NO. ..... 20 ..OF 198

In the Privy Council

10/1982

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 12 OF 1978

(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)

BETWEEN

DAVID NG PAK SHING	*1st Appellant*	(The 4th, 5th, 6th and 7th Defendants in High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)
MELVILLE EDWARD IVES	*2nd Appellant*	
HO CHAPMAN	*3rd Appellant*	
FERMAY COMPANY, LTD	*4th Appellant*	

and

LEE ING CHEE also known as LEE HAI HOCK	*1st Respondent*	(The Plaintiff in High Court Action No. 2459 of 1976)
LEE KON WAH	*2nd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 155 of 1977)
MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD	*3rd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 540 of 1977)

RECORD OF PROCEEDINGS

Volume IV

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should not take because that's basically what we didn't agree.

Q. What's the difference, Mr. Ho? I have some difficulty in understanding you on this. What is the difference between risking $92,000 or $200,000 with Mr. Chow before you would have his shares and risking on the other hand $130,000 for these other shares? Where is the distinction, Mr. Ho?

A. May I clarify?

Q. Please.

A. First of all, Mr. David NG said there was half a million shares and then a million odd shares coming, that would amount to possibly . . .

Q. I am sorry. You say that the half million shares depended upon . . .

A. No, he said there was half a million shares. I don't remember his exact figure.

Q. All right, about half a million shares.

A. And then a million odd shares coming. That would amount to about half a million dollars or maybe four or five hundred thousand dollars.

Q. You see, Mr. Ho, there are two things wrong with that. The first is that Mr. David NG assures this court that he told the syndicate about 500,000 on one visit and it wasn't until the next visit that he was offered the 1,000,000 odd, and so when you first heard about it, according to David NG, you didn't know anything about the 1,000,000 odd shares, you only knew, you were only told about half a million according to David NG himself.

A. He said there were some more coming possibly.

Q. Just listen to me first, please. Mr. David NG himself had told this court that when he mentioned other shares to you the first time, all he mentioned was the half million. He didn't say anything about the million odd, that came later. That's the first thing that is wrong with your evidence.

A. I don't know what he says. I don't know.

Q. Do you think Mr. David NG was lying or was he mistaken or are you mistaken or are you lying?

A. I am not insinulating one way or the other.

Q. You can't both be right. One says it is black and the other says it is white. Now who is telling us the truth, you or Mr. David NG?

A. I heard him say half a million shares were ready and then one million odd shares coming.

Q. But he says that is not the position. He says all he mentioned was half a million and he didn't mention the one million until some time, some days later. Now who is telling the truth, you or him?

A. When you refer who is telling the truth, I think we both are telling the truth because if he hadn't got the one million at that moment, then he hadn't got it, but there was a possibility they might have talked about that.

Q. I won't take that any further. Now Mr. Ho, did you know that these half million shares were in the name of Asiatic?

A. No.

Q. Could you not have asked David NG to enquire whether or not they were in the name of Asiatic.

A. I didn't bother.

Q. You were told, according to you, of half a million and another million odd so that there was a possibility of a further 1½ million plus?

A. I don't know the exact figure.

Q. You don't know the exact figure, but half a million plus one million odd means

1.5 million odd, correct?

A. Maybe, roughly speaking.

Q. You were going out into the market to buy shares to make up a package which eventually came to 23 million?

A. Yes.

Q. Didn't you think it worthwhile to instruct David NG to go up and bargain with these people?

A. Which people do you mean?

Q. People who were offering the million and a half shares.

A. No.

Q. Why not?

A. David said they wanted those things in cash.

Q. David said they wanted those things in cash?

A. And they'd rather sell it cheap and cannot be verified.

Q. And therefore you said, "Well, forget it then. If you do it, it's your business"?

A. Yes. That's against the principle of the syndicate.

Q. But you see, Chow and Hwang, Mr. Chow and Madam Hwang, his wife, at that stage had given no indication that they were willing to have the shares verified before they were sold to you, had they?

A. Finally it was.

Q. But at that stage, Mr. Ho.

A. Which stage?

Q. The stage when the 1½ million shares were first mentioned to you.

A. I guess they hadn't made up their minds. That's why the other people were selling cheap.

Q. They hadn't given you any indication that they were willing to have the shares verified, had they? Tell me if I am wrong.

A. I don't think it was discussed to that point.

Q. It hadn't been discussed to that point yet, so where is the distinction between the 15 million and the 1.5 million?

A. It's the price that they were first talking about.

Q. But where is the distinction as far as verification is concerned, Mr. Ho? Where is the distinction? Why couldn't – I mean David NG was there bargaining hard about the 15 million, why didn't you say to him, "Bargain hard with these people and get the 1½ million too"?

A. May I explain?

Q. Please.

A. On 15 million shares, it's something that is worth risking $92,000. For 15 million shares, to risk $92,000 is comparatively insignificant, but if we fail with these 15 million shares to buy one million or two million shares on unverified basis is certainly against the principle of the syndicate.

Q. All right. I'll just put one last thing to you about that, Mr. Ho. If it had turned out that the half million shares were Asiatic and if it had turned out they were genuine, do you think that the syndicate could have been a little more confident that the 15 million were also genuine?

A. I am sorry. I can't hear.

Q. I'll put it in another way. If the 500,000 turned out to be genuine, would it not have made the syndicate a little more confident that the 15 million were genuine?

A. I still don't think it bears any significance.
Q. They both came, both lots came from the same source according to David NG, they were all bought originally from CHOO Kim-san, they were all registered in the name of Asiatic, wouldn't that have made you a little more confident?
A. As I have said, I don't even know about these shares belonged to who and who.
Q. David NG never told you?
A. Oh, no. He said, "There is a half million shares." That's all.
Q. He never told you the persons from whom he was buying?
A. He said Chow said his friends got it.
Q. He never told you in whose name the certificates were?
A. No. I can't be bothered.
Q. And he never told you whether or not he got the certificates?
A. He told me he got the half million.
Q. He never told you the name of the certificates?
A. No.
Q. You never asked him?
A. No.
Q. Why not?
A. If I buy shares, I never ask names. I buy a lot of shares in the market, I never ask whom I buy from.
Q. I am not interested in buying shares in the market, Mr. Ho. You are putting together a package to make a large profit and these shares may, according to your evidence, have had to be used.
A. We didn't want it anyway, to start with, for the syndicate.
Q. Your evidence is that if you found you did not have enough shares, then these particular shares would be thrown into the pot, correct?
A. I am sorry again. I can't hear.
Q. You said in your evidence-in-chief that if the syndicate was unable to buy shares elsewhere, then they would make use of David NG's shares.
A. That's right.
Q. So you were interested, however indirectly, you were interested in those shares?
A. But still that is at his own risk to start with.
Q. Why didn't you ask him just as a matter of curiosity, "By the way, in whose names are those shares"? Was it forbidden, was it bad taste, bad-mannered? Why didn't you ask him?
A. No, it's against the principle of the syndicate.
Q. No, why didn't you ask him in whose names the certificates were?
A. I didn't ask anybody's name.
Q. Why didn't you ask him?
A. I see no reason to ask.
Q. I see, you see no reason to ask. Did you ever discover from him whether or not he got them transferred?
A. Pardon?
Q. Did you ever discover from him whether or not he had got them transferred?
A. Of what?
Q. Of those half million shares.
A. No, I didn't ask.
Q. You didn't even ask him that?

A. I didn't ask.
Q. You didn't ask him at any time whether he had managed to authenticate those half million shares?
A. I explained to him, "Everything has to be authenticated."
Q. Please answer my question.
A. Yes, I am trying to.
Q. Did you ever ask him whether or not he had managed to authenticate those shares?
A. No.
Q. You never asked him?
A. No.
Q. The same thing applies to the one million odd, is that right?
A. I didn't ask also.
Q. You did not ask. Mr. Ho, what does Ho Chapman & Associates do? Does it carry on business of any sort, or is it just, as you have said, a convenient place where correspondence can reach you?
A. As I have said, that is the central administrative office of my various companies and so on.
Q. But it doesn't do any buying or selling?
A. Oh yes, it does if it is convenient.

MR. CHING: My Lord, that's all I wish to ask him, but I would like to make it clear, of course, I have not gone through the whole of the evidence. I think we will all be rather wearied by doing it all over again. I simply say that I do not accept the evidence of this witness and leave it there.

COURT: Mr. Poon, any questions?

MR. POON: I don't think do.

REXN. BY MR. SWAINE:

Q. Just one question, Mr. Ho. Did the syndicate first mention to Mr. James COE it could not get more than 23 million shares, or did Mr. James COE first say to the syndicate he wanted less than 24 million shares? Which came first?
A. In the first place . . .

COURT: Sorry, I didn't get that.

(Court Reporter reads back the last question)

A. We mentioned first to James COE.

MR. SWAINE: I have no further questions.

COURT: Thank you.

Mr. R. Yorke, Q.C., absent.

Application for adjournment by Mr. Swaine until tomorrow morning, and discussion between Court and counsel as to the likely time required for hearing the case.

Appearance as before.

Mr. R. Yorke Q.C. absent.

MR. CHING: My Lord, I am afraid my learned friend, Mr. Yorke, is ill. He has been advised to stay in bed for a day, but he does not want the case adjourned. What we can do is hand him our notes at the end of the day, but in relation to the questions your Lordship asked about . . .

COURT: Oh, yes, there is no great hurry.

MR. CHING: What we intend to do is to see Mr. Yorke some time today and possibly we can deal with it at the end of the day or possibly tomorrow.

COURT: Yes. As I say, there is no great hurry, it can wait. Yes, Mr. Swaine.

MR. SWAINE: I call Mr. James Coe.

D.W.4 JAMES COE – Sworn in Punti.

XN. BY MR. SWAINE:

Q. Mr. Coe, can we have your full name, please?
A. James Coe. In Cantonese HUI Lok-kwan.
Q. And you live at 99, Waterloo Road, Flat 5C, in Kowloon?
A. Yes.
Q. You are a real estate merchant and you have been in business in Hong Kong since 1957?
A. Yes.
Q. Mr. Coe, one point: you do, of course, speak English, but your mother tongue is Cantonese?
A. Swatownese and Cantonese.
Q. And your Cantonese is far better than your English?
A. Yes.
Q. You are the chairman of three public companies, that is, Siu King Cheung Hing Yip Company Limited?
A. Yes.
Q. And Howard Land Investment Company Limited?
A. Yes.
Q. And Ka Yau Company Limited? That's Ka Yau. (Spelt)
A. Yes.
Q. In addition to these public companies are you also chairman of a number of private companies?
A. Yes.
Q. Approximately how many?
A. About twenty-eight.

Q. And all predominantly real estate?
A. Most of them, yes.
Q. Most of them, thank you.

MR. SWAINE: My Lord, Mr. Coe tells me he suffers from a weak stomach and after he stands for any length of time he gets a headache. That is correct, Mr. Coe?

A. (Witness sits down.) Thank you, my Lord.
Q. When did you acquire Siu King Cheung, Mr. Coe?
A. At the beginning of 1974.
Q. And what is the present issued capital?
A. Fifty-one million five hundred thousand shares at $1 each.
Q. We know that this year you issued seven million new shares.
A. Yes.
Q. And the fifty-one million five hundred thousand includes the seven million?
A. Yes.
Q. Has Siu King Cheung been successful under your management?
A. I feel that it is successful, sir.
Q. Did you pay a dividend last year?
A. Yes.
Q. How much?
A. Thirteen cents per share.
Q. Last year?
A. That's the year up to the end of March this year, sir.

COURT: The last financial year?

A. Yes.
Q. Thirteen cents per share?
A. Yes.
Q. And the previous financial year?
A. Ten cents per share plus bonus share one for ten.
Q. The thirteen cents paid for the financial year ending this March, was that paid also on the bonus issue of the previous year?
A. Yes.
Q. And what are your expectations for dividend for the forthcoming year? That is the year ending March, '78.
A. We hope that it will not be less than the dividend of last year.
Q. Is that just a hope or an expectation?
A. Hope and expectation, sir.
Q. All right. And your hope and expectation of thirteen cents a share, would that be payable on the seven million new shares issued this year?
A. Yes.
Q. When you first acquired Siu King Cheung in 1974 what was the issued capital at that time, Mr. Coe?
A. Seven point two million shares.
Q. Siu King Cheung has therefore enjoyed a rapid expansion?
A. Yes.
Q. How many shares in Siu King Cheung do you yourself own or otherwise

control?

A. More than thirty million shares.

COURT: You own and/or control?

A. Yes, sir.

COURT: Which is it? Is it 'and' control 'or' control?

A. Own and control, sir.

COURT: How many?

A. More than thirty million shares, sir, 3-0.
Q. In controlling shares do you employ nominees, Mr. Coe?
A. Yes, for part of the shares.
Q. Are you anyone's nominee or are you your own man? Do you understand my question? You use nominees. Are you used as a nominee or are you your own person?
A. I am myself, sir.

COURT: Are you used as a nominee by anybody?

A. No.
Q. All right. Now I want you to think back to October of 1976. Did you see anything in the newspapers which interested you?
A. Yes, in about October, sir.
Q. Yes.
A. It was about CHOO Kim-san's jumping bail.
Q. Did you yourself know CHOO Kim-san?
A. I don't know him and I have never met him before.
Q. And were you interested in the news that he had jumped bail?
A. Yes.
Q. Yes, what was it?
A. It's the interest in the San Imperial Company, sir.
Q. Yes. What specifically was the interest?
A. Well, I had a hope and a feeling that I would be able to buy the controlling interest of the San Imperial Company.
Q. Well, before I go on with this there is one point I ought to have dealt with earlier. Your other two public companies, were they taken over by you or started by you?
A. I took it over, sir.

INTERPRETER: He said, "I bought the companies."

Q. Would it be true to say, Mr. Coe, that you have a particular interest in taking over companies and developing them?
A. Yes, I am very much interested in this, sir.
Q. So you thought of the controlling interest in San Imperial. What did you do

about it?

A. In about November last year I telephoned Mr. Chapman Ho, sir.

Q. Was Chapman Ho known to you?

A. Mr. Chapman Ho and his wife have been very good friends of myself and my wife for more than ten years.

Q. And why did you telephone Chapman Ho in particular?

A. The reason is that I knew that at the beginning of 1960 . . .

COURT: At the beginning of the sixties, he said.

A. In the beginning of the sixties, sir, Mr. Chapman Ho was the general manager of the Imperial Hotel, sir.

Q. When you say 'general manager' do you know whether he was also a director?

A. Yes.

Q. What did you say to Mr. Chapman Ho?

A. I asked him whether there was any hope or any possibility in buying the controlling interest of San Imperial Company, sir.

Q. Yes, what did he say?

A. He said that he had already left this organisation for many years but he would try his best to find it out for me, sir.

Q. And did you speak to anyone else?

A. Yes.

Q. Yes, who?

A. Mr. Melville Ives.

Q. Why?

A. Because I knew that he was once the director of this company, sir.

Q. Did you know Mr. Ives?

A. Yes.

Q. In what way had you come to know Mr. Ives?

A. Because of the board of directors of Y.M.C.A. He was a director of the European Y.M.C.A. and I was the director of the Chinese Y.M.C.A. sir. Sorry, correction, sir. He was the director of the European Y.M.C.A. and I was the chairman of the Chinese Y.M.C.A. I am still the chairman of the Chinese Y.M.C.A., sir.

Q. And what did you say to Mr. Ives?

A. I also asked him whether or not it was possible to buy the controlling interest of San Imperial Company.

Q. Yes. What did he say?

A. He said that he would also try his best to find it out.

Q. And did you get in touch with either of them again?

A. No.

Q. Did you hear from either of them again?

A. At the beginning of March this year I received a telephone call from Mr. Chapman Ho. March this year.

MR. CHING: I'm sorry. Could I possibly ask this, my Lord. (Counsel speaks in Chinese.) "Until."

INTERPRETER: "I did not receive a telephone call until the beginning of March

'77 from Mr. Chapman Ho."

Q. So from your initial contact with Mr. Chapman Ho and Mr. Ives there was no further contact until you got Mr. Chapman Ho's telephone call in March?
A. Yes.
Q. And in the meantime what about your interest in acquiring a controlling interest in San Imperial?
A. I still had an interest, sir.
Q. On the telephone what did Chapman Ho say?
A. He said that there were clues to what I have asked him about acquiring the controlling interest of San Imperial Company, sir.
Q. Yes, and was there further discussion over the 'phone'?
A. Yes.
Q. Tell my Lord what was said.
A. About the number of shares, the general properties of the company and the price of shares.

COURT: What do you mean, "The general properties of the company?"

A. That is to say, apart from the hotel building itself there were other properties.

COURT: You are talking about any other properties which the company might have?

A. Yes, sir.
Q. Was the number of shares mentioned?
A. Yes.
Q. Yes. What was it?
A. Forty-eight million two hundred thousand shares at one dollar each.
Q. That would be the issued capital?
A. Yes.

COURT: This was mentioned by whom?

A. Mr. Chapman Ho, sir.
Q. Now, you had expressed an interest in a controlling interest. Was anything said about how many shares were available?
A. Yes.
Q. Yes. What was it?
A. Mr. Ho said that there were about twenty-four million shares.
Q. Did he tell you from what sources they had come?
A. No.
Q. What about the price of the shares?

COURT: Before you answer that, when you say you spoke about the number of shares in the company do I take it that you spoke of the number of issued shares in the company, not the number of shares in the company which were available to you?

A. The forty-eight million shares were the issued capital.

COURT: All right, it doesn't matter. Carry on.

MR SWAINE: My Lord, can I just clarify this?

Q. In addition to the mention of the forty-eight million two hundred thousand issued shares, was mention made about the number of shares available?
A. Yes. He said that there were twenty-four million shares.

COURT: I was just trying to find out when he said, "We spoke about the number of shares of the company" what specifically was he referring to.

MR. SWAINE: Well, my Lord, it appears that there was reference to two lots, two numbers, the issued and the available.

Q. Yes, we were now on the matter of the price.
A. Mr. Ho asked for one dollar seventy cents per share.
Q. What did you say? What did you say, Mr. Coe?
A. I said that it was too high and I was willing to offer one dollar fifty cents.
Q. Yes. What did Mr. Chapman Ho say?
A. He said that that was about the right price and that we could talk about it again when we met each other.
Q. I'm sorry, what was the right price?
A. At first he asked for one dollar seventy cents, and I said that it was too high and I offered one dollar fifty cents. Then he asked for one dollar sixty-five cents, and I said that it was still too high, but eventually we agreed that the price would be about one dollar sixty odd cents.

COURT: This was over the telephone?

A. Yes.
Q. And was it at that point that Mr. Chapman Ho said you had better meet face to face?
A. We both felt that it was bargaining, sir, and we felt that we should meet each other and discuss about the price further.
Q. And did you meet?
A. On the 13th of March, it was a Sunday, sir, at 5 p.m. in the afternoon we met each other in the Coffee Shop of the Holiday Inn.
Q. Was Mr. Ho alone?
A. No. That was the first time he introduced Mr. David Ng to me.
Q. And what was Mr. David Ng introduced to you as?
A. At that time I knew that he was in the stock and share business.
Q. Were you told why he was there at that meeting?
A. Yes. Mr. Ho told me that both Mr. David Ng and Mr. Ho were responsible for that transaction, sir.
Q. Now was Mr. Ives mentioned at that meeting?
A. No.
Q. Did you subsequently discover that Mr. Ives was also responsible for the transaction?
A. Yes.

Q. Do you remember how much later?
A. Shortly before the agreement was signed.
Q. Which agreement is that, Mr. Coe?
A. The first agreement.
Q. All right. Now tell my Lord what was discussed during that meeting at the Holiday Inn Coffee Shop.
A. The main point of meeting was to discuss upon the price of the shares, and how many shares were available for me.
Q. Taking the shares first, what were you told about the shares available?
A. There were about twenty-four million shares.
Q. And what was discussed about the price?
A. The other side insisted on the price of one dollar sixty-five cents, but I still offered one dollar fifty cents. Then he said he wanted one dollar sixty-three cents.

COURT: Who said?

INTERPRETER: "He."

COURT: Who is 'he'?

A. They, sir. One dollar sixty-three cents.

COURT: I'm sorry. Then they said what?

INTERPRETER: "They asked for one dollar sixty-three cents."

COURT: Yes.

A. I was willing to pay the one dollar fifty cents and thirteen cents more, but I said that I would try to see in what form I would pay the other thirteen cents.
Q. And why did you want to split the price one fifty plus thirteen cents payable separately?
A. The reason is that I thought that there might be an opportunity or a possibility of acquiring shares from other shareholders, then I could offer one dollar fifty cents to buy those shares.
Q. And what was the market price of San Imperial shares at that time, about the middle of March?
A. A few tens of cents. Well, I can't remember the exact price.
Q. What did they say about the thirteen cents being paid separately?
A. They agreed.
Q. Now what about the actual payment of the money for the available shares? Was that discussed?
A. Yes. Yes, eventually we agreed that three million dollars would be paid as the finder's fee because that was about the amount of the twenty-four million shares times thirteen cents.
Q. That was a question I would have asked anyway, Mr. Coe, but it wasn't the question I was asking, I'm sorry. What I was asking, was that payment of the money, all the money, for the acquisition of the available shares, was that

discussed, how it was going to be paid?

A. Yes, I said that I did not have much cash. Actually the cash I had that time was very little and I wanted them to be responsible for financing, sir.

Q. Now you say you had very little cash at the time. What about your assets?

A. About this I want to point out that I was not acquiring these shares for myself but for Siu King Cheung Hing Yip Company, and my assets at that time were not much, but Siu King Cheung Hing Yip Company had sufficient assets.

Q. Sufficient assets to . . .?

A. To carry out this transaction, sir. Sufficient assets and sufficient ability to carry out this transaction.

Q. Now what did they say about your suggestion they arrange the finance – they be responsible for the financing?

A. They agreed.

Q. Were they going to do this free of charge?

A. No.

Q. Yes. What were they going to get?

A. They asked me to take out some Siu King Cheung shares for them to go to the Finance Company or the bank to borrow some money for the purpose of financing, sir.

Q. Yes. I was going to come to that question also, Mr. Coe, but it wasn't actually the question I asked. Were they going to do the job of getting the financing for you free of charge?

A. Well, if they could raise the money, sir, I was willing to pay out one per cent.

COURT: Commission?

A. Commission, sir.

Q. After that meeting did you have further meetings with David Ng or Ho Chapman or both of them before the first agreement was signed?

A. Yes.

Q. Either or both?

A. Both.

MR. CHING: Both together?

A. Together, sir.

Q. And were you alone or with someone else?

A. Mostly there was another director of the Siu King Cheung Hip Yip Company present.

Q. And his name?

A. Mr. TAO Shiu-kan.

COURT: How do you spell it?

A. Mr. TAO Shiu-kam. (Spelt)

Q. Now you say that you were acting for Siu King Cheung and not for yourself. Did you have the authority of the board to act for them?

A. Yes.

Q. Will you look at document 19 in yellow 1. Is that the resolution of the Siu

King Cheung board of the 30th of March, 1977, authorising you to negotiate and purchase on behalf of that company the controlling shares of San Imperial?

A. Yes.

Q. The vice-chairman – yourself as chairman, the vice-chairman, is she your wife, Mrs. Barbara Coe?

A. Barbara Coe, yes.

Q. These further meetings with David Ng and Ho Chapman, what were they for?

A. It was also a discussion on the details of this transaction, sir, and other details.

COURT: I think Mr. Swaine referred to "these further meetings."

A. For the same purpose.

Q. Now we know that you instructed Mr. Philip Wong to handle the documentation of the purchase for you and we know that as early as the 31st of March, 1977, by document 20 in yellow 1, which you don't have to look at, Mr. Coe, Peter Mo & Company sent to Philip K.H. Wong & Company certain draft agreements.

A. Yes.

Q. Now then, you had agreed to pay one fifty per share plus a finder's fee of three million dollars. Why were you prepared to pay that much?

A. I was prepared to pay that amount because on the 13th of March I was given the accounts about the assets and the figures of the San Imperial Company and therefore I knew the actual value. I knew the actual value of the assets of this company.

Q. Yes. Just take this step by step, Mr. Coe.

COURT: He hasn't finished yet. "And therefore I thought it was worth it." Did you say this, Mr. Coe?

A. Yes. Therefore I thought it was worth to acquire the shares.

MR. CHING: May I respectfully suggest these matters are, of course, of prime importance and if the Interpreter could be allowed by the witness to interpret each sentence as it comes out rather than the whole paragraph?

COURT: Yes, it would be better.

Q. I think, Mr. Coe, it is essential that that evidence is . . .

A. Worth while to acquire these shares.

Q. . . . is correctly interpreted, and to do that means, of course, you have got to give the Interpreter time to interpret so give your evidence in batches rather than in a whole long sentence. All right.

Q. Now perhaps what you were going to say you also did something?

A. I had seen all the assets or the properties.

COURT: You have seen it?

A. I have seen all the properties.

Q. Did you specially go to see the properties?

A. Yes.

Q. And you saw each of them?
A. Yes.

COURT: You are talking about properties belonging to San Imperial?

A. Yes.
Q. Now Mr. Coe, you say that they gave you accounts at the 13th of March meeting?
A. Yes.
Q. What accounts?
A. Something like a balance sheet saying how much assets they had and how much liabilities they had and the properties.

COURT: I think you mentioned simplified balance sheet.

A. Yes, simplified balance sheet.
Q. Did you see any evaluation reports?
A. Yes.
Q. And how did you get them?
A. The other side gave me.
Q. I am sorry?
A. The other side gave me.
Q. Other side meaning?
A. Mr. David Ng and Mr. HO showed it to me.
Q. And what view did you form about the value of the controlling interest in San Imperial?
A. I formed the view that each share valued more than 1.70 cents.
Q. And you mentioned the first agreement – prior to the first agreement did you and Mr. Philip Wong see anyone in connection with your plan to buy the controlling interest?
A. Yes.
Q. Yes, who?
A. Mr. Wong accompanied me to see the Acting Commissioner for Securities, Mr. McInnis.
Q. Now during your negotiations with Mr. HO and Mr. NG in March, were you aware of any civil actions against CHOO Kim-san?
A. You mean about these shares?
Q. About anything – any civil actions against CHOO Kim-san?
A. I knew that in October last year the Crown wanted to sue him.
Q. You mean by that, the criminal action?
A. Yes.
Q. I said civil action.
A. No, I did not know anything at all.
Q. Did you know of any civil claims against Mr. CHOO Kim-san during your March negotiations?
A. Nothing at all, sir.
Q. When did you first learn of any civil claims against CHOO Kim-san – slowly give the interpreter a chance to interpret it.
A. That is the day before the agreement was signed on the 30th of April, that is the 28th of April – it was in the afternoon.

Q. Yes, what happened?
A. My solicitor told me that there was an action in respect of these shares.
Q. Now we know that on the 29th of April there was a notice published in the Morning Post by the solicitors for M.B.F. one of the plaintiffs in this action – I would like you to look at 35 in Yellow 1. Is this what Mr. Philip Wong told you about?
A. Yes.
Q. But on the 30th you signed the agreement?
A. Yes.
Q. Did you feel it was safe to do so?
A. I have discussed with my solicitor and felt that there was nothing wrong because at that time we knew that the thing which was wrong was about the Asiatic Nominees.
Q. Anything else?
A. There was nothing else about the twenty odd million shares we were to acquire.
Q. Now prior to signing the agreement did you see any Instruments of Transfer?
A. Yes.
Q. What were these?
A. They were about the 15 million San Imperial shares which had been transferred or registered in the name of Fermay Company at the end of March.
Q. That is before this notice was published?
A. Yes.
Q. And did that have any effect on your mind, the sight of the registration?
A. At that time I felt that it would not effect anything, this is why I signed the agreement.
Q. I am sorry what would not effect anything?
A. Because I was acquiring shares and the other side said that those shares were under the name of Fermay Company.
Q. All right – now I want you to look at the 30th of April agreement – this is document 40 – and you see that the vendor is David Ng and the purchaser is Rocky Enterprises Company Limited?
A. Yes.
Q. If you look at page 6 of the agreement you will see the signatures, David Ng, vendor and this is your signature, James Coe?
A. Yes.
Q. Why was the purchaser Rocky Enterprises Company Limited?
A. I have already told the court that I was not acquiring the shares for myself but for Siu King Cheung Hing Yip Company Limited, and Siu King Cheung Hing Yip Company is a public company. Under the usual circumstances the shares are quite sensitive. In the course of acquiring San Imperial shares and before we have finished acquiring San Imperial shares we did not want this disclosed.
Q. Why?
A. Because that would involve the inside transaction – inside information.

MR. CHING: Inside trading?

A. Inside trading information.
Q. Will you try again Mr. Coe?

A. That would involve the inside information for the trading, sir.

COURT: I think you said that would involve the question of – Mr. Coe, would you be able to say that in English?

A. As I said Siu King Cheung . . .

COURT: Just the last bit – that would involve the question of?

A. Of not letting the public know this dealing until the whole transaction is completed.

MR. SWAINE: Why?

COURT: Because that would involve . . .

MR. SWAINE: Why Mr. Coe?

A. Partly because it is against the Exchange regulation. Before the whole deal is completed it is not supposed to be made known to the public.

COURT: What is this about inside information you are talking about?

A. I was talking about – I was talking that if we had this transaction known to the public it is not good at all.

MR. SWAINE: Why? I am sorry, you know more about these things than we do, why?

A. If someone would know that we were acquiring San Imperial someone would feel that the price would be going up later and they go out into the market to speculate.
Q. On what shares?
A. On San Imperial Corporation Limited.
Q. Would there be any effect on the Siu King Cheung share price?
A. Yes.
Q. Would there be speculation?
A. On both companies.
Q. All right, the simple reason is you wanted to avoid speculation in the shares of both San Imperial and Siu King Cheung?
A. Yes.
Q. Now looking at 30th of April agreement now you see that is a sale of 23 million shares of San Imperial?
A. Yes.
Q. Originally you had been discussing 24 million?
A. Yes.
Q. Why was the number now 23 million?
A. Because they said that they did not have that much – they only had 23 million shares.
Q. One other technique in giving evidence Mr. Coe is not to say 'they' and 'he',

but identify the person for the avoidance of doubt, all right? So who is 'they'?
A. Mr. Ho and Mr. Ng.
Q. And were you prepared to take 23 million shares?
A. Yes.
Q. That would be less than a controlling interest?
A. 23 million shares were also the controlling interest of the company.
Q. What do you mean by that?
A. The so-called controlling interest of the company does not mean 50% or 75% – it means that it is sufficient to control the company.
Q. Yes and what in your view at the time would have been the minimum number sufficient to control the company?

COURT: Just say how much please.

A. Forty odd percent would be enough.

COURT: Can you be more specific?

A. 40%.
Q. Now you can give your reason – that is another technique in giving evidence – answer yes or no first if you can and then explain.
A. Usually for a small company if you want to control the small company it would always be better to have a 51% – the bigger the company the lower the percentage for the controlling interest would be.
Q. And that would be because the shares would be spread out among more people?
A. Yes.
Q. I want you to look at clause 7 of the agreement, page 2 – 7(c) contains conditions that San Imperial shall remain the owner of the six properties listed, do you see that?
A. Yes.
Q. And that these properties should possess the notional value set out in each paragraph, do you see that?
A. Yes.
Q. Was it your idea to put this in or the idea of Mr. Ho and Mr. Ng?
A. It was my idea.
Q. What was the reason?
A. The reason is that we discussed about the price of the shares on the basis of these figures.
Q. All right and I want you to look at the supplemental agreement, document 41 – and does this incorporate the discussions for Mr. HO and Mr. NG to be responsible for raising finance on the security of Siu King Cheung Hing Yip shares?
A. Yes.
Q. The amount that they were to raise was 17¼ million dollars on that security?
A. Yes.
Q. What was the market-price of Siu King Cheung shares in April?
A. More or less 1.00.
Q. Yes and at the time the issued capital of Siu King Cheung was 44,500,000 shares?

MR. CHING: Sorry?

MR. SWAINE: 44,500,000 – that is 51,500,000 of today minus 7,000,000 new shares?

A. Yes.
Q. And the 23 million shares represented more than 51%?
A. Yes.
Q. And as controlling interest, would the value of these Siu King Cheung shares be enhanced – increased?
A. Yes.
Q. Now I want you to look at document 42 – an undertaking signed by David NG that, "We shall" – in paragraph 2:–

> "cause to be sold the property Nos. 16-22 Oxford Road at $2.5 million and shall use our best endeavours to procure the sale of the property Nos. 2-10 Pilkem Street (Bangkok Hotel) at $7.5 million"

You see it there?
A. Yes.
Q. Who asked for this?
A. I did.
Q. But why?
A. I wanted to be surer about the value of these two properties.
Q. And did you have any doubt about those values?
A. Some doubt, sir.
Q. Why?
A. Because the rent collected was very little.
Q. One matter which I have omitted to ask you under clause 7 – would you please go back to clause 7 of the agreement, document 40 – you see that paragraph 3 refers to "$6 million cash representing 140 and 141 Connaught Road, Central".
A. Yes.
Q. Why is it put in that way?
A. I made such request because otherwise the commitment or the liability of the company would be very large.

COURT: Of which company?

A. San Imperial Company.
Q. This is something that one could write a chapter about Mr. Coe. You have got to take it slowly, all right?
A. This property was sold by a certain company to the San Imperial Company.
Q. And did you know who the seller was?
A. M.A.F.

COURT: M.A.F. which?

A. M.A.F. Credit.
Q. I don't want to test your knowledge as to the details of this contract but so far as you know it was a contract between M.A.F. and San Imperial?
A. Yes.
Q. And what was the commitment of or liability of San Imperial?
A. It was said that the San Imperial Company would have to pay out more than 10 million dollars for the construction of this building.
Q. And they have already paid out money for this property?
A. Yes.
Q. How much?

MR. CHING: Sorry – unless – how he knows that – it is not admissible, because the document, I would like to see that – I have asked Mr. Ng for it and it is not forthcoming.

MR. SWAINE: I do not particularly want to pursue this point. On what you have said so far Mr. Coe, is the cash value that was represented to you by David NG and HO Chapman as being part of the assets of San Imperial?
A. Yes.
Q. Yes, and you wanted to avoid further commitment or liability by San Imperial?
A. Yes.
Q. All right – now I would like you to look at document 37 – this was an undertaking to David NG, sorry your guarantee to David NG of performance by the purchaser, Rocky, of the agreement and any supplemental agreement?
A. Yes.
Q. Why did you sign this guarantee?
A. Because we used the Rocky Company as the purchaser and at that time Mr. HO and Mr. NG did not know of this company.
Q. And you were guaranteeing that company?
A. Yes.
Q. Now look at document 39 – that is HO Chapman's guarantee to Rocky of performance by the vendor, David NG of the agreement and any supplemental agreement?
A. Yes.
Q. And who asked for this?
A. I did.
Q. Why?
A. Because I did not know Mr. David NG well and I did not quite trust him at that time.
Q. At that time – did you have any reason not to trust him at that time apart from the fact that you did not know him well?
A. No.
Q. Then look at document 38 – this is a memorandum signed by David NG and yourself and it provides for your paying a 1% commission to David NG in the event of his raising the loan of 17¼ million dollars on your personal guarantee plus the security of 23 million Siu King Cheung shares?
A. Yes.
Q. And does that incorporate the discussion and agreement you have already referred to that if HO Chapman and David NG raised the finance for you,

you would pay them 1% commission?
A. Yes.
Q. Then would you look at document 43 – that is your agreement to pay finder's fee of $3,000,000.00 in respect of the 23 million shares?
A. Yes.
Q. That incorporates the agreement that you have already mentioned?
A. Yes.
Q. As a matter of interest who put those three lines through the document?
A. I don't know sir – it was not crossed it out.
Q. Do you know why it was crossed out?
A. It was cancelled at that time.
Q. Sorry, cancelled at what time?
A. It was cancelled at the time when we signed the second agreement.
Q. All right – now up to the 30th of April, how much had you paid to the vendors?
A. 1.5 million dollars.
Q. And by this time you had already learned that Mr. Ives was also a member of the Syndicate?
A. Yes.
Q. Now after the 30th of April did anything occur to cause you concern about the agreement?
A. Yes.
Q. Yes, what was it?
A. There were two things – the first one is that the San Imperial shares were suspended in the market.
Q. Do you remember when it was?
A. On the 4th of May.
Q. And what was the second thing?
A. The second thing is that I knew that there was – I discovered that there was an action concerning the shares that we were to buy.

MR. CHING: Another action?

A. Another action.
Q. How did you discover this?
A. I was told by my solicitor.
Q. And did you know whose action this was?
A. Do you mean who the plaintiff was?
Q. Yes.
A. I only know that it was a party in Malaysia.
Q. Did you see anything in the papers about it?
A. Yes.
Q. Would you look at document 26 in the bundle – do you recognise it?
A. Yes.
Q. Was this what you saw – this was a notice published on the 13th of April in the Morning Post.
A. I did not see this on the 13th of April but later.
Q. Later – all right this would be after the 30th of April?
A. Yes.
Q. And did you and Mr. Philip Wong go to see anyone?

A. Yes.
Q. Who was this?
A. Mr. McInnis.
Q. The Acting Commissioner for Securities?
A. Yes.
Q. Now as a result of what you had discovered, what did you do?
A. I went with my solicitor to see Mr. McInnis to discuss about this.
Q. And apart from that and after that, what did you do?
A. I had further discussion with Mr. NG, sir, because he was representing the syndicate.
Q. What was your discussion about?
A. It was about the 15 million San Imperial shares registered in the name of Fermay Company.
Q. Yes, and what was the discussion concerning those shares about?
A. It was a discussion about whether or not these 15 million shares were free from encumbrances.
Q. And as a result of those discussions, was any agreement reached?
A. Yes.
Q. And what was that?
A. It was agreed that the first agreement should be amended.
Q. And was it amended?
A. Yes.
Q. Would you look at document 54 in the bundle yellow 1? Is this what you mean by the amendment?
A. Yes.
Q. Would you look at clause 2? You see that the sale of the 23 million shares is to be effected by your having an option to purchase the Fermay shares, is that right? 2(a)? Will you read that for yourself?
A. Yes.
Q. And by the transfer of not less than 7 million, not more than 8 million San Imperial shares.
A. Yes.
Q. Then would you look at document 55? Do you recognize this as being your guarantee to David NG of performance of the 12th of May agreement?
A. Yes.
Q. And would you look at document 56? This is Chapman HO's guarantee in favour of Rocky of performance of the 12th of May agreement.
A. Yes.
Q. Do you know whether Chapman HO was in Hong Kong on the 12th of May?
A. He was not in Hong Kong.
Q. And do you know when he returned – approximately will do?
A. At about the end of May.
Q. Was this guarantee important to you?
A. Yes, very important.
Q. And were you waiting for it?
A. Yes.
Q. Mr. COE, I don't know if you are feeling unwell, but you don't look very bright; are you all right?
A. Yes, I am all right.

Q. Now I want you to look at document 69. This is a receipt dated the 8th of June from Philip K.H. WONG & Co. in favour of Siu King Cheung for $1,500,000.
A. Yes.
Q. Do you remember that?
A. Yes.
Q. Why did you pay a million five or rather, why did your company pay a million five on the 8th of June?
A. Because we were to complete the transaction on the 9th of June.
Q. Yes, and was it completed on the 9th of June?
A. Yes.
Q. Did you personally attend the completion?
A. Yes.
Q. Where did the completion take place? At whose office?
A. In the office of Messrs. Peter Mo & Co.
Q. Did you go alone or did you have Mr. Philip WONG with you?
A. With Mr. WONG.
Q. And who did you see of the other side at Peter Mo's office?
A. Mr. Chapman HO, Mr. David NG, Mr. Melville Ives and there were also three people on our side.
Q. Directors or?
A. On our side there were Mr. Philip K.H. Wong, the solicitor, myself and Mr. TAO.
Q. The director?
A. Yes.
Q. Now would you look at document 71? This is an agreement between yourself as borrower and David NG as lender.
A. Yes.
Q. And it recites that David NG has advanced to you 16.2 m.
A. Yes.
Q. And that you have transferred to David NG 23 million shares in Siu King Cheung as security.
A. Yes.
Q. Did the 16.2 m. actually change hands?
A. No.
Q. Was the security actually transferred?
A. Yes, they were given to them.
Q. That is the physical certificates.
A. Yes.
Q. Did you get a receipt for the certificates?
A. Yes.
Q. Would you look at document 77? This is a receipt signed by Peter Mo & Co. acknowledging receipt from Philip K.H. WONG & Co. of the 23 million shares.
A. Yes.
Q. And at 78 there is additionally a receipt from David NG in your favour of the 23 million shares.
A. Yes.
Q. Can you explain why there were two receipts, Mr. COE, for the same shares?
A. I gave this receipt, document 78, to Mr. David NG and he signed it. As this was a very big transaction, we wanted the solicitor for the other side to sign

as a double security.

Q. And did you receive the San Imperial shares upon the completion?

A. Yes.

Q. Physically?

A. Yes.

Q. How many?

A. 8 million shares.

Q. Now would you look at document 75? This is your authorization to David NG of Bentley Security Co., stockbrokers, to have the 8 million shares registered in the name of IPC.

A. Yes.

Q. So in the matter of the registration, you were using David NG as the stockbroker.

A. Yes.

Q. And indeed the 12th of May agreement ontains in clause 14 which you don't have to look at but for the record the provision that the purchaser shall pay the brokerage of Bentley at the standard rate of ½ per cent as well as of stamp duty arising from this transaction.

A. Yes.

Q. Now IPC Nominees Ltd., why was that used for the purpose of the acquisition of the shares on the completion date?

A. Well it is also for the purpose of security.

Q. To avoid speculation?

A. Yes.

COURT: Mr. Interpreter, would you like to think about the word "security" again? "for the purpose of security."

INTERPRETER: "Safe security."

Q. Protection?

A. Secrecy. (witness speaks in English)

Q. For the avoidance of speculation. Why did you change from Rocky to IPC?

A. The Rocky Company is under the names of myself and my wife and people know that I am the chairman of the Siu King Cheung Company, therefore that would cause the people to know that it was Siu King Cheung who were acquiring these shares. In order to keep the secrecy, I used the IPC Company and the directors of the IPC Nominees are my mother and another relative of mine.

Q. And your mother is Dr. TSANG Tak-fai?

A. Yes.

COURT: I don't quite understand, Mr. COE. Why then, if that was the purpose, did you not use IPC right from the beginning instead of Rocky?

A. At that time it did not occur to me that it would turn out in this way.

Q. Sorry. What do you mean by "turn out in this way"?

A. At first I thought that it would be good enough for me to use the name of Rocky in acquiring these shares. As it went on, I discovered that I was unable to keep the secret.

Q. So is the short reason that as time went on, you felt that Rocky was not sufficiently secret.
A. Yes.
Q. But did you have any added reason for secrecy beyond simply wanting to prevent speculation?
A. No.

MR. SWAINE: My Lord, this would be a convenient point.

D.W.4 – James COE – o.f.o.

XN. BY MR. SWAINE – continues:

Q. Mr. COE, we were looking at the 9th of June documents. Do you identify at 74 the revised finder's fee undertaking?
A. Yes.
Q. Now two matters that I must go back to. You had said this morning that at the time, namely, in March, during the negotiations your assets were not very much and, of course, you were acting on behalf of Siu King Cheung in negotiating for the purchase of the San Imperial shares?
A. Yes.
Q. When you say your assets were not very much, that of course is purely relative.
A. Yes, it is my personal assets.
Q. When I say "relative", to a rich man a million dollars might be not much, to a man of lesser means a million dollars would be a lot.
A. Yes.
Q. Did you yourself in your own name own shares in Sin King Cheung?
A. Yes.
Q. And in March how many shares would that be, in your own name?
A. About 6 million shares.
Q. And if you look at the receipt for the shares signed by David NG at 78, you will see that the 23 million shares are not shares in your own name.
A. Right.
Q. So do these exclude the 6 million shares?
A. That's right.
Q. Harvey Nominees Limited – these are nominees, of course, as the name implies?
A. Yes.
Q. And for whom did Harvey hold the shares?
A. For two other companies.
Q. Are these among the 20 odd limited companies you have mentioned this morning of which you were chairman?
A. Yes.
Q. And could the same be said of Rockson Limited and Ming Kee Trading Co. Ltd.?
A. Yes.
Q. Can the same be said of Rockson?
A. Yes.
Q. And Ming Kee?
A. No, not Ming Kee, sir.

Q. The shares in the name of Ming Kee of which there were some 500,000 possibly, for whom were these shares held?
A. They were shares belonging to Ming Kee Co. itself.
Q. And who controls Ming Kee?
A. I did.

COURT: I don't understand why then you say Ming Kee is not the same as Harvey and Rockson.

A. At that time I was not the chairman or even the director of this Ming Kee Company.

COURT: You controlled the company at the time but you were not the chairman nor the director of that company?

A. Yes.
Q. One other matter that I have to go back to. You had negotiated the amendment of the 30th of April agreement and the final form of it was the agreement of the 12th of May, do you remember that?
A. Yes.
Q. Did the 12th of May agreement give you any advantages over the 30th of April agreement?
A. Yes.
Q. What were they?
A. As long as I paid up money for the purchase of the 8 million shares, I controlled San Imperial company.
Q. How could you control San Imperial at that time with 8 million shares?
A. We have got proxy and voting right from the vendor about the 15 million shares.
Q. And you had also the option irrevocable and permanent to purchase the 15 million shares?
A. Yes.
Q. We come back to the 9th of June and you had deposited 23 million Siu King Cheung shares with David NG and signed a loan agreement for that sum.
A. Yes.
Q. What did you expect David NG to do with the agreement and the shares?
A. I expected that Mr. David NG would borrow some money from the finance company or the banks with the Siu King Cheung shares.
Q. And given normal conditions, did you expect any problems in a bank lending 16.2 million against 23 million Siu King Cheung shares?
A. No.
Q. And did David NG report to you on whether he had failed or succeeded?
A. Yes.
Q. And had he failed or succeeded?
A. He failed.
Q. And as a result, did you agree to do anything for him?
A. Yes.
Q. Yes?
A. I agreed to give him some postdated cheques.

Q. For how much?
A. $9 m., that is out of the $12 m.
Q. The $12 m. being the 8 million shares times $1.50?
A. Yes.
Q. And the loan agreement, however, was for $16.2 m.
A. Yes.
Q. What about the balance?
A. The other $4 m. was the option fee.
Q. And did you agree to pay postdated cheques for the $4 m.?
A. Yes.
Q. Now leaving aside the point 2, that still leaves $3 m. out of the $16 m.
A. Yes.
Q. What about that 3 m.?
A. That $3 m. was the finder's fees.
Q. What about it?
A. We gave Mr. HO an undated cheque for $3 m.
Q. Why undated?

COURT: Just a moment. What do you mean "we gave"?

A. I meant I.

COURT: All right. Why undated?

A. We did not have sufficient funds, sir, and we were not sure about the financing.
Q. Did Mr. HO agree to receive an undated cheque payable at some uncertain time?
A. He agreed.
Q. Did you discuss this with him?
A. Yes.
Q. Do you know why he agreed?
A. We agreed that this $3 m. was not to be paid right then. It would be paid some time later.
Q. And that agreement, was it reached – no, sorry, was that agreement reached as a result of David NG saying he couldn't obtain a loan from the bank or was it reached even beforehand?
A. Before.
Q. And did you give postdated cheques to Mr. David NG?
A. In what respect?
Q. Yes, you said you agreed to give him postdated cheques for 9 million and for 4 million. Did you give those cheques?
A. Yes.
Q. Now would you look at document 88 in yellow 1? This is David NG to yourself acknowledging receipt of two lots of postdated cheques totally respectively $9 m. and $ 4 m.
A. Yes.
Q. Are these the cheques that you gave Mr. NG?
A. Yes.
Q. In the mean time what about the 23 million Siu King Cheung shares?

A. They were still placed with the vendors.
Q. That is the syndicate?
A. Yes.
Q. Why?
A. Because I still haven't paid up the amount of money to them.
Q. So while that date was still outstanding, your Siu King Cheung shares remained deposited with them?
A. Yes.
Q. Now the date of that letter is the 25th of June, document 88.
A. Yes.
Q. Subsequently did Mr. David NG speak to you again about finances?
A. Yes.
Q. About when?
A. At the end of June.
Q. Yes, what did he say to you?
A. He said he needed cash for some purpose.
Q. Did he say what purpose?
A. Yes.
Q. What was it?
A. He wanted to buy the San Imperial shares owned by the MAF.
Q. Yes, he wanted to buy meaning he was going to buy or what?
A. Yes.
Q. Did you understand that he had not already bought the shares?
A. Yes.
Q. What did you know?

COURT: Yes, what did you know? What is it that you knew?

A. He said that he was going to buy shares from the MAF –.

COURT: You have said that.

A. – to make up –.

COURT: Will you answer Mr. Swaine's question, please?

Q. You see, Mr. COE, you had already got 8 million shares from the syndicate.
A. Yes.
Q. Did you understand that David NG was going to buy shares additional to those 8 million shares?
A. No.
Q. Yes, what did you understand, please?
A. I knew that the MAF shares were included in the 8 million shares.
Q. Did you understand that he had already bought the MAF shares?
A. At first I thought that he had already bought the shares. Later when he said that he wanted a loan to buy the shares to make it up – the total amount of shares to me, sir – then I knew that he had not bought those shares.
Q. Now Mr. COE, when one talks or buying, one could mean one has already bought but not paid for at all or one could mean that one hasn't bought at

all and therefore no question of payment arises. What was it in this case?

A. Between him and me I have paid up the amount to him, sir.

Q. Yes, but on the 9th of June, you say that 8 million shares were delivered to you.

A. Yes, may I add something, sir. When I said that those shares had been delivered to me, I meant to say that the shares were put on top of the desk and I handed over the shares to Mr. David NG – that is the Bentley Company, sir – for the purpose of registration.

Q. You did not make a physical check to ascertain there were 8 million shares?

A. Yes.

Q. Then your understanding from David NG when he spoke to you at the end of June was your understanding that he hadn't bought the shares from MAF at all or was your understanding that he had bought them but not paid for them, or did you have no understanding whatever?

A. It can be said that "did not know anything at all."

Q. Now did he tell you how much he needed?

A. Yes.

Q. How much?

A. He wanted to borrow $3,800,000 from me.

Q. Did you agree to lend him the money?

A. Yes.

Q. Why?

A. I must do that at that time because I knew that those shares were a part of the 8 million shares.

Q. And did he tell you whether the amount he would need was only $3,800,000, or that he needed more but he needed only to borrow $3,800,000 from you?

A. He told me that he actually needed 4.8 million dollars, but he had $1,000,000 himself and he only wanted to borrow 3.8 million dollars from me.

Q. And did he tell you how he had got the one million?

A. He said that he had a million dollars and I did not ask him how he got that $1,000,000.

Q. Now you agreed to lend the $3,800,000. Was that to be with or without interest?

A. With interest.

Q. At what rate?

A. 1% per month.

Q. And in what form was the – sorry. Was the loan in fact made to Mr. David NG?

A. Yes.

Q. In what form?

A. As a loan.

Q. Was it cash or – by what form?

A. By cheque.

Q. And by whose cheques?

A. Oceania Land & Finance Co. Ltd.

Q. It's Oceania Finance & Land Corporation Ltd.?

A. Yes.

Q. This would be, you say, about the end of June?

A. Yes.

Q. Oceania we knew to have been a subsidiary of San Imperial. We knew it was.

I haven't said when. Oceania we knew to have been a subsidiary of San Imperial. Now I want you to look at the yellow 4 file and look at document 2 in that file, page 11. Do you identify that as a minute of a resolution of the directors of Siu King Cheung on the 22nd of June, 1977?

A. Yes.

Q. And it resolves that an agreement between Siu King Cheung and San Imperial regarding the company purchasing 100% shareholding of Oceania from San Imperial by the issue of 7,000,000 shares of the company to San Imperial or its nominees be approved?

A. Yes.

Q. And the agreement of the 22nd of June is document 3?

A. Yes.

Q. Why did Siu King Cheung want to purchase Oceania from San Imperial?

A. It can be said that the San Imperial Company wanted to sell the company to Siu King Cheung.

Q. Why did Siu King Cheung want to buy it?

A. Siu King Cheung had advantage in that.

Q. Now on the 9th of June, you had bought the 8 million shares in San Imperial and you subsequently joined the board of that company, is that right?

A. Yes.

Q. Were you already a director on the 22nd of June or was that later?

A. I was already a director.

Q. And you are now Managing Director of San Imperial?

A. Yes.

Q. Were you Managing Director on the 22nd of June or only later?

A. I was already the Managing Director.

Q. So you are able to speak for both San Imperial and Siu King Cheung in the matter of the purchase and sale of Oceania?

A. Yes.

Q. What was the advantage to San Imperial in selling Oceania to Siu King Cheung?

A. Perhaps I'll say something more to explain this.

Q. Yes. Go slowly and give the interpreter time to interpret as you go along.

A. After I joined the San Imperial as the Managing Director in the middle of June, I was a businessman, I therefore wanted to see if the company was making a profit. Of course, if a company makes profit, the shareholders would have the advantage in it or the shareholders will be benefited. I want to say that making a profit to me is very important. When I learnt the past records of the San Imperial Company, especially for the period up till the end of June this year, actually in this financial year the company would lose a few hundred thousand dollars, about $600,000.

Q. Just pausing there, we know that a writ was issued against CHOO Kim-san by San Imperial for 1.6 million dollars.

A. Yes.

Q. When you speak of a loss, does that include the 1.6 million claim against CHOO Kim-san?

A. According to our accounts, it includes 1.3 million dollars instead of 1.6. According to the accounts, we know that Mr. CHOO Kim-san had taken away 1.3 million dollars from the company. As to the balance of $300,000, we can't say that Mr. Choo had also taken away this amount illegally from the

company.

Q. Perhaps you could just answer this shortly, Mr. Coe, whether the $600,000 loss was arrived at after taking into account the money owing by CHOO Kim-san.

A. Yes.

Q. All right. So the books showed a loss of about $600,000 by the end of June?

A. Yes.

Q. Will you continue?

A. If the other provisions or loss were added to the amount, it would be more. I therefore checked, made a search into all the accounts.

Q. Yes?

A. And I discovered that the book value of the Oceania Company was about $5,000,000 and the only property of the Oceania Company was the Bangkok Hotel.

Q. Just pausing there, Oceania owned the property, but the hotel, we know it was under a lease, is that right?

A. Yes.

Q. Paying a rent?

A. Yes.

Q. Which you have earlier said you thought was very low?

A. Yes.

Q. All right.

A. Therefore as soon as I started to buy the San Imperial shares, I knew that the value of this property (being the Bangkok Hotel) was more than $7,000,000. If I sold the Oceania Company to Siu King Cheung, with my standing, I must be fair to both companies. Therefore, both companies would be benefited. And I have discussed this with the directors of both companies. We therefore decided to sell Oceania to Siu King Cheung at $7,000,000. In this case, before the end of June, the San Imperial Company would have a capital gain or profit of $2,000,000. As to Siu King Cheung, the company had obtained an undertaking that the company would make a profit of $500,000. Therefore I say that this was also advantageous to Siu King Cheung Company.

Q. How do you get the $500,000?

A. If the Siu King Cheung Company was going to sell the Bangkok Hotel for 7.5 million dollars, then Siu King Cheung would make a profit of $500,000.

Q. How when you referred earlier to an undertaking, did you mean the undertaking that we have already looked at of the 30th of April signed by David NG whereby he undertook to use his best endeavours to procure a sale of the Bangkok Hotel property at 7.5 million?

MR. CHING: Which document?

MR. SWAINE: 42.

A. Yes.

Q. At the date of that undertaking on the 30th of April, 1977, was it in your mind that Siu King Cheung would buy the Oceania Company from San Imperial?

A. It never occurred to me until the time I joined the San Imperial Company.

COURT: I haven't got the question.

MR. SWAINE: My Lord, whether on the 30th of April it was in his mind that Oceania would be sold to Siu King Cheung, and the answer is . . .

INTERPRETER: "It did not occur to me until I joined San Imperial."

Q. And you have explained that the idea had occurred to you after you had gone through the books of San Imperial and formed the view that you would do something which would benefit both companies?

A. Yes.

Q. Why were you particularly concerned that San Imperial showed a capital gain or profit for the period up to the end of June? Why were you concerned that San Imperial showed a profit or capital gain of two million as at the end of June?

A. In June I already had a control of the company, that is the San Imperial Company, and I have already said that it was very important to me whether the company was making a profit or not.

Q. To what date are the accounts of San Imperial made up?

A. Monthly, unaudited.

Q. The published accounts, Mr. Coe.

A. To the end of December last year.

Q. And do you publish interim accounts or only once a year?

A. That was the interim report at the end of December last year.

Q. For what period?

A. From the 1st of July to the end of December last year, and the financial year of the company is from the 1st of July to the 30th of June next year.

Q. So your next report would be when?

A. We are preparing the report and we hope that that will be published soon.

Q. And it would show what financial period?

A. From 1st of July last year to 30th of June this year.

Q. I see. And will that report show a healthier financial picture for San Imperial compared with the previous year?

A. Yes, I believe so.

Q. Either you know it or . . .

A. Yes, I know.

Q. All right. Look at the agreement itself at document 3, Mr. Coe. It's still yellow 4. It starts at page 12, and at page 13, clause 3, "The sale and purchase shall be completed on or before the 30th of June, 1977," do you see that?

A. Yes.

Q. Paragraph 2, "The consideration for the shares shall be the issue by the Purchaser to the Vendor or its nominees on completion of the sale and purchase of 7,000,000 shares of Siu King Cheung of $1.00 each fully paid up which shall rank pari passu with the existing issued and fully paid up shares except that they shall not be entitled to any interim dividend payable for period ending the 30th day of September, 1977. The said shares shall be issued in manner as follows:– 1,000,000 shall be issued and delivered within 10 days;

and the remaining 6,000,000 shares shall be issued within 3 months from the date hereof but subject to Clause 8." I think you understand that, Mr. Coe.

A. Yes.

Q. Now the 1,000,000 shares which are to be issued within 10 days, how were you able to do that?

A. Fortunately the board of directors of Siu King Cheung Company had a mandate to issue new shares not more than 10% of the issued shares.

Q. Would you look at document 1, page 1, in the same file? I am sorry. It's page 10, document 1. Is that the mandate?

A. Yes.

Q. It's a mandate given at the annual general meeting of Siu King Cheung on the 5th of November, 1976?

A. Yes.

Q. Why was that mandate given?

A. In 1975 the stock exchanges in Hong Kong needed to issue new shares . . .

Q. I think we had better start again in bits. It is a very technical point, Mr. Coe. Take it slowly.

A. For the convenience of the companies in issuing new shares . . .

Q. Would you find it easier to give this part of your evidence in English, Mr. Coe, since it is highly technical?

A. (In English) In 1975 the Federation of the exchanges in Hong Kong . . .

Q. Stock exchanges.

A. (In English) . . . stock exchanges in Hong Kong, for the convenience of public companies issuing new shares, a new regulation was given, the result of which a mandate of 10% of the paid up capital be given to the board of directors by resolution of an annual general meeting, and after that many public companies in Hong Kong had taken the advantage of this 10% mandate regulation. And Siu King Cheung Hing Hip Company Limited had also thought it a very good thing to have this mandate passed at an annual general meeting just in case there is any good opportunity that might come up, and this is how we have this mandate.

Q. In November, on November 5, 1976, was there any idea in your mind at all that you would be using that mandate to issue shares to San Imperial? On the 5th of November, 1976, was there any thought in your mind that this mandate would be used to issue shares to San Imperial?

A. No, absolutely no.

Q. And it happens that there was a good opportunity in June of this year and therefore you made use of the mandate?

A. Yes.

Q. And has a similar mandate been passed this year?

A. Yes.

Q. We shall look at the minutes shortly, but is that mandate also with a view to furture good opportunities?

A. Yes.

Q. What was the issued capital then in November 1976?

INTERPRETER: Siu King Cheung?

MR. SWAINE: Siu King Cheung.

A. 10 million.

Q. Then going back to the agreement of the 22nd of June, the provision for the remaining 6,000,000 shares is subject to clause 8. Would you look at clause 8 now? Now that is Siu King Cheung undertaking that it shall obtain the approval of the shareholders of Siu King Cheung in general meeting within 3 months from the date of the agreement for the issue of the 6,000,000 shares, failing which the purchaser shall upon the expiration of the 3 months pay a cash consideration of $6,000,000 to the vendor in lieu of the 6,000,000 shares.

A. Yes.

Q. In the event, we shall be looking at the minute. Was the approval of the general meeting obtained for the 6,000,000 shares?

A. Yes.

Q. In June of 1977, do you recall what was the market price of Siu King Cheung?

A. $1 something.

Q. $1 something, and the last dividend payable, you have told us, was about 10¢ plus a one and ten bonus issue.

A. Yes.

Q. The dividend this year, you have told us, is 13¢ on the issued capital plus the bonus issue.

A. Yes.

Q. And your expectation is to pay 13¢ at least next year on the shares including the 7,000,000 new shares?

A. Yes.

Q. Now I would like you also to look at document 4, page 18. That is an undertaking on behalf of Siu King Cheung to San Imperial that upon delivery of the 6,000,000 shares, the market value of each shall not be less than $1.00.

A. Yes.

Q. Would you say therefore that San Imperial got good value for the sale of Oceania to Siu King Cheung?

A. Yes, very good.

Q. As a matter of record, document 5 is the directors' resolution exercising the mandate for the issue of 1,000,000 new shares to San Imperial, is that correct?

A. Yes.

Q. And document 7, for the record, is the letter of Siu King Cheung's solicitors to the Far East Exchange for permission to quote the 1,000,000 new shares.

A. Yes.

Q. Document 8 is a letter from Siu King Cheung's solicitors to Far East Exchange informing the exchange that Siu King Cheung has entered into the agreement with San Imperial for the purchase of Oceania.

A. Yes.

Q. There are similar letters at 9 to the Kowloon Exchange.

A. Yes.

Q. 10 to the Hong Kong Exchange.

A. Yes.

Q. And 11 to the Kam Ngan Exchange.

A. Yes.

Q. Now at 16, page 34, it's a valuation report to Siu King Cheung prepared by Asian Appraisal Hongkong Ltd. of the Bangkok Hotel property.

A. Yes.

Q. And they valued the fair market value of that property as at the 22nd of June, 1977 at $7,000,000?
A. Yes.
Q. Why was this valuation asked for?
A. In order to be fair.
Q. Well, in the context of the sale and purchase agreement of the 22nd of June or was it for the purpose of listing?
A. Both.
Q. Then document 19, page 49, is the notice of an extraordinary general meeting of Siu King Cheung for the authorized capital to be increased, for the directors to be authorised to issue 6,000,000 new shares and for the general mandate to be given to the directors to issue 10% of the issued share capital.
A. Yes.
Q. And the proposed resolutions were passed as would appear from the document 23, page 54, being an extract from the minutes of that extraordinary general meeting on the 3rd of August, 1977?
A. Yes.
Q. And without going through each individual document, you have applied for a obtained from the stock exchanges permission to quote the additional 6,000,000 shares?
A. Yes.
Q. Having acquired Oceania and its only asset, the Bangkok Hotel property, what was Siu King Cheung going to do with it – with the property?
A. After we had bought the Oceania Company, if there was the opportunity, we would sell the Bangkok Hotel.
Q. And did that opportunity arise?
A. Yes.
Q. And has the Bangkok Hotel been sold?
A. Yes.
Q. For how much?
A. 7.4 million dollars.
Q. And did you report this to the Far East Exchange at document 26, page 57 and 58?
A. Yes.
Q. Informing the exchange that in respect of the previous application and their objection to the valuation report prepared by Asian Appraisal, "our client . . ." – that is Siu King Cheung – ". . . has on the 23rd August 1977 disposed of the property known as Bangkok Hotel to Madam Agnes Wong Lo So for the price of 7.4 million" and you annexed a copy of the agreement. This shows, you say, that the valuation given by Asian Appraisal represents the true value.
A. Yes.
Q. Without looking at the correspondence, Far East Exchange was not satisfied that the property was worth the $7,000,000 valued by Asian Appraisal, is that correct?
A. Yes, at first.
Q. And this was in respect of your applying to quote the 6,000,000 new shares?
A. Yes.
Q. Madam Agnes WONG Lo-so, who is she, Mr. Coe?

A. I don't know her.
Q. But do you know whether she is a woman of property?
A. I have heard that she was rich.
Q. All right. The conveyance, we know, was completed last month on the 24th of October in favour of a company called Lawison Textile H.K. Company Limited.
A. You mean the property?
Q. Yes. The agreement was to Madam Wong, but the conveyance was eventually taken in the name of that company.
A. I only know that the property has been sold, but I don't know the details and to whom it was sold.
Q. Were you satisfied with the price?
A. Yes.
Q. The position then, Mr. Coe, is – and this is so evident – that without the issue of 7,000,000 Siu King Cheung shares to San Imperial, Siu King Cheung would not have got Oceania?
A. Yes.
Q. And it follows it would not have been able to sell the Bangkok Hotel?
A. Yes, to Siu King Cheung.
Q. All right. We had this digression because it was necessary to bring in Oceania. And do you remember the starting point was your evidence that you lent the 3.8 million to David NG by the issue of post-dated cheques from Oceania to David NG?
A. Yes.
Q. By then, the 22nd June agreement had already been signed?
A. Yes.
Q. Did you give instructions to anyone as regards making the 3.8 million available to David NG?
A. Yes.
Q. To whom?
A. My chief accountant.
Q. Yes, what's his name?
A. TSANG Chun-tok.
Q. And had you then already decided that the loan would be provided by Oceania Finance?
A. Yes.
Q. Did your accountant report to you subsequently as to whether this was feasible or would present problems?
A. No. There was no problem, sir.
Q. Did your accountant report to you about the procedure for the making of these loans?
A. Yes.
Q. What was that?
A. The procedure was like this, that the money would be lent by Oceania to Ming Kee indirect.
Q. Indirect?
A. Indiretly, and then by Ming Kee to me and to David Ng, sir.
Q. To you and then to David Ng?
A. By Ming Kee to me and then by me to Mr. David Ng.

COURT: This was what your chief accountant told you?

A. I instruct him, sir.
Q. Why did you instruct him in that way?
A. At that time the Oceania was a deposit taking company.
Q. Is it still a deposit taking company?
A. Yes. This is why it should be lent by Oceania to Ming Kee Company Limited indirect.
Q. Yes, indirect. All right, we will deal with that first. When you say 'indirect' what do you mean?
A. That is to say Oceania Company lent to a third person and then the third person lent it to Ming Kee.
Q. Yes, one third person or more than one third person?
A. More than one, sir.
Q. Why was that necessary?
A. In order to abide by the regulations of the deposit taking company, sir.
Q. What did you understand those regulations to be?
A. The money lent by a deposit taking company should not be more than twenty – I'm sorry – to a single party should not be more than 25% of the paid up capital.
Q. And what was Oceania's paid up capital at that time?
A. Five million dollars.
Q. So the maximum it could lend to any one person was one and a quarter million dollars?
A. Yes.
Q. Would you look at the bundle of documents which have all been marked 33(a) in Yellow 4, starting at page . . .

CLERK: Page 66.

Q. Now we have in the first lot of 33(a) bundles loan documents in respect of a WONG Luk Bor. Do you see that?
A. Yes.
Q. The documents, the loan documents, are dated the 27th of June, 1977.
A. Yes.
Q. Do you know WONG Luk Bor?
A. I have never seen him before, I don't know him.
Q. Do you know how his name comes to be on this Memorandum of Deposit?
A. I instructed my chief accountant to do this and to deal with the matter, and after that the chief accountant reported back to me, sir.
Q. Now if you would look at the fourth page, page 69, you will see the receipt of WONG Luk Bor for one and a quarter million dollars.
A. Yes.
Q. And it contains a request to forward the amount to Ming Kee Trading Company . . .
A. Yes.
Q. . . . which you have already told the Court is under your control.
A. Yes.
Q. Then over the page at 70, the securities for the one and a quarter million loan

are 3,686,000 shares of Howard Land Investment Company Ltd.

A. Yes.

Q. And whose shares were they?

A. It was under my control, sir.

Q. Now you don't actually know WONG Luk Bor but you provided the securities, the details were left to your chief accountant who reported to you. Would it be fair to say that WONG Luk-Bor was used here as your nominee?

A. You can say this, yes.

Q. All right. Would you look at the second batch of 33(a) documents, page 74? That is a similar Memorandum of Deposit in favour – I'm sorry, in the name of IP Ping Wai. Again, do you know this name?

A. No, I have never seen him before.

Q. And is the position the same as in the case of Mr. Wong?

A. Yes.

Q. He received one million two hundred and fifty thousand dollars which he requested be forwarded to Ming Kee.

A. Yes.

Q. And as security there was put up 2,050,000 shares in Siu King Cheung?

A. Yes.

Q. And whose shares were those?

A. These shares were also under my control, sir.

Q. The third batch of 33(a) documents: Memorandum of Deposit in the name of CHAN Tsang-kin. Do you know the name?

A. Yes.

Q. And who is he?

A. A friend of my chief accountant.

Q. And he received seven hundred and fifty thousand dollars which he requested be forwarded to Ming Kee.

A. Yes.

Q. The security for that loan was a property situated in California as described in the document which is the sixth page of that batch of 33(a) documents, page 87.

A. Yes, a commercial building, sir.

Q. Details of which are given at 87:

> ". . . Grand Deed of the property at 11706 Ramona Blvd., El Monte, California, U.S.A., Grand Deed No. BKD2355PG832."

A. Yes.

Q. And whose property is this?

A. It is my property, sir.

Q. Then the next batch of 33(a) documents: Memorandum of Deposit in the name of Lai Wai Company. That would be page 91. Do you know that company?

A. Yes.

Q. Yes, what is it?

A. A third party which had business transactions with one of my subsidiary companies, sir.

Q. They received seven hundred and fifty thousand dollars, again requested that the amount be forwarded to Ming Kee against securities consisting of 12,000 shares in various companies as would appear from page 94.

COURT: 95.

MR. SWAINE: I'm sorry, my Lord, 95.

A. Yes.
Q. And whose shares are those?
A. These shares were also under my control, sir.
Q. Then the next batch of 33(a) documents – they all bear the same date, the 27th of June – Memorandum of Deposit in the name of S.W. Cheung. Do you know the name?
A. Yes. I know him: he is the manager of another subsidiary company.
Q. And he received six hundred thousand dollars to be forwarded to Ming Kee.
A. Yes.
Q. Against the security of a residential building in California, the details of which are given in the . . .

INTERPRETER: Page 104.

Q. Page 104, I'm obliged.
A. Yes.
Q. Now then, you have explained why it was necessary to . . .

COURT: Whose building is this?

MR. SWAINE: I'm sorry.

A. Mine, sir.

MR. SWAINE: I'm obliged to your Lordship.

Q. You have explained why it was necessary to break up the loan into . . .

COURT: The one . . . (Inaudible)

MR. SWAINE: That comes later, my Lord. It is not one of the 27th of June batch.

Q. Yes. You have explained why it was necessary to break it up into these smaller loans. Why were all these loans channelled into Ming Kee? You have explained why it was broken up but why were all these loans channelled through Ming Kee?
A. Ming Kee is a company, so it is not right or proper for Oceania to lend money to me direct.
Q. Why is that?
A. If the company was to lend me the money there was a limit in the amount.
Q. There would be a limit if Oceania lent you the money or anyone of more than one and a quarter million?
A. Yes.
Q. So it makes sense why the loan had to be broken up. Why did it go through Ming Kee instead of to you direct? You say it wasn't right. Why was it not right?

