

~~GM6G2~~

37,1956

No. 49 of 1954.

In the Privy Council.

UNIVERSITY OF LONDON
20 FEB 1957
LIBRARY OF LEGAL STUDIES

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG.

16065

BETWEEN

CHU YAM OM and CHEUNG LAN CHAU . . . *Appellants*

AND

LI TAM TOI HING *Respondent.*

Case for the Appellants.

RECORD.

10 1. This is an appeal from a judgment, dated the 30th June, 1954, of the Supreme Court of Hong Kong in its appellate jurisdiction (Gregg and Reynolds, JJ.), dismissing an appeal from a judgment, dated the 5th March, 1954, of the Supreme Court in its original jurisdiction (Howe, C.J.), ordering the Appellants to discharge mortgages on certain property and to execute an assignment of that property to the Respondent and also granting certain consequential relief. The property affected by that judgment consists of the premises of a school (having some 900 pupils), known as the Sih Nan College, at No. 1 Oaklands Path, Hong Kong, on ground registered in the Land Office as Inland Lot No. 2182.

pp. 97-99.

pp. 87-94.

20 2. The legislative provisions relevant to this appeal are as follows :—

CHAPTER 128. LAND REGISTRATION ORDINANCE.

2. The Land Office shall be a public Office for the registration of deeds, conveyances, and other instruments in writing, and wills and judgments ; and all deeds, conveyances, and other instruments in writing, and wills, and all judgments, by which deeds, conveyances, and other instruments in writing, and wills and judgments, any parcels of ground, tenements, or premises in this Colony, may be affected, may be entered and registered in the said office in the manner hereinafter directed.

30 3.—(1) All such deeds, conveyances, and other instruments in writing, and wills and judgments, made, executed, or obtained,

and registered in pursuance hereof, shall have priority one over the other according to the priority of their respective dates of registration.

(2) All such deeds, conveyances, and other instruments in writing, and wills and judgments, as last aforesaid, which are not registered shall (as against any subsequent *bona fide* purchaser or mortgagee for valuable consideration of the same parcels of ground, tenements, or premises) be absolutely null and void to all intents and purposes: Provided that nothing herein contained shall extend to *bona fide* leases at rack rent for any term not exceeding three years. 10

4. No notice whatsoever, either actual or constructive, of any prior unregistered deed, conveyance, or other instrument in writing, or will or judgment, shall affect the priority of any such instrument as aforesaid as is duly registered.

CHAPTER 250. DEBTOR AND CREDITOR (OCCUPATION PERIOD)
ORDINANCE.

3.—(1) Where any payment was made during the occupation period in Hong Kong currency or occupation currency by a debtor or by his agent or by a custodian or a liquidator acting or purporting to act on behalf of such debtor to a creditor or to his agent or to a custodian or a liquidator acting or purporting to act on behalf of such creditor and such payment was made in respect of a debt— 20

- (a) payable by virtue of an obligation incurred prior to the commencement of the occupation period; and
- (b) accruing due either prior to or after the commencement of the occupation period,

such payment shall subject to the provisions of sub-section (2) be a valid discharge of such debt—

- (i) to the extent of the face value of such payment if made in Hong Kong currency; or 30
- (ii) at the official rate prescribed by the occupying power if payment made in occupation currency; or
- (iii) at the rate agreed by the parties concerned.

(2) In any case—

- (a) where the acceptance of such payment in occupation currency was obtained by duress or coercion, or
- (b) where such payment was made in occupation currency in respect of a pre-occupation capital debt which—
 - (i) was not due at the time of such payment; or 40

(ii) if due was not demanded by the creditor or by his agent on his behalf and was not payable under a contract the parties to which expressly stipulated that it should be of the essence of such contract that payment should be made on a date certain ; or

(iii) if due and demanded was not made within three months of such demand,

10

such payment shall be revalued in accordance with the scale contained in and in the manner prescribed in the Schedule and shall be a valid discharge of such debt only to the extent of such revaluation.

(3) In subsection (2) pre-occupation capital debt means any such debt as is referred to in subsection (1), including a sum payable as interest but not including a sum payable as rent and accruing due after the commencement of the occupation period.

* * * * *

20

(10) (1) In any case where a debt purporting to have been discharged in whole or in part by payment in occupation currency is by virtue of the provisions of this Ordinance deemed to be wholly or partly undischarged at the commencement of this Ordinance and where the payment of such debt before such purported discharge as aforesaid was secured by any mortgage charge lien guarantee indemnity or other form of security the rights of the creditor in relation to such mortgage charge lien guarantee indemnity or other form of security shall be deemed not to have been extinguished or diminished by such purported discharge.

