

~~Re~~
~~GM 632~~

Judgment
34, 1956

No. 49 of 1954.

In the Privy Council.

ON APPEAL
FROM THE FULL COURT OF THE SUPREME COURT
OF HONG KONG

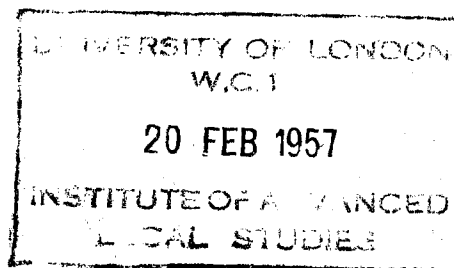
BETWEEN

CHU YAM OM and CHEUNG LAN CHAU (Defendants) . . . *Appellants*

AND

LI TAM TOI HING (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS



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UNIVERSITY OF LONDON
 20 FEB 1957
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 LEGAL STUDIES

46064

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 (Defendants) . . . *Appellants*

AND

LI TAM TOI HING (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

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DESCRIPTION OF DOCUMENT	DATE
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In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG.

BETWEEN

CHU YAM OM and CHEUNG LAN CHAU
(Defendants) *Appellants*

AND

LI TAM TOI HING (Plaintiff) *Respondent.*

10 **RECORD OF PROCEEDINGS**

No. 1.

WRIT OF SUMMONS AND STATEMENT OF CLAIM.

IN THE SUPREME COURT OF HONG KONG.

Original Jurisdiction.

Action No. 193 of 1949.

Between LI TAM TOI HING Plaintiff

and

CHU YAM OM, LEUNG SAI FOON and
CHEUNG LAN CHAU Defendants.

*In the
Supreme
Court of
Hong Kong.*

*Original
Jurisdiction.*

No. 1.
Writ of
Summons
and
Statement
of Claim,
10th May
1949.

20 GEORGE VI, by the Grace of God, of Great Britain Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Chu Yam Om, Leung Sai Foon and Cheung Lan Chau all of No. 1 Oaklands Path, Victoria in the Colony of Hong Kong, Gentlemen.

WE COMMAND YOU that within eight days after the service of this writ on you, exclusive of the day of such service you cause an appearance to be entered for you in an action at the suit of Li Tam Toi Hing of No. 8 Kennedy Road, ground floor, Victoria aforesaid, Married Woman

*In the
Supreme
Court of
Hong Kong.*

*Original
Jurisdiction.*

No. 1.
Writ of
Summons
and
Statement
of Claim,
10th May
1949,
continued.

AND TAKE NOTICE that, in default of your so doing, the Court may give leave to the Plaintiff to proceed *ex parte*.

Witness His Honour SIR LESLIE BERTRAM GIBSON Kt., K.C.,
Chief Justice of Our said Court, the 10th day of May, 1949.

(L.S.)

(Sgd.) C. D'ALMADA E CASTRO,
Registrar.

STATEMENT OF CLAIM.

THE PLAINTIFF CLAIMS :—

1. For an order that the Defendants in pursuance of the provisions of section 5 of the Land Transactions (Enemy Occupation) Ordinance 1948 do assign to the Plaintiff without further consideration and free from incumbrances and at the cost of the Plaintiff in the form prescribed by that Section the property registered in the Land Office as Inland Lot No. 2182 Together with the messuage erections and buildings thereon known as No. 1 Oaklands Path, Victoria in the Colony of Hong Kong the same having been assigned or purported to have been assigned by the Defendants to the Plaintiff by a Japanese Assignment as defined in the said Ordinance dated the 17th day of February 1944 and registered in the Japanese House Registration Office for the consideration of Military Yen 62,000.00 and that in default the Registrar of this Honourable Court shall execute such Assignment on behalf of the Defendants. 10 20

2. For an order that the Defendants do pay off the Mortgage dated the 10th December 1932 made between the Defendants of the one part and The Hong Kong and Shanghai Banking Corporation of the other part and registered in the Land Office by Memorial No. 135,093 and the Second Mortgage dated the same date made between the Defendants of the one part and the Procurator in Hong Kong for the Dominican Missions in the Far East of the other part and registered in the Land Office by Memorial No. 135,094 in accordance with the provisions of the Debtor and Creditor (Occupation Period) Ordinance 1948 and in default of such payment off within 2 weeks from the date of the order then the Plaintiff be at liberty to pay off the said Mortgages in accordance with the provisions of the said Ordinance 1948 on behalf of the Defendants with liberty to recover from the Defendants or any of them the amount of such payment together with the costs and expenses incidental to such payment. 30

(Sgd.) LO AND LO,
Solicitors for the Plaintiff.

This writ was issued by Lo & Lo, of Alexandra Buildings, Victoria, Hongkong, Solicitors for the Plaintiff who resides at No. 8 Kennedy Road, ground floor, Victoria, aforesaid. 40

(Sgd.) Lo and Lo.

No. 2.

AMENDED STATEMENT OF CLAIM.

*In the
Supreme
Court of
Hong Kong.*

*Original
Jurisdiction.*

Amended in green ink pursuant to
an Order made herein on 31st
December, 1949.

Amended in red ink pursuant
to an Order made herein dated
the 10th September 1949.

(Sgd.) C. D'ALMADA E
CASTRO,
Registrar.

(Sgd.) C. D'ALMADA E
CASTRO,
Registrar,
Hong Kong.

No. 2.
Amended
Statement
of Claim,
6th
January
1950.

6th January 1950.

14th September 1949.

10

IN THE SUPREME COURT OF HONG KONG.
Original Jurisdiction.

(L.S.)
(Sgd.)
C.
D'Almada
e Castro
Registrar
6.1.50.

Action No. 193 of 1949.

Between LI TAM TOI HING Plaintiff

and

CHU YAM OM, LEUNG SAI FOON and
CHEUNG LAN CHAU Defendants.

AMENDED STATEMENT OF CLAIM.

1. The Plaintiff is a married woman. She resides at No. 8 Kennedy
20 Road, Victoria, Hong Kong.

2. The 1st Defendant is a schoolmaster of Sai Nam School, No. 1,
Oaklands Path, Hong Kong. The 2nd Defendant was also a schoolmaster
of the said school but his present whereabouts are unknown to the Plaintiff.
The 3rd Defendant is Headmaster of the said school.

3. On or about the 28th December 1943, by an agreement in writing
entered into between the 1st and 2nd Defendants and the 3rd Defendant
by his attorney Mrs. Ho Ping Fai of the one part as Vendors and the Plaintiff
of the other part as Purchaser, the Defendants agreed to sell to the Purchaser
30 in the Land Office as Inland Lot No. 2182 together with the premises
thereon known as No. 1, Oaklands Path of which the Defendants as joint
tenants were the beneficial and registered owners. By the said Agreement
the said property was to be sold free from incumbrances.

4. ~~Upon the date of the said Agreement, the Plaintiff paid to the
Defendants the sum of Military Yen 10,000.00 as and for deposit and on
account of the purchase price.~~

4. 5. At the date of the Agreement aforesaid the said property
was subject to two mortgages (hereinafter referred to as "the said
Mortgages") viz., a mortgage (registered in the Land Office by Memorial
40 No. 135,093) to the Hong Kong and Shanghai Banking Corporation dated
the 10th December 1932 to secure the repayment of the principal sum of
\$120,000.00 and interest thereon and a second mortgage of the same date

*In the
Supreme
Court of
Hong Kong.*

*Original
Jurisdiction.*

No. 2.
Amended
Statement
of Claim,
6th
January
1950,
continued.

(registered in the Land Office by Memorial No. 135,094) to the Procurator in Hong Kong of the Dominican Missions in the Far East to secure the repayment of the principal sum of \$25,000 and interest thereon.

5. 6. On or about the 30th December 1943 the Plaintiff advanced to the Defendants out of and on account of the purchase price the sum of M.Y.35,000.00 to enable them to pay off and discharge the sums due by them in respect of the said mortgages. Upon receipt of the said sum the Defendants executed a mortgage of the said property to the Plaintiff to secure the repayment thereof. The Defendants by payments out of the said sum to the Liquidator of the said Corporation and the second mortgagee purported to discharge the said mortgages referred to in paragraph 4 hereof. 10

6. 7. On or about the 17th February 1944 the said Agreement for sale was completed and the 1st and 2nd Defendants and the 3rd Defendant by his attorney aforesaid executed a Japanese Assignment of the said property to the Plaintiff. Upon such execution as aforesaid the Plaintiff having advanced the said sum of M.Y.35,000.00 to the Defendants, the same was, by agreement between the parties, treated as part payment in respect of the purchase price and the Plaintiff paid to them the balance of the purchase price, viz., M.Y. 217,000. One of the terms of the said Japanese Assignment was that the said property was sold free from incumbrances. 20

7. 8. By virtue of Ordinance No. 24 of 1948, the said property is still subject to incumbrances, viz., the said mortgages despite their purported discharge as aforesaid.

8. 9. The Defendants refuse to discharge the said mortgages and refuse to assign to the Plaintiff the said property free of incumbrances.

THE PLAINTIFF CLAIMS :—

An order that the Defendants—

(i) do ~~within three weeks~~ discharge the said mortgages in accordance with the provisions of Ordinance No. 24 of 1948 ; in default of such discharge that the Plaintiff do have leave to discharge the same with liberty to recover from the Defendants the amounts paid in such discharge as well as the costs and other expenses incidental thereto. 30

(ii) an order that the Defendants do ~~within three weeks~~ execute an assignment of the said property to the Plaintiff and do all other things necessary to vest in her the legal estate in the said property ; in default that the Registrar of this Honourable Court do execute and do all other things necessary as aforesaid. 40

(iii) possession.

(iv) mesne profits.

(v) costs of this action.

(vi) further or other relief.

Dated the 17th day of August, 1949.

(Sgd.) LEO D'ALMADA,
Counsel for the Plaintiff.

No. 3.
AMENDED REPLY.

*In the
Supreme
Court of
Hong Kong.*

Re-amended as altered in red ink pursuant to order dated 23rd July 1951.

(Sgd.) G. S. EDWARDS,
p. Registrar.
27.7.51.

Amended as altered in red ink pursuant to Order dated 23rd June 1951.

(Sgd.) C. D'ALMADA E
CASTRO,
Registrar.
27.6.51.

*Original
Jurisdiction.*

No. 3.
Amended
Reply,
27th July
1951.

10 IN THE SUPREME COURT OF HONG KONG.
Original Jurisdiction.
Action No. 193 of 1949.

(L.S.)
(Sgd.)
C.
D'Almada
e Castro
Registrar
27.6.51.

Between LI TAM TOI HING Plaintiff
and
CHU YAM OM, LEUNG SAI FOON and
CHEUNG LAN CHOWAU Defendants.

REPLY.

1. The Plaintiff joins issue with the Defendants on their Defence.

2. The Plaintiff will rely on a green ink entry of the Japanese Assign-
20 ment being Memorial No. 4113 in the Land Office Register as affording
her the protection accorded to registration by and under Section 4 of the
Land Registration Ordinance 1844.

3. The Plaintiff is purchaser in her own name under the agreements
sued on, and is entitled to call for an assignment to her of the legal estate.
The purchase money was provided by Li Koon Chun, who is the Plaintiff's
husband and who had the conduct of the negotiations with the Defendants.

Dated this 30th day of May 1951.

(Sgd.) BROOK BERNACCHI,
Counsel for the Plaintiff.

30 4. The Plaintiff will further rely on the registration of the said
Japanese Assignment in the Land Office Register in accordance with the
Land Registration Ordinance 1844 by Memorial No. 204450 dated 23rd day
of May 1951, as affording her the protection accorded to registration by
and under section 4 thereof.

*In the
Supreme
Court of
Hong Kong.*

*Original
Jurisdiction.*

No. 4.
Rejoinder
of 1st and
3rd
Defen-
dants,
7th July
1951.

No. 4.

REJOINDER of 1st and 3rd Defendants.

IN THE SUPREME COURT OF HONGKONG.

Original Jurisdiction.

Action No. 193 of 1949.

Between LI TAM TOI HING Plaintiff
and
CHU YAM OM, LEUNG SAI FOON &
CHEUNG LAN CHAU Defendants.

REJOINDER OF 1ST AND 3RD DEFENDANTS

10

1. These Defendants join issue with the Plaintiff on paragraphs 2 and 3 of her Reply.

2. These Defendants deny that the said green ink entry referred to as No. 4113 in paragraph 2 of the Reply is a Memorial within the meaning of the Land Registration Ordinance 1844.

3. These Defendants say that the document to which the said green ink entry refers is not registered in the Land Office pursuant to or in the manner prescribed by the said Ordinance of 1844.

4. Further or in the alternative, by reason of the matters pleaded in 20 paragraphs 4 to 10 of the Statement of Defence and in the succeeding paragraphs hereof or some one or more of them, the said green ink entry ought to be deleted because it should not have been made or is incorrect.

5. In or about the month of December 1943, the Plaintiff's said husband Li Koon Chun entered into a verbal agreement with the second Defendant for :—

(i) the loan to the Defendants mentioned in paragraph 6 of the Defence herein ; and

(ii) for the sale to the said Li Koon Chun of the said premises for the sum of M.Y.80,000 (subsequently reduced to M.Y.78,000), 30 or alternatively that the second Defendant should procure such sale to be made ; and

(iii) for a lease by the said Li Koon Chun to the Defendants, or to the Second Defendant as purporting to represent the Defendants or the said Charity, of the said premises for the purpose of carrying on the said Sih Nan College.

6. The said verbal agreement was made without the knowledge or consent of the first and third Defendants as the said Li Koon Chun well knew. The only transaction of which the first and third Defendants had knowledge and to which they consented was the loan mentioned in 40 paragraph 6 of the Defence herein.

Dated the 7th day of July, 1951.

(Sgd.) S. V. GITTINS,
Counsel for 1st and 3rd Defendants.

No. 5.

RE-AMENDED STATEMENT OF DEFENCE.

In the
Supreme
Court of
Hong Kong.

Original
Jurisdiction.

Re-amended altered in green
pursuant to Order dated
23rd July 1951.

Amended in red ink pursuant to
an Order made herein dated
the 25th February 1950.

(Sgd.) C. D'ALMADA E
CASTRO
Registrar
15.8.51.

(Sgd.) C. D'ALMADA E
CASTRO
Registrar
Hong Kong
28.2.50.

No. 5.
Re-
amended
Statement
of Defence,
15th
August
1951.

10

IN THE SUPREME COURT OF HONGKONG.
Original Jurisdiction.
Action No. 193 of 1949.

Between LI TAM TOI HING Plaintiff
and
CHU YAM OM, LEUNG SAI FOON and
CHEUNG LAN CHOW Defendants.

RE-AMENDED DEFENCE OF THE 1ST & 3RD DEFENDANTS

1. Save as mentioned in paragraph 2 hereof paragraphs 1, 2, 5, 8 and 9
20 4, 7 and 8 of the Statement of Claim are admitted.

2. As to the said paragraph 2, the Defendant Leung Sai Foon is dead.
The said school is known as Sih Nan College.

3. These Defendants deny that under the Agreement alleged in
paragraph 3 of the Statement of Claim or otherwise they agreed to sell the
said property to the Plaintiff.

4. These Defendants admit that the said alleged Agreement and the
Japanese Assignment alleged in paragraph 7 6 of the Statement of Claim
were signed by the Defendants Chu Yam Om and Leung Sai Foon and by
Mrs. Ho Ping Fai. These Defendants say that the said Agreement was a
30 sham Agreement and the said Assignment was a sham Assignment and
that the same were and either of them was prepared and intended to be
used for the purpose of deceiving the Japanese Authorities. In truth and
in fact neither the said Agreement nor the said Assignment contained or
represented any real Agreement or Contract between those purporting to
be the respective parties thereto.

5. Further or in the alternative the said Mrs. Ho Ping Fai was not
authorised by the Defendant Cheung Lan Chau to make the said alleged
Agreement in respect of the said property with the Plaintiff or any one else
or to execute the said alleged Assignment.

40 ~~6. The Defendants did not nor did any of them receive the deposit
alleged in paragraph 4 of the Statement of Claim from the Plaintiff or at all.~~

6. 7. These Defendants deny that the Plaintiff advanced to the
Defendants M.Y.35,000.00 or any sum out of or on account of the said

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purchase price as alleged in paragraph 6 5 of the Statement of Claim or at all. The said sum was lent to the Defendants by the Plaintiff's husband, one Li Koon Chun, for the purpose of discharging the Mortgages alleged in paragraph 5 4 of the Statement of Claim. ~~These Defendants further deny that the Defendants received from the Plaintiff MY.17,000.00 or any sum at the time alleged or at all.~~

7. These Defendants deny that the said sum of MY.35,000.00 was by agreement treated as part payment in respect of the said purchase price as alleged in paragraph 6 of the Statement of Claim. These Defendants further deny that the Defendants or any of them received from the Plaintiff MY.27,000.00 or any sum in respect of the said purchase price at the time alleged or at all. 10

8. These Defendants admit that they and the Defendant Leung Sai Foon were until the death of the said Leung Sai Foon joint tenants of the said premises, but deny that they were the beneficial owners thereof. These Defendants and the said Leung Sai Foon at material times held the said premises as Trustees for and on behalf of a charity, namely the said Sih Nan College, as the Plaintiff and/or her said husband well knew.

9. If the said alleged Agreement or Japanese Assignment constitute a valid Agreement for sale of the said property (which is denied), these Defendants may in the alternative that they and the said Leung Sai Foon, as such Trustees as aforesaid, were not authorised under the terms of the said Trust to sell or agree to sell the said property, as the Plaintiff at material times well knew and will refer to the terms of the said trust at the trial. 20

10. In the further alternative the said alleged Agreement and Japanese Assignment were signed in consequence of undue influence or duress on the part of the Plaintiff and/or her said husband exercised upon the Defendants or upon the Defendants Chu Yam Om, Leung Sai Foon and the said Mrs. Ho Ping Fai. 30

PARTICULARS.

About the beginning of December 1943 the Japanese Authorities were pressing the Defendants for repayment of the loans mentioned in paragraph 5 of the Statement of Claim, the 31st December 1943 being the final date.

The Plaintiff's said husband agreed to lend to the Defendants the required sum, namely MY.35,000.00 on the security of a Deed of Mortgage of the said property in the English language, and the Defendants relying on this promise took no further step to secure other means of repayment. 40

On or about the 27th December 1943 the Plaintiff's said husband through his Solicitor Mr. Y. K. Kan, refused to have the said deed prepared, but instead offered to lend to the Defendants the said sum on the security of a Mortgage in the Chinese language if the

Defendants would sign the said alleged Agreement. The 2nd Defendant protested, but being aware of the influential position at that time of the Plaintiff's said husband, and being obliged to ~~repay~~ arrange for repayment of the said loans on the 31st December 1943 at the latest, and being in fear of the possible penalty if the said loans were not repaid on or before the said date, namely confiscation of the said property and/or imprisonment of the Defendants Chu Yam Om and/or Leung Sai Foon and/or the said Mrs. Ho Ping Fai ~~or some one or more of them~~, finally ~~were~~ was induced to acquiesce in the said proposal.

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Dated the 30th day of November, 1949.

(Sgd.) JOHN McNEILL,
Counsel for the Defendants
Chu Yam Om and Cheung Lan Chau.

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CHEUNG LAN CHAU Defendants.

COPY OF JUDGE'S NOTES.

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<i>Date of Hearing</i>	<i>Time</i>	<i>Page</i>	
4th June, 1951	a.m.	1	
23rd July, 1951	a.m.	2	
23rd "	p.m.	3	
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25th "	a.m.	10	
25th "	p.m.	13	
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26th "	p.m.	18	20
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7th August, 1951	p.m.	29	
8th "	a.m.	32	
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9th "	p.m.	42	
10th "	a.m.	44	
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13th "	a.m.	50	30
13th "	p.m.	53	
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COPY OF THE NOTES OF THE HONOURABLE THE CHIEF JUSTICE, SIR
GERARD LEWIS HOWE, KT., K.C., TAKEN ON THE HEARING OF THE
10 ABOVE ACTION.

4th June, 1951.

10 a.m.

O.J. 193/49.

Leo D'Almada, K.C. & Bernacchi (Liu) for Plaintiff.
McNeill & Gittins (Loseby) for Defendants.

D'Almada : Informed my friend of a point this morning—that
Plaintiff is only agent for her husband who is the true principal. Defendants
going to apply for an adjournment for discovery. First thought friend
entitled to succeed in adjournment—but now thinks otherwise—She is
person who would give discovery—no circumstances to justify—cheques
20 given of which one at least signed by lawful owner. Suing as an agent—
claim is Specific Performance.

Would appear case not liable to finish in the time allotted. Would
have to stand over until a later date anyway. Could easily proceed now
with the time allotted.

McNeill : No question of beneficial ownership—action on contract
brought in name of Plaintiff—brought in her own name—quite entitled
to do so—defence contract never made with present Plaintiff—never
agreed with her. Plaintiff has made the affidavit of documents. Refers
to order of 25/2/50. Reply was filed a week ago with consent after action
30 had twice been set down. Now appears that real Plaintiff is Plaintiff's
husband—Could and should have pleaded that then—refers to White
Book 519—O. 31, r. 12.

Told Plaintiff has no interest at all in these proceedings. Contract
never made with this Plaintiff.

D'Almada : Assuming that I had not told my friend—the husband
negotiated the contract—No question of agency—Plaintiff is not a nominee.
Plaintiff is only person to bring—agreement is suing—distinguishes case
cited in White Book under O. 31, r. 12.

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By the Court: Refers to para. 7 of Defence of 30.11.49. This paragraph is met by the simple joinder of issue. No question of discovery—no question of adjournment. Case should take its normal course. Estimate opening time plus evidence of chief witness will take all day. Cross-examination could be adjourned for a day or two.

Order: Case to be adjourned to a day to be fixed. At least one week to be set aside—Application for discovery to be made. Costs—reserved.

(Sgd.) G. L. HOWE.
4.6.51.

S/o to 23–24–25–26–27 July for hearing.

(Sgd.) G. L. HOWE.
4th June, 1951.

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(C.J.'s O.J. Book No. 7.)
23.7.1951 at 10.30 a.m.
O.J. 193/49.

D'Almada K.C. and Bernacchi (Lo & Lo) for Plaintiff.
McNeill K.C. and Gittins (Russ & Co.) for 1st and 3rd Defendants.

Opens:

McNeill: Asks for order made last hearing. Asks for amendment to para. 10 of the defence. "The Defendants protested" amended to "the second Defendant protested". "Were" to "was" in penultimate line. Amendment in terms. 20

D'Almada: I ask to amend reply in terms of notice—I will deal with this during opening—a new para. 4.

McNeill: A rejoinder has been filed—Shall I pass without leave—asks for leave.

Order in terms.

D'Almada: Plaintiff purchased as nominee of her husband—he conducted the negotiations. Issues (A) whether sale or mortgage. Defendants alleging agreement to sell a sham and only a mortgage entered into—Regarding 3rd Deft. says his attorney had no authority. If a sale, defence also that Plaintiff had notice of trust and also a plea of duress. Plaintiff is person entitled to sue. Refers to p. 261 Bowstead 10th Edn.—31 Hailsham p. 417, para. 497. 30

Opens pleadings—no negotiations with 2nd Defendant alone—1st Defendant had knowledge of all negotiations. Defendants bought for \$180,000—mortgaged same day to Bank for \$120,000 and on same day a second mortgage for \$25,000—10th December, 1932—on 12th declaration of trust—declaration of trust has not been registered (Ord. 1/1844). Japanese occupation—mortgages outstanding—had not registered. 40

25/8/42 application made to register by Wong Tat To as an agent for owners. Application in form—P.1 put in (subject to objection).

No mention of trust in this P.1 registered March 1943. Japanese then pressed for repayment of loans made by bank. 3rd Defendant absent in Macao had given wife a P/A. put in P.2—subject to objection—(not in affidavit of documents) 1st June, 1943.

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1st and 2nd Defendants asked Lee for money to pay off mortgage—repayment to be in H.K.\$—4\$ to 1 Yen. Solicitor advised against transaction—refused to carry out the loan. Later approached by both Defendants to buy the property—finally agreed to buy and named his wife as nominee—he conducted negotiations—Search made of registers—
10 British & Jap. save only mortgages—Permission to sell necessary so application necessary—made in December 1945. P.3 put in. Date line date 31.12.43—3 yrs. Later. In pursuance of agreement by Wong Tat To and the Japanese authority, letter written P.4 to liquidators of H.K. & S. Bank. P.4 returned to Kan when he saw the liquidators—not agreed to—
20 Agreement entered into P.5—In the circumstances a Chinese mortgage entered into on 30.12.43. P.6 (Para. 10 of defence). 15% interest = Yen 175 p.m. P.6 only to be effective if permission to sell not granted. Payment of M.Y.35,000 endorsed by document 30.12.43. P.7. Evidence will be led of payment into bank of this sum. Mortgages discharged and cancelled —Two other PA's.

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P/A 3rd Defendant to Ho Ping Fai 5 January, 1944 (Photos).

P/A 3rd Defendant to Ho Ping Fai 5 January, 1944 copies not in original which is in Land Office.

Rely on P/A P.8—Permission to sell granted by Japanese—and in July 1944 documents made.

Japanese assignment P.10—17.2.44.

Application to registrar made—P.11 put in 17.2.44.

Certificate of sale of house P.12—put in 17.2.44.

Chinese deed of sale P.13 put in 17.2.44.

30 No mention of any trust here.

Receipt of balance of purchase price P.14 put in dated 17.2.44.

Various deeds of title received by the Plaintiff.

McNeill : again, most of these have not been disclosed in the affidavit. The Tenancy agreement entered into between Plaintiff as lessor and Sai Nam School Headmaster as tenant. P.15 1st March 1944.

Adjourned 15 minutes.

Resumed 12.15.

As before.

40 *D'Almada* : Rent was paid in advance up to January 1945, after liberation rent not paid. About February–July 1945. Best time was September 1945. After liberation, given a letter to take to Sai Nam School. Copy produced P.16—Subsequently rent not paid. Plaintiffs

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case that 3rd Defendant registered as Manager of School by Education Department. Admitted also in defence that 1st Defendant a teacher. Bundle of Correspondence put in P.17.

Declaration of Trust put in P.18.

Document letter to 1st and 3rd Defendants by Chairman of School Committee P.19. dated 15.1.49.

S/o 2.30 p.m.

2.30 Resumed—as before.

D'Almada : Duress—even on pleadings no case of duress made out or no pressure upon them. Notice of Trust. 10

McNeill : Two clear pleas—(A) was no power in fact and law and (B) Defendants knew that.

D'Almada : Power to sell earlier. No notice of any trust. Plaintiff *bona fide* purchaser without any notice that property subject to trust. Notice now has not affected position of Plaintiff. Assuming had notice before purchase, no allegation of fraud against Plaintiff and in evidence of fraud Plaintiff in unassailable position because of Japanese Assignment.

Refer to Ord. 1 of 1844.

Preamble 1, 2, 3, 4, 5 deals with positions created by Sec. 5—assignment registered—trust deed not— 20

Cites Kwok Siu Lau 8 H.K. Reports p. 52.

Tsang Chuen v. Li Po Kwai [1932] A.C. (P.C.) p. 715—priority not affected if registered. If Japanese assignment registered then position would be as in this case. No registration here at all—if have not registered then both ways—Assignment registered eventually 23.5.51.

Copy P.20—register extract put in. Green Ink entry—Japanese registers opened—refers to Ordinance 34/48—

On “deemed” *King v. North County Council* 60 L.J.K.B. p.379–80.

Rex vs. Westminster Union Ltd. [1917] 1 K.B. 832.

Leitch vs. Emmott [1929] 2 K.B. 236. 30

Adjourned 15 minutes.

Resumed 4.10 as before.

D'Almada : Applies for amendment in terms of written note.

McNeill : Notice only on Saturday night—brought in after action was set down for hearing—Ask that something be done about it.

Ordered : Liberty to amend—questions reserved on terms.

(Sgd.) G. L. HOWE.

D'Almada : If held that to be properly registered—then under section 4 protected as against the deed of trust—unregistered and earlier.

Puts in original assignment to Defendants and mortgages—p.21.22.23.

S/o 24.7.51 to 10 a.m.

(Sgd.) G. L. HOWE.
23rd July, 1951.

24th July, 1951, at 10 a.m.

Resumed from above O.J.193/49.

10 *Appearances as before.*

McNeill : Plaintiff amended reply yesterday—refers to Civil Procedure Code—sec. 265.—374—Rules Supreme Court in England O.52. orders—amendment of yesterday not effective until it is drawn up—no provision for Plaintiff amending his pleadings to take advantage of something which has occurred after he has commenced action—Amendment made after pleadings closed and action brought—Sec. 170 C.P.C.—171.

These are the only cases in which a Plaintiff may plead something which has arisen after the writ.

20 Cites *Williamson v. L.N.W. Railway Co.* 7 Ch. D. 787—new claims—*Eshioky v. . . . Bank* [1932] 1 K.B. 254—Facts of this case—*Lis pendens*—refers to reply : Appeal same volume later page 426.

Hillon v. Steam Laundry [1946] 1 K.B. 65 :

If this correct is to say that it is no use proving we had notice of your trust since on 23.5.51 we registered our Japanese assignment. Prejudicing the position of Defendants who will not be able to plead with.

Melcalfe vs. 46 (1882) L.T.R. p. 31. Order does not take effect until drawn up.

30 *D'Almada* : Reverse decision made yesterday. Notice of the exhibit given—almost properly made—not open now to Court to reverse the order made. Precluded from alleging that in his notice—if found to have notice of the trust before the agreement for sale that plaintiff is out—amendment is to the fact that notice now is not sufficient to find is out of Court.

Section 4 of Ord. 38/48—to register within a certain time. Present knowledge. Then memorial serves not only present issues. In *Hillon's* case definite stating pleading limitations—should be ignored.

[1946] 1 K.B. *Benniger v.* 58.

Question of priorities may have to be considered.

Whether steps taken under the Ord. 38/48 taken now or earlier open to

40 *McNeill* : Knowledge of trust might have become known to Plaintiff immediately after the agreement or before the writ. Cause of action—happened to deal only with cause of action—any matters arising can only be pleaded by Plaintiff in reply to a counterclaim. Takes away and advantage for the Defendants.

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Order : I allow the amendment which is to all purposes the pleading of a fact—it is open to the Plaintiff out of time to register a memorial under the Ordinance of 1948. How far it will avail him is a matter for this Court. There is no question of either _____ or a change in the cause of action.

(Sgd.) G. L. HOWE.

Adjourned 15 minutes.

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Resume 11.45 a.m. As before.

D'Almada calls :

Exn. Bernacchi :

LI KOON CHUN D/d.

I live at 8 Kennedy Terrace. I am 63 and I am also known as Li Chuk Yuen and Li Ting Kwan. I am a merchant—a founder of Bank of East Asia Ltd.—a director of Woo Fat Shing Ltd., a shipping firm, the Oriental Investment Co. Ltd. and a director of the Bank of East Asia Ltd.—Joined my father's firm at age of 14, who carried on a shipping business and dealt in leasehold properties. I commenced a land investment business in 1908 and from then on I have had money dealings with properties. I own a number of leasehold properties now and also I was executor of my father's will whose estate consisted of a number of leasehold 20 properties.

I have property in Des Voeux Road 59–65—I got these about 1908. Connaught Road, West 85, 86, 87, 88—others now. St. Stephen's School etc. Also On Lok Yuen premises in Queen's, West End, Coventry St. and Queen's Central. As Director of Bank of East Asia I also have dealings with land. Director since 1919. I consider I can give a good valuation of leasehold properties in Hong Kong. I remember the time of the Japanese occupation. I remember Leung Yueng Shi who had mortgaged certain properties. In April 1943 she desired to pay off the mortgages. She offered me military Yen—it was a pre-war mortgage. I did not 30 agree to take military yen. She took proceedings against me in the Japanese Court. The Court forced me to accept military yen or be beheaded. I was a member of the Co-operative Association which was to look after the affairs of the Chinese in welfare e.g. to transmit applications from Chinese persons to Japanese authorities. The association was composed of well known persons of the Hong Kong community. It was not a voluntary organisation but established under Japanese authority. They were forced to join. I left Hong Kong and went to Macao in September 1944 and stayed there until the liberation. I did this because I was suspect as pro-British and as one who refused to accept military 40 yen. During this time of occupation I did not carry on land business. Apart from the property in this case I was not concerned in the purchase of any other property. At the end of 1942 I sold my half share in 22 Des Voeux Road, Central. I have a daughter Li Wai Sheung—in 1942–3 she was studying in Sai Nam School—middle school—Li Wai Sheung is also called Violet Lee. She was then about 16. She is now in America. The headmaster of Sai Nam then was Leung Sai Foon the 2nd Defendant—now dead. He was introduced to me by my daughter. He came with

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- Chu Yam Om 1st Defendant (identifies). They were brought by my daughter to see me. This would be about September or October 1943. I was then living in 35 Seymour Road. I knew nothing about the constitution of Sai Nam School. Leung Sai Foon told me that the school house of Sai Nam School is owned by Chu Yam Om, 1st Deft., and Cheung Lan Chau, 3rd Deft., and himself Leung Sai Foon. Leung also told me the property was mortgaged to Hong Kong Shanghai Bank. Chu Yam Om was present all the time. Leung also said that the mortgage money was being called in by the liquidator of the Hong Kong Shanghai Bank.
- 10 Leung asked me for a loan to enable him to repay the mortgage—to enable the mortgage to be repaid. I received two or three interviews with the same men. I was asked for loan of 40,000 military Yen. I said I pay this amount provided I am repaid in Hong Kong Dollars e.g. \$4 to 1 yen and further I would consult my lawyer. At the interviews Leung Sai Foon and Chu Yam Om and Wong Tat To was added to the last interview. As a result of my last interview I went to see Kan Yuet Keung. I received advice from him against the mortgage because of the H.K. dollar question and also the mortgage could not be registered. I accepted this advice of Kan and I saw the Sai Nam three persons, 1st and 2nd Defendants and
- 20 Wong Tat To and I said I could not lend. I told them why. Then Leung asked me to hold a meeting with Kan, myself and the three. I arranged a meeting at my house 25 Seymour Road. At this meeting there were witness, Kan, Wong Tat To, Chu Yam Om and Leung Sai Foon and I think the wife of Cheung Lai Chau. All I know of this man was that he was a member of Cheung Lan Chau i.e. Wong Tat To.

- I told them that I could not lend the money and Kan told them the reason. They urged me to grant the loan and said that they would not break their promise but Kan said “No.” Later the three, Chu Yam Om, Leung Sai Foon and Wong Tat To saw me again about ten days later.
- 30 There was a conversation in which Leung Sai Foon talked first. This time the proposal was that as I did not like to lend, they would sell the property to me. I said “I do not very much to buy but how much do you want?” They said—Leung Sai Foon—said that they would ask for 90,000 military yen from others but how much would I offer—I was not very pleased to buy but I was prepared to purchase. There were other meetings later to discuss price, etc., and eventually I agreed to buy for military yen 62,000. This was about the end of December, 1943. There were always the same three men present, but sometimes there was a fourth, Mrs. Cheung Lan Chau, who had been introduced to me by Leung. I see P.8—this is a
- 40 photograph of the lady in question—I valued the property by the market value and the area—I was told by Leung that they had paid 180,000 H.K. pre-war. I thought that 1 military yen = 3 H.K. the market was fluctuating about that time—the black market I mean. Use of H.K. dollars was officially banned by Japanese in June 1943. Having agreed to 62,000 M.Y. I went to see my lawyer Kan. I instructed him to prepare the necessary deeds. My wife was to be the purchaser. She is the present Plaintiff. I wanted my wife to be purchaser because during the occupation I did not like to use my name as buying property, I was afraid Japanese would punish me for intercepting military yen, because I had some trouble with
- 50 the Japanese authorities so I wanted no more to do with them. It was the Leung Yu Shee case I had trouble with military yen. Kan informed me that I had to send in an application for permission to buy and for the

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others to sell. He told me it would take some time. This was already towards the end of December, 1943. The mortgage to the Hong Kong Bank is still unpaid. The limit day to repay was the 31.12.43—Wong Tak Po told me that. In view of the approaching date line date of the mortgage the seller asked me to pay the military yen to pay the Mortgage (interpreter says seller and sellers could be). This conversation took place with Leung Sai Foon, Chu Yam Om and Wong Tat To, the last being the first person to speak. I agreed subject to their going to see the liquidator of the Hong Kong Shanghai Bank asking him to agree to a term such as that if my application to buy was refused, the same amount should be repaid to me. In the result I knew that Kan and Wong Tat To did go to see the liquidator. 10

S/o 2.30 p.m.

Resumed 2.30 p.m. As before.

LI KOON CHUN, o.f.d.

Exn. Bernacchi :

After this interview I had reason to believe that the liquidator would agree to this proposition. I then entered into an agreement with Leung Sai Foon, Chu Yam Om and the wife of the 3rd Defendant, Cheung Lan Chau. My wife was to be the purchaser. I made arrangements for her to come to sign the written agreement at Mr. Kan's house. I see P.5 —this is the agreement. I was present when this was signed. I paid a deposit—at first it was to be 10,000 M.Y.—finally I paid M.Y.35,000. I paid this M.Y. to Kan. I instructed him to pay it over. I think another document about a loan was also signed. I was present when the application for leave to buy and sell was made out. This was made on the same day as the agreement for sale P.5. I only remember it was made the same day, I cannot remember whether it was at the same time as P.5. I see P.3—this is the application for permission to sell. I saw the people signing the original application. P.3 is a copy. The 1st and 2nd Defendants, the wife of 3rd Defendant and my wife signed. Kan had another interview with the liquidator—After this second interview I understood that the liquidator would not agree to the propositions to hold the money. We had a discussion then Wong Tat To, Kan, Chu Yam Om and Leung Sai Foon. Suggested the M.Y.35,000 be used to pay off the mortgage to the Hong Kong and Shanghai Bank—the deposit money—I had already paid the money. In order to have some proof It was decided they should sign a borrowing note. Decided money to pay off Bank and a borrowing note was to be given to me. The borrowing note was to be a temporary Chinese document. No terms in the borrowing note. The note was that the money paid by me as deposit was to be treated as loan. Two mortgages on property, bank and Dominican missions—the deposit was to pay off both mortgages. Bank mortgage was to be paid before 31.12.43. The Dominican missions mortgage was to be paid off too as the house was to be sold to me without mortgages. 30

I see P.6. This was executed in Kan's office. This was security for the M.Y.35,000. By borrowing note I meant P.6. When P.6 was

executed the application for permission for sale and purchase of the house had not been granted. This P.6 was a safeguard in case permission not given. If permission to buy and sell came through, P.6 would be of no effect. In June 1943 the H.K. dollar was banned—official rate of exchange was 4 H.K. to 1 M.Y.—in December 1943 black market exchange about 3-1.—At this period I could not lend money on mortgage because M.Y. was going down. Permission was given for the sale and purchase by the Japanese Authority. I see P.10, the assignment in Japanese form. I was present when it was executed—signed and chopped—dated
 10 17th February, 1944. I had paid M.Y.35,000 deposit. I paid the balance of the purchase money—the balance I think was paid on the 3rd February some days before execution of P.10. I paid to Kan—paid by cheque. I paid on 3.2.44 to Kan because he asked me for it. The permission was given to buy and sell. I heard of this before I gave the cheque to Kan in his office with his costs. I paid M.Y.28,000-odd. Subsequently the deeds of the property were handed over to me. P.21-22-23 are the documents of title—I think Kan wrote to me about the permission and asking for payment of balance. I have not got the letter if I received it. I see the copy letter from my solicitor. I received the original of this
 20 but it is lost, P.24 only.

I had a discussion with 1st and 2nd Defendants about the school—they asked me to lease the school premises to them. Asked for lease of 10 years. I did not agree to 10 years and I asked for deposit and security. Said no deposit possible. I then gave them after having discussions a lease for 3 years.

Lease drawn by Kan on my instructions. I cannot remember whether I was present or not when lease executed. I received the lease—Kan showed it to me and gave it to me. P.15 is the lease. My rent collector collected the rent. This is my collector (identifies Yim Cheuk Wai). Rent collected
 30 by my Collector, he brought it to office, there entered into account—rent collected for these premises from time of lease until January 1946. No rent was paid from February 1946. I see P.16. This is written by me. P.16 is an original draft—I handed this draft to my collector to make a fair copy and to deliver to Sai Nam School. This was in February 1946. Since the liberation of Hong Kong I have seen Cheung Lan Chau, 3rd Defendant and Wong Tat To—this is Cheung Lan Chau (identifies 3rd Defendant). I saw him May or June 1946—this was the 1st time in that year I had seen him. He was not in Hong Kong when I bought the house. I had heard of his name at that time but I had not met him. The first time
 40 I became acquainted with him was in May or June 1946. He came to see me about the rent for the school premises—He came to ask for time because I pressed the school for payment of rent. Nothing else said in discussion about rent. 3rd Defendant did not say a word about not having sold the property to me. I never made any threats to these people about the sale nor did I ever press them to sell them to me. I never heard anything from anyone about any trust in connection with this school or the Defendants. This was not known to me at the time of the negotiations or at the time of the assignment. I knew nothing about this school being a charity. I paid fees for the education of my daughter there—very high
 50 school fees.

Adjourned 15 minutes.

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Resumed. 4.5.

Li Koon Chun o.f.d.

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XXn. McNeill :

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My daughter was about 16 in 1943 may be 17—First went to Sai Nam school either end of 1942 or beginning 1943. Before that at St. Paul's. Changed schools because Japanese came and school St. Paul's closed for some time. Closed for about one year. St. Paul's re-opened with same principal but teachers were changed—more Japanese—some teachers were assigned. I did not like the Japanese. My daughter goes to what school she likes. I would not have liked her to go back to St. Paul's. 10
Number of schools in H.K. decreased after Japanese came—not so much choice. My daughter was happy at Sai Nam school—it was a well run school I heard. I heard Sai Nam was well managed. The Sai Nam School was chosen by my daughter. She found it and came home and asked if she could go there. I did not make any enquiries about the school nor about the fees—I paid when asked to pay. I did not go to see the school. She just said wanted to go and went to that school. I did not ask any of my friends about it. After my daughter had gone to the school I heard the principal was Leung Sai Foon. I first met him in September or October 1943 when he came to see me. I knew Lau Tak Po. He is managing 20
director of Hong Kong Company. I have known him for some time—not very long—I knew H.K. Hung, a Solicitor. I know Li Yip Mui, Chinese Chamber of Commerce Chairman—he left Hong Kong before the war. I have said I first really became acquainted with Cheung Lan Chau 3rd Defendant in May or June 1946. This was the first occasion I had a conversation with him. I cannot say when first I saw him—sometime before this meeting in 1946—saw him may be in street, I saw him once or twice in the Street. In 1946 he came to see me and told me he was Cheung Lan Chau. I had heard this name before. I only thought I had seen him in the street—I might or might not have seen him. I think it 30
was advertised in the papers before the war that he was headmaster of Sai Nam. I cannot say how long before the war. Before war I knew there was such a school as Sai Nam from the newspapers.

First meeting about this sale took place September–October 1943. Chu, 1st Defendant, and Leung, 2nd Defendant, came with my daughter's introduction. First my daughter came home from school That Chu Yam Om and Leung Sai Foon would like to see me. I cannot remember school holidays or terms—terms were fixed by Japanese. So long ago I cannot remember whether September or October—not later than October I am sure because it took some time about discussions before it became the 40
end of the year. I cannot remember whether before or after 10th of 10th month. My daughter told me that they wanted to see me on account of some property. My daughter said nothing about borrowing money. Chu and Leung came to see me at 25 Seymour Road—my brother's home where I was then living. They mentioned the mortgage to H.K.S. Bank. Leung said that they had mortgaged the property to H.K.S. Bank and now bank pressed for payment—he did not mention any date for payment. This is the first time I had seen Leung Sai Foon. I did not ask the amount

of the loan. The next meeting between us was several days afterwards—about a week after—Leung Sai Foon, Wong Tat To and Chu Yam Om were there. This also was at Seymour Road. There was a discussion about mortgaging the house to me.

At the first meeting there had been talk of mortgaging the house to me. Had been a sum reached M.Y.40,000. No decision on first meeting because I had to inspect the house to see if property is up to the standard of that loan. I did inspect the house between 1st and 2nd meetings. I did not see my solicitors between these intervals—at second interview I had
 10 examined the property—at the second meeting both Defendants asked me for a reply to their suggestion for a mortgage. I said I could not give a reply until I had considered the matter further. I refer to 1st and 2nd.

This interview lasted several 5's of minutes. I was not averse to handing money at this meeting. I personally had no objection to the loan on mortgage. The next meeting was the third and was three or four days after the second. At this third meeting the same three and I think Mr. Cheung Lan Chau was present—meeting held at 35 Seymour Road. I was asked if I agree to mortgage—if I was willing to lend—Chu asked me
 20 —I said that if I get repayment in H.K. dollars 4-1 I would consider the loan at the second meeting nothing was said that the mortgage to the Bank had to be repaid before 31.12.43. Nothing was said at the 3rd meeting either about this. At the third interview Chu spoke first—the others spoke too taking part in the conversation. I cannot remember now who said what—the subject-matter is the loan to them.

S/o to 25.7.51 at 10 a.m.

(Sgd.) G. L. HOWE,
24th July, 1951.

25 July 1951, 10 a.m.

Resumed from above—O.J.193/49.

30 *Appearances as before.*

D'Almada : Asks to call Witness from Macao to prove P/A which are not admitted and clerk from registry.

McNeill no objection.

Bernacchi. Exn.

LEE SHU SUN dd : Punt.

I am senior clerk in the Land Office. I have been in this office for 25 years. Also worked in Land Office when controlled by Japanese. I produce a certified copy of land office register relating to the property in this action, re-certified yesterday. p.25 put in. This register shows a
 40 green ink entry of a sale during the Japanese occupation—from this entry I have found the appropriate entry in the register kept by the Japanese. That register contains a number of documents relating to this transaction—kept separately—the register of reference is to the file where these are

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kept—I produce this file. Here is the original of P.3, put in P.3A. This is the original of P.9, put in as P.9A. (McNeill—subject to examination by me). I produce the original Japanese assignment as registered in Land Office P.10A, attached to this are four photographs. Photographs had to be attached to such deeds under the Japanese rule of 1944. All parties appear in the land office—the solicitors clerk comes too with the photographs. This is identification purposes. The signatures by the photographs were there when the documents arrived at the land office. I produce another document, an application for registration of owners—25th August, 1942. This is another original as P.1, put in P.1A. (McNeill—I do not want to 10 delay this witness—I may take objection later on it is not on the list).

All subsequent applications to deal with property are not registered in the original application as P.1, but are recorded in the register left in the office. P.1 bears a reference to a transfer—it is a Japanese endorsement from the Land Office—Japanese. Puts in registers—P.26.

McNeill—I ask to reserve XXn.—allowed.

ADOLPHO EDUARDO JORGE sworn.

I am a Portuguese advocate practising in law in Macao since 1931, at Avenida Almada Ribeiro—Macao, No. 50 1st floor. I was so practising throughout the Pacific War. I see the 3rd Deft. Cheung Lan Chau. I see 20 P.8 I recognise the document. It bears my signature and my initials across the two photographs and a rubber stamp with my name and address. P.8 also bears in western writing the name Cheung Lan Chau, had a signature —were written by the 3rd Defendant in my presence. The photographs were already on the document beneath that name and signature was appended. I cannot remember exactly but I am almost sure the lady was present. I had met 3rd Defendant before this transaction. Introduced by an old friend of mine who owned Kwong Hing Tai Factory. The 3rd Defendant and a Chinese lady were brought to my office. The lady 30 of the photographs, with documents like P.8. I was to witness signatures and photographs. The documents were in Japanese. I did not know it. I asked what it was about. 3rd Defendant explained he was refugee in Macao and that he owned property in Hong Kong and he had to pay debts and had to raise money. The document was power of attorney. 3rd Defendant said he wished to sell property to get money and the document P.8 was to entitle his wife to sell on his behalf. I said I could not see the benefit of my signature. 3rd Defendant and the lady assured me that a lawyer had to witness so I witnessed. Chop is not used in Macao—wax seal only. However, 3rd Defendant assured me “ chop ” 40 was right and I had to get a rubber stamp with my name and profession on it. Then he was satisfied. The signature of 3rd Defendant was signed in my presence. I think the wife, the lady, signed too in my presence but I am not sure. I see the document produced—this also bears my signature and was executed at the same time as P.8—in my office. I remember all this because never before was I asked to deal with documents like this. The document is a duplicate of P.8. (document produced P.8A). I saw P.8A yesterday and I remembered the incident then.

The 3rd Defendant told me in Cantonese which I speak. I see P.9A. This bears my signature and rubber stamp—made at the same time as P.8.

All executed in my office at the same time that day. I did not regard this as a professional service but as a favour so I have no book entries. It was during the war about 8 years ago. I cannot give precise dates. I didn't know the date and the P/A.

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Xxn. McNeill :

I don't know exactly what this action is about. I was asked only about the p/a etc. as to signature and stamp. I got to H.K. about 4 p.m. yesterday. I had not much time to talk about it. I was asked about the P/A and its execution. I knew there was an action something about a
 10 sale of land. I saw that the P/A related to sale of land. I have a considerable practice in Macao. Plenty of work even during the war. Clients coming in and out during the war. Normally I keep a record. No record of this because it was for friendship—not professional service. It is seven or eight years ago. I have had hundreds of clients since. It is a fact that I have many of this kind of case. This P/A attracted me because I have not met anything before like this—just to sign my name on the P/A. When I was told it was a P/A it was not enough for me. This P/A was so unusual—it was during the war—the Japanese were in Hong Kong. I had to be careful and ask full particulars. I cannot read the P/A. The
 20 3rd Deft. I had known before. I would not have signed otherwise. I would have been satisfied if the P/A had been for another person. I had been introduced to 3rd Defendant before—he was brought by a person whom I knew. That is why I believe him. Mr. Chan Ming came with him and I had known him before. I had no reason to doubt the transaction when it was explained. I am not sure as to dates. I do not think 3rd Defendant came twice to my office on business. I see P.9A. I do not think 3rd Defendant came to my office alone to sign this. My profession does not use green ink. I used a green pen this time but I don't think it likely I used the green pen on two different occasions. On P.9A in Chinese is
 30 19th year, 1st month, 5th day. I remember this date—it seemed peculiar to me. Usually in Macao Chinese use two ways to put date—old way and the reference to Republic—19th years means 1930 to me. I asked about this and the 3rd Defendant told me this was a Japanese calendar. I cannot say whether this date corresponds to 5th January 1944 or not. The date was not written in by 3rd Defendant. The date I think was already written in. 3rd Defendant I think only signed his name. I agree the inks are different. I cannot swear whether he put the date or not, whether in my office or elsewhere. It is possible he did write the date on in my office—I cannot remember. Photograph was already on the
 40 document. The date is in some characters in Chinese—some Japanese looks like Chinese. I see P.8. The photograph is of Mrs. Cheung. I do not know if she will say she went to Macao in February 1944 and not in January 1944. P.8 and P.8A signed at same time. I found it difficult to remember precisely. I am sure there were not two occasions—3rd Defendant signing first and his wife on a later date. For this purpose 3rd Defendant and his wife only came to my office once. I cannot say how many documents—more than one. I recognise the documents when you produce them to me. There was only one visit. I am not certain as to dates. I do not say it could not have been February or January. They told me
 50 that the date corresponded to the day on which they were there—that is all.

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The date is in Japanese. The characters are the same in Japanese and Chinese for dates. The date characters on P.8 and P.8A and P.9—the month dates are the same—1st month 4 days—The characters on P.8 and P.9 as to date are not all the same characters—some are and some not. There are the same number of characters in each document—9 in each—only one different character that I can see. I see P.9A. I understand the difference between printed and written characters. There are 5 printed characters and 4 written. In P.8 all are written. The 3–4 same 5th different. 1st and 2nd same. The written characters in P.9A which corresponded and P.8—the character meaning month is different—on P.9A. 10
1st date character printed up, next two months in Chinese meaning 19—
In P.8 the 3rd and 4th characters mean 19. Next character of P.9A is printed—maybe—I don't know really. The next is written in Chinese—it means 1. In P.8 the equivalent character is 6th character. It is different character, a stroke. After the stroke character meaning 1, there is a printed character, then a written Chinese character meaning 5—the equivalent is 8 in the other document.

I see P.9A. I see my signature on it under the signature of 3rd Defendant. This is Mrs. Cheung's signature—points out. On P.9A I was intending to authenticate the signature of 3rd Defendant. This is what 20
I was asked to do. I was not asked to authenticate the signature of Mrs. Cheung on P.9A. In P.8 I was not to authenticate the signature of Mr. Cheung. 3rd Defendant said he would not go to Hong Kong and the P/A was to enable his wife to sell the property in Hong Kong. They had a special place for each one to sign. The place where I was to sign was marked "witness" as shown. On P.8 both signatures came before mine as witness—in P.9A—witness follows 3rd Defendant's name only. Mrs. Cheung's photo and on P.9 when I signed it, but I am not so sure whether the signature was there or whether she signed in my office. I have already agreed about the different words in P.9A. I see 30
P.8, it looks like same ink throughout. I don't know whether the date was written in on P.8 by Defendant in my office or not but I know there was a date there when I signed. Mr. Cheung, the 3rd Defendant, did tell me that the P/A was for a sale of property—my recollection is quite clear—it was said.

Witness to :

D'Almada : I am quite satisfied that what I have said is a clear recollection. My office has four rooms. I have one room and the staff the others. We have Chinese brushes and ink.

S/o 2.30 p.m.

(Sgd.) G. L. HOWE.

40

2.30 p.m. resumed as before.

LI KOON CHUN o.f.d.

XXn. by McNeill :

The next interview was about a few days later. I don't remember how many—also at 35 Seymour Road. At this interview Leung Sai Foon, Chu Yam Om, Wong Tat To and myself. They agreed to repay in H.K.

dollars 4-1, and also talked about interest and terms. The interest was to be 6% a month—i.e. 60 each on \$1,000.—In P.6 the figures have nothing to do with the question of interest—P.6 is a different mortgage. The terms of the mortgage was discussed—it was to be for 3 years. The amount was to be M.Y.40,000. The next interview after this took place after a longer interval because I had to consult my wife. I say my lawyer too and then the 5th interview took place. Present myself, Leung Sai Foon, Chu Yam Om and Wong Tat To. I then told them my lawyer had advised against the mortgage—also took place at 35 Seymour Road. At this meeting Chu Yam Om, Leung Sai Foon, Wong Tat To were present with Kan.

All these meetings took place September–October. These discussions began in September or October and continued after November or even later. It is not correct to say that meetings at which with Chu Yam Om and Mr. Chau was present only took place in December. The sixth meeting was with the lawyer Kan. The seventh meeting took place at 35 Seymour Road. They asked me to buy the property and I was not very keen. I had not much spare money then but if I had any I would buy gold. I had not bought land that year through my wife. There was discussion at this seventh meeting—nothing settled. The eight meeting was a few days later. At 7th meeting Chu Yam Om, Leung Sai Foon, Wong Tat To and self were present. At 8th meeting—same place 35 Seymour Road—same 3 persons and I think Mrs. Cheung but not sure.—At 8th meeting by price was discussed—nothing settled. Getting a little nearer—my first price offered was M.Y.55,000. At 8th meeting my offer was 55,000 and I did not increase at that meeting. All I can remember was that my offer was first \$55,000—I cannot say at which particular meeting. I think first at the 8th meeting. The Defendants had asked M.Y.90,000 but not from me but would have asked that sum from anyone else. There was another interview—a ninth interview—I cannot remember how long later. Chu Yam Om, Leung Sai Foon, Wong Tat To. I am not certain whether Mrs. Cheung was there or not—she was present on some occasions and not at others. Also at 35 Seymour Road. The bargain was struck in December. I cannot remember the number of interviews. The meeting after the eight I went up a little partly to M.Y.62,000 but not at the ninth interview. I increased little by little, I cannot say how much at a time. I reached M.Y.62,000 eventually but I cannot say in how many interviews. Cannot say how many interviews after my bid of M.Y.55,000. Two or three probably all in Seymour Road. I say that 1st Defendant Chu was present at all as was Wong Tat To and Leung Sai Foon—always. The interview at which the M.Y.62,000 was agreed was a few days before the end of December. I did not tell Kan until after the bargain was struck—not during the negotiations. After these meeting, I met Chu Yam Om and Leung Sai Foon but I do not remember the date. I cannot say if 28th December. I see P.5—this is dated 28th December. I was present when this was signed in Kan's office—next door to my office—next room in the same building. Cannot remember if morning or afternoon. Cannot remember whether wife came to my office. I remember I took her to Kan's office. The others were in the office of Kan when I got there—Kan was there. I spoke to Kan that I had agreed to buy the house. I had given instructions only to Kan when we all met in Kan's office. The instructions had to be given to Kan by both parties. Instructions

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might have been given to Kan a day or two before the signature—further instructions were given by both parties at the meeting. The Document P.5 was not yet made when both parties went to Kan's office as I have said. Cannot remember if in morning or afternoon. It may be correct that there were two meetings at Kan's—on the 28th December. I say that Chu Yam Om was present at the meeting or meetings—saw him there. There may, as I have said, been two meetings and the document P.5 signed in the afternoon. It might be that my wife and I were at the afternoon meeting when Chu, Leung, Mr. Cheung and Wong Tat To came—and the parties signed the document. I cannot remember how long it took but I think each one had to read the document before signing. Each one had to read it. I saw them read it. It is quite untrue to say they did not know what the document contained—it was all in Chinese—they could read. I think an application for permission of sale of property was also signed. 10

I see P.6 dated 30.12—I was there when that was signed. I cannot remember time of signing whether morning or afternoon.

Adjourned 15 minutes, resumed at 4 p.m.

XXn. continued.

Xn. McNeill :

LI KOON CHUN.

