles Bill 1902
(continued)

FORM A.

Titles Register.

Folio No.	Demarcation District.	Lot Number.	Crown Rent in 19—.	Name of Holder.	Remarks.	Area of Holding.	Nature of Holding.	Mortgages.	Leases.	Number and Kinds of Buildings.	Subsequent Proceedings (if any).	Rent Charge.	Transfer Register Number.

FORM B.

Declaration under Section 6.

I hereby certify that on the
day of appeared before me A.B. (or X.Y., the duly constituted
Agent of A.B.) of

And thereupon the said A.B. (or the said X.Y. on behalf of A.B.) declared that he (or
that the said A.B.) was then the registered holder of the customary lands described
10 in the Schedule hereto. And that he (or the said A.B.) has now sold his interest in the
said lands to the said C.D. in consideration of the sum of \$ which has actually
been paid to him the said A.B.

And the said C.D. (or the said Y.Z. on behalf of C.D.) declared that he the said
C.D. had purchased the interest of the said A.B. in the said land in manner aforesaid.

(Signed.)

Commissioner.

FORM E.

Item
No. C27

Statutory Declaration under Section 16.

New Territories
Titles Bill 1902
(continued)

In the goods of

1. I do solemnly and sincerely declare
that to the best of my knowledge and belief of
died on the day of , 19 , at
and that at the time of death the deceased was the registered
holder of the customary lands described in the Titles Register Book folio

10 2. I further solemnly and sincerely declare that the following persons are the
heirs of the deceased and entitled to share in the inheritance, that is to say:—

And I make this solemn declaration conscientiously believing the same
to be true and by virtue of the provisions of

Declared before me at the day of , 19

*Justice of the Peace, Notary Public or other
person authorised to administer declarations.*

FORM F.

Declaration by the Registrar of Titles.

Transmission by Inheritance under Section 16.

20 I hereby certify that on the day of appeared before me
who thereupon declared that they are
entitled (by law) to share in the inheritance of deceased in respect
to the following customary lands described in the Titles Register Book folio :—

(a.) And the said heirs agreed to be registered jointly as customary land-
holders in respect to the said land.

or

(b.) And the said heirs agreed before me that
shall be recognized as the customary land-holder in respect to the said
land.

or

30 (c.) And the said heirs agreed to have the said land partitioned among them in
the following shares that is to say:—

or

(d.) And whereas the said heirs disputed how the said land should be
partitioned I have duly enquired into the matter and have assigned the
shares as follows:—

(Signed.)

Item
No. C27

FORM G.

New Territories
Titles Bill 1902
(continued)

I, A.B., being entitled as customary land-holder to the land described in the
Titles Register Book folio do hereby notify my desire to surrender all my
rights in such customary land to the Crown and to receive in return a Crown lease on
the terms of and at a Crown rent of

(Signed.)

FORM H.

Book No.
Folio No.
Demarcation District
Lot No.
Crown Rent
Name of Holder
Area
General description

10

FORM I.

Memorandum of Lease.

I, A.B., of being registered as the customary holder
of the land situated at do hereby lease to C.D.
of all the said land to be held by him the said C.D. as lessee
for the space of years from the day of at the yearly rental
of payable subject to the following covenants, conditions,
and restrictions.

20

I, the above-named C.D., do hereby accept this Lease of the above-described
lands to be held by me as lessee, and subject to the conditions, restrictions, and
covenants above set forth.

Dated this day of 19

Signature of
Registrar.

Signatures of
Lessor & Lessee.

FORM J.

Caveat forbidding Registration of Dealing with Estate or Interest.

Item
No. C27

New Territories
Titles Bill 1902
(continued)

To the Registrar of Titles, New Territories.

Take notice that I, A.B., of
claiming _____ in
forbid the registration of any dealing with the estate or interest of C.D. in the said
land.

[Address for service of notices and proceedings:]

10 Dated this _____ day of _____, 19
A.B.

I, the above-named _____, agent for the above-named A.B.,
make oath and say that the allegations in the above Caveat are true in substance and in
fact.

Sworn by the said A.B. at }
this _____ day of _____ 19 }
Before me,

RULES.

20 1. The register mentioned in section 5 of the Ordinance shall be in the form
prescribed in Form A given in the Schedule thereto and shall be separate parts or
volumes corresponding to territorial sub-divisions; it shall be kept in the English
language.

2. On the receipt of an application under section 16 the Registrar shall
publish a notice in the form prescribed in Form H given in the Schedule calling upon
all persons who object to an order being made declaring the applicant to be entitled to
the customary land claimed by him, to make such objections within thirty days from
the date of the publication of such notice, or within such longer period as the
Registrar may in such notice prescribe.

30 The notice shall be in triplicate and shall be published in the following
manner:—One copy shall be posted on the land, one at the house of the headman of
the nearest village, and one shall be retained by the Registrar with an endorsement
stating the date on which the notice was posted.

3. The notice mentioned in section 23 of the Ordinance shall be served either

personally upon the person named therein or by fixing a copy upon the land in respect of which such notice is issued, or upon the door of the house, or upon the wall of a temple, police station or other conspicuous buildings in the town or village in which such person last resided.

4. The order of the Registrar under section 16 of the Ordinance shall be in the form prescribed in Form *H* in the Schedule thereto.

5. The Register of Transfers under section 5 of the Ordinance shall be kept in the form prescribed in Form *C* in the Schedule thereto. The particulars of each Transfer shall be registered under a serial number and such serial number shall be entered in the Titles Register.

10

Objects and Reasons.

It is desirable to provide a system of Land Tenure for the New Territories (exclusive of New Kowloon).

In the rest of the Territories there are some quarter of a million holdings often of a very low value.

The transfer of these and their transmission by inheritance is governed by custom of patriarchal origin. Society in general in the New Territories is not suited for the introduction of English Real Property Law.

Every original holder of land is to be treated as a customary landholder.

Dealings with customary land by transfer or by way of charge, and its transmission by inheritance are regulated by means of a system adapted from that known as "The Torrens Systems."

20

Provision is made by which a customary landholder desirous of obtaining a Crown Lease may do so upon the surrender to the Crown of his customary rights in the land to be leased.

Persons taking up land from the Crown in the New Territories may at their option become customary land-holders or they may obtain a Crown Lease and come under the general law of the Colony.

H. S. BERKELEY,
Attorney General.

30

ITEM NO. C28

DEBATE ON NEW TERRITORIES TITLES BILL 1902

(Taken from the "Hongkong Hansard" for the Session 1902–1903)

Item
No. C28
Debate on
New Territories
Titles
Bill 1902

OTHER FIRST READINGS

On the motion of the ATTORNEY-GENERAL, seconded by the COLONIAL SECRETARY, the following Bills were read a first time: – A Bill entitled an Ordinance to amend the Law relating to Employers and Servants; a Bill entitled an Ordinance with reference to Collisions between Junks and Ships; and a Bill entitled The New Territories Titles Ordinance.

10

NEW TERRITORIES BILL.

The ATTORNEY-GENERAL in moving the second reading of the New Territories Titles Ordinance said—The object of this Bill is to provide a system of land tenure for the New Territory exclusive of New Kowloon. In the Territories outside New Kowloon there are a large number of small holdings, the majority of them exceedingly small. I understand they run into something like quarter of a million. At the time the Territory was taken over these holdings were held by a system of patriarchal origin. It has been considered by those who have had the Territory under their immediate administration that the state of society in that part does not fit the people at present for the introduction of a technical system of English Real Property Law. They considered it would be better to introduce a system simple, effective and cheap, something that the people could easily understand and, and that can be cheaply administered. Recognising the patriarchal system under which land is held there the Bill provides that the land-holder will be treated as a customary land-holder. Dealings with customary land by transfer or by way of charge and its transmission by inheritance are regulated by means of a system adapted from that in force in Australia, known as "the Torrens Systems." Persons taking up land from the Crown in the New Territories may at their option become customary land-holders or they may obtain a Crown lease and come under the general law of the Colony.

30

The COLONIAL SECRETARY seconded, and the motion was agreed to.

The ATTORNEY-GENERAL then moved that the Bill be referred to the Law Committee.

The COLONIAL SECRETARY seconded, and the motion was agreed to.

THIRD READINGS.

Item
No. C28

Debate on
New Territories
Titles
Bill 1902
(continued)

On the motion of Hon. C. S. SHARP, seconded by Hon. C. W. DICKSON, the Bill entitled an Ordinance to authorise the making of Bye-laws by the "Star" Ferry Company, Limited, was read a third time and passed.

On the motion of the ATTORNEY-GENERAL, seconded by the COLONIAL SECRETARY, the Bill entitled the New Territories Titles Ordinance was read a third time and passed.

ITEM NO. C29

NEW TERRITORIES TITLES ORDINANCE, NO. 47 OF 1902

The New Territories Titles Ordinance, 1902.

LS

HENRY A. BLAKE,
Governor.

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902

[20th December, 1902.]

10 WHEREAS it is expedient to declare the law relating to rights in customary land in the New Territories and to make provision for the transfer of the right of use and occupancy in customary lands in the New Territories and for the registration of mutations in titles thereto:

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the New Territories Titles Ordinance, 1902, and shall apply only to the New Territories and to land therein.

Short title.
Application
of Ordinance.

2. In this Ordinance, unless the context otherwise requires:—

Definitions.

20 (a.) “Customary land” means land as to which a claim has been allowed by the Land Court constituted under Ordinance 18 of 1900 or land expressly granted to be held from the Crown under local customary tenure: but shall not include land as to which a Crown Lease has been issued.

(b.) A “Customary Mortgage” means a mortgage redeemable at any time by the mortgagor on repayment of the loan — the rents and profits of the estate being received in the meantime by the mortgagee in satisfaction of the interest without account.

30 (c.) “Customary Land-holder” means any claimant whose claim to land has been allowed by the Land Court constituted under Ordinance 18 of 1900 and every person to whom land is expressly granted to be held from the Crown under local customary tenure and includes any person deriving title by transfer or transmission from such claimant or grantee from the Crown but shall not be deemed to include any person who shall have surrendered his rights to the Crown under section 22 of this Ordinance, nor any person deriving title through such person.

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

(d.) "Titles Register" means the Register kept under the provisions of this Ordinance.

(e.) "Transfer" used in connection with land or any interest therein means the passing of such land or interest by the act of the parties: but does not include mortgage.

(f.) The "Titles Office" means the branch of the Land Office established for the New Territory.

(g.) The "Registrar" means the Registrar of Titles appointed for the purpose of carrying into effect the provisions of this Ordinance.

10

(h.) "Transmission" used in connection with land or any interest therein means the passing of such land or interest by the operation of law.

(i.) "Land" includes buildings thereon and also land covered with water or within the flow of the sea.

(j.) "New Territories" means the additional territories acquired by this Colony under the Convention dated the 9th day of June, 1898, between Her late Majesty Queen Victoria and His Majesty the Emperor of China for the enlargement of the limits of this Colony, but does not include that portion of the Territories which is defined as New Kowloon by Ordinance 30 of 1900.

20

Extract from
Titles
Register.

3. Every customary land-holder at the time of this Ordinance coming into force shall be entitled to have issued to him an extract from the Titles Register. Such extract to be in the form prescribed in Form II in the Schedule to this Ordinance under the seal of the Titles Office and signed by the Registrar. Every land-holder is entitled to an extract of his holding from the Titles Register free of charge in the first instance, but a fee will be charged for every subsequent extract or for a search.

Rights of
customary
land-holder.

4. A customary land-holder shall be deemed to have a permanent heritable and transferable right of use and occupancy in his customary land subject only:—

30

(a.) to the payment of all such Crown rent, land tax, or assessment as may from time to time be imposed in respect of customary land;

(b.) to the reservation in favour of the Crown of all mines and mineral products and of all buried treasure: with full liberty to work and search for the same, paying to the customary land-holder such compensation for any damage occasioned thereby as may be assessed by the Registrar;

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(c.) to the reservation in favour of the Crown of the right of making roads, drains and sewers and laying down water-pipes and gas pipes, carrying electric, telephone and telegraph wires and using, repairing and maintaining the same paying to the customary land-holder such compensation for any damage occasioned thereby as may be assessed by the Registrar. Should the land-holder be dissatisfied with such compensation he may appeal to the Supreme Court in the manner provided in section 20 hereof;

10 (d.) to the payment to any persons of such rent charge if any as the Land Court shall have decided to be payable out of such customary land;

(e.) to the right of the Crown to take possession of such land upon paying to the customary land-holder full and fair compensation: such compensation to be fixed by the Registrar: should the land-holder be dissatisfied with such compensation he may appeal to the Supreme Court in the manner provided in section 20 hereof;

20 (f.) to the enjoyment by any persons of all rights of way or other easements or profits to which the Land Court may have decided the land to be subject.

5. All mutations in titles to customary land in the New Territories whether by transfer, or mortgage, shall be effected and registered and all mutations to such titles by transmission shall be registered in accordance with the provisions of this Ordinance and not otherwise.

Registration
 of mutations
 in title.

6. — (1.) The parties to any transfer shall attend at the Titles Office either in person or by an agent authorised in writing attested by at least two witnesses whose addresses shall be stated in the attestation, and shall make application for registering the transfer producing the extract from the Titles Register issued in respect of the land which is the subject of transfer or accounting to the satisfaction of the Registrar for its non-production.

Transfers.

(2.) As security against personation and fraud the Registrar may decline to register any transfer unless an elder of the division or district in which the customary land is situate or two other respectable witnesses shall attend and identify the parties.

40 (3.) The Registrar, on proof being made to his satisfaction that the transferee is entitled to be registered shall enter particulars of the transfer in a Register of Transfers and shall draw up and sign a declaration in the form prescribed in Form B in the Schedule hereto and shall cause the same to be signed in his presence by the transferor (or his agent authorised as aforesaid) and shall deposit the same in his office and shall

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

also deposit the extract from the Titles Register if produced.

(4.) As soon as the necessary entries have been made in the Register of Transfers the Registrar shall proceed to note the transfer in the Titles Register and shall issue to the transferee an extract from the said Titles Register showing him to be the registered holder of the land transferred.

Mortgages.

7. – (1.) Every customary land-holder may charge his interest in such land by way of customary mortgage with the payment of any principal sum of money or by way of mortgage with the repayment at an appointed time of any principal sum of money with interest.

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(2.) For the purpose of effecting such a mortgage the registered holder and the proposed mortgagee shall attend at the Titles Office either in person (or by an agent authorised in writing attested by two witnesses whose addresses shall be stated in the attestation) and shall make application for registering the proposed mortgage producing the extract from the Titles Register issued in respect of the land which is to be charged or accounting to the satisfaction of the Registrar for its non-production.

(3.) As security against personation and fraud the Registrar may decline to register any mortgage unless an elder of the District in which the customary land is situate or two other respectable witnesses shall attend and identify the registered holder.

20

Registration
of mortgages.

8. – (1.) The Registrar on being satisfied that the proposed mortgagee is entitled to have the charge registered as a mortgage, shall draw up and sign a declaration in the form prescribed in Form *D* in the Schedule hereto and shall cause the same to be signed in his presence by the registered holder of the land (or his agent authorised in writing) and deposit the same in his office and shall enter the particulars of the mortgage in the Titles Register.

(2.) As soon as the necessary entries have been made the Registrar shall endorse on the extract from the Titles Register the particulars of the mortgage and shall hand the extract so endorsed to the mortgagee.

30

Implied
covenants
in customary
mortgage.

9. In every customary mortgage the following covenants shall be implied between the parties:—

(1.) that the mortgagee shall be at liberty to enter into possession of the land immediately the transaction has been registered;

(2.) that the mortgagee shall while in possession be entitled to receive and retain for his own use all the rents and profits of the said land without account;

40

(3.) that the mortgagor may at any time give six months' notice of his intention to repay on an appointed day the principal mortgage money.

(4.) that no interest shall be receivable by the mortgagee in respect of the principal mortgage money.

10. In every mortgage other than a customary mortgage the following covenants shall be implied between the parties:—

Implied
covenants
in ordinary
mortgage.

(1.) that the mortgagor shall be at liberty to retain possession;

10

(2.) that the mortgagor will on the appointed day pay to the mortgagee the stated principal mortgage money and will in the meantime and thereafter if and so long as the principal mortgage money or any part thereof remains unpaid pay to the mortgagee the interest as provided for in the said mortgage;

(3.) that should the mortgagor make default in payment of principal or interest the mortgagee shall be at liberty to enter upon the land and receive the rents and profits thereof.

