

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 34 of 1965

1967 | 8

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :-

SIOW WONG FATT (Defendant) Appellant
- and -
SUSUR ROTAN MINING LIMITED (Plaintiff) Respondent
- and -
KOTA MINING COMPANY LIMITED (Defendant) Pro Forma Respondent

RECORD OF PROCEEDINGS

LIPTON & JEFFERIES,
Princes House,
39, Jermyn Street,
London, S.W.1.

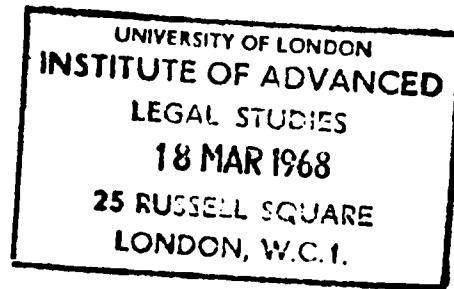
Solicitors for the
Appellant

PARKER, GARRETT & CO.,
St. Michael's Rectory,
Cornhill, London,
E.C.3.

Solicitors for the
First Respondent

CLASS MARK ACCESSION NUMBER

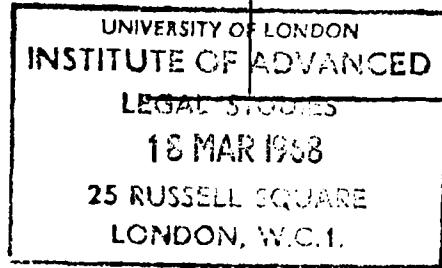
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IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 34 of 1965

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

BETWEEN:-

SIOW WONG FATT (Defendant) Appellant

- and -

SUSUR ROTAN MINING LIMITED (Plaintiff) Respondent

- and -

KOTA MINING COMPANY LIMITED (Defendant) Pro Forma Respondent

RECORD OF PROCEEDINGS

No.1

Writ of Summons dated 17th September, 1962

In the Supreme Court of The Federation of Malaysia

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT JOHORE BAHRU

Civil Suit 1962 No. 94

In the High Court at Johore Bahru

BETWEEN:-

SUSUR ROTAN MINING LIMITED Plaintiffs

- and -

1. SIOW WONG FATT

2. KOTA MINING COMPANY LIMITED Defendants

No.1

Writ of Summons
17th September,
1962

The Honourable Dato Sir James Thomson,
P.M.N., P.J.K., Chief Justice of the Federation
of Malaya in the name and on behalf of his Majesty
the Yang de-Pertuan Agong.

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.1
Writ of Summons
17th September,
1962 (Contd.)

To: 1. Siow Wong Fatt, 2. Kota Mining Co.
26 Jalan Ja'affar, Limited, 306
Kota Tinggi, Asia Insurance
Johore Building,
Kuala Lumpur.

WE COMMAND you that within 8 days in the case of 1st Defendant and 12 days in the case of 2nd Defendant after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Susur Rotan Mining Limited, a company incorporated in Singapore, and having their registered office at Flat No.21, Ngee Ann Building, Orchard Road, Singapore 9.

10

AND TAKE NOTICE that in default of your so doing the Plaintiffs may proceed therein and judgment may be given in your absence.

WITNESS, Vellore Rajaram Tiruvarangam, Registrar of the Supreme Court of the Federation of Malaya, the 17th day of September, 1962.

20

Sgd. Donaldson & Burkinshaw Sgd. V.R.T. Rangam
Plaintiffs' Solicitors Assistant Registrar
High Court,
Johore Bahru.

N.B. This Writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of the last renewal including the day of such date and not afterwards.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitor, at the Registry of the High Court at Johore Bahru.

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A Defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order of \$3.00 with an addressed envelope to the Assistant Registrar of the High Court of Johore Bahru.

INDORSEMENT OF CLAIM:

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The Plaintiffs' claim is:-

1. Against the 1st Defendant specific performance of an oral Agreement to grant to the Plaintiffs a sub-lease of mining land held on the Mining Certificate No. 603 Mukim of Ulu Sungei Sedili Besar in the District of Kota Tinggi in the State of Johore entered into between the 1st Defendant and the Plaintiffs.

In the Supreme Court of The Federation of Malaysia

In the High Court at Johore Bahru

No.1

Writ of Summons
17th September,
1962 (Contd.)

10 Alternatively DAMAGES.

2. Against the 2nd Defendants specific performance of the two Agreements entered into by the Plaintiffs and the Second Defendants on the 17th September 1961.

Alternatively DAMAGES.

3. Against both Defendants

(i) that a Receiver be appointed

(ii) Costs

20 (iii) Such further and other relief as to this Honourable Court may seem fit.

Sgd: Donaldson & Burkinshaw

Plaintiffs' Solicitors

THIS WRIT was issued by Donaldson & Burkinshaw, whose address for service is 45, Jalan Ibrahim, Johore Bahru, Solicitors for the said Plaintiffs incorporated in Singapore, and having its registered Office at Flat No.21, Ngee Ann Building, Orchard Road, Singapore.

30 This Writ accompanied by the Statement of Claim was served by me at on the Defendants on the day of 1962 at the hour of

Indorsed this day of 1962.

In the Supreme
Court of The
Federation of
Malaysia

No.2

Statement of Claim
dated 13th October
1962

In the High
Court at
Johore Bahru

No.2
Statement of
Claim 13th
October 1962

STATEMENT OF CLAIM

1. The Plaintiffs are a mining company having their registered office at Flat 21, Ngee Ann Building, Orchard Road, Singapore, 9.

2. The First Defendant is a mining prospector and also a director of the 10
2nd Defendant company.

3. In or about the month of November 1959 the 1st Defendant was granted a Prospecting Permit No. 141/59 in respect of an area of State Land at Sungai Susur Rotan in the Mukim of Ulu Sungai Sedili Besar, District of Kota Tinggi in the State of Johore.

4. The 2nd Defendants attempted to help the 20
1st Defendant in his prospecting of the said area of State Land but were unable to do so effectively. Therefore at the request of both Defendants the Plaintiff company carried out boring and prospecting operations during the year 1960 which showed that a certain part of the said State Land was rich in iron ore and suitable for mining, hereinafter called the said mining land.

5. Because neither the 1st Defendant nor the 30
2nd Defendants had the means nor the experience nor the skill to carry out mining operations and because the Plaintiff company was a company well experienced in mining and with substantial capital backing it was orally agreed between the Plaintiffs' company and the 1st Defendant in a

series of conversations on or about Chinese New Year 1961, that in consideration of the Plaintiff company taking such steps as were necessary to enable the 1st Defendant to obtain a mining lease or certificate and to assist him in preparation for mining generally the 1st Defendant would, if and when he was granted a mining lease or certificate of the said mining land forthwith grant to the Plaintiff company a mining sub-lease of the said mining land for the remainder of his term subject to a tribute to be paid by the Plaintiff company to 1st Defendant.

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6. In part performance of this said oral agreement referred to above the Plaintiff company took all steps that were necessary to enable the 1st Defendant to obtain a Mining Certificate and that were required by the agreement.

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PARTICULARS OF PART PERFORMANCE

- (a) The Plaintiffs' engineers prepared and submitted a Mining Scheme on behalf of the 1st Defendant at his request and the Plaintiffs paid the sum of \$2,090.80 in respect thereof.
- (b) The Plaintiffs prepared on behalf of the 1st Defendant his application for permission to use public roads for carrying iron ore in the month of April 1961.
- 30 (c) The Plaintiffs' engineers applied on behalf of the 1st Defendant to construct a jetty on the river bank at the end of Jalan Jaafar at the 1st Defendant's request.
- (d) The Plaintiffs rented to the 1st Defendant land at 26½ Milestone for the purpose of forming a stock pile of iron ore.
- 40 (e) The Plaintiffs applied on behalf of the 1st Defendant and at his request for T.O.L. on State Land at Kota Tinggi for erection of a conveyor belt for unloading iron ore.

In the Supreme Court of The Federation of Malaysia

In the High Court at Johore Bahru

No.2
Statement of
Claim 13th
October 1962
(Contd.)

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.2
Statement of
Claim 13th
October 1962
(Contd.)

(f) The Plaintiffs entered into possession of the said land at the First Defendant's request in order to conduct prospecting operations and the Plaintiffs have spent the sum of \$1,353.70 in respect of these said operations.

(g) The Plaintiffs at the cost of \$140,000 between the months of April and December 1961 constructed a road from Jalan Mawai to the said land in order to facilitate mining on the said land, and transport iron ore.

(h) The Plaintiffs paid the First Defendant the sum of \$60.00 in order that he might obtain a Forest Licence.

(i) The Plaintiffs paid the 1st Defendant the sum of \$200 at his request to obtain an option to purchase 4 acres of land at Mawai.

(j) The Plaintiffs paid on behalf of the 1st Defendant at his request the sum of \$500 as a deposit for the reserve road.

(k) The Plaintiffs paid to the 1st Defendant at his request the sum of \$6.00 to obtain a permit to occupy a Kongsi House at Pantai under Permit 457/60.

(l) The Plaintiffs went into possession of the said land in performance of the said verbal agreement and are still so in possession.

7. Thus the Plaintiff company has carried out all steps required and as a result of the said steps taken by the Plaintiff company in the month of January 1962 the First Defendant was granted Mining Certificate No. 603 in the Mukim of Ulu Sungei Sedili Besar in the District of Kota Tinggi in the State of Johore containing an area of about 185 acres in or about the month of January, 1962, in respect of the said mining land.

8. However the 1st Defendant has steadfastly refused and/or neglected to issue a

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mining sub-lease to the Plaintiff company or to take any steps to obtain formal permission from the Ruler in Council for such a sub-lease or indeed to give proper notice or discovery of the said Mining Certificate although he has been frequently asked to do all these things.

In the Supreme Court of The Federation of Malaysia

In the High Court at Johore Bahru

No.2
Statement of Claim 13th October 1962
(Contd.)

10 9. Therefore although the Plaintiff company has fulfilled all its liabilities under the said oral agreement and has suffered considerable financial loss thereby and carried out substantial acts in its performance of the agreement, the 1st Defendant has failed to fulfil his part thereof and this is a case in which it would be proper for the Court to order specific performance of the said oral agreement which Agreement is binding on both parties.

10. Under a written agreement dated the 19th day of September, 1960, made between the Plaintiff company and the 2nd Defendant company (hereinafter called "the main agreement") it was agreed that in consideration of two sums to be paid by the Plaintiff company to the 2nd Defendant each of \$40,000 by way of advance of tribute the 2nd Defendant who claimed to be assignees of the right to a sub-lease of the said mining land would issue authority in writing to the Plaintiff company to enter upon the said land and to mine it and to sell the iron ore won from the said mining land and take the profits thereof subject to payment of tribute.

11. The Plaintiff company will refer at the trial to the said main agreement for the full terms thereof.

12. Although the Plaintiff company has remained ready and willing at all times to carry out its liabilities under this said main agreement, and paid a sum in respect of the first payment referred to above, and 2nd Defendants in or about January 1962, by their actions repudiated the said agreement and shortly afterwards at or about the time of the issue of the Mining Certificate to the 1st Defendant set out in paragraph 7 wrote letters by their legal advisers clearly confirming in writing this said repudiation of the main agreement.

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.2
Statement of
Claim 13th
October 1962
(Contd.)

13. This agreement was repudiated by the Second Defendant before the second payment of \$40,000 fell due but the Plaintiff company has always been ready and willing to pay this said sum if the 2nd Defendant will carry out their part of the agreement.

14. This agreement is binding on both parties.

15. On the 19th day of September, 1960, the Plaintiff company and the 2nd Defendant also entered into another agreement (hereinafter referred to as a "supplemental agreement") whereby it was agreed that in consideration of the Plaintiff company entering into the main agreement the 2nd Defendant would execute a sub-sub-lease or assign a sub-lease in favour of the Plaintiff company in respect of the said mining land held or to be held in trust for the 2nd Defendants by a certain Chan Sai Sow. This agreement is binding on both parties.

16. In respect of this said supplemental agreement also the 2nd Defendant in or about the month of January, 1962, by their actions repudiated the said agreement which said repudiation was confirmed by letters written by their solicitors shortly afterwards and they have in fact failed to carry out their liability under the supplemental agreement.

PARTICULARS OF REPUDIATION OF BOTH
Main and Supplemental Agreement
dated 19th September 1961 between
the Plaintiffs and Second Defendant

- (a) On a number of occasions which the Plaintiff Company cannot more accurately specify from the month of July 1961 to January 1962 when the Plaintiff company wished to consult with the 2nd Defendants in matters concerning the said land or to obtain their agreement to the Plaintiff company taking further steps in connection with the said land or to obtain information concerning the mining lease, the 2nd Defendants refused to meet them and made excuses that they were too busy or that their representatives were not available and in various other ways demonstrated to the Plaintiff company

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that they were not willing to carry out the agreement but that they wished to carry out all mining operations in connection with the said land themselves without the assistance of the Plaintiff company.

In the Supreme Court of The Federation of Malaysia

In the High Court at Johore Bahru

No.2
Statement of
Claim 13th
October 1962
(Contd.)

- 10 (b) The Second Defendant company's solicitors wrote letters on the 29th January, 1962, on the 9th February, 1962, and on 16th February 1962, claiming that the said main agreement and the said supplemental agreement were void and their clients were not bound by them.

17. In the above premises it would be proper for the client to order specific performance of both the main and the supplemental agreements.

- 20 18. If the Second Defendants are not in a position to carry out these two said written agreements because they neither hold a sub-lease of the said mining land nor have control of it in any other manner they are liable for damages to the Plaintiff company including loss of the profits of the mining of the said land.

AND the Plaintiff company claims:-

- 30 1. That the 1st Defendant do execute a sub-lease in favour of the Plaintiff company of mining land held under the Mining Certificate No. 603 Mukim of Ulu Sungei Sedili Besar in the District of Kota Tinggi in the State of Johore, containing the same covenants as the said Mining Certificate for the remainder of the 1st Defendant's term less one day in accordance with the provisions of the Johore Mining Enactment and do all necessary acts for that purpose.

In the alternative, damages.

- 40 2. That the 2nd Defendants do issue authority in writing to the Plaintiff company to enter upon the said mining land and mine it and take the profits thereof.

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.2
Statement of
Claim 13th
October 1962
(Contd.)

3. That the 2nd Defendants do assign a sub-lease or execute a sub-sub-lease in favour of the Plaintiff company of this said mining land on the same covenants under which the 2nd Defendants hold for the remainder of their term less one day in accordance with the provisions of the Johore Mining Enactment and do all necessary acts for that purpose.

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In the alternative, damages.

Against both Defendants:-

4. That a Receiver be appointed.
5. Costs.
6. Such further and other relief as to this Honourable Court may seem fit.

DATED AND DELIVERED this 13th day of October, 1962.

Sgd: DONALDSON & BURKINSHAW

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Solicitors for the Plaintiff

To: the above named Defendants and to their Solicitors,
Messrs. Bradell Brothers,
c/o Messrs. Murugason & Co.,
No. 37 Jalan Ibrahim,
Johore Bahru.
JOHORE.

No.3
Defence of Second Defendant dated
20th December 1962

In the Supreme
 Court of The
 Federation of
 Malaysia

In the High
 Court at Johore
 Bahru

No.3
Defence of Second
Defendant
20th December
1962

1. The 2nd Defendants admit paragraph 1, 2 and 3 of the Statement of Claim and say that the 1st Defendants became a director of the 2nd Defendants on the 4th day of April 1961.

2. As regards paragraph 4 of the Statement of claim the 2nd Defendants deny each and every allegation contained therein as if the same were set forth herein and specifically traversed save and except that the 2nd Defendants admit that the land referred to contained iron ore.

3. The 2nd Defendants further say that all the boring and prospecting operations were carried out by the 2nd Defendants.

4. As to paragraph 10 of the Statement of Claim the 2nd Defendants admit that a written agreement dated the 19th day of September 1960 was made between the Plaintiff and the 2nd Defendants whereby it was agreed that the Plaintiff should pay two sums of \$40,000 by way of advance of tribute to the 2nd Defendants. The said agreement (hereinafter called the "main agreement") provided that the second payment of \$40,000/- should be paid to the 2nd Defendants within seven days of the issue of a Mining Lease or Certificate and if not then so paid the said main agreement should be at an end. The said main agreement further provided that the 2nd Defendants shall issue their authority in writing to the Plaintiffs to enter on the land and to mine it but say that this was subject to the condition that the second payment of \$40,000 referred to above have been previously paid to the 2nd Defendants. The 2nd Defendants will refer to the said main agreement for its full terms and effect at the hearing of this action.

Save and except as hereinbefore in this paragraph expressly admitted each and every allegation in paragraph 10 of the Statement of Claim is denied as if the same were set forth herein and specifically traversed.

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In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.3
Defence of
Second
Defendant
20th December
1962 (Contd.)

5. As to paragraph 12 of the Statement of Claim save and except that the 2nd Defendants received the first payment of \$40,000/- herein-before referred to, the 2nd Defendants deny each and every allegation contained therein as if the same were set forth herein and specifically traversed.

6. As to paragraph 13 of the Statement of Claim the 2nd Defendants deny each and every allegation contained therein as if the same were set forth herein and specifically traversed. 10

7. As to paragraph 14 of the Statement of Claim the 2nd Defendants say that the Plaintiffs are in breach of the said main agreement.

PARTICULARS OF THE BREACH

The Plaintiffs failed to pay the second instalment of \$40,000/- as provided under clause (2) of the said main agreement.

8. The 2nd Defendants further say that the Plaintiffs repudiated the said main agreement. 20

PARTICULARS OF THE REPUDIATION

The Plaintiffs repudiated the said main agreement by claiming the second payment of aforesaid sum of \$40,000 due under the said clause (2) of the said main agreement was not payable by reason of the fact that the Mining Certificate did not provide for mining the whole area contained in the prospecting permit No.141/59 referred to in paragraph 3 of the Statement of Claim. 30

9. The 2nd Defendants accordingly say that the said main agreement is not binding on the 2nd Defendants.

10. As to paragraph 15 of the Statement of Claim the 2nd Defendants admit that on the 19th day of September 1960 the Plaintiffs also entered into another agreement (hereinafter referred to as "Supplemental Agreement") but deny that the 2nd Defendants' obligations were as alleged and will refer to the said Supplemental Agreement for their full terms and effect at the hearing of this action. 40

11. It was an implied term of the said Supplemental Agreement that the due performance and observance of the terms and conditions of the said main agreement by the Plaintiffs was a condition precedent to the 2nd Defendants' obligations under the said Supplemental Agreement. By reason of the matters pleaded in paragraphs 7 and 8 hereof of the Defence, the 2nd Defendants say that the supplemental Agreement is not binding on them.
- In the Supreme Court of The Federation of Malaysia
-
12. As to paragraph 16 of the Statement of Claim the 2nd Defendants deny each and every allegation contained therein as if the same were set forth herein and specifically traversed. The 2nd Defendants further deny that the effect of the correspondence therein referred to was of the effect as alleged and will refer to the said correspondence for their full purport and effect at the hearing of this action.
- No.3
Defence of Second Defendant
20th December 1962 (Contd.)
13. In the further alternative the 2nd Defendants further say that the said main and supplemental agreements are illegal by reason of the fact that they contravene the provisions of Section 31 of the Johore Mining Enactment and are null and void for uncertainty.
14. If the said main and supplemental agreements are binding on the 2nd Defendants which is denied, then the 2nd Defendants say that upon the true construction of the said main supplemental agreements it is impliedly and or expressly provided that the due performance of the 2nd Defendants' obligations is subject to the condition that a valid sub-lease or under-lease or some other derivative title shall have previously been vested in the 2nd Defendants or in a certain Chan Sai Sow. No title at all has been vested in the 2nd Defendants or the said Chan Say Sow.
15. The Plaintiffs' Claim to specific performance of the said main and supplemental agreements and damages are denied.
16. Save as is herebefore expressly admitted that the 2nd Defendants deny each and every allegation of fact in the Statement of Claim as if the same were set forth herein and specifically traversed.
- Delivered this 20th day of December, 1962
- Sgd: BRADDELL BROTHERS
Solicitors for the 2nd Defendants
- To the above named Plaintiffs and to their Solicitors, Messrs. Donaldson & Burkinshaw, No.45, Jalan Ibrahim, Johore Bahru.

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.4
Particulars
of Paragraph
5 of Statement
of Claim
29th January
1963

No.4

Particulars of Paragraph 5 of Statement
of Claim dated 29th January 1963

PARTICULARS OF PARAGRAPH 5

1. As to the Plaintiff company taking such steps as were necessary to enable the 1st Defendant to obtain a mining lease or certificate:-

The steps are those steps set out in the Particulars of Part Performance contained in paragraph 6 of the Statement of Claim.

10

2. As to the assistance of the 1st Defendant in preparation forming generally

Those acts as described in the Particulars of Part Performance contained in paragraph 6 of the Statement of Claim.

3. As to the remainder of the term or what was to be:-

The term was to be whatever was granted by the Mines Department.
In the result the term was 10 years.

20

4. As to the tribute to be paid by the Plaintiff company to the 1st Defendant:-

The tribute to be paid direct to the 1st Defendant was 50 cents for every one ton of iron ore exported and was to be paid on completion of each shipment.

30

5. As to the sub-lease to be granted:-

The sub-lease to be granted was to be identical to the terms of the Mining Certificate save only as to the amount of tribute and as to the term thereof and in the form of Form (IV) at Schedule I to the

Mining Enactment No. 69.

Sgd: DONALDSON & BURKINSHAW

Solicitors for the Plaintiff

In the Supreme
Court of The
Federation of
Malaysia

In the High Court
at Johore Bahru

To:

The above-named Defendants
and to their Solicitors
Messrs. Braddell Brothers,
Advocates & Solicitors,
No. 37 Jalan Ibrahim,
Johore Bahru,
JOHORE.

No.4
Particulars of
Paragraph 5 of
Statement of
Claim
29th January
1963 (Contd.)

10

Filed at Johore Bahru, this 29th day of
January, 1963.

Sgd: Illegible

Assistant Registrar

Supreme Court, Johore Bahru

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at
Johore Bahru

No.5
Amended Defence
of First
Defendant
11th February
1963
(Amended
November 1963)

No.5
Amended Defence of First Defendant
dated 11th February 1963

AMENDED DEFENCE

1. Paragraphs 1, 2 and 3 of the Plaintiffs' Statement of Claim are admitted. The 1st Defendant first became a director of the 2nd Defendant Company on 4th April, 1961.
2. As regards paragraph 4 of the Statement of Claim, save and except that a part of the State Land referred to contained iron ore, the 1st Defendant denies each and every allegation contained in the said paragraph as if the same were set forth herein and specifically traversed. 10
3. As regards paragraph 5 of the Statement of Claim the 1st Defendant denies each and every allegation contained therein as if the same were set forth herein and specifically traversed. The 1st Defendant further denies that there was ever any agreement between the Plaintiffs and himself that he would grant any sub-lease to the Plaintiff. 20
4. In the alternative the 1st Defendant says that if, which is denied, the oral agreement alleged in paragraph 5 of the Statement of Claim was made:-

 - (1) The alleged agreement was null and void and of no effect by reason of Section 31 of the Johore Mining Enactment (Enactment No. 69). 30
 - (2) The alleged agreement was void by reason of Section 24 of the Contracts (Malay States) Ordinance in that it involved or implied injury to the property of others.
 - (3) The alleged agreement was void by reason of Section 30 of the Contracts (Malay States) Ordinance in that its meaning was not certain.

- (4) The alleged agreement was not in writing and is accordingly unenforceable.

4A. In the further alternative the 1st Defendant says that if (which is denied) the oral agreement alleged in paragraph 5 of the Statement of Claim was made.

- 10 (1) There was under the oral agreement a condition precedent to any obligation of the 1st Defendant to grant the sub-lease, that consent to such sub-lease should be given by Tan Gek Piah and Tan Seng Chiang, by Chan Sai Sow, and by the 2nd Defendants, and the consents of all the said parties have been either forthcoming or refused.
- 20 (2) There was under the oral agreement a condition precedent to any obligation of the 1st Defendant to grant the sub-lease, that the Plaintiff company should, by virtue of the two written agreements mentioned in paragraph 10 and 15 of the Statement of Claim and the two agreements and Declaration of Trust which are recited in the Agreement mentioned in paragraph 10 of the Statement of Claim, become and continue to be entitled to a sub-lease; and the Plaintiff never became so entitled or alternatively, if (which is denied) the Plaintiff became so entitled, the Plaintiff company ceased to be so entitled by reason of the Order of Court made in this Suit on the 10th day of November, 1963.

- 40 5. As regards paragraph 6 of the Statement of Claim the 1st Defendant repeats paragraph 3 hereof and further says that if, which is denied, there was the oral agreement as alleged and if,

In the Supreme Court of The Federation of Malaysia

In the High Court at Johore Bahru

No.5
Amended Defence of First Defendant 11th February 1963
(Amended November 1963)
(Contd.)

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at
Johore Bahru

No.5
Amended Defence
of First
Defendant
11th February
1963
(Amended
November 1963)
(Contd.)

which is also denied, there were taken by the Plaintiffs the steps alleged in their Particulars or any steps necessary to enable the Defendants to obtain a Mining Certificate, the said steps were not referable to the said alleged oral agreement but were taken on the Plaintiff company's own initiative in anticipation of obtaining a sub-lease in pursuance of their agreements with the 2nd Defendants mentioned in paragraph 10 and 15 of the Statement of Claim. With regard to the particulars of alleged part performance the 1st Defendant says as follows:-

10

Paragraph (a) The Plaintiffs' engineers prepared and submitted a Mining Scheme but they did so, not on behalf or at the request of the 1st Defendant, but on behalf of the Plaintiffs.

Paragraph (b) The Plaintiffs submitted an application to use public roads for carrying iron ore but they did so, not on behalf of the 1st Defendant but on their own behalf.

20

Paragraph (c) The Plaintiffs applied to construct a jetty on the river bank at the end of Jalan Jaafar but they did so, not on behalf or at the request of the 1st Defendant, but on their own behalf.

Paragraph (d) The 1st Defendant denies that the Plaintiffs rented the land at 26½ milestone or any land to the 1st Defendant. The 1st Defendant says that any land or tenancy of land for the purpose of a Stock pile was for the intended purpose of the Plaintiff company alone.

30

Paragraph (e) The 1st Defendant denies that the Plaintiffs applied for the T.O.L. alleged or any T.O.L. and says that if which is denied the Plaintiffs did apply for any T.O.L. the Plaintiffs did so not on behalf of the 1st Defendant or at his request but on their own behalf.

40

Paragraph (f) The 1st Defendant denies that the Plaintiffs entered into possession

- of the said land and says that if the Plaintiffs entered into possession or conducted any prospecting operations (which are denied) the Plaintiffs did so not at the request of the 1st Defendant but on their own behalf.
- Paragraph (g) The 1st Defendant admits that the Plaintiffs constructed a road from Jalan Mawai to the said land but says that the Plaintiffs did so on their own behalf.
- Paragraph (h) The 1st Defendant admits that the Plaintiffs paid him the sum of \$60/- but says that he received the same at the request of the Plaintiff company in order to pay for the cost of a plan required by Government before the issue of a Forest Licence which the Plaintiffs wished to have obtained for the benefit of the Plaintiffs and that the 1st Defendant did pay the \$60/- as cost of the said plan.
- Paragraph (i) The 1st Defendant admits that he received the sum of \$200/- to obtain an option to purchase land at Mawai but denies that the same was paid at his request and says that the same was received by him at the request of the Plaintiff company in order to obtain, for the benefit of the Plaintiff company, the said option and that the 1st Defendant did pay the said \$200/- for the said option.
- Paragraph (j) The 1st Defendant admits that the Plaintiffs paid the sum of \$500/- as a deposit for a reserve road but denies that the Plaintiff company did so on behalf of or at the request of the 1st Defendant. The Plaintiffs paid the said sum to Government in order that permission might be obtained from the authorities concerned to allow the Plaintiffs for their own purposes to construct the said reserve road.
- Paragraph (k) The 1st Defendant denies that the Plaintiffs company paid him the sum of \$6/- or any sum to obtain a permit to occupy a Kongsi House.
- Paragraph (l) The 1st Defendant denies that the Plaintiffs went into possession of the said land.

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.5
Amended Defence
of First
Defendant
11th February
1963
(Amended
November 1963)
(Contd.)

In the Supreme
Court of The
Federation
of Malaysia

In the High
Court at Johore
Bahru

No. 5
Amended Defence
of First
Defendant
11th February
1963
(Amended
November 1963)
(Contd.)

Save in so far as hereinbefore expressly admitted the 1st Defendant further denies each and every allegation contained in paragraph 6 of the Statement of Claim and in the Particulars thereto as if the same were set forth herein and specifically traversed. The 1st Defendant further says that none of the acts of part performance alleged are acts of part performance and none were necessary to enable the 1st Defendant to obtain a Mining Certificate.

10

6. As to paragraph 7 of the Statement of Claim save and except that the 1st Defendant admits that in the month of January 1962 the 1st Defendant was granted Mining Certificate No. 603 in the Mukim of Ulu Sungai Sedili Besar the 1st Defendant denies each and every allegation in the said paragraph as if the same were set forth herein and specifically traversed. The 1st Defendant will refer to the said Mining Certificate for its full terms and effect at the trial of this action.

20

7. As to paragraph 8 of the Statement of Claim save and except that 1st Defendant admits that he has not issued a mining sub-lease to the Plaintiff company or applied to obtain permission from the Ruler in Council for such a sub-lease the 1st Defendant denies each and every allegation in the said paragraph as if the same were set forth herein and specifically traversed.

30

8. As to paragraph 9 of the Statement of Claim the 1st Defendant denies each and every allegation therein as if the same were set forth herein and specifically traversed. The 1st Defendant says that in any event the alleged oral agreement cannot be specifically enforced for the following reasons:-

- (1) it is a contract the terms of which the Court cannot find with reasonable certainty.
- (2) it is a contract which runs into such minute or numerous details and otherwise from the nature is

40

such that the Court cannot enforce specific performance of its material terms.

- (3) it is a contract the performance of which is dependent of the volition of the Ruler in Council.
- (4) the Plaintiff has been guilty of delay in instituting this Suit.

10 9. As to paragraph 10, 12, 13, 14, 15, 16, 17, and 18 the 1st Defendant makes no admission and puts the Plaintiffs to strict proof of each and every allegation therein.

Dated and Delivered this 11th day of February, 1963, by,

Sgd: MURPHY & DUNBAR

Solicitors for the 1st Defendant

Dated and Re-delivered this day of November, 1963, by

Solicitors for the 1st Defendant.

20 To:
 The Plaintiffs and their Solicitors,
 Messrs. Donaldson & Burkinshaw
 The 2nd Defendant and their Solicitors,
 Messrs. Braddell Brothers.

In the Supreme Court of The Federation of Malaysia

In the High Court at Johore Bahru

No.5
 Amended Defence of First Defendant
 11th February 1963
 (Amended November 1963)
 (Contd.)

In the Supreme
Court of The
Federation of
Malaysia

In the High
Court at Johore
Bahru

No.6
Particulars
of Statement
of Claim
27th February
1963

No.6
Particulars of Statement of Claim
dated 27th February 1963

PARTICULARS OF STATEMENT OF CLAIM

PARAGRAPH 5

"As to the oral agreement in a series
of conversations: State the date and
place of each such conversation and
what was agreed at each conversation
and state the name of the person or
persons who acted on behalf of the
Plaintiff company at each conversation."

10

1. On the 13th or 14th of February 1961 in
the office of the State Engineer, Kota Tinggi.

Present:-

Mr. Siow Wong Fatt
Mr. Chan Sow Sai on behalf of
the Second Defendant
Mr. Chew Hee Jin
Miss Chua Siew Cheng on behalf
of the Plaintiff company.

It was agreed that the 1st Defendant would sub-
lease the Mining Certificate direct to the
Plaintiff company.

20

2. On or about the same date, but immediately
after the above there was a further meeting in the
Singapore office of Susur Rotan Mining Ltd.

Present:-

Mr. Siow Wong Fatt
Madam Yeo Lew Soo
Miss Chua Siew Cheng on behalf
of the Plaintiff company
Three other employees of the
Plaintiff company were also
present.

30

The First Defendant satisfied the representatives

of the Plaintiff company that he was able to sub-lease the Mining Certificate direct to the Plaintiff company and that no other persons could prevent this, and it was further agreed that in consideration of this promise the Plaintiff company would construct the road leading to the mine forthwith, and carry out the other steps referred to in the particulars of the part performance in paragraph 6 of the

10 Statement of Claim.

3. There was a further conversation on the 10th or 11th of October 1961 at 200, Clemenceau Avenue, Singapore.

In the Supreme Court of The Federation of Malaysia

In the High Court at Johor Bahru

Particulars of Statement of Claim
27th February 1963 (Contd.)

Present:

Madam Yeo Lew Soo, Chairman of the Plaintiff Company

Mr. Chew Hee Jin

Mr. Eng Tiang Poh

Miss Chua Siew Cheng

20 Madam Yeo & Miss Chua acted on behalf of the Plaintiff Company.

It was further confirmed that immediately the Mining Certificate is issued to the First Defendant, the sub-lease will be made direct to the Plaintiff company as the number of the Mining Certificate must be stated on the sub-lease.

30 4. On or about the 15th October, 1961 while inspecting the road leading to the mine constructed by the Plaintiff company

Present:

Mr. Siow Wong Fatt

Madam Yeo Lew Soo

Mr. Eng Tiang Poh

Mr. Chew Hee Jin

Miss Chua Siew Cheng

Miss Yong Lew See

Mr. Chua Kim Yong

40 Mr. Siow having inspected the progress that the Plaintiff company had made in constructing the

In the Supreme
Court of The
Federation
of Malaysia

In the High
Court at Johore
Bahru

Particulars of
Statement of
Claim
27th February
1963 (Contd.)

road to the mine confirmed that he would issue a
sub-lease to the Plaintiff company immediately
upon receipt of the Mining Certificate.

Dated this 27th day of February, 1963.

Sgd: Donaldson & Burkinshaw

Solicitors for the Plaintiffs

To:

The above-named Defendants
and to their Solicitors,
Messrs. Braddell Brothers,
c/o No. 37 Jalan Ibrahim,
Johore Bahru.

Messrs. Murphy & Dunbar,
c/o Messrs. M. Ismail & Co.,
(4th Floor)
Chung Khiaw Bank Building,
Jalan Ah Fook,
Johore Bahru.

JUDGE'S NOTES OF EVIDENCE

NO. 7
Opening by Plaintiffs Counsel

A. Hills for Plaintiffs

Murphy with Dunbar for 1st Defendant.

K. C. Chan for 2nd Defendant.

Hills: Settlement between 2nd Defendant and myself. This matter to stand down for a few minutes. Mr. Chan and I will submit a consent order.

Sd: Azmi.

10

Short adjournment.

Sd: Azmi.

Hills: Draft judgment made between me and 2nd Defendant:

By Consent it is ordered that:-

2nd Defendant do pay to Plaintiffs sum of \$30,000/- in full and final satisfaction of Plaintiffs' claim therein.

20

It is further ordered that in the event of Plaintiffs obtaining right to work for the mine referred to in this action, Plaintiffs would pay 2nd Defendant a tribute as set out in the main agreement dated 19th September, 1960, entered into between Plaintiffs and 2nd Defendant, and stipulations thereunder will be binding on the Plaintiffs and 2nd Defendant.

30

It is further ordered that 2nd Defendant do pay to Plaintiff half of the said sum of \$30,000/- within 15 days of the date hereof and the balance of \$15,000/- within 30 days of the date hereof.

It is lastly ordered that each party pays his own costs of the action.

Sd: Azmi.

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No.7
Opening by
Plaintiffs
Counsel 10th
November 1963

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No.7
Opening by
Plaintiffs
Counsel 10th
November 1963
(Contd.)

Murphy: I think order should be headed "By
consent between Plaintiffs and 2nd Defendant."

As to costs, it should be stated as between
Plaintiffs and 2nd Defendant only, or "No order
as to costs".

Sd: Azmi.

Hills:

The order as to costs:-

"No order as to costs between Plaintiffs
and 2nd Defendant."

Chan:

10

I confirm this.

Order in terms of consent order
as between Plaintiffs and 2nd
Defendant as above. sd: Azmi.

Hills: (continues)

I ask to make an amendment in paragraph
set out at page 17 of Pleadings:

Particulars of paragraph 5 by adding
these words:

"and in the form of Form (IV) at
Schedule I to the Mining Enactment
No. 69".

20

sd: Azmi.

No objection by Mr. Murphy. sd: Azmi.

Amended accordingly. sd: Azmi.

Hills (continues):

Claim for specific performance by
Plaintiffs against 1st Defendant.

Grounds for claim:

- 1) An oral agreement between 1st
Defendant and Plaintiffs entered
into before issue of mining certifi-
cate supported by part performance
by the Plaintiffs consisting of:-

30

- (1) going into possession,
- (2) expenditure of money,
- (3) building a road to the mine at 1st Defendant's request.

Refers to pleadings: (page 2).

Reads:-

Statement of Claim (page 4).

Statement of Claim:-

para. 1

- 10 " 2
 " 3
 " 4
 " 5
 " 6 - part performance by Plaintiffs.

Particulars of part performance:

- a) figure \$2,090.80 - might be wrong
- b)
- c)
- f) Plaintiffs entering into possession.
- g) Construction of road - \$140,000.
- h) Payment of \$60/- for forest licence.
- i) Payment of \$200/-
- j)
- k)
- l) Plaintiffs went into possession.

Para. 7

- 30 " 8. Refusal on part of 1st Defendant to issue mining sub-lease or take steps to do so.

Para. 9

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No. 7
Opening by
Plaintiffs
Counsel 10th
November 1963
(Contd.)

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No.7
Opening by
Plaintiffs
Counsel 10th
November 1963
(Contd.)

Rest of paragraphs refer to Plaintiffs and
2nd Defendant.

Plaintiffs' claim:- (p. 10)

Alternative claim - damages.

As to damages Court may ask Asst. Registrar
to assess damages - at least on actual expenses
in accounts. I am going to leave this for
time being.

Reads: Page 13 - Particulars of Statement of
Claim.

10

Para. 5.

Page 14.

Page 15 - reads para. 4.

Further particulars at page 16 concerns
part performance.

Page 17.

Defence at page 18.

Admitted para. 1, 2, 3 of Statement
of Claim.

Para. 2.

20

Para. 3.

Para. 4 - alternative -

1) if so made, null and void -

S 31 of Johore Mining
Enactment

2) Section 24 of Contracts
Ordinance

3) Section 30

4) Not in writing

Para. 5 Reads page 20.

30

" 21.

" 22 - para. 8 -
reasons why
contracts cannot be enforced.

	Judges Notes of Evidence	Plaintiffs' Evidence	No. 7 Opening by Plaintiffs Counsel 10th November 1963 (Contd.)
	I don't propose to read defence of 2nd Defendant.		
	Ex. A. I put in Agreed Bundle (marked "Ex. A) Agreed Bundle.		
	Page 1 - 1st Defendant's application.		
	Page 5 - slight amendment to original agreement as between 1st Defendant and Mr. Tan Gek Piah and Tan Song Ching		
10	1st Agreement made at page 51 - Agreement between 1st Defendant and Tan Gek Piah and Tan Song Ching.		
	At page 5 - slight amendment to Agreement at page 51 - amendments not material.		
	At page 57 - Agreement between Tan Gek Piah and Tan Song Chiang with one Chan Sai Sow. Assigned Tang Hai Mining Company's rights to Chan Sai Sow at p.57 - Applicant has given his consent.		
	page 58.		
20	page 59.		
	At page 62 - declaration of trust - declared that Chan Sai Sow holds sub-lease for 2nd Defendant after referring to various agreements and at page 63 - para. 1.		
	That makes 2nd Defendant beneficial owner of the lease.		
30	At page 66 2nd Defendant as beneficial owner enters into an agreement with Plaintiffs, granting 2nd Defendant rights to sub-lease to Plaintiff in return for payment of 2 sums of \$40,000/- and promise of tribute - see page 67 bottom.		
	Page 69.		
	Page 72 - supplemental agreement between Plaintiffs and 2nd Defendant.		
	We refer -		
	1) Oral agreement with 1st Defendant. 2) 2nd Defendant's agreement with Plaintiffs.		

Judge's Notes of Evidence To return to page 6 - permit to search for iron ore in favour of 1st Defendant.

Plaintiffs' Evidence Page 8 - Engineers advising of prospects of mining.

No.7
Opening by Plaintiffs Counsel 10th November 1963 (Contd.) Top of page 9 - high iron content. Fe 68.1%
Page 13 - no need now as 2nd Defendant is out.
Page 16.
Page 26 - For Braddell Brothers the claim not based on that agreement. 10

Page 35 - concerns 2nd Defendant's Agreement of 17th June, 1958 - First agreement between 1st Defendant and Tang Hai Mining Co.

Page 36.
Page 43 - At that stage we are replying on clause 6 of the agreement.
Page 44 - dated 11.4.1962. "There was no agreement between Mr. Siow and your clients."
Page 45.
Page 46 - caveat on land pending decision of this action. 20

Page 21 - letter from Plaintiff company to 1st Defendant - pleaded at sub-para. (d) of para. 6 of Statement of Claim - page 6 of Statement of Claim - page 6 of Pleadings - Defence para. (d) at page 20. Sd: Azmi.

Adjourned to 9.30 a.m. tommorrow.
Sd: Azmi.

11th November, 1963.

9.30 a.m. 30
Counsel as before.

Hills:
To sum up.

Plaintiffs ask for specific performance sub-lease of mining land or damages covering money expended and loss of profit.

The issues of facts and two of law.

Judge's Notes
of Evidence

1) Facts:

- (1) Was there an oral agreement between 1st Defendant and Plaintiffs to grant the sub-lease?
- (2) Was the part performance, i.e. building of roads, etc., referable to the oral agreement?

Plaintiffs' Evidence

No.7
Opening by Plaintiffs
Counsel 11th November 1963
(Contd.)

10 2) Two issues of law:

- (1) Is the oral agreement enforceable as a contract?
- (2) If so, should that contract be enforced by specific performance?

I will deal:

1st question of fact (as above):

Even if there was no contract to grant sub-lease, we should get substantial damages under Section 71 of Contract Ordinance, 1950.

20 Sec. 71 - compensation for work not intended to be gratuitous.

I will produce evidence of witnesses as to oral agreement:

- (1) Amount of money spent and work done.

2nd question of fact:

Was part performance referable to oral agreement? Defence suggested that we did this because of our agreement with 2nd Defendant. See Agreed Bundle page 66.

30 Under this agreement we were not required to do any work, i.e. build road.

All steps taken by us were not referable to this Agreement.

On strength of promise in oral agreement we built the road.

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No.7
Opening by
Plaintiffs
Counsel 11th
November 1963
(Contd.)

Assuming that there was such oral agree-
ment:-

Issue of law is whether oral agreement
is enforceable under Johore Mining Enactment.

Oral agreement is agreement to grant a
registerable lease and that is enforceable as
a contract against person who made the promise
and not against another. It is an action
personam right.

It is provision to grant something 1st
Defendant did not have then, i.e. to sub-lease
a lease he was going to get.

10

(a) See Tailby v. Official Receiver (1888)
13 Appeal Cases 523 - deal with future proper-
ty. Page 543. - top 10 lines.

(b) Haji A. Rahman v. Mohamed Hassan
(1917) A.C. 209 - unregistrable agreement can
be enforceable -

p. 213 - "In the view that....."

p.214 - "It does not profess to
profit

20

p.215 - "The agreement is valueless as
a transfer or

Refer sec. 31 of Johore Mining Enactment,
Vol. II of Laws of Johore - Enact. 69 -
Section 31 (p. 749).

Wording of Sec. 31 identical with wording of
Sec. 4. of the Selangor Land Code.

Section 32 of Johore Mining Enactment.

Form (IV) of Sub-lease at p. 789 of Johore
Enactment.

30

Wong See Leng v. Saraswathy Ammal.
(1954) M.L.J. 141. Page 141 (bottom) to page
142.

Buhagiar, J: p.143 - contractual right
..... not interest in land.

(c) Chin Cheng Hong v. Hameed & Ors.
(1954) M.L.J. 169 - headnote.

Page 170 - bottom

We claim for our right to be registered in the sub-lease.

(d) Margaret Chua v. Ho Swee Kiew & Ors. (1961) M.L.J. 173 Headnote.

p.175 - left column.

"That second part of the defence"
up to bottom of page 176.

J.W. White v. John Neaylon 1886 11 A.C.171

10 p.174.

p.175 - bottom to next page 176.

(unregistered oral agreement succeeds.....)

Yap Tai Cheong v. Wong Kam 2 F.M.S.L.R. 244.

As to question of damages

We are entitled to get back what we spent and profits if we had mined the land.

Sec. 71 of Contracts Ordinance.

Loss of profits if we had mined it.

Engell v. Fitch (1868) 4 Q.B. 659.

20 Headnotes.

(No attempt by Defendant 1 to apply for sub-lease).

Day v. Singleton (1899) 2 Ch. D. 320
Headnote.

Braybrooks v. Whaley (1919) 1 K.B. 435
Headnote.

p. 441 - Judgment of Salter J.

p. 442 - top page.

Jaques v. Millar (1877) 6 Ch. D. 153.

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No. 7
Opening by
Plaintiffs
Counsel 11th
November 1963
(Contd.)

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No.7
Opening by
Plaintiffs'
Counsel 11th
November 1963
(Contd.)

Headnote - loss of profits - entitled to be compensated.

2nd issue of Law: Whether claim being a contract, it should be specifically enforced, i.e. whether Court should order 1st Defendant to grant us sub-lease or rather ask for leave to Ruler in Council.

Specific Relief Ordinance 1960
Section II.

{b}
(c)
(d)

1C

Presumption that transfer of immovable property is by specific relief.

Section 17 -

{a}
(b)

Section 21 -

presumption of -

Para. III (page 426) seems to apply to this case.

2C

Specific performance regarding registration of contract. Loke Yew v. Port Swettenham Rubber Co. Ltd. (1913) A.C. 491. p.504. "So long as" Court right to set register right.