20

It is difficult to remember. I cannot say whether or not I was present when P.6 was signed. From Sept.—Oct. to the agreement of M.Y.62,000 the meetings were usually in the mornings. During the Japanese Occupation I had no fixed time to go to office as I had to talk. Meetings in the morning usually some time after 9 a.m. Leung Sai Foon would have to walk from the school to my house. I can say that Mrs. Cheung attended more than once. I deny she attended only once about the beginning of December. She had been there before the beginning of December—it is untrue that she came with Leung Sai Foon once only to the meeting about the mortgage. I deny that Chu, 1st Defendant, only attended a meeting at my house. I deny Chu, 1st Deft., only attended a meeting at which Kan was at until Kan received instructions to draft a mortgage. I deny Wong Tat To telephoned about middle of December to ask if the mortgage was alright and that I replied it would soon be ready. I deny that it was not until 20th December Wong and Leung were told that the mortgage could not be prepared. I deny that a day or two later Wong and Leung came to call upon me about this in my office. In those days no one used telephone for conversations about mortgage etc. I deny I saw these two in my office and an angry meeting took place. I have never had a conversation with them in my office. I deny these two saw me again a few days later and that I then offered to buy the premises. They had already asked me to buy the house. I deny I then offered M.Y.60,000 and that they asked M.Y.90,000. I deny that at a further meeting I agreed to M.Y.80,000. I deny it was arranged that the document was to be for M.Y.60,000 lest the Japanese consider the amount too large. I deny that these interviews took place only between Leung Sai Foon and I. The 1st Defendant Chu Yam Om was present from the beginning. The agreement P.5 made on 28th December was intended to be carried out. There was a term 30 40

that there should be a deposit of M.Y.10,000—I paid this M.Y.10,000 to Kan—in fact I paid M.Y.35,000. P.5 was agreed on 28th December. I cannot remember what date I paid it on. I paid this deposit but I forgot the date. When I talk about M.Y.35,000, it was made up of M.Y.10,000 and M.Y.25,000 more—The translation is not correctly set out if in P.5 says the M.Y. were to be paid hereby—it was to be paid but not on the signing. I cannot say whether I paid on that day or not. I paid in all that was payable by me but I cannot say what date I paid it on. I paid M.Y.35,000 to Kan after the execution of P.5 and that sum included the M.Y.10,000. I say it was intended to carry out the terms of P.5—Clause 3 of P.5 provides for the completion within 1 month after the application for sale and purchase was granted. I think it was approximately about the end of January. I see Clause 5 of P.5. I take the second sentence to mean that if certain time came for completion and the vendors were unwilling to sell, the deposit was to be _____ and compensation and damages to the purchaser. Clause 5 might mean that either party could call off the transaction but I think it is a question for a lawyer to answer. I read the agreement. The last part of Clause 5 provides for recourse to law for enforcement. I understand this when I read it about going to law courts. P.5 was on the basis that if the liquidator of the Hong Kong Bank agreed the money owing by the Defendants would be held as a deposit only. I thought it would be alright when P.5 was signed because the liquidator has said so. I paid M.Y.35,000 not only M.Y.10,000. P.5 was signed by my wife as my nominee. I did not pay M.Y.10,000 on the signing of P.5 because before the preparation of P.5 the liquidators were to be paid—the amount due to the liquidators was much more than M.Y.10,000. This agreement that I should pay M.Y.25,000 to the liquidators had been reached before the execution of P.5. I remember it was about M.Y.25,000 in respect of one mortgage. When instructions were given to the lawyer to prepare the document P.5, it was the usual thing to put in M.Y.10,000 but when the liquidators were seen I agreed to pay more. All this was going on about the same time, the preparation of P.5, the visit to the liquidators. I meant by preparation—completion. M.Y.10,000 was the normal deposit about these times. Kan told me I should pay M.Y.10,000—I see P.10. I was there when it was signed. All were present. My wife and I, Leung Sai Foon and Chu Yam Om and Mrs. Cheung. I cannot remember the date Mrs. Cheung signed P.10. I saw her sign it, the dates may have been put in later after she had signed. I say Mrs. Cheung signed at the same time as all the others. I cannot remember the date or month P.10 was signed. The date on the assignment P.10 was February 17. The date may be correct in the assignment—I cannot say. I only know I saw them sign. I can think of no reason why a different date should be put in for the one on which it was signed. I think Kan can answer these questions better. I can give no suggestions. I cannot even remember the date myself.

S/o 10 a.m. of 26th July.

(Sgd.) G. L. HOWE,
25th July, 1951.

26th July, 1951, at 10 a.m.

50 *Resumed from above. O.J. 193/49.*

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Supreme
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LI KOON CHUN o.f.d.

XXn. by McNeill :

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continued.

An agreement for sale was reached about the end of December. I don't remember when Chinese New Year was in 1944 (*Interpreter—25th January*). I think my daughter was still at school then. I cannot remember whether she continued at Sai Nam during 1944 or not. She had attended other Chinese private schools during the occupation. I left Hong Kong in September 1944 for Macao. She was not in Sai Nam School in September 1944—she had left for Macao in May or June 1944 I think. I cannot remember whether she remained at Sai Nam until she left for 10 Macao. Not strange I can't remember—she was grown up she can choose for herself. It is simply I cannot remember whether she changed her school or not. A lease was mentioned for the first time is January 1944—whether beginning or end I cannot remember. Leung Sai Foon was headmaster then. Nothing was mentioned about what would happen about the school during the negotiations but only after agreement reached. Leung Sai Foon had no necessity to mention it as he was a tenant he could carry on using the school premises under Japanese law. I say under Japanese law he could continue living in the premises but a lease would give a longer term—but under law I could not evict him. We did not know 20 how long the Japanese would occupy Hong Kong. I had no intention of obtaining possession of the school house then. I cannot remember if I told Leung Sai Foon this or not but I think not. It may be that I said I would give a lease sometime in December—but I think not. No I did not. I could not turn out the school—the Sai Nam School. I mean I could not get possession and turn out the people living there. Sai Nam School was my tenant after the sale. I don't know to whom the school belonged on the 28th December but I knew Leung Sai Foon was the headmaster. I knew the registered owners were the three Defendants. I do not know how the school was carried on before the sale. I remember the assignment 30 P.10—it is dated 18th February. I understand Sai Nam School to be the tenants. Before the sale the 3 Defendants owned the premises. There was no change, the landlord remained landlord and the tenant the tenant. I knew nothing about the organisation of the school. Sai Nam school were tenants even before the sale. I don't know when Sai Nam became tenant—a tenant is a party who has to pay rent to the Landlord. Before the sale the landlords were the three Defendants. Before 17th February the three Defendants were landlords. The Sai Nam school occupied the premises. I could not turn them out but a longer term would be by lease. 40 When I said in chief that the 1st and 2nd Defendants asked about the school and I said I would give a lease to them, I meant that Leung Sai Foon representing the school—to-day I say I was to lease to the school. The lease was made out as letting the premises to the school, Sai Nam School, and when Chu Yam Om and Leung Sai Foon asked me about the lease, the latter was headmaster and the former a master—they were negotiating with me on behalf of the school. I let the premises to the school—the same as letting to a firm. I knew this before 17th February of course and I knew it Sept.–October, 1943. In December 1943 all I knew was that one of the three was the headmaster and the other a teacher. In December 1943 I knew the Defendants represented the school. It is not necessary 50 for it to be that they held the premises for the school. I know there is a

difference between private property and the school property. I knew Cheung had been headmaster before the war. The Defendants I agree were 1st a teacher—2nd a headmaster and 3rd a former headmaster of the school. They were registered owners. In December 1943, the land of which they were registered owners had upon it the Sai Nam School. In December 1943 I could not have known any connection between the owners and the school because ownership of property is a private business and the school may be owned by a community or by the public. I did not mean that the school was started by public subscriptions. All I mean

10 by this is to put a line between ownership of land and ownership of a school. I could not come to the conclusion that the land was owned by the school. In December 1943 I knew that 3 Defendants were the owners of the land and that they represented the school but not that the 3 Defendants and the school were one. I have repeatedly told the court that I knew nothing of the organisation of the school. When they asked me for a lease they said they represented the school. I did not know in December 1943 that the 3 Defendants represented the school—they were landlords in December for the sale of the property. In December they represented themselves as landlords, but in January when they talked about the lease

20 they were representing the school. I use the word “representing” to mean representation—by same position I meant to say actual positions they held. In December 1943 I conducted negotiations with three registered owners. I never thought of number of them being representatives of school.

I see P.15 the tenancy agreement. It is to the Sai Nam school. When they talked about the lease with me, I understood them to represent the Sai Nam school so the lease is to the Sai Nam school. I did not make any enquiries about Defendants. I knew one was the headmaster and the other a master. I did not make any enquiries in December about them. I wrote

30 a letter of instructions to Kan about the lease.

The rent was collected by my collector and paid to my office. The accounts were paid to my office. I have lost my account books for the years 1943/44. No commission was paid to anyone regarding the lease. Regarding the sale and mortgage no commissions were paid to anyone. There would be no commission where the transaction direct i.e. from Vendor to purchaser. The solicitor received his costs. Discussions re a lease began in January. I fixed the rent according to the price of the property.—the price I paid I paid it at about .06 or .07% per month. The rent for the first two years M.Y.420 p.m. was approx. .6% of the

40 M.Y.62,000 paid. The rent was low as I have to fix in accordance with the rent market. I fixed monthly on the basis I mentioned but in those days I could only fix on these two factors. There may be another factor where the other partly asks for deduction.

No other factors. I deny that an arrangement was reached between Leung Sai Foon and myself that arrangements should be made to dispose of the property to me for M.Y.80,000. I deny that a dispute arose regarding the amount and that I wished to reduce the purchase price. I deny that the final sum agreed was M.Y.78,000. I deny that in January 1944 there were discussions about the area. I had a survey made but this survey

50 was finished before the agreement was entered into.

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I see the piece of paper produced—D.1 put in. It is not in my handwriting. It is about the area of the land. I do not know whether I have seen it or not. I do not remember whether I have seen it before or not. I cannot remember whether I gave this to Wong Tat To. I cannot remember.

Adjourned 15 minutes.

Resumed 12.05 as before.

Li Koon Chun ofd :

XXn. by McNeill.

I deny that subsequently I paid to Leung Sai Foon a sum of 10
M.Y.16,000, balance from 78,000 M.Y. I deny a verbal agreement between
Leung Sai Foon and myself that it should be arranged that the property
should be sold. All negotiations were carried out in the presence of Chu
Yam Om as well as Leung Sai Foon. I did enquire if any rent was being
paid by the school. I asked Leung Sai Foon about this. I cannot remember
what he said but I think he said rent paid was H.K.\$1,100 p.m. to the
Defendants—this is what Leung Sai Foon said to me. I deny I am
fabricating this question. Whether or not there was a question of rent
between the school and the Defendants I do not know, but that is what
Leung Sai Foon told me. I did not know the Defendants 1 & 2 and 20
Mr. Cheung had an account in the Bank of East Asia—there may be one
but I do not know. I see P. 6—the mortgage—I remember being asked
in direct examination about the terms of this mortgage. I remember at
first I said “no terms” but then I said that it was one of the terms of the
mortgage that the loan should be regarded as deposit on the purchase
price. I said that the money paid by me was to be treated as a loan.
I agree P.6 does not recite this but at the time the M.Y.35,000 was for
paying off the debt due to H.K. & S. Bank and P.6 was prepared as
security. It is not strange that this should be omitted because it was
verbally agreed in presence of Wong Tat To, Kan and Leung Sai Foon. 30
I think I heard about the order that loans to liquidated banks had to be
paid off in about the third decade in December. I did not read the papers
in those days—I did not pay much attention to orders of the occupying
authority. I don't remember being told about a letter written by the
liquidators of the Bank to the Defendants. I did hear that loans due to the
Bank had to be paid off before the 31st December. I could not say what
would happen to those who did not pay—it would not be so bad as to
meet beheading—the Japanese were very cruel (witness comments to
“unreasonable”). I had come to get H.K. dollars for M.Y. as I was
afraid I would get my head chopped off. To refuse M.Y. was a bad crime. 40
I was not a very outstanding figure before the war—position and influence—
I had a little. I was one of the Chinese prominent citizens during the war—
a member of the Co-operative Association. My son had some work in the
Control of rice organisation. I was dealing with two schoolmasters and
the wife of a third. I deny that I used my position to force through a sale
to myself using Leung Sai Foon. I see P.10—17th February. I say I saw
this document signed by each of the signatories. I came into the room—
Kan's office—The lawyer explained the document to the parties concerned
and then asked them to sign. I say that is so.

Coming to 1946 I dictated a letter to be sent to the school—P.16—
Before I dictated P.10, I think Wong Tat To had come to me, Mr. Cheung
came later—more than 3 months later. Cheung did not discuss as to the
rate of rent—he only said he would pay at a later date. This is true—I do
not know that in January 1946 the school Board repudiated this trans-
action at a meeting. Mr. Cheung did come to see me but whether or not
they had a meeting I cannot say.

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Re-Xn. Bernacchi :

The agreement says M.Y.10,000. I paid M.Y.35,000 as a deposit
10 because the latter amount was required to pay off the H.K. & S. Bank—
not the whole amount—M.Y.25,000 was to be paid to the Bank under the
assignment leaving \$10,000 (P.5). Account books for 1943/44 were lost—
my books were seized by the Japanese when my daughter attempted to
take them to Macao. My rent collector had rent books of his own. An
intermediary in a sale would get commission—position is the same in
mortgage transactions. I gave instructions to the rent collector to take
measurements of the area and house—that is what I call a survey.

By the Court : When Leung told me about the rent paid by the school,
1st Defendant was present. My daughter knew 1st Deft. was teaching in
20 the school—1st Defendant never told me he was not a teacher in the
school at the time.

(Sgd.) G. L. HOWE.

S/o 2.30 p.m.

Resumed 2.30 p.m. as before.

McNeill—I do not propose to proceed with para. 10—I handed in
this.

LI TAM TOI HING (Mrs.). d/d.

Exn. Bernacchi :

I live at 8 Kennedy Terrace and I am Plaintiff and wife of last witness
30 Li Koon Chun and during the occupation of the Colony I lived with him
at 35 Seymour Road. I see P.5. It bears my signature. I signed P.5
in Kan's office. My husband took me to Kan's office and asked me to
sign. I understand it to be an agreement to buy the house of the Sai Nam
school. My husband put up the money but my name was used as the
purchaser. I see P.3. I signed this. I see P.6—it also bears my signature.
My husband asked me to sign this. Mr. Kan asked me to sign matter and
my husband brought me. I do not remember when I signed which document.
I have been to Kan's office to sign documents three times altogether.
40 The first occasion only Leung Sai Foon was present when an agreement
for lease was signed and on two other occasions Leung Sai Foon, Chu
Yam Om and Mrs. Cheung were all present. The occasion when only
Leung Sai Foon was present was when a lease was signed. Mrs. Cheung
is the person in the photograph on P.8. This is Chu Yam Om (points at
1st Defendant). I had seen 1st Defendant Chu before the occasions of

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signing in Kan's office. I had seen him at 35 Seymour Road on more than one occasion but I cannot remember how many times. I see P.10. I see my name. I signed this document in Kan's office. I did not go anywhere other than to sign documents in Kan's office. I did not go anywhere else about this sale. I see P.10A. I see this is a copy of P.10. It also bears my signature. I see the sheet of photographs attached to P.10A. Mine is there. During the Japanese occupation photographs had to be used in the land office in connection with purchase of land. I went to the land office about this sale—hence the photographs. I went with an employee of Kan's who took me there.

10

At the land office I saw the other two persons whose photographs are on this sheet on P.10. Mrs. Cheung and Leung Sai Foon and Chu Yam Om. The photographs were then pasted on the piece of paper. I see P.15—I also signed this document. It has the signatures of myself, Leung Sai Foon and Kan, the lawyer. On the occasion when only the same three signed, it was the lease.

Xxn. McNeill :

I went three times to Kan's office to sign documents. One of these occasions I signed the lease. There were two other occasions on which I signed documents in Kan's office. On the other two occasions Mrs. Cheung was present and on both occasions she signed a document. I saw her sign documents more than once. I see P.5. I cannot remember the date I signed this. On the 28th December. I see P.6, this is dated 30th December. Both were signed in Kan's office.

I see P.10. This is dated 17th February 1944. This was signed in Kan's office. I cannot remember exactly how many times. My memory is not good.

(Sgd.) G. L. HOWE.

Nil Xxxn.

HO PING NAM d/d Punti.

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Exn. Bernacchi.

I am assistant cashier in the Bank of East Asia. I have brought certain cheques with me. I am here on subpoena. Some of the cheques I produce are in Chinese. There are five cheques. P.27A. Li Chok Yuen payable to bearer for M.Y.28,581 dated 3rd February 1944.

(B) Thomas Tam to Leung Sai Foon
Cheung Lan Chau } or bearer
Chu Yam Om }

Endorsed by Leung Sai Foon, for M.Y.2044 dated 30th December 1943.

(c) Thomas Tam for M.Y.7000 to Procurator of Dominican Missions 40
30 December 1943.

(D) Thomas Tam to Bank of East Asia—M.Y.25,308.97/100 date
30th December 1943.

No endorsement.

(E) Thomas Tam to bearer M.Y.26,890 dated 9th March 1944.
Endorsed Chu Yam Om, Leung Sai Foon and Ho Ping Fan
by chop.

This last cheque (E) bears an entry on the back to show put into the savings Bank by the three persons who endorsed the cheque—savings a/c in the Bank of East Asia—a sum of M.Y.20,000 into savings a/c and M.Y.6890 in cash.

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XXn. McNeill :

I see P.27E the sum was paid into the savings a/c on the same day as the cheque was presented. Cheque had to pass through rates department at close of business and that was done on that day. I cannot say whether any of the payees had an a/c in this bank. I am assistant cashier verifying signatures. I don't know whether any of the payees had a current a/c. I say now none of them had a current account—not in my time. A deposit a/c is withdrawn by drawing a cheque.

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(Sgd.) G. L. HOWE.

Nil re-Xn.

CHUN LEUNG SAN d/d

I am a clerk in Bank of East Asia attached to Savings Bank Department. I have brought certain documents from this Savings bank relating to Leung Sai Foon, Chu Yam Om, Ho Ping Fan. I produce the specimen signature from P.28A. The chops—P.28A—are a bone chop and an ivory chop. They are the chops of Ho Ping Fai, Leung Sai Foon and Chu Yam Om. In this case there are two chops for each person—Each person puts one of the two chops—the a/c was operated by chop. P.28A shows a report that in 1945 the chop of Leung Sai Foon had been lost—20/8/45 is the date of this endorsement. I produce also a form showing a payment into that account P.28B. This shows that a sum of M.Y.20,000 was paid in on 10.3.44. Being a payment in does not show chop of payees. Payments out were on two occasions:—

P.28C. 1st 28.3.44 paid out M.Y. 15,000, the chops being of Ho Ping Fan, Chu Yam Om, Leung Sai Foon.
30 P.28D. 2nd—30.5.44—M.Y.4,500. The chops being Ho Ping Fan, Chu Yam Om and Leung Sai Foon.

I also produce a copy of Bank ledger a/c—dealing with this account. P.28E.

Xxn. McNeill :

I see P.28A. Three impressions were made by the three different chops and was not good enough, three more were made underneath. I cannot say if any of these three persons had a savings bank account before.

(Sgd.) G. L. HOWE.

40 *Nil reXn.*

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KAN YUET KEUNG d/s English.

I am a solicitor of this Court practising as a partner in Messrs. Lo & Lo. I am also a solicitor of Supreme Court of Judicature. During the occupation I practised as a solicitor in partnership with Thomas Tam, George She and —I was acquainted with the Plaintiff and her husband— known them for years. I acted in this matter during the Japanese occupation. The first occasions I had anything to do with this matter was in about September or October 1943. I was consulted by Li Koon Chun about a loan he proposed to make to Defendants. Li told me the loans was about Sai Nam school and that school premises were mortgaged to bank and that liquidator of H.K. & S. Bank pressing Defendants for repayment of mortgage. Defendants asked for a loan to pay off the bank mortgage. Said he had agreed and that repayment would be in H.K. currency at 4-1. He instructed me to draw up an agreement for this transaction. I told him at once that it was a very dangerous transaction to enter into because if Japanese found he lent in yen and asked for repayment in H.K. currency it would be serious—I advised him against the loan. Li went away after this—we had a long conversation and he agreed with me and said he would not go ahead with it.

Li saw me again some days later—cannot say exactly maybe 7-10 later—said told Defendants about decision not to lend and they pressed ; said he felt difficult to refuse and would I explain to them that it was not possible for him to agree. We had a meeting at Seymour Road—his brother's home actually—and I went there. Present were Li, myself, Leung Sai Foon, Chu Yam Om—(identifies 1st Defendant) also Wong, who seemed to be a treasurer or manager etc. I did not of course know these people until I had been introduced. I see P.10A. This contains a photo of Leung Sai Foon (identifies it). Li asked me to explain to Defendants and I did so—in same terms as I had to Li—dangerous. Defendants went on trying to make me change my mind. I think Chu said he was a scholar—that no fear of being discovered by Japanese. I could not agree and said I would not accept. I advised against the transaction. I would not go into it to be influenced. I myself would be in trouble. I saw these people again some weeks later when I was instructed that Li had agreed to buy the premises. I cannot remember when I received these instructions. Li at that time had offices adjoining. He spoke to me about the sale either in my office or in his. I say the first time he told me he had agreed to buy the property no one else was there. I got instructions to draw up the documents—an agreement for sale—purchase price M.Y.62,000. It is customary in land matters in Hong Kong for the solicitor to act for both parties. I received instructions from Li and then I drew the agreement and at a later date Defendants and Li came to my office and the agreement was signed—then it was that the Defendants would confirm the transactions. I see P.5. This is the agreement I had drawn up in my office—this is dated 28th December, 1943. I cannot recall whether it was signed on that day—usual practice is so but I cannot swear this was. Present in my office on this signing were Li, Mrs. Li, Plaintiff, Leung Sai Foon, Chu Yam Om and the wife of Cheung Lan Chau—introduced to me as Ho Ping Fai. I see P.8. The photograph of Ho Ping Fai is on this. Wong Tat To was there as well—at this time it was necessary to apply to the Japanese authorities for permission to sell

a house. This application P.3 was also then signed. The grant of permission was not automatic and the application was made to the Governor's Office—procedure being to send in the application and wait and in due course it would come back—returned across the counter. Form bears an endorsement "granted" or "not granted." Could not tell beforehand whether it would be granted. I see P.5—it bears a clause that if application refused, agreement cancelled—Clause 8, P.5. P.5 is really a preliminary agreement subject to approval from Governor's office. After permission granted, a proper assignment had to be drawn up. No assignment could be registered showing encumbrances—Japanese required all mortgages paid off before sale. In this case there were two mortgages—one to H.K. & S. Bank and one to Dominican Missions. At this time all mortgages to liquidated banks had to be paid off by 31st December.

10

I kept a file relating to Japanese orders published in newspapers. I produce this. I see a cutting dated 31st May, 1943—regulations regarding transfer of premises and one of 5th November, 1943, regarding the compulsory payment to the liquidators of the Banks of outstanding mortgages. File put in P.29. This was kept by me when I was with the Bank of East Asia. The agreement for sale of the 28th December was just in time for repayment of bank mortgages.

20

There was discussion about the mortgage. When the parties came to me I explained that it was necessary to apply for permission for sale of property—and would take time to get an answer. Wong I think, raised the question that the mortgage had to be paid off on 31.12.43. I said impossible to complete before then. That being so, it was suggested that Li should deposit an amount sufficient to cover the mortgage to bank. Li agreed but stipulated that if the permission would not be granted, liquidators would return the deposit. I was instructed to approach the liquidator. I had instructions to approach the liquidator before the agreement for sale was drawn up. On same day as the discussions in the office I went across to the Japanese liquidator. I explained to the liquidator the difficulty. He did not say whether he agreed or not but the impression I had was that he agreed. I went about to the liquidators that day. On my return to the office I made P.4 to the liquidators. I cannot remember whether I despatched it by a clerk or took it over myself. Thomas Tam assisted in the drafting. P.4 is the final form. I saw the liquidators again. I cannot remember if the agreement for sale P.5 was executed before my next visit to the liquidator. I went to see the liquidator one or two days after the despatch of P.4. I went with Wong on the second occasion. On this occasion the liquidator eventually found the letter —P.4—said he could not possibly agree and handed the letter P.4 back to me. Wong spoke no English. As a result of the liquidator's refusal to agree there were further discussions at my office. After this liquidator Wong went away and later in the day all the parties came to my office. (Leung Sai Foon—Chu Yam Om and Mrs. Ho Ping Fan—Li of course was in the office—Wong was there too.) Discussions took place and it was decided that Li should lend them the money to pay off the liquidator, the money was to be treated as part of the purchase price and Li agreed. Li suggested that if refusal to sell came from Japanese and asked for a mortgage of the property so that if sale was refused he had some security. I think Li paid M.Y.35,000 by my firm about this time. I cannot remember

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whether before or after the liquidator refused to agree to hold the money. I produce books of a/c from my office kept by Mr. Tam—they are the firm accounts. I gave a list of all the documents in my possession to both parties in this set. My book of a/c showed that M.Y.35,000 of Li under his alias on the 30th December “With reference to Oaklands Park,” that is the cash a/c and in the same book is the banking entry that the same amount was paid into the bank. A/c book P.30. A different book is for 1944.

S/o 27.7.51 at 10 a.m.

27th July 1951 at 10 a.m.

Resumed as above. O.J.193/49.

Appearance as before.

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KAN YUET KEUNG o.f.o.

Exn. Bernacchi :

As a result of this agreement my firm paid the liquidator—cheques paid to Bank of East Asia to get a cash order to pay liquidator. Cheque P.27D is the one. Cheque for M.Y.25,508.97—We also paid the Procurator of the Mission P.27C for M.Y.7,000. This left a small balance of just over M.Y.2,000 from the M.Y. 35,000 was paid to Defendants by cheque less costs due to the firm. Applications were then put in to the Japanese Land Office for cancellation of these mortgages. I produce these P.31 & P.32. These were prepared in our office and dated 13th January and signed by Ho Ping Fai, Leung Sai Foon, Chu Yam Om and the relevant mortgagees. There was no necessity to register P.5—or produce it to the Japanese authorities—it was not necessary and so was never produced or registered. P.6—I see. This was executed in my office as a result of the conversations in my office which I have related—I think it was on the same day. The document P.6 was only thought of after the liquidator refused to allow a deposit on our terms. The original P.6 was retained by me and held in my possession until these proceedings. The assignment was handed together with other title deeds relating to the property, were handed over to the Plaintiff. The mortgage was only to be used if permission to sell and buy was refused. I see P.24. I recognise this as a document in the handwriting of P.C. Wong, then my managing clerk and is the duplicate copy for our files. I produce my 1944 a/c relevant to this issue. P.33 put in. Few entries relate on 3rd February—1st, 27,000 for purchase money for Oakland Park, and an entry for costs.

P.27A I recognise—it is the cheque signed by Li for M.Y.28,581.50 given in payment of this account.

Cheung Lan Chau 3rd Defendant was not to my knowledge in Hong Kong. I have never seen him until yesterday when I came to Court. Leung Sai Foon, Chu Yam Om came with a lady introduced as Mrs. Cheung

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—she produced to me a purported P/A P.2—I inspected P.2 and I considered it not a sufficient document to pass the Japanese authorities—otherwise unsatisfactory. I did not hand the witness as terms not clear. I advised Mrs. Cheung P/A not satisfactory and that a new P/A would have to be executed by her husband. I gave instructions for a fresh P/A to be prepared in my office. I had this drawn up in Japanese language. I cannot recall whether P.8 and P.9 were drawn up at the same time—most probably so. I recognise the handwriting of an office clerk. I cannot now remember why two forms were drawn up. One is the printed form printed and issued
 10 by the Japanese.

P.9A—Two were necessary as although the form was prescribed and the other was drawn up for some permanent records after the occupation. Assignments also were drawn in Japanese form but also practice was to have a Chinese assignment side by side. This is the probable case of the P/A in duplicate. P.8 is Japanese, P.9 modern Chinese form. I see P.8 and P.8A these are duplicates—There are Japanese characters in these. I am not acquainted with Japanese script. There is a similarity in characters. I can recognise certain characters. There is a power to sell in P.8. Clause 4 is the power to sell—I can read this. Anyone acquainted
 20 with Chinese script would understand P.8 as a P/A with power of sale. I would say about 80% of P.8 are similar Chinese characters. There is a difference in cost between a mortgage and an assignment. This practice both before, during and after occupation—in mortgage legal costs are always paid by mortgagor—in a sale in practice the agreement was showed by both parties. The cost of the assignment is always paid by the purchaser as is the stamping of the assignment but since 1948 when excess stamps may be showed. The costs as shown by P.33 and P.30—mortgage costs against Defendants because a mortgage but on sale completion costs of assignment both stamp and costs paid by Plaintiff. 3rd February 1944
 30 Plaintiff paid the sum to me and we paid over on the 10th March. The reason is that in those days Japs were reluctant about documents going for registration and the procedure was that after execution the parties would be escorted to Jap office with photographs etc. Smallest mistake had to be rectified—it would be unsafe to pay over at once unless assignment executed—had to await final approval of the deed.

I see P.10 and P.11. These are the Japanese assignments and the applications to register. I see P.10A, the duplicate copy from land office. The Japanese assignments P.10 and P.10A were executed in my office. I had only one room. Then we all attended—Chu, Leung, Mrs. Cheung—
 40 Li and wife. Wong Tat To was also present. In addition to the assignment, the application to register sale of house P.11, P.12 the certificate of sale were all signed at this time. P.13 the Chinese deed of sale was not for registration but for record. This was at no time surrendered. This was executed by Defendants as I have said at the same time. P.14 is the receipt for the purchase price signed on this occasion—Later I sent a clerk with the pictures to the Land Office, with photographs etc. I see the document produced, P.34 put in. This is a specimen signature card required by the Japanese office. I handed a card to Mrs. Cheung for her husband's signature and later she returned the card to me with her husband's
 50 chop on it and signed.

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I inspected the land registers as is my practice. Once before the signing of the original agreement P.5 and secondly just before completion of the Japanese assignment. I made this search personally. Japanese only allowed solicitors to search. After inspection I advised my clients to proceed with the sale. I paid the Defendants—Cheung Lan Chau, Chu Yam Om and Leung Sai Foon—were owners registered. The two mortgages appeared but no trust instructions of any sort was shown. At the time of the execution of the Japanese assignment Mrs. Cheung executed it with the P/A drafted in my office. She had been to Macao when her husband executed the P/A. P.8 and P.9 were used on her authority. She had the 10
duplicates with her—P.8 and P.8A and P.9A. It is quite untrue that the P/A were executed at a later date and back dated. I would not have allowed the deal to go through. I had asked Mrs. Cheung to go to Macao to get it done and she had done so.

I see P.15—tenancy agreement—executed in my office and prepared in my office written by the same clerk as before. Nothing about this tenancy agreement was said up to the execution of the assignment and it was a few weeks later when I received instructions from Li to draw up a tenancy agreement. I was not present at any of the discussions but Li gave me both verbal and written instructions as to the tenancy agreement. 20
I was however on one occasion just at the end of the discussions present— at one meeting. I then drew up the tenancy agreement P.15 and executed by Plaintiff and Leung. One only to Plaintiff and one to Leung Sai Foon.

A receipt was given to me by Wong Tat To for the duplicate lease put in P.38. A duplicate was sent to Leung Sai Foon who acknowledge in the document produced, P.36 put in. Eventually when I turned over the title deeds to Li I received a receipt from him. This is it, P.37 put in.

I had nothing further to do with this matter until 1946 when I was again instructed and wrote certain letters.

I see the chops on P.27 (A-E), P.5, P.10 and P.13, and the signature 30
—Exh. P.28A the bank signature card. The chops of Leung Sai Foon, Chu Yam Om and Mrs. Cheung appeared. These are personal chops. Among the Chinese “ chop ” is a very important thing and tantamount to a signature—prevailing custom in China for hundreds of years and is also Hong Kong custom. Personal chops are kept safely if used for his own private dealings. Later use of chops was similar in Hong Kong during the occupation. Japanese attached greater importance to a chop than to a signature. It was and is my practice to assume that a person executing is the correct person. Also if a deed is to be signed we assume that the person signing understands what is being signed and the nature 40
of the document. In my practice I have an extensive conveyancing business. I have met cases of property registered in first names and a trust not declared or registered. Often a person begs and does not wish his name to be known as a partner. The other instance is that say a partnership business for instance, it frequently happens that there are a number of partners some of whom do not wish to be known as partners—property would be purchased in the names of one or two and a declaration of trust prepared and executed but not registered. Often too, in the case of persons, the object is not to let the declaration of trust go in the register so as not to encumber the legal title or hinder dealings. 50

Not one of these Defendants—Chu Yam Om, Leung Sai Foon, Mrs. Cheung or Wong Tat To at any time suggested or in any way explained that the Defendants were trustees and not real owners.

Adjourned 15 minutes.

Resumed 12 noon.

KAN YUET KEUNG o.f.o.

XXn. by McNeill.

I am a solicitor of Supreme Court of Judicature from 1st June 1940 —Admitted here in November 1940. Since November 1940 my knowledge
 10 has considerably increased, I agree. I had practised then for one year before the Japanese occupation. I was however articled to Gibson and Weldon in London for five years. I wish to say that Gibson & Weldon are a large conveyancing firm. When I got instructions in 1943 regarding this matter, one of my clients was Li Koon Chun. In the case of the sale, as to the agreement of the sale of 28th December, I acted for both parties. The party on the other side was, the owners of the property. It is perhaps true that the way it carried out, one of the owners told me of the terms. I received instructions from Li first, the original instructions came from Li. I was acting too for the others—only two in Hong Kong. For Cheung,
 20 I acted because his wife Mrs. Cheung was there with a power of attorney. The original power of attorney was of no value for the purpose of the Japanese. I considered it sufficient authority at that time for me to act. It was however of little value as regards the Japanese. The law of the occupying power was such that P.2 was of no use. My reactions was that P.2 would not be accepted by the occupying power, not that it was otherwise a power. I cannot recall when I first saw Mrs. Cheung but she came to a meeting in my office with Chu, Leung Sai Foon and I first saw Leung Sai Foon at Li's home, Chu was also there as was Wong Tat To. This was the first time I had met them. I knew nothing of them
 30 until introduced and identified by Li. I cannot remember if Leung was introduced as headmaster of Sai Nam School. Li had already asked my advice about a mortgage on Oakland Park. I cannot remember whether the names of the registered owners were mentioned when Li first talked to me. He also I think mentioned Sai Nam school but not the names of the owners. I remember the meeting at Li's house when I told Chu, Leung, Wong that I advised against the mortgage. Li did not then tell me that they were representatives of the Sai Nam school, nor did he tell me before the meeting nor did I learn from anyone else. I first learned that Leung Sai Foon was headmaster at the time instructions were given
 40 to me by Li. I cannot remember with accuracy now. My client Li had also been a teacher at Sai Nam school and was related to my brother-in-law. I think he told me about Leung—Li mentioned Sai Nam school only. Before 28th December I did not know Leung Sai Foon was the headmaster. I think I heard on the 28th December. It was not the first meeting in my office. I first heard that the three Defendants were registered owners together at the time I made a search of title.

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When I gave instructions to have the deed drawn I knew the Defendants were joint owners. After the search I knew they were joint tenants—I gave verbal instructions to Lee to draw the document. Lee had joined me two or three months before this. I knew Lee knew where the school was situate. To my recollection Lee did not say Leung Sai Foon was headmaster when I gave him instructions.

It did not cross my mind when I first saw the deed in the registry that they were other than joint tenants and I treated them as owners all along. When I found Leung Sai Foon was headmaster, it did not occur to me that there was any close connection between joint tenants and the school. I disagree that I would now at once make enquiries as to the connection between Leung Sai Foon and the school. Li Koon Chun did not tell me that Leung Sai Foon and Chu were representatives of the school. Li did not tell me that in his view Sai Nam school was an "entity." I do not remember that he ever mentioned that to me. I knew there was a school on the property but my mind was never directed to the "make up" of the school. I searched, I found the registered owners. I drew the deed. I did not direct my attention to the constitution of the school. I did not consider whether the school was a tenant of the registered owners. My mind was never directed to the position of the school. I disagree that it should have been. I did not question Leung Sai Foon when I heard he was headmaster. I made no further enquiries then finding out the 3 Defendants were joint tenants. I did not question their capacity. I did not make enquiries from the registered owners as to the capacity in which they held as joint tenants—not whether partners or trustees. I was not concerned—except for this transaction I had not known them. When the mortgage was signed they attended in my office and signed the mortgage. They attended at my office to sign the assignment, the application for sale and the other documents. On December 28th when P.5 was signed—Li, Mrs. Li, Chu, Leung and Mrs. Cheung were there. P.3 was also signed. There was a conversation regarding the Japanese liquidator. I cannot say whether the conversation re the Japanese liquidator took place in the morning or not. I cannot remember now—it is a long time ago. Under the Japanese law the Japanese office would not register—i.e. they would not register an agreement for sale. P.5 definitely would not have been registered by the Japanese but that did not mean it was not a good document. We still followed pre-war procedure—present a preliminary agreement and then when permission given, the assignment—I believe P.5 could have been enforced. I do not say P.5 not recognised by the Land Office under the Japs—I say it was not registrable only. If the application for sale had not been granted, the agreement could not have been enforced in a Jap. Court because permission to buy and sell had been refused.

S/o. 2.30 p.m.

Resumed 2.30 p.m. as before.

McNeill : I do not accept the exhibit as the (memorial).

KAN YUET KEUNG o.f.o.

Xrn. by McNeill.

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- Before P.5 was drawn up I had searched in the Land office for the deed. I agree that in a joint tenancy if one dies the remaining 2 are legal owners—(Vol. 27, p. 660—reads passage from Hailsham to witness). I agree with that. Practice in Hong Kong is that if one joint tenant dies only necessary to register death certificate. If I see joint tenants in a deed they might be partners. If I saw such a deed I would advise my client to buy. I disagree that any such joint tenancies would put me on my guard.
- 10 Li instructs—purchaser wants to buy—vendors appear—my duty is to see he gets a good title. I search accordingly and examine deeds. Also to see that title from legal owners is good—identification of persons as owners etc.—duty to Vendors to see that terms are agreed and that they get the purchase money for which property is sold. That is my duty to both parties. When I search and find 3 persons as joint tenants I maintain it was not my duty to go beyond register to enquire whether trustees or not. To do that would be to go beyond scope of Land Registration Ordinance and which need not be done. Had I only been acting for vendors I would not find it incumbent upon me to find out whether trustees
- 20 or not. I am concerned only with the deed of title. Were they to come and say that a property is registered in our names, we want advice whether right to sell or not, then I would have to go into the title outside. I have to protect clients true—but when the three registered owners come to sell property I believe they have a right to sell unless they disclose a trust. What I have said is my own personal opinion. I did in my opinion have enough experience. I had five years in London in a conveyancing practice in London. I do think it unusual that persons having legal and beneficial ownership should register as joint tenants. I would not say it probable but possible that on reading a deed such as this to think one or
- 30 more of the joint tenants might be trustees. But I did not think it was part of my duty to any of my clients. I do not agree that the reading of this deed put me on my guard as to trustees. Even when I found that one of the joint tenants was the headmaster I would not agree that I had any additional duty.

- I see P.9A. This was prepared in my office written in the handwriting of Lee, my clerk. I don't know how long he had been at the school—Sai Nam. He did not tell me Cheung had been a headmaster there before the war. P.9A was given to Mrs. Cheung. I gave this to Mrs. Cheung to take to Macao with instructions how to execute. I cannot say that it
- 40 was sent by Wong Tat To by letter to Macao. I cannot say about this being sent or not. I cannot remember when P.9A came into my hands but I know I had it before completion of the sale. I would not allow completion until the P/A more in order. P.9A would not have a date on it when I gave it to Mrs. Cheung since I did not know when it would be executed. I see P.8, the other P/A and P.8A. They are duplicates. They were prepared in my office, written by same person in my office. The dates are almost the same but just a little difference. The actual day and month were inserted afterwards. I cannot say the dates were not filled in by me. I am quite sure I received these documents back before the completion.
- 50 I would not say the writing on these documents shows that the dates were

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inserted later. At that time I had 3 clients, Lee, Wong and Wong Wai Fat—
In December I cannot say the actual number of documents I handed to
Mrs. Cheung. P.8 and P.9 differ in form in that P.8 is a much more full
form of P/A. P.9A just contains a power to sell, manage. When I gave
Mrs. Cheung P.9A, I cannot remember whether I handed her P.8 and P.8A
as well. To the best of my recollection I handed her both documents.
P.9A is a form accepted by the Japanese at the time and P.8 and 8A drafted
on a system with the Japanese interpreter. I am sure I had both these
documents there when P.10 was signed. I see P.34—the signature sheet. 10
This was handed to Mrs. Cheung for the purpose of transmission to her
husband for his signature chop for Japanese authorities—handed at same
time as P/A. It is dated 18th February 1943. I cannot say why the date
was the 18th February. I cannot explain why it was not dated earlier
if it went to Macao. P.9A I see. It may have been posted to Macao and
returned—I cannot say.

The suggestion that some time later a wider P/A was considered
necessary and so P.8 and P.8A were drafted and handed to Mrs. Cheung
to take to Macao since her photograph was on it and it had to be executed
together. Mrs. Cheung went to Macao and the documents sent to Macao
to meet her. Mrs. Cheung went to Macao and signed it with her husband 20
before Jorge and her husband executed P.34 on or about the 17th or
18th February may or may not be right. I am not responsible for the duty
of these P/A. I cannot see anything similar in the duty of these P/A.
I still maintain that P.9A was ample to execute the assignment. It is
untrue that Mrs. Cheung—it is of most clear recollection that the assignment
was signed by all the parties in my office at the same time. Sometimes I
do agree parties sign at different times and the last date of signing inserted
in the deed. My recollection was that Mrs. Cheung was in my office on
the 17.2.43 and signed this document—the assignment. Mrs. Cheung
signed in my office in the presence of the others. I had nothing to do with 30
the registry of the memorial.

S/o 15 minutes.

Resumed 4.05.

McNeill asks to interpose—(cross-examination had been reserved).

LEE SHU SAN o.f.d.

XXn.

I produce the register from my custody. This contains the actual
Memorial 204450—This is it. It bears the signature Lo and Lo solicitors
for the purchaser. I cannot say whether a signature or not. The words
Lo & Lo are struck out in blue ink as are the words “Solicitors for 40
purchaser.” The words “stated in the agreement as” are inserted in the
column “(Premises affected)”. There are Chinese characters inserted
instead of Lo & Lo etc. The document was prepared in the solicitors’
office and I got it in that state.

Interpreter (the characters mean Li Tam Toi Hing).

Nil. Re-Xn.

(Sgd.) G. L. HOWE.

KAN YUET KEUNG o.f.a.

XXn. McNeill.

I see P.14 the receipt for the purchase money dated 17th February 1944 —I had not then paid over the money. In both Japanese assignment and the Chinese assignment it was necessary to do so as this was prepared at the same time and all executed together. They had not then received the full money—according to the accounts I think—we had received the money from Li on the 3rd February. We had an entry in the Ledger—
 10 ledger shows list of monies received from clients and this sum is shown with others under Plaintiff's name. We were holding it until after the registration—received from Li Koon Chun and held it for him until completion for Plaintiff and after completion held for vendors. This was to protect the purchaser. The cheque for balance of purchase price P.27E ; a cash cheque, I cannot say to whom it was handed. I cannot say to which individual it was handed. I cannot remember whether I gave instructions or to whom. I cannot remember whether I or Mr. Tam or any other member of the firm. I cannot say why cheque was made out for cash—perhaps they wanted cash. I cannot remember this payment I was looking after the vendor's interest—it was not is the purchaser. Payment has to be
 20 made to the right person. This was done. I cannot remember to whom it was handed. Neither I nor my firm communicated with Cheung 3rd Defendant in Macao. I did not consider any necessity so to do—I knew nothing of the opening of a bank account with the proceeds of the cheque P.27E.

I did not make out a completion statement for office use. I see the document produced. This is a draft of a re-assignment of the mortgage executed between the Defendants and Li—the re-assignment of P.6. I cannot say whether executed by the Plaintiff. I must have given
 30 instructions for this draft. Without the document itself I cannot say whether it was executed. This is merely a draft—put in P.38. I gave instructions for P.38 to be drafted but I cannot say if I considered it necessary or if it were in fact executed—it appears from the accounts that it is charged for \$110 in March 1944. This would be an indication that it was executed.

I made no enquiries as to apportionment of rent, I cannot say whether we apportioned rents when asked but I do not remember being asked on this transaction. The cuttings were kept by me but Court went by Bank of East Asia staff—I was aware of the proclamation—I must have
 40 read it. I do not think it was November that discussions opened. I cannot remember exactly but I know it was quite a long time between when Li first talked of the property and the assignment. I see this document produced—it is in the handwriting of my clerk Lee. I do not agree it purports to come from my office. The envelope belongs to our office—I have never seen this document before. I can only guess it to be a communication from Lee my clerk to someone else—Lee knew Leung Sai Foon so well—Put in D.2.

Re-Xn. Bernacchi.

I see P.8, P.8A, and P.9A. P.9A, I see the photograph of the lady. This is the P/A suggested that was sent to Macao and back—the signature
 50 of the witness who signed. It means that Mr. Cheung was present.

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I see P.10A—land office copy of the assignment. The document is dated the 17th February and by the side of that date is a rubber stamp—bearing the words “received 18th February”—then comes the number, etc. I see P.34—I recognise the writing of the date as being in the handwriting of my “Wong”—This is the date when all documents were sent in.

I said I had nothing to do with the registration of the memorial but I see now I attested as a J.P. with my initials where alterations were made. This would be before registration. Taken for registration and then executed. I see P.14—it should have been attached to the Chinese deed. 10 I don't know if it had been attached to any other document.

The Letter D.2 I see—it is understood and is a note on practice. from my firm would have been on firm paper and the firm seal.

(Sgd.) G. L. HOWE.

D'Almada :—Asks Court to have no objection to Li and Mrs. Li going England on Canton on 2nd August.

McNeill : I have no objections—have some questions for Li Koon Chun.

LI KOON CHUN on f.d.

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I did not pay 16,000 M.Y. to Wong Tat To to give to Leung Sai Foon.

(Sgd.) G. L. HOWE.

S/o 7.8.9.10 August

(Sgd.) G. L. HOWE.
27th July, 1951.

7th August, 1951, at 2.30 p.m.

Resumed from 27.7.1951. O.J. 193/49.

Appearances as before.

By Consent.

KAN YUET KEUNG o.f.o.

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XXnd. McNeill :

I had a room on the mezzanine floor. My whole firm's office was on the mezzanine floor. We resumed practice in April 1943, we went into room on fourth floor first—for a few months—then moved down to first room of mezzanine floor by August of the Bank of East Asia—the whole firm moved down—the room on 4th floor was kept under lock and key. I don't remember the exact date of moving. When this transaction took place we were in the mezzanine floor. I never used the 4th floor room or the mezzanine room alone—the whole office moved.

re-Xn. Bernacchi :

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All meetings, apart from the Seymour Road meetings, all meetings took place on mezzanine floor and not on 4th floor.

(Sgd.) G. L. HOWE.

YIM CHEUK WAI d/d Puntì.

Exn. Bernacchi :

- I am also known by Yim Chun Wah. I live at 42 High Street, 1st floor. I have been rent collector for Li Koon Chun for over 20 years. I collect rents from about 120 houses. I collect rents and enter them into a book called a day book. I produce my day book for 1945. (*Exh. P.39 put in.*) This is the book kept by me. There are entries there relating to 1 Oakland Park—Sai Nam School—these are they. I see the book produced—this is my cash book and I see an entry made by me
- 10 relating to this Sai Nam School. This is it (*put in P.40*). I make these entries when I collect rents. I ceased to collect rent from 1 Oakland Park. The first payment of rent was in 1944 but not collected by me. Li Koon Chun gave me instructions to make out a receipt for 5 months rent. I produce my receipt book showing the receipts P.41. I was not the person who collected the rent for the five months. Thereafter I did collect rent myself and I went to the school and asked for the person from whom rent should be collected and I collected the rent from him. I did not ever know his name. I see P.10A. I see the photographs on this document. None of the people paid me the rent. I collected at the school premises.
- 20 The last time I collected rent from Sai Nam School was January 1946 but I cannot say when. I see the counterfoil produced—it was issued by me for rent for Sai Nam for August 1945 to January 1946. (*Put in P.42.*) I collected this rent in Sept. 1945. I see P.16. I have seen this before. This is a draft made by Li Koon Chun who gave it to me to make a fair copy which I did and I delivered this fair copy to the school. Since delivering P.16 I have tried to collect rent from the school twice or three times—I went to the school and saw the same man. I was put off and told to come later. I reported to Li Koon Chun.

XXn. :

- 30 I was put off by the same person who had been paying rent before. I do not remember whether March or another month in 1944 when Li Koon Chun instructed me to collect rent but this was not the first time that rent had been collected. The first payment was in March 1944 when 5 months rent was paid, but not collected by me. The first payment paid was for March, April, May, June & July 1944. I first collected from August—the first payment was not collected by me. I do not know who received the five months rent. I only received instructions from Li Koon Chun to make out receipts for the amounts. My instructions re the August rent in August were that I was informed that the rent was
- 40 M.Y.420 p.m. and I was to collect 6 months in advance at a time.

(P.39 relates to rent from August 1945 to January 1946 inclusive.)

P.40 relates to rent from February to July inclusive 1945. I received this from the school from the man who was in charge and I entered it into P.40. The cash I paid into the Bank of East Asia to the account of Li Koon Chun or Li Chok Yuen—both relating to Plaintiff. P.39 is for August 1945 to January 1946 inclusive. P.42 the year given is the same year as P.39 but one relates to Japanese year and the other to Chinese Republic years.

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Re-Xn. :

I have assistants as rent collectors under me till now and at time under the Japanese occupation.

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(*Interpreter*—P.40 should read “received to the credit of Tam Shi.”
Tam Shi is the wife of Li Koon Chun.)

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D'Almada closes case. Defendant has refused proof of various documents. McNeill had informed me that he does not challenge the genuineness of the chops or the signatures on various documents.

McNeill : Opens for defence.

10

Not challenging chop or signatures—says now that it will be Defendants' case that Plaintiff has not the faintest hope of getting the remedy asked—Plaintiff cannot get specific performance of an agreement, i.e. the Japanese assignment, the one stated to be relied on.

Defence is that document of 28th December 1943 is a sham—and that the Japanese assignment was also a sham and evidence will be to the effect that behind all these very old transactions there was an agreement agreed to by Leung Sai Foon and Li Koon Chun and that the agreement behind the scenes was that set out in the rejoinder—refers

(A) Loan.

20

(B) sale for M.Y.80,000 reduced to M.Y.78,000.

(C) lease.

These Defendants were trustees as alleged in para. 9 of the defence, not authorised in fact re land to sell—known to Plaintiff by actual and constructive notice. Para. 5 of the defence that wife of 3rd Defendant was not authorised to execute the deed or to sign. Sai Nam School founded in 1929. In 1932 land of the school and buildings were purchased largely from funds publicly subscribed. Put into names of three persons—Defendants—i.e. joint tenants—1935 at all are joint tenants. A charity therefore, not a charity school but a charity—at least half the endowments from public subscriptions, accepted as such by Commissioner of Inland Revenue. In 1932 3rd Defendant was headmaster of the school and registered as such and so continued until Japanese came when 6 months after he left for Macao and stayed there until the end of 1945. Li Koon told us Japanese authorities kept a close eye on education. Japs appointed Leung Sai Foon. Leung Sai Foon supposed to be dead by 1946. 1st Defendant during the material periods was not a master in Sai Nam but was a private tutor to various children.

There will be considerable divergence of recollection of events between Plaintiff and Defendants.

40

Defendants will say that in December or middle November, 1943, a letter was received at school from the liquidator of H. K. & S. Bank pursuant to the order for repayment of loans. Letter created consternation. Wong Tat To had to raise money. One day, Leung told Wong not to bother as he had an introduction to Li Koon Chun from his daughter. First meeting at Seymour Road early in December, 1943, about 5th or

4th at which Li, Leung Mrs. Cheung were present. Meetings may have taken place between Leung and Li before. At this meeting question of a mortgage was discussed—may be 7th & 8th December. Wong Tat To etc., had been maybe at premises. Mortgage was discussed and instructions given to prepare mortgage—about 11–12 December Jap. Liquidator instructed Leung to call upon him and Leung and Wong went along and were told that repayments must be made before end of December. Wong and Leung both upset and Leung telephoned Li asking if mortgage alright—telephoned about mortgage—remember Li's evidence—About 8 or 9 days later i.e. about 20th December Wong got a telephone message from Kan and Wong did call. Told not possible to draft mortgage on the lines prepared. Leung and Wong called next day and did call on Li for explanation. Later day about 22 December another meeting with Li—Plaintiff. When Li was pressed for loan and then offered to buy, school to go back to school after the war. Following day another meeting at which price haggling took place. About 27/12/43 another meeting at which price was agreed M.Y.80,000. Felt that sale of school premises at that figure too high and therefore agreed that price of M.Y.62,000 be insisted. Morning of 28th December at Kan's office instructions were given to draw up a document of sale for M.Y.62,000—afternoon of 28/12 when document was actually signed P.5. Throughout Mrs. Cheung will say that she understood that it was a mortgage of the premises. No explanation given for P.5 and she signed under impression it was to do with the mortgage. On 29/12, Wong wrote to someone in Macao called Yuen Yat Fai with regard to a P/A. This letter has been disclosed but has been lost—referred to in a letter written by Yuen Yiu Fai. P.19 reads—refers only to P/A signed by Cheung.

Next came the letter of 11/1/44 Wong to Yuen Yat Fei (Yeung Mui)—suggest that the P/A concerned is the one with double photographs P.8.

30 Mrs. Cheung will say that on 5th January she was not in Macao and only went there once during the occupation about 12–13 February 1944. Got permit and went to Macao because the other power of attorney has no go.—P.9—dealt with in letter of Wong—P.8 was dealt with by Mrs. Cheung at Macao on this occasion. Supported by friend who went with her to Jorge's office when P.8 was signed. Mrs. Cheung will say she did not sign P.10 but that she signed some documents just before she left for Macao—not 17th February. Mr. Cheung will say that he had no idea at any time when he got back to Hong Kong that there was any question of a sale of these property. Although power to sell contained in P/A,

40 sale was never discussed with Cheung. Li has consistently said that all the parties were together when documents were signed. Particularly that on 17th February Mrs. Cheung was present at the signing of the Japanese assignment.

Wong will say dispute with Li about the M.Y.80,000. Question of area of the land arose and measurements were taken then and price was eventually reduced to M.Y.78,000 of which M.Y.16,000 passed through his hands to the other side—Kan's cheque. Say that 1st agreement is complete sham, the mortgage is very little better if any later at all from want of authority but that a loan to pay off the loan was all that either

50 Defendant learned anything about and all that Mrs. Cheung knew anything about. Rent was paid not from the Defendants at all—because lease

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peculiar in that a lease to the school—In 1946 when Cheung returned facts of this purported sale reported to the Committee and a resolution passed that sale would not be recognised.

This is in January 1946—in general opinion.

Calls.

D'Almada : Regards opening in law—always practice here to open the law here first. Suggest inference to be drawn from sec. 305 (5) of Code.

McNeill : No obligation to open law. Where Plaintiff opens a case and does not open law, Plaintiff will have had word. Fact deed shows 10 lack of power not on by Plaintiff.

Court : No obligation on Defendants to open law at this stage.

McNeill : I will give Lordship points :—

- (A) Cannot later S.P. in breach of trust.
- (B) existence of authority is question of fact and construction of documents before Court.
- (C) constructive notice.
- (D) equitable estates and equity.
- (E) legal estate—as regards *bona fide* purchase.
- (F) reply to green ink argument as to due registration. 20
- (G) validity of documents on which Plaintiff has pleaded in second exhibit i.e. the Jap assignment registered.
- (H) trust notice—Deft. may take advantage.
- (I) where specific performance in issue Deft. is entitled to bring evidence to show document does not contain the arrangements between parties.

(Sgd.) G. L. HOWE.

S/o 8-8-51 at 10 a.m.

(Sgd.) G. L. HOWE.

8th August, 1950 at 10 a.m.

30

Resumed from above.

O.J. 193/49.

Appearances as before.

Exn. McNeill.

CHEUNG LAN CHOW d/d Punti.

I am 3rd Defendant. I am 52 years of age and I now live at 57 Bonham Road, 3rd floor. I am now headmaster of Sai Nam School. This school started in 1929. At first at 26 Bonham Road—school grew and moved to Prospect Terrace and later to 3, 5 & 7 Babington Path, the residence of Wong Tat To and later it moved to 1 Oaklands Park, half the school only. This is where part the school now is e.g. we moved over the whole 40 school. Premises at 1 Oaklands Park were at first rented. In 1932

premises were purchased for the school. Funds for purchase were \$25,000 from the school as well as \$25,000 from the Dominican Procurator and \$120,000 from H. K. & S. Bank on mortgage.

I see the document produced—it is an appeal to the public for subscriptions to buy—put in D.3.

I see the bundle of documents produced—they are not all the same and are contributions of the school—the script is the same but are signed by different persons, put in one specimen D.4. I see the document produced, it is the regulations or prospectus for the school which issues each year. 10 D.5 put in. I joined the school from the start. When it was proposed and before it came into being, Yip Lan Chuen and Lau Tak Po, Fung Heung Chuen, Hung Hing Kam and many others started the school. Hung Hing Kam was a solicitor in Deacons now dead. I came when it was proposed to start the school and joined as I had been a lecturer in a University in China. I joined first as a promoter and when school opened I became headmaster—and I so remained up to the time the Japanese occupied Hong Kong. In 1932 1 Oaklands Path was bought for the school and the premises put into the name of three persons chosen for the purpose, Chu Yam Om, Leung Sai Foon and myself—were elected by 20 the Directors. The Directors ran the school. In 1932 I signed a deed of trust covering the premises 1 Oaklands Path. This is the deed—the original. P.18A—we represented the school. The accounts of the school were kept by an accountant. I had nothing to do with the accounts save when the accounts were prepared I inspected them. Instructions as to the school were given to me by the Directors. I would ask the Directors for instructions. The Directors were selected from and by the promoters or founders. After the Japanese occupied Hong Kong I stayed for a few months and then I went to Macao. I went to Macao because I did not like the Japanese. The school premises were occupied by the Japanese 30 as soon as they arrived in Hong Kong. The Japanese were not looking for me personally but they looked for the headmaster. I did not go to see the Japanese. Leung Sai Foon went to see the Japanese. I had to get a permit to go to Macao. I applied for a permit to go back to the country with the excuse that I was ill. I am married. I did not take my wife to Macao. Yeung Yat Fai was manager of school affairs before the war and remained in Hong Kong during the occupation. I saw him in Macao. I left no plan for anyone to communicate with me in Macao. I see P.9A, the P/A. I remember signing this document. I see the date 5th January, 1944. I wrote in this date myself. I signed P.9A 40 in the presence of Jorge the lawyer in Macao in his office—but he did not actually see me sign. I had already signed when Jorge signed. P.9A was given to me by Yeung Yat Fai—when P.9A was given to me, there was a small piece of paper with notes were attached to it. It said the document P.9A was required as Leung Sai Foon had succeeded in getting a loan on mortgage because the Japanese authorities wished to liquidate the accounts for 1 Oaklands Path. My wife came to Macao once—in the year 1944 over a month after I had signed P.9A. I see P.8. I remember signing this document. When my wife came to Macao she also signed P.8 —My wife came to Macao on the 13th February, 1944. She came to sign 50 and told me that the document I had already signed (P.9A) was not good because it was signed when she herself was not in Macao and two days

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later I received a letter to that effect. I mean the letter was received by Yeung Yat Fai who handed it over to me and the document P.8, was enclosed. My wife told me that P.8 had to be signed by both of us in the presence of a solicitor or lawyer and the letter from Wong Tat To said the same thing. Then I got a friend Chau Ming to take me to the lawyer—Jorge. I went as did my wife and Chau Ming. P.8 was signed in the lawyer's office. I signed it and I saw my wife sign it. She was in the lawyer's room when she signed. So was I. P.8 was signed about 4-5 days after my wife arrived in Macao. When I signed P.8 I did not pay attention to the date. I understood P.8 was for the purpose of raising mortgage to raise funds for paying off the loan. 10

After the occupation I returned to Hong Kong on the 13th October, 1945. While I was in Macao I was ill with weakness of heart and nerves. In January and February 1944 I was ill. When I returned to Hong Kong I met Leung Sai Foon. I first heard of the purported sale from Leung Sai Foon. Leung Sai Foon is dead, he died about 1946. I first heard about the tenancy from Li Koon at this time from Leung Sai Foon. He told me all at the first meeting we had. I approached the directors of the school. A meeting of directors of the school was held after I returned to Hong Kong in January 1946. I was present. Wong Tat To and myself had reported the matter to the Directors so the meeting was held. I see the book produced, it is the minute book of the Directors' meeting. D.6 put in. I see resolution (3) of that document—reads it. 20

I went to see Li Koon Chun in 1946 because I received a letter from Messrs. Lo & Lo asking me to go to see him. I told Li Koon that as to the sale of the house I knew nothing about it and that I would not recognise it. I also said I did not sign the lease so I would not pay rent. This is the letter I got from Lo & Lo (P.17, agreed correspondence). I told Li Koon that the Board of Directors did not recognise the sale either. When I signed the P/A P.8 and P.9A, I thought it was to mortgage the premises to pay off the loan. I see P.18A the deed of trust. When signed P.8 and P.9A I was aware that the trust deed P.18A did not permit trustees to sell—without authority from the Directors, I could not sell. I agree P.18A says not to "re-mortgage." I knew the premises were to be mortgaged and I knew it was contrary to the provisions of the trust deed but I knew at the same time that the proposed mortgage was to raise some funds to pay off an old mortgage and to avoid danger. Under the Japanese occupation I did not act as Headmaster of the school. The school had been re-opened shortly before I left for Macao—Leung Sai Foon was the headmaster. 30 40

Adjourned 15 minutes—resumed 11.50 as before.