20

11. In case default be made in payment of the principal sum due by virtue of a mortgage other than customary registered under this Ordinance or in the payment of any interest or periodical sum agreed to be paid in respect thereof the mortgagee may apply to the Registrar for a summons calling upon the mortgagor on a day named therein to show cause why the mortgaged property or any part thereof should not be sold for the payment of the mortgage debt. If without reasonable excuse the mortgagor fails to show cause as aforesaid the Registrar may if he thinks fit make an order for the sale of the mortgaged property or any part thereof: Provided always that no such order shall be made unless and until—

Sale of
mortgaged
property.

30

(i.) notice requiring payment of the principal mortgage money has been served on the mortgagor or one of any joint or several mortgagors and default has been made in payment of the mortgage money or any portion thereof for three months after such service; or

(ii.) some interest or periodical sum under the mortgage is in arrear and unpaid for three months after becoming due.

Summonses and notices under this section may be served either personally or by leaving the same at the last known residence of the mortgagor.

40

12.—(1.) For the purposes of this Ordinance the Registrar shall have powers similar to those vested in the Supreme Court of this Colony in any suit or action in respect of the following matters, viz:—

Powers of
Registrar.

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

- (a.) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise.
- (b.) Compelling the production of documents.
- (c.) Punishing persons guilty of contempt of any order of the Registrar.
- (d.) Ordering inspection of property.
- (e.) Making and enforcing any order which may be necessary to the proper hearing and determination of any question before the Registrar.

(2.) If it shall appear to the Registrar that any witness has made on oath a statement which is false, the Registrar may commit such witness to prison for any period not exceeding three months with or without hard labour or may fine such witness in any sum not exceeding one hundred dollars. 10

Sale to take place at the Titles Office. 13. Every sale of customary land under an order of the Registrar for the payment of a mortgage debt shall be held at the Titles Office or at such other convenient place and at such time and after such notice as the Registrar may direct.

Satisfaction to be recorded. 14. The Registrar shall on due proof of the satisfaction of the mortgage, record such satisfaction on the Titles Register and thereupon the mortgage shall be deemed to have been extinguished. 20

Sale or mortgage to be in accordance with provisions of Ordinance. 15. No sale or mortgage of any interest in any customary land in the New Territories shall be valid unless made in accordance with the provisions of this Ordinance.

Transmission. 16.—(1.) Any person claiming to be entitled to any customary land by transmission shall attend at the Titles Office either in person or by his agent authorised in writing attested by at least two witnesses whose addresses shall be stated in the attestation and shall make application to be registered as the customary holder of such land and shall produce the extract from the Titles Register last issued in respect of the land claimed or account to the satisfaction of the Registrar for its non-production. 30

The Registrar, if it appears to him, after a notice of such application has been published for such period and in such manner as he may prescribe and after such enquiry as he may think fit to make, that the applicant is so entitled, shall make an order to that effect and furnish the applicant with a copy of such order.

(2.) Every application for registration on transmission by way of

inheritance shall be accompanied by a statutory declaration in the form prescribed in Form *E* in the Schedule hereto and the order of the Registrar shall be in the form prescribed in Form *F* in the said Schedule.

Every transmission shall be noted in the Titles Register and an extract from the said Register shall be issued to every person entitled thereto.

10 17.—(1.) When any land is intended to be leased for a life or lives or for any term exceeding one year, the registered holder and the proposed lessee shall attend at the Titles Office either in person (or by an agent authorised in writing attested by two witnesses whose addresses shall be stated in the attestation) and shall make application for registering the proposed lease producing the extract from the Titles Register issued in respect of the land which is to be leased or accounting to the satisfaction of the Registrar for its non-production. As security against personation and fraud the Registrar may decline to register any transfer unless an elder of the Division or District in which the customary land is situate or two other respectable witnesses shall attend and identify the parties.

20 (2.) The Registrar on being satisfied that the proposed lessee is entitled to have the lease registered, shall draw up and sign a declaration in the form prescribed in Form *I* in the Schedule hereto and shall cause it to be signed in his presence by the lessor and the lessee or his agent authorised as aforesaid and shall deposit the same in his office and shall make a note of the particulars of the lease in the Titles Register.

(3.) As soon as the necessary entries have been made the Registrar shall endorse on the extract from the Titles Register the particulars of the lease and shall hand the extract so endorsed to the lessee.

30 (4.) In every lease there shall be implied the following covenants by the lessee with the lessor, that is to say:—

- (i.) that he will pay the rent thereby reserved at the times therein mentioned, and all rates and taxes which may be payable in respect of the demised property, during the continuance of the lease;
- (ii.) that he will keep and yield up the demised property in good and tenantable repair, reasonable wear and tear excepted;

and similarly there shall also be implied the following powers in the lessor, that is to say:—

- (iii.) power to distrain according to law;
- 40 (iv.) that he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof;

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

Leases.

Covenants
implied in
lease.

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

(v.) that in case the rent, or any part thereof, shall be in arrear for the space of three months, although no demand shall have been made thereof, or in case default shall be made in the fulfilment of any covenant, whether expressed or implied in such lease, on the part of the lessee, and shall be continued for the space of three months, it shall be lawful for the lessor to re-enter upon and take possession of the leased premises;

Recovery of
possession by
lessor to be
noted in the
Titles
Register.

18. The Registrar upon proof to his satisfaction of re-entry by the lessor, in manner prescribed by the lease, or under the power in the last sub-section of the last preceding section provided for, or of recovery of possession by a lessor, by any proceeding in law, shall note the same by entry in the Titles Register and the estate of the lessee in such land shall thereupon determine, but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar shall cancel such lease if delivered up to him for that purpose.

10

Registration
to be conclu-
sive evidence
of title.

19.—(1.) The registration of all mutations in title to customary land effected and registered in accordance with this Ordinance shall be conclusive evidence that the person whose name is entered on the Titles Register is absolutely and indefeasibly entitled to be registered and the title of such person shall not be subject to be questioned on the ground of adverse possession or otherwise except in the case of fraud or misrepresentation to which such person is proved to have been a party.

20

(2.) A certified extract from the Titles Register if signed by the Registrar and sealed with the seal of his office shall be received in evidence in the same manner as the original.

Appeals.

20. Every order or award and every entry in the Register made by the Registrar under this Ordinance shall be binding on all parties and shall not be set aside, varied or expunged except in the manner in this Ordinance expressly provided.

30

Provided always that any person who is aggrieved by any order, award or entry in the Register made by the Registrar may move the Supreme Court within one month after the registration of such order or the making of any such award or entry to set aside, vary or expunge the same.

Except as in this Ordinance expressly provided no Court shall exercise jurisdiction as to any matter relating to land within the jurisdiction given by this Ordinance to the Registrar of Titles.

Rules.

21. Subject to the provisions of this Ordinance the Governor in Council may from time to time make Rules in respect of all or any of the following matters:—

40

(a.) the form of the Titles Register;

- (b.) the form of the Register of Transfers and the mode in which such Registers are to be kept;
- (c.) the mode in which registration is to be conducted;
- (d.) the fees to be taken by the Registrar;
- (e.) the custody of the Registers and other documents connected with the business of registration;
- (f.) generally in relation to any matters whether similar or not to those above-mentioned as to which it may be expedient to make Rules for carrying into effect the provisions of this Ordinance.

10

All such Rules shall be published in the Gazette.

22. It shall be lawful for any customary land-holder to notify to the Registrar his desire to surrender his rights in his customary land to the Crown: and to receive in exchange a Crown lease. Such notification shall be in the form prescribed in Form G in the Schedule hereto: and on receipt of such notification duly signed by the applicant the Registrar shall forward the same to the Colonial Secretary with a report: and it shall then be lawful for the Governor to order that a Crown lease for such period and on such terms as he shall think fit be issued to the applicant in respect of such land: and such land shall from the date of the issue of such Crown lease be exempt from the provisions of this Ordinance and shall become subject to the general law in force in the Colony with regard to land held upon lease from the Crown.

20

Issue of
Crown lease.

23. The Registrar may by a notice in writing duly served in the manner prescribed in Rule 3 of the Rules made under section 21 of this Ordinance require any customary land-holder to erect boundary marks where necessary for the purpose of defining the limits of his customary land or to repair any boundary marks already existing; and if such land-holder fails to comply with this requisition within a period to be specified in the notice may cause the work to be done and recover the cost thereof as if it were an arrear of revenue due in respect of the land.

30

Boundary
marks.

24.—(1.) Nothing contained in this Ordinance shall derogate from any Rights of Way or other Easements now or hereafter acquired by the public in over along or across any customary land or shall be deemed to confer on the registered holder of any customary land a right to interfere with or obstruct the public use of any way or other easement so acquired or enjoyed as aforesaid.

Easements.

(2.) In case the registered holder of any customary land shall interfere with or obstruct the public use of any way or any easement now or hereafter acquired or enjoyed by the public in over along or across the land of which he is the registered holder any person aggrieved or

40

Item
No. C29
New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

damned by such interference or obstruction may apply to the Registrar for a summons calling upon such registered holder on a day named therein to show cause why an order shall not be made requiring him to abate such interference or remove such obstruction.

In case the registered holder shall fail to show cause as aforesaid the Registrar may if he thinks fit make an order requiring him to abate the interference or remove the obstruction within such limit of time as the Registrar may deem reasonable and if the registered holder fails to comply with the terms of the order within the specified period the Registrar may cause the necessary steps to be taken to that end and recover the cost thereof as if it were an arrear of Revenue due in respect of the land. 10

Caveats.

25.—(1.) Any person claiming to be interested in law or in equity, whether under an agreement, or under an unregistered instrument, or otherwise however in any land may lodge a caveat with the Registrar forbidding the registration of any dealing with such land, either absolutely or unless such dealing shall be expressed to be subject to the claim of the caveator, or to any conditions conformable to law expressed therein:

A caveat may be in the form prescribed in the Form *J* in the Schedule hereto, and shall be under the land and verified by the declaration of the caveator or an agent duly authorised in writing as aforesaid, and shall contain an address to which notices may be sent or at which proceedings may be served. 20

Upon the receipt of a caveat the Registrar shall make a memorandum thereon of the date and hour of the receipt thereof and shall enter a memorandum thereof in the Titles Register and shall forthwith send a notice of such caveat to the person against whose title such caveat shall have been lodged.

So long as any caveat shall remain in force the Registrar shall not, contrary to the requirements thereof, register any dealing with the land in respect of which such caveat shall have been lodged. 30

(2.) The registered proprietor or any other person claiming estate or interest in the land may, by summons, call upon any caveator, to attend before the Registrar to show cause why the caveat should not be removed; and the Registrar may upon proof that the caveator has been summoned, and upon such evidence as the Registrar may require, make such order in the premises, either *ex parte* or otherwise, as shall seem just.

Fees.

26.—All fees payable under this Ordinance or under any Rules or Regulation made thereunder may be recovered in a summary manner before a Police Magistrate. 40

Passed the Legislative Council of Hongkong, this 12th day of

December, 1902.

C. CLEMENTI,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 20th day of
December, 1902.

F. H. MAY,
Colonial Secretary.

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

THE SCHEDULE.

FORM A.

Titles Register.

10

Folio No.	Demarcation District.	Lot Number	Crown Rent in 19—.	Name of Holder.	Remarks.	Area of Holding.	Nature of Holding.	Mortgages.	Leases.	Number and Kinds of Buildings.	Subsequent Proceedings (if any).	Rent Charge.	Transfer Register Number.

Item
No. C29

FORM B.

Declaration under Section 6.

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

I hereby certify that on the _____ day of _____ appeared before me A.B. (or X.Y., the duly constituted Agent of A.B.) of _____ And thereupon the said A.B. (or the said X.Y. on behalf of A.B.) declared that he (or that the said A.B.) was then the registered holder of the customary lands described in the Schedule hereto. And that he (or the said A.B.) has now sold his interest in the said lands to C.D. in consideration of the sum of \$ _____ which has actually been paid to him the said A.B.

And the said C.D. (or Y.Z. on behalf of C.D.) declared that he the said C.D. 10 had purchased the interest of the said A.B. in the said land in manner aforesaid.

(Signed.)

Registrar.

FORM C.

Register of Transfers.

No.	Date.	Hour.	From whom.	To whom.	Book Folio.	Demarcation District.	Lot No.	Particulars of Transaction.	Signature of Collector of Land Revenue.

FORM D.

Mortgage.

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

I
of _____ hereby certify that on the _____ day
appeared before me A.B. (or X.Y., the duly constituted
Agent of A.B.) of _____ and C.D. (or Y.Z. the duly constituted
Agent of C.D.) of _____
And thereupon the said A.B. (or the said X.Y. on behalf of A.B.) declared that he
(or that the said A.B.) is the registered holder of the customary land described in the
10 Titles Register Book _____ folio _____. And that he the said A.B. has mortgaged to C.D.
his interest in the said land (or in part of the said land) that is to say (*here describe
the land mortgaged*) as security for the re-payment to the said C.D. *(on the
day of _____) of the principal sum of _____ *(with interest thereon at the rate of
_____ per cent. per mensem,) which said principal sum has been actually advanced
to him the said A.B. by the said C.D.

And the said C.D. (or the said Y.Z. on behalf of C.D.) declares that he agrees
to accept the mortgage above-mentioned as security for the said sum of \$
*(and interest.)

(Signed.)

20

Registrar.

[* Omit when the mortgage is customary.]

FORM E.

Statutory Declaration under Section 16.

In the matter of

1. I _____ do solemnly and sincerely declare that to the best
of my knowledge and belief _____ of _____ died on the
day of _____, 19____, at _____ and that at the time
of _____ death the deceased was the registered holder of the customary lands
described in the Titles Register Book _____ folio _____

30 2. I further solemnly and sincerely declare that the following persons are the
heirs of the deceased and entitled to share in the inheritance, that is to say:—

And I make this solemn declaration conscientiously believing the same to be
true and by virtue of the provisions of

Declared before me at _____ the _____ day of _____, 19____

*Justice of the Peace, Notary Public or other
person authorised to administer declarations.*

Item
No. C29

New
Territories
Titles
Ordinance,
No. 47 of
1902
(continued)

FORM F.

Declaration by the Registrar of Titles.

Transmission by Inheritance under Section 16.

I hereby certify that on the _____ day of _____
appeared before me
who thereupon declared that they are entitled (by law) to share in the inheritance of
deceased in respect to the following customary lands described
in the Titles Register Book _____ folio _____ :—

(a.) And the said heirs agreed to be registered jointly as customary land-
holders in respect to the said land. 10

or

(b.) And the said heirs agreed before me that
shall be recognized as the customary land-holder in respect
to the said land.

or

(c.) And the said heirs agreed to have the said land partitioned among them in
the following shares that is to say:—

or

(d.) And whereas the said heirs disputed how the said land should be
partitioned I have duly enquired into the matter and have assigned the 20
shares as follows:—

(Signed.)

FORM G.

I, A.B., being entitled as customary land-holder to the land described in the
Titles Register Book _____ folio _____ do hereby notify my desire to surrender all my
rights in such customary land to the Crown and to receive in return a Crown lease on
the terms of and at a Crown rent of _____

(Signed.)

FORM H.

Book No.
Folio No.
Demarcation District
Lot No.
Crown Rent
Name of Holder
Area
General description

30

FORM I.

Item
No. C29

Memorandum of Lease.

New
Territories
Titles
Ordinance,
No. 47
of 1902
(continued)

I, A.B., of _____ being registered as the customary holder
of the land situated at _____
do hereby lease to C.D. of _____
all the said land to be held by him the said C.D. as lessee for the space of _____
years from the _____ day of _____ at the yearly rental of _____
payable _____ subject to the following covenants,
conditions, and restrictions.

10 I, the above-named C.D., do hereby accept this Lease of the above-described
lands to be held by me as lessee, and subject to the conditions, restrictions, and
covenants above set forth.

Dated this _____ day of _____ 19____

Signature of
Registrar.

Signatures of
Lessor & Lessee.

FORM J.

*Caveat forbidding Registration of Dealing with
Estate of Interest.*

To the Registrar of Titles, New Territories.

20 Take notice that I, A.B., of _____
claiming _____ in _____ forbid the registration
of any dealing with the estate or interest of C.D. in the said land.

[Address for service of notices and proceedings:]

Dated this _____ day of _____, 19____

A.B.

I, the above-named _____, agent for the above-named
A.B., make oath and say that the allegations in the above Caveat are true in substance
and in fact.