* * * * *

SCHEDULE.

30

1. Where any such payment as is mentioned in subsection (2) of section 3 of the Ordinance was made in occupation currency during any month or any period set out in the first column of paragraph 3 of this Schedule, such payment shall be revalued by taking the number of dollars in Hong Kong currency set out opposite such month or period in the second column of paragraph 3 of this Schedule as equivalent to one thousand military yen.

40

2. In the case of a debt incurred during the occupation period which falls to be revalued under section 5 of this Ordinance, if the whole or any part thereof remains unsatisfied such whole or part shall be revalued as in the month or period in which the debt was incurred by taking the number of dollars in Hong Kong currency set out opposite such month or period in the second column of paragraph 3 of this Schedule as equivalent to one thousand military yen.

3. First Column	Second Column	
MONTH	AMOUNT IN HONG KONG DOLLARS TO BE TAKEN AS EQUIVALENT TO 1,000 MILITARY YEN	
1942 January to December inclusive.	\$ 800	
1943		
January	600	10
February	600	
March	600	
April	600	
May	560	
June	520	
July	480	
August	390	
September	320	
October	280	
November	280	20
December	280	
1944		
January	260	
February	200	
March	160	
April	120	
May	120	
June	90	
July	80	
August	60	30
September	48	
October	40	
November	32	
December	24	
1945		
January	20	
February	16	
March	16	
April	16	
May	12	40
June	8	
July	4	
August 1-15	4	
August 16-31	Nil	

CHAPTER 256. LAND TRANSACTIONS (ENEMY OCCUPATION)
ORDINANCE.

10 5.—(1) A Japanese assignment shall be construed and take effect as a valid and subsisting agreement by the assignor to assign on demand without further consideration and (save in so far as such agreement or other instrument otherwise provides) at the cost of the assignee or other person lawfully requiring the same the property to which such assignment relates in the form which would have been directed by the court prior to the Japanese occupation in a successful action for the specific performance of such an agreement.

* * * * *

9. Notwithstanding anything hereinbefore contained, in any action for specific performance founded on this Ordinance—

20 (a) it shall be a valid defence for a person who has been required to assign or confirm in accordance with the provisions hereof, to show that the Japanese assignment in respect of which such assignment or confirmation was required is void or voidable at his instance or would have been void or voidable at his instance but for the enactment of this Ordinance ;

(b) a defendant shall be entitled to rely upon any defence not inconsistent with this Ordinance upon which he would have been entitled to rely had this Ordinance not been passed.

30 3. These proceedings were started by a writ issued on the 10th May, 1949. The Respondent was the Plaintiff in the action, the two Appellants were the first and third Defendants respectively, and the second Defendant was a man named Leung, who in fact was dead at the date of the writ. The judgments were therefore expressed as being against the Appellants only. The Statement of Claim was dated the 17th August, 1949, but was twice amended after that date, and in its ultimate form made the following allegations :—

(A) The first Appellant was a school master of the Sih Nan College, the second Appellant was the headmaster and Leung had been a master at the school.

40 (B) On or about the 28th December, 1943, a written agreement had been made between the two Appellants and Leung (the second Appellant acting by his attorney) and the Respondent, by which the Appellants and Leung had agreed to sell to the Respondent free from incumbrances the school premises, of which the Appellants and Leung were as joint tenants beneficial and registered owners, for the price of M.Y.62,000.

(C) The property had at that date been subject to two mortgages, one to the Hong Kong and Shanghai Banking Corporation for 120,000 dollars and a second mortgage to the Procurator in Hong

Kong of the Dominican Missions in the Far East for 25,000 dollars ; both mortgages had been dated the 10th December, 1932, and both had been registered in the land office.

(D) On or about the 30th December, 1943, the Respondent had advanced to the Appellants and Leung on account of the purchase price M.Y.35,000 whereupon the Appellants and Leung had mortgaged the said property to the Respondent to secure repayment of that sum. With the money thus obtained the Appellants and Leung had purported to discharge the two mortgages of 1932. 10

(E) On or about the 17th February, 1944, the Appellants and Leung had executed a Japanese assignment of the said property to the Respondent and the Respondent had paid the balance of the price, i.e., M.Y.27,000.

(F) By virtue of the Debtor and Creditor (Occupation Period) Ordinance the property was still subject to the mortgages of 1932 ; the Appellants and Leung refused to discharge these mortgages and assign the property to the Respondent free of incumbrances.

pp. 7-9.