CHEUNG LAN CHOW o.f.a.

Exn. McNeill.

Leung Sai Foon was appointed Headmaster by the Japanese and not elected by anyone of the school. I see P.8. There was a letter with P.8 which was received by Yeung Yat Fai. There was also a small piece of paper attached to P.8 with notes on it. I detached this and gave it to Yeung Yat Fai.

XXn. D'Almada :

To avoid the danger the parties in Hong Kong were faced with, I mean my wife, my children, members of my family—by the parties I mean that if it were not done the members of my family would be facing danger. I did not care about Chu, Leung Sai Foon either. My concern was a family. It could be that my wife might be arrested and imprisoned. This would be because the Japanese could do anything they liked. I did not think of others. I know the mortgage to the Hong Kong Bank was executed by the three Defendants in this action. My wife's name did not appear in the document. I feared for my wife because my name was on the
 10 document and if I could not be found the Japanese would go for her.

It is my case that I gave the P/A to save my wife from danger. This is the only reason I executed these P/A. I feared she would be imprisoned. This is my justification for not disclosing the fact that I had no power to mortgage. When I was executing P/A to do something I had no power to do, it did not come into my head. I was only thinking of a way of raising funds to pay off the old mortgage. I knew I had no power to mortgage. I was acting then to meet the emergency. I was not prepared to sell the property. I did not think of sale at all because there was not any talk about selling. I did not read the P/A, before I signed them. I say again
 20 I did not read the P/A because I was told that the purpose was to pay off the old mortgage by a new one. I relied on the information I received—Even the P/A with both name and my wife's photograph on it. I was told by my wife that the purpose was to raise a mortgage. I was then suffering from weakness of heart and nerves. I did not read P.9A. I agree I was well enough to go twice to Jorge's office—and to insert the date in P.8. The note on the P/A was to the effect that the purpose was to pay off the old mortgage. I see P.2, this is my writing. This is a P/A I gave to my wife—it was written in Macao. P.2 was written when I was threatened by
 30 Leung Sai Foon. In May 1943 Leung Sai Foon sent a letter to Yeung Yat Fai. In the letter Leung said the Japanese were liquidating the H.K. & S. Bank and our school would be liquidated because we mortgaged the property to that Bank.

When the school premises were bought I had signed as purchaser. In the letter Leung instructed Yeung Yat Fai to make a document like P.2 to be given to my wife but not to be given to my wife but to be sent to Leung to deal with the Japanese and that if I did not do this I was to come back to Hong Kong and face the Japanese myself and if I did not he would inform the Japanese. I was angry but I thought I could do nothing so I picked up a piece of paper and wrote out this document P.2. I also asked
 40 Yeung Yat Fai to sign as a witness. I said to him I signed only under threat and that I would not recognise it. In fact I disagreed with the contents in the whole document P.2—I knew the contents of P.2. I knew what I was doing but for the purpose of dealing with the Japanese only. P.2 was for the purpose of entitling Leung to approach the Japanese. By the power of sale I meant only that I did not want anything to do with the matter and it was for Leung Sai Foon to deal with it. I agree I gave a power of sale to my wife in P.2—in fact however, it was to enable Leung Sai Foon to see the Japanese. P.2 was to be sent to Leung Sai Foon so that he would have authority to deal with*the Japanese but I did not know
 50 how he would. My purpose was to avoid further threat by Leung Sai

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Foon. I was afraid the Japanese would do something harmful. P.2 is made out in favour of my wife—it was a copy of a draft, sent by Leung Sai Foon. Leung Sai Foon died on the 2nd day of 1st moon 1946—i.e. 3rd February 1946. Leung Sai Foon had been associated with me for a long time in the running of this school. Although his name is in the list, he is not a founder, he only came in the second year. His name appears in the list for the 1st year was not signed by himself.

D.3 is undated but is about in the first year of the formation of the school. Leung Sai Foon's name is in it. The proposals for school in 1928 and the school in 1929—I see D.4 came into existence at the same time as D.3. D.4 also mentions all three Defendants as founders—Leung Sai Foon had been a teacher in the school before the Japanese came, from 1930 onwards—he was teaching right up to the Japanese occupation. As headmaster I was closely associated with him—we were comrades. The same circumstances apply to Chu—who was also a teacher in the school from early on until the Japanese occupation. First he was treasurer and became a teacher after the closing down of the Bank of Canton. During the time he was treasurer he was also secretary of the Siap Association and Secretary of the Bank of Canton. I do not remember when the Bank of Canton closed. 1st Defendant then became a teacher in the school—some years may be 4–5 before the Japanese came. I was closely associated with him too. When I came back from Macao I met Leung Sai Foon—he was not then a teacher in the school—this was 13.10.45. The school was not open because the Director of Education would not allow Leung Sai Foon to reopen the school—Leung Sai Foon was not a teacher after the school reopened—he was not qualified because he was the headmaster during the occupation. I took over the school when I came back and I did not wish to engage Leung Sai Foon as he had been headmaster during the occupation. Also Leung Sai Foon was ill. I cannot remember whether I met Leung Sai Foon on the 13.5.45 but it would be within three or four days. It was then he told me about what had happened to the school.

(Sgd.) G. L. HOWE.

S/o 2.30 p.m.

2.30 p.m. resumed as before.

By consent McNeill calls :

RICHARD CREESE TERRY s/s English.

Xn. Gittins :

I am Government Chemist—Assistant Government Chemist in Medical Department. I remember the 2nd August on which date I received certain documents from Mr. Gittins. These are they, Exhs. P.8A, and P.9A. I carried out certain tests regarding certain portions of these documents. The tests were chemical tests on the signature Cheung Lan Chow and on the “ chop ” ink.

Regarding P.8A, the signature is made in aniline ink using a springy nib—schoolboy type of nib. The corresponding signature on P.9A were made with blue black ink using a hard nib. I photographed the two signatures. These are the photographs I took, put in D.7 and D.8.

I compared the seals. On P.8A there are five seals of Cheung Lan Chow and on P.9A there are three. Seal inks are like printers inks, a mixture of pigment and oil. Printers ink made with dyeing oils and seal ink with a more dyeing oil. Formerly pigment was always vermilion but now usual pigments are red lakes of aniline dyes.

As a result of my test I found seals on P.8A to be made with ink having its pigment of lythol red type. The seals on P.9A made with an ink with pigment of a lakery thiodine red type. I also tested the other seals i.e. Ho Ping Fai—once the seal appears on P.8A and thrice on P.9A.
 10 The seal on P.8A made with ink whose pigment was of a lake of nitranaline red. On P.9A, the ink had its pigment of thiodine red dye stuff.

XXn. Bernacchi :

I made a complete report. This is it. I tested the green ink signatures on these documents also—same ink. I did not test the rubber stamps—look the same. In each case the script of the name Cheung Lan Chow above the signature is the same as the ink of the actual signature. The difference of nibs is very clearly shown in the photographs—point of flexible nib has in places. I have experience in nibs and pen ink. I have done several cases. This comes within the province of a chemist.
 20 All inks used are common type inks—seal inks were common types too.

(Sgd.) G. L. HOWE.

Nil re-Xn.

CHEUNG LAN CHOW o.f.d. Puntì.

XXn. D'Almada resumed :

Saw Leung Sai Foon two or three days after my return to Hong Kong—about the 3rd day. I first saw Chu Yam Om very long after my return—my impression is not clear. He used to be a teacher before the war in Sai Nam but not sure. Now he keeps a farm in the New Territories. 1st Defendant had never been a teacher after the war—he had been
 30 employed as librarian. The school reopened on 15th October, 1945. One or two months after the school reopened I found it necessary to have a librarian. So I think that this would be the first time I had seen 1st Defendant after my return. I went to see him two months after I came back. Probably I saw him, 1st Defendant, before I engaged him as librarian. 1st Defendant also is a founder of the school—he did nothing. All the people shown in the list are founders—gave no funds to school. Associated with school since 1928 1st Defendant taught from the beginning to the occupation. I don't know if he taught during the occupation. Wong Tat To is not a founder. Pre-war Wong Tat To was employed
 40 in the Bank of Canton so had time at night to assist us to inspect the accounts. He had done this from the opening. Connected with the school from its opening but as a side line working. I had known him for about 12 years before the war. From the time the Bank of Canton failed Wong Tat To did not become full time with the school.

First saw Wong Tat To within a few days after my return. When I was in Macao I did know that Wong Tat To had written letters to

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continued.

Yeung Yat Fai. He told me about it, Yeung did, but did not let me see the letters. I was not interested enough to see the letter. I can only remember that I went to Macao in the summer time. Yeung Yat Fai went with me. Leung Sai Foon told me about things, his voice was low and when he spoke he was weeping. I had gone to see him in his own house on my own without any real reason—friendly call. I was alone—Leung Sai Foon was lying in bed ill with T.B. He said “I am very sorry I have been very unfair to the parties concerned because I have sold the school under duress by the Japanese as well as Li Koon Chun. Now I ask you and others to excuse me for having done that. I could not resist the force of two parties, one after the other.” I was angry. I was surprised. I ended the conversation by telling him to rest himself. I did not want to go further because he was ill. That was the only time I saw him after my return. I cannot say whether the school directors saw Leung Sai Foon. I have not heard they did. Then I made enquiries from Wong Tat To. When I heard it first I asked my wife who said she knew nothing about it and that I should ask Wong Tat To as all had been done by him and Leung. She told me that these two had been to see Li Koon but that as Leung was ill it would be better if I saw Wong Tat To. 10

After seeing Leung Sai Foon, Wong Tat To came to the school and saw me—not more than a few days later. I had seen Wong Tat To on my return. I had seen Wong Tat To before I went to see Leung Sai Foon and he told me nothing of this transaction. Several days elapsed before I saw Wong Tat To to ask him about the transaction. I may have seen Wong Tat To in the interim but I didn't bring up the matter as I wished first to consult my wife—I was busy taking over the affairs of the school which came first—I did not see Wong Tat To until he came to the school one day—the reopening was important and I had to attend to that. I knew where Wong lived, but the affairs of the reopening came first. 20

When I saw Wong I asked about the transactions. He told me it was done because the Japanese were liquidating the H. K. & S. Bank and also wished to liquidate the school. Wong and Leung Sai Foon did not want to pay off the mortgage at first but finally a final letter came from the Japanese demanding the money for the mortgage—Wong and he went with Leung Sai Foon to see the Japanese and the attitude of the Liquidator was very serious—if mortgage not repaid “We shall check with you.” Also Wong told me that as a result Leung Sai Foon spoke to Li Koon Chun's daughter and after Li Koon agreed to a re-mortgage in order to enable the H. K. & S. Bank mortgage to be paid off. The matter was delayed up to the very last moment—until the last letter was received from the Japanese. Leung Sai Foon had to do this said Wong because he could not resist the forces of two parties. When I heard all this I said I was too busy to attend to it and said Wong should report to directors. That was all the conversation. In January 1946 there was a meeting of the Board. I saw Wong before this meeting. I did not discuss the matter with him further. 30

I did not make any effort to see Chu, 1st Defendant. 1st Defendant attended the Board meeting. On this date 1st Deft., Chu, may have been librarian. I cannot say what happened first, the appointment or the meeting. We might have registered 1st Defendant's name with Education 40

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Department in the hope of engaging him later. In truth I had registered 1st Def'ts. name beforehand, on 20th October, to enable me to engage him later. I did not discuss with Chu, 1st Deft., before the meeting.

Adjourned 15 minutes—resumed 4.10—as before.

CHEUNG LAN CHOW o.f.d.

XXn. D'Almada.

I understand that the P/A were made to permit a mortgage being entered into. I did not know my wife would have to sign some documents on the strength of my P/A. All I knew was that the P/A was for the purpose
 10 of getting a mortgage to pay off the old mortgage. I did not know because that was the only time I had done such a thing in my life. I myself executed 2 mortgages in 1932 with Leung and Chu. All I knew in 1944 was that the P/A was to raise funds—but I did not know they had to sign documents for the Mortgage. My wife stayed about 14 days in Macao, then she returned to Hong Kong. I did not see her again then until after the liberation. She did not write to me. I did not hear of her. From the time in Macao about 13 October, 1945, I never heard of again from her except when someone came to H.K. from Macao and returned to Macao. I heard no more about this transaction until I saw Leung Sai Foon in October 1945.
 20 I made no enquiries about the transaction. What I thought was that after the Japs had gone and the British had come back we, the directors, would deal with the matter. I agree I was frightened about my wife I did have enquiries from business men who came from Hong Kong. At the outbreak of the war the directors were, Lau Tak Po, Lau Yuk Wan, Tam Woon Tong, Fung Heung Chuen, Yip Lan Chuen, myself. There are seven—one other Cheng Chun Mun—in all. The seventh is Cheng Chun Mun. The Board did not change every year. We only replaced those who fell out for some reason. The Directors would select the new director themselves.

In the summer of 1942 when I left Hong Kong for Macao, Chun Mun
 30 was not then in Hong Kong. I was then in Macao. The others were here. I did not see them before I left for Macao. Fung Ngai Hong and Kwan Siu Tak—Fung Ngai Hong was appointed. When Fung Hung Chuen died. About the time I left Fung died, I cannot remember whether before or just after. Kwan Chor Pok was replaced by Kwan Siu Tak. This is a list of the directors at the outbreak of Pacific war when in list. Three died and other appointments made—this is the list—D.9. Three died, I was wrong—Fung may have died just before or just after I went to Macao. One had left elsewhere when the war for Hong Kong was on—one died after the liberation. Pok died in Shanghai. Lau Tak Po's memory can only
 40 be the same as mine. Substitutes, I remember that immediately after one died a substitute was appointed. Kwan Chor Pok was appointed instead of his uncle after the war. The successor to Ip, Cheng Chun Mun after the war. There were five directors at the first meeting after the war—one in Straits Settlements and one just did not attend.

I do not and did not own any other property in Hong Kong, nor in 1943-44.

S/o 10 a.m. on the 9th.

(Sgd.) G. L. HOWE,
 8th August, 1951.

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*Original
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9th August, 1951 at 10 a.m.

Resumed from 8.8.51 O.J.193/49.

*Original
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Appearances as before.

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CHEUNG LAN CHOW o.f.d.—Punti.

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(*D'Almada* :—Deft. now have a minute book relating to Directors' meetings. When I have examined I will maybe apply to recall this witness).

XXn. D'Almada :

The first time I reported the matter to the Directors was some time after the 20th October, in October however. I reported to Lau Tak Po 10 in his office. Lau was not then Chairman—Ip was Chairman then—he died before the meeting in January. I think but I am not sure that he was not at the meeting.

I see D.6, it is kept by the Board of Directors, Lau Tak Po keeps it now. I see P.8 and P.9. I did not read them. It may be that as Kan says these documents are easy to read. I could not agree with him. I am now reading P.9 and there are phrases as “buying”, “managing”, “buying” and “selling” but I do not know what they mean. I can read the Chinese characters. I knew it related to 1 Oaklands Path. In fact it was produced with a note attached by Yeung Yat Fai that it was to be 20 able to borrow. I do not understand the meaning of P.9. The words “Power of Attorney” are in Chinese characters I can read it. It means “letter of appointment” means an official appointment I say. I don't know what it means in Japanese—I signed without reading. I did not read the note—It was attached but not strictly—it accompanied P.9. I see P.8. I can read all the Chinese characters but has more Japanese characters than P.9. The characters for “Power of Attorney” appear there. I only saw these documents when I came into Court—I had never seen P.8. I have not tried to read these documents up to now. I can read some now. I cannot find the word “hereby appoint” (interpreter 30 states words not in document). I can read the word “agent.” I can read the character for this word but I don't know what it means—means an “agent” for some business.

I see clause 4 in P.8. The Chinese characters here—mortgage “buying”, “sell” but when mixed up with Japanese letters I really do not know what they mean. Really I do not understand.

Above my signatures on these documents, my name is written in script (English). I wrote these. On these documents P.8 and P.9, there was a slip attached to P.9 and a slip attached to P.8—accompanied rather—different paper—I did not read the slip or note. Yeung Yat Fai 40 explained to me.

I do not agree with Kan that clause 4 is easily understandable—to Chinese. I do not understand it at all. I sometimes sign Chinese, but not full name—the script gives the full name. When it was signed by me I thought it better to give my name in full. I was afraid people

could not read my signature so wrote the script—no particular reason. It was not because I realised that these documents were of importance that I signed in English, Chinese, and put my chop as well. Yeung Yat Fai got some letters from Hong Kong but I did not look at them. I had no interest because the school then had nothing to do with me. It was no concern of mine—as long as Japanese in power I would have nothing to do with the school. I had nothing to do with the buildings and premises—no concern of mine while Japanese there. No concern of mine whether school sold or premises sold. I paid no attention—a matter for the
 10 Directors to deal with after the war. I did not say Leung Sai Foon was a man of some influence with the Japanese. I do not think Leung Sai Foon was a man of standing or influence with the Japanese—I made out P.2 in consequence of his letter. I copied it from a note he sent me.

Jorge gave evidence in English and I did not understand. I have been told what he said and I have a general idea of what he said. It is not correct that there were not two meetings. There were two meetings—Beginning of January Yeung came with P.9 and a note explaining and asked me to sign the document on 4th January. Jorge is wrong when he says that I explained that I was selling property to pay off debts. Jorge did
 20 not ask me questions regarding these documents. His evidence is almost entirely untrue. He only asked my friend if he knew me. I say Jorge is fabricating all this—I do not know why he has done this. I did not know that Jorge received no expenses even. I deny that all these documents were signed by me in Jorge's office at one time. I see P.9A. I signed this in Jorge's office as I also signed P.8. Two occasions, one by myself and one with my wife. Before I signed P.8 I explained that I had to sign P.8 in exchange for P.9 which was not in order. This I did to my friend who explained to Jorge. P.9A was signed in the room where there was a lot of people. In his General Office—the room where his
 30 official desk was. It is so long ago I cannot remember well—other people were in another corner of the room. I signed at one corner by a big desk. Jorge was standing at the other corner attending a client.

Yeung Yat Fai and I did not live at the same place in Macao. The address on the documents is Chan Ming's address. I used this address as did Yeung Yat Fai. We did not disclose our real addresses, this was because when the Japanese wished me to stay I wanted to run away. Sometimes Japanese did pursue. I wanted to avoid my whereabouts being known. It could not be helped about my wife—I was a refugee. I had to give my name etc. on the P/A it could not be helped—May or
 40 June 1946 I went to see Li Koon. I said "as to the sale of the house I had nothing and I will not recognise it." This was not an untruth—I would not recognise the sale. The fact is I did not know until I came back about the sale. When I said Li Koon I knew it of course—"They sold the house and I knew nothing about it" that meant that I would not recognise. I also said that the Board of Directors would not recognise the sale. This was after the letter from Lo and Lo page 1 in P.17, is the one I received. I went very shortly after receipt of this letter—Wong Tat To arranged the meeting. I cannot remember the exact date. I knew it related to the sale. The question was rent and I didn't recognise
 50 rent. I would not have gone to see him unless I had received a lawyer's letter—I am sure I went within the month.

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I see P.18, the trust deed—this was executed by me in December 1932. From its execution the Board of Directors had custody of it. The first time I saw this after the war was when Wong Tat To produced it. Wong Tat To is the auditor of the Sai Nam school. I mean accountant only. Other assistants write out the books and he has custody and has to make the accounts. I had power to inspect the books. I did not know where the books were for the occupation period. I have not made enquiries where they are. I see the letter produced from the H. K. & S. Bank of February 1945; it is addressed to we three as mortgagors. This is the copy of letter sent by Russ to the Bank—Put in D.10 & 11. I did not give instructions for the writing of this letter. Instructions might have been given to our solicitors by Wong Tat To or Lau Tak Po. The letter must have been seen by the person in charge of affairs and the same persons must have given the answer. The person in charge of affairs was Yeung Yat Fai or Wong Tat To. All the school records were lost when first commandeered. (Adjourned 15 minutes—resumed 12.03—as before.) 10

CHEUNG LAN CHOW p.f.d.

ReXn. McNeill :

When I signed P.9A and P.8—When I signed P.9A my health was bad —I was ill—when I signed P.8 I was ill but better—but still sick. I do not know how to read Japanese. When I returned to Hong Kong in October 1945 liberation was at the end of August. In October all I know was that Government would not allow Sai Nam to open. I had to engage masters, arrange for classes, see the Director of Education, and to arrange the lessons—other affairs had to be completed too. I had to look for books. Before occupation 2,000 pupils maximum. Now we have less than 1,000. We had 2 places before the war—one in Oaklands Path, and 4 other places—5 in all—I did not go to see Chu, 1st Defendant, because he is not a clever man—rather stupid and I was afraid that Wong Tat To knew all about it. 20 30

By the Court : I executed this trust deed in 1932. I knew the contents—I knew the duties of a trustee. In Macao I signed these P/A without reading them. I thought in Macao that because the purpose was only to put through the mortgage to avoid liquidation it did not matter much. It did not occur to me that a sale might become necessary. Had I met the situation I would refuse to sell. Board of Directors are 7. A majority—i.e. over half of the directors were present, the making would be a good one. 4 is a quorum.

(Sgd.) G. L. HOWE. 40

HO PING FAI (f) d/d Punti.

I am the wife of Cheung 3rd Defendant. I live at 57 Bonham Road, 3rd floor. Before the occupation I lived at the same address and during the occupation I lived there too. I have five children, eldest 22 a boy, the youngest 17. I know what this action is about. I know Leung Sai Foon. I remember 1942, the year after Hong Kong was occupied. When the Japanese came into Hong Kong my husband was then in Hong Kong.

He went to Macao in the summer of that year. He did not come back until after liberation. The year later I saw Leung Sai Foon. There was a particular matter. He sent a boy to my house and asked me to go to see him in the school—the Sai Nam school. I went to see him Leung Sai Foon at the school. After the conversation we went together to see a Mr. Li—Li Koon Chun his full name. This would be the last month of the year, about the 7th or 8th Western calendar. We saw Mr. Li. Leung Sai Foon was with me. This meeting was at Seymour Road. I don't remember the number—a conversation took place. Conversation about Li agreeing to be mortgagee. After this meeting I did not go again to Seymour Road. Li Koon was to be mortgagee in respect of Sai Nam school. In December I again saw Leung Sai Foon—who told me to go to a certain place, a lawyer's office about the Bank of East Asia—Kan Yuet Cheung was the lawyer. I went to Kan's office—Leung Sai Foon came with me. There I saw some documents—Leung Sai Foon asked me to sign. I signed. I did not read the documents. I did not know what they were about—before I signed I had been told that it concerned a mortgage—Leung Sai Foon told me this. Kan did not read over or explain the documents to me. When I signed this document Chu, 1st Defendant, and Wong Tat To were present and Leung Sai Foon and Mrs. Li Koon Chun. A few days after this I again went to Kan's office with Leung Sai Foon. On that occasion again I had to sign documents—I signed documents. On this occasion Li Koon was not there neither was his wife. I cannot remember if anyone else was there beside myself and Leung Sai Foon. Kan the solicitor I did not notice. None of the documents I signed then was explained to me. I did not read them because I had then no spectacles. I thought the documents were in connection with Li Koon agreeing to be mortgagee for Sai Nam school. There were two occasions on which I went to Kan's office.

I see P.2—I do not remember this. This is the first time I have seen this document. I have no recollection of ever having seen it before—Leung Sai Foon never talked to me about any Powers of Attorney. I see P.9A. This has my photograph on it. This document was signed after Li Koon had agreed to be the mortgagee and the photograph was attached after signing. I stayed in Hong Kong during the occupation but during this period I left the Colony once. It was during the first moon of the Chinese year—1944 western calendar—(25th January—23rd February). I went to Macao. I had to get a permit to leave Hong Kong. I applied for a permit on the 4th day of the 1st moon (28th January). I got the permit on about the 17th day of 1st moon (10th February). I went then to Macao 2 days later. The 15th day of 1st moon is a special day. I got the permit after the 15th day of 1st moon. It was 4 days after the 15th of the 1st moon that I left for Macao.

S/o 2.30 p.m.

2.30 p.m. resumed—as before.

HO PING FAI o.f.d. Puntí.

Xn. McNeill.

I went to Macao as Leung Sai Foon told me to go there. As I was going to the boat in Hong Kong before I actually went on board, my

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luggage was on, my servant came to me to say Wong Tat To was there. I waited until all of my luggage was on board and I went to Tung Kwok bookstall. Then I saw Wong Tat To who gave me documents wrapped up in paper, showed me a place marked with a cross and told me to sign it. I took the parcel and went to 57 Bonham Road where I lived and I signed the document there. When I signed it I wrapped it up as before and gave instructions to deliver it to Sai Nam school to Wong Tat To—my servant's name is Kam Chi Fun. Then I took my evening meal—then I went on board the ship and went to Macao—I know a lady called Wong Mo Tha—she was a teacher in Sai Nam school before the war and during the occupation she went to Macao and after liberation she did not return to the school. I saw her in Macao this time. I went to visit her. When I got to Macao I saw my husband. I see P.8A and P.8. I see my signature on these documents—also that of Jorge the lawyer. As a result of what I was told by Leung Sai Foon that the document I had signed prior to this was not good I had to sign these too—I see P.9 and P.9A, these are the ones I had signed first. I signed P.8 and P.8A in Jorge's office in Macao. These documents also bear my husband's signature who came with me to sign. Since I signed P.8 and P.8A I have not seen them until now. I stayed about more than ten days in Macao. I did not know what was in the documents I signed just before I left for Macao. I did not read it and I did not even look at it. I was in a hurry to leave for Macao. I see P.27(E) a cash cheque for M.Y.26,890—issued from Kan's office. I see the back of the cheque—my chop is there. I have not ever put my chop on any cheque. I see P.28, the chop marks—I see P.28A, C, D. I did not place my chops on P.28A. I don't know what it is—I do not know anything about an account in the Bank of East Asia in my name, that of Leung Sai Foon and Chu, 1st Defendant. I see P.28c—my chop is also on this—I did not put my chop on this document. I see P.28(d) my chop is on that but I did not put it on. All these are impressions of my chop. I remember now that after the completion of the documents Leung Sai Foon came to me and said there were still things to be done and asked for my chop and I gave it to him. I never drew any money from the Bank of East Asia during the Japanese occupation. I did not receive any money from Leung Sai Foon either. Li Koon Chun is wrong when he says that on 17th February 1944, I attended a meeting at the office of Kan. I was in Macao then. I did not sign P.10 then—I see P.10—I went to Kan's office on two occasions only. Kan's office in the Bank of East Asia was on the fourth floor.

McNeill: I ask for translations of the letter heads of Kan's office—Certain characters are rising in the translation.

Order: Letters to be submitted for translation.

XXn. D'Almada:

One of the documents had to be signed again—a new document because it had not been signed by me in Macao. I think that is reasonable because according to what K. Y. Kan said the document signed by me was in fact not signed in Mr. Jorge's office. I did not mean that Kan told me all this, Leung Sai Foon told me Kan had said so. I have never read

P.9—at first I did not read it but then in fact I have never read that document nor was it ever explained to me. By “at first” I meant that this was the first document produced here and P.8 was the second. I see P.9A. I have not read it. I was educated in lower school—an old type of lower school. I can read and write but not write well—or read well either. In P.9A I cannot read the 1st character but I can read the 2nd not the 3rd but I can the 4th. I can see the two characters “buy” and “sell,” but at the time I had no glasses with me and I could not see the characters. I had no spectacles then. I signed with difficulty without
10 my glasses. I see the signature of mine on P.5. I did not know what P.5 was when I signed and even now I am not very clear about P.5. All I learned was that according to what I was told by Leung Sai Foon that in the absence of my husband I had to do all these things. I trusted Leung Sai Foon. I knew it was for the purpose of putting through a mortgage and that I was doing it on behalf of my husband. I did not understand the position clearly because when my husband left Hong Kong he did not tell me about it. I believed Leung Sai Foon because I had known him for a long time. Chu Yam Om I had also known for a long time—I did learn about the things in Kan’s office—from beginning to end I was
20 told by Leung Sai Foon that I was to sign to arrange a mortgage. Nobody explained anything to me about the documents. The chop on these documents is my chop as is the chop on the cheques. I did not have a chop pre-occupation and got one to satisfy the Japanese. I don’t know whether it was important not to lose one’s chop under the Japanese. I cannot remember when I was going to Macao whether I brought my chop with me or not. I agree I must have brought the chop to Macao. I attached no importance to my chop. My chop is now at home—in a drawer—it has been there a long time now—always kept there. My chop is on P.5 and on P.10. Taken out to use for documents such as these.
30 I still say that I did give my chop to Leung Sai Foon. I let Leung Sai Foon have the chop at least 4 times. He returned it each time after use—Sometimes took him two or three days to return it—I did not ask him on any occasion why he had taken the chop or what had been done. I think I was about a fortnight in Macao. I was back in Hong Kong about the end of February—I think—I cannot remember. It might not have been February. I don’t know the western calendar. I went some-time after the 15th day of the first moon—about 4 days—about 19th of 1st moon (12th February) I returned during the first decade of the 2nd moon (24th February—4th March). Even before this I had no direct communication with my husband—in fact after I returned from Macao I had
40 no direct communication with him until he came back after the liberation. I thought no more about the documents until after the liberation when my husband came back. Then my husband asked me about what Leung Sai Foon had said and I said he should find out from Wong Tat To. Leung Sai Foon had told me it was a mortgage—if it were a sale Wong Tat To would know. I did not think much about this case again until the solicitors came and I tried my best to recollect what had happened. When I saw the advertisements by Li Koon in the papers I had to collect my thoughts from then. I did not read the advertisements by my sons read them to me.
50 My husband was then in Shanghai—The advertisement was the one requiring my husband and Chu, 1st Defendant, and Leung Sai Foon to sign a conveyance. Then I tried to collect the facts of the case. Previous to this

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I had thought of the matter from the date my husband came back. I think about it because it was originally known to me as a mortgage which later turned out to be sale. Prior to 1946 I did not have any occasion to think about these happenings. The occasion of my going to Macao I remembered well because it was the only time I had been to Macao during the occupation. I was told to go home to sign the documents by Wong Tat To. I don't know why.

In any case I had to go home. I only went to see if luggage on board. While I was having my meal my servant took the document to deliver. Time was too short because I had to walk all the way—no vehicles. 10
Husband went to Shanghai in 1946 not in 1949 in the autumn. My husband was away then for 2 years autumn 1946—autumn 1948. When I saw the advertisement my husband was not in Hong Kong. He came back about one month after the advertisement.

Adjourned 15 minutes.

Resumed 4.30 p.m. as before.

HO PING FAI o.f.d.

XXn. D'Almada :

I am sure my husband was away from autumn 1946 to autumn 1949. I see the minute book of the Board of Directors. I see the minutes of a 20 meeting held on 15.8.47. This shows my husband present at this meeting. I knew nothing about what happened in the school. I cannot understand numbers of years in western calendar—1947 or 1941—I remember what happened in Macao well. I remember I was taken to a building with Chu, 1st Defendant, Leung Sai Foon and others—a Japanese Government Department—I think. Mrs. Li did not go that time. I don't remember a clerk from Kan's office being with us. I remember I went through with quite a number of persons. That was before I went to Macao. It was the second day after I signed the document in Kan's office. I went to Kan's office and was taken. My photograph on P.8 was taken when people had 30 to register, these photographs were taken. To-day is the first time I have seen P.2. I did not hand this paper to Kan—P.2. It is untrue that I handed P.2 to Kan. I see P.10A. When I visited this office I went with the other 2 Defendants but Mrs. Li, Plaintiff, was not there. We were compared with the photographs on P.10A. I did not wear glasses before the war but during the war my eyes became bad. I could sign without glasses but not very well—Documents given to me to sign had a X to show where to sign or else the right place was pointed out.

Re-Xn. :

During the occupation four return cards were issued and my chop was 40 used for that purpose. During the occupation Leung Sai Foon helped me in business such as this and I gave him the chop. I remember New Year day of 1944 (25th January). This was before I went to Macao. Holiday from school for the children on New Year. When I went to Macao the children had gone back to school.

(Sgd.) G. L. HOWE.

9th August, 1951.

S/o to 10 a.m. 10.8.51.

10th August, 1951 at 10 a.m.

Resumed from above O.J. 193/49.

Appearances as before.

McNeill—Asks to recall Kan.

No objection.

KAN YUET KEUNG on f.o.

XXn. McNeill.

I see P.5, P.6, P.7, P.10, P.15. These exhibits showed my office address on 5th floor (Chinese—western 4th floor). The move to the mezzanine floor from 5th floor which was very small had taken place. To the best of my recollection only two months from April 1943. Whole firm moved down. Technically we did not pay rent for the mezzanine floor—Paid for 5th floor—Notice on door saying we were on mezzanine. At the above there was a piece of paper directing people to the mezzanine floor. This was because of size—not possible for 4 partners to work—also no lifts at the time. The chop was still that of the official address on the 5th floor. On P.4, room 407 was typed on—that was the official address. It is not so that in December 1943 we were running the 5th floor. Lee the clerk to my recollection who made these documents was not engaged until we went to the mezzanine floor. P.2 the P/A was handed to me by Mrs. Cheung. It was Mrs. Cheung who handed it to me and I remember telling her it was not good enough. To the best of my recollection it was Mrs. Cheung not one of the others who handed it to me.

Re-Xn. D'Almada :

The room 407 was the small one on the 5th floor.

LAU TAK PO d/d English.

Xn. McNeill :

I am an old resident of Hong Kong, Chairman and Managing Director of various companies. Member of Board of Directors of Sai Nam School and a founder in 1929. I am now chairman since the liberation. Ip was the previous Chairman. Ip died in 1946. I was in Hong Kong during the occupation. I knew Cheung, 3rd Defendant, went to Macau. During the occupation I did not take any active part in the school. I did not know at the time that Leung Sai Foon had been appointed headmaster by the Japanese. The board of Directors manage the school. The school is not run for profit—no division of profits. The Board of Directors did not hold any meetings during the occupation. No meetings were allowed except under permit and we never met. I now know that a purported sale took place. I first heard of this in 1945 about October—the end I think—when 3rd Defendant came back from Macao. I consulted Mr. Loseby as to this first in 1945—British Military Administration came then.

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I see D.6 the minute book. This is the Board's record. I see the resolution regarding the transaction. That is a correct resolution.

D.12 is another book regarding the election of Directors to our Board. In 1946 again as Chairman I wrote Mr. Loseby. Cheung 3rd and Chu 1st also went on the request of Mr. Loseby. The Board of Directors would have to give permission to sell or re-mortgage. I support, as does the Board, the defence that Defendants had no power.

XXn. D'Almada :

I was not Chairman at the outbreak of war but I was on the Board all the time. During the occupation of the directors were Ip Lau Chuen, myself, Fung Ngai Om, Tam Woon Tong, Lau Yuk Wan. I washed my hands of the school because the Japs were in occupation and Leung Sai Foon was made headmaster. I did not discuss with fellow directors—I met some of them during the occupation—we did not discuss the school affairs. I knew about the Hong Kong Bank Mortgage and I knew of the second mortgage to the Fathers. I knew mortgages were being called in. I agree I had a responsibility but I was afraid to put my hand on the matter. I did not consider it my duty to see the Trustees—still in Hong Kong, the trustees were persons of trust—neither 1st or 3rd or 2nd Defendants came to see me during the occupation. I did not think of holding a meeting during the occupation. It was very difficult to get permits. We might have met in our houses. I did not attend any parties during the Jap occupation. 3rd Defendant told me about the sale to Li Koon Chun. 10

I know Li Koon Chun well. I did not see Li Koon about this. I did not write to Li Koon Chun either. I knew him well. I did not want to deal with him—it was not proper during the Japanese occupation. British administration was alright. Li Koon Chun is difficult to deal with. I began to take an interest in the school after the liberation. A meeting was held on the 27.1.46.

I would have objected to the course of putting through another to pay off the old mortgage. I would not have given my consent. I would have seen no object in saving the premises from the liquidator. I would not have sanctioned the mortgage. My impression then was that Li Koon Chun had extorted the sale—I see D.12—Cheung Lan Chau. He came back for the meeting and then went away. He came back but I didn't know what he came back for. He got leave from the Board to go. I see D.6. The report read by Wong Tat To I have a home—I will send it. I see P.19—I already knew about the sale. I had spoken to 3rd Defendant long before this. P.19 is a business way of writing—Cheung 3rd Defendant had been talking to Li Koon about the rent and so on. I cannot say why the phrase “the Committee was greatly surprised” got in—that is business—we had heard Wong Tat To's statement. I say I knew nothing about this transaction during the occupation. I did not tell Leung and Chu to save the school if they could as I could not be . P.17 I see (agreed correspondence). I had not seen the letter of 26th May 1946—letter of 10th July 1946—I have not seen before. Letter of 9th January 1947—I have not seen. I did not instruct Russ & Company to send the letter of 13th January. I was consulted by Cheung Lan Chau. Letters 30 40

written thereafter were written with my knowledge. I see D.10 and D.11. I know about—written with my approval. During the occupation directors would not take any part.

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Re-Xn. :

School was occupied by Japanese at first. Subsequently Japanese arranged for the reopening. Leung Sai Foon, Japanese appointee. Did not see Li Koon after liberation but I saw my solicitors and further consulted them. P.19—This was the first time the Directors had officially written to Defendants about the sale—it was for record. I was surprised
10 to see Li Koon move.

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By the Court :

Fung Keung Chuen died in 1941. Four directors have to be present to have evolved meeting.

(Sgd.) G. L. HOWE.

Adjourned 15 minutes.

Resumed 12 noon—as before.

CHU YAM OM d/d Punti.

I am 1st Defendant. I live at 68 High St., 1st floor. I am 61 and I am now librarian in Sai Nam school. I was also a farmer in the New Territories.
20 I had my first connection with Sai Nam school I think in 1928. I was connected with the school when the first proposals were made—I was a promoter. I remember the premises 1 Oaklands Path being bought for the school in 1932. I was then in the Bank of Canton and Secretary of the Sze Yap District Association. The property 1 Oaklands Path when bought was in the name of the three Defendants—we signed the assignment. Leung Sai Foon and Cheung Lan Chau were the other two. We also executed a trust deed. Before the war and after the Bank of Canton went, I taught in the school—Cheung Lan Chau was headmaster and remained so until the occupation. I taught in the school up till the occupation—but
30 not during the occupation.

During the occupation I worked as a private tutor. I taught Lo Man Hin's children and M.K. Lo's children as well. I did not know that 3rd Defendant was going to Macao. I did not know Leung Sai Foon had been appointed headmaster. At the beginning of the Japanese occupation the school was requisitioned by the Japs and used as stables but later I learned that the school was reopened with Leung Sai Foon as headmaster. During the occupation I was not concerned with the matters of the school. I knew of the mortgage to the H. K. & S. Bank—I knew about the calling
40 in of this mortgage by the liquidator when Leung Sai Foon approached me and told me about it. It was in December 1943, towards the end when I heard from Leung Sai Foon. I remember seeing Li Koon Chun. By arrangement Leung Sai Foon took me to see Li Koon. We went to —on the 3rd or 4th December—Seymour Road, I forget the number. Leung Sai Foon had told me what the interview was for, it was because the Japanese were liquidating the H. K. & S. Bank and requested us to pay off the mortgage. Also said that two days ago Li had agreed to lend

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a sum of money to pay off the mortgage. The purpose of taking me there was to be a witness that there was such a loan that is to prove that someone agreed to lend us money. Leung Sai Foon, Wong Tat To and I went. We had a discussion with Li Koon and Kan the solicitor who was there on our arrival. The conversation was with Li Koon and Leung Sai Foon—Li Koon introduced Kan as one of his friends or one of his son's friends. I could not gather the whole of the conversation but what I did get was that it was about mortgage and that Kan the solicitor was to make out the document for the purpose. I did not take any part in the conversation. Neither Li Koon or Leung Sai Foon spoke to me on any matter. I only listened. Kan said nothing to me and I spoke to neither Li Koon nor Kan. I went again on the 22nd or 23rd December, 1943. This was at Li Koon's house in Seymour Rd. I went with Leung Sai Foon and I was asked to go by him. I cannot remember if any other person went. Li Koon Chun was there again. I see P.3 and P.5. I see my signature on both these exhibits. These documents were signed in Kan's office. I did not know what these documents were about—Kan did not explain. I signed because Leung Sai Foon signed. Had said "I have signed—now you sign." I thought I was signing a document for a mortgage. When I was asked to sign the document was folded up exposing the part where to sign. I was shown where to sign—this was 28th December. I went again on the 30th December to sign another document. Leung Sai Foon asked me to go and sign this. I see P.6. This is the one I signed. I did not know what I was signing. When Leung Sai Foon was taking me to the office he said we were going to sign the mortgage. After this visit to Kan's office on the 30th December I went again to his office with Leung Sai Foon who asked me to go to Kan's office and then we went to a place opposite the Bank of Canton and there we paid off the mortgage to the liquidator. We paid off the mortgage to the Hong Kong Shanghai Bank. Later on, I do not remember going to Kan's office again. I see P.10. I cannot remember signing this. I have no recollection of that. It has my signature on it P.10 but I cannot recollect it. I first heard about this purported sale about one month after the date in P.10—about the middle of March passing the Sai Nam school Leung Sai Foon touched my shoulder and told me—that when I had signed the document, it was for a mortgage so I asked him why I had to sign so many documents—Leung Sai Foon told me that among the documents was one purporting to be a document for the sale of property but in fact it was not and the reason we had to sign so many documents was because of Japanese formalities. Leung Sai Foon also said that the amount showed in the document was only M.Y.62,000 but the actual amount received was M.Y.78,000 and I was not to worry. I see P.28A. I see my chop on that. I knew nothing about this bank account. Later Leung Sai Foon approached me and said that I had something more to do and as I had no time he said I was to give him my chop—this happened several times. I see P.27E. I see my chop on this document—the cheque—I have never seen this cheque P.27E before. I did not put my chop on it.

I see P.28c—this is a payment out slip—it has my chop on it. I did not put my chop on this—I have never seen this before. I did not receive any of the money in connection with P.28c.

S/o 2.30 p.m.

2.40 p.m. resumed as before.

CHU YAM OM o.f.d. Punti.

Ean. Gittins.

I see the trust deed. I held as a trustee under this deed.

XXn. D'Almada :

I was not the owner of property. I was only a representative when signing the deed. What was to be the whole matter I could not detect. I was informed that I must sign in order to pay off a loan. The relation between the school and the Association only exists when we are asked to subscribe. I knew the deed of assignment in 1932 was in my name—
10 that I was a trustee—I knew that when Leung Sai Foon approached me that it was because of these things that I had to do something.

What was to be the whole matter I never did understand. I only knew I had to sign something before the mortgage could be put in order. All was done under the direction of Leung Sai Foon. I only acted under his instructions. I did think it was because of my representative capacity. After thinking about it I came to the conclusion that I should not sign. I came to this conclusion when I was asked to sign knowing that the document P.18 prohibited me, doing so. I reached this conclusion before
20 I signed any document. I knew these transactions were to do with P.18. This was because the property was not my private property. At normal times I would have been very careful as to what I signed but not during the occupation when my brains were confused. My brains were confused all through the occupation when I thought of the unreasonable acts of the Japanese who would arrest people and chop their heads off without reason. My brains continued to be confused for three years and eight months and recovered after the liberation. People were under threat all the time. Under such conditions when one was under threat one has no time to think about what would happen. I only signed when Leung Sai Foon
30 said we had to sign. My first emotion in my mind was to refuse when I was first approached. I remember dates so clearly because I have never done such a thing before. I see P.10. I do not remember signing this document. I remember the meeting with Leung Sai Foon after the date of P.10 because it was then I learned about it all—about all being false. I need not worry—we would get back our property later. I connected P.10 to the story then told me by Leung Sai Foon. Leung said “What have you done a month ago.” I remember these dates—clearly in my mind. I see P.3. and P.5. I agreed I signed these. I said these documents were exposed at the signature. I now say I never signed
40 P.3. I never use a steel pen. I only signed P.5 which is done with a brush. I see P.3A, this is the original. I did sign. I say the document itself was folded. Other documents were as before . . . I see P.3A. I cannot remember whether I signed P.3A at the same time as P.5—but what I do remember was that Leung Sai Foon told me I must sign. I signed P.3A. I did not read over once for curiosity. No time to think. I see P.3A. Just above my signature is the word—is a character which I do not recognise.

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(Interpreter—Japanese character equivalent to Chinese “giving away something.”)

I only acted as directed by Leung Sai Foon. I see P.14, it is in Chinese characters. This acknowledges receipt of M.Y.62,000. It is signed and chopped by me. I just glanced at this when I signed but at the time I had something in my mind to the effect of why should I sign so many documents. I did ask why I should sign. When I was signing it was the 17th February and I had signed many other documents that day. I asked Leung Sai Foon why and he said to me to go on and sign. We are then in a time of difficulties. We all understood each other—so I knew him to be a difficulty—so I did not demand a full explanation from Leung. Leung Sai Foon had only disclosed to the effect that he was resisting two forces, one the Japanese and one Li Koon Chun. Leung Sai Foon was then headmaster of the school and was in difficulties. One force was the liquidator—Leung Sai Foon told me to ask Wong Tat To about it all next day. I did not ask Wong Tat To because I could hardly meet but later I learned all about the matter. After the liberation I mean, I learned it all. I learned it too from Leung Sai Foon just a month after P.10. I did not ask Leung Sai Foon what had happened to the money. He Leung told me he had put all in order. During the occupation Leung was headmaster. I did not know what influence Leung had with the Japanese so I dared not question him too deeply. I am a simple person. Leung had background. It did not occur to me to think whether he was acting as Headmaster or a co-trustee. It was up to him to say in what capacity he was acting. I could ask him no more when he said he was to be fully responsible. I could not ask Kan because there would be no point because I wanted no benefit. I saw nothing of any money. I saw a cheque for M.Y.35,000 being handed over to the liquidator and in addition, in Kan's office, Kan gave an account verbally. I knew nothing about the balance. I know now that my chop was used to get money from the Bank of East Asia. Leung Sai Foon had the idea to open the a/c in 3 persons' names—he did not inform me before the a/c was opened but in fact never did inform me. I came to know just now. I cannot deny knowledge now because I know of it now. I say that Leung Sai Foon told me that the transaction was a false one—it was not a real sale. I say that there was an entirely false sale and it was done just to fling off the Japanese. I do not know if any money passed. I only acted as I was asked to by Leung Sai Foon. I say that it was only in March I heard from Leung Sai Foon that the agreements were sham. I did not know they were false when I signed them. Part of my defence was duress. The Japanese were hard. The pressure from Li Koon Chun was that he was delaying the matter until the very last moment and then he forced us to turn the mortgage into a sale. Leung Sai Foon told me this when I was signing some documents on one occasion. Leung Sai Foon told me that Li Koon Chun's son was engaged in the M.B.K. Also said that if I did not sign Li Koon Chun would have his way with me. All the time a mortgage was in my mind. I was told that Li Koon Chun went to see the Japanese with his son. (Paragraph 10 of the defence read to witness.) I first told my solicitors about my meeting with Leung Sai Foon a month after the signing of P.10 some time ago but I cannot remember when—since long time ago. I have not been to the Japanese Land Office with Mrs. Cheung. I have

only been to the liquidator. I have never been anywhere else. I never remember going anywhere with photographs. Mrs. Cheung was once at Li Koon's house. I remembered on one occasion I went to Li Koon's house in Kennedy Road—not Seymour Road. We went for a New Year's visit—this was the Chinese New Year immediately after the December 1943. Leung Sai Foon, Wong Tat To, Mrs. Cheung and I went to pay our new year respects. I never remember an occasion when I went to Li Koon's with Mrs. Cheung or that Mrs. Cheung was there. Leung Sai Foon, Mrs. Cheung were never present together in Seymour Road in Li's house.

10 As secretary of a Bank I was a business man. In normal times such a man would read documents but not in time of war. It all depends on all the circumstances surrounding a person whether he would give up his chop or not. Leung Sai Foon idea ask the chop was that I was old and that my brains were confused and that I was only fit to read and write essays etc., and so I was to give him the chop to do all business—I could have read all these documents if I had wanted to do so—except the Japanese ones.

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(Sgd.) G. L. HOWE,
10th August, 1951.

20 Saturday 13.8.51 at 10 a.m.

13th August, 1951, at 10.20 a.m.

O.J.193/49—

Resumed from 10.8.51.

Appearances as before.

McNeill calls :

Exn. Gittins.

WONG TAT TO : d/d Punti.

I live at 4 St. Stephen's Lane. I am book stall keeper—China Book Company—at 77 Hollywood Road. I am also employed as assistant account of Sai Nam school. My duties are to produce the fair accounts from the figures supplied by the bookkeeper. These were my occupations before the occupation and during the occupation I only worked my own business. The school accounts were audited by auditors appointed annually, Li Tat Foo, Lai Kung Chi. These two are not the auditors now—they were auditors up to the year when first brought in the income tax law—since when they have had no time. The auditor then became Lau a present recognised auditor who is also a director. From 1937 the school was making profits every year but before that sometimes lost. The profits went to the school—they were not divided up. Cheung Lan Chau

30 was headmaster until the time of the occupation—went to Macao during the occupation. After the occupation the school was reopened by Leung Sai Foon on the directions of the Japanese, about June or July 1942—

40 When Leung Sai Foon reopened the school I did not have anything to do with it. Leung Sai Foon was an old colleague and friend of mine. I met him from time to time during the occupation. Leung Sai Foon spoke to me about a letter from the liquidator of the H.K. & S. Bank asking for repayment of the mortgage. It was about September 1942 when Leung

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first told me about this liquidated business—it may have been October—
Leung Sai Foon said there was no money to pay. At the end of October
1943 Leung spoke to me about it again. About March 1943 when he came
and spoke to me about the same matter and I had to go to see the liquidator
for settlement. Leung Sai Foon could not go because he was then ill
and I went on his behalf. Leung had T.B. At the 29th or 30th November
Leung Sai Foon sent for me and told me he had a final letter demanding
payment before the end of December. I did not take up the matter. Two
days later Leung sent for me again to say he was trying to raise funds to
repay the mortgage because he had a student whose father was Li Koon 10
Chun. According to the statement her father had agreed to lend money.
Leung was to go to see Li in some days time. Another few days later
Leung told me he had already seen Li and said he was going to ask Chu
to go to see Li for a confirmation. Leung asked me to go too. That day
Leung, 2nd Defendant, Chu, 1st Defendant, myself went to Li about the
3rd or 4th or 5th December. We went to Seymour Road. When we
went in and Leung Sai Foon started the conversation by saying to Li Koon
that he had agreed to lend money yesterday and so he had brought Chu
to see him. Li Koon agreed he had said he would lend money but that 20
Kan the lawyer who was there, an old friend's son—Li Koon said the
reason why he had asked Kan to come was because he wished him to make
a deed of mortgage.

The amount of 35,000 M.Y. we had to pay off the H.K.S. Bank and
the second mortgage to the mission. Kan was then invited to come to
the sitting room. Then Kan was asked to make out a mortgage in English.
Kan agreed to do so. Then we had some other propositions and finally
all parties agreed that the thing was to be done in that way. On the
10th or 11th December Leung sent for me again and said he had received
a telephone message demanding payment—again from the liquidator.
As a result I went to the liquidator—saw the liquidator—told him Leung 30
Sai Foon has approached someone who had agreed to lend money and the
documents were being drawn up. Liquidator said 31.12.43 date line.
After 8 or 9 days Leung Sai Foon sent for me again to say telephone
message from Kan. I had told Leung Sai Foon what had happened at
the liquidator's and I had been instructed to ring up Li Koon and tell him.
I did this—telling Li Koon what had happened and whether the document
was ready. Li Koon said it would soon be done. Later 8 or 9 days as
I have said, Leung Sai Foon told me that he had a telephone message
from Kan's office asking Leung to go to see them. Leung Sai Foon told
me to go. I went that day to Kan's office and I saw Kan. Kan said 40
to me that he had agreed the other day to make out the mortgage but now
he said he did not dare to do so. I asked Kan why he had not told about
this earlier. Kan said that he wanted to do it at first but that now after
thinking over the whole matter he dared not do it. Kan said he was
very sorry.

I left Kan and went to the school and told Leung Sai Foon. Then
Leung Sai Foon got frightened and asked me to go with him at once to
Li Koon. We went to Bank of East Asia to see Li Koon Chun. We saw
Li Koon and told him what Kan had said. Li Koon said that although
he had agreed to lend the money, when Kan had refused to do the document 50
it could not be helped—could not lend if Kan refused to complete the

documents. Then we left without any result. Next day, Leung Sai Foon spoke to me and we went to see Li Koon. We went again to the Bank to see Li Koon who said the same thing. Next day I did not attend to the matter, since holidays came, Xmas holidays. After the Xmas holidays about 27th December, Leung asked me to go again to Li Koon at Bank of East Asia. Li Koon again said he would not lend in any case. Then Li Koon said he could not lend but would buy if we agree to sell. Leung said that this was not private property—it belongs to the school—I cannot sell it—Li Koon said he learned the property belonged to the school but he only wished to buy it—he said he wished to buy because he had money M.Y. which he wanted to invest. Then Li Koon said he was not going to pick the school—not a very good one to live in—Leung Sai Foon said he had conditions the first being that Leung should have a chance to redeem it in the future, the second is that before he is able to redeem it no one else was to be a tenant but the school was to be let to Leung Sai Foon. The conversation was friendly—but not in very pleasing terms. Finally Leung said how much—Li Koon said how much do you want? Leung said at least the amount must be over 100,000 M.Y. Then several prices were suggested and finally Li Koon said M.Y.80,000. Leung Sai Foon agreed. Before we left Li Koon asked us to go the next day. Next day, we, Leung and I, first went to Kan's office—I think we had been told to do this by Li Koon. This was the morning, the 28th December. At the office we saw Li Koon and the bargain was repeated. At Kan's office Leung and Li had an arrangement. I was not a party to the transaction so I only listened but Leung told me to go to Kan and tell him to make out the agreement for M.Y.62,000. I remember that in the afternoon the parties signed a number of documents, I did not see P.5 signed by itself. On the 28th I went to Kan's office and I was told to tell Kan to make out the agreement for M.Y.62,000. In the afternoon at Kan's office, I saw Leung Sai Foon, Ho Ping Fai and Chu Yam Om, 1st Defendant, as well as Mrs. Li Koon. Next day, the 29th Leung Sai Foon sent for me and took me to see Li Koon which we did in the Bank of East Asia—Li told us to go and see his son who would bring us to see the Japanese. I, Leung Sai Foon and Mr. Li's son went to see the Japanese. I don't know why we did this. On the afternoon of the 30th, Leung Sai Foon, Chu Yam Om, Ho Ping Fai and myself went to Kan's office. There I saw documents signed. Again, after signing the party was taken by Kan to the liquidator. There I saw Kan hand a cheque to a Japanese. I see P.19 letter of Yeung Ming to Wong Tat To—original put in D.13. I received this letter. On the 20th, having signed the documents Leung Sai Foon gave me a document saying it was a P/A which he intended sent to Yeung Ming for Cheung to sign as it was necessary on account of the mortgage to pay off another mortgage. I see P.9A—this is it, the document I got from Leung Sai Foon. That is the P/A referred to in the letter D.13—I sent it by post to Macao for Cheung to sign. When I got it back I returned it to Leung Sai Foon.

Adjourned 15 minutes—resumed 12.05—as before.

WONG TAT TO—o.f.d.

Exn. Gittins :

I see D.1. I recognise this. I remember an occasion when Li Koon asked Leung and I to go to see him. There Li said that approval had been

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continued.

obtained for the application. This was one day in January. Li Koon said also that we were to come to transfer the property—Li Koon said area he had been told was 29,000 sq. feet but that he had checked and found it only 26,000 sq. feet. Accordingly the purchase price should be reduced by 6,000 M.Y. there being a shortage of 6,000 sq. feet. Li Koon handed this paper D.1 to Leung Sai Foon and then Kan came in. As a result, the price of M.Y.80,000 was reduced to M.Y.78,000 but we did not reach this agreement on this day but on a later occasion. I see the letter of January 11 from myself to Yeung Ming. Original put in D.14. This letter refers to the transaction. I wrote this to Yeung because when I sent P.9A to Yeung in Macao, I did not send a proper letter but only a few notes on a piece of paper. When P.9A was returned Yeung wrote me D.13 so I wrote fully to him in D.14. 10

My purpose was to acknowledge receipt of P.9A, which he had returned by post. Leung Sai Foon had told me Ho Ping Fai had applied for a permit “to return to the village” by this phrase I knew people always said this instead of “going to Macao.”

I see P.19—letter 4 dated 4th Mrch. I recognise this original—put in D.15, written by Yeung Ming. I see P.8A. This is a P/A which came into being because P.9 and P.9A was found to be not in order I was asked to send P.8A to Macao for signature and it was sent back to me. I sent P.8A to Macao, having received it from Leung Sai Foon one or two days before Ho Ping Fai left Hong Kong—I see P.8, it is identical with P.8A—The two copies were sent to Macao by me P.8 and P.8A. I don’t remember exactly when Ho Ping Fai left for Macao but I sent the documents two or three days before she left. She left 3 or 4 days before the Chinese New Moon in 1944 (about 12th February). I know the date because the school reopened immediately after the 15th day and I was very busy for those few days—on my own affairs—my children go to Sai Nam. They went back to school after new year 1944 and I sent P.8 and P.8A during one or two days after my children had gone back to school. School reopened 16th or 17th of the Chinese 1st moon 1944. On the day Ho Ping Fai went to Macao, Leung Sai Foon sent for me and asked me to go and see Kan. Also told me Ho Ping Fai going to Macao. At Kan’s office Leung Sai Foon asked members of Kan’s staff if anything had to be done by Ho Ping Fai. Kan was not there. One employee asked when would she be back. Leung said he did not know. Then it appeared there was a document to be signed by her and asked me to take it to her to sign. A number of documents had to be signed by her and I was told there were X on the places where she was to sign. Also she was to sign as soon as possible. I took the documents to my stall. I then rang up the school asking to get Ho Ping Fai to come to my stall. Ho Ping came to my stall after 3 p.m. I had a number of friends in my stall. I told her there were documents for her to sign and she had better take the time to sign. Ho Ping Fai did not sign in my shop as my friends were there and the space small. Ho Ping Fai took the documents away. I saw the documents again when I went to the school at 5 p.m. when a servant of Ho Ping Fai came and gave me the documents saying were from Ho Ping Fai. I gave them to Leung Sai Foon. Money was paid from Li Koon as a result of this transaction. I saw the money pass in the Bank of East Asia on either the 9th or the 10th March. I saw Kan give a cheque to Leung Sai Foon who put it in his 40 50

pocket. I see P.27E. I only saw one cheque. I cannot say if P.27E is the one or not. Leung Sai Foon went to the Bank of East Asia and there he went to the counter while I waited. I saw Leung Sai Foon apply some chops to the cheque which he handed in. Then he went to the next window and there I saw him put money into his pocket as well as a red book. Then he left and I went home. About a week after this, I went to Li Koon to see him and ask for a payment of the balance. I went alone to Li Koon's office on instructions of Leung Sai Foon. I saw Li and I asked him about the payment of M.Y.16,000. Then Li Koon took me to another compartment and went himself took money from a drawer which he handed out to me. He counted it and said it was M.Y.16,000 and told me to bring it to Leung Sai Foon. I see D.15. The two letters mentioned in first sentence were written by me, one being for the P/A P.8A to be sent back signed and the other was about the sending back of signature for registration. I see P.34. I recognise this. The second letter was about P.34 for land registration.