COURT: Perhaps a better way of putting it: Why must it go through Ming Kee? Why couldn't it go through these nominees to you, rather than to Ming Kee?

A. If the money came to me direct and I was a director of Oceania Company, sir, amongst the six parties one of them is a man in this group, that is Mr. Cheung, sir, and the amount borrowed by him plus the amount borrowed by me would be more than 25%.

Q. I fear that is not an answer. Mr. Coe, as to why it went through Ming Kee instead of to you direct.

A. Ming Kee also had an advantage in this by way of receiving interest. The name of a business, sir. I don't want myself to have any advantage in this.

MR. SWAINE: My Lord, would this be a convenient time?

Appearances an before.

MR. CHING: My Lord, may I first deal with our equivalent of the invisible man. My Lord, Mr. Yorke is, as your Lordship sees him, in court, but he is technically invisible. He has asked me to explain to your Lordship his reason, that he is still running a high fever and does not wish to infect everybody at this table, therefore, he is not robed and he is sitting at the back and no discourtecy to the court is intended.

COURT: Will you please convey from me through you my best regards and I wish him a speedy recovery.

MR. CHING: Obliged, my Lord.

D.W.4 – James COE – On former oath.

XN. BY MR. SWAINE – continues:

COURT: Before you start, just one point Mr. Coe. You mentioned your chief accountant, TSANG Chun-tok. He is chief accountant in Siu King Cheung or Oceania?

A. Siu King Cheung as well as Oceania.

COURT: Yes.

Q. How long has Mr. TSANG been with you?

A. About four years.

Q. You were looking yesterday at the loans from Oceania to the five persons whose names appear on the various memoranda of deposit – those five loans totalling 4.6 million dollars. Mr. David NG needed 3.8 million, what about the other 400 thousand dollars – the other 800 thousand dollars?

A. My accountant was responsible for these accounts, sir, but I cannot recall that now.

Q. Yes, all right, anyway it was not part of the loan to David NG?

A. No.
Q. The last of the 33(a) documents is the batch concerning Siu King Cheung which is at 108 and the date of that document is the 18th of July, 1977, wherein Oceania lends to Siu King Cheung 780 thousand dollars to be forwarded to Ming Kee against certain security?
A. Yes.
Q. What was that loan for?
A. I cannot recall everything now, sir, my accountant knows better about these accounts.
Q. Can you remember whether the money was lent to David NG?

MR. CHING: Really, my Lord, it is possibly the most leading question one could have.

Q. Very well Mr. Coe, you don't remember at all?
A. I know that this amount was lent out by the Oceania.
Q. Would you look at page 112 which sets out securities comprising two million shares in the Ka Yau Company – whose shares are those?
A. These shares were under my control.
Q. And looking at these securities, does that enable you to say that the loan was made at your request?
A. Yes, I can remember so it is.
Q. Does that now help you to remember to whom te loan was eventually made? I don't want you to guess Mr. Coe. If you really cannot remember this your accountant must tell us.
A. I am sorry I cannot remember it because there are too many accounts.
Q. How did you yourself personally at any time have an account with Bentley Securities for the purchase of shares?
A. Yes.
Q. And when did you start that account?
A. At about end of June, sir.

COURT: This year?

A. Yes.
Q. And how much was in the account?
A. At first I gave one million dollars to Bentley for the purchase of shares.
Q. You say 'at first' – does that mean it is changed?
A. Later David NG appeared in court for some cases and therefore he only bought some shares for me.
Q. When you say some cases – which cases?
A. The present one.
Q. The present case – do you know how many shares he bought for you?
A. Over 70 thousand San Imperial shares.
Q. When I said your account with Bentley and you said yes, was that your own personal account for your own benefit or your account for Siu King Cheung?
A. For Siu King Cheung.
Q. And do you know how much was spent on the purchase of the seventy odd thousand shares, just roughly?

A. Fifty odd thousand dollars.
Q. What about the balance then out of the one million?
A. He returned seven hundred thousand dollars to me.
Q. What about the balance of two hundred thousand odd?
A. The balance of two hundred odd thousand dollars was put on account. Out of the three hundred thousand dollars fifty odd thousand dollars was used for the purchase of the San Imperial shares.
Q. All right – so we are at the position where you have lent to David NG 3.8 million dollars?
A. Yes.
Q. And you have already told the court that just prior to that you had given to David NG post-dated cheques in the sum of 9 million dollars and 4 million dollars totalling 13 million dollars?
A. Yes.
Q. We looked at the letter acknowledging receipt of those cheques, you remember, 88 in Yellow 1 – you see there was a total of nine cheques?
A. Yes.
Q. How did David NG repay the 3.8 million to you?
A. Yes.
Q. How?
A. He also gave me post-dated cheques.
Q. And were those cashed?
A. Yes.
Q. And do you know where David NG got the money from?
A. I can remember that it should be like this that I have given him the post-dated cheques, so after he received the money he paid the money back.
Q. From your post-dated cheques?
A. Yes, that is to say after the post-dated cheques given to him by me were cashed – he had his post-dated cheques . . .

COURT: So the answer is yes.

Q. Now if you look at the post-dated cheques listed at 88, the first one is for 1.5 million, second for 1.5 million, that makes 3 million; the fourth is 1.5 million, that makes 4.5 million – do these figures help to jog your memory as to the amount of repayment made by David NG?
A. No, sir.
Q. All right. Were the whole of the post-dated cheques set out in that letter cashed upon or soon after due date?
A. Yes.
Q. Did you know what David NG did with the money?
A. I don't know sir.
Q. Would your accountant be able to tell the court?
A. Yes, I believe so.

MR. CHING: I am not challenging – first the witness is being asked not only about his own affairs but the witness is being asked whether his accountant can tell us about David NG – where is the value of such an answer to the question?

MR. SWAINE: My Lord, that remains to be seen.

MR. CHING: Call the accountant and ask him.

Q. Have you paid any interest to David NG – do you know this yourself?
A. Yes.
Q. For what?
A. For another loan.
Q. Who lent money to whom?
A. David NG lent money to me.
Q. Yes. How much did he lend you?
A. 8.5 million dollars.
Q. Now Mr. Coe, if you add up the last six cheques at page 88, the top three, that is the 4th, 5th and 6th cheques add up to 4.5 million, do you see that?
A. Yes.
Q. And the last three add up to 4 million – that is 8½ million?
A. Yes.
Q. Does that jog your memory as to where David NG got the money from?

COURT: Don't guess.

A. I cannot remember clearly.
Q. All right – and has this 8.5 million loan been repaid to David NG?
A. All has been repaid.

COURT: When?

A. Before the end of October.

COURT: How soon before?

Q. Was it by one payment or more than one payment?
A. Several payments.

COURT: Between what date and what date?

A. In July, August or September – correction in August or September.

COURT: In August or September or August and September?

A. In August and September.
Q. Also in October?
A. I cannot remember clearly, sir.
Q. The money borrowed from Oceania on your behalf, has that been repaid?

COURT: Money?

MR. SWAINE: Borrowed from Oceania, my Lord.

A. All has been repaid.
Q. Again do you remember when the repayments were made?
A. Before the end of October.

COURT: Can you be a little more specific?

A. I cannot remember, sir.
Q. Do you recall if it was one payment or more than one payment?
A. By several payments.
Q. And do you know if interest was paid to Oceania?
A. Yes.
Q. And who paid – who repaid the loans and paid interest?
A. I did.
Q. Now what about the 23 million Siu King Cheung shares which you had deposited with David NG as security?
A. They were returned to me on the 31st of October.
Q. By then were all the accounts clear between yourself and David NG?
A. Yes, all clear, sir.
Q. Coming back to Oceania, the various shares and property in California which were put up as security for the advance made by Oceania – you have told the court these were on either your properties and securities were under your control?
A. Yes.
Q. Without these shares and properties would Oceania have made the loans that we have been looking at?
A. No.
Q. So on either occasion that you have borrowed money or caused money to be borrowed you have always put up security?
A. Yes.
Q. You remember the matter of the finder's fee for the undated cheque for 3 million which you gave to HO Chapman and Associates – has that cheque been cashed?
A. Yes, cashed.
Q. You remember when that was?
A. I don't remember.
Q. Was it a month ago or two months ago?
A. In about October, sir.
Q. In addition to the assets of Siu King Cheung, did Siu King Cheung also have overdraft facilities from banks?
A. Yes.
Q. And the subsidiaries of Siu King Cheung, did they also have overdraft facilities?
A. Yes.
Q. Do you recall – may I have a moment's indulgence while the documents are being procured – do you recall the extent of the overdraft facilities available to Siu King Cheung and subsidiaries in October?
A. About 4 million dollars.
Q. We have the certificates from the banks – these can be put in when we have found them not to delay the matter further – my Lord, there are two obstacles – one is the certification of the banks that can be put in at some

later point, there is also one other matter which relates to some evidence given by Mr. Coe yesterday. There is a document that I have asked for, which if I show it to him ought to refresh his memory on a point that I want to clarify – that document is not yet to hand. If agreeable to my learned friend I will now conclude my examination-in-chief, subject to the bank certificates plus this document.

COURT: Is it agreeable to you?

MR. CHING: I don't mind, my Lord – is the document here?

MR. SWAINE: No, we have got to get it.

MR. CHING: I don't mind.

COURT: Mr. Poon?

MR. POON: I don't mind.

MR. SWAINE: I have no further questions.

XXN. BY Mr. CHING:

Q. Mr. Coe, I have something wrong with my ear this morning and I cannot tell how loudly or softly I am talking, so forgive me if I seem to be shouting at you some time, all right? I notice Mr. Coe that you attended this court off and on in the early days of the trial, is that right?
A. Yes.
Q. But you haven't done so now for some considerable time before giving evidence.
A. Right.
Q. Was that on the advice of your lawyers?
A. Yes.
Q. So that it could not be alleged that you have heard the other people giving evidence, is that right?
A. Yes.
Q. Which lawyer so advised you?
A. Mr. Philip K.H. Wong.
Q. That is the gentleman sitting at the back?
A. Sorry, sir – not Mr. Philip K.H. Wong, but a solicitor in Messrs. Philip K.H. Wong & Co.
Q. Who is the gentleman sitting at the back of the Court?
A. You mean this one?
Q. Yes.
A. Mr. TAO Shiu-kan.
Q. Is this the Mr. TAO who you say on occasions was with you when you discussed certain things with David NG and HO Chapman, is that right?
A. Yes.
Q. Do you know of any reason why he should have been in court every day?

A. I don't know.
Q. He hasn't been telling you what has been going on?
A. No.
Q. I see – are you reasonably confident of winning this case – I.P.C. reasonably confident of winning this case?
A. 100% confidence.
Q. You are 100% confident, I see – that explains why you paid finder's fee as late as October this year – the fourth week of this trial, is that right?
A. I don't understand this question, sir.
Q. Well we have been told by Mr. Swaine that the finder's fee was paid, if my memory serves me correctly, either on the 27th or the 28th of October. This case started on the 5th of October – on the 10th of October, I am sorry – 24th of October it was paid?
A. Yes.
Q. I am not asking you what advice your lawyers gave you, but did you pay that 3 million dollars upon your lawyers' advice?
A. No, I made my own decision to pay this 3 million dollars finder's fee. I was willing to pay this money.
Q. I see, you are – again just yes or no please – you did not consult your lawyers before paying the finder's fee?
A. I did not.
Q. And would I be right in saying that not only are you 100% confident of winning this case but you have faith in the three persons, Mr. Ives, Mr. HO Chapman and Mr. David NG who are in the Syndicate – you have faith in them?
A. Yes, I believe so.
Q. Does it go further than having faith in them Mr. Coe – have you been acting in concert with them at any time?
A. No, never.
Q. It would therefore either be a coincidence or it would be very surprising if I could show you whereas you have done certain things or said certain things which are not accurate, the Syndicate has done the same thing?
A. Yes, I believe so.
Q. All right – we will come back to that later Mr. Coe. I am a little bit lost at the moment – I have a document and I don't know in which bundle it is in – it is a Declaration of Trust by the shareholders – by I.P.C. Nominees in favour of Rocky Enterprises – I wonder if someone could assist me and tell me in which bundle that document is – has someone a clean copy? Mine is marked – end of Yellow 2, which document is it please? Has anybody a spare copy – you have got the original there, I see, all right. Perhaps this ought to go in – Mr. Coe would you look at this please. My Lord, I don't know what has happened to the copy – I recall my learned friend handing me a copy, I think at about the time he was opening his case.

COURT: All right while the search is being made, this had better go in as Exhibit?

CLERK: P.23.

MR. CHING: P.23, I am obliged.

COURT: Perhaps you have photostat copies made – you will carry on in the meantime.

MR. CHING: I am obliged. Look at that document please Mr. Coe, it is a Declaration of Trust which says:–

"WE, IPC NOMINEES LIMITED"

gives the address:–

"hereby declare and say as follows:–

1. That the 7,631,000 shares of San Imperial Corporation Ltd. being proposed to transfer to our company's name do not belong to us but to ROCKY ENTERPRISES COMPANY LTD. of 14th Floor Grand Building, Connaught Road, Central, Hong Kong and that we hold the said shares as Nominees for the Beneficial Owner.

2. That we further hold the said shares and all dividends and interest accrued or to accrue upon the same upon trust for the Beneficial Owner and we agree to transfer, pay and deal with the said shares and the dividends and interest payable in respect of the same in such manner as the Beneficial Owner shall from time to time direct."

Signed, I think by your mother?

A. Yes.

COURT: In respect of the 7 million?

MR. CHING: 631. Mr. Coe, is that a genuine document?

A. Yes.

Q. And where it refers to the Beneficial Owner you see in paragraph 1, it is referring to Rocky Enterprises Company Ltd. correct?

A. Yes.

Q. So your mother, as IPC Nominees, is declaring that IPC Nominees is holding 7,631,000 shares on behalf of the Beneficial Owner, Rocky Enterprises is that right?

A. Yes.

Q. Have you any explanation Mr. Coe for its's being stamped on the 17th of October whereas it is dated the 15th of June?

A. I cannot remember it.

Q. You cannot remember – you have told us that TSANG Tak-fai is your mother and you said the other shareholder and director of IPC is a female relative.

A. Yes.

Q. Female relative, please correct me if I am wrong, is TSANG Ngai Siu Fong?

A. Yes.

Q. In what way is she related to you?

A. My cousin's wife.
Q. What is the name of your cousin?
A. Mr. TSANG Chun-tok.
Q. Your chief accountant?
A. Yes.
Q. Has he got another name?
A. Abies TSANG – his English name is Abies TSANG'
Q. That is the name of the gentleman whose signature appears on the document in Yellow File 4, document 33(a), the loans from Oceania to certain people – I don't think you need look at all of them Mr. Coe – it is the same man.
A. Yes.
Q. All right, thank you. I want to refer you now Mr. Coe to some of the pleadings in this case – I shan't need that any more. Would you look at the pleadings file – I understand it is known as the pink file, although the cover is blue, page 88 please.

CLERK: Pink 2.

Q. Pink 2, page 88 please – now that I will tell you Mr. Coe, is the Statement of Claim in this case on the part of LEE Ing Chee and LEE Kon Wah, the plaintiffs. I would like you to look at the last sentence on paragraph 9, which you will find on page 88, and this is what Mr. LEE Ing Chee and LEE Kon Wah are alleging. It says:–

> "James Coe formed or caused to be formed Rocky Enterprises Company Limited hereinafter ROCKY, for the purposes of such purported purchases"

that is to say purchases of the San Imperial shares, all right?
A. Yes.
Q. Would you look now at page 152 – that I will tell you is your defence. There is a sub-paragraph 2 at the top of the page which is in fact sub-paragraph 2 of paragraph 9, and it says there:–

> "It is admitted that Rocky Enterprises Company Ltd. was formed by James Coe for the purpose of acquiring San Imperial shares from the Syndicate"

Do you see that?
A. Yes.
Q. Is that true?
A. Yes.
Q. Look at page 153 please, the next page, and I want you to look at paragraph 12 of your defence – look at the last sentence please, paragraph 12, and that says:–

> "IPC is a nominee company of Rocky Enterprises Company Ltd. which is in turn a nominee company of James Coe."

Is that accurate?

A. Yes.

Q. Yes, look now please at page 157 in the same file, that is another part of your defence – paragraph 30, sub-paragraph 3, bottom of the page. What it says is:–

> "IPC was nominee company for Rocky Enterprises Company Ltd. and the transfer was made to IPC on the direction of Rocky Enterprises Company Ltd., both companies were nominees of James Coe."

Do you see that?

A. Yes.

Q. Is that true or false?

A. True.

Q. True – all right, thank you, we won't need the file again. Now Mr. Coe, could you tell us something about – you have told us a lot about Siu King Cheung, would you tell us now about Ming Kee – do you hold the controlling interest?

A. Yes.

Q. Do you hold an outright majority?

A. Yes, it is under my control.

Q. And the other company that you mentioned – Howard – do you hold the majority there?

A. It is in my control.

Q. You have outright control?

A. Not mine, but it is in my control.

Q. I am not quite sure what you mean – you own certain shares in your own name?

A. I don't have any shares in this company – the shares of this company were owned by Siu King Cheung Company – sorry subsidiary company of Siu King Cheung.

Q. I see and because you control Siu King Cheung you control the subsidiary company, and therefore you control Howard?

A. Yes.

Q. You swore an affidavit Mr. Coe in High Court Action 2459. You swore an affidavit – it is in Red File 2, beginning at page 42 – you see that it was filed – if you look at the back of page 47 you will see it was filed on the 27th of July, and it was sworn on the 26th of July, all right – would you look at that affidavit please and you confirm that that is your affidavit. Have a quick look at it and confirm it is your affidavit.

A. I believe so.

Q. I think possibly I can help you Mr. Coe – I presume that it is not your signature. This is just an office copy and somebody has written upon it, but the original will have your signature, all right?

A. Yes.

Q. Mr. Coe, you see throughout your pleadings and throughout this affidavit you have never mentioned that it was not you who were buying San Imperial shares but Siu King Cheung.

COURT: Pleadings and the affidavit.

A. It is true that I did not mention that.
Q. Why was that?
A. I have told the court that we must keep secret about the dealings.
Q. I see, you deliberately omitted it from the affidavit, is that right?
A. May I explain?
Q. Could you answer me first?
A. It did not occur to me at that time.
Q. Why then was it left out of the affidavit – you gave a reason just now, namely that you had to preserve secrecy or words to that effect – do you resile from that now?
A. The affidavit was prepared by my lawyers, as to whether it is right or wrong I don't know.
Q. Let us just take it step by step Mr. Coe – when I first asked you the question why was it omitted you gave the answer – would you give me the exact note?

COURT REPORTER: "I have told the court that we must keep secret about the dealings."

Q. Do you wish to withdraw that as a reason for having omitted any mention of Siu King Cheung in your affidavit?
A. This has been the truth all the time, that I must preserve the secrecy.
Q. Mr. Coe, we will go into your preservation of secrecy at some later time. Will you please answer my question – do you wish to withdraw the answer which you gave?
A. (Long pause)

COURT: We are waiting for an answer Mr. Coe.

A. It is true that it did not occur to me at that time.
Q. So you wish to withdraw your answer, yes.
A. I think now that was a reason why it was omitted in my affidavit, but it never occurred to me that there are other reasons in law about the omission in the affidavit. It never occurred to me, sir, at that time.
Q. I'm sorry. Did you say, Mr. COE, just now (speaks Punti)?
A. I never knew that there was such an omission about Siu King Cheung in my affidavit.
Q. If you had known that it was omitted you would put it in?
A. Yes.
Q. Now you swore this affidavit to be true, did you not?
A. Yes.
Q. Did you not care what you were swearing to be true?
A. All the time I knew that this transaction concerned Siu King Cheung, the Rocky Company and myself up to now.
Q. Will you please answer the question, Mr. COE. It is capable of an answer yes; it is capable of an answer no. The question is: did you not care whether or not what you were swearing is true?
A. Of course, I cared very much, sir.
Q. You cared very much. Can I therefore assume that you read through your affidavit before you swore it?

A. Yes.

Q. You read through it carefully, you were careful about it, swearing only to the truth.

A. Yes.

Q. And how is it that you did not notice that mention of Siu King Cheung had been omitted?

A. All the time I thought that Siu King Cheung were buying the shares the same as I was buying the shares and I very seldom mentioned the name of Rocky Company to people.

Q. Let me refer you to certain parts of your affidavit. Mr. COE. Look at paragraph 7. It is at page 43, that is:

> "7. IPC Nominees Limited are at present holding the 7,631,000 shares in San Imperial Corporation Limited (hereinafter referred to as 'the said shares') the subject of the charging order nisi herein dated 15th July, 1977 as nominees for Rocky Enterprises Company Limited."

All right?

A. Yes.

Q. And look at paragraph 10, at the second last sentence, paragraph 10, and that said:

> ". . . Rocky Enterprises Limited was formed for the purpose of the acquisition."

All right? Look at the sentence before that:

> "On 30th April, 1977 an agreement was entered into between Mr. David Ng Pak Shing acting on behalf of Mr. M.E. Ives and Mr. Ho Chapman and Rocky Enterprises Limited . . ."

You see, throughout your affidavit, you are giving the impression that it is Rocky that is buying the shares and Rocky, of course, is your nominee according to your pleadings which you have confirmed to be true.

A. Yes.

Q. You see, the first time we knew about Siu King Cheung being the purchaswer was when your coursel opened your case. Do you not think that we were misled and the court was misled by this failure to mention Siu King Cheung?

A. I have only told the truth.

COURT: Will you answer the question, please?

Q. Do you not think that we were misled and the court was misled by your failure to mention Siu King Cheung?

A. It never occurred to me, sir.

Q. It never occurred to you. You see, the strange thing is, Mr. COE, neither you nor Mr. Ives, nor Mr. HO Chapman, nor David NG, seemed to be able to swear frank and honest affidavits. Are you sure now that you were buying on behalf

of Siu King Cheung?

A. It is 100 per cent that from the beginning to the end we were buying shares for Siu King Cheung Company, absolutely.

COURT: Why don't you say so in your affidavits and pleadings?

A. My lawyer knew it very clearly that I was buying shares for Siu King Cheung, but this is a legal matter, so I have no knowledge of this.

COURT: Mr. COE, (a) it is not a legal matter; (b) you haven't answered the question, but I am not going to press you.

Q. Now Mr. COE, you see, the only document that you have produced showing that you were buying on behalf of Siu King Cheung or indicated that you were buying on behalf of Siu King Cheung is document No. 19 in yellow file 1. It is a resolution of the Board of Siu King Cheung, and even that document was not given to us until your counsel has opened his case. Now have you any other document whatsoever to show that you were buying on behalf of Siu King Cheung?

A. The accounts in Siu King Cheung Company or in my company can prove that we have been buying shares for Siu King Cheung all the time.

Q. These particular shares I am talking about.

A. Yes.

Q. There is no other document except for that one and whatever may be in the Siu King Cheung accounts, is that right?

A. There are many documents such as vouchers or the accounts of the Company.

Q. Is there possibly a declaration of trust executed by you and your wife saying that you are holding Rocky Enterprises on behalf of Siu King Cheung?

A. I have to ask my lawyer about it first because the things about Rocky Company were all prepared by my lawyer.

Q. But you must have executed it if there is one. Have you ever executed it, an instrument of trust in relation to Rocky saying that you and your wife hold the shares in Rocky on trust for Siu King Cheung?

A. I believe that there is one, sir.

Q. It hasn't been disclosed to us, Mr. COE, would you like to get it for us some time?

A. I don't know whether there is one, sir, because everything concerning Rocky was prepared by my lawyer.

Q. You see, it is strange, you see – let's suppose that there is no such instrument of trust – isn't it rather strange that you should have an instrument of trust from your mother and your cousin – your cousin's wife, I'm sorry, in relation to IPC and yet none in relation to Rocky itself.

A. It never occurred to me until just now.

Q. Look at Exh. P23 again, will you? Isn't it strange that the beneficial owner is Rocky Enterprises and not Siu King Cheung?

A. This is the first time that is has occurred to me, sir, that Siu King Cheung's name does not appear in this document.

Q. Look at the figure of the shares, 7,631,000, document dated 15th of June. I suppose by the 9th of June, IPC had 8 million shares, did it not?

A. Yes.
Q. Why was the figure, 7,631,000 put in instead of 8 million?
A. I can remember that the balance of 300,000 odd shares had not been transferred to the company yet, or the registration work was not completed yet.
Q. But you have just agreed with me that by the 9th of June IPC had 8 million shares.
A. Yes, having the shares and having the name registered are two different things. We had the shares, but they had not been transferred to the company yet.
Q. You see, Mr. COE, one explanation, one explanation that covers everything in this document is that it was manufactured for the purposes of this litigation.
A. I deny that.
Q. You see, 7,631,000 is exactly the figure that LEE Ing-chee and LEE Kon-wah inserted in their charging order nisi. That is the figure of the shares that we are after. Is that a coincidence?
A. I did not know that until just now, sir.

COURT: It has been in the pleadings all these months. Are you telling us, Mr. COE, really, are you serious about this: you are telling us that you never knew about the figure of 7,631,000 until this morning?

A. I know that the shares of this amount 7,631,000 had been –

COURT: No, Mr. COE.

A. – registered –

COURT: You know exactly that I am referring to. What I am referring to is that the two Mr. LEEs, the plaintiffs in this case, in their statements of claim specifly the figure 7,631,000. Are you telling us that you never knew this figure until this morning?
A. I knew the figure, sir, but I did not know that is was so coincident that this figure was exactly the same as that one.
Q. And if this document P23 was manufactured for the purposes of this trial, it would also explain, would it not, that it wasn't stamped until four months and two days after it is said to have been executed: dated the 15th of June, stamped the 17th of October.
A. I don't know about this document, sir, because this was done by my accountant.
Q. Now you see, let's suppose that what you say is true: that at the date of the declaration of trust, only 7,631,000 shares had been registered in the name of IPC. Let's presume that to be true at the moment. Tell the court this, will you: is there an instrument of trust for an additional 369,000 shares?
A. I don't remember, sir.
Q. You don't remember, Mr. COE. Your mother, your cousin's wife are the shareholders and directors. Your cousin is your chief accountant and has been for four years. An instrument of trust is brought forward in relation to 7,631,000 shares because that was the exact number registered then. You don't know if there is a declaration of trust for the rest – for the balance to make

up 8 million?

A. Now I can remember that at that time the balance of 369,000 shares had not been registered in the company's name and they were later registered, sir. As to whether or not there is a declaration of trust for those shares I don't know.

COURT: (to interpreter) No, "I can't remember."

A. I can't remember, sir.
Q. Very well. No doubt you will check and if there is one, you will show it to us.
A. Yes, of course.
Q. And if there is not one, do you agree that document P23 is manufactured for the purposes of this trial?
A. I don't agree because I know nothing about this.
Q. Do you know who the witness, looks like Lena Cheng or Lena Cheung –
A. Yes.
Q. Who is she?
A. Another member of the staff in the company.

COURT: Which company?

A. International Projects Corporation.

COURT: A subsidiary of what?

A. My own company, sir.
Q. Soit wasn't even witnessed by a solicitor?
A. Well according to the document here, it is not.
Q. I am now going to read you, Mr. COE, a passage from your evidence-in-chief. I just want you to listen to it first. You were asked by your consel yesterday, you said you had very little cash at the time.

COURT: Morning or afternoon?

MR. CHING: I think the middle of the morning, my Lord, rather early in the morning.

COURT: Yes.

Q. You said you had very little cash at the time. "What about assets" and you answered, "I want to point out I was not acquiring shares for myself, but for Siu King Cheung. My assets at that time were not much but Siu King Cheung had sufficient assets." And then Mr. Swaine asked you, "Siu King Cheung had sufficient assets for what? and you answered, "Sufficient assets and ability to carry out the transaction."
A. Yes.
Q. Do you recall that?
A. Yes.
Q. Was it true?
A. Yes.

Q. Then Mr. COE, let me ask you this: if Siu King Cheung was buying the shares, if Siu King Cheung had sufficient assets to buy the shares, if Siu King Cheung had sufficient ability to buy the shares, why did you have to get loans, mortgage your own holdings in Siu King Cheung?

A. The properties that were given as securities for shares – (interpreter: sorry) The 23 million shares given as security belonged to Siu King Cheung group, sir.

Q. I see. They were not your shares?

A. They were in my control.

Q. Oh dear, Mr. COE! Here I was all along hearing that it was your personal shares, the 23 million that had been put up. I was wrong, was I? 10

A. They were not my shares, but they were in my control, sir.

Q. How were they in your control?

A. These shares belonged to a subsidiary company of Siu King Cheung and I was the chairman of Siu King Cheung. Therefore I can say that these shares were in my control.

Q. You see, that is the first time, you see, Mr. COE, in relation to the other shares for the loans from Oceania Inoticed that you were careful to draw a distinction between "my shares" on the one hand and "shares under my control" on the other hand. Now this is the first time you have told this court that those 23 million Siu King Cheung shares did not in fact belong to you but were only 20 under your control, do you agree with me?

A. Yes.

COURT: No, no, before he says yes, you had better be careful. You agree that this is the first time you tell us –

MR. SWAINE: I'm sorry. I remember the point was raised in examination-in-chief. I would like the opportunity of my junior checking his note on this. In fact, if it is desired that Mr. COE leave the room while the note is read out, of course it would be perfectly all right, but Mr. TANG has taken a note.

(witness leaves court)

MR. TANG: That was, my Lord, at the beginning of the evidencein the afternoon 30 yesterday. He was asked about two matters. The relevant matter is the question of his assets and the question of relativity in so far as the amount of –

COURT: Document 78.

MR. TANG: – are concerned and then my learned friend referred to document 78 and in fact just before that he was asked: "Did you in your own name ownshares in Siu King Cheung?" Answer, "Yes." Question, "In March how many shares would that be?" Answer, "About 6 million shares." "And then if you look at document 78, you will see that 23 million shares are not shares in your own name." Answer, "Right." "Do these shares exclude the 6 million shares?" Answer, "That is right." And then "Harvey Nominees Limited is 40 nominee?" Answer, "Yes." "For whom did Harvey hold the shares?" Answer, "For two other companies." Question, "Are these amongst 28 odd companies of which you are the chairman?" Answer, "Yes." "Would the same be said of

Rockson?" Answer, "Yes." "Ming Kee?" Answer, "No, not Ming Kee." Question, "The shares in the name of Ming Kee of which there were some 500,000 possibly, for whom were these shares held?" Answer, "They were shares belonging to Ming Kee." "Who controlled Ming Kee?" Answer, "I." Then your Lordship asked a question, "Why do you say Ming Kee is different from Harvey and Rockson?" Answer, "At the time I was not the chairman or even director." Your question again, "You controlled the company but not the chairman or director?" Answer, "Yes.".

COURT: Yes.

MR. CHING: Where my learned friend has gone wrong is right at the beginning. The third question asked after lunch was, "Did you yourself in your own name own shares in Siu King Cheung?" Answer, "Yes." Question, "In March how many did you own in your own name?" Answer, "About 6 million." And then "there was the receipt for the shares signed by David NG at document 78, 23 million shares were not shares in your own name." My lord, it does not say that they were not his shares. The whole tenor of the examination-in-chief is his holding shares in his own name and also holding shares not in his own name. And my question was – I put it to him just now "this is the first time you have told us that those 23 million shares were not your own."

COURT: I think to be perfectly fair to Mr. COE, this portion of the evidence should be explained to him or rather, should be disclosed to him.

MR. CHING: Yes, certainly.

COURT: Yes, very well.

MR. SWAINE: Perhaps to say this, my Lord, I was not at the time making any great distinction in my own mind between Siu King Cheung and James COE.

COURT: Yes.

(witness enters court)

Q. Mr. COE, I want to read you some questions and answers yesterday. Your counsel asked you: did you yourself in your own name own shares in Siu King Cheung and you said yes. And then you were asked in March how many shares did you own in your own name. Answer, "About 6 million". And then you were referred to a receipt signed by David NG at document 78, the 23 million shares, and you counsel said, "Those were not shares in your own name?" and you said, "Right." Correct?

A. Yes.

Q. Now let me ask you this: did you mean by that that you did not own those 23 million shares?

A. They were not my own shares – they were not in my name.

COURT: What?

A. They were not my shares.

COURT: No, no, no. Mr. Interpreter, this is a very vital point. "I meant that these shares were not in my own name." I thought that is what he said.

INTERPRETER: At first yes.

COURT: All right.

INTERPRETER: But later he said, "They were not my shares."

A. They were not my shares, but they were in my control, sir.
Q. I am not going to take that any further, Mr. COE. Mr. COE, I think you said earlier this morning – I was asking you about your affidavit. When you thought about this transaction of buying the shares, Rocky, IPC, Siu King Cheung and yourself – they all meant the same thing to you, is that right?
A. Yes, I did this for Siu King Cheung.
Q. You realize, of course, Mr. COE, that Siu King Cheung is a public company.
A. Yes.
Q. You realize that a company, whether it be public or private, is something quite different from its shareholders and its directors.
A. Yes.
Q. But you still say that in your own mind Siu King Cheung, Rocky, IPC and yourself are all the same thing.
A. I meant to say that I only wanted people to know that I was buying these shares and I did not want to disclose to the people that it was Siu King Cheung who were buying these shares.
Q. Mr. COE, that must be nonsense, mustn't it? Do you seriously tell this court that you wanted people to know that it was you buying the shares, you did not want people to know it was Siu King Cheung buying the shares.
A. I did not want the people to know that it was Siu King Cheung who were buying these shares, therefore the only way out is to say that I myself was buying these shares.
Q. Mr. COE, you told us yesterday that you abandoned the use of Rocky and used IPC instead so that people would not know that it was you buying the shares, didn't you?
A. Yes, but that was in the latter part, but in the former part, I said that I made it known to the people that I was buying these shares and not Siu King Cheung. If it was known to the people that Siu King Cheung were buying the shares it would be bad for the market and bad for the Commissioner for Security.
Q. I see, so you didn't even tell Mr. McInnis the truth?
A. Yes, I told him that Siu King Cheung wanted to buy these shares and I made it known to people that it was I who was buying the shares. He knew that.

MR. CHING: I wonder if the sharthand writer –

COURT REPORTER: ". . . If it was known to the people that Siu King Cheung were buying the shares it would be bad for the market and bad for the

Commissioner for Security."

Q. I suggest to you, Mr. COE, that the use of IPC was only for one purpose. The use of IPC was so that we – by which I mean the plaintiffs, the lawyers, the representatives – would be unable to trace the shares.

A. I don't agree, sir.

Q. You see, your counsel has told this court that the price of Siu King Cheung shares throughout the relevant period remained pretty steady, do you agree with that?

A. Yes.

Q. But yesterday you said that if it were known that Siu King Cheung were buying the shares, it would cause speculation on both the Siu King Cheung shares and the San Imperial shares and the price would go up.

A. I did not say that the price would go up. I only meant to say that there would be a fluctuation in the price.

Q. Was there fluctuation in the price?

A. When do you mean?

Q. AT any relevant time, say, this year, before the end of April.

A. Not for Siu King Cheung shares.

Q. You see, when you were asked yesterday why you used IPC instead of Rocky, one of the answers you gave was this: "At first I thought it was good enough to use the name of Rocky. As it went on, I discovered I was unable to keep the secret."

A. Yes.

Q. If you were unable to keep the secret, why did not the Siu King Cheung shares fluctuate?

A. I don't know whether this secret was disclosed.

Q. But you told this court yesterday, "At first I thought it was good enough to use the name of Rocky. As it went on, I discovered I was unable to keep the secret."

A. I meant to say that if we went on to use the name of Rocky company and we won't be able to preserve the secrecy completely.

Q. I suggest to you, Mr. COE, that if there was anything true in your evidence yesterday, it is this: that you used IPC for the purposes of secrecy to keep the 8 million shares secret from the plaintiffs in this case and that was the only reason why IPC was used.

A. I don't agree. The purpose was to preserve the secrecy from the whole public and it was not directed to any special parties or special person.

Q. You are a chairman, you say, of all the other three public companies. Why do you think that if it were known that it was you buying, people would jump to the conclusion it would be Siu King Cheung, not Ka Yau and not Ming Kee – I'm sorry, I have got it wrong: just Ka Yau and Howard.

A. Because Howard and Ka Yau were Siu King Cheung's subsidiaries.

Q. You do agree, though, do you not, that the fact that shares went into IPC instead of into Rocky made it much more difficult for the plaintiffs to trace them or to locate them for that matter?

A. It never occurred to me. We were to preserve the secrecy from all the public and it was not meant to the plaintiffs or to keep anything from the plaintiffs.

Q. What did you envisage might happen, Mr. COE, How many private companies

do you think there might be registered in the Companies Register?

A. I can't answer this question, but I believe that there are many many companies.

Q. There was a time, Mr. COE, many years ago, when the South China Morning Post once every while would publish in the business page new companies. One would see subscribers always solicitors' names – that sort of thing, shelf companies being set up. That doesn't happen now. Now how do you think it would have leaded out to the public that you were Rocky? Did you think that somebody would go up to the Companies Registry and say, "I want every single file you have. Give me every single file you have, and I want to look through it to see whether there is a company in which Mr. James COE is involved." Did you think that would happen?

A. Of course, in this way they would be very difficult to know it, but if people knew that I was buying shares I used the name of Rocky (Interpreter: sorry) If people knew that Rocky was buying shares and If they go to the Companies Registry and ask about the registration of Rocky Company, then they would find out that I was buying these shares.

Q. How would people find out that Rocky was buying the shares, please?

A. If I had the shares registered in the name of Rocky Company, then people would know it immediately.

Q. Mr. COE, how old are you?

A. Forty-eight.

Q. Please let's not get childish answers. If you have got the shares and if you have registered them in the name of Rocky, it wouldn't matter a tinker's curse, would it, if everyone knew that youhad got one. So let's not have childish answers. No, no, by the time they were registered, it would mean you would have the shares. It wouldn't matter who knew that you have them.

A. Yes, this is very right, but don't you forget that the 15 million shares had not been handed over yet.

Q. And you would have a permanent irrevocable option to buy them, don't you? Just yes or no.

A. Yes.

Q. And you are 100 per cent confident of winning this case, aren't you, yes or no?

A. Yes, right.

Q. Therefore you are as good as have 23 million shares, yes or no?

A. Yes.

Q. So let's not have childish answers. Now how would anyone find out that Rocky was buying the shares?

A. If they knew that Rocky was buying these shares, through investigations they would know that I was buying these shares.

Q. And if you would answer my question, we would get on a lot quicker, Mr. COE. How do you think anyone might find out that Rocky was buying the shares?

A. As soon as it was transferred, the news would be disclosed to the people.

Q. We have been through all that, Mr. COE. As soon as it is transferred. It doesn't matter who knows. The 15 million are locked in, as far as you were concerned. Now what on earth are you talking about? How could it have been discovered that Rocky was buying the shares at any time before transfer took place?

A. Would your Lordship allow me to explain this?

COURT: Explain! That is what we have been trying to get in the past five or ten minutes, Mr. COE.

A. If the transaction of 23 million shares was done at one time and if we announced to the people at the time that we have bought the San Imperial shares, it would be all right, but the question is that at that time we only had 8 million shares. If we let the public know that we bought the shares at 1.50 cents, then the public would speculate in the shares.

Q. Why should you tell the public how much you paid for them?

A. I will not tell anyone, but according to the history of the market, this is very common that this would happen.

Q. Just tell us please if you can.

A. This is a very serious matter and nothing to do with childish or not.

Q. Just a minute. Just tell us if you will or if you can how on earth anybody was going to find out that Rocky was buying the shares at any time before registration.

A. It happens very often that if a company was buying another company and if the people in this did not disclose it, the news would always be disclosed to the public.

Q. So it didn't matter what name you used, did it? The news was going to leak out, wasn't it?

A. It has. It's our understanding we must try our best to preserve the secrecy.

Q. All right. Let the court draw its own conclusions, Mr. Coe. Were you seriously going to buy the rest of the shares from the public?

A. I had this intention.

Q. Something like 25,000,000 shares from the public you were going to buy?

A. Yes, this is so-called the open bid.

Q. 25,000,000 or thereabouts of shares?

A. Yes.

Q. You were prepared to pay $1.50?

A. Yes.

Q. Where would you get $37,800,000 to pay?

A. This is a very good question. This is the trick in the share market. You mention about 37.8 million dollars, what is that?

Q. 25.2 million shares on the market at $1.50 is $37,800,000, isn't it?

A. If you say that whether or not I would have that much cash, the answer is that I won't, but if the question is that whether or not I would issue new shares amounting to that much to acquire the shares – in exchange of the shares, the answer is that it is possible.

Q. What were you going to do – issue shares in some company at the par value of $1.50?

A. This is another trick in the share market. If there is time, I could say something about it.

Q. Can you please tell me just yes or no – were you going to issue new shares at the par value of $1.50 in some company?

A. If Siu King Cheung Company was going to issue new shares, then Siu King Cheung would have to issue shares in the ratio of 1.5 to 1, that is, 1.5 shares in exchange of one San Imperial share.

Q. I see.

A. And if the price went up to $1.50, then Siu King Cheung would have to issue shares at the ratio of one to one, that is, one Siu King Cheung share in exchange of one San Imperial share. And if the price went up to $3, then Siu King Cheung would have to issue new shares at the ratio of one to two, that is, one Siu King Cheung share in exchange of two San Imperial shares.

Q. We can all do the mathematics, Mr. Coe. You said yesterday that you formed the view in March this year that the shares – the value of the shares was more than $1.70 each for a controlling interest.

A. Yes.

Q. You told us yesterday you wanted $1.50 put into the contract so that later you could acquire the rest of the shares from the public at $1.50.

A. Yes.

Q. In other words, is this the position, you were going to show whoever it may be, "I paid $1.50 for my shares and therefore I'll pay $1.50 for the rest of them"? Is that right?

A. Yes.

Q. And you would be saying that to the public, to the stock exchanges, to the securities commission as chairman of a public company?

A. Yes, plus $3,000,000 finder's fee. I must say that.

Q. You were going to tell the world you had paid $3,000,000 finder's fee? Why should you do this?

A. At least I should tell the shareholders of Siu King Cheung.

Q. Never mind about the shareholders of Siu King Cheung. What about the public? Were you going to tell the public you had paid $3,000,000 finder's fee? Yes or no?

A. We would only tell the shareholders that $1.50 plus $3,000,000 finder's fee.

Q. You see, Mr. Coe, the fact of the matter is, is it not, that you are not above telling an untruth if it is for your own advantage?

A. No.

Q. You inserted a false price in the sale and purchase agreement, you retained the false price in the replacement agreement, you were going to exhibit that false price to the public and thereby get the shares for less than what you had paid.

A. Not necessarily because the public would know that we had also paid the $3,000,000 finder's fee because they know how to work it out.

Q. How would they work it out?

A. If we wanted to buy the 25,000,000 San Imperial shares, there must be a big independent finance company to advise the San Imperial Company.

Q. I see, and then they would find out about the finder's fee from your record?

A. Yes.

Q. And so the public would know that you didn't pay $1.50 but you paid $1.63? As you say yourself, they are capable of working it out, aren't they?

A. This is a very normal way in the commercial field.

Q. You see, either you were going to lie to the public, or else the whole purpose of making the price $1.50 together with a finder's fee of three million was absolutely defeated, no point in it unless you were going to lie to the public.

A. I disagree.

Q. I'll explain it to you. On the one hand you say "I wanted $1.50 because that's the price I would offer", on the other hand you say the public would find out about the three million, they could do their own calculation, they would know

it's $1.63. What on earth are you talking about, Mr. Coe?

A. $1.50 is a figure that can be used as the standard price in the bargain with a third party about the San Imperial shares. As to how much would be paid for each San Imperial share, you don't know. It may be more or it may be less.

Q. You haven't been really frank with the court, Mr. Coe. In your affidavit, for instance, was there any mention of a finder's fee? As I assure you, I have looked for it and there is not. Do you agree with me?

A. Yes.

Q. Is it just a coincidence that Mr. DavidNG didn't mention the finder's fee either?

A. This I don't know.

Q. Is it just another coincidence again that HO Chapman never mentioned it? I am talking about their affidavits.

A. I did not know that they never disclosed that in their affidavits just up to now.

Q. Melville IVES never disclosed it either. We didn't know about it when we saw your list of documents and saw something called "finder's fee". Is it just a strange coincidence or have the four of you been acting in concert?

A. I don't know whether it was right or wrong to omit that in my affidavit, but I can assure you that I have never disscussed with the other three people, that is, Mr. Ives, Mr. Chapman HO, Mr. David NG, about the omission of the finder's fee in their affidavits.

Q. And you are sure, aren't you, that originally it was going to be 24 odd million shares, not 23 million, right from the beginning?

A. Yes.

Q. You see, 24 million shares, to take a round number, at 13¢ per share being the difference between $1.50 and $1.63, 24 million shares at 13¢ per share comes to $3,120,000.

A. Yes. There is a difference, yes.

Q. But 23 million shares at 13¢ is $2,990,000, almost exactly $3,000,000.

A. Yes.

Q. And you can think of no reason why you didn't tell the court in your affidavit about the finder's fee?

A. It's true that it never occurred to me up to just now.

Q. You are the chairman of three public companies, 28 private companies.

MR. CHING: My Lord, that would be a convenient moment.

D.W.4 – James COE – O.F.O.

XXN. BY MR. CHING: (continues)

Q. Mr. Coe, over the luncheon adjournment, have you been able to discover any trust instrument concerning 369,000 shares?

A. Yes.

Q. Can I have it please?

A. I have asked them to deliver it here.

Q. I see. All right, then we'll have to wait for it. While we are on the subject of documentation, could you tell us this – you entered into certain loan agreements with Mr. David NG, for instance, document 38, I think, is the most

convenient one in yellow file 1. Would you look at that please? The burden of that document is that the Siu King Cheung shares shall be used as security and that you will pay 1% commission on loan. All right? Yellow file 1, document 38. Do you agree that 23 million Siu King Cheung shares were going to be used as security for a loan and you were going to pay 1% commission.

A. Yes.

Q. That's the burden of the document.

A. Yes.

Q. First, therefore, since you say that these shares were not yours, did you have a board resolution authorizing you to pledge the shares of Siu King Cheung?

A. No.

Q. Did you have a board resolution authorizing you to pay 1% commission?

A. No, it was not mentioned.

Q. Mr. Coe, here you are using monies belonging to the public, aren't you? You have taken it upon yourself to do so without a board resolution?

A. I was doing that for the company.

Q. If you were doing that for the company and if the documents were genuine, one would expect to find a board resolution, especially from somebody who is chairman of three public companies and 28 private companies, wouldn't one?

A. Siu King Cheung had authorized me in doing things.

COURT: "Gave me full power" . . .

A. . . . full authority to do things for the company though I did not notice the details. As long as I did it well for the company, that would be all right.

Q. You are referring to the resolution which is document 19, is that right? Yellow 1, document 19.

A. Yes.

Q. All that says is to authorize you to negotiate the purchase of controlling shares. It doesn't authorize you to pledge the company's property, it doesn't authorize you to give the 1% commission, does it?

A. When the company gave me full authority to do this, as long as I could buy the shares, it doesn't matter how I did it. As long as I bought the shares, it doesn't matter how I did it and I did it upon my own conscience.

Q. Look at document 19. Where are the words "fully authorize"?

A. I was authorized by the company to carry out this.

Q. All right. We will turn to something else now, Mr. Coe. I would like to read to you a passage from one of David NG's affidavits. You will find it in red file 2. The passage I want is on page 52, paragraph 17. For the sake of your information, I will tell you that that affidavit was both sworn and filed on the 27th of July this year. This is what paragraph 17 says, "I refer now to the agreement of 30th April 1977 with Rocky Enterprises Limited. By the terms of that agreement completion was to take place on the day following the then next annual general meeting of San Imperial. The annual general meeting was scheduled to and did take place on 30th May 1977. Before that date, however, Rocky Enterprises Limited become uneasy over the proceedings affecting the 15 million shares. At their request an agreement dated 12th May 1977 was entered into in substitution for the agreement of 30th April 1977." And he exhibits a copy. He says, "By the terms of the agreement, a transfer of

between 7 and 8 million shares was to be made first for $1.5 each and an irrevocable and permanent option was granted to Rocky Enterprises Limited for the 15 million shares (alternatively for the entire Fermay shares) for $4 million. I caused 8 million shares in San Imperial to be transferred to IPC Nominees Limited which was nominated by Rocky Enterprises Limited to take the transfer." And this is the passage I want you to take particular note of: "In return I have received 8 cheques each for $1,500,000 from Rocky Enterprises Limited. The first two of these have been cleared, the third is in the course of being cleared and the balance will be presented for payment on their respective due dates. The Option fee has been paid to and by means of three post dated cheques." You see what he says there, 8 cheques for 1½ million each and the option fee by means of three post dated cheques all right? Do you see that?

A. Yes.

Q. Now curiously – look at your own affidavit in the same file. Look at page 44, your affidavit filed on exactly the same day, sworn one day before David NG. Page 44, paragraph 13. This is what you say in paragraph 13: "Pursuant to the agreement of 12th May, 1977, Rocky Enterprises have given 8 cheques each for $1.5 million to Mr. David Ng Pak Shing. They are as follows . . . " – and you you listed the dates. "The first 4 cheques have been cleared. The rest would be presented and cleared as they fall due." Paragraph 14: "As for the option fee of $4 million, this has been paid by 3 post-dated cheques for the amounts of $1.5 million, $1.5 million and $1 million respectively, post-dated . . . " etc. All right?

A. Yes.

Q. Now you see the dates from the cheques which you list in paragraph 13, if you count them, you will find there are only 7, not 8.

A. Yes, I see it. Do you want me to explain this?

Q. I imagine one of them has been left out, 27th of July, is that right?

A. This was prepared by my lawyer. I did not notice that until later. I only know that one of them is omitted here, but I don't know the date of that.

Q. The point is, you both say 8 cheques and then 3 more cheques for the option.

A. Yes, I did say this.

Q. Look at document 88 please, yellow file 1. Now there are only nine cheques on that document and one of them, the third one, is the 27th of July which has been omitted from paragraph 13 of your affidavit.

A. Yes.

Q. As a matter of fact, on the 27th of July how many cheques had been cleared?

A. I can't remember.

Q. Well, according to your counsel, the first three cheques on document 88 had been cleared on the 27th. So that's three we know about?

A. Yes.

Q. And if you look back at paragraph 13 of your affidavit, the two cheques for 29th April and 8th of July, they must have been cleared by then?

A. Yes, they should be.

Q. You say in your affidavit, "The first 4 cheques have been cleared." Is that just a mistake? You see, what puzzles me is, you say "the first 4 cheques have been cleared" whereas in fact five had been cleared. Then you crossed out "the third is in the course of being cleared" which would indicate that you should have said "the first two cheques have been cleared".

A. It may be so, but I can't remember.
Q. It may be so, but you can't remember. You see, curiously enough , if that was a mistake and should have been the first two cheques, David NG has made exactly the same mistake. Is that just a coincidence?
A. I know nothing about David NG.

MR. SWAINE: "I know even less about David NG."

A. I know even less. About my affidavit here, I can't remember it clearly now. This is why I don't know the things about David NG.
Q. All right, go back to document 88 please. The total amount of money on document 88 is 13 million, all right?
A. Yes.
Q. You had already received how much by the 25th of June? I am sorry. You had already paid how much by the 25th of June?
A. You mean paid before that?
Q. Yes. Three million, is that right?
A. Yes.
Q. So by the time all these cheques were cleared, then you would have paid 16 million?
A. Yes.
Q. All right. We will move on to something else for the moment, Mr. Coe. The loans taken from Oceania, Mr. Coe, were all really taken by you, were they not, the 4.6 million dollars?
A. On the face of it, yes.
Q. What do you mean on the face of it?
A. My name was used for the loans from the Oceania.
Q. No, it hasn't. You had six other people's names but never your own, but you were in fact the borrower.
A. Yes. I said that on the face of it, yes, because I was doing this for the Siu King Cheung Company for the whole matter.
Q. But you were the person who put up the securities?
A. Yes.
Q. They were your personal securities?
A. Yes.
Q. And if something had happened, say, to Mr. WONG Luk-bor, you would have had to reimburse Oceania for WONG Luk-bor?
A. Yes. In the past four years I did things for the company with my whole heart.
Q. So in one sense you were the real borrower, in another sense you were the guarantor of the nominal borrower?
A. Yes.
Q. And at that time, 22nd of June – 27th of June, had you taken over Oceania yet?
A. Yes.
Q. Deposit-taking company?
A. Yes.
Q. And when you say you had taken it over, you mean Siu King Cheung had taken it over?
A. Yes.

Q. And because you personally were in control of Siu King Cheung, you were also therefore in control of Oceania?
A. Yes.
Q. Were you in fact a director on the 27th of June?

INTERPRETER: Of . . . ?

MR. CHING: Of Oceania.

A. After I had done everything I handed all the matters to the solicitors. I believe so.
Q. All right. You don't know when you were formally appointed a director?
A. I believe so because whenever we bought some campanies, we always field Form X on the same day.
Q. I am going to read to you now a passage in your evidence yesterday afternoon.

MR. CHING: It must have been about 4 o'clock, my Lord. On average I take about five minutes a page, the fifth last page.

Q. You were telling the court about procedure for making the loans and what your Chief Accountant had told you and what you had instructed him to do, do you remember?
A. Yes.
Q. You were asked by your counsel, "Why did you instruct him in that way?" "Answer: At that time Oceania was a deposit-taking company. It still is. This is why it should be lent by Oceania to Ming Kee indirectly." "What do you mean by indirectly?" "Answer: Oceania lent to a third person, then the third person lent to Ming Kee. There was more than one third person." "Question: Why was that necessary?" "Answer: To abide by the regulations of deposit-taking companies." "Question: What did you understand the regulations to be?" "Answer: The money lent by a deposit-taking company to a single party should not be more than 25% of the paid-up capital." Do you recall that?
A. Yes.
Q. So you knew on the 27th of June this year that a deposit-taking company could not lend more than 25% of its paid-up capital to a single person?
A. Yes.
Q. Let me tell you exactly what the section says. Section 22 of Cap. 328, Deposit-Taking Companies Ordinance. "22. (1) A registered deposit-taking company shall not grant or permit to be outstanding to any one person, firm, corporation or company, or to any group of companies or persons which such person, firm, corporation or company is able to control or influence, any advances, loans or credit facilities, including irrevocable documentary letters of credit to the extent to which they are not covered by marginal cash deposits, or give any financial guarantees or incur any other liabilities on their behalf to an aggregate amount of such advances, loans, facilities, guarantees or liabilities in excess of 25 per cent of the paid-up capital and reserves of the registered deposit-taking company." That is perfectly clear, isn't it, Mr. Coe?
A. Yes.
Q. You can't lend more than 25% to any one person, correct?

A. Yes.
Q. You can't lend more than 25% to any group of persons controlled or influenced by any one person, correct?
A. Yes.
Q. Look at subsection (3) on the next page. "Any registered deposit-taking company that contravenes subsection (1) shall be guilty of an offence and shall – (a) in the case of a continuing offence, be liable on conviction upon indictment to a fine of $2,000 for every day during which the offence continues; and (b) in the case of an offence which is not a continuing offence, be liable on conviction upon indictment to a fine of $50,000." You see that?
A. Yes.
Q. So what you did was to cause Oceania commit a criminal offence? Do you want to answer that?
A. I don't agree.
Q. You don't agree. Why? Why don't you agree?
A.I knew at that time that I did not do anything wrong.
Q. Why?
A. And I knew that there was such a regulation that one could not lend to a person or a body more than 25%.
Q. Yes?
A. Therefore when I told my chief accountant to be responsible for the whole matter, I asked him to abide by the law.
Q. Yes?
A. And after he did it there was a report.
Q. Now Mr. Coe, I am not interested . . .
A. . . . And I asked him if that was correct and he said that that was correct.
Q. I am not interested in your chief accountant's view of the law. You have just agreed with me the section is clear, you can't lend to a group of persons which such person or company is able to control or influence.
A. Yes, right.
Q. You say that you or your accountant were unable to control or influence these six people who used their names to get the loans?

MR. SWAINE: Maybe at this point the witness ought to be warned that he need not give incriminating evidence.

COURT: Possibly the warning should come from me. Would you, Mr. Interpreter, give him the usual warning that he is not obliged to answer any question which might incriminate himself?

(Interpreter complies)

Q. Do you wish to answer? The question I ask you, Mr. Coe, is this: do you say that the six persons who allowed their names to be used could not be influenced or controlled by you or your chief accountant?
A. I don't know.
Q. You don't know? You put up securities including one commercial building in America, one residential building in America, you put up millions of shares of your own property. You don't know whether you or your accountant could

have controlled these six people?

A. I discussed this with my accountant at that time.

Q. Do you say – yes or no, please – that you don't know whether or not you or your chief accountant could control these six people?

A. I asked him about it and he said no, he did not control those six people.

Q. Mr. Coe, please don't be childish again. You do understand the question. Do you say that you do not know whether or not you or your chief accountant could have controlled those six people who allowed their names to be used against securities provided by you? Do you say that seriously to this court?

A. I felt that I could control them, but my chief accountant said that since he had arranged for everything . . .

INTERPRETER: May I clarify this from the witness? What he said means the chief accountant was not controlling those six people.

COURT: Mr. Interpreter, are you able to translate what the witness says or not? Whether it makes sense or not is another matter, are you able to translate this point?

INTERPRETER: Yes.

COURT: Perhaps you will translate it first. "I felt I could control them, but my chief accountant said since he had clarified . . . "

INTERPRETER: " . . . since he had made arrangements for everything, he was not controlling those six people."

Q. That really is childish, Mr. Coe. Look at yellow file 4, page 66.

A. I deny that. I don't think it's childish.

Q. Very well. You don't think so, I'll prove it to you. Yellow file 4, page 66. Just take this an an example, Mr. Coe. Page 66, document 33A, page 66.

MR. CHING: The first of the 33A my Lord.

Q. Do you see the name WONG Luk-bor? We are told he is an employee of David NG. This is WONG Luk-bor, this is an employee of David NG, all right?

A. At that time I did not know that.

Q. The document which he signed, the singature on page 68, the 27th of June, all right?

A. Yes.

Q. You look at page 69, that is a letter signed by WONG Luk-bor, also dated the 27th of June.

A. Yes.

Q. And the second paragraph instructs Oceania to forward the money to Ming Kee, all right?

A. Yes.

Q. If you were – if you or your chief accountant were unable to influence or control WONG Luk-bor, why should he apply for this loan?

A. About this question I argued with my chief accountant for a long time.

Q. Just answer my question. I am not concerned with what your chief accountant told you, I am not concerned with whether you argued with him or had a stand-up, knock-down, drag-out fight with him, all right? Why do you think WONG Luk-bor signed this application – signature on page 68 – unless you and/or your chief accountant were able to influence or control him?

MR. SWAINE: There might be a difference of language here. The witness has said, my Lord, that he felt he could control or influence these six persons. As regards the chief accountant, he said he was not controlling them. The question, as I understand it, is directed towards whether he or his chief accountant could. We heard Mr. Coe say he could. As to the accountant, he said he did not. Whether he could or not, of course, hasn't been elicited.

Q. Could you, Mr. Coe, you personally, control these six people?

A. I believe that I could control some of them, but two of them I was unable to control.

COURT: Let us be quite clear about this. You believe or you believed?

A. I believed that I could control some of those people. There were two of them I was unable to control.

Q. The two you couldn't control were Mr. WONG Luk Bor and Mr. IP Ping Wai?

A. Yes.

Q. Did you not, in fact, control all six of them?

A. You mean I myself?

Q. Either you yourself or through your servant or your agent or whatever else you like.

A. At that time actually I did not know those two people.

Q. Answer my question.

COURT: Would you kindly answer the question? I have had to ask you to answer the question on more than one occasion already, Mr. Coe.

A. Yes.

Q. Yes. So we've wasted about twenty minutes getting back to exactly whether we started, Mr. Coe. Indeed, you said in evidence-in-chief, in answer to your own counsel, that WONG Luk Bor was acting as your nominee, didn't you?

A. Yes.

Q. If you wish I'll read you the exact passage. All right? No question about whether or not you could control them or could control some of them; there was no question about whether or not you did control them, is there? Right?

A. Right.

Q. So you, as chairman of a public company, deliberately flouted section 22 of the Deposit-taking Companies Ordinance and thereby caused the company to commit a serious offence. Correct?

A. I disagree, sir.

MR. SWAINE: I was going to say he ought to be warned, but he disagrees.

COURT: I think he has already been warned, hasn't he?

MR. SWAINE: I'm not sure if he understands, my Lord, the procedure wherein he is not obliged to answer on the grounds of incimination.

COURT: Yes, I know, but I have warned him. It doesn't mean that every time a question is put I have to give the same warning on the same matter.

MR. SWAINE: No, my Lord, but I am just uneasy in my mind whether he has really understood the implication of questions such as these and the warning that the Court does give in these circumstances.

Q. Why do you say you disagree with me?
A. Well, at that time I did not feel that I have done anything wrong.
Q. What about now? Do you feel as if you have done anything wrong now that it has been explained to you?
A. I don't know because we have such experience before, sir, as people in the finance company, sir.

COURT: Yes, I think here I must warn you, Mr. Coe. It is one thing giving incriminating answers to one incident; you are not obliged to give incriminating answers to other acts as well.

Q. Mr. Coe, all this happened because you instructed your chief accountant to do it this way, is that right?
A. No, I'm not going to answer this question.
Q. You are not going to answer me. Very well, that's your privilege. Let me just remind you what you said in-chief, shall I? You were asked by your counsel:

> " Did the accountant report to you subsequently as to whether if was feasible or whether it would cause problems?
> A. No.
> Q. Did the accountant report to you about the procedure for making loans?
> A. Yes. Oceania lent money to Ming Kee indirectly and then by Ming Kee to me and then by me to David Ng."

You were asked by my Lord:

> " Is that what the chief accountant told you?
> A. No, I instructed him."

Do you recall saying that?

A. When I said, "I instructed him to do this" I meant to say that I instructed him to carry out this.
Q. Yes.
A. I did not mean that I instructed him to look for this and that.
Q. You mean you didn't tell him which particular people to get, is that right?
A. I said to him that he could do whatever he liked but it must be lawful, sir, and after he had done that he must give me a report.
Q. All right, let's cut it short. You instructed him. You knew about the

regulations concerning Deposit-taking Companies?

A. Yes.

Q. It is quite clear, Mr. Coe, that as chairman of a public company you deliberately flouted the provisions of section 22 of the Deposit-taking Companies Ordinance and thereby caused that company to commit serious offences.

A. I don't think so, sir, I don't think I have done wrong.

Q. You don't think so, you do not think you have done wrong. Will you please look at section 31 now. (To Interpreter) I think you put it in the back of the file, Mr. Interpreter, you put it in the WONG Luk Bor documents. I am looking at the Ordinance, Mr. Interpreter, section 31, you had it just now. Section 31, sub-section (1):

> "Where an offence under this Ordinance committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the company or any person who was purporting to act in any such capacity, he as well as the company, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

Sub-section (2):

> "For the purposes of this section, a person is deemed to be a director of a company if he occupied the position of a director, whatever the title of his office, or is a person in accordance with whose directions or instructions the directors of the company or any of them act; but a person shall not, by reason only that the directors of a company act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act."

What that means, Mr. Coe, is that if you were a director and if you caused something to be done, you also would be guilty. Do you understand that? Also even if you were not a director but if you had effective control and you caused something wrong to be done, you also would be personally liable, and if you were a person, whether you were a director or in control or holding the majority shares and you allowed something to happen by your neglect, you are still liable. Do you understand that? Do you understand that?

A. Yes.

Q. Do you still feel that you haven't done anything wrong, or do you not wish to answer?

COURT: Yes, I want to give you the same warning . . .

A. I'm not going to answer this question.

Q. You are not going to answer. Well, I will just formally put it to you, Mr. Coe, you knew full well at all times that Oceania was committing a serious offence, that you were committing a serious offence, and that you did so deliberately

for the purposes of your own private gain.

A. I don't agree, sir.

Q. You don't agree. Of course, if these proceedings had never come about nobody would ever have known, would they, about any possible offences? Is that right?

A. I don't know how to answer.

Q. Let me put it this way: As a deposit-taking company you have to make various reports to the Commissioner, don't you?

A. Yes.

Q. And in the report would you have told him, "Oh, by the way, these six people are all my nominees whom I control"? Would you have told him that?

A. I have never prepared such reports.

Q. No. Think about it now. Has a report gone in since you took over Oceania?

A. No, not yet.

Q. Well, what do you intend to do now, Mr. Coe? Do you intend to tell your employee who draws up the report to tell the Commissioner this is what you have done? Before you answer I should warn you it is an offence under another part of the Ordinance to give a false report. Now do you want to answer? Do you want to answer?

A. No.

Q. You don't want to answer. Why did you buy Oceania?

A. There are two or three reasons.

Q. Yes. Give them to us, please.

A. Well, I can say that the main reason is this, that I never had the intention of selling Oceania until the middle of June when I joined the board of San Imperial.

Q. So I would be wrong, would I, Mr. Coe, in thinking that some time before that, oh, say April, May, perhaps March, I would be wrong in thinking that at any time before June you had told Mr. Ives, "Oceania must be sold"?

A. They are two different things, sir. If I did, sir, it must be about the Bangkok Hotel, sir.

Q. I see.

COURT: You were saying?

A. There was no such thing, sir. After I joined the San Imperial Company I examined the accounts and found that in the financial year ending June this year, sir, there was a loss.

COURT: Yes.

Q. A loss by whom? Oceania or the San Imperial group?

A. San Imperial.

Q. Yes, carry on.

A. As a business man, sir, I hoped that this company could make a profit.

COURT: We know that, yes.

A. Therefore I discussed with the directors of the two companies.

Q. Yes.

COURT: Which two companies?

A. The directors of the Siu King Cheung and the San Imperial, sir. Once it was sold there would be a profit. This is the main reason, sir.
Q. Any other reasons?

MR. SWAINE: Profit for whom?

A. A profit for San Imperial, sir, amounting to two million dollars.
Q. Any other reasons?
A. If the transaction was successful there would be seven million new shares from Siu King Cheung to San Imperial, sir. If the dividend was 13 cents per annum then the company would have quite good income, sir.
Q. How much a year is the income of 13 cents?
A. Nine hundred and ten thousand dollars.

COURT: For San Imperial?

A. Yes, sir, and at that time Oceania had about three hundred thousand dollars to four hundred thousand dollars income per annum, sir, but I can't remember clearly.
Q. Had what?
A. Three hundred thousand dollars to four hundred thousand dollars income.
Q. Income, yes.
A. If the transaction was successful it would be good, very good, for the San Imperial Company.
Q. Tell me, Mr. Coe, do you know whether it's difficult to get permission to carry on business as a deposit-taking company?
A. Well, I think it's not really very difficult, sir.
Q. You really think that, Mr. Coe? You really think that?
A. Yes. Well, I had a private finance company by myself at that time. I could do that but I didn't do it.
Q. Did the San Imperial group have any other deposit-taking company apart from Oceania?
A. No, that was the only one.
Q. So you divested the group of it's only deposit-taking company, correct?
A. At the time when I had such an idea I did not know that the Oceania Company was a deposit-taking company. At that time it was in June, sir.
Q. But by the time you sold it you knew it was a deposit-taking company?
A. Yes.
Q. All right. So you knowingly divested San Imperial of it's only deposit-taking company?
A. After it was sold I learnt about it.
Q. And thereafter you behaved in such a way as to jeopardise it's licence.
A. Well, I did not know that there would be such trouble, sir. If I did I would not have caused Oceania to lend money to David Ng through me.

COURT: Through the nominees through you.

A. Through my nominees, sir, to David Ng.

COURT: Yes.

A. Well, I could just did it very simply, that I got the money from the Hong Kong Estates and lend it to David Ng direct. Last week I have talked with my chief accountant as well as my accountant – auditor, sorry – my chief accountant and my auditors that the deposit-taking licence should be cancelled, we don't want it any more.

Q. I see. So having obtained Oceania you sold off the Bangkok Hotel and you are going to get rid of the licence, and Oceania therefore will have nothing at all. Right?

A. The Oceania Company still has the assets amounting to seven point four million dollars.

Q. Yes. but nothing else.

MR. SWAINE: Cash?

A. Yes, cash.

Q. Isn't it clear, Mr. Coe, that you took over Oceania for one purpose and one purpose alone, and that was to utilise the money said to be owed by N.A.F. Investments to Oceania and thereby to pay or appear to pay for the shares coming from M.A.F. Corporation? Wasn't that the only reason?

A. My first intention was that if San Imperial sold it out, San Imperial would make a profit. This is the most important reason, sir.

Q. So San Imperial would make a profit, but as you have so rightly said this morning, you had an undertaking from David Ng that he would use his best endeavours to sell the Bangkok Hotel for seven point four million. Wasn't that right? – or seven point five, whatever the figure was.

A. At that time I did not believe that the actual value of the Bangkok Hotel would be that much.

Q. Come, come.

A. But I thought that the value of the hotel was more or less about that, but I wanted to make it surer.

Q. How would selling the whole company to Siu King Cheung make the price for the Bangkok Hotel be any surer?

MR. SWAINE: He is talking about the undertaking.

Q. You are making the undertaking surer?

A. Surer about the price mentioned or the value in the undertaking, sir.

Q. How would transferring Oceania and its assets to Siu King Cheung make the price in the undertaking or otherwise any surer?

A. They are two different things, sir. San Imperial's selling Oceania had nothing to do with this at all.

Q. Had nothing to do with the undertaking at all?

A. That's right.

Q. You see, if San Imperial had sold the hotel itself, instead of getting seven million it would have had seven and a half or seven point four million. Right?

A. Yes.

Q. So?

A. You can say that. At that time we did not know how much the hotel could be sold for.

Q. But as it turns out San Imperial has suffered to the extent of half a million dollars. Right?

A. I think you can't say it in this way because I have already said that San Imperial Company would get seven million new shares from Siu King Cheung, and I have already mentioned about its profit.

Q. And, Mr. Coe, if they had sold it for seven and a half million they could have bought seven and a half million new shares in Siu King Cheung, couldn't they? Whichever way you slice it they have lost have a million dollars.

A. No, they couldn't.

Q. They couldn't.

A. Well, I can assure you that they could not buy the shares. This is according to my experience, sir.

Q. I see. You say that the undertaking had nothing to do with it; nothing to do with selling the hotel?

A. They are two different things.

Q. I am now going to read you what you said yesterday about it.

"Q. Oceania owned the property but the hotel was under lease?

A. Yes. There was rental; it was very low. Therefore as soon as I started to buy San Imperial shares I knew the value of this property was more than seven million dollars. If I sold Oceania to Siu King Cheung, with my standing I must be fair to both companies, therefore both companies would be benefited, and I have discussed this with the directors of both companies. We therefore decided to sell Oceania to Siu King Cheung at seven million dollars. In this case before the end of June San Imperial would have capital gain or profit of two million dollars. As to Siu King Cheung the company had obtained an undertaking that the company would make a profit of half a million dollars, therefore I say that this was also advantageous to Siu King Cheung.

Q. How did you get the half a million?

A. If Siu King Cheung Company was going to sell Bangkok Hotel for seven point five million then Siu King Cheung would make a profit of five hundred thousand.