Plimmer v. Mayor, Councillor, etc. of Wellington (1883) 9 A.C. 629. p. 710. "The law relating to cases of this kind

Case cited on all forums with present case. To p. 711.

3C

Mulla's Contract & Specific Relief Acts. 8th Edn.

p. 780 - ref. S.18 of India Act (our S.17)
middle para.

"When A Buys

	Imperfect title	Judge's Notes of Evidence
	Court has jurisdiction to order the vendor....."	<hr/>
	Motilal v. Nanhelal (1930) 57 I.A.	Plaintiffs' Evidence
	333 P.C.	<hr/>
	Babu Rao v. Sonaji A.I.R. 1952 (Hyderabad) 48.	No.7 Opening by
	Gokul Chandra v. Haji Mohammad A.I.R. 1933 (Calcutta) 136	Plaintiffs' Counsel 11th November 1963 (Contd.)
	Head notes.	
	S. 27A in India Act not in ours.	
10	S. 18 (our S.17)	

Sd: Azmi

Judge's Notes
of Evidence

No. 8
Evidence of Chua Siew Cheng

Plaintiffs'
Evidence

Hills Calls:-

No.8
Chua Siew
Cheng
Examination

P.W. 1 Chua Siew Cheng a/s in English:

Living at No. 19 Jalan Buloh Perindu,
Singapore.

I am director of Plaintiffs since
September, 1960, i.e., date of incorporation.

The company was formed to win iron for
Susur Rotan Mining Ltd., and finance 1st Defendant
to get the mining certificate and the necessary
things to operate the mine.

My father first negotiated with 1st
Defendant in Kedah. This negotiation was
successful but my father died. We drew up an
agreement.

We prospected part of the area of the mine.
The result was good.

Some time later 1st Defendant approached
us and asked us to make the approach road in
February, 1961. In February, 1961, we had 2
meetings with 1st Defendant. First meeting at
the State Engineer's Office, Johore Bahru. We
were waiting to go into the office of the State
Engineer. We spoke to the clerk. We were
worried with the sub-lease matter. We entered
into agreement with 2nd Defendant. Agreement at
page 66 of Bundle, in September 1960. That
happened before the meeting at State Engineer's
office. We were worried about the sub-lease
going through so many hands, i.e. Tang Hai Mining
Co., and Chan Sow Sai and 2nd Defendant. 1st
Defendant said he could solve the problem of this
sub-lease matter. He said if it was dangerous
to go through so many hands he might as well give
it to my company straight.

Present there were Mr. Chua Kim Yong,
Mr. Chew Hee Jin, 1st Defendant and Mr. Chan
Sow Sai.

We met the State Engineer. After that
we returned to Singapore.

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We arrived at Singapore office - the Company's office, we had another meeting about this sub-lease matter. Mr. Chan Sow Sai was not there, but the others who were at State Engineer's office were present and also Madam Yeo Lew Soo, i.e. my mother. She is also a director.

Judge's Notes
on Evidence

Plaintiffs'
Evidence

No.8
Chua Siew Cheng
Examination
(Contd.)

10 1st Defendant repeated what he said at State Engineer's office at Johore Bahru, i.e. he said he had solved the problem of sub-lease matter. He said instead of going through so many hands he would give it straight to Susur Rotan Mining Co. because the Company was the actual miner whereas the others were not. I raised the question as to what the others would say to this, i.e. would they object to 1st Defendant's proposal. 1st Defendant replied that they would be fools to object. All that they would be interested would be the tribute money, and after all they were not real miners, or else they would not pass their rights to us. After that 1st Defendant said we should start constructing the road to the mine. Soon we had overcome the sub-lease question, we agreed to the idea of building the road.

20 30 We built the road. We hired tractor and all necessary machinery, i.e. shovels. We got labourers, lorries and all that. We did all this ourselves, i.e., we did not contract this out.

We started in April, 1961, and practically finished the road in December. Mr. Chua Kim Yong was in charge of this work. He was living on the mine there and also the labourers.

40 There are still people living there - my people. In October, 1961, 1st Defendant came to our Singapore office. My mother and I were present, so also Mr. Eng Tiang Poh. 1st Defendant was happy because the Johore Govt. had granted him the mining lease. He showed us the letter of approval from Government - letter at page 16 of Bundle. I then asked if he would execute the sub-lease to us. He replied that it was not yet the time to do so because what he had was only a letter of approval and not a mining lease. On the actual mining lease there would be a registration number of the mining lease. We have to quote the number of the lease on a sub-lease.

Judge's Notes
on Evidence

Plaintiffs'
Evidence

No.8
Chua Siew Cheng
Examination
(Contd.)

I saw that in letter from Government - a clause regarding "no transfer" etc. I translated that paragraph to 1st Defendant. 1st Defendant's reply was that was only a formality of the Government. There was no such thing as "no sub-lease". He said there was a provision in the Schedule as to a sub-lease. He said he would get that form next occasion. I saw 1st Defendant 4 or 5 days later, when we went to inspect the road to the mine. Present were Mr. Siow, Madam Yeo, Mr. Eng Tiang Poh, Miss Yong Lew See, Mr. Chua Kim Yong and myself.

10

Whilst we were walking along the road, he said it was a good thing he asked me to open up the road since the mining certificate has been approved, and that he could sub-lease to us and when that is done, we could operate the mine and then we would be counting money endlessly. We spoke in Teochew. We were going to get 10 years in the sub-lease.

20

Altogether we had to pay \$4.80 for every ton. \$4.80 was for Kpta Mining, Tang Hai Mining, Chan Sow Sai and 1st Defendant.

I produce the minute book of the company (marked Ex. P.I). 1st Resolution of the Company signed by me and my mother (on 1st page of book).

On 27.7.1961 a second resolution was passed.

30

My mother went to Japan and signed a contract. (Met Messrs. Atakah & Co., and Messrs. Yamamoto.

This is contract. My mother's signature on it (Marked Ex. P.2).

3rd resolution - dated 14.9.61. I signed it (p.3) - appointing We employed J.P. Wilkins & Co., of Ipoh.

On 24.11.61 We passed another resolution:-

40

Lease of land for storage of iron ore

We acquired the land from M/s. Wong Ah Lin and Joo Foo Teck.

Reference particulars of part performance (page 5 of Pleadings) I produce the mining scheme prepared by J.P. Wilkins & Co. (marked Ex. P.3)

I produce application to use a public road for carrying iron ore (marked Ex. P.4.)

This is copy of application made to the State Drainage & Irrigation Engineer for construction of a jetty (marked Ex. P.5).

Judge's Notes
on Evidence

Plaintiffs'
Evidence

No.8

Chua Siew Cheng
Examination
(Contd.)

10 Ref. para. (d) - at p.20 - a copy of our letter to 1st Defendant agreeing to rent his land.

Ref. para. (e) - application for State land for erection of a conveyor belt. This is copy of my application to Collector of Land Revenue. (Marked Ex. P.6).

Para. (f) - we entered into possession of land etc. as stated in paragraph (f).

Para. (h) - we did that. I produce the voucher dated 4.4.1961. (Marked Ex. P.7).

20 Signed by 1st Defendant. I paid \$60/- to 1st Defendant.

I paid \$200.00 as stated in paragraph (i) to 1st Defendant. I produce voucher for that. (Ex. P.8). 1st Defendant's signature on it as receiver.

Ref. paragraph (j) - I produce voucher for that. (Marked Ex. P.9 dated 16.11.1960).

30 Refers para. (k) - that was done. I produce voucher for that. (Voucher dated 26.1.61, Exhibit P.10). A kongsi was subsequently built, the labourers making the road lived in it.

My cashier will produce the accounts, which show expenses for making road, etc.

The Company had not spent any money not connected with this mine. The Company owns motor cars. They were used for business purposes of the company. 1st Defendant received the mining certificate, but he never granted us the sub-lease.

Judge's Notes
of Evidence

Plaintiffs'
Evidence

No.8
Chua Siew Cheng
Examination
(Contd.)

I was present at conversation between 1st Defendant and my mother at 8E Tanjong Rhu in January, 1962.

1st Defendant asked about position of one Chan Sai Sow, i.e. he was to be her Manager. My mother replied that she would prefer Mr Chua Kim Yong to be the mine manager. 1st Defendant was not pleased about this. My mother added further that she would have Mr. Chan Sai Sow as Asst. Mine Manager. If Chan could cope with the work, we could promote him to be the Manager.

10

After a long silence 1st Defendant said to my mother, "why don't you give up the mine? There is somebody else in Singapore who is interested?"

My mother was astonished at that. She said, "After all the hard working for past years you could suggest such rotten thing".

Sd: Azmi.

Adjourned to 2.30 p.m.

20

Sd: Azmi.

2.30 p.m.

Cross-
examination

P.W.l Chua Siew Cheng (on former affirmation):
- Cross-examined

XXD. by Murphy: My father died in July, 1960. He had met 1st Defendant. I was present when my father met 1st Defendant. I was actively engaged in mining a year prior to my father's death. All of us had experience. I have been in mining for year before my father's death.

30

This Company has only contract it had with Kota Mining Company. It was made for express purpose of mining this particular land. I had experience in South Island Mining Co. I was practically with my father - most of the time I was there. I watched my father's work in an iron ore mine in Kedah. I was supposed to look after the Company's correspondence. I translated letters from the Japanese people into English. I started in the South Island Co. about 1959 - some time in 1959. I finished

40

when my father died. I prospected in the South Island Mining Co. I watched the men clean the iron. I learnt all things that have to be learned.

The mine manager had mining experience. My mother also had experience. She had been in the mine. She always went with my father.

We entered into 2 agreements with Kota Mining Co. on 19.9.1960.

10 My mother was chairman of the company. I knew all about it.

Agreement at page 66 of Bundle.

1st paragraph recited fact that Siow Wong Fatt holds a prospecting permit.

2nd paragraph - I knew of that agreement. I read it. I knew the whole history. The agreement is at page 51.

Para. 6(g) - the Prospectors shall be at liberty to transfer or assign

20 I knew Tan had a right to compel 1st Defendant to transfer the right to them or to anybody else.

Para. 3 of Agreement - p.67.

Therefore Chan had all the rights in the mine.

With 1st Defendant's consent, declaration of trust was made.

I knew all these.

30 I entered into agreement with Kota Mining Co. - at p.66.

In that agreement all the previous agreements were recited, and I get the necessary rights.

I agree that all this must be with 1st Defendant's consent.

1st Defendant gave his consent later.

Judge's Notes
of Evidence

Plaintiffs' evidence

No.8
Chua Siew Cheng
Cross-
examination
(Contd.)

Judge's Notes
of Evidence

Plaintiffs'
evidence

No.8
Chua Siew Cheng
Cross-
examination
(Contd.)

At the time the agreement at page 66 was executed, 1st Defendant had nothing to do with Kota Mining Co. 1st Defendant knew about this agreement. He was at the negotiation. He attended the negotiations from the beginning.

The negotiations started before my father's death. Kota Mining Company was formed on 2.11.1959.

1st Defendant negotiated with me on many occasions. He asked us to take up the mines.

10

The negotiation for Agreement dated 19.9.1960 took place in my house, Agreement was drawn in the lawyer's office. 1st Defendant was present. 1st Defendant was many times at the negotiations.

1st Defendant was requested and though he was present there is no recital to effect 1st Defendant had consented. He knew all about it.

Supplemental agreement at p.72 - signed on same day and place in 1st Defendant's presence. 20 (Supplemental Agreement - purpose to ask Kota Mining to procure the assignment for Chan Sai Sow).

Q: Why did you not try to get a direct agreement from 1st Defendant?

A: Because he had made agreement with the Tano and Tans with Chan. There was no written consent from 1st Defendant.

Q: Why did you not get it?

A: We took it we were the actual miner. 1st Defendant was at the lawyer's office.

30

(Refer letters at p.10, p.11, p.12 and p.13).

Ref. p.13 - 1st Defendant not having got the lease yet, we wanted to keep it secret.

Mr. Chan, 1st Defendant, my mother and my brother and I were present when agreement at pages 66 and 72 were signed.

After that we brought the Japanese into the mine to get samples of the iron ore. In 1960

Kota Mining has had some enquiries to prospect - cutting rentice. Mining scheme had been prepared and submitted. Mining plan would show the area of place and tailings area etc., a stock pile and an access road.

Judge's Notes
of Evidence

Plaintiffs'
evidence

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

10 The Japanese whom we brought in prospected something of the place. The Japanese went some time about October - some time at end of the year. Nothing else was done after the agreement of 19.9.60. No other practical work was done by us after September, 1960. Nothing in January, 1961. Our first work was opening of the road in April, 1961. By practical work I meant work on the mine.

I cannot remember if I got 1st Defendant to help me get laterite.

20 In February and March, 1961, 1st Defendant came to my office. That was not first time he came. He came many times before. There was something about our asking 1st Defendant to get people to find out where we could get laterite.

Building a road helps a lot in getting a mining lease. At the time of building road, we were sure of the quality of iron ore. No reasonable prospect of lease being refused by the Government.

30 Building road helps to convince the Mines Department we know about mining. The road is the most essential part of the mining scheme. It is not totally on the mining scheme that mine lease is granted. The scheme put up by 2nd Defendant was approved.

We put up another scheme of our own at the request of the State Engineer to show him the actual operation of the mine, i.e. to show the position of wash plants, (2) the tailings area, (3) stock pile, (4) water supply.

40 The Kota Mining Company's scheme did not give sufficient details. The scheme is Ex. P.3 Valentine, Dunne & Associates, Ltd., are Engineers of Kota Mining Co.

Our scheme had all the details required by the

Judge's Notes
of Evidence

Mining Department.

Plaintiffs'
evidence

Messrs. Wilkins might send the scheme themselves to the Mining Department or they might do it through 1st Defendant.

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

I don't know of my own personal knowledge on whose scheme the lease was approved.

Everything done we have done in 1st Defendant's name, and not our Company or Kota Mining Company's name.

Sd: Azmi.

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Adjourned to 10 a.m. tomorrow.

12th November, 1963

Counsel as before.

P.W.1. Chua Siew Cheng (on former affirmations):

XXD: by Murphy: I deny that we built the road not to help 1st Defendant get the mining certificate. I was certain that the permit would be issued to 1st Defendant when we built the road. I thought so because the Japanese had gone to the mine and from them we knew the mine was good one. 20 The Japanese came at our request.

The written agreement of 19.9.60 was made only for position after the mining certificate has been issued (p. 68 of Bundle - paras. 3 and 4).

It was in pursuance of that agreement that we got the Japanese to inspect the mine about November or December, 1960. I was confident after that the Government would grant the mining certificate at that stage. 30

The permit was given to prospect. Whilst it was in force, that one must get a mining certificate. Kota Mining Co. was responsible for the prospecting. (See p.58 - para. 2)

It was up to us under the agreement at p.57 to put up a mining scheme. 2nd Defendant

employed their engineers Vallentine, Dunne & Associates Ltd., to do this work. It was duty of such engineers to put up a mining scheme to submit it through the permit holder. Everything has to be done through the permit holder. Kota Mining Co. relies on Vallentine, Dunne & Associates for advice and to put up a mining scheme. That is to do everything that is required in order to put up mining scheme.

Judge's Notes
of Evidence

Plaintiffs'
evidence

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

10 In April 1960 we started building this road. It was a road giving access to the mine. It was marked out in the plan submitted with the mining scheme. That plan was submitted by Vallentine & Dunne in name of 1st Defendant. I say we made the road in order to get 1st Defendant his mining certificate. It does help if we build a road in accordance with plan put up by him before certificate is issued. I had about 12 months experience in mining under my father.

20

The road is necessary for mining.

1st Defendant also said that building a road helps to get the certificate.

Q: From whom you got information that building a road before getting mining certificate helps to get it?

A: 1st Defendant said so, and it was from him I got that knowledge and not from my own experience.

30 The road had been built before Mr. Wilkins came in.

We had a verbal agreement with 1st Defendant in February, 1961. I am sure of the month.

The company's resolutions were signed by me and my mother.

The written resolution is the only writing as evidence in support of the oral agreement.

It was not issued to any one else.

I would expect to get $\frac{3}{4}$ million tons.

Judge's Notes
of evidence

Plaintiffs'
evidence

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

I knew that when we got the agreement in September, 1961. Even at 50 cts. a ton, a big amount is involved, i.e. \$375,000/-. My company was expected to get roughly a few million dollars, i.e. \$10 to \$20 millions.

All that depended on an oral agreement.

We did not get the agreement in writing because we trusted him.

(Referred to letter from Plaintiffs to Kota Mining Co. at p.14 of Agreed Bundle).

10

It was written on 17.7.1961 - six months after the oral agreement on which we relied.

At p.15 was their reply, in which Kota Mining Co. assured they had no intention of repudiating the Agreement.

We were not satisfied with that.

The purpose of writing to Kota Mining Co. was to get assurance to show to the Japanese. They did not confirm as requested in our letter of 17.7.1961 itself.

20

Ref. letter of 30.10.61 at page 18 of Agreed Bundle - Judy Chua is myself.

(Referred witness to pages 18 and 19).

We wrote para. 2 of letter of 6.11.61. It was 9 months after the oral agreement.

The 185 acres are part of the area in which we were expected to get the licence from 1st Defendant. It is area in which I promised to help 1st Defendant to get permit.

Q: Why did you write para.2 of letter at p.197 (..... obtaining lease).

30

A: We had helped 1st Defendant already.

In November 1961

- (1) We built the road
- (2) We have obtained letter from Japanese assuring us that they would buy ore from the mine.

Our oral agreement with 1st Defendant covers also this area.

Judge's Notes
of evidence

Q: Why did you not write Kota Mining Co. you have done enough?

Plaintiffs'
evidence

A: I did not think of it. They should know we have spent enough money.

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

(After long pause). I believe I have told Kota Mining Co. of our oral agreement.

Q: To whom and when did you mention?

10 A: I think it was to Mr. Wee Aik Hoon. I cannot remember the date. It was in his office.

Q: Why did you mention?

A: I was just talking about it.

Kota Mining Co. has the responsibility of prospecting and we had under the agreements with Kota Mining Co. to do the work after the mining certificate has been obtained. I also said that we also helped in getting 1st Defendant to get the lease.

20

To Court: We had agreement with Kota Mining Co. - i.e. practically with right of mining the land.

Kota got this report through various persons from the 1st Defendant.

From Government point of view it is risky to have so many sub-leases. So 1st Defendant promised to give us direct. He would get his lawyer to fill up form of sub-lease and send to Mines Department for approval. The sub-lease would be to us. The other persons, Tan Hai Mining, Chan Sai Sow, and Kota Mining, apart from assurance from 1st Defendant, did not confirm to me.

Continuation of cross-examination by Murphy

The other parties, apart from Mr. Wee Aik Hoon for Kota Mining, I don't think I have told them of 1st Defendant's agreement.

(Letter at Page 43 to first Defendant from plaintiff's solicitors dated 27/3/62).

Judge's Notes
of evidence

Plaintiffs'
evidence

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

This letter was written on my instruc-
tions.

Q: Why did you not tell me about the oral
agreement in that letter?

A: It did not occur to me then. I was lost at
that stage. (Letter at p.44). I saw that
letter from 1st Defendant's solicitors. It
says there is no agreement. We did not
reply to that letter.

Q: Why did you not direct your lawyer to write
to 1st Defendant as to the oral agreement? 10

A: It did not occur to me then.

It occurred to me latter about the oral agree-
ment.

Q: Why did you not write to 1st Defendant
regarding oral agreement?

A: 1st Defendant does not understand English.

It was he who asked us to do the work. It
did not occur to me to refer to the oral
agreement because I had in mind then only
my written agreements. 20

During this time I had completely
forgotten the oral agreement. I cannot remember
when the oral agreement came back to my memory.
I suddenly remember when I looked through the
documents and came across the resolutions of the
Company. That was before the issue of the
Writ of Summons.

The Company lodged a caveat against the
land. 30

(Shown a notice of caveat and marked
Ex. D.11.) This is copy of caveat I signed.
Signed on 26.6.1962 and also minuted in the
Book of Resolutions of Company which I also
signed.

On 13.9.1962 Company passed resolutions
directing our solicitors to take proceedings.
I cannot remember if I remembered about the oral
agreement again after reading these resolutions.

Writ was first indication that there was an oral agreement between us and 1st Defendant. No letters or documents at all referring to that. No letter was sent by us to 1st Defendant previously about the oral agreement.

I was happy with written agreements. They gave us all that we wanted.

Q: Why did you enter into the oral agreement?

A: 1st Defendant's suggestion we should help him.

10

We were quite happy with the written agreements but Mr. Siew was unhappy. He was most concerned about the mining certificate.

He was worried because the mining certificate was being delayed. It was being delayed by the Mining Department. He also said by building the road, it would help getting the certificate.

20 He promised to give the sub-lease direct to us. We would be happier if we got that.

I trusted 1st Defendant. I trusted. Mr. Chan.

At that time we did not know there was such a thing as a sub-sub-lease, etc. We were afraid of Government interference if there were sub-sub-lease.

The clerk in the office of State Engineer mentioned of danger in there being sub-sub-leases.

30 All the sub-lease must be registered in the Mining Department. I was afraid permission to sub-lease may not be given by the Ruler-in-Council.

We built the road at \$140,000 so that we could get the sub-lease direct. Regarding rule against sub-leasing, I made enquiries from other miners - Mr. Yong Tek Meow of Shaw House, the A.D.O. Kota Tinggi in 1961.

Judge's Notes
of evidence

Plaintiffs'
evidence

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

Judge's Notes
of evidence

Plaintiffs'
evidence

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

The first meeting with 1st Defendant regarding oral agreement was outside office of State Engineer, Johore Bahru - in February. (referred to particulars at p.13 of Pleadings: "On the 13th or 14th of February 1961 in the office of State Engineer.

(Referred to para. 5 of Statement of Claim, "on or about Chinese New Year 1961"). It was before the Chinese New Year. I am sure it was.

10

Chua Kim Yong was also present. (Not mentioned in particulars at p.13 of Pleadings. Chew Hee Jin was present. At first meeting he merely thought of giving it direct to us (use of words "he might as well give it to.....")

2nd meeting. It was in Singapore. 1st Defendant went to Singapore in the car with us. Chan also came in the car, but he went away on his own.

1st Defendant came with us. He said he had solved the problem. He had not apparently consulted the other persons having interest in the lease. I was satisfied with 1st Defendant's contention they would be fools to object. All were interested only in the tribute, including 1st Defendant himself. Then 1st Defendant told us to build the road. My brother was not present but Chew Hee Jin was one of the 3 employees present. These were all that have been said in February, 1961. All he said was "I have solved the problem and would give you the sub-lease direct".

20

30

(Referred to para. 5 of Statement of Claim - para. reading "that in consideration of the Plaintiff company.....")

1st Defendant did not say he would grant a lease for 10 years. He did not say about a tribute. As long as others would get their tribute money he would get his from them. I took it to mean he would get it from Kota Mining Co.

40

We were not paying him anything direct.

(Refers to para. 4 of Particulars at p.16.)

"The tribute to be paid direct to the 1st

Defendant was 50 cents for every ton of iron ore exported and was to be paid on completion of each shipment.")

Judge's Notes
of evidence

I said just now we were not paying 1st Defendant direct.

Plaintiffs'
evidence

Q: Why did you instruct your lawyer to supply the particular?

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

A: I cannot explain that. No one was denying him any money.

10 In February, 1961, nothing was mentioned about period of the sub-lease.

Q: If nothing was mentioned in the conversation as to time, would it not be untrue to say it was for rest of the time?

A: No comment.

A few days after the oral agreement, the first resolution was passed.

Sd: Azmi.

1 p.m.

Adjourned to 2.30 p.m.

Sd: Azmi.

2.30 p.m.

Counsel as before.

20 P.W.1. Chua Siew Cheng (on former affirmation)

(Referred to page 5 of Pleadings.
Particulars of Part Performance. Para.

(a))

Some one at Wilkins sent a mining scheme. We approached them in November, 1961 after 1st Defendant showed me the letter of approval.

Vallentine & Dunne made a scheme for Kota Mining Co.

1st Defendant asked us to make a second mining scheme.

I don't know if the scheme submitted by Vallentine & Dunne was accepted.

The letter of approval it says that a

Judge's Notes
of evidence

mining scheme was necessary.

Plaintiffs'
evidence

Ref. (b) - this is in reference to use of public roads. This has nothing to do with the actual one made on the mine.

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

1st Defendant asked me to do that.

Para. (c) Construction of jetty.

(Mr. Hills pointed that the 1st Defendant had admitted that the Plaintiffs applied to construct a jetty. The jetty was built because 1st Defendant asked for it.)

10

Para. (d): (Letter at p.21 has reference)

This is merely our letter to inform we are prepared to rent the land for the stock pile.

It was not because we wanted a different route from one chosen by Valentine & Dunne.

Para. (e) - again this was 1st Defendant's idea.

We did part of prospecting before the construction of the road. It was prospecting for iron ore.

20

Letter at p.18 asked as to prospecting. Our reply is at p.19. After prospecting we had samples of ore and sent them to Wilkins to analyse. It has something to do with the Mines Department. It was before road was done.

Ref. particular (g), road was for purpose of the mine. Not true we did the road, because we wanted to use it after the getting of the certificate.

We were anxious to work the mine as soon as possible.

30

It was to our advantage that the road was built before we got the sub-lease. We could have made the road after we got the sub-lease - we took to make road about 11 months.

It was not our intention in making road solely to enable us to mine immediately after getting the mining certificate.

Particular (h) - Forest licence - it is for purpose of getting laterite for the road. I can't remember.

Judge's Notes
of evidence

Particular (i) - This was for a stock pile. It was 1st Defendant who told us. He proposed it.

Plaintiffs'
evidence

Particular (j) - This is for licence for building the road.

No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

10 Particular (k) - This happened after the oral agreement. I would not have paid before that.

(Permit to occupy Forest Reserve) -

Permitted dated 23.3.60. Renewed it in January 1961).

Q: This permit was dated 1960, and that was before alleged oral agreement in February, 1961.

20 A: 1st Defendant had already asked us to construct the road before February, 1961. 1st Defendant asked us for \$6/- for renewal of Kongsi House.

(According to Ex. P.10 Chan signed the voucher). Nothing in Ex. P.10 itself 1st Defendant had anything to do with it.

On 26.1.1961 I was prepared to outlay money for 1st Defendant.

30 Particular (l) - Repossession of land - we have contract over the land up to certain limit. We could go into the land and take samples to be analysed.

From beginning we were on the land. Kota Mining Co. people were not there. I am speaking of period 1961.

There was no Kongsi before we went on the land.

Not true it was after letter of 17.7.61 that I approached 1st Defendant for a direct sub-lease for the first time.

Judge's Notes
of evidence

—
Plaintiffs'
evidence

—
No.8
Chua Siew
Cheng -
Cross-
examination
(Contd.)

I never went to Kota Tinggi and told 1st Defendant that Kota Mining Co. had refused to sign the letter in confirmation. I was upset about the letter. I did not mention anything about it to 1st Defendant. He came to my office in October and showed the approval. 1st Defendant came with Chan to my office in October.

I asked for a sub-lease then. My mother was present. He did not say he would not do it. I had contract with Kota Mining Co. in which they would undertake to get a direct sub-lease from 1st Defendant. I also have a verbal agreement for a direct sub-lease from 1st Defendant. Under Agreement with us and Kota Mining Co. — para. 3 — we will be liable to pay \$40,000/-.

10

Under oral agreement we were not liable to pay anything. We would pay Kota Mining Co. \$40,000/- and get 1st Defendant to give us a direct sub-lease.

Q: What would be position if you did not pay 20
Kota Mining Co. \$40,000/-?

A: I would not then get the oral lease from 1st Defendant.

In other words the direct lease from 1st Defendant was dependent on Plaintiff's continuing to be entitled under written agreement with Kota Mining Co. Sd: Azmi.

To Court: 1st Defendant and Kota Mining are of same group. If I did not pay Kota Mining Co. the \$80,000 under para. 3 of Agreement, 1st Defendant would cease to trust me. I got oral agreement after I got agreement with Kota Mining Co. Sd. Azmi.

30

Re-
examination.

Re-examined

Re-examined by Hills:- At. p. 16 of Bundle letter of approval — bottom part of that page — we got Wilkins to do the scheme. In February 1961 I trusted 1st Defendant. I relied on his verbal promise. Then I went to see Messrs. Donaldson & Burkinshaw. I saw Miss Smith of that firm. I told her of a written agreement with Kota Mining Co., but not of a verbal agreement

40

with 1st Defendant. I did not do so because I did not know about it.

Judge's Notes
of evidence

Q: Why did you not tell someone about a verbal agreement?

Plaintiffs'
evidence

A: I was mentioning about the case in the solicitor's office. And the conversation came to a point where I stated that Mr. Siow promised to give me a sub-lease. That was about one or two months after I spoke to Miss Smith. I did not know that a verbal agreement was accepted in the law. I did not know it was enforceable in the Courts.

No.8
Chua Siew
Cheng -
Re-
examination
(Contd.)

10

Sd: Azmi.

No.9
Evidence of Lim Fook Sang

No.9
Lim Fook Sang
Examination

P.W.2. Lim Fook Sang a/s in English: Age 39.
Living at No.7 Cecil Drive, Ipoh.

I am director of J.P. Wilkins & Co. Ltd.
I have been with this company since 1956.

I know Chua family connected with South Island Mining Co. in Kedah. That was run by Chua Ho San, who is dead now - father of P.W.1. It is now run by the family. In December, 1960, the Plaintiff Co. sent us some ore samples obtained from the area held under prospecting permit No.141/59 to help them analyse it. We analysed it. The sample showed 65% Fe sample. It is a good proportion. We charged them \$96/- for it and they had paid for it. In March, 1961, they sent me more samples from same area. We analysed them. The fee was \$192/- which they also paid.

In October, 1961, Mr. Chew Hee Jin of the Plaintiffs' company telephoned us in Ipoh and asked me to carry out survey for a mining scheme. We did that. I went to the area and stayed a few days there. I brought 3 Malays with me. I prepared a scheme. (Shown Ex. P.3) - P. 3 is the scheme I prepared. When I was there I saw 1st Defendant. He told me the prospecting permit holder. I told him I had been sent by the Plaintiffs to carry out a survey of a mining scheme. He said since Plaintiff Co. had sent for me the Plaintiffs had to pay our fees. He

Judge's Notes
of evidence

Plaintiffs'
evidence

No.9
Lim Fook Sang
Examination
(Contd.)

also said as he was going to give a sub-lease to the Plaintiff Co., he had no objection to the scheme being prepared. After I had prepared the scheme, I sent 6 copies to the Plaintiff Co. and asked them to get 1st Defendant to sign them first.

At the same time we prepared a covering letter to be submitted to the Inspector of Mines. On 31.10.61 we sent our bill.

According to our record we sent the letter to be submitted to the Inspector of Mines. We did not receive any acknowledgment of receipt from the Inspector. 10

The scheme had to be signed by the owner. We sent 6 copies to Plaintiff Co. to get 1st Defendant's signature.

I am not sure if our letter and scheme were sent to the Inspector. We sent a prepared application to the Kota Tinggi Town Board for permission to use public roads for carrying ore.

We also sent an application to the State Drainage & Irrigation Engineer, Johore, for permission to construct a jetty in the Kota Tinggi Town for loading and unloading ore. 20

The ore must be taken to the main road. There was a road in the area leading to the public road. It is about 7 miles long. It was almost completed when I visited the area. The Plaintiff Co. was building it. The ore would go by road to Kota Tinggi and then by lighter by river to the ship.

Sd. Azmi.

30

Cross-
examination.

Cross-Examined

XXD: by Murphy:

Plan P.3 - we made it.

It was headed "Kota Mining Co. Ltd." because the Plaintiff Co. were not recognised by the Mines Department. Kota Mining Co. did not object. I spoke with 1st Defendant and he has no objection.

I was taken to 1st Defendant's office in

Kota Tinggi. He must have expected me. I said so because he was not surprised. He took us around.

I did not know 1st Defendant. I was introduced to him by Chew Hee Jin. Chew Hee Jin introduced me as one who was making a mining scheme. I was not introduced as some one whom he was expecting.

10 I cannot remember who gave me the name of "Kota Mining Co. Ltd." to be put on the plan. I knew Vallentine & Dunne. I did not know that Vallentine & Dunne had done a scheme of the area. I would still do so even if I knew Vallentine & Dunne had done one. I came to know of it. When I was in Kota Tinggi 1st Defendant told me about it.

20 I was told by the Plaintiffs that I was to make a scheme in support of an application for a mining certificate. I was not told by my client that a scheme had been made by Vallentine & Dunne. I thought I was to make the first scheme on the mine.

1st Defendant told me that Mining Department had got the scheme made by Vallentine & Dunne and approved in principle by the Mining Department.

30 I was shown the plan put up by Vallentine & Dunne. Our scheme was basically the same as that of Vallentine & Dunne. I was not asked to alter anything. No stockpile in my scheme. It seemed strange that I should be asked to do the scheme again. 1st Defendant asked me to put in more details. I don't know why Plaintiffs wanted another scheme. I went to area with Mr. Chua, Mr. Chew and Mr. Siow. I took instructions from Mr. Chua. He merely told me they wanted a mining scheme. They told me 1st scheme had not enough details.

I changed position of the washing plant. I don't know where it is on the other plan.

Sd: Azmi.

5 p.m.

40 Adjourned to 10 a.m. tomorrow.

Sd: Azmi.

Judge's Notes
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Plaintiffs
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No.9
Lim Fock Sang
Cross-
examination
(Contd.)

Judge's Notes
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Evidence

No.9
Lim Fook Sang
Cross-
examination
(Contd.)

13th November 1963

10 a.m.

P.W.2. Lim Fook Sang (on former affirmation);

I made alteration in position of washing plant. I have seen Valentine & Dunne's plan - shown to me by 1st Defendant.

D12 (Shown a plan and marked Ex. D.12).

That is the plan. I suggested that they should make a water reservoir for the water pump. Nothing else. These two matters were suggested by me with agreement of Chua Kim Yong.

10

I drew plan embodying these two suggestions and I sent 6 copies to Plaintiff and asked 1st Defendant to sign the plan. The plan was solely for purpose of expediting issue of certificate. That was what I genuinely thought. I would be surprised if it was used for purpose of Section 65 of the Mining Enactment for purpose of working the mine.

My plan was submitted for issue of permit, and not for certificate.

20

(Shown letter of approval at p.16 of Bundle). I was shown that letter before making my plan. It is dated 28th September 1961. I completed my plan on 21.10.61. I refer paragraph in letter:

"The land hereby leased shall be mined only under a working scheme approved in writing, at his discretion, by the Warden of Mines."

30

I would be surprised a certificate has been issued without any plan. I don't know if 1st Defendant was expecting me.

1st Defendant said something to effect that Plaintiffs were going to get a sub-lease. He said, "Welcome to the mine. I will show around....."

Re-
examination.

Re-examination

Re-Xd by Hills:

1st Defendant was not surprised to see

40

me. I would not be surprised if P.W.1 has told 1st Defendant that she was going to call for me.

Sd. Azmi.

(Witnessed released).

Judge's Notes
of Evidence

Plaintiffs'
evidence

No.9
Lim Fook Sang
Re-examination
(Contd.)

No.10
Evidence of Yeo Lew Soo

No.10
Yeo Lew Soo
Examination

P.W.3. Yeo Lew Soo a/s in Teochew: Living at 90 Jalan Buloh Perindu, Singapore.

10 Chairman and director of Plaintiffs' Company. I have been so since 16.9.1960. I know Wee Aik Hoon. He is a business man and he is from 2nd Defendant company.

I met him in April, 1960. Besides him were present also Siow Wong Fatt (1st Defendant) and Tang See Sim. We discussed about this mining area. I was satisfied with this mining area and I agreed to work for the mine. I was satisfied with result of examination of iron ore and have agreed to operate the mine.

20 After that I entered into agreement with Wee Aik Koon on 19.9.1960.

(Shown agreement at p.72). I signed that agreement. I only knew roughly of contents of the agreement which were read out to me. I cannot remember every item.

30 After that I saw 1st Defendant again. We discussed about opening of the road. 1st Defendant said that since we were keen to work the mine, we should open the road. At the beginning my reply was that I would only construct the road after the mining certificate has been issued.

Later on 1st Defendant came to see me in my office, from Johore Bahru, and in my office 1st Defendant told me that he had seen Wan Ahmad of the Mines Department and that

**Judge's Notes
of evidence**

**Plaintiffs'
evidence**

No.10
Yeo Lew Soo
Examination
(Contd.)

Ahmad had told him that no sub-sub-lease would be issued after the sub-lease. Then I asked 1st Defendant what he would propose to do if no sub-sub-lease would be issued. He replied that he could give me a sub-lease direct. Then I said I would be very happy if he could give me a sub-lease direct. Then 1st Defendant said further that if he should give the sub-lease direct, I should construct the road first. I replied that if he would give me the sub-lease, direct, I would construct the road. He then said as far as construction of the road was concerned, I should do it quickly as that would help the issue of mining certificate. I considered what he said as reasonable. Following that I convened a meeting of our company.

10

At meeting of our company it was agreed that what 1st Defendant said was reasonable and we should as requested help him in constructing the road.

20

(Read out 1st Resolution in Ex. P.1)

That is the Company's resolution. My company built the road.

On 15.4.1961 the actual work of constructing the road started.

After that I went to Japan for purpose of selling iron ore.

I signed Ex. P.2.

I met 1st Defendant in my office again.

I saw him at the mine. I remember meeting him on the mine inspecting the road. On that occasion I saw him on the road. He said that he was fortunate that he has requested me to construct the road earlier and that the road had been properly done. He continued to say that it was fortunate I had constructed the road first and that had helped to get the mining lease. He also said he had received a letter of approval.

30

I now remember that earlier on when he came to my office after my return from Japan, he told me he had received a letter of approval.

40

He mentioned that it was fortunate the construction of road had been done resulting in the approval of the mining certificate and that he was happy with whole matter. P.W.l. was present then. As every one of us was happy, P.W.l. took the letter of approval from 1st Defendant and read it. She read it out to me.

Judge's Notes
of evidence

Plaintiffs'
evidence

No.10

Yeo Lew Soo
Examination
(Contd.)

10 In that letter it was stated that the mining certificate was not transferable and could not be sub-leased. Then 1st Defendant said what was stated in that letter were the usual conditions imposed by the Government and that the mining certificate could not be transferred or signed away from one to another privately. 1st Defendant assured me that I should not fear anything and as soon as mining certificate was issued he could get the necessary form from the Government to effect a transfer of the mining certificate direct to us.

20 All that happened at the office.

To go back to the mine. On the road 1st Defendant also said it was fortunate that he had asked us to construct the road first and that helped in getting the mining certificate. Nothing else was said. Everyone of us was happy. We all then went home.

30 On arrival at this house 1st Defendant got off and came back and gave P.W.l. a form. He told us not to be afraid of anything. The form was a sub-lease form from the Government. 1st Defendant's home was in Kota Tinggi Town. Subsequently I saw 1st Defendant again. He visited our house in Singapore at Tanjong Rhu. He came to inquire from me if Tang Sie Siew was to be appointed Mines Manager. I replied that Tang Sie Siew did not have much experience in mining. I then said that I would give the job to Chua Kim Yong. This man had been working previously in our mine in Kedah under South Island Co.

40 1st Defendant replied that if he was experienced he could take up the job. I also said Tang See Siew could take over when he gets some experience. 1st Defendant did not say anything else. 1st Defendant went further that

Judge's Notes
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No.10
Yeo Lew Soo
Examination
(Contd.)

it would be better if we did not work the mine and that there was another man in Singapore who was more experienced and able to do the mining. I became angry. So I asked him what he was talking about. I said that I had already helped him in opening the road and also helped him in getting the mining certificate and why should he say that so suddenly.

I also said I have spent so much time over it. The approximate cost of making the road is roughly \$140,000/-. Our company had paid that. 1st Defendant never spent a cent on it.

10

Sd: Azmi.

Cross-
examination.

Cross-examined

XXD, by Dunbar: I had some experience of mining because I had been following my husband who was a miner. I meant to say that I learned from my husband off and on. I was often by his side. I would say I had some experience. I used to follow my husband and observed him. Wee Aik Koon and I and Tang See Siew were present. Also present was my husband and P.W.I. It was my husband who agreed to work the mine. I was beside him. This conversation in April, 1960, took place in our house in Tanjong Rhu. I am sure it was in April. I remember that occasion. My house was under repair in April. How can I forget that? It was 2 or 3 months later my husband died. The % of ore was 68%. My husband had samples tested. I am sure 1st Defendant came to my house about that time. I came to know of the percentage in July, 1960. That was when result of test was received by my husband. He told me of the percentage content. That was the first time I knew of it. It was 1.7.60.

20

30

Q: How could you then be satisfied with the mining in April, 1960?

A: My husband had by then known the result conducted at the instance of 2nd Defendant.

40

In April, 1960, I did not know the actual percentage, but the 1st Defendant had assured us of the high percentage. I only came to know

of the actual 68% after receiving the report.

Everyone at Kota Tinggi had said the % on that area was high. Besides, 1st Defendant told us.

Judge's Notes
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No.10
Yeo Lew Soo
Cross-
examination
(Contd.)

I remember I entered into an agreement only with Kota Mining Co. which I signed at the lawyer's office. P.W.l. was present. My third son was present and also Tang See Siew. 1st Defendant was also present at the signing.
10 I remember well and that he was present. He appeared happy that the agreement was signed. I signed only once over that document, apart from my signing over corrections. The contents were explained to me. The agreement contained pages and was bound like a book.

After 1st Defendant came from Johore Bahru to our office in Singapore and it was on that occasion that he said he saw one Wan Ahmad as I have previously stated.

20 I did not make up what I said. It truly happened.

I have been Chairman and Director of Susur Rotan Mining Limited from the start. P.W.l. came into the Company later, and I think it was in 1961. I cannot remember the date or month.

When the first resolution was made, P.W.l. had already joined the Co. The book was acquired just before the meeting was held to pass the resolution. The book was bought when 30 the Company was organised in September, 1960. I am not sure of the acquisition of books of Company - done by someone else. This company was run on model of a registered company.

Before Susur Rotan Mining Ltd. was formed I knew something about companies. Very soon after formation of the company the company adopted a common seal. I was then Chairman of Board of Directors. P.W.l. was a director at 40 that time. We were the only directors. I cannot remember how long after the common seal was adopted that P.W.l. became a director.

I received the letter of 18.11.1960 from

Judge's Notes of evidence Teo Liang Chye Co. telling us we must have meeting to appoint Chairman, etc. etc. A meeting was held after receipt of the letter, but I

Plaintiffs' evidence
Teo Liang Chye Co. telling us we must have meeting to appoint Chairman, etc. etc. A meeting was held after receipt of the letter, but I cannot say how many days later, nor how many weeks later. The first meeting was held in 1961. The meeting was not held earlier because there were so many things to be done for the formation of the Company.

No.10
Yeo Lew Soo
Cross-examination
(Contd.)

I think a meeting was held in 1960 to discuss about the agreement signed in the office of Donaldson & Burkinshaw. The meeting was between me and Chua Sik Mong. We two were appointed directors to consider the agreement made with Kota Mining Co. I don't know who is Chan Yew Sin. I knew Tang See Siew. The Secretary was one Tang Poh.

10

According to Rules a person must be appointed to look after the records of a company. P.W.l. was such an officer and appointed from the beginning of the company. She is my only daughter. I know some one named Tan See Siew but not Chan Yew Sin.

20

Before signing of the agreement in the lawyer's office a resolution had been passed by the Company. I cannot say if the minutes of the meeting were recorded.

Sd: Azmi.

Witness says she is ill.

12.45 a.m.

Adjourned to 2.30 p.m.

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Sd: Azmi

2.35 p.m.

Counsel as before

P.W.3 Yeo Lew Soo on former affirmation:

XXD: by Dunbar

(Referred to Articles of the Company).

According to Article I the Secretary

is Chan Yew Sin.

He was a temporary Secretary at that time. I was confused this morning with the firm who made the seal for our company.

I thought I heard the name was Tan See Siew.

This morning the name Chan Yew Sin was mentioned to me. I was asked if I knew name of Chan Yew Sin. As regards name I have confused myself. I did know that where the name Chan Yew Sin was mentioned it was in connection with the official or Secretary of the Company. I did mention name Teng Poh. He was the man who was keeping the minutes.

Q: Does name of Teo Yang Chye mean anything to you?

A: Teo Yang Chye was the person who prepared the Articles of the Company.

He was the Secretary of the Company. I cannot say as to when he was Secretary. That was some time after formation of Company. I cannot remember if he was appointed to replace Chan Yew Sin. I have been Chairman of the Co. and I do not know very much about these matters. I took advice from my children. I am 43.

As regards such appointments, P.W.L. usually consulted me and on some occasions my son Chua Sip Mong consulted me.

Chua Sip Mong was a subscriber to the company. I subscribed one share and he subscribed one share. The first directors were myself and Chua Sip Mong. Chua Sip Mong is my husband's son by first wife.

P.W.L. is daughter of my husband and myself. When P.W.L. was appointed a director my son was working on the site. He could not come as frequently as he would. He was working for Susur Rotan Mining Ltd. after P.W.L. had become a director. My son was not actually working under Susur Rotan Mining. He was then busy looking after South Island Co. Whenever he came to Singapore I consulted him about the

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of Evidence

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No.10
Yeo Lew Soo
Cross-
examination
(Contd.)

Judge's Notes
of Evidence

Plaintiffs'
evidence

No.10
Yeo Lew Soo
Cross-
examination
(Contd.)

affairs of Susur Rotan. At the start of this Company he was a director of Susur Rotan Mining Ltd. Afterwards he ceased to be director. I cannot remember when he did so. I am afraid I do not know such about my son resigning when my daughter became a director. By subscribing one share Sip Mong became a director. I do not know if Sip Mong forfeited his share. I know nothing of forfeiture of Sip Mong's share. 10

(Referred to minutes of meeting dated 2.1.1962). I admit those were minutes of the meeting and I signed them. I cannot remember if the forfeiture of Sip Mong's share at the meeting. It happened so long ago. I have forgotten details of meeting. I cannot remember if Sip Mong resigned after appointment of P.W.l. as director.

I cannot remember if there was a meeting when P.W.l. was appointed a director. I have no recollection of a meeting. I appointed P.W.l. as director. 20

(Referred to minutes of director's meeting held on 2.2.1961 which are read to her).