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continued.

S/o 2.30 p.m.

(Sgd.) G. L. HOWE.

Resumed 2.30 p.m. As before.

20 WONG TAT TO. o.f.d.

I see P.15—a tenancy agreement—dated 1st March, 1944, between Li Koon Chun and Leung Sai Foon. This was completed on the 9th or 10th but was dated back to 1st March. On 28th December, it was agreed that if the lease was sold there would be a tenancy agreement. That is why payment was made and Leung Sai Foon had to sign the agreement P.15—After the liberation in October a week after 3rd Defendant came back from Macao I spoke to him. After speaking to 3rd Defendant he told me to speak to the directors—there was a meeting of the Directors on 27.1.46. D.6 refers and mentions my statement. I remember writing this statement.

XXn. Bernacchi :

I have said that Leung Sai Foon asked for a right to redeem this sale. This was so. No time limit was placed on this right to redeem. It was said like this at the time. I told the Directors Li Koon had agreed to this. Li Koon said he wished to purchase as he wanted to get rid of some of his Military Yen. He did not say why he wanted to use up his M.Y.—get rid of them.

I knew Military Yen were failing in value—1943-44 many people wanted to sell and few to buy property but I have no experience about more sellers than purchasers. I didn't know Li Koon was a man with considerable experience in property market—he was rich anyway. I say that Leung Sai Foon told Li Koon that he had no right to sell and yet Li Koon went ahead and purchased. Li Koon meant by redeeming that it should be done after the war. I remember on 30/12/43 I went with Kan to the Japanese liquidator. This was not in connection with

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an agreement that Li Koon should deposit a sum with the liquidator to be returned if permission to sell were refused—this was to repay the mortgage. I cannot remember if I went on any other occasion with Kan to the liquidator. I didn't get the impression that it was so. I knew there was a mortgage in addition to the agreement for sale. This was because Li Koon refused the mortgage and wanted to buy. Leung Sai Foon therefore said that a mortgage and an agreement for sale should be made. It was on the instructions of Li Koon who wished to have a mortgage for M.Y.35,000 and at the same time an application for sale for M.Y.80,000. It is not the case that the mortgage was security for the loan already made pending the grant of permission to sell. The mortgage came into existence when Li Koon refused to lend money but instead of buying the property. Leung Sai Foon was reluctant to sell but thinking that time had been wasted by him, he must get money to pay off the mortgage first so Leung Sai Foon suggested a mortgage to obtain money to pay off the mortgage debt. At the time we did not anticipate that Japs. would approve the sale. The P/As from Macao were required because Li Koon agreed to lend a sum of money to pay off another mortgage. I say I told Kan that the price was to be inserted at one figure while the real figure was another. I say I told Kan but he said nothing but later the document was filled out for M.Y.62,000. In 1942 I was not appointed attorney to register these premises with the Japanese registry. I was merely asked by Leung Sai Foon, Chu Yam Om and Mrs. Cheung to do this and there is no power of attorney. I see the document produced—I see the Chinese P/A produced to me. It has the chop of 3rd Defendant on it—P.1A. I think when this document was made the date was missed out as we did not know when we would have to use it. I see the application from P.6 in P.1A—I see document at p. 5 in this exhibit. I have never seen this piece of paper before nor do I know who wrote it. I cannot remember if I had instructions to get a specimen of signature and a P/A etc. from Macao. Documents had to be in Japanese and not in Chinese. Reasonably I should have had a P/A in Japanese from Cheung but I cannot say whether or not I did in fact get one. I see the form on 4th page of P.1A. I did not correspond throughout the occupation with Yeung Ming—occasionally. When I wished to send any message etc. to Cheung, 3rd Defendant, I would write to Yeung Ming. This is the envelope for D.13—D.15 put in. I see D.1 and D.15—These are not forgeries in so much that they have been subsequently dated a year later. I see the date on D.15—it is only at the end of the letter that the year can be seen. Year relates to year of Chinese Republic 33rd. I say the date on D.15 and the rest of the letter is all same type writing. I see D.13—I agree not the same difference—Chinese character 32 may be made into 33 fairly easily—all depends how it is written.

In D.15 it could easily have been changed. I see the envelope of D.13—this is a complete envelope. I see the envelope of D.15—it is torn away at the date stamp. The envelope of D.15 became torn as it is when I found it. I know nothing about the tearing of the stamp. D.15 bears no reference to Jorge. I agree that by 1944 the documents had already been taken to the Registry office. I deny that Japanese P/A was obtained from Cheung in 1943—the Japanese one—for purposes of

registration of the house. I see D.1. This is a scrap of paper. There is a date on it but I don't know why. No signature nor heading. I see the date 6.1.44 in that. I disagree that the "6" in the date is different from the "6" in the script. I cannot say—I can't read English. I cannot say really. I see D.14. This was a letter sent by me to Yeung Ming. It is my original letter. In D.14 I did not ask Yeung Ming to get into touch with 3rd Defendant. When I wrote about the school to Yeung, my idea was to let him know only without any instructions that he should communicate to any other person—I wrote at random—

10 I did not think about it. I wrote what I did to Yeung according to what I heard from Leung Sai Foon or Li Koon. The statement is correct. This was the conversation I heard between Leung Sai Foon and Li Koon I heard about 80 or 90% of the details. It does not mean that Ho Ping Fai was not in Hong Kong, it may mean that I had heard that she was in Macao. I do not say that in all cases Japanese refused to give a permit to go to Macao. I say she would get on a boat to go to Macao with a permit to go to the country. Ho Ping Fai signed documents before she got on to the boat to sail to Hong Kong. The documents were rolled up and I did not know what the documents were. I had no time to look at

20 the documents—Leung had told me I was to hand the documents back to him personally. During the occupation I did not see any of the Directors of the School. It still functioned as the Sai Nam school—with accounts. There was wide publicity re the calling in of mortgages. There were people with authority to act, Leung Sai Foon was the one. I do not think the Directors knew. The accounts were kept by a person appointed by Leung Sai Foon. I do not know who kept the a/cs. Fees were collected. It is untrue that I was school treasurer.

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S/o 2.30 p.m. on 14.8.1951.

(Sgd.) G. L. HOWE.

13th August, 1951.

30

14th August, 1951, at 2.30 p.m.

Resumed as above. O.J. 193/49

Appearances as before.

WONG TAT TO o.f.d.

To Court: I want to correct a statement I made in XXn. yesterday—I was wrong yesterday when I said that I told Kan the figure of M.Y.80,000—On thinking it over, I made a mistake when I said that. After hearing the conversation I told Kan M.Y.80,000—in actual fact the figure I told him was M.Y.62,000.

40 *XXn. Bernacchi:*

Nothing else I want to correct that I can remember now. I say that on two occasions Leung Sai Foon have said there was a term of redemption in the agreement for sale i.e. once to Li Koon and once again

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before Kan. I cannot say whether Kan heard because when Leung and Li Koon were talking about this term outside Kan's office. Ip Lan Chuen was Chairman of the Board of Directors of Sai Nam until his death in 1946. I did not meet him during the occupation period. I do not know if he had anything to do with the Sai Nam school during the occupation. I do not know that Ip asked one Wei Kai Yun to buy the property during the summer of 1943. I knew about the tenancy agreement from Li to Sai Nam. I was told about this by Leung Sai Foon. I had nothing to do with it myself. All I did was to receive the lease when it was sent by the solicitor to the school—no one would receive it and I signed for it on behalf of Leung Sai Foon. I was there at the time because there were very few servants—none of them would receive it—they went to my place and asked me to go to the school and receive it. I received no remuneration from the school for services. I do not know if any money was sent to Cheung in Macao but I believe not. I am now accountant—the accounts for the occupation period maybe are somewhere but I have not got them and I don't know where they are. I never asked for them—a matter for the headmaster. I was not the accountant during the occupation and I have not got the accounts. 10

Re-Xn. McNeill.

20

The meetings of 28th December, 1943 I remember—there were two meetings on that day, one in the forenoon and one in the afternoon. In the forenoon—Li Koon, Leung Sai Foon and myself. In the morning after the meeting instructions were given by me to the clerk of Kan about the proposition come to, that is, that the price for sale was M.Y.62,000. In the afternoon in Kan's office, Chu Yam Om, Leung Sai Foon, Ho Ping Fai, myself and Li Koon's wife. Then the party proceeded to sign the documents and I saw them sign one after the other. After the signing they left.

On the 29th December I went with Li Koon's son to see a Japanese official. I did not quite know what the purpose was—Li Koon took me and Leung Sai Foon. Talking in English. I did not understand. Area of land D.1 relates. I meant to say a discrepancy of 3,000 sq. feet. Ho Ping Fai is a mile of San Wui. From Hong Kong one goes either by Canton or by Macao. During the occupation one really went by Macao. My children collect stamps, some during the occupation. 30

McNeill : Two points—

(A) The report of Wong to the Board of Directors. Minutes of meeting of Board of Directors showed that report of Wong was prepared for the purpose of defence of any possible action. Reads the minutes of proceedings of this meeting of 14.1.49. P.17 letter of 15th December, 1948, from Lo & Lo. 40

Letter of Russ & Co. to Lo & Lo 16.12.48.

Documents are therefore specially prepared to instruct solicitors—therefore privileged.

Cites *Westminster Railways v. Kuwait Oil Co.* [1951] 1 K.B. 134.

(B) Accusation of forgery—by XXn. by Plaintiff's counsel. If accusation that a party to this suit, 1st or 3rd Defendants, are impliedly guilty of forgery—then serious. 1st and 3rd Defendants could not deny they represent the beneficiaries.

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D'Almada : We cannot say who did it or if it were done.

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McNeill : I accept that no charge had against Defendants in action.

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D'Almada : I don't call for it.

Not to be pressed.

(Sgd.) G. L. HOWE.

10 YEUNG YAT FAI d/d Punti.

I am 58—I live at 8 Ying Wah Terrace, 1st floor. I know the Sai Nam school. I was connected with that school from 1929—I was a master. I worked for the school in December 1941 when the Japanese invaded Hong Kong. I did not stay in Hong Kong during the occupation. I went to Macao and came back to Hong Kong in November 1945 after we won the war. After the Japanese invaded Hong Kong and the time I went to Macao I did not work in the school. I wrote D.13. This refers to a P/A signed and chopped by Cheung, 3rd Defendant. This P/A came into my possession when in Macao. I see P.9A—this is it—I did not show
20 D.13 to Cheung before I sent it. Attached to P.9A was a note—a small piece of paper—in between the folding, which was wrapped up in a larger piece of paper. When I received the P/A I opened it and I brought it to Cheung, 3rd Defendant, and I read over the small piece of paper to him and after reading I handed the P/A to Cheung, 3rd Defendant. I also mentioned in the letter about Cheung's health—I see D.14. It is a letter to me from Wong Tat To dated 11th January (1944). I remember receiving this letter D.14. I did not show them to 3rd Defendant Cheung. I see the mention about Ho Ping Fai. She did come to Macao but not at the time I received this letter D.14. She came about the middle of February 1944.
30 I received by post a further P/A. This is it P.8 and P.8A. They came to me on the 14th and 15th February 1944 which contained a small piece of paper in between the foldings and wrapped in a larger piece of paper. I looked at the small piece of paper which I read over to Cheung. I handed these documents to Cheung who was then lying on his bed. I have a general idea of the papers—instructions as to what Cheung had to do—“the premises were mortgaged and school had to repay the mortgage on a/c liquidation—we are now pressed to put through another mortgage to pay off other one and a P/A necessary.” This was in P.9A.

40 On P.8A the slip was to the effect that the P/A made before not in order. Purpose of putting through mortgage in order to pay off present one and this P/A had to be made—etc. Cheung was not to sign until Ho Ping Fai arrived then she and he would sign before a lawyer. I have lost the little bits of paper. I see D.14 letter of 11th January. I did not tell Cheung 3rd Defendant about the sale contemplated in D.14—I did not tell him because Cheung 3rd Defendant was not a good tempered man and he was seriously ill with weak heart and weak nerves—so I told him

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no news containing difficulties. I see D.15. I wrote this too. I see P.34. I recognise this. It is a specimen of signature and chop of 3rd Defendant. Came into my hands and I handed it to Cheung, 3rd Defendant. I got this back and I sent it on the 10th March to Wong Tat To. D.15 relates to this. No other signature card for Cheung passed through my hands. Ho Ping Fai only came to Hong Kong once during the occupation to my knowledge. I am not a stamp collector now. I was when I was a child. I did not collect during the occupation. The stamp produced belongs to me—a Macao stamp—dated 14th April 1944, hexagonal post mark. D.15 and D.16 have hexagonal post marks. I see two other stamps—dates 1943. 10
19th November or October 1943. Put in together D.16 and D.17 and D.18.

XXn. D'Almada :

I am not a stamp collector. I don't suggest anything from the stamp collection much except that different in 1943 and 1944. I am not certain but Macao post stamps are changing from time to time. I am now a school master at Sai Nam—resumed duties when I returned in November 1945. I left Hong Kong for Macao about summer 1942. I don't remember the month. I wore a Hawaiian shirt. In Macao I stayed idly hiding in Macao doing nothing. I did not want to do anything. Not hiding from anyone, just leading a quiet life with nothing to do with any 20 person during the war. I only went to Cheung 3rd Defendant only when I had to—I did not like to see him very much. I communicated with Wong Tat To, Leung Sai Foon and my daughter only to Hong Kong. They started the correspondence. Leung Sai Foon first wrote about May 1943, had some connection with school matters. That school premises mortgaged to H. K. & S. Bank and said the mortgage under liquidation. Enclosed in that letter a form of P/A and asked me to get Cheung to make one in that form because he Leung had to deal with the liquidator. I showed his letter to Cheung—he had to make out the P/A according to the form. This was the only letter Leung wrote to me. Wong first wrote 30 to me in December 1943—Nothing before this between Wong Tat To and myself and only the one with Leung Sai Foon. I am quite sure or at least I don't remember having to do anything for Wong Tat To about the registry of the house Oaklands Path. The letter from Wong is in a small piece of paper—D.13 and starts off by saying : “ I have read your letter.” This letter refers to the wrapped note—the real meaning of the character I used could mean anything wrapped up in a piece of paper. I don't think there was anything in the note to arouse Cheung's temper. I did not show Cheung the notes—however—was afraid he would die of heart failure. When I spoke to him I told him that the letter was 40 about putting through a new mortgage and the matter would not be more serious. The reason why I did not give the paper was that he was sick and was one who suffered from much nerves. Cheung is a man of much temper. I did not show him the second slip either. I thought I had better not tell Cheung when Wong Tat To told me that the premises were not to be sold. I seriously say that it was because of his temper I did not read him D.14. I regarded D.14 as being a matter of importance since the mortgage had been repaid. Not upset I say because I was out of Sai Nam School. Cheung would however think it serious and might die. In Macao I did meet Ho Ping Fai. I met her only three times in the single 50

trip she made. Once I met her at the wharf. Then I went to call on her at her house. Then I saw her off again. No need for me to tell her anything as she understood the position far better than I did. I did not ask her about the P/A. I did not speak to her about the school. She was there after I had received D.14. I am married. My wife did not come to Macao with me. At first I left for Macao and then later my son went to Canton—he is now 18. Went to Canton at 18 years of age Chinese summer of 1943. I see D.15. Again I deny it was written by me in connection with the registration of a house. I see the slips D.16, 17, 18—
 10 it could be that the different post marks were those of main post office and such post office—Ship Seng is such post office.

Re-Xn. McNeill :

I see D.13. I say was written by me—it is in dark handwriting date is in smaller characters. This is Chinese form of writing letters. In D.15 the same thing occurs. Completely I deny that D.15 was written by me in 1943. It is 1944 when I wrote it. I did not come here to commit fraud.

(Sgd.) G. L. HOWE.

WONG MO TAK : dd—Punti.

20 I was a teacher in Sai Nam School pre-war. I am still a member of the staff. During the occupation I went to Macao. I know 3rd Defendant and his wife Ho Ping Fai. I saw Ho Ping Fai once in Macao during the occupation. This was about 1944—the year before the liberation. In Macao I saw Ho Ping Fai and I went to meet her at the wharf. I saw her again when I invited her to have meals with me—it was an evening meal, the meal was 25th day of 1st moon (18th February)—it was date of my late mother's death. In Macao I was a teacher—When I met Ho Ping Fai at the wharf it was about 5 days before the dinner. A Sunday I think (Sunday 13th).

30 *XXn. Bernacchi :*

When in Macao I did not get any personal assistance from Sai Nam. I had left the school. On the anniversary of my mother's death we have to prepare food and worship. I can remember that it was that day I do the worship. Two years ago on the anniversary of my mother's death I was not at home. I am sure of Ho Ping Fai's date.

(Sgd.) G. L. HOWE.

S/o 15.8.51 at 10 a.m.

Plaintiff closes case.

(Sgd.) G. L. HOWE.

40

15th August, 1951, at 10 a.m.

14th August, 1951.

Resumed from above.

O.J. 193/49.

Appearances as before.

D'Almada : Put to Wong Tat To that Chairman had had to sell the premises—could not have discovered it before. Admissible now as in rebuttal. Asks to call witness.

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McNeill : If material at all is for purposes of Plaintiff's case. Kan's client mentioned him only last week. Not a word until now—nothing put to Lau Tak Po.

D'Almada : I wish to call him.

Order : May be called—McNeill liberty to reserve cross-examination and to call further evidence if necessary.

Calls :

WAI KEE YAN d/d English.

XXn. Bernacchi :

I live at 3 Chun Fai Terrace, 1st floor, Tai Hang Road. In 1940 I was Chairman and General Manager of Tai Wo Co. Ltd. owning Tai Wo works. Held this until this month. I then appointed my brother as Chairman and General Manager Tai Wo Hospital situated next to Sai Nam school. I know Ip Lan Chuen. I met him during the Japanese occupation. We met now and then—a relative of my wife—I knew he was on the board of Sai Nam School. I did not know if he was Chairman. During occupation period he discussed school with me. In summer of 1943 he discussed the school and put up the proposition that I should buy the Sai Nam school—good position etc. and next to the hospital. Asked about M.Y.40,000. Seems there was a mortgage on the school which they were trying to get paid off. This conversation took place in China Building. Chinese Manufacturers Union Meeting. Ip was President of the Union then. I gave a statement to Lo & Lo because I went to see Kan last week re the deed of appointment for my brother—Tuesday last week. On Wednesday I went back to sign the deed of appointment and after signing this case came up. I mentioned it. I had read about it. Asked later to make a statement.

(Sgd.) G. L. HOWE.

XXn. Reserved.

Gittins : Application—made an Order to give liberty to amend 30 pleadings on 23.7.51. Owing to proceedings papers not yet filed. Asks for extension under s. 182.

D'Almada : No objection.

Order : Time extended for 3 days from to-day.

(Sgd.) G. L. HOWE.

McNeill : Action cannot succeed. Started by issue of Writ against dead man. Letter from Lo & Lo refusing to administrate.

(A) Clearly there is a trust—formalities not gone through—Specific Performance will not be ordered by Court—(1844).

(B) No specific performance unless mutually.

(C) Registration may be tossed aside.

(D) Green ink entry not registration under old ordinance. Refers to Land Transactions Ordinance of 1948, s. 2.

(E) "deemed"—

(F) green ink entry not a registration under 1844.

(G) refers to Ordinance of 1844.

(H) Amendment to reply of 23.7. registered memorial 204450—signature wrong. Method of registration should be particularly followed. Section 6 not followed—Memorial bad.

10 Distinguish where legal estate has passed. Purchasers having got in the legal estate can say—I have the legal estate.

Cites *Pitcher v. Rawlins* p. 259 Chancery Appeal Cases 267–8.

Whole question of whether legal estate has passed.

Question of section 5 of Land Transactions Ordinance 1948—land could not be assigned under Japanese law—Section 5 leaves something more to be done i.e. conveyance of the legal estate.

20 *Cave v. Cave* 15 Chancery D. 639—Choose between equities: p. 647. Could be said maybe Plaintiff has an equitable interest—i.e. Vendor becomes a trustee for purchaser until completion: basis would be of course that the claim could be specifically entered. Refers to Fry Specific Performance 6th edition p. 17.—Until be enforced by Specific Performance so no equity in Plaintiff. Registration being bad—registration is that of documents not of title—bad documents not caused by registration.

Now if registration is good—

Cites 8 Hong Kong Law Reports p. 52. If legal estate has been got in.

30 Cites 1932 Appeal Cases p. 715—*Tsang Cheun and Li Po Kwai* 730. Even if deed of trust in this case P.18A even if not registered quite clear that there was a trust and a resulting trust; there was a trust resulting then. Apart from the actual deed of trust—even if trust deed not registered and if other deed is registered ample evidence of a resulting trust.

Legal estate and fact that trustees here in fact had properly conveyed to them. Further action here not one of ejection—claim for S.P. here. Court does not order S.P. in breach of trust. Court does not award damages in such cases in law.

Adjourned 15 minutes.

Resumed 11.50 as before.

McNeill: Court never grants S.P. in a breach of trust.

5 Maddocks Reports Vol. 1 438—*Ord v. Rock* 438.

40 6 Beavan p. 205—*Fuller v. Knight*.

6 Beavan p. 470—*Thompson v. Blackstone*.

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L.R. 16 Ch. D. p. 236—

Refers to 15th edition Lewin on Trusts p. 587.

Equitable description reading that both sides could claim S.P. against the other.

Fry p. 219—sec. 460.

Cites *Dunne v. Flood* 28 Ch. D. p. 586.

Deft. trustees here could not have succeeded against Li Koon if in breach of trust.

Cites *Gas Light and Coke Co. v. Towse* 35 Ch. D. 519, 529, 536.

Damages against trustees must be on an action based on deceit or 10 fraud.

Cites *Morgan v. Russel* 1909—(1) K.B. p. 357.

Defect in title—lack of power—re damages p. 365.

Cites *Burn v.* L.R. 7 H.L. 158.

Will not award damages in this type of action.

Pleadings—Statement of Claim para. 4 original now struck out.

Cited para. 5, para. 6.

“Grotesque” is only term for these pleadings.

All these agreements are shown on the Plaintiff's evidence.

(Sgd.) G. L. HOWE. 20

S/o 2.30 p.m.

Resumed 2.30 p.m. As before.

McNeill continues :—

Deals with agreements.

Two agreements alleged—28th December P.5, para. 3, the agreement is shown. P.5 does not even on the evidence contain what happened. Quotes from Halsbury Vol. X p. 444–5. Defendant entitled to say real contract not contained—Plaintiff not allowed so to do.

P.5—Clause 1—untrue on Plaintiff's evidence. M.Y.35,000 were paid encumbrances—Clause 6—Clause 8. 30

P.6—nothing in recitals re what happened. If this is the trust then P.5 meaningless.

P.2—no power of mortgage—or give money or receive money or give receipts.

P.7—receipt no power at that time.

Bowstead 10th Edn. p. 46.

P.6—no completion—no interest etc. in accounts.

P.38—reassignment.

P.10—of 17th February.

In Para. 4 of Statement of Claim pledge the P.10 not the real agreement. 40
No reference to M.Y.35,000.

P.9A—on 5th January this the only P/A.

D.13 relates—

Leung's evidence. Marks of Cheung's signature and Ho Ping Fai's are different.

If one signing why should chop marks be different.

In P.8A springy name and different ink—showing evidence that two interviews for signing took place.

Questions to Ho Ping Fai is from Plaintiff that :—clear not signed at same time. Evidence of D.13 and D.15—

P.10.

- 10 Section 8 of Land Registration Ordinance—pecuniary consideration—1st Schedule. Counsel set out and does it set out consideration or the contract. Receipt of M.Y.62,000. P.14—not paid with P.27D cheque—a cash cheque—Ho Ping Fai—no power to delegate account in name of Ho Ping Fai, Chu Yam Om, Leung Sai Foon. Transaction was a sham. Never alleged that Kan knew anything about M.Y.82,000.

Looks as if someone held the scenes work going on. Duress and undue influence —although some evidence—withdrawn because could not fully prove.

- 20 Clear from evidence that Sai Nam school run with public subscriptions and never run for profit—

Pemsel's case 1891 App. Cases 531.

Li Koon—

Notice.

Plaintiff well knew—some evidence of direct knowledge—knew Defendants different from school. Imaginable that Li—being headmaster and member etc.—joint tenants. Did not regard Kan as school teacher when negotiating—

- 30 Suggest Li knew enough to ask what position was. Clearly the lease was to the school. When a statement expresses in register are 3 persons as joint tenants—piece of importance which ought to be followed up.

Gibson Conveyancing—p. 155 16th edition. Joint tenants—danger signal.

Regarding the lease—Already in fact agreement made.

Balance of purchase money paid on 10th March—lease made before completion of the transaction. Agreement behind the scenes.

Damages—if arise at all—in this action.

Dismiss action with costs. Refuse S.P. disallow other claims.

Trust—

- 40 —register—Japanese assignment—inferred—made by all intents and purposes—trust exists—ample documents put in.

S/o 10 a.m. 16th August.

(Sgd.) G. L. HOWE.

15th August, 1951.

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16th August, 1951 at 10 a.m.

Resumed from above. O.J. 193/49.

Appearances as before.

McNeill :—do not propose to XXn. Wai Kee Yan.

McNeill : Defence—no passing of legal estate. Legal estate still in Defendants. Negotiations for sale of no importance.

D'Almada : Assessment of evidence.

Case for Plaintiff—puts—danger of mortgage—proceed into a sale—occupying power—permission—hence mortgage deed. Defendants' case.

Agreement for sale and Japanese assignment shown—para. 4 defence 10 now because do not represent the trustees between the parties. No authorization to make assignments. Trustees therefore could not sell—active or constructive. Para. 9—P.18.

Nothing in trust deed to prevent trustees selling—not sell without authority of certain persons. Business in trust deed.

Para. 10—not abandoned.

Facts led by Plaintiff.

K. Y. Kan—Li Koon Chun. Evidence fits entirely into the documents—letter by Wong Tat To to Ming in Macao.

P.4—Kan to liquidators.

.20

Defence evidence. P.5—P.13—neither for registrations—P.9A, P.8A. Tested against documents—defence evidence entirely unreliable on common sense. All witnesses with except of Teng. Conduct between 3rd Defendant and Leung Sai Foon incredible. Knew about sale entered on.

Jorge and his evidence—maybe wrong in number of meetings. Ho Ping Fai—unbelievable—red ink—chop story—chops of three persons. Oct.-Jan. visit to Japanese re documents, photographs two days after signing a document in Kan's office : Wong Tat To, Lying—goes through evidence.

Chu Yam Om—his evidence that he never did anything because his 30 brains were disturbed—does not remember anything. Secretary of Bank of Canton. P.10—no recollection that assignment was executed. Chop story. D.14 Ming—incredible story—never told 3rd Defendant anything. School teacher Wong—not very reliable as to dates—direct conflict as to Ho Ping signing deed in Japanese office for photographs—Lau Tak Po prominent man—not possible that he took no action—all members of Board of Directors from 1945—Li Koon difficult to deal with—others knew what this case to reveal—Letter P.19 from advertisement written—nonsense. No activity on part of board of directors. Ip Lan Chuen had to sell in 1942 by evidence given yesterday. Submits onus on the 40 Defendants to show that breach of trust.

Adjourned 15 minutes.

Resumed 11.50 as before.

D'Almada : Onus on breach is on the Defendants—within knowledge of Defendants upon evidence. Defendants stated that agreements do not show real transaction between the parties. Agreement for sale and Japanese assignment repeats the transaction between the parties—i.e. P.5 and P.10. 8th edn. Phipson 569. 12th Taylor—sec. 1128–30. Plaintiff's evidence establishes actual transaction. Specific performance.

Proposition not applicable in this case—relying on Ord. of 1884—Preamble—sec. 3 (2). Trust deed 1932 not registered— February 1944—sec. 3 (2) means just what it says i.e. trust deed is absolutely null and void—equitable estate—by the Ordinance this dictum cannot be looked at i.e. trust deed—i.e. a conveyance in breach of a second trust and then a subsequent potential conveyance. First document absolutely null and void against a subsequent purchaser. Clearly words not limited to person who has got in the legal estate equally applicable to anyone who even has interest. Plaintiff has paid over full purchase price and Plaintiff has an equitable interest—Nothing in this Deed to on an equitable exception.

20 Court cannot look at Deed of Trust. 8 Hong Kong Law Reports—52.
7 Chancery Appeal cases.
15 Ch. D. 646.

Bona fide purchasers not confined to one who has got in the legal estate. Where section 4 is concerned also null and void—deeds—equitable rule shut out—if no registration—

Don't register—out—notice is not of importance.

Conveyance :

Ordinance requires that this Court must shut out all knowledge of this deed and therefore can consider Specific Performance.

(Sgd.) G. L. HOWE.

30 *S/o 2.30 p.m.*

Resumed 2.30 p.m. As before.

D'Almada :—23rd Edn. Snell—p. 43—sec. 3 (1).

S.P. 8th Dart Vol. 2 p. 883.

Trust deed does not come into the picture at all as against time paid and purchase for value.

Distinguishes.

Edwards v. Edwards 2 Ch. D. 295—

Building Co., 1915 (1) Chancery p. 643.

40 7 Fisher and Lightwood's Mortgage—p. viii of preface—same principles relate to section 4.

Green ink entries—extract from register—

P.25—Page date 17.2.44. 6.3.44.

By virtue of the Ordinance are if under Ordinance of 1884.

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Degrees open under this Ordinance 9 (2).

Green ink entry is registration P.25—under Ordinance of 1884.

Sec. 25—of Ordinance 1884—not relating to presentation or before registration but after registration—“ actual notice.”

Specific Performance. Hall & Warren 32 E.R. p. 738.

Trust out of the picture—not choose to register then lose.

Cannot look at trust deed—therefor.

3.40 p.m.

McNeill—in reply on law.

Regarding Taylor on Evidence 720—not told what Plaintiff means 10 p. 569—Phipson—the same comment.

Resulting trust—don't look at document at all.

Edwards' case and *Building* case was to consider—not a single case concerned discretion cited by Plaintiff.

Discretion—Here Court asked to perfect a breach of trust.

Reference in Snell quoted is to equitable doctrines.

Fisher and Lightwood says the same thing.

Hall v. Warren—No relationship to this trust.

D'Almada : Resulting trust not pleaded.

(Sgd.) G. L. HOWE. 20

S/o for judgment for a day to be fixed.

(Sgd.) G. L. HOWE.

16th August, 1951.

No. 7.

LETTER from Sir Gerard Howe to Mr. Justice T. J. Gould.

Chief Justice's Chambers,
Court of Justice,
Hong Kong.

3rd March, 1954.

Dear Gould,

Attached is my Judgment in O.J. 193/49. I shall be grateful if you will pronounce it in Court and hand a copy down to Counsel.

10

Yours sincerely,
(Sgd.) GERARD HOWE.

The Hon. Mr. Justice T. J. Gould,
Supreme Court,
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from
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Howe to
Mr. Justice
T. J.
Gould,
3rd March
1954.

No. 8.

JUDGMENT.

No. 8.
Judgment,
5th March
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IN THE SUPREME COURT OF HONG KONG.

Original Jurisdiction.

Action No. 193 of 1949.

20 Between LI TAM TOI HING Plaintiff

and

CHU YAM OM, LEUNG SAI FOON &
CHEUNG LAN CHAU Defendants.

Coram : HOWE, C.J.

This is an action in which the Plaintiff seeks orders against the Defendants that they execute in her favour an assignment of a property known as No. 1 Oaklands Path, Hong Kong, and that the Defendants do discharge two mortgages on the property and also orders for possession and mesne profits. An order for substituted service of the writ was made
30 but only the first and third Defendants entered appearance, and it was pleaded and given in evidence at the hearing that the second Defendant died prior to the issue of the Writ ; no order was made to substitute any party in his stead.

The Statement of Claim pleads an agreement dated the 28th December, 1943, whereby the first and second Defendants and the third Defendant

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by his attorney (and wife) Ho Ping Fai agreed to sell the said property to the Plaintiff, free from encumbrances, for the sum of M.Y.62,000. At the date of the agreement there were two mortgages on the property, one to the Hong Kong & Shanghai Banking Corporation and one to the Procurator in Hong Kong of the Dominican Missions in the Far East, and it is pleaded that the Plaintiff advanced M.Y.35,000 for the purpose (which was effected) of paying off these mortgages. When the advance was made it was secured by the execution of a mortgage in the Plaintiff's favour. The Statement of Claim further pleads a Japanese assignment of the property, dated the 17th Februray, 1944, between the same parties 10 and completion of the agreement for sale by treating the M.Y.35,000 already paid as part of the purchase price and by a further payment of M.Y.27,000. It is pleaded finally that by virtue of the Debtor & Creditor (Occupation Period) Ordinance (at the date of the writ No. 24/1948) the property was still subject to the mortgages despite their purported discharge.

The first Defendant is a schoolmaster of Sai Nam School, situated on the said property; the second was a schoolmaster then and was headmaster during the Japanese occupation; the third is the present and pre-war headmaster. The Statement of Defence of the 1st and 3rd 20 Defendants admits that the agreement and Japanese assignment were signed by the 1st and 2nd Defendants and by Ho Ping Fai but claims that these documents were shams to deceive the Japanese and represented no real agreement or contract. Further it is pleaded that Ho Ping Fai had no authority from the 3rd Defendant to execute them. The receipt of M.Y.35,000 for the purpose of discharging the mortgages is admitted but it is pleaded as a loan, and not as part payment of the purchase price. The receipt of the sum of M.Y.27,000 "from the Plaintiff" is denied. I understand this denial to arise from the fact that it was the Plaintiff's husband who actually produced the money which would appear to be a 30 technicality without merit. It is admitted that the three Defendants were joint tenants of the premises until the death of the second Defendant but it is pleaded that they were trustees for "a charity, namely the Sin Nam College, as the Plaintiff and/or her husband well knew." It is pleaded alternately that the Defendants as trustees had no authority under the terms of the trust to sell, to the knowledge of the Plaintiff at material times. As a further alternative it is pleaded that the agreement and Japanese Assignment were signed under duress or undue influence by the Plaintiff and/or her husband. This allegation was abandoned by 40 counsel for the 1st and 3rd Defendants during the hearing.

The Plaintiff's reply indicated reliance upon a green ink entry of the Japanese Assignment (Memorial 4113) in the Land Office Register, and registration of the said Japanese Assignment on the 23rd May, 1951, in the Land Office (Memorial 204450) as affording protection under Section 4 of the Land Registration Ordinance 1844. In the rejoinder it is denied that there is any such statutory protection. Finally the rejoinder pleads that the second Defendant made a verbal agreement with the Plaintiff's husband for the loan of M.Y.35,000, a sale at M.Y.78,000 and a lease back to the Defendants but that the 1st and 3rd Defendants had no knowledge of anything except the loan. 50

From the pleadings emerge two broad issues of law and fact—

(A) whether the agreement and/or Japanese Assignment constituted a valid contract of sale which the court will not now set aside and

(B) whether the Declaration of Trust relied on by the Defendants not being registered under the provisions of the Land Registration Ordinance, is valid or null and void against the Plaintiff as purchaser.

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A great deal of evidence was called at the hearing but upon the view I take of it the facts can be quite simply stated. The three persons named
10 as Defendants had been owners of the legal estate in the premises in question since 1932, and the assignment in their favour which was registered in the Land Office vested the premises in them as joint tenants. On the 12th December 1932 they executed a declaration of trust of the premises whereby they declared that they stood possessed of the same, subject to a mortgage to the Hong Kong & Shanghai Banking Corporation and a second mortgage to the Procurator in Hong Kong for the Dominican Missions in the Far East, in trust for Sihnan College. The declaration covered also "the proceeds of sale thereof in case the premises shall hereafter be sold or disposed of," and continued: "and that we and the
20 survivors and survivor of us and the executors and administrators of such survivor shall not sell or re-mortgage or otherwise dispose of or deal with the said premises or any part thereof 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 Sihnan College. And we and each of us do hereby Further Declare that any letter minute or memorandum signed the person for the time being registered in the Education Department as the Manager of the said Sihnan College and addressed to us or any of us shall be conclusive evidence of any such direction as aforesaid therein contained as to any act deed matter or thing required or authorised to be done
30 performed executed or carried out in respect of or in connection with the said premises or any part thereof and also as to any appointment of new trustee or trustees for the said premises and that such direction shall be duly given effect to and carried out."

The declaration of trust has never been registered in the Land Office. The Sih Nan School was a non-profit-making concern managed by a board, of which the third Defendant was a member. According to the latter at the outbreak of the Pacific war there were seven members including himself and of these by the time he left Hong Kong, only one (Chun Mun) was not in the Colony. One Ip Lan Chuen was chairman in October 1945 but died
40 subsequently. The board itself selected persons to replace members who had died. The 3rd Defendant was headmaster of the school before the war, but left the Colony for Macao in 1942. Leung Sai Foon (named as second Defendant but now deceased) became headmaster from then until the end of the war.

Some time in 1943 the Japanese liquidator of the Hong Kong & Shanghai Banking Corporation began to press for repayment of the bank's mortgage, amounting to some H.K.\$120,000 and interest. The school had no resources and, about September of that year, Leung Sai Foon the then headmaster approached Li Koon Chun, the Plaintiff's husband, for

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a loan. The introduction was effected by a daughter of Li Koon Chun who was a pupil at the school, and Li said he was willing to lend provided he was repaid in Honk Kong dollars and that his solicitor advised it. The solicitor referred to was Mr. Y. K. Kan, who gave evidence, and Mr. Kan advised against the loan because of danger of repercussions from the Japanese if it became known that repayment was to be in Hong Kong currency. Li had a number of interviews at which the first and second Defendants, one Wong Tat To (an assistant accountant of the school) and sometimes the wife of the third Defendant (Ho Ping Fai) were present. As Li could not be persuaded to lend, the property was offered to him for 10 sale and he finally agreed to purchase at M.Y.62,000 free from encumbrances. By this time the date was towards the end of December, 1943, and the Japanese liquidator had fixed the 31st of that month as the last day he would allow for repayment of the mortgage. Unfortunately a sale could not be put through so quickly, as the permission of the Japanese had to be obtained. On the 28th December an agreement for sale of the premises was signed by the first Defendant, Leung Sai Foon and by Ho Ping Fai as attorney for the third Defendant. The Plaintiff was named as purchaser. The necessary application for permission to sell was also 20 signed. In the agreement the price shown as M.Y.62,000 and the deposit was M.Y.10,000 but at the same time Li was willing to advance M.Y.35,000 to repay the mortgages and on account of purchase price, provided the Japanese liquidator was willing to refund it if permission to sell was refused. Mr. Kan was under the impression that the liquidator was prepared to agree to this and wrote a letter to him on 28th December, 1943, asking for his confirmation of the arrangement. On the 30th December however the liquidator completely refused to agree, which resulted in a rather difficult position. Li however agreed to advance the M.Y.35,000 provided he was secured, and a mortgage was prepared and executed by 30 the same parties as the agreement to sell. The evidence of Li and Mr. Kan is that this document was merely to cover the possibility of permission to sell being refused—otherwise the M.Y.35,000 advanced was to be treated as on account of the purchase price. I accept this as a fact. The mortgages were paid off and, on the 17th February 1944 a Japanese assignment (with the necessary subsidiary documents) was executed by the same parties and was duly registered. In March a tenancy agreement was signed between the Plaintiff as lessor and "Sai Nam Middle School's Headmaster Leung Sai Foon."

A good deal of evidence was directed to the matter of the power or powers of attorney under which Ho Ping Fai was authorised to act for the 40 3rd Defendant, who was in Macao. I do not deem it necessary to go into detail but I accept the evidence of Adolpho Eduardo Jorge, a Portuguese advocate practising in Macao, as being substantially correct. I am satisfied on all the evidence that at the time of executing the Japanese Assignment of 17th February, 1944, Ho Ping Fai was properly empowered to sell as attorney for the 3rd Defendant.

I find that the facts are as I have outlined them above, and I reject the allegation that the 1st Defendant and Ho Ping Fai, or either of them, were unaware of the contents and effect of the documents they signed. I accept that the purchase price was as stated in the Japanese Assignment. 50

I find also that it is impossible to accept the allegation of the third Defendant that he was unaware of what was intended when he signed the powers of attorney.

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As to the members of the Board I do not deem it necessary to recapitulate the evidence, but I am satisfied that there were some of them in Hong Kong throughout, and that the trustees were unable to obtain any advice, much less consent, approval or disapproval from them. In my opinion they, quite deliberately, made themselves unavailable. The trustees, in view of the position with regard to the first mortgage and the attitude of the Japanese liquidator, were in a position best described as being between the upper and the nether millstone. They were forced, by the lack of interest or assistance from the members of the Board, to act on their own judgment and realised that a sale must be contemplated when a loan proved unobtainable; they therefore decided to sell rather than lose everything to the Japanese. There is support for this view to be derived from the evidence of Wai Kee Yan, a quite independent witness who was not cross-examined. He said that in the summer of 1943 Ip Lan Chuen, who was a member of the Board, and who may at the time have been chairman, suggested that the witness should buy the property for M.Y.40,000.

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Finally I accept Mr. Kan's evidence that he searched the Land Office register before the transaction was entered into and found the property to be in the names of the three Defendants as joint tenants. I find that neither he nor the Plaintiff nor Li Koon Chun knew that the Defendants were trustees and that the Plaintiff was a bona fide purchaser for valuable consideration.

Upon these findings of fact the answer to the first broad issue is clear. The Japanese Assignment operates by virtue of Sect. 5 (1) of the Land Transactions (Enemy Occupation) Ordinance (now Cap. 256) as a valid and subsisting agreement to assign on demand. It is not tainted with any question of duress or undue influence on the part of the Plaintiff and there is no question of mistake, misunderstanding or ignorance on the part of the vendors. It is therefore a contract to which a Court would give effect and (other considerations apart) would order specific performance of. That brings me to the second issue which imports considerations relating to the declaration of trust.

The first question is whether there was in fact a breach of this trust. The terms of the declaration indicate that there was no power of sale 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 Sihnan College." The sale having been carried out in order to save a complete loss of the premises, it could be said to be for the use of the school; there was a surplus of some M.Y.27,000 over and above the mortgages. I am inclined to agree with Mr. D'Almada's submission that the onus of showing a breach of trust lies upon the Defendants. It has not been shown who the registered manager of the school was but it can be accepted from the evidence of Lau Tak Po that at least no formal meeting of the Board was held and no formal resolution of authority passed. That does not altogether exclude the possibility that some members of the Board remaining in Hong Kong knew of the proposal and at least tacitly acquiesced in it.

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If they all did as Lau Tak Po who "washed my hands of the school" as seems probable, I cannot see that they should be heard to say that they had not directed the only possible course which remained to the trustees if they were to salvage anything of the trust property. In my opinion this onus has not been discharged, but I will nevertheless examine the position which arose on the assumption that there was breach of trust. The position then would be that the beneficiaries under the trust would have an equity prior in time to that of the Plaintiff. Under the rules of equity other things being equal their title would prevail. *Cave v. Cave*, 15 Ch. D. 639. It is necessary however to consider the effect of certain Hong Kong legislation. Sections 3 and 4 of the Land Registration Ordinance (now Cap. 128) are in the following terms:—

" 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.

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."

These sections are in such clear and strong language that it was held in *Kwok Sui Lau v. Kan Yang Che*, 8 H.K.L.R. 52 that an unregistered deed was void (in the absence of fraud) as against a bona fide purchaser for value even though the latter had at the time of registration notice of the unregistered deed. The case of *Tsang Chuen v. Li Po Kwai* [1932] A.C. 715, decided by the Privy Council, makes it clear (if it were in any event a matter of doubt) that the effect of the sections extended to cover the case of an unregistered trust. A number of authorities quoted by Mr. McNeill (headed by Ord. V, Noel 3 Madd. 438) to the effect that the Courts will refuse specific performance of a contract in breach of trust, are not in point if the Japanese assignment is to be regarded as a document registered under the Land Registration Ordinance. Such registration would, as against the Plaintiff, render the declaration of trust, "absolutely null and void to all intents and purposes." The Court would therefore be compelled to disregard it completely.

In the pleadings the Plaintiff relies upon a green ink entry made by the Land Officer in the Land Office Register as affording the protection derived from registration. (There is no plea that registration in the Japanese register is sufficient.) She further relies upon the registration

effected on the 23rd May, 1951. The relevant legislation concerning green ink entries is contained in the following definition and sections from the Land Transactions (Enemy Occupation) Ordinance (now Cap. 256).

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(A) Definition :

“ ‘ Green ink entries ’ means the entries made in green ink in the Land Office registers recording particulars of transactions registered in the Japanese registers and identified in the Land Office registers by the initials of the Land Officer.”

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(B) Sections :

10 “ 3. (1) The green ink entries shall be deemed to have been lawfully made.

(2) Notwithstanding the provisions of section 4 of the Land Registration Ordinance, a green ink entry, including any variation or addition made by virtue of this Ordinance, shall, save in so far as any such entry, variation or addition is lawfully deleted, constitute for a period of six years from the date of the commencement of this Ordinance actual notice of the transaction particulars of which are recorded by the entry.

20 4. After the expiration of the said period of six years the Land Officer shall delete from the registers all such green ink entries but such deletion shall be without prejudice to any right either within such six years or thereafter to register any instrument in respect of which a green ink entry has been made under the Land Registration Ordinance.”

30 It will be seen that the sections do not enact that a green ink entry shall be deemed equivalent to registration but that it shall constitute actual notice of the particular transactions for a limited period. Whether the phrase “ Notwithstanding the provisions of section 4 of the Land Registration Ordinance . . . ” is intended to negative the protection given by that section to a person registering a subsequent deed is a question which does not arise here. The provision for deletion of the green ink entries after a period and the preservation of a right to register the Japanese Assignment “ under the Land Registration Ordinance ” seem to me inconsistent with a view that the green ink entry is per se registration under that Ordinance. I see no reason, however, to doubt that the registration effected on the 23rd May, 1951, can be relied upon ; it is permitted under Section 4 of the Land Transactions (Enemy Occupation) Ordinance. There is no suggestion of fraud, and knowledge of the trust possessed at the time of registration is (as has been seen) immaterial. I hold therefore
40 that as against the Plaintiff the trust is null and void and she is therefore entitled to specific performance. In my opinion no injustice arises out of this finding as it seems plain that in the days of the Japanese occupation the “ Japanese Assignment ” (in the form adopted in this case) was a complete quittance of the property and the Japanese parallel to our own assignment of the legal estate. If the Plaintiff be regarded as having acquired the legal estate thereby, and that without notice of the trust, her title would have prevailed over that of the beneficiaries (*Pilcher v. Rawlings*, 7 Ch. App. Cases 259).

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1954,
continued.

The Statement of Claim includes a claim for an order that the Defendants do discharge the mortgages under the provisions of the Debtor and Creditor (Occupation Period) Ordinance and it is admitted in the Statement of Defence that by virtue of that Ordinance the property is subject to those incumbrances. There is also a claim for mesne profits but no evidence was given as to what represents a fair value. Rent was paid up to the 31st January, 1946.

I make orders in terms of paragraphs (i) and (ii) of the Claim. I make an order for possession, execution of which will be stayed 60 days. I direct that (in default of agreement) the Registrar inquire into the 10 amount properly payable as mesne profits as from the 1st February, 1946, and give leave to the Plaintiff to enter judgment for the amount so agreed or so found and certified by the Registrar. The costs of the action will be paid by the Defendants. All of the foregoing orders relate of course to the 1st and 3rd Defendants only.

(Sgd.) GERARD HOWE,
Chief Justice.

5th March, 1954.

O. J. ACTION No. 193 OF 1949.

D'Almada, Q.C. & Bernacchi (Lo and Lo) for Plaintiff. 20

McNeill, Q.C. & Gittins (Loseby) for the 1st and 3rd Defendants.

Sir Gerard Howe in hospital. At his request I pronounce and hand down Sir Gerard's written decision.

Order.

1. In terms of para. (i) and (ii) of the Claim.
2. For possession (execution thereof stayed 60 days.)
3. Direction that in default of agreement Registrar do inquire into the amount properly payable as mesne profits as from 1/2/46 and leave to Plaintiff to enter Judgment for amount so agreed or so found and certified by Registrar. 30

Costs of Action to be paid by Defendants. Foregoing, Orders relate to 1st and 3rd Defendants only.

(Sgd.) T. J. GOULD.

5/3/1954.

No. 9.
ORDER.

*In the
Supreme
Court of
Hong Kong.*

IN THE SUPREME COURT OF HONG KONG.
Original Jurisdiction.
Action No. 193 of 1949.

*Original
Jurisdiction.*

Between LI TAM TOI HING Plaintiff
and
CHU YAM OM, LEUNG SAI FOON &
CHEUNG LAN CHAU Defendants.

No. 9.
Order,
5th March
1954.

10

Before :

THE HONOURABLE THE CHIEF JUSTICE IN COURT.

This Action having on the 4th day of June, 23rd, 24th, 25th, 26th, 27th day of July, 2nd, 7th, 8th, 9th, 10th, 13th, 14th, 15th and 16th day of August 1951, been tried between the Plaintiff and First and Third Defendants (the Second Defendant being deceased) before the Honourable the Chief Justice Sir Gerard Lewis Howe without a Jury and the Judge having reserved his decision thereon and his written Judgment having been handed down and pronounced by the Honourable the Acting Chief Justice Mr. Justice Trevor Jack Gould on the 5th day of March, 1954 and the Honourable the Acting Chief Justice having on the 11th day of June, 1954 given leave to the Plaintiff for a formal Judgment to be drawn up and entered herein as to part thereof IT IS ADJUDGED as follows :—

1. That the first and third Defendants to execute an assignment to the Plaintiff of all that piece or parcel of ground registered in the Land Office as Inland Lot No. 2182 together with the premises thereon known as No. 1, Oaklands Path and do all other things necessary to vest in the Plaintiff the legal estate in the said property.

2. That the said Defendants do discharge the following mortgages on the said property in accordance with the provisions of the Debtor and 30 Creditor (Occupation Period) Ordinance 1948 :—

(A) A mortgage registered in the Land Office by Memorial No. 135,093 to the Hong Kong and Shanghai Banking Corporation and dated the 10th day of December, 1932, and

(B) A second mortgage of the same date registered in the Land Office by Memorial No. 135,094 to the Procurator in Hong Kong of the Dominican Missions in the Far East.

3. That in default of such discharge of the said Mortgages as aforesaid the Plaintiff do have leave to discharge the same with liberty to recover from the said Defendants the amounts paid in such discharge together 40 with the costs and other expenses incidental thereto.

4. That in default of execution by the said Defendants of an assignment aforementioned of the said property to the Plaintiff, the Registrar

*In the
Supreme
Court of
Hong Kong.*

of this Honourable Court is directed to execute such an assignment and do all other things necessary to vest in the Plaintiff the legal estate in the said property.

*Original
Jurisdiction.*

5. That the said Defendants do give possession of the said property to the Plaintiff, execution of which is stayed for sixty days from the date hereof.

No. 9.
Order
5th March
1954,
continued.

6. That the costs of the action be taxed and paid by the said Defendants to the Plaintiff.

Dated the 5th day of March, 1954.

(L.S.)

(Sgd.) C. D'ALMADA E CASTRO. 10
Registrar.

*Appellate
Jurisdiction.*

No. 10.
Notice of
Appeal,
20th March
1954.

**No. 10.
NOTICE OF APPEAL.**

IN THE SUPREME COURT OF HONG KONG.

Appellate Jurisdiction.

Appeal No. 4 of 1954.

(On Appeal from Original Jurisdiction Action No. 193 of 1949.)

Between CHU YAM OM and CHEUNG LAN CHAU . Appellants
(1st and 3rd Defendants)

and

LI TAM TOI HING Respondent
(Plaintiff). 20

To The Registrar of the Supreme Court of Hong Kong.

TAKE NOTICE that the Full Court will be moved at 10 a.m. on Monday, 17th May, 1954 or so soon thereafter as Counsel can be heard, by Counsel for the Appellants for an Order that the Judgment herein of His Honour the Chief Justice given on the trial of this action on the 5th day of March 1954 whereby an Order was made—

(i) In terms of paragraph (i) and (ii) of the Claim,

(ii) For possession, execution thereof stayed 60 days, 30

(iii) Directing the Registrar in default of agreement to inquire into the amount properly payable as mesne profits as from 1st February 1946 and giving leave to the Plaintiff to enter Judgment for—amount so agreed or so found and certified by Registrar,

(iv) Costs of Action to be paid by the Defendants. Foregoing orders relate to 1st and 3rd Defendants only,

may be reversed and that Judgment may be entered for the Defendants in the said action.

And for an Order that the costs of this Appeal may be paid by the Respondent to the Appellants and for such further Order as the Court may deem fit.

*In the
Supreme
Court of
Hong Kong.*

Dated the 20th day of March, 1954.

(Sgd.) RUSS & CO.,
Solicitors for the Appellants.

*Appellate
Jurisdiction.*

To
the abovenamed Li Tam Toi Hing
and to Messrs. Lo and Lo her Solicitors.

No. 10.
Notice of
Appeal,
20th March
1954,
continued.

10 N.B.—18th and 19th May are also reserved for the Appeal.

No. 11.
JUDGMENT OF THE FULL COURT.

No. 11.
Judgment
of the Full
Court,
30th June
1954.

IN THE SUPREME COURT OF HONG KONG.

Appellate Jurisdiction.

Appeal No. 4 of 1954.

(On Appeal from Original Jurisdiction Action No. 193/49.)

Between CHU YAM OM and CHEUNG LAN CHAU . Appellants

and

LI TAM TOI HING Respondent.

20

Coram : GREGG, J.

REYNOLDS, J.

Having carefully considered the submissions of Counsel, in this appeal, together with the notes of evidence taken and the judgment delivered by the learned Chief Justice, in the Court below, we wish to say at the outset that we are in complete agreement with all the findings of law and of fact made in that judgment.

We will, however, state our views on what we conceive to be the principal submission of Counsel for the Appellants, namely, that notwithstanding the fact that there was a written declaration of trust made
30 by the Appellants on the 12th of December 1932, in respect to the property in question (see Ex. P.18), there still exists a resulting trust in respect to the said property ; and that, as this resulting trust is not required to be in writing, the Land Registration Ordinance (Cap. 128), which refers only to written instruments, has no application thereto. Accordingly, it is further submitted that the alleged resulting trust is operative against the Respondent notwithstanding the Appellants' failure to register the written declaration (Ex. P.18); and that the learned Chief Justice's order for specific performance should be set aside as being in breach of it.

*In the
Supreme
Court of
Hong Kong.*

*Appellate
Jurisdiction.*

No. 11.
Judgment
of the Full
Court,
30th June,
1954,
continued.

A resulting trust, as defined in Hals. (2nd Edn.) volume 33 at page 141, “is a constructive or implied trust arising by operation of law in the following cases, namely, (1) When an intention to put property into trust is sufficiently expressed or indicated, but the actual trust either is *not declared in whole or in part* or fails in whole or in part. (2) Where property is purchased in the name or placed in the possession of a person ostensibly for his own use, but really in order to effect a particular purpose which fails; and (3) Where property is purchased in the name or placed in the possession of a person without any intimation that he is to hold it in trust, but the retention of the beneficial interest by the purchaser or 10 disposer is presumed to have been intended and is held to be equitable.” In such cases the beneficial interest in the property, so far as not applicable to any sufficiently expressed or indicated beneficiary or object results or reverts to the disposer or purchaser of the property, or, in the case of his previous death, to his representatives.

In the present case we have a trust which has been declared in whole and in writing and which, although so declared on Dec. 12, 1932, two days after the Appellants had become joint tenants of the land in question, has never been registered in accordance with the Land Registration Ordinance. (Cap. 128.) 20

The question that now arises is: does the said declaration of trust in writing remove and replace any resulting trust that may have existed prior to the said declaration by reason of the assignment of the land in question to the Appellants (see Ex. P.21) and the fact that the land in question was bought by other people’s money?

We would say that it does. In our view the declaration trust (Ex. P.18) has been clearly and sufficiently expressed; and, that being so, no resulting or implied trust can, in our view, possibly co-exist with it; for by its nature a resulting or implied trust can only arise in the absence of a sufficiently express declaration. Furthermore the whole purpose of 30 registration under the Land Registration Ordinance would be defeated if a person could at will substitute a resulting or implied trust for an express written declaration of trust whenever that written declaration happened to be unregistered.

What then is the position of the unregistered declared trust Ex. P.18 as against the registered Japanese Assignment? (Ex. P.10).

It is clear that under section 4 of the Land Registration Ordinance (Cap. 128) the registered Japanese Assignment takes priority over the unregistered declaration of trust regardless of notice. (See Tsang Chuen Appellant and Li Po Kwai Respondent, L.R. 1932 Appeal Cases, at p. 730.) 40 It is also clear that under Section 3 (2) of the same Ordinance, the unregistered declaration of trust is absolutely null and void, to all intents and purposes, against a bona fide purchaser for valuable consideration; and this, on the facts before us, we hold the Respondent to be.

Accordingly for the reasons stated we can see no substance in the submission that in the present case a resulting trust continues to exist and we hold, in common with the learned Chief Justice, that the unregistered written declaration is null and void as against the Respondent.

With regard to the other submissions made by learned Counsel for the Appellants, which we have also carefully considered, we are of the 50

opinion that they are not of sufficient substance to justify discussion. We might, however, mention, as regards the claim for possession, that we are satisfied that by non-payment of rent as from January 1, 1946 and by reason of the terms of their solicitors' letter dated January 13, 1947 (see Ex. P.17) the Appellants did not regard themselves as tenants of the Respondent, and so repudiated the tenancy agreement (Ex. P.15) made, in respect to the property in question, between the Respondent and 2nd Appellant (now deceased). Accordingly we are of the opinion that no tenancy now exists and that the Appellants are not now tenants within the meaning of the Landlord and Tenant Ordinance or within the meaning of its predecessor the Landlord and Tenant Proclamation No. 15 of 1945.

*In the
Supreme
Court of
Hong Kong.*
*Appellate
Jurisdiction.*
No. 11.
Judgment
of the Full
Court,
30th June
1954,
continued.

For the reasons given we dismiss this appeal with costs and, subject to our determination of the question of costs awarded in the Court below, the judgment and orders of the learned Chief Justice are upheld.

J. R. GREGG,
President.
30.6.54.

J. REYNOLDS,
Appeal Judge,
30.6.54.

20

No. 12.
ORDER.