30 this _____ Sworn by the said A.B. at _____ }
day of _____ 19____ }
Before me, _____ }

ITEM NO. C30

NEW TERRITORIES TITLES (REPEAL) BILL 1903

A BILL

ENTITLED

Item
No. C30

New
Territories
Titles
(Repeal)
Bill 1903

An Ordinance to repeal the New Territories Titles Ordinance, 1902,
(No. 47 of 1902).

WHEREAS it is expedient to repeal the New Territories Titles
Ordinance, 1902.

10 BE it enacted by the Governor of Hongkong, with the advice
and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the New Territories Titles (Repeal) Ordinance, 1903. Short title.

2. The New Territories Titles Ordinance, 1902, is hereby repealed. Repeal of Ordinance No. 47 of 1902.

Objects and Reasons.

20 The object is to repeal the New Territories Titles Ordinance because it has become apparent that the system of title by registration thereby established is unworkable and because it is found that the system if it could be brought into operation would clash with the Land Court Ordinance, 1900, in a manner contemplated neither by its framer nor by the Legislature when it passed the Ordinance.

The conflict with the Land Court Ordinance arises from the interpretation given in the New Territories Titles Ordinance to the expression "Customary land" and "Customary landholder".

The effect of that interpretation may be to override section 14 of the Land Court Ordinance and to confer "title" in a manner never intended and impossible to permit.

30 It was never intended and cannot be permitted that title to land in the New Territories should be acquired otherwise than by grant from the Crown as in the case of land in the other parts of the Colony but it is open to question whether the effect of the interpretation clause of the New Territories Titles Ordinance is not to vest in the Land Court the power to confer title independently of grant from the Crown. It was never intended that the Land Court should have power to do more than investigate claims to land and report thereon to the Governor. It was always intended and that intention still prevails that the ultimate right to grant or to refuse a title should rest with the Governor — an intention which clearly appears

Item
No. C30

New
Territories
Titles
(Repeal)
Bill 1903
(continued)

in section 14 of the Land Court Ordinance, 1900.

No inconvenience will thereby be caused to anyone because no land has yet been brought under the operation of the Ordinance.

H. S. BERKELEY,
Attorney General.

ITEM NO. C31

NEW TERRITORIES TITLES (REPEAL) ORDINANCE, NO. 21 OF 1903

Item
No. C31
New Territories
Titles
(Repeal)
Ordinance,
No. 21 of
1903

An Ordinance to repeal the New Territories Titles Ordinance, 1902,
(No. 47 of 1902).

LS

F. H. MAY,
Officer Administering the Government.

[9th December, 1903.]

10 WHEREAS it is expedient to repeal the New Territories Titles
Ordinance, 1902.

BE it enacted by the Governor of Hongkong, with the advice and
consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the New Territories Titles (Repeal) Ordinance, 1903. Short title.

2. The New Territories Titles Ordinance, 1902, is hereby repealed. Repeal of Ordinance No. 47 of 1902.

Passed the Legislative Council of Hongkong, this 7th day of
December, 1903.

20 R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Officer Administering the
Government, the 9th day of December, 1903.

A. M. THOMSON,
Acting Colonial Secretary.

ITEM NO. C32

CROWN LANDS RESUMPTION ORDINANCE, NO. 23 OF 1889

Item
No. C32

Crown Lands
Resumption
Ordinance,
No. 23 of
1889

An Ordinance enacted by the Governor of Hongkong with the advice and consent of the Legislative Council thereof, to enable the Governor to resume Crown Lands under lease and to give compensation therefor and for other cognate purposes. Title.

LS

G. WILLIAM DES VOEUX.

[24th June, 1889.]

10 WHEREAS the dwelling houses on certain portions of land under lease from the Crown especially in the City of Victoria are of insanitary construction as regards conditions of air and light and it is expedient that the Governor should be empowered to acquire or resume such lands and buildings compulsorily with a view to the erection of improved houses or dwellings thereon and doubts have arisen whether the resumption of such lands for the purposes aforesaid and for other purposes beneficial to the public of the Colony is within the meaning and intent of the powers of resumption for a public purpose, contained in the Crown leases of such lands and it is expedient to remove such doubts and whereas it is expedient that the duty of determining the value of lands resumed for a public purpose and of fixing the compensation to be awarded in respect thereof under Crown leases should be transferred from the Surveyor General to a Board of Arbitrators to be approved for the purpose: Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:— Preamble.

1. This Ordinance may be cited for all purposes as *The Crown Lands Resumption Ordinance, 1889.* Short title.

2. In this Ordinance unless inconsistent with or repugnant to the context. Interpretation.

30 The word *Board* shall mean any Board of Arbitrators appointed from time to time under this Ordinance.

The word *Land* shall mean any Crown land under lease from the Crown or any part or section thereof.

The word *Owner* shall mean the person whose name for the time being is registered in the Land Registry Office of the Colony in respect of any land sought to be resumed under the provisions of this Ordinance or if such person be absent from the Colony or cannot be found or is

Item
No. C32

Crown Lands
Resumption
Ordinance,
No. 23 of
1889
(continued)

bankrupt or dead his agent or representative in the Colony or the person entitled for the time being to have his name registered in the said Office in respect of such land or his agent or representative in the Colony.

Power of
resumption.

3. (i.) Whenever the Governor in Council shall decide that the resumption of any land is expedient in the interest of the Public it shall be lawful for the Governor to enter into private negotiations with the owner of any such land or any other person having any proprietary interest therein for the purchase of such land and all the right title and interest therein, and in case of the failure of such negotiation to give written notice that such land will be resumed on the expiration of four months from the publication of such notice, and that thereupon such compensation in respect of such resumption will be paid as may be awarded in the manner hereinafter provided.

10

(ii.) Such notice shall be published in the *Gazette* in English and Chinese and copies thereof shall be affixed upon a conspicuous part of the land to be resumed, and such publication shall be deemed to be notice to the owner and to every person interested in the land or having any right or easement therein.

(iii.) On the expiration of four months as aforesaid the land shall revert to the Crown and all rights of the owner his assigns or representatives or of any other person in or over the land or any part thereof shall absolutely cease.

20

Constitution
of Board.

4. After the expiration of four months as aforesaid a Board shall be appointed to determine the amount of compensation to be paid in respect of such resumption or taking and such Board shall in each case consist of three members and be constituted in manner following, viz:—

(1.) The Chairman of the Board shall be such judge of the Supreme Court as the judges may from time to time mutually arrange.

(2.) The two other members of the Board, shall consist of one member to be nominated by the Governor and the other by the owner of the land resumed provided always that the member nominated by the Governor may be the Surveyor General or any public officer.

30

(3.) Notice in writing of the nomination by the Governor of a member of the board shall be forthwith given to the owner by publication in the *Gazette*, and if he shall not nominate a member of the Board within seven days from the date of such publication it shall be lawful for the Chairman to nominate and appoint any person other than a member of the Colonial Civil Service on behalf of such owner.

40

(4.) The Governor may also appoint some person to act as clerk

to the Board at such remuneration as he may think fit.

Item
No. C32

5. The constitution of such Board shall be notified in the *Gazette* and within fourteen days from such notification the Board shall commence its sittings at such time and place as the Chairman may in and by such notification or by any other notification in the *Gazette* appoint.

Notification
of
Constitution
of Board.

Crown Lands
Resumption
Ordinance,
No. 23 of
1889
(continued)

10 6. No suit or action shall lie either against the Crown or against any other person for any loss or damage resulting to any person from any resumption of any land as aforesaid but any person claiming compensation whether as owner or otherwise by reason of such resumption shall before the commencement of the sittings of the Board transmit to the clerk of the Board if appointed or if no clerk be appointed to the Colonial Secretary for transmission to the Board a written claim stating the nature of his right or interest in the land and the amount which he seeks to recover.

No suit to lie
but claims to
be sent in
writing to the
Board.

7. Every claim shall be separately considered and adjudicated upon unless the parties otherwise agree.

Consideration
of claims.

8. The Board when constituted shall have the following powers and authorities, viz:—

Powers of
Board.

20 (1.) To determine the compensation to be paid in respect of such resumption or in respect of the extinction of any right or easement caused by such resumption regard being had not only to the value of the land taken and any buildings thereon but also to any damage or injury resulting to the owner of the land resumed by reason of the severance of such land from other land of such owner contiguous thereto, and to award compensation in respect of such resumption or extinction to all persons claiming compensation to whom the Board may find compensation to be due.

30 (2.) To award costs in their discretion either for or against the Crown, or for or against any parties claiming compensation, such costs in case of difference to be settled by the Registrar of the Supreme Court.

(3.) All such powers as are now or may be hereafter vested in the Supreme Court of the Colony or in any Judge thereof on the occasion of any suit or action in respect of the following matters:—

40 (a.) The enforcing the attendance of witnesses and examining them on oath or otherwise as they may think fit.

(b.) The compelling the production of any documents.

Item
No. C32

Crown Lands
Resumption
Ordinance,
No. 23 of
1889
(continued)

(c.) The punishing persons guilty of contempt.

(d.) The ordering an inspection of premises.

(e.) To enter and view any premises.

Notices by
Board.

9. Every notice under the hand of the Chairman of the Board may be substituted for and shall be equivalent to any form of process capable of being issued in any suit or action for enforcing the attendance of witnesses, or compelling the production of documents; and any warrant of committal to prison issued for the purpose of enforcing any such powers as aforesaid shall be under the hand of the Chairman and shall not authorise the imprisonment of any offender for a period exceeding three months; and every notice order or warrant of the Board may be served and executed in the same manner as notices orders and warrants of the Supreme Court may be served and executed under the procedure for the time being in force relating to civil suits.

10

No appeal
from decision
of majority.

10. If in the discharge of the duties devolving upon the Board there shall occur a difference of opinion between the members, the decision of any two of them shall have the same force and effect, as if all the members had concurred therein and any decision arrived at by the Board or a majority thereof shall not be subject to appeal and shall be final as regards all parties interested and no award of compensation made with respect to the resumption of any land shall be liable to be set aside for irregularity or error in matter of form.

20

Vacancies on
Board.

11. During the pendency of any proceedings before the Board if any member of the Board shall from any cause be or become unable to act, his place if he be a judge shall be filled by another judge or if he be a person appointed by the Governor or owner by some other person appointed by the Governor or owner as the case may require.

Re-grant of
lands, &c.

12. All lands resumed under the provisions of this Ordinance may be demised and granted by the Governor upon such terms and conditions and at such price whether by way of rent, premium, or otherwise and either by public auction or private contract as the Governor may determine.

30

Compensation
to bear
interest.

13. All sums of money awarded and all costs against the Crown if any shall as soon as practicable after the award is published be paid by the Governor out of the Public Revenues, and all sums awarded exclusive of costs shall bear interest at the rate of eight dollars per cent from the date of the resumption of the land until payment.

Notice of
resumption
to be conclu-
sive evidence
of a resump-
tion for a
public
purpose.

14. In any notice to resume any land it shall be sufficient to state that such land is required for a public purpose without stating the particular public purpose for which the land is required and a notice containing such statement shall be conclusive evidence that the land resumed is resumed for a public purpose.

40

15. Whenever the buildings or dwellings on any land are of insanitary construction as regards conditions of light and air, the Governor may, notwithstanding any of the powers of resumption herein contained or prior to the exercise of any such powers, permit the owner of such buildings or dwellings to reconstruct or rebuild the same or any part thereof upon such terms and conditions and subject to such security being given for the proper carrying out of such reconstruction or rebuilding as the Governor may in his discretion think fit.

Arrangement with owner to reconstruct buildings. Item No. C32
Crown Lands Resumption Ordinance, No. 23 of 1889
(continued)

10 16. Any Board constituted under this Ordinance may make such rules and regulations as may be deemed necessary for the conduct of all proceedings before it.

Power for Board to regulate proceedings.

17. This Ordinance shall not come into operation unless and until the Officer Administering the Government notifies by Proclamation that it is Her Majesty's pleasure not to disallow the same and thereafter it shall come into operation upon such day as the Officer Administering the Government shall notify by the same or any other Proclamation.

Suspending Clause.

Passed the Legislative Council of Hongkong, this 18th day of June, 1889.

20

ARATHOON SETH,
Clerk of Councils.

Assented to by His Excellency the Governor, the 24th day of June, 1889.

FREDERICK STEWART,
Colonial Secretary.

ITEM NO. C33

CROWN LANDS RESUMPTION AMENDMENT BILL 1899

A BILL

ENTITLED

Item
No. C33

Crown Lands
Resumption
Amendment
Bill 1899

An Ordinance to amend the Crown Lands Resumption Ordinance, 1889.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited for all purposes as the Crown Lands Resumption Amendment Ordinance, 1899. Short title.

10 2. The preamble to Ordinance No. 23 of 1889 is hereby amended so as to read as follows:— Amendment
of preamble
to Ordinance
23 of 1889:

Whereas it is expedient that the Governor should be empowered to acquire or resume any land and buildings compulsorily for any “public purpose” as defined by this Ordinance, and whereas it is expedient that the duty of determining the value of land and buildings so acquired or resumed and of fixing the compensation to be awarded in respect thereof, should (notwithstanding any clause contained in Crown Leases) be vested in a Board of Arbitrators.

20 3. Section 2 of Ordinance 23 of 1889 is hereby amended as follows:— Amendment
of section 2
of Ordinance
23 of 1889.

(i.) By substituting in place of the words “Crown land under lease from the Crown or any part or section thereof” the following words, namely:—

30 “land of whatever description or any part or section thereof, which is situated within the limits of the Colony as enlarged by a Convention dated the 9th of June, 1898, between Her Majesty the Queen and His Imperial Majesty the Emperor of China, and shall include the buildings (if any) erected on such land or on any part or section thereof;” and

(ii.) By adding the following paragraphs at the end of such section, namely:—

The word “resume” shall include acquiring, and the word “resumption” shall include acquisition.

The expression “resumption for a public purpose” as

Item
No. C33

Crown Lands
Resumption
Amendment
Bill 1899
(continued)

used in this Ordinance shall include—

- (i.) The compulsory resumption of insanitary properties by the Government for the purpose of erecting improved houses or dwellings thereon, and
- (ii.) The compulsory resumption of any land for any purpose connected with the Naval or Military Forces of this Colony, and
- (iii.) The compulsory resumption of any land for any purpose of whatsoever description, whether *ejusdem generis* with either of the above purposes or not, which the Governor-in-Council may decide to be a public purpose. 10

Amendment of s. (i.) of s. 3 of 23 of 1889. 4. Sub-section (i.) of section 3 of Ordinance 23 of 1889 is hereby amended by substituting for the words “expedient in the interest of the public” the following words, namely:—

“required for a public purpose.”

Amendment of s. 14 of 23 of 1889. 5. Section 14 of Ordinance 23 of 1889 is hereby amended by the insertion after the words “state that” and before the words “such land” of the following words, namely, “the resumption of.” 20

Objects and Reasons.

The object of clause 2 of this Bill is to amend the preamble to Ordinance 23 of 1889 in such a way as to make it clear that the acquisition or resumption of land or buildings may be effected for any “public purpose” as defined by clause 3 of this Bill.

The object of the amendment introduced by sub-section (i.) of clause 3 of this Bill is to make it clear that the expression “land” includes buildings, and also to clear up any possible ambiguity as to Ordinance 23 of 1889 being capable of application to the New Territories.

The object of sub-section (ii.) of clause 3 of this Bill is— 30

(a.) to make it clear that resumption includes acquisition, and

(b.) to define what is meant by a “public purpose.”

Clause 4 of this Bill introduces a small amendment in the language of section 3 of Ordinance 23 of 1889 which is required for the purpose of bringing the wording of that section into line with section 14.

Clause 5 of the Bill introduces a small amendment in section 14 of Ordinance 23 of 1889 with the object of bringing that section into line with the definition contained in clause 3 of this Bill.

HENRY E. POLLOCK,
Acting Attorney General.

Item
No. C33

Crown Lands
Resumption
Amendment
Bill 1899
(continued)

ITEM NO. 34

CROWN LANDS RESUMPTION AMENDMENT ORDINANCE,
NO. 30 OF 1899

Item
No. C34
Crown Lands
Resumption
Amendment
Ordinance
No. 30 of
1899

An Ordinance to amend the Crown Lands Resumption Ordinance, 1889.

LS

HENRY A. BLAKE,
Governor.