I signed minutes on their confirmation at end of the year. No mention of Chua Sip Mong in the minutes.

I cannot remember if Chua Sip Mong was still a director at the date of the meeting, nor if he was present or not. 30

I remember discussing with Chua Sip Mong about appointment of P.W.l as director.

I would not say he had ceased to take any interest in Susur Rotan Mining in February, 1961, but he was too busy looking after the South Island Co. I cannot strictly say if Sip Mong had already resigned before meeting of 2.2.61. This was a family matter and I still discussed things with him. 40

There was no such thing as my son Sip Mong resigning from Susur Rotan Mining. From

my point of view he is still a director of the company.

I agree that there must be something definite about appointments or resignations of officers. When my daughter was appointed a director there was meeting about it.

There is no form of resignation of Sip Mong and he is still on register.

10 I know nothing about Registrar of Companies in Singapore having received information from Susur Rotan Mining Co. that as on 1.3.1961 following were directors:

- 1) Madam Yeo
- 2) Chua Sip Mong (resigned on 2.2.61)
- 3) Chua Siew Cheng appointed as director as from 2.2.61.

20 Our first office was on upper floor of Lee Gek Yong Buildings. I don't know name of the street. In November, 1960 I moved into the above premises. This was time when we began doing business of Susur Rotan Mining Ltd. We paid office rent by cheques.

Q: On what Banks?

A: I have 2 or 3 banks. I cannot remember.

At beginning I paid rent as my own personal cheques and later on in the Company's cheques. We were advised to keep a separate account in name of the Company. I cannot remember when we got the advice. My children must have advised me.

30 I remember a reminder from Teo Liang Chye to us to appoint Bankers. (shown D.13.) We did not appoint Bankers immediately after receiving the letter because I thought it did not matter very much as I could use my personal cheques and it was a family business.

In minute books there were only P.W.L's and my signatures. They have no signatures of Chan Yew Sin and Teo Liang Chye. I don't know if Teng Poh signed or not. There is no

Judge's Notes
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Plaintiffs'
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No.10
Yeo Lew Soo
Cross-
examination
(Contd.)

Judge's Notes signature of Chua Sip Mong.
of evidence

Plaintiffs'
evidence

It is not true those things in P.1 were manufactured or connected when the dispute in this case has arisen.

No.10
Yeo Lew Soo
Cross-
examination
(Contd.)

There was a resolution to enter into agreement with Kota Mining Co. as result of a meeting in my house. There were no minutes of the meeting - there was merely a discussion in the family.

I discussed with Sip Mong and decided to have our office. I cannot say if that was entered in the Minutes Book. My son Chua Sip Mong should have entered the minutes in the book to effect that we decided to have office premises. I cannot say if he had done that or not. I guess he can read English a little. He can read English. He can write English but not very well. 10

There was a Minutes book - my son should have entered the minutes of meeting in that book. That was his job. He understood it was his job. 20 He should have entered minutes of meeting as discussed.

I do not know if my son had entered the minutes in the book, though there was a minute book from the beginning. My son told me so.

Q: I put it to you that Ex. P.1 could not be the book your son was telling about.

A: I don't know if that was the book or not my son was telling about.

I don't know if Ex. P.1 was the book my son had. 30

(Having gone through the book at my request) There is no signature of my son in it. (At this stage witness complains she cannot sit any longer. She has been given a chair to sit in Witness Box). I signed a minute at the second last page of the book dated 30.12.61.

Q: I suggest to you that the minute book has been concocted for this case.

A: Not true.

Not true my evidence has been concocted or tailored to suit my claims.

Sd: Azmi

Judge's Notes
of evidence

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No.10
Yeo Lew Soo
Cross-examination
(Contd.)

No.11
Chua Kim Yong
Examination

No.11
Evidence of Chua Kim Yong

P.W.4. Chua Kim Yong a/s in Teochew:-

Living at 54 Jalan Cheng Kit, Singapore.

I have been connected with mining for more than 10 years. I was with South Island Mining Co. for last 7 years. am still with the Company.

I know 1st Defendant. I first saw him in Sungei Patani in Kedah, but cannot remember date. He was enquiring from me as to whether we could take over Susur Rotan Mining and work the mine.

It was 1960, i.e. before death of Chua Hoe San. After that I saw him often. He came to our office in Asia Building, Singapore, practically every day. I also saw him in Johore Bahru. We often met and had food together.

It was on 13.2.1961 in Johore Bahru when we met Wan Ahmad at the office of the Mines Department. On this day 1st Defendant was in company of P.W.1, Tan See Siew, Chew Hee Jin, in a corner of that office. I was at the doorway. P.W.1. was discussing with the rest in English and when they talked to the Clerk, they did so in English. I was at the doorway, and I could not understand it. P.W.1. and the rest spoke in English. 1st Defendant spoke a little English. He cannot pronounce properly. We went back to our office in Singapore. We discussed about sub-lease in connection with Susur Rotan Mining but Tan See Siew was not there. He did not go there after some quarrel. This

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Judge's Notes
of evidence

Plaintiffs'
evidence

No.11
Chua Kim Yong
Examination
(Contd.)

found

discussion was in Teochew. 1st Defendant begged Madam Yeo Lew Soo, the proprietress, to construct the road. Madam Yeo then said what was the use of constructing the road if no sub-lease was given to her. 1st Defendant then said 'I would certainly give you a sub-lease. I was the person having authority to do so. Others have no power to do so.' I told 1st Defendant without a sub-lease, we would not construct the road. He then said he would certainly give a sub-lease. He also mentioned that South Island Co. was doing business on a large scale with a large output and we could certainly do the job. Being an old miner myself and having heard what 1st Defendant had said I fould that he had uncertainty in his mind and that he might cheat people. I did not speak to him further.

10

On 15.4.1961 1st Defendant came to see Madam Yeo and pressed for early construction of the road and also to render assistance to issue of mining certificate.

20

I collected a number of people and constructed the road - more than 40 persons. I was in charge. The road was $9\frac{3}{4}$ miles long. The surface of road was covered small laterite. We made bridges of timber. There were more than 70 bridges. The land was of hills and swamps. It was jungle land. I used 5 bulldozers and girders. The work lasted from 15.4.1961 to 27.11.1961. During the time I was doing the work I saw 1st Defendant every day. I used to consult him every day. He was the owner of the mines. I had to consult him for everything we did. He praised for the good work done. He was satisfied with the work. I was living in a kongsi two miles from the main road. There were still 3 people living there.

30

Reference meeting with 1st Defendant in Singapore, he spoke of a sub-lease. I said 1st Defendant had uncertainty in his mind and he might cheat people. By "uncertainty in his mind" I meant that he was actually begging the proprietor to construct the road. As a miner 1st Defendant would have to beg.

40

Sd: Azmi.

Adjourned to 10 a.m. tomorrow.

Sd: Azmi.

14th November, 1963. 10 a.m.

Counsel as before.

P.W.4. Chua Kim Yong on former affirmation:

XKD: by Murphy: I met 1st Defendant in Kedah first at beginning of 1960 - round about the Chinese New Year. That was when he went to Kedah about the mine in order to persuade us to take over this mine. He saw me. I did not know if he saw some other person about it. I told him to wait until I next went to Singalpore. I told him that because my residence was in Singapore and because my towkay was Chua Ho San, I had to consult him before I could inspect the area. 1st Defendant, consulted me on behalf of Chua Ho San - i.e. I was acting for Chua Ho San. I did not introduce 1st Defendant to Chua Ho San because Chua Ho San was then in Singapore. That was first time I met 1st Defendant. 1st Defendant asked me to go to the area and make the necessary inspection to find if there was any ore. So I told him I had to ask Chua Ho San.

Q: Did 1st Defendant say anything about taking over the mine?

A: He said, "If you find there is iron ore you can ask your towkay to work the mine."

That was all he said. Ref. permit and agreement, he said that as regard his prospecting permit, he had instructed Vallentine & Dunne to do the boring. He also said as result of boring by Vallentine & Dunne that the percentage of tin ore was high. Tin ore and not iron ore. He did explain to me it was an iron mine, At that time 1st Defendant did not know my towkay Chua Ho San. He did not know me either. He had made enquiry about my name, i.e. about the person in charge of the big iron mine there, not about Chua Ho San. It was difficult for him to see my towkay but easier to see me. He also told me as result of boring by Vallentine & Dunne it was found that the mine was not workable.

Q: What did he want you to do then?

Judge's Notes
of evidence

Plaintiffs'
evidence

No.11
Chua Kim Yong
Cross-
examination

Judge's Notes
of evidencePlaintiffs'
evidence

No.11
Chua Kim Yong
Cross-
examination
(Contd.)

A: He came to see me hoping we could assist him as we already have that kind of business on a big scale.

He wanted us to assist him so that the mining certificate would be issued and we could work the mine for him.

I am sure all these things happened about Chinese New Year, 1960. He also said we could pay him \$4/80 for every ton produced.

He also mentioned about the payment of \$40,000 to him and he also mentioned of execution of an agreement.

10

I know of Vallentine & Dunne.

Q: Was it because Vallentine & Dunne said the mine was not workable that he asked you to take over?

A: 1st Defendant was going to mine tin. He knew tin mining only.

The % of tin was high and then the Japanese would not agree to buy the iron ore from the mine. 20

1st Defendant wanted us to mine iron.
We were iron miners.

According to Vallentine & Dunne the mine was not workable as an iron mine.

I had heard of 1st Defendant as having a mine at Kota Tinggi.

Q: Did it not strike you as peculiar that a man you did not know should go to you and ask for \$4/80 as tribute on an unworkable mine according to Vallentine & Dunne?

30

A: I did not feel it was unusual as a miner.

After seeing me, 1st Defendant contacted my towkay direct.

I know one Tan See Siew. (Identifies person but man said his name is Chan Sai Sow (in Hakka). His name in Chinese characters,

according to Interpreter Teo, would be right for Tan See Siew (in Cantonese) and Chan Sai Sow (in Hakka).

Judge's Notes
of evidence

I knew him well whilst he was working in our mine in Kedah. He was known to my Chua Ho San.

Plaintiffs'
evidence

10

When I first met 1st Defendant Tan See Siew was not with him. In June or July, 1960, when I met Tan See Siew he took me round the mine. That was first time I saw mine. 1st Defendant was there. It is not correct that that was first time I saw 1st Defendant. I had already met him in Kedah.

No.11
Chua Kim Yong
Cross-
examination
(Contd.)

The first time I saw tin mine was in January, 1960. That was the time Mr. Tan took me round with 1st Defendant. I did not know 1st Defendant before January, 1960. Both meetings took place in January, 1960.

20

Tan made an appointment with me to take me to the mine. My towkay instructed me to go to the mine. Mr. Tan also told me that according to Vallentine & Dunne the mine was not workable.

30

Tan took me round to all places where there was iron ore. A little pitting has been done. I went to the mine to find out the % of iron ore and from my examination I found the iron ore was about 67 or 68%. The samples were later sent for analysis which confirmed my estimation. I could roughly tell the percentage by looking at the iron ore. I could tell the impurities roughly. I can tell by looking at iron, what was tin and what was arsenic. The tin content was .007. I can tell that by looking at it.

I met Tan at Johore Bahru.

I did not know conversation in English.
1st Defendant could say:

40

"Mine Department"

"p. p."

Judge's Notes
of evidence

Plaintiffs'
evidence

No.11
Chua Kim Yong
Cross-
examination
(Contd.)

I could recognise the sound of English language but I could not understand it.

I could understand Chan say in English that they go to the Mine Department.

The same day I went to Susur Rotan's office. I travelled in P.W.l's car. Tan See Siew was not in same car with us.

If P.W.l said Tan travelled with us - I would not know about that.

Tan was quarrelling with 1st Defendant, at Johore Bahru.

10

Then we went to the office.

Among those there I had experience. P.W.l also had experience. Besides these two, the towkay's son also had experience, but he was not present at the office. Therefore only P.W.l and I had experience. P.W.l followed her father about soon after leaving school.

Her brother is Chua Sip Mong. I would not know about Sip Mong's resignation as a director of the company.

20

If the road was built before issue of mining certificate, that fact might make issue of mining certificate more quickly. If no road is built, Government would not issue mining certificate.

Q: Is it not true that the building of road before issue of the mining certificate would only benefit the miners who are going to mine the area?

30

A: It would benefit the miners and also quicken the issue of mining certificate.

I did not tell P.W.l that I did not advise P.W.l. Other people might have done so.

Susur Rotan Mining Ltd. was employing me then. I was the most experienced of all. I know the iron content was good. I knew the mining certificate would ultimately be given.

It would not benefit Susur Rotan to make the road so that the Company could mine quickly. In fact it lost in money.

I don't think it would be an advantage to Susur Rotan in February 1961 to start building a road. I thought 1st Defendant was going to cheat Susur Rotan. I was employed by the Co. But in spite of all these I did not advise Susur Rotan against building the road. I had no right to do so. P.W.3 agreed to building the road at that meeting. I started on the road on 15.4.1961.

10

Q: I suggest that meetings never took place and that you made these up?

A: Yes, they did.

Sd: Azmi.

Re-examined

Re-xd by Hills: 1st Defendant said the mine according to Vallentine & Dunne was not workable. He said that as an iron mine it is not workable because the percentage of tin was too high.

20

Sd: Azmi.

Re-examination.

No.12
Evidence of Eng Tiang Poh

P.W.5 Eng Tiang Poh a/s in Teochew:

No.12
Eng Tiang Poh
Examination

Living at 30 Jalan Seaview, Singapore.

Book-keeper employed by Plaintiff Co. I have charge of cash books and accounts of Plaintiff Co. and I have been in charge since incorporation of the Company. I have made extracts of accounts to show money spent by the Co. on the mine under various heads. I produce statements and vouchers in support. This is Head Office accounts and these are details (marked Ex. P.14). These are Branch Accounts (marked Ex. P.15).

30

(Boring expenses for 1960 - Branch A/c - refers to para. (f) at p.6 of Pleadings).

P.14
P.15

Judge's Notes
of evidence

Plaintiffs' evidence

No.11
Chua Kim Yong
Cross-
examination
(Contd.)

Judge's Notes
evidence

Plaintiffs'
evidence

No.12
Eng Tiang Poh
Examination
(Contd.)

Ref. Branch Accounts (Ex. P.15). Civil Suit 654/1952 mentioned at bottom of page. This was in respect of 10 lorries originally loaned us and the sum of \$19,476.00 was claim against us for hire of lorry in connection with construction of the road on the mine. The following on that sheet were not in connection with making the road, i.e.:

1) Analysis Fee	\$678.00	
2) Legal Expenses	55.00	10
3) General Expenses	\$1,073.90	
4) Audit Fees	600.00	
5) Survey Fees	941.00	
Rent	545.00	

All the rest of the items refer to accounts on building of the road.

Ref. Ex. P.14 - All expenses were expanded by Susur Rotan Mining Ltd. for purposes of operating the mine.

I met 1st Defendant in October, 1961, in our office in Lee Gek Yeong Ltd. It was on 10.10.1961 P.W.1, P.W.3, and Chew Hee Jin were present. The meeting was in connection with letter of approval from Government and 1st Defendant showed the letter to P.W.1. P.W.1. said since approval has been granted, could a sub-lease be given to her. 1st Defendant said, "Not just yet. This is only a letter of approval. When the mining lease is out, only then a sub-lease can be given, giving the number of the mining lease".

20

30

I saw 1st Defendant on the mine's road on 15.10.1961. 1st Defendant said that he was very happy that the road was completing soon and he also said the mining certificate would be issued very soon. He also said that as soon as mining certificate was issued and the road would be completed, the iron would be taken out over the road.

These are the books:

- | | |
|--------------------------------|----------|
| 1) Cash | Ex. P.16 |
| 2) Petty Cash Book | P.17 |
| 3) Journal | Ex. P.18 |
| 4) Ledger for Singapore office | P.19 |
| 5) Ledger for Branch Office | P.20 |

Judge's Notes
of evidence

Plaintiffs'
evidence

No.12
Eng Tiang Poh
Examination
(Contd.)

I also have got the vouchers.

I suggest to Mr. Murphy these would be
produced if asked for by him in course of xxn.
or before next hearing.

Sd: Azmi.

Mr. Murphy: I ask for leave to xxe. the
witness after we have gone through the books.

Sd: Azmi.

Adjourned to 23.11.1963 at 10 a.m.

Sd: Azmi.

Certified true copy.

(T. Nesathurai)

Secretary to Judge.

21.11.1963.

Judge's Notes
of evidence

Plaintiffs'
evidence

No.12
Eng Tiang Poh
Examination
(Contd.)

Counsel as before.

P.W.5. Eng Tiang Poh:

XXd. by Murphy: Nil.

Sd: Azmi.

Murphy: Plaintiff did not plead special damages. Therefore I am not cross-examining as to accounts.

Sd: Azmi.

That concludes case for Plaintiff.

Sd: Azmi.

10

DEFENDANT'S EVIDENCE

Defendant's
evidence

No.13
Opening by
Defendant's
Counsel 23rd
November 1963

No.13

Opening by Defendant's Counsel

Murphy: I am putting amended defence.

Statement of Claim para. 5 - Plaintiffs taking steps.

Oral agreement alone and unsupported by agreements.

To that pleadings have been made.

Now from evidence of P.W.1. - oral agreement is not independent of it but connected with it.

20

(Refers to Notes of Evidence of previous hearing supplies to parties).

p.29. 32. She said, "Under oral agreement we were not liable to pay anything. We would pay Kota Mining Co. \$40,000/- and get 1st Defendant to give us a direct sub-lease.

Q: What would be position if you did not pay Kota Mining Co. \$40,000/-?

30

A: I would not then get the oral lease from 1st Defendant.

"In other words the direct lease from 1st Defendant was dependant on Plaintiffs continuing to be entitled under written agreement with Kota Mining Co."

In view of dependance of the agreements it is necessary to plead she is not entitled.

10 Our new para. 4A.

Judge's Notes
of evidence

Defendant's
evidence

No.13
Opening by
Defendant's
Counsel 23rd
November 1963
(Contd.)

Sd: Azmi.

Hills: I oppose this amendment. It should not be allowed at this stage. It is a considerable amendment. If it is true that oral agreement is dependant on written agreement his client should have told him many months ago. This 11th hour amendment to fit in to my learned friend's interpretation of the evidence.

20 If allowed, I have to re-open whole of Plaintiffs' case and put them in witness box to disprove that oral agreement is conditional on written agreement.

Plaintiffs had to pay \$4/80 a ton for Kota Mining. No one should lose.

\$40,000/- was only advance of tribute money.

Sd: Azmi.

Amendment allowed.

Sd: Azmi.

30 Murphy: I am calling evidence to show that there was no oral agreement, but I am calling experts first.

No.14
Evidence of Abu Bakar b. Mohd.
Nurut

No.14
Abu Bakar b.
Mohd. Nurut
Examination

D.W.1 Abu Bakar b. Mohd. Nurut a/s in English.

Judge's Notes
of evidence

Inspector of Mines, Johore Bahru,
but stationed at Kuala Lumpur.

Defendant's
evidence

No.14
Abu Bakar b.
Mohd. Nurut
Examination
(Contd.)

I assumed office on 1st May, 1962. I have the file dealing with applications for prospecting permit and mining lease of this case. The prospecting permit was issued to 1st Defendant on 21st November, 1959, by the Acting Conservator of Forests, Johore. This was in respect of an area - area 441 acres.

10

On 25.1.1960 area increased by 30 $\frac{1}{2}$ acres. This permit was issued by the Conservator of Forests. I would not know about it.

In November, 1959, 1st Defendant got prospecting permit. He had to submit report of his progress monthly, of the prospecting done. He did that. All was done in name of 1st Defendant.

Prospecting concluded on last day of last extension, i.e. 20.6.1961.

20

Permit holder had to submit a final prospecting result. In this case, Vallentine & Dunne filed their report on 24.1.1962 - on behalf of 1st Defendant. We gave grace to permit holder to file his final report.

After that permit holder had to apply for a mining lease.

A mining lease was to be issued. In this case a mining lease was issued by Commissioner of Lands with approval of Ruler in Council. The lease was issued on 23.1.1962. I was informed of this approval. It was in reference to an area of 184 acres 3 roods 35 poles and in reference to a Mining Certificate No. 603. The Commissioner of Lands and Mines issued the certificate.

30

On 24.1.1962 Vallentine & Dunne sent a final report in reference to the additional area of 45 acres.

40

The 1st final report was submitted by Vallentine & Dunne on behalf of 1st Defendant on 7.1.1961 in reference to area under Prospecting Permit 141/59. In addition to that Vallentine & Dunne submitted a revised estimate on the ore reserve on 23.2.1961. The revised report of ore reserve was 372,000 tons - earlier one was 250,000 tons.

10 The Mining Certificate was issued on 23.1.62.

A mining lease application was made by 1st Defendant on 16.9.60 to Collector of Land Revenue.

17 The revised report of ore reserve at 372,000 tons was in respect of area of

These are reports:-

18 1) 1st report dated 5.3.1960 from Vallentine & Dunne on behalf of 1st Defendant over area in Prospecting Permit 141/59 to effect that pitting was carried out during month of February with following results:

No. of pits sunk - 47

Total footage 522 $\frac{1}{2}$ feet

19 2) Next report on 7.4.1960. No additional pit put down in months of March, but pitting gangs were employed in deepening some of pits previously sunk.

20 3) On 21.4.1960 Vallentine & Dunne applied for extension of permit expiring on 31.5.1960 for further period of 6 months. It also states that prospecting work was being done.

Monthly reports continued to be sent.

Sd: Azmi.

Adjourned to 2 p.m. Sd: Azmi.

2 p.m.

Counsel as before.

D.W.1. Abu Bakar b. Mohd. Nurut on former affirmation:

Judge's Notes
of evidence

Defendant's
evidence

No.14
Abu Bakar b.
Mohd. Nurut
Examination
(Contd.)

Judge's Notes
of evidence

Defendant's
evidence

No.14

Abu Bakar b.
Mohd. Nurut
Examination
(Contd.)

On 23.2.1961 the Mines Department received a letter from Vallentine & Dunne enclosing a letter from Japanese ore buyer and also a letter from the Conservator of Forests dated 27th December 1960, giving permission to build a road.

Another letter from Vallentine & Dunne whilst revising a report on iron ore in the prospecting permit, they also enclosed a mining proposal of an area of 567.67 acres according to plan. We received a letter from Vallentine & Dunne informing us about their client's amended application for 185 acres. That is part of the area of 567 acres. A mining scheme was attached later. 10

On 21.6.1961 the Inspector of Mines of Johore Bahru made a report to the Warden of Mines. He made a further report on 26.6.1961 to the Collector of Land Revenue to whom the application was referred. 20

On 28.9.1961 I received a copy of a letter from the Commissioner of Lands & Mines, Johore, addressed to Collector of Land Revenue stating that Executive Council has the mining lease application. Then Collector of Land Revenue wrote letter at page 16 of Agreed Bundle to 1st Defendant.

Reference paragraph, "No transfer, sub-lease, charge or other dealing shall be endorsed or permitted, under the provisions of the Mining Enactment without the prior approval of the Ruler in Council", it is a special condition imposed on this lease. This condition is only applicable to this lease. 30

All the sub-paras. of paragraph 1 excepting the last two sub-paras. are standard conditions.

These are the conditions formulated from the Policy file on Iron Mining. These were 40 formulated by the various Departments and the Warden of Mines. The last two sub-paras. were imposed because the mine was in a Forest Reserve.

Sub-para. (v) refers to mining operations.

The details referred to were necessary after the mining certificate was issued. No further scheme would be necessary so far as the issue of certificate was concerned.

Judge's Notes
of evidence
Plaintiffs'
evidence

A mining certificate is a certificate of title authorising the holder to mine. A lease is essential after a proper survey of the land by the Survey Department has been made. A certificate gives the holder the right to hold the mining land.

No.14
Abu Bakar b.
Mohd. Nurut
Examination
(Contd.)

10

There are 3 things:

- 1) Permit;
- 2) Mining certificate;
- 3) Lease.

A mining certificate is to hold the mining land. After receipt of letter at page 16 they can start mining operations if they comply with the conditions in paragraph 1 of the letter, but the permit holder must also have a mining certificate previously.

20

We had further details after the mining certificate - to mine the land.

Detailed scheme is not required before issue of mining certificate.

The detailed scheme has to show:

30

- 1) Actual mining operation;
- 2) The slime detention area relative to acreage;
- 3) height of bund;
- 4) water intake arrangements;
- 5) how the water to be taken and the quantity of water;
- 6) stock piling area;
- 7) washing plant.

(Refer to particulars of part performance).

Judge's Notes Ref: b) application for permission to use
of evidence public roads - this is only
necessary after ore is ready to
be taken out of the mine.

Defendant's
evidence

No.14
Abu Bakar b.
Mohd. Nurut
Examination
(Contd.)

- c) construct a jetty - not necessary to apply for this before mining certificate is issued.
- d) land for a stock pile - also not necessary for getting mining certificate.
- e) land for erection of conveyor belt - also not necessary before mining certificate.
- g) building a road in order to facilitate - not necessary for getting a mining certificate.

10

I don't know if the building of road helps to obtain the mining certificate - the decision to give mining certificate is up to Ruler in Council.

20

In our report to the Government all we say is whether the scheme is feasible or not.

My report to the Warden did not say anything about the road because mentioning whether there is a road or not is not necessary.

A letter dated 25.1.1962 from 1st Defendant to Inspector of Mines at Johore Bahru and received on 27.1.1962. The year "1961" on letter is a mistake. The letter encloses a plan showing the detailed working scheme of the mine. That plan was signed by the owner. It does not say who prepared the plan. This is plan of the detailed working scheme submitted to our department by the 1st Defendant. (Plan marked Ex.

30

D.21 D.21. Mr. Murphy will have photo-stat copies made and after that D.21 to be returned to the Mines Department by Assistant Registrar, High Court.)

D.21

D22 (Shown a plan and marked Ex. D.22).

This is similar to copy sent to Inspector of Mines 40 by Valentine & Dunne on 23.2.1961, showing a tentative mining scheme. It was sent with the

letter informing us of the revised report on estimate of iron ore.

There was another tentative mining scheme (put up on 30.5.1961). It was also submitted by Vallentime & Dunne.

No other mining scheme submitted by anybody also besides these two. No other mining engineer was in communication with us in reference to this mine before issue of mining certificate. I have not come across in the file any reference to Messrs. Wilkins Co. Ltd. I know of them.

10

Judge's Notes
of evidence

Defendant's
evidence

No.14

Abu Bakar b.
Mohd. Nurut
Examination
(Contd.)

Sd: Azmi.

Cross-Examined

XXD: by Hills:

Cross-
examination.

(Shown photostat copy of letter dated 25.10.61 and marked P.23). I cannot trace this letter in my file.

20

(Referred to particulars of part performance).

Para. (a) - a detailed mining scheme is necessary before we allow mining operations.

30

(b) - necessary before you can take out the ore after approval of mining scheme.

(c) - mining may be allowed before this, but no ore is allowed to leave the mine before this.

(d) - in this Scheme stock pile is necessary and he must have permission before he can do it (stock piling).

(e) - T.O.L. for erection of conveyor belt - Exhibit P.4 was not submitted to our Department. This is a plan outside the mining area. It might have been submitted to D.I.D.

Judge's Notes
of evidence

Defendant's
evidence

No.14
Abu Bakar b.
Mohd. Nurut
Cross-
examination
(Contd.)

(g) - Mining may be allowed even before access road is made, but permission to be obtained from the authority concerned - not our Department - to take any ore out - i.e. Conservator of Forests, the P.W.D. and Collector of Land Revenue, have to give permission.

The miner obtains a mining certificate in order to mine.

10

Ex. P.3A and D.21 are similar except in D.21 'Intake A' was stated, and not in P.3A.

In P. 3A - also not shown the water pump and pipe line and Intake A.

Other than those, P.3A and D.21 are identical.

Intake A is to give more water from the river, Sungai Anak Susur Rotan.

I have been to this mine. I have been up the road. It goes through a Forest Reserve - a thick vegetation.

20

I never met P.W.l before.

Sd: Azmi.

No.15
Saw Chee Toe
Examination

D.W.2 Saw Chee Tow a/s in English:

Living at No. 457 East Coast Road, Singapore. I work in the office of Registrar of Companies, Singapore. I have been subpoenaed to have with me the file of Susur Rotan Mining Company which was registered in Singapore. The return of the directors of the company was registered on 1.3.1961. The directors are:

30

1) Yeoh Lew Soo

2) Chua Sip Mong

There is a note that Chua Sip Mong resigned on 2.2.1961 and another director, Chua Siew Cheng, was appointed on 2.2.1961.

Sd: Azmi.

XXD: by Hills: Nil.

Azmi.

No.16
Evidence of Abdul Rahman bin Abdul Hamid

D.W.3 Abdul Rahman bin Abdul Hamid a/s in English.

Administrative Assistant of office of Commissioner of Lands and Mines. I produce a caveat No. 2071 - Vol. I - Folio 30. (Marked Ex. D. 24). SD: Azmi.

10 XXN: by Hills: Nil. SD: Azmi.

No.17
Evidence of Allan King Jones

D.W.4 Allan King Jones a/s in English:

Living at No.1, Jalan 9/3, Petaling Jaya.

I work in Valentine & Dunne. I have files from that firm in reference to this mine.

20 We became engineers for Kota Mining Co. in 1960. My firm surveyed the land - subject matter of Prospecting Permit No. 141/59, in respect of 600 acres set out in the permit.

Our firm supervised the prospecting of iron ore in the permit area. We had samples of the ore assayed by Geological Survey Department. In February, 1961, our mining engineer prepared a mining scheme to support an application for a mining lease over part of a forest reserve.

30 I put up the first mining scheme on 23.2.1961. This was in respect of area of 750 acres.

On 30.5.61 we prepared another scheme in respect of 185 acres which were part of the area of 570 acres.

The Warden of Mines advised that there had been insufficient prospecting over the whole area. He indicated that he would be prepared to recommend a mining lease for 185 acres where

Judge's Notes
of evidence

Defendant's
evidence

No.16
 Abdul Rahman
bin Abdul Hamid
Examination

No.17
 Allan King
Jones
Examination

Judge's Notes
of evidence

Defendant's
evidence

No.17
Allan King
Jones
Examination
(Contd.)

most of the prospecting has been made.

That is why we put up a scheme for 185 acres.

I have seen letter at page 16 of Agrred Bundle. This is in respect of area of 185 acres.

Subsequently on 23.1.62 a mining certificate was issued. That was in respect of same area of 185 acres.

At this date this is the only area on which mining operation to take place.

10

Letter at pages 8 to 9 - that is our letter. It was, I think, in respect of 185 acres.

Prospecting up to February, 1960 - 47 pits. None in March, April, May and June, 1960. Prospecting ended in February, 1960.

At end of each month one has to report of new pits made. No further report after February, 1960. Last plan was made on 30th May, 1961.

20

D.25

This is copy of plan submitted with application for a mining lease. (Marked D.25). Not quite similar to D.12.

My scheme shows plan of part of the exit road but not for stock pile on this area:-

- 1) Area it is proposed to mine;
- 2) location of washing plants;
- 3) tailing area;
- 4) water intake from the river.

30

The stock pile is some miles away and not convenient to show in the plan. The stock pile is provided on the Sungai Ulu Sidek.

D.26

Our mining scheme reported dated 23.2.1961 - para. 5, we mentioned that proposed access route was shown on the plan submitted. This is copy of plan (marked Ex. D.26). This is on 1 inch to a mile scale. It shows the

location of various points.

In 1962 further area of about 45 acres was also approved for a mining lease.

The pitting of this area was done by somebody.

We gave two alternative roads and 2 alternative stock piles in Ex. D.26.

I know Wilkins & Co. We did not have their assistance in preparing the scheme.

10

Sd: Azmi.

Cross-Examined

Cross-examination.

XXD: by Hills:

D.25 - I would call it a detailed scheme. It shows a water intake at point marked P. It is sited on the river.

It was not prepared by me nor on my own supervision.

20

I am not a mining engineer. I am an accountant and Secretary of Vallentine & Dunne. I signed the letters.

The percentage of tin in the ore of first boring was high - not shown in the report. From memory I think it is about - 70% up to - 10%.

1st Mining Scheme report was put on 23.2.1961. It was not turned down.

The application for 570 acres refused but the application for 185 acres was subsequently approved.

I have not been to the mine.

30

It is recorded in our report of 23.2.1961 that total recoverable ore is estimated at 372,000 tons.

(Referred to last sentence of letter at page 9). That was made in March, 1960. It was a rough guess then. The estimate at 372,000 tons was proven estimate.

Sd: Azmi.

Judge's Notes
of evidenceDefendant's
evidenceNo.17
Allan King
Jones
Examination
(Contd.)

Judge's Notes
of evidence

No re-examination.

Defendant's
evidence

Sd: Azmi.

No.17
Allan King
Jones
Cross-
examination
(Contd.)

4.45 p.m.

Adjourned to 10 a.m. tomorrow.

24th November, 1963

Coram: Azmi, J. In Open Court.

Counsel as before.

No.18
Siow Wong
Fatt
Examination

No.18
Evidence of Siow Wong Fatt

Dunbar calls:

10

D.W.5. Siow Wong Fatt a/s in Hakka: Living at 26, Jalan Ja'afar, Kota Tinggi.

I am 1st Defendant.

I know about this case.

I made an application to postpone for iron in 1957.

After that I entered into an agreement with Tang Hai Mining Company and the partners Tan Gek Piah and Tan Song Chiang on 17th June, 1958.

20

I cannot read English. I cannot speak English.

After that I entered into another agreement with Tang Hai Mining Co. and the agreement is in Chinese. On same day I signed another agreement with the same person. This agreement is in English (identifies the Agreement at page 5 of Agreed Bundle). The Chinese agreement was signed first. The English agreement modifies the previous Chinese Agreement.

30

After the English agreement I understood that I have to compensate Tang Hai Mining Company - 50 cts. per ton of iron ore, and Tang

Hai Mining Company were to bear all expenses, i.e. all expenses they have to spend on the mine, inclusive of making the road.

Judge's Notes
of evidence

Defendant's
evidence

According to the Agreement of 17.6.1958 Tang Hai Mining Co. had to pay me \$1/- per ton. Therefore my tribute will be reduced to 50 cts.

No.18
Siow Wong Fatt
Examination
(Contd.)

After these two agreements, I knew there was an agreement between Tang Hai Mining Co. and Chan Sai Sow (at page 57 of Agreed Bundle). It is dated 3rd July, 1959. I knew that that agreement was going to be confirmed because Tang Hai Mining Company informed me of it. I consented to that agreement. My consent was necessary - there was stipulation to that effect in the agreement of 17.6.1958. Not long after agreement between Tang Hai Mining Co. and Chan Sai Sow had been entered into, Chan Sai Sow told me he was going to form Kota Mining Company. I understood that the purpose of forming Kota Mining Company was to operate my mine. After the Company had been formed the Company started to operate my mine according to the 1st agreement I entered into with Tang Hai Mining Co. Kota mining Co. started to cut the boundary lines as allowed by the Government, i.e. according to what is stated in the prospecting permit. It is at pages 6 - 7 of Agreed Bundle. This is original prospecting permit (marked Ex. D.27). After that Kota Mining Co. engaged Valentine & Dunne to prospect the land. I knew this as I accompanied people from Kota Mining to Kuala Lumpur to meet the people who were to do the prospecting. That was some time after the prospecting permit was issued.

D.27

Prospecting was done. I went to the area myself and saw what was going on. I saw the engineer from Valentine & Dunne prospecting the land with help of 20 to 30 persons. Chan Sai Sow and I often went to the land. The engineer made pits 3 ft. by 4 ft. The depth of pits varies from 30 to 47 feet. Iron ore was taken out of the pits. The ore was put in different piles and samples were taken from them for purpose of analysis. I saw samples being taken. I was present.

There were many pits - I cannot say how

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt
Examination
(Contd.)

many. A pit was made in area of 4 x 4 chains. The pits were made for whole area of about 500 acres. Ores were obtained from most of the pits. Those without iron ore were very few. There were more pits for half the area and less for the other half, i.e. one pit for an area of 8 x 8 chains. The prospecting was over by beginning of 1962. The pitting done was done progressively. Originally permit was for about 400 acres as allowed by the Land Office. Later when prospecting permit was issued it was an area of 441 acres. After that on my application an additional area of 186 acres was granted to me. 10

Chua Ho San was introduced to me by Chan Sai Sow on the land. Cannot remember when. Chua Ho San wanted to get a contract from Kota Mining Company. I understood it to be a contract to mine iron ore inclusive of delivery to the ships. At that time I understood Chua Ho San was a contractor with a mining company to mine iron ore. I did not consider whether my consent was necessary. I thought my consent was not necessary because I thought Chua Ho San was only a contractor. I read in the newspaper of Chua Ho San's death. It was about 2 or 3 months after I saw him on the land. 20

I know Chua Kim Yong (P.W.4) I met him about a week before I was introduced by Chua Ho San on my mine. It was Chan Sai Sow who took him to see me. Not true I went to Kedah to see him. 30

I did not offer to Chua Kim Yong or his towkay to operate my mine.

I heard of name of Susur Rotan Mining Co. later, i.e. about 5 months after I met Chua Ho San on the mine.

From what I heard it was a mining company that would work the mine for Kota Mining Co. as contractors.

I would have no objection to that kind of contract because it was a matter directly concerning Kota Mining Company. It was a matter between these two. 40

Q: If Kota Mining Company had attempted to transfer the mine to Susur Rotan, would that be also a matter between them?

A: It would also be a matter between the two companies.

There is some difference between contracting and taking over by transfer. If it is a matter of contract, Kota Mining Co. would be at full liberty to do so. If it is a matter of transferring the mine, then my consent is necessary.

10 I first heard of the contract between Kota Mining Co. and Susur Rotan roughly in September of that year - i.e. roughly over a month after Chua Ho San's death.

I learned of the nature of the transaction between the two Companies in April. I am not sure of the year. I think it was in 1960. In same month of April I joined Kota Mining Co. as a director.

20 After my joining, Chan Sai Sow informed me about it - i.e. that Chan Sai Sow had executed an agreement with Susur Rotan Mining Co.

He explained to me that the agreement was in respect of appointment of Susur Rotan Mining Co. as contractors to work the mine. Chan Sai Sow told me that he had also executed another agreement agreeing to give Susur Rotan Mining Co. a sub-sub-lease after he had obtained a sub-lease from me. On same day I joined as a director of Kota Mining Co. I became a director after Chua Ho San's death - Chinese New Year following Ho San's death. It was after issue of prospecting permit. 6 or 7 months after Chua Ho San's death.

Prospecting Permit was dated 21st November, 1959. Chua Ho San died in 1960. I became a director in April, 1961. I received this letter dated 28.11.1960 from Susur Rotan Mining (marked Ex. D. 28).

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt:
Examination
(Contd.)

40 Reference Plaintiffs' allegation that about Chinese New Year 1961 I promised to give them a sub-lease - there is no truth in that at all. At that time I knew Susur Rotan Mining as contractors.

D.28

Judge's Notes
of evidence

At beginning of 1961 Kota Mining Company were making preparations to mine iron ore.

Defendant's
evidence

I got the permit dated 27.12.1960. It was sent to me by the Government.

No.18
Siow Wong Fatt
Examination
(Contd.)

(Permit marked Ex. D.29 - a permit to construct and use Forest Road under the Forest Rules).

It is a permit allowing me to construct a road for which I had to deposit \$500/- . I did not want to construct the road. Kota Mining Co. wanted to do that.

I did not ask Susur Rotan Mining to construct a road. I did not ask Susur Rotan Mining to assist me in getting a mining certificate or to assist me to get the mining lease. I did not ask them in the preparation for mining. Any instruction would be from Kota Mining Co.

(Shown letter and marked D.30 - which is original of P.3).

20

I received that letter and also this plan (marked Ex. D.30A). This letter and plan were handed to me by Chan Sai Sow. Then I returned them to him as things were done not according to procedure. I said that because I did not engage this particular Engineer. I did not send it to Inspector of Mines - I just returned it to Chan Sai Sow.

Then later he came with another letter with another plan and asked me to sign them. I signed them. He also left Ex. D.30 and 30A with me. That is how these remained in my possession.

30

The letter I signed was not from Wilkins & Co.

D.31

I recognise this letter (marked Ex. D.31). This is copy of letter I said just now I signed. It is dated 25.1.1961.

(Dunbar: This is copy letter referred to in evidence of D.W.I.).

40

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fat
Examination
(Contd.)

When I signed D.31 I also signed a few plans - but different from plan P.3A.

I did not ask Plaintiffs to prepare a mining scheme on my behalf.

I did not ask Plaintiffs to do anything for me.

(Referred to letter at page 21 of Agreed Bundle).

10 I received the original. This was given to me to enable me to produce it before Collector of Land Revenue in connection with my application for stock pile land. This is merely to show the Collector of Land Revenue. Actually I never rented the land. This was for use of Susur Rotan Mining who were working for Kota Mining Co.

There was an application to use the public road to convey ore.

20 (Shown Ex. P.4). I signed an application which looked like P.4 enclosing a Plan now attached to P.4. I did that at request of Chan Sai Sow who spoke to me on the telephone.

(P.4 read out to witness). I signed a letter to that effect. I did not ask anyone to construct a jetty at Jalan Ja'afar. I did not ask anyone to rent me any land for a stock pile.

I did not ask anyone to apply for me for a T.O.L. for erection of a conveyor belt for unloading iron ore.

30 People employed by Kota Mining Co. were working on the mining land.

I received \$60/- from Plaintiffs. It was for a plan for a permit to obtain laterite for the road. Susur Rotan Mining wanted the laterite.

I received \$200/- from Plaintiffs for option money. I handed \$200/- to the owner of the land. Susur Rotan Mining wanted the

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt
Examination
(Contd.)

option.

I did not pay \$500/- but the Government sent me the receipt for \$500/-. I did not ask anyone to pay the \$500/-. This is receipt (marked Ex. D.32). It was sent to me by post.

Reference allegation - payment of \$6/- for a permit to occupy a kongsi house. I have no knowledge of this. I did not ask them to pay.

I was not present at the signing of agreement between Susur Rotan Mining and Kota Mining Co. I have never been in office of Donaldson & Burkinshaw.

10

The mine is being worked by a Company formed by me known as Siow Wong Fatt Mining Co. Ltd. I am a director of the Company and I have a small share. This company entered into a contract to sell the iron ore. Contract dated 22.6.1962.

Sd: Azmi.

12.45 p.m.

20

Adjourned to 2.15 p.m.

2.15. p.m

Cross-
examination.

Cross-examined

D.W.5. Siow Wong Fatt (on former affirmation):

XXD: by Hills:

(Ref. to agreement at page 51). This is my 1st agreement with Tang Hai Mining Co.

I see para. 6 - I have a mining certificate.

Q: Did you execute a sub-lease as agreed there? 30

A: On receipt of the Mining Certificate I informed Tang Hai Mining Co. and Kota Mining Co. by letter through my lawyers M/s. Tann Wee Tiong. I did not execute a sub-lease at that time.

Q: Why?

A: I did not do so because Kota Mining Co. delayed in the matter.

This agreement is between me and Tang Hai Mining Co. I have to give a sub-lease vide the agreement. I did not give it. Tang Hai Mining Co. did not come to me about the lease when my lawyer wrote to them.

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt
Cross-examination
(Contd.)

Q: Did you give a sub-lease to anybody?

A: No.

Under these contracts I have to give a sub-lease to somebody. To Tang Hai Mining Co., and Tang Hai Mining Co. to Kota Mining Co.

10

Q: Why didn't you give a sub-lease to Tang Hai Mining Co.?

A: I did not give it because Tang Hai Mining Co. did not come to get it from me.

I cannot say if they wanted a sub-lease or not. If they did want a sub-lease I would have given them according to the terms of the agreement.

(Referred to letter at page 45 of Agreed Bundle - letter dated 27th April, 1962).

20

Braddell Brothers were my solicitors then and Allen & Gledhill were solicitors for Tang Hai Mining Co. I was shown this letter. (Read 5th paragraph reading "Our clients contend that the Agreement of the 17th June 1958 between your client and themselves is of full force and effect and should your client persist in refusing to carry out the term of the Agreement requiring him to grant a sub-lease to our clients, then they will have no option but to take such legal remedies as they may be advised to safeguard their rights and interests including the making of appropriate representations to the Commissioner of Lands & Mines, Johore.")

30

I agree that shows they want the sub-lease. But at that time Tang Hai Mining Co. had assigned their rights to Kota Mining Co. I have sought legal advice on this matter.

40

Q: It is not therefore true for you to say that the Tang Hai Mining Co. did not want a sub-lease?

A: I did not know if they wanted before contents

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt
Cross-
examination
(Contd.)

Ex.
D33

D34

of the letter were explained to me by my solicitors.

Q: May I have the letter referred to in the first para. of that letter?

A: It is perhaps with my solicitor.

(Dunbar: No particular notice to produce this one. I have not got it. I never saw it.

K.C. Chan for 2nd Defendant after searching his files also cannot find it).

I executed two agreements with Chng Kee Huat, (1) in respect of contract work, (2) in respect of sale of ore to Fook Long Sin in Hongkong. 10

Agreement between me and Siow Wong Fatt Mining Co. Ltd. dated 22nd June 1962. This is agreement to mine ore. (Marked Ex.D. 33). The limited company are the contractors. They contract to work the area covered by Mining Certificate 603 until the mine is worked out.

In para. 7 I pay the Company \$14/- for every ton won. 20

The second Agreement is between me and Chng Kee Huat (marked Ex. D.34). He is called the purchaser.

Under paragraph 3, he is going to purchase ore from Mining Certificate 603 at \$20.00 per ton until the mine is worked out. With this profit of \$6/- per ton I have to pay (1) \$5.50 a ton to Kota Mining Co. Out of \$5/50, a sum of 84½ cents is to go to Tang Hai Mining Co. 30

(2) 50 cents go to me.

\$4/65½ go to Kota Mining Co. and I don't know what happens then.

I am director of Kota Mining Co. I hold a small share in the company. I did not go into accounts. I know Kota Mining Co. pay to a number of people. I dont know the details.