No. 12.
Order,
28th July
1954.

IN THE SUPREME COURT OF HONG KONG.
Appellate Jurisdiction.

Appeal No. 4 of 1954.

(On Appeal from Original Jurisdiction Action No. 193 of 1949.)

Between CHU YAM OM and CHEUNG LAN CHAU . Appellants
and

LI TAM TOI HING Respondent.

30

ORDER OF THE FULL COURT DATED THE 28TH DAY OF JULY 1954 GIVING
PROVISIONAL LEAVE TO APPEAL.

UPON the Petition of the above named Appellants Chu Yam Om and Cheung Lan Chau filed on the 10th July 1954 praying for leave to appeal to Her Majesty in Her Privy Council from the Judgment of the Full Court dated the 30th June, 1954 dismissing the appeal from the Judgment of The Honourable the Chief Justice Sir Gerard Lewis Howe, Kt., Q.C., dated the 5th March 1954 and upon reading the said Petition and the Notice of Motion filed herein on the 10th July 1954 and the Affidavit of Francis Henry Loseby, the Affirmation of Cheung Lan Chau and Chu Yam Om all dated 10th July 1954 and the Affirmation of Li Tam Toi Hing dated 26th July 1954 and upon hearing what was alleged by

40

*In the
Supreme
Court of
Hong Kong.*

*Appellate
Jurisdiction.*

No. 12.
Order,
28th July
1954,
continued.

Mr. John McNeill Q.C., of Counsel for the Appellants and by the Honourable Mr. Leo D'Almada Q.C., of Counsel for the Respondent and it appearing to this Honourable Court that the value of the subject matter of the appeal is more than \$5,000.00 and directly involves a claim or question to or respecting property amounting to or of the value of \$5,000.00 or upwards and is a proper case in which to allow such appeal THIS COURT DOTH ORDER that subject to the performance by the Appellants of the order of this Court by them to be performed hereinafter contained or hereinafter made and subject to the final order of this Court to be made upon the due performance thereof leave to appeal to Her Majesty the Queen in Her Privy Council against the said Judgment of this Honourable Court dismissing the appeal from the said Judgment of The Honourable the Chief Justice Sir Gerard Lewis Howe, Kt., Q.C., be granted to the said Appellants AND THIS COURT DOTH FURTHER ORDER :—

1. That the said Appellants do within three weeks of the hearing of the said Petition for leave to appeal pay to the Registrar of this Court the sum of \$5,000.00 as security for the due prosecution of the appeal and for the payment of all such costs as may become payable to the Respondent in the event of the Appellants not obtaining an Order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Appellants to pay the Respondent's costs of the appeal. 10 20

2. That the said Appellants do within three months of the hearing of the said Petition take all necessary steps to have the record of this action prepared and dispatched to the Registrar of the Privy Council.

3. That the further hearing of the Motion for stay of execution be adjourned sine die. (The present stay of execution to continue in the meantime.)

4. And that there shall be liberty to apply generally.

(L.S.)

(Sgd.) C. D'ALMADA E CASTRO. 30
Registrar.

DECISION OF THE FULL COURT re COSTS.

*In the
Supreme
Court of
Hong Kong.*

IN THE SUPREME COURT OF HONG KONG.

Appellate Jurisdiction.

Appeal No. 4 of 1954.

(On Appeal from Original Jurisdiction Action No. 193 of 1949.)

*Appellate
Jurisdiction.*

No. 13.
Decision
of the Full
Court re
Costs,
29th
September
1954.

Between CHU YAM OM and CHEUNG LAN CHAU . Appellants
(1st and 3rd Defendants)

and

10 LI TAM TOI HING Respondent
(Plaintiff)

1. As regards the first item of the Defendants' claim, namely, costs of the adjournment pending discovery of documents, we are of the opinion, having regard to all the circumstances of this case, that the proper order should be "no order as to costs" and we order accordingly.

20 2. As regards the second item of the Defendants' claim, namely, costs down to amendment in respect of the amendment to the Reply referred to on page 4 of the learned Chief Justice's notes of evidence, we are of the opinion that the said amendment effected no real alteration in the character of the relief sought and that it was neither absolutely vital nor did it make an entirely new case. That being so, we consider that the proper order should be that the Defendants be allowed the costs of and incidental to and/ thrown away by the amendment and we order accordingly.

3. The learned Chief Justice's order as to costs is therefore be varied as ordered. Costs of the present hearing to Defendants.

(Sgd.) J. R. GREGG,
President.
29.9.54.

30 (Sgd.) J. REYNOLDS,
Appeal Judge.
29.9.54.



*In the
Supreme
Court of
Hong Kong.*

*Appellate
Jurisdiction.*

No. 14.
Order of
the Full
Court as
to Stay and
extending
time for
sending
Record to
London,
19th
October
1954.

No. 14.

ORDER OF THE FULL COURT as to Stay and Extending Time for sending Record to London.

IN THE SUPREME COURT OF HONG KONG.

Appellate Jurisdiction.

Appeal No. 4 of 1954.

(On Appeal from Original Jurisdiction Action No. 193 of 1949.)

**Between CHU YAM OM and CHEUNG LAN CHAU . Appellants
(Defendants)**

and

**LI TAM TOI HING Respondent 10
(Plaintiff).**

Coram : GREGG, J.

REYNOLDS, J.

ORDER

Pursuant to our order of the 28th July, 1954, granting provisional leave to appeal to the Privy Council, we make the following supplemental order :

1. Time for the preparation and despatch by the Appellants of the record of this action is extended by two weeks from the date of the expiration of the three months' period already allowed. Should the Appellants fail to carry out the preparation and despatch of the said record within the time now allowed leave to appeal shall stand dismissed with costs to the Respondent. 30

2. Execution of the orders made by the Court below, in respect to the assignment and possession of the property in question, is stayed pending the making of such orders thereon as Her Majesty in Council may see fit. Provided that, pending the making of such orders, mesne profits at the rate assessed by the Registrar of the Court, on 23rd August, 1954, as being operative from March 1st, 1954, i.e. at the rate of \$2,125.00 per month, shall be paid by the Appellants to the Respondent with effect from July 1st, 1954. Total mesne profits for the months of July, August, September and October 1954 at the said rate shall be paid by the Appellants to the Respondent within one week from today ; and mesne profits at the said rate shall be paid for the ensuing months on the first day of each month. And provided further that, pending the determination of this appeal, the payment of \$2,450.00 per quarter, now being made by the Appellants to the 1st mortgagees of the property in question, shall be continued by them. Should default be made in any of such payments as aforesaid the stay of execution in respect to the orders mentioned shall ipso facto cease. 40

3. There shall be no stay of execution in respect to the mesne profits assessed by the Registrar of the Court at the total sum of \$139,017.50 in respect of the periods commencing on the 1st of February, 1946, and ending on the 28th of February, 1954. There shall also be no stay of

execution in respect to the mesne profits for the period from March 1st to July 1st, 1954 assessed by the Registrar of the Court at the rate of \$2,125.00 per month.

In the Supreme Court of Hong Kong.

4. Security for the repayment of any sums of money recovered from the Appellants by the Respondent and any sums paid by the Appellants as mesne profits to the Respondent in the event of the appeal being successful, shall take the form of a bond entered into by the Respondent with one surety. The form of the bond and the surety to be acceptable to the Registrar of the Court. Bond to be executed within one week from today.

Appellate Jurisdiction.

No. 14.
Order of the Full Court as to Stay and extending time for sending Record to London, 19th October 1954, *continued.*

10 5. Costs of this application to be costs in the cause.

6. Liberty to apply.

J. R. GREGG,
President.
19.10.54.

J. REYNOLDS,
Appeal Judge.
19.10.54.

No. 15.

ORDER OF THE FULL COURT granting Provisional Leave to Appeal.

No. 15.
Order of the Full Court granting Provisional Leave to Appeal, 19th October 1954.

20 IN THE SUPREME COURT OF HONG KONG.

Appellate Jurisdiction.

Appeal No. 4 of 1954.

(On appeal from Original Jurisdiction Action No. 193 of 1949.)

Between CHU YAM OM and CHEUNG LAN CHAU Appellants
(1st & 3rd Defendants)

and

LI TAM TOI HING Respondent
(Plaintiff)

30

ORDER

OF THE FULL COURT DATED THE 19TH OCTOBER 1954 PURSUANT TO ORDER DATED THE 28TH JULY 1954, GRANTING PROVISIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL GIVING THE FOLLOWING SUPPLEMENTAL ORDER.

UPON the further hearing of the Motion for stay of execution which was on the 28th day of July 1954 adjourned sine die and upon the application of Counsel for the Appellants for a variation of the order dated the 28th July 1954 giving provisional leave to appeal to Her Majesty the

*In the
Supreme
Court of
Hong Kong.*

*Appellate
Jurisdiction.*

No. 15.
Order of
the Full
Court

granting
Provisional
Leave to
Appeal,
19th
October
1954,
continued.

Queen in Her Privy Council and upon hearing what was alleged by Mr. John McNeill Q.C., Counsel for the Appellants and by Mr. Brook Bernacchi Counsel for the Respondent THIS COURT DOTH ORDER :—

1. That the time for the preparation and despatch by the Appellants of the record of this Action be extended by two weeks from the date of the expiration of the three months period already allowed. Should the Appellants fail to carry out the preparation and despatch of the said record within the time now allowed leave to appeal shall stand dismissed with costs to the Respondent.

2. That execution of the orders made by the Court below in respect 10
to the Assignment and possession of the property in question, be stayed pending the making of such orders thereon as Her Majesty in Council may see fit. Provided that, pending the making of such orders, mesne profits at the rate assessed by the Registrar of the Court, on 23rd August, 1954, as being operative from March 1st, 1954, i.e. at the rate of \$2,125.00 per month, shall be paid by the Appellants to the Respondent with effect from July 1st, 1954. Total mesne profits for the months of July, August, September and October 1954 at the said rate shall be paid by the Appellants to the Respondent within one week from today; and mesne 20
profits at the said rate shall be paid for the ensuing months on the first day of each month. And provided further that, pending the determination of this appeal, the payment of \$2,450.00 per quarter, now being made by the Appellants to the 1st Mortgagees of the property in question, shall be continued by them. Should default be made in any of such payments as aforesaid the stay of execution in respect to the orders mentioned shall ipso facto cease.

3. That there shall be no stay of execution in respect to the mesne profits assessed by the Registrar of the Court at the total sum of \$139,017.50 in respect of the periods commencing on the 1st of February, 1946, and ending on the 28th of February, 1954. There shall also be no stay of 30
execution in respect to the mesne profits for the period from March 1st to July 1st, 1954 assessed by the Registrar of the Court at the rate of \$2,125.00 per month.

4. That security for the repayment of any sums of money recovered from the Appellants by the Respondent and any sums paid by the Appellants as mesne profits to the Respondent in the event of the Appeal being successful, shall take the form of a bond entered into by the Respondent with one surety. The form of the bond and the surety to be acceptable to the Registrar of the Court. Bond to be executed within one 40
week from to-day.

5. That the costs of this application to be costs in the cause.

6. Liberty to apply.

(L.S.)

(Sgd.) C. D'ALMADA E CASTRO,
Registrar.

No. 16.

ORDER allowing Final Leave to Appeal to Her Majesty in Council.

*In the
Supreme
Court of
Hong Kong.*

IN THE SUPREME COURT OF HONG KONG.

Appellate Jurisdiction.

*Appellate
Jurisdiction.*

Appeal No. 4 of 1954.

(On Appeal from Original Jurisdiction Action No.193 of 1949.)

No. 16.

Order
allowing
Final
Leave to
Appeal to
Her
Majesty in
Council,
18th
November
1954.

Between CHU YAM OM and CHEUNG LAN CHAU . Appellants
(1st and 3rd Defendants).

and

10 LI TAM TOI HING Respondent
(Plaintiff).

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL BEFORE
THE FULL COURT.

20 UPON the Petition of the Appellants Chu Yam Om and Cheung
Lan Chau filed herein on the 10th day of July, 1954 for leave to appeal
to Her Majesty in Her Privy Council from the Judgment of this Honourable
Court pronounced on the 30th day of June 1954 confirming the Judgment
of The Honourable the Chief Justice Sir Gerard Lewis Howe, Kt., Q.C.,
of the 5th day of March 1954 coming on to be further heard this day before
the Full Court in Chambers and upon reading the Orders herein dated the
28th day of July 1954 and the 19th day of October 1954 made on the
said Petition and the Certificate of the Registrar of this Court dated the
11th day of November 1954 of due compliance with the said Order and
upon hearing the Solicitors for the Appellants THIS COURT DOTH
ORDER that the final leave to appeal prayed for be granted.

Dated the 18th day of November, 1954.

(L.S.) (Sgd.) C. D'ALMADA E CASTRO,
Registrar,
Supreme Court.



*Exhibits***EXHIBITS.***Plaintiff's Exhibits.***Plaintiff's Exhibit P.1—Translation from Japanese—Application to register No. 1 Oaklands Path, The Remaining Portion and Section A of Inland Lot No. 2182.**

P.1.

Translation from Japanese—Application to register No. 1 Oaklands Path, the Remaining Portion and Section A of Inland Lot No. 2182, 25th August 1942.

Duplicate.

Received : 25th August, Showa 17th Year (1942). No. 2358.

Registered : 15th March, Showa 18th Year (1943). Hongkong No. 4113.

Registration fee : Yen 240.00.

APPLICATION FOR REGISTRATION OF OWNERSHIP OF HOUSE.

1. Address of Owner of house : No. 1 Oakland Path, Hong Kong.
2. Name of Owner of house : Cheung Lan Chau, Chu Yum Om and 10 Leung Sai Foon.
Nationality : Chinese.
3. Location of house : No. 1 Oakland Path, Hong Kong.
4. Lot No. under former Hong Kong Government : I.L.2182, R.P. and Sec. A.
5. Area covered by house : 828 tsubo.
6. Type of house : European style.
Usage : School.
Structure : Reinforced concrete.
Number of storeys : Three. 20
Area of each floor : 255.7 tsubo.
7. Buildings annexed : Yes.
Type : One Class room.
Usage : School.
Structure : Reinforced concrete.
Number of storeys : Two.
Area of each floor : 105.83 tsubo.
8. Pledge or Mortgage : Yes.
Pledgee or Mortgagee : (1) Hongkong and Shanghai Banking Corporation, (2) Dominican Missions. 30
Amount : Hongkong and Shanghai Banking Corporation \$120,000.00
Dominican Missions \$25,000.00.
Interest : (1) 0.6% per annum, (2) 0.8% per annum.
Date : (1) 10th December, 1932, (2) 10th December, 1932.
9. Lease or Tenancy : Nil.
Leesee or Tenant :
Period :

- 10. Present condition of house : Complete.
- 11. Amount paid as House Tax (Rates) to the former Hong Kong for 4th Period 1941 : H.K. \$218.03 only.
- 12. Documents to prove ownership : One copy of Power of Attorney, Deed in possession of Hong Kong and Shanghai Banking Corporation.

Exhibits.

Plaintiff's Exhibits.

P.1.
Translation from Japanese—Application to register No. 1 Oaklands Path, the Remaining Portion and Section A of Inland Lot No. 2182, 25th August 1942, *continued.*

This is to apply for registration of ownership of the above-mentioned house with a plan attached.

Dated 25th August, Showa 17th Year (1942).

Address : No. 1 Oakland Path, Hong Kong.

10 Agent : WONG TAT TO (signed and chopped).

To Isogai Rensuke Esq., Governor of the Occupied Territory of Hong Kong.

THE ABOVE IS CONFIRMED.

15th March, Showa 18th Year (1943).

House Registry of the Government of the Occupied Territory of Hong Kong.

(Chopped : MIURA).

(L.S.)

Received : 18th February, Showa 19th Year (1944).

No. 405 of ' transfer '.

20 Inspected : 19.1.6 (6th January, 1944).

House Registry of the Government of the Occupied Territory of Hong Kong.

(Chopped : SHIGEHISA).

I hereby certify the foregoing to be a true translation of the Japanese document Marked " H. "

(Sgd.) G. TONG,
Court Translator.

Exhibits. **Plaintiff's Exhibit P.2—Translation from Chinese—Power of Attorney from Cheung Lan Chau to Ho Ping Fai.**

Plaintiff's Exhibits.

P.2.
Translation
from
Chinese—
Power of
Attorney
from
Cheung
Lan Chau
to Ho
Ping Fai,
1st June
1943.

(Power of Attorney) Maker of (this) Power of Attorney Cheung Lan Chow WHEREAS I am ill and have to go to other place to convalesce I specially entrust all my shares of and in the house situate at No. 1 Oakland Path, Hong Kong purchased (by me) with Chu Yam Yim, Leung Sai Foon in the joint names of Chu Yam Yim, Leung Sai Foon, Cheung Lan Chow, to my wife Ho Ping Fai to manage (the same) with full power. Hereafter, the management, sale and purchase, lease or letting and all other disputes and procedures of the above-mentioned house shall so far as the same 10 concerns my shares, be (done) and signed by Ho Ping Fai personally in order to be valid formerly. (I) specially make this Power of Attorney as a proof.

(Sgd.) CHEUNG LAN CHOW (chopped).

Witness YEUNG YAT FAY (chopped).

Dated the 1st day of June of 32nd year of the Chinese Republic.
I hereby certify the foregoing to be the true translation of the

Chinese document marked "P/A."

(Sgd.) HU WA YUN,
Court Translator. 20
2.1.51.

P.3.
Translation
from
Japanese—
Application
for per-
mission
for sale
of No. 1
Oaklands
Path,
28th
December
1943.

Plaintiff's Exhibit P.3—Translation from Japanese—Application for permission for sale of No. 1 Oaklands Path.

Copy.

APPLICATION FOR PERMISSION FOR SALE OF HOUSE

1. Vendors :—

Address : No. 1 Oakland Path, Hong Kong.

Names : Cheung Lan Chau, Chu Yum Om and Leung Sai Foon.

Nationality : Chinese.

Occupation : School Teachers. 30

2. Purchaser :—

Address : No. 8 Kennedy Road, Hong Kong.

Name : Tam Toi Hing.

Nationality : Chinese.

Occupation : Nil.

3. Location of house : No. 1 Oakland Path, Hong Kong.

4. Registered No. at the House Registry of the Government of the Occupied Territory of Hong Kong : Hongkong No. 4113.

5. Type of house : European style.
 Structure : Reinforced concrete.
 Usage : School.
 Number of storeys : Three.
 Area of each floor : 255.7 tsubo.
 Present condition : Complete.
6. Amount of Consideration Money : M.Y.62,000.00 only.
7. Method of payment : Cash (payment).
 Other conditions in the sale :
- 10 8. Reason for Application : The Vendors are the Owners of the above-mentioned house and has been operating the Sai Nam School. Due to shortage of expenses for the said school, the above-mentioned house was mortgaged prior to the outbreak of the invasion of Hong Kong to the Hong Kong and Shanghai Banking Corporation for H.K.\$120,000.00 and to the Dominican Missions for H.K.\$25,000.00 but due to the present issue of the Governor's Order it is ordered to refund the mortgage before the end of the year. At present we are still short of expenses and therefore we intend to refund our debts by selling the above-mentioned house to the Purchaser Tam Toi Hing and obtain the consideration money to refund the said debts.

This is to apply for permission for sale of house.

Dated 28th December, Showa 18th Year (1943).

Vendors : HO PING FAI (signed and chopped), Agent for
 CHEUNG LAN CHAU.
 CHU YUM OM (signed and chopped).
 LEUNG SAI FOON (signed and chopped).

Purchaser : TAM TOI HING (signed and chopped).

To Isogai Rensuke, Esq., Governor of the Occupied Territory of Hong Kong.

30 *Note :*

This Application shall consist of One Original and One Duplicate and submitted to the House Registry.

One set of this Application shall be made for one house.

I hereby certify the foregoing to be a true translation of the Japanese document Marked "E."

(Sgd.) G. TONG,
 Court Translator.
 8.3.49.

Exhibits.
 ———
Plaintiff's
Exhibits.
 ———

P.3.
 Translation
 from
 Japanese—
 Application
 for per-
 mission
 for sale
 of No. 1
 Oaklands
 Path,
 28th
 December
 1943,
continued.

Exhibits. **Plaintiff's Exhibit P.4—Letter from Mr. Y. K. Kan to the Liquidator of the Hongkong and Shanghai Banking Corporation**

Plaintiff's Exhibits.

P.4.

Letter
from
Mr. Y. K.
Kan to the
Liquidator
of the
Hongkong
and
Shanghai
Banking
Corpora-
tion, 28th
December
1943.

Room No. 407,
Bank of East Asia Building,
Hong Kong.

28th December, 1943.

The Liquidator,
Hongkong and Shanghai Banking Corporation,
Hong Kong.

Dear Sir,

10

Re: Mortgage of No. 1, Oaklands Path, by Messrs. Cheung Lan Chau,
Chu Yum Um and Leung Sai Foon to secure Banking Facilities for
H.K. \$120,000.00.

With reference to the interview which you so kindly accorded to our Mr. Kan this afternoon, we beg to confirm that the owners, Messrs. Cheung Lan Chau, Chu Yum Um and Leung Sai Foon have contracted to sell the above property to Mrs. Tam Toi Hing (*here appears an entry in Chinese characters*) in order to repay the loan covered by the mortgage on the property.

The necessary application for permission to sell the property has been 20 sent in to the Governor's Office. As, in all probability, it will not be known whether or not permission for this sale will be granted before the 31st of this month, that is, the final date fixed for repayment in accordance with the recent Government Order, you have been good enough to allow the buyer to deposit with the Liquidator's Office, an amount sufficient to cover the loan and interest to date, on the understanding that if permission is refused, this amount will be returned to the buyer, and that in the meantime, the Liquidator's Office will not deal with the property as a case of default in repayment.

We shall be much obliged if you will kindly confirm this arrangement, 30 when we shall have pleasure in forwarding to the Liquidator's Office the amount due under this mortgage.

In view of the urgency of this matter we shall be most grateful to receive an early reply.

(Here
appears an
entry in
Chinese
characters)

Yours faithfully,

(Sgd.) Y. K. KAN.

Tam, Kan, Hung and She.

(Here
appears an
entry in
Chinese
characters)

Plaintiff's Exhibit P.5—Translation from Chinese—Agreement for sale and purchase of No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A between Cheung Lan Chau, Chu Yam Om, Leung Sai Foon and Tam Toi Hing.

Exhibits.
 ———
Plaintiff's Exhibits.

AGREEMENT FOR SALE AND PURCHASE.

Vendors: Cheung Lan Chow, Chu Yam Yim, Leung Sai Foon of No. 1 Oakland Path, Hong Kong.

Purchaser: Tam Toi Hing of No. 8 Kennedy Road, Hong Kong.

The Vendors hereby agree to sell all the house and piece of land under their names situated in Hong Kong and registered in the Hongkong Land Office as Inland Lot. No. 2182 R.P. and Section A together with one house therein i.e. No. 1 Oakland Path, Hong Kong and all buildings, appurtenances and all other rights privileges appertaining to the house and piece of land to the Purchaser. And the Purchaser agrees to purchase (the same) for the price set out below and both parties now agree to enter into the following terms :—

P.5.
 Translation from Chinese—Agreement for Sale and Purchase of No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A between Cheung Lan Chau, Chu Yam Om, Leung Sai Foon and Tam Toi Hing, 28th December 1943.

1. It is agreed that the absolute sale price shall be M.Y.62,000 whereof M.Y.10,000 is hereby paid as deposit to be handed to the witness, a lawyer, and deposited in the Bank of East Asia Limited Hong Kong for safe custody and till the completion of the purchase when this deposit money together with the balance of the purchase price M.Y. 52,000 shall be paid to the Vendors.

2. The Vendors shall before the transaction complete all the procedures for the registration of the house and shall bear all fees thereof.

3. It is stipulated by both parties that the transaction shall be completed within one month after the application for the sale and purchase is granted at which time the purchaser shall pay the balance of the purchase price to the Vendors and the Vendors shall at the same time sign and make all deeds and documents to sell absolutely the property to the Purchaser.

4. After the transaction both parties shall complete all procedures for registering the transfer (of ownership) and if necessary the Vendors shall further sign all other necessary deeds and documents and shall not refuse on any pretext, but all expenses thereof shall be paid by the Purchaser.

5. If the Purchaser shall not carry out the transaction at the time fixed, then the Vendors shall be entitled to forfeit the deposit money and to resell the property to others and any deficiency in price shall be indemnified by the Purchaser. If the Vendors shall not agree to complete the transaction then the Vendors shall return the whole amount of the deposit money received to the Purchaser and shall indemnify the Purchaser against all losses suffered by him according to the value of the property at the time. But so long if there shall be one party failing to complete the transactions at the fixed time and the other party shall be unwilling to comply with this clause, then such other party is entitled to apply to the law courts in order to obtain the performance of the sale and purchase of the said property.

Exhibits.
Plaintiff's Exhibits.
P.5.
Translation from Chinese— Agreement for Sale and Purchase of No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A between Cheung Lan Chau, Chu Yam Om, Leung Sai Foon and Tam Toi Hing, 28th December 1943, *continued.*

6. All mortgages, debts, disputes and irregularities and defects in title affecting the said property shall be first discharged and perfected by the Vendors at their own expenses before the transaction. All rates and taxes up to the date of the transaction shall also be paid up by the Vendors, but all incomes and expenses after the purchase shall be handled by the Purchaser and shall not be concerned with the Vendors.

7. The expenses for this Agreement and the application for the sale and purchase shall be borne by the parties in equal half shares. But the cost for the transaction and fees for the registration of the transfer of ownership shall be paid by the Purchaser. 10

8. If this sale and purchase shall not be granted by the Governor's House, then this Agreement is considered annulled and the money deposited shall be recovered by the Purchaser in full.

Dated the 28th day of December 18th year of Showa, the 32nd year of the Chinese Republic.

Vendors : CHEUNG LAN CHOW's attorney HO PING FAI (signed and chopped)

CHU YAM YIM (signed and chopped)

LEUNG SAI FOON (signed and chopped)

Purchaser : TAM TOI HING (signed and chopped) 20

Witnessed Lawyer :

I hereby certify the foregoing to be the true translation of the Chinese document marked "A."

(Sgd.) HU WA YUN,
Court Translator.
2.1.51.



Plaintiff's Exhibit P.6—Translation from Chinese—Mortgage for M.Y.35,000 by Cheung Lan Chau, Chu Yam Om and Leung Sai Foon to Tam Toi Hing of No. 1 Oaklands Path registered as Remaining Portion and Section A of Inland Lot No. 2182.

Exhibits.
—
Plaintiff's Exhibits.
—

MORTGAGE OF HOUSE.

Mortgagor : Cheung Lan Chau, Chu Yam Yim and Leung Sai Foon of No. 1 Oakland Path (hereinafter referred to as " A ").
Mortgagee : Tam Toi Hing of No. 8 Kennedy Road, Hong Kong (hereinafter referred to as " B ").

P.6.
Translation from Chinese—Mortgage for M.Y.35,000 by Cheung Lan Chau, Chu Yam Om and Leung Sai Foon to Tam Toi Hing of No. 1 Oaklands Path registered as Remaining Portion and Section A of Inland Lot No. 2182, 30th December 1943.

10 WHEREAS A, being ordered by the Governor's order to repay within a time limit the sum of \$120,000 Hongkong currency borrowed upon a previous mortgage from the Hong Kong and Shanghai Banking Corporation and \$25,000 (Hongkong currency) from the Missions Etrangeres De Paris (French Missions) is willing to mortgage the property hereinafter mentioned to B as security for the loan of Military Yen 35,000 to be used for the purpose of paying off the abovementioned mortgage debts, and B is willing to accede to such request therefore both parties agree to make this mortgage deed which particulars as set out below :—

1. Total amount of the loan : Military Yen 35,000 only.
2. Term of mortgage : From the date of signing this deed to the 20 30th December in the 23rd Showa year (37th year of the Chinese Republic) that is for a term of 5 years and on the date of expiration of the term A shall pay off the principal and interest of the mortgage loan.

3. The agreed amount of interest : Interest shall be .5% per month calculated on sola calendar of 12 months and payable monthly. It is stipulated that if A shall make payment off within 2 years after this mortgage, (then A) shall pay interest for the full period of 5 years, but if A shall after 2 years give one month's previous notice to pay off the principal then the interest shall be calculated up to the date of payment off only.

30 4. Property mortgaged : The house (known as) No. 1 Oakland Path registered in the Governor's House Registration Office as " Hongkong No. 4113 " and a piece of land registered in the Hongkong Land Office as Inland Lot No. 2182, R.P. and Section A together with all the buildings and appurtenances thereon and the front and back rights of way drains and all the rights and privileges appertaining to the house and piece of land (hereinafter referred to as " the said property ").

5. If, when the time for repayment falls due, A cannot carry out the terms of this deed and B allows (this loan) to be on a monthly basis, then A shall continue to pay interest at the abovementioned rate without 40 default and deduction.

6. At any time after the expiration of the term of the mortgage, if A desires to pay off the principal and interest, or if B desires to call in the principal and interest, it is required for both parties to give 1 month's previous written notice to the other party demanding payment, but the notice must expire on the 30th day of each month.

Exhibits.
 Plaintiff's
Exhibits.
 P.6.
 Translation
 from
 Chinese—
 Mortgage
 for
 M.Y.35,000
 by Cheung
 Lan Chau,
 Chu Yam
 Om and
 Leung Sai
 Foon to
 Tam Toi
 Hing of
 No. 1
 Oaklands
 Path
 registered
 as
 Remaining
 Portion
 and
 Section A
 of Inland
 Lot
 No. 2182,
 30th
 December
 1943,
continued.

7. When A repays the principal and interest, B shall execute a re-assignment (or cancellation of mortgage) and also return all deeds and documents (which have been received by B) to A so as to vest the property back to A but all expenses in connection therewith shall be borne by back to A but all expenses in connection therewith shall be borne by A.

8. If A regularly pays his interest, B shall not interfere with A's right to collect the rent or management of the said property.

9. When the time comes either for the repayment of the principal or the payment of interest, and A fails to comply with the terms of this deed and shall be in default of such repayment or payment for 1 month, B has the power to enter into possession and manage the said property; and to apply the rent collected towards deduction of the principal and interest. If the said property becomes dilapidated or damaged B can repair the same, but the costs thereof shall be repaid by A and if A fails to repay, the same shall be included as part of the principal and shall bear interest at the abovementioned rate. 10

10. If B in pursuance to clause 6 hereof gives notice to A demanding repayment and A fails to comply with the demand B can at any time sell the whole property or any part thereof either by public auction or private contract as B may decide without obtaining A's consent, and B shall not be responsible for any loss in price in the sale; and at the sale, B has the power to sign and make all necessary deeds and documents on behalf of A who cannot object to the same, and any purchaser shall not be concerned as to the title but so far as B is concerned, there must be arrear of interest for more than 1 month, or (B) must have given 1 month's previous notice to A in accordance with clause 6 hereof before B can exercise this power of sale of the mortgaged property. After the sale, the buyer's responsibilities are at an end if he has obtained the receipt of the purchase price of the said property signed by B and he shall not inquire from B as to the application of such proceeds and if there are damages, the buyer shall not be responsible for the same. When B receives the proceeds of sale, he shall first apply the same towards payment of the costs and expenses incidental to the sale, then towards payment of the principal and interest, and the surplus (if any) shall be returned to A or the persons entitled to the same, but if the proceeds of sale are insufficient for payment of the costs and expenses of the sale and the principal and interest due, B still has the right to claim against A for the balance due and owing. 20 30

11. If during the continuance of this mortgage, if there is necessity for making other deeds and documents to prove that ownership of the property belongs to A, and at B's request A shall comply (with such request) and perfect the same at their own expenses. 40

12. If B considers that A's address is unknown B can send his notices by messenger to the said property and by leaving the same within the door thereof or having the same posted up at the said door, such notices (so served shall be considered) as having been delivered.

13. A shall insure the said property in an insurance company approved by B in their joint names and the amount to be insured shall be that as consented to by B and A shall pay the premium thereof

punctually and shall hand the receipts for such premiums to B for safe custody. If A fails to insure the said property, B has the right of insuring (the same) on his behalf and all expenses shall be included in the principal and shall bear interest monthly at the abovementioned rate.

Exhibits.
—
Plaintiff's Exhibits.
—

14. During the term of this mortgage, all the rates, taxes and other levies by the Government on the said property shall be borne by A and if A shall make default in payment of such taxes thereby causing B to suffer damage of whatever nature, then A shall make good such damages. But B shall have the power to pay on behalf of A and all sums so paid and costs thereto shall be treated as principal and shall carry interest monthly at the abovementioned rate.

P.6.
Translation
from
Chinese—
Mortgage
for
M.Y.35,000
by Cheung
Lan Chau,
Chu Yam
Om and
Leung Sai
Foon to
Tam Toi
Hing of
No. 1
Oaklands
Path
registered
as
Remaining
Portion
and
Section A
of Inland
Lot
No. 2182,
30th
December
1943,
continued.

15. If hereafter there are Government's orders prescribing procedures for mortgages, forms of contracts, registration, payments of stamp duty and all other regulations affecting the said property, then A shall comply with all of them and all expenses shall be borne by A.

16. All the fees for the deed shall be borne by A.

(1) In fact A has received from B the mortgage money of M.Y.35,000 only.

20 (2) In fact A has handed all the deeds and documents of this property to B.

(as numerated below)

The 30th day of December in the 18th year of Showa, the 32nd year of the Chinese Republic.

" A " :—CHEUNG LAN CHOW's attorney, HO PING FAI (signed and chopped).

CHU YAM YIM (signed and chopped).

LEUNG SAI FOON (signed and chopped).

" B " :—TAM TOI HING (signed and chopped).

Witness :—Lawyer, KAN YUET KEUNG (signed and chopped).

30 I hereby certify the foregoing to be the true translation of the Chinese document marked " M."

(Sgd.) HU WA YUN,
Court Translator.

2.1.51.



Exhibits. **Plaintiff's Exhibit P.7—Translation from Chinese of Receipt and Disbursement Account of Messrs. Tam Nga Si, Kan Yuet Keung, Hung Wai Chiu and Sze Yuk Ki, Solicitors.**

Plaintiff's Exhibits.

No. 1 OAKLANDS PATH, HONG KONG.

Receipt and Disbursement accounts.

P.7.
Translation from Chinese of Receipt and Disbursement Account of Messrs. Tam Nga Si, Kan Yuet Keung, Hung Wai Chiu and Sze Yuk Ki, Solicitors, 30th December 1943.

Received mortgage money from the mortgagee		Y35,000.00	
Paid for repayment of principal and interest to the liquidator of the Hong Kong and Shanghai Banking Corporation	Y25,308.97		
Paid for repayment of principal and interest to The Spanish Dominican Mission	7,000.00		10
Paid our office's expenses and disbursement	646.50		
Balance	2,044.53		
	<u>Y35,000.00</u>	<u>Y35,000.00</u>	

Dated the 30th day of December 18th year of Showa (1943).

Hereby received from the office of Tam Nga Si, Kan Yuet Keung, Hung Wai Chiu, Sze Yuk Ki, solicitors Military Yen Two thousand and forty four Yen and fifty three 20 sens. This is proof.

Dated the 30th day of December 18th year of Showa (1943).

(Japanese stamp)
(Ten sens (chopped))
(LEUNG SAI FOON)

Attorney of CHEUNG LAN CHAU sd. & chopped : HO PING FAI.
sd. & chopped : CHU YUM OM.
sd. & chopped : LEUNG SAI FOON.

I hereby certify the foregoing to be the true translation of the Chinese document marked "Ac."

(Sgd.) HU WA YUN,
Court Translator.

17.4.51.

Plaintiff's Exhibit P.8—Translation from Japanese—Power of Attorney from Cheung Lan Chau to Ho Ping Fai.

Exhibits.

Plaintiff's Exhibits.

POWER OF ATTORNEY

(1) CHEUNG LAN CHAU, maker of this Power of Attorney hereby appoint HO PING FAI of No. 57 Bonham Strand, 3rd floor, Hong Kong, to be my lawful Agent, and entrust her full power in relation to my share in the ownership of the house mentioned below :—

P.8.
Translation
from
Japanese—
Power of
Attorney
from
Cheung
Lan Chau
to Ho Ping
Fai, 5th
January
1944.

1. Location of house : One house (situated at) No. 1 Oakland Path, Hong Kong.
- 10 2. To settle all matters in relation to the abovementioned house.
3. To conclude contracts for Lease and Tenancy or to make rescission thereof, to collect rent, and to sign, chop and despatch all documents in relation to Lease and Tenancy.
4. To mortgage or to sell the abovementioned house. The Agent shall decide on the amount of mortgage, selling price, interest, expenses, etc., and shall also receive moneys, make refunds, payments, cancellations, and trusts etc.
5. To conclude or make application for rescission of contract when repairs or pulling down of the said house is necessary.
- 20 6. To pay up taxes and necessary expenses.
7. To appoint lawyer and pay for his expenses when it is necessary to take legal action in carrying out the abovementioned matters.
8. To carry out all matters ordered by the Authorities.
9. To appoint a Sub-Agent when necessary.

This is a Power of Attorney for future requirements.

Dated 5th January, Showa 19th Year (1944).

Address : Kwong Hing Tai Firm, No. 11 Wharf, Hoi Pong Street, Macau.

Occupation : School Teacher.

30 Age : 48 years.

Maker of Power of Attorney : CHEUNG LAN CHAU.
(signed and chopped).

Address : No. 57 Bonham Strand, 3rd floor, Hong Kong.

Occupation : Clerk, Sai Nam Middle School.

Age : 47 years.

Exhibits.

Plaintiff's Exhibits.

P.8.
Translation from Japanese—Power of Attorney from Cheung Lan Chau to Ho Ping Fai, 5th January 1944, *continued.*

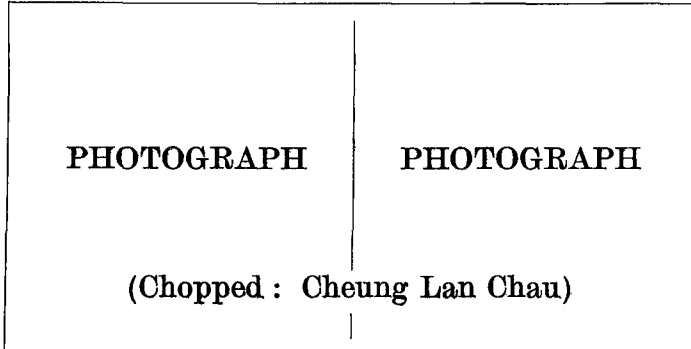
Agent : Ho PING FAI (signed and chopped).

Office : No. 50 Sun Ma Lo, 1st floor, Macau.

Occupation : Lawyer.

Witness : Jorge (signature illegible).

(Chopped : ADOLFO L. JORGE, Lawyer, Macau.)



10 sen Duty Stamp

I hereby certify the foregoing to be a true translation of the Japanese document Marked "K."

10

G. TONG.
15.7.50.

Court Translator.

P.9.
Translation from Japanese—Power of Attorney from Cheung Lan Chau to Ho Ping Fai, 5th January 1944.

Plaintiff's Exhibit P.9—Translation from Japanese—Power of Attorney from Cheung Lan Chau to Ho Ping Fai.

POWER OF ATTORNEY.

I hereby appoint Ho PING FAI to be my Agent and entrust her with the following power(s) :—

1. Power to administer, rent, sell, and arrange mortgage rights and to make cancellations thereof for the house situated at No. 1 Oakland 20 Path, Hong Kong, which is my property.

2. Registrations, Legal actions and other procedures with the Authorities in relation to the above matters.

The foregoing is a Power of Attorney.

Specimen of signature of the Agent is as shown below.

Dated 5th January, Showa 19th Year (1944).

Address : Kwong Hing Tai Firm, No. 11 Wharf, Hoi Pong Street, Macau.

Name : CHEUNG LAN CHAU (signed and chopped).

Witness : D. ADVOGADO.

ADOLFO L. JORGE.

(Chopped : ADOLFO L. JORGE, Lawyer, Macau.)

10

The following

Dated 5th January, Showa 19th Year (1944).

Exhibits.

Plaintiff's Exhibits.

P.9.

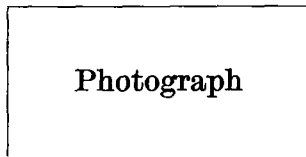
Translation from Japanese—Power of Attorney from Cheung Lan Chau to Ho Ping Fai, 5th January 1944,

• *continued.*

SPECIMEN OF SIGNATURE OF AGENT	
Registration No.	
Address :	No. 57 Bonham Strand, 3rd floor, Hongkong.
Name :	Ho Ping Fai.
Signature :	Ho Ping Fai (signed).
Chop :	Ho Ping Fai (chopped).

20

Photograph of Agent



Signed : D. ADVOGADO.

ADOLFO L. JORGE.

Chopped : CHEUNG LAN CHAU.

The foregoing is a copy.

Dated 17th February, Showa 19th Year (1944).

KAN YUET KEUNG (signed and chopped), Lawyer.

I hereby certify the foregoing to be a true translation of the Japanese document Marked "F".

(Sgd.) G. TONG,

Court Translator.

8.3.49.

30

Exhibits. Plaintiff's Exhibit P.10—Translation from Japanese—Contract for Sale and Purchase of
 No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A,
 by Cheung Lan Chau, Chu Yam Om and Leung Sai Foon to Li Tam Toi Hing
Plaintiff's Exhibits.

P.10.

Original.

Revenue Stamps Yen 6200.00.

Translation
 from
 Japanese—
 Contract
 for Sale
 and
 Purchase
 of No. 1
 Oaklands
 Path
 registered
 as Inland
 Lot
 No. 2182,
 Remaining
 Portion
 and
 Section A
 by Cheung
 Lan Chau,
 Chu Yam
 Om and
 Leung Sai
 Foon to
 Li Tam
 Toi Hing,
 17th
 February
 1944.

CONTRACT FOR SALE AND PURCHASE OF HOUSE

Vendors :—

Former Address : No. 1 Oaklands Path, Hongkong.

Present Address : (1) Kwong Hing Tai, No. 11 Wharf, Hoi Pong Street, Macau.

(2) No. 68 High Street, 1st Floor, Hongkong. 10

(3) No. 61 Bonham Strand, ground floor, Hongkong.

Names :

(1) Cheung Lan Chau.

(2) Chu Yum Om.

(3) Leung Sai Foon.

(hereinafter briefly referred to as " A ")

Purchasers :—

Address : No. 8 Kennedy Road, ground floor, Hongkong.

Name : Li Tam Toi Hing.

(hereinafter briefly referred to as ' B ')

Contract for sale and purchase of house is made as follows :—

20

1. ' A ' sells to ' B ' No. 1 Oaklands Path, Hongkong, which they own i.e. (the house) registered as Hongkong 4113 at the House Registry of the Government of the Occupied Territory of Hongkong, and the land registered as I.L. 2182, R.P. & S.A. at the former Hongkong Government, which is approximately 828 tsubo, and all buildings erected upon its surface. Designation of house is as in the sheet annexed.

2. The price of the above immovable property is decided to be Military Yen Sixty Two Thousand only, upon agreement by ' A ' and ' B '.

3. After the completion of the procedures for sale and purchase, ' B ' shall have the right of administration, usage, and all other rights in connection with the above immovable property, and shall be responsible for the payment of taxes and repairs etc. 30

4. This sale and purchase is done in a most legitimate manner, but if (in the future) any dispute should be made due to the incompleteness in the procedures, or due to the origin of the said immovable property not being clarified, or due to the dispute on the ownership of the former owner of the said immovable property, or due to the dispute of debt involving the said immovable property, ' A ' shall settle the same at his own expense, and ' B ' is not to be responsible therefor.

5. For the purpose of the registration of the transfer of ownership and other procedures, ' A ' shall subscribe his signature and affix his chop when necessary from time to time, for which ' B ' shall bear the expenses. 40

6. After the completion of sale and purchase, 'B' shall pay all taxes in respect of the said immovable property, and shall strictly observe the preceding articles. If 'B' should commit a breach thereof whereby causing 'A' any damage or loss, 'B' shall promptly make good the same.

The above having been contracted, two copies of the said contract are made of which each party is to hold one copy, and this contract is made to meet future (requirements).

17th February, Showa 19th Year (1944).

10 Vendors : HO PING FAI (signed and chopped),
agent for CHEUNG LAN CHAU.
CHU YUM OM (signed and chopped),
LEUNG SAI FOON (signed and chopped).

Purchaser : LI TAM TOI HING (signed and chopped).

Witness : KAN YUET KEUNG (signed and chopped).

Received : 18th February, Showa 19th Year.
No. 405 of 'transfer.'

20 Inspected : 6th March, Showa 19th Year.
House registry of the Government of the Occupied Territory
of Hongkong.

(chopped : SHIGEHISA).

I hereby certify the foregoing to be a true translation of the Japanese document Marked "A."

(Sgd.) G. TONG,
Court Translator.
8.3.49.

(Annexed Sheet)

Hongkong 4113.

Designation of house :—

30 Type of House : European Style.
Structure : Reinforced concrete.
Usage : School.
Number of Storeys : Three.
Area of each floor : 255.7 tsubo.
Type of Building annexed : one class-room.
Structure : Reinforced concrete.
Number of storeys : Two.
Area of each floor : 115.83 tsubo.

40 Chopped : HO PING FAI,
CHU YUM OM,
LEUNG SAI FOON,
LI TAM TOI HING.

I hereby certify the foregoing to be a true translation of the Japanese document Marked "A.1."

(Sgd.) G. TONG,
Court Translation.
8.3.49.

Exhibits.
—
Plaintiff's
Exhibits.
—

P.10.
Translation
from
Japanese—
Contract
for Sale
and
Purchase
of No. 1
Oaklands
Path
registered
as Inland
Lot
No. 2182,
Remaining
Portion
and
Section A,
by Cheung
Lan Chau,
Chu Yam,
Om and
Leung Sai
Foon to
Li Tam
Toi Hing,
17th
February
1944,
continued.

*Exhibits.**Plaintiff's Exhibits.*

P.11.

Translation from Japanese—Application for Registration of Sale and Purchase of No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A by Ho Ping Fai, Chu Yam Om and Leung Sai Foon to Li Tam Toi Hing, 17th February 1944.

Duplicate.

Plaintiff's Exhibit P.11—Translation from Japanese—Application for Registration of Sale and Purchase of No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A by Ho Ping Fai, Chu Yam Om and Leung Sai Foon to Li Tam Toi Hing.

APPLICATION FOR REGISTRATION OF SALE AND PURCHASE OF HOUSE.

1. Former Owner of house :—

Addresses :

Former Address : No. 1 Oakland Path, Hongkong.

Present Address : (1) Kwong Hing Tai Firm, No. 11 Wharf, Hoi Pong Street, Macau. 10

(2) No. 68 High Street, 1st floor, Hongkong.

(3) No. 61 Bonham Strand, ground floor, Hongkong.

Names : (1) Cheung Lan Chau,

(2) Chu Yum Om,

(3) Leung Sai Foon.

Nationality : Chinese.

2. New Owner of house :—

Address : No. 1 Oakland Path, Hong Kong.

Name : Li Tam Toi Hing. 20

Nationality : Chinese.

3. Location of house : No. 1 Oakland Path, Hong Kong.

4. Lot No. under former Hong Kong Government : I.L.2182, R.P. and Sec. A.

5. Registered No. at the House Registry of the Government of the Occupied Territory of Hong Kong : Hongkong No. 4113.

6. Area covered by house : 828 tsubo.

7. Type of house : European style.

Structure : Reinforced concrete.

Usage : School. 30

Number of storeys : Three.

Area of each floor : 255.7 tsubo.

8. Buildings annexed : One Classroom.

Structure : Reinforced concrete.

Usage : School.

Number of storeys : Two.

Area of each floor : 105.83 tsubo.

9. Reason for Registration and Date: Completion of Contract for Sale and Purchase. 17th February, Showa 19th Year (1944).

The Power of Attorney which is attached to the Application for Registration of Cancellation of Mortgage which was submitted is utilised. This is to apply for Registration of Sale and Purchase of the above-mentioned house.

Dated 17th February, Showa 19th Year (1944).

Vendors: HO PING FAI (signed and chopped),
Agent for CHEUNG LAN CHAU.

10 Address: No. 57 Bonham Strand, 3rd floor, Hongkong.
CHU YUM OM (signed and chopped).
LEUNG SAI FOON (signed and chopped).

Purchaser: LI TAM TOI HING (signed and chopped).
To Isogai Rensuke Esq., Governor of the Occupied Territory of Hong Kong.

Received: 18th February, Showa 19th year (1944).
No. 405 of 'transfer'.

Registered: Hongkong No. 4113.
Transfer of Ownership.

SALE AND PURCHASE OF ABOVE HOUSE REGISTERED.

20 Dated 6th March, Showa 19th year (1944).

House registry of the Government of the Occupied Territory of Hong Kong.

(Chopped: SHIGEMITSU).

(L.S.)

Registration fee Yen 310.00 received.

I hereby certify the foregoing to be a true translation of the Japanese document Marked "I."

(Sgd.) G. TONG,
Court Translator.

30

15.7.50.

Exhibits
Plaintiff's
Exhibits.

P.11.
Translation from Japanese—Application for Registration of Sale and Purchase of No. 1 Oaklands Path registered as Inland Lot No. 2182, Remaining Portion and Section A by Ho Ping Fai, Chu Yam Om and Leung Sai Foon to Li Tam Toi Hing, 17th February 1944, continued.

Exhibits. Plaintiff's Exhibit P.12—Translation from Japanese—Certificate for Sale of House No. 1
 Oakland Path, Inland Lot No. 2182, Remaining Portion and Section A, Vendors Ho Ping Fai,
 Chu Yam Om and Leung Sai Foon, Purchaser Li Tam Toi Hing.
 Plaintiff's Exhibits.

Original

P.12.
 Translation
 from
 Japanese—
 Certificate
 for Sale
 of House
 No. 1
 Oaklands
 Path,
 Inland Lot
 No. 2182,
 Remaining
 Portion
 and
 Section A,
 Vendors
 Ho Ping
 Fai, Chu
 Yam Om
 and Leung
 Sai Foon,
 Purchaser
 Li Tam
 Toi Hing,
 6th March
 1944.

CERTIFICATE FOR SALE OF HOUSE

1. Designation of house :—

Registered No. at the House Registry of the Government of the
 Occupied Territory of Hong Kong : Hongkong No. 4113.

Lot No. under former Hong Kong Government : I.L. 2182, R.P.
 and Sec. A. 10

Location of house : No. 1 Oakland Path, Hong Kong.

Type of house : European style.

Structure : Reinforced concrete.

Number of storeys : Three.

Area of each floor : 255·7 tsubo.

Building annexed : One classroom constructed of reinforced concrete.

Usage : school, number of storeys : Two, area of each floor : 105·83
 tsubo.

Consideration money of this sale : M.Y. 62,000-00 only.

The above-mentioned house had been my property and I have sold 20
 it to you at the price mentioned above the amount of which I have received
 in full. Should I myself or any other person make dispute I shall be solely
 responsible and will not cause you any trouble. This is a Certificate of
 Sale for future requirements.

Dated 17th February, Showa 19th Year (1944).

Former Address : No. 1 Oakland Path, Hong Kong.

Present Address : (1) Kwong Hing Tai Firm, No. 11 Wharf, Hoi
 Ping Street, Macau.

(2) No. 68 High Street, 1st floor, Hong Kong.

(3) No. 61 Bonham Strand, ground floor, Hong 30
 Kong.

Vendors : HO PING FAI (signed and chopped), Agent for CHEUNG
 LAN CHAU.

CHU YUM OM (signed and chopped).

LEUNG SAI FOON (signed and chopped).

Address : No. 8 Kennedy Road, ground floor, Hong Kong.

Purchaser : LI TAM TOI HING.

(Address of Ho Ping Fai, the Agent : No. 57 Bonham
 Strand, 3rd floor, Hong Kong.)

Received : 18th February, Showa 19th Year (1944).
No. 405 of ' transfer '.

Registered : Hongkong No. 4113.
Transfer of Ownership.

SALE AND PURCHASER OF ABOVE HOUSE REGISTERED

Dated 6th March, Showa 19th Year (1944).

House Registry of the Government of the Occupied Territory of
Hong Kong.

10

(L.S.)

(Chopped : SHIGEMITSU).

Registration fee Yen 310.00 received.

I hereby certify the foregoing to be a true translation of the
Japanese document Marked " J. "

(Sgd.) G. TONG,
Court Translator.
15.7.50.

*Exhibits.**Plaintiff's Exhibits.*

P.12.

Translation
from
Japanese—
Certificate
for Sale
of House
No. 1
Oaklands
Path,
Inland Lot
No. 2182
Remaining
Portion
and
Section A,
Vendors
Ho Ping
Fai, Chu
Yam Om
and Leung
Sai Foon,
Purchaser
Li Tam
Toi Hing,
6th March
1944,
continued.

**Plaintiff's Exhibit P.13—Translation from Chinese—Agreement for Sale and Purchase by
Cheung Lan Chau, Chu Yam Om and Leung Sai Foon to Li Tam Toi Hing of No. 1 Oaklands
Path registered as Remaining Portion and Section A of Inland Lot No. 2182.**

P.13.
Translation
from
Chinese—
Agreement
for Sale
and
Purchase
by Cheung
Lan Chau,
Chu Yam
Om and
Leung Sai
Foon to
Li Tam
Toi Hing
of No. 1
Oaklands
Path
registered
as
Remaining
Portion
and
Section A
of Inland
Lot
No. 2182,
17th
February
1944.

20

AGREEMENT FOR SALE AND PURCHASE OF HOUSE.

Vendors : Former address : No. 1 Oaklands Path, ' Sui Sing ' District,
Hong Kong.

Present address : (1) Cheung Lan Chau of No. 57 Bonham
Road ' Sui Sing ' District, 3rd Floor,
Hong Kong.

(2) Chu Yum Om of No. 68 High Street,
' Sui Sing ' District, 1st floor, Hong Kong.

(3) Leung Sai Foon of No. 61 Bonham Road,
' Sui Sing ' District, Ground floor, Hong
Kong.

30

(hereafter called " A ").

Purchaser : Li Tam Toi Hing of No. 8 Kennedy Road, Central District,
ground floor, Hong Kong.

(hereafter called " B ").

Agreement for Sale and Purchase is made as follows :—

1. " A " sells to " B " and " B " agrees to buy a house standing in
" A's " names situate at No. 1 Oaklands Path, ' Sui Sing ' District, Hong
Kong including both the building and a piece of land on which the house

Exhibits.
—
Plaintiff's
Exhibits.
—

P.13.
Translation
from
Chinese—
Agreement
for Sale
and
Purchase
by Cheung
Lan Chau,
Chu Yam
Om and
Leung Sai
Foon to
Li Tam
Toi Hing
of No. 1
Oaklands
Path
registered
as
Remaining
Portion
and
Section A
of Inland
Lot
No. 2182,
17th
February
1944,
continued.

stands registered in the House Registry of the Government of the Occupied Territory of Hong Kong as 'Hong' No. 4113 and also registered in the former Hong Kong Government as Section A and the Remaining Portion of Inland Lot No. 2182 (area : 828 tsubo) together with all legal rights and benefits pertaining to both the house and the land.

2. Both parties agree to fix the absolute sale price for the said property at the exact sum of Sixty two thousand Military Yen.

3. After the completion of the transaction the right of administration and use of the said property and all other rights and privileges together with all taxes and rates, repairs and all other obligations shall be of "B's" concern, and "A" shall have nothing to do with the same. 10

4. The sale of said property is definitely a proper dealing and all the procedures have been completed. Hereafter, in case of any doubt in the origin, incompleteness of procedures, complication in title or disputes of debts, "A" shall make good the same at their own expenses and the same shall have nothing to do with "B".

5. Regarding the procedures of registration of transfer of ownership, "A" shall, if required, sign all other necessary documents for better assurance and shall not be allowed to put up any excuse, but the expenses therefore shall be borne by "B". 20

6. After the completion of the sale, "B" shall pay all taxes and rates in respect of the said property and shall strictly observe all terms and conditions stated in the previous title deeds. If "B" commits a breach thereof, whereby causing "A" any loss or damage, "B" shall be responsible for the compensation to "A".

For the purpose of confirming the above-mentioned Agreement for Sale and Purchase this deed is specially made in duplicate for each party to hold a copy as proof.

Dated the 17th day of February, Showa 19th Year 33rd Year of the Chinese Republic. 30

"A": HO PING FAI, attorney for CHEUNG LAN CHAU (sgd. & chopped)
CHU YUM OM (sgd. & chopped)
LEUNG SAI FOON (sgd. & chopped)
"B": LI TAM TOI HING (sgd. & chopped)
Witness: KAN YUET KEUNG (sgd. & chopped)

I hereby certify the foregoing to be the true translation of the Chinese document marked "D/S."
(Sgd.) HU WA YUN, Court Translator. 40
20.4.51.

Plaintiff's Exhibit P.14—Translation from Chinese—Receipt for M.Y. 62,000, purchase price of No. 1 Oaklands Path, registered as Remaining Portion and Section A of Inland Lot No. 2182.

Exhibits.
—
Plaintiff's Exhibits.
—

Hereby received from Li Tam Shi alias Li Tam Toi Hing (who handed to us) the purchase price of No. 1 Oakland Path, M.Y.62,000 only This is proof.

P.14.
Translation from Chinese—
Receipt for M. Y. 62,000, purchase price of No. 1 Oaklands Path, registered as Remaining Portion and Section A of Inland Lot No. 2182, 17th February 1944.

19th year of Showa

Dated the 17th day of February 33rd year of the Chinese Republic.

Japanese Stamp (chopped)

10

HO PING FAI
CHU YAM YIM
LEUNG SAI FOON

(Sgd.) Ho Ping Fai, attorney of Cheung Lan Chow
(chopped : HO PING FAI).

(Sgd.) Chu Yam Yim (chopped : CHU YAM YIM).

(Sgd.) Leung Sai Foon (chopped : LEUNG SAI FOON).

Witness : Lawyer Kan Yuet Keung (chopped : KAN YUET KEUNG).

I hereby certify the foregoing to be the true translation of the Chinese document marked "P."

20

(Sgd.) HU WA YUN,
Court Translator.
2.1.51.

Plaintiff's Exhibit P.15—Translation from Chinese—Tenancy Agreement from Li Tam Toi Hing to Leung Sai Foon.

P.15.
Translation from Chinese—
Tenancy Agreement from Li Tam Toi Hing to Leung Sai Foon, 1st March 1944.

TENANCY AGREEMENT.

Makers of this Letting of House and Land Agreement :—

Lessor : Li Tam Toi Hing residing at No. 8 Kennedy Road, Hong Kong.

30

Tenant : Sai Nam Middle School's Headmaster Leung Sai Foon residing at No. 61 Bonham Road, ground floor, Hong Kong.

The Tenant agrees to rent the house and ground specified below and agrees with the Lessor that both parties are willing to observe the conditions set out below :—

1. One house situate at No. 1 Oakland Path Hong Kong together with 2 pieces of land registered in the Land Office as Section A of Inland

Exhibits. Lot No. 2182 and Inland Lot No. 2182 R.P. and all other buildings and erections thereon including the garage, big parade ground and the newly erected classrooms.

Plaintiff's Exhibits.

P.15.
Translation
from
Chinese—
Tenancy
Agreement
from Li
Tam Toi
Hing to
Leung Sai
Foon,
1st March
1944,
continued.