Q. You refer to an undertaking. Do you mean the 30th of April document signed by David Ng, document 42?

A. Yes."

Do you still say, in the face of what you said yesterday, do you still say that the undertaking on the one hand and the sale of the Bangkok Hotel on the other, had nothing to do with each other?

A. If the San Imperial was going to sell the Bangkok Hotel before the end of June they won't be able to get a buyer by that time and then the two million dollars profit could not be realised for the year ending June, '77.

Q. Why was it so important to show a profit then? It hadn't been on the dividend

list for years and years, had it?

A. I have already told you that as a business man I always want my company to make a profit.

Q. Well, is it that you want your company to make a profit or is it that you want your company to appear to make a profit?

A. To make a profit and let people see that the company has made a profit. This is very important, sir.

Q. Mr. Coe, you know about the contract between Oceania and M.A.F. Investments concerning the Connaught Road property?

A. Yes.

Q. Mr. David Ng tells this Court that he has never seen a cheque for five million or one point five million in relation to that contract. Have you seen any such cheque?

A. Which cheque in the amount of one point five million dollars?

Q. Well, look at document 9 in Yellow File 1. Five million and one point five million; two cheques. Look at the last page of document 9 – well, not the last page, the second last page, the eighth page. The Schedule: Five million deposit, one point five million further deposit. Did you ever see those cheques?

A. How could I know anything about this, because this is long before I joined the San Imperial Company?

Q. Whenever it was, have you ever seen the cheques?

A. No.

Q. No. Mr. Coe, I'm not going to take you through all of this because it's already been done with Mr. Ives and Mr. David Ng. I simply suggest to you that the whole transaction concerning Oceania and the cancellation of the agreement with M.A.F. and your purchase of Oceania was simply to get the M.A.F. Corporation shares as money circulating amongest the same people.

A. I deny that absolutely.

Q. You deny it. I suggest to you that all of this documentation which has come about was simply window-dressing to hide what was really happening.

A. I disagree, sir. Why should I?

Q. It is true, is it not, that on not one document did you sign on behalf of Siu King Cheung; on every document you signed as if you were acting personally?

A. In respect of what, which documents?

Q. Any document in this case.

A. Which documents? I still want to know, sir.

Q. Each and every one signed by you save for those where you certified as chairman of Siu King Cheung.

A. Why not? According to the board resolution was signed by me.

Q. All right.

A. I mean to say, the minutes and the resolution, sir, giving me the authority, sir. It was signed by me . . .

Q. I suggest . . .

A. . . . as the chairman.

Q. I suggest . . .

A. Which documents are you referring to?

Q. All right, Mr. Coe, if you insist. Everything except your minutes. Do you want to look at each and every document? Every one except your minutes is signed by you in your personal name without mention of Siu King Cheung.

Yes or no.

A. Yes, I admit that but I have already explained it.

Q. Is it possible at all, Mr. Coe, that if the deal had gone through and a profit would be made, you would put it in your own pocket, but if the deal fell through you would say, "It's Siu King Cheung's, not mine?"

A. Absolutely not, sir. I won't do this, sir.

Q. Even in your affidavit, Mr. Coe, you never said, "I'm duly authorised by Siu King Cheung to make this affidavit on its behalf," did you?

A. You can't jump to a conclusion according to the affidavit alone. It was prepared by my lawyer when I – lawyer informed me that my affidavit had been prepared I went to see my lawyer and I signed it. Therefore you can't say that I had such an intention. I did not have such intention at all.

Q. And on the 9th of June, when there was this alleged completion of sale and purchase of eight million shares, you did not even bother to count them. Is that right?

A. Yes. I behieved very much that there were eight million shares, and this is way of my doing the business.

Q. Your way of doing business is not . . .

COURT: Just a minute.

A. Though I did it but I always thought that I should be responsible for that, but if there was any number of shares short I myself would take out the shares and make it up.

Q. I suggest to you, Mr. James Coe, that there is a much simpler reason why you didn't count those shares, that's because the whole thing was a sham.

A. I deny that absolutely, sir.

Q. Why not make sure that there were eight million shares?

A. I looked at it and I believed that there were eight million shares, and if there was any number short I would have a way to chase it back . . .

COURT: Could control.

A. . . . and I had a control of the eight million shares.

Q. Why not just count them? Good heavens, you were paying twelve million dollars plus four million option.

A. Do you say that I must count it?

Q. You were paying twelve million dollars plus four million dollars on an option. Why didn't you count the shares?

A. I felt that I did not have to do it because I was sure that there were eight million shares there.

Q. How were you sure?

A. I just had a look at the shares but I did not count it one by one. There was a large bundle of share certificates: well, how could I count it one by one, sir?

Q. That's exactly how you should count it, one by one, with the help of an adding machine if necessary. Do you say that in the Holiday Inn Coffee Shop you were given a document, a simplified form of balance sheet?

A. Yes.

Q. Where is it, please?

A. I have kept it in my office.

Q. Would you like to bring it, please?
A. Yes.
Q. And the trust deed, please?
A. I think my lawyer has got it.
Q. Oh, I see. Well, I obviously haven't had a chance to look at this.

MR. CHING: Was this the document my learned friend is waiting for?

MR. SWAINE: No, it's what you asked for. You asked for the trust deed in respect of three hundred and sixty-nine thousand shares.

MR. CHING: Oh, I see. The trust deed is here. That had better go in, I supposed, my Lord.

COURT: Are there copies?

MR. CHING: Well, they are both copies.

MR. SWAINE: Yes, my Lord, these are copies. We haven't had time to enquire where the originals are. One is in respect of three hundred and sixty-eight thousand shares, the other in respect of a thousand shares, that makes up the three hundred and sixty-nine thousand shares. My Lord, they both bear date on the 18th July, 1977, stamped on the 20th October, 1977. If the originals are required we will try to secure them as well.

COURT: Have you any objection to the copies going in?

MR. CHING: Could I, as the Americans say, my Lord, take it under advisement? They are both stamped the 20th of October; I think I rather would like to see the original, if I may.

Q. Well, could you bring this document you were given at the Holiday Inn Coffee Shop, please?
A. My lawyer has got it.
Q. Your lawyers have it.

COURT: Are there other matters you would like to cross-examine on?

MR. CHING: I don't think so, my Lord.

MR. SWAINE: My Lord, the document has been disclosed but for some reason it's not been put in the bundle. It was originally in one of my early bundles but it appears not to have gone into the final bundle, but it has been disclosed.

COURT: Well, in that case we had better adjourn then.

Appearances as before. Mr. Yorke present.

MR. SWAINE: My Lord, I have a sub-poenaed witness from the Dah Sing Bank on

sub duces tecum – he is here to produce certain originals of cheques which we disclosed – I think if I may interpose him rather than keep this witness in court.

COURT: Yes.

MR. SWAINE: The gentleman is here – as he is here to produce documents only, he needs not to be sworn. I think he would have to step forward and identify himself to the court and produce the documents.

(A gentleman steps forward)

MR. SWAINE: Is your name Mr. Siu Pang?

A. Yes.
Q. You are sub-accountant of the Dah Sing Bank at 10A Ice House Street?
A. Yes, I am.
Q. And you are here on sub-poena issued by IPC Nominees Limited?
A. Yes.
Q. You have got in your possession, I believe, twenty-two original cheques and you have also made twenty-two copies?
A. Yes, I do.
Q. Is that right?
A. Yes.
Q. Would you hand these up?

CLERK: Exhibit D.12.

MR. SWAINE: Just mark them collectively. My Lord, we will sort these out and put them in the right slots, in which case may the sub-poenaed witness be discharged?

COURT: Yes.

MR. SWAINE: Thank you Mr. SIU. (Gentleman leaves court)

MR. CHING: My Lord, I have in fact finished my cross-examination of Mr. Coe, subject to this document that my learned friend mentioned which was unavailable yesterday – I don't know what it is . . .

MR. SWAINE: No, it was a false trail, my Lord – it has not materialised. We do, of course, have the bank list or certificate regarding the overdrafts – the overdraft facilities. Our solicitor was going to make copies for us. He is not in court now. These will simply show there are overdraft facilities available to Siu King Cheung.

COURT: Would you like to cross-examine Mr. Yorke?

MR. YORKE: I am most grateful for your Lordship's indulgence, but my Lord, if

I think it is to the advantage of Mr. James Coe, then I would have done otherwise.

(Mr. Swaine confers with Mr. Yorke)

MR. SWAINE: I was just suggesting that particularly with my learned friend's disability this morning, my Lord, there is a better court . . .

MR. YORKE: A court on the top floor . . .

COURT: There is one upstairs, I am told, but only for one day, I am afraid. I have no strong view either way – if you wish to move them we shall all move up.

MR. YORKE: Your Lordship will notice that the machine is moving forward so we are going to be exposed to that noise continuously for several days.

CLERK: In fact there are only four courts in this building not effected by the noise.

COURT: Apart from the court upstairs just for one day, certainly for next week there are not any other quiet courts available.

MR. YORKE: I will do my best, my Lord.

D.W.4 – James COE – On former oath.

XXN. BY MR. YORKE:

Q. Mr. Coe, I did not have the pleasure of hearing you give your evidence in chief – do you mind telling me do you understand the English language?

COURT: Do you understand English?

A. Yes.
Q. So it would assist you if I were to ask my questions slowly so that you have a chance to listen to the English as well as to the translation?
A. Yes.
Q. You are, I think, a financier and property developer of considerable experience?
A. Yes.
Q. And you have been, by most standards successful?
A. Yes, you may say so.
Q. And a financier does occasionally have a punch which comes off but most of the time he has to work by a cold calculation of figures and the probable risks does he not?
A. Yes.
Q. And therefore the occasional inspired punch apart, there will be a clear and discernible reason for what a successful financier does?
A. Yes.
Q. And whatever a financier might do with his own private affairs when he is chairman or senior director of a public company, it is extremely important that he keeps the affairs of that company in order?

A. Yes.

Q. You would agree also that we are all vulnerable and any of us could be run over leaving this building, drowned on the ferry, fall out of a hijacked aircraft or even pisoned by a jealous enemy?

A. Yes.

Q. And therefore you, as chairman of a large public company and two other companies as well, will take great care that the affairs of the company were in such order that if you yourself were to suffer that unhappy premature fate the company would nevertheless be able to go on with the deals you have already set up?

A. Yes, but I have a preparation in my mind and the precautions, sir.

Q. Mr. Coe, if you are run over by a bus, preparations in your mind are of no assistance to your company are they?

A. Yes, right, but there are other directors in the company.

Q. Yes. Mr. James Coe, without wishing you any ill-will, suppose that in fact that you have unfortunately been killed on the 1st of August this year or thereabouts, you would agree to suppose that . . .

A. There are suppositions in all matters.

COURT: Will you answer the question.

Q. You unfortunately, as we know you didn't, were accidentally killed on the 1st of August this year or thereabouts, if that had happened will you tell his Lordship upon what documents the solicitors for Siu King Cheung could have proceeded against Messrs. Ives, Ng and Ho Chapman in order to enforce, for the benefit of Siu King Cheung, the agreement which you say you entered into on behalf of your company?

A. Well as to the setting up of the transaction, that is to say the using the name of Rocky Company was advised by my solicitor in signing agreement with the seller.

Q. I just remind you that you told me about five minutes ago that as chairman of the company of a public company you would like to keep the company's affairs in order, and punches apart, a successful financier does things for a reason, reminding you of that would you now tell my Lord, if you had dropped dead on the 1st of August, 1977 upon what documents the solicitors for Siu King Cheung could have enforced a San Imperial Agreement against Messrs. Melville Ives, David NG and HO Chapman?

A. On behalf of Siu King Cheung company I engaged Mr. Philip K.H. Wong to deal with this matter.

MR. SWAINE: My Lord, we did have Mr. McInniss on sub-poena and we are drawing very close to the end of the defence case. We have been in touch with him, and I am told that he is leaving for Macau for the week-end this afternoon, and I think it would be desirable to have him give evidence today, if possible in the event we are able to finish all the evidence by the week-end not to leave Mr. McInniss until next week. Therefore, I suggest, and my learned friends have agreed, to interpose Mr. McInniss, say at 12 o'clock.

Q. Mr. Coe, I am afraid I will have to ask you for a third time, if you had

dropped dead, what documents exist or existed at the 1st of August, 1977 which would have enabled the public company of which you are a chairman, Siu King Cheung, to sue for and obtain the benefit of the agreement that you entered into with Melville Ives, David NG and HO Chapman – if the answer is none, please say so – I am asking about the documents.

A. To my knowledge there is none but I believe that my solicitor would have very good arrangements.

Q. I will come to your solicitor in a moment.
Now may his Lordship take it as an example of your thoroughness and integrity and care for the interest of a public company of which you preside that a 35 million dollar deal is put through without a single piece of paper showing the entitlement of that company to the benefit of the deal?

A. Yes, you can say this but don't you forget that I am not the only director and the shareholder of Rocky Company. There is another director. This director is also a director of Siu King Cheung.

COURT: Your wife?

A. My wife – I always thought that I might drop dead any time, but I have told my wife and the co-director that I would do my best for the benefit of the company in case I drop dead my wife still could deal with the matter on behalf of the company.

Q. You were careful to get your mother to sign a Declaration of Trust in your favour but you don't seem to be equally careful to get your wife to sign a Declaration of Trust in favour of Siu King Cheung?

A. The Rocky Company was used to complete this transaction and my wife is the other director of Rocky Company. If anything happened to me my wife could still complete the transaction for the company.

Q. Mr. James Coe, you are an intelligent, successful business man, and you know perfectly well you have not answered my question. Please understand I am not being offensive in this question, but do you trust your mother as much as your wife?

A. Yes.

Q. Then why did you get your mother to execute a Declaration of Trust in your favour but not get your wife to execute one in favour of Siu King Cheung?

A. Well there is a difference in this. I know that if a nominee company held shares for someone he or she must sign a Declaration of Trust to that person. And my solicitor arranged for the use of the name of Rocky Company in signing the agreement on behalf of Siu King Cheung Company, therefore I believe that my solicitor must have a reason in this arrangement.

Q. Are you seriously telling my Lord that you told your solicitors that the whole deal was for the benefit of Siu King Cheung and they never mentioned it from beginning to end?

A. At the beginning, that is at about the end of March I approached Mr. Philip M.H. Wong and asked him to deal with the matter. At that time he knew that it was for Siu King Cheung Company, and on the 29th of April I gave him the cheque, and the cheque was drawn by Siu King Cheung Company and the receipt also says that 'Received from Siu King Cheung Hing Yip Company'.

Q. Mr. Coe, I shall come later to the use of your monies of public companies as

your own benefit, for the moment I am concerned with the existence or non-existence of documents – I think you have agreed with me there is no document in existence upon which had you died on the 1st of August Siu King Cheung could sue Melville Ives, David NG and HO Chapman for the benefit of the agreements you entered into for Rocky?

A. To my knowledge there is no document.

COURT: It is not just to your knowledge Mr. James Coe, there are no documents – come, come Mr. James Coe, whether there are documents or not is not a legal question.

A. No documents.

Q. Since you have agreed a successful financier – successful financiers do not do things without a reason, I suggest to you the only reason why there are no such documents is that from the beginning to end you intended to keep the whole benefit of this transaction for yourself, and that at the end of the day Siu King Cheung would get nothing or almost nothing out of it.

A. Well I deny that absolutely.

Q. Are you saying your saw your solicitor Mr. K.H. Wong about the 27th of March and you told him what you were doing in general terms?

A. Yes.

Q. And you told him of course that this was a project which you were putting through as chairman of Siu King Cheung for the benefit of Siu King Cheung?

A. Yes.

Q. Would you look at Red File 2, page 19 please – have you got it – can you read in the English language Mr. Coe?

A. Yes.

Q. Would you read it through slowly please.

A. (Witness reads) Yes.

Q. There you are – you see the date – the date is over the page which is 29th of June – some time later.

A. Yes.

Q. Are you seriously telling my Lord that if you had told Mr. Philip K.H. Wong, a respected senior partner of a firm of solicitors in Hong Kong, that the whole deal was being set up for the benefit of Siu King Cheung he could possibly have sworn that affidavit?

A. Please tell me what is your question.

Q. You have told my Lord that you told Mr. Philip K.H. Wong that the whole of this deal was set up for the benefit of Siu King Cheung and not for the personal benefit of Mr. James Coe and his wife – if you had told that to Mr. Philip K.H. Wong, do you seriously believe that a respected Hong Kong solicitor would have sworn an affidavit which omits any mention of that fact and gives the impression that it is you and your wife who are solely interested in the deal?

A. I don't know why he did not mention anything about Siu King Cheung in his affirmation, but I had in fact told him that I was buying the shares for Siu King Cheung Company.

Q. So perhaps we are going to have the pleasure of Mr. Wong coming to give evidence to tell us how it is if he knew all that he did not mention it in the affidavit. You see Mr. Ching, you remember, yesterday put it to you that you

and Mr. HO Chapman, Mr. Melville Ives and Mr. David NG have really put your heads together in order to suppress information from the court and to mislead the court. You remember that suggestion?

COURT: Mr. Yorke is just reminding you of the question put to you by Mr. Ching yesterday – it is not a question yet.

A. Yes.

Q. You see there is this difference that Mr. Ching did not put to you that the affidavits of Mr. HO Chapman, Mr. Melville Ives and Mr. David NG were all drafted through the firm of Peter Mo & Company – you know that?

A. Yes.

Q. You see, there may be some explanation as to why the affidavits drafted through Peter Mo and Company unfortunately all omit reference to Siu King Cheung, isn't it a coincidence that the affidavits drafted through Philip K.H. Wong & Company also omit reference to Siu King Cheung?

A. I don't know what they said in their affidavits.

Q. You still haven't read them – this case has been going on . . .

A. I did have a glance at the affidavits but I did not notice the omission of reference to Siu King Cheung in their affidavits until yesterday when the question was put to me.

Q. You were in court repeatedly in the early stages of the case, you had your man in court virtually every day, you say you just haven't actually read the affidavits and noticed these things?

A. I have seen them, but I did not read them carefully – thoroughly.

Q. Now you admitted to my learned friend Mr. Ching that at the time this deal was about to go through that you did not have much cash, right?

A. Yes.

Q. I beg your pardon, I was just looking at Mr. Ching's notes – what you said, I could just read from Mr. Ching's note – You said:–

> "Yes, I said I did not have much cash – cash I had at that time was very little and I wanted them to be responsible for financing."

A. Yes.

Q. And of course since Rocky, in so far as you and your wife were concerned, would have no more cash than you did, it follows that any monies which had to be raised apart from self financing, would have to be raised by Siu King Cheung?

A. Yes, but the so-called 'having no cash' means that Siu King Cheung Company did not have sufficient cash.

Q. Siu King Cheung Company did not have sufficient cash?

A. I have already told the court that I was buying shares for Siu King Cheung, but I told the Syndicate that I myself was buying it.

Q. Just digressing for one question only – we haven't seen the Annual Report and Accounts for Siu King Cheung have we?

A. I don't know, but we have them, sir.

Q. Perhaps you can arrange that somebody in court could be sent while you are in the witness box to get us a copy of the latest Annual Report and Accounts of

Siu King Cheung.

A. Yes.

Q. Your last answer which you just gave to me was that you said that Siu King Cheung did not have sufficient cash.

A. Yes.

Q. May I read my learned friend Mr. Ching's note of what you said in chief:–

> "I want to point out that I was out acquiring shares not for myself but for Siu King Cheung. My assets at that time were not much but Siu King Cheung had sufficient assets.
> Siu King Cheung had sufficient assets for what? Sufficient assets and ability to carry out the purchase – the transaction"

I mis-read my learned friends' written-note – I have that as 11 pages into the evidence in chief – how do you reconcile telling your counsel in chief that you hadn't had the money and telling my Lord that you didn't have the money?

MR. SWAINE: I think really there is a distinction here as between cash and the assets and the ability you have to draw a distinction between hard cash and the assets.

MR. YORKE: My Lord, really that is a most harmful intervention by my learned friend to make without asking the witness to leave the witness box, he having done that, told the witness what to say, there is no point my pursuing that.

MR. SWAINE: I must object to that, my Lord. If a question is put which is misleading then it is my duty to object, and the question as put was misleading because my learned friend was asking the witness to reconcile two apparently inconsistent statements, both of which relate to money and money was not the point.

COURT: Yes, Mr. Yorke, I agree with Mr. Swaine – there is a distinction between ready cash and assets.

MR. YORKE: My Lord, it having been raised I am not going to pursue it, let's get this – you certainly personally did not have the assets to effect this purchase and it would be necessary for Siu King Cheung, one way or another to finance it?

A. Because Siu King Cheung was buying the shares.

Q. Yes, as they were . . .

A. Not myself.

Q. And as they were buying shares you would expect them ultimately to finance the purchase?

A. Yes.

Q. And that is of course something which again you would have told Mr. Philip K.H. Wong isn't it?

A. He knew it.

Q. Would you just look at Red 2, page 42 please – have you got that?

A. Yes.
Q. That is your affidavit – rather a long one – if you just turn to the back of the page before 50 – back to page 49 you will see that . . .
A. There is no page 49.
Q. That should be the back sheet.

COURT: The back sheet.

Q. 49 is blank and then at the back of it facing page 50 . . .
A. Yes.
Q. Affidavit of James Coe sworen on the 26th of July and filed on the 27th – you see it is a Philip K.H. Wong's affidavit not a Peter Mo & Company's affidavit.
A. Yes.
Q. Would you now look please at page 45 and just read paragraph 15.
A. (Witness reads) Yes.
Q. There you have your solicitor who knows that it is not you and it is not Rocky which is nominees – Siu King Cheung were going to do the deal and Siu King Cheung was going to have to raise the money?
A. Yes.
Q. You see the fourth line of that paragraph 15:–

> "Rocky Enterprises Company Limited could raise finance to facilitate the purchase."

Do you see that line?
A. Yes.
Q. I wonder if you could tell my Lord how a senior partner of a respected solicitor's firm in Hong Kong could possibly have drafted that affidavit if you told him that Siu King Cheung was really the ultimate buyer – purchaser, Siu King Cheung was going to raise the money?
A. It is true that it is stated like this in my affidavit, but I have already told the court that we must try to preserve the secrecy of the purchase.
Q. So that the suppression of the truth in an affidavit to the court was deliberate.

MR. SWAINE: This is a matter that I would object to – perhaps Mr. Coe had better leave the room.

(James Coe leaves court)

MR. SWAINE: My Lord, a lot of cross-examination, both by my learned friend Mr. Ching and now by my learned friend Mr. Yorke, has been and is being directed to the question of Siu King Cheung not being disclosed earlier as being the real purchaser, my Lord. That matter is not an issue in this case, and the only issue which was before the court in the interlocutory proceedings was whether Rocky, who appear as purchaser in the agreement of the 30th of April and the replacement agreement of the 12th of May was a nominee of CHOO Kim-san's. That was the only issue that has been dealt with at the time. It was not an issue then whether Rocky was a nominee for Siu King Cheung. That was not a question which was in issue then nor is it a question which is

properly in issue at this time of the case. The entire tenor of these affidavits, as your Lordship will see, is directed to showing that Rocky the ostensible purchaser was not a nominee of CHOO Kim-san. Your Lordship will see this in Philip K.H. Wong's affidavit at page 19 of Red 2 where clearly what he is directing his mind to is the issue as it was then put by the plaintiff. Your Lordship will look at the end of paragraph 4 that he has no reason to believe that either Mr. James Coe or Mrs. Coe are in any way in league or connected with or representing Choo Kim San in this transaction.

With great respect my learned friends are taking a point which was not in issue at the material time and using that point now in cross-examination where that point is not, my Lord, truly in issue in the pleadings.

COURT: Mr. Yorke.

MR. YORKE: I cannot begin to accept my learned friend's submission, but I respectfully say so that it is cross-examination to a fact, and I am obviously going to submit, and so will my learned frind Mr. Ching, not one of the witnesses so far being called can believe to know very much more than their address, and here, my Lord, if it be the truth that the only issue was – were Rocky Enterprises a nominee of James Coe, then the obvious way of disposing of that point would be to say, 'Yes, of course they are nominees – they are nominees of Siu King Cheung a large public company, and here is an affidavit from the directors saying that this is the case.'

My learned friend then says it only emerges later in the defence that Siu King Cheung were the real purchasers. I should have thought that all my cross-examination this morning had made it clear I am not beginning for one moment to accept that Siu King Cheung were the real purchasers, and I shall in due course submit to your Lordship that James Coe was using the money of a public company in order to make highly profits for himself while Siu King Cheung would never have known. It is upon my learned friend's own defence – had it been in the defence that Rocky was – I am sorry – had it been the defence that they were trying to disprove that Rocky Enterprises were the nominees of Choo Kim San, the easiest and obvious way to do it was to say whose nominees they were, and that is something which they carefully did not do. I also remind your Lordship if I may respectfully say so, I quickly checked, I do not know the practice in Hong Kong, that the affidavits even though filed are not available for public inspection, and therefore had these matters been on affidavit they would not have revealed what was going on – I say that not myself but on what I have been instructed – this is speaking from that – I say this sort of cross-examination is clearly admissible to show, firstly that Mr. James Coe is not trying to tell the truth either on affidavit or to your Lordship, and if he had said what he says he said to Philip K.H. Wong, Mr. Wong would certainly and could get a quicker and easier way of disposing of this allegation if it is a large public company to come along by its directors and say, 'Yes, it is all right. It is our money', and that would be the end of the case.

COURT: But supposing Mr. James Coe said to Mr. Philip K.H. WONG, "Yes, indeed I was purchasing those shares on behalf of Siu King Cheung but I really don't

want anybody to know about this for reasons a, b, c, d and e, so if you file an affidavit formally I want to be truthful whereas at the same time I also don't want anybody to know."

MR. YORKE: My Lord, with respect, the rule is always in affidavits: it must be full and frank and you must not tell what is a white lie; you must not make a statement which, though true in itself, is misleading in its context; and to say that Rocky Enterprises Co. Ltd. could raise finance, though what you really mean is some other companies could raise finance, it is easily misleading. My Lord, this is something which I say no competent solicitor nor counsel, properly instructed, would have said. My Lord, it would be a perfectly proper thing to say that "I, James Coe, am acting for a group of public companies and I hold these shares in trust for them and I ask leave to withdraw the affidavits from the court file," which can be done so that the matter having gone before the judge in chambers and having been seen, it would then be withdrawn, so nobody would ever know; that could have been done. There are so many ways by which this can be done. Your Lordship knows the occasion when a witness doesn't want to give an address, he writes it down on a piece of paper, it is passed down counsel's table and handed up to the judge. The ability to preserve secrecy was necessary, not merely in commercial matters but well-established law; they are all common law jurisdiction and that could have been done. What I do say is that that affidavit is one which is inexplicable if Mr. Philip K.H. WONG had been told that it was not Rocky Enterprises but Siu King Cheung who were purchasing the shares.

MR. SWAINE: I still maintain my objection. There was no misleading of the court. The only question in issue at that time: was Rocky a nominee of CHOO Kim-san. My Lord, one could have gone a step further, I agree, and said, "Well we are not nominees because we are in fact nominees for someone else. That wasn't necessary at that stage. It was sufficient to deny that Rocky was a nominee of CHOO Kim-san's. As for the financing, my Lord, Rocky was known to be and is a shelf company with a capital of $2 or $20 whatever. My Lord, there could have been no question of Rocky itself financing the transaction. It must have been known that James Coe was the person behind the transaction and, my Lord, there was no misleading.

COURT: No, paragraph 15 shows that it was Rocky which could raise financing. If, according to you, Rocky was in fact not in a position to raise financing, should this not have been disclosed in the pleadings, in the affidavit?

MR. SWAINE: My Lord, being in a position to finance means also having recourse to other sources than one's own funds. Rocky was a shelf company, obviously was going to have to have recourse to funds other than its own sources. My Lord, there could have been no misleading here. Rocky was known to be a shelf company with two subscriber shares. The only matter material then was whether Rocky was a nominee for CHOO Kim-san.

My Lord, as to the other point which my learned friend makes, that he doesn't accept that James COE acted for Siu King Cheung and that he was acting for his private gains but using the monies of a public company, my

Lord, how can that possibly arise on the pleadings? Is my learned friend here holding a brief for Siu King Cheung and out to get Mr. COE on behalf of Siu King Cheung? That has nothing whatever to do with the pleadings, nor with the issues in this case. Well, as the cross-examination progresses, we are moving further and further away from the cases pleaded by the plaintiffs.

COURT: This is on credibility?

MR. YORKE: My Lord, it goes to credibility and also, my Lord, if I may draw my learned friend's attention to this, that we have been careful in our pleadings simply to say that there was no real money involved in this transaction and this was a process whereby, as Mr. James COE, Melville Ives and HO Chapman allege, they were going to help themselves to the proceeds of San Imperial with no – we say no, and there may be some real money coming in – but in no way – and I hope to establish to your Lordship later this morning – in no way were real amounts of money that would have been necessary to purchaser San Imperial shares at $1,50 ever going to become available, either to James COE or to anybody else. I don't pretend, my Lord, as I said earlier, that I could ever prove what exactly happened, but what I can respectfully attempt to establish is that what did not happen is what the defendants say happened.

COURT: I allow the cross-examination to go on upon those lines.

Witness returns to the box.

Q. Well Mr. COE, perhaps I can put it a little more moderately. At the time that you swore paragraph 15, you knew that it was Siu King Cheung that was going to raise the money if it was ever to be raised at all, is that right?
A. Yes.
Q. And you thought it right not to mention that fact to the court at the time?
A. I did not want to disclose it – I meant to say to preserve the secrecy, sir.
Q. Let's turn to another matter. You say you never met CHOO Kim-san.
A. Right.
Q. Particularly, you did not meet him just before he fled the colony.
A. Up to now I have never seen him before.
Q. And you did not arrange before he fled the colony you would somehow put up the money to buy his holding at a bargained price for you and a bargained price for him?
A. I have already told the court that when I read the news in October, I telephoned Mr. Chapman HO and asked him if there was such a possibility. At that time I only hoped that I would be able to buy those shares but I did not actually know that I could buy those shares.
Q. And you hadn't arranged with CHOO Kim-san once you set up the financing he would make the shares available to you, once you set it up under the control of his man HO Chung-po?
A. I did not even know Mr. CHOO and I have never met him before. I did not even know how many shares he had. I know nothing about it.
Q. You see, the only subsidiary of San Imperial that you actually wanted to purchase was Oceania.

A. Yes, I have bought the shares. I mean to say that Siu King Cheung had bought the shares, but I did not have the intention until June – (witness speaks in English) No, I am talking about Oceania. I mean to say to buy Oceania Company, not the shares. I did not have the intention till June this year.

Q. It is not quite the question. The only subsidiary that you wanted to buy of San Imperial was Oceania. It is the only one you were interested in buying separately.

A. Yes, I only had the idea in the middle of June.

Q. And so there is no way that CHOO Kim-san whom you had never met could possibly have known that before he fled the colony in October, 1976?

A. I did not even know him, sir.

Q. You did not know him, so he could not have known that you would want to buy Oceania in nine months' time. That is obvious, isn't it?

A. I believe that no one knew that I wanted to buy Oceania Company. I did not have the intention or idea of buying this company until June.

Q. And so it would be quite wrong for me to suggest that this was set up by you with CHOO Kim-san and that you used the proceeds of the Oceanic Company, the Bangkok Hotel, in order to pay for a large parcel of the San Imperial shares?

A. Right, there was no such thing at all.

Q. Look at yellow 4, page 12. It is the agreement for the purchase of Oceania. Now take your time, please, Mr. COE. You see, on that day you were able to buy the whole issued capital of Oceania, that is to say, 49,997 in the name of San Imperial plus three shares in the name of CHOO Kim-san.

A. Yes.

Q. Of course, there is legislation in Hong Kong – I think it is section 168 of the Ordinance – whereby if you buy more than 90 per cent of the shares, you can compulsorily acquire the remainder. Did you know that?

A. Yes.

Q. But it takes six months, doesn't it?

A. I only know that if one got 90 per cent of the issued shares, he could buy the rest compulsorily, but I know nothing about taking six months.

Q. But here you were happily in the position that on the purchase you were able to pick up not only San Imperial shares but also CHOO Kim-san's shares.

A. Yes.

Q. I want you to look at page 22 in the same bundle, please, and please could somebody give me the original.

MR. YORKE: My Lord, I am not making a complaint about it, but I have been given copies, but please could it be got by this afternoon, anyway, not to make anybody run around for it. I would like to see the original dates.

Q. You see, would you read that document, Mr. COE?

A. I have.

Q. You have. You will see that CHOO Kim-san in effect makes a declaration of trust in the three shares that he holds in Oceania and says they are not his but they are San Imperial's who are the benefifical owners and therefore he has undertaken to transfer, pay or deal with them and so on in whatever way the beneficial owner, San Imperial, requires.

A. Yes.

Q. And you see the date on the bottom left-hand side of that document? 26th of October, 1976.

A. Yes.

Q. You know the date that CHOO Kim-san fled the colony?

A. I don't know the exact date.

Q. Perhaps I can tell you.

A. But it was in October.

Q. Yes, perhaps I can tell you: it was the 28th of October. Now Mr. James COE, I wonder if you could help my Lord on what puzzles me. Do you suppose that just before he flees the colony, Mr. CHOO Kim-san very kindly executes a declaration of trust in the three shares that he holds in one of many companies of which just happens to be the company that you happen to want to buy six months later?

A. I don't know. I can tell you this: that I did not see this document until June this year.

Q. That is what you say, Mr. COE. If you just turn back two pages to page 20. We can see that on the 27th of June, you signed what would have been a blank transfer – signed at some unknown date by CHOO Kim-san with, I think, you signature at the bottom. It looks like your handwriting putting in the 27th of June.

A. Yes.

Q. And of course, if you just turn back to page 22, you will see that there is a penalty for late stamping, but I can't read it on my copy. It appears to have been a stamp on the 27th.

A. Yes.

Q. So that the fact that the document was somewhat out of date must have been known to you at the time that you signed the counterpart of transfer at page 20.

A. Yes.

Q. That's right. Well now looking at it either on the 27th of June or even to day, doesn't it strike you as a little strange that Mr. CHOO Kim-san, the day before he flees the colony or possibly two days – we don't know exactly when he went – the day before he flees the colony, he very kindly executes a declaration of trust in the company that you are going to buy in June of the following year.

A. The chief accountant of San Imperial showed this declaration of trust to me in June together with other declarations of trust regarding the subsidiary companies.

Q. Mr. James COE, we know quite a lot about Mr. CHOO Kim-san: he robs San Imperial with well over a million dollars; he robbed my client some HK$25m. or more; he robbed or defrauded companies in other places; he is facing nine counts of fraud. Why do you suppose that just before he disappears he very kindly executes a deed of trust in respect of three shares in a company he is consistently and actively defrauding?

A. But a week or two weeks before today, my lawyer showed this document to me and he specifically pointed out the date here to me. We felt very strange about this. Therefore I asked the chief accountant of San Imperial about this. I asked him who signed the name here as the witness. He told me that it was signed by the ex-secretary of the company and then I asked him who put on

the date chop on this document and he also told me that it was the ex-secretary.

Q. You see, I unfairly have a suspicious mind, Mr. COE, but doesn't it look as if before Mr. CHOO Kim-san fled the colony, he made arrangements with you – as his Lordship has seen, perhaps he made arrangements with HO Chung-po – he made arrangements with you whereby you would be able to take over Oceania without any hitch as you did in document 12 in yellow 4 and you would then be able to use the proceeds of the sale of the assets of Oceania to help finance the purchase of San Imperial shares.

A. When my lawyer showed this document to me I was very much surprised.

Q. So were we.

A. And this is why I double-checked this with the chief accountant of San Imperial. If you say that there were some pre-arrangements about this, I should say that even a god or a saint won't be that wise to prepare this. I have already told the court that if I wanted to lend money to Mr. David NG or if the company wanted to lend money to Mr. David NG, I did not have to do this but to get the money from the Hong Kong Estate and lend it to Mr. NG. As for San Imperial, sir, Oceania Company is not any better than the other subsidiary companies, but it happened that I intended to buy this company.

Q. And it just happened that that was the one company where CHOO Kim-san, on the day before he fled the colony, executed a deed of trust of shares.

MR. SWAINE: That was misleading, isn't it, because he has said that he did see other declarations of trust with respect to other subsidiary companies.

COURT: Yes, it is.

MR. YORKE: Perhaps. Certainly we could have discovered. Your Lordship will remember how we got this file and that it is a little later, on the 32nd day of the trial. You now say well there are other declarations of trust.

MR. SWAINE: This comes up because of persistent questioning on credit to a remote degree. The witness gives an answer, the documents are there. If you want them they will be made available. This is not a matter that is discoverable.

MR. YORKE: My Lord, I don't know on what principles my learned friend discovers documents. Let's have a look at another coincidence.

MR. SWAINE: It's not "discover documents": going to credit, that is the plain and simple principle.

MR. YORKE: I'm sorry, but my learned friend is quite wrong. When somebody has left a company which he has defrauded, any documents which go to prove or negative fraud are relevant and should be discovered, however remote they happen to be.

COURT: You are going onto another point now?

MR. YORKE: If I may, my Lord. Yes all right. There is another coincidence which follows on to this, my Lord.

Q. But you gave evidence yesterday – you gave evidence yesterday – my Lord, I'm so sorry, I should have said that this is not going to credit: this is going to the setup which we say of course actually took place and not the setup which the defendant says took place, but it has nothing to do with credit at all.

MR. SWAINE: It is a setup that was put in cross-examination and therefore we cannot be omniscient like gods and saints and discover documents which we did not know about prior to your cross-examination.

MR. YORKE: Of course, my Lord – I'm sorry my learned friend gets up unusual and angry about this – we should have seen yellow 4 before this trial commenced and not the way that we did. If we had seen yellow 4 before this trial commended the matter might have gone very differently. My Lord, my instructing solicitor has just gone to get the documents.

Q. But you said yesterday that the stock exchanges agreed to a provision and I think you said the Association of the Stock Exchange has agreed to a provision whereby a general mandate could be given to directors to increase the share capital by up to 10 per cent, right?
A. Yes.
Q. And that was given for obvious and practical reasons?
A. Yes.
Q. Am I right that that was done in November, 1975?
A. Which?
Q. No, the Stock Exchange rules.
A. Yes, I was told that it was in 1975.
Q. I may be wrong about November, but it was, say, 1975.
A. I don't know in which month it was, I can't remember.
Q. But it was in 1975. You didn't take advantage of that provision until the 5th of November of 1976, did you? That is page 10 of yellow 4.
A. Yes.
Q. I suggest to you it is more than a coincidence that you do that within 14 days of Mr. CHOO Kim-san making his declaration of trust at page 22.

MR. SWAINE: I'm sorry, but we don't know that he made that declaration of trust on the 26th of October. We know that it was chopped on that date.

COURT: I see, all right.

Q. I accept my learned friend's interjections, but you – is it a coincidence that within a fortnight of document 22 being chopped, that you resolved about a year or 18 months after the Stock Exchange has suggested to alter its rules to give yourself power to increase the share capital of the company?
A. I can explain this in two ways. I have never seen Mr. CHOO before, I did not know him, so it was impossible. Frank, sir, I was also very surprised about

the date in document page 22. This is why about a week or two weeks ago I went with my lawyer to see Bill SZE, the chief accountant of San Imprial and asked him about this. About the second question as to why the mandate was not obtained before November, 1976, right, the reason is because the Siu King Cheung shares were only listed on the 9th of July, 1976, in the Far East Stock Exchange. Because of the listing, sir, I then had the desire or ambition to develop this or to expland this company, and as I knew about the mandate, as I learned about the mandate then, and the annual meeting after the 9th of July was in November, the first one (preceding three words spoken in English by the witness), this is why I made use of the opportunity and obtained the mandate. But don't forget that the mandate obtained on the 5th of November, 1976, was only 1 m. shares. If you say that because of the mandate in November 1976 we could buy Oceania Company in June 1977 I don't agree because I think that even the gods or saints would not be able to do it. If I really wanted to buy the company in June 1977, I could have called the EGM, Extraordinary General Meeting, of the company and issued 7 m. new shares for that purpose, and the AGM was actually called in June or July 1977 and as a result 6 m. new shares were issued so, plus the 1 m. shares because of the mandate there was a total of 7 m. shares. Even without the 1 m. shares because of the mandate in November 1976, we would still be able to complete the transaction in June, 1977. If anybody says that this is a pre-arrangement or a preintention, I would say that this man is making a decision according to his own imagination. I told my wife yesterday that if anyone says that I had something to do with CHOO Kim-san, even if you chop off my head I would still deny it.

MR. SWAINE: My Lord, I have Mr. McInnis here and it would be a convenient time to interpose him. I think Mr. COE had better leave.

COURT: Before that, Mr., what is the significance of the 9th of July? I missed that point.

A. The listing of Siu Kin Cheung shares in the Far East Stock Exchange.

MR. SWAINE: Mr. COE, would you leave the room? We have got Mr. McInnis here. Would you just wait outside for the time being?

MR. CHING: My Lord, my learned friend has handed me the originals of the other two declarations of trust. Could they possibly go in as B and C in the previous number?

COURT: Are there copies?

MR. SWAINE: Yes, we had some copies yesterday but the originals were asked for.

D.W.5 – Eustin Alastair McInnis Sworn in English

DN. BY MR. SWAINE:

Q. What is your present rank in the office of the Commission for Security?
A. I am currently the Commissioner for Securities and the Commissioner for Commodities Trading.
Q. Were you Acting Commissioner for Securities in April last year? I'm sorry, in April this year.
A. Both this year and last year, yes.
Q. Do you remember Mr. James COE who was in court a moment ago coming to see you earlier this year?
A. Yes, I do.
Q. And was he alone or had he come with a solicitor?
A. Well I saw him – met him twice, the first time when he was alone, the second time when he was with Mr. WONG.
Q. Mr. WONG being Mr. Philip WONG?
A. Mr. Philip WONG, yes.
Q. Do you recall approximately when it was that Mr. COE saw you the first time?
A. I think it was the 20th of April – on the 20th of April I saw him.
Q. And do you recall why he had come to see you?
A. As far as I can recall, he expressed his intentions of purchasing shares in a publicly quoted company in Hong Kong and he just wanted to know if he were to purchase the shares and/or a controlling interest, how best he might do it to conform with whatever rules and regulations and requirements in the Securities Ordinance or the Takeover Code. As far as I can recall, it was more of an exploratory nature: if he were to do something, how best might he proceed.
Q. Did he tell you the name of this public company?
A. Yes, he did, San Imperial.
Q. And at that first meeting which was exploratory, did he say whether he was acting for himself or for a company?
A. I think I got the impression – and it is purely memory – that my impression was he was acting for himself.
Q. Do you recall the second occasion when he came to see you?
A. Yes.
Q. When would that have been?
A. 4th May.
Q. And he was there with Mr. Philip WONG?
A. Yes.
Q. And do you recall what occurred during that meeting?
A. Well, they came to enquire the reasons why the share quotation of the company had been suspended.
Q. And was any mention made of Mr. COE's intention having been carried further by the time of the second meeting?
A. Yes, I think yes.
Q. Now did he tell you about any agreement?
A. He said that he had entered into an agreement to, I think, purchase 48 per cent of the company.
Q. And at that stage, was mention made of whether he was acting for himself or for a company?
A. Again, I think, if memory serves me correct, the emphasis had moved on slightly from acting in a personal capacity to acting for a company – acting in

a personal capacity into a corporate capacity.

Q. The emphasis had shifted, according to your recollection, from his acting personally to acting in a corporate capacity?

A. Yes.

Q. Which company would that be?

A. I can't pronounce the name.

Q. Will you try please?

A. Siu Kin –

Q. Siu Kin Cheung Hing Yip, that would be the correct name?

A. Yes.

Q. Yes, thank you very much.

NO. XXN. BY MR. CHING.

COURT: Thank you.

MR. SWAINE: My Lord, perhaps the originals of the document that has caused a certain amount of heat in court, the thing that bears the chop "26th of October" plus the instrument of transfer.

COURT: Right.

Mr. JAMES COE returns to the witness box, at 12.05 p.m.

MR. YORKE: Yes, I am very much obliged. Merely, my Lord, that the date stamps were not legible. It does turn out that all the legible chops are 27th of June, 1977. I'm much obliged.

XXN. BY MR. YORKE:

Q. Mr. Coe, I want to turn now to something very different. You gave evidence to Mr. Swaine in chief that the deal which you did with San Imperial and Oceania was for the benefit of both parties. Do you remember that?

A. Yes.

Q. And in effect, without bothering to read the several passages in the evidence, what you said was that San Imperial would make a profit of $2,000,000 on the book value of the Bangkok Hotel and Siu King Cheung would make a profit of $500,000.

A. $400,000.

Q. It will turn out to be $400,000 in the end, but you actually said $500,000. Nothing turns on it, Mr. Coe, I won't argue about it. But you said before you gave those two figures, you said, "I must be fair to both sides," – that I think you would have an interest in both sides – "and I had discussed this with the directors of both companies before." Is that right?

A. It was after I had such intention and before the deal was completed.

Q. Yes, of course. Yes, I accept that, but the note I have of your evidence is that "Both companies would be benefited and I had discussed this with the directors of both companies before we decided to sell Oceania to Siu King Cheung at $7,000,000."

A. Yes.

Q. So that what you in effect said to the San Imperial directors was, "Well, I can make you a profit of $2,000,000 on your book value of the Bangkok Hotel," and what you said to the Siu King Cheung directors was, "I can make you a profit of four hundred or five hundred thousand dollars on the deal."

A. I have something to add. I told the directors of San Imperial Company that the benefit of San Imperial in having 7,000,000 Siu King Cheung shares was that the price of Siu King Cheung shares was very steady and that they could receive $910,000 dividend each year and that was much more than the profit of Oceania Company, and that the value of each Siu King Cheung share, according to the company's assets, was more than $1.10. And for Siu Ming Cheung Company, they could make a profit of four hundred or five hundred thousand dollars apart from the expenses and that could also achieve the aim of the expansion of the Siu King Cheung Company.

Q. You also said that San Imperial had got good value. You were asked, "You say San Imperial had got good value to sell Oceania to Siu King Cheung?" You said, "Yes, very good."

A. Yes.

Q. Just tell my Lord why, since you, wearing your San Imperial hat, were under the impression, as you told Siu King Cheung directors, that the property could be sold for four hundred or five hundred thousand dollars more, why San Imperial shouldn't get the benefit of that additional money.

A. I have already told the court the three reasons that it was also good for San Imperial Company to have 7,000,000 Siu King Cheung shares for the sale of the property. They are the dividend of $910,000, the steadiness of the market price of the shares and the value being more than $1.10 per share. Without the special relationship between Siu King Cheung Company and San Imperial Company, the Siu King Cheung Company would have more consideration over the issue of 7,000,000 new shares to San Imperial Company because the Siu King Cheung Company would not issue new shares or 7,000,000 new shares just like that.

Q. You are saying it was better for San Imperial to have 7,000,000 shares in your company than to have an extra $400,000 in its bank account, let alone $7,000,000 in its bank account in addition which it would have had if it sold the Bangkok Hotel, is it right? You are saying it was better for San Imperial?

A. Yes.

Q. I am going to show you on the books that no company director of San Imperial could possibly have thought that for one moment if he knew how to read his own balance sheet. Shall we just look please at the balance sheet which appears in yellow 5, starting at page 92? Now Mr. James COE, I can take it, with your standing as a company chairman, you have no difficulty in reading balance sheets, profit and loss accounts, trading accounts, chairman's reports, auditors' notes and so on, do you?

A. There will be no great difficulty.

Q. And although these documents are sometimes strange to some people, they are really quite straight forward.

MR. YORKE: The number, of course, is the number at the top right-hand corner which is the headnote in the bundle, not the number in the report.

Q. Now this is the state of San Imperial for the year ended 30th of June, 1976. Just see what's going on in the company, shall we? And Mr. Coe, I don't want to go into technical accounting details, but as I am not certain of the Hong Kong practice, I will be grateful if you will correct me if I make a material mistake.

A. I may not be a hundred per cent correct, but we can discuss it together.

Q. Just look at the top of the left-hand page on 96, would you? You see how the group turnover which covered 1975 and 1976 figures as shown side by side, the group turnover has dropped by a million and a half dollars, from 9.09 to 7.4?

A. Yes.

Q. And the trading profit, the trading profit has shown a loss for the second and consecutive year, 273,000 for 1975, 300,000 for 1976.

A. Yes.

Q. But of course, trading profit or loss is only the beginning of the story, isn't it, when you are also working out what the company is doing, and one has to take into account a lot of other charges which are sometimes called charges below the line, right?

A. Yes.

Q. You agree, Mr. Coe. Thank you very much. And would you look please – that loss is arrived after charging five items, you see the bottom item on the line about interest charge, 1975 to 1976, the interest charge is doubled from 1.1 million to 2.0 million, doubled from one year to the next, so that on a declining turnover, it looks, does it not, as if the company is having to borrow money and pay a lot for it in order to keep going?

A. Yes.

Q. If you just jump down to about five lines from the very bottom where it says "Profit/(Less)" – and the "loss" is always put in brackets – after "Extraordinary Items", you will see that for the preceding year actually when they had taken account, for example, of tax rebate, they actually made an actual profit on the $9,000,000 turnover of $28,000. In 1976, on the seven and a half million turnover, the actual loss was 1.1 million.

A. Yes.

Q. And if you look on the right-hand side of the page, you will see what that sort of trading is doing to the balance sheet. You leave out the share capital – the shareholders were the first people to lose their money – it says "represented by". You know that you have got to balance out the capital account at the end of the day with the account below, haven't you? Mr. Coe, there is no magic, the figure at the bottom of the right-hand side of the page has got to match the figure at the top.

A. Yes.

Q. You have got the amount $54,840,019, it has got to match the one at the bottom even, if necessary, writing in a loss to show it.

A. Yes.

Q. Let's look at what it is represented by. Current assets, you see a little note 8, 6.9 million.

A. Yes.

Q. As against, in the previous year, 10.9 million. Deduct current liabilities 1,786,017.

A. Yes.

Q. So it had net current assets – it's in 1976 – 5,146,257.
A. Yes.
Q. Whereas the previous year it had net current assets of 9.024 million.
A. Yes.
Q. In other words, over that period of 12 months, the company had lost nearly half its current assets.
A. Yes.
Q. And can we be quite clear that we are talking about the same thing when we talk about current assets? Current assets are in effect the liquid assets of a company which either are in cash or can rapidly be turned into cash.
A. Yes, right.
Q. As opposed to fixed assets which we see lower down in the note 13 . . .
A. Yes.
Q. . . . where the company had a lot of fixed assets, 64 million in 1976 and 57 million in 1975 which may or may not be due to a valuation, I don't know. And then could you just turn over the page to 98 and see just where there is a special note about interest? It's not any different from what you see on 96. I want you to see the pattern. You see, it's "Interest Expenses", and the bottom line shows the figures we have already seen on page 96 against little note 2. So we are looking now at note 2. You can get the cross reference. There is a note 2 on page 96 on the left-hand side of the page and we are now looking at note 2, so you get a bit more information about the interest.
A. Yes.
Q. You see, I suggest to you that the company had been borrowing rather heavily. If we look here now, it appears to be right, doesn't it,because you see how the figures of 2.0 million and 1.1 million are arrived at under "The Group", "Other Loans repayable within 5 years" have gone up from 452,000 to 1.998 million although the bank overdraft appears to have been replaced with a rather longer term of borrowing, it looks right, doesn't it?
A. Yes.
Q. You know also, of course, do you, that the company had been out of the dividend list for at least two, and possibly three years?
A. Yes.
Q. So looking at the picture overall, if you were a director of the company at that time, you have got a company with a lot of fixed assets quite valuable which is rapidly running out of liquid assets and its interest charges have doubled in 12 months. Right?
A. Yes.
Q. And that, of course, would give any competent finance director, let alone the chairman, cause to be worried about the state of the company?
A. Yes.
Q. Because if you had been out of the dividend list for two or three years, the stock market is closed to you for new capital.
A. Do you mean to say that no one wanted to buy the shares?
Q. No, you couldn't make a rights issue successfully in relation to a company which hasn't paid a dividend for three years.
A. May I have the question again?
Q. Do you know what I mean by a rights issue?
A. Yes.

Q. That is to say, when the company says to its 10 million shareholders, "We are going to offer you each one share for every share you already hold for the bonus price," then a pledging of these shares, and the company gets the money.

A. Yes.

Q. But when the share is standing at 40¢ as against a dollar and they had been out of the dividend list for two or three years, there is really not much chance of making a rights issue, is there?

A. I wish to say something about this that the Hong Kong stock market is quite strange. According to the theory given by you, I agree with you that if the company was out of the dividend for two to three years and therefore it would be very difficult for the company to have any rights issue to the shareholders. Well, I say that the Hong Kong stock market is quite strange, not to say a company which is out of dividend for two to three years and difficult to have any rights issue, even for a very famous and good company which had declared dividends for three to four or five years, it is still very difficult for this company to have any rights issue, generally speaking.

Q. I don't dispute it. It's difficult for them, it's worse for a company which is out of the dividend list. I have the last two questions I want to ask you before the adjournment. So on the picture that we have seen so far, the directors of the company should, if they are competent, have been worried about the rapid erosion of their liquid assets and the very high interest charges they were incurring?

A. I agree.

Q. And if you look at page 94, you will find that is exactly what the chairman was worried about. I can't pronounce the name properly, Ooi Seng Poy. The third paragraph, "The Group turnover for the year was HK$7,437,794.00 of which room sales accounted for around 55%, rental income about 16% and restaurant sales approximately 20%. Unfortunately, over 27% of the said revenue was used for payment of interest on loans. To remedy this unhappy situation the Group disposed of Far East Mansion Flat and the August Moon Hotel which at the time of sale was making no profit and showed no prospect of improvement. Both sales were made at reasonable market price whereby the loan account at the time of disposal was reduced by 35%." And that is what you would expect to find an intelligent chairman, finance director, saying and doing, isn't it?

A. Yes.

MR. YORKE: My Lord, would that be a convenient moment?

COURT: Yes.

D.W.4. – James COE – O.F.O.

XXN. BY MR. YORKE: (Continues)

Q. Mr. Coe, at the end of the morning, you have just seen the rapid declining net asset and cash situation of San Imperial in the accounts to the 30th of June, 1976. Now there was an interim report which has brought the matter up to date to the 15th of June which was about 12 days before you agreed to buy

Oceania. Will you turn to page 110 in the same bundle you have in front of you, that's yellow 5? It says, "1976-1977 Interim Report". The next page, 111, "Hong Kong 15th June", signed by Mr. David NG Pak-shing.

A. Yes.

Q. Now it's a little difficult to follow as compared with the previous one because it's comparing, I think, a year's turnover with the six months' turnover. Would you just look on page 111 where the figures were given at the bottom? It says, "You may also note in the report the business done by your Group during the period has since improved as compared to the year ended 30th of June, 1976 as below:– Year ended 30/6/76 total turnover 7.4 million" – and you have already seen that figure this morning – "Six months ended 31/12/76 total turnover 5.6 million".

A. Yes.

Q. So when you turn over the page to 112, top right-hand corner, you see the figures $5,610,520 for 31/12/76 and $7,437/794 for 30/6/76. Unlike the previous accounts, it's not comparing 12 months with 12 months, but it's showing the difference of the 6 months on the preceding 12.

A. Yes.

Q. That, of course, is a perfectly proper thing to do when the directors want to draw attention to a possible turn-round in the company's business.

A. Yes.

Q. The trouble is, when a company starts to experience a substantial increase in its trading – and you will remember that, looking at that figure on page 111, it's an increase of something like 70% or more – then the company is going to need more working capital, isn't it?

A. Yes.

Q. Because one of the classic ways of going bankrupt in any company is to overtrade with insufficient capital backing.

A. Yes.

Q. In particular, working capital of course means liquid capital as opposed to fixed assets, doesn't it?

A. Yes.

Q. Now look at page 113, you will see the current assets deduct current liabilities on the right-hand side of the page that there, as at 31st December, although the company is now trading at 60 or 70% more, its current assets have more than halved in six months from 5.14 which we saw previously to only just over 2 million.

COURT: Where is this?

MR. YORKE: It's at page 113, my Lord, on the right-hand side of the page, you will see that is the group and subsidiaries, but the left-hand side is only corporation without its subsidiaries, so we have to take the group as a whole. What I am comparing is the figure 2,070,326 on the right which is less than half of the figure 5,146,257 next to it. That figure, your Lordship will remember, was on page 96.

COURT: Yes.

A. Yes.

MR. YORKE: Mr. Interpreter, would you just put 96 against 130 like that?

INTERPRETER: We have.

Q. You have, good. So just putting the picture together, we can see that the net current assets of the company have gone down from just over 9 million – just over 5 million to just over 2 million in a period of not much more than 18 months, is that right?

A. Yes.

Q. You will remember you agreed with me a moment ago, of course, when a company is fast increasing its trading, it needs more working capital. You will see what the cost of more money was to San Imperial if you turn to page 115, and at the top left-hand side of the page, within the "Notes to the Accounts", we have got the same information about interest that we had previously on page 98. You see there that it is now paying interest over six months of 1.7 million. This is a six-month figure.

A. Yes.

Q. As a matter of fact, it wouldn't matter for the purpose of this calculation if it is a twelve-month period, but that is equivalent to 3.4 – $3,422,774 in a full year, isn't it, 3.4 million in a full year?

A. Yes.

Q. Just turn back to 113 with 113 open at the same time as 115, please, so you can just see the two of them together.

MR. YORKE: Would your Lordship read the right-hand side of page 113 and the left-hand side of page 115? It's merely for convenience, so you see the figures side by side.

Q. So you see the periods paying interest were at 1.7 million in six months and its current assets have fallen from 9 million down to 2 million.

A. Yes.

Q. I suggest to you at that rate of interest, on its existing turnover, this company was desperately short of cash and couldn't last more than seven months on its profit and loss account and balance sheet as it was.

A. Yes.

Q. And no finance director in his senses would have accepted a deal which gave him an annual dividend of $900,000 a year instead of a deal which would give him 7 or 7.4 million cash straight away.

A. Right. I wish to point out one or two very very important points. I myself am not specialized in accounting. I am a businessman. I find it that it is useless to judge a company's finance on its balance sheet if you don't know the actual accounts and the actual situation of this company. And I can say that this balance sheet is out of date and that no one would be able to see the big amounts in these accounts or in this balance sheet unless one joins this company and understands the actual situation of the company in the past year

or so, like I did. The current assets according to page 113, being 5,146,257, is correct.

Q. Mr. Coe, that was the 30th of June, 1976?

A. Yes. I want to point out this figure first. This figure appears to be quite healthy, but when I joined this company last year, I found that before Mr. Choo fled, this amount had already been used up for the purchase of some properties and the San Imperial Hotel building was mortgaged in July last year for a certain amount of money.

COURT: You can go on forever if you like. I am quite unable to catch up. I am not a typewriter. What's this about San Imperial Hotel?

A. The San Imperial Hotel building was mortgaged in July last year for a certain amount of loan. Usually I don't have any objection to the mortgage of properties.

COURT: Yes. It's not a question of being simple or not being simple. It's a question of just giving me time to write it down. I don't mind if you go on for three hours, but just give me time to write it down. Yes?

A. In July or August last year, the loan obtained from the mortage was used up as well as the amount 5,146,257.

INTERPRETER: That's in page 113.

Q. 5,146,257 had within six months reduced to 2,070,326?

A. Actually within two or three months from end of June 1976, it was even much less than $2,000,000. Though the figure here 2,070,326 is much less than 5,146,257, but in July or August, it was already much more than the actual figure, and actually in June this year when I joined this company, the current assets of this company were much more than this figure here, $2,000,000, including 1.5 million dollars fixed deposit with Sun Hung Kai and one million odd dollars cash, amounting to about $3,000,000. Apart from the $3,000,000, the 7,000,000 Siu King Cheung shares were considered by the bank to be liquidity.

Q. Mr. James COE, financial matters are really not very difficult. If your 7,000,000 shares were considered by the bank as liquidity and San Imperial borrowed money from it, then they would have to pay interest on that money, right, isn't it?

A. Yes, but on the other hand, they could sell the shares for some money.

Q. If they had to pay interest on money borrowed against your shares, that would make the picture on the left-hand side of page 115 worse instead of better, wouldn't it, because the interest payable would be greater?

A. Yes, right, but in June, San Imperial was not necessary to raise any loan because the company had $3,000,000 in cash and that was already sufficient, and the business nowadays is very good.

Q. Just look at page 112, would you, the last paragraph on the left-hand side? You see, the certified public accountants say that this document gives a true and fair view of the state of affairs as at the 31st of December.

A. Yes.

Q. Now tell his Lordship where the cash came from out of that certified balance sheet and profit and loss account to enable the company to improve its liquidity position in July of 1977 if it wasn't selling assets.

A. At the beginning of this year, that is before I joined San Imperial Company, the company sold August Moon Hotel and the proceeds of the sale were entered into the accounts of the company.

Q. We saw that on page 94 which was for the previous account, the left-hand side of page 94, Mr. Coe. That has already been done in the previous account and we are now looking at the following account. It's on the left-hand side of the chairman's statement, page 94, third paragraph, ". . . Far East Mansion Flat and the August Moon Hotel which at the time of sale was making no profit . . ." So this is just an old story?

A. Yes, but the proceeds of sale were entered into the accounts of the company.

Q. Yes, in the previous year.

A. And was later used to redeem the mortage.

Q. The question that I asked you which you have avoided answering, Mr. Coe, as far as I can see, is where you say the money came from to suddenly improve the liquid position of San Imperial in July of 1977.

A. Yes. As I have said, the proceeds of sale was used to redeem the mortage, and as a result of that the company paid less interest and, moreover, the business of the hotel was very good.

Q. Mr. James Coe . . .

MR. SWAINE: He's not finished.

A. For each month two hundred to three hundred thousand dollars was entered into the accounts of the company, cash, sir.

Q. Mr. James Coe, I don't think you are doing yourself credit as a company chairman. Look at page 115, would you? Look at the top left-hand corner. The August Moon Hotel was sold in the period ending 30th June, 1976. We know that from the previous accounts.

A. To my knowledge, sir, the sale of the August Moon Hotel was completed at the beginning of this year, '77. I remember that very clearly, sir.

Q. So that when Mr. Ooi Seng Poy signed his statement on page 94 which we've been looking at, in the third paragraph, that reporting on the previous year apparently he then goes on to talk about something which has happened after the year is over.

A. "For the year ahead it is anticipated . . ."

Q. That's in the next paragraph, Mr. Coe. I'm talking about the one before. You will notice that it says, "Despite the disposal of August Moon Hotel . . .", it seems that it has already been done.

A. Yes, that's right, there is nothing wrong with it.

Q. And if you go back to page 115, if you look at the top left-hand figures which you have been looking at several times, you will see that so far from going down in the last six months the interest charge is increased by over 50% – 70%.

A. Yes, right. Yes, I can explain this. I'll repeat it, that the sale of August Moon Hotel was completed in March or April this year, so there is nothing wrong with paragraph 3 on page 94.

Q. Well, Mr. James Coe, if that is so . . .

INTERPRETER: Sorry, Mr. Yorke.

A. It is true that it's stated in the chairman's statement here like this, but it is true that the Far East Mansion flat was sold, but in the report it says ". . . and the August Moon Hotel which at the time of sale . . .", and this phrase, ". . . at the time of sale" means at the time of sale of the Far East Mansion flat and it's not at the time of sale of the August Moon Hotel and this is the fact, and here says, ". . . the sale of August . . ." – sorry, correction sir. It says, ". . . making no profit . . ." in the chairman's statement means the August Moon Hotel was not making any hotel business profit.

COURT: Mr. Coe, will you read the last sentence, "Both sales were made at reasonable market price . . ."

A. Yes. About the sale of August Moon Hotel I wish to say something more. The agreement for the sale of the hotel was signed at the end of last year, but the transaction was completed in March or April this year.

MR. SWAINE: My Lord, I have advised that we get the agreement itself to really cut short a great deal of the cross-examination and the possible controversy. We do know that one reason San Imperial was suspended was failure to produce the accounts, and these accounts, although for the year ended June, '76, were not produced until May, '77. It may well be that the chairman, although producing the accounts for the previous year, was reporting on matters which had transpired in any event prior to his report which is May, '77.

MR. YORKE: I think I can dispose of the matter, my Lord, much more quickly than that.

Q. Would you just notice, Mr. Coe, the last sentence to which my Lord drew your attention?

> "Both sales were made at reasonable market price whereby the loan account at the time of disposal was reduced by 35%."

A. Yes.
Q. Would you now look at page 96, and you see "Deferred Liabilities", note 14, on the right-hand side of the page?
A. Yes.
Q. Do you see the figure of 21.35 million?
A. Yes.
Q. I'm sorry, Mr. Coe . . .
A. This amount has not been reduced yet, sir. This is not the present amount, sir.
Q. I see.

MR. YORKE: My Lord, it may be a fair point. I'm not sure from the way in which this account is drawn up because the note 14 isn't as informative as I thought

it would be on that point, my Lord. I don't want to waste time on it.

Q. I'll leave that point, Mr. Coe, until we find out what is contained in note 14.

MR. SWAINE: In fact, I think this makes – I have just noticed note 18 which I think really computes the point. If one looks at 101, note 18:

> "Properties held by one of the subsidiaries, August Moon Hotel . . . and Flat G, . . . Far East Mansion have been disposed off in subsequent year with a small profit."

MR. YORKE: I'm much obliged to my learned friend. That was a bad point on my part for which I apologise, Mr. Coe. I'm afraid it's my unfamiliarity with the way in which accounts are drawn here, but no matter, no matter.

Q. You see, there was the company, in order to reduce it's borrowings, selling off property.
A. Yes.
Q. And you said that of course they could sell the Siu King Cheung shares.
A. If necessary, yes.
Q. And of course if they tried to sell seven million shares even in Siu King Cheung the price would be depressed quite badly, wouldn't it?
A. Yes. Yes, but in June it can be said that the company had quite much cash.

COURT: You mean this year?

A. In June this year, sir.

COURT: Had a lot of cash?

A. Yes, sir. I have said that the company had 3 million dollars cash.
Q. Mr. James Coe, I am going to suggest to you, looking at the deterioration of its performance, '75 which was a bad year when it had 9 million or even if it had 3 million dollars last year, it was still desperately short of cash.
A. Yes. Yes, I don't know the past of this company but the cash flow of the company has been increased since I joined this company. The cash flow was increased from time to time.
Q. Whether the increase is positive or negative in effect we have no documents to show, do we?
A. I am telling the truth, sir. Everybody knows that the hotel business is very good this year. This is the most important reason, sir.
Q. Of course, if one goes to your company, Siu King Cheung, you really couldn't have afforded to pay cash for the shares in June of 1977, could you?
A. I have already said that at the time – at the beginning of this year when I negotiated about this deal there was no sufficient cash.
Q. Can we just look at your own company's accounts, and I'll suggest to you that you had to pay shares because there was no way you could have ever paid cash. Can we look at your Siu King Cheung Company Report for 1966/67 which is the brownie one – '76/77. That will become P. . . .

CLERK: P.24, sir.

Q. P.24. This is '76/'77. Just turn to page 20, would you? I am going to ignore the company throughout but take the group as a whole. You see the left-hand side of page 20, half way down against "Net Current Assets" which is note 13, that your net current assets were a minus quantity, 487 thousand dollars?

A. Yes.

Q. And if one looks at the past performance on the right-hand side of the page, again about two inches down into the page, you will see "Profit after Texation" 3.3 million, but you had to bring forward losses made in the past of 6.9 million so the net position was 3.6 million loss.

A. Yes.

Q. And if we look again back to the left-hand side, you will see where all the assets of the company were, the fixed assets of 15 million. I am just looking . . .

A. Yes.

Q. . . . at the large, large figures. "Properties for sale", that is properties which you were in the process of selling when you could get a decent price, 16 million.

A. Yes.

Q. And then ignoring the quite substantial items, "Investment in Associates" and "Long Term Investments", "Intangible Assets" 17 million, would you accept that if one goes to note 14 that 14 million of those intangible assets were just good will?

A. Yes.

Q. Now, I don't complain in any way, Mr. Coe, about the way in which these accounts are drawn up. You will have to forgive me if I'm slow because they are not drawn up in the way that I'm used to and I might be a little slow about this. You see on page 21 that under "1976" for the Group down at the bottom there is a figure of 1 million dollars payable as dividends.

A. Yes.

Q. And that, I think, is 10 cents per share on 10 million shares.

A. Yes.

Q. You can find that if you turn over to page 30. That's right, isn't it? You can see the situation as at the 31st March, '76, is 10 million shares. It is under item 15, "Share Capital", which shows the number of shares.

A. Yes.

Q. And it's upon that that the dividend was paid.

MR. YORKE: I am told, my Lord, that one of the advantages to San Imperial of this deal was that they were going to get 13 cents per share dividend on the issued capital – on capital that was issued to them – I'm sorry.

A. Yes.

Q. You see the figure on page 21 immediately against letter '6' of 2.2 million for dividends?

A. Yes.

Q. 13 cents per share, how many shares do you make that?

A. 17 million shares.

Q. Yes, that's exactly what I make it, 17 million shares. Tell me how do I pick

– how do I pick those 17 million shares out of page 30?

A. Some new shares were issued at the end of March this year.

Q. Mr. Coe, I'm not trying to be clever, I merely want to find that in order to get from ten to seventeen I must add up some more figures which make seventeen, and at the moment I can't find a logical way of picking 17 million out of page 30. I just want you to help me if you would.

A. If you add up these four figures here that makes 17 million shares.

Q. The one, the one and the five, is it?

A. Right.

Q. It is the one, the one and the five. Thank you very much, I'm very much obliged. Just for the sake of the note, it's the "bonus issue" of a million, ignore the next one, include the next two with a note (b) against them and ignore the last one. So before you made any issue to San Imperial you had a capital of 44.5 million shares.

A. Yes.

Q. Would you care to work out for his Lordship what the dividend on 44.5 million shares at 13 cents is?

A. About 5 or 6 million dollars.

Q. 5.785 million dollars, I've done the sum for you.

A. Yes.

Q. And after you had issued 7 million shares to San Imperial you had a capital of 51.5 million dollars.

A. Yes.

Q. Can you work out the dividend on that or will you accept it from me that it will be 6.695 million dollars?

A. Yes, about that; 6695, sir.

Q. Six point.

COURT: I haven't got it.

MR. YORKE: My Lord, on 44.5 million . . .

COURT: That I have got. Plus 7 million.

MR. YORKE: Your Lordship should have 44.5 plus 7 which is 51.5.

Q. Would you now go back to page 20? Tell my Lord where on those figures, your profits after taxation – perhaps I'm wrong about Hong Kong but it is certainly so in other countries – profits after taxation which is available for dividend. "Profit after taxation", the highest figure, 3.35. Tell my Lord how it is that you propose to pay a dividend on the current shareholding as issued including the shares issued to San Imperial is twice the highest profit you have ever made.

A. You can't see that here.

Q. No.

A. But we have building sites under development and in 2 to 3 years' time the company will make a profit of millions of dollars.

Q. Possibly that may be true, Mr. Coe . . .

A. Well, actually there is already a profit of several million dollars which is not

shown in the accounts here.

Q. Mr. James Coe, I'm learning a great deal about Hong Kong and accounts in the course of this case, but these accounts appear to be signed by you and certified by your accountants, audited by Messrs. Norman B. Cheung & Company, Certified Public Accountants. I should have thought there weren't any material omissions.