I cannot give a sub-lease to other

persons now without breaking the term of these two agreements.

Judge's Notes
of evidence

I saw Chua Ho San in 1960 - not sure of year. It was about $1\frac{1}{2}$ years after I got the prospecting permit. Prospecting Permit is dated 21.11.1959. I saw Mr. Chua about $1\frac{1}{2}$ years after that. About May, 1961. I also gave an approximate time when I said $1\frac{1}{2}$ years. It was between 14 and 16 months. I cannot say if it is wrong to say Chua died in 1960. At the time when I saw Chua, prospecting had been done in respect of a large part of the area.

Defendant's
evidence -

No.13

Siow Wong Fatt
Cross-examination
(Contd.)

10

I did not have any other mine then. I came to know Chua was towkay of Southern Island Mine when I was introduced to him on the mine.

Not sure that I sought out Chua Ho San because he was a rich man to help me. He was reputed to be a rich man. I agree money is required before ore can be taken out of the mine. I did not personally have any capital myself.

20

I did not promise to give him a sub-lease if he would finance the mine. Susur Rotan Mining was formed in September, 1960.

I did not have any discussion with P.W. 3 at all. I had not yet met her in August or September that year. I met her roughly in November. I am vague about dates. Not correct I met her and husband in April.

30

Q: Do you therefore say that Susur Rotan Mining Ltd. was formed when none of the members of the Company had met you?

A: I cannot say anything about registration of this company. In respect of this matter Chua Kim Yong saw me first on land and a week later Chua Kim Yong and Chua Ho San came to see me. P.W.1 saw me. At that time I did not know they were going to form the company. It was in November. I knew that when I received the letter.

40

I did not know the object of forming company. I knew from its name it was going to do mining work.

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt
Cross-
examination
(Contd.)

I saw some of them on the land before November but not frequently.

Q: I put it to you that you wanted them to mine the land?

A: No.

I did not say I saw P.W.3 in November. I received a letter in November.

I met her a little more than 2 months after I received the letter. That was before the Chinese New Year 1961.

10

Q: Then you asked her to build the road?

A: I did not.

Q: I put it to you: you asked her and she refused?

A: That is not true.

I did not see the State Engineer about that time.

I don't know where his office is. I deny I went there with Chua Kim Yong and Chan Sai Sow.

20

I went to Plaintiff Company's office in Singapore after the Chinese New Year accompanied by Chan Sai Sow.

I deny I promised to give them a sub-lease if they make the road.

Naturally one must construct a road to work mine.

I agree Plaintiff Co. built the road but they built it for Kota Mining Co.

I am still owner of Mining Certificate 603, i.e. the mine.

30

I am now mining under the two agreements - Ex. D.33 and D.34. I cannot take out the iron without the road.

I am using the road but we are not paying anything. The construction of the road is a matter between Kota Mining Co. and the Plaintiffs. I say this, Kota Mining Co. wanted to mine the land.....

Judge's Notes
of evidence

Defendant's
evidence

In fact Kota Mining Co. received a tribute of \$4.65 $\frac{1}{2}$, they are responsible for everything.

No.18
Siow Wong Fat+
Cross-
examination

(Contd.)

- 10 I agree to pay Kota Mining Co. \$4/65 $\frac{1}{2}$
at the time when I executed agreement in favour of Chng Huat. They have spent a lot of money constructing various works on mine. For what Plaintiffs spent, that is a matter between Kota Mining Co. and Plaintiffs.

This road gave access to my mine. Not true Plaintiffs built the road because I promised to sub-lease.

Sd: Azmi.

To Court: The Mine is producing roughly 5,000 tons a month.

20

Sd: Azmi.

I saw P.W.2. give evidence. It is correct to say I met him in my house. He said he went to prepare a scheme. I did not tell him that the Company had to pay him his fee.

I deny saying to him that I was going to give the Company a sub-lease and that for that I had no objection to his making a scheme.

I was given D.30 and D.30A by Mr. Chan Sai Sow. I handed it back to him.

30

D.21 - This was given to me by Chan Sai Sow. There were several copies of D.21. After I appended my signature on them he sent them to Inspector of Mines.

(Witness is told D.21 was produced by D.W.1).

It is true D.30 was made by Wilkins & Co.

D.21 was one which was sent to the Government.

Judge's Notes
of evidence

Defendant's
evidence

No.18

Siow Wong Fatt
Cross-
examination
(Contd.)

D.21 is different from D.30A.

Q: What is the difference?

A: When D.30A was shown to me, the Intake A was not in.

Later it was put in, according to Chan (I notice the pipe line and Intake A on D.30A is in pencil but on D.21 it was in ink).

I saw Chan put in the pencil addition on D.30A. D.21 seems to be produced by D.30A though no chop of Wilkins & Co. on D.21.

10

It was after D.21 was sent in that permission was given to me to work the mine. The Government had already approved the plan previously prepared by Valentine & Dunne. One Che Mat told me.

I know P.W.3 went to Japan. I don't know personally why she went there. I have about 20,000 tons in my stock pile at present. (Ex. P.1: - 1st page - resolution dated 18th February, 1961 - read out and translated to witness).

20

I do not know what it is about. It is not true I gave them a sub-lease.

I originally promised to sub-lease to Tang Hai Mining Co. They then assigned the sub-lease to Chan Sai Sow. He then made a declaration of a trust in favour of Kota Mining Co.

Q: The sub-lease is still to be released to Chan Sai Sow?

A: I should give a sub-lease to Chan Sai Sow but Chan Sai Sow did not come to see me because he had trouble with his people.

30

\$500/- for the road reserve - receipt was sent to me together with a licence. I am sure I did not send the \$500/-.

Ex.
D35

(Referred to copy of letter and marked Ex. D.35). This is a copy of letter given to me by Chan Sai Sow for my signature. After

signing it I handed it back to Chan Sai Sow and he sent it to the Government. The letter was an application for a road. I know what it was roughly before I signed it. It was Chan Sai Sow who spoke to me on telephone about application use public road.

Judge's Notes
of evidence

Defendant's
evidence

No.18

Siow Wong Fatt
Cross-
examination
(Contd.)

- 10 It was Chua Kim Yong who came to see me with that letter. I signed the letter and posted it to the President, Town Council. I received the permission. At present our Company is not using the road originally applied for. We are now using the Makam road. We are not using the jetty referred to in Pleadings. Our stock pile is at Makam and not at 26½ milestone.

Our Company is using the road built by the Plaintiff Co. I did not tell P.W.1 that building a road would help issue of Mining Certificate.

- 20 It is my signature on P.7.

It is a fee for the person who made plans for the application for laterite filed with the Forest Department.

I signed it and received the money.

In October, 1961, I received letter at p.16 of Agreed Bundle, i.e. approval ref. mining lease.

- 30 I cannot remember after receipt of that letter if I went to office of Plaintiffs. I remember Chan Sai Sow took this letter and showed it to people of Kota Mining Co. I cannot recollect if I went to office of Plaintiff company and showed the letter to P.W.1 and P.W.3. Not true I promised to give a sub-lease to them.

- 40 I met P.W.1 and P.W.3 on road to the mine but cannot say in what month or year. It was about time the road was about to be completed.

I did not say to them it was good thing they built the road, or that we would be

Judge's Notes
of evidence

Defendant's
evidence

No.18
Siow Wong Fatt
Cross-
examination
(Contd.)

opening the mine and counting money endlessly.

I remember P.W.4 giving evidence. He was in charge of building of the road. I often saw him in connection with the work on the mine.

He did not consult me about the road. That had nothing to do with me. Not true he consulted me. The road is about 8 miles long. Shortly after Susur Rotan Mining Ltd. was formed the Japanese came to the mine. They took some samples after inspecting the area. These Japanese, one of whom was Yamamoto, came to the mine for first time about 2 years before, i.e. soon after issue of prospecting permit.

10

At beginning Kota Mining Co. invited the Japanese to the mine. Later on Susur Rotan Mining also invited same Japanese to go to the mine.

20

I deny I promised in 1961 to give Susur Rotan Mining a sub-lease if the company would build the road.

Sd: Azmi.

Re-
examination.

Re-examined

Re-examined by Dunbar:

I have no dispute or trouble now with Tang Hai Mining Co.

Sd: Azmi

5.00 p.m.

30

Adjourned to 9.30 a.m. tomorrow.

Sd: Azmi.

25th November, 1963

No.19
Defendant's
address to
Court
25th November
1963

No.19
Defendant's address to Court

Coram: Azmi, J. In open Court.

Counsel as before.

Murphy: I close my case.

Judge's Notes
of evidence

First as to damages:-

(Refers to Hills' address - at page 9
of Notes of Evidence).

Plaintiff Co. is entitled to full
profit what it has lost, after deducting
expenses.

No. 19
Defendant's
Address to Court
25th November
1963
(Contd.)

We have estimated excess but not
costs of running the mine.

10 Ref. P.14 and P.15 - accounts.

Ex. P.15.

Ex. P.14 - Expenses of Head Office.

Company started end of 1960.

Alleged contract made in 1961.

Special damage - no evidence how the
figure of \$140,000.00 for road.

This should be under special damages.

No claim for special damages.

No details.

20 The cost of road was introduced
to show part performance and not in reference
to claim for damages. No evidence given as to how
figures was arrived at.

From pleadings and evidence, they can
get only nominal damages.

These accounts were put to support
second part "of what they spent" (page 9 of
Notes of Evidence of previous hearing supplied
to parties).

30 Second: Claim in pleadings against 1st Defendant.
Claim on oral agreement. Particulars given of
part performance. First question:

Was there an agreement at all?

Judge's Notes
of evidence

No. 19

Defendant's
Address to Court.
25th November

1963

(Contd.)

Was the agreement pleaded or
some other agreement?

Agreement pleaded was:-

as in paragraph 5 of Statement of

Claim.

(Reads paragraph 5 of Statement of
Claim).

Evidence as to whether there was an
agreement?

1) No writ on evidence at all other
than in the minutes of the Company suggesting
that there was an oral agreement.

10

2) Evidence as to minutes - Exhibit P.1.

Apart from freshness, there is nothing
in that book signed by anyone else except P.W.1.
and P.W.3.

P.W.3. did not at first remember Chan
Yew Sin as Secretary, see her evidence and
subsequent explanation after adjournment

Evidence of P.W.3 - at page 40 45
bottom of Notes of Evidence. Name of Chan Yew
Sin does not appear in Minutes Book though he
was Secretary.

20

No mention in book that Teng Poh was
appointed Secretary.

Appointment of P.W.1. as Secretary -
see minute of 16.12.1961.

Evidence at p. 49 - "There was a
Minutes book -
from the beginning. My son told me so."

30

No minute of the alleged meeting.

The son Chua Sip Mong has resigned -
denied by P.W.3 - see page 47 of Notes of
Evidence - contradicts herself, see page
46.

I submit the minutes are bogus.

Ample evidence to contradict the alleged oral agreement, namely:

Judge's Notes
of evidence

No.19

Defendant's
Address to Court
25th November
1963
(Contd.)

- 1) D.29 - permit
- 2) D.32 - receipt - claimed road was built. Oral agreement supposed to have taken place in February, 1961.

Permit was issued 27.12.60.

Receipt dated 16.11.60.

10 All done before oral agreement.

- 3) P.10 - receipt for \$6/- dated 26.1.61.

All things happened before alleged date of oral agreement.

- 4) Letter at p.19 of Agreed Bundle - in reply to letter at p.18 of Agreed Bundle.

p.19 3rd paragraph - "According to our agreement will be your responsibility."

20

This was made on 6th November, 1961.

- 5) Admitted conduct of Plaintiff would be inexplicable if there was an oral agreement in following matters:-

- a) Letter at page 14 of Agreed Bundle -

Plaintiffs to Kota Mining Co. Ltd. -

30

Paragraph 2 - asking Kota Mining Co. to prepare sub-lease.

Reply at page 15.

Impossible to believe that if oral agreement was in existence, Plaintiffs

Judge's Notes
of evidence

No.19

Defendant's
Address to
Court.
25th November
1963
(Contd.)

would not also have written to 1st Defendant who was also a director of Kota Mining Co.

- b) Letter at page 44 of Agreed Bundle. No reply to statement "There was no agreement between Mr. Siow and your clients". And there was no reply that there was oral agreement.
- c) Caveat - D.24. Filed in order to prevent transfer of the mining lease. No reference to "oral agreement" in caveat.

10

Page 25 of Notes of Evidence:

"Q: Why did you not direct your lawyer....."

A:occurred to me later about the oral agreement."

20

Oral agreement absent from her mind.

Page 33 of Notes of Evidence:

"I did not do so because I did not know about it.....I did not know that a verbal agreement was accepted in the law. I did not know it was enforceable in the Courts."

Can you believe somebody has not told her?

Third: Evidence as to Oral Agreement.
P.W.1. at p.12 of Notes of Evidence.

30

"1st Defendant repeated what he said at State Engineer's Office.....
.....solved the problem of sub-lease matter."

"i.e. would they object to 1st Defendant's proposal. 1st Defendant..... and after all they were not real miners,
....."

40

Her version was that.

Judge's Notes
of evidence

Contradicts mother's evidence, page
39 of Notes of Evidence.

"Then 1st Defendant said further
that if he should give the sub-lease
direct, I should construct the road
first."

Page 51-52 of Notes of Evidence -
P.W.4's evidence.

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10 None of this evidence bears out state-
ments in pleadings.

P.W.3 says nothing about lease or
tribute.

P.W.1. only said 1st Defendant to get
from Kota Mining Co., i.e. she was tying
it up to the Agreements with Kota Mining Co.

Page 11 of Notes of Evidence - P.W.1 -
Meeting at State Engineer's Office.

20 Page 50 of Notes of Evidence -
P.W.4 - Meeting at Mines Department.

Oral agreement unlikely and improbable
story. 1st Defendant has agreement with Kota
Mining Co. that Kota Mining to do everything.
1st Defendant gets 50 cts. Instead of which
it is said he made oral agreement at a time
when he was not a free agent to do it because
of agreements and when P.W.1 knew who 1st
Defendant was. She knew of the others - see
her evidence at page 12 of Notes of Evidence.

30 Agreed Bundle pages 66 and 67 - Plain-
tiffs to pay \$40,000/-. This amount is lost
to Plaintiffs. Plaintiffs cannot sue for it.
Plaintiffs already risking \$40,000/-. Is it
feasible that they would risk a further
\$140,000/- on basis of getting mining
certificate merely oral agreement?

Fourth: If there was anything said at all,
what are the terms?

All we have: Susur Rotan Mining to

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of evidence

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build road in consideration of which Plaintiffs to get a sub-lease. No mention of tribute - period of lease.

As to road - no provision of particulars of road - nature of surface, width.

Fifth: As to Agreements.

P.W.l. says oral agreement was dependent on the written agreement, i.e. 1st Defendant to get tribute from Kota Mining Co. See her evidence at page 27-28 of Notes of Evidence.

10

It would appear that what Plaintiff wants is an agreement co-existing with what she had got in her written agreement.

Contract Ordinance, 1960, Section 30. Agreements void for uncertainty. Not enough in evidence to convert what was said to form a contract.

Section 24 (d) - unlawful consideration. Alleged oral agreement is in breach of 1st Defendant's agreement with others.

20

Plaintiffs have to pay Kota Mining Co. further \$40,000/- but if she gets it direct she would not have to bother with Kota Mining Co.

See Notes of Evidence page 32:

"I asked for a sub-lease then.....
.....
have a verbal agreement for a direct sub-lease from 1st Defendant."

P.W.l. says oral agreement dependent on agreement with Kota Mining Co.

30

Reference Agreed Bundle page 20 - "Our clients informs us that they approached your clients..... proportionately as Mining Certificates are issued in respect of parts of the land in question".

Page 30.

Page 31 - refusing to pay.

Page 33

If it is right her claim on oral agreement to depend on co-existence of her agreement with 2nd Defendant to get her sublease through various intermediaries, then as Kota is not liable to perform any longer, she cannot compel performance of her oral agreement.

10 And now Kota Mining Co. is no longer under liability to perform the agreement because of settlement of case in this Court.

Before: Plaintiff Co. was in breach with Kota Mining Co. by reason of its failure to pay the amount of \$40,000/- to Kota Mining.

That is why we amended our pleading. (Para. 4A). To sum up: Oral agreement subject to consent of other intermediaries and to continued maintenance of existence of contractual rights among them.

Specific performance:

20 p.44 of Agreed Bundle - No reply to that para. 2. Dated 11.4.1962. Writ issued on 17.9.1962, i.e. writ issued 5 months after they have been told.

Huxham v. Llewellyn 38 Law Times 577 - delay in filing bill fatal to plaintiff's application for specific performance.

30 P.W.2 Lim Fook Sang. Page 30 33 of Notes of Evidence. "In December, 1960, the Plaintiff Co. sent us some ore samples obtained from the area held under prospecting permit No. 141/59 to help them analyse it." This was before date of oral agreement.

In March, 1961 - more samples.

Page 34 of Notes of Evidence.

"In October, 1961, Mr. Chew Hee Jin of the Plaintiffs' company telephoned us in Ipoh and asked me to carry out survey for a mining scheme."

40 (Letter of approval dated 28th September, 1961. Agreed Bundle page 16).

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Known by everybody there the approval
of mining lease has been given.

Page 36 of Notes of evidence.....

Hills said that this was scheme on
which the lease was given.

Compare - D.25 (Kota Mining Company's
by Vallentine & Dunne.)

D.30A - with Wilkins stamp
on it.

Same.

10

D.30A was put up after approval has been
given.

P.W.3. did not know even of similarity,
etc. Had gone to Japan to enter agreement.
She is not right person to go. See agreement
at page 66 of Agreed Bundle.

Page 68 - para. 4 of Agreement -
giving preference to Yamamoto with whom
First Party had already entered into
negotiations.

20

Agreement dated on 19.9.1960.

P.W.3 went to Japan in July, 1961.

Pleading in paragraph 5 - inexperience
of 1st Defendant, experience of Susur Rotan
Mining - i.e. that of P.W.3, P.W.1 and P.W.4:

Chua Sip Mong perhaps only one who knew
anything about mining and keeps himself out
of Court.

Paragraph 4 - boring - all Plaintiffs
did was to obtain samples.

30

I submit no evidence before Court to
show there was oral agreement.

Sd: Azmi.

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Hills: Damages:-

Proof as to cost of road.

Page 58 of Notes of Evidence - P.15
items not connected with making of road.

Rest connected with costs of road -
\$109,775.00.

These are extracted from Ledger Ex. P.20.

10 All those items supported by vouchers.
Vouchers were made available to other side
months ago. They could cross-examine on any
item they did not agree.

P.W.4. said he was in charge.

As regards to claim, 3 alternative
on evidence:

1) If there was no contract at all-
we are entitled to money we have
spent - Section 31 of Contracts
Ordinance, if road built for 1st
Defendant.

2) If there is a contract, Section
18 of Specific Relief Ordinance,
1960.

Equitable compensation different
from Common Law damages. We are to
be compensated under this Section.

Accounts and vouchers submitted
for information.

30 3) We ask for specific performance.

Defence to Specific Performance.

1st objection - by Murphy - Section
30 of Contracts Ordinance.

Uncertainty - 1st objection.

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Regarding sub-lease - form of sub-
lease in Johore Mining Enactment - Form (IV)
Schedule I - p.789 of Volume II.

- i) period - till time worked.
- ii) D.29 - permit to build road -
give particulars of road - details
of road.

2nd Objection:

Performance would involve injury to
others. Section 24 (d) of Contracts Ordinance. 10
Other parties consent - they are only entitled
to tribute - P.W.1. has said we would continue
to pay tribute as agreed in the written agree-
ments with others.

Finally as to delay:

Mulla's Indian Contract and Specific
Relief Acts (8th Edn.) page 799 - delay.

Page 800.

Specific period.

Two other points raised by Murphy. 20

- 1) Murphy attacks resolutions. If
Court accepts resolutions, it becomes
conclusive evidence of oral contract.
In reference to comments as to
minutes of Company, I saw this:
Company is family business. Perhaps
procedure is not faultless. Whole
thing can be explained that P.W.1.
and P.W.3 were only 2 directors and
P.W.1 same time Secretary on 2nd
February, 1961. 30

Nothing in evidence to warrant
rejection of that evidence.

- 2) Another objection - road permit
D.29 - issued and \$500/- paid
before oral agreement. P.W.1
said 1st Defendant had been wanting
her to build road long before and
she refused and she only agreed to

build road after 1st Defendant had agreed to give a direct sub-lease.
Page 34 38 of Notes of Evidence.

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P.W.3's evidence:

"After that I entered into agreement with Wee Aik Koon on 19.9.1960."

Page 39 - I suggest it supports my case.

10 About P.W.1.'s failure to warn her lawyer then as regards oral agreement, she did not believe it was enforceable lay man - a matter of law.

Ref. P.W.1 - page 29 32 of Notes of Evidence - "In other words the direct lease from 1st Defendant was dependent on.....
.....Kota Mining Co."

Purely a question of facts - whatever things done by Plaintiffs was because of contract with Kota Mining Company or for oral agreement.

20 I say 1st Defendant should pay for the road rather than Kota Mining Co. for its breach.

It was on 1st Defendant's representation that we built the road. We would not build the road on Kota Mining Company's agreement. Because the agreement with Kota Mining Co. still depends upon 1st Defendant though through various links.

30 The company's resolution shows Company not building road for Kota Mining Co.

To sum up:

1. Did or did not we build road under oral agreement?
2. We refused to build until we got direct sub-lease.

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3. We built road as result of
oral promise to grant
a sub-lease direct.

Sd: Azmi.

Murphy: I ask for certificate as to
costs of 2 Counsel.

I also ask if Mr. Hills undertakes
to keep the \$30,000 to himself for our
costs until disposal of this case.

Sd: Azmi.

10

Hills: I will keep back \$7,000/- out
of \$30,000/- for that purpose.

Sd: Azmi.

C.A.V.

22nd January, 1964

Coram: Azmi, J. In open Court.

Datok Jackson for Plaintiffs

Murphy for 1st Defendant

Chan for 2nd Defendant.

I read my judgment and dismissed
suit with costs - two Counsel.

20

Sd: Azmi.

Certified true copy

Sd:

(T. Nesathurai)

Secretary to Judge

26.2.1964.

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 Malaysia

J U D G M E N T

For the purpose of my judgment it is not necessary in my opinion to refer to the whole pleadings in detail. I think it is sufficient if I refer in detail only to paragraphs 5 and 6 of the Statement of Claim and the Statement of Defence in answer to them.

In the High Court
 at Johore Bahru

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10 Paragraph 5 of the Statement of Claim reads as follows:-

Because neither the 1st Defendant nor the 2nd Defendants had the means nor the experience nor the skill to carry out mining operations and because the Plaintiff company was a company well experienced in mining and with substantial capital backing it it was orally agreed between the Plaintiff company and the 1st Defendant in a series of conversations on or about Chinese New Year 1961, that in consideration of the Plaintiff company taking such steps as were necessary to enable the 1st Defendant to obtain a mining lease or certificate and to assist him in preparation for mining generally the 1st Defendant would if and when he was granted a mining lease or certificate of the said mining land forthwith grant to the Plaintiff company a mining sub-lease of the said mining land for the remainder of his term subject to a tribute to be paid by the Plaintiff company to 1st Defendant."

20
 30
 40 Paragraph 6 of the Statement of Claim reads as follows:-

"In part performance of this said oral agreement referred to above the Plaintiff company took all steps that were necessary to enable the 1st Defendant to obtain a Mining Certificate and that were required by the

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agreement".

The rest of paragraph 6 gives the "Particulars of Part Performance", among which were:

"(a) The Plaintiffs' engineers prepared and submitted a Mining Scheme on behalf of the 1st Defendant at his request and the Plaintiffs paid the sum of \$2,090-80 in respect thereof.

10

(f) The Plaintiffs entered into possession of the said land at the 1st Defendant's request in order to conduct prospecting operations and the Plaintiffs have spent the sum of \$1,353.70 in respect of these said operations.

(g) The Plaintiffs at the cost of \$140,000.00 between the months of April and December 1961 constructed a road from Jalan Mawai to the said land in order to facilitate mining on the said land, and transport iron ore.

20

(j) The Plaintiffs paid on behalf of the 1st Defendant at his request the sum of \$500.00 as a deposit for the reserve road.

(l) The Plaintiffs went into possession of the said land in performance of the said verbal agreement and are still so in possession."

30

The Plaintiff company then goes on to say that though it had taken all steps required and as a result of which the 1st Defendant was granted Mining Certificate No.603 in reference to an area of about 185 acres in January, 1962, the 1st Defendant had refused or neglected to issue a mining sub-lease to the Plaintiff company or to take steps to obtain formal permission from the Ruler in Council for such a sub-lease. By reason thereof the company suffered

40

considerable financial loss and claims specific performance for the execution of a sub-lease in its favour or alternatively damages.

In the Supreme Court of The Federation of Malaysia

10 The 1st Defendant denies all these allegations and, in reference to paragraph 6 of the Statement of Claim, says further that if the Plaintiff company had indeed taken the steps alleged in the "Particulars of Part Performance", the said steps were not referable to the said alleged oral agreement but were taken on the Plaintiff company's own initiative in anticipation of obtaining a sub-lease in pursuance of the agreement with the 2nd Defendant. At the end of the Plaintiff company's case the 1st Defendant filed a further alternative defence, namely para. 4A.

In the High Court at Johore Bahru

20 Para. 4A says that Tan Gek Piah, Tan Song Chiang, Chan Sai Sow and the 2nd Defendant have not been shown to have given their consent to the grant of the sub-lease, which consent according to the oral agreement was a condition precedent to any obligation of 1st Defendant to grant the sub-lease.

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30 Para. 4A further says that it was a condition precedent to any obligation of the 1st Defendant to grant the sub-lease, that the Plaintiff company continues to be entitled to a sub-lease by virtue of the two written agreements and the two agreements and Declaration of Trust mentioned in paragraphs 10 and 15 of the Statement of Claim, and that the Plaintiff company had ceased to be so entitled by reason of the settlement it made with the 2nd Defendant in reference to its claim in the Suit to which I will refer in detail. At the outset of the hearing of this Suit a Consent Order between the Plaintiff company and the 2nd Defendant was recorded by me at the request of Counsel to the effect that the 2nd Defendant do pay the Plaintiff company a sum of \$30,000 in full and final satisfaction of the Plaintiff company's claim in the Suit, but in the event of the Plaintiff company obtaining the right to work the mine, the Plaintiff company will pay the 2nd Defendant a tribute as set out in the main agreement dated 19th

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September 1960, entered into between the Plaintiff company and the 2nd Defendant, and the stipulations thereunder will be binding on both parties.

It is not disputed that on the 17th June, 1958, the 1st Defendant and a company called Tang Hai Mining Company signed an agreement under which the 1st Defendant allowed Tang Hai Mining Company to prospect the land in question and that on his receiving a Mining Certificate or Lease, he would execute a valid sub-lease in favour of Tang Hai Mining Company on payment of certain sums of money by the Mining Company to the 1st Defendant and also, among other things, the payment of a tribute. A subsequent agreement between the two parties made in the Chinese Lanauge amended some of the particulars of the first agreement in reference to the amount of tribute and to other payments.

10

20

On 3rd July 1959, Tang Hai Mining Co. executed an agreement in favour of one Chan Sai Sow under which Tang Hai Mining Co. assigned all its rights made under the agreements of the 17th June, 1958, and 2nd December, 1958, between it and the 1st Defendant.

On 4th December 1959, Chan Sai Sow signed a deed under which Chan declared that all the benefits which he would stand possessed under the agreement of 3rd July, 1959, are held in trust for the 2nd Defendant.

30

On the 19th September, 1960, the 2nd Defendant signed an agreement with the Plaintiff company under which, for certain consideration the 2nd Defendant agreed to allow the Plaintiff company to work the mine. In paragraph 1 of the agreement the Plaintiff company agreed to pay the 2nd Defendant \$80,000/-, half of it on the signing of the agreement and the balance as soon as a mining lease or certificate is issued in respect of the same land. This agreement in its recital also refers to the 1st Defendant as the holder of Permit No. 141/59 and also to the agreement of 17th

40

June, 1958, made between the 1st Defendant and Tang Hai Mining Company, and also to the agreement of 3rd July, 1959, between Tang Hai Mining Co. and Chan Sai Sow, and also to the Declaration of Trust made by Chan Sai Sow in favour of 2nd Defendant.

In the Supreme Court of The Federation of Malaysia

- 10 It might be noted here that at the time when the alleged oral agreement was made the Plaintiff company was fully aware of all these various agreements and the relationship between the parties to each agreement.

In the High Court at Johore Bahru

- 10 I will now refer to the rest of the evidence. According to P.W.1, Chua Siew Cheng, she and others of the Plaintiff company had two meetings with the 1st Defendant in February, 1961, during which, according to her, the 1st Defendant orally agreed to give her a direct sub-lease of the mining land. According to her at the first meeting whilst they were at the State Engineer's Office, she expressed concern about the sub-lease going through so many hands and to this, according to her, the 1st Defendant said he could solve this matter by giving it direct to the Plaintiff company. Present at this meeting were Chua Kim Yong (P.W.4), Chew Hee Jin, 1st Defendant and Chan Sai Sow. After this meeting they met again 20 at the premises of the Plaintiff company, and according to her, the 1st Defendant repeated what he said at the State Engineer's office and when asked by P.W.1 if the other parties would object, the 1st Defendant replied that they would be fools to do so since they were not really miners but were interested only in tribute money. It was at this meeting that the 1st Defendant requested the Plaintiff company to start constructing a road to the mine 30 because the building of the road would facilitate the issue of the mining certificate. The road was started in April, 1961, and practically finished in December under the charge of P.W.4, Chua Kim Yong. Miss Chua, P.W.1, went on to say that in October, 1961, the 1st Defendant went to the Company's Singapore Office and in the presence of her mother the 1st Defendant informed them that the Government had granted 40

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him the mining lease and showed them their letter of approval (page 16 of the Agreed Bundle). When she asked him when he was going to execute the sub-lease the 1st Defendant replied that it was not yet time to do so because he had not got the lease itself yet it was necessary to mention in a sub-lease the reference number of the mining lease. She then pointed to 1st Defendant the condition in the letter of approval that there shall be no transfer. According to the witness the 1st Defendant said that that was only a formality of the Government and that there was no such thing as "no sub-lease".

10

P.W.l. then said that she met the 1st Defendant again whilst walking along the road on the mine and there, according to her, the 1st Defendant pointed out that it was a good thing the road had been opened now and the mining certificate had been approved and he could sub-lease to the Company and the Company could operate the mine which would bring them riches. Among other things she stated that all the various written agreements were made with 1st Defendant's consent, and that 1st Defendant was at the negotiation from the beginning in reference to the agreement between the Plaintiff company and the 2nd Defendant, and was present at the lawyer's office but she admitted that there is no recital in the agreement to the effect that 1st Defendant had consented. She also maintained that the supplemental agreement was also signed in the 1st Defendant's presence.

20

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When asked why the Plaintiff company did not try to get a direct written agreement from the 1st Defendant, her reply was that the 1st Defendant had made an agreement with the Tans and the Tans with Chan, and there was no written consent from 1st Defendant and when pressed to answer why no written consent was obtained from the 1st Defendant she said, "we took it we were the actual miners. 1st Defendant was at the lawyer's office."

40

She was referred to the letters at pages

	14 and 15 of the Agreed Bundle. The letter at page 14 is dated 17th July, 1961, and written by the Plaintiff company to the Managing Director of the 2nd Defendant. In it the Plaintiff company requested the Managing Director to prepare and execute a formal sub-lease in its favour so as to enable it to commence mining operations. To this	In the Supreme Court of The Federation of Malaysia
10	letter the 2nd Defendant replied that they would write again when they had received the mining certificate or mining lease and they they had no intention of repudiating the agreement between them. She was then asked why there was no reference in either of the letters as to the alleged oral agreement between her and the 1st Defendant, and her reply was that the 1st Defendant had not yet got the lease and that they wanted to keep it secret.	In the High Court at Johore Bahru
20	She was also asked why she did not direct the attention of her lawyers to this matter of the oral agreement and to request them to write to the 1st Defendant about it. Her reply was that it did not occur to her then, but she subsequently said that she did not realise that the oral agreement would be enforceable in the Courts.	No. 21 Judgment of Azmi, J. 22nd January 1964 (Contd.)
30	She admitted that she fully realised that she already had a written contract with the 2nd Defendant for a sub-lease at the time when the 1st Defendant made the alleged oral agreement to give her company a direct sub-lease. She also agreed that for the oral agreement the Company would not have to pay to anybody, including the 1st Defendant, more than what it has to pay under the written agreement with the 2nd Defendant.	
40	Witness said that all the things done by the Plaintiff company enumerated in the "Particulars of Part Performance" were done because the 1st Defendant promised to give the company a direct sub-lease.	
	I will now refer to the evidence of P.W.3. - Yeo Lew Soo. She is the mother of P.W.1, and the Chairman and a Director of the	

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Plaintiff company since the Company's incorporation on 16th September, 1960.

According to her she discussed the opening of the road with the 1st Defendant who said that since they were keen to work the mine they should open the road. She then referred again to the meeting in her office and the question of a sub-sub-lease was discussed. According to her the 1st Defendant stated that one Ahmad of the Mines Office told him that no sub-sub-lease would be allowed, but the 1st Defendant said he would give her a direct sub-lease if she constructed the road. According to her the actual work of constructing the road started on 15th April, 1961. Then she went to Japan for the purpose of selling iron ore. She met the 1st Defendant again on the road subsequently on which occasion, according to her, the 1st Defendant made a remark that it was fortunate he had asked her to construct the road earlier and that the construction of the road had helped him in getting the mining certificate.

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She was questioned as to her experience in mining. I myself feel that having heard her evidence this lady could not have known very much about mining or in fact about the details of the formation of her company or the details of all the agreements connected with this case, e.g. she was not able to explain why there was no mention of the name of the Secretary of the company in the resolutions or in the minutes of the meetings. She could not even remember the name of the first secretary or the parts taken by her son as Director. She said contrary to the recorded minutes of the Company's meeting that her son never resigned formerly and was still a Director even up to the date of the trial.

Lim Fook Sang, P.W.2, a Director of

- J.P. Wilkins & Co., said that in December, 1960, the Plaintiff company sent them some ore samples for analysis which showed that there was 65% iron ore. In October, 1961, Mr. Chew Hee Jin of the Plaintiff company told Wilkins & Co., to carry out survey for the mining scheme. The scheme is Exhibit P3. We could not say if his scheme and letter was sent to the Inspector of Mines. The Company prepared application to Kota Tinggi Town Board for permission to use the Public roads for carrying ore and also an application to the State Drainage & Irrigation Enginer, Johore, for permission to construct a jetty in Kota Tinggi Town for loading and unloading ore.
- In cross-examination he could not explain why the name of Kota Mining Co. Ltd. was placed on the plan. He said he was not aware until later that Vallentine & Dunne had already done a scheme of the area. He had subsequently seen the plan put up by Vallentine & Dunne, and according to him both schemes were basically the same. He made no provision for stock pile in his own scheme, but he made alteration in position of a washing plant.
- P.W.4, Chua Kim Yong, said that he met the 1st Defendant on 13.2.1961 at Johore Bahru at the office of the Mines Department. On that day also present were P.W.1, Tan See Siew, and Chew Hee Jin. He said 1st Defendant was talking in English to P.W.1, and he said that the 1st Defendant begged P.W.3 to construct the road. When P.W.3 said what was the use of constructing the road if no sub-lease was given to her, 1st Defendant said that he would certainly give her a sub-lease as he was the person having authority to do so and others have no power to do so.

On 15th April 1961, the 1st Defendant went to see P.W.3 again and pressed for early construction of the road. According to P.W.4, work on the road started on 15th April, 1961, and finished on 27th November, 1961. One

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In the High Court at Johore Bahru

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peculiar thing about this evidence is that according to him, Vallentine & Dunne were of the opinion that the mine was not workable as an iron mine and yet he said that the 1st Defendant offered him \$4.80 for every ton produced from the mine during the Chinese New Year, 1960.

P.W.5, Eng Tiang Poh, produced the accounts of the Head Office of Plaintiff company and also the Branch Accounts.

That concludes the evidence for the Plaintiff Company.

The Inspector of Mines, Johore Bahru, D.W.I., said that the prospecting permit was issued to 1st Defendant on 21st November, 1959, in respect of an area of 441 acres. On 25th January, 1960, the area was increased by 30½ acres. The permit was issued by the Conservator of Forests. Prospecting done in the name of the 1st Defendant finally concluded on 20th June, 1961. Vallentine & Dunne filed the final report on 24th January, 1962, on behalf of the 1st Defendant. A lease was approved on 20th March, 1962, for an area of 184 acres 3 roods 35 poles in reference to the Mining Certificate 603. On 24th January, 1962, Vallentine & Dunne sent in a final report in reference to the additional area of 45 acres. According to this witness a detailed scheme is not required before the issue of the mining certificate. According to the Inspector a detailed scheme would show several particulars, for example the actual mining operation, slime detention area, height of bund, stock piling areas, washing plant, etc. It would appear from this that the scheme submitted by Vallentine & Dunne had sufficient details for the purpose of the Mines Department. According to his permission for use of road becomes necessary only after the ore is ready to be taken out of the mine. The construction of a jetty and provision for its stockpile and provision for land for erection of a conveyor and actual building of the road were not necessary to be done before getting the mining certificate. He was not aware that

the building of a road in the mine would facilitate the issue of a mining certificate since the issue of a mining certificate is the function of the Ruler in Council. The Department's report to the Government would merely say whether the scheme is feasible or not and in his report he did not say anything about roads as it was not necessary to do so.

10 According to him no other mining schemes were submitted in reference to this mine except those prepared by Vallentine & Dunne. He himself had not come across in the file any reference to Messrs. Wilkins & Co. Ltd.

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20 D.W.2, Saw Chee Tee, a clerk in the office of the Registrar of Companies, Singapore, stated that the Company was registered on 1st March, 1961, and the Directors were Yeo Lew Soo and Chua Sip Mong, but there is a note to the effect that Chua Sip Mong resigned on 2nd February, 1961, and Chua Siew Cheng was appointed Director on the same date.

30 D.W.4, Allen King Jones, an accountant of Vallentine & Dunne, stated that his firm supervised the prospecting of iron ore in the permitted area and their Mining Engineer prepared the first mining scheme to support an application for a mining lease for an area of 570 acres. In May the same year another scheme in respect of 185 acres was prepared, and this was part of the original 570 acres. The reason was that the Mines Department indicated that it would be prepared to recommend a mining lease of the 185 acres only. Prospecting was done up to February, 1960, and a scheme was submitted, Exhibit D.25. The scheme shows that the area it is proposed to mine, location of washing plant, tailing area and water intake from river, but the stockpile is not shown on the plan as it was some miles away. According to him the first mining scheme and report was not turned down but the application for 570 acres was refused, but another application for 185 acres was subsequently approved.

40 D.W.5, the 1st Defendant, stated that he applied for a permit to prospect for

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iron in 1957. On 17th June, 1953, he entered into the agreement with Tang Hai Mining Company. In fact the two agreements were made that day. In the subsequent one the amount of tribute was reduced but Tang Hai Mining Co. was to bear all expenses including the making of a road. He said he was aware of the agreement made between Tang Hai Mining Co. and Chan Sai Sow, and he consented to that agreement. He was also aware of the agreement made by Chan Sai Sow and the 2nd Defendant. He understood that the 2nd Defendant was to operate the mine.

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Kota Mining Company engaged Vallentine & Dunne to prospect the land. He was present on the land and saw what was going on. Originally the area asked was 441 acres. After that an additional area of 186 acres was granted to him. He said that Chua Ho San, father of P.W.1, wanted to get a contract from Kota Mining Company to mine the iron ore and deliver it to the ships. He understood that Chua Ho San was merely a contractor. He did not consider that his consent was necessary as Chua Ho San was merely a contractor. Chua Ho San died subsequently. About 2 or 3 months before that witness saw him on the land. He said he saw Chua Kim Yong, P.W.4, on the land, but denied that he saw him in Kedah. He also denied that he offered to Chua Kim Yong or his towkay to operate the mine.

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He heard of Susur Rotan Mining Ltd. 5 months after he met Chua Ho San on the mine. He understood that this company was to work the mine for Kota Mining Co.Ltd. as contractors. He learnt of the nature of the transaction between the two companies in April, 1960. In the same year he joined Kota Mining Co. Ltd. as a Director. It was then he learnt that Chan Sai Sow had executed an agreement with the Plaintiff Company. He understood from Chan Sai Sow that the agreement was to give the Plaintiff company a sub-sub-lease after he had obtained a sub-lease from witness. He denied that he ever promised to give

40

Company a sub-lease. He obtained the permit to construct a road in the forest reserve. It was the Plaintiff company who wanted to construct the road. He denied that he asked the Plaintiff company to do it.

He received the letter D.30, which is the original of P.3, and also Plan D.30A from Chan Sai Sow but returned them because they were not properly done. He said he never employed J.P. Wilkins & Co. to do it. He did not send the plan to the Inspector of Mines. Then another plan was produced which he signed but he apparently never sent it to the Mines Department because he still retained it. He denied he ever asked the Plaintiff company to prepare a mining scheme on his behalf, or in fact asked the Company to do anything.

Briefly, he said that all the things he did when requested by the Company he did so for the Company for the Company's own purpose. In cross-examination he admitted that he never gave the sub-lease to Tang Hai Mining Company, and the reason given was that he was never asked. He finally admitted that he received from Tang Hai Mining Company's solicitors a letter where the Company stated that they wanted a sub-lease. His reply to that was that he had taken legal advice. The reason apparently he did not give the sub-lease was because Tang Hai Mining Co. had assigned their rights to the 2nd Defendant. He said he cannot give a sub-lease to any person without breaking the terms of the two agreements he had signed. Witness also denied he met P.W.l. and the others at the State Engineer's office or at the office of the Plaintiff company. He admitted using the road on the mine made by the Plaintiff company but said the construction of the road was a matter between Kota Mining Company and the Plaintiff company.

Kota Mining Company received a tribute of \$4/65½ and were therefore responsible for everything. He denied telling Miss Chua P.W.l., that the building of the road would facilitate the issue of a mining certificate.

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He also denied that he would give the Plaintiff company a sub-lease if the Company built the road.

On the evidence produced by the Plaintiff company the promise was to give a direct sub-lease to the Company whilst at the same time preserving the rights of the other persons involved and it was first made by the 1st Defendant when Miss Chua expressed worry over the sub-lease passing through so many hands. According to Miss Chua this incident took place at the office of the State Engineer in Johore Bahru in the presence of Chua Kim Yong (P.W.4), Chew Hee Jin and Chan Sai Sow, but according to Chua Kim Yong it happened at the Mines Office. Chua Kim Yong himself said that the matter was discussed in the English Language which he himself could not understand. At a subsequent meeting, Miss Chua said, the 1st Defendant repeated his promise but requested the Company in return for an oral promise to start building the mine road because that would, so the 1st Defendant told her, facilitate the issue of the mining lease or certificate. According to Mrs. Yeo, the 1st Defendant told her that he had been to the Mines Office where he was told no sub-sub-lease would be granted, but the 1st Defendant agreed to give her a direct sub-lease if she constructed the road immediately. Thus the construction of the road started. Now, according to Chua Kim Yong, the 1st Defendant begged Mrs. Yeo to build a road and when she expressed doubt as to the usefulness of that unless she got a sub-lease, the 1st Defendant thereupon said he would give her a sub-lease if she builds the road.

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It is, therefore, now apparent on the evidence produced on behalf of the Plaintiff company that it was the Plaintiff company's case that the road was built because of this oral promise to give a direct sub-lease and that the road was built because of the 1st Defendant's

allegation that the building of the road would facilitate the issue of the mining lease.

With reference to the last point, I would say that I myself feel considerable doubt that the building of the road played any part at all in the issue of the mining certificate by the Ruler in Council. We have no evidence of what transpired in the Chambers of the Ruler in Council when the 1st

10 Defendant's application for a mining certificate was considered, but I accept the evidence of the Inspector of Mines that he did not think that building a road was even necessary at that stage of the proceedings. Besides, I do not think myself that Miss Chua, a highly intelligent lady herself, could have accepted what the 1st Defendant said without first making enquiries.

With reference to the first question, I 20 do not consider, for the following reasons, that the building of the road was started because of the alleged oral promise:

(1) Miss Chua herself admitted that she did not know at that time that a verbal agreement was accepted in law or enforceable in the Courts. Miss Chua is undoubtedly the prime mover in this matter. Would it be probable then that she would risk spending so much money on the making of the road before she was sure that the oral 30 agreement was good in law? She or someone in the company had apparently been in consultation with their solicitors. Would it not, therefore, be reasonable to expect that she would seek legal opinion on this matter? I would, therefore, say that the Plaintiff company did not start construction of the road because of this alleged oral promise.

(2) There is another reason why I do not believe the Plaintiff company's story that the 40 road was built because of this alleged oral agreement. I find that at page 43 of the Agreed Bundle there is a letter dated 27th March, 1962 from Messrs. Donaldson & Burkinshaw, on behalf of the Plaintiff company to Mr. Siow Wong Fatt, the 1st Defendant. That letter after referring to the agreement made by the 1st Defendant and

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Tang Hai Mining Company, the assignment of rights to Chan Sai Sow and Chan Sai Sow's Deed of Trust in favour of the 2nd Defendant, and 2nd Defendant's assignment in favour of the Plaintiff company, went on to say that in accordance with the interpretation of the agreements in question, the 1st Defendant was under a personal obligation to execute a sub-lease or transfer of the mining land in favour of the Plaintiff company.

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There was nothing in that letter which could be said to refer to the alleged or any oral promise.

Though no question was asked for Miss Chua I would like to suggest as a probability that if a promise to give a direct sub-lease was made by the 1st Defendant, it was on the basis disclosed in the letter of the 27th March 1962, but not on a separate oral promise made in consideration of the immediate construction of the road. It also occurs to me that in the circumstances since the direct sub-lease would also preserve the rights of the other parties to the various written agreements, the result of such an arrangement would be that the Ruler in Council would be the only person who would be ignorant of the true position.