2. The Tenant's object of taking (the premises) is to use the same as a school, and as he now admits and decides (that such is his object) he shall not during the continuance of the term change and use (the premises) for any other purpose. As to the buildings erections the Tenant shall keep them properly and satisfactorily. Regarding all the orders promulgated by the Government and the rules and bye-laws relating to sanitation, the Tenant shall observe them rigidly and if there (for breach of such orders rules and bye-laws) should be any fines or penalties involving the said house and land, the Tenant shall be responsible therefore. 10

3. During the continuance of the term, the Tenant shall not transfer or sublet the said premises or any part thereof to any one, but in the event of any change of the headmaster and/or any staff, such change shall not be considered as a transfer (of the said premises).

4. The term of the letting shall be for 3 years commencing from the 1st March in the 19th Showa year (33rd year of the Chinese Republic) to the 28th February in the 22nd Showa year (36th year of the Chinese Republic). At the expiration of the term, if the said house is still to be let out (by the Lessor) to others, then the Tenant shall have the first priority and a new agreement must be made by both parties. 20

5. It is agreed that for the first two years the monthly rental shall be M.Y.420 and for the 3rd year the monthly rental shall be a sum equivalent to interest at 0.8% per month on the then market value of the said whole property. The Tenant shall pay his rental once every six months in advance and shall not be in arrears.

6. (If) the roof and the wall of the said house crack and become danger, the same shall be repaired by the Lessor; if (however) the Lessor considers the work of construction (for the same) be so much that repair cannot be carried out (he) can notify the Tenant to have the tenancy agreement cancelled and the Tenant shall remove (from the said premises) forthwith and hand back the possession of the same without any claim. All other repairs whether inside or outside the premises shall be wholly carried out and paid by the Tenant. As to the original fittings and fixtures in the said house, the Tenant shall not alter them and (he) shall not within the boundary of the said house and land erect any buildings. If there is such to be done, the previous consent by the Lessor must be first obtained. 30

7. The tiles of the roof, walls, floor beams, doors, windows, varandahs' railings, staircases, locks, hinges, (windows/doors) hooks, glasses, wires, bath tubs, wash basins, water pipes, taps, water closets' apparatus, oven, sink etc., of and in the said house are all complete and furnished and the Tenant is responsible for upkeeping and maintaining the same. If the same is damaged or displaced, (the Tenant) shall according to an inventory, hand back all of (them) to the Lessor at the expiration of the tenancy. 40

8. The charges for water, electricity, gas and the deposits of them respectively shall be paid by the Tenant.

9. The house property tax (about M.Y.70.00 every season) and the land tax levied by the present government in respect of the said house and land shall be borne by the Lessor. If, in the future, there should be increase to the aforesaid taxes or other levies imposed by any new regulations, the Lessor shall except for the taxes as are levied in the days before such increase and addition, only pay (such increased or additional) taxes up to the limit of M.Y.20.00 per month and the amount thus exceeds the 20 dollars shall be borne by the Tenant himself.

10. If during the continuance of the term of this agreement, the said premises is requisitioned by the Government or by the Military authority, the period of such requisition shall still be regarded as (part) of the term of the tenancy, but as to the rental, if the said premises is wholly or only a part thereof is requisitioned so that the school cannot be continued, the same shall cease for payment till the (said premises) is not requisitioned ; then payment of rent shall be continued. But if at the expiration of such requisition and when (the said premises) is handed back to the Tenant for him to continue (his tenancy), because of the students being scattered and unable to assemble, then the rental in such school term shall be decreased as to both parties shall be expedient till the same shall be paid in full in the beginning of the next term. If only a part (of the premises) is requisitioned and that (such requisition) shall not hinder the carrying on of the school, the rental shall be decreased in proportion to the extent of the requisition. If only the garage is requisitioned, then the rental shall not be decreased. And if by the act of God, mishap, war or other accidents, the said premises is wholly damaged and cannot be used, then both parties can cancel this Agreement.

11. The Lessor or other persons holding permit issued by the Lessor can in certain reasonable times enter the said house to inspect and the Tenant shall not refuse.

12. If the Tenant fails to observe any of the above clauses the Lessor can forthwith terminate this tenancy agreement, and the Tenant shall forthwith remove and hand back the said house to the Lessor and shall indemnify (the Lessor) against all losses.

Dated the 1st day of March in the 19th year of Showa, in the 33rd year of the Chinese Republic.

Lessor : (sd. & chopped) LI TAM TOI HING.

Tenant : Sai Nam Middle School (chopped : SAI NAM MIDDLE SCHOOL).

Headmaster LEUNG SAI FOON (sd. & chopped).

40 Witness : Lawyer KAN YUET KEUNG (sd. & chopped).

I hereby certify the foregoing to be the true translation of the Chinese document marked " T."

(Sgd.) HU WA YUN
Court Translator.

2.1.51.

Exhibits.

Plaintiff's Exhibits.

P.15.

Translation from Chinese— Tenancy Agreement from Li Tam Toi Hing to Leung Sai Foon, 1st March 1944, *continued.*

Exhibits. **Plaintiff's Exhibit P.16—Translation from Chinese—Draft Letter from Li Tam Toi Hing to Sai Nam Middle School.**

Plaintiff's Exhibits.

(Draft)

P.16.

Translation from Chinese—Draft Letter from Li Tam Toi Hing to Sai Nam Middle School, February 1946.

For the perusal of the Administrative officer(s) of the Sai Nam Middle School :—

This is to state that your esteemed school in renting the whole building of the house No. 1 Oaklands Path, managed by us, has stipulated that from the 1st of March, this year, the monthly rent thereof shall be the standard sum computed at the rate of \$8.00 per \$1,000.00 per month according to the current price of this property. At present, the price of this property according to the present value (is) 320,000.00 Hong Kong Dollars. To calculate this (sum) by the monthly rate of \$8.00 per \$1,000.00, the monthly rent should be \$2,560.00. For this, this letter is submitted. Please tender the exact amount every month and obliged. This is written to you, meanwhile, to enquire after your welfare. 10

Words of landlord LI TAM TOI HING.

This letter was dispatched sometime in February in 1946.

I hereby certify the foregoing to be the true translation of the Chinese document marked "DR."

(Sgd.) HU WA YUN, 20
Court Translator.
9.5.51.

P.17.
Bundle of agreed Correspondence, Letters from Lo and Lo to Sai Nam Middle School, 25th May 1946 to 27th January 1949.

Plaintiff's Exhibit P.17—Bundle of agreed Correspondence, Letters from Lo and Lo to Sai Nam Middle School.

(Copy)

25th May, 1946.

The Principal,
Sai Nam School,
No. 1, Oakland Path.

Dear Sir,

Re : No. 1, Oaklands Path.

30

We shall be glad if you will kindly call on Mr. Li Koon Chun at the Bank of East Asia Ltd. with a view to settle the question of rental with regard to the above premises.

Yours faithfully,
(Sgd.) LO AND LO.

YKK : MB.

(Copy)

10th July, 1946.

Exhibits.

Plaintiff's Exhibits.

The Principal,
Sai Nam School,
No. 1, Oaklands Path.

P.17.
Bundle of
agreed
Corres-
pondence,
Letters
from Lo
and Lo
to Sai Nam
Middle
School,
25th May
1946 to
27th
January
1949,
continued.

Dear Sir,

Re : No. 1, Oaklands Path.

10 With reference to our letter to you of the 25th May, our client will be glad if you will make an offer as to the amount of rental you are prepared to pay in respect of the above premises. It must be remembered that no rent has been received by our client since the reoccupation and we feel that this matter should be settled without further delay.

Yours faithfully,
(Sgd.) LO AND LO.

YKK : MB.

(Copy)

9th Jan. 1947.

20 The Principal,
Sai Nam School,
No. 1, Oaklands Path.

Dear Sir,

Re : No. 1, Oaklands Path.

Our client, Mrs. Li Tam Toi Hing has instructed us to write once again with reference to the rental of the above premises. On our client's instructions, we have already written two letters to you dated the 25th May 1946, and 10th July 1946, respectively, but as yet no reply has been received from you either by our client or ourselves.

30 Having regard to the fact that no rent has been paid to our client ever since the reoccupation, it is fair to say that our client has been most patient in the matter. However, this matter must be settled and we are further instructed to ask you once again to make an offer as to the amount of rental you are prepared to pay.

Unless we hear from you within three days from the date hereof, we have instructions to apply to the Tenancy Tribunal for your eviction.

Yours faithfully,
(Sgd.) LO AND LO.

YKK : MB.

*Exhibits.**Plaintiff's Exhibits.*

P.17.

Bundle of
agreed
Corres-
pondence,
Letters
from Lo
and Lo
to Sai Nam
Middle
School,
25th May
1946 to
27th
January
1949,
continued.

Russ & Co.

Messrs. Lo. & Lo.

Dear Sirs,

Re : No. 1, Oaklands Path.

We have been consulted by the Director and other members of the Committee of the Sai Nam School with reference to your letter of the 9th January 1947.

If our instructions are correct, this School is a charity and the 10 registered owners are trustees only, and had no power of sale.

The property is subject to a Mortgage to The Hong Kong and Shanghai Banking Corporation, who are claiming repayment of the loan.

Having regard to the green ink entry on the Land Office Register, it appears to us that any application to the Tenancy Tribunal is prohibited by the Moratorium, and in any case we are instructed to say that our clients are not and never have been tenants either of your client, the registered owners, or any other person.

Yours faithfully,

RUSS & CO.

20

(Sgd.) F. H. LOSEBY.

(Copy)

16th Jan. 1947.

Messrs. Russ & Co.

6, Des Voeux Road, Central.

Dear Sirs,

Re : No. 1, Oaklands Path.

We beg to acknowledge the receipt of your letter of the 13th instant upon which we have obtained instructions from our client to reply thereto.

Our client is greatly surprised that your clients now seek to repudiate 30 the sale as your letter seems to indicate, on the pretext that the property was trust property and your clients were trustees and had no power to sell. The allegation is entirely untrue and your clients know fully well it is not true. It is merely an excuse on the part of your clients to repudiate what was in fact a perfectly bona fide, voluntary and legal transaction.

It is equally untrue for your clients to say that they are not and have never been tenants of our client. Soon after the completion of the sale, your clients entered into a tenancy agreement with our client and in pursuance of that agreement your clients have paid rent to our client regularly up to January, 1946. 40

Having regard to your clients' attitude in the matter, we feel that no useful purpose could be served by continuing this correspondence further and accordingly, we shall be obliged if you will let us know whether you have instructions to accept service of proceedings which our client intends to take against your clients.

Yours faithfully,

(Sgd.) LO AND LO.

YKK : MB.

(Copy)

Russ & Co.

Hong Kong,
29th January, 1947.*Exhibits.**Plaintiff's
Exhibits.*

Messrs. Lo & Lo.

P.17.
Bundle of
agreed
Corres-
pondence,
Letters
from Lo
and Lo
to Sai Nam
Middle
School,
25th May
1946 to
27th
January
1949,
continued.

Dear Sirs,

Re : No. 1, Oaklands Path.

We thank you for your letter of the 16th January 1947.

We think you have misread our letter. The school, as we informed you, is a charity, and we are acting for members of the Committee. There is no question of a pretext. On the facts, there was no other advice which we could give.

Until we know the persons against whom you intend to proceed, we are unable to undertake to accept service.

Yours faithfully,
(Sgd.) RUSS & CO.

YKK : MB.

(Copy)

15th December, 1948.

Messrs. Cheung Lan Chau (),
20 Chu Yam Om () and the Legal
Representatives of Leung Sai Fun (),
c/o Sai Nam School,
No. 1, Oaklands Path.

Dear Sirs,

Re : Inland Lot No. 2182.
No. 1, Oaklands Path.

During the Japanese occupation the above property was sold by you to our client, Madam Li Tam To Hing, free of incumbrances for the sum of Y62,000.00. In pursuance of the Land Transactions (Enemy Occupation) Ordinance 1948, we are now instructed by our client to call upon you to execute a confirmatory assignment of the above property in favour of our client and shall be obliged if you will let us know either directly or through your solicitors, who we understand are Messrs. Russ and Company, whether you are prepared to comply with our request.

We are instructed to inform you that unless you are prepared to confirm the assignment of the property to our client in the proper form, our instructions are to take proceedings against you with a view to applying to the Court for a declaration in which event you will be mulcted with costs.

Yours faithfully,
(Sgd.) LO AND LO.

40

YKK : MB.

Exhibits.
—
Plaintiff's Exhibits.
—
P.17.
Bundle of agreed Correspondence, Letters from Lo and Lo to Sai Nam Middle School, 25th May 1946 to 27th January 1949, *continued.*

Russ & Co.
Messrs. Lo & Lo,
Hong Kong.

(Copy)

Hong Kong,
22nd January, 1949.

Dear Sirs,

Re : No. 1, Oaklands Path—Inland Lot No. 2182.

We refer you to our correspondence on this matter.

Our attention has been drawn to an advertisement in the Chinese press in your name dated the 11th January, 1949. 10

Under these circumstances, we are now placing the matter before Counsel, and trust you will give us Notice of any steps you may take in this matter.

Yours faithfully,
(Sgd.) RUSS & CO.

(Copy)

26th January, 1949.

Messrs. Russ & Co.
Dear Sirs,

Re : No. 1, Oaklands Path. 20

In reply to your letter of the 22nd instant, we beg to inform you that we have instructions to take legal proceedings forthwith against the persons named in our notices in the Chinese Press recently and we shall be obliged if you will kindly let us know at once whether you are acting for any of these persons and whether you have instructions to accept service on their behalf.

Yours faithfully,
(Sgd.) LO AND LO.

YKK : MB.

(Copy)

30

Russ & Co.

Hong Kong,
27th January, 1949.

Messrs. Lo & Lo,
Hong Kong.

Dear Sirs,

Re : No. 1, Oaklands Path.

We thank you for your letter of the 26th January, 1949.

We have no instructions to act for the registered owners, but we are taking immediate steps to see if we can make it possible for you to effect 40 service on the survivors.

Yours faithfully,
(Sgd.) RUSS & CO.



Plaintiff's Exhibit P.18—Declaration of Trust by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau.

Exhibits.

Plaintiff's Exhibits.

TO ALL TO WHOM THESE PRESENTS SHALL COME WE, CHU YAM OM
(*Chinese characters*) LEUNG SAI FOON (*Chinese characters*) and CHEUNG
LAN CHAU (*Chinese characters*) all of Victoria in the Colony of
Hongkong Gentlemen SEND GREETING :—

P.18.
Declaration
of Trust
by Chu
Yam Om,
Leung Sai
Foon and
Cheung
Lan Chau,
12th
December
1932.

WHEREAS by an Assignment dated the tenth day of December One
thousand nine hundred and thirty two and made between The Hongkong
and Shanghai Banking Corporation (hereinafter referred to as "the
10 Bank") of the one part and ourselves of the other part and registered in
the Land Office by Memorial No. 135,092 in consideration of the sum of
One hundred and eighty thousand Dollars therein expressed to be paid
by us to the Bank the Bank did thereby assign unto us as joint tenants
All That piece or parcel of ground situate at Victoria aforesaid and
registered in the Land Office as Inland Lot Number Two thousand one
hundred and eighty two Together with the messuage erections and
building thereon now known as No. 1 Oaklands Path and the rights and
appurtenances thereto belonging for the residue then to come of the
term of Nine hundred and ninety nine years created therein by a Crown
20 Lease dated the Twentieth day of April One thousand nine hundred and
seventeen and made between His Majesty King George The Fifth of the
one part and Lau Iu Chung of the other part Subject to the payment of
the rent and to the performance and observance of the Lessee's covenants
therein reserved and contained AND WHEREAS by a Mortgage executed
on the same date as the said Assignment and made between ourselves
of the one part and the Bank of the other part and registered in the Land
Office by Memorial No. 135,093 in consideration of the Bank agreeing to
advance to us a sum not exceeding One hundred and twenty thousand
Dollars by way of overdrafts on current account we did thereby assign the
30 said premises unto the Bank by way of Mortgage to secure the repayment
to the Bank of the said sum of One hundred and twenty thousand Dollars
and all moneys which might at any time thereafter or from time to time
advanced by the Bank in respect of the said Mortgage together with
interest thereon as therein mentioned AND WHEREAS by another Mortgage
also executed on the same date as the said Assignment and made between
ourselves of the one part and The Procurator in Hongkong for the
Dominican Missions in the Far East of the other part and registered in
the Land Office by Memorial No. 135,094 in consideration of the sum of
Twenty five thousand Dollars thereby advanced by the said Procurator
40 in Hong Kong for the Dominican Missions in the Far East to us we did
thereby assign the said premises unto the said Procurator in Hongkong
for the Dominican Missions in the Far East by way of Second Mortgage
to secure the repayment of the said sum of Twenty five thousand Dollars
together with interest thereon at the time and in manner therein mentioned
AND WHEREAS the moneys with which we purchased the said premises
did not belong to us but were paid out of moneys belonging to the SIHNAN
COLLEGE (*Chinese characters*) now carrying on business at No. 1 Oaklands
Path Victoria aforesaid together with the monies advanced to us under
the said Mortgages as aforesaid as to One hundred and twenty thousand
50 Dollars by the Hongkong and Shanghai Banking Corporation by way of

Exhibits.
 ———
Plaintiff's
Exhibits.
 ———

P.18.
 Declaration
 of Trust
 by Chu
 Yam Om,
 Leung Sai
 Foon and
 Cheung
 Lan Chau,
 12th
 December
 1932,
continued.

overdraft and as to Twenty five thousand Dollars by the said Procurator in Hongkong for the Dominican Missions in the Far East AND we purchased the said premises not for our own use but as Trustees for and on behalf and for the use of the said Sihnan College NOW KNOW ALL MEN BY THESE PRESENTS that we and each of us DO HEREBY DECLARE that we and the survivors and survivor of us and the executors administrators of the last survivor shall stand possessed of the said premises and every part thereof and the income and profit thereof SUBJECT to the said Mortgages and the proceeds of sale thereof in case the said premises shall hereafter be sold or disposed of UPON TRUST for the said Sihnan College and that we and the survivors and survivor of us and the executors and administrators of such survivor shall not sell or remortgage or otherwise dispose of or deal with the said premises or any part thereof 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 Sihnan College AND WE AND EACH OF US DO HEREBY FURTHER DECLARE that any letter minute or memorandum signed the person for the time being registered in the Education Department as the Manager of the said Sihnan College and addressed to us or any of us shall be conclusive evidence of any such direction as aforesaid therein contained as to any act deed matter or thing required or authorised to be done performed executed or carried out in respect of or in connection with the said premises or any part thereof and also as to any appointment of new trustee or trustees for the said premises and that such direction shall be duly given effect to and carried out IN WITNESS whereof we the said Chu Yam Om, Leung Sai Foon and Cheung Lan Chau have hereunto set our hands and seals this twelfth day of December One thousand nine hundred and thirty-two. 10

SIGNED SEALED and DELIVERED by the
 said Chu Yam Om, Leung Sai Foon
 and Cheung Lan Chau in the presence
 of :—

}	(Sgd.) CHU YAM OM (L.S.)	30
	(Sgd.) LEUNG SAI FOON (L.S.)	
	(Sgd.) CHEUNG LAN CHAU (L.S.)	

(Sgd.) H. K. HUNG,
 Solicitor,
 Hong Kong.

Interpreted to the said Chu Yam Om,
 Leung Sai Foon and Cheung Lan Chau
 in the Chinese language by :—

(Sgd.) CHU KAM TIN,
 Clerk and Interpreter to Messrs. Deacons,
 Solicitors,
 Hongkong.

40



Plaintiff's Exhibit P.19—A Bundle of Letters from Lau Tak Po etc. to 1st and 3rd Defendants etc., 1944 and 1949.

Exhibits.

Plaintiff's Exhibits.

For the joint perusal of Messrs. (Cheung) Lan Chau and (Chu) Yam Om ;

10 This is to state that upon the perusal yesterday of a note inserted in the edition dated January the 11th this year of the Kung Sheung Daily News and the Wah Kiu Yat Po (circulating) in the Colony to the effect that Messrs. Lo & Lo, Solicitors, representing Li Tam Toi Hing, requesting you in the matter of Inland Lot No. 2182, that is, house No. 1 Oaklands Path, Hong Kong, that whereas you during the occupation period of the Colony on the 17th February 1944 had executed a deed in the Japanese language and sold the said property to Li Tam Toi Hing and whereas it was necessary to make a Confirmatory Deed of sale in the English language a notice was therefore published in the newspapers calling upon (you) to make a Confirmatory Deed at the office of Messrs. Lo & Lo, Solicitors on or before the 24th January 1949 without delay and so forth the Committee was greatly surprised.

P.19.
A Bundle
of Letters
from Lau
Tak Po
etc. to
1st and
3rd
Defendants
etc., 1944
and 1949.

20 I beg to submit that the right of ownership of the said house on the said Lot was acquired by our School with its money in 1932 for its permanent school premises. There of you were elected as representatives to subscribe signatures and a declaration was also made that the said house was bought by the School with its money. The right of ownership belongs to the School and the property does not belong to any private individuals.

30 Now it is inserted in the newspapers that you have during the occupation period of Hongkong sold the right of ownership of the said house to Li Tam Toi Hing. Of what has taken place in the past the Committee has had no knowledge at all. Upon the perusal of the newspapers a meeting was forthwith held on January 14th. A resolution was adopted to the effect that Inland Lot No. 2182, that is, house No. 1 Oaklands Path, Hong Kong, is the property acquired by the School itself as its permanent school premises and that prior to a notice being sent to you authorising you to do so you are requested not to complete any procedure regarding the said Lot. In connection with (such request) this letter is specially written to inform you hoping that you will take notice hereof and act accordingly for which (we) shall be grateful.

I beg to convey to you my best compliments of the season.

Written by : (Sgd.) LAU TAK PO,
Chairman of School Committee,
Sih Nan College,
Hong Kong.

40 Dated the 15th day of January, 38th year of the Republic of China (1949).

For the perusal of Mr. (Wong) Tat To :

I have read your letter dated December 29th and noted its contents. The Power of Attorney was signed and chopped by Mr. (Cheung) Lan

Exhibits.
 Plaintiff's
Exhibits.
 P.19.
 A Bundle
 of Letters
 from Lau
 Tak Po
 etc. to
 1st and
 3rd
 Defendants
 etc., 1944
 and 1949,
continued.

(Chau) himself in the presence of the Portuguese advocate Mr. Chor Chee Jee who was invited to bear witness and subscribe his signature to the same. It was forthwith sent back by post. When you have received it please notify me at once. This is my expectation. Mr. (Cheung) Lan (Chau) is staying here to recuperate himself. He engaged a doctor to give him injection. His health is making progress. Though he is still subject to stomach troubles, yet the numbness of his fingers has gradually diminished. This I specially include herein for your information.

Meanwhile I beg to enquire after your general welfare.

Written by 10
 Yours humbly,
 (Sgd.) YEUNG MIN,
 5.1.33. (1944)

(Envelope)

For

Mr. Wong Tat To to open
 care of

China Book Store,
 No. 77 Hollywood Road,
 Hong Kong.

20

From Yeung Min, a Chinese,

Correspondence chop of Kwong Hing Tai
 Firecrackers Dealers Firm, Macao,
 Office at the Praya of Macao, Telephone No. 834.
 Factory at Tum Chai, Telephone No. 2846.

For the perusal of Mr. (Yeung) Min,

This is to state that I have duly noted the contents of your letter dated January the 5th. I have also received a Power of Attorney enclosed therewith.

The mortgage monies due have been properly paid off on the due date. But it is necessary to wait for the Power of Attorney to be sent back before (the payment) could be deemed as being properly made, because the said Bank upon the receipt of money due for mortgage would not accept payment at random from any person, but would accept payment from the original person who had actually borrowed the money in the past. The proper procedure is for the original person to repay the money today and then he could get back the original deeds. Why I have urgently requested you to complete the procedure at an early date is also because of that. 30

Now although the said Bank has properly dealt with (the matter) yet no definite arrangement has ever been made with the new money lender. At present (we) are waiting to see whether the application for permission to sell (the property) is approved or not. If permission is not granted then (the property) would be re-mortgaged. Such was the arrangement arrived at the other day. Besides the disposal of (the property) was not intended at the beginning. It was only resorted to on account of all kinds of difficulties and reasons. When all procedures are completed I will inform you in details.

- 10 I learn that Madam (Ho) Ping Fai has applied for a travel permit to return to the village. I wonder if she has got it.

All persons in Hong Kong including myself are very well. Please do not worry about me.

Meanwhile I beg to enquire after your welfare.

Submitted by

Yours humbly,

(Sgd.) (WONG) TAT TO,

January 11 (1944).

For the perusal of Mr. (Wong) Tat (To) :

- 20 I have received from you two letters dated the 27th and the 29th day of February (1944) and noted their contents. The Power of Attorney was sent back on the 1st day of March. I trust you have duly received it. With reference to the supply of specimen signature card for the House Registration Office which was omitted in the past I have not Mr. (Cheung) Lan (Chau)'s signature and enclosed (the card) in this letter which please receive and check.

Mr. (Cheung) Lan (Chau)'s health is slightly improved. I am also keeping in good health. Please do not worry about me.

- 30 I have received letters from my son Hiu and Ching Leung and noted their contents. Please tell them of this.

All commodities here are very dear. As the price for rice is very high it is difficult to solve the problem of living costs. The fried rice cakes you give me some time ago I could only use for my morning meals. Even that I have already finished them long ago.

I learn from my aunt that Mr. Wai has returned to Hong Kong. I wonder if you have seen him yet. How the vessels on both the Hongkong-Macao and the Canton-Macao lines run once every eight days according to schedule. For instance, when any ship comes on the 7th day the

Exhibits.

Plaintiff's Exhibits.

P.19.

A Bundle of Letters from Lau Tak Po

etc. to 1st and

3rd

Defendants

etc., 1944

and 1949,

continued.

Exhibits. next ship will call on the 15th day. When you go out later on to collect
Plaintiff's Exhibits. outstanding accounts you must pay particular attention to the sailing
 schedules of the vessels. Or you may apply for permission to travel for
 a longer time so as to avoid staying beyond the time allowed. I avail
 myself of this opportunity to inform you of this.

P.19.
 A Bundle
 of Letters
 from Lau
 Tak Po
 etc. to
 1st and
 3rd
 Defendants
 etc., 1944
 and 1949,
continued.

Meanwhile I beg to enquire after your welfare.

Submitted by

Yours faithfully,

(Sgd.) (YEUNG) MIN,

10.3.33 (1944). 10

(Envelope)

Mr. Wong Tat To to receive and open,
 care of
 China Book Store,
 No. 77 Hollywood Road,
 Hong Kong.

From Yeung Min, a Chinese.

Correspondence Chop of Kwong Hing Tai

Firecrackers Dealers Firm, Macao.

Office at the Praya of Macao, Telephone No. 854.

Factory at Tum Chai, Telephone No. 2846.

20

Sd. W. K. THOMSON

Folio.....

Folio..... Exhibits.

INLAND LOT	LOCALITY	MEASUREMENTS				ANNUAL RENTAL	COMMENCEMENT OF TERM	TERM OF YEARS	DATE OF EXECUTION OF LEASE	DATE FOR PAYMENT OF FIRST HALF-YEAR'S RENT	LEASE EXECUTED			
		N.	S. (vide plan on Lease)	E.	W.						On the Part of the Crown	Lessee		
No. 2182.	Babington Path				Content Square Feet 29812	\$ 32 c. 00	25 June 1862	999	20 April 1917	24 June 1917	By Sir Francis Henry May, K.C.M.G., LL.D.	By Lau Iu Chung		
LEASEHOLDER	DEED REGISTERED			REMARKS	SUB-ASSIGNMENTS									
	No. of Memorial	Date of Deed	Date of Registry		No. of Memorial	Date of Deed	Date of Registry	Nature of Deed or Document	To Whom Given	Amount of Consideration	Rate of Interest or Rental	No. of Memorial or Re-assignment or Satisfaction	Date of Re-assignment of Satisfaction	Date of Registry
Lau Iu Chung Li Shun Fan	Refer to Vol. LX XXV folio 73	25 April 1924	30 April 1924	Sold under Powers of Mortgage No. 80340 Sd. W. K. THOMSON	65430	18 May 1918	28 May 1918	Mortgage	The Credit Foncier D'Extreme Orient	\$25,000	\$8 % per ann.	66608	18 October 1918	21 October 1918 Reassigned
					70269	29th December 1919	5th January 1920	Mortgage	Sir Catchick Paul Chater, Kt., C.M.G. and The Hon. Mr. Ernest Hamilton Sharp	\$32,000	\$12 per mil per month	72394	31st August 1920	2nd September 1920 Reassigned
					70273	5th January 1920	6th January 1920	Second Mortgage	Tang Man Hi	\$10,000	\$17 per mil per month	72393	31st August 1920	2nd September 1920 Satisfied
					72395	31st August 1920	2nd September 1920	Mortgage	Fung Pok Om	\$70,000	\$10 50c. per mil per Chinese lunar month	80339	27th July 1922	28th July 1922 Reassigned
					73701	30th December 1920	6th January 1921	2nd Mortgage	Porphyrio Maria Nolasco da Silva	\$30,000	\$15 per mil per lunar mth.	80338	27th July 1922	28th July 1922 Satisfied
					73702	31st December 1920	6th January 1921	Mortgage of Mortgage Memorial No. 73701	Cheung Yuen	\$25,000	\$15 per mil per lunar mth.	80337	27th July 1922	28th July 1922 Satisfied
					78386	19th January 1922	20th January 1921	Third Mortgage	Lo Luk	\$3,000	\$15 per mil per lunar month	80336	27th July 1922	28th July 1922 Satisfied
					79174	24th April 1922	25th April 1922	Equitable Charge	Carlos Augusto Da Roza	\$3,000	\$12 % per annum	80335	27th July 1922	28th July 1922 Satisfied
					80340	27th July 1922	28th July 1922	Mortgage	The Banque de L'Indo Chine	Banking facilities not exceeding \$120,000 vide memorial				
					82360	22 December 1922	5th January 1923	Second Mortgage	William Joseph Carroll	\$30,000	2 % per cal. month Repayable by instalments vide memorial			
					83197 (Intd.)	23rd February 1923 F. E.	26th February 1923	Equitable Charge	Lau Fung She, Lau Wong She, Lau Wing Chung & Lau Iu Chung	\$25,000	10 % p.a.			
					84177	25 April 1923	2 May 1923	Equitable Charge	Lo Shi	\$25,000	\$13 % p.a.			
					84650	28 May 1923	29 May 1923	(Equitable Charge (subject to Memorials Nos. 80340, 82360, 83197 & 84177))	The Luen Mow Steamship Co. Ltd. & Chau Lim Sang	\$30,000	\$15 per mil p. C. m.			
					85356	28 June 1923	29 June 1923	(Mortgage (subject to 80340, 82360, 83917, 84177 & 84650))	Chau Tsing Chuen	\$20,000	\$12 per mil p. C. m.			
85438	4 July 1923	5 July 1923	(Mortgage (subject to 80340, 82360, 85365, 83917, 84177 & 84650))	Li Shun Fan	\$107,000	\$10 per mil p. m.								
88856	13 December 1923	15 December 1923	(Mortgage (subject to 80340, 82360, 83917, 84177, 84650, 85356 & 85438))	Lau Fung Sze, Lau Wong Sze, Lau Wing Chung & Lau Iu Chung	\$93,000	\$10 % p.a.								
91309	26 April 1924	30 April 1924	Mortgage	Kwik Djoen Eng	\$180,000	\$9 p. mil p. C. m.								
91310	26 April 1924	30 April 1924	Further Charge	Kwik Djoen Eng	\$30,000	\$15 p. mil p. C. m.								

Property Sold under power of Sale in Mortgage 80340 vide Contra.

Note : Vide Order Memor. No. 100879 regd. Vol. LXXXV folio 73

Sd. W. K. THOMSON

P.20.
Certified Copy of Land Office Register of Inland Lot No. 2182, 16th April 1951.

INLAND LOT	LOCALITY	MEASUREMENTS				ANNUAL RENTAL	COMMENCEMENT OF TERM	TERM OF YEARS	DATE OF EXECUTION OF LEASE	DATE FOR PAYMENT OF FIRST HALF-YEAR'S RENT	LEASE EXECUTED			
		N.	S.	E.	W.						Content Square Feet	\$	c.	On the Part of the Crown
No. 2182.		—	—	—	—	—	—	—	—	By	By			
LEASEHOLDER	DEED REGISTERED			REMARKS	SUB-ASSIGNMENTS									
	No. of Memorial	Date of Deed	Date of Registry		No. of Memorial	Date of Deed	Date of Registry	Nature of Deed or Document	To Whom Given	Amount of Consideration	Rate of Interest or Rental	No. of Memorial or Re-assignment or Satisfaction	Date of Re-assignment of Satisfaction	Date of Registry
Li Shun Fan					98070	5 July 1924	27 August 1925	Agreement for sale of Section A	Yu To Sang	\$84,000	\$10,000 Deposit paid			
Kwik Djoen Eng	104622	11 Feb. 1927	14 March 1927	Foreclosure Order	100879	1 May 1926	4 May 1926	Order in O.J. Miscellaneous Proceedings No. 3 of 1926	Kwik Djoen Eng					
Chu Yam Om, Leung Sai Foon & Cheung Lan Chau (J.Ts.)	135092	10.12.32	13.12.32		105430	25 May 1927	25 May 1927	Mortgage to secure Banking facilities	The Nederlandsch Indische Handelsbank	pt. extent \$700,000	—	110178	2 May 1928	4 May 1928 Reassigned
					110220	8 May 1928	9 May 1928	Mortgage to secure Banking facilities	The Hong Kong & Shanghai Banking Corporation	extent \$150,000	(vide 135092 contra)			
(Chinese Characters) (Li Tam Toy Hing)	(*) 4113	17 Feb. 1944	6 March 1944	(No. 1 Oakland's Path) (Intd.) C. D. A. C., L.O.	129944	28 Jany 1932	16 Feb. 1932	2nd Mortgage	Charles Samuel Martin	\$50,000				2 March 1944 Reassigned. Discharged by payment to Liquidators
					135093	10.12.32	13.12.32	Mortgage	The H. K. & S'hai Banking Cpn.	\$120,000	\$6% p.a.	* 4113	11 January 1944	
					135094	Do.	Do.	2nd Mortgage	The Procureur in H. K. for the Dominion Missions in the Far East	\$25,000	\$8% p.a.	* 4113	30 December 1943	2 March 1944 Satisfied (Intd.) C. D. A. C. L.O.
					175624	28 Dec. 1946	3 Jan. 1947	Statutory Declaration by John Alexander Duke Morrison as to the discharge of mortgage Mem. 135093 supra during the Japanese occupation.						
					198420	15 June 1950	16 June 1950	Lis Pendens in O. J. Action No. 193 of 1949	Li Tam Toi Hing (Plaintiff)					Chu Yam Om, Leung Sai Foon & Cheung Lan Chau (Defendants)

* Chinese Characters appear here.

P.20. Certified Copy of Land Office Register of Inland Lot No. 2182, 16th April 1951, continued.

Plaintiff's Exhibit P.21—Original Assignment by Hongkong and Shanghai Banking Corporation to Chu Yam Om, Leung Sai Foon and Cheung Lan Chau of Inland Lot No. 2182.

Exhibits.

Plaintiff's Exhibits.

Hong
Kong
Stamp
Office.
1,800.00
Dollars.

I certify that the sum of \$1,800.00 has been paid in respect of Assignment Duty.

W. J. LAINE,
p. Collector of Stamp Revenue.
13/12/32.

P.21.
Original Assignment by Hongkong and Shanghai Banking Corporation to Chu Yam Om, Leung Sai Foon and Cheung Lan Chau of Inland Lot No. 2182, 10th December 1932.

THIS INDENTURE made the tenth day of December One thousand nine hundred and thirty two Between THE HONGKONG AND SHANGHAI BANKING CORPORATION whose Head Office is situate at No. 1 Queen's Road Central Victoria in the Colony of Hong Kong (hereinafter called "the Vendors") of the one part and CHU YAM OM (*Chinese characters*) LEUNG SAI FOON (*Chinese characters*) and CHEUNG LAN CHAU (*Chinese characters*) all of Victoria aforesaid Gentlemen (who and the survivors and survivor of whom and the executors and administrators of the last survivor their or his assigns are where not inapplicable hereinafter included under the designation "the Purchasers") of the other part WHEREAS by a Mortgage dated the Eighth day of May One thousand nine hundred and twenty eight and made between one Kwik Djoen Eng (therein and hereinafter referred to as "the Mortgagor") of the first part Kiem Tjiang Han Firm (therein and hereinafter referred to as "the Requesting Parties") of the second part and the Vendors of the third part and registered in the Land Office by Memorial No. 110220 in consideration of the Vendors' granting at the request of the Mortgagor Banking Facilities to the Requesting Parties as therein mentioned the Mortgagor did thereby assign unto the Vendors the premises hereinafter more particularly described by way of Mortgage to secure the due payment of all moneys in the said Mortgage more particularly mentioned and covenanted by the Mortgagor and the Requesting Parties jointly and severally to be paid to the Vendors in respect of the said Banking Facilities Subject to the proviso for redemption therein contained and it was by the said Mortgage provided and declared that the Vendors might at any time or times thereafter without any further consent on the part of the Mortgagor or of any other person and whether in possession or not sell the said premises therein expressed to be thereby assigned or for the time being subject to the security or any part or parts thereof either together or in parcels and either by public auction or private contract or partly by public auction and partly by private contract with power upon such sale to make any stipuation as to title or evidence or commencement of title or otherwise which the Vendors should deem proper AND ALSO with power to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby AND for the purposes aforesaid to enter into such contracts stipulations and agreements and to execute and do all assurances and things as might be deemed expedient or necessary PROVIDED ALWAYS that the Vendors should not exercise the said power of sale until they should have previously made a demand upon the Mortgagor and/or the Requesting Parties for payment of moneys payable by the Mortgagor and/or the Requesting Parties under the reciting presents as aforesaid and default should have been made in such payment or any part thereof for the space of One calendar month or unless or until there should be default in payment

Exhibits.
 ———
Plaintiff's
Exhibits.
 ———

P.21.
 Original
 Assign-
 ment by
 Hongkong
 and
 Shanghai
 Banking
 Corporation
 to Chu
 Yatt Om,
 Leung
 Sai Foon
 and
 Chetung
 Lan Chan
 of Inland
 Lot
 No. 2182,
 10th
 December
 1932,
continued.

of any interest payable thereunder upon demand or until default shall be made in payment of any Crown rent or in performance of any of the covenants or conditions reserved by and contained in the Crown Lease therein mentioned or in performance of the covenants in such Crown Lease contained and it was further agreed and declared that upon any sale purporting to be made in pursuance of the aforesaid powers in that behalf the purchasers should not be bound to see or enquire whether any default had been made in payment of any principal money or interest intended to be secured by the reciting Mortgage at the time therein appointed for payment thereof or whether any money should remain owing on the security 10 of the reciting presents or as to the propriety or regularity of such sale nor whether any demand had been made in writing to the Mortgagor and/or to the Requesting Parties in manner provided by the reciting Mortgage AND notwithstanding any impropriety or irregularity in such sale the same should as far as regarded the safety and protection of the purchasers be deemed to be within the aforesaid powers in that behalf and be valid and effectual accordingly AND it was further declared that the receipt of the Vendors for the purchase money of the premises sold or of any part thereof should effectually discharge the purchasers therefrom and from 20 being concerned to see to the application or being answerable for any loss non-application or mis-application thereof AND WHEREAS a considerable sum of money exceeding One Hundred and Fifty thousand dollars remains owing under the said Mortgage AND WHEREAS default has been made by the Mortgagor and the Requesting Parties in payment of the moneys owing on the security of the said Mortgage and the Vendors as such Mortgagees as aforesaid and in exercise of the power of sale contained in the said Mortgage have agreed with the Purchasers for the sale of the said premises to the Purchasers for the sum of One hundred and eighty thousand dollars NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of ONE HUNDRED 30 AND EIGHTY THOUSAND DOLLARS now paid by the Purchasers to the Vendors (the receipt of which the Vendors hereby acknowledge) the Vendors in exercise of the aforesaid power of sale and of every other power them enabling do hereby assign unto the Purchasers ALL THAT piece or parcel of ground situate at Victoria in the Colony of Hong Kong and registered in the Land Office as Inland Lot Number Two thousand one hundred and eighty-two TOGETHER with all the messuages erections and other buildings thereon now known as No. 1 Oakland Path and all rights rights of way (if any) privileges easements and appurtenances thereto belonging or appertaining or therewith at any time used held occupied or enjoyed 40 AND ALL the estate right title and interest property claim and demand of the Vendors in and to all the said hereby assigned premises EXCEPT AND RESERVED as in the said Crown Lease is excepted and reserved TO HOLD the premises hereby assigned unto the Purchasers as joint tenants for the residue now to come of the term of NINE HUNDRED AND NINETY NINE YEARS created in the said premises by a Crown Lease dated the Twentieth day of April One thousand nine hundred and seventeen and made between His Majesty King George The Fifth of the one part and Lau Iu Chung of the other part SUBJECT to the payment of the rent and to the performance and observance of the Lessee's covenants and conditions 50 in the said Crown Lease reserved and contained But freed and absolutely discharged of and from all equity of redemption subsisting under the said

Mortgage and of and from all principal and interest and other monies by the said Mortgage secured AND the Vendors hereby covenant with the Purchasers that they the Vendors have not done omitted or knowingly suffered any act deed matter or thing whereby or by means whereof the premises hereby assigned or any part or parts thereof now are or is or can or shall or may be impeached charged affected or encumbered in title estate or otherwise howsoever AND the Purchasers with the object and intention of affording to the Vendors a full and sufficient indemnity but not further or otherwise hereby covenant with the Vendors that the

10 Purchasers will at all times hereafter during the said term pay the rent and perform and observe all the Lessee's covenants in the said Crown Lease reserved and contained and will indemnify the Vendors against the non-payment of the said rent and the non-performance or non-observance of the said covenants and conditions IN WITNESS whereof the Vendors have hereunto caused their Common Seal to be affixed and one of their Directors and their Chief Manager have hereunto set their hands and the Purchasers have hereunto set their hands and seals the day and year first above written.

Exhibits.
Plaintiff's Exhibits.
 P.21.
 Original Assignment by Hongkong and Shanghai Banking Corporation to Chu Yam Om, Leung Sai Foon and Cheung Lan Chau of Inland Lot No. 2182, 10th December 1932, *continued.*

20 SEALED with the Common Seal of the Vendors and SIGNED by William Henry Bell one of their Directors and Vandeleur Molyneux Grayburn their Chief Manager in the presence of:—

W. H. BELL.
 V. M. GRAYBURN.

H. S. VALENTINE MOSSOF,
 Solicitor,
 Hong Kong.

SIGNED SEALED and DELIVERED by the Purchasers in the presence of:—

CHU YAM OM.
 LEUNG SAI FOON.
 CHEUNG LAN CHAU.

30 H. K. HUNG,
 Solicitor,
 Hong Kong.

INTERPRETED to the Purchasers in the Chinese language by:—

CHU KAM TIN,
 Clerk and Interpreter to Messrs. Deacons,
 Solicitors, &c.,
 Hong Kong.

40 RECEIVED of and from the Purchasers the sum of ONE HUNDRED AND EIGHTY THOUSAND DOLLARS being the consideration money above expressed to be paid by the Purchasers to the Vendors. } \$180,000 : 00

Witness:—

H. S. VALENTINE MOSSOF.

W. H. BELL.
 V. M. GRAYBURN.

*Exhibits.**Plaintiff's Exhibits.*

P.21.
Original
Assign-
ment by
Hongkong
and
Shanghai
Banking
Corporation
to Chu
Yam Om,
Leung Sai
Foon and
Cheung
Lan Chau
of Inland
Lot
No. 2182,
10th
December
1932,
continued.

[*By endorsement*]

Dated 10th December 1932.

HONGKONG & SHANGHAI BANKING
CORPORATION

to

CHU YAM OM and OTHERS.

ASSIGNMENT

of

Inland Lot No. 2182 situate at Victoria
in the Colony of Hongkong in con-
sideration of \$180,000 : 00. 10Registered at the Land Office by Memorial
No. 135,092 on Tuesday the Thirteenth
day of December 1932, at 3 p.m.

? ? ?

Land Officer.

(Sgd.) JOHNSON, STOKES AND MASTER,
DEACONS,
Solicitors,23 fos. Hongkong. 20
Cs. xd.
H. W. H.

P.22.
Mortgage
for
\$120,000.00
of Inland
Lot
No. 2182
by Chu
Yam Om,
Leung Sai
Foon and
Cheung
Lan Chau
to Hong-
kong and
Shanghai
Banking
Corpora-
tion, 10th
December
1932.

Plaintiff's Exhibit P.22—Mortgage for \$120,000.00 of Inland Lot No. 2182 by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Hongkong and Shanghai Banking Corporation.Hong
Kong.
Executed
in
pursuance
of a Duly
Stamped
Agreement.Hong
Kong.
Stamp
Duty.Stamp.
Three
Dollars.

THIS INDENTURE made the tenth day of December One thousand nine hundred and thirty two Between CHU YAM OM (*Chinese characters*) LEUNG SAI FOON (*Chinese characters*) and CHEUNG LAN CHAU (*Chinese characters*) all of Victoria in the Colony of Hong Kong Gentlemen (who and the survivor of whom and the executors or administrators of such survivor their or his assigns are where not inapplicable hereinafter included under the designation "the Mortgageors") of the one part and THE HONGKONG AND SHANGHAI BANKING CORPORATION whose Head Office is at No. 1 Queen's Road Central Victoria aforesaid (which Bank and its successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagees") of the other part WHEREAS the Mortgageors have applied to the Mortgagees to allow them to overdraw 30

their Joint current account with the Mortgagees which the Mortgagees have agreed to do upon the Mortgagors entering into the covenants contained in these presents and assigning to the Mortgagees the premises hereinafter described and intended to be hereby assigned as security to the extent of One Hundred and Twenty Thousand Dollars for the due payment of all moneys payable or which may at any time hereafter or from time to time become payable by the Mortgagors in respect of any such overdraft or which may be or become payable by the Mortgagors under any of the covenants hereinafter contained NOW THIS INDENTURE

10 WITNESSETH that in consideration of the Mortgagees allowing the Mortgagors to overdraw their Joint account as aforesaid the Mortgagors do hereby covenant with the Mortgagees that they will on demand in writing of the Mortgagees made to the Mortgagors or any one or more of them or left on some part of the premises hereinafter described and intended to be hereby assigned or left at any of the Mortgagors' last known places of abode or business in Hongkong pay to the Mortgagees all sums of money which at the date of such demand may be outstanding and according to the books of the Mortgagees payable by the Mortgagors to the Mortgagees on the Mortgagors' overdrawn Joint account as aforesaid together with

20 interest thereon at the rate of Six per cent per annum or at such other rate as the Mortgagees may from time to time charge on their customers' overdrawn current accounts such interest to be calculated with the usual quarterly rests AND the Mortgagors do further covenant with the Mortgagees that so long as any money remains due to the Mortgagees they will pay to the Mortgagees interest for the sum or sums so owing at such rate as aforesaid calculated as aforesaid until date of repayment without deduction AND THIS INDENTURE FURTHER WITNESSETH that in pursuance of the said agreement and in consideration of the premises and with the object and intention of affording to the Mortgagees a security

30 for the due fulfilment by the Mortgagors of the covenants and conditions herein contained They the Mortgagors do hereby assign unto the Mortgagees ALL THAT piece or parcel of ground situate lying and being at Victoria aforesaid and known and registered in the Land Office as Inland Lot No. 2182 TOGETHER with all messuages erections and buildings now or hereafter to be erected thereon And all rights rights of way (if any) privileges easements and appurtenances thereto belonging and all the estate right title interest property claim and demand of the Mortgagors therein and thereto To HOLD the said premises hereinbefore assigned unto the Mortgagees for all the residue now to come and unexpired of the term of

40 NINE HUNDRED AND NINETY NINE YEARS from the Twenty fifth day of June One thousand eight hundred and sixty two created therein by an Indenture of Crown Lease thereof dated the Twentieth day of April One thousand nine hundred and seventeen and made between His Majesty King George V of the one part and Lau Iu Chung of the other part and for all other the estate term and interest of them the Mortgagors therein But subject to the proviso for redemption hereinafter contained PROVIDED ALWAYS that if the Mortgagors shall at any time pay to the Mortgagees the amount of their overdrawn Joint current account as aforesaid and shall pay interest for the same at the rate and calculated as aforesaid

50 until repayment and also all such sums of money as the Mortgagees may expend in respect of the non-payment of the Crown rent or other moneys reserved by or non-performance of the covenants and conditions contained

Exhibits.

Plaintiff's Exhibits.

P.22.
Mortgage for \$120,000.00 of Inland Lot No. 2182 by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Hongkong and Shanghai Banking Corporation, 10th December 1932,
continued.

Exhibits.
 Plaintiff's
Exhibits.

P.22.
 Mortgage
 for
 \$120,000.00
 of Inland
 Lot
 No. 2182
 by Chu
 Yam Om,
 Leung Sai
 Fook and
 Cheung
 Lan Chau
 to Hong-
 kong and
 Shanghai
 Banking
 Corpora-
 tion, 10th
 December
 1932,
continued.

in the said Crown Lease or in payment of the police lighting water and other rates if any assessed or to be assessed on the said premises or in insuring any part of the said premises from damage by fire together with interest for the same at the rate aforesaid from the time at which such expenditures were respectively made then the Mortgagees shall at any time after such payment shall have been so made upon the request and at the cost of the Mortgagors reassign the said premises hereby assigned unto the Mortgagees or as they shall direct PROVIDED ALWAYS and it is hereby declared that if default shall be made in payment as aforesaid of any moneys payable hereunder or the interest for the same or any part thereof respectively 10 as aforesaid or in payment of any money for the time being due or claimed by the Mortgagees to be due under any of the clauses covenants or conditions herein contained or there shall be any breach of any of the covenants herein contained it shall be lawful for the Mortgagees at any time or times thereafter without any consent on the part of the Mortgagors or of any other person to enter into and upon and take possession of the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present security and the same thenceforth to hold possess and enjoy and to receive the rents and profits thereof without any lawful interruption or disturbance by the Mortgagors or any other person and/or to let or 20 lease the same for any term and upon such conditions as the Mortgagees shall think fit and to appoint any person or persons at such remuneration as the Mortgagees shall think proper to collect the rents and profits of the said premises on behalf of the Mortgagees AND the Mortgagors do hereby further covenant with the Mortgagees that they the Mortgagors will until their liability under these presents is discharged and satisfied and until the said premises have been reassigned as aforesaid at all times keep the said premises hereby assigned or expressed or intended so to be and every part thereof in a good state of repair and in such good and proper sanitary condition as may be required by the Hong Kong Government AND ALSO 30 will insure all buildings now or hereafter to be erected on the said premises against loss or damage by fire in their full insurable values in the office of the China Fire Insurance Company Limited or in such other local office or offices as the Mortgagees shall first approve of in writing and will punctually pay all premia or sums of money necessary for such purpose and will at any time on demand made for that purpose on the Mortgagors or one of them or left on the said premises endorse over to produce to or leave with the Mortgagees the policy or policies of such insurance and the receipts for every such payment and the Mortgagees shall at all times have a lien on the same and the moneys thereby assured AND ALSO 40 that if default shall be made in keeping the said premises so insured it shall be lawful for the Mortgagees to insure and keep insured all or any of the said premises in any sum not exceeding their full insurable values AND that the Mortgagors will on demand repay to the Mortgagees all moneys expended by the Mortgagees for that purpose with interest thereon at the rate aforesaid from the time of the same respectively having been advanced or paid and that until such repayment the same shall be a charge upon the said premises hereby assigned AND IT IS HEREBY DECLARED that the Mortgagees may at any time or times hereafter without any 50 further consent on the part of the Mortgagors or of any other person and whether in possession or not sell the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present

- security or any part or parts thereof either together or in parcels and either by public auction or private contract or partly by public auction and partly by private contract with power upon any such sale to make any stipulation as to title or evidence or commencement of title or otherwise as the Mortgagees shall deem proper AND ALSO with power to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby and for the purposes aforesaid to enter into such contracts stipulations and agreements and to execute and do all such assurances and things as may be deemed expedient or necessary
- 10 PROVIDED ALWAYS and it is hereby agreed and declared that the Mortgagees shall not exercise the power of sale hereinbefore contained until they shall have previously made a demand as aforesaid upon the Mortgagors or any one or more of them for payment of the moneys payable by the Mortgagors under these presents as aforesaid and default shall have been made in paying the same or any part thereof for the space of one calendar month or unless or until there shall be default in payment of any interest payable hereunder or until default shall be made in payment of the said Crown rent or any monies reserved by or in performance of any of the covenants and conditions contained in the said Crown Lease or in performance of any
- 20 of the covenants herein contained PROVIDED ALSO and it is hereby agreed and declared that upon any letting leasing or sale purporting to be made in pursuance of the aforesaid powers in that behalf the tenant or purchaser shall not be bound to see or enquire whether any default has been made in payment of any principal money or interest intended to be hereby secured or whether any moneys remain owing on the security of these presents or as to the propriety or regularity of such letting leasing or sale nor in the case of any sale whether any demand has been made in writing to the Mortgagors or one of them as aforesaid AND notwithstanding any impropriety or irregularity whatsoever in any such letting leasing or sale
- 30 the same shall as far as regards the safety and protection of the tenant or purchaser be deemed to be within the aforesaid powers in that behalf and be valid and effectual accordingly AND the remedy of the Mortgagors in respect of any breach of the clauses or provisions hereinbefore contained with respect to the letting leasing or sale of the premises shall be in damages only AND IT IS HEREBY DECLARED that the receipt of the Mortgagees for the rents of the premises let or for the purchase money of the premises sold or of any part thereof shall effectually discharge the tenant or purchaser therefrom and from being concerned to see to the application or being answerable for any loss non-application or misapplication thereof AND
- 40 IT IS HEREBY AGREED AND DECLARED that the moneys which shall arise from any such letting leasing or sale shall be held UPON TRUST First To defray all expenses incurred by the Mortgagees in or about such letting leasing or sale or otherwise in relation thereto and in paying any rates assessed on the said premises and preserving the said premises from forfeiture by paying the Crown rent or other monies reserved by and performing the covenants and conditions contained in the said Crown Lease and in effecting or keeping up any policy or policies of insurance on the said premises against any damage by fire together with interest for the same payments at the rate and in manner aforesaid from the respective
- 50 dates thereof Secondly To apply such moneys in or towards satisfaction of all moneys and interest for the time being owing on the security of these presents and Thirdly To pay over the surplus (if any) unto the Mortgagors

Exhibits.

—
Plaintiff's Exhibits.

—
P.22.

Mortgage
for
\$120,000.00
of Inland
Lot
No. 2182
by Chu
Yam Om,
Leung Sai
Foon and
Cheung
Lan Chau
to Hong-
kong and
Shanghai
Banking
Corpora-
tion, 10th
December
1932,
continued.

Exhibits.
 ———
Plaintiff's
Exhibits.
 ———
 P.22.
 Mortgage
 for
 \$120,000.00
 of Inland
 Lot
 No. 2182
 by Chu
 Yam Om,
 Leung Sai
 Foon and
 Cheung
 Lan Chau
 to Hong-
 kong and
 Shanghai
 Banking
 Corpora-
 tion, 10th
 December
 1932,
continued.

or other person entitled thereto AND IT IS HEREBY ALSO AGREED AND DECLARED that the aforesaid power of letting leasing and sale may be exercised by any person or persons who for the time being shall be entitled to receive and give a discharge for the moneys owing on the security of these presents AND FURTHER that the Mortgagees shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers and trusts or any of them AND the Mortgagors do hereby jointly and severally covenant with the Mortgagees that the said Crown Lease is now good valid and subsisting and in no wise void or voidable and that the rent and Lessees covenants and conditions reserved and contained in the said Crown Lease have been duly paid and performed up to the date hereof AND FURTHER that the Mortgagors will from time to time during the continuance of this security pay the Crown rent and perform the covenants and conditions reserved and contained in the said Crown Lease and will pay the rates assessed on the said premises and will at all times keep the Mortgagees indemnified against all actions suits expenses and claims which may be incurred or sustained on account of the non-payment of the said Crown rent or rates or the breach of the said covenants and conditions or any of them AND ALSO that if default shall be made in paying the Crown rent and other moneys by and in the said Crown Lease reserved and the rates taxes and assessments payable and assessed on the said premises or default shall be made in the performance of the Lessees covenants and conditions in the said Crown Lease contained it shall be lawful for the Mortgagees to pay such Crown rent and other moneys rates taxes and assessments and perform such covenants and conditions AND that the Mortgagors will on demand repay to the Mortgagees all moneys expended by the Mortgagees for that purpose with interest thereon at the rate aforesaid from the time of the same respectively having been advanced or paid and that until such repayment the same shall be a charge upon the said premises hereby expressed to be assigned AND ALSO that they the Mortgagors now have good right to assign the premises hereinbefore expressed to be hereby assigned unto the Mortgagees in manner aforesaid free from incumbrances AND FURTHER that they the Mortgagors and every person having or lawfully or equitably claiming any estate right title and interest in or to the said premises or any of them will at all times at the cost (until foreclosure or sale) of the Mortgagors and afterwards of the person or persons requiring the same execute and do all such lawful assurances and things for the further and more perfectly assuring all or any of the said premises unto the Mortgagees as by the Mortgagees shall be reasonably required IN WITNESS whereof the Mortgagors have hereunto set their hands and seals and the Mortgagees have caused their Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED and DELIVERED by the
 above named Chu Yam Om, Leung
 Sai Foon and Cheung Lan Chau (they
 having been previously identified by
 H. K. Hung) in the presence of

H. K. HUNG,
 Solicitor,
 Hong Kong.

CHU YAM OM.
 LEUNG SAI FOON.
 CHEUNG LAN CHAU.

Interpreted to the Mortgagors by
CHU KAMTIN,
Clerk & Interpreter to
Messrs. Deacons,
Solicitors,
Hongkong.

(Chinese characters)

The advance against this Mortgage has been repaid on 30th of Dec. 1943
and all properties mentioned herein are released to the Mortgagors.

10

For THE YOKOHAMA SPECIE BANK, LTD.
The Liquidator of Hongkong & Shanghai
Banking Corporation,

? ? ?
Jan. 11 1944.

[By endorsement]

Dated 10th December 1932.

P.22

CHU YAM OM & OTHERS

to

20

HONGKONG & SHANGHAI BANKING
CORPORATION.

MORTGAGE

of Inland Lot No. 2182 to secure Over-
draft Facilities to the extent of
\$120,000.00.

xd.

30

Registered at the Land Office by Memorial
No. 135,093 on Tuesday the Thirteenth
day of December 1932, at 3 p.m.

? ? ?
Land Officer.

JOHNSON, STOKES AND MASTER,
Solicitors, &c.,

Hong Kong.

L.S.F.

Fols. 32.

Exhibits.

Plaintiff's
Exhibits.

P.22.

Mortgage
for
\$120,000.00
of Inland
Lot
No. 2182
by Chu
Yam Om,
Leung Sai
Foon and
Cheung
Lan Chau
to Hong-
kong and
Shanghai
Banking
Corpora-
tion, 10th
December
1932,
continued.

Exhibits. **Plaintiff's Exhibit P.23—Second Mortgage by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Procurator in Hong Kong for the Dominican Missions in the Far East of Inland Lot No. 2182.**

Plaintiff's Exhibits.