MR. SWAINE: What did he say?

INTERPRETER: He is looking for something in the statements.

Q. May I help you, Mr. Coe? Could it possibly be note 9 on page 26 that you want? It may not be.

A. What I said is this, that the Garfield Court had been developed and sold at a profit of several million dollars which has not been entered into the accounts for the year ending march, '77, but it will be entered into the accounts for the year ending March, '78.

Q. I see, and you haven't in your statement on the 8th of October of this year – page 17 – that you didn't think it of interest to your possible investors that this is what you had done?

A. It does say in this report that the profit of the sale of that property will be reflected in the accounts for the next year. Well, I can remember that it is in this report.

Q. Well, I'm sure it is but just show me where. I'm afraid I'm not familiar with this form of accounts. Is it on – perhaps it's on page 6 and 7, is it? You said at the end of note 2 on page 6 – you said a subsidiary had developed Garfield Court. "There were 56 units, and 50 units have now been sold." Is that it?

A. Yes.

Q. Page 6, note 2. That doesn't tell us when and in which financial year any of those units were sold, does it?

A. The profit has not been entered into this year's accounts, but it will be entered into the accounts for the next year.

Q. Well, let's consider something else that you said you were going to do and that is you were going to make an open bid for the outstanding 25 million shares in San Imperial at a figure of $1.50, and that was why you wanted the figure of $1.50 put into the contract. Do you remember?

A. Yes.

Q. You said to Mr. Ching yesterday, you said you need 37.8 million, "whether I have cash I don't – it doesn't matter," I think. "I would issue new shares amounting to that much to exchange," and you then went on, "If S.K.C. was going to issue new shares at the rate of $1.50 for one San Imperial, the S.K.C. price went to $1.50, then it would be three to two," and so on and you gave examples in the way prices would shift.

A. Yes.

Q. Did you consider what that would mean in terms of the dividend demand upon your company?

A. Yes, but it is not an easy thing to do, sir.

Q. No. Let's just see how difficult it is, shall we? 51.5 million shares already issued, 37.5 million shares needed to be issued to effect an open bid at the

current price of $1 for a Siu King Cheung share, that makes a total of 89 million shares which, by a coincidence which I don't rely as such, is exactly twice the 44.5 million shares you started out with before attempting the take-over of San Imperial.

A. Yes, but I am not saying that I am going to buy it right now. I say that there is a possibility that we may buy the company in the future.

Q. You see, if you had made any such offer, the dividend payment you would have needed to maintain 30 cents per share, which is the least you could have done to maintain the value of your shares in the stock market, would have cost you 11.57 million dollars a year.

A. Yes. Yes, but I have said that the Hong Kong market is very strange. It doesn't mean that it is necessary for Siu King Cheung to issue 25 million shares in order to buy 25 million San Imperial shares.

Q. I thought you would have to issue 37.5 million to buy 25 million.

A. On the other hand, it may only be necessary to issue 10 million Siu King Cheung shares for that purpose, that is in case the price went up to $2, $3, $4 or even $5.

Q. Of course, if it went up to $10 you would hardly have to issue any shares at all. His Lordship can do that calculation perfectly easily. But take the price as it is now; it makes no difference what the share price goes to, the dividend which you would require to service a capital – the total capital which you would then have would be 11.57 million dollars per annum.

A. Yes, but in this case Siu King Cheung Company will not issue any new shares.

Q. I'm glad to hear it.

A. Because it is not worthy for the company to do that – it is not worthwhile for Siu King Cheung Company to issue new shares at this moment, but if it is worthwhile to issue new shares then Siu King Cheung would do so.

Q. So all this careful agreement with Mr. HO Chapman and others about fixing a price of $1.50 was done on the off-chance that at some time in the future, when Siu King Cheung shares stood at some different value, you might then wish to make an open bid?

A. As I've said yesterday that I would base on the price of $1.50 in the bargain, sir.

Q. I suggest to you what you were really after, if you will look at page 113 in Yellow 5, which we were looking at before – 113 in Yellow 5 – if you look two-thirds of the way down the page under "31.12.'76" column, "Fixed Assets" against note 14, just under 70 million dollars of fixed assets in San Imperial. The fixed assets – Fixed Assets, 69,957,578, whereas if you look back at page 20 of your own, you only had about – on the left-hand side of the page, the first three items, 7,8 and 9, you only just had something over 30 million dollars of fixed assets. I'm just taking round figures, the left-hand side of page 20, the first three figures, 7, 8 and 9; add them up and there is about 32 million dollars.

A. Yes.

Q. And what you were really after was getting the assets of the company, which was at twice the assets that you had, and you were getting them by – principally by purchasing Oceania for the issue of shares, selling its asset, the Bangkok Hotel, and using that to pay for the San Imperial shares.

A. It was not necessary for me to do this. Well, actually I have another plan in my mind. There is a buyer who would want to – who would like to buy the

23 million shares, if the shares are free from encumbrances. If he offers me 5 cents or 10 cents more I will – or I may or I will sell the shares to him. In these circumstances Siu King Cheung Company will have an immediate profit. For the purpose of acquisition or sale there are many methods. It is not necessary to have 30 to 40 million dollars to do this.

Q. Going back, Mr. Coe, not to what you can do now but what you were agreeing to do this time last year with Mr. CHOO Kim-san and what you were doing this Easter in the agreements which you entered into and is particular the agreement of the 27th of June, you didn't have the money, your company didn't have the money, and the only way in which you could get at the assets of San Imperial was to strip out Oceania, sell its assets and use that money for the purposes of the purchase.

A. I disagree, sir. In actual fact at the end of October Siu King Cheung Company paid out 19.2 million dollars cash to pay up this money.

Q. What you did after this action had been going underway for three weeks has no interest to me at all, Mr. Coe. I am concerned with what you did before it started.

A. It is true that at the beginning I did not have sufficient cash, but Siu King Cheung was able to complete this deal. Siu King Cheung issued 7 million shares for the purchase of Oceania.

Q. Yes, we know about that.

A. That 7 million shares is liquid cash. You can't say that I actually took that much money from the company. The best example is this, that a few years ago the Hong Kong Land Investment Company acquired Dairy Farm, but did Hong Kong Land Investment Company have any cash? I'm sorry – did Hong Kong Land Investment Company take out any cash? They only issued new shares for the purchase of the Dairy Farm. In the stock market acquisition is a very strange or wonderful and lawful way in doing business.

Q. It is perfectly obvious and elementarily simple, isn't it, Mr. Coe? Don't pretend there is any difficulty about it at all.

A. I'm not saying that it is very simple. Sometimes it appears to be simple but it is very difficult for a person to achieve it. You would find it very, very difficult in doing it.

Q. I'll leave that and go to two last matters, I hope, Mr. Coe. You twice said yesterday, I think, that you could have got money from Hong Kong Estates. What did you mean by that?

A. The reason I said that is because Mr. Ching alleged to me that it was unlawful for Oceania Company to lend money to six people. This is why I said in answer to Mr. Ching that I could borrow money from the Hong Kong Estates Company . . .

Q. How?

A. . . . and lend it to David Ng.

Q. How?

A. Because at that time I thought that it was right for Oceania Company to lend money to those six people.

Q. How could you borrow money?

A. If it was not right I would not have done it.

Q. How could you have borrowed money from Hong Kong Estates?

COURT: Do I take it that you mentioned Hong Kong Estate without really meaning that you could indeed have borrowed money from Hong Kong Estates, but you were just using Hong Kong Estates as an example that you could have borrowed money from anybody else rather than Oceania?

A. That is right. What I meant to say was there were many other ways and in that case I would not have committed myself.

Q. And the company you happened to choose was a company from which, that is you have or since it is a subsidiary of San Imperial, might possibly have been the wrong thing to do?

A. Which company do you mean?

Q. Hong Kong Estates which purchased shares in San Imperial.

A. I don't understand it.

Q. Very well, the last question – the last matter I would put to you, would you look at P.21 please – my Lord, I am not going to put the whole lot – if my learned wishes he could possibly re-examine – my Lord on my copy of P.21 I have made an addition which I invite your Lordship to make, and it is this – perhaps the easy thing is to hand up mine. My Lord, it is, as it were – I pass mine up – your Lordship may care to see it rather meets up with your Lordship's document. Your Lordship will see on the top left-hand corner I have now put in, 'An agreement relating to the Declaration of Trust – James Coe – Choo Kim-san' – declaration of trust in relation to three San Imperial shares – an agreement I have dated the 26th of October, 1976 – the document, I think is Yellow 4 – I cannot remember the number off-hand, and then it goes across the page down to the sale – Oceania to James Coe – Your Lordship may like to write that on. Your Lordship has asked for elucidation of a number of matters on this . . .

COURT: But most of which in fact has already been explained.

MR. YORKE: I am just happy to leave the remainder open to Monday.

COURT: I myself want to look through the evidence, but as I say most of it has already been explained.

MR. YORKE: It does appear to be the case. Would you look at that document Mr. James Coe – when you bought Oceania what assets did it have apart from the Bangkok Hotel?

A. No other net assets.

Q. Well then, where did the 4.6 million come from which was lent to this group of people you say on the advice of your Chief Accountant on the 27th of June?

A. At that time the Oceania Company had about 1.2 million dollars assets and about the same amount in liabilities.

Q. The question I asked you is where did the 4.6 million come from which Oceania lent on the 27th of June to the five people about who Mr. Charles Ching has cross-examined you.

A. I wish to explain this very clearly, so, therefore, I wish your Lordship could

give me more time to explain.

COURT: Can you tell us where the 4.6 million dollars came from? If you think you need to go into detail do so – I thought it would be a simple answer.

A. One million dollars was taken out of the 1.2 million dollars by creation, sir – that is the term used by the bank circles, therefore by creation there was one million dollars, one million dollars, one million dollars and 800 thousand dollars totaling 3.8 million dollars in order to make the six people to achieve the purpose of written off.

Q. That is your explanation as to how on the 27th of June Oceania was able to lend 4.6 million to these people and subsequently on the 18th of July lent 78 million to somebody else?

A. Yes. Starting from Oceania the four parties of Oceania, David Ng, M.A.F. and Hong Kong Estates were used as a circle. In order to form that circle Oceania Company must have that one million dollars and Oceania had it at that time. Oceania lent that one million dollars to Mr. David Ng, and Mr. Ng returned that one million dollars to M.A.F. and M.A.F. returned that one million dollars to Hong Kong Estates and Hong Kong Estates deposited this one million dollars with Oceania Company as fixed deposit, and in the second round the same parties were used and so there was another million dollars making a total of two million dollars. You see Mr. James . . .

A. I haven't finished.

Q. I am so sorry.

A. And the third round – in the third round the same one million dollars was used, therefore after the third round there were three million dollars deposited with Oceania Company, and in the fourth round one million dollars is used – sorry in the fourth round 800,000 dollars was used therefore after the fourth round there was a total of 3.8 million dollars and then Hong Kong Estates deposited 200,000 dollars with Oceania Company making a grand total of 4 million dollars. This was very lawful and there were cheques in one million dollars each and there was money in the bank to meet the cheques.

Q. What was the point of the exercise except to deceive and hide to anybody who tried to investigate it that there was no real money coming into the transaction?

A. It is not that there was no cash at all – there was money – there must be money to start with.

COURT: Even a hundred dollars.

A. Even a hundred dollars – it all depends how much you had, and then you will know how many rounds you will have to go to make it up to 4 million dollars, by creation. If we had 3.8 million dollars then we would only have to go one round. This is what I call by creation. That is to say with one million dollars you could do that by creation. It says that all the banks in Hong Kong have ninety billion dollars. Is it true that the banks have ninety billion dollars cash – solid cash? No.

Q. Mr. James Coe . . .

A. They are also doing this by way of creation. The reason for doing this is that David Ng needed this money to pay it back to M.A.F. for a cheque for the purchase of two million odd San Imperial shares. This is very important. M.A.F. owed Hong Kong Estates 6 million dollars cancellation fee. In order for San Imperial company to receive the cancellation fee at once I felt that it was worthy to do it, that is to say to lend money to Mr. David Ng and then Mr. David Ng paid money back to M.A.F. and then M.A.F. paid money back to Hong Kong Estates. This is the most important reason. At that time we only had one million dollars cash, and with that one million dollars we were able to carry it out and made it advantageous to the parties.

Q. What you did was done in order to make it look to anybody who examined the books as if you were really paying cash for shares when in practice you wouldn't have any money effectively until the 24th of October when you succeed in selling the Bangkok Hotel, and that is when all the money was repaid three days later back to Oceania and everybody else?

A. No, I deny that. I will repeat it. In fact that was to save Mr. David NG and make him able to pay the money to M.A.F. to clear the post-dated cheques given to M.A.F. by Mr. David NG, and the more important thing is this, that San Imperial Company would be able to receive the cancellation fee amounting to 6 million dollars immediately and out of the 6 million dollars, one million odd dollars already had been paid.

Q. Mr. James Coe, if the 6 million dollars are not real dollars, are just circulating money, then San Imperial is not receiving any real money at all is it?

A. I deny that – in that case can you deny that all the banks in Hong Kong have not got 90 billion dollars?

Q. Mr. James Coe, the basis of banking is so elementary that we don't need lessons on it in this court, but we are concerned with what you did with the real money. I have only two questions I am going to ask you, and they are very short. One is this that you are wrong that the figure of the money which you got from Hong Kong Estates was 200 thousand dollars/It was in fact four million, and that is the money which you used to enable Oceania to make the loans.

A. Yes, I have already said that there were four millions deposited with Oceania Company, but this money had already been paid back to Hong Kong Estates afterwards.

Q. Look at Yellow 4 page 47 please – we are almost finished – Yellow 4, page 47 please – page 134 – beg your pardon Yellow 4 page 134 – you see that is on the day on which Oceania makes all these loans to your nominees, and that day Oceania issues a receipt for 4 million from Hong Kong Estates?

A. Yes.

Q. The only other matter I have to put to you is the reason why you were so anxious to see M.A.F. paid was because if you did not pay M.A.F. promptly Mr. HO Chung-po might have some very embarrassing things to say.

A. I deny that. At that time when this was being done the name of HO Chung-po did not appear in my mind at all.

MR. YORKE: My Lord, I have no further questions of this witness.

MR. SWAINE: The question of a time-table now arises. I have some questions in re-examination – I shan't be very long. I have got possibly one more witness and then I shall close my case. I think it has been suggested among ourselves that if we finished the evidence tomorrow, then . . .

COURT: I thought we did not want to sit on Saturdays.

MR. SWAINE: I think the consensus is we would rather finish the evidence this week-end and it is possible if your Lordship would see your way clear to give ourselves time to get our final speeches, then we need not resume on Monday, but possibly resume on Tuesday or a day later, I ask my Lord, perhaps Wednesday. There has been a great deal of evidence. There has got to be a great deal of writing up of notes over the next few days. It has been discussed tentatively between ourselves, of course this is all subject to your Lordship's approval . . .

COURT: Very well then, you think half a day would be sufficient for the evidence?

MR. SWAINE: Yes, my Lord.

COURT: How is your time-table?

MR. CHING: This morning I had partial success, as it were, in that the criminal case has been put back to the 12th of December. I, therefore, have one week with which to creat some arguments. My Lord, my other difficulty is that on the 5th, that is to say Monday week, I have an order 14, which is very complex and I am therefore a little bit worried. If my learned friend starts on Wednesday, I understand he will be three days, I will be in difficulties for the Monday following. I understand that if that should happen my learned friend would have no objection to adjourning once more for that one day.

COURT: How long do you think you will be on your feet?

MR. CHING: I cannot conceive that I can be longer than a day and a half or a maximum of two days. I don't know how long my learned friend Mr. Yorke will be. Again on the basis which my learned friend indicated, that is of dividing up the case between us I should be less than my learned friend. I am picking up the back end part of it – I think four days together would be sufficient.

COURT: So if we start on Wednesday you will finish on Friday?

MR. SWAINE: Yes, my Lord, I will certainly finish . . .

MR. CHING: My Lord, if my learned friend starts on Wednesday, much sympathy though I have for my learned friend, he is cutting it a bit fine so far as I am concerned.

MR. YORKE: I am inclined to make a similar application, because I am anxious

to get back to London. I am in difficulty in starting a House of Lords on the following Monday. Although I can get back by then it is difficult to prepare a case which would start a day after I would get back. I am anxious to get away before the end of the week. That is only my personal convenience.

MR. SWAINE: My Lord, I am quite prepared to start on Tuesday.

COURT: Very well then.

MR. SWAINE: I think if we finish the evidence tomorrow, at least that is out of the way and we shall have the week-end plus Monday. I am asked whether if your Lordship would be agreeable to start at 9.30 tomorrow.

COURT: Yes.

Appearances as before.

D.W.4 – James COE – o.f.

MR. SWAINE: My Lord, we have not actually exhibited although I think we should and the originals have been seen by my learned friends, the 8 million certificates in the name of IPC Nominees Limited. My Lord, I will put in, if I may, a set of copies which has been made up into a convenient bundle.

CLERK: Exh.D13.

MR. SWAINE: My Lord, I might just make the point as this is a convenient time to do it, that the 8 million shares, as you will see, comprises 10 certificates and the subject-matter of the charging order nisi is the 7,631,000 shares. My Lord, these are the first 8 certificates. Your Lordship will see that there is one for 631 and there are 7 of a million each.

COURT: The first 8 or the first 3?

MR. SWAINE: The first 8, the dates of these are all the 15th of June, 1977. Then the balance, 369,000 shares, are made up, as your Lordship will see, from the front page of 2 certificates: one for 368,000 shares, the other for a thousand shares; and these were both issued on the 18th of July, 1977. Your Lordship will remember being told (word or words drowned by a loud cough) the registration of these 369,000 shares. My Lord, I think we have at my learned friend's request produced and it has now been exhibited the declaration of trust in respect of the 369,000 shares. Rather than making the point in re-examination, I make the obvious point that the declarations of trust, of course, correspond with the way in which the certificates were issued. There is one for 7,631 issued on one date; there is another declaration in respect of the balance of 369 issued on another date.

REXN. BY MR. SWAINE

Q. Mr. COE, I think it would be helpful if we were to have a more definite idea of the extent of your beneficial ownership of Siu King Cheung. You have said that you youself held shares in your own name. Does wife hold shares in her name?

A. Yes.

Q. And do you have children?

A. Yes.

Q. And do they also hold shares in their names?

A. Yes.

Q. Now would you indicate how much of the issued shares of Siu King Cheung is owned beneficially by your wife – by yourself, your wife and your children, and when I ask you that of course I include shares which are held in the names of subsidiaries of Sin King Cheung, but at the end of the day how much of the Siu King Cheung shares is owned beneficially by yourself, your wife and your children?

A. About 11 million shares in my name, in my wife's name and in my two sons' names.

COURT: You said in your name, your two sons' name and your wife's name. Are there any held by nominees?

A. No.

Q. And these 11 million are held in the names that is of yourself, your wife and your two sons?

A. Yes.

Q. And are there shares held in the names of subsidiaries of Siu King Cheung?

A. Yes.

Q. And do you or your wife or your sons have shares in the subsidiaries?

A. No.

Q. Let me put this slightly differently in case I have not understood you, Mr. COE. If Siu King Cheung were to go into voluntary winding-up, how much of Siu King Cheung would pass to you and your family?

A. You can say that it is 11 million shares out of 51.5 million shares.

Q. Now when you say in-chief that you controlled over I think the figure was 30 million shares of Siu King Cheung, what did that mean?

A. Apart from the 11 million shares owned by myself, my wife and my two sons, the majority of the Siu King Cheung shares are owned by the subsidiary companies.

Q. And how did you come to exercise control over the shares in the names of the subsidiaries?

A. The shares are owned by the subsidiary companies and the subsidiary companies are under the parent company Siu King Cheung and I am the chairman of Siu King Cheung, sir.

Q. And are these subsidiaries wholly or partly owned by Siu King Cheung?

A. Most of the subsidiary companies are owned 100 per cent by the Siu King Cheung company.

Q. So you have a position where the subsidiaries owned the majority of the Siu King Cheung shares and the subsidiaries are in most cases themselves 100 per cent owned by Siu King Cheung.

A. Yes.
Q. Now you remember the suggestion made to you by Mr. CHING that the reason the 8 million shares taken in the name of IPC was to make it more difficult for the plaintiffs to trace those shares. Do you remember that?
A. Yes.
Q. Now we have got the share certificates and we know that on the 15th of June IPC became registered shareholder of the 7,631,000 shares.
A. Yes.
Q. And anyone searching the share register of San Imperial on or after 15th of June would see the name IPC?
A. Yes.
Q. Do you remember also that you contrasted the present income of Oceania in the sum of – sorry, you will remember that Oceania having got the 7 million Siu King Cheung shares – (spoken to by Mr. TANG) I will start again. San Imperial having got the 7 million Siu King Cheung shares in return for Oceania, would be entitled to a dividend of some $910,000?
A. Yes.
Q. And you said that Oceania had, prior to the swap, been receiving an income of you said about 3 to 400,000 a year.
A. I should say 30 to 40,000 dollars per month.
Q. Yes, it is about half of the expected dividend income.
A. Yes.
Q. Now was that the rent from the Bangkok Hotel or did Oceania have other income as well?
A. Only the rent, sir, and there is no other income.
Q. You remember that you were criticized for not letting San Imperial make the extra $400,000 upon the sale of the Bangkok Hotel.
A. Yes.
Q. Prior to the sale, did you not obtain the valuation report of the Bangkok Hotel property?
A. Yes.
Q. And we have already looked at this and this is document 16. If you want to look at it again, document 16, page 30 at yellow 4, and was the market value then assessed as at the 22nd of June, 1977, in the sum of $4 m.?
A. Yes.

MR. YORKE: My Lord, I wondered if my learned friend should really re-examine by what amounts to a leading question to suggest that at the time the deal was put through, Mr. COE thought he property was worth. What the implication of that question was, "I thought it was only worth $7 m.", when his own evidence-in-chief was that at the time the deal went through he discussed it with the directors not only of San Imperial on the one side but with Siu King Cheung, I think, and that he sold it to the directors of Siu King Cheung on the basis that it was actually worth 7.4. My Lord, that is what I have my learned friend's, Mr. CHING's note as saying: "I must be fair to both companies and therefore both companies would have benefited and I have discussed it with the directors to sell Oceania to Siu King Cheung at 7 m. shares" – I can't quite read $7 m. "In this case before the end of June San Imperial would have a capital profit, that is on book value, of $2 m. As for

Siu Kin Cheung, the company had obtained an undertaking that the company would make a profit of $500,000." My Lord, my learned friend is, as it were, by implication, trying to in re-examination, by leading it off, suggest, without actually putting it in so many words, that Mr. James COE thought the property was only worth 7 m., the true valuation of that. His own evidence-in-chief was he thought and told his co-directors there was actually a profit of $400,000.

MR. SWAINE: My Lord, the evidence-in-chief on the valuation report was that Mr. COE had got this valuation for two purposes: in order to be fair – if I remember the words rightly – and also in order to satisfy the Stock Exchanges for the purpose of the listing of the new shares. My Lord, Mr. COE's subjective view of the value of the property is one thing; an objective view by an independent valuer at the time is something quite distinct and which I am entitled to put to the witness in re-examination.

COURT: Oh yes, oh yes, but the point is this, isn't it, that he received a report saying that the property was worth $7 m., but his own view was that it was worth 7.4 or 7.5.

MR. SWAINE: He thought 7.5; in the end he got 7.4. The independent valuer said 7 m.

COURT: All right.

MR. SWAINE: My Lord, it could have been sold for 6.5 in which case Siu Kin Cheung, presumably, would have complained and my learned friends would have taken up the cudgels on behalf of Siu King Cheung. As it happens, it's got 7.4, so they take up the cudgels on behalf of San Imperial. You can't have it both ways.

COURT: Carry on.

Q. It was suggested to you, Mr. COE, that you were concealing even from your own solicitors that you were purchasing the San Imperial shares for Siu King Cheung and not for yourself and that you, of course, have denied.
A. Yes.
Q. And you have referred, amongst other things, to the receipts issued by Philip K.H. WONG & Co. for the cheques which you had given to them.
A. Yes.
Q. Would you look at yellow 1, document 36? Is that one of the receipts?
A. Yes.
Q. Now that, for the record, is the receipt dated 30th of April, 1977 issued by Philip K.H. Wong & Co. and it reads "receipt from Siu King Cheung Hing Yip" and the amount is 1.5 m.
A. Yes.
Q. Would you look also at 69 in the same bundle? Is that the other receipt?
A. Yes.
Q. That for the record is the receipt dated 8th of June, 1977 of Philip K.H. Wong & Co. stating that they had received from Siu King Cheung Hing Yip the

further sum of 1,500,000.

A. Yes.

Q. Then you will remember that you were referred to your affidavit of the 29th of June, 1977 being red file 2, page 19. We don't need to look at that, but do you remember having seen counsel in conference or consultation before that affidavit was made?

A. Yes.

Q. And was that counsel Mr. Robert TANG?

A. Yes.

Q. And was it made known to him that you had been acting for Siu King Cheung?

A. Yes, sure.

Q. You were asked to look at Yellow 4, page 22. Now that is the declaration of trust signed by CHOO Kim-san which bears the chop date 26th of October, 1976. You will remember being questioned about that date.

A. Yes.

Q. Now you say you made enquiries of the chief accountant of San Imperial.

A. Yes.

Q. Do you know when CHOO Kim-san signed the declaration?

A. I don't know.

Q. All right. Do you know when the chop date was applied?

A. No.

Q. All you do know is it bears a chop date "26th of October 1976".

A. Yes.

Q. You remember the evidence as to the sale of the August Moon Hotel which you were certain had been completed only in March or April this year, Mr. COE.

A. Yes.

Q. Do you know how much the August Moon Hotel went for? How much did it fetch?

A. It is about 11 million or 12 million dollars.

Q. If I told you it was $11 m., that would correspond with your recollection?

A. Yes.

Q. That sale was put through, of course, by the previous board.

A. Yes.

Q. And that, as you have said, has relieved the cash flow problem.

A. Yes.

Q. And reduced the burden of interest.

A. Yes.

Q. Tell me: is it good business.

MR. YORKE: My Lord, so that my learned friend can't take a point against me in my final submission, I merely observe this – and perhaps it is a technicality. He may want to have the cake and eat it at the same time whatever the expression is by saying "you improve your cash flow problem and simultaneously reduce the burden of interest". You can do either of those things with the sum of money but you can't do both, not at the same time, my Lord.

MR. SWAINE: I'm sorry. I do defer to my learned friend on matters relating to accounts, my Lord, but let me perhaps put it this way. I think you did say that the proceeds went in part towards reducing the outstanding loans on the part of San Imperial.

A. Yes, a part of the proceeds was paid to redeem the mortage of the August Moon Hotel and a part of the money, according to my recollection, sir, was paid to redeem the mortage of the Bangkok Hotel.

Q. And the rest of the money?

A. To my knowledge, sir, the money was with the company, sir.

Q. And that would go to improving the cashflow?

A. Yes.

Q. Tell me, Mr. COE, as a matter of business, if one wants to keep a company going, does one sell off the assets of the company if unnecessary to do so?

A. It all depends on the financial situation of the company. If it is not necessary, no, sir.

Q. And if San Imperial had sold the Bangkok Hotel then – no, my Lord, I withdraw the question. It is a matter for comment. I am asked, Mr. COE, if you could give us the figure if you know it for the respective mortages on the August Moon Hotel and the Bangkok Hotel.

A. I don't know, sir.

Q. You were questioned about the last annual report of Siu King Cheung itself, Mr. COE. Would you have a copy of the report handy? Would you turn to page 6 which is your chairman's report? Now would you look at the second paragraph, fourth line. That reads, does it not: "This amount of net profit does not include profit on sale of properties located at Argyle Street because it will be reflected on the accounts when the sale is completed."

A. Yes, I thank you because this is what I could not find yesterday.

Q. And Garfield Court, the picture at page 13, gives the address in Argyle Street, and the two sentences following: "Your directors have now recommended payment of final dividend of seven cents per share making a total of thirteen cents per share in respect of the year ended 31st March, 1977, as compared with the ten cents plus one bonus share for ten shares for the year ended 31st March, 1976."

A. Yes.

Q. Then do you go on in the next paragraph to give particulars of assets acquired by the company during the year ended 31st March, 1977?

A. Yes.

Q. And these include net item 2, Garfield Court, which is a 14-storeyed residential building in Argyle Street. "There were 56 unites and 50 units have now been sold."

A. Yes.

Q. In paragraph 3 your company acquired 49 per cent of IPC Holdings Limited which is developing a 14-storeyed commercial building at Reclamation Street which you expected to complete in 1976. And at page 7 in the second complete paragraph, you referred to the sharing in the project developing a 12-luxury-European-style-house villa at Silver Strand.

A. Yes.

Q. Which you expected to complete before the end of this year.

A. Yes.

Q. And then finally at the foot of page 7, you expressed the belief that in the absence of unforeseen circumstances, both the Company profit and dividend for the year 1977-1978 would not be less than 1976-1977.

A. Yes, right.

Q. One last set of questions for you. This relates to the evidence at the end of the day yesterday about the creation of loans. Do you remember, Mr. COE?
A. Yes.
Q. Looking at it from one point of view, we know that David NG owed MAF Corp. $4.8 m.
A. Yes.
Q. By arrangement he was to pay that sum to Oceania direct.
A. Yes.
Q. He needed to borrow $3.8 m. for that purpose.
A. Yes.
Q. And he borrowed it from you.
A. Yes.
Q. You borrowed it from Ming Kee.
A. Yes.
Q. And Ming Kee through nominees borrowed it from Oceania?
A. Yes.
Q. At the end of the day you were owing Oceania $3.8 m.?
A. Yes.
Q. And through your nominees you put up securities for the loans from Oceania?
A. Yes.
Q. You had said in-chief that you had repaid Oceania.
A. Yes.
Q. Now we have now got as a result of a subpoena to the Dah Sing Bank a batch of 22 cheques, the last three of which are issued by yourself in favour of Oceania totalling $3.8 m. Are these three cheques given by way of repayment?

CLERK: D12.

MR. SWAINE: I think the copies might also be in Yellow 4. These are the 33B cheques, my Lord.

COURT: Are these the cheques starting from page 118 of yellow 4?

MR. SWAINE: My Lord, yes, page 118.

COURT: Perhaps my clerk can work with your junior so that it shows because I don't think I have got photostat copies of them in the exhbits file.

MR. SWAINE: My Lord, I wonder if your Lordship has at page 116 in the yellow file –.

COURT: 116 is a receipt.

MR. SWAINE: Oh I see. Your Lordship doesn't have the insertion which is just in my file. I apologize. I will arrange for that to be done.

COURT: Perhaps the easiest thing to do is to let me have photostat copies of these cheques so that they can go into the exhibits file.

MR. SWAINE: We shall arrange for that.

Q. Now the total amount borrowed from Oceania through the six nominees, Mr. COE was – you can take it from me – we have gone through these figures – $5,380,000.00.
A. Yes.
Q. And if you deduct the 3.8 which we have already accounted for, that leaves $1,580,000.00.
A. Yes.
Q. And you had said in-chief all the loans had been repaid, Mr. COE.
A. Yes.
Q. I have here two photostats of cheques issued by yourself in favour of Oceania, one for $780,000 and the other for $800,000 totalling therefore $1.58 m.
A. Yes.

COURT: Are these in the documents?

MR. SWAINE: No, they are not. We have the pay-in slips, but we weren't able to get the photostats until just recently. My Lord, the pay-in slips are 139 and 140 in yellow 4. Your Lordship will see the 139 pay-in slips is $780,000 and the page 140 pay-in slip is $800,000. Could we mark the photostats please?

INTERPRETER: D14A and B.

Q. Now additionally, I would like you to look, Mr. COE, at the yellow 4 index item 35 which is page 6 of the index itself.

MR. SWAINE: Does your Lordship have the index to the yellow 4 bundle? I'm sorry, my Lord. It is the discovery in the form of an index. It is page 6 of the list.

Q. Now you see there item 35, 13 cheques with the following particulars: all in favour of David NG. The cheques are all there, Mr. COE. We will just look at the index for your reference, all right?
A. Yes.
Q. Now my learned friend Mr. Yorke says he is not interested in cheques issued after the commencement of this trial, but –.

MR. YORKE: My Lord, I think I did say that yesterday – I wasn't entirely performing at my best yesterday – but I have always said previously and I maintain that what I am not interested in is cheques made after your Lordship's ruling that this trial would go forward on its merits, that the defendants have no locus standi to strike us out of a legal point.

MR. SWAINE: But we have a series of cheques issued in October. These are the last six.

Q. Do you see those, Mr. COE, the last six cheques?
A. Yes.

Q. And these totalled $4,188,000. Now just take that from me. And the other October cheque is the one over the page under item 36. That is the finder's fee and the amount was $3 m. Do you see that?
A. Yes.
Q. So the October cheques in this series totalled $7,188,000.
A. Yes.
Q. Now that is, of course, a separate batch of cheques from the $5,380,000 that we have just been looking at, i.e., the money repaid to Oceania?
A. That is right.
Q. We add those together, then we get a total figure in the amount of $12,568,000.
A. Yes.
Q. The Bangkok Hotel fetched as we know $7.4 m.
A. Yes.
Q. If we deduct that from the 12,568, we are left still with $5.168 m.
A. Yes.
Q. Now you remember saying, Mr. COE, that in October Siu King Cheung and subsidiaries had overdraft facilities from Banks to a sum of about $4 m.
A. Yes.
Q. And we were then waiting to get the bank certificates for this figure.

MR. SWAINE: My Lord, I think we have copies of this for your Lordship and for counsel.

Q. Are these the certificates justifying to the overdraft facilities?
A. Yes.
Q. And does the total of these four facilities come in fact to $4.920 m.?
A. Yes.

CLERK: D15A to D.

Q. And if you needed to at the time, Mr. COE, would you have drawn upon these facilities to pay part of the money then owing to David NG?
A. Yes.

MR. YORKE: With respect to my learned friend, you must allow me to observe that each of these statements indicates the overdraft facilities extended on the account, but it's no indication that any of the four extended facilities have been utilized. Each of these letters could be in exactly the same terms with the possible exception of the last one if every penny of facility was fully utilized.

Q. Well perhaps we could say, Mr. COE, whether these facilities have been utilized as at the 15th of October.
A. Most of the overdraft facilities was not utilized.
Q. Yes do you remember how much was available?
A. About $4 m.

COURT: That was on what date?

A. 15th of October.
Q. And what you needed to pay David NG in October was just over $4 m.
A. Yes.
Q. The finder's fee of 3 m., you have told the court that you had given Chapman HO an undated cheque.
A. Yes.
Q. If necessary, could that finder's fee have been further deferred?
A. Yes.

MR. SWAINE: My Lord, I have no further questions.

BY COURT

Q. Mr. Coe, I have one or two questions to clarify a few points. I don't think you told us, did you, how you came to the conclusion that the San Imperial shares were worth $1.63 or more? I don't think you told us how you arrived at that conclusion, that is, to make it worth your while to buy at $1.63.
A. According to my memory, the syndicate gave me the simplified balance sheet in which the market value of the net assets was $75,000,000 approximately.

MR. SWAINE: In fact, we have now made copies of that simplified balance sheet. Maybe this will be a convenient time to produce it. It was disclosed in our list, but through inadvertence it was not put in the bundle of documents.

CLERK: D.16.

Q. Yes?
A. And the paid up capital of the San Imperial was 48.2 million shares, so we take a round figure of 50,000,000 shares, 75 divided by 50 equals to 1.5.

MR. YORKE: The exact figure is 1.57.

A. Yes.
Q. Yes?
A. Of course this is only the market value of the net assets and it's only the approximate amount.
Q. Yes?
A. If your Lordship looks at the Imperial Hotel (F & F) under the column of current value, it's $2,000,000, and people in the hotel business know every well that the goodwill of a hotel may well worth ten or fifteen million dollars like this one.
Q. In a large hotel such as this. This figure is not shown in the simplified account, in the goodwill account?
A. I worked it out myself in my mind. I knew it. I know of a hotel which is not as good as the Imperial Hotel, that is the Merlin Hotel, and they asked for $18,000,000 for the goodwill of Merlin Hotel.
Q. All right, I understand. Did you check the correctness of the simplified account or not or did you just accept the . . .
A. Yes, I have checked it.

Q. I don't think I'll ask you how you checked it.

MR. SWAINE: If your Lordship remembers, he made a physical check of the properties himself.

Q. There is another point. I think you said you needed only 40% to acquire a controlling interest in a fairly large establishment.
A. Yes.
Q. Why then did you think it necessary to buy about 50% of the shareholding of San Imperial with a view to acquiring all of it at a later stage?
A. It would be safer to have 50% of the shares and that could avoid being acquired by the other people. It was only my hope or what I was thinking at that time to acquire a hundred per cent of the shares. It all depends on the situation. If it is worthwhile, then I may do it.
Q. You will do it immediately?
A. If it is worthwhile, I'll do it.
Q. But really it wasn't necessary at all, was it? If you got your 50%, it would be safe?
A. Yes.
Q. Even 40% is relatively safe?
A. Yes. I will give you an example. The assets of Rockefeller group amounts to one hundred billion dollars. The brothers of the Rocky family had assets and shares amounting to $300,000,000 only, that is, only 0.3% of one hundred billion dollars.

MR. CHING: Are these American or English billions? There is a difference.

Q. Yes, it is important.
A. (In English) American.
Q. Yellow 1, document 40 – this is, Mr. Coe, the 30th of April agreement between David NG and Rocky. I have only got a photostat copy. Will you turn to page 6 where the signatures appear?
A. Yes.
Q. You see your signature there?
A. Yes.
Q. Now presumably you were signing on behalf of Rocky, were you?
A. Yes.
Q. Normally would there be a chop of Rocky below your name?
A. Normally, yes, but Rocky was a new company and the solicitor knew very well or knew very clearly that I was signing on behalf of Rocky Company.
Q. Yes, but anybody else looking at it wouldn't know who James COE was or whether he was connected with Rocky at all?
A. That's right.
Q. Now will you turn to document 19 which is Siu King Cheung's resolution authorizing you to buy shares in San Imperial?
A. Yes.

Q. Now compare this with document 40, the agreement which I have just referred you to. I can't remember now whether there is in existence any document which shows that you could purchase shares on behalf of Siu King Cheung but using Rocky. That's right, isn't it?

A. Yes.

Q. There is nothing either in Siu King Cheung or in Rocky to show that you, on behalf of Siu King Cheung, were using Rocky to buy the shares?

A. That's right.

COURT: Thank you very much.

A. Thank you, my Lord.

MR. YORKE: I think it's a convenient moment to make a small application. It's just that I would like, if I may, to have a transcript of part of Mr. James COE's evidence yesterday. It's only about the last half hour.

COURT: (To Court Reporter) Will you make a note of that?

MR. YORKE: My Lord, it's from the moment when I produced document P.21 and asked your Lordship to write an extra circle on. I am not worried about that, writing a circle on, but it's from then onwards when Mr. James COE gave the evidence about the money going round and round and round.

COURT: When he was talking about creation?

MR. YORKE: Yes, my Lord, if I could just have the last half hour of his evidence.

COURT: From . . .?

MR. YORKE: I have got my learned friend Mr. Winston POON's notes. When I introduced P.21 – it hasn't been mentioned at all, it's about 10 past 4 last night, it's really quite late in the day and I asked your Lordship to write a new circle. I don't want that. It begins with "Where did the 4.8 million which you say was arranged to be lent by your chief accountant to these six people come from?"

COURT: I see, yes.

MR. YORKE: But I don't wish to ruin the shorthand writer's weekend. I don't want it on Monday, but if I could have it in the course of next week, I would be very grateful.

COURT: You want that part until the time I rose?

MR. YORKE: Yes.

COURT: So we'll adjourn to Tuesday?

MR. SWAINE: There is one more witness.

COURT: Sorry.

MR. SWAINE: There is one more witness and then I shall be closing my case.

COURT: Yes.

D.W.6 – CHENG Yun-sing Affirmed in Punti

XN. BY MR. TANG:

Q. Mr. Cheng, you are the senior partner of Y.S. Cheng & Company, a firm of public accountants, are you not?
A. Yes.
Q. And your firm was appointed as the auditor of MAF Credit Ltd. in 1976?
A. If I am not wrong in this, according to my recollection, it should be at the end of December, 1975.
Q. I beg your pardon. And your task was to audit . . .

COURT: You became auditor for . . .

INTERPRETER: MAF.

COURT: MAF Corporation?

MR. TANG: MAF Credit.

INTERPRETER: End of December, 1975.

Q. And your task was to audit the account of MAF Credit for the year ending the 31st of December, 1975?
A. Yes.
Q. When did the auditing work actually begin?
A. I think the time when we started the auditing work should be in about April.
Q. April 1976?
A. Yes.
Q. Now in the course of the auditing, did you come across the name of Asiatic Nominees Limited?
A. Yes.
Q. In connection with what?
A. Shares.
Q. What shares?
A. San Imperial shares.
Q. I see. You have heard of the name of MAF Corporation, have you not?
A. Yes.
Q. That is a subsidiary of MAF Credit?
A. Yes.
Q. And Mr. Cheng, you said that in connection with shares in San Imperial, you

came across the name of Asiatic Nominees.
A. Yes.
Q. What had Asiatic Nominees to do with these San Imperial shares?
A. We have found that the Asiatic Nominees were holding the shares for a subsidiary company of the MAF Credit.
Q. And what may the name of the subsidiary company be?
A. (In English) The full name is Malaysia America Finance Corporation (HK) Ltd.

INTERPRETER: The full name is MAF . . .

COURT: . . . Corporation.

A. (In English) Corporation.
Q. The full name is MAF Corporation Ltd. Did you find out the number of shares that Asiatic was holding for MAF Corporation?
A. 2.15 million shares.
Q. When was that? Was that in April 1976? When was that? Was that in April 1976 or May 1976 that you – I'll rephrase my question. When did you find out that there were 2.15 million shares?
A. I think the question is not clear.
Q. You are not clear as to the date that you discovered that Asiatic was holding those shares for MAF Corporation or you are not clear about my question?
A. I am not sure about the exact date. I think that was after the preliminary auditing of the accounts. I think it was in May or June 1976.
Q. Did you at that time know what sort of company Asiatic Nominees was?
A. After I found this, I sent a foki to the Companies Registry.
Q. For what?
A. To check the records of this Asiatic Nominees Company.
Q. Did your staff report to you the result of his search?
A. Yes.
Q. Were you told what sort of company it was, what sort of capital structure it had?
A. The full information of this company such as who the directors were, the names of the shareholders and the number of shares.
Q. You mean the number of shares issued?
A. Yes.
Q. Now many were issued?
A. Two shares at $1 each.
Q. What did you do about it after you learnt of that?
A. We thought that it was rather dangerous for that much shares to be kept by such a nominee company.
Q. Did you take any action?
A. Yes.
Q. What action did you take?
A. I have discussed with the director of the MAF Corporation.
Q. Can you remember the name of this director?
A. It should be Mr. HO Chung-po according to my memory.
Q. What did you say to him?
A. I asked him to strengthen his controlling system over the company.

Q. Yes?
A. And I suggested to him that it would be better for him to transfer the shares to the original company, that is the MAF Corporation (HK) Ltd.
Q. Can you remember when did you suggest to Mr. Ho?
A. It was in about August or September.

MR. SWAINE: Which year?

A. 1976.
Q. What did Mr. Ho say to your suggestion?
A. I can't remember clearly what he said in detail in the reply. According to my recollection, I think he said that or he agreed that he would think it over.
Q. Now you said in the course of your – well, after your preliminary audit, you discovered that 2.15 million shares of San Imperial were held by Asiatic Nominees for MAF Corporation. Did you seek confirmation from anyone whether that was so?
A. Yes. This is the proper procedure.
Q. Now from whom did you ask for this confirmation?
A. Asiatic Nominees Limited.
Q. Did they reply?
A. Yes.
Q. Was it in writing?
A. Yes, it should be in writing.
Q. But it was in fact in writing?
A. Yes.
Q. Have you got a copy of the letter with you?
A. Yes.
Q. What's the date of it?
A. 13th of August, 1976.
Q. It was from Asiatic Nominees to your firm Y.S. Cheng & Company?
A. Yes.
Q. May I have a look at it? And signed by Mr. HO Chung-po?

CLERK: D.17.

Q. If you can't recognize . . .
A. I can't recognize it.
Q. Is it that you only allowed my instructing solicitor to take a rather truncated copy of this letter?

COURT: Our copy?

MR. SWAINE: I think the best thing is that we make copies after, my Lord, the document is exhibited.

Q. Now you said Mr. HO Chung-po said to you that he would consider your suggestion.
A. Yes.
Q. Now were you eventually informed by him what was the result of the discussion?

A. Yes. There was a letter from him.

Q. I see. What's the date of this letter? Can we have it please?

A. I don't like to produce too many documents because of my profession unless his Lordship so orders.

COURT: Yes, if you will be so good as to produce it.

MR. SWAINE: My Lord, it may be that once the originals have been seen, then we can make copies and not deprive Mr. Cheng of his originals.

COURT: Yes.

A. 4th of October, 1976.

INTERPRETER: It's a letter from . . .

MR. TANG: . . . MAF Corporation to Y.S. Cheng & Company dated the 4th of October signed by Mr. LEE Fai-to.

MR. SWAINE: My Lord, I don't know why this witness and these exhibits are causing amusement at counsel's table. I would have thought this was not really being fair to the witness. I have had occasion to remark before about this question of merriment during the giving of evidence.

MR. YORKE: My Lord, I am so sorry. My first question in cross-examination is to congratulate Mr. Cheng on the thoroughness of his audit. I take no discourtesy at all.

MR. SWAINE: Very well.

COURT: This is what?

CLERK: D.18.

Q. This letter says, "As requested, we hereby confirm . . ."

MR. TANG: My Lord, I have got, as I have said, truncated copies because when we went to Mr. Cheng's office to get copies, he refused to allow us to take photostate copies.

COURT: Perhaps you can take photostat copies.

MR. TANG: Yes, after this has been produced, we can photostat it. This we have got was all that we were allowed to photostat.

Q. This letter reads as follows: "As requested, we hereby confirm that 2,150,000 shares of San Imperial Corporation Limited have been registered in our name on 1st September, 1976. The new certificate numbers are as follows," and it gives the numbers of the certificates.

A. Yes.
Q. At the bottom of the letter, there is written in someone's handwriting words in red "Transferred back to the Company on 1/9/76". Can you tell my Lord who wrote this?
A. I did.
Q. When did you write that?
A. According to my memory, it was written after the receipt of this letter and after I had seen the certificates.
Q. Did you see these certificates yourself?
A. I believe I did. That was very long ago.
Q. Where did you see them?

MR. YORKE: I have no objection to my friend leading on this part of the evidence.

Q. Where did you see them?
A. In the office.

COURT: In whose office?

A. In the registered office of MAF Corporation.

COURT: When did you see them?

A. I can't remember the date, but it was after the receipt of this letter.

COURT: So there is no mistake about it. When you referred to the transfer back to the company, what company were you referring to?

A. MAF Corporation.
Q. How long after the receipt of this letter that you saw the share certificates yourself?
A. I can't remember the exact date. I think it was about a week after the receipt of this letter.
Q. Would you look at yellow 1, page 98 please, the letter dated the 23rd of July, 1977?
A. Yes.
Q. You see that is a letter addressed to the Chairman, Board of Directors, of MAF Finance Corporation?
A. Yes.
Q. And it was written by Y.S. Cheng & Co.?
A. Yes.
Q. Did you write this letter yourself?
A. Yes.
Q. Did you sign it?
A. Yes.
Q. It says, "In accordance with your request . . ." Whose request were you referring to?
A. The director of MAF Corporation.
Q. And then you went on to say, "we, the Auditors of your Company, hereby

confirm that from documentary evidence and Books of Accounts of your Company available to us during the course of our audit, we were satisfied that your Company, MAF Corporation has actually held in the Company's own interest, 3,226,000 shares in San Imperial Corporation Limited in Hong Kong as at 31st December, 1976."

A. Yes.

Q. Do you confirm that the content of the letter is true?

A. Yes.

Q. Now you have already told my Lord of the 2.15 million shares.

A. Yes.

Q. You said that they were held by Asiatic Nominees.

A. Yes.

Q. The balance of the shares, can you say when were they acquired by MAF Corporation?

COURT: Sorry, I am not quite clear. What balance?

MR. TANG: The balance of – well, after deducting 2.15 million shares from 3.226.

COURT: Oh, I see.

Q. The balance, do you know when were they acquired?

A. According to my memory, the balance was purchased from time to time in 1976.

Q. Which part of 1976?

A. It was a long time ago. I can't remember.

Q. Mr. Cheng, would it be fair to say that the 2.15 million shares in the name of Asiatic Nominees were transferred to MAF Corporation as a result of your suggestion to Mr. HO Chung-po?

A. Yes.

MR. YORKE: My Lord, I don't really know how on earth can one witness talk about the motive of some other person who is not called as a witness. There may no doubt be, of course, a connection, but really no witness is competent to give evidence about the motive of another person.

MR. TANG: I think for the present purpose, I am satisfied with the answer, my Lord.

MR. CHING: I don't intend to cross-examine, my Lord. I'll leave it to my learned friend Mr. Yorke.

XXN. BY MR. YORKE:

Q. Mr. Cheng, may I first apologize to you for what may have appeared to be some risibility on this side of the table whilst you were giving your evidence, and I assure you it was not directed to you at all, but about certain other matters. May I secondly say on this side of the table we have nothing but respect for the way in which your firm carried out the audit of the affairs of MAF, and without in any way wishing to cast any aspersion upon other professional colleagues of yours whom we need not name, the fact that these 2.15 million

shares were not held by MAF is something which should have been discovered by the previous auditors, is it not?

A. Yes, it should be so.

Q. I am very grateful. So in fact it's a great pity your firm hadn't been appointed a year or two earlier, then perhaps we might not be here. Can I just please understand the situation of auditors, that although, of course, you work quite closely in connection with the company's own internal accountants, the auditors' obligation is to the shareholders?

A. Yes.

Q. And it's your job to report to the shareholders if the company, in its accounts or any way in which you can inspect matters, has done something which may be either misleading or deleterious to the interests of the shareholders?

A. Yes.

Q. But beyond reporting to the shareholders, you have no powers over the company at all, do you?

A. Yes.

Q. But your sanction is apart from discovering a criminal office which it might become your duty to report to the police which has nothing to do with being an auditor?

A. According to my knowledge, the auditors should not make such a report.

Q. Perhaps they don't, but what you can do is if you are dissatisfied with what you find in a company, you either – in the extreme case, you refuse to add your certificate to the company's accounts at all?

A. Would you please repeat the question?

Q. I am sorry. Perhaps I'll do it the other way round. I'll go the other way. If you are entirely satisfied that the company's accounts represent a true and fair picture of what the company has been doing, drawn on a consistent basis from year to year, then you will certify the accounts accordingly?

A. Yes.

Q. If, on the other hand, you find there is something wrong in the accounts, in your opinion, there is something wrong, you may still be prepared to certify them but with what is called a qualification?

A. Yes.

Q. And that is usually done – because accountants are very well-mannered people – in very polite language such as saying, "The directors have entered this property in the books at a hundred million dollars, we have been unable to verify this figure."

A. Yes.

Q. And that to anybody who can read the accounts means "You'd better be very careful bcause this building may not be worth $6 m.?

A. Yes.

Q. But that is the limit of your powers, Mr. Cheng, isn't it?

A. Yes, I think it should be so.

Q. So that if, for example, Mr. HO Chung-po having said he would think it over about – be can't agree, he would think it over about getting 2.15 million shares transferred into the name of MAF Corporation, if he had done nothing about it, then there is nothing whatever you could have done about it until it came to the drawing up of the annual accounts when your firm would very properly have insisted on there being a note that the 2.15 million shares ought

to have been but were not registered or in the possession of the company.

A. Yes.

Q. And that would have been about May of 1977, would it not have been? Is that right?

A. I am not sure that it was in May. I think it was in May or June because this happened a long time ago.

Q. Anyway it would have been some time in 1977.

A. No, in May 1976.

Q. With respect, that can't be right, Mr. Cheng, because you were talking about a conversation which you had in August 1976, so you can't possibly be referring to accounts which would have been drawn up three months earlier.

A. The letter was written in August.

Q. Yes.

A. The conversation was before the confirmation.

Q. Of course, yes, but Mr. Ching's note is that this was suggested to Mr. HO Chung-po in about August or September of 1976. Do you remember that? When would the next set of accounts be drawn up which you would be certifying? I thought it would be about May 1977. Perhaps I am wrong.

A. There are accounts for two years, therefore in your questions, I wish to know which year are you talking about.

Q. It's probably my fault, Mr. Cheng, but I am concerned with the account in which you would have added a qualification if the 2.15 million shares had not been transferred into the name and possession of MAF Corporation.

A. Yes, I understand now.

Q. And I am told by Mr. Tang that apparently the accounts were actually the 16th of February, 1977, is that right – does that help you?

A. The report was made on the 16th of February, 1977.

Q. Good, so if Mr. HO Chung-po had, whether politely or not, refused to do anything about your very proper and correct suggestion, all you could have done was to wait until February and then say, 'My firm will not sign these accounts except in a note saying we have drawn the directors' attention to the fact that these shares are not in the possession or name of the company and they should be, and therefore, we are unable to verify this items in the net current assets' – sorry, 'in the current assets of the the accounts.'

A. One thing I would like to correct – the shares should be classified as investment and not as current assets.

Q. Mr. Cheng, I have been very careful. I don't pretent to exactly follow the Hong Kong method of drawing up legislature, but under whatever heading they would be, you would put them as investments, in that case you would say that 'we were unable to verify this evidence of investment.

A. About this question I cannot give you just a simple answer.

Q. Mr. Cheng, again it is my fault, but all I want is however you would have qualified the accounts, that qualification would not have become apparent to the world until February of 1977.

A. Yes.

Q. I am very much obliged – now you obtained from Mr. HO Chung-po, after he had said he would think it over, the letter of the 13th of August, which is D.17, would you just have a look at that please – perhaps I should just ask you before you look at that Mr. Cheng – before you look at that I should ask

you just one more question – however angry you, as senior partner of Y.S. Lo & Co., might have been about this, there is nothing you could have done about it until October – until February?

A. Yes.

Q. Now you very sensibly and again I compliment you on the behaviour of your firm, obtained the letter of the 13th of August, D.17 – of course, that of course relieved part of your worries did it not?

A. Yes.

Q. Yes, but of course for that to be of value it will be necessary for the person signing the letter to have authority to bind the company – for that letter to be of value it would be necessary for the person signing the letter to be able to bind the company – legally bind the company?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. If for example, if I signed the letter it would be useless because it would not bind the Asiatic Nominees?

A. Yes.

Q. Would you like to look now please at the document, you have probably never seen it before, in Brown 3 at page 10, it is a copy of Form X which I am sure you have seen so many times – the beginning, the yellow tag, the second, which is page 10, second of the Form X's, No.2 of Form X, I dare say you have seen many of these in your time have you not Mr. Cheng?

A. Yes.

Q. You see that that is Form X which was delivered apparently to Companies Registry on the 11th of August, and it shows that Mr. HO Chung-po had resigned on the 11th of August?

A. Yes.

Q. So on the face of it, it looks as if he had resigned as director three days before he signed the letter which looks like a Declaration of Trust in favour of M.A.F.?

A. I wish to clarify this that when my foki went up to the Companies Registry to make a search, the document he saw may not be this one.

Q. Please understand I am not in any way criticising you or your firm in any way, but you do see now that Mr. HO Chung-po had resigned as a director three days before he signed D.17 and the Form X appears to have been submitted to the Companies Registry on the 11th of August as well?

A. But I never said that this letter was signed by HO Chung-po.

COURT: No, no – you misunderstand the position completely. You are not being attacked – quite on the contrary you are being praised. Just on record it seems that this letter was signed two days after he had resigned, that is all.

A. Yes.

Q. And an accountant of your standing and integrity would never have accepted that letter D.17 if you know that HO Chung-po had resigned three days earlier?

A. I can only say that I would consider it.

Q. Look, would you take it that we have all seen Mr. HO Chung-po's signature so many times that we know that it is Mr. HO Chung-po's signature – I am now saying, please understand that I am not going subsequently to turn around and criticise you, I have said that you, with your reputation and integrity, if

you had known that HO Chung-po had ceased to be a director of Asiatic Nominees three days before he signed that letter, you would not have been satisfied with that letter would you?

A. Yes.

Q. Yes, of course, thank you very much. In fact I hardly need to say that in retrospect it looks rather as if you were deceived by Mr. HO Chung-po, isn't it?

A. I agree.

Q. I have only one other matter – again it is not a criticism at all, Yellow 1, page 98, the certificate which you gave – please understand although in this case certain matters underlying the share transactions have been attacked, but I am not attacking you about the certificate, I merely want to ascertain from you whether in order to give that certificate you did more than what I would suggest would be the normal auditor's checks, that is to say that you examined the brokers' notes, the entries in the books of the purchasers, the cheques or other documents in payment and the existence of the share certificates in the possession of the company, and that there were no documents charging the affairs in anyone else's interest?

A. Yes.

Q. And that is what any competent auditor would do when he was asked to verify the beneficial ownership of shares apparently standing in the books of a company – putting it in other words, that is standard procedure isn't it?

A. Yes.

Q. And you did not when you were asked to give that certificate actually carry out any investigation into the dealings being done in the market in San Imperial shares over that period?

A. No.

Q. Of course you weren't asked to?

A. Yes, that is right.

Q. Thank you very much – you have been most helpful.

REXN. BY MR. TANG:

Q. At the time of your suggestion to Mr. HO Chung-po, he was a director of M.A.F. Corporation was he not?

A. To my knowledge he was.

MR. CHING: May I suggest 'As far as I knew he was.'

INTERPRETER: 'As far as I knew he was'.

Q. Would you look at Exhibit D.17 again – you have been told that the letter was signed by Mr. HO Chung-po – now let us assume that it was indeed signed by Mr. HO Chung-po.

A. Yes.

Q. Your firm received this letter?

A. Yes.

Q. He says:–

"We hereby confirm that we hold on behalf of M.A.F. Corporation, 2.15 million shares."

A. Yes.

Q. And then the second paragraph here says:–

". . . the above shares were released to M.A.F. together with the transfer forms."

Do you see that?

A. Yes.

Q. And then it gives details of the shares?

A. Yes.

Q. What would the probable action of your company be after the receipt of such a letter?

A. In this case since the issued capital was that small, this is the reason why we suggested to them to transfer the shares back to the company.

Q. Yes, quite, but Mr. Cheng, I am directing your attention to the second paragraph, which says:–

". . . the above shares were released to M.A.F. together with the transfer forms."

A. Yes.

Q. In the course of your audit would it be necessary for you or your staff to come across these transfer forms and certificates?

A. Yes.

Q. And you said Mr. HO Chung-po had deceived you?

A. Yes.

Q. Can you think of any possible benefit to him of this deceit?

A. I don't feel that there would be any benefit.

Q. Thank you Mr. Cheng.

COURT: Thank you.

MR. TANG: My Lord, there remains only some formal matters which relate to the searches made, I believe, by two persons in the employment of Peter Mo & Company into the appointment of directors in the M.A.F. group of companies – they have not been agreed. I think it is necessary, as it were, to produce them.

MR. SWAINE: I think, perhaps, I think this is a matter of formal proof or agreement, my Lord. I would suggest that subject to either agreement or formal proof the case for the defendants would be closed, and then I would address you on Tuesday.

COURT: Yes.

11.55 a.m. Hearing adjourns to 29th November, 1977 for closing addresses.

(DOCUMENT WITHDRAWN)

Mr. Ching: 8th and 9th defendants are the registered shareholders of 7th defendant. 5th and 9th defendants have not appeared in these proceedings. 8th and 9th defendants and 4th defendant are also directors of 7th defendant. 1st defendant was arrested and charged for certain company fraud in June 1976 – he has absconded – failed to answer to his bail in October 1976. He has not appeared to these actions. 2nd and 3rd defendants are Hong Kong companies – nominee companies set up to act as 1st defendant's nominees and holding shares in their own names on behalf of 1st defendant. Even the directors and shareholders of the two companies: Ho Chung-po, Li Fai-to are 1st defendant's nominees. Ho claims that 2nd defendant is not 1st defendant's creature but he owns the company himself. On 4th May, 1977 voluntary resolution of 2nd defendant filed soon after injunction served on it in Action No. 252 with which we are not concerned. 10th defendant is a nominee company – it is in itself a nominee of Rocky Enterprises which is a nominee of James Coe. Ask leave to amend Statement of Claim – paragraph 1 5th line – the amount should be $2,338,651.94. Reply – amend paragraph 9 by adding two sentences at the end (see Statement of Claim). Also paragraph 8, add "(2) of paragraph" between the words "Sub-paragraph" and "32" (Mr. Swaine – no objection. Leave to amend. Mr. Swaine ask to amend 10th defendant's defence paragraph 15(v) as shown in the slip handed up to Court. Mr. Ching: no objection. Leave to amend. Re-services waived by both sides). (Leave to plaintiffs to file supplemental list of documents).

There is a judgment against 1st defendant in each of the three actions. In Lee Ing Chee's case (No. 2459) it is a Hong Kong judgment. In Lee Kon Wah's case (High Court Miscellaneous Proceedings No. 155) and the Malaysia Borneo Finance Corporation (M) Berhad action (Miscellaneous Procesdings No. 540), they are foreign judgments registered in Hong Kong. All that the plaintiffs are trying to do is to enforce those judgments against certain assets of 1st defendant, i.e. shares in San Imperial (previously known as Imperial Hotels Holdings Ltd.) 1st defendant was the beneficial owner of a large number of shares in San Imperial. The plaintiffs say these shares are still beneficially owned by 1st defendant notwithstanding certain share transactions. The two Lees have got a charging order and a garnishee order to the extent of $8.8 million.

1st defendant built up a large empire of companies with interlocking shareholdings. He is fond of using nominees. He was a shareholder in MBF – a Malaysian finance company. By Malaysian law a shareholder of a finance company is not permitted to borrow money from that company. 1st defendant therefore could not borrow in his own name from MBF, so he used nominees: (A) in Action No. 2459 – Lee Ing Chee who took one loan in his own name M$2.10 million with interest, and (B) in Action No. 155 – Lee Kon-wah, who took three loans in his own name to a total of M$1.250 million with interest, and (C) in Action No. 540 – Manhattan Properties (a Malayan company) another of 1st defendant's creatures the shares of which were in the names of 1st defendant and Chung Chee-sang) – there were three loans totalling M$6.30 million with interest. None of those loans have been repaid. As a matter of history, re Action No. 2459, that history is irrelevant; and re Lee Kon-Wah and MBF that history is only relevant as to the registration of

foreign judgments. Lee Ing-Chee having got his judgment in Hong Kong and Lee Kon-Wah and MBF having registered their judgments in Hong Kong, the defendants are not allowed to go behind those judgments in the present proceedings. Paragraph 1(i) of 4th, 5th, 6th and 7th defendants' defence referred to (see Consolidated action). Paragraph 1(ii) – (v) of 4th, 5th, 6th and 7th defendants' defence referred to – I do not understand that, and I shall object if my learned friend attempts to go behind the judgment and I say the same thing about the judgment in Lee Kon-Wah's case registered in Hong Kong – my learned friend cannot go behind that judgment (see paragraph 2 of 4th, 5th, 6th and 7th defendants' defence). (See also Cap. 319). This court is not a court of appeal over a Malaysian court. As a matter of history, MBF sued Lee Ing Chee (I.C. Lee) in Kuching under Civil Suit K No. 134/1975 and obtained judgment on 19th July, 1976 in the sum of M$2,338,651.94 with interest at 15% p.a. from 1st April, 1975 until 19th July, 1976 and at 6% p.a. thereafter. Then I.C. Lee instituted the present action against 1st defendant in Hong Kong and obtained judgment on 5th July, 1977 for the same sum of money and same interest.

MBF sued Lee Kon-Wah (K.W. Lee) in K 1474/1975 in Kuala Lumpur and got judgment for just over M$1.6 million with interest at 12% p.a. from 1st August, 1975. K.W. Lee sued 1st defendant in Kuala Lumpur (K 2445/1975) and got judgment on 28th January, 1977 for just over M$1.3 million with interest from 1st October, 1976 at 12% p.a. with costs. K.W. Lee registered his judgment in Hong Kong. The order by which that judgment was registered was dated 31st March, 1977 – but 1st defendant was at liberty to set it aside within 14 days after service – it was served on 1st defendant – no application to set aside. 4th, 5th, 6th and 7th defendants applied on 27th July, 1977 to set it aside and 10th defendant on 24th August, 1977 also applied to set it aside.

Re Manhattan Properties – MBF sued 1st defendant personally in Kuala Lumpur (No. K1631/1977) – it was alleged that Manhattan Properties in borrowing money from MBF acted for 1st defendant. MBF got M$9,036,831.58 with interest from 1st April, 1976 at 15% p.a. plus costs. MBF has registered that judgment in Hong Kong (Action No. 540). On 19th August, 1977 there was an order that the judgment should be registered but 1st defendant was at liberty to set it aside in 14 days.

Substituted service effected. No application by 1st defendant to set it aside. 4th, 5th, 6th and 7th defendants have applied to set aside this judgment (in September 1977). Mr. Swaine has no locum standi to set aside I.C. Lee's judgment and in any case he is out of time. Also the transaction was done at a place of business in Malaysia. Re 1st defendant's companies, see schedule A. In an affidavit in Action No. 2459 by I.C. Lee, he said in paragraph 3, that MAF Credits was wholly owned by 1st defendant – that is wrong. In an affidavit in Action No. 252, I.C. Lee correctly set out the position. Schedule B shows the ownership of MBF.

After 1st defendant sold his 51% in San Holdings, he acted as if he still was in control. Later Dato Loy bought 51% of MBF, so 1st defendant was no longer in control – that was in mid-1974 (see schedule B). As a result there were a large number of actions.

1st defendant used nominees to hold his shares by using nominee companies the directors of which were also his nominees. See schedule C. Everybody connected with 1st defendant knew his propensity for using nominees, in particular it was known by 4th and 5th defendants that 1st defendant used nominees.

Re the Bank of Trade – I.C. Lee will say that at one time 1st defendant wanted to buy a controlling interest in the bank and paid a deposit for the purpose. Then he changed his mind, but the vendor would not release 1st defendant from the bargain. I.C. Lee knew it and 1st defendant told him to go to Gunston & Chow to try to do something about the control. Later, instructions were withdrawn because he wanted to sell to Amos Dors, but the deal fell through also. This story is relevant to I.C. Lee's conversation with 8th defendant in Taiwan.

Re San Imperial – Before 1st defendant took it over, it was called Imperial Hotels Holding Ltd. In July 1972, 1st defendant bought 51% of shares of San Imperial – seems to be 17th July, 1972. He put his 51% some in his own name, some in the name of 3rd defendant and the vast majority in 2nd defendant's name. I.C. Lee will say 2nd and 3rd defendants were nominee companies wholly owned by 1st defendant, the shareholders and directors of which were 1st defendant's nominees: Ho Chung-po and Li Fai-to. They are still 1st defendant's agents and nominees, and they have chosen to keep away from these proceedings. Ho Chung-po acted hand in glove with 1st defendant as 1st defendant's agent servant or nominee.

I.C. Lee became close to 1st defendant. He began to work for 1st defendant in 1969. 1st defendant was in total control of these companies at the time, and he was the boss. In fact I.C. Lee was 1st defendant's personal assistant. In 1969 I.C. Lee was working for another company, Sim Lim Co., in Malaysia. A Mr. K.C. Lee at about that time was working for one of 1st defendant's companies (he died sometime ago). Later in 1969 K.C. Lee approached I.C. Lee and told him 1st defendant was looking for experienced personnel so he could open more branches of his finance company, i.e. MBF. 1st defendant interviewed Lee and caused MBF to employ Lee at the Batu Pahat branch. In 1971, Lee was transferred to a branch of MBF in Kuala Lumpur. MBF's head office is in Kuala Lumpur at 164 Jalan Tungku Abdul Rahman. Throughout this time, Lee never saw 1st defendant. In 1972 1st defendant sent for Lee and saw Lee at the head office and told Lee he wanted him to come to Hong Kong. Lee came to Hong Kong in February 1972 as office manager of San Timbers Ltd. in Hong Kong and worked as such. In July 1972 1st defendant took over San Imperial and soon thereafter 1st defendant appointed Lee as company secretary. About that time 1st defendant appointed Lee as company secretary of MAF Corporation. 1st defendant and Lee became closer and closer. At the end of 1972 Lee became secretary and director of all of the companies owned or controlled by 1st defendant in Hong Kong, except Asia Land. Lee became director of San Imperial in 1974. His salary was paid by MAF Corporation though he was an employee of San Timber. Then Lee became a nominee of 1st defendant of all the companies in Hong Kong owned or controlled by 1st defendant. He was given general supervision of those companies in Hong Kong, in Bangkok and in Brunei. In fact he was 1st defendant's general factotum. Lee resigned all of his posts effective end of March 1976.

K.W. Lee in January 1969 was appointed office manager of San Development (M) SDN Berhad. The head office was also at 164 Jalan Tungku Abdul Rahman. Lee in November and December 1972 was appointed a director of Wardieburn. Early in 1973 he was appointed to Bangkok with no official position – simply a general personal assistant to 1st defendant. He was paid by I.C. Lee. In October or November 1974 he quarrelled with 1st defendant about the loans taken out in his own name for MBF for 1st defendant's benefit. Manhattan Properties was set up for the sole purpose of getting loans from MBF. 1st defendant would send someone to look for a piece of property, then followed an oral agreement for sale and purchase, money was then given to a lawyer. Then 1st defendant would mortgage the property to MBF for far more than the property was bought for without paying a cent for it taking the balance for himself. Manhattan Properties (i.e. M.P.) became owners of two rubber plantations. In 1975 K.W. Lee was out of a job, and needing a job, he was asked by I.C. Lee to manage the two properties, on the basis that he was employed by I.C. Lee and not by 1st defendant. He did so till 1976.

David Ng (4th defendant) is an accountant. He got to know 1st defendant when 1st defendant took over San Imperial – he is a close associate of 1st defendant and did 1st defendant's bidding. In July 1972, 4th defendant did not appear to be well to do. Now he is. 4th defentant now is able to obtain a loan for James Coe to purchase shares. David Ng was not simply an accountant or broker of 1st defendant (he claims he was not 1st defendant's accountant). From 1972–1973, he was 1st defendant's nominee as a director on MAF Credits. On 28th October, 1976 1st defendant failed to answer to his bail but 4th defendant found 1st defendant in Taiwan, just two months later, with ease (though the Hong Kong authorities knew not where 1st defendant was). Ho Chung-po is still a nominee of 1st defendant – this is common ground at least between the two Lees and 4th defendant (as shown in 4th defendant David Ng's affidavit).