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It is also my opinion on the facts that all the various things done by the Plaintiff company described in the "Particulars of Part Performance" were done by the Plaintiff company on its initiative in anticipation of obtaining a sub-lease in pursuance of the various agreements I have mentioned as stated in the letter of the 27th March 1962. It is quite true

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that many of those things were done in the name of the 1st Defendant, but that I think is according to practice because, so far as the various Government departments are concerned, in such matters as this they would recognise only the holder of a mining permit so that all applications must be made in the holder's name.

I would, therefore, say that the Plaintiff company has failed to substantiate its allegations in paragraphs 5 and 6 of the Statement of Claim. For these reasons I would dismiss the Suit with costs.

Sd. Azmi bin Haji Mohamed

22nd January, 64.

(AZMI BIN HAJI MOHAMED)

20

JUDGE

Certified true copy.

(T. Nesathurai)

Secretary to the Judge

23.1.1964.

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No.22
Order of Court

BEFORE THE HONOURABLE MR. JUSTICE AZMI
JUDGE, MALAYA

IN OPEN COURT

This 22nd day of January, 1964

O R D E R

This Action coming on for trial on
the 10th, 11th, 12th, 13th, 14th, 23rd,
24th and 25th days of November 1963 in the
presence of Mr. A. Hills with Dato D.C.
Jackson of Counsel for the Plaintiffs and Mr.
D.H.Murphy with Mr. T.G. Dunbar of Counsel
for the 1st Defendant

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AND UPON hearing the evidence adduced
and what was alleged by Counsel for the
Plaintiffs and for the 1st Defendant THIS
COURT DID ORDER that this action should stand
adjourned for judgment AND THIS ACTION standing
for judgment this day in the presence of
Counsel for the Plaintiffs and for the 1st
Defendant as aforesaid THIS COURT DOTH ADJUDGE
that the Plaintiffs' claim against the 1st
Defendant be and is hereby dismissed with costs
to be taxed under the Higher Scale and be paid
by the Plaintiffs to the 1st Defendant AND THIS
COURT DOTH CERTIFY that the Plaintiffs and 1st
Defendant be allowed two Counsel for the trial
of this action under Order 65 Rule 47 of the
Rules of the High Court 1957.

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GIVEN under my hand and the Seal of
the Court this 22nd day of January, 1964.

Sgd: V. R. T. RENGAM

ASSISTANT REGISTRAR

HIGH COURT

JOHORE BAHRU

No.23
Notice of Appeal

In the
 Federal Court
 of Malaysia

IN THE FEDERAL COURT OF MALAYSIA
 (Appellate Jurisdiction)

(Appellate
 Jurisdiction)

Civil Appeal No.14 of 1964

BETWEEN

Susur Rotan Mining Limited .. Appellants
 and

No.23
 Notice of
 Appeal
 6th February
 1964

1. Siow Wong Fatt .. 1st Respondent
 2. Kota Mining Company Limited 2nd Respondents

(In the matter of Civil Suit No. 94 of 1962 in the
 High Court in Malaya at Johore Bahru

Between

Susur Rotan Mining Limited Plaintiffs
 And

1. Siow Wong Fatt .. 1st Defendant
 2. Kota Mining Company
 Limited .. 2nd Defendant)

NOTICE OF APPEAL

Take notice that the Appellants being dissatisfied with the decision of the Honourable Mr. Justice Azmi given at Johore Bahru on the 22nd day of January, 1964 appeals to the Federal Court against the whole of the said decision.

Dated this 6th day of February, 1964

Sgd: Donaldson & Burkinshaw.

SOLICITORS FOR THE APPELLANTS

To,

The Registrar,
 The Federal Court,
 Kuala Lumpur

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And to,

The Asst. Registrar,
 The High Court in Malaya at Johore Bahru.

In the
Federal Court
of Malaysia
(Appellate
Jurisdiction)

And to

The 1st Respondent abovenamed or his
Solicitors, Messrs. Murphy & Dunbar,
c/o Messrs. M. Ismail & Co.,
4th Floor, Chung Khiaw Bank Building,
Jalan Ah Fook, Johore Bahru.

No.23
Notice of
Appeal
6th February
1964
(Contd.)

The 2nd Respondent above named or its
Solicitors, Messrs. Braddell Brothers,
Room No. 301 3rd Floor,
O.C.B.C. Building,
Johore Bahru.

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The address for service for the Appellants
is care of Messrs. Donaldson & Burkinshaw,
Advocates & Solicitors, Room Nos. 3F & 3G 3rd
Floor, Foh Chong Building, Jalan Ibrahim, Johore
Bahru.

No.24
Memorandum of
Appeal
18th March
1964

No. 24
Memorandum of Appeal

Susur Rotan Mining Limited, the Appellants
above named appeal to the Court of Appeal against
the whole of the decision of the Honourable Mr.
Justice Azmi given at Johore Bahru on the 22nd day
of January, 1964, on the following grounds:-

1. The Learned Trial Judge was wrong in holding
that the road was not built because of the alleged
oral promise to grant a sub-lease to the
Plaintiff Company because:-

- (a) The Learned Judge did not say that he
disbelieved the Plaintiff's witnesses
in giving their evidence.
- (b) The Learned Judge did not deal with or
consider the question of the documentary
corroboration supplied by the
Resolutions.
- (c) The two reasons given by the Learned
Judge in fact amount to only one reason
if as evidence shows Miss Chua did not
inform her lawyers of the position at
that time.
- (d) The Learned Judge gives no reason why the
road was built if not on the strength of
the alleged oral promise.

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- (e) The evidence of the existence of the oral promise to grant a sub-lease should have been accepted by the Learned Judge.

2. The Learned Trial Judge was wrong to hold that the particulars of part performance as set out in the Statement of Claim were carried out in pursuance of the various written agreements and not in furtherance of the oral contract to grant a sub-lease because:-

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of Malaysia
(Appellate
Division)

No.24
Memorandum of
Appeal.
18th March
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(contd.)

- 10 (a) The building of the road which is the main item of part performance was not mentioned in any of the agreements.
- (b) If the Plaintiff company had been so cautious and reasonable as the Learned Judge holds them to have been the Plaintiff company would not have built the road until a sub-lease was granted to them.
- 20 (c) The Learned Judge does not appear to have considered the evidence given that the Plaintiff Company refused to build the road until the oral promise to grant it a sub-lease direct was made.
- (d) The evidence that the part performance pleaded was carried out in pursuance of the oral agreement to grant a sub-lease should have been accepted by the Learned Judge.

- 30 3. The Learned Judge's suggestion that a promise was given to give a direct sub-lease even on the terms that he considers to have been probable is sufficient to entitle the Plaintiff company to specific performance of the promise, or damages.

4. The Learned Trial Judge was wrong in holding that the Ruler in Council would have been ignorant of the position and even if he were so ignorant it is not a fact that could be taken into account in considering the truth or otherwise of the Plaintiff company's story.

40 5. The Learned Trial Judge should have held that all that was set out as part performance was performed on the strength of an oral promise to grant a sub-lease to the Plaintiff company.

6. The Learned Trial Judge should have granted specific performance of the said promise to grant a sub-lease to the Plaintiff Company.

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7. In the alternative, the Learned Judge should have held that the Plaintiff company is entitled to damages based on loss of profit of mining the mine, formulating the amount on the basis of the figures disclosed by the First Defendant in his evidence.

No. 24
Memorandum of
Appeal.
18th March
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(contd.)

8. In the further alternative the Learned Trial Judge should have held that if there was no oral agreement which he found, the Plaintiff company was entitled to compensation amounting to the cost of building a road and other expenditure set out in evidence against the First Defendant within the terms of Section 71 of the Contracts Ordinance No. 14 of 1950.

10

Dated this 18th day of March, 1964.

Sd:

Solicitors for the Appellants

To:

The Chief Registrar,
Federal Court of Malaysia,
KUALA LUMPUR.

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The Asst. Registrar,
High Court,
Johore Bahru.

Messrs. Murphy & Dunbar,
(Solicitors for the 1st Respondent),
c/o Messrs. M. Ismail & Co.,
4th Floor, Chung Khiaw Bank Building,
Jalan Ah Fook, JOHORE BAHRU.

Messrs. Braddell Brothers,
(Solicitors for the 2nd Respondent),
Room 301, 3rd Floor, O.C.B.C. Building,
JOHORE BAHRU.

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No. 25

Notes of Argument recorded by Thomson, Lord President, 17th and 18th September, 1964.

In the
Federal Court
of Malaysia
(Appellate
Jurisdiction)

Cor: Thomson, Lord President, Malaysia
Wee Chong Jin, Chief Justice, Singapore.
Tan Ah Tah, Judge, Federal Court.

17th September, 1964.

No. 25
Notes of Argu-
ment of
Thomson, Lord
President.
17th & 18th
September
1964.

For Appts: A. L. Hills.

For Respt. 1: T. G. Dunbar.

10 Respt. 2: Not represented (Settled).

Hills:

1st Respt. held prospecting permit.

Entered into succession of agreements whereby various people financed him and got in return rights over a mining area in a forest reserve - "Susur Rotan".

20 Made written agreement with Tang Hai Mining whereby they were to advance him money. They would inspect land and then could call for a mining title.

Subsequently they assigned to one Chan Sai Sow. He made a declaration of trust that he held the mining rights in trust for Kota Mining Company Limited of which he was a director (2nd Respt.). They entered into agreement with Appt. Company whereby they assigned the rights to enter on the land.

Hills (continuing):

Date of that - 19.9.60.

30 Same day Kota Mining by another agreement ("supplementary agreement") they agreed to grant when they could a sub-lease.

So Appt. claimed to have right to mine the land and call for a sub-lease from Tang Hai Mining.

Prior to September 1960 about April Respt. met one Chua, a well-known iron ore miner. There

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was some discussion about his carrying on the mine when a mining lease was issued. He died in July 1960. One of the widows and his daughter and his son formed the present Appellant Company to carry out mining on the land. Immediately after the agreement of 19.9.60 was made

No. 25
Notes of Argu-
ment of
Thomson, Lord
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September,
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(Contd.)

At that stage most prospecting had been done.

Here there is conflict. We say about New Year (15.2.61) there was a series of conversation between Respt. and the Appt. Coy. And Respt. would grant to the Coy. a sub-lease direct and we would pay the other links in the chain the tribute to which they were entitled under their agreements. In return for the advantage of a direct sub-lease we agreed to build a road to the mine - about 9 miles of laterite road through a jungle.

10

It was understood we should finance the preparation for mining generally.

Road cost over \$100,000.

20

Sept. 1961 - approval of mining certificate was received by Respt. January, 1962, mining certificate was issued to him. We were then entitled to call for a sub-lease. We had paid \$40,000 in Sept. 1960 and had promised to pay a further \$40,000 advance of tribute on issue of the mining certificate.

Relations had deteriorated and neither side would go on.

Hills (continuing)

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We sued Kota Mining Co. Ltd. on the written agreement and Respt. on the oral agreement.

We settled with Kota Mining and they paid us \$30,000.

But Respt. defended and our claim was dismissed.

Writ issued 17.9.62.

Appeal is confined to 2 points.

(1) Was there an oral contract between Appts.

and Respt.? J. found against us and we appeal against that finding. If there was, should it be enforced by specific performance.

(2) We spent about \$200,000 in expectation of a sub-lease. If there was no enforceable verbal promise are we not entitled to compensation under sec. 71 Contracts Ordinance?

Pleadings and correspondence.

Until issue of the writ Appts. were depending on the written agreement only. So there is no mention of the oral agreement in the correspondence.

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(Appellate
Jurisdiction)

No. 25
Notes of Argument of
Thomson, Lord President.
17th & 18th September,
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(Contd.)

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On illegality -

Leong Poh Chin v. Chin Thin Sin (1959) M.L.J. 246.

Reads judgment.

Adj'd. to 18.9.64

18th September, 1964

Hills (continuing):

Plan is D.26.

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Appts. built road and did other acts for benefit of Respt. and Appts. have received nothing.

Was there a contract?

It was not suggested there was more than a verbal agreement.

J. did not base his conclusions on demeanour etc.

Lim Hye Chua v. Lim See Kiat (1940) M.L.J. 199.

Watt v. Thomas (1947) A.C. 484, 488.

Powell v. Streatham Manor Nursing Home (1935)

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A.C. 243, 266.

Hills (continuing):

Evidence was not that the road was necessary

In the Federal Court of Malaysia (Appellate Jurisdiction) but that the Respt. said it was necessary (I - p.158). J's reasons for disbelieving the story of the oral promise are not adequate.

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Notes of Argument of Thomson, Lord President.
17th & 18th September, 1964.
(Contd.)

The only possible explanation of Appts. building the road is expectation of the mining lease which could only come from the Respondent's statements.

The only document which supports the oral agreement is the resolution dated 18.2.61 (II - p.100).

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Only person who denied the conversation was Respt. himself. He could have called Chan Sai Sow who was a co-director of Kota Mining. According to our evidence he was present on one occasion (p.47. A - P.W.1).

J. gave no reason for disbelieving the man from Wilkins (P.W.2 - p.68).

P.W.4 and P.W.5 confirmed the conversation.

If there was a contract there can be specific performance.

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Loke Yew v. P. S. Rubber Co. Ltd. (1913) A.C. 491. applies to mining leases in Jchore.

Yap Tai Cheong v. Wong Kam (1921) 2 F.M.S.L.R. 244.

Specific Relief (Malay States) Ord. 29/1950 - sec. 11, 17, 21.

But consent is necessary as here not a defence in India.

Motila v. Nanhelal 57 I.A. 333, 337.

There are 2 cases where the contractual relationship varied -

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Plimmer v. Mayor, Councillors & Citizens of the City of Wellington (1883) 9 A.C. 699, 710, 713.

Ramsden v. Dyson L.R. 1 H.L. 129, 142.

Hills (continuing):

I now turn to my remedy under s.71 Contracts

Ordinance.

J. did not deal with this question but his finding (at p.160) came near to finding fact which would support it.

Pollock & Mulla p. 424, 425 430.

N.K.Bose v. M.M.Bose I.L.R. (1881) 7 Cal.573.

S. Srirama Raja v. Sec. of State for India (1943) I.L.R. Mad. 158.

That we built the road for our own benefit
10 does not exclude the section.

Here Respt. enjoyed the benefit of the work.. He admitted it (p.122) and J. accepted this (p.156) though he omitted to deal with the question of compensation. A/cs. were produced and there was no cross-examination.

We asked for "further and other relief".

Case for Appts.

Dunbar:

Will deal with s. 71 Contracts Ordinance. It
20 was not pleaded.

What was pleaded was an oral contract and breach.

Anyhow Respt. had no benefit from building of the road.

Hills says the road would not have been built but for the oral promise of Respt. But P.W.1 said it was because they would get the Mining Certificate (p.56). The permit to build the road is dated 27.12.60 (II - p.164) - before the oral agreement which was alleged on 15.2.61.
30

The Plan is dated June 1960 and was prepared by Vallentine & Dunne, Kota's engineers.

Both parties thought the agreement was unenforceable.

Apart from the Minutes Book, there is no paper that supports allegation of oral promises. The lawyers' letters all referred to the written agreements.

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ment of
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Dunbar (continuing)

No.25
Notes of Argu-
ment of
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(Contd.)

I agree J. did not mention the Minute Book.
My case was the Minutes Book was a concoction.

The minutes relied on is the first in the book. It is pasted in - and pasted very lightly.

18.11.60 (p.118) Accountants reminded Company of what it had to do. But Minutes Book produced starts in February and there are no resolutions as to appointments of directors etc. before the resolution as to the road.

10

The only signature in the book are those of Miss Chua and her mother.

None of the secretaries before Miss Chua were called.

Though J. has not mentioned the book he cannot have overlooked it. He has held there was no oral agreement and it follows he took a complacent view of the matter.

There were discrepancies between the S/C and the Particulars and the evidence.

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Most capital discrepancy is as to agreement.

Appts. evidence was at variance with the facts as pleaded in many respects.

The most important was at to the tribute (p.63).

~~He~~ is stopped as to claim in contract. We only wish to hear him on s.71~~J~~.

Dunbar (continuing)

The Indian cases fall into 2 lines (Pollock and Mulla - p.431) as to whether or not "enjoys" means "accepts and enjoys".

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Road was built on Government land and belongs to the Government. And the benefit must be direct.

The question has not been gone into. It was not pleaded.

Hills:

I admit it was not pleaded in terms but I mentioned s. 71 both in opening (p.44) and closing (p.135).

Respt. is the lessor and anything that improves the value of the lease as a mining lease need not ex facie benefit him.

Anyhow in the circumstances they are "accepting" and "enjoying" the road.

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ment of
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10 C.A.V.

Intld. J.B.T.

18.9.64

18th February, 1965

For Appts: Godwin

For Respt: Dunbar

Costs apportioned - Appts. to have 50%

Dunbar:

Ask for removal of caveat.

Godwin:

20 Do not oppose.

Order:

Caveat dd. 26.6.62 be discharged.

Intld. J.B.T.

18.2.65

TRUE COPY

Sd: Tneh Liang Peng.

(Tneh Liang Peng)

Secy. to the Lord President,

19.7.65.

In the
Federal Court
of Malaysia
(Appellate
Jurisdiction)

No. 26

NOTES OF ARGUMENT RECORDED BY TAN AH TAH, JUDGE,
FEDERAL COURT.

NOTES OF ARGUMENT

No. 26
Notes of
Argument of
Tan Ah Tah,
F.J.
17th & 18th
September,
1964

Thursday, 17th September, 1964
A.L.Hills for Appellants
Dunbar for 1st Respondent
2nd Respondent absent

Hills: 1st Respondent held a prospecting permit in Johore. The area was Susur Rotan - it was a forest reserve.

In June 1958 1st Respondent entered into an agreement with Tang Hai Mining Co.

Chan Sai Sow made a declaration of trust - saying he held the land in trust for Kota Mining Co. Ltd.

On 19.9.60 Kota Mining Co. Ltd. entered into an agreement with Appellant whereby they assigned the right to enter on land and mine it.

On same day - 19.9.60 - by a supplementary agreement they agreed to grant Appellant a sub-sub-lease.

We had the right to mine the land and call on Kota Mining for a sub-sub-lease. Kota Mining could then call upon Chan Sai Sow.

In April 1960 1st Respondent met Chua Ho San, a mine owner. Some discussion about mining.

Chua Ho San died in July 1960. His widow and daughter formed Appellant Co.

Appellants say on or about Chinese New Year 1961 - 15.2.61 - there were conversations between 1st Respondent and representatives of Appellant Co. The Upshot was : 1st Respondent would grant to Appellant a sub-lease direct. Appellant would pay Tang Hai Mining Co., Chan Sai Sow and Kota Mining the tribute to which they were entitled under their agreements. Appellant agreed to build a road to the mine - about 9 miles laterite road through jungle. It was understood we were to help 1st Respondent to get a mining

lease so that we could get a sub-lease.

In April 1961 we started to build the road which was completed in October 1961. It cost over \$100,000.

In September 1961 1st Respondent received a letter approving mining lease.

In January 1962 the mining certificate was issued to him.

10 We had paid \$40,000 in September 1960 - it was an advanced of tribute.

As to the written agreement, Appellant sued Kota Mining Co., Ltd., under it and we sued 1st Respondent under the oral agreement. Kota Mining paid \$30,000 to settle the claim.

Writ was issued on 17.9.62. I think Appellant lost the right against Kota Mining Co. when the claim was settled.

The claim is confined to 2 points:-

- 20 (1) Was there an oral contract between Appellant and 1st Respondent.
 (2) If so, should it not be enforced by an order for specific performance.

We spent about \$200,000 in expectation of receiving a sub-lease. If there was no oral contract I submit we are entitled to compensation under section 71 of the Contracts Ordinance = section 70 of the Indian Contract Act.

30 Section 71 does not require a contract. It resembles the English idea of a quasi-contract. No promise is required. (See Pollock and Mulla's Indian Contract Act p.424).

(Both Counsel agree that the law of Johore applies to this case).

Record p.4, 8, 10 (Prospecting permit), 14 (map), 15 (report by Valentine, Dunne & Associates, Ltd.).

In 1961 Appellant was relying on the written agreement. That is why the oral agreement

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was not mentioned in the correspondence.

Leong Poh Chin v Chin Thin Sin (1959) M.L.J.
246 at p.247 right col. DE - illegal to act
on licence granted to someone else.

It is common ground the road was built to
transport ore.

Adjourned to 18.9.64.

Sd. Tan Ah Tah.

Friday, 18th September 1964

Cor: Thomson, Lord President, Malaysia
Wee Chong Jin. C.J. Singapore
Tan Ah Tah, F.J.

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Civil Appeal No. 14/64
(hearing continued)

Counsel as before

Hills: Judge did not refer to the demeanour of
the witnesses.

Lim Hye Chua v Lim See Kiat (1940) M.L.J.199
Watt v Thomas (1947) A.C.494 at p.488.
Powell v Streatham Manor Nursing Home (1935)
A.C.243 at p.266 10th line onwards.

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Abraham Ho Ah Loke v Manson Hing

Judgment at p.158 A3

The evidence was that 1st Respondent said the
building of a road would facilitate the
granting of a mining certificate. P.W.1 said
p.62 A2 she trusted 1st Respondent.

The 2 reasons given by the Judge at pp.158, 159
amount to only 1 reason.

The road was not built in pursuance of the
written agreement. The road was not
mentioned in the agreement. Plaintiffs could
never have sued Kota Mining Co.

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Between September 1960 and February 1961 1st
Respondent had asked Madam Yeo to build the road
and she had refused.

Resolution dated 18.2.61 p.100 Pt.II. Unless

this was forged, there must have been some promise made by 1st Respondent.

The only person who denied the conversation was 1st Respondent.

Chan Sow Sai was present p.47A but Defendants did not call him.

1st Respondent's evidence p.117 EFG, p.118, 119 - prevarication on his part is displayed.

10 P.W.2 Lim Fook Sang - director of J.P. Wilkins & Co. Ltd. - said p.69 E3 1st Respondent was going to give a sub-lease to Plaintiffs. See p.73B. P.W.3 also gave evidence re conversation. P.W.5 was not cross-examined.

If there was a contract I submit specific performance can be ordered

20 Tailby v Official Receiver (1888) 13 App.Cas. 523 Loke Yew v Port Swettenham Rubber Co. (1913) A.C. 491. Yap Tai Cheong v. Wong Kam (1921) 2 FMSLR 244. Specific Relief (Malay States) Ordinance 1950 No. 29/50 s.11 - specific performance.

Section 17(a) of same Ordinance.

Section 21 III "Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance."

30 Motilal v Nanhelan (1930) 57 Indian Appeals 333. (Thomson L.P.: Day v Singleton may be relevant). I ask for an order that 1st Respondent do apply for the sanction of the Ruler-in-Council, and if his application is successful, that 1st Respondent do grant a sub-lease to Plaintiff.

Plimmer v. Mayor, etc. of Wellington (1883) 9 App. Cas. 699 at p. 710 citing judgment of Lord Kingsdown in Ramsden v Dyson, p. 711, 712.

40 Ramsden v Dyson L.R.1 H.L.129 at p.130, 142 "If I had come to the conclusion..... did so in the belief....."

Form of relief. See Plimmer's case 9 App.

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Cas. at p. 713 last para.

Alternatively, I ask for compensation for
making the road.

Compensation.

Section 71 Contracts (Malay States) Ordinance
No. 14/50 = Section 70 Indian Contract Act.
Judgment at p.160 AB.

Pollock and Mulla p.424, 425 quotation, 430.

Nobin Krishna Bose v Mon Mohun Bose Ind.L.R.
(1881) 7 Cal. 573 - Plaintiffs thought they
were paying for themselves.

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S. Spirama Raja v Secretary of State for
India (1943) Ind. L.R. Mad. 158.

Four factors necessary:-

- (1) Act should be lawful
- (2) Act should be done for another person
i.e. another person has the benefit
- (3) Not intending to do so gratuitously
- (4) The other person enjoys the benefit.

1st Respondent said, p.122D, he could not
take out the iron without the road; p.122G,
road gave access to the mine; p.125B, using
the road. Judge, p.156F, said 1st Respondent
admitted using the road.

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Dunbar: Section 71 Contracts Ordinance was not
pledged.

None of the points was pleaded.

Tribute to be 50 cents instead of \$1 - p.8
of Pt.II. 2nd Respondent has paid
\$30,000 to settle Appellant's claim. That
must be on the basis that 2nd Respondent will
keep what they have.

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The mine is now being worked by Siow Wong
Fatt Mining Co.

2nd Respondent would have had to build the
road. It was 2nd Respondent who benefitted

from what Appellants did.

It is said the road would not have been built without the promise.

P.W.1 said, P.56, she was confident in November or December 1960 that Government would grant the mining certificate.

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If P.W.1 did not think the oral agreement was enforceable, 1st Respondent would have thought so too and therefore there was no contract.

In none of the letters was the oral agreement referred to. Even when it was said there was no agreement, Appellant did not claim there was this oral agreement. I put it to the 2 women that the resolution at p.100 of Pt.II was concocted. Minute books was put in as P.1. Madam Yeo said there was a minute book but that was not the one.

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Appellant Company was incorporated in September 1960 and the 1st minute is dated 18.2.61.

On 18.11.60 the accountants wrote to Appellant Company reminding them the 1st directors meeting had to be called immediately. There are no minutes recording this meeting.

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There are no signatures in the minute book except those of P.W.1 and P.W.3 although there were 3 secretaries and P.W.3's stepson. The stepson resigned on 2.2.61 and a minute should have appeared in the book.

As to the oral agreement, there are discrepancies in pleadings, particulars and evidence.

Statement of claim para. 5 at p.9B.

Particulars at p.17. Evidence at p.62.

Particulars at p.20 G.1 to 3 contradicts evidence at p.63 FG - regarding payment of tribute.

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P.W.1's evidence p.46, p.47 - no evidence of a real agreement.

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P.W.3's evidence at p.74 AB - no
reference to assisting generally.

Adjourned to 2.30 p.m.

Thomson L.P.: We don't wish to hear you on the
claim under the contract.

Dunbar (continuing): As to the claim under section 71 of
the Contracts Ordinance, see Pollock
and Mulla p.431 - accepts and enjoys.
The road is built on Government land.
Pollock p.432 - the benefit must be
direct. The road is Government
property. Once the settlement
between Appellant and 2nd Respondent
took place the benefit went to 2nd
Respondent. If the mine has come
back to 1st Respondent, he is no
better off. All he gets is his 50
cents.

Hills: D26 is a plan of the proposed road.
It was built in accordance with the
plan.

Dunbar: The fee of \$500 was paid by Appellants
in November 1960.

Hills in reply: At p.166 Pt. II - payment of \$500.
Permit at p.162 - permit to
construct and use Forest Road.

Dunbar said a claim under section 71
was not pleaded. But the facts
were pleaded. And I also mentioned
section 71 in my opening, p.44B and
my closing address, p.135G.

Dunbar said 1st Respondent did not
have the benefit. But 1st
Respondent is the lessee. The mine
is operated by his company. 2nd
Respondent is entitled to tribute.
1st Respondent said his lorries use
the road to take the ore out. This
amounts to acceptance and enjoyment
of the road.

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C.A.V.

Sd. Tan Ah Tah

Singapore.
Thursday, 18th February 1965

Cor: Thomson, Lord
President, Malaysia
Wee Chong Jin, C.J.
Singapore
Tan Ah Tah, F.J.

Civil Appeal No. 14/64
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10 Susar Rotan Mining Ltd. .. Appellants
vs.
Siow Wong Fatt & Anor.. Respondents

A.P. Godwin for A.L.Hills for Appellant
Dunbar for 1st Respondent
2nd Respondent absent

Written judgment delivered by Thomson L.P.
Wee Chong Jin C.J. and I agree.

Godwin: I am not familiar enough with the case
to argue the question of costs today.

20 Dunbar: The argument on section 71 of the
Contracts (Malay States) Ordinance No.
14/50 was quite short. Appeal allowed.
Judgment of Court below varied. Caveat
dated 26.6.62 to be discharged. Appellant
to have half of the costs here and below.

Sd. Tan Ah Tah

Certified True Copy.

Sd. Eng Seong Hooi
Private Secretary to the
JUDGE,
FEDERAL COURT, MALAYSIA

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20.7.65

No. 27.

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA

This litigation arises from a somewhat
complicated series of dealings in relation to
certain mining land in the State of Johore.

On 10th April, 1957, Siow Wong Fatt who is
the respondent to the present appeal applied to

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the Johore State Government for a prospecting licence in respect of an area of land near the Sungai Susur Rotan in the Mukim of Ulu Sungai Sedili, District of Kota Tinggi, in the State of Johore, which I shall call "the land". The licence, which took the form of a permit to search for iron ore in a forest reserve under the Forest Rules, was issued on 21st June, 1960, and on 28th September, 1961, the State Government approved the grant to Mr. Siow of a mining lease in respect of the land. That lease was issued on 23rd January, 1962, and contains the usual provision that no transfer, sub-lease or other dealing in respect of the land should be permitted without the prior approval of the Ruler-in-Council. On the same day (23rd January 1962) a Mining Certificate (No. 603) was granted in respect of a portion of the land.

It would appear that at first Mr. Siow had no intention of exploiting the land himself and on 17th June, 1958, he entered into an agreement with Tan Gek Piah and Tan Song Chiang who carried on business under the style of Tang Hai Mining Company ("Tang Hai"). Briefly, the effect of this agreement (as varied by a supplementary agreement on 2nd December, 1958) was that it purported to assign to Tang Hai such prospecting and mining rights as Mr. Siow might subsequently obtain in respect of the land and to execute in their favour a sub-lease of any mining lease he might obtain. In return Tang Hai was to pay the expenses of obtaining these rights and developing the mine on the land and to pay Mr. Siow a tribute of 50 cents a ton on the ore won. Then, on 3rd July, 1959, Tang Hai entered into an agreement with one Chan Sai Sow by which in consideration of a tribute of \$1.40 per ton (of which, of course, 50 cents a ton would have to be paid over to Mr. Siow) they purported to assign to him their rights under their agreement of the previous year with Mr. Siow.

A company was then formed, of which Mr. Chan was a director, for the purpose of exploiting the "rights and benefits" of Mr. Chan under his agreement of 3rd July, 1959, with Tang Hai. This was the Kota Mining Company Limited ("Kota") and on 4th December, 1959, Mr. Chan executed a Declaration of Trust to the effect that he held the rights he had obtained from Tang Hai in trust for Kota. Subsequently Mr. Siow became a director of Kota at a date which is not altogether clear in the evidence but could not have been later than April, 1961.

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Some time in 1960 Chua Ho San, said to be a wealthy miner of considerable experience, came to interest himself in the land. The evidence is silent as to his activities but he died during the year and on his death his widow and daughter formed a Company which was incorporated under the name of Susur Rotan Mining Limited in September, 1960. This Company ("Susur Rotan") is the appellant in the present appeal.

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10 On 19th September, 1960, Susur Rotan entered into two agreements with Kota. By these agreements Kota purported to assign their rights in respect of the land to Susur Rotan in return for a tribute of \$4.30 a ton and the same day they were paid \$40,000 by way of an advance of consideration. It was probably at some time after this that Mr. Siow became a director of Kota.

20 Soon after their formation in September 1960, Susur Rotan started to prepare for the exploitation of the mining rights which in view of the series of agreements which have been related they entertained reasonable hopes of obtaining in the more or less near future. And, in circumstances which were the subject of controversy at the subsequent trial, they spent a great deal of money mainly in connection with the making of a road to the mining land, which thitherto was only accessible by sea, which they hoped might accelerate the granting of the necessary instruments by the State and would also, of course, be necessary for the future working of the mine.

30 Miss Chua, the daughter of the deceased Chua Ho San, who was a director of Susur Rotan, said that this is what happened and her evidence was supported by that of her mother. Mr. Siow, who knew of the agreements between Susur Rotan and Kota as well as of the agreement between himself and Tang Hai, approached Susur Rotan to make an access road to the mine. At the same time Susur Rotan were worried about so many parties being involved in the chain of agreements by reason of which they expected to obtain the sub-lease of the land. About Chinese New Year (15th February) 1961 Miss Chua had a meeting with Mr. Siow and others, including Chan Sow Sai of Kota, at which Mr. Siow suggested that the question of the sub-lease should be dealt with by his granting it direct to Susur Rotan because Susur Rotan were to be the actual miners and the other parties to the various written agreements would not object as all they were interested in was

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getting their tribute. This suggestion was repeated a few days later at a meeting in Singapore at which Mr. Chan was not present and it was accepted by Susur Rotan who on the strength of it and at Mr. Siow's request proceeded to construct the access road which was completed some time in December at a cost of about \$100,000. None of this was reduced to writing.

Prior to this alleged oral agreement Susur Rotan had spent some small sums of money in the name of Mr. Siow in respect of obtaining permission to make the road, permission to erect a "kongsi house" for labourers and to obtain some necessary land for the dumping of ore prior to shipment, and after the alleged agreement they spent money on the preparation of a mining scheme, the fate of which is not clear from the evidence, and obtaining permission for the erection of a jetty at the place where the ore was to be loaded and obtaining some state land for the erection of a conveyor belt. The amounts involved were, however, small and it is not necessary to consider these transactions in detail beyond observing that they were all carried out either in the name of Mr. Siow or of Kota. The main and indeed the only substantial matter of expenditure was the construction of the road.

Then in January 1962, Mr. Siow had a conversation with Miss Chua and her mother Yeo Lew Soo, who was the Chairman of the Board of Directors of Susur Rotan, at which he suggested that Chan Sai Sow of Kota should be the manager of the mine for Susur Rotan. Miss Chua and Madam Yeo were not agreeable to this. Mr. Siow then asked why they did not give up the mine and said somebody else in Singapore was interested in it. He then took his departure.

Mr. Siow's account of these events was different. He said that shortly after the formation of Kota (which was in December, 1959) Kota started to cut boundary lines round the land for which he had applied and to carry out a great deal of prospecting work with the assistance of a firm of engineers by the name of Valentine and Dunne. Then the deceased Chua Ho San (the father of Miss Chua) came on the scene and he thought that Chua Ho San was arranging to work the mine for Kota as some sort of contractor. After Chua's death he heard of some arrangement between Kota and Susur Rotan and when he became a director of Kota in the early part of 1961 Chan Sai Sow told him that

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there were two agreements between Kota and Susur Rotan, one by which Susur Rotan were to work the mine as contractors for Kota and another by which Kota after they had obtained a sub-lease from him were to execute a sub-sub-lease in favour of Susur Rotan.

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10 He denied that he ever made any promise to Susur Rotan to grant them a sub-lease direct and he denied that he ever asked them to make the road; in fact he did not want the road, it was Kota who wanted it. He admitted that applications were from time to time made in his name in connection with the prospective working of the mine but these were not made at his request. Everything that was done, so far as he was concerned, was a matter of arrangement between Susur Rotan and Kota.

20 Whatever truth, if any, may lie in these two conflicting versions of the relations between Mr. Siow and Susur Rotan it is common ground that when Mr. Siow was granted a mining lease in respect of the mining land and a mining certificate was issued in his name on 23rd January, 1962, no steps were taken by anybody to grant a sub-lease or to effect any assignment of any rights under the mining certificate in favour of Susur Rotan.

30 Ultimately, to complete the narrative, Mr. Siow entered into certain other arrangements for the mining of the land. Mr. Siow's own version of these was that he made an arrangement with a Company known as Siow Wong Fatt Mining Company, Limited, of which he is a director, under which this Company worked the land on his behalf for a payment of \$14 a ton. He then sold the ore to one Chng Kee Huat for \$20 a ton. Out of this he paid \$5.50 a ton to Kota, out of which Kota paid 84½ cents a ton to Tang Hai. The production of the mine at the time of the trial was about 5,000 tons a month and at that time, therefore, Mr. Siow was making a profit of \$2,500 a month plus the two unknown quantities of his share in the \$14 a ton paid to the Siow Wong Fatt Company and of his share in the \$4.65½ a ton retained by Kota as against the \$2,500 a month only that he would have got from his 50 cents a ton tribute under his agreements with Tang Hai.

The present litigation arose in the following way.

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Soon after the granting of the sub-lease on 23rd January, 1962, it appeared to be reasonably clear that Mr. Siow had no immediate intention of granting a sub-lease to anybody that would enable any of the written agreements which had been executed to be carried out and a long correspondence accordingly commenced among the various parties and their solicitors which it is not necessary to relate in detail.

As regards Kota, that correspondence ended in a letter dated 15th March 1962, from their Solicitors to Susur Rotan's solicitors by which in effect they repudiated the agreements of 19th September, 1960.

As regards Mr. Siow, Susur Rotan's Solicitors wrote a letter to his solicitors dated 27th March, 1962, which set out the chain of agreements commencing with Mr. Siow and ending with Susur Rotan and concluding "In accordance with the interpretation of the Agreements in question, you are now under a personal obligation to execute a sub-lease or Transfer of the mining land in favour of our clients". The reply to that was on 11th April 1962, and simply said "There was no agreement between Mr. Siow and your clients".

Ultimately on 27th July, 1962, Susur Rotan lodged a caveat against the land and on 17th September, 1962, they commenced the present proceedings against Mr. Siow and against Kota.

Against Kota the claim was based on the repudiation of the agreements of 19th September 1960. It is not necessary to discuss this claim in detail for at the commencement of the subsequent trial Kota consented to judgment being entered against them for \$30,000.

As against Mr. Siow the case as pleaded was that about the time of the Chinese New Year (15th February), 1961, it was orally agreed between the parties that in consideration of Susur Rotan taking such steps as were necessary to enable Mr. Siow to obtain a mining lease and to assist him in preparation for mining generally, he would, if and when granted a mining lease, grant to Susur Rotan a sub-lease subject to a tribute of 50 cents a ton to be paid by them. In part performance of this oral agreement the plaintiffs had spent considerable sums of money (which were specified) on preparing a mining scheme, conducting prospecting operations, constructing a road to the land and

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for other purposes and had entered into possession of the land. In the circumstances they claimed specific performance of the alleged oral agreement or alternatively damages, appointment of a receiver and such further and other relief as the Court might deem fit. And, although this was not pleaded in terms, counsel for Susur Rotan made it clear both in his opening and his closing addresses that it was his clients' case that if they failed in their claim under the alleged oral agreement then they were in any event entitled to compensation under section 71 of the Contracts Ordinance.

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The case came on for trial at Johore Bahru on 10th November, 1963, and at the commencement of the trial counsel for Susur Rotan announced the settlement between his clients and Kota whereby Kota submitted to judgment for \$30,000 in full and final satisfaction of the claim against them, each side to pay its own costs. Kota having thus disappeared from the scene the case went on against Mr. Siow in whose favour judgment was eventually entered.

Against that decision Susur Rotan have now appealed.

The trial Judge dealt with the evidence in a long and careful judgment and came to the conclusion that Susur Rotan had failed to prove the oral agreement on which they based their claim and had failed to prove that they had built the access road to the mine in accordance with, or as part of the consideration for, any such agreement and it was on these grounds that he dismissed the claim. He did not, however, consider the question of whether Susur Rotan were entitled to compensation under section 71 of the Contracts Ordinance.

The present appeal falls into two parts. First, it is said that the finding that there was no oral contract as pleaded by Susur Rotan is wrong. Second, it is said that even if that finding was not wrong nevertheless Susur Rotan were entitled to some monetary compensation by reason of Section 71 of the Contracts Ordinance. These two parts of the appeal will have to be dealt with separately.

The question of the oral agreement is essentially a question of fact but as the Judge has not expressed any views as to the relative credibility of the witnesses, particularly Mr.

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Siow and Miss Chua, it is open to this Court to consider the whole question in the light of the recorded evidence.

It will be convenient to commence as examination of the evidence by considering the probable state of mind of the parties early in 1961. At that time Mr. Siow had agreed to grant a sub-lease to Tang Hai and he knew that the benefit of that agreement had passed to Kota and that Susur Rotan had acquired the benefit of it by virtue of their agreements with Kota. What he was to get was his tribute of 50 cents a ton. Susur Rotan had their agreements with Kota and they knew of the antecedent agreements forming the chain which led to them from Mr. Siow. The effect of these was in effect that they were to get the sub-leases (or a sub-sub-lease) when the mining lease was granted to Mr. Siow and they were to pay a tribute of \$4.80 a ton to Kota. In the circumstances it was in the interest of both parties that the grant of the lease to Mr. Siow and the getting of the mine into production should be accomplished as soon as possible for the sooner these things were done the sooner would Mr. Siow start receiving his tribute and the sooner would Susur Rotan start making their mining profits. Kota, whose position was known to both sides and who also had an interest in the mine being brought into production so that they could start receiving their tribute of \$4.80 a ton, were still taking an active interest in the whole affair. In all the circumstances it is at the lowest possible that nobody was very interested as to who did what in the name of whom so long as progress was made towards the common end of getting the mine into production.

Again, it is difficult to see that either party had any motive for making the alleged oral agreement for a direct sub-lease to Susur Rotan. Mr. Siow certainly had no such motive. If he was an honest man he did not stand to gain by it in any way. And if he was a dishonest man and was already regretting his agreement with Tang Hai and looking for a more profitable way of exploiting his lease it was still loss to his interest to do anything in the way of enabling Susur Rotan to acquire contractual rights directly against himself, particularly in the light of his own close relations with Kota.

Nor did Susur Rotan stand to gain from such a new agreement. Miss Chua said she was worried

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about the sub-lease having to pass through so many hands before it passed to Susur Rotan and that in effect she would feel a greater sense of security if she had a direct agreement with Mr. Siow. This no doubt showed a business-like lack of faith in human nature and in the infallibility of lawyers. It is, however, not very easy to reconcile with the fact that her agreements with Kota had been drawn up by her solicitors who had before them the antecedent agreements in the chain. Frankly it seems incredible that she should think she would derive any advantage from the substitution of an oral agreement for a series of carefully drafted written agreements.

Again, the fact that the road was made does not carry the argument very far in any direction. There was no satisfactory evidence that the making of the road would accelerate in any way the granting of the lease to Mr. Siow. On the other hand it was something that would have to be done some time as part of the development of the mine, and be done at the expense of Susur Rotan as the operating company in whatever way the sub-lease came to them. As has been said the sooner it was done the better, but the better for both parties.

Finally, there is the extraordinary fact that until long after the parties fell into dispute Susur Rotan made no attempt to set up the alleged oral agreement. Miss Chua said that she had preferred this oral agreement as being more reliable and offering greater security than the chain of written agreements. There was a great deal at stake. It was not something she would be likely to forget when the interests of her Company were imperilled. And yet we find that as late as 27th March, 1962, the Company's solicitors wrote a letter to Mr. Siow reciting the various written agreements in the chain and stating:-

"In accordance with the interpretation of the Agreements in question, you are now under a personal obligation to execute a sub-lease or Transfer of the mining land in favour of our clients."

In this letter there is not a word about any oral agreement.

The reply to that by Mr. Siow's solicitors on 11th April, 1962, was that "there was no agreement between Mr. Siow and your clients" which might have

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been expected to elicit the reply that although there might not be any written agreement there was an oral one. There was no such reply. Three months later, on 26th June, 1962, a caveat was lodged against the land which was signed and sworn to by Miss Chua who is sufficiently familiar with English to be able to give evidence in that language. This recited the written agreements but did not mention any oral one.

Indeed no mention whatsoever was made of the alleged oral agreement until the endorsement of claim on the Writ which was issued on 17th September 1962.

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On all this it is clear that Miss Chua did not tell her solicitors about the oral agreement until at any rate after the lodging of the caveat. Her explanation of this was not convincing. It did not occur to her to write to Mr. Siow or to tell her lawyer about the oral agreement. She was lost. She had completely forgotten about it until she suddenly remembered when she was looking through her documents and came across a resolution in the minute book of the Company.

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This resolution which was signed by Miss Chua and her mother and dated 18th February, 1961, read as follows:-

"RESOLVED that the Company be and is hereby authorised to start construction of the ROAD and to do all that are reasonably necessary in order to help Mr. Siow Wong Fatt to obtain a Mining Lease on the Assurance of Mr. Siow Wong Fatt that he will transfer the sub-lease direct to us when the Mining Certificate is issued by the Authority."

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There is, however, room for doubt as to whether the record of this resolution was made on the date which appears on the face of it. It is pasted on to the very first page of the unpaginated volume in which it occurs, an operation which could have been carried out at any time. Moreover it occurs only nine pages prior to a resolution purporting to authorise the lodging of the caveat of 26th June 1962, and it is difficult to suppose that Miss Chua should not have come across it at that stage at the very latest had it been then in existence and in the position it now occupies in the book.

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10 In all the circumstances, then, as they have been related I am compelled to the conclusion that there is a strong balance of probability against there having been any oral agreement of the sort alleged by Miss Chua. It is not necessary to go so far as to say that the whole thing was a deliberate concoction. It may well be that in the course of conversations Mr. Siow may have laid much stress on the consideration that Susur Rotan was going to get the sub-lease in the end and that the effect on Miss Chua's mind of increasing anxiety as to whether approaching litigation might not rob her Company of the fruits of the chain of agreements may have been to affect her recollection of these conversations. Nevertheless it is hardly possible to disagree with the trial Judge's finding that Mr. Siow made no promise of the sort alleged.

So much for the first part of the appeal.

20 There remains, however, the other part of the appeal, the question of compensation under section 71 of the Contracts Ordinance. That section, which is the same as section 70 of the Indian Contract Act, reads as follows:-

30 "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

40 As is pointed out by the editors of Pollock and Mulla on "The Indian Contract Act" (8th Ed.; p.424), "this section goes far beyond English law". Moreover its interpretation is, to my mind, to be approached in the light of certain observations of the Privy Council in the case of Ramanandi Kuer v. Kalawati Kuer⁽¹⁾ and Chunna Malram Nath v. Mool Chandram Bhagat.⁽²⁾ In the former case Lord Sinha said this (at p.227):-

"It has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper

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(1) (1928) I.L.R. VII Patna 221.

(2) (1928) I.L.R. IX Lahore 510.

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course is to examine the language of that Statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law - or of the English law upon which it may be founded."

And in the latter case Lord Atkinson said this with reference to section 63 of the Indian Contract Act (our section 64) (at p.518):-

"The language of the section.....
ought not to be enlarged by any implication
of English doctrines."