P.23.
Second Mortgage by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Procurator in Hong Kong for the Dominican Missions in the Far East of Inland Lot No. 2182, 10th December 1932

Hong Kong. Stamp Duty	Stamp 50 Dollars.
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THIS INDENTURE made the tenth day of December One thousand nine hundred and thirty two Between CHU YAM OM (*Chinese characters*) LEUNG SAI FOON (*Chinese characters*) and CHEUNG LAN CHAU (*Chinese characters*) all of Victoria in the Colony of Hongkong Gentlemen (who and the survivor of whom and the executors or administrators of such survivor their or his assigns are where not inapplicable hereinafter included under the designation "the Mortgagors") of the one part and THE 10
PROCURATOR IN HONGKONG FOR THE DOMINICAN MISSIONS IN THE FAR EAST of Victoria aforesaid (who and whose successors and assigns are where not inapplicable hereinafter included under the designation "the Mortgagee") of the other part WITNESSETH that in consideration of the sum of TWENTY FIVE THOUSAND DOLLARS Hongkong Currency this day lent and advanced by the Mortgagee to the Mortgagors (the receipt whereof is hereby acknowledged) THEY the Mortgagors do hereby covenant with the Mortgagee that they the Mortgagors or one of them will on the Ninth day of June One thousand nine hundred and thirty four pay unto the Mortgagee the sum of Twenty Five Thousand Dollars Hongkong 20
Currency and will pay interest for the same in the meantime at the rate of Eight Dollars per cent. per annum from the date hereof payable monthly in equal monthly payments on the Ninth day of each calendar month without any deduction AND FURTHER that if the said sum of Twenty Five Thousand Dollars or any part thereof shall remain unpaid after the said Ninth day of June One thousand nine hundred and thirty four the Mortgagors will so long as the said sum or any part thereof shall remain unpaid pay to the Mortgagee interest on the said sum or such part thereof as shall remain unpaid at the rate aforesaid by equal monthly payments on the Ninth day of each month without deduction AND IT IS HEREBY 30
AGREED AND DECLARED that if the said sum of Twenty Five Thousand Dollars or any part thereof shall remain unpaid after the said Ninth day of June One thousand nine hundred and thirty four it shall not be competent for the Mortgagors at any time hereafter to pay off or for the Mortgagee to call in the said sum of Twenty Five Thousand Dollars until the party so paying off or calling in the said sum shall have given to the party respectively receiving or paying the said sum (or as regards notice by the Mortgagee only shall have left on some part of the premises hereinafter assigned) at least one calendar month's previous notice in writing of such intention to pay off or call in the said sum such notice in the case of notice 40
by the Mortgagors only to expire on the Ninth day of any month AND THIS INDENTURE FURTHER WITNESSETH that for the consideration aforesaid they the Mortgagors do hereby assign unto the Mortgagee ALL THAT piece or parcel of ground situate lying and being at Victoria aforesaid and known and registered in the Land Office as Inland Lot No. 2182 TOGETHER with all messuages or tenements erections and buildings now or hereafter to be erected thereon AND all rights rights of way (if any) privileges easements and appurtenances to the same premises belonging

or in anywise appertaining and all the estate right title interest term and terms of years property claim and demand whatsoever of the Mortgagors therein and thereto To HOLD the said piece or parcel of ground messuages buildings and premises hereinbefore assigned or expressed or intended so to be with their and every of their appurtenances unto the Mortgagee for all the residue now to come and unexpired of a certain term of NINE HUNDRED AND NINETY NINE years from the Twenty-fifth day of June One thousand eight hundred and sixty-two created therein by an Indenture of Crown Lease thereof dated the Twentieth day of April One thousand

10 nine hundred and seventeen and made between His Majesty King George V of the one part and Lau Iu Chung of the other part and for all other the estate term and interest of them the Mortgagors therein But subject to an Indenture of Mortgage dated the tenth day of December One thousand nine hundred and thirty two and made between the Mortgagors of the one part and The Hongkong and Shanghai Banking Corporation of the other part and registered at the Land Office by Memorial No. 135,093 for securing Overdraft Facilities to the extent of One Hundred and Twenty Thousand Dollars and interest as therein mentioned And subject to the proviso for redemption hereinafter contained PROVIDED ALWAYS that

20 if the Mortgagors shall on the said Ninth day of June One thousand nine hundred and thirty four pay to the Mortgagee the sum of Twenty Five Thousand Dollars Hongkong Currency and shall pay interest for the same at the rate of Eight Dollars per cent. per annum from the date hereof until repayment by equal monthly payments on the Ninth day of each calendar month without any deduction as aforesaid AND ALSO all such sums of money as the Mortgagee may expend in respect of the non-payment of the yearly Crown rent reserved by or non-performance of the covenants and conditions contained in the said Indenture of Crown Lease or in payment of the police lighting water and other rates if any assessed or to be assessed

30 on the said premises or in insuring any part of the said premises from damage by fire together with interest for the same at the rate aforesaid from the time at which such expenditures were respectively made then the Mortgagee shall at any time after such payment shall have been so made upon the request and at the cost of the Mortgagors reassign the said premises hereby assigned unto the Mortgagors or as they shall direct PROVIDED ALWAYS and it is hereby declared that if default shall be made in payment as aforesaid of the sum of Twenty Five Thousand Dollars or the interest for the same or any part thereof respectively at the times hereinbefore appointed for payment thereof respectively or in payment of

40 any moneys for the time being due on the security of these presents or there shall be any breach of any of the covenants herein contained it shall be lawful for the Mortgagee at any time or times thereafter without any consent on the part of the Mortgagors or of any other person to enter into and upon and take possession of the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present security and the same thenceforth to hold possess and enjoy and to receive the rents and profits thereof without any lawful interruption or disturbance by the Mortgagors or any other person and/or to let the same for any term and upon such conditions as he shall think fit and to appoint any person

50 or persons at such remuneration as he shall think proper to collect the rents and profits of the said premises on his behalf AND the Mortgagors do hereby further covenant with the Mortgagee that they the Mortgagors

Exhibits.

Plaintiff's Exhibits.

P.23.

Second Mortgage by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Procurator in Hong Kong for the Dominican Missions in the Far East of Inland Lot No. 2182, 10th December 1932, *continued.*

Exhibits.
 ———
Plaintiff's
Exhibits.
 ———
 P.23.
 Second
 Mortgage
 by Chu
 Yam Om,
 Leung Sai
 Foon and
 Cheung
 Lan Chau
 to Pro-
 curator
 in Hong
 Kong for
 the
 Dominican
 Missions
 in the Far
 East of
 Inland Lot
 No. 2182,
 10th
 December
 1932,
continued.

will at all times during the continuance of this security keep the said premises hereby assigned or expressed or intended so to be and every part thereof in a good state of repair and in good and proper sanitary condition as required by the Hong Kong Government AND ALSO insure all buildings now or hereafter to be erected on the said premises against loss or damage by fire in their full insurable values in some local office or offices as the Mortgagee shall first approve of in writing and will punctually pay all premia or sums of money necessary for such purpose and will at any time on demand made for the purpose on them or left on the said premises endorse over to produce to or leave with the Mortgagee the Policy or 10 Policies of such insurance and the receipts for every such payment and the Mortgagee shall at all times have a lien on the same and the monies thereby assured AND ALSO that if default shall be made in keeping the said premises so insured it shall be lawful for the Mortgagee to insure and keep insured all or any of the said premises in any sum not exceeding their full insurable values AND THAT the Mortgagors will on demand repay to the Mortgagee all monies expended by him for that purpose with interest thereon at the rate aforesaid from the time of the same respectively having been advanced or paid and that until such repayment the same shall be a charge upon the said premises AND IT IS HEREBY DECLARED that the 20 Mortgagee may at any time or times hereafter without any further consent on the part of the Mortgagors or of any other person and whether in possession or not sell the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present security or any part or parts thereof either subject to the said Indenture or Mortgage or freed and discharged therefrom either together or in parcels and either by public auction or private contract or partly by public auction and partly by private contract with power upon any such sale to make any stipulation as to title or evidence or commencement of title or otherwise which the Mortgagee shall deem proper AND ALSO with power to buy in or rescind 30 or vary any contract for sale and to resell without being responsible for any loss occasioned thereby AND for the purposes aforesaid to enter into such contracts stipulations and agreements and to execute and do all such assurances and things as may be deemed expedient or necessary PROVIDED ALWAYS and it is hereby agreed and declared that the Mortgagee shall not exercise the power of sale hereinbefore contained until he shall have previously given at least one calendar month's notice in writing to the Mortgagors or one of them to pay off the moneys for the time being owing on the security of these presents or left a notice in writing to that effect at or upon some part of the premises hereinbefore expressed to be 40 hereby assigned and default shall have been made in payment of such moneys or some part thereof at the expiration of such notice (but so that such notice shall in no case be given or left before the said Ninth day of June One thousand nine hundred and thirty four) or unless or until the whole or any part of some monthly payment of interest whether before or after the said Ninth day of June One thousand nine hundred and thirty four shall be in arrear for thirty days or until default shall be made in payment of Crown rent or in performance of any of the lessees covenants or conditions reserved by and contained in the said Indenture of Crown Lease or in performance of any of the covenants herein contained or until 50 default shall be made by the Mortgagors in payment of the moneys for the time being owing on the security of these presents after notice given by the

Mortgagors to the Mortgagee of their intention to pay off such money PROVIDED ALSO and it is hereby agreed and declared that upon any letting or sale purporting to be made in pursuance of the aforesaid powers in that behalf the tenant or purchaser shall not be bound to see or enquire whether any default has been made in payment of any principal money or interest intended to be hereby secured at the time hereinbefore appointed for payment thereof or whether any money remains owing on the security of these presents or as to the propriety or regularity of such letting or sale nor in the case of any sale whether any notice has been given in writing

10 to the Mortgagors or one of them in accordance with the provision lastly hereinbefore contained AND notwithstanding any impropriety or irregularity whatsoever in such letting or sale the same shall as far as regards the safety and protection of the tenant or purchaser be deemed to be within the aforesaid powers in that behalf and be valid and effectual accordingly AND the remedy of the Mortgagors in respect of any breach of the clauses or provisions hereinbefore contained with respect to the letting or sale of the premises shall be in damages only AND IT IS HEREBY DECLARED that the receipt of the Mortgagee for the rents of the premises let or for the purchase money of the premises sold or of any part thereof

20 shall effectually discharge the Tenant or Purchaser therefrom and from being concerned to see to the application or being answerable for any loss nonapplication or misapplication thereof AND IT IS HEREBY AGREED AND DECLARED that the moneys which shall arise from any such letting or sale shall be held UPON TRUST in the first place to defray all expenses incurred by the Mortgagee in or about such letting or sale or otherwise in relation thereto and in paying any rates assessed on the said premises and preserving the said premises from forfeiture by paying the Crown rent and performing the Lessees covenants reserved and contained in the said Indenture of Crown Lease and in effecting or keeping up any policy or

30 policies of insurance on the said premises against any damage by fire together with interest for the same payments after the rate of Eight Dollars per cent. per annum from the respective dates thereof Secondly to apply such moneys in or towards satisfaction of the principal moneys and interest for the time being owing on the security of these presents And thirdly to pay over the surplus (if any) unto the Mortgagors or other person entitled thereto AND IT IS HEREBY ALSO AGREED AND DECLARED that the aforesaid power of letting and sale may be exercised by any person or persons who for the time being shall be entitled to receive and give a discharge for the monies owing on the security of these presents AND

40 FURTHER that the Mortgagee shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers and trusts or any of them AND the Mortgagors do hereby covenant with the Mortgagee that the said Indenture of Crown Lease is now a good valid and subsisting Lease of the premises hereinbefore assigned and in no wise void or voidable and that the rent and Lessees covenants reserved and contained in the said Crown Lease have been duly paid and performed up to the date hereof AND FURTHER that they the Mortgagors shall and will from time to time during the continuance of this mortgage security pay the Crown rent and perform the Lessees covenants and conditions

50 by and in the said Indenture of Crown Lease reserved and contained and will pay the rates assessed on the said premises and will at all times keep the Mortgagee indemnified against all actions suits expenses and claims

Exhibits.
 ———
Plaintiff's
Exhibits.
 ———

P.23.
 Second
 Mortgage
 by Chu
 Yam Om,
 Leung Sai
 Foon and
 Cheung
 Lan Chau
 to Pro-
 curator
 in Hong
 Kong for
 the
 Dominican
 Missions
 in the Far
 East of
 Inland Lot
 No. 2182,
 10th
 December
 1932,
continued.

Exhibits.

Plaintiff's Exhibits.

P.23.

Second Mortgage by Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Procurator in Hong Kong for the

Dominican Missions in the Far East of Inland Lot No. 2182, 10th December 1932, *continued.*

which may be incurred or sustained on account of the non-payment of the said Crown rent or rates or the breach of the said covenants and conditions or any of them AND ALSO that they the Mortgagors have good right to assign the premises hereinbefore expressed to be hereby assigned unto the Mortgagee for the residue of the said term and in manner aforesaid save and subject as aforesaid AND FURTHER that they the Mortgagors and every person having or lawfully or equitably claiming any estate right title and interest in or to the said premises or any of them will at all times at the cost until foreclosure or sale of the Mortgagors and afterwards of the person or persons requiring the same execute and do all such lawful assurances and things for the further and more perfectly assuring all or any of the said premises unto the Mortgagee as by him shall be reasonably required IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written. 10

SIGNED SEALED and DELIVERED by the above-named Chu Yam Om, Leung Sai Foon and Cheung Lan Chau (they having been previously identified by H. K. Hung) in the presence of

H. K. HUNG,
Solicitor,
Hong Kong.

CHU YAM OM.
LEUNG SAI FOON.
CHEUNG LAN CHAU. 20

Interpreted by :—

CHU KAMTIN. Deacons.
Interpreter to Messrs. ~~Johnson, Stokes and Master,~~
Solicitors, &c., Hongkong.

RECEIVED on the day and year first above written of and from the Mortgagee the sum of TWENTY FIVE THOUSAND DOLLARS being the consideration money above mentioned to be paid by him to us. \$25,000.00 30

Witness :—

H. K. HUNG.

CHU YAM OM.
LEUNG SAI FOON.
CHEUNG LAN CHAU.

(*Chinese characters*)

We hereby certify that all the moneys due or payable under the within written Mortgage have been paid and satisfied and that we have no claim in respect thereof.

Dated the 30th day of December 1943.

40

Witness :

W. C. HUNG.

FR. F. R. NOVAL.

(*Chinese characters*)

[By endorsement]

Dated 10th December 1932.

IN THE SUPREME COURT
OF HONG KONG
Original Jurisdiction.
Action No. 193 of 1949.
Exhibit No. " P.23."

CHU YAM OM & OTHERS

TO

THE PROCURATOR IN HONGKONG
FOR THE DOMINICAN MISSIONS IN
THE FAR EAST

SECOND MORTGAGE

of Inland Lot No. 2182 to secure \$25,000.00
and interest.

xd.

Registered at the Land Office by Memorial
No. 135,094 on Tuesday the Thirteenth
day of December 1932, at 3 p.m.

? ? ?
Land Officer.

JOHNSON, STOKES AND MASTER,
Solicitors, &c.,
Hong Kong.
L.S.F.
Fols. 35.

Exhibits.

*Plaintiff's
Exhibits.*

P.23.

Second
Mortgage
by Chu
Yam Om,
Leung Sai
Foon and
Cheung
Lan Chau
to Pro-
curator
in Hong
Kong for
the
Dominican
Missions
in the Far
East of
Inland Lot
No. 2182,
10th
December
1932,
continued.

10

20



Exhibits. Plaintiff's Exhibit P.24—Translation from Chinese of Copy Memorandum as to balance purchase money.

Plaintiff's Exhibits.

P.24.

Translation from Chinese of Copy Memorandum as to balance purchase money, 31st January 1944.

No. 1 Oaklands Path, Hong Kong.

Purchase price M.Y. 62,000.

Less mortgage loan M.Y. 35,000.

There should be paid the balance of the purchase price M.Y. 27,000.

Add our office's expenses together with all disbursements, total M.Y. 1,581.50.

There should be paid in total M.Y. 28,581.50.

Dated the 31st day of January, 19th Year of Showa (1944).

10

I hereby certify the foregoing to be the true translation of the Chinese document marked "C."

(Sgd.) HU WA YUN,
Court Translator.
16.4.51.

Folio.....

Folio.....

Exhibits.

Plaintiff's Exhibits.

P.25. Certified Copy of the Land Office Register relating to Inland Lot No. 2182, 16th April 1951.

INLAND LOT	LOCALITY	MEASUREMENTS				ANNUAL RENTAL	COMMENCEMENT OF TERM	TERM OF YEARS	DATE OF EXECUTION OF LEASE	DATE FOR PAYMENT OF FIRST HALF-YEAR'S RENT	LEASE EXECUTED			
		N.	S. (vide plan on Lease)	E.	W.						On the Part of the Crown	Lessee		
No. 2182.	Babington Path				Content Square Feet 29812	\$ 32 c. 00	25 June 1862	999	20 April 1917	24 June 1917	By Sir Francis Henry May, K.C.M.G., LL.D.	By Lau Iu Chung		
LEASEHOLDER	DEED REGISTERED			REMARKS	SUB-ASSIGNMENTS									
	No. of Memorial	Date of Deed	Date of Registry		No. of Memorial	Date of Deed	Date of Registry	Nature of Deed or Document	To Whom Given	Amount of Consideration	Rate of Interest or Rental	No. of Memorial or Re-assignment or Satisfaction	Date of Re-assignment of Satisfaction	Date of Registry
Lau Iu Chung Li Shun Fan	91308 Refer to Vol. LX XXV folio 73	25 April 1924	30 April 1924	Sold under Powers of Mortgage No. 80340	65430	18 May 1918	28 May 1918	Mortgage	The Credit Foncier D'Extreme Orient	\$25,000	\$8 % per ann.	66608	18 October 1918	21 October 1918 Reassigned
					70269	29th December 1919	5th January 1920	Mortgage	Sir Catchick Paul Chater, Kt., C.M.G. and The Hon. Mr. Ernest Hamilton Sharp	\$32,000	\$12 per mil per month	72394	31st August 1920	2nd September 1920 Reassigned
					70273	5th January 1920	6th January 1920	Second Mortgage	Tang Man Hi	\$10,000	\$17 per mil per month	72393	31st August 1920	2nd September 1920 Satisfied
					72395	31st August 1920	2nd September 1920	Mortgage	Fung Pok Om	\$70,000	\$10 50c. per mil per Chinese lunar month	80339	27th July 1922	28th July 1922 Reassigned
					73701	30th December 1920	6th January 1921	2nd Mortgage	Porphyrio Maria Nolasco da Silva	\$30,000	\$15 per mil per lunar mth.	80338	27th July 1922	28th July 1922 Satisfied
					73702	31st December 1920	6th January 1921	Mortgage of Mortgage Memorial No. 73701	Cheung Yuen	\$25,000	\$15 per mil per lunar mth.	80337	27th July 1922	28th July 1922 Satisfied
					78386	19th January 1922	20th January 1921	Third Mortgage	Lo Luk	\$3,000	\$15 per mil per lunar month	80336	27th July 1922	28th July 1922 Satisfied
					79174	24th April 1922	25th April 1922	Equitable Charge	Carlos Augusto Da Roza	\$3,000	\$12% per annum	80335	27th July 1922	28th July 1922 Satisfied
					80340	27th July 1922	28th July 1922	Mortgage	The Banque de L'Indo Chine	Banking facilities not exceeding \$120,000 vide memorial				
					82360	22 December 1922	5th January 1923	Second Mortgage	William Joseph Carroll	\$30,000	2% per cal. month Repayable by instalments vide memorial			
					83197 (Intd.)	23rd February 1923 F. E.	26th February 1923	Equitable Charges	Lau Fung She, Lau Wong She, Lau Wing Chung & Lau Iu Chung	\$25,000	10% p.a.			
					84177	25 April 1923	2 May 1923	Equitable Charges	Lo Shi	\$25,000	\$13% p.a.			
					84650	28 May 1923	29 May 1923	Equitable Charge (subject to Memorials Nos. 80340, 82360, 83197 & 84177)	The Luen Mow Steamship Co. Ltd. & Chau Lim Sang	\$30,000	\$15 per mil p. l. m.			Property Sold under power of Sale in Mortgage 80340 vide Contra.
					85356	28 June 1923	29 June 1923	Mortgage (subject to 80340, 82360, 83917, 84177 & 84650)	Chau Tsing Chuen	\$20,000	\$12 per mil p. l. m.			
					85438	4 July 1923	5 July 1923	Mortgage (subject to 80340, 82360, 85365, 83917, 84177 & 84650)	Li Shun Fan	\$107,000	\$10 per mil p. m.			
					88856	13 December 1923	15 December 1923	Mortgage (subject to 80340, 82360, 83917, 84177, 84650, 85356 & 85438)	Lau Fung Sze, Lau Wong Sze, Lau Wing Chung & Lau Iu Chung	\$93,000	\$10% p.a.			
					91309	26 April 1924	30 April 1924	Mortgage	Kwik Djoen Eng	\$180,000	\$9 p. mil p.l.m.			
					91310	26 April 1924	30 April 1924	Further Charge	Kwik Djoen Eng	\$30,000	\$15 p. mil p.l.m.			

INLAND LOT	LOCALITY	MEASUREMENTS				ANNUAL RENTAL	COMMENCEMENT OF TERM	TERM OF YEARS	DATE OF EXECUTION OF LEASE	DATE FOR PAYMENT OF FIRST HALF-YEAR'S RENT	LEASE EXECUTED			
		N.	S.	E.	W.						Content Square Feet	\$	c.	On the Part of the Crown
No. 2182.		—	—	—	—	—	—	—	—	—	By	By		
LEASEHOLDER	DEED REGISTERED			REMARKS	SUB-ASSIGNMENTS									
	No. of Memorial	Date of Deed	Date of Registry		No. of Memorial	Date of Deed	Date of Registry	Nature of Deed or Document	To Whom Given	Amount of Consideration	Rate of Interest or Rental	No. of Memorial or Re-assignment or Satisfaction	Date of Re-assignment of Satisfaction	Date of Registry
Li Shun Fan Kwik Djoen Eng Chu Yam Om, Leung Sai Foon & Cheung Lan Chau (J.Ts.)	104622 135092	11 Feb. 1927 10.12.32	14 March 1927 13.12.32	Foreclosure Order	98070 100879	5 July 1924 1 May 1926	27 August 1925 4 May 1926	Agreement for sale of Section A Order in O.J. Miscellaneous Proceedings No. 3 of 1926	Yu To Sang Kwik Djoen Eng	\$84,000	\$10,000 Deposit paid			
Sd. W. K. T. (Chinese Characters) (Li Tam Toy Hing)	* 4113	17 Feb. 1944	6 March 1944	(No. 1 Oakland's Path) † no dealings until (Intd.) C. D. A. C., L.O. further notice.	105430	25 May 1927	25 May 1927	Mortgage to secure Banking facilities	The Nederlandsch Indische Handelsbank	pt. extnt \$700,000	—	110178	2 May 1928	4 May 1928 Reassigned
					110220	8 May 1928	9 May 1928	Mortgage to secure Banking facilities	The Hong Kong & Shanghai Banking Corporation	extnt \$150,000	(vide 135092 contra)			
Sd. W. K. THOMSON, P.L.O. 25/7/51.				Japanese Assignment of Sec. A & the R.P. to Li Tam Toi (or Toy) Hing (Purchaser) registered by Mem. 204450 on 23 May 1951. Re-certified with the above entry regarding Japanese Assignment Mem. No. 204450 added.	129944	28 Jany 1932	16 Feb. 1932	2nd Mortgage	Charles Samuel Martin	\$50,000				
					135093	10.12.32	13.12.32	Mortgage	The H. K. & S'hai Banking Cpn.	\$120,000	\$6% p.a.	* 4113	11 January 1944	2 March 1944 Reassigned. Discharged by payment to Liquidators Sd. W. K. T.
					135094	Do.	Do.	2nd Mortgage	The Procureur in H. K. for the Dominion Missions in the Far East	\$25,000	\$8% p.a.	* 4113	30 December 1943	2 March 1944 Satisfied Intd. C. D. A. C. L.O.
					175624	28 Dec. 1946	3 Jan. 1947	Statutory Declaration by John Alexander Duke Morrison as to the discharge of mortgage Mem. 135093 supra during the Japanese occupation.						
					198429	15 June 1950	16 June 1950	Lis Pendens in O. J. Li Tam Toi Hing (Plaintiff) (Chu Yam Om, Leung Sai Foon & Cheung Lan Chau (Defendants))						

* * Chinese Characters appear here.
† Additions appearing in pencil.

Plaintiff's Exhibit P.27A—Translation—Cheque of The Bank of East Asia Ltd. for M.Y. 28,581.50 made out by Li Chok Yuen.

Exhibits.
Plaintiff's Exhibits.

(Here appears cheque of the Bank of East Asia Ltd., for M.Y. 28,581.50 made out by Li Chok Yuen in Chinese characters.)

P. 27A.
Translation
—Cheque
of The
Bank of
East Asia
Ltd. for
M.Y.
28,581.50
made out
by Li
Chok Yuen,
3rd
February
1944.

AGREED TRANSLATION.

THE BANK OF EAST ASIA LTD.

No. 676407 Folio 447 Hong Kong, 3rd Feb., 33rd Yr. C. R.
6

THE BANK OF EAST ASIA LTD.
HONG KONG.

TRANSFER

10

Pay Cash or Bearer

Military Yen Twenty Eight Thousand Five Hundred and Eighty One and Cents Fifty only.

M.Y. 28,581.50

(Sgd.) Illegible.

No. 24 Li Chok Yuen M.Y. a/c.

This cheque is payable in Hong Kong.

I hereby certify that the foregoing is a true translation of the Chinese document marked "AA."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
3.1.56.

20



Exhibits. Plaintiff's Exhibit P.27B—Translation—Cheque of The Bank of East Asia Ltd. for M.Y. 2,044.53 made out by Mr. Y. K. Kan to Messrs. Leung Sai Foon, Chu Yam Om and Cheung Lan Chau.
Plaintiff's Exhibits.

P.27B.
Translation
—Cheque
of The
Bank of
East Asia
Ltd. for
M.Y.
2,044.53
made out
by Mr. Y.
K. Kan to
Messrs.
Leung Sai
Foon, Chu
Yam Om
and Cheung
Lan Chau,
30th
December
1943.

THE BANK OF EAST ASIA LTD.

(Here appears cheque of the Bank of East Asia Ltd., for M.Y. 2,044.53 made out by Mr. Y. K. Kan in Chinese characters.)

AGREED TRANSLATION.

No. 675149 Folio 468 Hong Kong, 30th December, Showa 18th Yr.
2

THE BANK OF EAST ASIA LTD.
HONG KONG.

(Chopped) "B.E.A. Hong Kong
Dec. 30 1943
Paid."

Pay Messrs. Leung Sai Foon, Chu Yam Om and Cheung Lan Chau or Bearer Military Yen Two Thousand and Forty Four and Cents Fifty Three only.

M.Y. 2,044.53 (Sgd.) Illegible.

No. 489 W. N. T. Tam & Y. K. Kan M.Y. a/c.

This cheque is payable in Hong Kong.

10

(BACK)

(Sgd.) LEUNG SAI FOON (Sgd.) LEUNG SAI FOON
received.

20

I myself have no connection
with the Chungking Government.

I hereby certify that the foregoing is a true translation
of the Chinese document marked "BB."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
3.1.56.



Plaintiff's Exhibit P.27C—Cheque of The Bank of East Asia Ltd. for M.Y. 7,000.00 made out by Mr. Y. K. Kan to The Procurator in Hong Kong for the Dominican Missions in the Far East.

Exhibits.

Plaintiff's Exhibits.

(Cheque of the Bank of East Asia Ltd. for M.Y. 7,000.00 made out by Mr. Y. K. Kan for the Procurator in Hong Kong for the Dominican Missions in the Far East.)

(Chinese characters)

No. 675148 Folio 468 Hong Kong, 30th December 1943.

2

THE BANK OF EAST ASIA LTD.

HONG KONG.

10

(Chinese Characters)

(Chinese characters)

Pay The Procurator in Hong Kong for the Dominican Missions in the Far East Dollars M.Y. Seven thousand only.

(Chinese characters)

(Chinese characters)

TRANSFER

M.Y. 7,000.00.

No. 489 W. N. T. Tam & Y. K. Kan M.Y. a/c.

(Sgd.) Illegible.

(BACK)

20

p.p The Procurator in Hong Kong for the Dominican Missions in the Far East.

(Sgd.) W. E. GONZALEZ.

(Chinese characters)

P.27c.
Cheque of The Bank of East Asia Ltd. for M.Y. 7,000.00 made out by Mr. Y. K. Kan to The Procurator in Hong Kong for the Dominican Missions in the Far East, 30th December 1943.

Exhibits. Plaintiff's Exhibit P.27D—Translation—Cheque of The Bank of East Asia Ltd. for M.Y. 25,308.97 made out by Mr. Y. K. Kan to the Bank of East Asia Ltd.

Plaintiff's Exhibits.

P.27D.
Translation
—Cheque
of The
Bank of
East Asia
Ltd. for
M.Y.
25,308.97
made out
by Mr. Y.
K. Kan to
the Bank
of East
Asia Ltd.,
30th
December
1943.

THE BANK OF EAST ASIA LTD.

(Here appears cheque of the Bank of East Asia Ltd., for M.Y. 25,308.97 made out by Mr. Y. K. Kan in Chinese characters.)

AGREED TRANSLATION.

No. 675147 Folio 468 Hong Kong, 30th December, Showa 18th Yr.
2

THE BANK OF EAST ASIA LTD.
HONG KONG.

TRANSFER

Pay The Bank of East Asia (Ltd.)

Military Yen Twenty Five Thousand Three Hundred and Eight and Cents Ninety Seven only.

M.Y. 25,308.97

(Sgd.) Illegible.

No. 489 W. N. T. Tam & Y. K. Kan M.Y. a/c.

I hereby certify that the foregoing is a true translation of the Chinese document marked "CC."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.

3.1.56.

This cheque is payable in Hong Kong.

10

20

Plaintiff's Exhibit P.27E—Translation—Cheque (Cash) of the Bank of East Asia Ltd. for M.Y. 26,890.00 made out by Y. K. Kan.

Exhibits.

Plaintiff's Exhibits.

(Here appears Cheque (Cash) of the Bank of East Asia Ltd., for M.Y. 26,890.00 made out by Y. K. Kan in Chinese characters.)

P. 27E.
Translation
—Cheque
(Cash) of
the Bank
of East
Asia Ltd.
for M.Y.
26,890.00
made out
by
Y. K. Kan,
9th March,
1944.

This cheque is payable in Hong Kong.

THE BANK OF EAST ASIA LTD.

AGREED TRANSLATION.

No. 682125 Folio 504 Hong Kong, 9th March, Showa 19th Yr.
2

THE BANK OF EAST ASIA LTD.
HONG KONG.

10 Pay Cash or Bearer (Chopped) " B.E.A. Hong Kong
10 Mar. 1944 Paid."
Military Yen Twenty Six Thousand Eight Hundred and Ninety
only.
M.Y. 26,890.00 (Sgd.) Illegible.
No. 489 W. N. T. Tam & Y. K. Kan M.Y. a/c.

(BACK)

Entered Savings a/c 1575 (Chopped) " Chop of HO PING YIU."
Credited M.Y. 20,000.00 (Chopped) " ditto "
Paid M.Y. 6,890.00 (Chopped) " LEUNG SAI FOON."
20 (Sgd.) Illegible (Chopped) " CHU YAM OM."

I hereby certify that the foregoing is a true translation
of the Chinese document marked " DD."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
3.1.56.

Exhibits. Plaintiff's Exhibit P.28A—Translation—Specimen signature card of Ho Ping Fai, Leung Sai Foon and Chu Yam Om.

Plaintiff's Exhibits. (Here appears Specimen signature Card of Ho Ping Fai, Leung Sai Foon and Chu Yam Om in Chinese characters.)

P.28A.
Translation
—Specimen
Signature
Card of
Ho Ping
Fai, Leung
Sai Foon
and Chu
Yam Om,
10th March
1944.

AGREED TRANSLATION.

A/C M.Y.1575.
No. K5921
10 Mar 1944.

THE BANK OF EAST ASIA, LTD.
SAVINGS DEPARTMENT.

10

Name : Ho Ping Fai, Leung Sai Foon & Chu Yam Om.
Address : No. 57 Bonham Road, 3rd floor.
Occupation :

(A/C No. M.Y.1575)
(Book No. K5921)

(Chopped) "CHU YAM OM."
(") "CHU YAM OM."
(Chopped) "LEUNG SAI FOON."
(") "LEUNG SAI FOON."
Leung Sai Foon's
Chop reported lost.
20/8/1945. (Chopped) "HO PING FAI." 20
(Sgd.) Illegible. (") "HO PING FAI."

Specimen Chop and Signature left (with the Bank) for reference in respect of savings and deposits.

I hereby certify that the foregoing is a true translation of the Chinese document marked "AB."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
7.1.56.

Plaintiffs' Exhibit P.28B—Translation—Pay in Slip of The Bank of East Asia Ltd. for M.Y. 20,000.00.

(Here appears Pay in slip of the Bank of East Asia Ltd. for M.Y.20,000.00 in Chinese characters.)

AGREED TRANSLATION.

THE BANK OF EAST ASIA, LTD. HONG KONG.

SAVINGS DEPARTMENT.

Credit A/C No. 1517.

Name : Ho Ping Fai, Leung Sai Foon and Chu Yam Om.

10 M.Y. Twenty thousand only.

10 Mar. 1944.

(Chopped) (Illegible)
Accountant.

(Signed) (Illegible)
Posting Clerk.

(Signed) (Illegible)
Shroff.

(Signed) (Illegible)
Teller.

20 I hereby certify that the foregoing is a true translation of the Chinese document marked "AC."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
7.1.56.

Plaintiff's Exhibit P.28C—Pay out Slip of The Bank of East Asia Ltd. for M.Y. 15,000.00.

(Here appears Pay out slip of The Bank of East Asia Ltd., for M.Y.15,000.00 in Chinese characters.)

AGREED TRANSLATION.

By Pass Book No. 1517, please pay M.Y. Fifteen Thousand only.

30 M.Y.100 Notes.....
M.Y.10 Notes.....
M.Y.5 Notes.....

Dated the 28th day of March, 33rd Year (of the Chinese Republic).

(Chopped) HO PING FAI.
(Chopped) LEUNG SAI FOON.
(Chopped) CHU YAM OM.

Exhibits.
Plaintiff's Exhibits.

P.28B.
Translation
—Pay in
Slip of
The Bank
of East
Asia Ltd.
for M.Y.
20,000.00,
10th March
1944.

P.28c.
Translation
—Pay out
Slip of
The Bank
of East
Asia Ltd.
for M.Y.
15,000.00,
28th March
1944.

Exhibits. To The Bank of East Asia, Ltd., Hong Kong.

<i>Plaintiff's Exhibits.</i>	(Signed)	(Illegible).
	(Signed)	(Illegible).
P.28c.	(Signed)	(Illegible).
Translation	(Signed)	(Illegible).
—Pay out		
Slip of		
The Bank		
of East		
Asia Ltd.		
for M.Y.		
15,000.00,		
28th March		
1944,		
<i>continued.</i>		

I hereby certify that the foregoing is a true translation of the Chinese document marked "AE."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
7.1.56.

10

P.28D. **Plaintiff's Exhibit P.28D—Translation—Pay out Slip of The Bank of East Asia Ltd. for M.Y. 4,500.00.**

Translation
—Pay out
Slip of
The Bank
of East
Asia Ltd.
for M.Y.
4,500.00,
30th May
1944.
(Here appears Pay out slip of The Bank of East Asia Ltd., for M.Y.4,500.00 in Chinese characters.)

AGREED TRANSLATION.

By Pass Book No. 1575, please pay M.Y. Four Thousand and Five Hundred only.

M.Y.100	Notes.....	
M.Y.10	Notes.....	
M.Y.5	Notes.....	

20

Dated the 30th day of May, 33rd Year (of the Chinese Republic).

(Chopped) HO PING FAI.
 (Chopped) LEUNG SAI FOON.
 (Chopped) CHU YAM OM.

To The Bank of East Asia, Ltd., Hong Kong.

(Signed) (Illegible).
 (Chopped) (Illegible).
 (Signed) (Illegible).
 (Signed) (Illegible).

I hereby certify that the foregoing is a true translation of the 30 Chinese document marked "AD."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
7.1.56.

Plaintiff's Exhibit P.28E—Translation—Copy of The Bank of East Asia Ledger showing payment in and out.

(Here appears Copy of The Bank of East Asia Ledger showing payment in and out in Chinese characters.)

AGREED TRANSLATION.

<i>Date</i>	<i>Dr.</i>	<i>Cr.</i>	<i>Balance</i>	
1944	M.Y.			Leung Sai Foon Chop Reported Lost on 20/8/45.
Mar. 10		20,000.-	20,000.-	
10 „ 28	15,000.-		5,000.-	
May 30	4,500.-		500.-	(Sgd.) (Illegible).

Exhibits.

Plaintiff's
Exhibits.

P.28E.
Translation
—Copy of
The Bank
of East
Asia Ltd.
Ledger
showing
payment
in and out,
10th March
to 30th
May 1944.

M.Y. A/C No. 1575/K5921 Name: Leung Sai Foon & Chu Yam Om Ho Ping Fai Sheet No. A.1

I hereby certify that the foregoing is a true translation of the Chinese document marked "AF."

(Sgd.) CHAN SIN CHEUNG,
Court Translator.
7.1.56.

Exhibits. Plaintiff's Exhibit P.29—Translation from Chinese—Order of Japanese Governor No. 27.
 Translation from Chinese—Order of Japanese Governor No. 50.

Plaintiff's Exhibits.

GOVERNOR'S ORDER No. 27.

P.29.

Translation from Chinese—Order of Japanese Governor No. 27, 31st May 1943.

Translation from Chinese—Order of Japanese Governor No. 50, 5th November 1943.

Regulations governing the control of transfer of premises shall be enacted as follows :

RENSUKE ISOGAI,
 Governor of the Captured
 Territory of Hong Kong.

May 31, 18th Year of Showa (1943).

Regulations on the Control of Transfer of Premises. 10

Art. 1. Unless permitted by the Governor of the Captured Territory of Hong Kong, transfer or handing over of premises by sale, purchase, exchange, present, or any other reason, is prohibited.

Art. 2. Those wishing to obtain a permit as stated in the preceding Article, must submit an application, under the joint signature of the transferor and the transferee, to the House Registration Office of the Government of the Captured Territory of Hong Kong, giving the following particulars :—

- (A) Name, address, nationality and profession of the transferor.
- (B) Name, address, nationality and profession of the transferee. 20
- (C) Full address of the house concerned.
- (D) Registered number of the house concerned.
- (E) Purpose of the premises, actual area of the building, style of construction and present condition.
- (F) Price of transfer.
- (G) Means of payment and other conditions in regard to the transfer.
- (H) Reason for applying for a permit.

Art. 3. Those who contravene the regulations contained in Article 1 shall be imprisoned for a term not exceeding three years or alternatively 30 fined a sum not exceeding 5,000 yen.

If the circumstances deem it necessary, imprisonment and fine may be imposed together.

Addendum.

This Order shall come into force as from the date of promulgation.

I hereby certify the foregoing to be the true translation of the Chinese document marked " O.1."

(Sgd.) HU WA YUN,
 Court Translator.

9.5.51.

40

GOVERNOR'S ORDER No. 50.

Regulations governing the disposition of immovables held as securities by Enemy Banks shall be enacted as follows :

RENSUKE ISOGAI,
Governor of the Captured
Territory of Hong Kong

November 5th, 18th Year of Showa (1943).

Regulations governing the disposition of immovables held as securities by Enemy Banks.

10 Art. 1. All persons having put forth immovables as securities for the debts incurred to any of the Enemy Banks now under liquidation in accordance with Public Notices Nos. 7, 24 and 34 of the 17th Year of Showa (1942) should settle their debts before the 31st December 18th Year of Showa (1943) so as to release their securities.

Art. 2. Should the procedure stipulated in the foregoing Article be not attended to before the time limit fixed in the foregoing Article, the respective Banks entrusted with the liquidation shall in accordance with the directions of the Governor dispose of the said securities in order to settle the whole or a part of their respective debts.

20 Addendum.

This Order shall come into force as from the date of promulgation.

I hereby certify the foregoing to be the true translation of the Chinese document marked "O.2."

(Sgd.) HU WA YUN,
Court Translator.

9.5.51.

Exhibits.

*Plaintiff's
Exhibits.*

P. 29.

Translation
from
Chinese—
Order of
Japanese
Governor
No. 27,
31st May
1943.

Translation
from
Chinese—
Order of
Japanese
Governor
No. 50,
5th

November
1943,

continued.

Exhibits.

Plaintiff's Exhibits.

Plaintiff's Exhibit P.30—Translation from Chinese—Entries

(MONEY) KEPT ON BEH

P.30. Translation from Chinese— Entries in Account Books of Messrs. Y. K. Kan & Co. Solicitors, 30th December 1943.	(1943) December 30th	Li Chok Yuen	Oaklands Path	25,208.97 7,000.— 646.50 2,044.53	} 145	35,000.00
--	-------------------------	--------------	---------------	--	-------	-----------

BANK A

December 30th	Li Chok Yuen	Oaklands Path	35,000.00
---------------	--------------	---------------	-----------

December 30th	752 Cheung Lan Chau Chu Yam Om, Leung Sai Foon No. 1 Oaklands Path	Paid into Bank	Stamp Application Form	<i>Disbursement</i> 35.00 1.50	<i>Costs</i> 610.00	<i>Cash</i> —
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in Account Books of Messrs. Y. K. Kan & Co., Solicitors.

ALF (OF CLIENTS)

*Exhibits.**Plaintiff's Exhibits.*

P.30.

Translation from Chinese— Entries in Account Books of Messrs. Y. K. Kan & Co. Solicitors, 30th December 1943.

December 30th	Hongkong & Shanghai Banking Corporation Paid by cheque of Bank of East Asia	Mortgage	145	}	25,308.97
" "	Spanish Procurator Oaklands Path	Sihnan Mortgage	145		7,000.00
" "	Oaklands Path	Costs	145		646.50
" "	Cheung Lan Chau, Chu Yam Om, Leung Sai Foon		145		2,044.53
CCOUNT					
December 30th	Hongkong & Shanghai Banking Corporation Paid by cheque of Bank of East Asia	Mortgage		}	25,308.97
" "	Spanish Procurator	Mortgage			7,000.00
" "	Cheung Lan Chau, Chu Yam Om, Leung Sai Foon	Oaklands Path			2,044.53
December 30th	752 Stamp No. 1 I hereby certify the foregoing to be the true translation	Oaklands Path			35.00

of the Chinese document marked "A."

(Sgd.) CHAN KWOK YING,
Court Translator.
26.7.1951.

Exhibits. Plaintiff's Exhibit P.31—Translation from Japanese—Application for Cancellation of Registration of Mortgage (1st Mortgage).

Plaintiff's Exhibits.

(Copy)

P.31.

Translation from Japanese—Application for Cancellation of Registration of Mortgage (1st Mortgage), 2nd March 1944.

Duplicate.

APPLICATION FOR CANCELLATION OF REGISTRATION OF MORTGAGE OF HOUSE

1. Location of House : No. 1 Oaklands Path, Hongkong.
2. Lot No. under former Hongkong Government : I.L. 2182, R.P. & S.A.
3. Registered No. at the House Registry of the Government of the 10 Occupied Territory of Hongkong : Hongkong No. 4113.
4. Mortgagee : The Hongkong & Shanghai Banking Corporation.
5. Amount of Mortgage : Hongkong Dollars One hundred and Twenty Thousand.

The above sum of mortgage has been refunded on 11th January, Showa 19th Year as in the receipt attached, and this is to apply for cancellation of registration of mortgage.

13th January, Showa 19th Year. (1944)

Mortgagee: (Signature not legible) (signed and chopped) Acting Manager, Hongkong Branch, Yokohama Specie Bank, 20 Liquidator of the Hongkong and Shanghai Banking Corporation.

Mortgagors : (1) HO PING FAI (signed and chopped) agent for CHEUNG LAN CHAU.

(2) CHU YUM OM (signed and chopped).

(3) LEUNG SAI FOON (signed and chopped).

Former Address : No. 1 Oaklands Path, Hongkong.

Present Address : (1) Kwong Hing Tai, No. 11 Wharf, Hoi Pong Street, Macau.

(2) No. 68 High Street, 1st floor, Hongkong. 30

(3) No. 61 Bonham Strand, ground floor, Hongkong.

(Address of the agent HO PING FAI: No. 57 Bonham Strand, 3rd floor, Hongkong.)

To. Mr. Yoshii Sada, Head of the House Registry of the Government of Occupied Territory of Hongkong.

Received : 13th January, Showa 19th Year.
No. 783 of 'Cancellation.'

Registered : Hongkong No. 4113.
Cancellation of mortgage.

THE ABOVE CANCELLATION OF MORTGAGE REGISTERED.

2nd March, Showa 19th Year.

House Registry of the Government of the Occupied Territory of
10 Hongkong.

(chopped : SHIGEHISA)

(L.S.)

I hereby certify the foregoing to be a true translation of the Japanese document Marked "D"

(Sgd.) G. TONG,
Court Translator.
18.3.49.

Exhibits.

Plaintiff's Exhibits.

P.31.

Translation from Japanese—Application for Cancellation of Registration of Mortgage (1st Mortgage), 2nd March 1944, *continued.*

Plaintiff's Exhibit P.32—Translation from Japanese—Application for Cancellation of Registration of Mortgage (2nd Mortgage).

20 *Duplicate.*

APPLICATION FOR CANCELLATION OF REGISTRATION OF MORTGAGE OF HOUSE.

(This is in the same form as P.31 applied to the second mortgage.)

P.32.

Translation from Japanese—Application for Cancellation of Registration of Mortgage (2nd Mortgage), 2nd March 1944.

Exhibits.

Plaintiff's Exhibit P.33—Translation from Chinese—Entries

Plaintiff's Exhibits.

(1 9

P.33.	February 3rd	Tam Toi Hing	Oaklands Path	Purchase Money	173	27,000—	
Translation from Chinese—Entries Account Books of Messrs. Y. K. Kan & Co., Solicitors, February to March 1944.	Ditto	Ditto	Costs & Disbursement	—	1,581.50	} (BANK
	February 3rd	Tam Toi Hing				173	27,000—	
	February 3rd	Tam Toi Hing	Oaklands Path		769		<i>Disbursements—Costs</i>
				Stamp Registration Application Form	620— 310— 150	931.50	650
	March 10th	Cheung Lan Chau	Oaklands Path		778	—	110
	March 31st	Sihnan Middle School			832		<i>Disbursements</i> 150 —



Account Books of Messrs. Y. K. Kan & Co., Solicitors.

4 4)

Exhibits.
Plaintiff's
Exhibits.

P.33.

Translation
from
Chinese—
Entries
Account
Books of
Messrs.
Y. K. Kan
& Co.,
Solicitors,
February
to March
1944.

28,581.50

ACCOUNT)

March 10th	Cash	Oaklands Path	..	173	26,890	-	-	26,890—
„	„	ditto	Costs	173	110	-	-	—

ACCOUNT)

January 26th		Stamp	769	Oaklands Path No. 1			620—
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—

March 6th		Registration fee	..	769	Oaklands Path			310—
-----------	--	------------------	----	-----	---------------	--	--	------

Costs

150—

I hereby certify the foregoing to be the true translation of the Chinese document marked " B ".

(Sgd.) CHAN KWOK YING,
Court Translator.
26.7.1951.



*Exhibits.***Plaintiff's Exhibit P.34—Translation from Japanese—Specimen Signature of Cheung Lan Chau.***Plaintiff's Exhibits.*

SPECIMEN OF SIGNATURE.

P.34.
Translation
from
Japanese—
Specimen
Signature
of Cheung
Lan Chau,
18th
February
1944.

Registered No. : Hongkong No. 4113.

<p>Address : Kwong Hing Tai Firm, No. 11 Wharf, Hoi Pong Street, Macau.</p> <p>Name : Cheung Lan Chau.</p>
<p>Signature : Cheung Lan Chau. (signed).</p> <p>Chop : Cheung Lan Chau. (chopped).</p>

Dated 18th February, Showa 19th Year (1944).

10

I hereby certify the foregoing to be a true translation of the
Japanese document Marked "G"

(Sgd.) G. TONG,
Court Translator.
8.3.49.

P.35.
Translation
from
Chinese—
Receipt by
Wong Tat
To for
Tenancy
Agreement,
29th March
1944.

Plaintiff's Exhibit P.35—Translation from Chinese—Receipt by Wong Tat To for Tenancy Agreement.

Received
the Original of one Tenancy Agreement
Principal Leung Sai Foon
Sai Nam Middle School.

20

(Sgd.) Wong Tat To received for (the principal).

Dated the 29th day of March, the 33rd Year of the Chinese Republic.

I hereby certify the foregoing to be the true translation of the
Chinese document marked "R."

(Sgd.) HU WA YUN,
Court Translator.
16.4.51.

Plaintiff's Exhibit P.36—Translation from Chinese—Copy Letter to Leung Sai Foon.

Exhibits.

To : The Principal Leung Sai Foon,
Sai Nam Middle School.

Plaintiff's Exhibits.

re. Letting of No. 1 Oaklands Path, 'Sui Sing' District, Hong Kong.

P.36.

We hasten to state that (the Agreement) in respect of the above premises has been duly signed. (We) now send you herewith the original of the Agreement. Please acknowledge receipt and obliged.

Trans-
lation
from
Chinese—
Copy
Letter to
Leung
Sai Foon,
29th
March
1944.

Dated the 29th day of March, 33rd year of the Chinese Republic,
19th year of Showa.

10

(Chopped :

I hereby certify the foregoing to be the true translation of the Chinese document marked "A."

(Sgd.) HU WA YUN,
Court Translator.
16.4.51.

Plaintiff's Exhibit P.37—Receipt for Title Deeds.

P.37.

re. No. 1 Oakland Path.
(Inland Lot No. 2182.)

Receipt for
Title
Deeds,
13th
March
1944.

RECEIVED from Messrs. TAM, KAN HUNG and SHE the following title
20 deeds and documents relating to the above premises :

1. Crown Lease dated the 20th April, 1917.
2. Mortgage Memorial No. 65430 with Reassignment endorsed.
3. Attested copy Power of Attorney dated the 3rd day of May, 1918.
4. Mortgage Memorial No. 70269 with Reassignment endorsed.
5. Attested copy Power of Attorney dated the 25th October, 1919.
6. Second Mortgage Memorial No. 70273 with Certificate of Satisfaction endorsed.
7. Mortgage Memorial No. 72395 with Reassignment endorsed.
8. Second Mortgage Memorial No. 73701 with Certificate of Satisfaction endorsed.
9. Sub-Mortgage Memorial No. 73702 with Certificate of Satisfaction endorsed.

30

- Exhibits.* 10. Mortgage of the Equity of Redemption Memorial No. 78386 with Certificate of Satisfaction endorsed.
- Plaintiff's Exhibits.* 11. Equitable Charge Memorial No. 79174 with Certificate of Satisfaction endorsed.
- P.37.
Receipt for Title Deeds, 13th March 1944, continued.
12. Mortgage Memorial No. 80340.
13. Assignment Memorial No. 91308.
14. Mortgage Memorial No. 91309.
15. Order Memorial No. 104622.
16. Valuation Report dated the 15th November 1926.
17. Attested copy Power of Attorney dated the 20th June 1927. 10
18. Attested copy Power of Attorney dated the 6th March 1928.
19. Mortgage Memorial No. 110220.
20. Agreement for Sale and Purchase dated the 14th December 1932.
21. Assignment Memorial No. 135092.
22. Mortgage Memorial No. 135093 with (*here appears an entry in Chinese characters*) attached.
23. Second Mortgage Memorial No. 135094 with (*here appears an entry in Chinese characters*) attached.
24. (*Here appears an entry in Chinese characters.*)
(*Chinese characters.*) 20

Dated the 13th day of March, 1944.

P.38.
Trans-
lation
from
Chinese—
Deed of
Redemp-
tion from
Chu Yam
Om, Leung
Sai Foon
and Cheung
Lan Chau
to Tam
Toi Hing,
10th
February
1944.

Plaintiff's Exhibit P.38—Translation from Chinese—Deed of Redemption from Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Tam Toi Hing.

DEED OF REDEMPTION

Mortgagee: Tam Toi Hing of No. 8 Kennedy Road (hereafter briefly referred to as "A").

Applicant for cancellation of mortgage: Cheung Lan Chau, Chu Yam Om, Leung Sai Foon (all) of No. 1 Oaklands Path, Hong Kong (hereafter briefly referred to as "B").

Property redeemed: No. 1 Oaklands Path, Hong Kong (registered in the 30 Governor's House of Registration Office of the Occupied Territory of Hong Kong as 'Hong' No. 4113), the house and a piece of land (registered in the Land Office of the Hong Kong Government as Inland Lot No. 2182 R.P. and Section A) together with all buildings erected thereon and appurtenances and the right of way in the front and at the rear, drainage and all rights and privileges appertaining to the house and land (hereafter briefly referred to as "the said property").

WHEREAS B. has on the 30th day of December, 32nd year of the Chinese Republic, 18th year of Showa borrowed from A. the principal sum of M.Y.35,000.00, and stipulated that interest shall be \$5.00 per \$1,000 50 per month calculated by solar calendar of 12 months (and) mortgaged the

said property aforesaid as security. A deed of mortgage of house has been executed in the office of Kan Yuet Keung, solicitor as proof. AND WHEREAS B. has on the 10th day of February 33rd year of the Chinese Republic 19th year of Showa in pursuance of the deed of mortgage of the said property aforesaid repaid to A. the principal and interest of the mortgage money and there is no money due and owing. A. has also acknowledged receipt of the same amount. Now A. at the request of B. hands back the possession of the said property aforesaid to B. for their free administration, and in the meantime returns to B. the deed of mortgage of house together with the previous title deeds and documents for them to receive and hold and neither party shall claim against each other.

IN ORDER to have some proof in the future, this Deed of Redemption is specially made and handed to B. for record as proof.

Dated the 10th day of February 33rd year of the Chinese Republic 19th year of Showa.

“ A.”

Witness : Lawyer

I hereby certify the foregoing to be the true translation of the Chinese document marked “ D. R.”

(Sgd.) HU WA YUN,
Court Translator.
18.4.51.

Exhibits.
Plaintiff's Exhibits.

P.38.
Translation from Chinese—Deed of Redemption from Chu Yam Om, Leung Sai Foon and Cheung Lan Chau to Tam Toi Hing, 10th February 1944, *continued.*

Plaintiff's Exhibit P.39—Translation from Chinese—Li Chok Yuen's Rent Account Book for 1945 relating to No. 1 Oaklands Path.

LI CHOK YUEN'S RENT ACCOUNT BOOK
FROM ALL FIRMS FOR 1945.

By Sai Nam School,
6 months' (rent) for No. 1 Oaklands Path, whole premises, from August 34th Year (of the Republic of China) to January 35th Year (of the Republic of China) at M.Y.420 per month M.Y.2,520.00

I hereby certify the foregoing to be the true translation of the Chinese document marked “ En. 1.”

(Sgd.) HU WA YUN,
Court Translator.
9.5.51.

P.39.
Translation from Chinese—Li Chok Yuen's Rent Account Book for 1945 relating to No. 1 Oaklands Path.

Exhibits. **Plaintiff's Exhibit P.40—Translation from Chinese—Receipt from Tam Shi for M.Y. 2,520.00.**

Plaintiff's Exhibits. RECEIPT AND DISBURSEMENT ACCOUNTS OF LI CHOK YUEN FOR 1945
(L.E. YUET YAU YEAR, 34TH YEAR OF THE REPUBLIC OF CHINA).

P.40.
Trans-
lation
from
Chinese—
Receipt
from Tam
Shi for
M.Y.
2,520.00,
1945.

RECEIVED payment from Tam Shi being 6 months' (rent) for Sai Nam School at No. 1 Oaklands Path, whole premises from 1st February (Showa 20th year) to the end of July M.Y.2,520.00

I hereby certify the foregoing to be the true translation of the Chinese document marked " En.2."

(Sgd.) HU WA YUN,
Court Translator. 10
9.5.51.

P.41. **Plaintiff's Exhibit P.41—Translation from Chinese—Counterfoils of Rent Receipts up to the end of June 1944.**

Trans-
lation
from
Chinese—
Counter-
foils of
Rent
Receipts
up to the
end of
June
1944.

1552
HEREBY RECEIVED from Sai Nam School the sum of M.Y.420.00 being the amount of rent from the 1st day of June Showa 19th year to the end of June, Showa 19th year in respect of No. 1 Oaklands Path, whole premises. Rates.

The person receiving the money :
Receipt 20
Counterfoil

Dated the day of year.

I hereby certify the foregoing to be the true translation of the Chinese document marked " R.4."

(Sgd.) HU WA YUN,
Court Translator.
9.5.51.

1553
HEREBY RECEIVED from Sai Nam School the sum of M.Y.420.00 being the amount of rent from the 1st day of July, Showa 19th year to the end 30 of July, Showa 19th year in respect of No. 1 Oaklands Path, whole premises. Rates.

The person receiving the money :
Receipt
Counterfoil

Dated the day of year.

I hereby certify the foregoing to be the true translation of the Chinese document marked " R.5."

(Sgd.) HU WA YUN,
Court Translator. 40
9.5.51.

1550

HEREBY RECEIVED from Sai Nam School the sum of M.Y.420.00 being the amount of rent for the period from the 1st day of April Showa 19th year to the end of April Showa 19th year in respect of No. 1 Oaklands Path, whole premises. Rates.

The person receiving the money :
Receipt
Counterfoil

Dated the day of year.

10 I hereby certify the foregoing to be the true translation of the Chinese document marked " R.2."

(Sgd.) HU WA YUN,
Court Translator.

9.5.51.

Exhibits.
—
Plaintiff's Exhibits.
—
P.41.
Trans-
lation
from
Chinese—
Counter-
foils of
Rent
Receipts
up to the
end of
June
1944,
continued.

1549

HEREBY RECEIVED from Sai Nam School the sum of M.Y.420.00 being the amount of rent from the 1st day of March, Showa 19th year to the end of March, 19th year Showa in respect of No. 1 Oaklands Path, whole premises. Rates.

The person receiving the money :
Receipt
Counterfoil

Dated the day of year.

20 I hereby certify the foregoing to be the true translation of the Chinese document marked " R.1."

(Sgd.) HU WA YUN,
Court Translator.

9.5.51.

1551

30 HEREBY RECEIVED from Sai Nam School the sum of M.Y.420.00 being the amount of rent from the 1st day of May, Showa 19th year to the end of May, 19th year Showa in respect of No. 1 Oaklands Path, whole premises. Rates.

The person receiving the money :
Receipt
Counterfoil

Dated the day of year.

40 I hereby certify the foregoing to be the true translation of the Chinese document marked " R.3."

(Sgd.) HU WA YUN,
Court Translator.

9.5.51.



Exhibits.

Plaintiff's Exhibit P.42—Translation from Chinese—Counterfoil Rent Receipt.

Plaintiff's Exhibits.

No. 4129

P.42.
Trans-
lation
from
Chinese—
Counter-
foil Rent
Receipt,
1945.