4. The Defence of the two Appellants was dated the 30th November, 1949, and in its ultimate form was to the following effect :— 20

The Appellants admitted the agreement of the 28th December, 1943, and the Japanese Assignment of the 17th February, 1944, but alleged that both were sham documents prepared for the purpose of deceiving the Japanese authorities. They denied that the second Appellant's alleged attorney was in fact authorised to sign either document. They denied that the Respondent had advanced M.Y.35,000 on account of the purchase price and said that this sum had been lent to them by the Respondent's husband, one Li, for the purpose of discharging the mortgages of 1932. They denied that they had received from the Respondent the M.Y.27,000. 30 They alleged that, as the Respondent and her husband had known at all material times, the Appellants and Leung had held the premises as trustees for the Sih Nan College and under the terms of the trust had not been authorised to sell the property. The Defence also contained allegations of undue influence and duress, which the Appellants abandoned at the trial.

p. 5.

5. The Respondent delivered a Reply dated the 30th May, 1951, containing allegations not relative to the points on which the Appellants now rely. The Appellants delivered a Rejoinder, dated the 7th July, 1951, which dealt with these allegations and also alleged as follows :— 40

p. 6.

In or about December, 1943, the Respondent's husband, Li, had made an oral agreement with Leung for—

1. The loan of M.Y.35,000 mentioned in the Defence ;
2. The sale of the property to Li, for M.Y.80,000 (subsequently reduced to M.Y.78,000) ; and

3. A lease by Li to the Appellants and Leung of the premises for the purposes of the school. This agreement, to the knowledge of Li, had been made without the knowledge or consent of the Appellants, who had known of, and consented to, nothing but the loan of M.Y.35,000.

6. The action was tried by Howe, C.J., on 13 days between the 23rd July and the 16th August, 1951. On behalf of the Respondent, Li gave evidence that Leung had asked him for a loan in order to pay off the mortgage on the school premises ; and he had refused to make a loan. p. 17, ll. 4-20.
- 10 Subsequently, at the end of December, 1943, he had agreed to buy the premises for M.Y.62,000, his wife (the Respondent) to be the actual buyer. Application, he said, had then been made to the Japanese authorities for permission for him to buy the premises. The Japanese liquidator of the Hong Kong and Shanghai Bank had been insisting that the mortgage be paid off by the 31st December, 1943. As the sale could not be completed by then, Li had agreed, so he said, to provide enough money to pay off the mortgage, if the liquidator would agree that the money should be refunded to him in the event of permission to buy being refused. p. 17, ll. 36-46.
- 20 The liquidator, he said, refused to agree to this, so eventually he had paid over the M.Y.35,000 on a document, called by him a " borrowing note," which was in fact a mortgage. The assignment of the property had been executed on the 17th February, 1944, and he had paid the balance of the price just before that ; he had then let the school premises to the first Appellant and Leung for three years. (The tenancy agreement was made an exhibit (P.15), and the tenant was in fact " Sai Nam Middle School's Headmaster Leung Sai Foon.") He said that in the course of these negotiations he had heard nothing about any trust in connection with the school. A Solicitor named Kan, who had acted for both sides in these negotiations, gave evidence supporting the evidence of Li. He p. 17, l. 51-p. 18, l. 1 ;
pp. 109-109.
- 30 said that before preparing the agreement of the 28th December, 1943, he had searched the land registry and had found no mention of any trust affecting the school premises. Neither the Appellants nor Leung, according to him, had ever suggested that they were trustees. p. 18, ll. 33-40 ;
pp. 113-115.
p. 19, ll. 8-12.
- p. 19, ll. 21-25.
- p. 19, ll. 45-48.
- pp. 34-44.
- p. 38, ll. 1-7.
- p. 39, ll. 1-3.