Now, it has never been denied that during the course of their relations with Mr. Siow Susur Rotan spent a great deal of their own money. Some of it was spent on taking steps that were necessary before the State would grant Mr. Siow his lease; most of it was spent on things, particularly the making of the road to the mining site, which were necessary, or at any rate highly desirable, for the profitable development of the mine, though I would pause here to observe that in my view a sum of some £2,000 that was spent on obtaining a mining scheme from a firm of engineers by the name of Wilkins does not fall within either of these categories because the evidence as to what use, if any, was ever made of this scheme is far from clear.

But in both categories the money was spent for Mr. Siow in the sense that when it was spent only Mr. Siow had any standing in relation to the land and it was spent with his knowledge, even though it be true as he alleged that he did not know whether Susur Rotan or Kota (it could not have been anybody else) was spending it. It was not spent gratuitously because Susur Rotan clearly had no intention that anybody else should have the benefit of it for nothing. And the person who has enjoyed the benefit is Mr. Siow. The money had to be spent by somebody to transform Mr. Siow's prospects and then his lease into a profitable mining proposition, it had to be spent by somebody at some time, and it seems a matter of ordinary common sense that the fact that it had been spent and did not have to be spent in future must have affected the nature of Mr. Siow's subsequent arrangements with Siow Wong Fatt Mining Company Limited, and Kota. In the circumstances it seems clear that Mr. Siow must pay compensation under Section 71.

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For Mr. Siow it has been urged that even if he would otherwise be liable to pay such compensation Susur Rotan are not entitled to recover it in the present proceedings because no claim for it was specially pleaded. Compensation under the section is analogous to special damages and like special damages must be specially pleaded.

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of Malaysia
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(Contd.)

10 Now, the point, though this of course does not of itself deprive it of merit, is a very technical one. After all the Statement of Claim sets out particulars of the money that was spent by Susur Rotan and counsel for the Company made it quite clear both in opening and closing his case that if he failed on his claim in contract as pleaded he would none the less be entitled to his remedy under section 71.

20 The point, however, rests on an analogy. An analogy is not an argument and any analogy between what may compendiously be called an English remedy and an Indian remedy calls for careful scrutiny.

30 The expression "damages" is habitually used by lawyers in this country in relation to contract irrespective of whether the law applicable is, as in Singapore, the English Common Law or, as in Johore, the Contracts Ordinance. But the word "damages" is nowhere to be found in the Contracts Ordinance. The word that is used throughout the Ordinance is "compensation" and it is used in a wider sense than the word "damages" bears in English law; it includes every pecuniary remedy under the Ordinance, not only "damages" and "compensation" as distinct from damages as these expressions are used in England in relation to contract, but also remedies unknown to the English law as under section 71.

40 The question of pleading was considered by the Privy Council in the case of Raja Mohan v. Manzoor Ahmad⁽³⁾ in relation to section 65 of the Indian Contract Act which is the same as section 66 of our Ordinance. The claim in that case had been based on a mortgage which the Court found to be invalid and the Chief Court of Oudh had refused to entertain a claim for compensation under section 65 because it had not been pleaded.

(3) (1943) A.I.R. (P.C.) 29, 34.

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Appellate
urisdiction)

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udgment of
homson, Lord
resident.
alaysia.
8th February
965.
(Contd.)

In the event, however, the Privy Council (per Sir George Rankin) said this:

"With all due respect to the Chief Court, their Lordships think that their attitude towards the question of pleading was unduly rigid. A defendant who when sued for money lent pleads that the contract was void can hardly regard with surprise a demand that he restore what he received thereunder.....

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.....
There is no reason to apprehend that by allowing the appellants to obtain relief under S.65 any injustice to the respondents can result. On the contrary, *prima facie* it is hardly just that the rights of the parties in respect of the transaction of 12th August 1919, should be dealt with in part and in part postponed. Though a matter of discretion a result so inconvenient needs to be justified by solid reason and their Lordships see no sufficient reason to prevent restitution being ordered in this case."

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Much the same thing was said by the Supreme Court of India in relation to Indian section 70 (our section 71), the relevant section in the present case, in the case of Subramanyam v. Theyappa⁽⁴⁾ where it was said:-

"If a party to a contract has rendered service to the other not intending to do so gratuitously and the other person has obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him: even if he failed to prove an express agreement in that behalf, the Court may still award him compensation under section 70 of the Contract Act. By awarding a decree for compensation under the Statute and not under the oral contract pleaded, there was in the circumstances of

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(4) (1961-1) Mad. L.J. (S.N.) 30 (S.C.).

this case no substantial departure from the claim made by the respondent."

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Federal Court
of Malaysia
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10 It will be observed that in neither of these cases is there any reference to differences between Indian procedure and English procedure.

It is to be noted, however, that the relevant Indian rule is rule 7 of Order 7 in the First Schedule to the Code of Civil Procedure which is the same as our Order 20 rule 6 and Order 20 rule 6 of the English Rules of 1883.

And in any event the practice of the Courts in England "has been to consider and deal with the legal result of pleaded facts, though the particular legal result alleged is not stated in the pleadings" (per Scrutton, L.J.: Lever Bros. v. Bell)⁽⁵⁾

20 I am therefore of the opinion that Susur Rotan are entitled to compensation equivalent to all moneys spent by them in relation to Mr. Siow's mining land (other than the payment to Messrs. Wilkins which has been mentioned) and that the judgment of the Court below should be varied by being entered in their favour for that amount, to be ascertained in default of agreement by the Registrar under Order 36 rule 57.

As regards costs, clearly there will have to be some sort of apportionment but I would wish to reserve my opinion till we have heard counsel.

Sgd: J.B. Thomson.

30 LORD PRESIDENT,

FEDERAL COURT OF MALAYSIA.

Singapore,
18th February, 1965

A.L.Hills Esq. for appellants.

T.G.Dunbar Esq. for respondent l.

TRUE COPY

Sd: Tneh Liang Peng
(TNEH LIANG PENG)

Secretary to the Lord President
Federal Court of Malaysia. 1.3.65

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(5) (1931) 1 K.B. 557, 583.

In the
Federal Court
of Malaysia
(Appellate
Jurisdiction)

NO. 28

ORDER OF FEDERAL COURT

IN OPEN COURT

This 18th day of February, 1965.

No.28

Order of
Federal Court.
18th February
1965.

THIS APPEAL coming on for hearing on the 17th and 18th days of September 1964 in the presence of Mr.A.L.Hills of Counsel for the above named Appellants and Mr.T.G.Dunbar of Counsel for the above named 1st Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment and the same coming on for Judgment this day in the presence of Mr.A.P.Godwin of Counsel for the Appellants and Mr.T.G.Dunbar of Counsel for the 1st Respondent IT IS ORDERED that this appeal against the Judgment of the Honourable Mr.Justice Azmi dated the 22nd day of January 1964 in so far as it dismissed the Plaintiffs claim for specific performance and in the alternative damages for breach of the oral contract alleged by the Appellants be and is hereby dismissed AND IT IS ORDERED that this appeal against the said Judgment in so far as it dismissed the Plaintiffs claim for compensation under section 71 of the Contract Ordinance be and is hereby allowed and that the Judgment of the Honourable Mr.Justice Azmi dated the 22nd day of January, 1964, be varied by directing that judgment be entered in favour of the Plaintiffs for the amount of compensation equivalent to all moneys spent by the Plaintiffs in relation to the 1st Defendant's mining land (other than the payments to Messrs. Wilkins), such amount to be agreed between the parties or in default of agreement to be ascertained by the Registrar under Order 36 Rule 57 AND IT IS FURTHER ORDERED that the above named 1st Respondent do pay to the above named Appellants one half of the costs of this Appeal and of and incidental to the inquiry before the Registrar (if any) and of the trial of the action to be taxed AND IT IS FURTHER ORDERED that the sum of \$500.00 (Dollars five hundred only) lodged in Court as security for the costs of this Appeal be paid out to the Appellants AND IT IS LASTLY ORDERED that the Caveat dated the 26th day of June 1962 registered by the above named Appellants against the land comprised in Prospecting Permit 141/59 in the Mukim of Ulu Sungei Sedili, District of Kota Tinggi, Johore,

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including such land as is now contained in Johore Mining Certificate No. 603 issued to the above named 1st Respondent be cancelled or removed from the register.

GIVEN under my hand and the seal of the Court this 18th day of February, 1965.

Sd: Raja Azlan Shah,

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA,
KUALA LUMPUR.

In the
Federal Court
of Malaysia
(Appellate
Jurisdiction)

No. 28
Order of
Federal Court
18th February
1965.
(Contd.)

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No. 29

AFFIDAVIT OF SIEW WONG FATT
(NOT PRINTED)

No. 30

NOTICE OF MOTION
(NOT PRINTED)

No. 30

No. 31

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO HIS
MAJESTY THE YANG DI-PERTUAN AGONG

No. 31

(NOT PRINTED)

20

In the
Federal Court
of Malaysia
(Appellate
Jurisdiction)

No. 32

ORDER ALLOWING FINAL LEAVE TO APPEAL TO HIS
MAJESTY THE YANG DI-PERTUAN AGONG.

No.32
Order allowing
final leave to
Appeal to His
Majesty The
Yang Di-
Pertuan Agong.
30th August,
1965.

BEFORE: THOMSON, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA;
ONG, JUDGE, FEDERAL COURT, MALAYSIA:
AND
AZIZ, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT
THIS 20TH DAY OF AUGUST 1965.

O R D E R

UPON MOTION made unto the Court this day by Mr. Thomas George Dunbar of Counsel for the 1st Respondent above named in the presence of Mr. K. S. Nathan of Counsel for the above named Appellants AND UPON READING the Notice of Motion dated the 24th day of July 1965 and the Affidavit of Chiang Mun Fong affirmed on the 23rd day of July 1965 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that Final Leave be and is hereby granted to the 1st Respondent to appeal to His Majesty the Yang Di-Pertuan Agong against that part of the Judgment and Orders of the Federal Court of Malaysia made and given herein on the 18th day of February 1965 as allowed the appeal on the claim for compensation and ordered the 1st Respondent to pay to the above named Appellants one half of the costs of the Appeal and of and incidental to inquiry before the Registrar (if any) and of the trial of the action to be taxed AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the cause.

Given under my hand and the seal of the Court this 30th day of August 1965.

Sgd. Pawan Ahmad Bin Ibrahim Rashid

CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

PART IIEXHIBITSEXHIBIT "A" (1)

Application for Prospecting Licence, 10th April, 1957.

EXHIBITS"A" (1)

Application
for
Prospecting
Licence.
10th April,
1957.

STATE OF JOHORE

SCHEDULE N.

APPLICATION FOR PROSPECTING LICENCE

Address: Siow Wong Fatt 27 J. Tambatan K.Tinggi

Date: 10th April 1957

10

Sir, - I have the honour to apply that I may be granted a licence under the Mining Enactment, 1922, to prospect for Lead & Tin Ore over an area of 600 acres; with the right to select 600 acres within this area and to receive a lease therefor.

2. The land can be pointed out by Siow Wong Fatt who lives at 27 J. Tambatan K.T.

3. My address, to which any communication concerning this application may be sent by post, is

4. I herewith deposit the sum of \$10/2 to cover the prescribed fees.

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I am, Sir,

Your obedient servant,

(Signature)

EXHIBITS

"A" (3)
Letter,
Collector of
Land Revenue
to First
Defendant.
20th April
1957.

EXHIBIT "A" (3) LETTER, COLLECTOR OF
LAND REVENUE TO FIRST DEFENDANT,
20th April, 1957.

(G.33) Gen.21

Land Office, Kota Tinggi,
K. Tinggi, 20.4.57.

No.CLRKT.M/22/57/(2)

SUBJECT

10 P. Licence for lead & tin ore
over 600 acres at Sg. Susur Rotan, Ulu
Sg. Johore

Sir,

I have the honour to acknowledge the receipt
of your letter No. - dated the 10th April, 1957,
enclosing \$10/- cash the contents of which are
receiving attention.

2. Enclosed, please find receipt A
No. 820881/18.4.57 for retention.

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

Sd: Illegible.

for Collector of Land Revenue,
KOTA TINGGI

To,

Mr. Siow Wong Fatt,
27 Jalan Tambatan,

HAR.

KOTA TINGGI.

EXHIBIT "A" (51) AGREEMENT, FIRST
DEFENDANT AND TANG HAI MINING CO.
17th June 1958.

Singapore	Stamp Office
17 VI 58	0050
Stamp Office.	Singapore.

EXHIBITS"A" (51)

Agreement,
First
Defendant and
Tang Hai
Mining Co.

17th June
1958.

AN AGREEMENT made the 17th day of June one thousand nine hundred and fifty-eight (1958) Between SIOW WONG FATT (NRIC NO.422777 (KT) of No.26 Jalan Ja'afar, Kota Tinggi, Johore (hereinafter called "the Applicant") of the one part and TAN GEK PIAH of No.155 Charlton Road, Singapore and TAN SONG CHIANG of No.421-9 Upper Serangoon Road, Singapore, trading in partnership under the style of TANG HAI MINING CO. at No.421-9 Upper Serangoon Road, Singapore (hereinafter called "the Prospectors") of the other part.

WHEREAS the Applicant has applied to the Collector of Land Revenue, Kota Tinggi, for a prospecting licence under the Mining Enactment 1922 to prospect for iron ores and other minerals over 600 acres of State Land at Sg. Susur Rotan in the Mukim of Ulu Sungei Sedili Johore (hereinafter referred to as "the said State Land") under reference CIRKT.M.22.57(2) and his duly paid a deposit of Dollars Ten (\$10.00) vide receipt A.No.820881 dated the 18th day of April, 1957.

AND WHEREAS the aforesaid application of the Applicant is still pending consideration and approval by the appropriate authorities concerned.

AND WHEREAS the Applicant has now agreed with the Prospectors to allow the Prospectors full licence and authority to enter upon the said State Land to search for iron ore and/or other minerals when the Prospecting Licence is issued by the appropriate authority concerned subject to the terms and conditions laid down in the Prospecting Licence and/or under the Mining Enactment and subject to any other conditions as may be imposed by the Authorities from time to time.

EXHIBITS"A" (51)

Agreement,
First
Defendant and
Tang Hai
Mining Co.

17th June.
1958.

(Contd.)

WHEREBY IT IS AGREED as follows:-

1. In pursuance of the said agreement and in consideration of the sum of Dollars three thousand (\$3,000.00) paid by the Prospectors to the Applicant by way of loan (the receipt whereof the Applicant hereby acknowledges) the Applicant shall within one week after the Prospecting Licence is issued by the appropriate authorities concerned hand over to the Prospectors the said Prospecting Licence and any other relevant documents and allow the Prospectors and their servants or agents and workmen to enter upon the said State Land and make all proper searches and trials for iron ores and/or other minerals and work all minerals discovered at their own expense subject to the terms and conditions so laid down in the Prospecting Licence and/or under the Mining Enactment and subject to any other conditions as may be imposed by the Authorities from time to time.

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2. The Prospectors shall:

(a) from time to time be responsible to advance to the applicant on loan such sum or sums of money as may be required to enable the Applicant to pay to the appropriate authorities the premium survey and other fees which are payable before the issue of the Prospecting Licence;

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(b) commence to prospect the said State Land within 3 months from the date of receipt of the notice from the Applicant notifying the issue of the Prospecting Licence, unless the failure be so commence prospecting is shown to be due circumstances beyond their control and not to their own fault in which case the Applicant shall grant such reasonable extension of time as may be mutually agreed upon;

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(c) on commencing to prospect the said State Land supply at their own expense the requisite tools and other equipments and the necessary labour to prospect and bore the said State Land under the supervision of

a Mining Engineer who shall supervise and report on such boring operations and shall supply to the Applicant free of charge copies of the boring plan and of the boring results:

EXHIBITS"A" (51)

Agreement,
First
Defendant and
Tang Hai
Mining Co.
17th June
1958.

(Contd.)

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- (d) complete such prospecting operations within 6 months from the date of the commencement of prospecting unless they can satisfy the Mines Department and the Applicant that an extension of time is reasonably required;
- (e) during the aforesaid period or extended period of prospecting observe and comply with all the requirements under the Mining Enactment, Emergency Regulations and Workmen's Compensation Ordinance;
- (f) apply through the Applicant all alienated lands which they may require to prospect under the same terms and conditions contained herein.

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3. If after boring and prospecting the Prospectors do not wish to carry on mining operations on the said State Land, the sum of \$3,000.00 so advanced under clause 1 hereof and any sum or sums of money so advanced under 2(a) hereof shall be deemed as forfeited to the Applicant and this Agreement shall become null and void without notice on either party.

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4. If the Prospectors shall successfully find iron ores and/or other minerals on the said State Land and are willing to carry out mining operations on the said State Land according to the terms and conditions hereinafter contained, the Applicant shall forthwith apply to the appropriate authorities concerned for the issuance to him of a Mining Certificate or Lease.

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5. On approval by the appropriate authorities of the aforesaid application for a Mining Certificate or Lease, the Prospectors shall at the request in writing of the Applicant, advance to the Applicant on loan such sum or sums of money as may be required to enable the Applicant to pay to the appropriate authorities the premium survey and other fees which are payable before the issue of

EXHIBITS"A" (51)

Agreement,
First
Defendant
and Tang Hai
Mining Co.

17th June
1958.

(Contd.)

the Mining Certificate or Lease.

6. On the issuance to the Applicant of a Mining Certificate or Lease over the said State Land, the Applicant shall forthwith execute a valid sub-Lease of the State Land in favour of the Prospectors substantially in the form of the Memorandum of Sub-Lease (Schedule X) or the Mining Enactment Cap.147, subject to the following modifications:-

- (a) The Prospectors shall carry out mining operations on the said State Land for iron ores only and the Applicant shall be entitled to carry out mining operations for other minerals at his own expense and shall have free access to the road or roads so constructed by the Prospectors provided that no obstruction shall be caused thereto and to the mining operations carried out by the Prospectors. 10
- (b) The Prospectors shall commence mining operations on the said State Land within one year from the date of executing the aforesaid Sub-Lease. 20
- (c) The Prospectors shall keep proper record book for the production of iron ores and the Applicant shall have free access at all reasonable times to inspect the said record book.
- (d) The Prospectors shall on execution of the aforesaid Sub-Lease advance to the Applicant a further loan of Dollars Twenty thousand (\$20,000.00) and shall pay to the Applicant a tribute of Dollars One (\$1.00) per long ton of iron ore extracted by the Prospectors from the said State Land. In the event of the prevailing market price of iron ores be reduced to \$18.00 or under per long ton, the aforesaid tribute shall be reduced from \$1.00 to 50 cents per ton. But in the event of the prevailing market price of iron ores be increased from \$60.00 or above per long ton, the aforesaid tribute shall be increased from \$1.00 to \$2.00 per long ton. The aforesaid tribute or varied tribute shall be payable within one week after and in accordance with the tonnage or 30 40

iron ores so extracted from the said State Land for export by shipment has been duly surveyed by the Government.

- (e) The Applicant agrees to allow the Prospectors to deduct all sums advanced on loan under Clause 1, 2(a), 5 and 6(d) hereof from the tribute or varied tribute payable by the Prospectors to the Applicant from time to time and such deduction shall be fifty (50%) per cent of the tribute or varied tribute payable at each time.
 - (f) The Prospectors shall allow the Applicant to run a provision shop to be erected on the State Land at the expense of the Applicant without in any way infringing the provisions of Law in existence as soon as a Sub-Lease is entered into between the parties hereto.
 - (g) The Prospectors shall be at liberty to transfer or assign the said Sub-Lease provided the written consent of the Applicant shall have been first obtained, such consent however is not to be unreasonably withheld.
 - (h) The Prospectors shall apply through the Applicant all alienated lands which they may require to carry out mining operations under the same terms and conditions contained herein.
 - (i) The Prospectors shall comply with the terms and conditions imposed by the appropriate authorities regarding filling and levelling conditions and undertake to furnish sureties to the satisfaction of the Government to execute a bond as required by the Government.
7. This Agreement shall be binding upon the parties hereto their heirs, executors and administrators and assigns.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first

EXHIBITS

"A" (51)

Agreement
First
Defendant
and Tang Hai
Mining Co.

17th June
1958.
(Contd.)

<u>EXHIBITS</u>	above written	
"A" (51)	SIGNED by the above named)	
Agreement	TAN GEK PIAH and TAN SONG }	
First	CHIANG trading as: TANG }	
Defendant	HAI MINING CO. in the }	
and Tang Hai	presence of : - }	
Mining Co.		Sd:
17th June	Sd: Illegible	
1958.	Advocate & Solicitor	
(Contd.)	Singapore	
	&	
	Federation of Malaya	
		10
	SIGNED by the above named)	Sd: Siow Wong Fatt
	SIOW WONG FATT in the)	(In Chinese)
	presence of :-)	
	Sd: Illegible.	
	Advocate & Solicitor	
	Singapore	
	&	
	Federation of Malaya.	
		20

EXHIBIT "A" (5)

CHANGES IN AGREEMENT
OF 17.6.58
DATED 2nd December
1958.

EXHIBITS

"A" (5)
Changes in
Agreement
of 17th
June, 1958,
dated 2nd
December,
1958.

THIS AGREEMENT made this 2nd day of December 1958, between Siow Wong Fatt i/c. J.42277 of 26, Jalan Ja'afar, Kota Tinggi (hereinafter called the Applicant) and Mr. Tan Gek Piah and Tan Song Ching - jointly known as Prospectors, of 421-9 Upper Serangoon Road, Singapore, do hereby confirm and rectify the under mentioned changes in the original Agreement made and signed on 17.6.58 by Lawyer Tan Wee Chong of Singapore.

- 10
1. The Applicant, Mr. Siow Wong Fatt, do willingly, agree that the original tribute fee of \$1.00 be cancelled to read as 50 cents, tribute. This is willingly agreed by the Applicant in view of the fact that several changes regarding the original Agreement is to be altered. Instead of receiving a tribute of \$1.00 per ton, the Applicant is willing to receive 50 cents per ton because the prospectors have Agreed to bear the cost of all expenses incurred in connection with the Application made by the Applicant to the Collector of Land Revenue, Kota Tinggi.
- 20
2. In the original Agreement of 17.6.58, it was agreed, that the Applicant shall repay the costs incurred or loaned with regard to the obtaining of the Mining Lease. Now it is agreed by both parties, willingly, that, ALL EXPENSES incurred for obtaining full rights up to paying of Grant fees etc., shall be borne by the Prospectors, and that this expenses shall not be recovered from the Applicant.
- 30
3. Further, Item 5 (D) in original Agreement of 17.6.58, it was proposed to loan to the Applicant \$20,000.00. Whereas now the Applicant has willingly agreed to receive
- 40

EXHIBITS

"A" (5)
 Changes in
 Agreement
 of 17th
 June, 1958,
 dated 2nd
 December,
 1958.
 (Contd)

only \$10,000.00 (Ten thousand dollars only)
 to be recovered by monthly deductions as
 per terms of original Agreement. To be
 recovered or to be repaid to the prospectors
 by the Applicant, by deductions from
 receivable tribute.

4. Further to the above, it is now strictly agreed, that all other conditions and terms of Original Agreement of 17.6.58 is to be adhered to, when the Mining Lease is obtained. 10
5. The Applicant wish also to state that the Brokers Commission he, will pay only to the person known as Ah Lee, and he is not responsible for any other payment for brokers.
6. Further it is also agreed, that the period for start boring shall be 4 months, and not 3 months as stated in the original Agreement.

Whereunto we willingly, and without any compulsion do set our hands this 2nd day of December, 1958.

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Sd: (In Chinese)

In the presence of: Applicant. Siow Wong Fatt

Sd: Prospectors} Sd:
 Leong Kong Koy}

Sd:

W.D. Samson.

EXHIBIT "A" (57) AGREEMENT,
 TANG HAI MINING CO. and
 CHAN SAI SOW, 3rd July 1959

EXHIBITS
 "A" (57)
 Agreement,
 Tang Hai
 Mining Co.
 and Chan
 Sai Sow,
 3rd July,
 1959.

THIS AGREEMENT is made the 3rd day of July
 one thousand nine hundred and fifty-nine (1959)
 Between TAN GEK PIAH of No.155, Charlton Road,
 Singapore, and TAN SON CHIANG of No.421-9 Upper
 Serangoon Road, Singapore, trading under the
 style of TANG HAI MINING COMPANY at No.421-9
 10 Upper Serangoon Road, Singapore (hereinafter
 called "the Prospectors") of the one part and
 CHAN SAI SOW of No.49 Niven Road, Singapore,
 (hereinafter called "the Assignee") of the other
 part.

WHEREAS

(1) By an Agreement dated the 17th day of
 June 1958 and varied by an Agreement dated the
 2nd day of December, 1958 (hereinafter referred
 to as "the Agreements") made between the
 20 Prospectors of the one part and SIEW WONG FATT
 of No.26, Jalan Ja'afar, Kota Tinggi, Johore
 (therein and hereinafter referred to as "the
 Applicant") of the other part

(2) The Applicant agreed with the Prospectors
 to allow the Prospectors full licence and
 authority to enter upon State Land at Sungai
 Susur Rotan in the Mukim of Ulu Sungai, Sedile,
 Johore, containing 900 acres or thereabouts
 (therein and hereinafter referred to as "the
 30 said State Land") to search for iron ores and/or
 other minerals, subject to the terms and
 conditions laid down in the said Agreements. It
 was further agreed that if the Prospectors
 should successfully find iron ores and/or other
 minerals on the said State Land and were
 willing to carry out mining operations on the
 State Land the Applicant should subject to
 certain terms and conditions execute a valid
 Sub-Lease of the said State Land in favour of the
 40 Prospectors substantially in the form of the
 Memorandum of Sub-Lease (Schedule X) of the
 Mining Enactment Cap.147 subject to certain
 modifications set out in the said Agreements.

EXHIBITS
"A" (57)
 Agreement,
 Tang Hai
 Mining Co.
 and Chan
 Sai Sow,
 3rd July,
 1959.
 (Contd)

(3) The Applicant has given his consent in writing to this assignment.

NOW THIS AGREEMENT WITNESSED as follows:-

(1) In consideration of \$4,500.00 (being equivalent to the Government Deposit paid by the Prospectors on the 6th day of August, 1958 against Receipts Nos.DN.293657 and DN.240391) now paid by the Assignee to the Prospectors (the receipt whereof is hereby acknowledged) as beneficial owners hereby assign unto the Assignee ALL THAT the hereinbefore recited Agreements with the Applicant dated the 17th day of June 1958 and the 2nd day of December, 1958 the full and exclusive benefit thereof together with all moneys now payable or hereafter to become payable by the Prospectors under or by virtue thereof and the benefit of all certificates from time to time hereafter to be given by the Government authorities concerned and also the materials stock engines machinery tools implements scaffolding huts sheds erection plants and effects whatsoever which have been provided and are now in upon or about the said State Land TO HOLD the same unto the Assignee absolutely

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(2) The Assignee hereby covenants with the Prospectors that the Assignee will carry on prospecting under the terms and conditions of the said Agreement and will fulfil observe and perform all the stipulations on the part of the Prospectors contained in the said Agreement and will at all times hereafter save harmless and keep indemnified the Prospectors against all actions proceedings claims demands demand damages and costs whatsoever by reason or on account of the non-observance of the said Agreements or otherwise in relation thereto or on account of the various conditions and terms specified in the said Agreements.

(3) The Prospectors and the Applicant shall apply for and obtain Title Deeds to the said State Land mining and other Government Permits and the expenses thereof shall be paid by the Assignee

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(4) The Assignee shall pay to the Prospectors the royalty of \$1.40 per ton of ore and/or other minerals gotten and sold by the Assignee and calculated on weights as stated in the certificate of export issued by the appropriate authority such royalty to be paid not later than one week after the date of issuance of the certificate of export

EXHIBITS
 "A" (57)
 Agreement,
 Tang Hai
 Mining Co.
 and Chan
 Sai Sow,
 3rd July,
 1959.
 (Contd)

10 (5) The Assignee shall pay a sum of \$30,000.00 as advance of royalties to the Prospectors in the following instalments:-

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- (a) \$4,000.00 before issuance of a P.P. Permit.
- (b) \$5,000.00 immediately on the issuance of a P.P. Permit
- (c) If the Assignee shall be successful in his search for iron ores and/or other minerals \$22,000.00 within one week of the granting of a Permit to commence mining operations.

This sum of \$30,000.00 will be set off against royalties which shall until the full amount is exhausted be calculated at half the rate hereinbefore provided.

(6) If the Assignee shall be unsuccessful in his search for iron ores and/or other minerals the Prospectors shall refund the sum of \$4,500.00 hereinbefore stated.

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(7) If within three months of the issuance of a P.P. Permit Assignee fails to commence and continue to make proper searches and trials for such ores and/or other minerals as aforesaid and fails to furnish a report of such searches and trials to the Prospectors this Agreement shall cease. Any dispute as to whether the Assignee is taking sufficient steps for searches and trials shall be conclusively decided by the mining inspector of the district or if he shall be unable or unwilling to do so by arbitration.

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(8) The Assignee shall permit a representative of the Prospectors to be stationed on the said

EXHIBITS
"A" (57)
 Agreement,
 Tang Hai
 Mining Co.
 and Chan
 Sai Sow,
 3rd July,
 1959.
 (Contd)

State Land and other places to assist in the mining operations and other business in relation thereto and shall give him every assistance in his duties and shall pay for all the expenses of the representative including his board and lodging.

(9) In any of the following cases namely where delay is caused by (i) strike or lock-out of workmen (ii) accident to the mining operations for which the Assignee is not responsible (iii) bad weather (iv) force majeure (v) the acts of King's enemies or other reasonable cause the Prospectors shall grant such extension of time as shall appear to them reasonable.

(10) Disputes shall be referred to one arbitrator.

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

SIGNED SEALED AND DELIVERED } Sd: Illegible.
 by the above named TAN GEK } c/o TANG HAI MINING
 PIAH and TAN SONG CHIANG } CO. 9 Upper
 trading as: TANG HAI } Serangoon Road,
 MINING COMPANY in the } Singapore.
 presence of:- }

Sd: Illegible Interpreted by me -
 (Illegible)

Advocate & Solicitor
 Singapore
 &
 Federation of Malaya.

SIGNED SEALED AND DELIVERED } Sd: S.S. Chan.
 by the above named CHAN SAI } Interpreted by me -
 SOW in the presence of:- } (Illegible)

Sd: Illegible.

Advocate & Solicitor
 Singapore
 &
 Federation of Malaya.

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"A" (6) PERMIT TO SEARCH FOR
IRON ORE, 21st NOVEMBER 1959.

Ref: C.F.J. 125/58

PERMIT TO SEARCH FOR IRON ORE IN THE PANTI
FOREST RESERVE
(Issued under Forest Rule 25)
PERMIT No.141/59.

EXHIBITS

"A" (6)
Permit to
search for
Iron Ore,
21st
November,
1959.

Messrs. Siow Wong Fatt, 26 Jalan Ja'afar,
Kota Tinggi and their employees are hereby
10 permitted to enter part of Panti Forest Reserve
shown in red on the back of this permit in
order to prospect for iron ore subject to the
following conditions :-

- (1) Before any prospecting is begun boundaries indicated in the plan but not following easily identifiable natural features shall be demarcated by the permittee under the supervision of a Forest Officer.
- (2) The permit holder shall allow the Inspector of Mines and any person authorised generally or in particular case by the Conservator of Forests at all reasonable times to inspect any prospecting operations and shall render to the Inspector of Mines within one month of cancellation or expiry of the permit, whichever event may first occur, and in such form as may be prescribed by him in writing a full and true account of the result of his prospecting operations in as many copies as he may require. Such account will, if the Inspector of Mines so requires, be verified by Statutory Declaration.
- (3) In any notice requiring the rendering of such an account, such holder or any other person, shall be informed whether or not sample of bedrock shall be required, and if so required, such holder or other person shall accordingly furnish the said sample as specified.

EXHIBITS
 "A" (6)
 Permit to
 search for
 Iron Ore,
 21st
 November,
 1959.
 (Contd)

- (4) No tree of the species included in Schedule I to "The Forest Rules" shall be felled or injured without the permission of the Conservator of Forests.
- (5) Forest Produce other than of trees listed in Schedule II shall be cut only to such extent as may be essential to the purpose of this permit.
- (6) Before final expiration of the permit all pits, shafts, adits or other excavations shall be filled in to the satisfaction of the Inspector of Mines, provided that any shaft, adit or other excavation agreed by the Inspector of Mines to have possible future use in mining may be left unfilled if securely fenced to prevent any danger or damage to man or beast.
- (7) This permit expires on 31st January 1960 and conveys no right to select an area for a lease. Should an extension to this permit be desired application should be made to the Conservator of Forests not less than one month before the date of expiry.
- (8) The permittee shall deposit the sum of \$ - and such further sums as the Conservator of Forests may require with the District Forest Officer, as a guarantee of good faith and such sum or sums as may be forfeited wholly or in part either in repayment to the Forest Department for restitution of a breach of condition 6 or to revenue by way of liquidated damages for breach of any other conditions of this permit or proportionally or wholly on failure.
 - (i) to complete prospecting within the period of the permit.
 - (ii) or to produce conclusive results of prospecting
 - (iii) or to submit results in accordance with the manner prescribed under conditions 2 and 3.

(9) This permit may be cancelled at any time by the Conservator of Forests for breach of any of its conditions or for cessation of work for one month and in the event of such cancellation the permit holder shall have no claim to the return of any money paid to or deposited with the Government, nor to any damages on account of such cancellation.

EXHIBITS
 "A" (6)
 Permit to
 search for
 Iron Ore,
 21st
 November,
 1959.
 (Contd)

10 FEE \$100/-.

Dated at Johore Bahru this 21st day of November, 1959.

Permit automatically extended to 31st May, 1960 from 31st January 1960.

Sd:

CONSERVATOR OF FORESTS,
 JOHORE.

- (a) "To prospect" means to carry out only operations as may in the opinion of the Inspector of Mines, Johore be reasonably necessary to test the qualities of the land in respect of the metal or mineral, or oil shales or mineral oil specified in the permit.
- (b) Period not exceeding one year except with permission of the Mentri Besar.

ADDITIONAL CONDITIONS

- (10) The area covered by this prospecting permit is in a Forest Reserve. You are hereby notified that any subsequent application for mining rights in this area made by you will be considered both in relation to the mineral value discovered and the use (Forest Reserve) for which the land is at present reserved. You should therefore not assume that an application for mining rights over this area will be favourably considered.

EXHIBITS

"A" (6)

Permit to
search for
Iron Ore,
21st
November,
1959.
(Contd)

EXTENDED TILL 20th December 1960.

Vide 44 CFJ 125/58

Sd:

PEMELIHARA RUTAN JOHORE
21.6.60.

Sd:

CONSERVATOR FORESTS
JOHORE

EXTENDED
TILL
28th June,
1961.

DI-LANJUT-KAN MASA-NYA HINGGA
20.12.61
Bill (77) dlm. L.H.J. 125/58

ABD. RAHMAN BIN MOHD. ALI,
PEMELIHARA HUTAN
JOHORE.

"A" (62) DECLARATION OF TRUST, CHAN
 SAI SOW and SECOND DEFENDANT, 4th
December 1959.

EXHIBITS

"A" (62)
 Declaration
 of Trust,
 Chan Sai
 Sow and
 Second
 Defendant,
 4th
 December
 1959.

10

THIS DECLARATION OF TRUST is made the 4th day of December 1959 between CHAN SAI SOW of No.49 Niven Road, Singapore, Company Director (hereinafter called "Mr. Chan") of the one part and KOTA MINING COMPANY LIMITED a Company incorporated in the Federation of Malaya and having its registered office in Kuala Lumpur (hereinafter called "the Company") of the other part.

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WHEREAS by an agreement dated the 17th day of June 1958 as varied by an Agreement dated the 2nd day of December 1958 both made between Tan Gek Piah and Tan Song Chiang (hereinafter called "the Prospectors") of the one part and Siow Wong Fatt of the other part the said Siow Wong Fatt agreed with the Prospectors to allow the Prospectors full licence and authority to enter upon State Land at Sungai Susur Rotan in the Mukim of Ulu Sungai Sedili, Johore, containing 900 acres or thereabouts (therein and hereinafter referred to as "the said State Land") to search for iron ores and/or other minerals subject to the terms and conditions laid down in the said agreements it being further agreed that if the Prospectors should be successful in their search for iron ores and/or other minerals on the said State Land and be willing to carry out mining operations on the said State Land the said Siow Wong Fatt should subject to certain terms and conditions execute a valid Sub-Lease of the said State Land in favour of the Prospectors substantially in the form of the Memorandum of Sub-Lease (Schedule X) of the Mining Enactment (Cap.147) subject to certain modifications set out in the Agreements.

AND WHEREAS by an Agreement dated the 3rd day of July 1959 and made between the Prospectors of the one part and Mr. Chan of the other part the Prospectors with the consent in writing of the said Siow Wong Fatt and in consideration of the sum of \$4,500 assigned to Mr. Chan the exclusive benefit of and under the said

EXHIBITS"A" (62)

Declaration
of Trust,
Chan Sai
Sow and
Second
Defendant,
4th
December
1959.
(Contd)

Agreements of the 17th day of June 1958 and the 2nd day of December 1958 and of all moneys then payable or thereafter to become payable by the Prospectors under or by virtue of the said Agreements and the benefit of all certificates from time to time thereafter to be issued by the Government authority concerned AND also the materials stock engines machinery tools implements scaffolding huts sheds erections plants and effects whatsoever which had been provided and were then in upon or about the said State Land.

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AND WHEREAS the Company was formed for (inter alia) the purpose of exploiting the rights and benefits of Mr. Chan in and under the said Agreement of the 3rd day of July 1959 and of prospecting exploiting and mining the said state land.

NOW THIS DEED WITNESSETH that it is hereby agreed and declared as follows:-

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1. Mr. Chan will stand possessed of the benefit of the said Agreement of the 3rd day of July 1959 and of all rights benefits and assets which passed to him under the Assignment contained in the said Agreement and the benefit of any permits and certificates issued or hereafter to be issued by the Government authority concerned and of any lease sub-lease or other document of title to be issued in respect of the said state land and whether the same are issued in the name of Mr. Chan or of any other person or persons and held for the benefit of Mr. Chan any of the said Agreements hereinbefore referred to and also of all rights in the said State Land and of all rights and benefits accrued or to accrue from the prospecting and mining of the said State Land in trust for the Company and will deal with and dispose thereof and act under the said Agreement of the 3rd day of July 1959 as the Company may from time to time direct.

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2. The Company will at all times pay and provide all moneys necessary for carrying out the obligations of Mr. Chan under the said Agreement of the 3rd day of July 1959 and will

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indemnify Mr. Chan against the same and will refund to him all moneys paid by him thereunder and all expense incurred in and about his obligations under the same prior to the date hereof.

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3. Mr. Chan will at all times faithfully observe the terms and conditions of the said Agreement of the 3rd day of July 1959 and do all such acts matters or things as may from time to time be required to be done by him under the said terms and conditions

EXHIBITS

"A" (62)
Declaration
of Trust,
Chan Sai
Sow and
Second
Defendant,
4th
December
1959.
(Contd)

IN WITNESS WHEREOF CHAN SAI SOW has hereunto set his hand and seal and the Common Seal of KOTA MINING COMPANY LIMITED was hereunto affixed this 4th day of December One thousand nine hundred and fifty nine (1959).

SIGNED SEALED AND DELIVERED }
by the above named CHAN SAI } Sd: S.S. Chan.
SOW in the presence of:- }

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Sd: Illegible.
Solicitor.

THE COMMON SEAL of KOTA
MINING COMPANY LIMITED }
was hereunto affixed in }
the presence of :- }

Sd: Wee Ah Kon DIRECTOR

Sd: Illegible SECRETARY.

EXHIBITS"A" (8)

Mining Report
 Valentine,
 Dunne &
 Associates,
 Ltd.
 9th March,
 1960.

"A" (8) MINING REPORT, VALENTINE, DUNNE &
 ASSOCIATES, LTD.,
of March 1960.

CSH/AL

9th March, 1960.

Messrs. Kota Mining Co.Ltd.,
 7th Storey Building,
 229, Rochore Road,
 Singapore.

Dear Sirs,

Area covered by P.P.No.141/59
Mukim of Ulu Sungei Sedili District
of Kota Tinggi, Johore

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Further to our letter of 9th February we have completed our field survey of the area held by Mr. Siow Wong Fatt, and we enclose herewith a print of plan No.14-181 showing the boundaries of the original Permit Area and the extended area. The relative positions and levels of the pits as well as the approximate contour lines of the hills are also shown on the plan. All the levels given are assumed levels based on a value placed on the top of a numbered boundary stone as marked on the plan.

20

The acreage of the original Permit Area as calculated on our plan with a scale of 8 chains to an inch is approximately 459.32 acres, and the acreage of the extended area is 108.35 acres. With reference to the letter from the Collector of Land Revenue, Kota Tinggi, addressed to Mr. Siow Wong Fatt and dated 1st February 1960, the Collector of Land Revenue stated that the increase in area of F.P.P.141/59 between the eastern boundary of F.P.P.141/59 and Sungai Susur Rotan is 30a.3r. 20p. which gives a difference of approximately 77.72 acres over the extended area. Please advise us if you want us to clarify this matter with the Collector of Land Revenue.

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As can be seen from the attached plan, the Permit Area is situated at the foothills of the Bukit Muntahak which rise steeply in a southerly direction just south of the Permit Area to a height of 2082 feet. The Permit Area

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is cut by small drainage channels which flow towards the north and east. The valleys of these streams are steep and narrow and many of them contain iron ore boulders. The Geological Map of Malaya, 1948, classifies the country rock as hornblende granite of Post Trias age.

When the writer was in the area on 21st January and then on 22nd and 23rd February, he inspected most of the pits sunk and took spot samples of boulders from the mineralised zones within the area. A composite sample obtained was then sent to the Geological Survey Department, Ipoh, for analysis and a report by the Geological Survey Department is given below:-

	Fe	68.1%
	SiO ₂	1.21
	Al ₂ O ₃	1.50
	TiO ₂	0.08
20	Mn	0.03
	P	0.01
	S	Nil
	Metalli tin	0.03

The iron ore of the area is recognised by the Department as magnetite and limonite with some clay material. The magnetite is hard, specular, and in parts crystallised, and we are unable to say with certainty how the deposit was formed. The writer, however, considers that the magnetite is probably a metasomatic or replacement deposit formed by the replacement of the pre-existing rocks by iron ore. The alteration may have been brought about by the action of downward percolating solutions of meteoric origin, or by the action of upward emanating solutions from an igneous source. In this case, the mineralising solutions most probably come from an igneous source because magnetite is one of the common oxides associated with deposits so formed at high temperature.

In view of the lack of good exposure of the country rock in the area and the little information at present available we are unable to ascertain the form of the deposit. The

EXHIBITS

"A" (8)
Mining
Report
Vallentine,
Dunne &
Associates,
Ltd.,
9th March,
1960.
(Contd)

EXHIBITS

"A" (8)
 Mining Report
 Vallentine,
 Dunne &
 Associates,
 Ltd.,
 9th March,
 1960.
 (Contd)

deposit may be irregular in shape, or it may be tabular by reason of following the contact of the younger and older rocks.

To date prospecting by pitting has been done with a view to determining the quantity and quality of the float ore or boulder ore, and no attempt has been made to estimate the quantity of insitu ore. Large boulders of high grade ore can be seen in the eastern slopes of the hill, and systematic pitting in the eastern half of the Permit Area has revealed a mineralised zone as shown outlined blue on the attached plan. The western half of the Permit Area has been thoroughly searched and no trace of any iron ore is found.

Pitting in eastern half of the Permit Area revealed many good boulder ores mixed with the alluvial clay and the pits which bottomed on iron ore are shown coloured red on the plan. It is unfortunate that no effort was made by the pitting gangs to penetrate into the iron ore bed, but however, they have now been advised to do so. Assuming a bed of float ore of 6 feet thick, the mineralised zone with an area of approximately 60 acres could be expected to produce some 800,000 tons of iron ore.

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Yours faithfully,

Vallentine, Dunne & Associates
 Ltd.

Sd:

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Encl:

c.c.

Mr. Siow Wong Fatt,
 26 Jalan Ja'afar,
 Kota Tinggi,
 JOHORE.

"A" (10) LETTER. BRADDELL BROTHERS TO
 DONALDSON & BURKINSHAW
6th August 1960

BRADDELL BROTHERS
 Advocates & Solicitors
 Your Ref: KEWH/PK/LSK
 Our Ref: JLPH/NGH

P.O. BOX NO.1001
 Meyer Chambers,
 Raffles Place,
 Singapore, 1.

EXHIBITS

"A" (10)

Letter,

Braddell

Brothers to
 Donaldson &
 Burkinshaw,
 6th August
 1960.

6th August, 1960.

Messrs. Donaldson & Burkinshaw,
 Singapore.

10 Dear Sirs,

Re: Mining Land at Kota Tinggi

We thank you for your letter of the 2nd August; we confirm that we act for Kota Mining Co. Ltd.

We enclose a draft of the proposed Mining Agreement relating to the land at Kota Tinggi together with a spare copy for your own use

20 Will you kindly return the draft to us in due course approved or with any comments you may care to make.

We understand there is some questions as to our clients' title to enter into the Agreement. You are at liberty to come to this office to see all the documents which our clients have.

Yours faithfully,

Sd: Braddell Bros.

EXHIBITS"A" (11)

Letter,

Donaldson &

Burkinshaw

to Braddell

Brothers,

12th August

1960.

**"A" (11) LETTER, DONALDSON & BURKINSHAW
TO BRADDELL BROTHERS, 12th August,
1960**

JGS/IL/28832

12th August 1960

Your Ref: JLPH/NGH

Messrs. Braddell Brothers,
Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

We refer you to your letter dated the 6th instant enclosing draft Mining Agreement which we have considered.

10

According to our instructions received, we are given to understand that in the event of a Mining Lease or Certificate being granted to your clients, your clients will sub-lease the land in question to our client for the remaining term in the Lease. There is no clause in the draft Agreement to this effect. Instead clause 3 indicates that our client will only be a licensee and not a lessee. Kindly consult your clients on this point.

20

In view of the doubt of the nature of the transaction we do not propose as yet to return to you a copy of the draft Agreement with alterations.