[24th October, 1899]

10 BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited for all purposes as the Crown Lands Resumption Amendment Ordinance, 1899.

Short title.

2. The preamble to Ordinance No. 23 of 1889 is hereby amended so as to read as follows:—

Amendment
of preamble
to Ordinance
23 of 1889.

20

Whereas it is expedient that the Governor should be empowered to acquire or resume any land and buildings compulsorily for any “public purpose” as defined by this Ordinance, and whereas it is expedient that the duty of determining the value of land and buildings so acquired or resumed and of fixing the compensation to be awarded in respect thereof, should (notwithstanding any clause contained in Crown Leases) be vested in a Board of Arbitrators.

3. Section 2 of Ordinance 23 of 1889 is hereby amended as follows:—

Amendment
of section 2
of Ordinance
23 of 1889.

(i.) By substituting in place of the words “Crown land under lease from the Crown or any part or section thereof” the following words, namely:—

30

“land of whatever description or any part or section thereof, which is situated within the limits of the Colony as enlarged by a Convention dated the 9th of June, 1898, between Her Majesty the Queen and His Imperial Majesty the Emperor of China, and shall include the buildings (if any) erected on such land or on any part or section thereof;” and

(ii.) By adding the following paragraphs at the end of such section, namely:—

Item
No. C34

The word "resume" shall include acquiring, and the word "resumption" shall include acquisition.

Crown Lands
Resumption
Amendment
Ordinance
No. 30 of
1899
(continued)

The expression "resumption for a public purpose" as used in this Ordinance shall include—

(i.) The compulsory resumption of insanitary properties by the Government for the purpose of erecting improved houses or dwellings thereon, and

(ii.) The compulsory resumption of any land for any purpose connected with the Naval or Military Forces of this Colony, and 10

(iii.) The compulsory resumption of any land for any purpose of whatsoever description, whether *ejusdem generis* with either of the above purposes or not, which the Governor-in-Council may decide to be a public purpose.

Amendment of s. (i.) of s. 3 of 23 of 1889. 4. Sub-section (i.) of section 3 of Ordinance 23 of 1889 is hereby amended by substituting for the words "expedient in the interest of the public" the following words, namely:—

"required for a public purpose." 20

Amendment of s.14 of 23 of 1889. 5. Section 14 of Ordinance 23 of 1889 is hereby amended by the insertion after the words "state that" and before the words "such land" of the following words, namely, "the resumption of."

Passed the Legislative Council of Hongkong, this 11th day of October, 1899.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 24th day of October, 1899.

J. H. STEWART LOCKHART, 30
Colonial Secretary.

ITEM NO. C35

CROWN LANDS RESUMPTION BILL 1900

A BILL

ENTITLED

Item
No. C35
Crown Lands
Resumption
Bill 1900

An Ordinance to facilitate the resumption by the Governor of Crown Lands required for a public purpose.

10 WHEREAS it is expedient that the Governor should be empowered compulsorily to resume any Crown Land, including any buildings thereon, for any "public purpose" as defined by this Ordinance, and whereas it is expedient that the duty of determining the compensation to be paid in respect of such resumption under this Ordinance should, notwithstanding any clause contained in Crown Leases, be vested in a Board of Arbitrators:

Preamble.

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as The Crown Lands Resumption Ordinance, 1900.

Short title.

2. In this Ordinance, unless the context otherwise requires,—

Interpretation.

20 The word "Board" means any Board of Arbitrators appointed, from time to time, under this Ordinance:

The word "Land" means Crown land of whatever description, (whether held under Crown Lease or other title recognised by the Crown) or any part or section thereof, which is situated within the limits of the Colony as enlarged by the Convention dated the 9th of June, 1898, between Her Majesty the Queen and His Imperial Majesty the Emperor of China, including the City of Kowloon, and includes buildings (if any) erected on such land or on any part or section thereof:

30 The word "Owner" means the person whose name, for the time being, is registered in the Land Registry Office of the Colony in respect of any land sought to be resumed under the provisions of this Ordinance or, if such person be absent from the Colony or cannot be found or is bankrupt or dead, his agent or representative in the Colony, or the person entitled for the time being to have his name registered in the said Office in respect of such land, or his agent or representative in the Colony:

The expression "resumption for a public purpose" includes—

Item
No C35
Crown Lands
Resumption
Bill 1900
(continued)

- (i) Resumption of insanitary property for the purpose of securing the erection of improved dwellings or buildings thereon or the sanitary improvement of such property, and
- (ii) Resumption of any land upon which any building is erected which, by reason of its proximity to or contact with any other buildings seriously interferes with ventilation or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health, and
- (iii) Resumption for any purpose connected with the Naval or Military Forces of the Crown including the Volunteer Force in this Colony, and
- (iv) Resumption for any purpose of whatsoever description, whether ejusdem generis with either of the above purposes or not, which the Governor in Council may decide to be a "public purpose."

10

Power of
resumption.

3. – (1.) Whenever the Governor in Council shall decide that the resumption of any land is required for a public purpose it shall be lawful for the Governor to enter into private negotiations with the owner of any such land or any other person having any proprietary interest therein for the purchase of such land and all the right, title and interest therein, and in case of the failure (in the opinion of the Governor) of such negotiations or in case it is not known who the owner is, to give notice that such land will be resumed on the expiration of four months from the publication of such notice, and that thereupon such compensation in respect of such resumption will be paid as may be awarded in the manner hereinafter provided.

20

(ii.) Such notice shall be published in the Gazette in English and Chinese and copies thereof shall be affixed upon a conspicuous part of the land to be resumed, and such publication shall be deemed to be notice to the owner and to every person interested in the land or having any right or easement therein.

30

(iii.) On the expiration of four months as aforesaid the land shall revert to the Crown and all rights of the owner, his assigns or representatives, or of any other person in or over the land or any part thereof shall absolutely cease.

Constitution
of Board.

4. After the expiration of four months as aforesaid a Board shall be appointed to determine the amount of compensation to be paid in respect of such resumption or taking, and such Board shall in each case consist of three members and be constituted in manner following, viz:—

40

- (1.) The Chairman of the Board shall be such judge of the Supreme Court as the judges may from time to time mutually arrange.
- (2.) The two other members of the Board shall consist of one member to be nominated by the Governor and the other by the owner of the land resumed: Provided always that the member nominated by the Government may be the Director of Public Works or any public officer.
- 10 (3.) Notice in writing of the nomination by the Governor of a member of the board shall be forthwith given to the owner by publication in the Gazette, and if he shall not nominate a member of the Board within seven days from the date of such publication it shall be lawful for the Chairman to nominate and appoint any person other than a member of the Colonial Civil Service on behalf of such owner.
- (4.) The Governor may also appoint some person to act as clerk to the board at such remuneration as he may think fit.
- 20 5. The constitution of such Board shall be notified in the Gazette and within fourteen days from such notification the board shall commence its sittings at such time and place as the Chairman may in and by such notification or by any other notification in the Gazette appoint.
- 30 6. No suit or action shall lie either against the Crown or against any other person for any loss or damage resulting to any person from any resumption of any land as aforesaid, but any person claiming compensation whether as owner or otherwise by reason of such resumption shall, before the commencement of the sittings of the board, transmit to the clerk of the board if appointed or if no clerk be appointed to the Colonial Secretary for transmission to the board a written claim stating the nature of his right or interest in the land and the amount which he seeks to recover.
7. Every claim shall be separately considered and adjudicated upon unless the parties otherwise agree.
8. The board when constituted shall have the following powers and authorities, viz:—
- 40 (1.) To determine the compensation to be paid in respect of such resumption or in respect of the extinction of any right or easement caused by such resumption, regard being had not only to the value of the land taken and any buildings thereon but also to any damage or injury resulting to the owner of the land resumed by reason of the severance of such land from other land of such owner contiguous thereto, and to award compensation in respect of such resumption or
- Notification of constitution of Board.
- No suit to lie but claims to be sent in writing to the Board.
- Consideration of claims.
- Powers of Board.

Item
No. C35

Crown Lands
Resumption
Bill 1900
(continued)

extinction to all persons claiming compensation to whom the board may find compensation to be due.

(2.) To award costs in their discretion either for or against the Crown, or for or against any parties claiming compensation, such costs in case of difference to be settled by the Registrar of the Supreme Court.

(3.) All such powers as are now or may be hereafter vested in the Supreme Court of the Colony or in any Judge thereof on the occasion of any suit or action in respect of the following matters:—

10

(a.) The enforcing the attendance of witnesses and examining them on oath or otherwise as they may think fit.

(b.) The compelling the production of any documents.

(c.) The punishing persons guilty of contempt.

(d.) The ordering an inspection of premises.

(e.) To enter and view any premises.

Compensation where property is resumed.

9. When any property is resumed under this Ordinance, the Board, in determining the compensation to be paid and in estimating the value of the land resumed and of any buildings thereon, may—

(a.) take into consideration the nature and then condition of the property and the probable duration of the buildings in their existing state and the state of repair thereof;

20

(b.) decline to make any compensation for any addition to or improvement of the property made after the date of the publication in the Gazette of the notice of intended resumption (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair):

Provided that, in the case of any interest acquired after the date of such publication, no separate estimate of the value thereof shall be made so as to increase the amount of compensation.

30

The Board may also receive evidence to prove—

(1.) that the rental of the building or premises was enhanced by reason of the same being used as a brothel, or as a gaming house, or for any illegal purpose; or

(2.) that the house or premises are in such a condition as to be a

nuisance, within the meaning of any Building Ordinance, or Ordinance relating to the Public Health, for the time being in force in this Colony, or are not in reasonably good repair; or

- (3.) that the house or premises are unfit, and not reasonably capable of being made fit, for human habitation.

And if the Board is satisfied by such evidence, then the compensation—

- 10 (a.) shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the house or premises had not been occupied as a brothel, or as a gaming house or for any illegal purpose; and
- (b.) shall, in the second case, be the amount estimated as the value of the house or premises if the nuisance had been abated or if they had been put into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such repair as the case may be; and
- 20 (c.) shall, in the third case, be the value of the land, and of the materials of the buildings thereon:

Provided also that, where insanitary property is resumed for the purpose of securing the erection of improved dwellings or buildings thereon, or the sanitary improvement of such property, no additional allowance shall be made in respect of compulsory purchase.

10. Every notice under the hand of the Chairman of the board may be substituted for and shall be equivalent to any form of process capable of being issued in any suit or action for enforcing the attendance of witnesses, or compelling the production of documents; and any warrant of committal to prison issued for the purpose of enforcing any such powers as aforesaid shall be under the hand of the Chairman and shall not authorise the imprisonment of any offender for a period exceeding three months; and every notice, order or warrant of the Board may be served and executed in the same manner as notice, orders and warrants of the Supreme Court may be served and executed under the procedure for the time being in force relating to civil suits.

Notices by
Board.

11. If in the discharge of the duties devolving upon the Board there shall occur a difference of opinion between the members, the decision of any two of them shall have the same force and effect as if all the members had concurred therein, and any decision arrived at by the Board or a majority thereof shall not be subject to appeal and shall be final as regards all parties interested, and no award of compensation made

No appeal
from decision
of majority.

Item
No. C35

with respect to the resumption of any land shall be liable to be set aside for irregularity or error in matter of form.

Crown Lands
Resumption
Bill 1900
(continued)

Vacancies
on Board.

12. During the pendency of any proceedings before the Board if any member of the Board shall from any cause be or become unable to act, his place if he be a judge shall be filled by another judge or if he be a person appointed by the Governor or owner by some other person appointed by the Governor or owner as the case may require.

Re-grant of
lands, &c.

13. All lands resumed under the provisions of this Ordinance may be demised and granted by the Governor upon such terms and conditions and at such price whether by way of rent, premium, or otherwise and either by public auction or private contract as the Governor may determine.

10

Compensa-
tion to bear
interest.

14. All sums of money awarded and all costs against the Crown, if any, shall as soon as practicable after the award is published be paid by the Governor out of the public revenues, and all sums awarded exclusive of costs shall bear interest at the rate of eight dollars per cent from the date of the resumption of the land until payment.

Notice of
resumption
to be conclu-
sive evidence
of a resump-
tion for a
public
purpose.

15. In any notice to resume any land, it shall be sufficient to state that the resumption of such land is required for a public purpose without stating the particular purpose for which the land is required, and a notice containing such statement shall be conclusive evidence that the resumption is for a public purpose.

20

Arrangement
with owner
to recon-
struct
buildings.

16. Whenever the buildings or dwellings on any land are of insanitary construction as regards conditions of light and air, the Governor may, notwithstanding any of the powers of resumption herein contained or prior to the exercise of any such powers, permit the owner of such buildings or dwellings to reconstruct or rebuild the same or any part thereof upon such terms and conditions and subject to such security being given for the proper carrying out of such reconstruction or rebuilding as the Governor may in his discretion think fit.

30

Power for
Board to
regulate
proceedings.

17. Any Board constituted under this Ordinance may make such rules and regulations as may be deemed necessary for the conduct of all proceedings before it.

Saving of
rights of
resumption
under Crown
Leases.

18. This Ordinance shall not be deemed to prevent the exercise by Her Majesty, Her heirs, successors, or assigns of any power of resumption contained in any Crown Lease.

Repeal.

19. Ordinances No. 23 of 1889 and No. 30 of 1899 are hereby repealed.

Objects and Reasons.

Item
No. C35

Ordinance No. 30 of 1899 was passed to amend The Crown Lands Resumption Ordinance, 1889.

Crown Lands
Resumption
Bill 1900
(continued)

It, however, left the title of the principal Ordinance unaltered, although it dealt not merely with the resumption of Crown lands, but also with the acquisition by the Governor of land of any description, for public purposes.

10 It appears unnecessary to mix the two subjects, and it is certainly desirable to consolidate in one Ordinance the law relating to the resumption of Crown lands.

The present Ordinance incorporates, with some few slight alterations, the amendments introduced into The Crown Lands Resumption Ordinance by Ordinance No. 30 of 1899, so far as they relate to the resumption of Crown lands. It should be borne in mind that all land in the New Territories is declared by the New Territories Land Court Ordinance, 1900, to be the property of the Crown during the term specified in the Convention of 9th June, 1898. Thus the resumption of any part thereof from the occupiers, if necessary, would come within the terms of this Ordinance.

20 Under the heading "resumption for public purpose" in section 2, a new clause is added, viz., clause (ii) relating to "obstructive buildings." This is based upon section 38 of the Imperial Act known as "The Housing of the Working Classes Act, 1890." The whole of section 9 is also new and deals with certain points connected with the assessment of compensation; while its last paragraph makes special provision in cases where insanitary property is resumed. This section follows in the main the provisions of section 21 of the Imperial Act previously mentioned. Section 18 makes it clear that the alternative mode of proceeding provided by this Ordinance does not annul any power of resumption contained in Crown
30 Leases.

W. MEIGH GOODMAN,
Attorney General.

ITEM NO. C36

Item
No. C36

CROWN LANDS RESUMPTION ORDINANCE, NO. 32 OF 1900

Crown
Lands
Resumption
Ordinance,
No. 32 of
1900

An Ordinance to facilitate the resumption by the Governor of Crown Lands required for a public purpose.

LS

HENRY A. BLAKE,
Governor.

[14th November, 1900.]

10 WHEREAS it is expedient that the Governor should be empowered compulsorily to resume any Crown Land, including any buildings thereon, for any "public purpose" as defined by this Ordinance, and whereas it is expedient that the duty of determining the compensation to be paid in respect of such resumption under this Ordinance should, notwithstanding any clause contained in Crown Leases, be vested in a Board of Arbitrators: Preamble.

Be it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as The Crown Lands Resumption Ordinance, 1900. Short title.

20 2. In this Ordinance, unless the context otherwise requires,—
The word "Board" means any Board of Arbitrators appointed, from time to time, under this Ordinance: Interpretation.