HEREBY RECEIVED from Sai Nam School the sum of M.Y.2,520 being the amount of rent for six months commencing from the 1st day of August Showa 20th year to the end of January, Showa 21st year in respect of No. 1 Oaklands Path, whole premises. Rates.

The person receiving the money :

Receipt

Counterfoil

Dated the day of , Showa 20th Year. 10

I hereby certify the foregoing to be the true translation of the Chinese document marked " R.6."

(Sgd.) HU WA YUN,
Court Translator.

9.5.51.



Plaintiff's Exhibit—Memorial of Japanese Assignment.

MI.

Stamp Duty M.Y.620.00
on Deed

No. 204,450

Exhibits.
Plaintiff's Exhibits.

A MEMORIAL required to be registered in the Land Office according to the provisions of Ordinance No. 1 of 1844.

Memorial of Japanese Assignment, 23rd May 1951.

	Nature and object of the Instrument to which the Memorial relates.	
	JAPANESE ASSIGNMENT with Certified English translation thereof a copy of each is hereto annexed.	
Y.K.K.	Δ or TOY * otherwise spelt as YAM	
	Date of Instrument.	The 17th February, Showa Year (1944).
Y.K.K.	Names and additions of Parties.	CHEUNG LAN CHAU (<i>Chinese characters</i>) of Kwong Hing Tai, No. 11 Hoi Pong Street, Macau, CHU YUM* OM (<i>Chinese characters</i>) of No. 68 High Street, 1st floor, Hong Kong and LEUNG SAI FOON (<i>Chinese characters</i>) of No. 61 Bonham Strand, ground floor, Hong Kong "Vendors". LI TAM TOI Δ HING (<i>Chinese characters</i>) of No. 8 Kennedy Road, ground floor, Hong Kong "Purchaser".
	Names and additions of Witnesses.	To the execution by the said parties (the said Cheung Lan Chau by his Agent Ho Ping Fai) :—Kan Yuet Keung, Solicitor.
Y.K.K.	Premises affected by the Instrument.	Inland Lot No. 2182 (stated in the Agreement as R.P. & S.A.).
C/F No. 16 Y.K.K.	Signature of Parties signing Memorial.	Lo and Lo (<i>Chinese characters</i>) Solicitors for and on behalf of the Purchaser.

On this 23rd day of May, 1951, Chan Kwan Fat Clerk to Messrs. Lo and Lo of Victoria in the Colony of Hong Kong hereby certify (according to Section VII of Ordinance No. 1 of 1844) that the foregoing Memorial contains a just and true account of the several particulars therein set forth.

Y. K. KAN,
Victoria,
J.P.

RECEIVED at the Land Office and Registered as Memorial No. 204,450 on 23 May 1951 the..... day of 194 , at o'clock in the noon.

W. K. THOMSON,
Land Officer.

*Exhibits.***Defendants' Exhibit D.1—Note Area of Inland Lot No. 2182 Remaining Portion and Section A.***Defendants' Exhibits.*

D.1.
Note Area
of Inland
Lot
No. 2182
Remaining
Portion
and
Section A,
6th
January
1944.

I. L. 2182 S.A. & R.P.
Total area of lot 29,500 sq. ft.
(about)
Available Level Ground
about 26,000 sq. ft.
Area of Playground 8,000 sq. ft.
(about)
Narrowest width about 70' 0"
6/1/44.

10

D.2.

Defendants' Exhibit D.2—Translation from Chinese—Letter from W. N. Tam, Y. K. Kan, W. C. Hung and Y. K. She, Solicitors to Leung Sai Foon.

Trans-
lation
from
Chinese—
Letter
from
W. N.
Tam,
Y. K. Kan,
W. C.
Hung and
Y. K. She,
Solicitors
to Leung
Sai Foon,
1943.

TRANSLATION

Envelope

To the Headmaster Leung Sai Foon to open
Sih Nan College,
No. 1 Oaklands Path,
Hong Kong.

From :—Solicitors' Office of
Thomas W. N. Tam,
Y. K. Kan,
W. C. Hung and
George Y. K. She.
Bank of East Asia Building (4th fl.)
Telephone No. 33377.

20

1. Formal Mortgage can be done without the necessity of submitting application for permission but there is no registration enforced at present. Until February next year there may be regulations to be announced.

2. Money advanced on Mortgage (of property) in now-a-day, the 30 mortgage money cannot be obtained more than 60% or 70% of the assessed value (of the property).

3. The costs charged by solicitors' office is approximately the same as for sale and purchase of property; for example, \$210.00 shall be charged on \$10,000.00, \$405.00 shall be charged on \$30,000.00 and \$435.00 shall be charged on \$35,000.00.

4. Brokerage shall be paid double the amount as that for sale and purchase as before, for example, $\frac{1}{2}$ % commission was payable on sale and

purchase and 1% commission is payable now on mortgage. This charge is due to the fact that commission is borne by the Mortgagor alone while no commission is paid by the Mortgagee. At present, on sale and purchase of property, the vendor generally pays commission at the rate of 2% and on mortgage, it is obviously not less than 2%. It may be 3% or 4%.

Exhibits.
—
Defendants' Exhibits.
—
D.2.

5. Generally speaking the mortgagee or purchaser decides on which solicitor to prepare the mortgage or assignment. But on some occasions the Mortgagor or Vendor may suggest his own solicitor with the consent of the Mortgagee or Purchaser.

Trans-
lation
from
Chinese—
Letter
from

10 6. Preparing Reassignment is usually done by the Solicitors upon the instruction of the Mortgagee, but on some occasions the Reassignee instructs his own solicitors to notify the other side of the repayment of principal and on many occasions the other side would raise no objection to it.

W. N.
Tam,
Y. K. Kan,
W. C.
Hung and
Y. K. She,

7. The cost of preparing Reassignment is \$75.00 where consideration does exceed \$2,500.00.

Solicitors
to Leung
Sai Foon,
1943,
continued.

8. It will be more convenient to the new Mortgagee if the 2nd Mortgage is to be satisfied at the same time, because the new Mortgage will become the 2nd Mortgage if the existing 2nd Mortgage remains unsatisfied.

9. There will be no question on the 2nd Mortgage as it can be satisfied
20 now.

10. Some Mortgagees take back $\frac{1}{4}$ of the commission for themselves.

11. Some Mortgagees deduct their interest to be paid in advance for one year or several months for fear that the Mortgagors might fail to pay their interest.

30 12. According to the usual practice, the term of mortgage is generally for one year with a right of extension for a further year, therefore in many cases the interest is payable for one year. But sometime the arrangement they made is a little loose i.e. if repayment is made after six months, the mortgagee is entitled to one month's previous notice in addition to one month's interest, that is all. And in some cases where a little time is elapsed, eight months' interest is required. Therefore you often hear people say: Once you leave the door you will have to pay eight months' interest. It may be arranged for a term of two years. Both parties arrange beforehand as to how the interest is to be paid so as to avoid future disputes.

I hereby certify the foregoing to be the true translation of the Chinese document marked "O".

(Sgd.) CHAN KWOK YING
Court Translator.
12.5.1951.



Exhibits. Defendants' Exhibit D.3—Translation from Chinese—Leaflet copy for Subscriptions for Sai Nam School.

Defendants' Exhibits.

TRANSLATION

D.3.
Trans-
lation
from
Chinese—
Leaflet
copy for
Subscrip-
tions for
Sai Nam
School.

“ Nan ” Character No. 10.

THE LEAFLET OF ORGANIZATION FUNDS RAISED
FOREWORD OF RAISING FUNDS FOR SIH NAN COLLEGE.

There are many hundred thousands of Chinese residing in Hongkong. Among them there is not a small number of young people in need of education. At peaceful time as it was in the past there was a chance of joining a school in the interior. But in the recent years the current situation 10
under-went a great change and fighting broke out incessantly. As a result, some schools were closed by order while others stopped operation. Besides, educational institutions were used for political activities and students were led astray into a wrong path and became wild and reckless. Therefore the young people remaining in Hongkong could not go to the interior for their study. Conversely many people in the interior brought their youngsters to Hongkong looking for a school. That is the reason why schools have sprung into existence day after day.

Although there are many schools in Hong Kong, yet perfect ones are still very few. If they were not embarrassed with finance they would be 20
handicapped by the shortage of efficient staff. The object of most of the schools was mercenary and all the school system was based on old rules. Some of the schools stressed on English subjects while others devoted their attention exclusively to Chinese classics. Thus the pupils could not master both Chinese and English subjects at the same time and their parents were greatly dissatisfied with this. It is a great pity !

Being aware of the above (defects) and striving to meet the long felt demand by rectifying the common errors we have specially established the Sih-Nan College in Hongkong with a view to carrying out our ideal scheme in education. Now let us proclaim the aims and objects for which our 30
College is established for the information of our countrymen.

1. We embark upon the educational career for the purpose of education only.

2. Course of study : We strive to mix both European and Chinese (knowledge) and make a compromise between old and new schools of thought without prejudice and without omission.

3. Subjects : We esteem both theory and practice so that when the students upon graduation may be fit for admission into a university and also for making a living.

4. Management : We strictly adopt the principal of intervention, 40
gradually stimulate the spirit of self-government, and inculcate a good habit in the pupils.

5. Training : We train up sound mind and healthy physique.

6. School teachers : We base on " full-time " as principle so that the teachers may devote their whole time to teaching. We adopt strict methods in examination so as to avoid dilatoriness or patchiness.

Exhibits.
—
Defendants'
Exhibits.

We swear we will carry out the above several items from beginning to end. In short we will not abuse the trust imposed upon us by the guardians and will not hinder the progress of our pupils. We will train up talents for the nation and promote welfare for the public. Lofty as our aims are our capacity and resources are limited. It is therefore necessary to raise funds at the commencement of the founding of the School in order to have her firmly established before our principle of education can be carried on effectively. We are looking to people of all classes who are zealous in the cause of public welfare to give us their advice and support so as to enable us to accomplish (our aims and objects). By so doing you will not only do a great service to us, but to our nation as well.

D.3.
Trans-
lation
from
Chinese—
Leaflet
copy for
Subscrip-
tions for
Sai Nam
School,
continued.

FOUNDERS

	Chu Yam Om	Tam Suet Yau	Fung Heung Chuen
	Ip Lan Chuen	Li Yick Mui	H. K. Hung
	Lau Tak Po	Lau King Cho	Kwan Cho Pok
	Lau Hing Tin	Tam Ching Po	Chiu Pik
20	Cheung Kwai Hay	Lai Kung Chi	Lai Shui Lam
	Chu Chiu Cheuk	Yuen Mang Hung	Chan King Kwok
	Lam Chun Sheung	Ng Cho Chi	Leung Sai Foon
	Cheung Lan Chau	Woo Kwok Wai	Lam Sin Fong
	Kwan Luen Sum	Chan Woon Wah	

List of Donators

Mr. Fung Heung Chuen donated \$100.00

Received 8th February.

Defendants' Exhibit D.4—Translation from Chinese—Subscription List of Sai Nam College

D.4.

TRANSLATION.

30 SCHEME OF FORMATION OF SIH-NAN COLLEGE WITH PRIMARY SCHOOL ANNEXED.

Trans-
lation
from
Chinese—
Subscrip-
tion List
of Sai Nam
College.

(1) AIMS AND OBJECTS OF ESTABLISHING SCHOOL.

THE NECESSITY OF ESTABLISHING MORE SCHOOLS IN HONG KONG.

There are many hundred thousands of Chinese residing in Hongkong. Among them there is not a small number of young people in need of education. At peaceful time as it was in the past there was a chance of joining a school in the interior. But in recent years the current situation

Exhibits. under-went a great change and fighting broke out incessantly. As a
 result, some schools were closed by order while others stopped operation.
Defendants' Exhibits. Besides, educational institutions were used for political activities and
 students were led astray into a wrong path and became wild and reckless.
 D.4. Therefore the young people remaining in Hongkong could not go to the
 interior for their study. Conversely many people in the interior brought
 their youngsters to Hongkong looking for a school. That is the reason
 why schools have sprung into existence day after day.

Trans-
 lation
 from
 Chinese—
 Subscrip-
 tion List
 of Sai Nam
 College,
continued.

DEFECTS OF EXISTING SCHOOLS IN HONG KONG.

Although there are many schools in Hong Kong, yet perfect ones are 10
 still very few. If they were not embarrassed with finance they would be
 handicapped by the shortage of efficient staff. The object of most of the
 schools was mercenary and all the school system was based on old rules.
 Some of the schools stressed on English subjects while others devoted their
 attention exclusively to Chinese classics. Thus the pupils could not master
 both Chinese and English subjects at the same time and their parents
 were greatly dissatisfied with this. It is a great pity !

THE POLICY OF OUR COLLEGE IN EDUCATION.

Being aware of the above (defects) and striving to meet the long-felt
 demand by rectifying the common errors we have specially established the 20
 Sih-Nan College in Hongkong with a view to carrying out our ideal scheme
 in education. Now let us proclaim the aims and objects for which our
 College is established for the information of our countrymen.

1. We embark upon the educational career for the purpose of
 education only.

2. Course of study : We strive to mix both European and Chinese
 (knowledge) and make a compromise between old and new schools of thought
 without prejudice and without omission.

3. Subjects : We esteem both theory and practice so that when the
 students upon graduation may be fit for admission into a university and 30
 also for making a living.

4. Management : We strictly adopt the principle of intervention,
 gradually stimulate the spirit of self-government, and inculcate a good
 habit in the pupils.

5. Training : We train up sound mind and healthy physique.

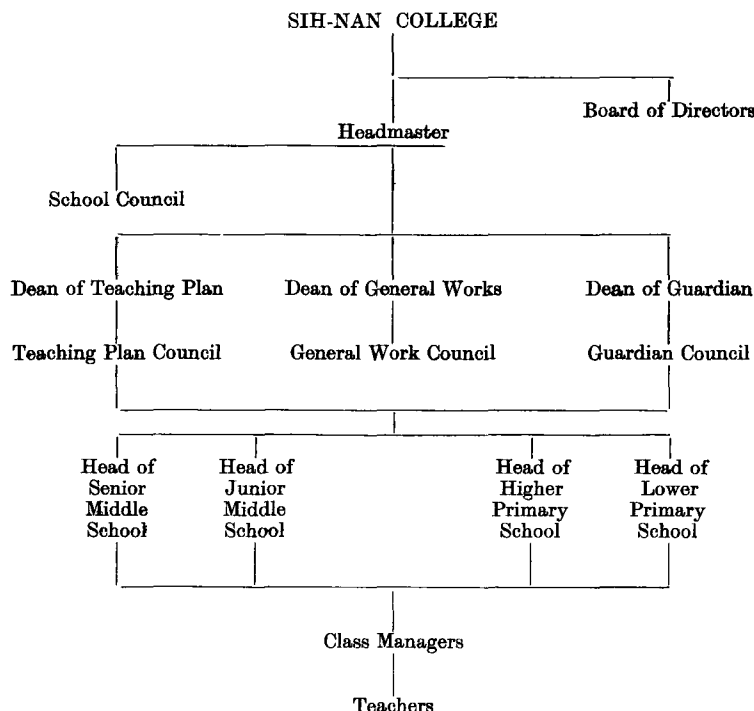
6. School teachers : We base on " full-time " as principle so that
 the teachers may devote their whole time to teaching. We adopt strict
 methods in examination so as to avoid dilatoriness or patchiness.

We swear we will carry out the above several items from beginning
 to end. In short we will not abuse the trust imposed upon us by the 40
 guardians and will not hinder the progress of our pupils. We will train
 up talents for the nation and promote welfare for the public. Lofty as our
 aims are our capacity and resources are limited. We are looking to people
 of all classes who are zealous in the cause of public welfare to give us

their advice and support so as to enable us to accomplish (our aims and objects). By so doing you will not only do a great service to us, but to our nation as well.

Exhibits.
Defendants'
Exhibits.

(2) OUTLINE OF ORGANIZATION SYSTEM.



10

D.4.
 Trans-
 lation
 from
 Chinese—
 Subscription
 List
 of Sai Nam
 College,
continued.

(3) OUTLINE OF DIVISION

The school is divided into two departments :—The Primary School Department and the Middle School Department. The Primary School Department consists of the Lower and the Higher Primary School. The Middle School consists of the Junior and the Senior Middle School. Lower Primary School—4 years ; Higher Primary School—2 years ; Junior Middle School—3 years ; Senior Middle School—3 years ; all alike adopts school year system. Upon completion of courses of study all successful candidates at examination shall become graduates.

20

(4) OUTLINE OF SUBJECTS TAUGHT

1. In the Lower Primary School :—

Chinese language, English language, Arithmetic, Letter-writing, Chinese classics, General intelligence, Mandarin, Physical training, Music, Drawing and Handicraft.

30

2. In the Higher Primary School :—

Chinese language, English language, Letter-writing, Moral practice, Chinese classics, Arithmetic, Counting with abacus, History, Geography, Natural science, Physical training, Music, Drawing, Handicraft and Mandarin.

Exhibits.
 ———
Defendants'
Exhibits.
 ———
 D.4.
 Trans-
 lation
 from
 Chinese—
 Subscrip-
 tion List
 of Sai Nam
 College,
continued.

3. In the Junior Middle School :—

Chinese language, English language, Arithmetic, Counting with abacus, Chinese classics, Commercial knowledge, Industrial knowledge, book-keeping, Moral practice, History, Geography, Natural science, Physical training, Music, Drawing, Handicraft and Mandarin.

4. In the Senior Middle School :—

Chinese language, English language, Arithmetic, Chinese history, World history, Chinese geography, World geography, Chinese classics, Ethics, Logic, Social science, Psychology, Political economics, 10 General philosophy, General literature, General law, General science, General education, Biology, Mineralogy, Physics, Chemistry, History of philosophy, History of literature, History of education, Physical training, Drawing, Music, Mandarin and second foreign language.

School Premises :—New foreign-styled three storeyed building, No. 26 Bonham Road, Hongkong.

Headmaster :—Cheung Lan Chau.

Founders :—Li Yick Mui	Ip Lan Chuen	H. K. Hung	
Fung Heung Chuen	Lau Tak Po	Lau King Cho	20
Tam Suet Yau	Chiu Pik	Lai Sui Lam	
Kwan Cho Pok	Lai Kung Chi	Chu Yam Om	
Cheung Lan Chau	Ng Cho Chi	Lam Sin Fong	
Woo Kwok Wai	Leung Sai Foon	Lam Chan Sheung	
Chan Sze Lim	Cheung Kwai Hi	Un Mang Hung	
Lau Hing Tin	Chu Chiu Cheuk	Tam Ching Po	
Kwan Luen Sham	Chan Woon Wah	Chan King Kwok	

Supporters :—(If you agree to support please sign hereunder)

Kam Hoo Ting	
Lau Pak Tuen	30
Lau Shuk Chong	
Luk Mang Fei	
Chung Tsze King	
Ip Wai Hung	
Im Ping Cheung	
Lau Tsze Ping	
Chan Chik Yue	
Hui Cheung	
Hui Pak Sang	
Chan Yin Sang.	40

I hereby certify the foregoing to be the true translation of the Chinese document marked " Q ".

(Sgd.) CHAN KWOK YING,
 Court Translator,
 16.5.1951.

Defendants' Exhibit D.5—Translation from Chinese—Prospectus of Sai Nam College for 1937—1938.

Exhibits.

Defendants' Exhibits.

TRANSLATION

PROSPECTUS OF SIH NAN COLLEGE (WITH PRIMARY SCHOOL ANNEXED)
Registered with the Hongkong Government and the Chinese Government.

D.5.
Trans-
lation
from
Chinese—
Prospectus
of Sai Nam
College for
1937-1938.

Addresses :

- Boy School : No. 1 Oaklands Path above Bonham Road.
 Girl School : Nos. 3 & 5 Babington Road above Bonham Road.
 Branch Girl School : No. 69 Waterloo Road, Homuntin, Mongkok.
 10 Boy School : Telephone No. 22595.
 Girl School : Telephone No. 26130.
 Branch Girl School : Telephone No. 59019.

I. Aims and Objects :

- (A) We embark upon the educational career for the purpose of education only.
 (B) Course of study :—We strive to mix both European and Chinese (knowledge) and make a compromise between the old and new schools of thought without prejudice and without omission.
 20 (C) Subjects :—We esteem both theory and practice so that when the students upon graduation may be fit for admission into a university and also for making a living.
 (D) Training :—To train up sound mind and healthy physique.
 (E) Management :—We strictly adopt the principle of intervention gradually stimulate the spirit of self-Government, and inculcate a good habit in the pupils.

II. School system :

The School is divided into two departments, the primary school and the middle school department. The primary school department consists of the lower and the higher primary school and the middle school department consists of the junior and the senior middle school. Lower primary school—4 years; higher primary school—2 years; junior middle school—3 years; and senior middle school—3 years. All alike adopts school year system. Upon the completion of courses of study all successful candidates at examination shall each be given a diploma.

III. Curricula :

- (A) Lower Primary School :—Chinese, English Language, Arithmetics, Letter-writing, General-intelligence, Mandarin, Physical-training, Music, Drawing, Handicraft, Writing-exercise, Hygiene, History, Geography.
 40 (B) Higher Primary School :—Chinese Language, English Language, Letter-writing, Arithmetic, Counting with abacus, History.

Exhibits.
 —
Defendants'
Exhibits.
 —
 D.5.
 Trans-
 lation
 from
 Chinese—
 Prospectus
 of Sai Nam
 College for
 1937-1938,
continued.

Geography, Natural science, Mandarin, Civic-duties, Drawing, Handicraft, Writing-exercise, Hygiene, Physical-training, Music.

- (C) Junior Middle School :—Chinese Language, English Language, Arithmetic (Mathematic, Algebra and Geometry), Counting with abacus, Commercial-knowledge, Book-keeping, History, Geography, Natural-science (physics, chemistry, zoology, botany, mineralogy, biology), Mandarin, Civic-duties, Classics, Physical-training, drawing, Music.
- (D) Senior Middle School :—Chinese Language, English Language, 10 Mathematics (Algebra, Geometry, Trigonometry), Chinese-history, Chinese-geography, World-history, World-geography, Classics, Ethics, Logic, Social-science, Psychology, Political-economy, General-philosophy, General literature, General-law, General-science, General-education, Biology, Mineralogy, Physics, Chemistry, History of Philosophy, History of literature, History of education, Physical-training, Drawing, Music, Mandarin, Second foreign language.

IV. Teachers :

All courses of study in the College are undertaken by graduates 20 employed from Chinese and foreign Universities. For teaching Chinese language, experienced scholars shall be employed. For teaching English language, Englishmen and experts in English language shall be employed. The staff composes persons having special knowledge and ripe experience in education. All are full-time teachers who have devoted their exclusive attention to education.

V. Pupils :

All males feeling inclined to study and bearing a good character may apply for enrolment. Female pupils of 12 years or under may 30 also be enrolled in the primary schools.

VI. Procedure of enrolment :

- (A) Registration : Anybody who seeks enrolment in the College must be registered in advance by filling in an application and upon the payment of a sum of \$1 as registration fee.
- (B) Assigning :—All persons duly registered must bring with him or her ink and pen to the College on the due date for entrance examination which shall consist of written examination (Chinese language, English language and arithmetic) and oral examina- 40 tion. In case any formal school leaving certificates are produced upon registration and are acceptable to the College students may be admitted to the suitable classes without entrance examination. After applicants have been assigned to their classes a list shall be posted at the door when all pupils shall attend the various classes as assigned.

VII. School Fees :

Exhibits.

(A) Pupils must pay all their fees before the school opens and produce receipts therefor issued by the accountant of the College together with a release at the office of the management of the College for registration before they are allowed to attend their classes.

Defendants' Exhibits.

D.5.

Trans-
lation
from
Chinese—
Prospectus
of Sai Nam
College for
1937-1938,
continued.

(B) School fees for the second semester from February to July of the 27th year of Republic of China (1938) are as follows :—

10	<i>Classes</i>	<i>School Fees for one semester</i>	<i>Sundry Charges</i>	<i>Total</i>
	1st & 2nd year Lower Primary Grade	\$22.50	\$4.00	\$26.50
	3rd year Lower Primary Grade ..	25.00	4.00	29.00
	4th year Lower Primary Grade ..	27.50	4.00	31.50
	Higher Primary Grade	30.00	5.00	35.00
	Junior Middle School	40.00	5.50	45.50
	Senior Middle School	50.00	6.00	56.00

(c) School fees etc., will be collected in Hongkong Currency and will be payable at once before the School is opened for the semester.

20

School fees will not be refunded in case any pupil ceases attendance half way or when he is dismissed from the School for the breach of rules.

(D) Pupils may apply to the school management for boarding and lodging in the school. The dormitories are clean and the charges moderate.

VIII. Address :

30

School premises at No. 1 Oaklands Path above Bonham Road Hongkong Telephone No. 22595 are capacious airy and well lighted, provided with big play-ground and elegant gardens. All equipments in the school are complete and perfect. Means of communication is convenient. Bus route No. 3 reaches direct to the school.

Headmaster :

Cheung Lan Chau

Founders :

40

Cheung Lan Chau	Li Yick Mui	Ip Lan Chuen
H. K. Hung	Fung Heung Chuen	Lau Tak Po
Lau King Cho	Ng Cho Chi	Lam Sin Fong
Woo Kwok Wai	Leung Sai Foon	Chan Sze Lim
Cheung Kwai Hay	Yuen Mang Hung	Lau Hing Tin
Chu Chiu Cheuk	Tam Ching Po	Kwan Luen Sum
Chan Woon Wah	Kwan Cho Pok	Chan King Kwok
Chu Yam Om	Lai Kung Chi	Tam Suet Yau
Chiu Pik	Lai Shui Lam	

Exhibits.
 ———
Defendants'
Exhibits.
 ———
 D.5.
 Trans-
 lation
 from
 Chinese—
 Prospectus
 of Sai Nam
 College for
 1937-1938,
continued.

Honorary Directors :

Wong Chung Wai	Ngai To Ming	
Hung Hee Ling	Chan Kai Kong	
Tsu Man Yee	Wong Wan Ng	
I Wai	Chan Kam To	
Poon Chu Ki	Cheng Chun Man	
Cheng Yuk Sau	Chau Tsun Nin	
Li Yuk Tong	Cheng Tit Yu	
Li Sing Kui	Kan Tong Po	
Li Chi Chung	Lau Yuk Wan	10
Tam Woon Tong	Chan Foo Cheung	
Chiu Tsan Yu	Chan Kam Po	
Lau King Ching	Chan Lan Fong	
Fan Kit Pang	Wan Chung Yiu.	

Honorary School Doctors :

Dr. Chiu Chu Son	Dr. Ma Sau Shan	
Dr. Tai Hon Hang	Dr. Li Cho Yau	
Dr. Si Man Wai	Dr. Tai Hon Sum	
Dr. Tseung Fat Im	Dr. Li Sung	
Dr. Hui Yue Cheong.		20

Supporters :

Ma Kwan Mo	Lai Chai Hay	Au Tai Tin	
Au Tai Yuen	Li Yau Chuen	Fung Ping Shan	
Ho Sai Kwong	Ho Sai Wing	Lui Woon Yim	
Mung Man Wai	Kung Kit Yuen	Wong Wai	
Tang Shiu Kin	Wong Shiu Hung	Chu Hing Lan	
Char Leung Chiu	Chan Yick Nam	Chan Cheuk Bun	
Chung Tsz King	Lau Ngai Foo	Shum Pak To	
Yu Shuk Man	Tang Kwan Shan	Kam Hoo Ting	
Li Po Cheung	Chan Pak Wah	Li Pak Yin	30
Li Yat Ngok	Ip Pak Jut	Fung Kang Yue	
Hui Cheung	Hui Pak Sang	Chan Mang Wan	
Chan Yick Wan	Mak Sui Cho	Fung King Shan	
Lau Chak Hing	Chu Chung Hin	Ng Ngai Chi	
Chau Ka Ho	Fong Kong	Cheung Kat Shing	
Li Chung Ping	Chan Yue Tin	Pun Hung Yin	
Wan Sing Kung	Wan Lai Po	Lo Wai Mang	
No Ngar Shuen	Wong Tin Shek	Wong Lang Koon	
Chan Ming Shan	Woo Wai Man	Huen On Ting	
Yu Wah Shan	Leung But Yue	Tang Yee Ngar	40
Chan Lim Pak	Yue Pak Yat	Ko Ki Fung	
Wong Chik Sang	Pun Hiu Cho	Leung Tak Ki	
Fung Yiu Cheung	Cheng Hok Mong	Ng Chuk Chuen	
Chu Shut Tin	Li King Hon	Woo Shuet Hong	
Wong Cheuk Chiu	Fung Yiu Ting	Wong Ming Hin	
Lam Kau Mau	Chiu Chung Tan	Lai Kai Shiu	
Ma Chui Chiu	Li Hoi Tung	Chan Heung Pak	
Lau Tsz Ping	Lau Pak Tuen	Lau Suk Chong	
Im Ping Cheung	Ho Sai Iu	Ho Sai Ki	

	Wong Yuet Chiu	Li Yiu Hon	Chan Chick Yue	<i>Exhibits.</i>
	Lui Yat Kwai	Yue Bun Sun	Ng Yiu Wan	—
	Ng Yiu Ting	Ng Yue Hon	Wan Hung Fei	<i>Defendants'</i>
	Koo Yiu Tung	Chu Cheuk Man	Luk Mang Fei	<i>Exhibits.</i>
	Lam Ching Huen	Kwok Kai Hing	Tsui Tun Yuen	—
	Ip Wai Pak	Yuen Hiu Fan	Chan Yuet Po	D.5.
	Lam Man Shan	Fung Ngai Om	Ng Yue Tek	Trans-
	Lo Yin Nin	Ma Ying Piu	Lam Woo	lation
	Kwok Chuen	Chan Ping Yue	Lau Shu Tong	from
10	Li Min Hing	Kwan Shu Chung	Fu Ki Chau	Chinese—
	Yue Cheuk Sang	Tsui Kwan Min	Yung Tsz Ming	Prospectus
	Lui Yum Suen	Kwan Yick Chi	Chan Kwai Lok	of Sai Nam
	Tam Siu Tan	Woo Siu Kui	Wong Siu Chuen	College for
	To Ki Cheung	To Tsz Ying	Ip Wai Hung	1937-1938,
	Chiu Chiu Fan	Yeung Yan Chau	Ling Kwan Shau	<i>continued.</i>
	Lau Sing Chong	Chu Yun Chi	Wong Po Man	
	Chu Chan Sang	Chu Ka Fan	Lui Wai Chi	
	Ip Yin Sam	U Yick Hoo	Li Chung Shan	
20	Chiu Yung Sang	Li Man Kai	Chu Hoi Wan	
	Li Shu Fan	Fung Fuk On	Wong Chi Kan	
	Au Kun Yue	Wong Yin Yu	Yu Kit Ting	
	Chan Kok Man	Chan Yin Sang	Li Tam Yue	
	Leung Wan Sang	Ng Kui Lin	Shum Sheung Po	
	Chiu Chi Shan	Chau Pik Yue	Li Hon Chi	
	Tse Yat Cho	Cheung Ping Cheong.		

I hereby certify the foregoing to be the true translation of the Chinese document marked "M."

(Sgd.) CHAN KWOK YING,
Court Translator.
12.5.1951.

30

Defendants' Exhibit D.6—Translation from Chinese—Minutes of Meeting of Directors of Sai Nam School.

TRANSLATION.

After the resumption (of activities) of the Sih Nan College, the first meeting of directors was held.

- (1) Date : 27th January 35th Year of the Chinese Republic (27.1.1946).
 (2) Place (of Meeting) : No. 1 Oaklands Path.
 (3) Persons (Directors) present : Lau Tak Po, Fung Ngai Om, Kwan Siu Tat, Lau Yuk Wan and Cheung Lan Chau.
 (4) Persons present : Yeung Yat Fei, Tong Siu Chung, Wong Tat To and Chu Yam Om.
 (5) Chairman : Lau Tak Po.
 (6) Secretary : Tong Siu Chung.

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D.6.
Trans-
lation
from
Chinese—
Minutes of
Meeting of
Directors
of Sai Nam
School,
27th
January
1946 &
14th
January
1949.

Exhibits.

MATTER FOR INFORMATION.

Defendants' Exhibits. (1) The Chairman reported as follows :—

D.6.
Trans-
lation
from
Chinese—
Minutes of
Meeting of
Directors
of Sai Nam
School,
27th
January
1946 &
14th
January
1949,
continued.

(1) After the outbreak of the Pacific War Hong Kong was occupied by the Japanese troops. After the fall (of Hong Kong), most of us went away and sought shelter elsewhere. Those, who reluctantly remained in the Colony, had to undergo various forms of difficulties and oppressions, with the result that the Board of Directors had no chance to hold any meetings, which were in fact not necessary. Now Hong Kong is liberated and our School has resumed its operation. Therefore this Meeting is called and held. 10

(2) On the very day when the war started, the British Government had requisitioned our School premises. After the Japanese Occupation, the School premises were used to billet soldiers when many apparatus and articles of the School were damaged and many documents, books and registers were scattered and lost. We need time to investigate into these matters to put them in order gradually.

(3) When the Japanese occupied Hong Kong, all schools in Hong Kong had to suspend operation and both the teachers and pupils went away in different directions. The Headmaster Cheung took refuge in Macau for a few years. After the Colony was liberated, the Civil Department of the Military Administration permitted our School to reopen. Now the Headmaster Mr. Cheung has returned to Hong Kong to manage the School affairs and we heartily extend our welcome to him. 20

(4) According to the statement made by Mr. Wong Tat To " yesterday (or recently) " all foreign banks were liquidated after the Japanese had occupied Hong Kong. Because the School premises were mortgaged to the Hong Kong & Shanghai Bank, (we were) pressed by the Japanese Liquidator's Office to pay off the Mortgage debt. In order to avoid the forfeiture by the Japanese of the School premises and any unexpected events, Leung Sai Foon wished at that time to put through a new mortgage of the property for the purpose of paying off (the existing Mortgage). Unexpectedly Li Koon Chun used pressure and tricks to force and execution of such documents as sale deed, Mortgage deed and tenancy agreement. But we did not know anything beforehand. The School premises being a property of the common concern no private individual is entitled to secretly change the right of ownership. The meeting is requested to discuss about steps to be taken in regard to (this matter). 30

RESOLUTIONS :—

(1) The question of the Headmaster resuming this post :

Resolution—In compliance with the order of the Government, Mr. Cheung Lan Chau resume his post of Headmaster to manage the School affairs again. 40

(2) The question of the School resuming activities :

Resolution—For the time being activities be confined to the School premises, No. 1 Oaklands Path, acquired by us pending expansion to be planned for gradually. As to further details let the Headmaster decide according to circumstances.

(3) The question of dispute over the School premises :

Resolution—No recognition be extended to the change of the right of ownership of the School premises nor any rent be paid to any one. The Chairman, Mr. Lau (Tak Po), be also requested to consult with Solicitors as to the way of dealing with all (matters).

Chairman : (Signed) LAU TAK PO.

Secretary : (Signed) TONG SIU CHUNG.

10 I hereby certify the foregoing to be the true translation of the Chinese document marked "A."

(Sgd.) CHAN KWOK YING,
Court Translator.

7.8.1951.

SECOND MEETING OF SCHOOL DIRECTORS.

- (1) Date :—5 p.m. of 14th January 38th year of (Chinese) Republic (14.1.1949).
- (2) Place of Meeting :—No. 1 Oaklands Path.
- (3) Persons (Directors) present :—Kwan Siu Tat, Yeung Yat Fei (not director), Lau Tak Po, Lau Yuk Wan and Fung Ngai Om.
- 20 (4) Persons present :—Tong Siu Chung, Wong Tat To.
- (5) Chairman :—Lau Tak Po.
- (6) Recorder :—Tong Siu Chung.
- (7) The Chairman read the minutes of the last Meeting. Persons present raised no objection and what was read was considered proper.
- (8) Affairs to be announced.

30 The Chairman announced : " The other day letters were sent to all directors. Today we have come to this Meeting to discuss the question of complications of the present school building of our school. Now to begin with, a brief account of what had passed concerning the establishment history and the self-owned school building must be given. Our school was promoted in the 17th year of the (Chinese) Republic (1928). It was because of the shortage of well-equipped and properly-managed schools for the education of the numerous children of the Hongkong Chinese that enthusiastic educators and gentlemen of other walks of life banded themselves together and exerted their effort to promote (the scheme) and to start subscriptions with the result that the school was established and opened in the 18th year of (Chinese) Republic (1929). Mr. Cheung Lan Chow was unanimously appointed the Headmaster. Due to efficient management, the result had been very good and school fee had been

40 comparatively low, the school having won the favourable comment of society. During the 2 or 3 years, the school had changed its premises for no less than 4 times and children attending the school exceeded 1,000. In the 21st year of the (Chinese) Republic (1932) the school rented and

Exhibits.

Defendants' Exhibits.

D.6.

Translation from Chinese—Minutes of Meeting of Directors of Sai Nam School, 27th January 1946 & 14th January 1949, *continued.*

Exhibits.
 ———
Defendants'
Exhibits.
 ———

D.6.
 Trans-
 lation
 from
 Chinese—
 Minutes of
 Meeting of
 Directors
 of Sai Nam
 School,
 27th
 January
 1946 &
 14th
 January
 1949,
continued.

moved into its present school building. Later the old owner mortgaged (the building) to the Hongkong and Shanghai Bank. On expiry of the term of mortgage and when public auction (was advertised) we, the school authority from a desire of building a sound foundation for the school due to factual demands, had decided to purchase the property subject to the mortgage, as the permanent school building. The then value of the property was \$180,000.00, but the school, from the time of its establishment to that year, could save just a little more than \$20,000.00. The difference was very great but the Hongkong and Shanghai Bank was prepared to lend \$120,000 on a mortgage and the Procurator in Hongkong for the Dominican Mission in the Far East lent \$25,000.00 on a 2nd mortgage. The difference was yet a little over \$10,000 which amount was made up from loans by the then school directors. It was in October of the 21st year of the (Chinese) Republic (1932) that an agreement for purchase and sale was executed providing December as the time for completion. The total amount was \$185,000.00 odd including costs. It was expressly agreed that Police rates Crown rents and bank interest had to be paid as proper payments from the annual school income and these can be traced in books of accounts. But according to (the laws of) Hongkong, concerning purchase a property (by a body) it was necessary that some trustees had to sign the assignment. At the time, the general opinion was that as it was the school property, it would be more convenient for the persons who managed the school, should act as trustees. Moreover it was feared that the directors, who were busily engaged in their private business individually would hardly find time to look after this matter also. Thereupon the 3 persons the headmaster, Cheung Lan Chow, Chu Yam Om and Leung Sai Foon were elected to act as trustees to sign the assignment. For purposes of efficiency and to prevent the rise of any untoward happenings in the future, the 3 trustees executed in the office of Messrs. Deacons solicitors a declaration of trust to be handed over to the board of directors for them to keep to show this carefulness. As to the loans from the various persons, the name had been gradually paid off after a few years. \$18,000 odd was repaid to the Hongkong and Shanghai Bank, the balance, yet owing, being merely \$101,000 odd. In the Winter of 1941, after the fall of Hongkong, the Hongkong and Shanghai Bank was forced to be liquidated. At the time of purchase, our school was mortgaged to the Hongkong and Shanghai Bank and naturally became a debtor. For the fact that we knew nothing before hand as to how Leung Sai Foon managed to repay the debt, we had decided in the last meeting not to recognise the change of ownership of our school property. Concerning an advertisements in the *Kung Sheung Yat Po* of the 11th relating to our school building, we have specially called this meeting. For the purpose of giving every one a chance to know the facts in details, Mr. Wong Tat To was requested to make a written report. Concerning the discussion to devise ways and means how to handle the matter Mr. Wong Tat To announced the (written) report giving verbal explanations therefor (the written report kept and preserved elsewhere)."

AFFAIRS TO BE DISCUSSED.

- (1) What attitude our meeting is to adopt concerning the opposing party's advertisement in the papers calling upon Mr. Cheung, Mr. Chu and 50

the legal representative of Leung Sai Foon (deceased) to proceed and to execute an English confirmatory assignment of No. 1 Oaklands Path, which was sold during the Japanese occupation ?

Exhibits.
 —
Defendants' Exhibits.

Resolution : On behalf of the board of directors of the school, the chairman of the board should write to Cheung, Chu &c., directing them not to comply with the demands of the opposing party concerning the execution of the necessary deed of No. 1 Oaklands Path i.e. Inland Lot No. 2182 (letter in another paper).

D.6.
 Trans-
 lation
 from
 Chinese—
 Minutes of
 Meeting of
 Directors
 of Sai Nam
 School,
 27th
 January
 1946 &
 14th
 January
 1949,
continued.

- 10 (2) For the purpose of getting things in readiness for the litigation a certain solicitor must be retained.

Resolution : The board of directors of the school should write to Mr. Loseby of Messrs. Russ & Co., appointing him as our solicitor and requesting him to retain counsels on our behalf.

- (3) Whose name was to be used on behalf of the board of directors of the school to write the letter to the Solicitor giving him instructions ?

Resolution : The matter should be carried out by Mr. Lau Tak Po, the chairman of the board of directors of the school.

20

- (4) How to raise funds to meet the expenses of the litigation ?

Resolution : To make payments from the school accumulated funds of past years.

- (5) Who were to be elected to appear in Court in future on behalf of the board of directors of the school ?

Resolution : Mr. Lau Tak Po was elected to be representing the board of directors of the school.

30

- (6) As all school directors were individually and busily engaged in their private business, and for the purpose of speeding up matters, certain persons had to be appointed and held responsible for attending to this work.

Resolution : Lau Tak Po, Yeung Yat Fei and Tong Siu Chung were appointed to discuss and manage the affairs amongst themselves.

Chairman : (Sgd.) LAU TAK PO.

Recorder : (Sgd.) TONG SIU CHUNG.



Exhibits. **Defendants' Exhibit D.10--Letter from The Hong Kong and Shanghai Banking Corporation to Cheung Lan Chau, Chu Yam Om and Leung Sai Foon.**

Defendants' Exhibits.

THE HONGKONG AND SHANGHAI BANKING CORPORATION

D.10.

Letter
from The
Hongkong
and
Shanghai
Banking
Corporation
to Cheung
Lan Chau,
Chu Yam
Om and
Leung Sai
Foon,
22nd
February
1949.

Ch/Accts. Dept.

Hongkong.
22nd Feb. 1949.

Messrs. Cheung Lau Chau, Chu Yam On & Leung Sai Foon.
c/o Sai Nam Middle School,
Hongkong.

Dear Sirs,

10

Re : Pre-war Account.

We forwarded to you under cover of our letter of 31/12/48 particulars of your pre-war account with us made out in accordance with the Debtor/Creditor (Occupation Period) Ordinance, 1948, and giving you notice under Sec. 11 (2)a of the Ordinance to reinstate the security.

Up to the time of writing we have not heard from you in this respect and must now point out that failure to communicate with us puts us in a position where we may be obliged to take steps for recovery of the sum due to us.

We shall be glad therefore if you will give this matter your prompt attention and let us have your instructions at your earliest convenience.

Yours faithfully,
(Sgd.)
Actg. Chief Accountant.

SHA : TS.

Defendants' Exhibit D.11—Letter from Russ & Co., to The Hongkong and Shanghai Banking Corporation.

12th April, 1949.

The Hongkong & Shanghai Banking Corp.,
Hong Kong.

Dear Sirs,

Your Ref. Ch/Accts.—re : Pre-war Account.

We have been consulted by the Sihnan College with reference to your letter of the 22nd February, 1949.

10 Unfortunately, according to our instructions, Inland Lot No. 2182 (No. 1, Oaklands Path) was sold by two of the Trustees without authority during the Japanese Occupation to Madam Li Tam Toi Hing, the wife of Mr. Li Koon Chun, of the Bank of East Asia. We have been in correspondence with Messrs. Lo & Lo, and they have threatened to commence proceedings against the Trustees for a Confirmatory Deed. We have informed Messrs. Lo & Lo that in our opinion the Sihnan College is a Charity.

20 The papers in question are being considered by Mr. H. G. Sheldon, K.C., and Mr. John McNeill, on behalf of the Directors of the Sihnan College. So far as the law is concerned, it seems to us that there is no answer to your right to have the security reinstated. There does, however, appear to be some doubts as to the effect of the two Ordinances which deal with these complicated questions. It seems to us that an appreciation of the views of your advisers on the law might prove of great assistance to our clients as well as Counsel.

Yours faithfully,
(Sgd.) RUSS & CO.

Exhibits.

Defendants' Exhibits.

D.11.

Letter from Russ & Co. to The Hongkong and Shanghai Banking Corporation, 12th April 1949.

Exhibits. **Defendants' Exhibit D.12—Translation from Chinese—Extracts from Minute Book of Sai Nam School of Meeting of Directors.**

Defendants' Exhibits.

TRANSLATION.

D.12.
Trans-
lation
from
Chinese—
Extracts
from
Minute
Book of
Sai Nam
School of
Meeting of
Directors,
15th
August
1947.

After the resumption (of activities) of the Sih Nan College, the Second Special Meeting of Directors was held.

- (1) Date : 15th August 36th Year of the Chinese Republic (15.8.1947).
- (2) Place (of Meeting) : No. 1 Oaklands Path.
- (3) Persons (Directors) present : Lau Yuk Wan, Kwan Siu Tat, Cheung Lan Chau, Fung Ngai Om and Lau Tak Po.
- (4) Persons present : Yeung Yat Fei and Tong Siu Chung. 10
- (5) Chairman : Lau Tak Po.
- (6) Secretary : Tong Siu Chung.

MATTER FOR INFORMATION.

- (1) The Chairman reported as follows :—

Mr. Ip Lan Chuen, a Director of this School, is possessed of ripe experience and a high reputation and is zealous in education. Since the establishment of this School, he has given his unstinting support for 10 years as if it were in one day. It is noted with deep regret that Mr. Ip passed away on the 25th July this year. Really it is a very great loss to this School. All of us beg to express deep sorrow (for his death). But the 20 directorship vacated by the late Mr. Ip shall have to be filled by some one. It is noted that Mr. Cheng Chan Man is a person of great learning and extensive knowledge and is zealous in education. Since the establishment of this School, we have been greatly indebted to his support and assistance. In recent years Mr. Cheng has been lecturing in Chungshan University and we are thankful for his guidance and help in respect of the admission of the graduates of this School to that Institution. He is requested to take up this post and by his so doing, it will not only be a great pleasure to all of us, but to this School as well. The Meeting is requested to give its decision. 30

MATTER FOR DISCUSSION.

- (1) The question of filling the vacancy of a Director :

Resolution.—The vacancy of a Director of this School is to be filled by Mr. Cheng Chan Man with unanimous consent. A letter is to be sent to Mr. Cheng inviting him to take up the post.

Chairman : (Signed) LAU TAK PO.

Secretary : (Signed) TONG SIU CHUNG.

I hereby certify the foregoing to be the true translation of the Chinese document marked "E." 40

(Sgd.) CHAN KWOK YING,
Court Translator.
9.8.1951.

Defendants' Exhibit D.13—Translation from Chinese—Letter from Yeung Min to Wong Tat To.

Exhibits.
 ———
Defendants'
Exhibits.
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TRANSLATION.

For the perusal of Mr. (Wong) Tat To :

I have read your letter dated December 29th and noted its contents. The Power of Attorney was signed and chopped by Mr. (Cheung) Lan (Chau) himself in the presence of the Portuguese advocate Mr. Chor Chee Jee who was invited to bear witness and subscribe his signature to the same. It was forthwith sent back by post. When you have received it please
 10 notify me at once. This is my expectation. Mr. (Cheung) Lan (Chau) is staying here to recuperate himself. He engaged a doctor to give him injection. His health is making progress. Though he is still subject to stomach troubles, yet the numbness of his fingers has gradually diminished. This I specially include herein for your information.

D.13.
 Trans-
 lation
 from
 Chinese—
 Letter
 from
 Yeung
 Min to
 Wong
 Tat To,
 5th
 January
 1944.

Meanwhile I beg to enquire after your general welfare.

Written by
 Yours humbly,
 (Sgd.) YEUNG MIN,
 5.1.33 (1944)

20 For (Envelope)
 Mr. Wong Tat To to open,
 care of
 China Book Store,
 No. 77 Hollywood Road,
 Hong Kong.

From Yeung Min, a Chinese.

30 Correspondence chop of Kwong Hing Tai
 Firecrackers Dealers Firm, Macao.
 Office at the Praya of Macao, Telephone No. 854.
 Factory at Tum Chai, Telephone No. 2846.

I hereby certify the foregoing to be the true translation of the Chinese document marked "A" & "A1"

(Sgd.) CHAN KWOK YING,
 Court Translator.
 11.5.1951.

*Exhibits.***Defendants' Exhibit D.14—Translation from Chinese—Letter from Wong Tat To to Yeung Min.***Defendants' Exhibits.***TRANSLATION.**

D.14. For the perusal of Mr. (Yeung) Min,

Trans-
lation
from
Chinese—
Letter
from
Wong
Tat To to
Yeung Min,
11th
January
1944.

This is to state that I have duly noted the contents of your letter dated January the 5th. I have also received a Power of Attorney enclosed therewith.

The mortgage monies due have been properly paid off on the due date. But it is necessary to wait for the Power of Attorney to be sent back before (the payment) could be deemed as being properly made, 10 because the said Bank upon the receipt of money due for mortgage would not accept payment at random from any person, but would accept payment from the original person who had actually borrowed the money in the past. The proper procedure is for the original person to repay the money today and then he could get back the original deeds. Why I have urgently requested you to complete the procedure at an early date is also because of that.

Now although the said Bank has properly dealt with (the matter) yet no definite arrangement has ever been made with the new money lender. At present (we) are waiting to see whether the application for 20 permission to sell (the property) is approved or not. If permission is not granted then (the property) would be re-mortgaged. Such was the arrangement arrived at the other day. Besides the disposal of (the property) was not intended at the beginning. It was only resorted to on account of all kinds of difficulties and reasons. When all procedures are completed I will inform you in details.

I learn that Madam (Ho) Ping Fai has applied for a travel permit to return to the village. I wonder if she has got it.

All persons in Hong Kong including myself are very well. Please do not worry about us. 30

Meanwhile I beg to enquire after your welfare.

Submitted by
Yours humbly,
(Sgd.) (WONG) TAT TO,
January 11 (1944).

I hereby certify the foregoing to be the true translation of the Chinese document marked "C."

(Sgd.) CHAN KWOK YING,
Court Translator.
11.5.1951. 40

Defendants' Exhibit D.15—Translation from Chinese—Letter from Yeung Min to Wong Tat To.

Exhibits.

Defendants' Exhibits.

TRANSLATION.

For the perusal of Mr. (Wong) Tat (To),

I have received from you two letters dated the 27th and the 29th day of February (1944) and noted their contents. The Power of Attorney was sent back on the 1st day of March. I trust you have duly received it. With reference to the supply of specimen signature card for the House Registration Office which was omitted in the past I have got
 10 Mr. (Cheung) Lan (Chau)'s signature and enclosed (the card) in this letter which please receive and check.

Mr. (Cheung) Lan (Chau)'s health is slightly improved. I am also keeping in good health. Please do not worry about us.

I have received letters from my son Hiu and Ching Leung and noted their contents. Please tell them of this.

All commodities here are very dear. As the price for rice is very high it is difficult to solve the problem of living costs. The fried rice cakes you gave me some time ago I could only use for my morning meals. Even that I have already finished them long ago.

20 I learn from my aunt that Mr. Wai has returned to Hong Kong. I wonder if you have seen him yet. Now the vessels on both the Hongkong-Macao and the Canton-Macao lines run once every eight days according to schedule. For instance, when any ship comes on the 7th day the next ship will call on the 15th day. When you go out later on to collect outstanding accounts you must pay particular attention to the sailing schedules of the vessels. Or you may apply for permission to travel for a longer time so as to avoid staying beyond the time allowed. I avail myself of this opportunity to inform you of this.

Meanwhile I beg to enquire after your welfare.

30

Submitted by

Yours faithfully,

(Sgd.) (YEUNG) MIN,

10.3.33 (1944).

I hereby certify the foregoing to be the true translation of the Chinese document marked "D."

(Sgd.) CHAN KWOK YING,

Court Translator.

11.5.1951.

Exhibits. Defendants' Exhibit D.18A—Deed of Trust from Chu Yam Om, Leung Sai Foon and Cheung Lan Chau of Inland Lot No. 2182.

Defendants' Exhibits.

TRANSLATION.

(Envelope)

D.18A.
Deed of Trust from Chu Yam Om, Leung Sai Foon and Cheung Lan Chau of Inland Lot No. 2182, 12th December 1932.

Mr. Wong Tat To to receive and open care of
China Book Store,
No. 77 Hollywood Road,
Hong Kong.

From Yeung Min, a Chinese.

Correspondence Chop of Kwong Hing Tai
Firecrackers Dealers Firm, Macao.
Office at the Praya of Macao, Telephone No. 854.
Factory at Tum Chai, Telephone No. 2846.

10

I hereby certify the foregoing to be the true translation of the Chinese document marked "Di."

(Sgd.) CHAN KWOK YING,
Court Translator.
11.5.1951.

Hong Kong Stamp Duty 20 Dollars. 12.12.32
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20

TO ALL TO WHOM these Presents shall come We, CHU YAM OM (*Chinese characters*), LEUNG SAI FOON (*Chinese characters*) and CHEUNG LAN CHAU (*Chinese characters*) all of Victoria in the Colony of Hong Kong Gentlemen SEND GREETING :—

WHEREAS by an Assignment dated the Tenth day of December One thousand nine hundred and thirty two and made between The Hong Kong and Shanghai Banking Corporation (hereinafter referred to as "the Bank") of the one part and ourselves of the other part and registered in the Land Office by Memorial No. 135092 in consideration of the sum of One hundred and eighty thousand Dollars therein expressed to be paid by us to the Bank the Bank did thereby assign unto us as joint tenants All That piece or parcel of ground situate at Victoria aforesaid and registered in the Land Office as Inland Lot Number Two thousand one hundred and eighty two Together with the messuage erections and building thereon now known as No. 1 Oakland Path and the rights and appurtenances thereto belonging for the residue then to come of the term of Nine hundred and ninety nine years created therein by a Crown Lease dated the Twentieth day of April One thousand nine hundred and seventeen and made between His Majesty King George The Fifth of the one part

30

40

and Lau Iu Chung of the other part Subject to the payment of the rent and to the performance and observance of the Lessee's covenants therein reserved and contained AND WHEREAS by a Mortgage executed on the same date as the said Assignment and made between ourselves of the one part and the Bank of the other part and registered in the Land Office by Memorial No. 135093 in consideration of the Bank agreeing to advance to us a sum not exceeding One hundred and twenty thousand Dollars by way of overdrafts on current account we did thereby assign the said premises unto the Bank by way of Mortgage to secure the repayment to the Bank

10 of the said sum of One hundred and twenty thousand Dollars and all moneys which might at any time thereafter or from time to time advanced by the Bank in respect of the said Mortgage together with interest thereon as therein mentioned AND WHEREAS by another Mortgage also executed on the same date as the said Assignment and made between ourselves of the one part and The Procurator in Hong Kong for the Dominican Missions in the Far East of the other part and registered in the Land Office by Memorial No. 135094 in consideration of the sum of Twenty five thousand Dollars thereby advanced by the said Procurator in Hong Kong for the Dominican Missions in the Far East to us we did thereby assign the said

20 premises unto the said Procurator in Hong Kong for the Dominican Missions in the Far East by way of Second Mortgage to secure the repayment of the said sum of Twenty five thousand Dollars together with interest thereon at the time and in manner therein mentioned AND WHEREAS the moneys with which we purchased the said premises did not belong to us but were paid out of moneys belonging to the SIHNAN COLLEGE (*Chinese characters*) now carrying on business at No. 1 Oakland Path Victoria aforesaid together with the monies advanced to us under the said Mortgages as aforesaid as to One hundred and twenty thousand Dollars by the Hong Kong and Shanghai Banking Corporation by way of overdraft and as to

30 Twenty five thousand Dollars by the said Procurator in Hong Kong for the Dominican Missions in the Far East AND we purchased the said premises not for our own use but as Trustees for and on behalf and for the use of the said Sihnan College NOW KNOW ALL MEN BY THESE PRESENTS that we and each of us do hereby declare that we and the survivors and survivor of us and the executors administrators of the last survivor shall stand possessed of the said premises and every part thereof and the income and profit thereof Subject to the said Mortgages and the proceeds of sale thereof in case the said premises shall hereafter be sold or disposed of upon trust for the said Sihnan College and that we and the survivors and

40 survivor of us and the executors and administrators of such survivor shall not sell or re-mortgage or otherwise dispose of or deal with the said premises or any part thereof 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 Sihnan College And we and each of us do hereby Further Declare that any letter minute or memorandum signed by the person for the time being registered in the Education Department as the Manager of the said Sihnan College and addressed to us or any of us shall be conclusive evidence of any such direction as aforesaid therein contained as to any act deed matter or thing required or authorised to be done performed

50 executed or carried out in respect of or in connection with the said premises or any part thereof and also as to any appointment of new trustee or trustees for the said premises and that such direction shall be duly given effect to

Exhibits.

Defendants' Exhibits.

D.18A.

Deed of Trust from Chu Yam Om, Leung Sai Foon and Cheung Lan Chau of Inland Lot No. 2182, 12th December 1932, *continued.*

Exhibits. and carried out IN WITNESS whereof we the said Chu Yam Om, Leung Sai Foon and Cheung Lan Chau have hereunto set our hands and seals this twelfth day of December One thousand nine hundred and thirty two.
Defendants' Exhibits.

D.18A.
 Deed of
 Trust
 from
 Chu Yam
 Om, Leung
 Sai Foon
 and
 Cheung
 Lan Chau
 of Inland
 Lot
 No. 2182,
 12th
 December
 1932,
continued.

SIGNED SEALED and DELIVERED by the
 said Chu Yam Om, Leung Sai Foon
 and Cheung Lan Chau in the presence
 of :—

(Sgd.) H. K. HUNG,
 Solicitor,
 Hong Kong.

(Sgd.) CHU YAM OM (L.S.)
 (Sgd.) LEUNG SAI FOON
 (L.S.)
 (Sgd.) CHEUNG L. C. (L.S.)

10

Interpreted to the said Chu Yam Om,
 Leung Sai Foon and Cheung Lan Chau
 in the Chinese language by :—

(Sgd.) CHU KAM TIN,
 Clerk and Interpreter to
 Messrs. Deacons,
 Solicitors,
 Hong Kong.

[*By endorsement*]

20

Dated 12th December 1932.

CHU YAM OM AND OTHERS
 TO
 SIHNAN COLLEGE

DECLARATION OF TRUST
 relating to Inland Lot No. 2182.

Registered in the Land Office by Memorial
 No. 205579 on 26 Jul 1951.

(Sgd.) W. K. THOMPSON,
 p. Land Officer.
 DEACONS,
 Solicitors,
 Hong Kong.

30

12 Fos.
 Fung.
 xd.

In the Privy Council.

ON APPEAL
FROM THE FULL COURT OF THE SUPREME COURT
OF HONG KONG

BETWEEN

CHU YAM OM and CHEUNG LAN CHAU (Defendants) . . . Appellants

AND

LI TAM TOI HING (Plaintiff) Respondent.

RECORD OF PROCEEDINGS

LIGHT & FULTON,
24 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Appellants.

DARLEY, CUMBERLAND & CO.,
36 JOHN STREET,
BEDFORD ROW,
LONDON, W.C.1,
Solicitors for the Respondent.