7. Evidence for the Appellants was given as follows :—

- (1) The second Appellant, the headmaster of the school, said that the school premises had been bought in 1932. Twenty-five thousand dollars had been obtained from the Dominican Procurator and 120,000 dollars from the Hong Kong and Shanghai Bank, and the school had provided another 25,000 dollars. The property had been put into the name of the two Appellants and Leung, and on the 12th December 1932 they had executed a deed of trust. The directors had nominated them as trustees and the directors ran the school. When the Japanese occupied Hong Kong they immediately occupied the school premises, and he had gone a few months later to Macao. While in Macao he had given a power of attorney to his wife, thinking that it was for the purpose of raising a new mortgage to pay off the old mortgage on the premises. He had had no power to sell or mortgage the premises. He had not p. 48, l. 41-p. 49, l. 3.
- 40 p. 49, ll. 18-21.
- p. 49, ll. 27-30.
- p. 49, l. 49-p. 50, l. 11.
- p. 50, ll. 31-35.
p. 51, ll. 18-19.

p. 55, ll. 23-30.

thought about a sale because there had been no talk of selling the premises. When he left Hong Kong in the summer of 1942, six out of seven directors of the school had been in Hong Kong.

pp. 145-148.

pp. 135-136.

p. 136, ll. 10-15.

(2) The original conveyance of the property to the Appellants and Leung was dated the 10th December, 1932. The declaration of trust executed by them was dated the 12th December, 1932, but was never registered. By this declaration the Appellants and Leung undertook not to sell, re-mortgage or otherwise dispose of the premises "except by the direction of the persons having authority in that behalf and in accordance with the constitution and for the use of the said Sih Nan College." 10

p. 59, ll. 4-11.

p. 59, ll. 11-18.

p. 59, l. 34-p. 60, l. 37.

(3) Ho Ping Fai, the wife of the second Appellant, said that in December, 1943, Leung had taken her to see Li, and Li had agreed to become the mortgagee of the school. Later in December she had gone to Kan's office with Leung and signed some documents at Leung's request. She had not read the documents and they had not been explained to her. She had gone to Macao and got the power of attorney from her husband, but not until February, 1944. She had been in Macao on 17th February, 1944, and had not signed the assignment on that date. 20

p. 65, ll. 34-36.

p. 65, ll. 42-46.

p. 66, ll. 4-9.

p. 66, ll. 15-20.

p. 66, ll. 23-24.

p. 66, ll. 33-35.

p. 67, ll. 13-14.

(4) The first Appellant said that after being requisitioned by the Japanese the school had been re-opened with Leung as headmaster. On the 3rd or 4th December, 1943, Leung had taken him to see Li. Leung had told him that the Japanese were liquidating the Hong Kong and Shanghai Bank and requesting the school to pay off the mortgage. At the meeting, at which Kan had been present, he had gathered that the premises were to be mortgaged to Li and Kan was to draw up the necessary documents. He had signed an application for permission to sell the premises and the agreement for sale. He had signed them at Leung's request, thinking they were documents for a mortgage. He had also signed a mortgage to Li, but had not known what he was signing. He had heard for the first time in March, 1944, from Leung that one of the documents was a purported sale of the property; all that he had known at the time had been that he had to sign something before the mortgage could be put in order. 30

p. 70, ll. 14-25.

p. 70, ll. 40-51.

p. 71, ll. 5-20.

p. 71, ll. 35-37.

(5) Wong Tat To, an accountant of the school, said he had attended a meeting with Li on or about the 3rd or 4th December, 1943. Li had agreed to lend M.Y.35,000 on mortgage and had instructed Kan to prepare the necessary document. Later Kan had said he dared not prepare the document, so Li had refused to make the loan. About the 27th December Li had said he would buy the property. Leung answered at first that he could not sell but eventually he agreed to do so. On the 30th December he, Wong, had gone to Kan's office with the first Appellant, Leung and Ho Ping Fai; there he had seen documents signed. 40

p. 63, ll. 29-32.

p. 63, ll. 36-38.

(6) Lau Tak Po said he had been a director of the school since 1929. He had been in Hong Kong during the Japanese occupation. During the occupation no meetings could be held except under

permit, and no meetings of the directors had been held. He had washed his hands of the school at that time. He had first heard of the purported sale about October, 1945. p. 64, ll. 11-12.
p. 63, ll. 38-39.

8. After the close of the Appellants' case, the Respondent was given permission to call a witness named Wai. He said that he knew a man named Ip who was on the board of the school. In the summer of 1943 Ip, he said, had suggested to him that he should buy the school. The Appellants objected strongly when the Respondent asked for permission to call this witness. No suggestion that the directors had been considering a sale during the occupation had been put to Lau Tak Po. The learned Chief Justice released Lau Tak Po when he had given his evidence, and he had left Hong Kong before Wai gave evidence. It was thus impossible for the Appellants effectively to cross-examine Wai or to rebut his evidence. p. 80.

9. At the close of the hearing on the 16th August, 1951, Howe, C.J., reserved his judgment. The judgment was not given until the 5th March, 1954. The learned Chief Justice was then ill in hospital; and his judgment was read by another Judge. p. 94, ll. 22-23.