30 The word "Land" means Crown land of whatever description, (whether held under Crown Lease or other title recognised by the Crown) or any part or section thereof, which is situated within the limits of the Colony as enlarged by the Convention dated the 9th of June, 1898, between Her Majesty the Queen and His Imperial Majesty the Emperor of China, including the City of Kowloon, and includes buildings (if any) erected on such land or on any part or section thereof:

The word "Owner" means the person whose name, for the time being, is registered in the Land Registry Office of the Colony in respect of any land sought to be resumed under the provisions of this Ordinance or, if such person be absent from the Colony or cannot be found or is bankrupt or dead, his agent or representative in the Colony, or the person entitled for the time being to have his name registered in the said

Item
No. C36

Office in respect of such land, or his agent or representative
in the Colony:

Crown
Lands
Resumption
Ordinance,
No. 32 of
1900
(continued)

The expression "resumption for a public purpose" includes—

- (i) Resumption of insanitary property for the purpose of securing the erection of improved dwellings or buildings thereon or the sanitary improvement of such property, and
- (ii) Resumption of any land upon which any building is erected which, by reason of its proximity to or contact with any other buildings seriously interferes with ventilation or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation or dangerous or injurious to health, and 10
- (iii) Resumption for any purpose connected with the Naval or Military Forces of the Crown including the Volunteer Force in this Colony, and
- (iv) Resumption for any purpose of whatsoever description, whether ejusdem generis with either of the above purposes or not, which the Governor in Council may decide to be a "public purpose." 20

Power of
resumption.

3. — (1.) Whenever the Governor in Council shall decide that the resumption of any land is required for a public purpose it shall be lawful for the Governor to enter into private negotiations with the owner of any such land, or any other person having any proprietary interest therein, for the purchase of such land and all the right, title and interest therein, and in case of the failure (in the opinion of the Governor) of such negotiations or in case it is not known who the owner is, to give notice that such land will be resumed on the expiration of four months from the publication of such notice, and that thereupon such compensation in respect of such resumption will be paid as may be awarded in the manner hereinafter provided. 30

(ii.) Such notice shall be published in the Gazette in English and Chinese and copies thereof shall be affixed upon a conspicuous part of the land to be resumed, and such publication shall be deemed to be notice to the owner and to every person interested in the land or having any right or easement therein.

(iii.) On the expiration of four months as aforesaid, the land shall revert to the Crown and all rights of the owner, his assigns or representatives, or of any other person in or over the land or any part thereof shall absolutely cease. 40

Constitution
of board.

4. After the expiration of four months as aforesaid, a Board

shall be appointed to determine the amount of compensation to be paid in respect of such resumption, and such Board shall in each case consist of three members and be constituted in manner following, viz:—

Item
No. C36

Crown
Lands
Resumption
Ordinance,
No. 32 of
1900
(continued)

10

- (1.) The Chairman of the Board shall be such judge of the Supreme Court as the judges may from time to time mutually arrange.
- (2.) The two other members of the Board shall consist of one member to be nominated by the Governor and the other by the owner of the land resumed: Provided always that the member nominated by the Governor may be the Director of Public Works or any public officer.

20

- (3.) Notice in writing of the nomination by the Governor of a member of the board shall be forthwith given to the owner by publication in the Gazette, and if he shall not nominate a member of the Board within seven days from the date of such publication it shall be lawful for the Chairman to nominate and appoint any person other than a member of the Colonial Civil Service on behalf of such owner.

- (4.) The Governor may also appoint some person to act as clerk to the board at such remuneration as he may think fit.

5. The constitution of such Board shall be notified in the Gazette and within fourteen days from such notification the board shall commence its sittings at such time and place as the Chairman may in and by such notification or by any other notification in the Gazette appoint.

Notification
of constitu-
tion of
Board.

30

6. No suit or action shall lie either against the Crown or against any other person for any loss or damage resulting to any person from any resumption of any land as aforesaid, but any person claiming compensation whether as owner or otherwise by reason of such resumption shall, before the commencement of the sittings of the board, transmit to the clerk of the board if appointed or, if no clerk be appointed, to the Colonial Secretary for transmission to the board, a written claim stating the nature of his right or interest in the land and the amount which he seeks to recover.

No suit to lie
but claims
to be sent in
writing to
the Board.

7. Every claim shall be separately considered and adjudicated upon unless the parties otherwise agree.

Considera-
tion or
claims.

8. The board when constituted shall have the following powers and authorities, viz:—

Powers of
Board.

40

- (1.) To determine the compensation to be paid in respect of such resumption or in respect of the extinction of any right or easement caused by such resumption, regard being had not only to the value of the land taken and any buildings thereon

Item
No. C36

Crown
Lands
Resumption
Ordinance,
No. 32 of
1900
(continued)

but also to any damage or injury resulting to the owner of the land resumed by reason of the severance of such land from other land of such owner contiguous thereto, and to award compensation in respect of such resumption or extinction to all persons claiming compensation to whom the board may find compensation to be due.

(2.) To award costs in their discretion either for or against the Crown, or for or against any parties claiming compensation, such costs in case of difference to be settled by the Registrar of the Supreme Court. 10

(3.) All such powers as are now or may be hereafter vested in the Supreme Court of the Colony or in any Judge thereof on the occasion of any suit or action in respect of the following matters:—

(a.) The enforcing the attendance of witnesses and examining them on oath or otherwise as they may think fit.

(b.) The compelling the production of any documents.

(c.) The punishing persons guilty of contempt.

(d.) The ordering an inspection of premises.

(e.) The entering upon and viewing of any premises. 20

Compensation where property is resumed.

9. When any property is resumed under this Ordinance, the Board, in determining the compensation to be paid and in estimating the value of the land resumed and of any buildings thereon, may—

(a.) take into consideration the nature and then condition of the property and the probable duration of the buildings in their existing state and the state of repair thereof;

(b.) decline to make any compensation for any addition to or improvement of the property made after the date of the publication in the Gazette of the notice of intended resumption (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair): 30

Proviso.

Provided that, in the case of any interest acquired after the date of such publication, no separate estimate of the value thereof shall be made so as to increase the amount of compensation.

The Board may also receive evidence to prove—

(1.) that the rental of the building or premises was enhanced by reason of the same being used as a brothel, or as a gaming

house, or for any illegal purpose; or

- (2.) that the house or premises are in such a condition as to be a nuisance, within the meaning of any Building Ordinance, or Ordinance relating to the Public Health, for the time being in force in this Colony, or are not in reasonably good repair; or
- (3.) that the house or premises are unfit, and not reasonably capable of being made fit, for human habitation.

Item
No. C36
—
Crown
Lands
Resumption
Ordinance,
No. 32 of
1900
(continued)

And if the Board is satisfied by such evidence, then the compensation—

- 10 (a.) shall, in the first case, so far as it is based on rental, be based on the rental which would have been obtainable if the house or premises had not been occupied as a brothel, or as a gaming house or for any illegal purpose; and
- (b.) shall, in the second case, be the amount estimated as the value of the house or premises if the nuisance had been abated or if they had been put into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such repair, as the case may be; and
- 20 (c.) shall, in the third case, be the value of the land, and of the materials of the buildings thereon:

Provided also that, where insanitary property is resumed for the purpose of securing the erection of improved dwellings or buildings thereon, or the sanitary improvement of such property, no additional allowance shall be made in respect of compulsory purchase. A certificate signed by the Colonial Secretary to the effect that the property was resumed as being insanitary and for the purpose mentioned in this proviso shall be conclusive evidence thereof.

Proviso
where
insanitary
property is
resumed.

- 30 10. Every notice under the hand of the Chairman of the board may be substituted for and shall be equivalent to any form of process capable of being issued in any suit or action for enforcing the attendance of witnesses, or compelling the production of documents; and any warrant of committal to prison issued for the purpose of enforcing any such powers as aforesaid shall be under the hand of the Chairman and shall not authorise the imprisonment of any offender for a period exceeding three months; and every notice, order or warrant of the Board may be served and executed in the same manner as notices, orders and warrants of the Supreme Court may be served and executed under the procedure for the time being in force relating to civil suits or actions.

Notices by
Board.

- 40 11. If in the discharge of the duties devolving upon the Board there shall occur a difference of opinion between the members, the

No appeal
from decision

<p>Item No. C36</p> <hr/> <p>Crown Lands Resumption Ordinance, No. 32 of 1900 (continued)</p>	<p>of majority.</p> <p>Vacancies on Board.</p> <p>Re-grant of lands, &c.</p> <p>Compensa- tion to bear interest.</p> <p>Notice of re- sumption to be conclusive evidence of a resumption for a public purpose. Arrangement with owner to recon- struct buildings.</p> <p>Power for Board to regulate proceedings. Saving of rights of resumption under Crown Leases.</p>	<p>decision of any two of them shall have the same force and effect as if all the members had concurred therein, and any decision arrived at by the Board or a majority thereof shall not be subject to appeal and shall be final as regards all parties interested, and no award of compensation made with respect to the resumption of any land shall be liable to be set aside for irregularity or error in matter of form.</p> <p>12. During the pendency of any proceedings before the Board if any member of the Board shall from any cause be or become unable to act, his place if he be a judge shall be filled by another judge or if he be a person appointed by the Governor or owner by some other person appointed by the Governor or owner as the case may require.</p> <p>13. All lands resumed under the provisions of this Ordinance may be demised and granted by the Governor upon such terms and conditions and at such price whether by way of rent, premium, or otherwise and either by public auction or private contract as the Governor may determine.</p> <p>14. All sums of money awarded and all costs against the Crown, if any, shall as soon as practicable after the award is published be paid by the Governor out of the public revenues, and all sums awarded exclusive of costs shall bear interest at the rate of seven dollars per cent from the date of the resumption of the land until payment.</p> <p>15. In any notice to resume any land, it shall be sufficient to state that the resumption of such land is required for a public purpose without stating the particular purpose for which the land is required, and a notice containing such statement shall be conclusive evidence that the resumption is for a public purpose.</p> <p>16. Whenever the buildings or dwellings on any land are of insanitary construction as regards conditions of light and air, the Governor may, notwithstanding any of the powers of resumption herein contained or prior to the exercise of any such powers, permit the owner of such buildings or dwellings to reconstruct or rebuild the same or any part thereof upon such terms and conditions and subject to such security being given for the proper carrying out of such reconstruction or rebuilding as the Governor may in his discretion think fit.</p> <p>17. Any Board constituted under this Ordinance may make such rules and regulations as may be deemed necessary for the conduct of all proceedings before it.</p> <p>18. This Ordinance shall not be deemed to prevent the exercise by Her Majesty, Her heirs, successors, or assigns of any power of resumption contained in any Crown Lease.</p>	<p>10</p> <p>20</p> <p>30</p> <p>40</p>
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19. Ordinance No. 23 of 1889 and No. 30 of 1899 are hereby repealed.

Passed the Legislative Council of Hongkong, this 5th day of November, 1900.

R. F. JOHNSTON,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 14th day of November, 1900.

J. H. STEWART LOCKHART,
Colonial Secretary.

Repeal.

Item
No. C36

Crown
Lands
Resumption
Ordinance,
No. 32 of
1900
(continued)

ITEM NO. C37

CROWN LANDS RESUMPTION BILL 1921

A BILL

INTITULED

Item
No. C37

Crown Lands
Resumption
Bill 1921

An Ordinance to amend the Crown Lands Resumption Ordinance, 1900.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

- 10 1. This Ordinance may be cited as the Crown Lands Resumption Ordinance, 1921, and shall be read and construed as one with the Crown Lands Resumption Ordinance, 1900, hereinafter called the principal Ordinance, and the said Ordinance and this Ordinance may be cited together as the Crown Lands Resumption Ordinances, 1900 and 1921.
2. In the determination of the compensation to be paid under the principal Ordinance:—
- (a.) No allowance shall be made on account of the resumption being compulsory:
- (b.) Subject to the provisions of section 11 of the principal Ordinance, and to the provisions of paragraph (c.) of this section, the value of the land resumed shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: and
- 20 (c.) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held.
3. Section 2 of this Ordinance shall not apply to any case in which the notice under section 4 of the principal Ordinance shall have been published in the *Gazette* before the commencement of this Ordinance, or to any case in which the notice under section 5 of the principal Ordinance shall have been given to the owner before the commencement of this Ordinance.
- 30 4. Sub-section (1) of section 3 of the principal Ordinance is amended by the addition of the words “or in case the owner is absent from the Colony or cannot be found,” after the word “is” in the eighth line thereof.
5. If any co-owner of land which is to be resumed is absent from the Colony or cannot be found proceedings under the principal
- Short title and construction. Ordinance No. 10 of 1900.
- Additional rules for determining compensation. 9 & 10 Geo. 5, c. 57, s. 2 (1), (2).
- Application of s. 2.
- Amendment of Ordinance No. 10 of 1900, s. 3 (1).
- Absence of co-owner.

Item
No. C37

Crown Lands
Resumption
Bill 1921
(continued)

Amendment
of Ordinance
No. 10 of
1900, s. 11.

Ordinance may be taken in all respects as if such person were non-existent.

6. The proviso which is contained in the last seven lines of section 11 of the principal Ordinance is repealed.

Objects and Reasons.

1. This bill contains the three following main provisions:—

(a.) The customary 10% allowance for compulsory acquisition is to be abolished.

(b.) The compensation is to be based on the amount which the property would fetch in the open market if sold by a willing seller. 10

(c.) No compensation is to be given in respect of any use of the land which is not in accordance with the terms of the crown lease under which the land is held.

2. Paragraphs (a) and (b) of clause 2 are adopted from the Acquisition of Land (Assessment of Compensation) Act, 1919, 9 & 10 Geo. 5, c. 57, s. 2 (1) and (2).

3. Paragraph (c) of clause 2 is intended to prevent claims being made on public moneys in respect of uses of the land which are not in accordance with the terms of the Crown lease. Such claims are sometimes made, and they are generally supported by the production of permits to use the land in that particular way. Though such permits are intended to be only temporary they are often renewed from year to year for long periods, and the argument is that the Crown must be taken to have waived the breach of the Crown lease. It has also been argued that the expectation of the continued renewal of such permits must be taken into account in fixing the compensation. 20

4. Clause 3 of the bill is intended to save existing arbitrations from coming under the stricter provisions of clause 2 of the bill. 30

5. Clauses 4 and 5 are intended to get over a difficulty which sometimes occurs in the New Territories when owners, or co-owners, are absent from the Colony or cannot be found.

6. Clause 6 is a minor amendment which is consequential on paragraph (a) of clause 2.

J. H. KEMP,
Attorney General.

6th May, 1921.

ITEM NO. C38

CROWN LANDS RESUMPTION ORDINANCE, NO. 14 OF 1921

Item
No. C38
Crown Lands
Resumption
Ordinance,
No. 14 of
1921

I assent to this Ordinance.

LS

R. E. STUBBS,
Governor.

2nd September, 1921.

An Ordinance to amend the Crown Lands Resumption Ordinance, 1900.

[2nd September, 1921.]

10 BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Crown Lands Resumption Ordinance, 1921, and shall be read and construed as one with the Crown Lands Resumption Ordinance, 1900, hereinafter called the principal Ordinance, and the said Ordinance and this Ordinance may be cited together as the Crown Lands Resumption Ordinances, 1900 and 1921.

Short title
and
construction.
Ordinance
No. 10 of
1900.

2. In the determination of the compensation to be paid under the principal Ordinance:—

Additional
rules for
determining
compensa-
tion.
9 & 10 Geo. 5,
c. 57, s. 2 (1),
(2).

20 (a.) No allowance shall be made on account of the resumption being compulsory:

(b.) Subject to the provisions of section 11 of the principal Ordinance, and to the provisions of paragraph (c.) of this section, the value of the land resumed shall be taken to be the amount which the land if sold in the open market might be expected to realise: and

(c.) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held.

30 3. Section 2 of this Ordinance shall not apply to any case in which the notice under section 4 of the principal Ordinance shall have been published in the *Gazette* before the commencement of this Ordinance, or to any case in which the notice under section 5 of the principal Ordinance shall have been given to the owner before the commencement of this Ordinance.

Application
of s. 2.

Item
No. C38

Crown Lands
Resumption
Ordinance,
No. 14 of
1921
(continued)

Amendment of Ordinance No. 10 of 1900, s. 3 (1). 4. Sub-section (1) of section 3 of the principal Ordinance is amended by the addition of the words "or in case the owner is absent from the Colony or cannot be found," after the word "is" in the eighth line thereof.

Absence of owner or co-owner. 5. If any owner or co-owner of land which is to be resumed is absent from the Colony or cannot be found proceedings under the principal Ordinance may be taken in all respects as if such person were non-existent.

Amendment of Ordinance No. 10 of 1900, s. 10 (1). 6. Sub-section (1) of section 10 of the principal Ordinance is amended by the insertion of the words "and also in respect of damage to business due to removal," between the word "thereto" and the word "and" in the seventh line thereof, and by the insertion of the words "or damage" between the word "extinction" and the word "to" in the eighth line thereof.