M.E. Ives (5th defendant) is a solicitor. He has acted for 1st defendnat as his solicitor and as his nominee on many occasions. He became a director of MAF Credits and San Imperial as 1st defendant's nominee. He was well connected with 1st defendant. He is involved with 4th defendant (David Ng) and 6th defendant (Ho Chapman) in a "syndicate," which is purported to buy San Imperial shares previously held by Asiatic (2nd defendant) for 1st defendant. They were particularly looking for 1st defendant's San Imperial shares: so 15 million shares were bought from 8th and 9th defendants and those shares were put into Fermay (7th defendant) which was set up for this purpose. There were a bought note and a sold note for those shares (see document 127 of the common bundle for the defendants) – note that same signature for transferee and transferor – this seems to be Peter Mo & Co.'s signature (compare signature on document 101). See document 14 of the same bundle. Peter Mo & Co. was not authorized to sign bought and sold notes, only 5th defendant was. 5th defendant also owns or controls City through which many of the transactions were channelled.

Ho Chapman (6th defendant) claims now to be a man of wealth. 5th defendant approached 6th defendant with the idea of buying 1st defendant's shares presumably because 6th defendant is a man of wealth (Mr. Swaine: 6th defendant is

worth $22 million). In July 1972 when 1st defendant took over San Imperial, he was managing director of the Imperial Hotel.

At sometime 1st defendant sold his shares in San Holdings and so he lost control, though it was not till May 1973 that he resigned as managing director of San Holdings.

Re the three loans: (I) M$2½ million – 3rd December 1973. (II) M$3 million – 18th December 1973. (III) M$800,000 – 16th January 1974. Total: M$6.3 million.

(I) About November or December 1973, 1st defendant in Hong Kong told I.C. Lee to go to Kuala Lumpur, to head office of MBF, to sign some documents for a loan. 1st defendant told him that a part of the money was to be used for purchase of property and a part was for his own use and everything would be arranged by K.C. Lee, the general manager of MBF. So I.C. Lee went to Kuala Lumpur and saw K.C. Lee at MBF's head office. 1st defendant was the man in charge. After he had sold his San Holdings shares he still appeared to be in charge and acted as if he was in charge. Within the premises there was a private office for 1st defendant's personal use. I.C. Lee saw K.C. Lee at the head office at No. 164. K.C. Lee appeared to have arranged everything and I.C. Lee signed three documents in the office: (i) an application dated 29th November 1973 for a loan, the very day after M.P. had been incorporated; (ii) an agreement for loan dated 29th November 1973; (iii) a charge and a charging agreement dated 29th November 1973 by which the rubber plantation was charged. All three documents were signed at the same time at No. 164. I.C. Lee knew nothing about the arrangements and negotiations for a loan. He also signed a transfer form at a lawyer's office transferring the property into the name of M.P. This loan was for M$2½ million.

(II) In December 1973 in Hong Kong 1st defendant told I.C. Lee to go to Kuala Lumpur to see K.C. Lee and sign certain documents for a loan. He saw K.C. Lee at No. 164 and he signed three documents: (i) an application for a loan dated 18th December 1973, (ii) an agreement for a loan dated 18th December 1973, (iii) a charge and a charging agreement dated 19th December 1973. And he signed a transfer form. The loan was M$3 million.

(III) An additional loan for M$800,000 was obtained with the same security as the second loan. I.C. Lee went to Kuala Lumpur and saw K.C. Lee at No. 164 and signed two documents: (i) an agreement for a loan dated 16th January 1974, (ii) a charge and a charging agreement dated 16th January 1974. No transfer was required this time.

I.C. Lee does not know what happened to the money. After M.P. was set up and bank accounts were opened and 1st defendant asked I.C. Lee to sign a book of blank cheques and I.C. Lee did so but the bank accounts of M.P. could be operated only with I.C. Lee's signature and Choong Chee Seng's signature. When I.C. Lee signed the blank cheques – no other signature appeared (see plaintiff's bundle No. 1, pages 94–95 re M$2.5 million, also see pages 97, 98–100, page 103, page 113).

The same comments apply to the K.W. Lee loans: (I) M$700,000 in 1972, when the office procedure of MBF was a little different in that the application for loan did not have to be signed by the applicant. 1st defendant approved the loan. 1st defendant told K.W. Lee to sign a letter asking for a loan. All this was done at No. 164. The date on the letter was 14th June 1972. At No. 164 1st defendant asked him to sign and he did sign an agreement for a loan and receipt for M$170,000 dated 19th June 1972. He signed a memorandum for deposit of shares, i.e. the 2 million shares in San Holdings with 11 share certificates. (II) An additional loan for M$300,000 upon the same security. On 1st defendant's instruction, he signed certain documents using the same shares as security but a different value was put on it. The M$300,000 cheque was handed to K.W. Lee at No. 164 and he paid it into his own account and then paid it out on 1st defendant's instruction. (III) The loan was for M$250,000. Before that, MBF purported to return the 10 share certificates to 1st defendant, who was still managing director of MBF at the time. In April 1973, while MBF had only 1 million shares as security (the 10 certificates comprising one million shares having been returned to 1st defendant). K.W. Lee signed certain documents to obtain loan in his own name using the same one million shares (in one certificate) as security, said to be of a much higher value. This time K.W. Lee had to sign an application form. All this was done at or through No. 164.

11th October, 1977.

1st defendant was resident at Malaysia. He travelled around South East Asia a lot. He had wives in different places. He had a residence in Hong Kong. He had a residence in Kuala Lumpur. At No. 115 Sungai Besai there was a branch of MBF as well as the general administrative offices of MBF. There was a room there for 1st defendant's sole personal use and he used it as his home. 1st defendant claims he did not have sufficient notice of the Malaysian proceedings to enable him to defend those actions – it is up to the defendant to prove this point.

Four lots of shares involved:

(1) 422,560 shares still in the name of Asiatic (2nd defendant), 1st defendant's nominee. Ho Chung-po is a director and a shareholder.

(2) 400,000 shares still in the name of Triumphant (3rd defendant), 1st defendant's nominee. Ho Chung-po is a director and share-holder. The director and shareholders are 1st defendant's nominees.

In Action MP 159, 2nd and 3rd defendants did appear, but not in these proceedings.

(3) 15 million shares, registered in the name of Asiatic (2nd defendant), and it is claimed by 4th, 5th, 6th, 7th and 10th defendant), that those shares were bought by 8th and 9th defendants from 1st defendant at some time and subsequently in March 1977, 8th and 9th defendants sold those shares to the syndicate, i.e. 4th, 5th and 6th defendants through the instrumentality of 7th defendant, set up specifically for the purpose of that sale and purchase. Now 7th

defendant is registered as shareholder.

(4) 7,631,000 shares transferred from various sources to IPC (10th defendant). They came from Asiatic, Triumphant and MAF Corporation. Ho Chung-po is a shareholder and director of each of the three companies. Those shares went into the name of MAF Nominees, from there they went to City (owned or controlled by 5th defendant), from City they went to IPC.

Need not deal with the shares in (1) and (2) as 2nd and 3rd defendants have not appeared and whatever order the Court makes binds them.

About the shares in (3) and (4), the two plaintiffs have got charging orders nisi on all four lots of shares and they seek to make those orders absolute. We have also a garnishee order nisi. Re (3) the total purchase price was $9 million – a deposit of $200,000 was paid leaving $8.8 million unpaid. 8th and 9th defendants being 1st defendant's nominees, so if the transaction was genuine, the money was in fact due to 1st defendant. The $8.8 million is enough to satisfy the two plaintiffs. 4th, 5th, 6th, 7th and 10th defendants say: (A) 1st defendant took the sharescripts and transfer forms with him when he absconded and later 8th and 9th defendants bought the shares from 1st defendant; (B) the agreement between the syndicate and 8th and 9th defendants was signed in Taiwan dated 23rd March 1977, and five short days later, the shares somehow came from Taiwan to Hong Kong and were transferred to 7th defendant's name. Normally it would have taken a month. The Registrar of San Imperial was MAF Corporation of which Ho Chung-po was director at that time, (C) at sometime the syndicate agreed to sell to J. Coe 23 million shares. Coe is the man behind 10th defendant.

Re (A), there were previous proceedings namely, Action MP 159. At one stage, MBF applied for an injunction concerning the 15 million shares. 7th defendant resisted the injunction. 4th defendant resisted that too and in his affidavit filed on 23rd July 1977, paragraph 4-6 – not one word was said about the source of those shares (page 15 of red file). In fact the shares were bought from 8th and 9th defendants in Taiwan. On 29th June 1977 4th defendant filed another affidavit – paragraph 14(a) to (j) when he first mentioned 8th and 9th defendants (page 27 of red file). 8th and 9th defendants have never appeared – though they knew about these proceedings all along – 4th defendant says he has told 8th and 9th defendants about them. If 8th and 9th defendants were genuine, they would have come because their case is that $8.8 million was owing to them, and are the registered shareholders of all the shares in 7th defendant – though 7th defendant appears in these proceedings. In defendants' common bundle, document 14 does not give 4th, 5th and 6th defendants authority to defend proceedings in Court against 7th defendant. See document 62 – it does not say 4th defendant was empowered to defend proceedings on behalf of 7th defendant. So it must have been 8th and 9th defendants of 7th defendant who instructed Peter Mo & Co. on behalf of 7th defendant. There is nothing from 8th and 9th defendants that they bought the shares from 1st defendant. (a) Paragraph 20(b) of Statement of Claim referred to – this sub-paragraph

is now abandoned. (b) 1st defendant's propensity to use nominees, therefore all the more reason for 1st defendant to use 8th and 9th defendants as nominees here as 1st defendant was on the run. (c) nothing from 8th and 9th defendants that they had bought from 1st defendant. The two Lees had never heard of 8th and 9th defendants – so 1st defendant must have met 8th and 9th defendants only recently after he had got to Taiwan. 8th and 9th defendants therefore bought the shares directly from a total stranger, (and not through a stockbroker) – the shares are not in a Taiwan company but in a Hong Kong company. And 8th and 9th defendants had not bothered to put the shares into their own names at all. And 8th and 9th defendants bought the shares which were not in 1st defendant's name but in 2nd defendant's name. No enquiries by 8th and 9th defendants of 2nd defendant regarding 1st defendant. How did 8th any 9th defendants know everything was genuine. Paragraph 10(i) of defence referred to – why was it necessary to authenticate? 2nd defendant never kept any records of who were the owners of the shares held in 2nd defendant's name – then how would 8th and 9th defendants get the dividends or bonus issues? Yet 8th and 9th defendants did not put the shares in their own names. 8th and 9th defendants took no steps to authenticate those shares, otherwise 7th defendant would not have found it necessary to authenticate. Paragraph 20(d) of Statement of Claim read out. Paragraph 20(v) of defence referred to – it relates to the conversation between 4th and 8th defendants – this evidence is not admissible. When I.C. Lee went to Taiwan the first time, he was accompanied by Wilson of Johnson, Stokes & Master but Wilson never saw 8th defendant and 8th defendant never saw Wilson. But 4th defendant had seen Wilson. 2nd defendant submitted a Form 10 dated (strangely) 23rd March 1977, the date that the sale and bought agreement between the syndicate and 8th and 9th defendants was signed – it cannot just be a coincidence in dates. Defence paragraph 10(i) referred to again: see also paragraphs 10(ii) and (iii) and paragraph 11. 4th defendant did not know 8th and 9th defendants till Madam Lau introduced them. 4th defendant paid a deposit of $200,000. 8th and 9th defendants sent their share scripts and transfer forms to the Registrars, MAF Corporation. The transfer form had been already signed by 2nd defendant as the transferor, and by the time it got to the Registrars, it was signed by 7th defendant as the transferees. See defendants' common bundle of documents: document 17 is the transfer form of some of the shares. See document 62 in that bundle. Since it was 4th defendant who had the power to sign the transfer form, where was the security for 8th and 9th defendants, for 4th defendant could transfer the shares to anyone he liked. Document 123 of 3rd January 1977 from Ives (according to the defendants on 31st December 1976 4th defendant was introduced to 8th and 9th defendants, and he had met with 1st defendant on 30th December 1976. When 4th defendant met 1st defendant, 1st defendant said he had already sold all the shares). Re that telex: Mr. Swaine says it was sent before the syndicate was informed by 4th defendant of 4th defendant's meeting with 8th defendant in Taiwan). See document 124, the advice from London – last paragraph thereof.

Re the garnishee order nisi, see 4th, 5th, 6th and 7th defendants' defence paragraph 23(iii). 10th defendant in his defence does not plead paragraph 23(iii), only paragraphs 23(i) and (ii). Why should the syndicate care to whom they pay the $8.8 million so long as they pay somebody and get a good title to the share? And yet they dispute the garnishee proceedings. Defendants say the money is payable to

a third party – a third party who has not come forward to assert his rights.

The sale by 8th and 9th defendants to 4th defendant was bogus. 4th and 5th and 6th defendants formed a syndicate. It is like a partnership – imputed knowledge. 4th defendant still did 1st defendant's bidding. I.C. Lee and 8th defendant had a conversation and 8th defendant said he had never met 4th defendant and never received the deposit. Agreement was signed on 23rd March 1977, and Fermay (7th defendant) was registered as shareholders on 28th March 1977. Wilson never met 8th defendant. 4th defendant said in an affidavit he purchased more shares in Taiwan from people who had bought from 1st defendant (in all just over 2 million shares) – see paragraph 28 of the defence. In the affidavit and defence, not one single particular was given. 4th defendant in his affidavit said he paid about 20 cents a share: Red file page 54, at paragraph 21, but he bought the 2,165,000 shares from 8th and 9th defendants – see defendants' common bundle, documents 128-129. Why didn't 4th defendant say he had bought these further shares from 8th and 9th defendants? See documents 127 to 129 and note the names of the transferors.

The purpose of the syndicate was not just to buy San Imperial shares but to buy 1st defendant's San Imperial shares, and it was Ives' idea to form the syndicate. Ives must have known of 1st defendant's propensity to use nominees. Ives drew up the agreement between 4th defendant and 8th and 9th defendants. He owned City.

Re the 23 million shares, which included the 15 million shares. We are going after 7,631,000 shares. IPC has got 8 million shares. In Action No. 2459, I.C. Lee filed an affidavit on 15th July 1977, paragraph 35, where he deposed to the beneficial ownership of IPC. Dr. Tsang Tak-fai filed an affidavit in reply saying she was J. Coe's mother. There was another Dr. Tsang Tak-fai – paragraph 35 is therefore a mistake. I.C. Lee's evidence will therefore not be to the effect of paragraph 35. IPC however is not above suspicion: (i) It was Rocky which was set up on J. Coe's behalf; (ii) The 7,631,000 shares were put into IPC rather than Rocky. The setting up of IPC as nominee of Rocky which is a nominee of J. Coe is a strategy by which the share transaction was hidden; (iii) The agreement of 30th May 1977 was for a long time the only agreement between the syndicate and J. Coe by whichever name they chose to use (see 4th defendant's affidavit filed in Action MP 159, paragraph 10, at page 16 of red file; see also page 27, paragraph 14(m). See page 50, paragraph 17 of red file. Defendants' common bundle – documents 43, 74. See page 53 of red file paragraph 18.)

Mr. Yorke: (I) We do not challenge the purchase price of $1 per share as being a fair price for the San Imperial shares. We are entitled to intercept (garnishee) the money on its way to 1st defendant or if it has not been paid, then we are entitled to a charging order so that we do receive the money when it is paid. How odd that 7th defendant has not brought their directors 8th and 9th defendants here? How odd that the syndicate has not brought 8th and 9th defendants here in relation to the $8.8 million? 4th, 5th, 6th and 7th defendants have not even interpleaded under Order 17 of Rules of Supreme Court.

(II) Re Notices of hearsay evidence of 7th October 1977 by 4th, 5th, 6th and 7th defendants – statements by 1st defendant and by 8th defendant. If admitted, still no probative value.

(III) One does not "buy and sell" shares. One assigns the proprietory right in a company. The share is only evidence of that right (Vol. I, Palmer – page 332, paragraphs 34-01 and 34-02). See also section 9, Cap. 23, on assignment of chose in action. A bought and sold note is not an assignment – it is only an agreement. The transfer form is the assignment under section 9.

It has never been pleaded by any of the defendants that they were bona fide purchasers for value without notice.

Still on assignment, if one does not come under section 9, then he has to rely on common law and bring in the assignor; See (1919) 2 Ch. at pages 111-112.

The defendants claim that they derive their titles from 8th and 9th defendants, but 8th and 9th defendants were never registered as shareholders. So they cannot rely on section 9. The only thing 8th and 9th defendants can assign is whatever equitable right they have as a result of their contract with 1st defendant. The only assignment here is to 7th defendant, and not to 8th and 9th defendants but 1st defendant could not assign to 7th defendant because 7th defendant was not in existence in November or December 1976. 8th and 9th defendants never paid a cent to 1st defendant for the shares. Of the defects in title, 8th and 9th defendants knew and 4th defendant knew. 8th and 9th defendants were not purchasers at all – because they never intended to acquire any interest in the shares – at most they intended to lend their names to the transaction.

If 7th defendant were bona fide, then we want a garnishee order. If 7th defendant not bona fide, then we want a charging order.

12th October, 1977.

At common law you cannot assign a right – you can do it only in equity. Now under section 9 of Cap. 23 you can assign the right in law if all the procedures are complied with. In these cases there are no section 9 assignments. There is no assignment from 1st defendant to 8th and 9th defendants of the 15 million shares. 1st defendant could not have absolutely assigned his rights to 7th defendant because 7th defendant was not incorporated yet. So what has been done has been done purely in equity. So the blank transfer forms plus share certificates must have been handed by 1st defendant to 4th defendant so that 4th defendant could sell them when he found a buyer and 4th defendant was acting for 1st defendant. There is no evidence that 1st defendant sold shares to 8th and 9th defendants or that 8th and 9th defendants bought from 1st defendant. See correspondence handed up marked K. In equity there attaches to the shares an equity in 1st defendant to enforce the equity by insisting on payment being made to himself 1st defendant could therefore restrain registration or transfer of those shares (because he has not been paid) against 8th and 9th defendants, 4th defendant and the syndicate, except

for the bona fide purchaser for value without notice of the defect of the vendor's title.

10th defendant IPC are not purchasers, only nominees. 4th, 5th, 6th and 7th defendants are not bona fide in that they are not without notice. In Action No. 540, paragraph 9 of the defence of 4th, 5th, 6th and 7th defendants. Paragraph 9(a) is wrong in law. Paragraph 9(b)(iii) – the various vendors were in fact 8th and 9th defendants. How could they have got good title in equity. Again paragraph 9(c) is not referring to the equities and it seems to point to an erroneous thinking that shares are like chattels. See paragraph 9(e) – we have never said there are any defects in 1st defendant's title – we say his title is good, and 1st defendant's indebtedness to the plaintiffs has nothing to do with his title and his shares. Here again the pleader thinks that shares are like chattels. Compare paragraph 8 of Statement of Claim which speaks of the vendor's title and not 1st defendant's title. We simply ask, by paragraph 9, the defendants to show they bought without notice of 1st defendant's title, not without notice of defects in 1st defendant's title. We say there are no defects in 1st defendant's title.

Four lots of shares involved:

(1) 422,560 shares retained by 2nd defendant

(2) 400,000 shares retained by 3rd defendant as 1st defendant's nominees

(3) 15 million shares in 7th defendant's name. 1st defendant has not been paid by 8th and 9th defendants or by 7th defendant

(4) 7,631,000 shares in IPC's name

(a) 2,164,000 shares (paragraph 9(b)(iii) of defence) for which no value was given at all,

(b) 3,226,000 shares (paragraph 9(b)(i) of defence). There is a holding of 2,150,000 shares which MAF Corporation have on its books as at end of December 1975, plus 1,078,000 shares very nearly all of which were bought between 31st August 1976 and 30th November 1976. Of those shares, they were bought at the time by MAF in order to make up part of 23,000,000 shares or 51% of the holding which would give control of San Imperial. The last injection into that parcel was 4th defendant's purchase on the market 329,400 shares. Even if they are bona fide purchasers on the market it was all done as part of the scheme to sell off 1st defendant's assets. There are 1,650,000 shares which came out of Triumphant – there was here no genuine sell but simply a transfer from one nominee to another nominee.

(c) 2,279,600 shares (paragraph 9(b)(ii) of defence)

Supreme Court of Hong Kong High Court

No. 41

Judge's Notes – (A) Opening of Plaintiffs

The figures do not always add up. The descrepancies are not large.

Note the significance of the finder's fee of $3 million.

On charging orders, see Palmer vol. 1, at page 413, paragraph 40-38. See Order 15 rule 6 of Rules of Supreme Court, re J. Coe and Rocky Enterprises. All that is being charged is the beneficial interest of 1st defendant. The legal title is not affected.

If any money has been paid then until it gets to the hands of 1st defendant, we are entitled to intercept it by way of a garnishee order. See Order 49 rule 1 of Rules of Supreme Court.

Cap. 319, section 6: on setting aside a foreign judgment registered in Hong Kong. Note the words "any party against whom". Refer to section 6(1)(a)(ii) and (iii). We are not seeking to enforce the judgment against any of the defendants, only against 1st defendant's assets. This relates to the defendants' locus standi. The defendants would not be any the worse off if we succeed in toto. See (1890) 24 Q.B.D. 103, 106, 107-8. In any case we can succeed if we show and only to the extent that we show that the defendants have no beneficial interests in the shares or in their proceeds. If we fail in showing that then our claim must be dismissed because we cannot enforce against the defendants under Cap. 319. So the court does not even have to decide on the question of locus standi. On section 6(1)(a)(ii), see section 6(2)(a)(iv) and (v). As to section 6(1)(a)(iii), we advertised in Taiwan, Hong Kong and Malaysia (see Y). This objection, with exceptions, is available only to the original debtor himself.

Dicey, Rule 184 referred to. See (1975) A.C. 591.

JUDGE'S NOTES – (B) OPENING FOR THE DEFENCE

Mr. Swaine opens for the defence.

(I) I now deal with the personalities.

(1) 4th defendant is managing partner of a firm of stock brokers of Bentley Securities Company. In partnership with Hari Harilela. 4th defendant has 30%. Harilela has 70%. The present capital is $1.2m reduced from the original capital of $2m during the boom days of the stock market. 4th defendant is also a director of the Tai Pan Building Management Ltd. who are estate agents and brokers (see Documents 3, 4, 5 and 6 of Yellow bundle 1). 4th defendant is not a shareholder of Tai Pan, but he and his wife are both directors. He gets paid a management fee of $10,000 a month. 4th defendant has in the past been associated with 1st defendant. Has not been agent or nominee of 1st defendant. 4th defendant has been associated with 1st defendant in three main ways. He was a director of Luen On Investment Co. Ltd. when it went public in 1972 but resigned in April, 1973. Luen On is now MAF Credit Ltd. 1st defendant was a partner of 4th defendant in Bentley Securities on its formation in 1975 but 1st defendant retired in September, 1974 when Harilela came in instead. Then there is Bladon International Investment Ltd., one of 1st defendant's companies. Bladon went public in early 1973 and 4th defendant injected into Bladon certain properties: 35 – 37 Sheung Heung Road, 6th and 7th floors. That injection was an exchange for Bladon shares to the value of $950,000. The property itself was owned by Romo Co. Ltd. of which 4th defendant was a 55% shareholder, so beneficially, 4th defendant got 55% of the $950,000 Bladon shares upon the injection. 4th defendant became managing director of Bladon on the injection and share issue but resigned in May 1973.

4th defendant used to work for Harilela as chief accountant. He started buying shares in the local market at the end of 1970 through a firm of stockbrokers called Head and Shoulders Company. He sued them in Action 1026 of 1972 in respect of securities they were holding on his account. The cost of these shares to 4th defendant was $190,000 and he settled with them at the end of 1972 when he was presented with a bonanza when the value of the shares went up to about $489,000. Subsequently, in addition to the bonanza he made a profit of about $1m on the stock market on the sale of the Bladon shares and also on trading in new issues. The new issues were allotted direct to 4th defendant because he was in his own name a member of the Far East Stock Exchange and he got in his own seat in January 1973 whereas Bentley was not formed until later and did not start business till May 1973. The seat on the Far East remained in 4th defendant's name. He invested $600,000 in Bentley towards the $2m capital. At the end of the day, he came out not as profitable as earlier on. By 1st October, 1976, 4th defendant owned property and investments with a net value of about $1 1/3m. He was therefore enable to make his contributions, when the time came, to the syndicate.

(2) 5th defendant is a solicitor in Peter Mo & Co. At any one time the firm maintains about 10,000 active files. He has been associated with 1st defendant and has not been and is not his nominee or agent. The Imperial Hotel Holdings Ltd. later became San Imperial. When the former company was under Harilela's control, 5th defendant was a director. When 1st defendant acquired the company and changed the name to San Imperial, 5th defendant joined the board at 1st defendant's invitation in 1972 and served for a few months when he resigned. He also joined the board of Luen On and Bladon but remained for about six months only. He has acted as solicitor for 1st defendant or 1st defendant's companies from time to time, but never was exclusively 1st defendant's companies' solicitors. He and they also used other solicitors. Peter Mo & Co. had acted against 1st defendant on occasions. A Malaysian firm of solicitors wrote to Hong Kong on behalf of clients wanting to sue 1st defendant (dated 2nd October, 1976) – (Document 18 in Pink file No. 1.)

(3) 6th defendant is now semi-retired. His wealth is estimated at HK$22m. He is still chairman of companies in Hong Kong and abroad. He owns shares of companies in Hong Kong, Vancouver, U.S.A. and in the Holiday Inn in Penang. 6th defendant has been actively engaged in the Hotel business and his family owned one third of the land on which the Imperial Hotel now stands. They had 50% of the joint venture for the development of that property into the present Imperial Hotel. He was managing director of that joint venture when Harilela bought the controlling interest in the Imperial Hotel and 6th defendant became his business associate. He became a partner of Harilela in a number of companies in Hong Kong and overseas. The Imperial Hotel Holdings Ltd. went public in 1971 under Harilela and it comprised the Imperial Hotel Ltd., Hong Kong Estates Ltd. and the Imperial Court and some other subsidiary companies. On the company going public: Sir S.N. Chau was Chairman and Harilela was Vice-chairman. 6th defendant was managing director and 5th defendant was also a director. 4th defendant was at the time in overall charge of the accounts of the company. Harilela then sold his controlling interest is in the Imperial Hotel Holdings Ltd. to the Committee of the Far East Stock Stock Exchange and they in turn sold to 1st defendant. 6th defendant came to know 1st defendant at this time but they did not become friends nor did they mix socially. 6th defendant resigned as managing director upon sale by Harilela though he stayed on to supervise the handover to 1st defendant.

(4) IPC Nominees Ltd. (10th defendant) is a nominee company of James Coe and the directors are Dr. Tsang Tak-fai, his mother, and a female relative Tsang Ngai Siu-fong. J. Coe is chairman of (1) Siu King Cheung Hing Yip Co. Ltd., (2) Howard Land Investment Co. Ltd. and (3) Ka Yau Co. Ltd. J. Coe has never met 1st defendant and does not know him.

(II) I now come to the Back ground events.

It is common ground on 28th October 1976 1st defendant jumped bail. J. Coe thought it mught be a good opportunity to get a controlling interest in San Imperial. He contacted 6th defendant, knowing of 6th defendant's association and with whom he was friends. J. Coe and 6th defendant mixed socially. J. Coe also contacted 5th defendant knowing he used to act for San Imperial. 5th defendant spoke to 6th defendant, and they were good friends. Later J. Coe renewed his inquiries and 5th and 6th defendants thought J. Coe really meant business and 5th and 6th defendants thought they ought to look seriously into the matter. They decided to bring in 4th defendant who was known to both of them, thinking that 4th defendant would be a useful man to have. At the very early stage there were three problems facing these three men: (1) Did 1st defendant have a substantial holding in San Imperial? That was resolved by a search showing a large holding in the name of Asiatic which was thought might well be 1st defendant's beneficiary. (2) Could these three men deal lawfully with 1st defendant as he was a fugitive from Hong Kong? 5th defendant was to look into this. (3) There was the problem of locating 1st defendant. It was guessed he was probably in Taiwan, or perhaps in Thailand or Indonesia. It was agreed 4th defendant should go to Bangkok and Taiwan to try to locate 1st defendant. At this time the syndicate comprising the three men were out to buy 1st defendant's shares from 1st defendant. 4th defendant went to Bangkok on 24th December, 1976 and made various enquiries including enquiries at the Thai MAF Credit. He also went looking at the coffee shops of various hotels. He failed to find 1st defendant. He returned to Hong Kong and then went to Taiwan on 30th December, 1976.

(III) I now come to 4th defendant's meetings with 1st defendant.

4th defendant contacted 1st defendant on 31st December, 1976 at the coffee shop of President Hotel in Taipei. 4th defendant said he was interested in buying any shares which 1st defendant might have in San Imperial. 1st defendant's reply was the subject of Hearsay Notice No. 4 which is that he had sold his shares to Mr. Chow. What followed is in our Hearsay Notice No. 9 – that 1st defendant arranged for 4th defendant to meet Madam Lau the go-between.

(IV) I now deal with 4th defendant's meetings with the Chows (8th defendant and 9th defendant).

Madam Lau arranged the meeting of 4th defendant with 8th and 9th defendants. The first meeting occurred on 31st December, 1976. They met again on 1st January, 1977. See our Hearsay Notice No. 5, paragraph 1 – 8th defendant said he had bought 15 million shares in San Imperial and he was interested in selling them. 4th defendant then returned to Hong Kong later on Saturday, 1st January, 1977. The syndicate met on 4th January, 1977, but before that, on 3rd January, 1977, 5th defendant had telexed to London solicitors to seek counsel's opinion as to whether the shares of a fugitive from justice could lawfully be purchased (Document 123 in Yellow file No. 2). The telex is important as being a contemporaneous document showing that the syndicate was out to buy the shares for itself, otherwise why ask for advice from London? The telex makes no sense if the syndicate were

acting as 1st defendant's nominees. The reply to the telex came on 5th January, 1977 (Document 124). By then the advice was redundant because on 4th January, 1977, 4th defendant had reported to 5th and 6th defendants that 1st defendant had already sold the shares to 8th and 9th defendants. Upon the receipt of 4th defendant's report, the syndicate decided to go ahead and also to purchase additional San Imperial shares in order to secure a majority holding. The issued capital of San Imperial was 48.2 million shares. The 15 million shares in Taiwan would not give a majority holding. The syndicate aimed at getting 24.2 million shares which would give a majority holding. In the end this target was not realized. The immediate problem facing the syndicate was how to find out if the shares which 8th defendant said he had were authentic. Another problem was how best to buy the shares from 8th defendant with a minimum of cash outlay by doing a back to back deal with the ultimate purchaser. These problems later resolved themselves. At that time there was no commitment to J. Coe. They were at this time seeking other possible buyers and feelers were put out, particularly by 6th defendant. In the end J. Coe was from the syndicate's point of view the buyer who was most acceptable. 4th defendant made a total of five visits to Taiwan after the initial trip on 30th December, 1976 before the agreement of 23rd March, 1977 was signed. The deal was clinched with 8th and 9th defendants on 23rd March, 1977. The 4th defendant's five trips to Taiwan were on 9th-13th January, 23rd-27th January, 9th-13th February, 27th February, 27th February-2nd March, 22nd-26th March. Additionally 4th defendant was on long distance telephone with 8th defendant on 7th January and 5th March. The substance of the conversations with 8th defendant is in our Hearsay Notice No. 10, paragraphs A to H and our Hearsay Notice No. 5, paragraph 2. The substance of these discussions was a great deal of haggling over price. Finally the price was agreed at 60 cents per share. Additionally 8th defendant showed 4th defendant some but not all of the San Imperial share certificates and he also showed 4th defendant the transfer forms with the signature on the forms of the transferors, namely Asiatic Nominees Ltd. 4th defendant sought two such forms but the numbers of the shares were not inserted on these forms, i.e., one could not tell from the two forms how many shares they comprised.

(V) I now deal with the mechanics of the sale by 8th and 9th defendants.

The problem for the syndicate remained how to prove the authenticity of the shares and transfer forms in 8th defendant's possession. The syndicate considered a number of possible solutions including the verification of the shares by lodging them with a bank as security for advances. None of these methods proved practicable. Finally the Fermay Scheme was settled upon and this was agreed to by 8th defendant. The Fermay Scheme involved these elements: Utilize a Hong Kong company as vehicle for the transfer (in the event it was Fermay). 8th and 9th defendants would take up shares in the Hong Kong company and transfer the San Imperial shares of that company in exchange. The Hong Kong company would then submit the San Imperial shares and the San Imperial registrars for the issue of new certificates in the name of that company as transferees. And if the registrars should do that, that would mean the registrars were satisfied with the shares in the hands of 8th and 9th defendants. 8th defendant agreed to the use of Fermay (which was a shelf company of Peter Mo & Co.) for the purpose outlined above during 4th defendant's trip to Taiwan on 27th February and 2nd March 1977. On the tele-

phone on 5th March, 1977, 8th defendant said he was unable to come to Hong Kong. That set the stage for 4th defendant's trip to Taiwan on 22nd March, 1977 and he stayed till 26th March, 1977. Before 4th defendant left for Taiwan, 5th defendant prepared two drafts for 4th defendant to take to Taiwan; one of these was the sale and purchase agreement and the other was director's minutes to be signed by 8th and 9th defendants. 4th defendant saw 8th defendant on the evening of 22nd March, 1977 when oral agreement was reached. He saw 8th defendant again in the morning of 23rd March, 1977 and discovered he had left behind in Hong Kong the draft agreement which 5th defendant had prepared. He then telephoned 5th defendant long distance and 5th defendant dictated the draft agreement to 4th defendant. The same afternoon 4th defendant typed out the agreement and he also typed out a fair copy of the minutes which 5th defendant had prepared for him. The agreement of 23rd March, 1977 and the minutes were then signed by 8th and 9th defendants (the minutes is in Document 13 in Yellow file No. 1). Fermay being a shelf company had only 1,000 shares at the time. The effect and object of the minutes were to convert the San Imperial shares help by 8th and 9th defendants to 9 million shares of Fermay, leaving Fermay as owner of San Imperial shares and 8th and 9th defendants as owners of Fermay. The 15 million shares referred to in paragraph 2 of the minutes and the Hong Kong $9m referred to were subsequently typed in the two spaces having been left blank, because on 23rd March, 1977 it was not known how many of the San Imperial shares would eventually be proved valid. In the event the 15 million shares were proved valid and the "15 million shares" and the "HK$9m" were inserted on a subsequent date. On 23rd March, 1977, 8th and 9th agreed that 4th defendant, 6th defendant and 5th defendant be appointed authorised signatories of Fermay. Subsequently, the minutes in Document 14 (Yellow file No. 1) were prepared in Hong Kong and brought by 4th defendant to Taiwan on 1st April, 1977 for the signature by 8th and 9th defendants.

(VI) I now deal with the Fermay agreement of 23rd March, 1977 (Document 16 in Yellow file No. 1). 8th and 9th defendants signed in the margin on the left on pages 1 and 2. 4th defendant said he was acting for a syndicate and not just for himself, but it was not clear at that time whether names of all three would be inserted in the agreement in light of the fact that the agreement itself was signed by only 4th defendant as the purchaser. The essence was for 8th and 9th defendants to sell the whole of the issue capital of Fermay to the syndicate the price being 60 cents per San Imperial shares, i.e. $9m for 15 million shares. The deposit payable was $200,000 with completion of sale within 90 days of registration of the San Imperial shares in the name of Fermay.

(VII) I now deal with matters ancillary to the Fermay agreement.

The agreed deposit was $200,000 but it was not a straightforward $200,000 (see paragraph G of Hearsay Notice No. 10) because it was agreed between 4th defendant and 8th defendant that the cost of setting up the machinery for proving the San Imperial shares should be paid out of that deposit. From the syndicate's point of view, if the shares held by 8th defendant were not genuine and therefore worthless, then for all practical purposes they would have lost $200,000. From the viewpoint of 8th and 9th defendants if the shares should be validated they would

be receiving $8.8m. It was known that the stamp duty on the transfer would be $72,000 for 15 million shares, and that the cost of increasing the capital of Fermay to $9m was $36,000, wherefore the cost of validating the shares was known to be HK$108,000 which would leave 8th and 9th defendants with actual cash of $92,000. The money paid to 8th and 9th defendants originated from a Wing On Bank draft for US$20,000 in favour of 4th defendant (Yellow file No. 2 – Document 125). The money was paid to 8th and 9th defendants in Taiwan dollars.

Our Hearsay Notice No. 10 paragraph H shows that 8th defendant said to 4th defendant he would send the San Imperial shares and the transfer forms to Hong Kong direct. Paragraph E of the same notice shows that 8th defendant agreed that the new San Imperial share certificates when issued in the name of Fermay should be kept by Peter Mo & Co. pending completion. Paragraph I of the same notice shows that 8th defendant sent the share certificates and transfer forms to the registrars direct. Consequential upon that, Peter Mo & Co. prepared bought and sold notes for the San Imperial shares (Document 17 of Yellow file No. 1) as this was required for the purpose of stamping. The bought and sold notes were each stamped at $36,000. New certificates in Fermay's name were issued on the same day (Documents 140 and 141 in Yellow file No. 3).

(VIII) I now deal with the purchase of San Imperial shares in the open market in Hong Kong.

The number here is 2,279,600 shares. This was effected by the syndicate pursuant to its intention to buy if possible a controlling interest in San Imperial and to resell that interest at a profit. The bought and sold notes are dated 3rd January, 1977 to the 28th June, 1977 and after the suspension of trading in the stock market, they bought further shares in Hong Kong on 4th-7th July, 1977. The total cost of the 2.2 million shares was $1,247,064.40 (i.e. at an average of about under 60 cents per share though the prices varied). When buying in the stock market, the syndicate felt it could not lose even no package was eventually put together because of the net asset value of San Imperial as disclosed in the company's annual report. Further, as a result of feelers put out by 6th defendant the syndicate considered that the value of the shares as a controlling interest would be $1.60 to $1.70 per share.

J. Coe's own estimate was about $1.70 per share.

See Document 135 in Yellow file 2 consisting of five statements of accounts.

The bought and sold notes for these shares are at Document 137 of Yellow file No. 2.

(IX) I now deal with the shares in the syndicate.

There was no former agreement between 4th, 5th and 6th defendants but they did agree each would have a third share in the syndicate. It was estimated that 6th defendant would be footing more of the bill than 4th and 5th defendants, and

in the event he did. The agreement between them was that at the end of the day the expenses would be refunded out of the profits and the net pool would be then divided by three.

(X) I now deal with the purchase of the shares in Taiwan by 4th defendant at 20 cents each.

This was 4th defendant's own speculation. He got them cheap. The syndicate agreed that the profits would be for his own personal benefit as he had done the legwork.

(XI) I now deal with the 2,165,000 shares bought in Taiwan.

During the course of 4th defendant's negotiations with 8th defendant, 8th defendant told 4th defendant he had friends who had bought shares from 1st defendant and asked if 4th defendant was interested in buying those shares. Our Hearsay Notice No. 8 is double hearsay, but the evidence goes to 4th defendant's state of mind and is also part of the surrounding circumstances, and it explains the subsequent actions of 4th defendant and the syndicate. 4th defendant had personal contact with two of these friends (see our Hearsay Notice No. 11) when he met a Mr. Lee and a Mr. Fong on 12th February, 1977 at a dinner party. The discussions with 8th defendant (Hearsay Notice No. 8) concern two lots of San Imperial shares: (1) 515,000 shares, (2) 1,650,000 shares. These were agreed to be sold at 20 cents a share. The first lot was agreed on or about 13th February, 1977 and the second about 2nd March, 1977. These sales were agreed before the Fermay agreement. It was not till 5th March, 1977 over the telephone that 8th defendant finally agreed to sell his 15 million shares at 60 cents a share. The 2,165 million shares were bought cheap (i) because though this was a large number it was not sufficient to give a controlling interest; (ii) the authenticity of these shares was also unknown and unproved; (iii) and 4th defendant was prepared to pay hard cash for a speculative purchase. As to the financing of these batches which involved some $433,000, 4th defendant will say that he arranged for four lots of money to be available in Taiwan (Document 120 in Yellow file No. 2). 4th defendant on 27th February, 1977 brought into Taiwan US$5,000 and HK$40,000 cash. He took out a Wing On Bank draft dated 28th February, 1977 (Document 126 in the same file) in favour of Tai Pan for HK$200,000, with 4th defendant as the payee. At Document 121 of the same file dated 22nd March, 1977 it shows that 4th defendant brought in US$22,000 and HK$8,500. On 1st April, 1977 4th defendant brought in cash US$5,000 and HK$25,000 (Document 122 of the same file). He therefore took in a total of US$32,000, and together with the Wing On draft, he took in a total of HK$273,500, giving the whole sum in excess of HK$400,000 (at HK$4.70 to US$1). The mechanics of payment was as follows: 4th defendant paid 8th defendant for the shares on behalf of his friends and 4th defendant had the assistance of a friend Lo Sze who is a jewelry merchant had has a family in Taipei. He has been helpful to 4th defendant in converting the bank draft for him and making advances against subsequent payment. The Wing On draft of 28th February, 1977 was superceded by a Bank of America draft in May 1977. The share transfers were stamped in Hong Kong on 29th March, 1977 at 60 cents per share, although purchased for 20 cents in Taiwan. These shares purchased in Taiwan were for 4th defendant's own account,

though they went into the package which the syndicate was putting together for resale. He had these shares (the 2,165,000 shares bought in Taiwan) registered in the name of MAF Nominees Ltd. in order to keep them, on the first instance, distinct from the syndicate shares. The 2,165,000 shares were eventually put into the name of City Nominees prior to transfer to I.P.S.

(XII) I now deal with the agreement of 30th March, 1977 with MAF Corporation (H.K.) Ltd.

See Document 18 in Yellow file No. 1. The syndicate were scouting around for the purchase of as many of the San Imperial shares as would make up a controlling interest. 4th defendant searched the San Imperial register and found a substantial holding in the name of MAF Corporation. There were then negotiations for the purchase of shares from MAF Corporation, and these led to the agreement of 30th March, 1977. 4th and 6th defendants were acting for the syndicate. This is an option agreement (as distinct from sale and purchase) to buy up to 6 million shares at $1.50 per share, the cost of the option being $50,000. The option fee was duty paid (see Document 130 in Yellow file No. 2). The purchase of shares under this agreement at $1.50 would of course give the syndicate no profit. From the syndicate's point of view, however, the value lay in the ability to gain a controlling interest. Eventually under this agreement the syndicate obtained 3,226,000 shares from MAF Corporation (see below).

(XIII) I now deal with the agreement with Rocky of 30th April, 1977 (Document 40 in Yellow file No. 1) together with related documents.

(A) The events preceding.

They had been a long course of dialogue with J. Coe and in the intervening months the syndicate had been building up the package, but with no commitments to J. Coe. Indeed feelers had been put out to attract other buyers. The dialogue with J. Coe was resumed in March 1977 when 8th defendant arranged a meeting with J. Coe when 4th defendant was introduced to J. Coe and they met for the first time. At this meeting between J. Coe, 4th defendant and 6th defendant, J. Coe was told of the syndicate and that the syndicate was in the process of acquiring a controlling interest in San Imperial. That meeting was on or about Sunday, 13th March, 1977. There J. Coe said he was prepared to pay $1.50 a share for the controlling interest, or an effective controlling interest. He also said he was willing to pay a finder's fee to help make up the price to a level which the syndicate thought could be acceptable. Later a finder's fee of $23m was agreed. J. Coe had done his own checking as to the assets of San Imperial and he considered the shares were worth $1.70. J. Coe also made clear to 4th and 6th defendants that so far as possible he wished the purchase of the shares to be self-financing. J. Coe was intending to buy the San Imperial shares for his company i.e. Siu King Cheung Hing Yip Co. Ltd. He was so authorized by a board resolution of 30th March, 1977 (Document 19 in Yellow file No. 1) to do this. The use of nominees by J. Coe in the purchase of San Imperial shares was so as not to attract

speculative interest in the shares of Siu King Cheung. J. Coe then instructed P.K.H. Wong & Co. to act for him in the documentation for the purchase (Documents 20, 31 and 33, in Yellow file No. 1). At about this time, the dispute over the San Imperial shares gained publicity because on 13th April, 1977 (Document 26 in Yellow file No. 1) I.C. Lee advertised in South China Morning Post that he had filed proceedings against 1st defendant, in the High Court. This notice was not spotted by J. Coe and was spotted by 6th defendant in Hong Kong. 6th defendant got in touch with 5th defendant who was then in London. 5th defendant then returned to Hong Kong. This was the first time the syndicate knew of any adverse claim to the San Imperial shares owned by 1st defendant. Later another notice (Document 35 in the same file) appeared on 28th April, 1977. P.K.H. Wong spotted this notice and he passed it on to J. Coe, but the view taken by J. Coe and the syndicate on advice was that as the transfer of the 15 million shares to Fermay had been completed on 28th March, 1977 it was safe to go on with the deal. For J. Coe's protection, the final form of the 30th April, 1977 agreement (Document 40 of Yellow file No. 1) contained a Clause 19. The earlier draft (Document 24 of the same file) did not have a similar clause.

(B) The agreement itself (Document 40).

It is an agreement between 4th defendant and Rocky for the sale of 23 million shares at $1.50 per share. Rocky was the nominee which J. Coe used at the time. Eventually the shares were transferred not to Rocky but to I.P.C. J. Coe had second thoughts about using Rocky for the completion of the sale because the directors of Rocky were J. Coe and his wife. The object of using a nominee company was to prevent speculation in Siu King Cheung and J. Coe realized that Rocky was not really the best nominee for that purpose because anyone could find out who the directors were and make the connexion with Sui King Cheung. Rocky was a shelf company of P.K.H. Wong & Co. The directors of I.P.C. another of J. Coe's company, were his mother and a lady relative. By this means he was able to preserve anonymity.

Clause 2 of the 30th April, 1977 agreement referred to. By 30th April, 1977 it was known to the syndicate that they were not going to get more than about 3½ million shares under the option agreement. Clause 2(c) refers to 4½ million shares, comprising the 2,165,000 shares 4th defendant had bought in Taiwan and the shares which the syndicate were in the process of buying in the local market. The price was $1.50 per share and the deposit was $1m. Completion of the sale, under Clause 8, is to be the day following the Annual General Meeting of San Imperial. The Annual General Meeting took place on 30th May, 1977. There is then Clause 13, so that the sale and purchase of the shares would be self-financing.

(C) The supplemental agreement of the same date i.e. 30th April, 1977 (Document 41 of Yellow file No. 1).

(D) The undertaking to pay a finder's fee of $3m (Document 43 of

Yellow file No. 1) – this was later cancelled and superceded. The 4½ million was in fact paid.

(E) J. Coe's guarantee to 4th defendant (Document 37 of Yellow file No. 1) dated 30th April, 1977. Here J. Coe was guaranteeing performance by his nominee company Rocky.

(F) 6th defendant's guarantee to Rocky (Document 39 of Yellow file No. 1). J. Coe considered this guarantee necessary because he knew 6th defendant but had not known 4th defendant.

(G) The agreement to pay a one percent commission by J. Coe to 4th defendant in the event of 4th defendant raising the second of the two loans for 17,250,000 (Document 38 of Yellow file No. 1) this being the loan provided for in the supplemental agreement.

(H) An undertaking relating to the mechanics of getting J. Coe into the driver's seat (Document 42 of Yellow file No. 1, Clause 1).

(I) This relates to the deposit paid by J. Coe as well as the 4½m on account of the finder's fee. Document 34 of Yellow file No. 1 is a receipt dated 29th April, 1977. See also Document 44 of the same file, dated 2nd May, 1977. See Document 36 of the same file also.

(XIV) I now pass on to the agreement of 12th May, 1977 which replaced the 30th April, 1977 agreement.

(A) The events leading up to the 12th May, 1977 agreement were the suspension of the trading in San Imperial shares on 4th May, 1977. J. Coe went with P.K.H. Wong to see the then Action Commissioner for Securities J. Coe had by then discovered that there had been the Action 2459 notice published on 13th April, 1977. He proceeded to negotiate the deal with the syndicate. The result was the 12th May, 1977 agreement (Document 54 of Yellow file No. 1).

1st November, 1977
Coram: Yang J. in Court.

(B) The terms of the agreement referred to. By the 30th April, 1977 agreement, the sale was for 23 million shares. By the replacement agreement, it was for the sale of the same 23 million shares, but as regards the 15 million shares held in Fermay's name, there was to be an option purchases instead of an outright purchase. The outright sale of the balance i.e. the shares in City Nominee's name, should be not less than 7 million nor more than 8 million shares. In the 30th April 1977 agreement, the sale was for 15 million shares on Fermay's name, 3½ million shares under the option agreement with MAF Corporation (see above), the 4½ million shares which 4th defendant had bought in Taiwan and which the syndicate had been buying in

Hong Kong. In the replacement agreement, the 3½ million M.A.F. option and the 4½m City Nominee shares were lumped together as comprising not less than 7 million and not more than 8 million shares. As the price of the option for the 15 million shares in Fermay's name, Rocky agreed to pay an option fee of $4m (Clause 4(b) to (d) of the 12th May, 1977 agreement). See in this context Clause 6 of the 30th April, 1977 agreement respecting the $1m deposit. The exercise of the option is provided in Clause 13 of the 12th May, 1977 agreement (see in particular the last sentence in that clause). J. Coe will say this replacement agreement was triggered by the events leading to this agreement (see (A) hereof) and he turned the situation to his own advantage because by the acquisition of the 8 million shares he had got himself effective control of San Imperial as the remaining 15 million shares were now in deep freeze and he had an irrevocable and permanent option to buy these 15 million shares.

I also refer to Clause 10 of the 12th May, 1977 agreement which is the counterpart of Clause 13 of the 30th April, 1977 agreement.

(C) J. Coe's guarantee to 4th defendant (Document 55 in Yellow file No. 1) in replacement of the similar guarantee given under the 30th April, 1977 agreement (Document 37 of the same file).

(D) 6th defendant's guarantee to Rocky (Document 56 of Yellow file No. 1) in replacement of the similar guarantee given under the 30th April, 1977 agreement (Document 39 of the same file).

(E) The supplemental agreement of 10th April, 1977 (Document 41 of Yellow file No. 1) was at this time simply held over; it was not cancelled or replaced. It was not superceded till later.

(F) The finder's fee agreement (Document 43 in Yellow file No. 1) was superceded by a new agreement on 9th June, 1977.

(G) The one per cent commission agreement (Document 38 of Yellow file No. 1), which had provided for 4th defendant to get a one per cent commission on the loan to be raised on the Siu King Cheung shares, was also left over.

(XV) I now deal with the completion of the sale and purchase of the 8 million shares. Completion occurred on 9th June, 1977. The amount payable by J. Coe via his nominees on completion was overall $19m (= $12m for the 8 million shares at $1.50 per share, $3m for the finder's fee, and $4m for the option fee). In addition J. Coe was obliged to pay the brokerage and stamp duty on the sale, plus the cost of stamping the loan agreement which was the loan agreement which was then estimated at about $200,000.

J. Coe had already paid $1½m on 30th April, 1977 ($1m being the

deposit, and $½m being on account of the finder's fee). He paid a further $1½m on 8th June, 1977 for which he got the receipt of P.K.H. Wong & Co. (Document 69 in Yellow file No. 1). The cheque is Document 106 (III) in Yellow file No. 2. The receipt of Peter Mo & Co. to P.K.H. Wong & Co. of 9th June, 1977 is Document 76 in Yellow file No. 1. That left J. Coe with $16.2m still to find. The $16.2m was dealt with in this way:

Document 71 in Yellow file No. 1 is a loan agreement of 9th June, 1977 between J. Coe as borrower and 4th defendant as lender for $16.2m against the security of the 23 million Siu King Cheung shares. That loan agreement replaced the old loan agreement of 30th April, 1977 which was also backed by the Siu King Cheung shares. The 23 million Siu King Cheung shares were physically delivered to 4th defendant (Documents 77 and 78 of Yellow file No. 1 referred to). You have then the notional situation on completion that J. Coe had received $16.2m from 4th defendant as a loan and you get the factual situation that J. Coe delivered the shares to 4th defendant. The notional receipt of the money is Document 72 of Yellow file No. 1, signed by J. Coe. That receipt is offset by cross receipts totalling the same $16.2m of which there are two; (1) the receipt of $13.2m by 4th defendant to Rocky (Document 73 of Yellow file No. 1) supplemented by the further receipt at Document 79 (Yellow file No. 1) by 4th defendant; (2) the receipt of $3m being the balance (Document 80 of Yellow file No. 1) – This receipt was from 6th defendant to J. Coe. In substance the syndicate had received $3m cash on account and the syndicate agreed to deferred payment of the balance of $16m against the security of 23 million Siu King Cheung shares which were now in 4th defendant's possession.

The new finder's fee agreement (Document 74 of the same file) was addressed by J. Coe to 5th defendant. See also Document 75 (Yellow file No. 1), a letter from J. Coe to 4th defendant to have the 8 million shares registered in the name of I.P.C. That registration was effected in two lots, one lot comprising 7,631,000 shares and another lot 369,000 shares. The bought and sold notes for these two lots are at Documents 85, 84, 93 and 94 of Yellow file, No. 1.

(XVI) I now come to the payments by J. Coe after completion.

The position after completion was that J. Coe owed the syndicate $16.2m 4th defendant intended to use J. Coe's loan agreement of 9th June, 1977 and the 23 million collateral shares to obtain refinancing. He failed to refinance, i.e. he failed to raise the loan. If he had succeeded he would have got the one per cent commission in accordance with Document 38 (Yellow file No. 1). He told J. Coe about his failure and J. Coe agreed to re-arrange the payments. J. Coe got the syndicate to agree to the finder's fee being deferred. That left $13m which he had to find (i.e. $16m less the $3m finder's fee which the syndicate now agreed to defer). He paid the syndicate the $13m by means of nine postdated cheques (which have all since been cleared and paid). He handed the nine cheques to 4th defendant on 25th June, 1977 (see Document 88 in Yellow file No. 1).

J. Coe gave to 6th defendant an undated cheque for $3m being the

finder's fee which was agreed to be deferred. It was finally dated and paid on 26th October, 1977 – there was therefore a deferment of some three months.

As to the incidentals which came to about $200,000. See Document 89 in Yellow file No. 1. The cheque was postdated to 15th August, 1977 (Document 108 in Yellow file No. 2). In the event the actual stamp duty and brokerage for the 8 million shares was $156,000 (Document 92 in Yellow file No. 1). The stamping on the loan agreement came to $32,400 (Document 71 Yellow file No. 1). $156,000 + $32,400 = $188,400 leaving $11,600 still payable to J. Coe.

(Mr. Yorke: Ask for specific discovery of further documents. We have seen 4th defendant's bank accounts. Re Document 88 of Yellow file No. 1. Ask for specific discovery of 4th defendant's cheques Nos. 113926-113934 on the Chase Manhattan Bank Mr. Swaine: Certainly my friend can have specific delivery.)

(XVII) I now deal with the purchase of and payment for the 3,226,000 shares under the option agreement with the MAF Corporation.

This does not follow chronologically from the previous two headings. This is to be read in conjunction with the heading entitled the 30th March, 1977 option agreement (see above) referred to. On 22nd April, 1977 Peter Mo & Co. wrote to MAF Corporation (see Documents 30 and 32 of Yellow file No. 1). The mechanics of the actual payment are involved. The cost of the 3,226,000 shares at $1.50 each was $4,839,000. The method of payment requested by MAF Corporation is at Document 46 of Yellow file No. 1. Oceania was a subsidiary of San Imperial. See Document 131 of Yellow file No. 2 – it is MAF Corporation's receipt dated 14th June, 1977. The cheques themselves are in respect of the $4.8m cheque at Document 109 in Yellow file No. 2, and the $39,000 cheque is the 8th cheque in Document 23 in Yellow file No. 3. The $4.8m cheque was date 17th June, 1977 and was intended to be covered by 4th defendant's re-financing of J. Coe's loan agreement of 9th June, 1977. When that refinancing failed to materialize, arrangements were made for the $4.8m cheque to be returned to 4th defendant and to be replaced by five postdated cheques totalling $4.8m (Document 132 in Yellow file No. 2). As to the five cheques, see page 148 of Yellow file No. 3. See also Document 133 of Yellow file No. 2.

I now explain why. Oceania's involvement in the payment stemmed from an agreement of 18th January, 1977 (Document 9 of Yellow file No. 1) between MAF Investment (a subsidiary of MAF Credit) and Oceania a subsidiary of San Imperial). That agreement was for MAF Investment to sell to Oceania the property at 140 and 141 Connaught Road for the purpose of redevelopment and a price of $14m payable by instalments. Oceania had paid to MAF Investment $6½m but the agreement was, in the view of the syndicate and J. Coe who were buying their way into San Imperial, not an advantageous contract for the subsidiary Oceania. They thought the contract should be broken if possible. The syndicate procured the then board of directors of San Imperial to pass a resolution dated 3rd May, 1977 (Document 48 to Yellow file No. 1, paragraph 2 thereof). The price of breaking the agreement was $½m. As a result of this resolution, there was the cancellation agreement at page 1 of Document 9 (Yellow file No. 1). So $6m was refunded by MAF

Investment to Oceania. The $4,799,999 was paid by the syndicate to Oceania as part of the $6m. The reason was that the syndicate was aside from the $39,000, obliged to pay MAF Corporation $4.8m and MAF Investment (a subsidiary of MAF Credit, which was the parent company also of MAF Corporation) was obliged to pay Oceania $6m. So instead of doing it by two steps it was agreed to do it by one step. In the event, to make the matter more involved, the five replacement cheques were drawn payable to Hong Kong Estates Ltd. which was another subsidiary of San Imperial. Oceania meanwhile had been acquired by Siu King Cheung and the formal transfer of Oceania to Siu King Cheung was towards the end of June 1977. This explains the reference to J. Coe in Document 132 of Yellow file No. 2. By this time (17th June, 1977) J. Coe was in the process of acquiring Oceania for Siu King Cheung.

(Mr. Yorke asks for similar specific discovery in respect of the five replacement cheque. Mr. Swaine: Yes)

At the end of the day the Court will see that it was J. Coe's money circulating to the extent of the $3m which he had put down and the $9m which he had put up subsequently.

(XVIII) I now deal with two items under the heading of Miscellaneous.

(A) 4th defendant became a director of San Imperial on 13th May, 1977 at its annual general meeting and he became chairman soon thereafter by virtue of the 7 million to 8 million shares held in the name of City Nominees. These shares were transferred to I.P.C. on 9th June, 1977. On 10th June, 1977 J. Coe became managing director of San Imperial on the basis of the I.P.C. holdings, 4th defendant remained chairman by virtue of the shares held in Fermay's name, of which he is a director. He is now managing director of Fermay.

(B) 4th defendant is new managing director of Fermay (Document 62 of Yellow file No. 1). See also our Hearsay Notice No. 10, paragraphs J, K and L. 5th defendant got the minutes typed out in his office when 4th defendant consulted 5th defendant after 4th defendant had spoken on the telephone with 8th defendant. On a prior occasion 4th defendant had brought back to Hong Kong blank sheets of the Skyprene notepaper and these minutes were typed on the notepaper. 4th defendant then sent the typed minutes by post to 8th defendant in Taipei, and 8th defendant returned the signed minutes to 4th defendant by post. (Mr. Yorke asks for specific discovery of covering letters if any. Mr. Swaine: Yes, if there were any.)

(XIX) I now deal with certain additional matters which my learned friend has raised.

(i) Re the request for specific discovery for covering letters in respect of the Fermay minutes (supra) – see Document 62 of Yellow file No. 1. There are none.

(ii) See Document 132 of Yellow file No. 2 relating to the five Chase Manhattan Bank cheques from Bentley totalling $4.8m (see above). The letter of 17th June, 1977 enclosed these five cheques dated 25th June, 1977, 27th June, 1977, 28th June, 1977, 28th June, 1977 and 29th June, 1977 respectively. Document 88 in Yellow file No. 1 referred to: this is 4th defendant's acknowledgement of nine postdated cheques totalling $13m from James Coe (see above). The five postdated cheques of Bentley in Document 132 were dated prior to the nine postdated cheques from J. Coe in Document 88. In the latter part of June 1977, 4th defendant approached J. Coe for a loan in anticipation of the maturity dates of J. Coe's nine postdated cheques and J. Coe agreed. 4th defendant had $1m available for meeting the first of the cheques but he required an additional $3.8m, and J. Coe then lent to 4th defendant $3.8m by means of four cheques in the sum of $1m, $1m, $1m and $800,000. These cheques were credited to 4th defendant's account on 28th June, 1977, 28th June, 1977, 28th June, 1977 and 29th June, 1977. The $1m which 4th defendant had available was money on a share dealing account between himself and J. Coe – that $1m was not a loan. Basically, therefore, 4th defendant had $1m and borrowed $3.8m from J. Coe and on 18th July, 1977 4th defendant borrowed a further $780,000 from J. Coe, so that there was owing by 18th July, 1977 the sum of $4,580,000 to J. Coe. Document 88 shows the dates of these nine cheques. On 26th July, 1977, 27th July, 1977, 27th July, 1977, 29th July, 1977, 2nd August, 1977, 5th August, 1977, 9th August, 1977, 11th August, 1977 and 13th August, 1977 these cheques were credited to 4th defendant's account. On the maturity and payment of the first three cheques, 4th defendant made re-payment to J. Coe in the sums of $1½m and $1½m totalling $4½m, but the original amount owing was $4,580,000, so the balance of $80,000 which was owing to J. Coe was set-off as interest payable to 4th defendant on the cross loans. As to the remaining six postdated cheques in Document 88, upon the maturity and payment of these six cheques totalling $8½m, these sums were lent back to J. Coe at the subsisting interest of one per cent per month. Subsequently J. Coe made re-payments to 4th defendant on dates commencing 11th August, 1977 running through further dates in August and October. These credits will appear in 4th defendant's later bank statements, totalling $8,629,446.67. The reason for the odd figure was that interest was charged against J. Coe at $129,446.67. On the discharge of these loans to J. Coe, the Siu King Cheung shares, which had throughout been in 4th defendant's possession as collateral security, were released and returned to J. Coe. At the end of the day, this was J. Coe's money in circulation earning interest one way or the other, but the core of the matter was that J. Coe put out $19m for the acquisition of the 8 million I.P.C. shares plus the finder's fee which was part of the deal and the $4m option fee for the 15 million San Imperial shares. Also, J. Coe had put up the 23 million shares as collateral. The mechanics are complicated but the position at the end of the

day is straightforward.

At the end of the day, the issue is whether the syndicate was acting for their own benefit or as nominees for 1st defendant.

After hearing counsel case adjourned to to-morrow for specific discoveries of further documents of the defendants and also to enable the defendants to prepare further Hearsay Notices if any.

2nd November, 1977.

Mr. Swaine: Under (XV) and (XVI), when 4th defendant made the loan agreement of 12th June. 1977 with J. Coe, and subsequently lent and borrowed money form J. Coe, and earned interest on the loan to J. Coe, he was acting on behalf of the syndicate and not himself.

JUDGE'S NOTES –(C) FINAL SUBMISSIONS

29th November 1977.

Mr. Swaine:

The issues depend upon the relief claimed. The Lees must show on 27th July 1977, 1st Defendant had a beneficial interest in the fifteen million and 7.631 million shares capable of being charged. White Book p. 766: "Beneficial interest of judgment debtor;" p. 767: "Effect of Order." Palmer's Company Law 22nd ed. at p. 413, para. 90-38. One looks to the date of the charging order nisi and asks if 1st Defendant could have made a valid charge of the shares in question in favour of the judgment creditor. The judgment debtor can only charge that which is beneficially his. If he had disposed of his beneficial interest before the date of the charging order nisi, then the Court will not make the order nisi. This is the guiding principle in the Lees' and MBF's cases.

The case for the Lees as pleaded: Para. 14 puts their case in a nutshell. How do the Lees seek to show the shares were at the material time 1st Defendant's? They seek to show that by saying that none of the four agreements is genuine (see paras. 22 and 30 of Statement of Claim). They seek to show the agreements were not genuine by asserting: (1) Para. 7 (this allegation has not been made good – 4th Defendant was independent of 1st Defendant. See my opening re 4th Defendant), (2) Para. 8 (I have made good para. 8 of the defence and my opening submission re 5th Defendant), and (3) Para. 9 (6th Defendant was and is wholly independent of 1st Defendant and I have made good my opening submission re 6th Defendant). Turning to Para. 20: I.C. Lee lies about what 8th Defendant had said to him, but if Lee was telling a truth, then 8th Defendant was telling a lie. 8th Defendant could not be telling the truth, because 8th Defendant's story is that he did not know 4th Defendant – no dispute that 8th Defendant did know 4th Defendant and had met him on nine separate occasions. 4th Defendant could not have fabricated that evidence, nor could 4th Defendant have fabricated the telephone calls he had made to 8th Defendant (see Yellow 2, Document P10) at his residential number. I.C. Lee is not an impartial witness – he is not a witness of truth. He is a turncoat and a fugitive from justice from Thailand. I.C. Lee's version of his meeting with Chow is fraught with suspicion – e.g. Wilson did not attend the meeting. About his notes of the interview – Ex. P8 – he modified his evidence under cross-examination. The notes were fabricated. Improbable for 8th Defendant to make a confession to a total stranger. 8th Defendant is not a mere cipher – obviously well educated and a man of business (see Ex. P9). If Court accepts I.C. Lee's evidence, what does 8th Defendant's confession amount to? If he lied about not knowing 4th Defendant, he could equally have lied as to the rest of the story. The lie is more consistent with 8th Defendant wanting to conceal his own involvement in the transaction than his being ignorant of the transaction. If he was 1st Defendant's nominee, as alleged by the plaintiffs, then the probable thing for him to do was to assert he had bought the shares beneficially. If 8th Defendant was 1st Defendant's nominee, why would he destroy 1st Defendant's cover. Why should he make a clean breast of things to I.C. Lee. 8th Defendant acted for himself and wished to conceal it. As to 4th Defendant's credit, a lot of cross-examination about 4th Defendant's affidavit of 27th

July 1977 (Red 2, p. 55), para. 26: the probability is that 8th Defendant had come by the information about Wilson through lawyer Hwang. If 8th Defendant could lie to I.C. Lee, he could lie to 4th Defendant too. 4th Defendant had no way of knowing any solicitor of Johnson, Stokes & Master was going to Taipei. If 4th Defendant had had to guess, he would have made the obvious guess of Simon Ip. If Court believes both I.C. Lee and 4th Defendant, then 8th Defendant was lying to both. 8th Defendant would not want to disclose his confession to I.C. Lee therefore he lied to 4th Defendant. At the end of the day the Court still has to determine the status of the 8th and 9th Defendants: Were they the owners of the fifteen million shares or simply 1st Defendant's nominees? If they were nominees, that would still leave the Court the task of adjudicating upon the effect of the 23rd March 1977 agreement. Coming back to para. 22 of Statement of Claim of the Lees: (a) We have Madam Lau's testimonial. (b) This was the end product of three months' negotiation. (c) No evidence whatever as to this (Mr. Ching: This is abandoned). (d) Would 8th and 9th Defendants have appeared if in their view they would be in jeopardy? See the telex exchanges between Peter Mo & Co. and Kirkwood of Taiwan. Why should they come since they are not amenable to a Hong Kong Court's jurisdiction? (e) This is capable of a sinister or a perfectly innocent explanation, 5th Defendant's evidence on this referred to. The registrars in the special circumstances (dealing with fifteen million shares) would expedite matters. (f) The order referred to in para. 16 is directed against 1st Defendant. This subparagraph is a non-sequitar. This order restricts a transfer as distinct from a registration of transfer. It is not now disputed that Peter Mo & Co. was not then San Imperial's solicitor at that time. 4th Defendant was never cross-examined on his meetings with the 8th and 9th Defendants.

The burden rests squarely on the Plaintiffs. The chief matter I have to contend with is the suggestion that the 8th and 9th Defendants lost control of the fifteen million shares in Fermay. What they did and what the syndicate did is capable of an innocent explanation. This was done after three months' negotiation. At this point of time the 8th and 9th Defendants should repose trust in the syndicate for the purpose of disposal of the fifteen million shares. The Lee's case is that 1st Defendant had no reason to distrust 4th Defendant and 5th Defendant. MBF's case is that the syndicate had paid 1st Defendant some $10 million before the fifteen million shares were released on 28th March 1977 – if that theory be true, then there would be nothing on which to garnish in respect of the fifteen million shares. If 8th and 9th Defendants were 1st Defendant's nominees, does it follow that the 23rd March 1977 agreement was not genuine. It does not so follow. The essential elements of that agreement is the price of 60 cents – that was a genuine price. The market price then was about 55 cents (Yellow 2, Document 135). Look at Yellow 2, Document 124. Even if the syndicate were using 8th and 9th Defendants as a screen between the syndicate and 1st Defendant, this would not make the 23rd March 1977 agreement a sham. It would make it a true agreement between the syndicate and 8th and 9th Defendants as 1st Defendant's nominees. The use of Fermay was not a device but was an integral part of the agreement, with a view to authenticating the shares. Re Clause 4 of the agreement (the last sentence thereof) – Mr. Yorke cross-examined on the basis that this was a genuine clause! If 8th and 9th Defendants were 1st Defendant's nominees, nevertheless, the Lees have not made good the plea that the 23rd March 1977 agreement

was not genuine, i.e. devoid of legal effect. This agreement passed the beneficial interest of 1st Defendant to the syndicate upon execution of the agreement and the right of 1st Defendant is simply one to be paid the balance of the purchase price. The Lees have taken the precaution of asking for the garnishee order to be made absolute (para. 23 of Statement of Claim) if the agreement was genuine. Notwithstanding 8th and 9th Defendants' absence, the Court will have to be satisfied that they were 1st Defendant's nominees – the burden is on Plaintiffs to prove that – before the garnishee order can be made absolute. There is no direct evidence that 8th and 9th Defendants were 1st Defendant's nominees. The only evidence is 8th Defendant's confession to I.C. Lee – but it only means that he was the nominee of a relative in U.S.A. On 4th Defendant's evidence 8th and 9th Defendants were clearly acting for themselves.

If 8th and 9th Defendants were 1st Defendant's nominees, the syndicate may or may not be aware of it. 4th Defendant's evidence (on which he was not tested) is that he was dealing with 8th and 9th Defendants in their own right. 4th Defendant said he had had suspicions that 8th and 9th Defendants were 1st Defendant's fronts and the syndicate suspected that also. The suspicion was gradually dispelled by time and circumstances. No reason for the syndicate to resort to the subterfuge if they did not think 8th and 9th Defendants were acting in their own right. The syndicate would have done business with 1st Defendant direct if it was legal. The telex at Yellow 2, Document 124 shows the syndicate's motive was not a discredible motive. This telex destroys the suggestion that the syndicate were themselves 1st Defendant's nominees. The probability is that the syndicate did not know 8th and 9th Defendants were 1st Defendant's nominees but thought that they were dealing with 8th and 9th Defendants in their own right. That 4th Defendant knew 8th and 9th Defendants were 1st Defendant's nominees but 5th and 6th Defendants did not is also not probable – for why would 4th Defendant go on a frolic of his own and make a false report to the syndicate each time. It would be grave for Court to hold each of the syndicate was lying to the Court.

If 8th and 9th Defendants were 1st Defendant's nominees and the syndicate did know, because they all in fact knew or 4th Defendant knew and his knowledge was to be imputed. Still the Court has to decide whether the agreement of 23rd March 1977 was genuine.