10. In his judgment Howe, C.J., first summarised the effect of the pleadings and said that two broad issues emerged :— pp. 87-88.
p. 89, ll. 1-7.

(1) Whether the agreement and Japanese assignment constituted a valid contract of sale which the court would not set aside, and

(2) Whether the declaration of trust, not being registered under the Land Registration Ordinance, was valid against the Respondent.

Sometime in 1943 the Japanese liquidator of the Hong Kong and Shanghai Bank had begun to press for repayment of the mortgage amounting to 120,000 dollars and interest. Li had agreed to lend the money provided his solicitor advised it, but his solicitor (Kan) had advised against it. There followed a number of interviews and, the learned Chief Justice held, Li had finally agreed to buy the premises free from incumbrances for M.Y.62,000. On the 28th December the agreement for sale of the premises to the Respondent had been signed but, as the permission of the Japanese was required, it could not be completed by the 31st December, by which date the liquidator required the mortgage to be paid off. Li, according to the learned Chief Justice's finding, had been willing to advance M.Y.35,000, if the liquidator agreed to refund it should permission for sale be refused, but the liquidator refused to agree to this. However, Li did advance the M.Y.35,000 on the security of a mortgage of the premises. The old mortgages were paid off, and the Japanese assignment was executed on the 17th February, 1944, and in March a tenancy agreement was signed by the Respondent and Leung. The learned Chief Justice held that on the 17th February, 1944, Ho Ping Fai was properly empowered to sell as attorney of the second Appellant. The second Appellant knew what was intended when he signed the power of attorney, and the first Appellant and Ho Ping Fai knew the contents and effect of the documents which they signed. p. 89, l. 45-p. 90, l. 7.
p. 90, ll. 7-12.
p. 90, ll. 12-28.
p. 90, ll. 28-38.
p. 90, ll. 43-46.
p. 91, ll. 1-3.
p. 90, ll. 47-49.

p. 91, ll. 4-20.

He (Howe, C.J.) said he was satisfied that the directors quite deliberately made themselves unavailable and the trustees could get no advice from them. Being forced to act on their own judgment, the trustees had decided to sell the premises rather than lose everything to the Japanese. The learned Chief Justice accepted Kan's evidence that he had searched the register and found no mention of any trust. As neither he nor the Respondent nor Li knew that the appellants were trustees, the Respondent was a "bona fide" purchase for value. Consequently the Japanese assignment, under the Land Transactions (Enemy Occupation) Ordinance, Section 5 (1), operated as a valid agreement to assign on demand, and so was a contract of which, other considerations apart, the court would order specific performance. Turning to the question of breach of trust, the learned Chief Justice said that, while no formal resolution authorising the sale had been passed by the directors, it was possible that some of them knew of the proposal and at least tacitly acquiesced. He did not think the Appellants had discharged the onus of showing breach of trust, but held that in any case the declaration of trust, not having been registered, was "absolutely null and void to all intents and purposes." Having dealt with certain matters which do not now arise, the learned Chief Justice made an order directing the Appellants to discharge the mortgages of 1932 and assign the property to the Respondent. 10

p. 91, ll. 21-26.

p. 91, ll. 27-35.

p. 91, ll. 46-50.

p. 92, ll. 4-44.

p. 94, ll. 8-15.

pp. 96-97.

11. The Appellants appealed against this judgment by a notice of appeal dated the 20th March, 1954. The appeal was heard by Gregg and Reynolds, JJ., between the 17th and 24th May, 1954. The judgment of the court was reserved, and was delivered on the 30th June, 1954.

p. 97, ll. 22-26.

p. 97, ll. 27-38.

p. 98, ll. 21-26.

p. 98, ll. 29-34.

p. 98, ll. 41-44.

12. The learned Judges said they agreed with all the Chief Justice's findings of law and of fact. The principal submission of counsel for the Appellants had been that, quite apart from the written declaration of trust of the 12th December, 1932, there was a resulting trust affecting the property, and this resulting trust, not being in writing, was not affected by the Land Registration Ordinance, and was valid against the Respondent, with the result that the order for specific performance ought to be set aside. They held that the written declaration removed and replaced any resulting trust that might have existed previously. A resulting trust could only arise in the absence of an express declaration and, the learned Judges said, the whole purpose of the Land Registration Ordinance would be defeated if a person could at will substitute a resulting trust for an unregistered written declaration of trust. The unwritten declaration was absolutely void against a "bona fide" purchaser for value, which they held the Respondent to be. Consequently, the appeal was dismissed with costs. 30