10

Amendment of Ordinance No. 10 of 1900, s. 11. 7. The proviso which is contained in the last seven lines of section 11 of the principal Ordinance is repealed.

Passed the Legislative Council of Hongkong, this 1st day of September, 1921.

S. B. B. McELDERRY,
Clerk of Councils.

20

Assented to by His Excellency the Governor, the 2nd day of September, 1921.

CLAUD SEVERN,
Colonial Secretary.

ITEM NO. C39

CROWN LANDS RESUMPTION AMENDMENT BILL 1922

A BILL

INTITULED

Item
No. C39

Crown Lands
Resumption
Amendment
Bill 1922

An Ordinance to amend the Crown Lands Resumption Ordinance, 1921.

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

- 10 1. This Ordinance may be cited as the Crown Lands Resumption Amendment Ordinance, 1922, and shall be read and construed as one with the Crown Lands Resumption Ordinance, 1900, hereinafter called the principal Ordinance, and with the Crown Lands Resumption Ordinance, 1921, and the said Ordinances and this Ordinance may be cited together as the Crown Lands Resumption Ordinances, 1900 to 1922.
2. Section 2 of the Crown Lands Resumption Ordinance, 1921, is repealed and the following section is substituted therefor:—
- Additional rules for determining compensation. 20 9 & 10 Geo. 5, c. 57, s. 2 (1), (2).
- 30 2. In the determination of the compensation to be paid under the principal Ordinance:—
- (a.) No allowance shall be made on account of the resumption being compulsory:
- (b.) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held:
- (c.) No compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance, by the Crown or by any person, of any licence, permission, lease or permit whatsoever, provided that this paragraph shall not apply to any case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed: and
- (d.) Subject to the provisions of section 11 of the principal Ordinance, and to the provisions of paragraphs (b.) and (c.) of this section, the value of the land resumed shall be taken to be the amount which the land if sold in the open market might be
- Short title and construction. Ordinances Nos. 10 of 1900 and 14 of 1921.
- Repeal of Ordinance No. 14 of 1921, s. 2, and substitution of new section.

Item
No. C39
Crown Lands
Resumption
Amendment
Bill 1922
(continued)

Application
of s. 2.

expected to realise.

3. Section 2 of this Ordinance shall not apply to any case in which the notice under section 4 of the principal Ordinance shall have been published in the *Gazette* before the commencement of this Ordinance, or to any case in which the notice under section 5 of the principal Ordinance shall have been given to the owner before the commencement of this Ordinance.

Objects and Reasons.

1. The object of this Ordinance is to make it clear that in resumptions under the Crown Lands Resumptions Ordinances no compensation is to be awarded in respect of mere expectancies or probabilities. For example, the owner of agricultural land held under a Crown lease which prohibits the erection of buildings except with the licence of the Crown is not to receive any compensation with respect to the possibility that such a licence might at some time have been obtained if the land had not been resumed. This principle is not new as it is in force under the Lands Clauses Consolidation Acts in England, and it seems only reasonable that the community should not have to pay for a mere possibility of this kind which the claimant could never have enforced. 10

2. The reason for the amendment of Ordinance No. 14 of 1921 on this point is that that Ordinance laid down as a general rule that the basis of compensation should be the market value of the land, and it appears to be the case that speculators, in the case of agricultural land for instance, are often prepared to pay more than the value of the land for agricultural purposes in the hope that they may be allowed to convert it into building land. The claimant in such a case would no doubt argue that the speculator's price formed or was evidence of a market price above the real value of the land as agricultural land. This position is all the more likely to arise in a district which is about to be developed by the Government for building purposes, and if the above argument were to prevail the result would be that the community would have to pay a very much increased price for the land, although this increased price was based solely on the mere possibility of conversion which the Government have absolute discretion to refuse. The effect would be to make development more expensive and to raise the rents on the developed property, and it might even have the effect of checking development altogether in a particular district. 30

3. The intention of this bill, therefore, is to provide that the rule of taking the market price as the basis of compensation is to be subject to the further rule that no compensation is to be given in respect of such mere probabilities. 40

4. For convenience, the whole of section 2 of Ordinance No. 14 of 1921 is to be repealed and re-enacted, but practically the only part of the substituted section which is new is paragraph (c.).

J. H. KEMP,
Attorney General.

13th December, 1921.

Item
No. C39

Crown Lands
Resumption
Amendment
Bill 1922
(continued)

ITEM NO. C40

NOTICE OF NON-DISALLOWANCE OF ORDINANCE NO. 14 OF 1921

(Taken from "The Hongkong Government Gazette",
6th January, 1922)

LEGISLATIVE COUNCIL.

Item
No. C40

Notice of
Non-
Disallowance
of Ordinance
No. 14 of
1921
dated 5th
January
1922

No. 3.—His Majesty the KING has not been advised to exercise his power of disallowance with respect to the following Ordinances:—

Ordinance No. 14 of 1921.— An Ordinance to amend the Crown Lands Resumption Ordinance, 1900.

10 Ordinance No. 15 of 1921.— An Ordinance to authorize the Appropriation of a Supplementary Sum of One million four hundred and fifty-seven thousand seven hundred and eighty-seven Dollars and seventy-four Cents to defray the Charges of the year 1920.

Ordinance No. 18 of 1921.— An Ordinance to amend further the Bills of Exchange Ordinance, 1885.

Ordinance No. 22 of 1921.— An Ordinance to amend the Estate Duty Ordinance, 1915.

20 A. G. M. FLETCHER,
Clerk of Councils.

COUNCIL CHAMBER,
5th January, 1922.

ITEM NO. C41

CROWN LANDS RESUMPTION AMENDMENT ORDINANCE,
NO. 9 OF 1922

Item
No. C41

Crown Lands
Resumption
Amendment
Ordinance,
No. 9 of
1922

I assent to this Ordinance.

L.S.

R. E. STUBBS,
Governor.

24th March, 1922.

An Ordinance to amend the Crown Lands Resumption Ordinance, 1921.

16

[24th March, 1922.]

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Crown Lands Resumption Amendment Ordinance, 1922, and shall be read and construed as one with the Crown Lands Resumption Ordinance, 1900, hereinafter called the principal Ordinance, and with the Crown Lands Resumption Ordinance, 1921, and the said Ordinances and this Ordinance may be cited together as the Crown Lands Resumption Ordinances 1900 to 1922.

Short title
and construc-
tion.
Ordinances
Nos. 10 of
1900 and 14
of 1921.

20 2. Section 2 of the Crown Lands Resumption Ordinance, 1921, is repealed and the following section is substituted therefor:—

Repeal of
Ordinance
No. 14 of
1921, s. 2,
and substitu-
tion of new
section.

Additional 2. In the determination of the compensation to be paid
rules for determining compensation. under the principal Ordinance:—

9 & 10 Geo.
5, c. 57, s.
2 (1), (2).

(a.) No allowance shall be made on account of the resumption being compulsory:

(b.) No compensation shall be given in respect of any use of the land which is not in accordance with the terms of the Crown lease under which the land is held:

30

(c.) No compensation shall be given in respect of any expectancy or probability of the grant or renewal or continuance, by the Crown or by any person, of any licence, permission, lease or permit whatsoever, provided that this paragraph shall not apply to any

Item
No. C41

Crown Lands
Resumption
Amendment
Ordinance,
No. 9 of
1922
(continued)

case in which the grant or renewal or continuance of any licence, permission, lease or permit could have been enforced as of right if the land in question had not been resumed: and

(d.) Subject to the provisions of section 11 of the principal Ordinance, and to the provisions of paragraphs (b.) and (c.) of this section, the value of the land resumed shall be taken to be the amount which the land if sold in the open market might be expected to realise.

10

Application
of s. 2.

3. Section 2 of this Ordinance shall not apply to any case in which the notice under section 4 of the principal Ordinance shall have been published in the *Gazette* before the commencement of this Ordinance, or to any case in which the notice under section 5 of the principal Ordinance shall have been given to the owner before the commencement of this Ordinance.

Passed the Legislative Council of Hongkong, this 23rd day of March, 1922.

A. G. M. FLETCHER,
Clerk of Councils.

20

Assented to by His Excellency the Governor, the 24th day of March, 1922.

CLAUD SEVERN,
Colonial Secretary.

ITEM NO. C42

NOTICE OF NON-DISALLOWANCE OF ORDINANCE
NO. 9 OF 1922

(Taken From "The Hongkong Government Gazette",
11th August, 1922)

LEGISLATIVE COUNCIL.

Item
No. C42
Notice of
Non-
Disallowance
of Ordinance
No. 9 of
1922
dated
9th August
1922

No. 348 – His Majesty the KING has not been advised to exercise his power of disallowance with respect to the following Ordinances:—

10 Ordinance No. 8 of 1922. — An Ordinance to restrict the employment of aliens and of former enemy aliens on certain British ships registered in the Colony of Hongkong.

Ordinance No. 9 of 1922. — An Ordinance to amend the Crown Lands Resumption Ordinance, 1921.

A. DYER BALL,
Clerk of Councils.

COUNCIL CHAMBER,
9th August, 1922

ITEM NO. C43

PETITION BY LANDHOLDERS

Item
No. C43

Petition by
Landholders
dated 29th
April 1925

To the Right Honourable Lieutenant
Col LEOPOLD CHARLES MAURICE
STENNETT AMERY His Majesty's
Secretary of State for the Colonies.

The Humble Petition of the under-
signed, Landholders of New
Kowloon in the New Territories,
in the Colony of Hongkong, sheweth
as follows:—

10

1. That your Petitioners are Landholders at New Kowloon in the New Territories in the Colony of Hongkong, which is a part of the land which was leased to the British Government under the Convention between Great Britain and China signed at Peking on the 9th day of June 1898.

2. That by the terms of the said Convention it was understood that there would be no expropriation or expulsion of the inhabitants of the district included within the extension, and that if land was required for public offices fortifications or the like official purposes, it should be bought at a fair and reasonable price.

20

3. That the Government of Hongkong has for some time past been resuming land in New Kowloon for public purposes, under the powers conferred upon them by the Crown Lands Resumption Ordinance of 1900 and that under this Ordinance the Government of Hongkong has power to resume any land which is required for a public purpose and that in this Ordinance a resumption for a public purpose is defined as resumption, inter alia, for any purpose which the Governor in Council may decide to be a public purpose.

30

4. That the Government is resuming the lands in question for the purpose of laying out roads, and developing the land for building purposes, and that the building sites available, after the land has been laid out and levelled, are sold by the Government as building land.

5. That the development of land for building purposes and the sale of it, although covered by the extremely wide language of the Crown Lands Resumption Ordinance, is not an official purpose contemplated by the aforesaid Convention, which your Petitioners contend, contemplated only such permanent official purposes as roads fortifications, Government buildings etc., and that the Convention contemplated free purchase of lands required for such purposes, and not compulsory resumption.

6. That the Crown Lands Resumption Ordinance contains provisions for the appointment of Boards of Arbitration to determine the amount of compensation to be paid to the persons whose land is resumed under that Ordinance. And that such Boards

Item
No. C43

are duly constituted and their awards are duly carried out by the Government of Hongkong.

Petition by
Landholders
dated 29th
April 1925
(continued)

7. That the Boards have adopted a fixed method of valuing cultivated land in this district for the purpose of compensation. Awards are made upon a scale of values ranging from 5 cents per foot in respect of the best class of agricultural land downwards; and under no circumstances is more than five cents per foot ever awarded by the Boards as the value of the land, even though the market value of the land prior to resumption is several times that figure. This value is arrived at by taking the annual value of the crop that the land would produce, if it were used for purely agricultural purposes, and capitalising it. The figure thus arrived at is deemed sufficient compensation for the owners, on the ground that the owners are entitled to use their land for agricultural purposes only, and for no other purposes whatsoever. 10

8. That this view of the position of the landholders of these districts is consistent with the legal position into which your Petitioners, with the other inhabitants of the New Territories, have been forced by the legislative action of the Government of Hongkong; but is not consistent either with equity or with the Convention of 1898 as the following recital shows.

At the date of the said Convention the Landholders in the New Territories held their land according to Chinese tenure by grant from the Crown as freehold; and this tenure was recognised by the Government in Hongkong, after a careful investigation into the state of land tenure in the Territory. The Government in 1902, after the conclusion of the said investigation, passed the New Territories Titles Ordinance, in which it was enacted by Section 4, that a customary landholder should be deemed to have a permanent, heritable, and transferable, right of use and occupation in his customary land subject only to certain reservations. These reservations were as follows:— 20

- (A) to the payment of all such Crown Rent, land tax, or assessment as might from time to time be imposed in respect of customary land.
- (B) to the reservation in favour of the Crown of all mines and mineral products and of all buried treasure, with full liberty to work and search for the same, paying to the customary landholder such compensation for any damage occasioned thereby as might be assessed by the Registrar; 30
- (C) to the reservation in favour of the Crown of the right of making roads, drains, and sewers, and laying down water pipes and gas pipes, carrying electric, telephone, and telegraph wires and using, repairing and maintaining the same, paying to the customary landholder such compensation for any damage occasioned thereby as might be assessed by the Registrar. Should the landholder be dissatisfied with such compensation he might appeal to the Supreme Court in the manner provided in Section 20 of the Ordinance. 40
- (D) to the payment to any persons of such rent charge if any as the Land

Court should have decided to be payable out of such customary land;

- (E) to the right of the Crown to take possession of such land upon paying to the customary landholder full and fair compensation; such compensation to be fixed by the Registrar; should the landholder be dissatisfied with such compensation he might appeal to the Supreme Court in the manner provided in Section 20 of the Ordinance.
- (F) to the enjoyment by any persons of all rights of way or other easements or profits to which the Land Court might have decided the land to be subject.

10

A customary landholder was defined as any claimant whose claim had been allowed by the Land Court, constituted in 1900, for the purpose of investigating titles to land. All present holders derive their titles through such claimants. The Government of Hongkong therefore are precluded from alleging that the interest of a landholder in the New Territories was, at the date of the said Ordinance, less than the interest described by the Ordinance; and it is noticeable that there is nothing in Section 4 of the Ordinance to prevent the landholder from using his land for building purposes.

20

The Government appear to have decided later on to adopt a system of Crown Leases, and after certain intermediate legislation, an Ordinance was passed in 1910, which is still in force, and governs the whole of the New Territories. By virtue of this Ordinance and its predecessors the Government grants leases for 75 years which contain numerous covenants and conditions, and also a proviso for resumption by the King for the improvement of the Colony, or for any other public purpose.

30

This Ordinance was a complete infringement of the Convention since it gave the landholders only a term of years (and that term subject to restrictive covenants and to forfeiture for breach of covenants as well as to resumption) in exchange for what was to all intents and purposes a freehold interest.

40

The Ordinance was carried out by means of the execution by the Governor of Leases for entire districts, known as block leases. These Leases contain schedules in which are set out the names of the landholders, with particulars of their holdings, showing in particular, whether their land is agricultural or building land. These Leases remain at all times in the Government's Land Office and are never executed by the Lessees. Moreover it is safe to say that of the landholders who hold land by virtue of the Leases, few have ever seen the Leases, and that very many do not even know of their existence.

The Leases contain a provision that in the event of any building being erected on any premises demised as (i.e. included in the schedule as) agricultural or garden ground, the rent is to be such a sum as is specified

Item
No. C43

Petition by
Landholders
dated 29th
April 1925
(continued)

in the licence to erect such building; and also contain a covenant by the Lessee not to build without a licence from the King's Surveyor.

It is clear that the object of these provisions was merely to give the Government power to charge a higher rental for land used as building land; and that it was not intended to prevent the landholders from using their land as building land, if they so desired; as they would have been entitled to do under the New Territories Titles Ordinance, or under Chinese jurisdiction; and it is submitted that any Court of Equity would so contrive the block Leases. Nevertheless the Government of Hongkong take the view that they are entitled arbitrarily to refuse to grant licences to build; and that consequently the tenants are only entitled to the use of the land as agricultural land; and are therefore entitled to compensation, on resumption, only on the basis of the value of the land as agricultural land. To strengthen their position the Government have passed the Crown Lands Resumption Amendment Ordinance 1922 by Section 2 of which it is provided, inter alia, that in the determination of the compensation to be paid under the principal Ordinance:—

10

(b) “No compensation shall be given in respect of any use of the land “which is not in accordance with the terms of the Crown Lease “under which the Land is held.”