The case of the Lees as regards the IPC shares (7,631,000 shares). Paras. 25-30 of their Statement of Claim. Re para. 30: (a) This has not been proved. (b) See J. Coe's explanation – sub-para. (b) is not proved. (c) This is a corollary of sub-para. (b) – there has been an explanation. (d) This does not give a cause of action. (e) That has been explained. The attempt to deceive and to mislead has not been proved. (f) MAF Nominees hold shares for 1st Defendant and MAF Corporation: see I.C. Lee's evidence on this, which is not in dispute. MAF Nominees did not hold shares for 1st Defendant alone. (g) That has been explained. (h) 4th Defendant said it was an omission on his part. 5th Defendant also gives an explanation, i.e. the 30th April 1977 agreement was considered to be the final break-through, and the 12th May 1977 agreement was basically just a modification. If the 12th May 1977 agreement was an afterthought and a sham it would involve the 4th, 5th and 6th Defendants and J. Coe lying to this Court. What motive would there have been to

deliberately suppress the 12th May 1977 agreement? I have opened on this. By necessary implication the $4 million is refundable as a matter of law if no shares are available. On pleading, Lees' case is that none of the three agreements are genuine. To sustain such a finding the Court will have to find that 4th, 5th and 6th Defendants and J. Coe were lying about these agreements.

As regards the 1,650,000 shares and 514,000 shares purchased by 4th Defendant in Taiwan, there is no separate attack on those. The Court only needs to refute the allegation that the agreements were not genuine in order to refuse and to make charging order nisi as regards the 7,631,000 shares absolute.

Turning now to MBF's Statement of Claim. Para. 3 on p. 2 – "at all material times" must mean the 7th September 1977, the date that the charging order nisi was obtained. At para. 6 on p. 4 MBF pleads a garnishee order nisi in respect of $11,446,500 out of $12 million, etc. The order was made on 14th September 1977. The pleading is that the syndicate had received the $11,446,500 not in their own belief but as 1st Defendant's nominees. Para. 7 is new – it is on conspiracy. There are here four distinct elements. (1) The intent to avoid etc. (2) The intent to defraud. (3) Sale on behalf of 1st Defendant. (4) To obtain proceeds on behalf of 1st Defendant. So it is implicit here the syndicate was acting as 1st Defendant's nominees. No evidence that the syndicate acted for 1st Defendant or as his nominees. The evidence is all the other way. Why would the syndicate act for 1st Defendant? The probability is that they acted for themselves for their own profit. The registered judgment was not in being until 19th August 1977 (date of registration in Hong Kong). Until 13th April 1977 when I.C. Lee's notice appears in the papers, the syndicate was not even aware of any civil claims against 1st Defendant.

Para. 7(A) on p. 5 re the fifteen million shares and para. 7(B) on p. 15 re the 7,631,000 shares under the title of conspiracy.

Para. 7(A) – Re 4th, 5th and 6th Defendants MBF makes the same allegations against them as the Lees. Re J. Coe – no allegation of conspiracy against him. As to the parties and the transaction my submission re Lees' case applies. See sub-para. (3) on p. 9 – nothing new here. Sub-para. (4) on p. 12 – this is new.

See MBF's bundle of pleadings – enclosure 97: F & B Ps prepared by Winston Poon. MBF does not now aver that 1st Defendant was beneficial owner of the 3,226,000 shares (Mr. Yorke refers to Ex. P12). It cannot be the case that 1st Defendant was the beneficial owner of the 3,226,000 shares or of the shares bought in the Hong Kong stock market or privately in Hong Kong during the suspension of the San Imperial shares. In reply to sub-para. (4) on p. 12, mere knowledge that 1st Defendant was beneficial owner of the shares or any part thereof is irrelevant. Failure to register in the books of San Imperial is irrelevant. A contract to buy shares is dealt with in very much the same way as, e.g. contract to buy land. The fact the transfers were affected by or on behalf of 1st Defendant is immaterial and do not invalidate the transfers. Defendants' title is not vitiated in this way. Sub-para. 4 at p. 12: (a) This has been dealt with. (b) This also. (c) No evidence on that, so this must have been abandoned. (d) It is abandoned. (e) No evidence on

that so that too is abandoned. (f) That has been dealt with. (g) I have dealt with that. (h) That has been dealt with. (i) This also. (j) This has been dealt with also (will come back to the last three lines about 1st Defendant later). (k) This is the only matter that is new (will come back to it).

The case of conspiracy about the fifteen million shares has not been made out by MBF.

Para. 7(B) – Sub-paras. (1) and (2) have been dealt with, except that City is new. Sub-para. (3) at pp. 17-19 show the mechanical steps by which the shares were transferred to IPC. Sub-para. (3)(a)(iv) at pp. 17-18 referred to. Sub-para. (3)(b)(v) at p. 18 adds nothing to the Plaintiff's case: cannot see the relevance of it. Stage II at p. 18 deals with transfer to City. Sub-para. (3)(b)(ii) – same comments. I now deal with Stage III on p. 19 – deals with the transfer to IPC. Sub-para. (4) under B at p. 20 – re (a), same comments as under (A)(4); re (b), these are shares bought by 4th Defendant from Lee & Fong in Taiwan, but the central point for the Court is whether at the time of the charging order nisi 1st Defendant had a beneficial interest in the shares and the rest is irrelevant. So (b) is a non-sequitur.

As to the garnishee, the Court has to decide whether on 14th September 1977 (the date on which the garnishee order nisi was obtained by MBF) 8th and 9th Defendants were nominees of 1st Defendant. Whether on 14th September 1977 the syndicate was nominee of 1st Defendant in relation to the $11,446,500. The case of conspiracy as regards the 7,631,000 shares also has not made out by MBF.

Para. 8 at p. 20 – Transactions not bona fide. The "vendor" is the same as in para. 7 (see F & B Ps prepared by Winston Poon). The particulars under para. 8 has been dealt with under para. 7(A)(4) and para. 7(B)(4).

Para. 9: it is not for us to prove we are who we are but for the Plaintiffs to prove we are not what we purport to be. The Defendants are bona fide purchaser for value. The plea that we have knowledge of 1st Defendant's title is irrelevant.

I now deal with the law:–

Re Onslow's Trusts (1875) XX L.R. Equity Cases 677, 680-681. The question remains re the charging orders nisi whether 1st Defendant could have made a valid charge on the dates of the charging order nisi in respect of the shares in question. If by those dates 1st Defendant had disposed of his beneficial interest in those shares then there would have been nothing to charge.

Gill v. Continental Union Gas Co. Ltd. (1872) VII L.R. Exchequer 332, 336-337. On the date of the charging orders nisi 1st Defendant had disposed of his entire equitable interest. The agreement of 23rd March 1977 has the effect of taking the beneficial interest in the fifteen million shares out of 1st Defendant and putting them in the syndicate, notwithstanding that the full purchase price has not been paid – this is on the basis that that agreement was genuine.

Hawks McQarthur (1951) 1 A.E.R. 22 is to be distinguished. Here the transferees of the shares had paid for the shares but had not been able to get the legal title. Had they not paid in full for the shares they would not have had a better claim. Headnote – F-H referred to. Gill's case (supra) was applied. Per Vaisey at p. 25 – A, and the paragraph just after letter F; pp. 26-27 the paragraph just below letter G; p. 27 letters D-F: "On general principles, etc."; pp. 27-28 last paragraph.

Where the full purchase price has not been paid, in law it makes no difference. Palmer at p. 387, paragraphs 40-03, 40-04. Musselwhite v. Musselwhite & Son Ltd. [1962] Ch. 964 – judgment (3) on p. 965. Per Russell, J., at p. 979, from last paragraph to p. 980, at p. 984 last paragraph to p. 986.

None of the authorities say the unpaid vendor may charge the shares. Note in particular the last paragraph of p. 986 to p. 987. An unpaid vendor of shares has disposed of his equitable interests.

Parway Estates Ltd. v. Comm. of I.R. 45 Reports of Tax Cases 135, p. 140 – H to p. 141 – B to p. 142 – B. Upjoin J. was upheld by Court of Appeal: see p. 146 between G & H, p. 148 between B & C.

30th November, 1977.

On garnishee order, see General Horticultural Co. (1886) 32 Ch. D512 – headnote.

Mr. Yorke says only an assignment will suffice and failure to register constitutes a defect in title. The authorities demolish the argument.

If the 23rd March 1977 agreement was a sham then there would have been no valid disposition of the fifteen million shares. The Court must find that 8th and 9th Defendants were 1st Defendant's nominees, that the syndicate knew they were nominees, and that neither side, i.e. 1st Defendant and syndicate, intended the 23rd March 1977 agreement be of any effect whatever but only as a mere pretence. If Court not satisfied as to the second element it must follow that the agreement is genuine because it would only mean that 8th and 9th Defendants made the contract on behalf of an undisclosed principal.

In support of my submission that 8th and 9th Defendants were not 1st Defendant's nominees. I would say this. The fifteen million shares remained in the name of Asiatic till 28th March 1977 when they were transferred to Fermay. 1st Defendant is no fool. The question must arise: would 1st Defendant have left the fifteen million shares in the name of Fermay and therefore liable for seizure if he had remained the beneficial owner. This lends credence to the statement by 1st Defendant to 4th Defendant and by 8th and 9th Defendants to 4th Defendant that 1st Defendant had sold the shares to 8th and 9th Defendants in November 1976, i.e. about a month after he had fled Hong Kong. He would only have left the shares in this vulnerable position, in Fermay's name, if he had ceased to have a beneficial interest.

The Court will have to find, if the Court were to find that the syndicate had knowledge, that every member of the syndicate was lying to the Court, or 4th Defendant was lying to the Court and to his partners because he reported to the syndicate on his visits to Taipei. The points which negative knowledge are: (1) Why was any sort of payments made to 8th and 9th Defendants if the syndicate knew them to be 1st Defendant's nominees? The payment of $92,000 would have been entirely superfluous. 4th Defendant was not challenged about this payment. (2) The unchallenged body of evidence comprised in the custom coupons and the bank drafts – if not for payment to 8th and 9th Defendants then for what purchase? (3) Why was Fermay set up at all, if the intention was to transfer from 1st Defendant to 4th Defendant through 8th and 9th Defendants? The use of Fermay would be superfluous. (4) Why trouble to authenticate the shares if they were known to the syndicate that it was 1st Defendant who was selling the shares? The Court will not easily discard the evidence of the 4th, 5th and 6th Defendants, particularly 4th Defendant's presenting the share certificates to banks in Taipei and Hong Kong. (5) If this was a straightforward deal with 1st Defendant through 8th and 9th Defendants, why three months of negotiation? (6) If 1st Defendant was unloading via 8th and 9th Defendants to the syndicate with their knowledge the fifteen million shares, why leave outstanding 422,560 shares in the name of Asiatic and 400,000 in the name of Triumphant, as these extra shares would have been useful for the syndicate to make up the controlling package. It would be a very odd situation if 4th Defendant having acted in collusion with 1st Defendant through 8th and 9th Defendants should then proceed upon his election as Chairman of San Imperial to (i) change the registrars (ii) arrange for a special audit and (iii) sue 1st Defendant in June for the $1 million owed to San Impeial. The fifteen million shares are not to be viewed in isolation but in the context of the syndicate trying to acquire a controlling or an effective controlling interest in San Imperial. It was J. Coe's enquiry which started the chain of events. If there was a plot between the 4th, 5th and 6th Defendants and J. Coe before even 1st Defendant fled Hong Kong then all four must have been lying.

Now, 2,609,000 (329,400 + 2,279,600) shares were bought in Hong Kong, of which a total of 940,200 was purchased after 30th March 1977. The 2,165,000 shares bought in Taiwan were bought cheap because they were unauthenticated and the vendors wanted hard cash. No cross-examination of 4th Defendant as to the funds which he imported into Taiwan totalling some $424,000: this is apart from the $92,000 paid to the 8th and 9th Defendants. If 4th Defendant did not use the $400,000-odd to pay 8th Defendant on behalf of the vendors of the 2,165,000 shares what purpose would there have been for this payment – none other has been suggested. If 1st Defendant was still the beneficial owners why left those shares in the name of Asiatic and Triumphant right up to 29th March 1977.

The MAF agreement of 30th March 1977 was made because the syndicate needed the shares and was prepared to forgive profit on this particular parcel. The inspector (in Yellow 5, at 63) gave no hint there was anything sinister about the transaction.

The agreements with Rocky referred to. J. Coe was acting for Siu King Cheung. McInnes' evidence referred to showing that J. Coe was acting for Siu King

Cheung. J. Coe gave value throughout for every aspect of the transaction: $3 million paid to his solicitors before completion; on 9th June 1977 when completion was implemented he deposited 23 million Siu King Cheung shares to back the loan agreement of 9th June 1977 for a loan of $16.2 million. The $19.2 million consisted of $4 million option fee, plus $3 million finder's fee and $200,000 for brokerage plus $12 million for the 8 million shares. The postdated cheques for $13 million (the $16 million less the $3 million finder's fee which the syndicate agreed to defer after 4th Defendant had failed to raise financing after the 9th June 1977 loan agreement) were mere mechanics (Document 88, Yellow 1). 4th Defendant needed $3.8 million to complete his deal with MAF (4th Defendant had already got $1 million on account). He would have got the $3.8 million if he succeeded in getting the re-financing on the loan agreement with J. Coe, backed by the Siu King Cheung shares. He failed to do so because of the adverse publicity then being given about the claims against the syndicate and the San Imperial shares. It was in J. Coe's interests that he lent the money because he needed the shares which was part and parcel of the eight million shares and he himself incurred no risks because by this time 4th Defendant had J. Coe's postdated cheques and J. Coe could have used his cheques as a set off. The arrangements were always business like – interests were charged by either side. Upon maturity of payment of J. Coe's cheque i.e. after the initial set off of the $3.8 million loan with interest, there was no reason why 4th Defendant should not lend the money back to J. Coe with a view to earning interest. All sums have now been paid to the syndicate commencing 4th August 1977 and ending with the interest payment on 31st October 1977. J. Coe's repayments to 4th Defendant are in item 35 of 10th Defendant's list in Yellow 4 p. 6.

Re the $3.8 million borrowed from Oceania by J. Coe via nominees in order to lend to 4th Defendant. Even there J. Coe gave value because the loans were secured by shares or property belonging to or under the control of J. Coe. J. Coe has repaid Oceania the $3.8 million (item 33 (a) of 10th Defendant's list in Yellow 4, p. 5). See Ex. D12.

Re the Oceania purchase by J. Coe for Siu King Cheung – it was for full value i.e. 7 million new shares of Siu King Cheung. The Bangkok Hotel was sold for $7.4 million and the proceeds went into Siu King Cheung's accounts. J. Coe has given credible reasons for buying Oceania and for selling Bangkok Hotel. He did not have to resort to the acquisition of Oceania or sale of Bangkok Hotel to finance his purchase of shares from the syndicate, e.g. by the issue of Siu King Cheung shares to the syndicate, to raise bank loans, to use the overdraft facilities of some $4 million.

Item 35 in Yellow 4 at p. 6: re the 13 cheques by way of repayment from J. Coe to 4th Defendant, the first 7 of which are dated in August 1977 total $4,240,000. $4,240,000 + the 3 earlier cheques of $4½ million which had been cashed = $8.74 million. $8.74 million + $3 million paid before 9th June 1977 = $11.74 million paid to the syndicate before October. The amount payable to the syndicate was $19.2 million less the $3 million finder's fee (which was deferred), we get $16.2 million payable to the syndicate, less the $11.74 million paid before October 1977, leaving a deficit of $4.46 million, which was well within J. Coe's means to pay on his existing overdraft facilities.

In fact the amounts paid by J. Coe during October to the syndicate and to Oceania totalled $9,560,000 (the last 4 cheques of October in item 35 come to $4.18 million, then the payments to Oceania in fact totalled $5,380,000 as shown in item 33(a), i.e. the $3.8 million + $780,000 borrowed from Oceania and $800,000 also borrowed from Oceania – see Exs. D14). The aggregate was therefore $9.56 million which is well in excess of the $7.4 million realized from the sale of Bangkok Hotel.

The MBF asks for one garnishee order in respect of $11,446,500.

J. Coe is nobody's nominee. His two agreements were bona fide and for value. The completion on 9th June 1977 was valid. The shares are now in IPC's name. The 15 million shares are beyond Plaintiffs' reach because of Rocky's agreement of 12th May 1977. If Court is against syndicate, as regards Rocky the option is a genuine agreement for value (i.e. the $4 million option fee). The option agreement at Clause 13 (Document 54 of Yellow 1). Once the Plaintiffs have been paid their judgment debts then the shares are no longer under any restriction, then the option may be exercised. The Plaintiffs are not entitled to a charging order on the 15 million shares but only to a garnishee if the Court is against the syndicate.

Paras. 15-18 of Lees' Statement of Claim are not relevant.

Mr. Tang:

The sale of 3,226,000 (Mr. Yorke argues) shares at $1.50 was necessary to save Ho Chung-po from blame. It had to be $1.50 otherwise Ho Chung-po would face serious consequences in Hong Kong – Breach of s. 48 Companies Ordinance. It was said the company had suffered a book loss of over $3.3 million. Cross-examination of 5th Defendant by Mr. Yorke at p. 3. pp. 4-5 of transcript, (marked X). Mr. Yorke would have been right if indeed there had been a breach of s. 48. There was never a breach of s. 48 (= s. 45 of Companies Act 1929). Cf. s. 54 of Companies Act 1948 Vol. 5 Halsbury's Statutes, p. 163 – particularly the last phrase of s. 54, beginning with "or, where the company is a subsidiary company, in its holding company." Also see the General Note – first paragraph thereof. I.C. Lee's evidence under re-examination (at p. 80), so it was argued 1st Defendant's debt to MAF Corporation was uplifted in exchange for shares in MAF Credit. Under s. 54 of the 1948 Act, there would have been a breach. If it were not for the purpose of saving Ho Chung-po, then the MAF Corporation option agreement was at arm's length. Since Mr. Yorke saw that he could not rely on s. 48, he says 1st Defendant took away $5 million from the MAF group and pocketed it (Mr. Yorke: the allegation about the $5 million has nothing to do with the 3,226,000 shares). Mr. Yorke talks about a self-cancelling operation – it is a little difficult to understand what is meant. Annual Report of San Imperial referred to (infra).

Ex. D4 referred to: the note on p. 16. The auditor obviously passed the investment as one which the company could have lawfully held. The accountant did not refer to the 2.15 million shares in Asiatic's name which should have been in MAF Corporation's name. There is no evidence to prove a breach of s. 48, Ex. P21 referred to. Circle A says $5 million was taken by 1st Defendant. Circle B talks

about a cancellation, thereby creating a debt. No useful purpose can be served by this manouvre. Yellow 5, p. 99 the San Imperial Annual Report p. 113. There can be no creation of something to be cancelled. Re circle B – in the accounts – no debt has been created – instead of finding something in the current assets column, you find something under Fixed Assets. No sinister motive. The making and cancellation of the Lang Sun agreement serves no useful purpose. It is not a self-cancelling entry and can have nothing to do with the 3,226,000 shares.

If the $5 million had been taken away by 1st Defendant the accounts would show this and cannot be covered up by the option agreement of 30th March 1977.

Mr. Yorke's case is that Ho Chung-po has to be saved. I ask, from what? The answer is nothing. There can be no cover up.

Re the return of the 2.15 million shares to MAF Corporation (Ex. P14, p. 12) – the Plaintiffs MBF's case is that 1st Defendant could have and would have taken the 2.15 million shares to Taipei but he wanted to protect Ho Chung-po. These shares were in Asiatic's name and 1st Defendant was in control of Asiatic via his nominees. The 2.15 million shares were not in 1st Defendant's physical possession. There is no evidence he could have taken the shares away. But would he have taken the shares to Taipei? Consider Y.S. Cheng's evidence. By August Ho Chung-po knew 1st Defendant was facing serious charges, one of which was the forging of a minute (see Ho Chapman's evidence). Y.S. Cheng asked Ho Chung-po to transfer the shares out of Asiatic – there is no reason for Ho Chung-po not to comply. He knew 1st Defendant was in trouble, so Ho Chung-po would want to save his own skin. If Ho Chung-po did not know 1st Defendant was running away, there was no reason for him not to comply. Ho Chung-po was not the only directors – at the material time there were four. Taking away the 2.15 million shares would effectively stop 1st Defendant from selling it: nobody would have dared buy from him because everyone would know these are stolen shares, stolen from MAF Corporation, and Ho Chung-po would be bound to at least inform the stock exchanges about the 2.15 million shares in order to save his own skin.

The last thing 1st Defendant would want 4th Defendant to know is that 8th and 9th Defendants were his nominees even if they were his nominees, so it cannot be argued that 4th Defendant knew 8th and 9th Defendants were 1st Defendant's nominees.

Assuming the syndicate paid 1st Defendant the $9 million as Mr. Yorke suggested, why should any one hide the payment? The payment can be evidenced. The 23rd March 1977 agreement, Clause 4 – there can be no estoppel. If the 23rd March 1977 agreement was a sham – what is the real agreement: It could only be a sham, and there could only be need for a sham, if the syndicate were 1st Defendant's nominees and if all the proceeds had to be paid to 1st Defendant (i.e., proceeds of the sale to J. Coe). There is no need for a sham agreement.

The option agreement was entered into on 30th March 1977. As at 31st March 1977 the syndicate had bought 1,690,800 shares from 3rd January 1977. 15

million + 1,690,800 + 2,165,000 = 18,855,800 shares therefore still 4,144,200 shares short of the 23 million shares. Shares purchased in the market in April is 202,000 + shares purchased in June is 14,000 (Statement 4) = 216,000 shares. 4,144,200 – 216,000 – 372,800 = 3,420,400 shares short (see Statement 5 at Document 135 of Yellow 2). 4th Defendant had to complete by 31st May 1977 at the latest, so he had only two months to make up the deficiency. There were not enough shares on the local market. In three months 4th Defendant could only get 1,690,800 shares. Not possible to buy 3,420,400 shares in two months.

Ex. P19 A & B referred to.

Re Oceania. The Oceania loan would not have been necessary had it not been for these proceedings because the loan agreements could have been performed and re-financing achieved. J. Coe's theory of creation is very simple. Yellow 4, p. 126, p. 127 – the cheques were payable to Hong Kong Estates (see below).

Yellow 1, Document 40, Clause 19 and Document 54, Clause 16 demonstrate that the agreements between the syndicate and J. Coe must be genuine.

Re sale of Bangkok Hotel – Mr. Yorke says San Imperial was desperately in need of cash and therefore would have sold the Bangkok Hotel for cash rather than shares (see p. 113 of Yellow 5), but look at p. 99 para. 8. Fixed deposits and cash and Bank balance and note (a) show the $5,067,172 was not readily available, p. 115 Fixed deposits $1,795,911. Cash position improved to $616,331 from $283,937 (p. 99). So James Coe was right.

1st December 1977.

Re Oceania and Hong Kong Estates. The Loong San Building agreement is to be found in a letter in Yellow 4, p. 126, particularly the second paragraph, which says, "You shall have the option if you pay us $5 million." The granting of an option and the exercise of an option. This letter grants an option to Hong Kong Estates for the payment of a deposit of $5 million. It does not say when the $5 million was to be paid. It is implicit that it was payable before the exercise of the option. This letter constitutes an offer to Hong Kong Estates of an offer to purchase in return for a deposit of $5 million. That offer was accepted when 1st Defendant signed at the bottom of the letter. For the present it is unnecessary to investigate whether or not this letter constitutes a sufficient memorandum in writing. At p. 127, Hong Kong Estates wrote to MAF Investment and this letter constitutes the exercise of the option (see the first and second paragraphs). Hong Kong Estates exercised its option but directed the sale and purchase agreement be made with Oceania. Refer to the usual conveyancing practice of nominating an assignee. See the agreement at Yellow I. Document 9 which came about as a result of the exercise of the option. See p. 2 of the agreement para. 1. The natural inference from these three documents is that Hong Kong Estates obtained an option for $5 million as deposit or part-payment if the option is exercised, but the deposit would be refundable if they decided not to exercise the option. In the agreement of 18th January 1977, MAF Investment acknowledged prior receipt of $5 million. On the evidence it is quite clear that Oceania was not the beneficial owner of the 5 million (vide J.

Coe's evidence (which was not challenged) that the only asset of Oceania was Bangkok Hotel.) On the cancellation of the Loong San agreement $6 million was payable to Oceania – that would have formed part of its current assets but as Bangkok Hotel was its only asset it must necessarily follow that it had a current liability of $6 million. The only reasonable inference is that the $6 million is not beneficially Oceania's, but Hong Kong Estates'. Also Oceania directed that payments be made to Hong Kong Estate. See Yellow 4, p. 128, re the payment of $5,999,999; p. 129 re receipt from Hong Kong Estates. The defence witnesses were not challenged or cross-examined as to whether Hong Kong Estates were the ultimate owners. J. Coe at p. 281 of the notes said MAF owed Hong Kong Estates. See Yellow 4, p. 132 – in reply, Yellow 2 Document 132. When J. Coe said he could have done it with Hong Kong Estates as well, he was right.

If indeed 1st Defendant had taken the $5 million away, there was no way by which this could be covered up so there was nothing to protect Ho Chung-po from.

Re the 23rd March 1977 agreement – if it was a sham, it must have been done to cover up something. It would be a sham if the syndicate are nominees of 1st Defendant. If so, then their agreement with J. Coe would be an agreement between 1st Defendant and J. Coe. If it were a sham, it cannot be that only 4th Defendant knew, all members of the syndicate must have known also, that that agreement was a sham. There was no advantage in understating the price. If low price given, it would show a higher profit and the syndicate would have to pay more tax.

After 1st Defendant left Hong Kong MAF was in the effective control of Ho Chung-po and K.Y. Woo, not 1st Defendant.

Mr. Ching:

Re the amount of money involved as far as the two Lees are concerned. Amended Statement of Claim para. 1 M$2,338,651.94 + interests + costs = HK$4,677,303.88 (at HK$2 = M$1) + ($913,030.75 (at 15%) + $383,666.13 (at 6% up to to-day)) + $1,226 = HK$5,975,226.76 up to to-day. Para. 2 M$1,354,037.35 + interests + costs M$120: $2,708,074.70 + $380,166.64 (interests) + $240 = HK$3,088,481.34 up to to-day. The total up to to-day is HK$9,063,708.10 and the interests $1,659.19 per day. The present claim therefore already exceeds the $8.8 million payable by the syndicate to 8th and 9th Defendants. I can no longer be content with the garnishee order being made absolute. I must look for other reliefs. See Pink file 2, pp. 55 and 56.

One cannot isolate the Fermay incident from the IPC incident. If a witness lies in one, he lies in the other.

Re the 15 million shares, 8th and 9th Defendants were 1st Defendant's nominees so the $8.8 million must be paid to us. The syndicate knew they were 1st Defendant's nominees. The agreement of 23rd March 1977 is a sham.

Re the IPC shares, the agreements of 30th April 1977 and 12th May 1977 are sham agreements.

Ask for charging order for all the 23 million shares, or I ask for charging orders on the 15 million shares and on so many of the IPC shares which still belong to 1st Defendant.

If the syndicate partially truthful and if 8th and 9th Defendants are nominees of 1st Defendant then I should get the garnishee order on $8.8 million.

I have proved my case on the documents. The burden of proof initially lies upon the Plaintiff. In this case the evidential burden has shifted onto the Defendants. 4th, 5th and 6th Defendants and J. Coe untruthful. Ask Court to find that.

I.C. Lee says 4th Defendant close to 1st Defendant and did 1st Defendant's bidding (this evidence not cross-examined on)(p. 60). Re 5th Defendant, see Yellow 5, p. 33, p. 36 – telex in Yellow 2, p. 123 of 3rd January 1977 and 4th January 1977 referring to "XXX Ltd. and YYY Ltd." 5th Defendant said in cross-examination that XXX was Asiatic was Triumphant and YYY was Asiatic. So in January 1977 he was already mentioning Triumphant, though 4th, 5th and 6th Defendants said in evidence they were only considering Asiatic. On Defendants' evidence they were only interested in San Imperial shares at the time though in January 1977 in fact MAF Credit was also mentioned. Re I.C. Lee's meeting with 8th Defendant. His description of 8th Defendant not contradicted by 4th Defendant. If I.C. Lee was lying he could have said 8th Defendant told him he was 1st Defendant's nominee. It is true 8th Defendant's conversation does not show he was 1st Defendant's nominee. We do not say what 8th Defendant said was true – at the least it shows 8th Defendant was not acting for himself but for somebody's else. If 8th Defendant lied, he lied to lead us to a search in U.S.A. so as to give them time to transfer the shares.

Ho Chung-po was and is 1st Defendant's nominee (cf. Donald Yap's affidavit on what Ho Chung-po told him), and 4th Defendant knew about it all the time. 4th Defendant agreed with me that at all material times he knew Ho Chung-po was 1st Defendant's nominee. The warrant of I.C. Lee's arrest is irrelevant.

We prove our case on the documents and on Defendants' own evidence.

(1) If a person lies or is evasive, the question is why? (2) If a person does something that is totally unnecessary, that wastes time and money, again the question is why?

Suppression of truth – massive suppression of truth in the interlocutories and even in the trial. Some affidavits false. 4th Defendant, 6th Defendant and J. Coe said they had read their affidavits – each said I left it to my lawyer. 5th Defendant's excuse is that I overlooked it. They did not even try to purge themselves. The suppression of the 12th May, 1977 agreement and the reliance of the 30th April 1977 agreement. 4th Defendant's affidavit in Red 2 p. 15 – in no

material particular is that affidavit true, starting from para. 5. The 12th May 1977 agreement was an option re the 15 million shares – not probable for J. Coe not to exercise the option and forfeit $4 million. 5th Defendant's affidavit in Red 2 p. 8 – no mention of the 12th May 1977 agreement. 4th Defendant in Red 2 p. 33 – para. 14m again rely on the 30th April 1977 agreement. 5th Defendant too in Red 2 p. 25. The 12th May 1977 agreement was not mentioned till 4th Defendant swore it in these proceedings (Red 2, p. 50) and till J. Coe disclosed it in his first affidavit (Red 2, p. 42). 6th Defendant's affidavit (Red 2, p. 22). 5th Defendant's affidavit in Red 2 p. 35. The agreement of 23rd March 1977 was also suppressed in the first affidavits.

4th Defendant's affidavit in Red 2 at p. 51, p. 54 Blue file, p. 46, paras. 9, 10, 11, 16, 17, 18.

Also no mention that J. Coe had become managing director in mid-June of San Imperial before he bought Oceania. No mention of finder's fee by J. Coe or by anybody else, not till the list from Ph. K.H. Wong & Co. came.

Counsel misinstructed – 5th Defendant is a client AND instructing solicitor. Errors made by counsel. Re telex – Mr. Swaine said when I was opening that when the telex was sent, 4th Defendant had not yet reported fully to 5th Defendant. In fact 5th Defendant had had a report from 5th Defendant when telex sent telex at 4.20 p.m. on 4th January 1977 and 4th Defendant had told 5th Defendant about 8th and 9th Defendants. In fact on 3rd January 1977 5th Defendant already knew the telex had not gone off on 3rd January 1977 (Mr. Swaine: not necessarily). Mr. Swaine opened by saying syndicate was out to buy the shares of 1st Defendant from 1st Defendant – cf. 5th Defendant's evidence. Mr. Swaine pointed out 4th and 6th Defendants were not worried about the moralities and they had no reason to invent 8th and 9th Defendants. If 5th Defendant did have reservations about morality – then he did have a reason to lie about 8th and 9th Defendants because he did not want the Court to know he dealt with 1st Defendant through 8th and 9th Defendants. Mr. Swaine said the $92,000 originated from the Wing On Bank draft (Yellow 2, Document 125) which is dated 21st January 1977 – but the agreement with 8th and 9th Defendants was 23rd March 1977 – how did 4th Defendant know in January he had to pay 8th and 9th Defendants in March? This is the cheque that was not cashed! Mr. Swaine was misinstructed that the $92,000 was paid by that cheque. Re the 2,165,000 shares bought from Lee & Fong. In his opening, Mr. Swaine said the syndicate agreed to let 4th Defendant have these on his own account because of the leg work done by 4th Defendant – but the reason given in the opening is different from that given by 5th and 6th Defendants in their evidence (that the shares could not be authenticated and because it was against the syndicate's policy) – 4th Defendant yet gives another reason. In his opening Mr. Swaine says J. Coe was willing to pay the price asked by the syndicate because he had made his own checking as to the asset backing but the evidence is that J. Coe was given Ex. D16 and it was only after that that he went to look at the property to check – without checking the liability. The agreement of 12th May 1977 – in opening Mr. Swaine says it was because Ph. K.H. Wong had noticed the notice of I.C. Lee of 13th April 1977 – that notice was important enough for 6th Defendant to phone 5th Defendant but 5th and 6th Defendants did

not tell J. Coe but none of the syndicate would say the 13th April 1977 notice was a reason for the coming into being of the 12th May 1977 agreement. The Connaught Road agreement between MAF Investment and Oceania – Mr. Swaine opens that this agreement was part and parcel of the whole exercise – the syndicate was getting the shares out of 1st Defendant's name to protect the shares, and 1st Defendant – the cancellation of that agreement was part and parcel of the whole thing, this 4th Defendant denies, thereby contradicting the opening. Mr. Swaine says J. Coe thought the agreement was a bad deal, J. Coe does not say so in his evidence. In his opening Mr. Swaine says 4th Defendant had $1 million in hand on a joint account therefore he only had to borrow $3.8 million from J. Coe – J. Coe says no such thing in his evidence Yellow 5, p. 1: It does not show in that account that he (4th Defendant) had used the $1 million. In his opening, Mr. Swaine says upon the discharge of the loans the Siu King Cheung shares were released to J. Coe and at the end of the day it was J. Coe's money in circulation earning money – J. Coe knew of no such loan back to himself which is different from the opening. J. Coe only says "you will have to ask my chief accountant". And the chief accountant is not called.

The unnecessary complexities – (1) There was Fermay set upon the suggestion of syndicate. Bringing the transaction to Hong Kong was meaningless. 8th and 9th Defendants lost control not just by Fermay by Yellow 1, Document 17, pp. 1 and 3 signed by 4th Defendant on behalf of Fermay – so 8th and 9th Defendants were deprived of control of the 15 million shares. (2) As to authentication we are asked to believe that three grown men would sit around and consider ways and means of authenticating shares. It was easy for 8th and 9th Defendants to sign the transfer forms and to send them and the shares to the registrars with a covering letter requesting new shares to be issued to Peter Mo and hold to "our order." 1st Defendant did not leave the 15 million shares in a vulnerable position – he left them with his syndicate and Fermay. (3) There was the financing of the shares by J. Coe. In chief J. Coe said he did not have enough cash but Siu King Cheung had enough assets. J. Coe owned or controlled 23 million shares of Siu King Cheung – why not just take his 23 million shares to a bank and ask for a loan? The syndicate was helping 1st Defendant because the syndicate and J. Coe was not willing to use their own money. 4th Defendant lent J. Coe $16.2 million – 4th Defendant did not have this kind of money. Then J. Coe nominally pays them back and hands over 23 million Siu King Cheung shares for 4th Defendant to raise a loan from the bank. Why did not J. Coe himself go and raise the loan on his own shares. One explanation only because they were not willing to spend any money. No resolution authorising J. Coe to pay 1% commission to 4th Defendant, Siu King Cheung being a public company. No resolution to pledge any of those shares. (4) The financing of the purchase of the 3,226,000 shares – this is a series of coincidences and unnecessary complexities. Yellow 4, p. 126. Then Yellow 4, pp. 20-22 of 26th October 1976. One could not be in complete control of Oceania without those three shares. Yellow 4 p. 1. Yellow 1, Document 9 from p. 2 onwards on 18th January 1977. No attempt to prove a true payment. The 18th January 1977 agreement was set up to be knocked down again. On 30th March 1977 Document 19 Yellow 1. Siu King Cheung authorised J. Coe to buy San Imperial shares – on the same day Document 18 in Yellow 1 comes into being. Then on 3rd May 1977, Document 48 Yellow 1 para. 2 – it was the syndicate who told San Imperial

to do that. After that on 12th May 1977 – Yellow 1, Document 9 – then Document 30. In mid-June J. Coe takes over Oceania and J. Coe having got control of San Imperial takes over 100% of Oceania (not 100% less three shares). Document 24, Clause 7(d), (e) and Document 40 Clause 7(c)(iii) – where the $6 million in Document 9 p. 1 is provided for Documents 42 and 54 Clause 5(c)(iii) and (vi). Although the option was exercised on 20th April 1977 payment was made well before 22nd July 1977 – by the creation of money!! Apart from Bangkok Hotel Oceania had $1.2 million ($6,000,000 – $4.8 million Document 9?) J. Coe could have raised $4 million on the bank overdraft and not through Oceania. He did not do so because he did not want to use his own money. Document 88 in Yellow 1 shows on 22nd July 1977 the syndicate could have got $1.5 million on the first cheque. That and the $3 million already paid by J. Coe make $4.5 million which the syndicate could use to pay MAF Corporation but they did not want to use their own money. No real money used. The $1.2 million in Oceania was matched by Oceania's $1.2 million debt. Mr. Swaine opens that 4th Defendant borrowed $0.78 million from J. Coe as a separate loan having nothing to do with the agreement – 4th Defendant says he used the money to buy shares. Bangkok Hotel sale completed in October 1977 – coincidence that the Oceania loans were repaid in October 1977: same money going round and round.

Demeanour of the defence witnesses. 6th Defendant's guarantee and 4th Defendant was backdated. Fermay's minute (Document 62 in Yellow 1) was backdated. Documents not stamped Breaches under the Deposit Taking Companies Ordinance. Ex. P10 relates to 15,515,000 shares (!) at 60 cents (!) 1.65 million shares not mentioned therein, though 6th Defendant says the 514,000 and the 1.65 million shares were mentioned together. 8th and 9th Defendants objected to Clause 4, but in March 1977 exactly that happened!! 4th Defendant did not stamp the bought and sold notes for the shares he had bought in Taiwan. Yellow 4 33(a) – loans taken by 4th Defendant's 2 own employees and he says he knows nothing about it. His newspaper interview in Yellow 1, Document 57. If 4th Defendant was serious in suing 1st Defendant why not attack 1st Defendant's shares in Asiatic and Triumphant. 6th Defendant also lies.

Re J. Coe – his reason for putting $1.50 in the contract would not stand up because people would be advised about the $3 million finder's fee. Why 23 million? 8 million or 15 million would have been enough. Why did the syndicate buy the 3,226,000 shares from MAF Corporation? Totally superfluous. The finder's fee was paid on 26th October 1977 – why was it paid other than as window dressing. The $3 million relates not to the 8 million but to the entire 23 million shares. No document of trust in favour of Siu Kin Cheung. Breaches of the Deposit Taking Companies Ordinance.

Re 8th and 9th Defendants – no affidavit from them. Re Wilson's description – perhaps 8th Defendant lied to 4th Defendant because he realized he had said too much to I.C. Lee.

8th and 9th Defendants were nominees of 1st Defendant: (1) Nothing in writing showing 8th and 9th Defendants bought these shares from 1st Defendant. (2) Content of 8th Defendant's conversation with I.C. Lee. (3) Conversation be-

tween 8th Defendant and 4th Defendant – telephone conversation. (4) Madam Lau's notice: 8th and 9th Defendants were strangers to 1st Defendant (Yellow 1, p. 86), 1st Defendant's business in Hong Kong was failing and the strangers wanted to buy shares in 1st Defendant's failing business. (5) without knowing anything about San Imperial. (6) 8th and 9th Defendants ever tried to authenticate the shares? Nothing to show they did. (7) No evidence that 8th and 9th Defendants made any enquiries whether or not 1st Defendant was the true owner – the shares were not in his name but in Asiatic's. (8) nor did they enquire from the registrar if there was a stop order. (9) or if the shares were encumbered. (10) nor the market value of the shares. (11) 8th and 9th Defendants bought on 30th November 1976 and never tried to put shares into their own names right up to 30th March 1977 in Asiatic's name of whom they knew nothing. (12) What happens if there are dividends, right issue, suspension, annual report, bonuses? (13) 8th Defendant presumably bought for re-sale but how did he buy for re-sale without knowing anything about the shares. (14) Nothing was said as to how much 8th and 9th Defendants paid for the shares. (15) Financial standing of 8th and 9th Defendants. (16) 8th and 9th Defendants committed serious crimes – if already wealthy, why take the risk. (17) If 8th and 9th Defendants did know they had committed a crime, how on earth did they expect to sell the shares. (18) 8th and 9th Defendants unwilling to enter into Ex. P10 because of the price and conditions yet entered into the Fermay agreement and lost everything in return for $92,000. (19) The agreement is 23rd March 1977 – registration on 28th March 1977. In fact it was an one day registration because on 27th March 1977 4th Defendant says in evidence. 4th Defendant asked Ho Chung-po had arrived and Ho Chung-po told 4th Defendant the shares had not arrived. On 28th March 1977 they were registered. 920) 8th and 9th Defendants are owed $8.8 million, why no care taken by 8th and 9th Defendants and why let go the shares to the syndicate? Why not appear to these proceedings? What is the point of signing a contract unless you are prepared to sue or defend upon it, unless it is a sham. (21) Fermay is still their company, why then have not tried to come or said they cannot come. (22) 8th and 9th Defendants are nominees – they have never pushed for their money. 4th Defendant says he had explained to 8th Defendant over the telephone. Cf. 5th Defendant's evidence that 8th and 9th Defendants continually pushed 4th Defendant for money.

2nd December 1977

(23) Known predilection on the part of 1st Defendant to use nominees. (24) If 5th Defendant truthful about his worry about dealing with 1st Defendant, then there is good reason for 1st Defendant to use nominees. (25) If 4th Defendant telling the truth then he never saw 8th and 9th Defendants in possession of the share certificates AND transfer forms at the same time, so 8th and 9th Defendants never had control of the shares. (26) We do not know how they got to Hong Kong.

As to the reasons advanced by Mr. Swaine why 8th and 9th Defendants could not be nominees: (1) Payment of $92,000 – even nominees can be paid. (2) Evidence about money taken to Taiwan – I am not concerned about how the money was used. Lo Sze was not called. No receipts were given for the Lee & Fong deal. (3) Why set up Fermay? – Fermay was to get the shares out of the control of the nominees 8th and 9th Defendants. (4) Why trouble to authenticate? –

specious efforts. It was not just authentication – it was getting the shares out of the name of 1st Defendant. (5) Three months of negotiations – even 1st Defendant would wish to bargain if the agreement was genuine, if a sham, all this takes time e.g. the re-financing because the syndicate did not want to use their own money. (6) If 1st Defendant unloading through 8th and 9th Defendants, why leave the Asiatic and Triumphant shares? – Why didn't the syndicate buy those shares – why didn't 4th Defendant go against those shares when as Chairman of San Imperial sued 1st Defendant? (7) It would be odd for 4th Defendant to change registrars, arranged for special audit and to sue 1st Defendant – because 4th Defendant thought the shares were safely locked up and he had to do a bit of window dressing as Chairman of San Imperial.

Whether the syndicate knew 8th and 9th Defendants were nominees: ((1)) Telex – it shows they knew – it referred to XXX and YYY when 5th Defendant knew of the existence of 8th and 9th Defendants. ((2)) Though the syndicate did not meet till 4th January 1977, they start buying on 3rd January 1977 because they knew the shares were forthcoming from 8th and 9th Defendants. ((3)) 5th Defendant had good reasons to interpose 8th and 9th Defendants as nominees. ((4)) Why was 4th Defendant not re-examined on 4th Defendant's reason why he thought 8th and 9th Defendants were not nominees a reason which Mr. Ching did not want in cross-examination of 4th Defendant. 5th Defendant was never asked what his belief is. 5th Defendant says because (1) negotiations protracted – if 8th and 9th Defendants had bought speculatively then no reason for them to prolong the negotiations. They knew nothing about the shares. (2) 8th and 9th Defendants brought forward nothing concrete about the validity of the shares – does not make sense. (3) The syndicate's big problem was the worth of San Imperial and there was nothing forthcoming from 8th and 9th Defendants about that – if 8th and 9th Defendants knew nothing then all the more reason to suspect 8th and 9th Defendants. (4) 8th and 9th Defendants co-operated but gave no inspiration – 8th and 9th Defendants only co-operated to the extent of agreeing to lose control of the 15 million shares. Those were the four reasons given by 5th Defendant for believing that 8th and 9th Defendants were not nominees. 5th Defendant advanced bad reasons, 4th Defendant not re-examined for his reasons, mean they knew 8th and 9th Defendants were nominees. ((5)) The setting up of Fermay – it was an integral part of the set-up – at the syndicate's suggestion. They wanted to use and then neutralize the nominee. ((6)) Payment to 8th and 9th Defendants of the $92,000: the Wing On Bank draft that could not be cashed – wrong date (supra). ((7)) Where was the $8.8 million to come from to pay 8th and 9th Defendants – the re-financing did not cover the $8.8 million. ((8)) The predilection of 1st Defendant to use nominees – Ho Chung-po was and is 1st Defendant's nominee. 4th Defendant said it though later resiled from it in part. 5th Defendant says we did not know if 8th and 9th Defendants were just another Lee Ing Chee or Ho Chung-po. 4th and 5th Defendants knew at all material times why should they now deny knowing it? ((9)) Cheung Foon was mentioned in the opening of the defence. He is from Hong Kong – present at some of the discussions between 4th Defendant and 8th and 9th Defendants in Taipei. He has not been called – why? (Mr. Swaine explains why he is not called.) ((10)) Lee & Fong shares – why 4th Defendant willing to buy them? Cost him $400,000-odd (= 1/3 of his wealth). He bought without authenticating them because 4th Defendant knew they were genuine coming

from 1st Defendant. ((11)) Why should the syndicate be contesting the garnishee – it does not matter who the syndicate pay – they could have interpleaded. 5th Defendant thought he had a duty!! ((12)) Incredibility of the syndicate's witnesses.

Re the 23rd March 1977 agreement is a sham: (1) 8th and 9th Defendants have not appeared. (2) Fermay. It was never necessary for 8th and 9th Defendants at any time to trust the syndicate. (3) Fermay was the idea of the syndicate. (4) How Peter Mo & Co. came to be involved – no information as to how these shares came to Hong Kong – somehow they got to the registrars who sent the certificates to 5th Defendant to (A) fill in the transferees (why sent them to 5th Defendant to fill in the particulars), and to (B) execute the bought and sold note (why to Peter Mo & Co., why not 4th Defendant?) because Ho Chung-po knew of 5th Defendant's involvement and he could only have known from 1st Defendant. (5) Re the Lee and Fong shares – 4th Defendant bought because he know they could have got through (see Ex. P10). (6) Ho Chung-po must be clear he was and is 1st Defendant's nominees. A lot of questions he could have answered. 2nd and 3rd Defendants are defendants but Ho has not appeared. If he is not a nominee – why was he not called? If he is a nominee and if the syndicate is telling the truth why was he not called? (Mr. Swaine – why don't you call him?) (7) Telex – MAF Credit, Triumphant.

Agreement of 12th May 1977 (Document 54 in Yellow 1) – re option re the 15 million shares. Mr. Swaine says even if the 23rd March 1977 agreement was a sham Rocky would have an equitable right – it cannot be right: see Clauses 13 and 16. They cannot have an equitable right or beneficial interest. The rights do not arise until after the restraints are discharged.

Re the IPC shares: (I) re Lee and Fong – same arguments apply. They were willing to sell so cheap knowing 8th and 9th Defendants were selling at 60 cents. 4th Defendant left authentication till very late (the absurd story about Wong Luk Bor). He paid 8th Defendant and not Lee and Fong. If Lee and Fong and 8th and 9th Defendants were all nominees of 1st Defendant then this begins to make sense. (II) MAF Corporation shares – all done on behalf of 1st Defendant – did not go into IPC till 9th June 1977. Tao not called. Shares did not go into Rocky but into IPC – to mislead and to confuse. Ho Chung-po bought the 3,226,000 shares. The Rocky agreements were sham. Many suspicious circumstances. The 12th May 1977 agreement not disclosed till much later: it is not stamped. The suspicious financial arrangements – syndicate and J. Coe were protecting 1st Defendant's assets but were not willing to put up their own money. This agreement went through notwithstanding the Court orders. (4th Defendant knew 1st Defendant was being sued by Harilela.) Re the two trust deeds in relation to IPC. Some payments and stamping of instruments of trusts were after this Court's rulings. No mention of Siu King Cheung before Mr. Swaine opened. No instrument of trust by Rocky in favour of Siu King Cheung. Price per share – should be $1.63.

Mr. Yorke: (p. 214) (p. 226) (p. 229)

1st Defendant made preparation before leaving Hong Kong re the San Imperial (S.I.) shares. He has mulcted companies. 1st Defendant therefore tried to

realize the value of his holding in S.I. before leaving. Hence his shares operations (see Ex. P12). 5th Defendant agreed that 1st Defendant must have made preparations before he left Hong Kong. Note Declaration of three Oceania's shares (Yellow 4, p. 22), chopped on 26th October 1976. 1st Defendant did not put in all the shares he had – perhaps some share certificates not easily findable or in Hong Kong available for conversion.

Ever since we saw the MAF Corporation blue cards it has been our case that it was necessary for 1st Defendant to have an ally in Hong Kong, i.e. Ho Chung-po (HCP). HCP would be in difficulties as soon as 1st Defendant's affairs were investigated re the 2.15 million shares. Re Ex. D4: the accountant at the time was not Y.S. Cheng. Y.S. Cheng's evidence is a bonus to us. It is not necessary for me to prove there had been a breach of s.48 – what matters is whether those people knew they had done something wrong that had to be covered up. The 2.15 million should be in MAF Corporation but was not and so should be put right. See Black 3, p. 916 and p. 917. Re Wilson's evidence. See Black 3, p. 925. We got the blue card after difficulty. *The computer printout was doctored, and the blue card was withheld from us for about three weeks and this gives the key. Element of fraud or criminality in something. The 2.15 million was never reduced to MAF Corporation prior to 1st September – so Mr. Tang's presumption of 1st Defendant's theft falls because the shares were not even in MAF Corporation's name. Mr. Tang's arguments based on false facts. Why did HCP do all the other things (see Ex. P14) if all that HCP needed to do was to report to the stock exchanges? Re Ex. P19 A and B – you cannot fit the dealing in the MAF Corporation into the local market (vide Kam Ngan). They were washing 1st Defendant's shares (see Y.S. Cheng's evidence).

The intention is to self-cancel the shares entries re the 2.15 million shares. Market price not affected.

No explanation consistent with honesty.

MAF Corporation was not buying for long term investment because they stopped buying when the market was down.

1st Defendant set up the Oceania deal as a cash yielding entity so that the purchases would be largely in part self-financing (Ex. P21). Declaration of trust of three Oceania's shares – 1st Defendant already had at the time in contemplation someone like J. Coe (Yellow 4, p. 22).

It is enough for my purpose that 1st Defendant and HCP thought something was wrong and had to be covered up. Mr. Tang relies on Ex. D4 to show there was no breach of s.48 – but the auditors should have discovered that the company had not got the investment at all. The Note in Ex. D4 – the S.I. share last stood at $2 in 1972 – but Ex. D4 was made in 1975. Ex. P14 made no allowance for loss in book value. In 1974 the share was less than $1. It may be that if HCP did not make good the loss on the book value he would be in trouble (i.e., re the 2.15 million

* not produced.

shares). All I need show that probably they had something to hide. HCP not called, nor the Wong Luk Bor or Tao.

The two most suspicious documents are Yellow 4, p. 22 and the MAF option agreement. These are the integral part of the same scheme.

On 28th October 1976, having set up the scheme 1st Defendant left Hong Kong, with about 20 million shares (if the shares left Hong Kong at all), worth about $30 million. Yet 1st Defendant disposed of them for a song! (Lee and Fong must have got them at less than 20 cents if Defendants are to be believed.) Coincidence that MAF Corporation came out with their book wiped clean! – coincidence too that Yellow 4, p. 22 existed!

We shall never know what really happened.

The S. (= syndicate) would want a lot of money before they were prepared to join in. The proceeds were therefore to be split between 1st Defendant and the S. The 329,400 and 2,279,600 shares might be innocent, perhaps too the 369,000 shares. All the rest owed still 1st Defendant's.

The only evidence come from the incestuous circle.

HCP and the MAF Corporation option agreement. 4th Defendant has seen the two blue cards for MAF Corporation and MAF Nominees and therefore knows the figure 3,226,000 shares. HCP must know there had not been recent dealings with S.I. shares. Either of them could easily have ascertained how many S.I. shares MAF Corporation had got. 4th Defendant was buying from the one vendor who knows how many shares there were i.e. the registrars themselves. On 24th March 1977 HCP had amalgamated the MAF Corporation and MAF Nominees into one (Ex. P14, pp. 12,14) – this was one day after the 23rd march 1977 agreement with 8th and 9th Defendants. The wording of the MAF Corporation agreement – Clause 3 (Yellow 1). It is an option for 6 million shares – and see the words in brackets. Why then this wording drafted by 5th Defendant? No explanation was forthcoming. This agreement was therefore not drawn up anywhere near 30th March 1977 but at a time when the number of shares was not known at all (perhaps in October 1976) for how else could you make a mistake of about 100%? Or, looking at the Stamp Ordinance as put to 4th Defendant, the only reason for making it an agreement which does not require stamping is that the agreement is not a contemporaneous one. The real date of the agreement was probably 28th October 1976 or earlier.

Re the participants in this matter. Necessary for Court to find on honesty and integrity of the defence witnesses. The demeanour of defence witnesses in the witness box. Inconsistencies in their evidence. The failure of 4th Defendant to authenticate his shares purchased in Taipei. He stood to gain a lot of money yet he did not authenticate the shares. 4th Defendant wants to keep his shares separate – why, but one share is like another (see Yellow 1, Document 28).

The option in the 12th May 1977 agreement conferred no rights until exercised therefore they suppressed that agreement. 4th Defendant's affidavit at

Supreme Court of Hong Kong High Court

No. 41

Judge's Notes – (C) Final Submissions

p. 53 of Red file 2 is misleading. It is drafted by 5th Defendant.

No genuine payments for the sale of these shares.

5th Defendant's first affidavit, p. 8 Red file 2 where he gives the others a character reference at p. 11, the last sentence of para. 14 is misleading. Cf. his second affidavit on p. 25 when he is truthful.

Mr. Tang says HCP was protected from nothing (I have dealt with that). He also refers Exs. P19 A & B – I have dealt with it also. Then he says S.I. was not strapped for cash: shows he knows nothing about the convention about accountancy. The danger of overtrading if you do not have the working capital i.e. the means whereby one pays his way (by cash, loans from Bank against security). For fixed deposits – you can get it early on payment of a penalty in practice though you have no contractual right to do it. Even if the bank refuses to do it, another bank will lend you money against that deposit. In Yellow 5 p. 99, 113 etc., it is supposed to show an increase in cash, but it is dribble in the bucket probably it will keep the company going for 10 days only. That is why I said S.I. was strapped for cash and J. Coe had no answer to that.

Re Mr. Tang on 4th Defendant and Bentley after the option agreement: He said it is not possible to purchase those shares in the local market but this should have been dealt with by 4th Defendant in re-examination. But they did not even try to get the shares in the local market, so it is idle to say they could not get the shares. There were 25 million shares around since S.I. became public (that is, not counting 1st Defendant's shares and MAF Corporation's 3,226,000 shares). It is not for counsel to say by way of submission that it could not be done or that it could not be done without pushing the price up.

5th December 1977

"Washing" = to wash off the name of the owner of the shares because he does not want it known lest certain consequences would follow. Chain of ownership is therefore "washed".

The 2,279,600 shares – not shown in Ex. P14.

The 36,900 shares – probably washed but can't prove it.

The 5,390,200 shares were in MAF Nominees (see Transfer Nos. 4858, 4861, 4859 (see Ex. P14, pp. 14 and 17)). Transfer No. 4859 comes from Cheng Hang Wu – 4th Defendant's wife (Yellow 3, Document 15).

A whole group of actions by 1st Defendant for none of which was there a probable explanation – so the probabilities are that all the agreements were shams.

See (1924) 19 Lloyd's List L.R. 95, those parts marked X.

(1) In the affidavits in July all evidence of refinancing was suppressed,

e.g., para. 18 of 4th Defendant's affidavit in Red file 2, p. 53. Ask Court to make a finding to wrest from the defendants. (2) the bank accounts from April. (3) onwards (which we did not get till 2nd November 1977). Yellow 4 was obtained through Mr. Ching's cross-examination though Mr. Swaine in his opening undertook to produce it (though Yellow 4 relates to 10th Defendant only).

Here re-financing = inability to finance. J. Coe had to find $37.5 million – he and his company had not got it. He only had $1 million cash (see Transcript of J. Coe's evidence p. 2 ◎). Why didn't J. Coe take 23 million Siu King Cheung shares to the bank and raise a loan? This question has never been answered. On 23 million shares at $1 each, you are lucky to raise 2/3 of the value – in Hong Kong not more than ½. So J. Coe could not raise the purchase price. (1) Would any bank in Hong Kong lend money on shares belonging to subsidiary companies of Siu King Cheung without resolutions authorising the borrowing? No. (2) For shares to be of real value they have to be dividend bearing. From Siu King Cheung's accounts (Ex. P24) the 23 million shares were not dividend bearing and therefore of no value to a bank. See p. 7 of Ex. P24 under dividends under 1976-1977 at .13 per shares. On a share capital of 51½ million shares, at .13 per share $6.695 million is required. On 17 million shares it would only require $2.210 million. P. 21 under Dividends – $2,210 million is on 17 million shares. Profit after taxation is $3,355,656.49 just enough to pay one half of the capital. Apart from the 11 million shares held by J. Coe and his family the majority of the rest were held by his subsidiary companies. 51½ million – 11 million = 40½ million shares, a majority of that owned by subsidiary. Put that figure at 23 million. 40½ million – 23 million = 16½ million shares, almost identical with the 17 million shares on which dividend was paid. The 17 million was publicly held so that it was only on those that a dividend was paid. (3) It was never J. Coe's intention the deal should benefit Siu King Cheung. Could Siu King Cheung have enforced the deal? See Yellow 4 Document 33 – fictitious yet meticulous yet no documents on the real transaction.

Re J. Coe: (1) Finder's fee – whatever is the truth, there was a clear intention by J. Coe to lie to the public in order to make money – 4th, 5th and 6th Defendants went along with that. (2) Bangkok Hotel: it was suggested that it was a good deal for S.I. – it was in fact not a good deal for S.I. – it was worth $400,000 – $500,000 more on J. Coe's own evidence. J. Coe was therefore acting to the detriment of S.I. Re Ex. D16 – J. Coe said Bangkok Hotel was Oceania's asset. Oceania had $1.2 million but also a liability of $1.2 million – see Clear Water Bay project current value $5½ million on Ex. D16. See Yellow 1, Document 40, p. 2, Clause 7(iv) notional value $6 million. See Document 54, Clause 5(c)(iv) notional value $5½ million. The $½ million difference is not important. That was 12th May 1977. Look at Ex. P24, p. 12 – Golden Villa coming up as Siu King Cheung's property (p. 7, para. 3 shows it is a joint enterprise). It therefore shows there were other assets. J. Coe three times refused to answer questions relating to transactions which might incriminate himself. Mr. Swaine opens that 4th Defendant had $1 million available on a share dealing account – in fact 4th Defendant did not have it because the $1 million only came in when the loan was made (Yellow 5, p. 1) – Yellow 5, p. 1 in no way supports Mr. Swaine's opening of 4th Defendant's evidence.

No real money paid. The money was to come out of S.I.'s assets. Ex. P13 showing that notwithstanding the large sums having been paid – it is the same money going round and round. Ex. 13A shows how little money has been used, and that it is only on the documents we have got, which is not all. As at end of Period 2, a maximum of $7.58 million was used. Now we know the Hong Kong Estates transaction was initiated by a loan from Hong Kong Estates – (Yellow 4, p. 134): see the $4 million receipt. See Ex. P21, inset marked X – self-cancelling. J. Coe and Siu King Cheung did not have anything like $37½ million – the money could only have come from S.I.

J. Coe's evidence shows the financing was only window dressing – to create the illusion of cash. Transcript of J. Coe's evidence. Re creation – how the banks do it (Ex. P26) – but note (1) the bank has "paid" anybody anything – only lending because the money will be repaid – the bank will collapse if it has to actually pay. (2) and the system depends on the depositors' not wanting their money back, otherwise there would be a run on the bank. You could also do it internally in a company provided that you do not kid yourself and know that it is only window dressing. If create paper money there is no limit as to the money you can create! See Ex. P24, p. 26 the paragraph marked X – if you could create money, you do not need to borrow it. You can only do it if the debtor has the ability to pay back. J. Coe's evidence at p. 2 of the transcript – last answer thereat – this is a classic fraud – just creating paper money. To create the impression that the money had been paid in July, in fact not – except for the proceeds from the Bangkok Hotel – the purpose is to buy time.

(1974) 4 A.E.R. 238 – s.54 does not apply in Hong Kong, letter e to letter h. Who has got the S.I. shares? J. Coe has. Whose assets? Oceania. How was J. Coe to finance the transaction? See Ex. P24, p. 20. J. Coe's evidence in the transcript shows the money was never there.

The Law:

1. If all agreements are shams, no effect should be given to them at all.

2. If any of the agreements are genuine then only those which have been completed by registration can purport to be legal assignments or opposed to equitable, but in every case where there has been a registration whether it would be the syndicate Fermay and IPC, they knew of the prior rights of creditors of 1st Defendant. No assignments to a bona fide purchaser for value without notice.

3. None of the agreements for sale would be enforced in equity (i.e. no specific performance would be granted) therefore no transfer of beneficial interest could take place because of the villainy of the Defendants.

Spry on Equitable Remedies p. 156, p. 157 – you cannot get specific performance if there is fraud. See under the title Fraud (X) Clermont v. Tasbough (1819) J. & W. 112; 37 E.R. 318 & 321. Panama & South Pacific Telegraph Co. v. Judia Rubber Co. (1875) L.R. 10 Ch. 515, 526, 527, 531.

Snell on Equity, p. 574 3(b) shares can only be assigned and not sold. There can be no specific performance of an equitable or legal assignment because of the conduct of the parties. See pp. 69-70 of Snell; see also section 2 at p. 70. The assignment is not effective unless notice has been given (see p. 71 (d): p. 72 last sentence of para. 2.) There are no legal assignments in this case. P. 73 para. 4, p. 74 section 3, p. 79 section 4, and p. 80, p. 596, para. 8(a) – "trickiness". P. 44 on Priorities – p. 48.

Ask Court to make express findings as regards the pleadings: Our pleadings do not really set out the case we rely on. Ask Court to notice that it was the Defendants who asked for this rapid trial. Most important discovery did not occur till November 1977: Yellow 4 – Bank statement and cheques MAF Corporation's blue cards and suppression of computer printouts. A lot of matters could not have been pleaded on 10th October 1977. Conspiracy – a want of real money coming in. A lot of matters dealt with in evidence are not in pleadings but no one was taken by surprise. Not restrained by the pleadings – because as at 10th October 1977 we knew very little.

*One Court finds fraud, deception, perjury etc. everything may be presumed against the wrong doer on related matters.

Of Fermay's 15 million shares – against them the option cannot be exercised.

Re shares bought in Taiwan – 1st Defendant's title not divested.

15 million + 2.165 million Taiwan shares + the residual shares of Asiatic Triumphant and 1st Defendant's shares are the minimum shares that can be recovered.

On my judgment M$9,036,831.58 + interest from 1st April 1976 + $120 costs – as at to-day. Interest annually is M$1,355,523.74 – and accruses daily at M$3,713.77. The total interest as to-day M$2,280,252.57.

Mr. Swaine:

Ex. P24, p. 21 – Dividends at 13 cents a share for 17 million shares come to $2,210,000. The explanation is at p. 30, para (15). This share structure did not take into account the 7 million shares issued for acquisition of Oceania. J. Coe's unchallenged evidence that with redevelopment and sale of properties he expects to pay 13 cents including the 7 million new shares i.e. the whole share capital. J. Coe also said he estimated the asset value of Siu King Cheung at more than $1.10 per share (in cross-examination by Mr. Yorke some 10 minutes after I had interposed McInnis). This puts a price tag of $7.7 million on the 7 million shares from the acquisition of Oceania.

(1974) 3 A.E.R. 238 distinguished – per Greene M.R. – J. Coe put up 23 million Siu King Cheung shares as part and parcel of the loan agreement of 9th June 1977. Before 30th April 1977 agreement was superceded by the 12th May

1977 agreement he had also put up the 23 million Siu King Cheung shares under the supplemental agreement.

In regard to acquisition of Oceania he denied having taken money out of S.I. but said he issued 7 million new shares for the purpose.

(1924) 19 Lloyd's List L.R. 95, at p. 96 marked ◎ – for every sinister interpretation in this case there is perfectly honest and reasonable explanation. At top of p. 97 marked ◎ – you might well think if the case had been proved against syndicate and J. Coe they had not only been negus but also fools.

It was at my insistence that we had pleadings and viva voce evidence – the formula was agreed by counsel. If the matter has been one for concealment then my instructions would have been to stick to affidavits and leave the issues as woolly as possible.

Much of the law we have had this morning about assignment of rights is a circular argument because what Court has to find is whether the agreements were shams. If so, then there would be no question of specific performance, no equities would have passed therefore as at the date of the charging orders nisi the shares would have been the properties of 1st Defendant and he could have made a valid charge of them. If agreements genuine then the agreements are capable of specific performance then the equities would have passed to the syndicate and/or J. Coe.

So long as Plaintiffs' case stays within the broad bounds of pleadings I have no quarrel, but not open to them to set up a new case not within the broad bounds of pleadings.

I accelerate the proceedings, but by consent and for the benefits of all parties.

Re our endeavour to stifle the trial on the merits – it was an order by consent before Zimmern J. that the matter of setting aside of foreign judgments should go first. In this case it was thought it was desirable for both matters to be dealt with in the one trial because in the former proceedings we had succeeded in setting aside but the merits in the long term would have to be investigated.

Re fraud on the body of creditors of 1st Defendant – cf. statements of claim – the matter cannot be dealt with by way of submissions but by pleadings.

As to costs – leave it for the time being.

JUDGE'S NOTES – (D) QUESTIONS FROM JUDGE TO COUNSEL

Coram: Hon. Yang, J. in Court.
Date: 5th December, 1977.

Q.1. If the 2.15m shares were MAF Corporation's, then no charging order may be made as regards those shares? (See p. 328 of notes).

A. Correct.

Q.2. Re the $5m in circle A of Ex. P. 21 – not of great importance to Plaintiffs' case whether 1st Defendant had taken the $5m or not? (see pp. 307-308 and 312).

A. Correct.

Q.3. Mr. Yorke submits that the syndicate had paid 1st Defendant $10m before the 15m shares were released by 1st Defendant to them – (a) there is no evidence to support this allegation? (b) if this is true, then the Plaintiffs would have nothing on which to garnish. (see p. 291 of notes ◎)?

A. Not relied on now.

Q.4. Garnishee order on $11,446,500 – is it the Plaintiffs' case that the syndicate has received this sum? (See p. 295 of notes). (MBF's claim, para.6).

A. No – "receivable".

Q.5. No allegation of conspiracy against J. Coe – J. Coe an innocent third party?

A. Now MBF does make an allegation against J. Coe so that he is no longer an innocent party. Mr. Swaine objects and says Plaintiffs must be bound by the broad concepts of their pleadings (see Mr. Swaine's submission on p. 340 and p. 341 of notes).

Q.6. (See p. 306 of notes ⊛) – is Mr. Swaine correct on the law that in any event Plaintiffs not entitled to charging order on the 15m shares?

A. No.

Q.7. Of the four agreements – which require stamping?

A. The 30th April 1977 and the 12th May 1977 option agreements.

Q.8. If Sham agreements – does not necessarily follow from that that the syndicate are nominees of 1st Defendant?

A. Not now relying on "nominees".

Q.9. Mr. Yorke submits that 1st Defendant had made preparations to dispose of his shares to someone like J. Coe so he and the syndicate made up a package for the purpose – if so, then 1st Defendant must have divested himself of his interest at least in the 7.6 + million shares?

A. See Mr. Yorke's submission on 5th December 1977.

Q.10. It is suggested that no real money has been paid by J. Coe – the evidence appears to suggest that J. Coe had paid for the shares?

A. See Mr. Yorke's submission on 5th December 1977.

JUDGMENT OF MR. JUSTICE YANG

In these proceedings the plaintiffs seek to have made absolute certain charging orders nisi and garnishee orders nisi in relation to a substantial number of shares in the San Imperial Corporation, Ltd. (hereinafter referred to as San Imperial) alleged to be beneficially owned by the first defendant. The second to the tenth defendants were joined as defendants in Action 2459 of 1976 and in Miscellaneous Proceedings 155 of 1977 by a court order dated 20th August 1977. The same defendants were joined as defendants in Miscellaneous Proceedings 540 of 1977 by another order dated 23rd September 1977. Of the ten defendants, only the fourth, fifth, sixth, seventh and the tenth defendants have appeared and contested the plaintiffs' claims.

The Background

On 5th July 1977 in High Court Action 2459 of 1976 the plaintiff LEE Ing Chee obtained judgment against the defendant Choo Kim San (the first defendant in these proceedings, hereinafter referred to as C.K. San) in the sum of M$2,338,651.94 together with interest thereon at the rate of 15% per annum from the 1st April 1975 to 19th July 1976, and thereafter at the rate of 6% per annum from 19th July 1976 until payment, with HK$1, 226 fixed costs.

In an action in the High Court of Kuala Lumpur in Malaysia entitled Civil Suit 2445 of 1976, Lee Kon Wah, the plaintiff in Miscellaneous Proceedings 155 of 1977, obtained judgment against C.K. San in the sum of M$1,354,037.35 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment and M$120 costs. The Malaysian judgment has been duly registered in this Colony under the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance, Cap. 319, by way of the said Miscellaneous Proceedings. The registration of the Malaysian judgment has never been set aside.

On 11th August 1977 the plaintiff Malaysia Borneo Finance Corporation (M) Berhad (hereinafter referred to as MBF) in an action in the High Court of Kuala Lumpur in Malaysia entitled Civil Suit 1631 of 1977 obtained judgment against C.K. San in the sum of M$9,036,831.58 with interest thereon at the rate of 15% per annum from 1st April 1976 until payment and M$120 costs.

On 19th August 1977, MBF (now the plaintiff in Miscellaneous Proceedings 540 of 1977) registered in this Colony the Malaysian judgment as a judgment in the High Court of Hong Kong, pursuant to the Foreign Judgments (Reciprocal Enforcement) Ordinance, Cap. 319. The registered jugment has never been set aside.

The Orders Nisi

On 15th July 1977 the plaintiffs Lee Ing Chee and Lee Kon Wah obtained charging orders nisi in respect of the following shares:

(a) 422,560 San Imperial shares registered in the name of Asiatic Nomine-

es, Ltd. (i.e. the second defendants, hereinafter referred to as Asiatic),

(b) 400,000 San Imperial shares registered in the name of Triumphant Nominees, Ltd. (i.e. the third defendants, hereinafter referred to as Triumphant),

(c) 15 million San Imperial shares registered in the name of Fermay Co. Ltd. (i.e. the seventh defendants, hereinafter referred to as Fermay), and

(d) 7,631,000 San Imperial shares registered in the name of IPC Nominees, Ltd. (i.e. the tenth defendants, hereinafter referred to as IPC).