13. The Appellants respectfully submit that findings of fact made in a judgment delivered after the extraordinarily long period (2½ years) which had elapsed between the end of the trial and the delivery of the learned Chief Justice's judgment, although accepted by the learned Judges in the Full Court, are open to question. There was, for example, no evidence supporting the finding of the learned Chief Justice that the directors "quite deliberately made themselves unavailable," or his speculation that some of them may have known of the proposed sale and tacitly

acquiesced in it. The learned Chief Justice seems to have placed some reliance on the evidence of Wai. This evidence, in the Appellants' submission, consisted of hearsay and (quite apart from the unfortunate circumstances in which it was given) was therefore inadmissible.

14. The Appellants respectfully submit that when the property was conveyed to them and Leung on the 10th December, 1932, the circumstances were such as to give rise immediately to a resulting trust of which the beneficiaries were the directors of the school. This resulting trust arising from the facts of the situation existed before, and independently
10 of, the declaration of trust of the 12th December, 1932. The Appellants submit that the execution of that declaration could not change the pre-existing facts, and could not therefore displace the resulting trust to which those facts give rise. This resulting trust, not being a deed, conveyance, other instrument in writing, will, or judgment, could not be registered under the Land Registration Ordinance, and was therefore valid and effective without registration. Consequently, the Appellants submit that in 1943 they held the property as trustees, and the sale, if made, as the courts in Hong Kong have found, constituted a breach of trust of which specific performance ought not to be ordered.

15. The Appellants respectfully submit that the learned Chief Justice, and the Full Court in adopting his findings, did not properly appreciate the discretionary nature of the remedy of specific performance. The learned Chief Justice appears to have taken the view that if there was a valid agreement to assign not constituting a breach of trust specific performance would automatically be granted. The Appellants submit that, quite apart from any breach of trust, the circumstances were such that specific performances could not properly have been ordered. The premises in question were occupied by a large and important school. The sale (if sale there was) had been forced upon the Appellants by the
20 oppressive attitude of the enemy authorities occupying Hong Kong. Great hardship would be caused both to the Appellants and to the directors, and still greater hardship to the pupils, if the school were to be deprived of its premises, whereas no hardship would be suffered by the Respondent if the money paid by her husband were to be refunded with suitable interest.
30

16. The Appellants respectfully submit that the Respondent, even on the findings made by the Supreme Court, was not entitled to some of the relief which she has been granted. The Appellants were ordered not only to discharge the mortgages of 1932 and assign the property to
40 the Respondent, but also to give possession of the property and pay mesne profits. There was no evidence that the Appellants had ever been in possession of the property. Their interest in the property was that of trustees, even though the trust might be void as against the Respondent, and at all material times the property had apparently been in the possession of the directors of the school. As regards the order for mesne profits, further difficulties arise. The Full Court held that the Appellants were not tenants of the Respondent, and there was no evidence that either of them had ever been his tenant. Under the agreement of the 1st March, 1944, Leung was the sole tenant. Moreover, the Appellants respectfully

submit that, since the Japanese assignment, under the Land Transactions (Enemy Occupation) Ordinance, section 5 (1), takes effect only as an agreement to assign, the tenancy agreement of the 1st March, 1944, is of no effect, and no order for mesne profits ought to have been made.

17. The Appellants respectfully submit that this appeal ought to be allowed, and the judgment of the Supreme Court of Hong Kong in its appellate jurisdiction ought to be reversed, for the following (amongst other)

REASONS

- (1) BECAUSE neither the Appellants nor Leung entered 10 into any genuine agreement to assign, or assignment of, the premises :
- (2) BECAUSE the Appellants and Leung held the premises as trustees under a valid trust and had no power to sell the property :
- (3) BECAUSE the learned Chief Justice in making an order for specific performance, and the appellate court in affirming his order, did not exercise discretion upon proper principles :
- (4) BECAUSE no order for specific performance ought to 20 have been made.

FRANK GAHAN.

J. G. LE QUESNE.

No. 49 of 1954.

In the Privy Council.

ON APPEAL
from the Supreme Court of Hong Kong.

BETWEEN
CHU YAM OM and
CHEUNG LAN CHAU . Appellants
AND
LI TAM TOI HING . . Respondent.

Case for the Appellants.

LIGHT & FULTON,
24 John Street,
Bedford Row,
London, W.C.1,
Solicitors for the Appellants.