20

(c) “No compensation shall be given in respect of any expectancy or any “probability of the grant or renewal or continuance by the Crown or “by any person of any licence permission lease or permit whatsoever, “provided that this paragraph shall not apply to any case in which “the grant or renewal or continuance of any licence permission lease “or permit could have been enforced as of right if the land in “question had not been resumed.”

(d) “Subject to the provisions of Section 11 of the principal Ordinance “and to the provisions of paragraphs B and C of this Ordinance the “value of the land resumed shall be taken to be the amount which “the land if sold in the open market might be expected to realise.”

30

The Boards of Arbitration have taken the view that Sub-sections (b) and (c) compel them to value the land as agricultural land; in other words as if the land could have been used for no other purpose but that of agriculture. Thus making Sub-section (d) inoperative. There is no appeal from the Boards. It follows that the landholders' interests have been reduced by legislative action from the comparatively extensive estate described in the New Territories Titles Ordinance, to a mere licence to cultivate the surface.

9. That this amounts to expropriation in breach of the Convention.

40

10. That the result is that in a number of cases it has actually happened, that Landholders who at the time of Resumption had recently purchased their holdings, have been awarded as compensation a fraction of what they had actually paid for the

property. Nor will it be disputed by the Government that in the developing districts land has freely been bought and sold at many times the figures allowed by the boards; both Vendors and Purchasers believing that licences to build would be obtained without difficulty at an increased Crown Rent.

Item
No. C43

Petition by
Landholders
dated 29th
April 1925
(continued)

11. That a man might in the morning be the owner of a plot of land which he could sell at any time for twenty cents a foot or more, and that by the same evening by the service of a resumption notice he might be deprived of four fifths of that value or even more.

10 12. That such a result not only was never contemplated at the time the Convention was signed, but is the very thing which was expressly provided against by the Convention.

13. That many persons whose lands have been resumed (including some of your Petitioners) have, as their only means of protest against this treatment, refused to attend before the Boards of Arbitration, and refused to accept the compensation awarded to them. And a substantial sum of money representing these rejected awards is at present in the hands of the Government.

20 14. That in a Proclamation issued by His Excellency Sir Henry Arthur Blake, G.C.M.G., then Governor of the Colony on the 9th day of April 1899, the measures to be taken by the Government with regard to the land were detailed for the information of the Public, and this Proclamation contained the following promises:—

“I would also impress upon you that these Territories having been leased “by His Imperial Majesty the Emperor of China to Her Britannic Majesty “the Queen of England, as subjects of Her Majesty’s Empire, your “commercial and landed interests will be safeguarded and that your usages “and good customs will not in any way be interfered with.” And again “It will be necessary for you to register without delay your titles for the “land occupied by you that the true owners may be known. Should any “land be required for public purposes it will be paid for at its full “value.”

30 15. That in the Colonial Secretary’s Report on the New Territories forwarded to Mr. Joseph Chamberlain, Secretary of State for the Colonies in 1900, the Colonial Secretary made the following observation:—

“It may seem peculiar that suspicion should have arisen seeing that His “Excellency the Governor informed the inhabitants both by proclamation “and by speech that the tenure of the land would remain practically “undisturbed and that the Chinese Authorities have repeatedly notified “the inhabitants that the tenure of the land would remain the same as “before and that the rights of property would be respected.”

40 16. That the procedure of the Government to-day is therefore not only a breach of the Convention, but also of the verbal and written promises made to the inhabitants at the time, and that there is a widespread feeling in the Colony that the acts of the Government amount to a breach of faith.

Item
No. C43
Petition by
Landholders
dated 29th
April 1925
(continued)

17. That the end aimed by the Government is presumably to assist in the provision of housing accommodation for the growing population of the City of Victoria and Kowloon; but that this end does not benefit your Petitioners and their fellow landholders in the New Territories, who suffer all the loss and inconvenience without getting any of the advantages.

18. That if resumption must take place, the most equitable way of dealing with the owners would be to give, to those that desire it, other lands equivalent in acreage and fertility to the lands taken, together with compensation for cost of removal of buildings and for crops; and to pay to those who do not want land, compensation equivalent to the real value of the land they own, and not to an artificial value created by the Government's own legislative acts. 10

19. That in the majority of cases it would be unnecessary to pay any compensation at all. If the Government resumed what was required for roads, and made the roads, the land owners would accept licenses to build on the balance of the land in lieu of compensation. No difficulties would arise if this method was followed, since the system of Crown Leases would enable the Government to keep full control of the resulting development, and the landholders would readily fall in with the Government's schemes.

20. That if this method were pursued, the owners would be satisfied; the Government would not be out of pocket, since the income from new buildings would more than justify the outlay incurred in making the roads; and the Government would avoid the stigma of providing cheap houses for one section of the community out of the pockets of another. 20

21. That the whole system in addition to being unjust to individuals, inconsistent with the British Government's solemn engagements, and damaging to British prestige is, your Petitioners submit, entirely unnecessary.

Your Petitioners therefore Humbly Pray that – an enquiry be made into the present system of land resumption as practised in the New Territories by the Government of the Colony AND that measures be taken to bring about a reform of this system in so far as it results in injustice to the holders of lands in the New Territories AND that an enquiry be made into those cases in which compensation award for lands already resumed has been refused, in order that such compensation may be reconsidered, and in proper cases readjusted. 30

And your Petitioners will ever pray, &c.

Dated the 29th day of April, 1925.

ITEM NO. C44

DESPATCH FROM SECRETARY OF STATE TO GOVERNOR

Item
No. C44

Despatch from
Secretary of
State to
Governor
dated 26th
November
1925

18-11-45
20
22
23
24

Memorandum
The Hon. Attorney General

Re: *Chimney*

25-7
Mr. J. Macdonald Smith
Ministry of Works

PUBLIC	Reference C.O. 129	489
COPYRIGHT PHOTOGRAPH - NOT TO BE REPRODUCED PHOTOGRAPHICALLY WITHOUT PERMISSION OF THE PUBLIC RECORD OFFICE LONDON		

DRAFTSMAN

Sir,

I have the honor to acknowledge

your letter of the 18th inst.

in relation to a memorial

dated 18th Aug. 1945, from certain landholders of New

London on the subject of land

reversion in the New Territories

1. The main allegation

made by the petitioners is that

the effect of the legislation

which they refer to the policy of

adopted elsewhere amounts

in itself to expropriation

in breach of the Convention of 1907

Mr. (illegible)
Mr. (illegible)
Mr. (illegible) (Heading and address illegible)
Mr. Strachan
Sir.J. Shuckburgh
Sir. C. Davis
Sir. G. Grindle
Sir. J. Masterton Smith
Mr. Ormsby-Gore
Mr. Amery

81

DRAFT.

Sir,

I have to ack. the receipt of
Sir R.E. Stubbs' despatch No.304 of the
5th Aug, 1925, enclg a memorial
from certain landholders of New
Kowloon on the subject of land
resumption in the New Territories.

2. The main allegation
made by the petitioners is that
the effect of the legislation to
which they refer and the policy
adopted thereunder, amounts
in itself, to appropriation in
breach of the Convention of 1898

in case of the above sentence
 there is a very nice question arising
 = a word about what is right
 with respect to bond possession
 under Chinese law - It is quite
 important to be able to say before we go
 into any consideration upon it, if
 we could only say that it does not
 appear to me to be a question on
 which we ought to be troubled with
 it that it does appear that the view
 of the Hongkong Bank as to the
 right of the holder of bond under
 Chinese law has become less
 definite as time progressed & the
 question of the former made under
 it needed to be put
 - The other two points made
 by the petitioner are fairly clear
 from the Chinese law on which the
 for general reference within the
 meaning of the Convention, & especially

The petitioner
 The petitioner

for the lease of the New Territories. This is a very big question depending to a great extent upon the rights which holders of land possessed under Chinese law and it is quite impossible on the infm. before me to come to any conclusion upon it. I would only say that ~~it~~ does not ~~it~~ seem to me to be a frivolous one ~~which can lightly be brushed aside,~~ and that it does appear that the view of the Hongkong Govt. as to the rights of the holders of land under Chinese law have become less sympathetic as time progressed and the Convention and the promises made under it receded into the past.

the contention of
the petitioners

3. The other two points made by the petitioners are, firstly, that town extension works are not works for official purposes within the meaning of the Convention; and secondly,

/and

and the value of the land
the former contribution
found that the contribution
payable in respect of area 82
seemed to be compensation
at a fair price as contemplated
by the Convention.

As regards the first
point I find great difficulty
in agreeing with Sir R. E. J. J. J.

that the compulsory purchase
of land is not an appropriation

or that town planning
is carried on in the way which

he describes is an special
purpose within the meaning

of the Convention. The words
of the Convention is very

precise and it will be done
in a response to
that special purpose.

Mr. Smith
Mr. J. S. J.
Mr. C. J. J.
Mr. G. J. J.
Mr. J. J. J. J.
Mr. J. J. J. J.
Mr. J. J. J. J.

DRAFT.

PUBLIC RECORD OFFICE									
1	2	3	4	5	6	7	8	9	10
Reference									
C.O. 129									
489									
COPYRIGHT PHOTOGRAPH - NOT TO BE REPRODUCED PHOTOGRAPHICALLY WITHOUT PERMISSION OF THE PUBLIC RECORD OFFICE, LONDON									

Mr. (illegible)
Mr. (illegible)
Mr. (illegible)
Mr. Strachan
Sir. J. Shuckburgh
Sir. C. Davis
Sir. G. Grindle
Sir. J. Masterton Smith
Mr. Ormsby-Gore
Mr. Amery

DRAFT.

and this (illegible) applies even if
the former contention is not
sound, that the compensation
payable in respect of land
resumed is not compensation
at a fair price as contemplated
by the Convention. 82

4. As regards the first
point, I find great difficulty
in agreeing with Sir R.E. Stubbs
that the compulsory purchase
of land is not expropriation
or that town planning,
carried on in the way which
he describes, is an official
purpose within the meaning
of the Covention. Thw wording
of the Convention is very
precise and it will be observed
the expression
that / "official purposes" is

not used generally but with reference to public offices and fortifications.

5. I am advised that the relevant clause in the Convention means that there will be no expropriation or expulsion of the inhabitants of the district, unless the land is required for public offices, fortifications, or for official purposes of a like nature to public offices and fortifications, in which case it shall be bought at a fair price. And this leads to the second point, which is the adequacy of the compensation. A fair price must mean a fair market price, and a fair market price is the price which, having regard to its actual potential value, the land would fetch on the open market.

This

different view
mission adopted by
a maximum
for confederation.

merely for the sake of argument,

that the Govt. has the power

right to grant or withhold

licenses for turning agricultural

land into building land, it

cannot be far, if there is

a real chance that such

license will be granted,

to eliminate that element on

computing the value of the

land for purposes of

granting confederation.

would not be eliminated if

the land were sold in the

open market.

PUBLIC RECORD OFFICE

Reference
C.O. 129 489

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DRAFT.

Mr. Secretary,
Mr. C. Davis,
Mr. G. G. G.,
Mr. J. Mackenzie,
Mr. Ormsby-Gore,
Mr. Amey.

Mr. (illegible)
Mr. (illegible)
Mr. (illegible)
Mr. Strachan
Sir. J. Shuckburgh
Sir. C. Davis
Sir. G. Grindle
Sir. J. Masterton Smith
Mr. Ormsby-Gore
Mr. Amery

DRAFT.

This seems to me to be a very different thing from the (illegible) method adopted by the (illegible) of ascertaining the value of land for compensation. Even assuming⁸³ (merely for the sake of argument) that the Govt. has the ~~-prior~~ right to grant or withhold licences for turning agricultural land into building land, it cannot be fair, if there is a real chance that such licence will be granted, to eliminate that element in computing the value of the land for purposes of granting compensation. It would not be eliminated if the land were sold in the open market. I note

that

that C. R. S. Hubbs states that
the amt. of compensation which
is granted is in accordance
with Chinese laws & customs.
This may be so, but it is
surely not the point, which is
whether or not it is in accordance
with the Convention.

6. It appears to me possible
that if the Govt. of Hongkong
were to adopt a fairer & more
generous method of assessing
compensation in the case of lands
expropriated for public purposes, the
whole controversy would die
down. I request, therefore, that
you will take the matter into
your consideration & inform me
in due course of the policy
which you propose to adopt. In
the meanwhile the petitioners are
hopeful that they have their petition under con-

that Sir R.E. Stubbs states that the amt. of compensation which is granted is in accordance with Chinese law and customs. This may be so, but it is surely not the point, which is whether or not it is in accordance with the Convention.

6. It appears to me possible that if the Govt.of Hongkong were to adopt a fairer and more generous method of assessing compensation in the case of lands resumed for public purposes, the whole controversy would die down. I request therefore that you will take the matter into your consn. and will inform me in due course of the policy which you propose to adopt. In the meanwhile the petitioners shd be infd that I have their petition under consn.

7. I have

I have also to ask that you
will continue as an

as possible with a national

return out going the 8th

features of the training

but with regard to this

land question, in case

may think it desirable

to consult the Law Officer

on the points which have

been raised

(Signed) L. S. AMERY.

Mr. Speaker

Mr. J. Sturges

Mr. C. Davis

Mr. G. G. G. G.

Mr. M. M. M.

Mr. C. C. C.

Mr. J. J. J.

DRAFT.

PUBLIC RECORD OFFICE					
1	2	3	4	5	6
1	2	3	4	5	6

Reference
G.O. 129

489
 COPYRIGHT PHOTOGRAPH - NOT TO
 BE REPRODUCED PHOTOGRAPHICALLY
 WITHOUT PERMISSION OF THE
 PUBLIC RECORD OFFICE, LONDON

Mr. (illegible)
Mr. (illegible)
Mr. (illegible)
Mr. Strachan
Sir. J. Shuchburgh
Sir. C. Davis
Sir. G. Grindle
Sir. J. Masterton Smith
Mr. Ormsby-Gore
Mr. Amery

DRAFT.

7. I have also to ask that you will furnish me as soon as possible with a statement setting out fully the 84 position of the Hongkong Govt. with regard to this land question, in case I may think it desirable to consult the Law Officers on the points which have been raised.

(Signed) L.S. AMERY

ITEM NO. C45

GAZETTE NOTIFICATION RELATING TO THE RESUMED LAND

G.N. 3080 CROWN LANDS RESUMPTION ORDINANCE (Chapter 124)

RESUMPTION OF LAND FOR TEMPORARY HOUSING AREA
YICK YUEN, YUEN LONG, NEW TERRITORIES

To the owners and every person interested or having any right or easement in the following lots shown coloured orange on the plan numbered YLR 137 which is deposited in the District Office at Yuen Long in the New Territories and which is available for inspection there:—

- 10 Lot Nos. 2938, 3103, 3104, 3105, 3106, 3107, 3525, 3526 and 3543 in Demarcation District No. 124.

TAKE NOTICE that the Governor in Council having decided that the above-mentioned lots are required for a public purpose, the Governor has ordered that the above-mentioned lots shall be resumed and revert to the Crown on the expiration of THREE MONTHS from the date of the affixing of the notice to the said land.

7 October 1981

A. G. EASON *Deputy Secretary for Lands and Works*

憲示第三零八零號

收回官地條例（香港法例第一二四章）

關於收回土地以供建設新界元朗亦園臨時房屋區事

致下開地段之業主及對該等地段具有利益關係或任何權利或地役權之人士：

- 20 丈量約份第一二四約地段號數：

第二九三八號、第三一〇三號、第三一〇四號、第三一〇五號、第三一〇六號、第三一〇七號、第三五二五號、第三五二六號及第三五四三號。

查上開地段由於總督會同行政局已決定收回作公共用途，現經總督下令，自本告示張貼於上述地段之日起滿三個月後，由政府收回。該等地段之範圍業已在圖則 YLR 137 用橙色表明，該圖則現存於新界元朗理民府署，供有關人士查閱。特此公佈週知。

一九八一年十月七日

副地政工務司 伊信

Item
No. C45

Gazette
Notification
relating
to the Resumed
Land
dated 7th
October
1981

ITEM NO. D1

Item
No. D1

AFFIDAVIT OF PATRICK MOUBRAY CADELL

Affidavit of
Patrick
Moubray
Cadell
dated 3rd
November
1983

AT EDINBURGH, on the Third day of November 1983 before

KENNETH BORSYTH BARCLAY, NOTARY PUBLIC, EDINBURGH,
APPEARED PATRICK MOUBRAY CADELL, B.A.,

who being SOLEMNLY SWORN DEPONES:--

1. I am Keeper of Manuscripts in the National Library of Scotland.
- 10 2. There is now produced and shown to me marked Exhibit P.C.1 and docquetted as relative to this affidavit a true photo-copy of an original document in the Chinese language which is included in the personal papers of Mr Stewart Lockhart, deceased, which are deposited in this Library and held in my custody. In the original document the text is in black and the seal is in red.
3. There is now produced and shown to me marked Exhibit P.C.2 and docquetted as relative to this affidavit a true photo-copy of an original document in the Chinese language which is included in the personal papers of Mr Stewart Lockhart, deceased, which are deposited in this Library and held in my custody. In the original document the text is in black and the seal is in red.
- 20 4. There is now produced and shown to me marked Exhibit P.C.3 and docquetted as relative to this affidavit a true photo-copy of an original document in the Chinese language which is included in the personal papers of Mr Stewart Lockhart, deceased, which are deposited in this Library and held in my custody. In the original document the text is in black and the seal is in red.
5. I regret that it is not possible for original documents from the Lockhart papers to be removed from this Library.