On the same day, the plaintiffs Lee Ing Chee and Lee Kon Wah obtained garnishee orders nisi against the fourth defendant David Ng (hereinafter referred to as Ng) the fifth defendant Melville E. Ives (hereinafter referred to as Ives) and the sixth defendant Ho Chapman (hereinafter referred to as Ho) in respect of the sum of $8.8 million allegedly due and owing from Ng, Ives and Ho to the eighth defendant Chow Chaw-I (hereinafter referred to as Chow) and the ninth defendant Hwang Shang-Pai (hereinafter referred to as Hwang). The plaintiffs claim that this sum of money is in fact due and owing to C.K. San as consideration for the purported sale[1] of the 15 million shares now registered in the name of Fermay to Ng, Ives and Ho by Chow and Hwang.

On 7th September 1977, MBF obtained a charging order nisi in respect of –

(a) the same 422,560 San Imperial shares in the name of Asiatic,

(b) the same 400,000 San Imperial shares in the name of Triumphant,

(c) the same 15 million San Imperial shares in the name of Fermay,

(d) the same 7,631,000 San Imperial shares in the name of IPC, and

(e) 57,600 San Imperial shares registered in C.K. San's own name.

On the same day MBF also obtained a garnishee order nisi against Ng, Ives and Ho in respect of the same sum of $8.8 million for the same reasons referred to above.

On 14th September 1977, MBF obtained another garnishee order nisi against Ng, Ives and Ho in respect of the sum of $11,446,500 payable by one Mr. James Coe (hereinafter referred to as Coe) or his nominee company Rocky Enterprises Co., Ltd. (hereinafter referred to as Rocky) to Ng as consideration for the sale of 7,631,000 San Imperial shares (which formed part of a parcel of 8 million San Imperial shares) now registered in the name of IPC by Ng, Ives and Ho to Coe and/or Rocky. It is MBF's claim that this sum of money is in fact due from Ng, Ives and Ho to C.K.

(1) Throughout this judgment share dealings are, for the sake of convenience, referred to as sale and purchase of shares.

San. The $11,446,500 represents the purchase price for the 7,631,000 shares at $1.50 per share.

The Defendants' Case

Purely for the sake of convenience I shall give a summary of the defendants' case first. It is as follows–

C.K. San was arrested for fraud in Hong Kong in June 1976. He jumped bail and escaped from Hong Kong on or about 28th October 1976. In November Coe was desirous of acquiring a controlling interest in San Imperial. Ng, Ives and Ho then got together in December and formed themselves into a syndicate for the purpose of collecting into a parcel some 24 million shares (viz. half of the total issued share capital of 48.2 million San Imperial shares). They hoped to sell the parcel to Coe or some other person at a large profit.

Ng located C.K. San in Taipei on 31st December 1976. Through him he came into contact with Chow and Hwang who had purchased 15 million San Imperial shares from C.K. San in November 1976. After protracted negotiations Ng on 23rd March 1977 purchased those shares on behalf of the Syndicate at 60 cents per share. In the meantime Ng had also bought on his own account two lots totalling 2,164,200 San Imperial shares from a Mr. Lee and a Mr. Fong in Taipei at 20 cents each. These two lots of shares were to form part of the parcel of 24 million shares.

For the purpose of proving the authenticity of the 15 million shares, the details of which will be given elsewhere in this judgment, the shares were registered in the name of Fermay.

On 30th April 1977 the Syndicate entered into an agreement with Malaysian American Finance Corporation (Hong Kong) Ltd. (hereinafter referred to as MAF) whereby they were given the option to purchase up to 6 million San Imperial shares at $1.50 per share. In fact MAF had only 3,226,000 shares, so this was the amount which the Syndicate purchased. During this period the Syndicate also acquired further San Imperial shares on the local market at an average of 54 cents per share and from private sellers at $1 per share.

By 30th April 1977 the Syndicate was able to reach an agreement with Coe's nominee company Rocky for the sale of 23 million shares at $1.5 per share. The parcel of 23 million shares was made up of the 15 million acquired from Chow and Hwang in Taipei and the balance of 8 million. The balance of 8 million was made up of the 2,164,200 shares acquired by Ng on his own account in Taipei, the 3,226,000 shares acquired under the MAF option agreement, and the remainder acquired or to be acquired on the local market and from private sellers. Subsequently, in view of certain interlocutory proceedings brought by the plaintiffs' charging or otherwise restraining C.K. San's San Imperial shares, the agreement was replaced by a new agreement dated 12th May 1977. Under the new agreement Rocky was given an option on the 15 million shares. The balance, which was to be not less than 7 million nor more than 8 million, remained an outright sale and purchase.

After the 8 million shares were acquired by Rocky, they were registered not in Rocky's name but in the name of IPC, Coe's other nominee company. It is Coe's case that the real purchaser was one of his companies called the Siu King Cheung Hing Yip Co., Ltd. (hereinafter referred to as SKC)

It is the defendants' case that all these transactions were genuine and bona fide. It is contended on behalf of the defendants that on the dates that the charging orders nisi were made C.K. San had already divested himself of his beneficial interests in his San Imperial shares and for that reason these orders nisi should not be made absolute.

10 **The Plaintiffs' Case**

The case for the plaintiffs Lee Ing Chee and Lee Kon Wah is that all the transactions in respect of these shares were *sham transactions.* That being so, the San Imperial shares in question were and still are beneficially owned by C.K. San. It was also originally their case that at all material times the defendants acted, held and are holding the above-mentioned San Imperial shares as C.K. San's *nominees.* However, whilst maintaining that Chow and Hwang are C.K. San's nominees, the two plaintiffs do not now maintain the Ng, Ho, Ives, Fermay and IPC are also C.K. San's nominees.

MBF's case is based on *conspiracy.* By para. 7 of their Statement of Claim,
20 they claim that for the purpose of avoiding and defeating the execution by MBF of their registered Malaysian judgment and to defraud C.K. San's creditors the defendants and each of them together with persons unknown from about October 1976 onwards conspired and combined amongst themselves in Hong Kong and elsewhere to sell or cause to be sold on behalf of C.K. San the 15 million shares in the name of Fermay and the 7,631,000 shares (being part of the 8 million shares) now registered in the name of IPC and to obtain on behalf and for the benefit of C.K. San the proceeds thereof.

MBF makes no allegation of conspiracy against Coe (see para. 7(A)(1)(f)(ii), at p. 7 of MBF's Statement of Claim).

30 MBF also concedes that the Syndicate collected the San Imperial shares into a parcel for the purpose of selling them to "some *innocent persons*" (see paras. 7(B)(3)(a)(v), and (b)(ii), at p. 18 of MBF's Statement of Claim). *In the context of the present case the innocent persons could only be Coe and Rocky.*

In the alternative, MBF claims that all the transactions in respect of the shares in question were *not bona fide at arm's length and for full value without notice of any defect in the vendor's title.* If the transactions were shams, then it follows that they were not bona fide at arm's length and for full value without notice.

The Issue

The parties will agree that *the real and ultimate issues in this trial are (1)*

whether on the dates that the charging orders nisi were made C.K. San had already divested himself of his beneficial interests (if any) in any or all of the San Imperial shares referred to above, and (2) if so, whether the purchase prices for any of the shares were in fact payable to C.K. San. The burden is of course on the plaintiffs to prove their case.

Rulings

Before dealing with the facts of the case, it is necessary to refer to some of the rulings made in the course of these proceedings.

1. Lee Ing Chee's claim (Action 2459 of 1976) and Lee Kon Wah's claim (MP 155 of 1977) were consolidated by an order dated 20th August 1977.

2. On 23rd September 1977 I ordered a joint trial of the consolidated action and MBF's claim (MP 540 of 1977).

3. On 14th October 1977 I ruled that the defendants were not permitted to go behind the judgments which the plaintiffs Lee Ing Chee, Lee Kon Wah and MBF had obtained against C.K. San.

4. On 15th October 1977 I ruled that the defendants in court, not being parties against whom the two registered Malaysian judgments might be enforced, did not come within Sec. 6 of the Foreign Judgments (Reciprocal Enforcement) Ordinance, Cap. 319. They were therefore not entitled to make an application to set aside the registration of the two Malaysian judgments.

5. On 25th October 1977 the Court made a ruling on the parties' Hearsay Notices. At the time of the ruling, I indicated that I would give my reasons more fully in my judgment. I now do so under a separate heading.

6. On the same day I also ruled that there was no privilege attached to trust instruments drawn up by or held in the possession of Ives (a practising solicitor) or his firm on behalf of C.K. San.

7. In the course of final addresses, it was agreed by counsel for all parties that they should not be strictly bound by their respective pleadings. Mr. Swaine suggested that whilst the parties were not to be so bound, *each party must not go beyond the broad concepts of his own pleadings.* I accept this suggestion.

Ruling on Hearsay Notices

By R. 7 of the Evidence (Hearsay) Rules, Cap. 8, a person need not be called as a witness if (1) he is dead, or (2) beyond the seas, or (3) unfit by reason of his bodily or mental condition to attend as a witness, or (4) despite the exercise of reasonable diligence it has not been possible to identify or find him, or (5) that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the hearsay notice relates. These

Rules were made under Sec. 53 of the Evidence Ordinance, Cap. 8 Sec. 53(1) specifies that provision shall be made by rules as to the procedure which shall be followed "as well as other conditions" which shall be fulfilled before hearsay evidence may be given. Sec. 53(3)(a) clearly provides that Rules made in pursuance of Sec. 53(1) shall not confer on the court a discretion to exclude such hearsay evidence where the requirements of the rules affecting its admissibility have been complied with. The requirements are of course the procedure and "other conditions" referred to in Sec. 53(1). Accordingly, if one of the five reasons for not calling the person to be a witness is present, the court has no power to prevent a party from putting in the hearsay evidence. On an analysis of the Ordinance and the Rules, my view is that *Rasool v. West Midlands P.T.B.*(2) was correctly decided.

The question then arises as to whether the court has a general power to exclude evidence at its discretion and inspite of the statutory provisions referred to above. At first view Sec. 68(5) seems to give the court this power. Phipson suggests that there is no exclusionary discretion (12th ed., para. 650, at p. 282). Halsbury too is of the same view (4th ed., vol. 17, para. 55, at p. 41). A similar observation is to be found in The Supreme Court Practice 1976 (38/22 – 25/4, at p. 591). And Cross seems to suggest that it is only in relation to claims to privilege from answering questions in cross-examination that the court's exclusionary discretion has been invoked in civil case (4th ed., at p. 30). I adopt these observations as correct statements of the law.

The Defendants

The first defendant C.K. San

He was an astute business man and a major shareholder in San Imperial. In June 1976 he was arrested in Hong Kong on certain charges of fraud and granted bail. On or about 28th October 1976 he absconded from Hong Kong and was located by Ng in Taipei on 31st December 1976. It was known to Ng, Ives and Ho that C.K. San had defrauded a number of companies in the region of South East Asia.

The second defendant Asiatic

This is a nominee company holding a substantial number of San Imperial shares for C.K. San and also 2,150,000 San Imperial shares for MAF.

The third defendant Triumphant

This is also a nominee company holding San Imperial shares for C.K. San.

The fourth defendant Ng

He is a stockbroker. He was at one time a business associate of C.K. San. Ng, Ives and Ho formed a syndicate with a view to collecting 24 million San Imperial shares (about half of the total share capital) and selling them to Coe and/or

(2) (1974) 3 All E. R. 638.

Rocky. His chief role in the Syndicate was to acquire San Imperial shares.

The fifth defendant Ives

He is a practising solicitor and a senior partner of Messrs. Peter Mo and Company. He was at one time C.K. San's business associate. He has on a number of occasions acted for and against C.K. San in his capacity as a solicitor. His chief role in the Syndicate was to advise on legal matters and draft the necessary documents, e.g. agreements, minutes of board meetings, affidavits, etc. In the present proceedings, Ives is both a defendant and an instructing solicitor, representing his own interests and that of Ng, Ho and Fermay.

The sixth defendant Ho

He is a business man of considerable means. He was at one time a business associate of C.K. San. His chief role in the Syndicate was to find buyers for those San Imperial shares which the Syndicate was able to collect. It was he who was mainly responsible for the Syndicate's negotiations with Coe.

The seventh defendant Fermay

This is a shelf company formed for the sole purpose of holding and proving the authenticity of the 15 million San Imperial shares alleged to have been purchased by Ng on behalf of the Syndicate from Chow and Hwang in Taipei.

The eighth defendant Chow and ninth defendant Hwang

They are husband and wife. It is the defendants' case that Chow and Hwang had bought the 15 million shares from C.K. San in Taipei in November 1976 and in turn sold them to Ng in March 1977.

The tenth defendant IPC

This is Coe's nominee Company which now holds 8 million San Imperial shares (including the 7,631,000 shares subject matter of the charging orders nisi). The defendants claim that Coe's nominee company Rocky had purchased these shares on behalf of SKC from the Syndicate, but the shares were eventually registered in the name of IPC.

Assessment of Witnesses

Plaintiff Lee Ing Chee

He was a close friend and business associate of C.K. San for a number of years. There is a warrant of arrest dated 22nd April 1977 issued against him in Thailand on an allegation of fraud. I have no hesitation in coming to the conclusion that *he is a truthful witness.*

Pursuant to the plaintiffs' Hearsay Notice, he gave evidence of a conversation he had had with Chow in Taipei about the 15 million San Imperial shares. He told the Court that Chow had in effect denied the purchase of those shares. In the light of all the evidence adduced at the trial, I am of the view that Chow did make the statements alleged in the Hearsay Notice but those statements were untrue, probably because Chow did not want to get himself involved, or because he did not want Lee to know he was C.K. San's nominee.

Mr. Christopher Wilson

He is a solicitor. As a witness for the plaintiffs, he spoke of his and Lee Ing Chee's visit to Taipei. I am convinced that he is an *entirely honest and reliable witness.*

Mr. U.A. McInnes

He is the Acting Commissioner for Securities. In his evidence given on behalf of the defendants, he referred to the meetings he had had with Coe. I accept all his evidence as *representing the truth.*

Mr. Y. S. Cheng

He is an accountant by occupation. His competency and integrity as an accountant and his veracity as a witness for the defendants are never in dispute. In his evidence he said that 2,150,000 San Imperial shares registered in the name of Asiatic were in fact held by Asiatic on behalf of MAF, and that those shares were, on his suggestion, later transferred to the name of MAF. He also said that MAF held in their own interest the 3,226,000 San Imperial shares subject matter of the option agreement between MAF and the Syndicate whereby the latter was able to exercise the option of purchasing up to 6 million shares from MAF. *I accept this evidence as representing the truth.*

Defendant Ng

From a humble beginning, Ng has risen to the top of the business world. In his earlier days he had worked as an accountant and a typist. He is now the Chairman of San Imperial and also a stockbroker, occupying a seat on the Far East Stock Exchange.

During his eight and a half days on the witness stand, I have had ample opportunity to observe him and to assess his evidence. He was vigorously cross-examined for many days. It is obvious that he is a highly intelligent and confident person. It is difficult to state precisely my reasons for *not accepting him as a truthful witness* but having considered his demeanour and the manner in which he answered questons, I have no doubt whatsoever that much of his evidence is untrue.

My general opinion of Ng's untruthfulness is fortified by numberous factors, in particular the following:

1. Ng was looking for C.K. San after he had fled Hong Kong. The Syndicate did not know where C.K. San was. They suspected that he was probably in Taipei, Bangkok or Indonesia. Ng went to Bangkok with his family to spend the Christmas holidays and failed to find C.K. San there. Then he went to Taipei. As luck would have it, on the morning after his arrival he went down to the coffee shop of the hotel he was staying at and found C.K. San there as well. The coincidence is to say the least remarkable.

2. Ng's evidence is that whilst in Taipei he negotiated with Chow about the sale of the 15 million San Imperial shares Chow had allegedly acquired from C.K. San the month before, i.e. November 1976. During the first meeting Chow asked Ng whether those shares were "hotel shares". Ng replied that they were, and added that San Imperial also dealt with land development. Chow then made some casual enquiries about the general situation of the hotel trade in Hong Kong but made no enquiries about land development. Ives' evidence is that at that time if C.K. San were to sell his 15 million shares in Taiwan, the rate would be 10 to 15 cents per share. The market rate in Hong Kong at that time was 20 to 23 cents, or at any rate under 30 cents, per share. If that evidence is true then Chow and Hwang would have paid at least $1.5 million to buy those shares. It is also the defendant's case that Chow and Hwang and C.K. San were strangers. They only came to know each other through the introduction of a Madam Lau in the beginning of November 1976. Thus, Chow and Hwang were dealing with a stranger and spending a substantial sum of money to acquire shares of a company outside Taiwan, the business of which they did not know nor were particularly interested to know. The improbability is at once obvious.

3. For the purpose of raising funds for the Syndicate's purchase of the 3,226,000 San Imperial shares under the MAF option agreement, a number of complicated arrangements were made. One of those arrangements was for a Mr. Ip Wai and a Mr. Wong Luk Bor and others to borrow various sums of money from one of Coe's companies called the Oceania Finance & Land Corporation, Ltd. (hereinafter referred to as Oceania). Oceania paid the sums borrowed, not to the borrowers, but to another of Coe's firms called Ming Kee. Ming Kee then lent the money to Coe. Coe then lent the money to the Syndicate. The Syndicate was thereby able to pay MAF. It is an agreed fact that both Mr. Ip and Mr. Wong were Ng's employees. Ng however said in evidence that he knew nothing about this arrangement. This fact, coupled with his membership in the Syndicate, belies his evidence.

4. Under the MAF agreement, the Syndicate was able to exercise their option to purchase up to 6 million San Imperial shares. At the time of the agreement it was clear to Ng that MAF had only 3,226,000

shares. There was no suggestion that MAF had other San Imperial shares held by nominees. The source for as many as 6 million shares has never been satisfactorily explained.

5. If MAF could indeed acquire up to 6 million shares, the Syndicate would have had too many shares on their hands, because the total acquired by the Syndicate for sale would then be more than half of the total share capital of San Imperial. According to the evidence of the defendants, Coe had wanted a controlling interest, which would be 50%. Coe's evidence however was that a 40% interest would suffice. Indeed Ng's evidence is that Coe told him he would rather have less than 23 million shares or at any rate less than a 50 interest.

6. On 30th April 1977 the Syndicate entered into an agreement with Rocky for the sale of 23 million San Imperial shares. On 12th May, 1977, a new agreement was made, replacing the 30th April, 1977 agreement whereby there was to be an option exercisable in regard to the 15 million shares and an outright sale and purchase of the remaining 7 million to 8 million shares. For reasons best known to Ng, the new agreement was not disclosed in some of his affidavits sworn for the purpose of certain interlocutory proceedings. The non-disclosure could not be accidental or due to the lapse of memory as it was an important document. But on the other hand, it is difficult to see what useful purpose could be served by its suppression. Whatever the true reason, Ng had the duty to make a full and frank disclosure in all his affidavits. This he has failed to do. The first disclosure of the new agreement is in Ng's affidavit of 27th July, 1977.

7. In his affidavit of 23rd June, 1977, Ng swore that the Syndicate had started to acquire San Imperial shares in the stock market in Hong Kong in January, 1977, and had acquired 8 million shares. This sentence gives the impression that all of the 8 million shares were acquired in the local stock market. In fact 3,226,000 shares were acquired under the MAF option agreement and 2,164,200 shares were allegedly acquired by Ng from Lee and Fong in Taipei. In the same affidavit Ng referred to the time that he made the affidavit as being "an opportune moment" because the shares could at that time be sold at $1.50 per share. In fact at the time of the affidavit the Syndicate had already agreed to sell to Rocky at $1.50 per share plus a finder's fee which would bring the price up to $1.63 per share. This part of Ng's affidavit is therefore untrue.

8. The Syndicate knew of C.K. San's arrest for fraud and his past record of defrauding companies. Ng said in evidence that until plaintiff Lee Ing Chee's notice in the South China Morning Post dated 13th April 1977 giving notice that he had obtained in the High Court an interim attachment in respect of C.K. San's 16.5 million San Imperial shares,

Ng had not even suspected that C.K. San might be in debt. This evidence cannot be true.

The list given above is by no means exhaustive but is sufficient for the purpose of illustrating Ng's untruthfulness.

Defendant Ives

He is a solicitor of some 30 years standing and a draftsman of some repute. I ought to say at the outset my comments about him as a witness are in no way a reflection on the integrity and standing of his firm or any other partner or member of his firm.

He was on the witness stand for just under five and a half days. I therefore have had ample opportunity to observe his demeanour and the way in which he answered questions. The cross-examinations of Ives were both long and searching. He too is highly intelligent and, as a very experienced solicitor, enjoys an advantage on the witness stand which laymen who are not used to court appearances do not have. He is in my view *an evasive witness.* Again, whilst it is difficult to pinpoint any reasons for *not accepting him as a completely truthful witness,* I have no doubt that much of his evidence is untrue. I am acutely and painfully mindful of the grave allegation I am making against a professional man and an officer of the Court. It is not the sort of criticism any judge would make lightly, or without having given the matter the most anxious and careful consideration. But regrettably, this is my firm opinion, and I feel duty bound to state it.

My general opinion of his untruthfulness is also supported by a number of factors. The following list is not exhaustive, but will suffice as illustrations.

1. Ives' first draft of a sale and purchase agreement (Ex. P. 10) relating to the 15 million San Imperial shares contains errors which no draftsman could honestly make. This was to be an agreement between Ng and Chow and Hwang. The draft mentions the sale of 15,515,000 shares at 60 cents per share. The true position, which Ives knew at the time of drafting this document, was that it was a sale of 15 million shares at 60 cents per share. The 515,000 shares (in fact 514,200 shares, but for the purpose of fixing a price these were deemed to be 515,000 shares) were according to the defendants' case purchased separately by Ng on Ng's own account from Lee and Fong in Taipei at 20 cents each. Even Ho, who is not a lawyer, could see the errors. He thought the draft agreement was wrong and that Ng and Ives might had made a mistake.

2. Ives also drafted the 12th May 1977 agreement between the Syndicate and Rocky whereby it was provided that the option relating to the 15 million shares "shall be exercisable" by Rocky. On the construction of the agreement as worded, Rocky may, but is not bound to, exercise the option to purchase the 15 million shares. Ives

in his evidence however said that the intention was that Rocky was bound to exercise the option, though he did suggest that "exercised" would have been a better word. When pressed by Mr. Ching in cross-examination, he finally conceded that Rocky was not bound to exercise the option and the agreement is therefore not enforceable against Rocky. Again it is not an honest mistake that an experienced draftsman is likely to make.

3. Ives said under cross-examination that probably C.K. San sold the San Imperial shares in Taiwan for 10 or 15 cents each, though at the time the market value was 20 to 23 cents each. He also conceded that C.K. San had the largest block of San Imperial shares. It is not disputed that the market rate for a controlling interest (of say 40%) was about $1.60 to $1.70. It is also common ground that C.K. San was an astute business man who had milked a number of companies in South East Asia. In these circumstances the likelihood of C.K. San's willingness to dispose of his shares at less than one-tenth their true value was minimal, even if one takes into account the fact that he was a fugitive from justice and was therefore in a weak bargaining position.

4. Ives was responsible for Ng's affidavits sworn for the purpose of certain interlocutory proceedings. In those affidavits the cancelled agreement between the Syndicate and Rocky dated 30th April 1977 was referred to but not the new agreement of 12th May 1977. Under cross-examination Ives conceded that the 12th May 1977 agreement "could be" material, and that the non-disclosures were his mistakes. He also admitted that this agreement should have been disclosed in those affidavits. As an experienced solicitor and draftsman, who must have realized the necessity for frank and complete disclosures in any affidavit, it is difficult to see how an honest mistake could have been made in this instance.

5. Ives said the Syndicate was prepared to pay Chow and Hwang 60 cents per share for the 15 million San Imperial shares. Ives said that in their attempt to valuate the worth of San Imperial, Ng had referred to some "old valuations", namely a letter dated 22nd March 1975 relating to the lease of premises known as Jade Imperial Hotel (Yellow 1, Document 6) owned by the San Imperial Hotel Ltd., the predecessor of San Imperial. Ives said that San Imperial had not published any balance sheets for the past 18 months, and "there was no knowing what C.K. San might have done with the company. We made investigations into its properties and those of its subsidiaries, looking for mortgages, debentures, etc." How these investigations were carried out have not been disclosed. On Ives' own admission, the Syndicate was afraid that there were "unknowns" (i.e., about C.K. San's milking San Imperial), which might "detract from the net asset value of the company." It is in my view highly unlikely

that any genuine and serious valuation would have been arrived at in so casual a manner.

6. Ives drafted the MAF option agreement, which contains the reference to 6 million San Imperial shares. It will be remembered that Coe wanted a 40% interest (in any event not more than a 51% interest) in San Imperial. The total issued share capital of that company was 48.2 million shares. The observations made in illustrations 4 and 5 in respect of Ng apply here. It would appear from Ives' evidence that the figure of 6 million shares was inserted in the agreement for no more plausible reason than that MAF "insisted on having it in".

7. According to Ives, when the Syndicate was first formed at the end of 1976, it was thought Asiatic was holding a large block of San Imperial shares for C.K. San. At that stage Triumphant was neither mentioned nor considered. But in the telex for legal advice sent by Ives to London on 4th January 1977, both Asiatic and Triumphant (referred to as XXX Ltd. and YYY Ltd. respectively) were indicated. The telex was prepared by Ives on 3rd January 1977, i.e. on the day that Ng returned to Hong Kong from Taipei. On that day Ng telephoned Ives and told him that he had contacted C.K. San and that he thought "we were in business". It is unlikely that Ng would have failed to mention over the telephone that C.K. San had sold the shares to Chow and Hwang. Ives' evidence, however, is that he prepared the telex on 3rd January 1977 on the basis that the shares were still owned by C.K. San. On the following day, i.e. the 4th, the Syndicate met for lunch and it was at that meeting that Ng reported on his meeting with Chow and Hwang, in which case the telex would have been unnecessary because the Syndicate's worry at time was the legality of purchasing the shares directly from a fugitive from justice. Ives said in evidence, "The telex was dictated on Monday (i.e. the 3rd) and my secretary tried to transmit it on Monday but she was unable to get a circuit. She tried all day on the 4th and was not able to transmit till 16:44 hours". The telex was therefore sent off after the Syndicate's lunch meeting. It is unlikely that Ives' secretary would have failed to inform him of her inability to transmit the telex. The probabilities are that at the time that the telex was sent the Syndicate already knew of C.K. San's shares registered in the name of Triumphant.

Defendant Ho

He is a very successful business man and also highly intelligent.

In his affidavit of 29th June 1977, he also referred to the 30th April 1977 agreement without mentioning the new 12th May 1977 agreement. He said in evidence that it was his lawyer Ives who prepared this affidavit for him. In my view it is highly unlikely that the omission of any reference to such an important docu-

ment was due to an honest mistake.

It is *perhaps possible that HO was misled by Ng and Ives,* but as a member of the Syndicate the principle of imputed knowledge applies.

Coe

Coe did not know C.K. San.

He too is a very successful business man and a highly intelligent person. He was on the witness stand for three and half days and was subjected to lengthy and searching cross-examinations. Having observed him, I form the general view that he was *not a completely truthful witness.* My general view is strengthened by the following particulars:

1. He was the first person to disclose the new 12th May 1977 agreement in an affidavit. But in that same affidavit (sworn on 26th July 1977) he failed to disclose the fact that he or Rocky acquired the San Imperial shares for his other company, viz, SKC. He had not made a full and frank disclosure in his affidavit.

2. In the same affidavit, he swore that he purchased the shares at $1.50 each, which is not strictly true. In addition to the $1.50, he had to pay a finder's fee of $3 million which brought the price up to $1.63 per share. Nowhere in this affidavit was the finder's fee mentioned.

3. He signed a number of documents in connexion with the acquisition of the San Imperial shares, not on behalf of SKC but as if he himself or Rocky were making the purchase. Furthermore there were no documents upon which the Syndicate could be compelled to transfer those shares to SKC.

4. There are no documents showing that either Coe, Rocky or IPC was acting for SKC.

5. On his valuation of San Imperial, Coe said that he relied on a simplified account prepared by the Syndicate (Ex. D16). The account had not been professionally audited or certified, nor was it vouched for by any independent person. He also said that he had made a physical inspection of all the building owned by San Imperial, apparently without ascertaining whether they had been mortgaged. He therefore came to the conclusion that the market value of the shares was $1.57 each but in fact the true value was $1.70 per share because the goodwill of Imperial Hotel (owned by San Imperial) was in his view worth $10 million to $15 million. The value he put on the goodwill of the hotel was not shown in the simplified account but was based on his knowledge that the goodwill of Merlin Hotel was valued at $15 million. It is in my view very unlikely that any genuine

and serious valuation could be arrived at in so casual a manner.

6. At a Board Meeting held on 30th March 1977 SKC authorized Coe to negotiate and purchase on behalf of SKC the controlling shares of San Imperial. But both the agreements of the 30th April 1977 and 12th May 1977 were made between Ng on behalf of the Syndicate and Rocky.

7. His solicitor, Mr. Philip K.H. Wong, whose integrity and competency are recognized, made an affidavit on 29th July 1977, saying that he had acted for Rocky in the purchase by that company of the San Imperial shares. SKC was not mentioned in this affidavit. Coe said that he had told Mr. Wong about SKC. If so, Mr. Wong could not have failed to refer to it because this was an important fact. The probability is that Coe had not given Mr. Wong the complete facts at that time. It is worth noting that there had not been any mention of SKC until Mr. Swaine's opening address for the defence.

8. At the beginning of the hearing Mr. Ching asked for a list of documents in the possession of Coe, Rocky, or SKC. The defence promised to produce them. These documents in my view could have been produced without difficulty. Mr. Swaine in his opening on 31st October and 1st November 1977 undertook to produce them, but it was not till much later and after numerous requests that they were produced in a file known as Yellow 4. No plausible reason has been advanced for the inordinate delay. The probability is that Coe was unwilling to produce them, and this procrastination must at least go to his credibility.

The particulars listed above are not exhaustive, but will suffice as illustrations.

Conclusion

In the course of the hearing, Mr. Yorke requested from the defence certain bank accounts for the period commencing April 1977. No convincing reason has been advanced for the long delay before their production. San Imperial's register of shareholders (Ex. P. 14) was produced after a delay of three weeks. The probable reason in my view lies not in any difficulty in locating the documents but in the unwillingness of the defendants or some of them to disclose them. The blame in no way lies with defence counsel, or with Philip K.H. Wong & Company.

In my judgment *Ng, Ives, and Coe were not truthful witnesses.* Their oral evidence is unreliable in almost all material particulars. I shall therefore *rely mainly on documentary or undisputed evidence.*

The Law

A number of authorities have been cited by Mr. Swaine. It is not because they have not been helpful that I do not discuss them at length here. They all deal with general and well known principles. I need only refer to a few of them by their titles and state that I have perused and considered them with care. Amongst the cases cited are *Onslow's Trusts*[3]; *Gill* v. *Continental Union Gas Co. Ltd.*[4]; *Re General Horticultural Co.*[5]. In particular I rely on *Hawks* v. *McArthur*[6]. I also rely on an authority cited by Mr. Yorke, namely, *Compania Naviera Martiartu* v. *Royal Exchange Assurance Corporation*[7].

I also referred to *Palmer's Company Law,* 22nd ed., vol. I, para. 40 – 38 at p. 413, which gives a useful explanation on charging orders.

The Facts

I do not propose to deal with all the details and improbabilities which have been disclosed, nor with all the issues which counsel have submitted on, particularly in their final addresses. Suffice it to say that I have given all those matters my careful consideration. I shall instead *concentrate on what I consider to be the important features of the case.*

It is impossible on the evidence to bring to light all the relevant facts, a substantial part of which being known only to the Syndicate, Coe, C.K. San and their friends. As Mr. Yorke has said, we shall never know what really happened, but the probabilities are that the profits on the transactions were to be split between the Syndicate and C.K. San.

The 422,560 San Imperial shares registered in the name of Asiatic

There is no dispute that at all material times Asiatic held these shares as C.K. San's nominee (Ex. P. 14, p. 6).

The 400,000 San Imperial shares registered in the name of Triumphant

There is no dispute that at all material times Triumphant held these shares as C.K. San's nominee (Ex. P. 14, p. 11).

The 57,600 San Imperial shares registered in the name of C.K. San

There is no dispute that at all material times these were C.K. San's shares (Ex. P. 14, p. 2).

(3) (1875) XX L. R. Equity Cases 677.
(4) (1872) VII L. R. Excheq. 332.
(5) (1886) 32 Ch. D. 512.
(6) (1951) I All E. R. 22, at p. 24 F & G, p. 26 G & H, p. 27 A, D – H, and p. 28A.
(7) (1924) 19 Lloyd's List Law Reports 94, at pp. 95 – 97, for The Earl of Birkenhead.

The 15 million San Imperial shares registered in the name of Fermay

In my opinion *most of the evidence of Ng, Ives and Ho on this aspect of the case is untrue. Ng however did make the admission that he knew he was purchasing shares from C.K. San's nominees. I accept this statement as representing the truth. And on the principle of imputed knowledge, since Ng knew, Ives and Ho also knew.*

In June 1976 C.K. San was arrested on certain grave charges of fraud and was granted bail. He jumped bail and escaped from Hong Kong on or about 28th October 1976. It is common ground that when he left Hong Kong he brought with him some 200 share certificates representing 15 million San Imperial shares registered in the name of his nominee company Asiatic (Exs. P. 11A and 11B). *In fact these shares were beneficially owned by C.K. San.*

In November 1976 Coe approached Ives and Ho separately and expressed his desire to acquire a controlling interest in San Imperial. As a result, Ives, Ho and Ng (i.e. the Syndicate) met in December to discuss the possibility of acquiring, if possible, 24.2 million San Imperial shares (the total issued share capital being 48.2 million shares) and then selling these shares to Coe or some other person at a large profit. Prior to the meeting Ng had ascertained that the largest single shareholding was in the name of Asiatic, which the Syndicate knew to be C.K. San's nominee company. At none of the preliminary discussions was C.K. San's other nominee company Triumphant mentioned. It is not disputed that the *Syndicate know that C.K. San habitually used nominees to hold his shares for him.*

In their evidence Ng, Ives and Ho claimed that the Syndicate, after discussions, decided that they had first to resolve *three problems*, namely, (1) Where could C.K. San be found? (2) Could the Syndicate properly deal with C.K. San, he being a fugitive from justice?, and (3) As the Syndicate suspected that C.K. San might have milked San Imperial before leaving Hong Kong, what was the true value of that company?

As to the first problem, according to the evidence, it was thought that C.K. San might be in Taiwan, Bangkok or Indonesia. Ng flew to Bangkok for the Christmas holidays and asked for C.K. San's whereabouts at one of the companies under C.K. San's control, but his search was fruitless. On 3rd January 1977 he flew to Taipei. Ng saw C.K. San the following morning in the coffee shop of the hotel at which Ng happened to be staying. The reason for this good fortune was, according to Ng, that he knew that most visitors from Hong Kong would stay at this particular hotel. I do not accept Ng's evidence that he had to search for C.K. San. One would have thought that, C.K. San, who was heavily in debt and a fugitive from justice, would avoid going to public places, particularly one frequented by visitors from Hong Kong. In my view *the first problem did not exist.*

As to the second problem, Ives sought legal advice from London. This was probably a matter of some urgency, or he would not have sent a telex. Instead of sending the telex in December, as a prudent man would have done, Ives waited

till 4th January 1977 to do so. Ng was in Taipei from 30th December 1976 to 3rd January 1977. During this period, according to Ng, he made contact with C.K. San as well as Chow and Hwang, and he learned that C.K. San had sold the 15 million San Imperial shares to Chow and Hwang in November, and they were now willing to sell if the price was acceptable. Ng did not telephone either Ives or Ho from Taipei. But after his arrival in Hong Kong on 3rd January 1977, he telephoned Ives and said that he had located C.K. San and he thought "we were in business". There was no mention of Chow and Hwang. Being aware of the legal problem of purchasing shares directly from a fugitive, Ng must have known that the acquisition of the 15 million shares by Chow and Hwang would probably change the legal position. It is very unlikely that he would have omitted this most important information when he reported to Ives, whose duties it was to solve legal problems for the Syndicate. In my view Ng did not meet Chow and Hwang on his first visit to Taipei.

Ives said in evidence that after receiving Ng's telephone call, he dictated a telex seeking counsel's opinion in London regarding the purchase of shares directly from C.K. San (Yellow 2, p. 123). The telex referred to both Asiatic as well as Triumphant (which, according to the evidence, had not been mentioned even as late as 5th January 1977) as being C.K. San's nominee companies holding substantial shareholding in San Imperial. For undisclosed reasons, the telex also referred to C.K. San's shareholding in MAF Credit Ltd. It will be seen that the two lots of shares Ng was supposed to have purchased from Lee and Fong were registered in the names of Asiatic and Triumphant respectively (Yellow 2, Documents 128 and 129). Ives said that his secretary was unable to transmit on 3rd January. On the 4th, the Syndicate had a lunch meeting during which Ng reported on his conversations with C.K. San and with Chow Hwang. The telex was despatched at 4:44 p.m. the same day. It is highly unlikely that Ives' secretary would have failed to inform him of her inability to transmit the telex message. On the balance of probabilities, I find that at the time the telex was sent, the Syndicate knew of the two lots of shares registered in the names of Asiatic and Triumphant respectively as being C.K. San's shares. I also find that Chow and Hwang had not as yet come on to the scene at this stage. In my view, on credibility and on probability, *the second problem still existed at the time the telex was sent,* i.e. at 4:44 p.m. on 4th January, 1977.

The urgency of the matter was shown by the promptness of the reply to Ives' telex, which arrived on 5th January 1977 (Yellow 2, p. 124). It in effect advised against purchasing the shares from C.K. San. It is therefore likely that *Chow and Hwang, Lee and Fong and Fermay were used in the light of this legal advice from London.*

As to the third problem, my observations on Ives' evidence of the Syndicate's valuation of San Imperial, under the title of Assessment of Witnesses, apply, especially in the light of the Syndicate's suspicions that C.K. San might have milked the company. In my view, on credibility and on probability, *the third problem did not exist.*

I must now return to Ng's visit to Taipei on 30th December 1976. The

evidence is that C.K. San had sold the 15 million San Imperial shares to Chow and Hwang in November. If C.K. San were to sell these shares in Taipei, he would not be able to get more than 10 to 20 cents per share. The market rate in Hong Kong at the time was just under 30 cents per share. As a controlling interest, the price was $1.50 to $1.70 per share. It is common ground that 15 million shares would give the holder effective if not absolute control of San Imperial. It is in my view unlikely that C.K. San, being an astute man, would have sold those shares at one-tenth their true value. The defence produced a testimonial from a certain Madam Lau of Taipei (Ex. D9) in which it was said that in November 1976 Mrs. C.K. San introduced her to C.K. San. C.K. San indicated to her that his business in Hong Kong was in some difficulties and he asked her to find a purchaser for his San Imperial shares. Through her introduction, Chow and Hwang purchased these shares from C.K. San. It is in my view unlikely that anyone would have bought shares privately from a total stranger who confessed to being in difficulties. Madam Lau was not called as a witness. There is no evidence as to who she was or what she did. The testimonial is not a document to which any weight could be given. It was more than a month after the alleged purchase that Ng met Chow and Hwang. They asked Ng if the San Imperial shares were "hotel shares". My comments about Ng's evidence in this respect (under the title of Assessment of Witnesses) are equally applicable here. Also, Chow and Hwang had done nothing to have the shares authenticated or registered in their own names. In my judgment, on credibility and on the balance of probabilities, *C.K. San did not divest his interests in those shares to Chow and Hwang.*

According to Ng, it was this same Madam Lau who, on the suggestion of Mrs. C.K. San, introduced him to Chow and Hwang.

On Ng's fourth visit to Taipei, between 9th and 13th February 1977, he brought with him a draft agreement prepared by Ives (Ex. P. 10). At the time, no agreement had been reached as to the 15 million shares. According to Ng, Chow wanted $1 per share but the Syndicate counter-offered 40 cents per share. On the third visit Chow had said he had friends with 515,000 San Imperial shares for sale together with the 15 million shares. The draft agreement referred to 15,515,000 San Imperial shares to be sold by Chow and Hwang at 60 cents per share, payment to be made by nine monthly instalments, the first on signing of the agreement and the last on 30th December 1977. *This draft has in itself the elements of a sham.* Firstly, if Ng was truthful, then the vendors would not be just Chow and Hwang but should include the names of the friends (i.e., Lee and Fong) who had the 515,000 shares. Secondly, the price was not agreed on at that stage. It will be seen from Ng's evidence that it was on a subsequent visit that the price was agreed at 60 cents per share for the 15 million shares and 20 cents per share for the 515,000 shares. Thirdly, there had been no mention of payment by instalments between Ng and Chow and Hwang. In any event, it is unlikely that any vendor would agree to sell shares in a Hong Kong company to a group of strangers from Hong Kong on instalments covering a period of some 10½ months. Indeed Ng's own evidence was that Chow and Hwang objected to those terms.

Ng said in evidence that on 5th March 1977 Chow telephoned him from

Taipei and said he would agree to sell the 15 million shares at 60 cents each. On 8th March the Syndicate formed a shelf company called Fermay for the purpose of authenticating and holding the 15 million shares. Chow and Hwang were then to request the Registrars of San Imperial to have the 15 million shares registered in the name of Fermay. The registration would be proof that those shares were authentic. Chow and Hwang would then be made the sole shareholders of Fermay, whose sole assets were to be the 15 million shares. Fermay would eventually transfer the shares to the Syndicate.

On 22nd March, Ng again flew to Taipei, and on the following day he signed the agreement with Chow and Hwang. This agreement (Yellow 1, Documents 16 and 16A) had a number of peculiar features. Firstly, the number and price of the shares sold were not menioned. There were spaces left blank for these figures to be filled in later. The reason advanced by the defence, which I do not accept, is that these figures were to be inserted after the authenticity of the shares was established. Secondly the names of the vendors were also to be filled in later. Thirdly, Chow and Hwang (but not Ng) put their signatures against the blank spaces to authenticate the future insertions. It is not known what steps Chow and Hwang could take to prevent Ng from inserting a purchase price smaller than that agreed upon. Fourthly, clause 4 provides that delivery of the shares of Fermay (which would own the 15 million San Imperial shares) and transfers to the Syndicate by Chow and Hwang shall be proof of payment of the balance of the purchase price, and Chow and Hwang as vendors shall be estopped from denying payment after delivery. *In my view it is highly unlikely that complete strangers would deal with $9 million worth of shares in this manner.*

The agreement took three months to come into being. Undoubtedly there must have been protracted negotiations, *probably because the Syndicate wanted to split the profits with C.K. San.*

Ives conceded that there was another method of authenticating the shares. Chow and Hwang could have sent the share certificates together with the transfer forms to the Registrars of San Imperial together with a convering letter requesting them to issue new share certificates to the Syndicate's solicitors or to hold those shares to the orders of Chow and Hwang. This would in fact be a less cumbersome and cheaper way of achieving the Syndicate's purpose. The use of Fermay was therefore quite unnecessary, and in my view not for the alleged purpose of authenticating the 15 million shares. As Mr. Ching has observed, *Fermay must have been used to get the shares out of C.K. San's name.*

It is said that Chow and Hwang had been paid a deposit of $200,000 for the 15 million shares. However, stamp duties for the bought and sold notes for the shares totalling $72,000 and the fee of $72,000 for increasing Fermay's capital from $1 to $9 million were paid out of this sum. Chow and Hwang had therefore only $92,000 in their pockets. *The balance still outstanding is therefore $8.8 million* (subject matter of the garnishee orders nisi). No further sum has been paid, nor have they insisted on payment.

On the same day as the agreement was made, Chow and Hwang as first directors of Fermay (see Yellow 1, Document 10) purported to hold a board meeting and resolved that Ng, Ho and Ives be authorized signatories of Fermay for the purpose of entering into any contract or signing on behalf of Fermay any document, receipt, contract, bought and sold note, transfer or any other document of any nature whatsoever and the signature of any one of them was to be binding on Fermay (Yellow 1, Document 14). Thus, by this resolution, Chow and Hwang relinquished their control of Fermay. And by clause 4 of the agreement (supra), they were estopped from claiming the balance of the purchase price amounting to $8.8 million. *There could be no acceptable reason for Chow and Hwang to repose such complete trust in the Syndicate.*

There is an undated letter, said to be written after 20th May 1977, by which Chow and Hwang resigned as directors of Fermay (Yellow 3, p. 144). On the same day, Chow and Hwang passed a resolution appointing Ng the managing director of Fermay (Yellow 1, Document 62). By these gestures, Chow and Hwang voluntarily relinguished whatever power they might still retain in Fermay. The reason for this peculiar conduct on the part of Chow and Hwang was given by Ives. Ng, according to Ives, told Chow and Hwang that Fermay should be legally represented if sued. On Ng's suggestion, they made Ng the managing director to represent Fermay in any legal proceedings.

In my judgment *the 23rd March 1977 agreement was, on credibility as well as probability, a complete sham and nullity.* On the facts, I have also drawn the conclusions that *(1) Chow and Hwang were acting as C.K. San's nominees at all material times, (2) the Syndicate must have known that Chow and Hwang were C.K. San's nominees, (3) all parties knew that the transaction between the Syndicate and Chow and Hwang were shams, and (4) accordingly, the beneficial interests in the shares still remain in C.K. San.*

Chow and Hwang sent the share certificates and the share transfer forms to the Registrars of San Imperial some time near the end of March 1977. There is no evidence as to the precise manner in which this was done. On 28th March the 15 million San Imperial shares were registered in the name of Fermay (Exs. P. 11A and B, Yellow 3, pp. 140 and 141), only five days after the agreement was entered into. It may be noted that, according to Ng, he telephoned the Registrars of San Imperial on the 27th March and was told that the 15 million shares had not reached them yet. *The transfer into Fermay therefore took only one day, which in itself causes suspicion.*

On 30th April 1977 Ng on behalf of the Syndicate entered into an agreement with Rocky for the sale and purchase of 23 million San Imperial shares including the 15 million shares. On 12th May 1977 this agreement was replaced by a new agreement whereby Rocky was granted an option to purchase the whole of the issued and fully paid up shares of Fermay, which was of course by then the registered owner of the 15 million San Imperial shares (Clause 1, at Yellow 1, Document 54). Under the new agreement, Rocky had paid the Syndicate an option fee of $4 million. By clause 13 of the new agreement, however, the option shall

be "exercisable" by Rocky as soon as the injunctions affecting those shares "and/or any other restrictions on dealing with the shares are lifted and discharged".

Accordingly, if the new agreement was a sham agreement, then the 15 million shares are still beneficially owned by C.K. San. *If the agreement be genuine, then clauses 13 and 16 operate to prevent Rocky from exercising the option.* Rocky's equitable interest in those shares does not arise until the conditions in clauses 13 and 16 have been fulfilled. Though the agreement was entered into before the making of the charging orders nisi, no option had been exercised prior to those orders. The end result is that C.K. San will not be considered as having divested himself of his beneficial interests in the 15 million shares until after the restrictions placed on them have been removed. Mr. Swaine argues that once the plaintiffs have been paid their judgment debts then the shares are no longer under any restrictions, and Rocky will then be entitled to exercise the option. The true position however is that Rocky is under no obligation to pay for the shares until after they have exercised the option. Under the agreement they are not bound to exercise the option, and they are not able to exercise the option until the shares are free from restrictions.

Finally, I should add that unless otherwise indicated I have attached no weight to the conversations referred to in the defendants' Hearsay Notices in respect of the 15 million San Imperial shares. The statements alleged to have been made by C.K. San are self-serving and not worthy of credence. There are also statements alleged to have been made by Chow which were self-serving. No plausible reason or evidence has been advanced for his non-appearance as a party and non-attendance as a witness for the defence.

The 7,631,000 San Imperial shares registered in the name of IPC

This lot of shares form part of the 8 million shares sold by the Syndicate to Rocky under the new agreement of 12th May 1977 (Yellow 1, Document 54). By clause 2(b) of the agreement, the Syndicate, represented by Ng, was to transfer to Rocky not less than 7 million nor more than 8 million San Imperial shares. The agreement replaced the 30th April 1977 agreement (Yellow 1, Document 40) under which there was an outright sale and purchase of the whole of the 23 million shares.

Some 7,669,800 of those shares were first registered in the name of City Nominees, Ltd., a company under the control of Ives and his four partners in Peter Mo and Company. This company was used as a vehicle to lodge the shares pending the completion of the deal with Rocky (see e.g., Yellow 1, Documents 25 and 27). From City Nominees, Ltd., these shares went into IPC (Ex. D13: the first six items therein come to 7,631,000 shares). IPC then executed three declarations of trust in respect of the 8 million shares in favour of Rocky (Exs. P. 23A, B and C). There were however no declarations of trust in favour of SKC.

The 8 million shares were made up of:

(1) 514,200 shares allegedly acquired by Ng on his fourth trip to Taipei.

(2) 1,650,000 shares allegedly acquired by Ng on his fifth trip to Taipei.

(3) 2,609,800 shares acquired by Ng on behalf of the Syndicate on the local stock market and from private sellers. These were paid for out of the Syndicate's funds.

(4) 3,226,000 shares acquired by Ng and Ho on behalf of the Syndicate under the MAF option agreement of 30th March 1977 (Yellow 1, Document 18), whereby the Syndicate was given the option to purchase up to 6 million San Imperial shares.

Only 7,631,000 out of the 8 million shares form the subject matter of the charging orders nisi.

There is exhibited a most useful and helpful chart prepared by Mr. Yorke (Ex. P. 12) showing the movements of all the shares in question. Apart from showing that the 15 million shares came from Asiatic into Fermay, it also shows how approximately 8 million shares came from various sources through various companies into IPC. It will be noted that whilst Rocky was the purchaser, these shares were registered in the name of IPC which is also one of Coe's nominee companies.

I shall now deal with the five lots of San Imperial share comprising the 8 million shares.

(1) *The 514,200 shares* were allegedly acquired by Ng on his fourth visit to Taipei, which lasted from 9th to 13th February 1977. In my view, on credibility as well as on balance of probabilities *there was either no actual acquisition or the purported acquisition was a sham and a nullity. I have already stated that Ng's evidence is not worthy of credence.*

It will be recalled that *Ng has admitted having purchased shares from C.K. San's nominees. The probabilities therefore are that Lee and Fong (if they did exist) were C.K. San's nominees.*

According to Ng, on his third visit to Taipei in January 1977, Chow had informed him that he had friends who were willing to sell 515,000 San Imperial shares in addition to the 15 million shares held by Chow and Hwang. Chow had further said he wanted to sell the two lots together and asked for $1 per share. There was on that occasion no mention that Chow had obtained the friends' consent to have the two lots sold together, nor was there any mention of yet another lot of 1,650,000 shares which the same two friends had and were to sell to Ng on a subsequent visit. It is therefore significant that in Ives' telex to London, both Asiatic and Triumphant were mentioned as holding San Imperial shares as C.K. San's nominees. The 15 million shares and the 514,200 shares were registered in the name of Asiatic and the 1,650,000 shares in the name of Triumphant. *The probabilities are therefore that the Syndicate knew that both the 514,200 shares and the 1,650,000 shares came into Ng's hands from C.K. San, with or without Lee and Fong as C.K. San's intermediaries or nominees.*

On Ng's fourth visit, he showed Chow the first draft agreement prepared by Ives (Ex. P. 10). It referred to 15,515,000 shares. The draft was not shown to Chow's friends who supposedly owned the 515,000 shares. After some discussion, the friends, Lee and Fong, were pursuaded to sell at 20 cents per share for cash, which was only one-fifth the asking price. Lee and Fong must have known that a much higher price could be fetched if the two lots were sold together. Again, it is not disputed that these shares were still registered in the name of Asiatic which was C.K. San's nominee company.

If Ng is to be believed, then the probability is that Lee and Fong acquired those shares from C.K. San. The price they would have had to pay C.K. San for them would have been 10 to 15 cents per share. Neither Lee or Fong was called as a witness. There is no evidence as to who Lee and Fong were and what their financial status was, but they would have had to pay C.K. San about $70,000 for those shares, probably without any assurance that the share certificates and transfer forms representing those shares were genuine. Having regard to the wording of Ives' telex, and on the balance of probabilities, my view is that *there was no or no genuine acquisition of the shares by Lee and Fong from C.K. San, and the Syndicate knew that.*

According to Ng, he had suspected that the share certificates might be false. When Lee and Fong wanted payment in cash, Ng allegedly said in reply, "If you want cash, let's not talk about it, because I would not be able to get my money back if the shares were forged or false. If you really want to sell your shares, please do it through Mr. Chow because in that case I would be in a position to get my money back." It is not entirely clear why Ng should feel safer to transact through Chow, who was also a stranger to him at that time. In spite of his suspicion he too did nothing to prove those shares. It was not till 29th March, 1977, and after he had paid Chow in cash, that he had them registered in the name of MAF Nominees Ltd. (Ex. P. 14, pp. 6, 14). Unlike the 15 million shares the purported agreement for the sale and purchase of this lot was not reduced into writing.

As has been said earlier, payment was alleged to have been made on the basis that there were 515,000 shares but in fact there were only 514,200 shares. The total payment would therefore have been $103,000. Ng said he made the payment to Chow. There is documentary evidence showing that he had brought a total of about $500,000 into Taiwan (Yellow 3, pp. 122 – 124, 134). However there is no documentary proof showing the exact amount paid and to whom it was paid. Those shares were supposedly acquired on Ng's own account and paid for out of his own pocket. The total net worth of Ng at that time was about $1.5 million. *In my view payment was made towards those shares, but it is not possible to make a finding as to the precise purpose of such payment.*

I would comment here that I give no weight to statements purported to have been made by Lee and Fong as contained in the defendants' Hearsay Notices.

These shares were supposed to have been bought at 20 cents each. They were later sold to Rocky at a true price of $1.63 each. The profit was therefore

enormous. There was no plausible reason for Ives and Ho to permit Ng to pocket the whole profit on the shares alleged to have been acquired from Lee and Fong. Ng, Ives and Ho gave somewhat differing reasons for agreeing to Ng's purchase of those shares on his own account. One reason was that because Ng had done a lot of "legwork" between Hong Kong and Taiwan, he was allowed to have this extra bonus to himself. It will be recalled that the sole reason for bringing him into the Syndicate was to find San Imperial shares, i.e., to do the legwork. Another reason advanced was that the Syndicate wanted to keep their capital outlay to a minimum. It was therefore against their policy to use actual cash to buy shares. This reason is inconsistent with the Syndicate's purchases with their own money of some 2¼ million San Imperial shares from the open market for about $1¼ million from 3rd January to 28th June 1977. Yet another reason, given by Ho but not by Ives and Ng, was that this purchase was against the Syndicate's policy of proving the authenticity of shares. Ho, however, did not explain why this lot of shares could not be proved in the same way as the 15 million shares. The same observations apply to the 1,650,000 shares Ng was alleged to have bought in Taiwan or his own account.

The 514,200 shares was subsequently registered in the name of MAF Nominees Ltd., then City Nominees Ltd., and finally, IPC (Ex. D8A). They formed part of the 8 million shares sold to Rocky. In my judgment, *the alleged acquisition of those shares by Lee and Fong either never took place or was a sham and a nullity. The alleged acquisition of the same shares by Ng from Lee and Fong was also a sham and a nullity. The beneficial interests in these shams therefore had not passed from C.K. San to Ng.*

If the 12th May 1977 agreement between the Syndicate and Rocky was a genuine and bona fide agreement, then the price for those shares (less the sums already paid) was in truth due and owing to C.K. San and not to the Syndicate. If the agreement was a sham, then the 514,200 shares are still C.K. San's.

(2) *The 1,650,000 shares* were allegedly acquired by Ng on his own account from Lee and Fong for 20 cents each during his fifth visit to Taipei, which was from 27th February to 2nd March 1977. On that occasion Chow was said to have lowered his price on the 15 million shares from $1 to 80 cents but Ng's counter-offer was 60 cents. Ng paid Chow $330,000 for those shares on his sixth visit later in March. As has been said, there are documents (Yellow 3, pp. 122 – 124, 134) showing that he had brought about $500,000 in all into Taipei, but these documents do not show the exact amount paid, to whom it was paid or the precise purpose for which it was paid. These shares were registered in the name of Triumphant, which held the shares for C.K. San. After payment in cash (Ex. P. 14, pp. 11, 14), Ng had them registered on 29th March, 1977, in the name of MAF Nominees. *I repeat all the observations I have made respecting the 514,200 shares in so far as they are applicable.*

Ng in his evidence has conceded that he had purchased shares from C.K. San's nominees, so the probability is that Lee and Fong (if they ever existed) were acting as C.K. San's nominees.

For the two lots of shares, Ng paid $433,000 out of his own pocket,

which represented just over a quarter of his net worth, without knowing whether his suspicion as to the authenticity of the share certificates and transfer forms was correct or incorrect.

These shares were later registered in the name of MAF Nominees Ltd., then City Nominees Ltd., and finally, IPC (Ex. D8B).

In my judgment, either there was no acquisition of those shares by Lee and Fong or the acquisition was a sham and a nullity. The acquisition of these shares by Ng from Lee and Fong was also sham and a nullity. The Syndicate in my view knew that these transactions were shams. As regards the 12th May 1977 agreement between the Syndicate and Rocky, I repeat the observations I have made in respect of the 514,200 shares.

The two lot of shares, totalling 2,164,200 in number, were sold to Coe or Rocky for $3,246,300 at $1.50 each.

(3) *The 2,609,800 shares* were, on the balance of probabilities, acquired from the local market and from private sellers locally and had nothing to do with C.K. San. *There is no evidence to show that C.K. San had held these shares beneficially.*

(4) *The 3,226,000 shares* were made up of the following:

(i) 70,000 shares acquired from Asiatic by MAF Nominees, Ltd. on behalf of MAF on 23rd November 1976 (Ex. P. 16, see also Ex. P. 14, pp. 6, 13, 19).

(ii) 369,000 shares acquired by MAF from the local stock market (Ex. P. 14, pp. 19, 13).

(iii) 7,000 shares acquired by MAF also from the local stock market (Ex. P. 14, p. 12).

(iv) 2,150,000 shares held by Asiatic for MAF (Ex. P. 14, p. 4) and transferred to the name of MAF on 1st September 1976 (Ex. P. 14, p. 12). It will be recalled that Mr. Y.S. Cheng (the accountant for MAF's parent company) suggested the transfer, which was duly effected (Exs. D17 and 18).

By a letter dated 23rd July 1977 (Yellow 1, Document 98), Mr. Cheng confirmed that MAF had held in it's own interest the 322,600 San Imperial shares as at 31st December 1976. There is no reason for me to believe that that situation has changed since that date.

The conclusion is therefore that *these 3,226,000 shares had nothing to do with C.K. San.* (See also my comments on Mr. Y.S. Cheng above).

In the light of Mr. Y.S. Cheng's evidence, which I accept in full, it will

not be necessary for me to make any finding as to the genuiness or otherwise of the MAF option agreement of 30th March 1977. It is clear that the person in charge of MAF, Ho Chung-po, was C.K. San's agent throughout the relevant period. It is also clear, particularly from a scrutiny of San Imperial's register of share transfers (Ex. P. 14), that he and C.K. San were engaged in certain fraudulent schemes. However, in the light of Mr. Y.S. Cheng's evidence, it will not be necessary for me to embark upon an enquiry into that part of the case.

It has been noted that MBF makes no allegation of conspiracy against Coe, and the implication of MBF's pleadings is that Rocky was an innocent purchaser. It follows, as far as MBF is concerned, that Rocky entered into the two agreements innocently with the Syndicate on 30th April and 12th May 1977 respectively. Moreover, there is no evidence against Coe of any deceit or intention to mislead on his part.

On the evidence I am also of the view that MBF has not made out a case of conspiracy against the Syndicate, as described in para. 7 of their Statement of Claim.

I must nevertheless consider these two agreements in the context of the claims by the plaintiffs Lee Ing Chee and Lee Kon Wah, and in the context of MBF's alternative claim, and decide whether these were sham agreements.

I shall deal with them under a separate heading below and refer to them respectively as the replaced Rocky agreement and the new Rocky agreement.

The Replaced and the New Rocky Agreements

On 13th March 1977 Ho, Ng and Coe met at the Holiday Inn. After some discussion, the price for the shares was agreed at $1.50 per share plus a finder's fee of $3 million, which in effect brought the price up to $1.63 per share. Coe's evidence is that he was at the time hoping to acquire even more shares in the future. If the price was stated at $1.50 in the contract, then for the purpose of bargaining he would be able to tell future sellers that he had bought at that price. I cannot believe that Coe, being a successful businessman, would be so naive as to think he could conceal the payment of a finder's fee or the real price from future sellers, or that future sellers would refrain from demanding a higher price simply because Coe had paid a lower price in a previous transaction. It is also a little difficult to see the need for more shares if he had already got control of San Imperial by his acquisition of 23 million shares from the Syndicate. He's evidence however is that sometime in March, Coe told him that he was short of cash, and "he would settle for 23 or even 22 million shares."

Coe said he was in fact purchasing the shares on behalf of SKC but he wanted to keep this fact a secret because, in view of the sensitiveness of the market, news of SKC's acquisition would cause speculation in SKC as well as San Imperial shares. The 30th April 1977 agreement was therefore supposedly made between Ng acting on behalf of the Syndicate, and Rocky acting on behalf of SKC. There is however no documentary evidence to support Coe's allegation, and there is nothing,

documentary or otherwise, upon which SKC could demand that the shares be transferred to its name.

The Syndicate might or might not have known that Coe was acting on behalf of SKC (if he did in fact so act).

On 13th April the plantiff Lee Ing Chee's notice appeared in the South China Morning Post (Yellow 1, Document 26) to the effect that he had obtained an interim attachment in the High Court in respect of C.K. San's 16.5 million San Imperial shares and also his shares in other companies. Strangely, there was no discussion between any member of the Syndicate and Coe about this notice. On the 20th April Coe called on the Acting Commissioner for Securities Mr. McInnes and enquired how best to acquire San Imperial. On this occasion Mr. McInnes was given the impression that Coe was acting for himself. On the 4th May, when San Imperial shares were suspended in the local stock market, Coe and his solicitor Mr. Philip K.H. Wong again called on Mr. McInnes and in the conversation Coe mentioned that he had entered into an agreement to purchase 48% of San Imperial on behalf of SKC. As has been pointed out, Mr. Wong, however, in his affidavit stated that he was acting for Rocky in the acquisition of these shares.

On 29th April MBF put a notice in the South China Morning Post (Yellow 1, Document 35) to the effect that MBF had, in High Court Action 252 of 1977, obtained an injunction against C.K. San in respect of 17,421,960 San Imperial shares. Coe's evidence is that this was the first time he knew of any restraints on C.K. San's Imperial shares.

On the same day, Coe gave his solicitor two cheques totalling $1½ million to be paid to the Syndicate as deposit for the 23 million shares (Yellow 1, Documents 34, 44 and 47).

On 30th April the replaced Rocky agreement was entered into (Yellow 1, Document 40) for the sale and purchase of 23 million San Imperial shares. Clause 19 of the agreement is important. It provides: "This sale is conditional and it is of the essence that (i) the Vendors shall not be restrained by any order made in Action No. 252 of 1977 in the High Court from completing the transaction and (ii) at the time of completion there shall be no suspension of trading of San Imperial shares consequent upon any proceedings taken under action No. 252 of 1977." *This clause would have been superfluous if the agreement were a sham.*

In order to guarantee the value of San Imperial, Ng or the Syndicate was made to insert clause 7(c), which provided that on completion San Imperial "shall remain the registered owner of or be otherwise beneficially entitled to six listed properties, namely –

(i) the building known as Imperial Hotel,

(ii) No. 6, Tung Shan Terrace,

(iii) $6 million cash representing Nos. 140 and 141, Connaught Road, Central (called the Loong San Building),

(iv) a property at Clear Water Bay Road,

(v) Nos. 16 – 22, Oxford Road, with a notional value of $2½ million, and

(vi) Nos. 2 – 10, Pilkem Street (Bangkok Hotel), with a notional value of $7½ million."

It will be noted that there is nothing in this agreement to show that Coe signed on behalf of Rocky. And there is no evidence to show that he had the authority to sign for Rocky. It is necessary in this context to refer to a resolution of SKC dated the 30th March which authorized Coe to negotiate and purchase on behalf of SKC the controlling shares of San Imperial. Coe therefore acted in breach of that resolution. Moreover, there is also nothing to show that Rocky entered into the agreement on behalf of SKC.

Neither SKC, Rocky or Coe had the cash to pay for the shares at the time. So by clause 13, Ng was to lend $17¼ million to Rocky on the security of the 23 million San Imperial shares. This loan represents half the total amount which Rocky had to pay Ng or the Syndicate, namely $3 million finder's fee plus the purchase price of $34.5 million for the 23 million shares at $1.50 each.

By a supplemental agreement of the same date (Yellow 1, Document 41), Ng agreed to use his best endeavours to raise a further loan in favour of Rocky in the sum of $17¼ million (i.e., half of the total amount due under the replaced Rocky agreement) on the security of 23 million SKC shares. The total issued share capital of SKC was 44½ million shares. About 11 million of the 23 million SKC shares belonged to Coe and his family, the rest was held by companies under his control. There is however nothing to show that Coe had the authority to pledge those shares.

By a memorandum of the same date (Yellow 1, Document 38) Coe agreed to give Ng a 1% commission for raising the loan. It is common ground that if Coe had gone to a bank to raise the loans, the bank would only charge a ½% handling charges. It is also not disputed that SKC shares were steady and were worth $1 on the stock market.

On the same date Coe wrote to Ho and undertook to pay a $3 million finder's fee (Yellow 1, Document 43).

Again on the same day, Coe guaranteed Rocky's performance of the contract and in turn Ho guaranteed Ng's performance of the contract (Yellow 1, Documents 37 and 39). This was necessary because Ho knew Coe but not Rocky, and Coe knew Ho but not Ng. *In my view if the agreement were a sham, these guarantees would not have been necessary.*

By a document called an undertaking (Yellow 1, Document 42), and dated 30th April, Ng undertook on behalf of the Syndicate to cause all existing directors of San Imperial to resign and to make Coe and his nominees the new directors. Ng

also undertook to sell the Oxford Road property at $2½ million and to use his best endeavours to sell the Bangkok Hotel property for $7½ million. This undertaking remained binding notwithstanding the coming into being of the new Rocky agreement. The undertaking was given at Coe's insistence because he did not want any of the directors then on the board of San Imperial to remain, and he thought the rents collected from the Oxford Road and Bangkok Hotel properties too low. Again it would seem that *this undertaking would have been unnecessary if the agreement were a sham.*

On or about 2nd May Coe paid the Syndicate another $1½ million as deposit (Yellow 1, Documents 44 and 47).

Then, on 5th May, a news item appeared in the South China Morning Post reporting, inter alia, the charges of fraud against C.K. San (Yellow 1, Document 51). The amount involved was $14 million.

Coe was by then sufficiently concerned about the development of events as to request a new agreement to replace the 30th April agreement.

On 12th May the new Rocky agreement was entered into (Yellow 1, Document 54).

By clauses 2(a) and 10, Ng granted Rocky an option to purchase the whole of the Fermay shares or the 15 million San Imperial shares registered in the name of Fermay. By clauses 2(b), Ng was to cause City Nominees, Ltd. (which by now was holding about 8 million San Imperial shares on behalf of the Syndicate) to transfer to Rocky not less than 7 million nor more than 8 million San Imperial shares.

Clause 4 provides for the payment of $4 million as an option fee. Clause 4(e) provides that the option shall be permanent and irrevocable.

Clause 5(c)(v) and (vi) of the new Rocky agreement repeat clauses 7(c)(v) and (vi) of the replaced Rocky agreement (supra).

Clause 10 provides that on completion of the 15 million shares Ng was to lend Coe $18.5 million on the security of the 23 million San Imperial shares. The $18.5 million was arrived at by deducting the option fee from the purchase price of $22,500,000 for the 15 million shares at $1.50 per share.

Clause 16 provides, "This sale is conditional and it is of the essence that (i) the Vendor shall not be restrained by any court order in particular those made under High Court Action No. 252 of 1977 and Action No. 2459 of 1976 in the High Court from completing the transaction and (ii) at the time of completion there shall be no suspension of trading of San Imperial shares consequent upon any rule, regulation, actions or proceedings." *This clause would not have been necessary if the new Rocky agreement were a sham.*

There is in my opinion no advantage in entering into a sham agreement on 12th May.

By two documents of the 12th May (Yellow 1, Documents 55 and 56) Coe guaranteed Rocky and Ho guaranteed Ng for the same reasons as before.

Three of the 30th April documents were not superceded and were held over, namely –

(1) the offer of 1% commission by Coe to Ng,

(2) the supplemental agreement whereby Ng was to extend a loan to Rocky on the security of the SKC shares, and

(3) Coe's offer to pay the finder's fee of $3 million.

As in the case of the replaced Rocky agreement there is nothing to show that Coe had the authority to sign for Rocky or that he was signing for Rocky, nor that Rocky was acting for SKC.

It is necessary to digress here and refer to the MAF option agreement for the 3,226,000 San Imperial shares. The Syndicate did not have sufficient money or did not want to use their own money to pay for those shares. They therefore obtained a loan from Oceania. The story starts from 1976 and involved a company called the H.K. Estates, Ltd. It will be seen that the whole maneuvre was very complicated indeed.

In 1976 a subsidiary of MAF Credit, Ltd., called MAF Investment, Ltd., had a property known as Loong San Building at Nos. 140 and 141, Connaught Road, Central. A subsidiary of San Imperial called Hong Kong Estates, Ltd., had deposited $5 million with the MAF Group as a loan. The MAF Group was not in a healthy financial position, so San Imperial wanted to "uplift" that loan. The MAF Group did not have sufficient cash, but they had the Loong San property, so it was agreed between the two sides that San Imperial would purchase this property and the $5 million would be used as a deposit (see Yellow 5, P. 64).

So on 17th July 1976 MAF Investment granted Hong Kong Estates an option to buy the Loong San property for $14 million. The option fee was $5 million (Yellow 4, P. 126). Nothing was done until 17th January 1977 when Hong Kong Estates exercised the option and instructed MAF Investment to enter the agreement of sale with Oceania, which was also a subsidiary of San Imperial (Yellow 4, P. 127). On 18th January MAF Investment and Oceania entered into an agreement for the sale and purchase of the Loong San property (Yellow 1, Document 9, p. 2).

H.K. Estates had paid the option fee of $5 million before the 18th January. Another sum of $1½ million was paid on the 18th January to MAF, which was also a subsidiary of MAF Credit.

Then for reasons which are not entirely clear or acceptable, the agreement was cancelled by a resolution at a board meeting of San Imperial on 3rd May (Yellow 1, Document 48). MAF Investment was to repay $6 million to Oceania but

was permitted to retain $½ million as a penalty for the cancellation of the 18th January agreement. When Oceania received the $6 million, it was to hold the money on behalf of Hong Kong Estates which was of course the true owner of the money.

MAF did not have the cash to repay Oceania, so it had to sell the 3,226,000 San Imperial shares (see Yellow 5, P. 63) to raise the money. The completion date for the MAF option agreement (Yellow 1, Document 18) was 22nd July (Yellow 1, Documents 30 and 32). By an agreement between MAF Investment and Oceania, also dated 12th May (Yellow 1, Document 9), MAF Investment paid Oceania one dollar forthwith, and was to pay $4,799,999 on or before 22nd July, and a further sum of $1.2 million one month thereafter. This and the two other agreements, viz, the MAF option agreement and the new Rocky agreement therefore formed the integral parts of one single plan. Ng's evidence that it had nothing to do with his re-financing arrangements with Coe is false. His evidence that the dates of 12th May and 22nd July were pure coincidences is also false.