We would however, like to mention a few points which have arisen in the discussion with our client on the matter. Our client wishes his mother, Madam Yeo Liew Soo to be the contracting party instead of himself with the right to assign the benefit and liabilities under the Contract to a limited liability Company to be formed by our client. We do not as yet know the name of this Company. Paragraph 9 of the draft Agreement will therefore have to be altered accordingly.

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As regards paragraph 4 of the draft Agreement our client states that he has no objection to offering for sale the iron ore to T. Yamamoto & Co. Ltd. but he says that he

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wishes to have the discretion to sell to other person should he desire to do so.

Our client wishes to have his right of way on to the land in question secured. We understand that there is no legal right of access to the Mining Land.

Your clients will of course have to rectify the position before our client enters into any written Agreement.

10

Yours faithfully,

Sd: Donaldson & Burkinshaw.

EXHIBITS

"A" (11)

Letter,

Donaldson &
Burkinshaw
to Braddell
Brothers

12th August
1960.

(Contd)

EXHIBITS
"A" (12)

Letter
 Braddell
 Brothers to
 Donaldson &
 Burkinshaw
 29th August
 1960.

"A" (12) LETTER BRADDELL BROTHERS TO
 DONALDSON & BURKINSHAW
 29th August 1960

BRADDELL BROTHERS Advocates & Solicitors	P.O. Box No.1001 Meyer Chambers, Raffles Place, Singapore.
Your Ref: JGS/ML/28832	

Our Ref: JLPH/NGJ 29th August, 1960.

Messrs. Donaldson & Burkinshaw,
 Singapore.

Dear Sirs,

10

Re: Mining Land at Kota Tinggi

We thank you for your letter of the 25th August.

We do not understand the third paragraph of your letter. The Agreement is between Kota Mining Co.Ltd. and your client, not between Mr. Chan Sai Sow and your client. It is the Company who is contracting with your client and not Mr. Chan. It is the Company who will receive the tribute moneys and not Mr. Chan. Please do not trouble yourselves to send us a further draft Agreement expressed to be between Mr. Chan and your client as we shall not be able to approve it.

20

As regards the fourth paragraph of your letter we are instructed that your client no longer insists on the insertion of a clause to the effect that you mention. You will agree with us that if for any reason your client is prevented from entering on to the land this will go to the very root of the contract and be such a frustration as will under the law result in the parties going back to the same position as they were in before the contract was signed. It may be that you had in mind the Coronation case that on a frustration the loss lies where it falls. We understand a more recent decision has abrogated this long-standing rule of law.

30

Yours faithfully,
 Sd: Braddell Bros.

40

"A" (13) LETTER BRADDELL BROTHERS TO
 DONALDSON & BURKINSHAW
 6th September 1960

"A" (13)
 Letter,
 Braddeil
 Brothers to
 Donaldson &
 Burkinshaw
 6th
 September
 1960.

BRADDELL BROTHERS
 Advocates & Solicitors
 Your Ref: JGS/IL/28832
 Our Ref: JLPH/NGJ

P.O. Box No.1001
 Meyer Chambers,
 Raffles Place,
 Singapore.

6th September 1960.

10 Messrs. Donaldson & Burkinshaw,
 Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

Since writing you we have seen our clients
 on the two drafts.

As regards the Principal Agreement our
 clients have instructed us to request you to
 emphasize to your client that Clause 9 of the
 Principal Agreement is for her protection and
 is not for the benefit of our clients.

20 Our clients are very concerned over the
 question of the Supplemental Agreement or any
 draft or copy thereof getting into the wrong
 hands. Our clients' agreement to enter into the
 Supplemental Agreement is given on the
 following terms and conditions :--

- (a) That the three copies of the draft
 enclosed never leave your hands and that
 you return two copies of the draft to us;
- (b) that the Agreement be signed by both
 parties in solus;
- (c) that the signed Agreement remain in your
 office or in ours;
- (d) that no copies of the drafts or of the
 agreement go outside your office.

EXHIBITS

"A" (13)
Letter,
Braddell
Brothers to
Donaldson &
Burkinshaw
6th
September
1960.

You will appreciate that in view of our clients' requirements in this respect the three copies of the draft Supplemental Agreement are sent to you on your undertaking to return them to us without retaining a copy if your client should find herself unable to agree to all or any of the above.

Yours faithfully,

Sd: Braddell Bros.

"A" (66) AGREEMENT, SECOND DEFENDANT AND
PLAINTIFF, 19th September 1960

EXHIBITS
"A" (66)
Agreement,
Second
Defendant
and
Plaintiff
19th
September
1960.

10

THIS AGREEMENT is made the 19th day of September, 1960 Between KOTA MINING COMPANY LIMITED a company incorporated in the Federation of Malaya and having an office at No.220 Rochore Road, Singapore (hereinafter called "the First Party") of the one part and SUSUR ROTAN MINING LIMITED a company incorporated in Singapore and having its Registered office at No. 8-E Tanjong Rhu, Singapore (hereinafter called "the Second Party") of the other part.

WHEREAS:

20

(1) One Siow Wong Fatt is the holder of Prospecting Permit No.141/59 issued by the Government of the State of Johore with liberty thereunder to enter on an area of State Land in the locality of Sungai Susur Rotan in the Mukim of Ulu Sungai Sedeli, District of Kota Tinggi in the State of Johore to prospect for iron ore subject to the conditions contained in the said Permit.

30

(2) By an Agreement dated the 17th day of June 1958 made between the said Siow Wong Fatt of the one part and Tan Gek Piah and Tan Song Chiang of the other part as varied by a subsequent Agreement dated the 2nd day of December 1958 and made between the same parties Siow agreed with the Tans for the consideration therein mentioned to allow the Tans full licence and authority to enter upon the said area of State Land to search for iron ores and/or other minerals and it was stipulated that if the Tans should find iron ores and/or other minerals on the said State Land and were willing to carry out mining operations on the said land Siow should forthwith apply to the appropriate authorities for the issue to him of a Mining Certificate or Lease and on the issue of the same forthwith execute a valid Sub-Lease of the said State Land in favour of the Tans subject to the terms and conditions as to payment of moneys and otherwise in the said Agreement as varied as aforesaid contained.

40

EXHIBITS
"A" (66)
 Agreement,
 Second
 Defendant
 and
 Plaintiff
 19th
 September
 1960.
 (Contd)

(3) By an Agreement dated the 3rd day of July 1959 and made between the aforesaid Tans of the one part and one Chan Sai Sow of the other part in consideration of the payment made to and the royalties agreed to be paid to the Tans by the said Chan as therein mentioned the Tans with the written consent of the aforesaid Siow assigned to the said Chan all the benefit of the said Agreements of the 17th day of June 1958 and the 2nd day of December 1958 absolutely.

10

(4) The said Chan Sai Sow having been appointed a director of the First Party by a Declaration of Trust dated the 4th day of December 1959 and made between the said Chan and the First Party it was agreed and declared that the said Chan should stand possessed of the benefit of the said hereinbefore recited Agreements and of all rights benefits and assets which passed to him under the assignment contained in the Agreement of the 3rd day of July 1959 in trust for the First Party.

20

(5) The First Party has agreed with the Second Party for it to work mine and exploit the said area of mining land comprised in the said Prospecting Permit No.141/59 for the obtaining of iron ore therefrom for the consideration and on the terms and conditions hereinafter contained.

30

- NOW IT IS HEREBY AGREED as follows:-
1. The Second Party shall pay to the First Party the sum of \$80,000/- by way of advance payment on account of the tribute moneys which will become payable by the Second Party to the First Party under the provisions herein-after contained. Of this sum of \$80,000/-
 - (a) the sum of \$40,000/- shall be paid on the signing of this Agreement; and
 - (b) the balance of \$40,000/- shall be paid as soon as a Mining Lease or Certificate is issued in respect of the said land hereinbefore described.

40

Should the Second Party so require in writing it shall be allowed grace of seven days to

pay the said balance of \$40,000/- or such extended period beyond seven days as the First party shall (if they so wish) by writing consent to; if payment shall not have been made within such period of seven days or any such extended period of grace then this Agreement shall be at an end and the sum of \$40,000/- paid on the signing of this Agreement shall be absolutely forfeited to the First Party.

EXHIBITS
 "A" (66)
 Agreement,
 Second
 Defendant
 and
 Plaintiff
 19th
 September
 1960.

(Contd)

- 10 2. The First Party shall not be liable to pay interest on any part of the said sum of \$80,000/-. The said sum shall be set off against tribute moneys payable by the Second Party at the rate of \$2/- for every dry basic ton shipped by the Second Party so that the whole advance shall be deemed to be offset on the completion of the shipment by the Second Party of an aggregate of 40,000 dry basic tons of iron ore.
- 20 3. As soon as a Mining Lease or Certificate shall have been issued in respect of the said Mining Land the Second Party shall have paid to the First Party the whole of the said sum of \$80,000/- the First Party shall issue its authority in writing to the Second Party authorising it, its servants and agents to enter upon the said Mining Land and to mine and exploit the same for the purpose of obtaining iron ore therefrom.
- 30 4. The written authority of the First Party referred to in Clause 3 hereof shall be deemed to grant to the Second Party full right and liberty to exploit and mine the said Mining land for iron ore and subject to giving first preference to T. Yamamoto & Co. Limited agents of Kawasaki Steel Corporation (with whom the First Party has already entered into negotiations for the sale of iron ore from the said Mining land) the Second Party shall be free to negotiate for the sale of iron ore mined by it with and to sell the same to any importer and/or steel miller it being expressly agreed however that the Second Party shall first negotiate with the said T. Yamamoto & Co. Limited as such agents as aforesaid for the sale of iron ore on terms at least as favourable

EXHIBITS

"A" (66)
Agreement,
Second
Defendant
and
Plaintiff
19th
September
1960.
(Contd)

as the Second Party would offer to and which would be acceptable by other importers and/or steel millers and that if T. Yamamoto & Co. Limited shall within a period of 14 days from the commencement of negotiations offer to purchase the iron ore mined by the Second Party on the said mining land on terms as good as or better than would be granted by other importers and/or steel millers the Second Party shall sell such iron ore to T. Yamamoto & Co. Limited but if the said T. Yamamoto & Co. Limited shall not within such period of 14 days aforesaid agree to purchase such iron ore on terms which are as good as or better than would be granted by other importers and/or steel millers then the Second Party shall be free to negotiate with and sell such iron ore to any other buyer.

10

5. The Second Party shall in carrying out mining operations on the said land comply strictly with all the stipulations of the mining title granted by the Government and with all Government rules and regulations relative to mining operations.

20

6. The First Party shall be entitled to receive from the Second Party the sum of Malayan dollars four and cents eighty (M\$4.80) for every dry basic ton of iron ore mined and shipped by the Second Party payment whereof shall be made as follows:-

30

(a) 80% to be paid within 10 days of the date of the completion of the loading of each shipment and

(b) the balance of 20% to be paid within 60 days of such date aforesaid.

7. The Certificate of the Government Marine Surveyor shall as between the parties hereto be conclusive evidence of all quantities of iron ore shipped.

8. If the Second Party shall for any reason which is due to or has any connection with any act or omission within the control of the Second Party not commence mining operations on the said

40

Mining land within a period of three calendar months from the date of the issue of the First Party's written authority pursuant to Clause 3 hereof then this Agreement shall be at an end and all sums which shall have been paid by the Second Party to the First Party under Clause 1 hereof shall become absolutely forfeited to the First Party.

EXHIBITS
 "A" (66)
 Agreement,
 Second
 Defendant
 and
 Plaintiff
 19th
 September
 1960.
 (Contd)

10 9. If for any reason (such as a strike by the Second Party's workmen) not due to or connected with the actual default of the Second Party it shall not have commenced mining operations within a period of six calendar months from the date of the issue of the First Party's written authority aforesaid then in such case on the expiry of such period this Agreement shall be at an end and the First Party shall within 14 days of the date of such expiry repay to the Second Party the sum of Dollars Fifty thousand (\$50,000/-) whereupon each party shall be absolutely free and discharged from all obligations and payments performed or to be performed and made or to be made under the terms of this Agreement Provided that the said period of six calendar months may be extended from time to time and whether the same or any extended period has already expired or not by mutual consent in writing under the hand of both parties.

20

30 AS WITNESS the hands of the parties hereto.

SIGNED by WEE AIK KOON }
 on behalf of KOTA }
 MINING COMPANY LIMITED }
 in the presence of:) Sd: Wee Aik Koon

Sd: Illegible.
 Singapore.
 Solicitor.

40 SIGNED by the said YEO LIEW SOO for and on behalf of SUSUR ROTAN MINING LIMITED in the presence of:) Sd: (In Chinese)
 Sd: Illegible
 Singapore. Solicitor.

EXHIBITS"A" (72)

Agreement,
Second
Defendant
and
Plaintiff
19th
September
1960.

"A" (72) AGREEMENT SECOND DEFENDANT AND
PLAINTIFF 19th September 1960

THIS AGREEMENT is made the 19th day of September 1960 Between KOTA MINING COMPANY LIMITED a company incorporated in the Federation of Malaya and having an office at No. 229 Rochore Road, Singapore (hereinafter called "the First Party") of the one part and SUSUR ROTAN MINING LIMITED, a Company incorporated in Singapore and having Registered Office at No. 8-E Tanjong Rhu, Singapore, (hereinafter called "the Second Party") of the other part.

SUPPLEMENTAL to an Agreement dated the 19th day of September 1960 between the parties hereto (hereinafter called "the Principal Agreement") WHEREBY IT IS AGREED that in consideration of the Second Party entering into the Principal Agreement and for the better performance of the terms and conditions thereof by the Second Party the First Party shall if and as soon as a Mining Lease or Certificate shall be granted in respect of the mining land the subject matter of the Principal Agreement use its best endeavours to procure in favour of the Second Party the execution or assignment of a valid underlease and if a mining title or some derivation thereof by underlease shall be issued direct to or shall be assigned to the said Chan Sai Sow the First Party shall direct the said Chan to execute an underlease or an assignment of an underlease (as the case may be) in favour of the Second Party

AS WITNESS the hands of the parties hereto

SIGNED by Wee Aik Koon) KOTA MINING CO.LTD.
on behalf of KOTA MINING)
COMPANY LIMITED in the } Sd: Wee Aik Koon
presence of : - } Managing Director

Sd: Illegible.
Singapore. Solicitor.

SIGNED by the said YEO LIEW) Sd: Illegible
SOO for and on behalf of }
SUSUR ROTAN MINING LIMITED } (In Chinese)
in the presence of : -
Sd: Illegible. Singapore. Solicitor.

10

20

30

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"A" (50) RECEIPT BY SECOND DEFENDANT
FOR \$40,000, 19th September
1960.

KOTA MINING COMPANY LIMITED

19th September, 1960.

EXHIBITS
"A" (50)
Receipt by
Second
Defendant
for
\$40,000
19th
September
1960.

Received the sum of Dollars Forty
Thousand only (\$40,000.00) amount payable under
Clause 1 (a) of Agreement dated 19th September,
1960 between Kota Mining Company Limited
and Susur Rotan Mining Limited.

10

Stamp

Stamp

KOTA MINING COMPANY LIMITED

Sd:

Director.

EXHIBITS

P4.

**Letter, First
Defendant to
Town Board.
Undated.**

P4 Letter First Defendant to Town
Board Undated.

Seow Wong Fatt,
26 Jalan Ja'afar,
Kota Tinggi,
Johore.

The President,
Town Board,
Kota Tinggi,
Johore.

10

Dear Sir,

Re: Seow Wong Fatt of
Kota Mining Company Ltd.

I beg to submit my application for your kind consideration for permissions to be granted to enable me to carry out the transportation of the iron ore and the establishing of the stockpile site in according to our approved application for a Mining Lease on Forest Permit No.141/59. Details of the permissions requested are stated below:-

20

Permission to use the Jalan Mawai and Jalan Ja-Afar Road for transporting our iron ore from the Stockpile site as indicated above to the jetty at the end of Jalan Ja-Afar Road and the edge of Sungai Johore. Briefly the whole operation can best be described as thus:-

On arrival of the Japanese Steamer my lorries will carry iron ore from the stockpile and unload them to the Tongkang at the Jetty. The numbers of trucks used for this operation is maximum Five (5). The trucks will not enter the town centre and will work in an orderly manner without being a nuisance to the town people, shop whatsoever. The road will be in use a few days per shipment in a month.

30

I thank you for your kind consideration and await the favour of your early reply.

40

Yours faithfully,

SUPREME COURT, Johore Bahru, Exhibit marked
Civil Suit No. 94/1962. "P4"
Put in by P.W.1 Chua Siew Cheng (f) this 11th
day of November, 1963. Sd: V.R.T.Rangam.
Assistant Registrar.

"D" (35) LETTER, FIRST DEFENDANT TO DISTRICT FOREST OFFICER,
14th November 1960.

EXHIBITS
"D" (35)
Letter,
First
Defendant
to District
Officer,
14th
November
1960.

Siow Wong Fatt,
26 Jalan Ja'afar,
Kota Tinggi.
14th November, 1960.

The District Forest Officer,
Johore Bahru.

10 Sir,

Ref: DFO/JS.257/59/6

With reference to the above, I have the honour to enclose herewith cheque for \$500.00 being deposit for making a road from 38 $\frac{3}{4}$ milestone Mersing Road through the Panti Reserve to join the Forest Access running from Lombong to Susur Rotan my mining area.

20 2. Sir, I shall be much obliged and grateful if early permission and approval be granted to make the road, so that I can start the preliminary preparations for making the road.

Thanking you in anticipation.

I have the honour to be,

Sir,

Your obedient servant,

Sd: Siow Wong Fatt.

In Chinese.

EXHIBITS

"P" (9). CASH VOUCHER, \$500.

"P" (9)

Cash

Voucher

\$500

16th

November

1960.

SUSUR ROTAN MINING LTD.

Singapore Office.

Voucher No. 6
16/11/60

CASH VOUCHER

SUSUR ROTAN LTD.

FOREST DEPT. JOHORE.

Amount Five hundred only

Please pay

Dollars.

Being Deposit for Reserve Road.

10

\$500

"D" (32) RECEIPT FOR \$500 DISTRICT FOREST
OFFICER FROM FIRST DEFENDANT
16th November 1960.

EXHIBITS
"D" (32)
Receipt for
\$500
District
Forest
Officer
from First
Defendant
16th
November
1960.

(Fin.38) Cheque The First National
City Bank of New York.

HNo. 832163

FEDERATION OF MALAYA

STATE OF JOHORE.

State	Department Forest
-------	--------------------------

10	Received from	Siow Wong Fatt
----	---------------	-----------------------

Dollars Five Hundred only

and cents -

in respect of

\$ c

DFOJS 257/59	\$	500
--------------	----	-----

Deposit

a/c No. 1535

TOTAL	\$500
-------	-------

Signature Sd: Illegible Date 16.11.60.

District Forest Officer,

20 Johore South.

EXHIBITS

"D" (13)
 Letter, Teo
 Liang Chye
 & Co. to
 Plaintiff
 18th
 November
 1960.

"D" (13) LETTER TEO LIANG CHYE & CO.
 TO PLAINTIFF
 18th November 1960.

TEO LIANG CHYE & CO.
 Accountants & Auditors

17-B(2) Upper Circular
 Road, Singapore, 1.

18th November, 1960.

Our Ref: TLC/CYS.

REGISTERED.

10

Messrs. Susur Rotan Mining Limited
 8-E Tanjong Rhu Road,
 Singapore.15.

Dear Sirs,

We forward herewith our bills No.060341 and No. P.S.60187 totalling \$1,272.00 and shall be grateful if you will let us have your cheque for the said amount by return post.

We have to remind you that the First Directors Meeting has to be called immediately to transact the following business:-

20

- (1) To appoint Chairman of the Board
- (2) To appoint Managing Director
- (3) To appoint Bankers
- (4) To appoint Auditors and Secretary
- (5) To approve the Common Seal.
- (6) To allot shares
- (7) Other business.

The Directors must also acquire their qualification shares within two months from the date of their appointment.

30

Yours faithfully,
 TEO LIANG CHYE & CO.
 Sd: Illegible.

"D" (28) LETTER PLAINTIFF TO FIRST
DEFENDANT, 28th November 1960

SUSUR ROTAN MINING LIMITED,
Room No.8 - 2nd Floor,
200 Clemenceau Avenue,
Singapore.9.

Date 28th November, 1960.

10 Siow Wong Fatt Esq.,
26 Jalan Ja'afar,
Kota Tinggi,
Johore.

Dear Sir,

We respectfully beg to inform you that
from the 19th November 1960, we have
established ourselves in business as Miners
under the firm name of:-

SUSUR ROTAN MINING LIMITED

at the above address.

Yours faithfully,

20 Sd: Yeo Lew Soo (In Chinese)

Chairman.

EXHIBITS
"D" (28)
Letter
Plaintiff
to First
Defendant
28th
November
1960.

EXHIBITS"D" (29)Permit to
construct
and useForest Road
27th
December
1960

"D" (29) PERMIT TO CONSTRUCT AND USE
FOREST ROAD, 27th December
1960.

Permit 482/60 DFOJS 257/59.

Permit to construct and use Forest Road
(Issued under Forest Rule 29)

Messrs. Siow Wong Fatt of No.26, Jalan Ja'afar Kota Tinggi is hereby permitted to construct and use Forest Road in Panti Forest Reserve as shown overleaf subject to the following conditions:-

1. When the road is built it becomes the property of the Government and when the permittee ceases to require its use he shall have not further claims to compensation for its construction and maintenance.
2. The overall width of the road including sidetables shall not be less than 22 feet and the width of the carriageway not less than 12 feet.
3. The roadway shall be suitably cambered but in any case the camber shall give an average fall of not less than 1 in 15.
4. The construction of the carriageway shall be of laterite or some other suitable material laid in two layers to give a finished thickness of at least 6".
5. The finished surface of the road shall be an even surface to the satisfaction of the District Forest Officer.
6. Side drains shall be constructed where necessary so that at all times the surface of the road is free from standing water.
7. Bridges and culverts shall be constructed to the satisfaction of the District Forest Officer.

10

20

30

8. No wood corduroying is permitted.
9. Forest Department, other Government Vehicles, the sawmillers who is given the exclusive rights to work timber in the Reserve and any other persons approved by this department shall be allowed free use of the completed road.
10. Any other miners requiring the use of the road will, after consultation with the permittee, be issued with a permit to use it.
11. The road and all permanent bridges and culverts shall be maintained by the permittee to the satisfaction of the District Forest Officer.
12. The permittee shall deposit the sum of \$500/- and such further sums as the Conservator of Forests may require with the District Forest Officer Johore South as a guarantee of good faith and such sum or sums may be forfeited wholly or in part either in repayment to the Forest Department, or to revenue by way of liquidated damages for breach of any conditions of this permit.
- 30 This permit may be cancelled at any time by the Conservator Forests for breach of any of its conditions and in the event of such cancellation the permit holder shall have no claim to the return of any money paid to or deposited with the Government, nor to any damages on account of such cancellation.
13. This permit is not transferable by Power of Attorney or otherwise
- Sd: (A.RAHMAN B. MOHD.ALI)
Ag. CONSERVATOR OF FORESTS, JOHORE.
- Date: 27.12.60. Valid from 1st
Fee \$12/- per year. December, 1960
- 40 Deposit \$500.00 collected vide to 31st July 1961.
Receipt 832163 dated 16.11.60 Extended to 31.1.62
Fee \$14/- collected Extended to 31.1.63
Receipt 832174 dated 27.11.60. Fee \$12/- collected
vide Receipt 834609 dd.15.1.62.

EXHIBITS
 "D" (29)
 Permit to construct and use Forest Road 27th December 1960
 (Contd)

EXHIBITS

"P" (10)

Cash

Voucher,

\$6

6th January

1961.

"P" (10) Cash Voucher \$6 6th January
1961.

SUSUR ROTAN MINING LTD.,
Singapore Office.

PETTY CASH VOUCHER

Amount	Susur Rotan Ltd.,
Please pay	Forest Reserve
Dollars	Dollars only.

Being Permit for Kongsi House for
Labourers prospecting [illegible]

10

\$6/-

"P" 8(1) Cash Voucher \$200
19th January 1960 (for 1961)

SUSUR ROTAN MINING LTD.
Singapore Office.

EXHIBITS
"P" 8(1)
Cash
Voucher
\$200
19th
January
1960 (for
1961).

C

Voucher No. 3
Date 19/1/60

CASH VOUCHER

Account	Susur Rotan
10 Please pay	Siow Wong Fatt
Dollars	Two hundred only
Being	Option money to buy 4 acres of land at Mawai.

Sd: In Chinese Sd: Siow Wong Fatt
In Chinese
Receiver

Manager Cashier

\$200/-

20	Cheque No.
----	------------

C.B.

EXHIBITS"P" 8 (2)

Agreement

Ho Geuh

Kheng and

First

Defendant

23rd

January 1961.

"P" 8(2) Agreement Ho Geuh Kheng
and First Defendant
23rd January 1961.

Kota Tinggi

23rd January 1961

In consideration for the sum of Dollars Two Hundred (\$200.00) only, paid to me by SLOW WONG FATT of No. 26, Jalan Jaafar, Kota Tinggi, I now agree that the land held by me under EMR. No.173 Lot No.303 2A.3R.09P. and Grant 5960 1A.2R.22P in the Mukim of Sungai Sedili Besar, Kota Tinggi, will be sold to Mr. Sio Wong Fatt within the agreed period of TWO (2) Months, from the date of this temporary receipt for the said deed of transfer.

10

Further it is agreed that the full price for an acre of land is agreed at \$500.00 (Dollars Five Hundred only for one acre)

The deposit of \$200.00 now paid to me by the said Sio Wong Fatt will be confiscated if he fail to transact the sale before or on the 23rd day of March 1961.

20

I set my hands this 23rd day of January 1961.

.....
Signature of HO GEUH
KHENG i/c Sii. 0933.

Witness to the above
signature:

Sd: In Chinese

Sd: Illegible.

30

P.1(1) RESOLUTION OF PLAINTIFF,
18th February 1961.

SUSUR ROTAN MINING LIMITED
(Registered in Singapore)

Miners, Importers & Exporters

Room No.8 - 2nd Floor,

200 Clemenceau Avenue,

Singapore.9.

Date 19

10 "RESOLVED that the Company be and is hereby authorised to start construction of the ROAD and to do all that are reasonably necessary in order to help Mr. Siow Wong Fatt to obtain a Mining Lease on the Assurance to Mr. Siow Wong Fatt that he will transfer the sub lease direct to us when the Mining Certificate is issued by the Authority".

Sd: In Chinese

Sd: Illegible DIRECTORS

20 DATED this 18th day of February, 1961.

EXHIBITS
P.1 (1)
Resolution
of
Plaintiff
18th
February
1961.

EXHIBITS

P7 Cash
Voucher
\$60
4th April
1961.

P7 CASH VOUCHER \$60 4th April 1961

SUSUR ROTAN MINING LTD.,
Singapore Office.

CASH VOUCHER

Amount Forest Road Licences
Please pay Mr. Siow
Dollars Sixty only

Being Forest Road Licence for Mining
Road.

"A" (14) LETTER, PLAINTIFF TO SECOND
DEFENDANT, 17th July 1961

EXHIBITS
"A" (14)
Letter,
Plaintiff
to Second
Defendant
17th July
1961.

SUSUR ROTAN MINING LIMITED
MINERS, IMPORTERS & EXPORTERS.

Room No.8 ~ 2nd Floor.

200 Clemenceau Avenue,

Singapore.

17th July, 1961.

10 The Managing Director,
Messrs. Kota Mining Co.Ltd.,
7th Storey Building,
229 Rochore Road,
Singapore.

Dear Sir,

Re: FPP 141/59 in the Mukim of
Susur Rotan ~ District of Kota
Tinggi

20 We are pleased to inform you that above
file would go before the Executive Council
meeting on or about the 22nd of this month for
Mining Certificate and we are confident that
Mining Certificate would be approved by the
Executive Council to commence Mining
operations.

30 As soon as you are notified by the
appropriate authorities, will you please
prepare and execute a formal sub-lease in our
favour so as to enable us to commence Mining
operations. The said sub-lease is necessary
as it is required under the Mining regulations
before they will allow any Mining operations to
start. We hope that you would please attend to
this vital requirement of the Mines Department
and confirm your agreement.

Yours faithfully,

We confirm.

Messrs. Kota Mining Co.Ltd.

EXHIBITS

P.l.(2)

Resolution
of Plaintiff
27th July
1961.

P.l. (2) RESOLUTION OF PLAINTIFF,
27th July 1961.

SUSUR ROTAN MINING LIMITED

"RESOLVED that the Chairman of the Company
Madam Yeo Lew Soo be and is hereby authorised
to proceed to Japan to negotiate with Messrs.
Ataka & Co. Ltd., and Messrs. Yamamoto & Co.
for the Sale of Iron Ore and to sign the
necessary Contract with the above Japanese
firms. She is to be accompanied by the
employee Mr. Chew Hee Jin".

10

DIRECTORS. Sd: In Chinese

Sd: Illegible.

DATED this 27th day of July, 1961.

"A" (15) LETTER, SECOND DEFENDANT TO
PLAINTIFF, 29th July 1961.

EXHIBITS
"A" (15)
Letter,
Second
Defendant
to
Plaintiff
29th July
1961.

KOTA MINING COMPANY
LTD.

29th July, 1961.

The Managing Directors,
Messrs. Susur Rotan Mining Ltd.,
200 Clemenceau Avenue,
Singapore.

10 Dear Madam,

Re: FPP 141/59 in the Mukim of
Susur Rotan District of
Kota Tinggi

We thank you for your letter of the
17th July to which we will reply when we have
received the Mining Certificate or Mining
Lease. We have no intention of repudiating
the Agreement between us.

Yours faithfully,

EXHIBITS

P.l(3)
Resolution
of
Plaintiff
14th
September
1961.

P.l. (3) RESOLUTION OF PLAINTIFF,
14th September 1961

SUSUR ROTAN MINING LIMITED

"RESOLVED that Messrs. J.P. Wilkins & Co.,
Ltd., be and is hereby appointed Mining
Consultant Engineers for the Company and
especially to prepare the Mining Scheme for
submitting to the Inspector of Mines to
enable Mr. Siow Wong Fatt to obtain the
Mining Certificate.

10

DIRECTORS: Sd: In Chinese.

Sd: Illegible.

DATED this 14th day of September, 1961.

"A" (16/17) LETTER COLLECTOR OF LAND
REVENUE TO FIRST DEFENDANT
28th September 1961.

OFFICE OF THE COLLECTOR OF LAND
REVENUE KOTA TINGGI

Ref:(23) in CLRKT
4/11/60

28th September, 1961.

Mr. Siow Wong Fatt,
26 Jalan Ja'afar,
10 Kota Tinggi.

EXHIBITS
"A" (16/17)
Letter,
Collector of
Land Revenue
to First
Defendant
28th
September,
1961.

Sir,
Mining Lease for Iron, Mukim Ulu
Sg. Sedili, 185 acres - Siow Wong Fatt

Reference the above subject, I have the honour to inform you that the Government has now approved your application for the issue of a mining Lease on the following terms and conditions:-

20 Mining Lease 10 years
Premium \$10/- per acre for
the duration of
Lease
Annual Rent \$5/- per acre per
annum
Survey Fees At scheduled rates
Special Conditions:

The lessee shall have the right to take and work iron ore within the area hereby leased.

30 The lessee shall pay royalty to the State on all iron ore taken from the land hereby leased at such rate and place and in such manner as may from time to time be prescribed and to such person as from time to time be authorised to receive the same.

No transfer, sub-lease, charge or other dealing shall be endorsed or permitted, under the provisions of the Mining Enactment without the prior approval of the Ruler in Council.

EXHIBITS

"A" (16/17)
 Letter,
 Collector of
 Land Revenue
 to First
 Defendant
 28th
 September,
 1961.
 (Contd)

Regarding only the efficient carrying on of mining operation during the period specified in section 17(iii)(c) of the Mining Enactment, the operations on the land hereby leased shall be directed towards the maximum extraction of iron ore by excavation and prior to loading, and, to this end, the operations may be controlled by the Warden of Mines as provided under Section 99 of the Mining Enactment.

10

The land hereby leased shall be mined only under a working scheme approved in writing, at his discretion, by the Warden of Mines. Such working scheme shall include the washing of iron ore mined and the retention of tailings derived from mining and/or from washing the iron ore mined.

No ore obtained from the land shall be removed beyond the boundaries except over a route to be approved by the Collector of Land Revenue, and if a public road is utilised the approval in writing of the State Engineer, Johore, must be obtained.

20

No ore shall be stockpiled elsewhere than on a site to be licensed therefor by the Collector of Land Revenue.

No loading of ore into lighters shall be done until all necessary protective measures to the banks of the rivers shall be completed to the satisfaction of the State Drainage & Irrigation Engineer, Johore.

30

The lessee will permit the approved permittee, its servants and agents and any person authorised by it all time during the continuance in force of Forest Permit, or of any licence replacing the same consequent upon the excision of the said area from the reserve forest but not exceeding in all a period of twelve months from the date of the said Forest Permit, to enter upon the lands hereby leased and without hindrance to cut and remove therefrom any timber standing thereon which the said approved permittee may be

40

entitled to cut and remove by virtue of the said Forest Permit.

For the purpose of the last preceding conditions, the period within which mining operations are required to commence under the provisions of section 17(iii) of the Mining Enactment shall be deemed to run from the time when the Conservator of Forests, Johore, notifies the lessee that the area or any part thereof upon which mining operations can in the opinion of the Warden of Mines reasonably be carried out, has been cleared of the timber permitter to be cut and removed under the said Forest Permit.

10

2. The probable cost of fees for the issue of a Mining Lease is as follows :-

20

Premium	\$18,500.00
Annual Rent	925.00
Survey Fees	795.00
Demarcation Fees	370.00
Boundary Marks	70.00
Preparation & Registration Fees	6.00 (M.L.)
-do-	<u>4.00</u> (M.C.)
Grand Total ..	<u><u>\$20,670.00</u></u>

Please, therefore, remit the above sum as early as possible.

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

30

PEMUNGUT HASIL TANAH

Kota Tinggi.

EXHIBITS

"A" (16/17)

Letter,
Collector of
Land Revenue
to First
Defendant
28th
September,
1961.
(Contd)

EXHIBITS

P.3 Letter
J.P. Wilkins
& Co.Ltd. to
Inspector of
Mines
25th October
1961.

P.3 LETTER J.P. WILKINS & CO. LTD. TO
INSPECTOR OF MINES, 25th October
1961.

J.P. Wilkins & Co.Ltd.
(Incorporated in the
Federation of Malaya) No.8-10, Station Road,
Ipoh, Malaya.
25th October, 1961.

Our Ref:No.(7) in SRML/61.

The Inspector of Mines,
Johore,
Johore Bahru.

Sir,

Mining Scheme for Kota Mining Co.Ltd.
In the Mukim of Ulu Sungai Sedili Besar
Kota Tinggi - Johore.

We forward herewith on behalf, of Mr. Seow Wong Fatt of Kota Mining Co. Ltd., two copies of our surveyed Plan No.170-61 showing the proposed mining scheme for your formal approval and recommendation of the issue of a Mining Lease over the selection of 185 acres, the premium and survey fees of which have already been paid.

You will observe that the present scheme is basically the same as the original proposed scheme submitted to you by Messrs. Valentine, Dunne & Associates, Ltd. in their plan Nos.14-181B/3 dated 8th March 1960 and which we understand has had your approval in principal. Our proposed scheme of mining could be summarised in 5 parts as follows:-

(1) Mining will commence in an area of 84.93 acres west of the Sungai Anak Susur Rotan outlined red on our plan. Mechanical shovels will be used to load the iron ore on to the lorries for conveyance to the washing plant.

(2) A water reservoir is to be created in the ravine by sealing off the northern neck with a bund and adjustable concrete gate for raising or lowering the water level as required for feeding the water pump to supply water to the washing plant.

10

20

30

40

- (3) Tailings will be retented in the proposed dumping area of 19 acres.
- (4) The washed ore will be loaded on lorries from the discharge end of the washing trommel and conveyed to the stockpile area situated 19 miles away as indicated on Valentine & Dunne's Plan No.14-181/3 dated 8.6.1960 entitled "Proposed route of iron ore - mine to ship".
- 10 (5) Lighters will convey the iron ore from stockpile to ship via Sungai Sedili Besar.

EXHIBITS
 P.3. Letter
 J.P.Wilkins
 & Co.Ltd. to
 Inspector of
 Mines
 25th October
 1961.

Trusting that the scheme submitted will receive your favourable consideration at your earliest convenience, we remain,

Yours faithfully,

LPS/csc

c.c. Mr. Siow Wong Fatt,
 Kota Tinggi.

20

Supreme Court, Johore Bahru
 Civil Suit No.94 of 1962
 Exhibit marked "P3"
 Put in by P.W.l. (Chua Siew
 Cheng)
 This 11th day of Nov: 1963

Sd: V.R.T. Rangam.

Asst. Registrar.

EXHIBITS"A" (18)

Letter,
Second
Defendant to
Plaintiff
30th October
1961.

**"A" (18) LETTER, SECOND DEFENDANT TO
PLAINTIFF, 30th October 1961**

Managing Director, 30th October, 1961.
Susur Rotan Mining Ltd.,
200 Clemenceau Avenue,
Singapore.

Dear Madam,

**Re: Prospecting on remaining
area South-west of the
185 acres**

10

As you are aware, the Mining Lease for 185 acres has now been approved by the State Authorities, and only awaiting the formalities for its final execution of the Mining Lease titles.

During the meeting held on Saturday the 28th October, 1961, between your Miss Judy Chua and Mr. Chew Hee Jin and our Messrs. Wee Aik Koon and Hee Chit Lim, you brought out the subject of the further prospecting by diamond drilling of the above area, we would remain you of your assurance during our meeting held sometime in July this year that you would assume all responsibilities for such further prospecting and the expenses incurred thereon. In fact, you also assured us that you would be able to carry out such diamond drilling with the assistance of the Japanese engineers connected with your company.

20

We would further remind you of the assurance given by Mr. Chew Hee Jin to Mr. Siow Wong Fatt in Kota Tinggi sometime in July this year to the effect that Messrs. Susur Rotan Mining Ltd. would carry out any further prospecting apart from the 185 acres already obtained, at their expense. Mr. Siow Wong Fatt confirmed the above to us.

30

In view of the above, we would appreciate if you will kindly let us know when you are commencing with this diamond drilling of the remaining area.

Please reply as soon as possible.

Yours faithfully,

Sd:

EXHIBITS

"A" (18)

Letter,

Second

Defendant to

Plaintiff

30th October

1961.

(Contd)

EXHIBITS"A" (19)

Letter,
 Plaintiff
 to Second
 Defendant,
 6th
 November
 1961.

**"A" (19) LETTER, PLAINTIFF TO SECOND
 DEFENDANT, 6th November 1961.**

SUSUR ROTAN MINING LIMITED
SINGAPORE

6th November, 1961.

The Manager,
 M/s. Kota Mining Co.Ltd.,
 7th Storey Building,
 229 Rochore Road,
 Singapore.

10

Dear Sirs,

**Re: Prospecting on Remaining Area
 South-west of 185 acres.**

We are in receipt of your letter of 30th October 1961.

We are surprised to note your remarks on the 2nd and 3rd paragraphs of your letter. It seems to us that there is some misunderstanding on the subject of further prospecting by diamond drilling on the remaining area South West of 185 acres.

20

According to our agreement you are responsible for the obtaining of the Mining Lease and therefore anything which should have to be done in order to obtain the Mining Lease title will be your responsibility.

Under the circumstances any prospecting requested by the Mining Department in order to obtain the Mining Lease will have to be done by you at your expense. And on this you will understand that there cannot be any possibility of our assuming the responsibility.

30

The discussion on this subject between M/s. Wee Aik Koon and Hee Chit Lun and Miss Judy Chua and Mr. Chew Hee Jin in July and 28th October 1961 is that prospecting that is necessary in order to obtain the Mining Lease

will have to be done by you at your expense. After the issuing of the Mining Lease title by the authorities and thereafter any further prospecting that we wish to be done will naturally be at our expense.

Further the assurance given by our Mr. Chew Hee Jin to Mr. Siow Wong Fatt in July 1961 is the same as above.

10 We would request you to start prospecting as soon as possible and we understand that the Prospecting Permit will expire on the 20th December 1961 and no extension will be allowed.

20

We would also suggest for your consideration that if you wish us to help you in prospecting we shall be glad to do so but all the expenses in connection with this prospecting will have to be paid by you. We will assure you that if this prospecting is to be done by our engineers, it will be cheaper and quicker than if you were to do it yourselves.

We trust that we have explained the matter clearly and thereby clear any misunderstanding which you may have.

Further we shall be glad to have your confirmation as to whether you wish us to do the prospecting for you and bill you accordingly.

We would appreciate your early reply.

Yours faithfully,

Sd: Illegible.

EXHIBITS
 "A" (19)
 Letter,
 Plaintiff
 to Second
 Defendant,
 6th
 November
 1961.
 (Contd)

EXHIBITS

P.5. Letter
 J. P. Wilkins
 & Co. Ltd.
 to State
 Drainage &
 Irrigation
 Engineer,
 15th
 November,
 1961.

P.5. LETTER J.P. WILKINS & CO. LTD. TO
 STATE DRAINAGE & IRRIGATION ENGINEER
 15th November 1961.

J.P. Wilkins & Co.Ltd. (Incorporated in the Federation of Malaya)	No.8-10 Station Road, Ipoh, Malaya, Ipoh (Office 3223) Telephones (House 4625)
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15th November, 1961.
 Our Ref: No.(10) in SRML/61.

10

The State Drainage & Irrigation Engineer,
 Drainage & Irrigation Department,
 Johore Bahru,
 Johore.

Dear Sir,

Re: Kota Mining Co.Ltd.
 Proposed Iron Ore Mine
 within Forest Permit
 No.141/59 Kota Tinggi,
 Johore.

20

We have been requested by the above mining company to approach you for permission in connection with their proposed scheme for the construction of a jetty at the river end of Jalan Ja'afar in Kota Tinggi Town. The Jetty is required for the loading of iron ore from lorries direct into lighters for conveying to ship anchored in the roads of Sungai Johore. The proposed jetty would be of wooden construction supported on timber piles driven into the stream bed and made strong enough to take a weight of 15 tons. Lorries would reverse on to the jetty and tip the iron ore down a chute into the centre of the lighters tied to the jetty.

30

We attach a plan showing the site of the proposed jetty designated in red lettering. On the same plan is shown an alternative loading scheme is expected to be much too costly to implement.

40

Would you kindly consider the first scheme for the construction of a jetty and give us the necessary formal approval.

Yours faithfully,

JPW/csc.

c.c. M/s. Kota Mining Co. Ltd.,

SUPREME COURT, Johore Bahru,
Civil Suit No. 94/1962

Exhibit marked "P5"

Put in by P.W.l Chua Siow Cheng
this 11th day of November, 1963.

10

EXHIBITS

P.5. Letter
J.P. Wilkins
& Co. Ltd.
to State
Drainage &
Irrigation
Engineer,
15th
November,
1961.
(Contd)

Sd: V.R.T. Rengam.

Assistant Registrar.

EXHIBITS"A" (20)

Letter,
 Plaintiff to
 Second
 Defendant
 15th
 November,
 1961.

"A" (20) LETTER, PLAINTIFF TO SECOND
 DEFENDANT, 15th November 1961

SUSUR ROTAN MINING LIMITED
 (Registered in Singapore)
 MINERS, IMPORTERS & EXPORTERS

Room No.8 - 2nd Floor

200 Clemenceau Avenue,

Singapore.9.

Date 15th November 1961.

The Manager,
 M/s. Kota Mining Co.Ltd.
 7th Storey Building,
 229 Rochore Road,
 Singapore.

10

Dear Sir,

Re: Prospecting on Remaining Area
 South-west of 185 Acres

We have to refer you to our registered
 letter of 6th instant in reply to yours of 30th
 October, 1961.

20

Up to date we have not yet received your
 confirmation as to whether you wish us to do
 the prospecting for you and bill you accordingly
 or not.

At this stage we have to emphasise that
 there is very little time left to do the
 prospecting and have again to state that
 Prospecting Permit will expire on the 20th
 December 1961 and no extension will be allowed.

In this respect we have to refer you to the
 copy of the attached letter dated 15th May, 1961
 to your engineers M/s. Valentine, Dunne &
 Associates Limited regarding the question of

30

diamond drilling which we trust is fully understood by you.

We would appreciate your acknowledgment and reply to this letter.

Yours faithfully,

EXHIBITS

"A" (20)

Letter,
Plaintiff to
Second
Defendant
15th
November,
1961.
(Contd)

EXHIBITS

"A" (21)

Letter,
Plaintiff to
First
Defendant,
17th
November,
1961.

"A" (21) LETTER PLAINTIFF TO FIRST DEFENDANT
17th November 1961.

SUSUR ROTAN MINING LIMITED

Room No.8 - 2nd floor

200 Clemenceau Avenue,

Singapore.

17th November 1961.

Mr. Seow Wong Fatt,
26 Jalan Jafar,
Kota Tinggi,
Johore.

10

Dear Sir,

Re: Stockpile Land

This is to confirm to you that we have agreed to rent to you the land No. 330 of P9185 on the 26 $\frac{1}{2}$ milestone (approx.) Kota Tinggi - Jalan Mawai at a monthly rent of \$20/- (Dollars Twenty only) per month payable in advance.

Yours faithfully,

20

"A" (22) LETTER SECOND DEFENDANT TO
PLAINTIFF 18th November
1961.

EXHIBITS
Letter,
Second
Defendant to
Plaintiff,
18th
November,
1961.

18th November, 1961.

The Secretary,
Susur Rotan Mining Limited,
200 Clemenceau Avenue,
Singapore.9.

Dear Sir,

10 We acknowledge receipt of your letters
dated 30th October and 15th November,
contents of which are noted.

Referring to the diamond drilling work
on the remaining area, we consider that
since you have denied the verbal undertaking
in your letter of the 30th October, we have
decided to do it ourselves and have to thank
you for your kind offer.

Yours faithfully,

EXHIBITS"A" (23)

Letter,
Plaintiff
to Second
Defendant
23rd
November,
1961.