(Sd.) Patrick Cadell

Before me,

30 (Sd.) Kenneth F. Barclay
Notary Public,
Edinburgh.

(Seal of Kenneth Forsyth Barclay,
Notary Public, Edinburgh)

ITEM NO. E1

AFFIDAVIT OF ANTHONY RICHARD DICKS

Civil Appeal No. 76/83

IN THE COURT OF APPEAL

(On Appeal from the High Court Miscellaneous
Proceedings No. 982 of 1982)

Item
No. E1

Affidavit
of Anthony
Richard
Dicks dated
17th November
1983

10

IN THE MATTER of land described
as Lot Nos. 2938, 3103, 3104, 3105,
3106, 3107, 3525, 3526 and 3543 in
Demarcation District No. 124 in the
New Territories Hong Kong
(hereinafter referred to as "the
resumed land")

– and –

20

IN THE MATTER of land described
as Lot Nos. 3129, 3130, 3131, 3132,
3362, 3556 and 3561 in Demarcation
District No. 124 in the New
Territories Hong Kong (hereinafter
referred to as "severed land")

BETWEEN

WINFAT ENTERPRISE (HK) COMPANY LIMITED

Plaintiff

– and –

THE ATTORNEY-GENERAL

Defendant

I, ANTHONY RICHARD DICKS, of 703 Prince's Building, Hong Kong,
Barrister, make oath and say as follows:—

1. This affidavit is supplemental to my affidavit filed herein on 9th December 1982.
2. There are now produced to me and marked as follows, what appear to be
30 photocopies of the following documents:

Item
No. E1

Affidavit
of Anthony
Richard
Dicks dated
17th November
1983
(continued)

(i) Proclamation in the Chinese language by the Magistrate of San On County dated 12th day of 2nd Moon of the 25th year of Kwong Su (23rd March 1899) marked "ARD-1".

Translation marked "ARD-1a".

(ii) Proclamation in the Chinese language by the Viceroy of the Two Kwong Provinces dated 24th day of the 2nd Moon of the 25th year of Kwong Su (4th April 1899) marked "ARD-2".

Translation marked "ARD-2a".

(iii) Proclamation in the Chinese language by Sir Henry Blake, Governor of Hong Kong, dated 9th April 1899 marked "ARD-3".

10

Translation marked "ARD-3a".

3. During the short time available to me, I have formed the following opinion of the aforesaid documents:

(i) That under the legal system in force in the former Chinese Empire during the Qing (or Tsing) Dynasty, local officials, including in particular provincial governors, had, under authority conferred by the Imperial Government, the power to make proclamations having the force of law.

(ii) That the Proclamations exhibited hereto marked ARD-1 and ARD-2 are to the best of my knowledge and belief in a form typical of the proclamations referred to in (i) above.

20

(iii) That the Proclamation exhibited hereto marked ARD-3 appears to be worded in a form which bears the closest possible resemblance to Chinese proclamations of the kind referred to in (i) and (ii) above.

SWORN at the office of P.C. Woo)
& Co. at 1223 Prince's Building)
Hong Kong at this 17th day of)
November 1983)

(Sd.) Anthony R. Dicks

Before me

(Sd.) Roland Kun-Chee Chow
Solicitor, Hong Kong.

30

ITEM NO. E2

CERTIFIED TRANSLATION OF PROCLAMATION OF
SAN ON MAGISTRATE

TRANSLATION

Item
No. E2

Certified
Translation
of Proclamation
of San On
Magistrate

10 Chiu, Imperial Sub-Prefect, Special Magistrate of San On County, Thrice Decorated. Let all clearly understand this that pursuant to a dispatch from Tam, Viceroy of the Two Kwong Provinces, instructing local civil and military officers to attend in person for the purpose of delineating the Kowloon Boundary, it has now been determined that all islands within the latitudes and longitudes on the nautical chart prescribed by the Tsung-li Yamen are within the leased territory. To this end let this proclamation be clearly understood so that the soldiers and the people should know that you should realise that within the leased area as delimited all fields, lands, houses, graves, customs and usages, that is trade, commerce, fishing and oyster-catching, will remain as before. You must not be alarmed or suspicious or cause trouble. Those islands not included in the leased territory will continue to be within Chinese territory and have nothing to do with you. Should anyone dare to avail themselves of pretexts to incite and try to create incidents, they will most certainly be punished without leniency. An important and special proclamation.

(illegible)

20 The islands which are to be included in the leased territory are as follows:

Peng Chau, Gut O, Tap Mun, Lantau Island, Ma Wan, Ping Chau, Cheung Chau, Lamma together with all small islands.

Proclaimed on the 12th day 2nd Moon 25th year of Kwong Su.

Seal
(illegible)

Proclamation

ORIGINAL PROCLAMATION OF SAN ON MAGISTRATE IN CHINESE

Original Proclamation of San On Magistrate in Chinese

Panbi

欽加同知銜特授新安縣正堂記功三次趙

兩廣總督部堂譚 札開九龍勘界事地方文武均應親往會勘等因奉此現經議明遵照

總理衙門所定海國經緯界線所有線內各島均在租界之內為此到切示諭軍民人等知悉爾等須

知其已到租界者所有田園廬墓風俗鄉情即貿易生理捕魚捉蝦等事一切仍舊供勿驚疑生事

其未劃入租界各海島仍在中國界內與爾等無涉如敢藉詞煽惑希圖滋事足即嚴辦不貸切

切特示

光緒二十五年

計開劃入租界內各海島列下

- 坪洲
- 普澳
- 塔門
- 大嶼山
- 馬灣
- 牟洲
- 長洲

薄寮 并各小島

光緒二十五年三月

十二

日示

告示



ITEM NO. E4

CERTIFIED TRANSLATION OF PROCLAMATION
OF VICEROY OF TWO KWONGS

TRANSLATION

Item
No. E4

Certified
Translation
of Proclamation
of Viceroy
of Two
Kwongs

- Tam, Junior Guardian of the Heir Apparent, Secretary of State for Military Affairs, Viceroy of the Two Kwong Provinces and Luk, Official of the Highest Order, Secretary of State for Military Affairs, Governor of Kwong Tung Province. Let all clearly understand this that whereas Kowloon has been leased under the decree of the Emperor and the boundary has been defined in accordance with the original map
- 10 forwarded by the Tsung-li Yamen, it has been agreed with the foreign officials that the people are to be treated with exceptional kindness, there can be no forced sale of your houses and landed property, the graves within the leased territory are never to be removed and local customs and habits are to remain completely as before. Therefore, your villages and market towns in the leased territory will be no different from if they were (still) within Chinese territory. To this end let this proclamation be clearly understood, that you the soldiers and the people, may know that whatever matter which may occur in the villages and market towns of China which has nothing to do with you, do not use these as pretext to incite. All of you in the villages and market towns of the leased territory can follow your occupation. If in disobedience to the
- 20 Imperial decree you dare to create strife or avail yourselves of any pretext to stir up trouble, there is now a large military force in the territory which will arrest and deal with the guilty without mercy. Let every one strictly obey. An important and special proclamation.

(illegible)

Proclaimed on the 24th day 2nd Moon 25th year of Kwong Su.

Seal
(illegible)

ORIGINAL PROCLAMATION OF VICEROY OF THE TWO KWONGS IN CHINESE

Original Proclamation of Viceroy of the Two Kwongs in Chinese

太子少保兵部尚書兩廣總督部堂譚
頭品頂戴兵部尚書廣東巡撫部院鹿
為

旨先惟憲

劉切曉諭事照得九龍租界係奉

總理衙門奏開勘定已與洋官訂明

仍舊是爾等村墟在租界內與在中

烟或凡在租界以內各村墟亦各照常

旨生事或借端滋擾現有火兵在境

定即會究不貸各宜慎勿違

光緒二十五年二月



Handwritten signature in cursive script.

日示

ITEM NO. E6

CERTIFIED TRANSLATION OF GOVERNOR'S
PROCLAMATION IN CHINESE

TRANSLATION

Item
No. E6

Certified
Translation
of Governor's
Proclamation
in Chinese
dated 9th
April 1899

By Order of Her Majesty, Blake, Governor and Commander-in-Chief of Hong Kong and its Dependencies and Vice-Admiral of the same, decorated with the Highest Honours. Let all clearly understand this, that certain territories situated east west south north within the County of San On, the boundaries of which are hereunder stated, now belong to Her Majesty the Queen of Great Britain pursuant to the decree of the
10 Imperial Majesty of China permitting the granting of an Extension to the boundary of Hong Kong. In November of last year I was appointed by gracious order of Her Majesty to come and govern Hong Kong and administer the said territory. Now therefore I have chosen the 17th day of April according to the western calendar, that is the 8th day of the 3rd Moon according to the Chinese calendar, as the date on which the British Flag shall be hoisted in substitution within the confines of the territory for the purpose of defining the border of each country and for the maintenance of lasting friendly relations. Upon the said date I will instruct and send subordinates here and for fear that as this may not yet be widely known among you inhabitants and you may become suspicious and be incited by rumours disseminated by lawless persons resulting
20 in disaster and as people are ignorant, one leads and a hundred follow, it is incumbent upon me to forewarn (you) and let all clearly understand this: To this end let this proclamation be clearly understood by all the inhabitants residing within the limits of San On County that from the date of this proclamation you do continue as usual to reside in peace, work in happiness and make a living whilst abiding by the law. Take heed, do not concoct rumours, cause incidents or incite others. (You) must know that all land situated within San On County is land which has been leased by Her Majesty the Queen of Great Britain from His Imperial Majesty the Emperor of China as an extension of the boundary for future commerce, mutual trade, mutual enjoyment and enduring peace. All landed property which is truly
30 yours will continue to be yours and managed by you. Such of your good customs which are beneficial to the people will continue as before and will not be changed. For all inhabitants under heaven within the realm of Great Britain our Monarch will treat equally that all shall enjoy prosperity and happiness. In view of my respect for the virtuous intentions of Her Majesty, I for my part should do my utmost to elevate your status. Only then will I be fulfilling my duty. Therefore I plan first to choose from among elders of your villages who have always commanded your respect to assist in the management of local affairs and making of laws to dispel evil and encourage good, and protecting your villagers and creating peace and tranquility and that each will be able to go about his business. I firmly believe in your natural
40 propensity for good and innate ability to abide by the law. You must know that a country (government) basically legislates for the good of the people and that all who come to cause trouble will definitely be punished according to the law and will be shown no mercy. Now (I) make known to you inhabitants that all owners of landed property and houses must produce your title deeds for registration without delay and for examination so that the true owners may be known and fraud prevented. If land is required by the country (government) it may be acquired and its full value given to you. You must know that, as subjects of the Great British Empire, you will be

Item
No. E6

Certified
Translation
of Governor's
Proclamation
in Chinese
dated 9th
April 1899
(continued)

guaranteed freedom from maltreatment. Should you have any complaints to make, any official governing the territory will be pleased to hear you out. The law follows my spoken words. There will be no injustice and no laxity. All must render implicit obedience. An important and special proclamation. (Official Endorsement – illegible)

The boundaries, size and islands of the extension are as follows.

The Northern boundary commences at the point of high water mark in Mirs Bay where the east longitude 140°30' – bisects the land, and follows that high water mark to a point immediately to the West of Sha Tau Kok, and then follows the road along the Northern edge of this town till the middle of a stream becomes the boundary as far as the road to King Hau. From King Hau to King To the mountain pass becomes the boundary to about one li West of King To where the Northern edge of the road is the boundary. From this point to the mouth of the Sham Chun river the Northern bank of the Sham Chun river forms the boundary. From the mouth of the Sham Chun river the boundary follows the high water mark along the coast of Deep Bay till the point of east longitude 113°52' bisects the land.

10

The eastern boundary is 114°30' East longitude.
The western boundary is 113°52' East longitude.
The southern boundary is 22°9' North latitude.

All the waters of Mirs Bay and Deep Bay are within the British Administration.

Lung Koo	Sau Chau	Sheung Mo Chau	20	
Ha Mo Chau	Chek Lap Kok	Lantau Island		
Chun Sheung Chau	(illegible)	Cheung Chau		
Shek Kwu Chau	Cha Kwo Chau	Ping Chau		
Nei Koo Chau	Kau Yi Chau	Ma Chau		
Ching Yi	Poi Liu	Po Toi		
Lu Chau	Ching Chau	Fuk Tong Chau		
Ngau Tau Chau	Tiu Chung	Pak Nap		
Yim Tin Chai	Kiu Tsui	Kau Sei		
Tap Mun	Chek Chau	Pak Tam Chau		
Wong Nei Chau	Sheung Chau	Gut O		30
Peng Chau				

Proclaimed on the 9th day of April 1899, English Calendar.

Sealed with the
oblong official
seal of the
Governor of
Hong Kong

ORIGINAL GOVERNOR'S PROCLAMATION IN CHINESE

大清英皇陛下諭旨

前切曉諭事照得新安縣屬等處地方勘定東西南北四至界限開列於下乃我

大清國大皇帝諭旨准行批為香港展拓界址去年十一月本部堂解臈

諭命來督首江兼轄蘇二現擇於西曆四月十七日即中曆三月初八日在蘇州一帶地方換樹

大英旗號巧欲各安疆界和好長敦居期本部堂飭屬隨從造認或職成禍端小民無知必至一信百和合

亟先先行切切曉諭此示諭新界內等處各色居民人等知悉自示之後爾等照常安居樂業守

分營士慎毋造言生事煽動人心須知新安縣屬等處一帶地方係

大清國大皇帝諭旨准行批為香港展拓界址之地將來通商互市共享

兩等差美風俗利於民者悉仍其舊毋庸更改蓋凡

字內屬於大英國土地之人民我皇上首一視同仁務使各子昌熾康樂之福本部堂仰體

皇上德意自應致力以增尚爾等之地位方為盡職故先

辦事務又安立除暴安良之法保讓爾等無間使得以

能安分守法須知國家立法本為益民起見如有自外生成作奸犯科者

定必按律懲治決不姑寬今與爾居民人等約凡有

出產屋宇之業至須得契券呈出速行註冊以便查

核誰是真實業主無得蒙混倘國家需用公地可按照價值給回爾等須知凡屬

大英國子民確可保無受苛虐情事倘有冤抑遽情呈

遞凡官斯土者無不樂為伸理豈本部堂言出法隨

毋枉毋縱各宜凜遵毋違切切特示

北界以東經線一百一十四度三十分過六鴨湖

水漲角之處起沿沙頭角水線直至沙頭角西為止

沙頭角西繞沙頭角北以小路為界由沙頭角西至

口以小河中為界由河口至深河口止以深河口北

岸為界由深河口沿河海以至東經線一百一十三度

五十二度後海潮水漲界為止

東界以東經線一百一十四度三十分

西界以東經線一百一十三度五十二分

南界以東經線一百一十二度九分

所有大鴨灣及後海水道俱歸大英管屬



大英一千八百九十五年四月 告示

Item No. E7 Original Governor's Proclamation in Chinese dated 9th April 1899

In the Privy Council

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

WINFAT ENTERPRISE (HK) COMPANY LIMITED **Appellant**
(Plaintiff)

AND

ATTORNEY GENERAL **Respondent**
(Defendant)

RECORD OF PROCEEDINGS

RAYMOND TANG & CO.
Solicitors for the Appellant (Plaintiff)

CROWN SOLICITOR
Solicitors for the Respondent (Defendant)