"A" (23) LETTER PLAINTIFF TO SECOND
DEFENDANT 23rd November
1961.

SUSUR ROTAN MINING LIMITED

(Registered in Singapore)

MINERS, IMPORTERS & EXPORTERS

Room No.8 - 2nd Floor

200 Clemenceau Avenue,

Singapore.9.

Dated, 23rd November, 1961.

10

The Manager,
M/s. Kota Mining Co.Ltd.,
229 Rochore Road,
Singapore.

Dear Sir,

We are in receipt of your letter of 18th instant and note that you will be doing yourselves the diamond drilling work on the remaining area.

Further we regret to note that you have stated in your letter that "we have denied the verbal undertaking" and have to point out that there is no question of a denial arising and as already pointed out in our letter of 30th October 1961 our representatives have never informed you of such undertaking.

20

We trust that we have made ourselves clear on this point.

Yours faithfully,

30

Sd: Illegible.

P.1 (4) RESOLUTION OF 24th November 1961

EXHIBITS

P.1.(4)
Resolution
of Plaintiff
24th
November
1961.

SUSUR ROTAN MINING LIMITED

"RESOLVED that the Company be and is hereby authorised to enter into an agreement with M/s. Wong Ah Lin and Joo Poo Teck to lease the land comprised in Johore Government Grant No.14469 Lot No.330 for the storage of Iron Ore for a period of 5 years from 1962 to 1966 at a yearly rental of Dollars Two hundred and Fifty only commencing from the 1st day of January 1962. Payment of \$500/- is to be made immediately for 1962 and 1963 yearly rent and thereafter to be paid yearly not later than 31st day of January of each and every succeeding years. Other conditions and terms are as per copy of agreement attached".

DIRECTORS

Sd: In Chinese.

Sd: Illegible.

20 DATED 24th day of November, 1961.

EXHIBITS

P.I. (5)
 Minutes of
 A.G.M. of
 Plaintiff
 30th
 December
 1961.

P.I. (5) MINUTES OF A.G.M. OF PLAINTIFF
 30th December 1961.

SUSUR ROTAN MINING LIMITED

Minutes of an Annual General Meeting of
 the Company held at Flat No.21, First Floor,
 Ngee Ann Building, Orchard Road,
 Singapore 9, on Saturday, 30th December, 1961
 at 10.30 a.m.

PRESENT: Madam Yeo Lew Soo (Chairman),
 and Miss Chua Siew Cheng. 10

MINUTES: Minutes of the previous meeting
 held on 31st December, 1960,
 were read and duly confirmed.

CHAIRMAN'S ADDRESS: The notice convening the meeting
 having been read, the Chairman
 explained that the accounts for
 the year ended 30th September,
 1961, were not ready, therefore
 he suggested that the audited
 accounts of the Company be
 approved at the next meeting. 20

DIRECTORS: The Chairman said in accordance
 with the Articles of Association
 of the Company, Miss Chua Siew
 Cheng resigned from the
 Directorate were re-elected
 Directors of the Company.

AUDITORS: Messrs. Evan Wong & Company, were
 appointed Auditors of the
 Company. 30

There being no other business, the meeting
 then terminated with a vote of thanks to the
 Chairman.

Confirmed this 19th day of December, 1962.

Sd: In Chinese.

Chairman.

"A" (24) LETTER DONALDSON & BURKINSHAW
TO BRADDELL BROTHERS,
26th January 1962.

JGS/ZM/C. 28832

26th January, 1962

Messrs. Braddell Bros.,
Singapore.

Dear Sir,

re: Mining Land at Kota Tinggi

10 We refer to the above matter which was
dealt with by your Mr. Harris in August, 1960
your ref: JLPH/NGJ.

20 You will recollect that you sent us
photostat copies of the Agreements referred
to in the Agreement dated 19th September,
1960 between Kota Mining Co. Ltd., and
Susur Rotan Mining Ltd. We refer to the third
recital which mentions an Agreement date 2nd
December, 1953 made between Mr. Seow Wong Fatt
of the one part and Messrs. Tan Gek Piah and
Tan Song Chiang of the other part.

We wonder if you could let us have a
copy of this Agreement.

Yours faithfully,

Sd: Donaldson & Burkinshaw.

EXHIBITS

"A" (24)
Letter,
Donaldson &
Burkinshaw
to Braddell
Brothers
26th
January
1962.

EXHIBITS"A" (25)

Letter,
Plaintiff to
Second
Defendant,

29th
January,
1962.

"A" (25) LETTER PLAINTIFF TO SECOND
DEFENDANT, 29th January 1962

29th January, 1962

The Managing Director,
M/s. Kota Mining Co.Ltd..
229 Rochore Road,
Singapore.

Dear Sir,

Re: FPP141/59 - Mukim of Susur
Rotan District of Kota Tinggi

10

Recently we have noticed that you have not sent to us copy of the letters received by you from the Mines Department and your engineer's Messrs. Valentine, Dunne & Associates Ltd.'s reply and correspondence to these letters which we should be informed or else it will not be possible for us to act without knowing what is going on.

Up to date we have also not yet received copy of the Survey Report of the 185 acres which we understand is completed and is at present in your possession.

20

Further we have also to request that a copy of the Diamond drilling report on the remaining area South West of 185 acres, recently conducted by you should be sent to us.

We feel strongly that some co-operation from your staff in the above matters will be beneficial to both of us.

We would appreciate your looking into the above matters to let us have the above requisite copies as soon as possible.

30

Yours faithfully,

"A" (26) LETTER BRADDELL BROTHERS TO
DONALDSON & BURKINSHAW,
29th January 1962

EXHIBITS"A" (26)

Letter

Braddell

Brothers to

Donaldson &

Burkinshaw

29th

January

1962

BRADDELL BROTHERS
Advocates & Solicitors
Your Ref: JGS/ZM28832
Our Ref: JLPH/NGJ

Meyer Chambers,
Raffles Place,
Singapore.1.

29th January, 1962

10 Messrs. Donaldson & Burkinshaw,
Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

We thank you for your letter of the 26th January.

We do not have a copy of the Agreement to which you refer.

20

We expect you require the documents to advise your clients on the position which has just arisen in regard to the mining rights. We refer to the Mining Certificate which, as you no doubt know, has just been issued in the name of Mr. Siow Wong Fatt containing a condition against transfer etc.

In case you have not seen the condition (which is No. 3 of 10 special conditions) it reads as follows:-

30

"No transfer, sublease, charge or other dealing shall be endorsed or permitted, under the provisions of the Mining Enactment without the prior approval of the Ruler in Council".

We are concerned as to the position under the various agreements and are beginning to have doubts as to their validity. We were of course not asked to advise on the validity of any of the transactions. We know next to nothing about the mining laws of Johore and always say so to our clients.

EXHIBITS

"A" (26)

Letter

Braddell

Brothers to

Donaldson &

Burkinshaw

29th

January

1962.

(Contd)

Will you kindly let us have the benefit
of your opinion as to the validity of the
several agreements which have been entered into
and which purported to assign rights which
seem clearly to have been unassignable?

Please let us hear from you.

Yours faithfully,

Sd: Braddell Bros.

"A" (27) LETTER DONALDSON AND BURKINSHAW
TO BRADDELL BROS.
3rd February 1962.

EXHIBITS

"A" (27)
Letter,
Donaldson &
Burkinshaw
to Braddell
Bros.
3rd.
February
1962.

JGS/ZM/28832
Your Ref:JLPH/NGJ

3rd February, 62.

Messrs. Braddell Bros.,
Singapore.

Dear Sirs,

re: Mining Land at Kota Tinggi

10 We refer to the Agreement between our
respective clients in respect of the above
and in particulars to Clause 1(b) of the
principal Agreement dated 19th September, 1960
which states that the balance of \$40,000.00
shall be payable as soon as a Mining Lease or
Certificate is issued.

20 As your clients are the persons who are
applying for the Lease, we trust that your
clients will inform our clients when this
Lease or Certificate has been issued so that
our clients may be able to make payment in
accordance with the Agreement.

We trust that you will inform us as soon
as the Mining Lease or Certificate is issued.

Yours faithfully

Sd: Donaldson & Burkinshaw.

EXHIBITS"A" (28)

Letter

Donaldson &

Burkinshaw

to Braddell

Brothers

3rd

February

1962.

**"A" (28) Letter Donaldson & Burkinshaw,
to Braddell Brothers,
3rd February 1962.**

JGS/ISK/28832 3rd February, 1962

Messrs. Braddell Bros.
Singapore.

Dear Sirs,

re: Mining Land at Kota Tinggi.

We regret we had overlooked your letter
of 29th January in writing ours of 3rd instant.

10

Our clients should be obliged if you
would give them 7 days to pay the sum of
\$40,000/-.

Would your clients agree to an extension
of another 40 days within which to make payment
of this sum as the Chinese New Year is
approaching.

Yours faithfully,

Sd: Donaldson & Burkinshaw.

"A" (29) LETTER, DONALDSON & BURKINSHAW
TO BRADDELL BROTHERS,
8th February 1962.

EXHIBITS

"A" (29)
Letter,
Donaldson &
Burkinshaw
to
Braddell
Brothers
8th
February
1962.

JGS/ZM/28832
Your Ref: JLPH/NGJ

8th February, 1962

Messrs. Braddell Brothers,
Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

10. We refer to our letter of the 3rd instant and to our telephone conversation this morning explaining how you had receive two identical letters from us on the same day.

Our clients inform us that they approached your clients direct on Saturday morning regarding the extension of time for payment of the \$40,000/-. We understand that your clients are agreeable to this but they wish the matter to be dealt with through you.

20. Our clients came in to see us yesterday morning and informed us that they have recently become aware that the Mining Certificate which has been issued is only in respect of 184 acres of mining land. This is only a small portion of the land which is the subject of the Agreement. In view of this recent information, it appears that the Mining Certificate has not been issued in respect of "the said land"

30. referred to in Paragraph 1 of the Agreement as the Certificate has only been issued in respect of part of "the said land". It would appear therefore that the sum of \$40,000/- does not become payable until a Mining Certificate is issued in respect of all the land described in the Agreement. Would you kindly let us have your views on this.

In view of such unforeseeable circumstances, may we suggest that a further Agreement be entered into between the parties which could provide, for instance, that our clients should pay the sum of \$40,000/- proportionately as

EXHIBITS
"A" (29)

Letter,
Donaldson &
Burkinshaw
to
Braddell
Brothers
8th
February
1962.

(Contd)

Mining Certificate are issued in respect of parts of the land in question.

We might add further that, when a Mining Certificate is issued in respect of the whole of the land, the period of seven days should run from the date when our clients receive from your clients notice of the issue of the Certificate as our clients would not know when the Certificate is issued.

Would you be good enough to let us know the number of the Mining Certificate that has been issued.

10

Yours faithfully,

"A" (30) LETTER, BRADDELL BROTHERS TO
DONALDSON & BURKINSHAW,
9th February 1962.

BRADDELL BROTHERS Advocates & Solicitors Your Ref: JGS/LSK/28832 Our Ref: JLPH/SC	Meyer Chambers, Raffles Place, Singapore.1. 9th February, 1962.
--	--

10 Messrs. Donaldson & Burkinshaw,
Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

We thank you for your letters of the
3rd and one letter of the 8th February.

20 There can surely be no question but that
at the time they instructed you to write you
longer letter of the 3rd February your
clients were well aware a Mining Certificate
had been issued. We wrote to you this effect
on the 29th January.

Further we are instructed that Miss Judy
Chua telephoned Mr. Hee Chit Lim twice in the
30th January and was told the Certificate had
been issued and that we had written you to that
effect.

30 Our clients confirm that on Saturday after-
noon last your clients called on ours to ask
for an extension of time within which to pay
the sum of \$40,000/-. Our clients did not
agree to any extension.

We confirm that the Mining Certificate
has been issued only in respect of 184 acres.

On one of the plans attached to the
prospecting permit the land is shown as of an
area of 441 acres. On another the area is 549
acres. The agreement of the 17th June 1958
seems to relate to an area of 600 acres. A
later agreement states that the area is 900
acres.

EXHIBITS

"A" (30)
Letter,
Braddell
Brothers to
Donaldson
&
Burkinshaw,
9th
February
1962.

EXHIBITS

"A" (30)
 Letter,
 Braddeil
 Brothers to
 Donaldson &
 Burkinshaw
 9th
 February,
 1962.
 (Contd)

Except that the area can hardly be less than 441 acres it is impossible to say what area is comprised in the expression "thesaid land". For that reason it would appear that the agreements of the 19th September 1960 are void for uncertainty.

Further we are instructed that except for a further area of some 40 acres, the land comprised in the Mining Certificate is the only part of the larger area (whatever that is) which is commercially workable. Consequently if another Mining Certificate is issued it will only be in respect of the area of approximately 40 acres. It follows that a Mining Certificate never will be issued in respect of "the said land". Thus the agreements are impossible of performance.

Lastly it seems certain that under the Johore Mining Enactment all the purported dealings with Siow Wong Fatt's rights are null and void.

10

20

Yours faithfully,

"A" (31/32) LETTER, DONALDSON & BURKINSHAW
TO BRADDELL BROTHERS,
12th February, 1962

JGS/ZM/S.31331 12th February, 62.
Your Ref: JLPH/SC

Messrs. Braddell Brothers,
Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

We thank you for your letter of the 9th instant.

10 We do not propose to go into the question now as to whether or not our clients were aware of the issue of a Mining Certificate in view of what is further stated in your said letter.

20 According to our interpretation of the Agreements, we cannot agree that it is impossible to say what area is comprised in the expression "the said land" as the first recital in the Principal Agreement refers to the land comprised in Prospecting Permit No.141/59 and it is the land described in that Permit that is referred to as "the said land" in the Principal Agreement. There can only be one area which is subject to Prospecting Permit No.141/59.

30 It is true that the prior Agreements relate to land comprising an area more than that described in Prospecting Permit No.141/59 in which case, we can take it to mean that the Agreements entered into between our respective clients intended our clients only to have the benefit of the land comprised in Prospecting Permit 141/59.

40 If your clients have no interests whatsoever in the land comprised in Prospecting Permit 141/59, then they are at fault in entering into an Agreement providing that our clients should be issued in respect of the said land even though there is more than one Certificate. The intention is that the said land should be subject to being leased. Would

EXHIBITS

"A" (31/32)
Letter,
Donaldson
&
Burkinshaw
to
Braddell
Brothers,
12th
February
1962.

EXHIBITS
"A"(31/32)
 Letter,
 Donaldson &
 Burkinshaw
 to Braddell
 Brothers,
 12th
 February,
 1962.
 (Contd)

you please be good enough to let us have a photostat copy of the Mining Certificate as our clients do not have a copy of this

We further refer to your letter of the 29th January last in which you reiterate Condition No.3 in the Mining Certificate. The Condition does not say that there shall be no transfer but says that there shall be no transfer, etc. without the prior approval of the Ruler in Council.

10

Under the terms of the Agreement between our respective clients, your clients have agreed that they would use their best endeavours for an Underlease or an Assignment of an Underlease to be issued direct to our clients.

Are your clients proposing to make an application for an Underlease to be made in favour of our clients? We see no difficulty in this in view of the fact that Mr. Siow Wong Fatt is a Director of your clients' Company. If your clients fail to act in accordance with the Agreements, then they will be in breach.

20

Our clients have handed to us a cheque made out in favour of your clients for the sum of \$40,000/- to show their willingness to pay this amount but naturally this amount can only be paid when a Mining Certificate is issued in respect of the whole of "the said land". However, if your clients agree, our clients will pay an amount proportionate to the area of land that is the subject of the Mining Certificate.

30

Would you kindly obtain your clients' instructions and get in touch with us on these matters.

Yours faithfully,

Sd: Donaldson & Burkinshaw.

c.c. Messrs. Susur Rotan Mining Ltd.

"A" (33/34) LETTER, BRADDELL BROTHERS TO
 DONALDSON & BURKINSHAW,
 16th February 1962.

EXHIBITS
 "A"(33/34)
 Letter,
 Braddell
 Brothers to
 Donaldson &
 Burkinshaw
 16th
 February
 1962

BRADDELL BROTHERS
 Advocates & Solicitors
 Your Ref: JGS/ZM/S.31331
 Our Ref: JLPH/NGJ

Meyer Chambers,
 Raffles Place,
 Singapore.1.
 16th February, 1962.

10 Messrs. Donaldson & Burkinshaw,
 Singapore.

Dear Sirs,

Re: Mining Land at Kota Tinggi

We thank you for your letter of the 12th
 February.

20 May we refer to the fifth paragraph on
 page 1. Are your clients charging ours with
 fraud? Your clients had the benefit of legal
 advice at the time they entered into the
 agreements with ours. Your clients were
 furnished with copies of all the recited trans-
 actions save an agreement of the 2nd December
 1958. Our clients did not seek our advice on
 the validity of the agreements.

We have now looked into the matter and as
 far as we can see the position is as follows.

30 Our clients at the time of entering into
 the agreements with you had such rights, if any,
 as they took under the documents recited in the
 principal Agreement. The Agreements dated 17th
 June 1958 and the 3rd July 1959 were signed
 before a prospecting permit was issued. They
 purported to grant a licence to enter on the
 land. Eventually a prospecting permit was
 issued to Siow Wong Fatt. It granted him a
 licence to enter on the land for prospecting
 purposes. A licence is personal. We cannot see
 how Siow as a licensee could have granted any
 right to any other person to do that which he
 alone was permitted to do. Siow did not take an
 interest in the land under the permit.

EXHIBITS

"A"(33/34)
 Letter,
 Braddeil
 Brothers to
 Donaldson &
 Burkinshaw
 16th
 February
 1962
 (Contd)

Now that a mining certificate has been issued it seems to us that the position is governed by Section 31 of the Johore Mining Enactment. This provides that land held under a certificate granted under the Enactment shall not be capable of being transferred, transmitted, subleased, charge or other dealt with except in accordance with the provisions of the Enactment and every attempt to transfer, transmit, sublease, charge or otherwise deal with the same shall be null and void and of no effect.

10

Quite apart from the question of whether Siew had anything to assign or grant it seems quite clear that all the dealings which have taken place are null and void and of no effect at all.

You say that the expression "the said land" in the principal Agreement refers to the land comprised in Prospecting Permit No.141/59. This permit appears to have been issued in respect first of an area of 441 acres and then of 549 acres. The Certificate relates to an area of 184A. 3R. 25P.

20

Our clients do not propose to make an application for an underlease to be made in favour of your clients. They have no locus standi or any interest whatsoever to make such an application. At the time the Agreements of the 19th September 1960 were entered into Mr. Siew Wong Fatt was not a director of our client Company.

30

If your clients are correct in their view that the agreements are valid our clients point put that the time for payment of the sum of \$40,000/- has long expired. The agreement does not provide for payment of proportionate amounts. A mining certificate will never be issued in respect of the whole of the said land.

Yours faithfully,

40

Sd: Braddell Bros.

"A" (35) LETTER, BRADDELL BROTHERS TO ALLEN
& GLEDHILL, 22nd February 1962.

EXHIBITS

"A" (35)

Letter,
Braddell
Brothers to
Allen &
Gledhill,
22nd
February
1962.

RCH

22nd February, 1962.

JLPH/NGJ

Messrs. Allen & Gledhill,
Singapore.

Dear Sirs,

Mining Land at Kota Tinggi -
Siow Wong Fatt and Tang Hai
Mining Company

10

Mr. Siow Wong Fatt has asked us to act in place of Messrs. Tann Wee Tiong & Co. He has handed us a copy of Messrs. Tann's letter to your clients of the 27th January and copies of your three letters to Messrs. Tann of the 9th, 10th and 15th February.

20

We are instructed that there has been a mistake. Messrs. Tann should not have written your clients at all. Our client intended that the letter of the 27th February be written to your clients' assignee, one Chan Sai Sow.

You refer to an agreement "to sub-lease the above mining lease when it is obtained". This we take it refers to an agreement dated the 17th June 1958 between our respective clients. This agreement was never implemented by your clients.

30

On the 3rd July 1959 before the issue of the Prospecting Permit your clients signed an agreement with Chan Sai Sow assigning all the agreement of the 17th June 1958.

The assignment was made with our client's consent.

Assuming that the agreement of the 17th June 1958 was a valid agreement (and we think that is a bold assumption) it has lapsed by

EXHIBITS

"A" (35)

Letter,

Braddell

Brothers to

Allen &

Gledhill

22nd

February

1962

(Contd)

non-performance by your clients. Your clients have no right whatsoever to the grant of a sub-lease.

Yours faithfully,

Sd: Braddell Bros.

"A" (36/37) LETTER, DONALDSON & BURKINSHAW
TO BRADDELL BROTHERS, 10th March
1962.

JGS/LSK/31331

10th March, 62.

Messrs. Braddell Brothers,
Meyer Chambers,
Singapore.

EXHIBITS
"A"(36/37)
Letter,
Donaldson &
Burkinshaw
to Braddell
Brothers
10th March
1962.

Dear Sirs,

Re: Mining Land at Kota Tinggi

10 We refer to your letter of the 16th ultimo, upon which we have now obtained our clients' instructions.

Your clients appear to be trying desperately hard to find some way of escaping liability under the Agreements which they have entered into. In your letter of the 29th January last, you stated that you were "beginning to have doubts" as to the validity of the various Agreements.

20 Your letter of the 9th ultimo stated that the Agreements were void for uncertainty and in the last paragraph thereof you stated that all the purported dealings were also void under the Mining Enactment.

Your letter under reply now says that a personal licence is incapable of transfer so no rights have passed and that now the position is governed by Section 31 of the Mining Enactment.

30 It is apparent that your clients have no intention of carrying out the terms of the Agreements.

We refer to the previous correspondence which we have had with you in connection with the above in which we requested you to send us

EXHIBITS

"A"(36/37)
 Letter,
 Donaldson &
 Burkinshaw
 to Braddell
 Brothers
 10th March
 1962
 (Contd)

a copy of the Mining Certificate and let us know the number of such certificate. So far we have had no satisfactory reply from you. Our clients are therefore beginning to doubt whether a Mining Certificate has in fact been issued to Mr. Siow Wong Fatt's name. If in fact a Mining Certificate has been issued, will you send us a copy of the Certificate or alternatively will you allow our clients an opportunity to inspect the Certificate at your premises? We should like this point clarified before we take any further steps. In the meantime, we are still holding the cheque for the sum of \$40,000/- made in favour of your client. Upon proof that the Mining Certificate has in fact been issued, we shall forward same to you.

10

As regards the fourth paragraph of your letter under reply according to the Authorities only purely personal licences are not assignable. It can hardly be said that Mr. Siow's permit was a purely personal one. We are sure that when the permit was issued, it was never intended that Mr. Siow should himself prospect for iron ore.

20

In answer to the fifth paragraph of your said letter, we think the important words are "except in accordance with the provisions of the Enactment." Section 31 does not say there shall be no transfer etc. The procedure on transfers is governed by Section 32 of the same Enactment.

30

Our clients have handed us a plan showing that the original area subject to Prospecting Permit No.141 of 1958 was 459.32 acres and that the area was extended in 1960 by 108.35 acres. The total area therefore which is subject to the permit is approximately 567 acres. We can therefore see no reason to quibble in this connection.

40

As regards the 8th paragraph of your said letter, Mr. Siow Wong Fatt is at present a Director of your client Company and it is immaterial that at the time of the Agreements he was not a Director.

Our clients are surprised at the recent attitude that your clients had taken as on 29th July 1961 they wrote a letter to our clients stating that they had no intention of repudiating the agreements.

Will you please let us have a reply to this letter within a week's time.

Yours faithfully,

EXHIBITS

"A"(36/37)
Letter,
Donaldson &
Burkinshaw
to Braddell
Brothers
10th March
1962
(Contd)

EXHIBITS
"A" (38)

"A" (38) LETTER, BRADDELL BROTHERS TO DONALDSON
& BURKINSHAW 15th March 1962.

Letter,
Braddell

Brothers to
Donaldson &
Burkinshaw
15th March
1962.

BRADDELL BROTHERS
Advocates & Solicitors

Meyer Chambers,
Raffles Place,
Singapore.l.

Our Ref: JLPH/NGJ
Your Ref: JGS/LSK/31331

15th March, 1962.

Messrs. Donaldson & Burkinshaw,
Singapore.

Dear Sirs,

10

Re: Mining Land at Kota Tinggi

We thank you for your letter of the 10th
March.

Your clients have at all material times
been aware that a Mining Certificate has been
issued. The agreement does not stipulate that
it shall be issued in the name of Siow Wong
Fatt.

Our clients note that your clients have
now instructed you, on proof that the Mining
Certificate has been issued, to send us a cheque
for the whole of the sum of \$40,000/-.

20

Previously your clients took the stand that
the sum of \$40,000/- did not become payable
until Mining Certificate was issued in respect
of all the land described in the Agreement.

The fact of the matter is that your clients
did not and were not in a position to pay the
said sum of \$40,000/- on the issue of the Mining
Certificate or during the period of 7 days grace
for which you asked in your letter of the 3rd
February. The said sum not having been paid
within the period of grace the Agreement is at
an end.

30

Yours faithfully,

Sd:

"A" (39/40) LETTER, DONALDSON & BURKINSHAW
TO BRADDELL BROTHERS, 17th March
1962.

EXHIBITS

"A"(39/40)
Letter,
Donaldson &
Burkinshaw
to Braddell
Brothers
17th March
1962.

Our Ref: JGS/FMK/S.31331
Your Ref: JLPH/NGJ

Messrs. Braddell Brothers, 17th March, 62.
Meyer Chambers,
Singapore.

Dear Sirs,

10 Re: Mining Land at Kota Tinggi

We thank you for your letter of the 15th instant.

You still have not given us a satisfactory reply regarding the Mining Certificate. Are we to assume by the second paragraph of your letter that a Mining Certificate has already been issued? If so, will you let us have a copy thereof or will you allow our clients to inspect the Certificate at your premises?

20 We deny that our clients have at all material times been aware that a Mining Certificate has been issued, if indeed it has been issued. In fact, even now they are not certain whether a Certificate has been issued because you appear to have given us no answer to any of our enquiries in connection with the Mining Certificate. The mere fact that our clients asked whether a Mining Certificate had been issued does not mean that they knew a Mining Certificate had been issued. Your reasoning in this respect is not very logical. If our clients knew that a Mining Certificate had been issued there would be no need for them to ask whether such a certificate has been issued or not.

30 40 We cannot say that it makes any difference whether the agreement says that the Certificate should be issued in the name of Siow Wong Fatt or not. The point is that your client claim it has been issued in his name and that our clients

EXHIBITS
 "A"(39/40)
 Letter,
 Donaldson &
 Burkinshaw
 to Braddell
 Brothers
 17th March
 1962.
 (Contd)

are entitled to enforce their rights against your clients for breach of contract.

Our clients gave us a cheque for \$40,000 in your clients' favour in order to show their good faith in this matter.

Our clients still maintain that the \$40,000.00 is not due until the Mining Certificate is issued in respect of the whole of the land but as stated above, in order to show good faith, our clients are prepared to hand you over a cheque for \$40,000.00 upon proof that a Mining Certificate has been issued. So far you have not given us any proof at all in the connection.

10

The allegation contained in the last paragraph of your letter that our clients were not in a position to pay the \$40,000.00 is quite unfounded and should be withdrawn.

In view of your clients' attitude, our clients intend to take action against them and we are instructed and do hereby give notice that unless an application for a transfer or sub-lease of the Mining Certificate in our clients' name is made within 14 days from the date hereof by your clients, our clients will take such steps against you as they may be advised and as may be necessary to protect their interests.

20

Yours faithfully,

"A" (41) LETTER, BRADDELL BROTHERS TO DONALDSON & BURKINSHAW 19th March 1962.

EXHIBITS

"A" (41)

X (41)
Letter

Better,
Braddeell

**Bradford
Brothers**

BIOGRAPHIES

to
Donaldson

DONALDSON.
82

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Brahma Sūtra

BUICK 115.11
10th

1961

March
1868

1962.

10 Dear Sirs,

re: Mining Land at Kota Tinggi.

We thank you for your letter of the 17th March on which we are taking our clients' instructions.

Meanwhile may we remind you that on the 16th March your Miss Smith telephoned the writer informing him that your clients were in your office and wished to have inspection of the Mining Certificate. The writer replied that he had it in his possession but had not instructions to produce it for inspection.

Yours faithfully,

EXHIBITS"A" (42)

Letter,
 Donaldson &
 Burkinshaw
 to Braddell
 Brothers
 24th March
 1962

"A" (42) LETTER, DONALDSON & BURKINSHAW TO
 BRADDELL BROTHERS, 24th March 1962

JGS/ZM/S.31331

24th March, 62.

Your Ref: JLPH/NGS

Messrs. Braddell Bros.,
 Singapore,

Dear Sirs,

re: Mining Land at Kota Tinggi.

We have discussed the contents of your letter of the 19th instant with our clients.

10

Our clients say that they find it difficult to believe that a Mining Certificate has been issued and therefore, they want proof of this. It may be that what you have in your possession merely a letter informing Mr. Siow that a Mining Certificate will, in due course, be issued to him. Our clients wonder whether you know what a Mining Certificate looks like as you have already admitted that you know next to nothing about the Mining Laws of Johore and always say so to your clients.

20

We trust that your clients will agree to our clients' having inspection of the document in your possession. This is a perfectly reasonable request and we cannot see what objection you have to granting it.

We refer to our letter of the 20th instant and if we do not hear from you by return of post as to whether or not you are also acting for Mr. Siow, we shall communicate with him direct.

30

Yours faithfully,

"A" (43) LETTER, DONALDSON & BURKINSHAW TO
FIRST DEFENDANT, 27th March 1962

JGS/ZM/Z.31331

Mr. Siow Wong Fatt, 27th March, 1962.
26 Jalan Ja'afar,
Kota Tinggi.

EXHIBITS

"A" (43)
Letter,
Donaldson &
Burkinshaw
to First
Defendant,
27th
March 1962.

Dear Sir,

Re: Mining Land at Kota Tinggi.

10 We act for Messrs. Susur Rotan Mining
Ltd.

We refer to the Agreement made by you on
the 17th June, 1958 with the firm of Tang Hai
Mining Company in which, for the consideration
therein mentioned, you gave them certain rights.

By virtue of Paragraph 6 of the Agreement,
you agreed to execute a valid sub-lease in
favour of Tang Hai Mining Co., on the issue to
you of a Mining Certificate or Lease over the
State Land, the subject of the said Agreement.
20 In accordance with the said Agreement, Tang
Hai Mining Company assigned their rights to
Chan Sai Sow who then executed a Deed of Trust
as he was holding the rights under the said
Agreement in trust for Kota Mining Co., Ltd.

On the 19th September 1960, Kota Mining
Co., Ltd. executed a further Assignment of
their rights in favour of our clients. Our
clients are therefore the ultimate assignees
and as such, are entitled to enforce their
30 rights against you direct.

We understand also that you are a
Director of Kota Mining Co. Ltd.

We are informed that a Mining Certificate has
been issued in respect of part of the Land held
under Prospecting Permit No.141/59.

EXHIBITS
"A" (43)
Letter,
Donaldson &
Burkinshaw
to First
Defendant,
27th
March 1962
(Contd)

In accordance with the interpretation of the Agreements in question, you are now under a personal obligation to execute a sub-lease or Transfer of the mining land in favour of our clients. Have you taken any steps to comply with this obligation?

Kindly let us hear from you within five days from the date hereof.

Yours faithfully,

"A" (44) LETTER, BRADDELL BROTHERS TO
DONALDSON & BURKINSHAW, 11th
April 1962.

BRADDELL BROTHERS
Advocates & Solicitors

Meyer Chambers,
Raffles Place,
Singapore.

Your Ref: JGS/ZM/S.31331
Our Ref: JLPH/NGJ

11th April, 1962

Messrs. Donaldson & Burkinshaw,
Singapore.

10 Dear Sirs,

re: Mining Land at Kota Tinggi.

Your letter of the 27th March addressed to Mr. Siow Wong Fatt and written on behalf of Susur Rotan Mining Ltd. has been handed us with instructions to reply.

There was no agreement between Mr. Siow and your clients. That being so we do not think any comment is necessary on the various statements in your letter.

Yours faithfully,

EXHIBITS

"A" (44)
Letter,
Braddeil
Brothers to
Donaldson &
Burkinshaw
11th April
1962.

EXHIBITS"A" (45)

Letter,

Allen &

Gledhill to

Braddell

Brothers

27th

April 1962

"A" (45) LETTER, ALLEN & GLEDHILL TO BRADDELL
BROTHERS, 27th April 1962.

ALLEN & GLEDHILL
Advocates & Solicitors
Our Ref: RCH/ec/l24/62
Your Ref:JLPH/MK.

P.O. Box No.32
55 & 61 The Arcade,
Raffles Place,
Singapore.

27th April, 1962.

Dear Sirs,

Re: Mining Lease for Iron
Mk. Ulu sg. Sedili

10

Further to our letter of the 24th February 1962, we have now had our clients' full instructions.

We are instructed that as your client well knows there has been no mistake about your client instructing Messrs. Tann Wee Tiong & Company to write to our clients and in view of the fact that Messrs. Tann Wee Tiong & Company sent a copy of their letter to Mr. Chan Sai Sow there can be no doubt whatsoever that your client had accepted the position by the 27th January 1962 (the date of Messrs. Tann Wee Tiong & Company's letter) that the Assignment dated the 3rd July 1959 was no longer of any force and effect because of your client's failure to fulfil clause 7 of the Assignment.

20

We have also seen your letter of the 22nd February on behalf of Mr. Chan Sai Sow addressed to Messrs. Tang Hai Mining Company and we are instructed to reply thereto.

30

As to the fourth paragraph of that letter, we would point out that a copy of the letter dated the 27th January 1962 from Messrs. Tann Wee Tiong & Company was sent to your client so that he was well aware (and for good reason) that so far as Mr. Siow Wong Fatt was concerned the party who had any claim to the issue of a sublease were our clients and not Mr. Chan Sai Sow.

Our clients contend that the Agreement of the 17th June 1958 between your client and themselves is of full force and effect and should your client persist in refusing to carry out the term of the Agreement requiring him to grant a sub-lease to our clients, then they will have no option but to take such legal remedies as they may be advised to safeguard their rights and interests including the making of appropriate representations to the Commissioner of Lands and Mines, Johore.

10

EXHIBITS
"A" (45)
Letter,
Allen &
Gledhill to
Braddell
Brothers
27th
April 1962
(Contd)

Please let us hear from you after you have taken your client's instructions.

Yours faithfully,

Sd: Allen & Gledhill.

M/s. Braddell Brothers,
Meyer Chambers,
Raffles Place,
Singapore.1.

EXHIBITS

D.24. Caveat 26th June, 1962.

D.24

Caveat,
26th June,
1962.

02487

\$1.00 stamp
Stamp Office,
27. Jul. 62
Johore Bahru.

The Commissioner of Lands & Mines

JOHORE BAHRU

TAKE NOTICE that WE, SUSUR ROTAN MINING LIMITED a Company incorporated in Singapore and having its registered office at Flat 21, Ngee Ann Building, Orchard Road, Singapore, claiming a right to a Sub-Lease or Assignment of all that land hereinafter described on the following grounds:-

10

1. Under an Agreement dated 17th June, 1958 made between Siow Wong Fatt of the one part and Tan Gek Piah and Tan Song Chiang of the other part as varied by a subsequent Agreement dated 2nd December, 1958 and made between the same parties the said Siow Wong Fatt agreed inter-alia and for a sufficient consideration that on the issue to him of a Mining Certificate or Lease, he would forthwith execute a valid Sub-Lease of the property in favour of the said Tan Gek Piah and Tan Song Chiang.

20

2. By an Agreement dated 3rd July, 1959 and made between Tan Gek Piah and Tan Song Chiang of the one part and Chan Sai Sow of the other part the said Tan Gek Piah and Tan Song Chiang with the written consent of the aforesaid Siow Wong Fatt assigned to the said Chan Sai Sow all the benefit of the said Agreements of the 17th June, 1958 and the 2nd December, 1958 absolutely.

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3. The said Chan Sai Sow having been appointed a Director of the Kota Mining Co. Ltd., by a Declaration of Trust dated 4th December, 1959 and made between the said Chan Sai Sow and the said Kota Mining Co. Ltd., it was agreed and declared that the said Chan Sai Sow should stand possessed of the benefits of the herein-

40

before recited agreements and all rights, benefits and assets which passed to him under the assignment contained in the Agreement dated 3rd July, 1959 in trust for the said Kota Mining Co. Ltd.

EXHIBITS
D.24
Caveat,
26th June,
1962
(Contd)

4. We claim to be entitled to an Assignment or Sub-Lease of the land referred to in the under-mentioned Mining Certificate by virtue of two Agreements both dated the 19th September, 10 1960 between the said Kota Mining Co. Ltd., of the one part and ourselves of the other part. Under the Agreements above mentioned and made between Kota Mining Co. Ltd., and ourselves it was agreed that as soon as a Mining Lease or Certificate shall have been issued in respect of the property referred to in Prospecting Permit No.141/59, the said Kota Mining Co. Ltd., would execute an Assignment or sub-lease thereof in our favour. The land in which we claim to be entitled to a sub-lease as aforesaid is all 20 that land formerly comprised in Prospecting Permit 141/59 in the Mukim of Ulu Sungei Sedili, District of Kota Tinggi, Johore containing an original area of 459.32 acres in addition to an extended area of 108.35 acres including such land as is now contained in Mining Certificate No.603 for 184.875 acres in Lot No.627 and Plan No.25214 issued to Siow Wong Fatt of No.26 Jalan Jaffar, Kota Tinggi and we forbid the registration of any dealing with the before 30 mentioned land until this caveat be withdrawn by the caveator, or by the order of the Court, or unless such dealing be subject to the claim of the caveator, or until after the lapse of 21 days from the date of the service of notice by the caveatee at the following address:-

Address for service of Notices and proceedings is care of Messrs. Donaldson & Burkinshaw, 45, Jalan Ibrahim, Johore.

Dated this 26th day of June, 1962.

40 THE COMMON SEAL of SUSUR ROTAN MINING LIMITED is hereto affixed in the presence of:-

(Seal)

Sd: In Chinese
Director.

Sd: Illegible.
Secretary.

EXHIBITS

D.24
Caveat,
26th June,
1962
(Contd)

I, the above named CHUA SIEW CHENG of
8-E Tanjong Rhu, Singapore, the Agent for the
above named SUSUR ROTAN MINING LIMITED
affirmed that the allegations in the above
Caveat are true in substance and in fact.

Sd: Chua Siew Cheng.

Affirmed before me,

Sd: Illegible.

A Commissioner for Oaths.

"A" (46) LETTER, BRADDELL BROTHERS TO
DONALDSON & BURKINSHAW,
26th July, 1962.

EXHIBITS

"A" (46)
Letter,
Braddell
Brothers to
Donaldson &
Burkinshaw
26th July,
1962.

BRADDELL BROTHERS
Advocates & Solicitors
Your Ref: JGS/DK/S.31331
Our Ref: JLPH/MK/892/59/2

Meyer Chambers,
Raffles Place,
Singapore.

26th July, 1962.

Messrs. Donaldson & Burkinshaw,
Singapore.

10 Dear Sirs,

Mining Land at Kota Tinggi.

We have been handed the notice of caveat addressed to Mr. Siow Wong Fatt by the Commissioner of Lands & Mines, Johore.

It is open to argument whether the provisions of section 41 of the Johore Mining Enactment permit the filing of a caveat. We refer you to sections 34, 57, 62 and 71 of the Johore Land Enactment.

20 We enclose for your information a copy of our letter to the Commissioner of Lands and Mines asking him to remove the caveat. We refer you to section 55(v) of the Land Enactment. Our client hopes, however, that yours will move under sub-section (viii) to withdraw the caveat in the course of the next few days.

Our client has already been put to trouble and expense. He may have suffered unforeseen damage. We respectfully refer you to subsection (xi). No doubt you will agree with us that "any person" includes the solicitor filing a caveat. Our client reserves, as he must, the right to claim compensation.

There is a passage in the caveat which has particularly disturbed our client. We refer to the statement in ground four that Kota Mining would execute an assignment or sub-lease in favour of your clients.

EXHIBITS
 "A" (46)
 Letter,
 Braddeil
 Brothers to
 Donaldson &
 Burkinshaw
 26th July,
 1962.
 (Contd)

As we pointed out in our letter to you of the 11th April last, there was no agreement between our client and yours. However, since he became a Director of Kota Mining, our clients has become aware of the two agreements of the 19th September, 1960.

Our client finds that the shorter contains a provision which is in contrast with the statement in the caveat. We refer to the provision that as soon as a mining lease or certificate be granted, Kota Mining would use its best endeavours to procure in favour of your clients the execution or assignment of a valid underlease.

10

Caveats are required to be verified by affirmation. Our client respectfully enquires how the inadvertance crept in.

May we please hear from you?

Yours faithfully,

Sd:

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"A" (47) LETTER, BRADDELL BROTHERS TO
COMMISSIONER OF LANDS & MINES,
26th July, 1962

EXHIBITS

"A" (47)

Letter,
Braddell
Brothers to
Commissioner
for Lands &
Mines,
26th July,
1962.

BRADDELL BROTHERS
Advocates & Solicitors
Our Ref: JLPH/KL/892/59/2

Meyer Chambers,
Raffles Place,
Singapore.1.
26th July, 1962.

10 The Commissioner of Lands & Mines,
Land Office,
Johore Bahru.
Johore.

S i r,

Mining Certificate No.603
Mukim of Sedili Besar
District of Kota Tinggi
Caveat Pres.No.2071 Vol.Fol.30

20 We have the honour to inform you that we
act for the caveatee, Mr. Siow Wong Fatt.
We have been handed your notice of the 11th
July.

Our client's address for service of
notices and proceedings is No.26, Jalan Jaffar,
Kota Tinggi.

We are respectfully to ask you, pursuant
to section 55(v) of the Land Enactment, so far
as it applies by virtue of section 41 of the
Mining Enactment, immediately to remove the
caveat.

30 Its filing was, we are instructed,
wrongful.

In one important particular the allegations
in the caveat, verified as they purport to be
by affirmation, are patently untrue both in
substance and in fact.

We are, Sir,
Yours respectfully,
Sd:

40 copy for information of Messrs.
Donaldson & Burkinshaw - JGS/DK/S.31331

EXHIBITS"A" (48)

Letter,
 Donaldson &
 Burkinshaw
 to Braddell
 Brothers
 15th August
 1962

**"A" (48) LETTER, DONALDSON & BURKINSHAW TO
 BRADDELL BROTHERS, 15th August 1962**

CLD/ML/S.31331

15th August, 62.

Your Ref: JLPH/MK/892/59/2.

Messrs. Braddell Brothers,
 Singapore.

Dear Sirs,

Mining Land at Kota Tinggi

Siow Wong Fatt,
 M.C.No.603 Mukim of Sedili Besar
 District of Kota Tinggi.
Caveat Pres.No.2071 Vol.Fol.30

10

Thank you for your letter of the 26th ultimo together with the enclosures therein contained.

We are instructed that your client has been well aware of the agreement between our clients and the Kota Mining Company Limited ever since these agreements were made. Indeed, your client has personally approached our clients, for money on many occasions to assist your client to obtain a Mining Certificate on this property and many other expenses connected therewith. Both your client and all other contracting parties have at all times regarded our clients as the persons entitled to a Mining Lease.

20

The Caveat filed by our clients does not purport to set out word for word the Contracts of the 19th September, 1960 but in our view, the Caveat does contain the substance of these Contracts. Of course, we agree with you that the shorter of these Contracts stipulates that Kota Mining Company Limited will use its best endeavours in favour of our clients to obtain the execution or assignment of a valid underlease. It seems to us that the effect of this provision is that your client, if he has the power

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to do so must grant an underlease to our clients and our clients would be entitled for an order for specific performance if your client refused to do so. Therefore, although the Caveat does not contain the exact words of the Contracts the differences in wording between the Caveat and the Contracts are not material.

EXHIBITS
 "A" (48)
 Letter,
 Donaldson &
 Burkinshaw
 to Braddell
 Brothers
 15th August
 1962
 (Contd)

- 10 We are now instructed to and do hereby give your client notice that unless your client applies to the Commissioner of Lands and Mines, Johore Bahru, to effect a proper sub-lease in favour of our clients within 14 days, such sub-lease to be subject to the approval of the Ruler in Council, you leave our clients no alternative but to apply to the Government for protection of our clients' rights.

Yours faithfully,

c.c. to:-

- 20 1. The Commissioner of Lands & Mines
 Johore Bahru.
 2. Messrs. Tang Hai Mining Company.
 3. Messrs. Kota Mining Company Limited.

EXHIBITS"A" (49)

Letter,

Braddell

Brothers to

Donaldson &

Burkinshaw

27th August

1962.

"A" (49) LETTER, BRADDELL BROTHERS TO DONALDSON
& BURKINSHAW 27th August 1962

BRADDELL BROTHERS

Advocates & Solicitors	Meyer Chambers, Raffles Place, Singapore.1.
Your Ref: CLD/ML/S.31331	
Our Ref: KCC/LCM/892/59/2	

27th August, 1962.

Messrs. Donaldson & Burkinshaw,
Mercantile Bank Chambers,
Singapore.1.

10

Dear Sirs,

Mining Land at Kota Tinggi
Siow Wong Fatt,
M.C. No.603 Mukim of Sedili
Besar, District of Kota Tinggi
Caveat Pres.No.2071 Vol.Fol.30

We have for acknowledgment your letter
of the 15th instant. Our Mr. Harris who is
handling this matter is away on leave. We
shall, therefore, appreciate if you will kindly
let us have a little time to look into the
matter before giving you an answer.

20

Yours faithfully,

Sd:

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 34 of 1965

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :-

SIOW WONG FATT (Defendant) Appellant
- and -
SUSUR ROTAN MINING LIMITED (Plaintiff) Respondent
- and -
KOTA MINING COMPANY LIMITED (Defendant) Pro Forma
Respondent

RECORD OF PROCEEDINGS

LIPTON & JEFFRIES,
Princes House,
39, Jermyn Street,
London, S.W.1.

Solicitors for the
Appellant

PARKER, GARRETT & CO.,
St. Michael's Rectory,
Cornhill, London,
E.C.3.

Solicitors for the
First Respondent