The price for the 3,226,000 shares at $1.50 each was $4,839,000. On 2nd May MAF requested Ng and Ho to pay $4.8 million to Oceania direct because MAF owed Oceania $6 million over the cancellation of the Loong San Property deal; the balance of $39,000 was to be paid to MAF (Yellow 1, Document 46; Yellow 2, Document 131). On 15th June, MAF Investment paid Oceania $5,999,999 (Yellow 1, Documents 81 and 82; Yellow 4, P. 128). Of the $5,999,999, a cheque for $4.8 million was issued on behalf of the Syndicate. Owing to Ng's failure to raise $4.8 million for the 3,226,000 shares, other arrangements were made. The cheque was therefore cancelled on or about 27th June and later replaced by five cheques totalling $4.8 million but payable to Hong Kong Estates (Yellow 4, P. 132; Yellow 2, Document 132). On the same day Hong Kong Estates acknowledged receipt of the $5,999,999 (Yellow 4, P. 129).

As has been noted the Syndicate either did not have sufficient funds or did not want to use their own money to pay for the 3,226,000 shares under the MAF option agreement. With the assistance of Coe, they were able to raise sufficient funds with which to pay for those shares. This was in late June 1977.

The 9th June saw the completion of that part of the new Rocky agreement relating to the 8 million shares. *Coe had by then paid two sums of $1½ million each as deposit.* The total that had to be paid was $19.2 million, made up as follows –

(i) $12 million for the 8 million shares,

(ii) $3 million finder's fee,

(iii) $4 million option fee, and

(iv) $200,000 for brokerage and stamp duties.

The sum still outstanding was therefore $16.2 million (i.e. $19.2 million less $3 million already paid).

A number of documents came into being on 9th June, all contained in the bundle of documents marked Yellow 1 –

(1) Document 71 is an agreement showing that Ng had lent Coe $16.2 million on the security of 23 million SKC shares. This agreement was made pursuant to the supplemental agreement of 30th April (Yellow 1, Document 41). Whilst Ng took physical possession of the SKC shares, no cash changed hands, under this or any of the following documents. An earlier attempt by Ng to raise money from a bank on the security of SKC shares has failed, allegedly due to the adverse publicity given to San Imperial and C.K. San in the press. It is unlikely that any bank would give Coe or Ng the sort of loan that was needed, because the 23 million SKC shares offered as security were not all dividend bearing. Of the 44½ million shares of SKC, only 17 million were dividend bearing (Ex. P. 24, p. 30). Also Coe did not have the authority to pledge that part of the 23 million shares which belonged to his family and subsidiary companies.

(2) Document 72 is Coe's receipt to Ng respecting the loan of $16.2 million.

(3) Document 73 is Ng's receipt to Coe for $13.2 million on account of the purchase price of the 8 million shares.

(4) Document 74 is a revised finder's fee agreement, which presumably replaced Coe's letter of 30th April offering to pay a finder's fee of $3 million (Yellow 1, Document 43 supra).

(5) Document 75 is a request from Coe to Ng to have the share registered in the name of IPC. The reason given by Coe was the preservation of secrecy. He said, "IPC was used for the acquisition of these shares after completion date for the purpose of secrecy, to avoid speculation. Rocky is under me and my wife. People knew I'm Chairman of SKC, so that would cause people to know that it was SKC who were acquiring the shares. So to keep the secrecy, I used IPC, the directors of which being my mother and another relative. It'd not occurred to me it would turn out in this way, so I did not use IPC in the beginning – at first I thought it'd be enough to use Rocky, but later I discovered I was unable to keep the secret. Apart from wanting to avoid speculations I did not have any other reason for secrecy." In the circumstances of this case, it will not be necessary for me to determine the truthfulness of this statement.

(6) Document 76 shows that on 9th June the Syndicate received $1½ million from SKC (Yellow 1, Document 69).

(7) Documents 77 and 78 show that Coe had deposited the 23 million SKC shares with Ng.

(8) Document 79 is a receipt from Ng to Coe. It states that of the $13.2

million deemed to be paid by Rocky, $4 million was deemed to be option fee.

(9) Document 80 is Ho's receipt to Coe acknowledging receipt of $3 million as finder's fee.

By a letter dated 25th June, Ng acknowledged the receipt of nine post-dated cheques from Coe (Yellow 1, Document 88). Six of these cheques totalling $9 million were paid towards the purchase price of the 8 million shares (Yellow 2, Documents 106(iv) to (ix)). Three of these cheques totalling $4 million were paid as option fee (Yellow 2, Documents 107(i) to (iii)). *The total therefore came to $13 million.* The first six cheques were cleared between 26th July and 5th August; the last three cheques between 9th and 13th August. The letter concluded by stating that upon the clearing of these nine cheques, the loan agreement of 9th June (supra) between Ng and Coe would be "abandoned". *It will be recalled that the total loan was $16.2 million. There was therefore a balance of $3.2 million. The $3 million was the finder's fee. The payment of that sum took the form of an undated cheque issued to Ho. It was cashed in October. The remaining $200,000 was for expenses and was paid to Ng by Coe's cheque dated 15th August* (Yellow 2, Document 108).

As has been noted, the Syndicate needed $4.8 million to pay for the 3,226,000 shares acquired under the MAF option agreement. This sum they borrowed from Coe, for it was in his interest to lend the money to the Syndicate so that he could obtain those shares.

Before coming to the manner in which the $4.8 million was borrowed, it will be convenient to state at this juncture that at the end of the day the sum of $4.5 million (represented by the first three cheques of Coe's nine cheques referred to in the previous paragraph) was used to repay Coe towards that loan of $4.8 million from Coe to the Syndicate. Interests at 1% per month were charge by both parties for the loan and cross-loan. The remaining six cheques were, upon maturity, paid into Ng's account. The money was then re-lent to Coe, earning interest at 1% per month for the Syndicate (see Yellow 5, pp. 118 – 125). The 23 million SKC shares deposited by Coe with Ng as security were returned to him on 31st October, after all the loans had been repaid.

Returning to the $4.8 million required by the Syndicate for the 3,226,000 shares, $1 million came from Coe in the following manner. On 27th June, Coe deposited $1 million into Ng's firm of stockbrokers which was allegedly for the purpose of trading in the stock market (Yellow 5, P. 1). It is interesting to observe here that San Imperial shares, having been suspended from trading on 4th May, were re-listed on 27th June. Ng's evidence is that the $1 million was, with Coe's consent, borrowed without interest by the Syndicate to form part of the $4.8 million. In fact, according to the accounts kept by Ng's firm (Yellow 5, P. 1), the $1 million was not used for a whole month, and there is nothing in those accounts indicating that the $1 million was paid towards the purchase of the 3,226,000 shares. Coe on the other hand said in evidence that he did not know how Ng had got the $1 million. Be that as it may, that leaves $3.8 million to be raised.

The already complicated situation is further complicated by Coe's purchase of Oceania, from which company the $3.8 million was to come. There is exhibited a most useful and ingenious diagram fathered by Mr. Fung and adopted by Mr. Yorke (Ex. P. 21), which attempts to show how this was done. Some of my findings on this part of the case are based on this diagram.

On 22nd June, San Imperial sold its subsidiary Oceania to SKC for $7 million (Yellow 4, P. 12).

In payment for the purchase of Oceania for $7 million, SKC issued 7 million new shares to San Imperial. The 7 million new shares were issued under a mandate given at SKC's board meeting of 5th November 1976 (Yellow 4, Documents 10 and 11).

The 7 million new shares would not yield any dividends until 1st April 1978 (Ex. P. 24, p. 30). In 1976 SKC shares were yielding a dividend of 11 cents, in 1977 the dividend was 13 cents. Coe's evidence is that SKC will pay a dividend of 13 cents in 1978, and the 7 million new shares will be entitled to the same dividends as the other SKC shares. This being a statement made in public by the Chairman of SKC, I have no reason to doubt its truthfulness.

The book value of Oceania was $5 million. So the sale by San Imperial to Oceania for $7 million would show a gain of $2 million in San Imperial's books. SKC too benefited from the deal because the Bangkok Hotel property was worth $7½ million. It was in fact sold for $7.4 million. SKC therefore made a profit of $400,000 and still retained Oceania. Why San Imperial themselves could not have sold the Bangkok Hotel property for $7.4 million has not been explained.

No plausible explanation has been advanced as to why San Imperial preferred SKC shares to cash, except that the 7 million shares would yield a dividend of $910,000 for San Imperial in 1978. Their annual report for the year ended 30th June 1976 disclosed a very poor financial picture (Yellow 5, pp. 92 – 109). Compared with 1975, the company was borrowing more money and paying more interests. The turnover of the San Imperial Group dropped from $9 million in 1975 to $7.4 million in 1976. The net current assets dropped from $9 million to $5.1 million in the same period. Their fixed assets however showed a slight increase. San Imperial had not been paying dividends for two or three years, and was in 1976 fast running out of liquid assets. Their interest expenses were also fast rising, indeed, 27% of the Group's revenue was used for payment of interest on loans. San Imperial issued an interim report in 1977 covering the period from 1st July to 31st December 1976 (Yellow 5, pp. 111 – 117). Mr. Tang, in what must be described as a brilliant address, argued inter alia, that San Imperial's financial position had improved in the second half of 1976 and was no longer "strapped for cash". The interim report was issued by Ng as Chairman. It shows that the turnover for the six months was $5.6 million, as compared with $7.4 million for the whole year 1975 – 1976. If the turnover of any business is greater, then it follows that the business is going to require more working capital, which must be provided from liquid assets, as opposed to fixed assets. Their current assets were however $2 million as compared with $5.1 million for the year 1975 – 1976. Interest expenses

for the six months came to $1.7 million, as compared with $2 million in 1975 – 1976. The Group's fixed deposits for the six months were $1.8 million, as compared with $5 million in the previous year. Cash and bank balance went up to $616,331 from $283,937 in the previous year. However the increase was, as Mr. Yorke described it, a dribble in the bucket. Even Coe was forced to agree that San Imperial was desperately in need of cash and would "finish up" in seven months.

On 22nd June Coe, was by virtue of his holding of the 8 million shares, already managing director of San Imperial. It is significant to note that as early as 26th October 1976, two days before he left Hong Kong, C.K. San had executed a declaration of trust in favour of San Imperial in respect of his three shares in Oceania (Yellow 4, Documents 22 and 20). He therefore must have intended to sell Oceania at some future point of time. *There is however no evidence to show that Coe knew about it.* It subsequently transpired that C.K. San had executed similar declarations of trust in respect of some of his other companies.

Oceania's only assets were the Bangkok Hotel property. The $6 million which came into Oceania from MAF (supra) was of course in truth the property of Hong Kong Estates.

It has already be said that the Bangkok Hotel property was subsequently sold by Oceania for $7.4 million on 24th October (Ex. P. 22, p. 3; see also Yellow 4, pp. 34 – 35).

The plaintiffs argue that the $7.4 million was used to finance the $4.8 million required by the Syndicate. This was not entirely true, because the sale of the Bangkok Hotel property was on 24th October but the loans from Oceania were given on 27th June (Yellow 4, Document 33). On that day, a total of $4.6 million went as loans from Oceania to five nominees. Each nominee asked for the sum borrowed to be forwarded to Ming Kee Trading Co., Ltd. (hereinafter referred to as Ming Kee), which was one of Coe's companies. Each nominee also offered securities which in fact belonged to Coe. These moneys then went from Ming Kee to Coe, who lent the money to the Syndicate. Of the $4.6 million, $3.8 million was for the Syndicate to pay off MAF. It is not entirely clear what the remaining $800,000 was for. All the loans were subsequently repaid on 27th October, three days after the sale of the Bangkok Hotel property.

It is not disputed that Oceania was a deposit taking company, whose paid up capital at the time was $5 million. On 27th June, Oceania extended to Ming Kee or Coe through nominees loans totalling $4.6 million. Coe was at the time a director of Oceania and he admitted to being the real borrower and the guarantor of the nominees. It therefore appears that *a breach of Sec. 22 of the Deposit-taking Companies Ordinance, Cap. 328, has been committed.* I shall in due course inform the Attorney-General of this fact.

On Coe's own admission Oceania had $1.2 million available at the time. The $1.2 million in fact belonged to Hong Kong Estates. His theory, the fallacy of which will be exposed in a moment, is that by "creation of money" $3.8 million might be generated. This is what he said: "The $3.8 million lent by Oceania to the

six nominees came in this way: $1 million was taken out of the $1.2 million by creation. By creation there were $1 million, $1 million and $1 million and $800,000, making $3.8 million in order to have the six nominees written off (sic). Starting from Oceania, you make a round with Ng, MAF and H.K. Estates. In order to form the circle, Oceania must have $1 million (which Oceania had). Oceania lent $1 million to Ng, Ng returned the $1 million to MAF, MAF returned that $1 million to H.K. Estates, which then deposited the $1 million with Oceania on fixed deposit. In the second round the same parties were used, so there was another $1 million, making $2 million deposited with Oceania. The third time was the same; so there was $3 million with Oceania. The fourth round was for $800,000. When it got back to Oceania there was then a total of $3.8 million. Then H.K. Estates deposited $200,000 with Oceania making a grand total of $4 million."

Coe went on to say, "There must be money to start with, even if it was only $100. It depends on how many rounds you have to go to make up $4 million. If we had $3.8 million we only needed to go one round. The reason for doing this is because Ng had to pay MAF for the 3,226,000 San Imperial shares."

Mr. Yorke produced a chart (Ex. P. 26) which at once shows the fallacy of Coe's theory. It is reproduced below –

"SIMPLE DIAGRAM OF PYRAMID OF CREDIT @ 80%

BANK

Customer A deposits	1,000,000		
		lends	800,000 to B
B pays C who deposits	800,000		
		lends	640,000 to D
D pays E who deposits	640,000		
		lends	512,000 to F
F pays G who deposits	512,000		
		lends	409,600 to H
H pays J who deposits	409,600		
		lends	327,700 to K
	3,336,600 Total deposits		2,689,300 Total loans

Note 1) that the Bank has not paid anybody anything.
2) of the 3,336,600 only 1 M was ever 'cash', 1,689,300 is 'created' money.

The so-called creation of money therefore involves certain characteristics: (1) the bank gives a loan which has to be repaid and not an outright payment, otherwise the bank will soon exhaust its funds, and (2) the system depends on the depositors not wanting their money back immediately or simultaneously, otherwise there would be a run on the bank.

The only conclusion that may reasonably be frawn is that *the loans by*

Oceania to the Syndicate were sham transactions, designed to create the impression that actual loans were given.

The plaintiffs contend that no real money was used for any of these transactions. The resourcefulness and diligence of Mr. Poon resulted in a number of charts. I refer in particular to two charts (Exs. P. 13 and 13A) showing the payments and receipts of money by the Syndicate, Coe and other parties. They show that *up to the 30th August Coe had actually paid out $12.2 million.* On 14th October, I ruled that the defendants were not permitted to go behind the judgments already obtained by the plaintiffs and that the case must be tried on its merits. *From 24th to 31st October Coe paid further sums totalling $7,189,446.67.* It has been argued on behalf of the plaintiffs that the payments made in October were not genuine payments because they were made as a result of my ruling. It is however clear from Mr. Swaine's final address to this Court that the defendants had anticipated that the merits would have to be investigated. *My conclusion is that the 8 million shares have been paid for by that Rocky and all his payments were genuine. It is obvious that the price for the 15 million shares does not as yet have to be paid.*

In October, the outstanding sum Rocky still owed the Syndicate for the 8 million shares was about $7 million. The bank overdraft facilities which SKC, IPC and another of Coe's company called Rockson, Ltd. had as at 15th October came to $4,920,000, which could be used to pay the Syndicate. If necessary the finder's fee of $3 million could be deferred. Ho had by then received Coe's undated cheque but agreed not to pay it in.

It may be also noted here that Coe could have used his overdraft facilities to lend the Syndicate the $3.8 million. There was therefore no necessity for him to use Oceania.

Whatever the true relationship between Rocky and SKC on the question of the acquisition of San Imperial shares, and whatever the true relationship between San Imperial and SKC on the question of the Oceania deal, on the balance of probabilities my judgment is that both the replaced and the new Rocky agreements were genuine and bona fide for full value without notice of defect in the vendors' title. There is nothing in the evidence which inevitably leads to the conclusion that Coe was aware of the sham agreements which the Syndicate had entered into.

It is clear from what I have stated above that *the Syndicate had no beneficial interests in the shares Ng was alleged to have bought from Lee and Fong, nor in that portion of the money paid by Rocky for those shares.*

On all the findings above, it follows *(1) that the beneficial interests in the 8 million shares have passed from C.K. San to Rocky, and (2) that the purchase price paid by Rocky to the Syndicate under the Rocky agreements for the 2,164,200 shares alleged to have been bought by Ng from Lee and Fong, less $433,000 already paid by Ng to Chow, was in fact receivable by C.K. San.*

Orders Absolute

On my findings of facts I make the following orders:–

(I) Under the consolidated actions

(i) The charging order nisi in respect of the following San Imperial shares is made absolute:

(a) the 422,560 shares registered in the name of Asiatic,

(b) the 400,000 shares registered in the name of Triumphant, and

(c) the 15 million shares registered in the name of Fermay.

(ii) It follows that the garnishee order nisi in respect of the $8.8 million is discharged.

(iii) The charging order nisi in respect of the 7,631,000 San Imperial shares registered in the name of IPC is discharged.

(II) Under the MBF action

(i) The charging order nisi in respect of the following San Imperial shares is made absolute:

(a) the same 422,560 shares registered in the name of Asiatic,

(b) the same 400,000 shares registered in the name of Triumphant,

(c) the 57,600 shares registered in the name of C.K. San, and

(d) the same 15 million shares registered in the name of Fermay.

(ii) It follows that the garnishee order nisi in respect of the $8.8 million is discharged.

(iii) The charging order nisi in respect of the 7,631,000 San Imperial shares registered in the name of IPC is discharged.

(iv) As to the garnishee order nisi in respect of $11,446,500:

(a) that part of the order nisi relating $2,813,300 (being the purchase price of $3,246,300 under the new Rocky agreement for the shares allegedly acquired by Ng from Lee and Fong in Taiwan less the $433,000 already paid by Ng to Chow) is made absolute, and

(b) that part of the order nisi relating to the balance, namely $8,633,200 ($11,446,500 – $2,813,300) is discharged.

Supreme Court of Hong Kong High Court

No. 43

Orders Absolute of Mr. Justice Yang in High Court Action No. 2459 of 1976 & High Court Miscellaneous Proceedings No. 155 of 1977 dated 25.1.1977

ORDERS ABSOLUTE OF MR. JUSTICE YANG IN HIGH COURT ACTION NO. 2459 of 1976 & HIGH COURT MISCELLANEOUS PROCEEDINGS NO. 155 OF 1977

Upon hearing Counsel for the Plaintiffs and Counsel for the 4th, 5th, 6th, 7th and 10th Defendants and upon reading the two Affirmations of Lee Ing Chee filed herein on the 15th day of July 1977 and the order to show cause made herein on the 15th day of July 1977 and the Garnishee Order Nisi herein dated the 15th day of July 1977 respectively IT IS ORDERED that:

(a) the interest of the 2nd, 3rd and the 7th Defendants in respect of the following shares namely:

(i) 15 million shares of $1.00 each in San Imperial Corporation Limited whose registered office is situate at 32-34 Nathan Road, Kowloon in the Colony of Hong Kong previously held in the name of Asiatic Nominees Limited whose registered office is situate at 59 Des Voeux Road Central, Victoria in the Colony of Hong Kong and now held in the name of Fermay Company Limited whose registered office is situate at Bank of Canton Building, 4th floor, Des Voeux Road Central, Victoria in the Colony of Hong Kong;

(ii) 400,000 shares of $1.00 each in the said San Imperial Corporation Limited now held in the name of Triumphant Nominees Limited whose registered office is situate at 36, King's Road, 3rd floor, in the Colony of Hong Kong;

(iii) 422,560 shares of $1.00 each in the said San Imperial Corporation Limited now held in the name of the said Asiatic Nominees Limited;

do stand charged with the payment of (1) M$2,338,651.94 and interest thereon at the rate of 15% per annum from 1st April 1975 to 19th July 1976 and thereafter at the rate of 6% per annum from 19th July 1976 until payment and the sum of $1,226.00 fixed costs, the amount due from the 1st Defendant to the Plaintiff Lee Ing Chee in High Court Action No. 2459 of 1976 under the Judgment herein dated the 5th day of July 1977 and (2) M$1,354,037.35 and interest thereon at the rate of 12% per annum from 1st October 1976 until payment and M$120.00 costs which is equivalent in Hong Kong Currency to the sum of HK$2,559,130.59 with interest thereon at the rate of 12% per annum from 1st October 1976 until payment and $226.80 for costs, the amount due from the 1st Defendant to the Plaintiff Lee Kon Wah in Supreme Court Miscellaneous Proceedings No. 155 of 1977 on the Order for registration of Foreign Judgment made herein by Mr. Registrar Cameron and dated the 31st day of March 1977.

Supreme Court of Hong Kong High Court

No. 43

Orders Absolute of Mr. Justice Yang in High Court Action No. 2459 of 1976 & High Court Miscellaneous Proceedings No. 155 of 1977 dated 25.1.1977

(b) The Charging Order Nisi granted herein on the 15th day of July, 1977 in respect of 7,631,000 shares in San Imperial Corporation Ltd., registered in the name of IPC Nominees Ltd., be discharged.

(c) The Garnishee Order Nisi granted herein on the 15th day of July, 1977 in respect of $8,800,000.00 be discharged.

AND IT IS FURTHER ORDERED that the costs of these actions as between the Plaintiffs and the 1st to the 9th Defendants be paid by the 1st to the 9th Defendants and that there be no order as to costs as between the Plaintiffs and the 10th Defendant.

Dated the 25th day of January 1978. 10

(Sd.) S.H. MAYO
Registrar.
(L.S.)

ORDERS ABSOLUTE OF MR. JUSTICE YANG IN HIGH COURT

MISCELLANEOUS PROCEEDINGS NO. 540 of 1977

Supreme Court of Hong Kong High Court

No. 44

Orders Absolute of Mr. Justice Yang in High Court Miscellaneous Proceedings No. 540 of 1977 dated 25.1.1978

Upon hearing Counsel for the Plaintiff and Counsel for the 4th, 5th, 6th, 7th and 10th Defendants and upon reading the Affidavits of Christopher Raymond Wilson filed herein on the 13th day of September 1977, 14th day of September 1977 respectively, the Affirmation of Tang Bing Kong filed herein on the 15th day of September 1977, and the order to show cause made herein on the 7th day of September 1977 and the Garnishee Order Nisi dated the 14th day of September 1977 respectively IT IS ORDERED that:

(a) the interest of the 1st, 2nd, 3rd and the 7th Defendants in respect of the following shares namely:

(i) 15 million shares of $1.00 each in San Imperial Corporation Limited whose registered office is situate at 32-34 Nathan Road, Kowloon in the Colony of Hong Kong previously held in the name of Asiatic Nominees Limited whose registered office is situate at 59 Des Voeux Road Central, Victoria in the Colony of Hong Kong and now held in the name of Fermay Company Limited whose registered office is situate at Bank of Canton Building, 4th floor, Des Voeux Road Central, Victoria in the Colony of Hong Kong;

(ii) 400,000 shares of $1.00 each in the said San Imperial Corporation Limited now held in the name of Triumphant Nominees Limited whose registered office is situate at 36, King's Road, 3rd floor, in the Colony of Hong Kong;

(iii) 422,560 shares of $1.00 each in the said San Imperial Corporation Limited now held in the name of the said Asiatic Nominees Limited;

(iv) 57,600 shares of $1.00 each in the said San Imperial Corporation Limited held in the name of the 1st Defendant Choo Kim San,

do stand charged with the payment of M$9,036,831.58 and interest thereon at the rate of 15% per annum from 1st April 1976 until payment and the sum of M$120.00 costs; which is equivalent in Hong Kong currency to the sum of HK$17,079,611.69 and interest thereon at the rate of 15% per annum from 1st April 1976 until payment and the sum of $226.80 for costs, the amount due from the 1st Defendant to the Plaintiff on the Order for registration of Foreign Judgment made herein by Mr. Registrar O'Dea and dated the 19th day of August 1977.

(b) The Charging Order Nisi granted herein on the 7th day of September, 1977 in respect of 7,631,000 shares in San Imperial Corporation Ltd., registered in the name of IPC Nominees Ltd., be discharged.

Supreme Court of Hong Kong High Court

No. 44

Orders Absolute of Mr. Justice Yang in High Court Miscellaneous Proceedings No. 540 of 1977 dated 25.1.1978

(c) The Garnishee Order Nisi granted herein on the 7th day of September, 1977 in respect of $8,800,000.00 be discharged.

IT IS FURTHER ORDERED that the Garnishee Order Nisi granted herein on the 14th day of September, 1977, whereby it was ordered that the sum of HK$11,466,500.00 received by one David Ng Pak Shing or David Ng Pak Shing and one Melville Edward Ives and one Ho Chapman from Rocky Enterprises Company Limited as consideration for the sale of 7,631,000 shares of $1.00 each in San Imperial Corporation Ltd. to the said Rocky Enterprises Company Limited be attached to answer the said judgment herein and costs, be made absolute in respect of the sum of $2,813,300.00 and that the part of the said Garnishee Order Nisi relating to the balance namely the sum of $8,633,200.00 be discharged and IT IS ORDERED that the said Garnishee David Ng Pak Shing, Melville Edward Ives and Ho Chapman do forthwith pay to the Plaintiff the said sum of $2,813,300.00. 10

AND IT IS FURTHER ORDERED that the cost of this action as between the Plantiff and the 1st to the 9th Defendants be paid by the 1st to the 9th Defendants and that there be no order as to costs as between the Plaintiff and the 10th Defendant.

Dated the 25th day of January, 1978

(Sd.) S.H. Mayo
S.H. Mayo
Registrar
(L.S.)

1978 No. 12
(Civil)

Supreme Court of Hong Kong Court of Appeal

No. 45

Notice of Appeal of the 4th, 5th, 6th & 7th Defendants dated 30.1.1978

IN THE COURT OF APPEAL

(On Appeal from the High Court of Justice, High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)

BETWEEN

LEE ING CHEE	Respondent (Plaintiff)

and

CHOO KIM SAN	1st Defendant
ASIATIC NOMINEES LTD.	2nd Defendant
TRIUMPHANT NOMINEES LTD.	3rd Defendant
DAVID NG PAK SHING	4th Defendant (Appellant)
MELVILLE EDWARD IVES	5th Defendant (Appellant)
HO CHAPMAN	6th Defendant (Appellant)
FERMAY COMPANY, LTD.	7th Defendant (Appellant)
CHOW CHAW-I	8th Defendant
HWANG SHANG PAI	9th Defendant
IPC NOMINEES, LTD.	10th Defendant (Appellant)
ROCKY ENTERPRISES COMPANY LIMITED	12th Defendant (Appellant)
SIU KING CHEUNG HING YIP CO. LTD.	13th Defendant (Appellant)

BETWEEN

LEE KON WAH	Respondent (Plaintiff)

and

CHOO KIM SAN	1st Defendant
ASIATIC NOMINEES, LTD.	2nd Defendant
TRIUMPHANT NOMINEES, LTD.	3rd Defendant
DAVID NG PAK SHING	4th Defendant (Appellant)
MELVILLE EDWARD IVES	5th Defendant

	(Appellant)
HO CHAPMAN	6th Defendant (Appellant)
FERMAY COMPANY, LTD.	7th Defendant (Appellant)
CHOW CHAW-I	8th Defendant
HWANG SHANG PAI	9th Defendant
IPC NOMINEES, LTD.	10th Defendant (Appellant)
ROCKY ENTERPRISES COMPANY LIMITED	12th Defendant (Appellant)
SIU KING CHEUNG HING YIP CO. LTD.	13th Defendant (Appellant)

BETWEEN

MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD	Respondent (Plaintiff)

and

CHOO KIM SAN	1st Defendant
ASIATIC NOMINEES LTD.	2nd Defendant
TRIUMPHANT NOMINEES LTD.	3rd Defendant
DAVID NG PAK SHING	4th Defendant (Appellant)
MELVILLE EDWARD IVES	5th Defendant (Appellant)
HO CHAPMAN	6th Defendant (Appellant)
FERMAY COMPANY, LTD.	7th Defendant (Appellant)
CHOW CHAW-I	8th Defendant
HWANG SHANG PAI	9th Defendant
IPC NOMINEES, LTD.	10th Defendant (Appellant)
JAMES COE	11th Defendant
ROCKY ENTERPRISES COMPANY LIMITED	12th Defendant (Appellant)
SIU KING CHEUNG HING YIP CO. LTD.	13th Defendant (Appellant)

NOTICE OF APPEAL OF THE 4TH, 5TH, 6TH & 7TH DEFENDANTS

Take Notice that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named 4th, 5th, 6th and 7th Defendants on appeal from so much of the judgment herein of the Honourable Mr. Justice Yang given at the trial of these proceedings on 25th day of January 1978 whereby it was adjudged that

under the consolidated actions that the charging order nisi in respect of the 15 million San Imperial shares registered in the name of Fermay Company Limited be made absolute and under Miscellaneous Proceedings No. 540 of 1977 that the charging order nisi in respect of the same 15 million San Imperial shares registered in the name of Fermay Company Limited be made absolute and that as to the garnishee order nisi in respect of $11,446,500 that that much of the order relating to $2,813,300 be made absolute with costs against the 4th, 5th, 6th and 7th Defendants in favour of the abovenamed Plaintiffs for an Order that the charging orders nisi in respect of the said 15 million San Imperial shares registered in the name of Fermay Company Limited be discharged and the garnishee order nisi for $11,446,500 be discharged in its entirety and that the Plaintiffs may be adjudged to pay to the 4th, 5th, 6th and 7th Defendants their costs of these proceedings and of this appeal to be taxed or such other order as may be just.

And further take notice that the grounds of this appeal are:—

1. That the learned judge erred in holding that the Plaintiffs have proved or in finding that the agreement dated 23rd March 1977 and made between the 8th and 9th Defendants and the 4th, 5th and 6th Defendants (hereinafter referred to as the "23rd March agreement") was a sham and nullity.

2. That the learned judge having found that the Plaintiffs Malaysian Borneo Finance Corporation (M) Berhad have failed to prove the conspiracy alleged by them in paragraph 7 of their Statement of Claim erred in holding that on the pleadings he could find or in finding that the 23rd March agreement was a sham and nullity or that the 1st Defendant had not divested himself of his beneficial interest, if any, in the 15 million San Imperial shares registered in the name of Fermay Company Limited.

3. That the learned judge not having found that the 4th, 5th and 6th Defendants were the nominees of the 1st Defendant erred in holding that on the pleadings he could find or in finding in favour of the Plaintiffs Lee Ing Chee and Lee Kon Wah that the 23rd March agreement was a sham and nullity or that the 1st Defendant had not divested himself of his beneficial interests, if any, in the 15 million San Imperial shares registered in the name of Fermay Company Limited.

4. That the learned judge could not on the pleadings find that the 23rd March agreement was a sham and a nullity.

5. That the learned judge erred in finding that the purchase of the 2,164,200 shares by the 4th Defendant in Taiwan was a sham and nullity.

6. That it was not open to the learned judge on the pleadings to find that the purchase of the 2,164,200 shares by the 4th Defendants in Taiwan was a sham and nullity.

7. That the learned judge erred in holding that the purchase price paid by Rocky Enterprises Limited to the 4th, 5th and 6th Defendants for the 2,164,200 shares bought by the 4th Defendant in Taiwan was in fact receivable in Taiwan by the 1st Defendant.

Supreme Court of Hong Kong Court of Appeal

No. 45

Notice of Appeal of the 4th, 5th, 6th & 7th Defendants dated 30.1.1978

8. That the learned judge erred in finding or the following findings were against the weight of the evidence:

(a) that the 23rd March 1977 agreement was a sham and nullity

(b) that the 8th and 9th Defendants were nominees of the 1st Defendant

(c) that the 4th, 5th and 6th Defendants knew that the 8th and 9th Defendants were nominees of the 1st Defendant

(d) that the evidence of the 4th, 5th or 6th Defendants is untruthful

(e) that James Coe was not a completely truthful witness

(f) that Lee and Fong were the nominees of the 1st Defendant

(g) that the 4th, 5th and 6th Defendants knew that Lee and Fong were the nominees of the 1st Defendant

(h) that the purchase of 2,164,200 shares from Lee and Fong was a sham and nullity

(i) that the 4th Defendant did make the admission that he knew he was purchasing from the 1st Defendant's nominees

(j) that the telex which arrived on 5th January 1977 (Yellow 2, p.124) in effect advised against purchasing shares from the 1st Defendant

(k) that the draft agreement (Ex. p.10) has in itself the elements of a sham or that it was a sham.

9. That the learned judge erred in failing to evaluate the evidence.

10. That the Judgment was against the weight of the evidence.

11. That the learned judge erred in finding that notwithstanding the replacement agreement of 12th May 1977 the 1st Defendant had not divested himself of his beneficial interest, if any, in the 15 million San Imperial shares registered in the name of Fermay Company Limited.

12. That the learned judge misdirected himself in holding that as the time for the exercise of the option granted by the agreement of 12th May 1977 had not arrived the charging orders nisi could be made absolute.

13. That the learned judge erred in law in holding that the 4th, 5th, 6th and 7th Defendants were not entitled to make an application to set aside the registrations of Civil Suit 2445 of 1976 in the High Court of Kuala Lumpur in Malaysia and Civil Suit 1631 of 1977 in the High Court of Kuala Lumpur aforesaid (hereinafter referred to collectively as the "Malaysian Judgments").

14. That the learned judge erred in law in holding that the said Malaysian judgments are conclusive against the 4th, 5th, 6th and 7th Defendants.

Dated this 30th day of January, 1978.

(Sd.) Peter Mo & Co.
Peter Mo & Co.
Solicitors for the Appellants

Supreme Court of Hong Kong Court of Appeal

No. 46

Notice of Appeal of the 10th Defendant dated 6.2.1978

NOTICE OF APPEAL OF THE 10TH DEFENDANT

Take Notice that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named 10th Defendant on appeal from so much of the judgment herein of the Honourable Mr. Justice Yang given at the trial of these proceedings on 25th day of January 1978 whereby it was adjudged that under the consolidated actions that the charging order nisi in respect of the 15 million San Imperial shares registered in the name of Fermay Company Limited be made absolute and under Miscellaneous Proceedings No. 540 of 1977 that the charging order nisi in respect of the same 15 million San Imperial shares registered in the name of Fermay Company Limited be made absolute and that much of the order relating to $2,813,300.00 be made absolute with no order as to costs so far as it concerns the 10th Defendant for an Order that the charging orders nisi in respect of the said 15 million San Imperial shares registered in the name of Fermay Company Limited be discharged and that the Plaintiffs may be adjudged to pay to the 10th Defendant its costs of these proceedings and of this appeal to be taxed or such other order as may be just.

And further take notice that the grounds of this appeal are:–

1. That the learned Judge was wrong in finding that the 1st Defendant had not divested himself of his beneficial interest (if any) in the 15 million San Imperial shares registered in the name of Fermay Company Limited;

2. That the learned Judge was wrong in making absolute the charging order nisi in respect of the said 15 million San Imperial shares registered in the name of Fermay Company Limited;

3. That the learned Judge's finding that Mr. James Coe was not a completely truthful witness was against the weight of the evidence;

4. That the learned Judge had failed to evaluate the evidence of the said Mr. James Coe either properly or at all.

And further take notice that the 10th Defendant intends also to rely on further grounds of appeal to be lodged after the transcript of the evidence adduced at the trial is made available.

Dated the 6th day of February, 1978.

(Sd.) Philip K.H. Wong & Co.
PHILIP K. H. WONG & CO.,
Solicitors for the 10th Defendant Appellant

Supreme Court of Hong Kong Court of Appeal

No. 47

Respondents' Notice (Filed by Lee Ing Chee and Lee Kon Wah) dated 24.4.1978

RESPONDENTS' NOTICE (FILED BY LEE ING CHEE AND LEE KON WAH)

TAKE NOTICE that the abovenamed Respondents (Plaintiffs), Lee Ing Chee and Lee Kon Wah, intend upon the hearing of the appeal under the 4th, 5th, 6th and 7th Defendants' Notice of Appeal dated the 30th day of January 1978 and the 10th Defendant's Notice of Appeal dated the 6th day of February 1978 from the Judgment of the Honourable Mr. Justice Yang given on trial of these proceedings on the 25th day of January 1978 to contend that so much of the said Judgment as adjudged (at Page 8 thereof) that the said Respondents (Plaintiffs) do not now maintain that Ng, Ho, Ives, Fermay and IPC are also C. K. San's nominees should be varied to the extent that the said Respondents (Plaintiffs) have always and do maintain that the said Ng, Ho, Ives, Fermay and IPC were C. K. San's nominees and for an Order that the costs of the Defendants' appeal and this Notice be paid to the said Respondents (Plaintiffs) by the Defendants.

AND FURTHER TAKE NOTICE that the learned Judge was wrong in holding (at Page 8 of his Judgment) that the said Respondents (Plaintiffs) did not continue to maintain that the said Ng, Ho, Ives, Fermay and IPC are also C. K. San's nominees.

Dated the 24th day of April, 1978.

(Sd.) Deacons
DEACONS,
Solicitors for the Respondents (Plaintiffs).

Supreme Court of Hong Kong Court of Appeal

No. 48

Cross Notice of Appeal of Malaysia Borneo Finance Corporation (M) Berhad dated 26.4.1978

CROSS NOTICE OF APPEAL OF MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the abovenamed Respondent Malaysia Borneo Finance Corporation (M) Berhad on appeal from so much of the judgment herein of the Honourable Mr. Justice Yang given on the 25th day of January 1978 whereby it was adjudged

(a) that from about October 1976 onwards there was no conspiracy by the Defendants with the intent to avoid and/or defeat the execution by the above-named Respondent of the Registered Judgment in High Court Miscellaneous Proceedings No. 540 of 1977 and to defraud the creditors of the 1st Defendant generally; and

(b) that the charging order nisi in respect of the 7,631,000 San Imperial shares registered in the name of the 10th Defendant be discharged.

FOR AN ORDER:

(1) that the 700,000 (sic) (7,631,000) San Imperial shares previously registered in the names of the 2nd Defendant then one MAF Nominees Limited then one City Nominees Limited and thereafter forming part of the aforesaid 7,631,000 San Imperial shares (which since 23rd February 1978 have been held in the name of the 12th Defendant who purportedly holds the same on behalf of the 13th Defendant) be made absolute; alternatively;

(2) that as to the Garnishee Order nisi in respect of $11,446,500.00 that that much of the Order relating to the sum of $1,050,000.00 being the purchase price for the aforesaid 700,000 San Imperial shares allegedly having been paid by one James Coe (the 11th Defendant) or his nominee one Rocky Enterprises Limited (the 12th Defendant) to the 4th Defendant be made absolute.

AND that the costs of this Appeal to be taxed and to be paid for by the above-named Appellants, or for such further or other Order as to the Court of Appeal may seem just.

AND FURTHER TAKE NOTICE that the grounds of this Appeal are:

(1) That the learned Judge failed upon his own finding of fact and/or law to hold that from about October 1976 onwards there was conspiracy by the Defendants in particulars the 4th, 5th and 6th Defendants with the intent to avoid and/or defeat the execution of the said Registered Judgment by the above-named Respondent and/or to defraud the creditors of the 1st Defendant generally in that:

(a) he took no or no sufficient account or fail to give due weight to

his findings that

(i) the 4th, 5th and 6th Defendants at all material times knew or ought to have known that the 1st Defendant was indebted to creditors and that the 1st Defendant on or about 28th October 1976 failed to answer to his bail granted to him upon being charged with fraud by the Crown and

(ii) the 4th, 5th and 6th Defendants did in fact realize the assets of the 1st Defendant and to obtain on behalf of the 1st Defendant the proceeds of the same or part of the same;

(b) he failed to draw the correct inference from the findings aforesaid in failing to hold that the 4th, 5th and 6th Defendants must, with the knowledge and by realizing the assets of the 1st Defendant aforesaid, necessarily intend the natural probable consequences of their act namely, to defraud or deprive the benefits of the creditors of the 1st Defendant generally;

(2) that the learned Judge erred or misdirected himself in holding that the above-named Respondent has failed to prove conspiracy by the Defendants together with persons unknown from about October 1976 onwards with the intent to avoid and/or defeat the execution of the said Registered Judgment by the above-named Respondent and to defraud the creditors of the 1st Defendant generally;

(3) that the learned Judge erred or misdirected himself in finding as a fact that the Agreement dated 12th May 1977 made between the 4th Defendant and the said Rocky Enterprises Company Limited (the 12th Defendant) was not a sham and a nullity;

(4) that the learned Judge erred or misdirected himself in finding as a fact that the said James Coe (the 11th Defendant) or the said Rocky Enterprises Company Limited (the 12th Defendant) was a bona fide purchaser under the said Agreement of 12th May 1977 without notice of any defect in the vendor's title;

(5) that the learned Judge erred or misdirected himself in finding on the evidence of one Y.S. Cheng that the aforesaid 700,000 San Imperial shares out of the 3,226,000 San Imperial shares were beneficially owned by one Malaysia American Finance Corporation (HK) Limited; and in particular

(a) the learned Judge failed to give due weight to or ignored the fact that the said Y.S. Cheng on his evidence conceded that he had not investigated or examined the stock exchange transactions whereby the said Malaysia American Finance Corporation (HK) Limited purported to acquire title to the aforesaid 700,000 San Imperial shares; and

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No. 48

Cross Notice of Appeal of Malaysia Borneo Finance Corporation (M) Berhad dated 26.4.1978

(b) the learned Judge should have on the evidence found that the transactions referred to in (a) above were sham transactions and not genuine transactions on the stock market as alleged;

(6) that the learned Judge erred or misdirected himself in failing to hold that the title of that 1st Defendant to the aforesaid 700,000 San Imperial shares had not been divested; alternatively;

(7) that the learned Judge erred or misdirected himself in failing to hold that the transactions whereby MAF Nominees Limited purported to acquire title to the aforesaid 700,000 San Imperial shares on behalf of the said Malaysia American Finance Corporation (HK) Limited were sham.

The above-named Respondent reserves the right to and intends to add to these grounds of Appeal after the transcript of evidence is available.

Dated the 26th day of April, 1978.

(Sd.) Johnson, Stokes & Master
JOHNSON, STOKES & MASTER
Solicitor for the Plaintiffs
MALAYSIA BORNEO FINANCE
CORPORATION (M) BERHAD

RESPONDENTS' NOTICE (FILED BY LEE ING CHEE AND LEE KON WAH)

TAKE NOTICE that 2 of the abovenamed Respondents, namely, Lee Ing Chee and Lee Kon Wah, while seeking to uphold the Judgment entered and Orders made for the said Respondents against the Defendants on the 25th day of January 1978 upon the trial of these proceedings on the grounds on which such Judgment was in fact entered and such Orders were in fact made, desire to contend on the appeal that the said Judgment and Orders should be affirmed on the following other ground, namely:–

That the learned Judge ought not to have held (at page 8 of his said Judgment) that the said Respondents did not continue to maintain that Ng, Ho, Ives and Fermay were also C.K. San's nominees, because the said Respondents or their Counsel never informed or indicated to the learned Judge that such plea had been abandoned, but ought to have held that Ng, Ho, Ives and Fermay were also C.K. San's nominees.

AND FURTHER TAKE NOTICE that the said Respondents will apply to the Court of Appeal for an Order that the Appellants pay to them the costs occasioned by the notice to be taxed.

Dated the 29th day of April, 1978.

(Sd.) Deacons
DEACONS
Solicitors for the Respondents (Plaintiffs)

Supreme Court of Hong Kong Court of Appeal

No. 50

Supplementary Notice of Appeal of the 10th Defendant dated 17.11.1978

SUPPLEMENTARY NOTICE OF APPEAL OF THE 10TH DEFENDANT

TAKE NOTICE that on the hearing of its Appeal the 10th Defendant will rely on the following grounds (in addition to those set out in its Notice of 6th February 1978) namely:–

(1) That the learned Judge ought to have held (if he did not hold) that under the terms of an agreement embodied in minutes of a meeting of the Board of Directors of the 7th Defendant held at Room 205, 200 Naking East Road Section 3 Taipei Taiwan R.O.C. on 23rd March 1977 at 11.00 a.m. the beneficial interest in the 15,000,000 shares in the capital of San Imperial Corporation Limited therein referred to vested in the 7th Defendant and that under an agreement dated 12th May 1977 and made between the 4th Defendant and Rocky Enterprises Company Limited:–

(a) Rocky Enterprises Company Limited acquired a valid and enforceable option either:–

(i) to purchase the entire issued share capital of the 7th Defendant from the beneficial owners thereof;

(ii) to purchase the said 15,000,000 shares in the capital of San Imperial Corporation Limited (which were then registered in the name of the 7th Defendant) from the 7th Defendant; and

(b) The 7th Defendant also granted to Rocky Enterprises Company Limited an irrevocable proxy in respect of the said 15,000,000 shares of San Imperial Corporation Limited and to exercise the votes exercisable in respect of the said shares in such manner as it should think fit.

(2) That the learned Judge misdirected himself in finding that after the 23rd March 1977 the beneficial interest in the said 15,000,000 shares in the capital of San Imperial Corporation Limited remained in the 1st Defendant and that there was no evidence to support that finding.

Dated the 17th day of November 1978.

(Sd.) Philip K. H. Wong & Company
Philip K. H. Wong & Company,
Solicitors for the 10th Defendant.

LETTER FROM MR. REGISTRAR MAYO TO PETER MARK & COMPANY

Supreme Court of Hong Kong Court of Appeal

No. 51

Letter from Mr. Registrar Mayo to Peter Mark & Company dated 9.2.1979

9th February, 1979.

Messrs. Peter Mark & Co.,
Grand Building, 11th Floor,
Hong Kong.

Dear Sirs,

Civil Appeal No. 12 of 1978

I am directed by the Chief Justice to forward to you the enclosed copies of two judgments herein with which judgments the Chief Justice concurs.

10 At the hearing of the appeal counsel asked that when the Court had reached its decision it should refrain from making any Orders consequential upon that decision until counsel had had an opportunity to be heard as to those Orders. Accordingly the enclosed drafts contain no consequential Orders.

It may well be that the various counsel concerned in the case can now agree the Orders which should flow from their Lordships' decision. I am to ask that an attempt to reach such agreement should now be made and that following such agreement (or in the event of failure to agree) you should seek a date from the Clerk of Court upon which counsel can be heard as to the Orders to be made.

Yours faithfully,

20 (Sd.) S.H. Mayo

S.H. Mayo
Registrar

JUDGMENT OF HUGGINS, J.A.

By an Agreement dated 30th April 1977 (which has been called "the Rocky Agreement") the Appellant Ng, who was in truth acting on behalf of himself and the Defendants Ives and Ho, agreed to sell to Rocky Enterprises Co. Ltd. ("Rocky") 23,000,000 fully paid up shares of £1 each in San Imperial Corporation Ltd. ("San Imperial"). On 12th May 1977 that Agreement was replaced by another Agreement ("the New Rocky Agreement"), which had substantially the same object although the machinery by which the sale was to be effected was more complicated. It is enough to say at this point that the judge has found that Rocky paid to the Vendor under that Agreement the whole of the purchase price for the 8,000,000 shares so far handed over, including $11,446,500 for 7,631,000 of them, which have since been registered in the name of the Defendant IPC Nominees Ltd. ("IPC"). IPC is a company controlled by a Mr. James Coe, who also controls, directly or indirectly, Rocky and another company – Siu King Cheung Hing Yip Co. Ltd. ("SKC"). It was no doubt at the instance of Mr. Coe that the 7,631,000 shares were registered in the name of IPC. Fifteen million of the shares which Ng agreed to sell to Rocky are still registered in the name of Fermay Co. Ltd. ("Fermay"), a company formed by the Appellants Ng, Ives and Ho (called "the Syndicate") as a vehicle for the purchase and holding of the shares pending their re-sale to Coe or to one of the companies in which he was interested. The 15,000,000 shares and another 2,164,200 of the shares sold to Rocky came into the hands of the Syndicate through a Mr. and Mrs. Chow of Taiwan, the 8th and 9th Defendants. The 15,000,000 shares had come to the Chows through the Defendant Choo Kim-san and the Chows agreed to sell them to Ng at a price of 60 cents a share. The Chows also arranged the sale to Ng of the 2,164,200 shares, which they said belonged to a Mr. Lee and a Mr. Fong. There was evidence that these 2,164,200 shares were bought by Ng with his own money on his own behalf, although they were eventually to be sold to Coe along with any shares acquired by the Syndicate. The learned judge was doubtful about the existence of Lee and Fong but it was common ground that if they did exist they had acquired their shares from Choo Kim-san. If Lee and Fong were fictitious, the judge concluded, the 2,164,200 shares came to Ng direct from Choo Kim-san. Ng bought them at only 20 cents a share. Although, on behalf of the Syndicate, he agreed to buy the 15,000,000 shares, that purchase was effected indirectly through Fermay. It was a complicated transaction the essential steps in which were as follows:

1. The Chows were appointed directors of Fermay.

2. The capital of Fermay was increased to allow the issue of shares to a sum equal to the price Ng was to pay for the 15,000,000 San Imperial shares, namely $9,000,000.

3. The new shares in Fermay were allotted to the Chows.

4. The proceeds of that allotment to the Chows were used by Fermay to buy from the Chows the 15,000,000 San Imperial shares.

5. By an agreement in writing dated 23rd March 1977 ("the Fermay

Agreement") the Chows agreed to sell to the Syndicate their entire shareholding in Fermay for $9,000,000.

It will be necessary to consider this transaction in greater detail later on, but for the moment enough has been said about it. The Respondents to this appeal obtained judgments against Choo Kim-san and sought to execute upon them. They alleged that all the foregoing dealings with the shares of San Imperial were shams designed to mask the continuing beneficial interest in them of Choo Kim-san. They obtained (inter alia) charging orders nisi against

(a) the 15,000,000 San Imperial shares still registered in the name of Fermay which have not yet been transferred to Rocky under the New Rocky Agreement;

(b) the 7,631,000 San Imperial shares which have been transferred under the New Rocky Agreement and which had been registered in the name of IPC;

and they obtained garnishee orders nisi in respect of

(a) a sum of $8,800,000 million said to be owed by the Syndicate to the Chows as the unpaid balance of the purchase price of the Fermay shares under the Fermay Agreement of 23rd March 1977;

(b) the sum of $11,446,500 paid by Coe or his nominee Rocky for the 7,631,000 shares transferred under the New Rocky Agreement.

The judge discharged the charging order in respect of the 7,631,000 shares registered in the name of IPC on the ground that the beneficial interest in them had passed under the New Rocky Agreement and he also discharged the garnishee order in respect of the $8,800,000 on the ground that the Fermay Agreement was a sham and no debt was incurred under it. The order charging the 15,000,000 San Imperial shares in the hands of Fermay was made absolute. The garnishee order in respect of the sum of $11,446,500, part of the price paid under the New Rocky Agreement, was made absolute only to the extent of $2,813,300. This was on the basis that of the shares so far transferred under that Agreement 2,164,200 had come from Choo Kim-san through Lee and Fong, so that in truth the purchase price for them was due not to the Syndicate but to Choo Kim-san. The price to Rocky of those 2,164,200 shares was $3,246,300, but the judge gave credit for the sum of $433,000 which the Syndicate had already paid to the Chows for the benefit of Lee and Fong (and, therefore, of Choo Kim-san). The Appellants seek to set aside the orders absolute.

At one stage I had doubts whether it was right to give credit for the $433,000 which Ng had paid to the Chows on account of the purchase price of the Lee and Fong shares. On the findings of the learned judge it would seem at first sight that the Syndicate, having received the whole of the purchase price paid by Rocky, held the entire sum on trust for Choo Kim-san and that the money which had been paid to the Chows (ostensibly as the purchase price of the Lee and Fong shares) was a separate

and distinct matter which could not reduce the Syndicate's liability to Choo Kim-san. However, if the sale by Lee and Fong to Ng was a sham and if Lee and Fong were in truth nominees of Choo Kim-san, the $433,000.00 had already been paid to Choo Kim-san through his nominees. Had all the transactions been genuine the profit made by the Syndicate would have been the price it received less the price it paid. If the Syndicate, as a nominee of Choo Kim-san, received the shares from other nominees of Choo Kim-san under a sham agreement, any payment made by it under that agreement could fairly be treated as an advance payment on account of the planned resale, for it could be consideration for nothing else. That being so, I am satisfied that, when calculating the debt still owing, it was proper to give credit for the sum which had been paid.

As I understand it, the substance of Mr. Sherrard's argument as to the law is based upon the finding by the judge that "MBF has not made out a case of conspiracy against the Syndicate, as described in paragraph 7 of their Statement of Claim" ("MBF" being Malaysia Borneo Finance Corporation (Malaya) Berhad, one of the Respondents) and it seems to me that a large part of the difficulty which has arisen in the case stems first from the attitude to the pleadings which was adopted in the court below and secondly from an insufficient analysis of what the judge meant by his reference to the conspiracy which was described in the Statement of Claim. Unfortunately the actions became so complicated that the parties abandoned any attempt to litigate upon the basis of the pleadings as drafted. As the judge says:

> "In the course of final addresses, it was agreed by counsel for all parties that they should not be strictly bound by their respective pleadings. Mr. Swaine suggested that whilst the parties were not to be so bound, *each party must not go beyond the broad concepts of his own pleadings.* I accept this suggestion."

Paragraph 7 of the Statement of Claim of MBF states:

> "For the purpose of and with the intent to avoid and/or defeat the execution of the Registered Judgment by the Plaintiffs as aforesaid and to defraud Choo Kim-san's creditors generally the Defendants and each of them together with persons unknown from about October 1976 onwards conspired and combined amongst themselves in Hong Kong and elsewhere to sell or cause to be sold on behalf of Choo Kim-san the 15,000,000 shares in the name of Fermay and the 7,631,000 shares in the name of IPC and to obtain on behalf and for the benefit of Choo Kim-san the proceeds of the sale of the same. . . . . ."

What that suggests at first sight is a conspiracy by all the Defendants to procure either one legally binding agreement or a series of legally binding agreements which would have the effect of transferring the beneficial interest in the shares from Choo Kim-san to a third party. However, a conspiracy to procure a final transfer to a third party which was to be legally binding, preceded by a number of sham transactions which were to have the appearance of transfers but which were not intended to convey the beneficial interest, might conceivably be within the paragraph. When one turns to the particulars one finds a third possibility, a conspiracy to do no more than give the

appearance of a transfer of the beneficial interest by a series of transactions which was not intended to have the effect of transferring the beneficial interest at all: both the Fermay Agreement (part of the Fermay transaction) and the New Rocky Agreement are described as "purported" Agreements. It is questionable whether that was of itself sufficient allegation of a sham, for it could be interpreted as merely raising an issue whether the Agreements were duly executed or whether the parties were ad idem, but I think everyone understood it as alleging shams. The matter is further complicated by the express disclaimer in the particulars of any allegation against Coe "as to whether or not he was a party to the conspiracy pleaded herein". Strictly the substance of the pleading should be ascertained from the body of it and not from the particulars. On that basis the words "the conspiracy as described in paragraph 7 of the Statement of Claim" in the judgment could mean either of the first two alternatives. A finding that there was no conspiracy of the second kind would have been inconsistent with the other findings, because they established just such a conspiracy, but a finding that there was no conspiracy of the first kind would not. If one reads paragraph 7 as a whole, it becomes clear that what was intended was to allege that all the transactions from first to last were a mere front to give the impression of a transfer of the beneficial interest when in truth the beneficial interest was intended to remain in Choo Kim-san. A finding that there was no conspiracy of this third kind was not inconsistent with the other findings, because they included a finding that the New Rocky Agreement was not a sham. Unless it can be shown that the meaning intended by the learned judge was necessarily one which would produce inconsistency, the argument based upon inconsistency must fail. I am not persuaded that the learned judge was guilty of such an inconsistency as Mr. Sherrard has submitted. On the contrary, in the context I think the judge interpreted paragraph 7 strictly and was merely emphasising a consequence of his findings that Rocky had "entered into the two agreements innocently with the Syndicate on 30th April and 12th May 1977 respectively" and that all the preceding transactions were shams. Once that is accepted, the suggested inconsistency disappears.

I must here mention that, whereas I have just assumed that the judge did find the Fermay transaction to be a sham, it was questioned in the course of the hearing whether he had so found. It was rightly said that there was no direct finding to that effect, but such a finding was implicit. It is to be inferred, for example, from the finding that "all the parties [to the transaction] knew that the transaction between the Syndicate and [the Chows] were shams" (sic). That is not a finding that they believed the whole transaction to be a sham, whether it was or not, but that they knew it was in fact a sham. The "transaction" included much more than the Fermay Agreement of 23rd March. This finding therefore undermines the argument that, if (i) the Fermay Agreement was a sham and (ii) the Chows were agents of Choo Kim-san, no charging order could be made upon the San Imperial shares registered in the name of Fermay although a charging order could be made upon the Fermay shares. As it seems to me, if the whole Fermay transaction was a sham, it must follow that the purported transfer of the San Imperial shares to Fermay was ineffective to transfer the beneficial interest away from Choo Kim-san.

There has been much discussion whether the members of the Syndicate were Choo Kim-san's nominees. The judge expressly found that the Chows, and also Lee and Fong (if they existed), were nominees of Choo Kim-san but he made no such finding in respect of the others. It has always been Mr. Ching's contention that they, too, were

nominees, although the matter was not pressed in argument, whilst Mr. Yorke told the trial judge that he was not relying upon any such contention. I think Mr. Yorke's contention was that the Syndicate was never intended to receive, and in the event did not receive, a grant of an interest (legal or beneficial) in any of the shares: Choo Kim-san retained the beneficial interest in all of them until it was conveyed to Rocky, whilst the legal interest in the 15,000,000 shares passed to Fermay (a legal entity distinct from its members) and the legal interest in the Lee and Fong shares passed from Asiatic Nominees Ltd. ("Asiatic") and Triumphant Nominees Ltd. ("Triumphant") – two of Choo Kim-san's nominee companies – through several hands into the hands of IPC without at any time vesting in the Syndicate. If by "nominee" is meant a person named as the recipient of a grant of an interest in the San Imperial shares, then I agree that the Syndicate was not a nominee, but it is debatable whether the word can be so limited. It may well be wide enough to cover the situation where Choo Kim-san nominated the Syndicate to become the sole shareholder of Fermay, which was to receive the legal interest in the 15,000,000 San Imperial shares. Although the Syndicate, being in law distinct from the company of which it held shares, had no direct interest in the San Imperial shares, it was a "nominee" to hold the shares of Fermay and thereby to exercise control over the San Imperial shares on behalf of Choo Kim-san. I think that is the better view, but it is immaterial to the real issues in the case.

The substance of the Appellants' argument runs like this:

(a) the judge has found that there was no conspiracy;

(b) the conspiracy to which he was referring was a conspiracy to enter into a sham transaction, namely the Fermay transaction (of which the Fermay Agreement of 23rd March 1977 formed a part), for the purpose of defrauding Choo Kim-san's creditors;

(c) the finding that there was no conspiracy necessarily includes a finding that the Fermay transaction was not a sham, although it is conceded that he found it was a sham;

(d) in so far as the judge elsewhere found that the Fermay transaction was a sham he must have misdirected himself as to the elements of a sham;

(e) as, for one reason or another, the Fermay transaction was not a sham, the beneficial interest in the 15,000,000 San Inperial shares passed to the Syndicate (whether or not the Chows were nominees of Choo Kim-san) and the shares were not a proper subject for a charging order.

I think it is common ground that there was no discussion in the court below as to the elements of a sham, but we are not to assume that the learned judge was ignorant of them. Mr. Sherrard submits that none the less the judge did apply the wrong principles and counsel cited to us a number of cases. I do not find it necessary to refer to them, because I think the law is reasonably clear and that there is no real disagreement here between the parties. All I would say is that I think when one is looking at a case on the subject of shams one must be careful to bear in mind the type of case with which the

court was dealing: the language used in a case where the transaction was alleged to have been intended to have no legal effect at all may be misleading when read in relation to a case where the transaction is alleged to have been intended to produce some legal effect but not that which appears upon its face. What the Respondents were alleging here was that the Fermay transaction was intended to bring about a transfer of the legal title to the shares by registration of Fermay as owner, but nothing more. That is to say, the beneficial interest was not to be transferred as the indicia would suggest and no money was to pass from the Syndicate to the Chows or to Choo Kim-san, whose nominees the Chows were alleged to be. If that was what the parties intended, it was undoubtedly a sham and the court should act on the basis that the beneficial interest has not been transferred: the transaction was not a nullity but its effect was limited to the legal interest. When the learned judge said in his judgment that the Fermay Agreement was a nullity, he must be taken as having concerned himself only with the beneficial interest, which was all that was directly in issue in execution proceedings such as these.

It is now necessary to look at the reason why, in Mr. Sherrard's submission, it is apparent that the learned judge applied a wrong test for a sham, namely whether the Syndicate was aware that the Chows were nominees of Choo Kim-san. At least twice in the course of his judgment the learned judge said that Ng had admitted that he knew he was purchasing shares from Choo Kim-san's nominees, and the judge accepted that to be the truth, although Ng insisted in evidence that he believed he was acquiring the 15,000,000 shares from independent vendors. So, the argument goes, the learned judge must have thought that a purchase of shares from a known nominee could not be a genuine purchase. Disregarding the further contention that Ng never made the admission attributed to him, I am far from satisfied that the learned judge made the error relied upon: it was only necessary to state the proposition of law shorn of all irrelevant verbiage for it to be obvious that it was untenable. Nor is it suggested that the Plaintiffs ever put their case in that way. I merely observe in passing that I think the learned judge may have read too much into Ng's "admission" and that it would have been more accurate to say that Ng admitted "that he knew he had purchased shares from Choo Kim-san or his nominees": it is not clear that he was talking about the Fermay transaction. That would not, however, have destroyed the entire force of the judge's point, which I take to be that Ng's previous admission fitted ill with the assertion of both himself and Ives in evidence that they were satisfied that the Chows were beneficially entitled. Again, the judge said more than once that "the profits" on the transactions were to be split and it is argued that there could be no "profits" unless the transactions were genuine. With respect I think that that is too literal a reading of the judgment: it is quite clear that the learned judge was referring to the financial benefits to be obtained through the transactions, whether or not they were profits in the commercial sense.

Although I said that an alleged inconsistency between the findings by the learned judge that MBF had not made out a case of conspiracy against the Syndicate and the finding that the Fermay transaction was a sham constituted the main plank in Mr. Sherrard's argument, he attacked the latter finding also on other grounds: counsel submitted that the documents and undisputed facts were inconsistent with it and that it was based upon the wrongful rejection of the evidence of Ho, Ives and Ng and that of Coe. He argued that the reasons given for disbelieving their evidence were invalid

and that, even if that evidence was justifiably disbelieved, there was no sufficient evidence upon which the judge could find in favour of the Respondents that the transaction was a sham.

The story opens with the breach by Choo Kim-san of his recognizance to appear to answer charges of criminal fraud. On his flight from the jurisdiction he took with him the scrip relating to a large number of shares in San Imperial. Those shares were registered in the names of Choo Kim-san's nominees. He, perhaps because he foresaw the possibility of a future execution against the shares, decided that they must no longer appear as his property. The Appellants say that he sold some of them to Mr. and Mrs. Chow and some to Messrs. Lee and Fong. As we have seen, the judge doubted even the existence of Lee and Fong but no one has doubted that Mr. and Mrs. Chow exist (they were apparently served as Defendants) or that they purported to sell shares to Ng. What is questioned is whether they, and Lee and Fong (if they existed), were nominees of Choo Kim-san and whether they intended to pass the beneficial interest in the shares they agreed to sell to Ng. It is the contention of the Respondents that Ng was merely another nominee of Choo Kim-san and that no property passed to him. Neither Mr. Chow nor Mrs. Chow entered an appearance to resist the proceedings instituted by the Respondents. That in itself is relied upon as indicating that they have no beneficial interest which they could protect.

The version of events relied upon by the Appellants is that, having been told by Coe that he was a prospective purchaser, the Syndicate started looking for Choo Kim-san with a view to acquiring a controlling interest in San Imperial, the principal business of which was that of a hotel in Hong Kong. Ng was the person assigned the task of finding and negotiating with Choo Kim-san: in December 1976 the search was begun, although not before the members of the Syndicate had questioned whether it would be lawful to deal with a fugitive from justice and had agreed to obtain an opinion from counsel in London. Ng testified that he started his search for Choo Kim-san in Bangkok during his Christmas holiday and that he subsequently went to Taipei on 30th December 1976 and chanced to meet Choo Kim-san the following morning in the coffee shop of the hotel at which Ng was staying: Choo Kim-san told him that he had sold the shares and named the Chows as the buyers, after which Ng saw the Chows: Mr. Chow told him that they had shares which they were prepared to sell: there was some discussion about San Imperial and the price of its shares, but nothing was agreed: Ng returned to Hong Kong on Saturday 1st January 1977 and went straight to the race course: he was unable to communicate with the rest of the Syndicate until Monday the 3rd, when he spoke to Ives on the telephone and said he had located Choo Kim-san and thought it "likely they were in business". According to Ives he then dictated a telex message asking for the opinion which it had been agreed should be obtained from English counsel. Ng said he also spoke to Ho on the Monday and as a result they started buying San Imperial shares on the stock market: there followed a lunch meeting on Tuesday the 4th, at which Ng made a full report on his visit to Taiwan: he returned to Taiwan on 9th January and discussed with the Chows the price at which they would be willing to sell their shares: he was shown a bundle of share certificates and there was also some discussion about the genuineness of those certificates: again nothing was agreed and Ng returned to Hong Kong on 13th January: the Syndicate considered ways of satisfying themsevles of the genuineness of the share

certificates: Ng made a third visit to Taiwan from 23rd January to 27th January: he and Chow approached banks to see if they would accept the share certificates as security, that being one of the ways in which it was thought their genuineness could be proved: the banks refused: on this visit Ng asked to see the blank transfer forms which the Chows had received with the share certificates and there was some inconclusive haggling over the price the Syndicate would pay: Mr. Chow, apparently for the first time, said how many shares they were offering and added that some of them had been purchased by himself and that he was holding some for friends – 15,000,000 and 515,000 respectively: he said that all these shares "would be sold together" and he showed Ng two of the transfer forms: on his fourth visit, from 9th February to 13th February, Ng took with him what has been called a working draft Agreement, which had been drawn up by Ives: Mr. Chow thought that the draft was unreasonable and rejected its terms: there was further haggling over the price but nothing was agreed about the 15,000,000 shares: Lee and Fong took part in the discussions on this occasion: the price offered for their shares had been 20 cents a share and they insisted that that was too low: however, on the day of his departure Ng was told by Mr. Chow that Lee and Fong had handed him 514,200 shares and that they wanted to be paid as though there were 515,000: Ng agreed and promised to pay 20 cents a share on his next trip to Taiwan: on his return to Hong Kong Ng found that Ho was not happy about his purchase of the 514,200 shares, and eventually the Syndicate agreed that Ng would be buying them on his own account: Ng went back to Taiwan on 23rd February and haggling continued over the price of the 15,000,000 shares: he paid for the 514,200 shares and was handed the relevant documents: on the occasion of this fifth visit Mr. Chow told him that his friends were now offering a further 1,650,000 shares but that they wanted 30 cents a share: Ng counter-offered 20 cents and Chow told him next day that he had been handed the certificates relating to the 1,650,000 shares: Ng promised to pay on his next trip to Taiwan: he returned to Hong Kong on 2nd March: he did not have the Bought and Sold Notes for the 514,200 shares stamped immediately because they would have had to be stamped according to their market value of 40 cents and he hoped the market price would drop back to 20 cents, so the certificates were locked away in a safe: they were eventually stamped after the acquisition of the 15,000,000 shares: Ng's shares were registered in the name of MAF Nominees Ltd. ("MAF Nominees"): on 5th March Mr. Chow telephoned and agreed to sell the 15,000,000 shares at 60 cents a share: thereupon the Syndicate embarked upon the formation of Fermay and prepared a draft Agreement, some transfer forms and various other documents relating to the proposed Fermay transaction: these documents were taken by Ng to Taiwan on 22nd March, except for the draft Agreement, which he left behind and had re-typed in Taiwan: the sale of the 1,650,000 shares to himself was now completed and these also were subsequently registered in the name of MAF Nominees: the draft Agreement relating to the 15,000,000 shares became the Fermay Agreement of 23rd March 1977, but at the time it was executed there were blanks still to be filled: the blanks were filled later in Hong Kong and a completed copy of the Agreement was taken by Ng to Mr. Chow on his seventh visit to Taiwan, which began on 1st April: Ng also took for signature by the Chows the minutes of the meeting of the board of Fermay, this being the final document evidencing the Fermay transaction.

All that needs to be added here in relation to the Fermay transaction is that documents introduced during the interlocutory proceedings showed that Ng had

apparently given a different chronology of some of the negotiations previously. In particular he must have said that Lee and Fong had told him on or about 12th February 1977 (that is during his fourth visit) that they had some – in fact 514,200 – San Imperial shares which they were interested in selling to him, although in his evidence he said that Mr. Chow had told him about those shares on his third visit. This is relevant because Ives could not have included a reference to those shares in the working draft Agreement if Ng had not been told about them until his fourth visit.

The Appellants' account of the acquisition of the remaining 8,000,000 shares sold to Rocky was as follows. Apart from the 2,164,200 he had bought from Lee and Fong, Ng had bought 2,609,000 privately, either in the stock market or elsewhere, and nothing more needs to be said about them: no impropriety is alleged. All the others had at one time been registered in the name of MAF Nominees along with the 2,164,200 shares Ng bought from Lee and Fong. The largest parcel, consisting of 3,226,000 shares was acquired by the Syndicate from MAF Corporation (H.K.) Ltd. ("MAF Corporation") under an Agreement dated 30th March 1977 ("the MAF Option Agreement"). Of these shares 369,000 had been bought by MAF Corporation in the stock market but had been registered in the name of MAF Nominees immediately, 7,000 had been bought by MAF Corporation in the stock market and had been registered in MAF Corporation's own name, whilst 2,150,000 had been received by MAF Corporation on 1st September 1976 from Asiatic and had been registered in MAF Corporation's own name. I understand it to be suggested that the transfer of the 2,150,000 shares from Asiatic to MAF Corporation was a gift made at the instance of Choo Kim-san shortly before he failed to answer to his recognizance, but the evidence of Mr. Cheng, the auditor, was that the shares had been held by Asiatic on behalf of MAF Corporation and were transferred after he had advised MAF Corporation that it was desirable they should be so transferred. The learned judge found that the 3,226,000 (which included the 2,150,000) had nothing to do with Choo Kim-san and said that it was not necessary for him to make any finding as to the genuineness or otherwise of the MAF Option Agreement. Mr. Yorke submits that that was the learned judge's only substantial mistake – one to the detriment of the Plaintiffs – and that it arose because Mr. Cheng had not considered the possibility that the shares which he understood to have been bought by MAF Corporation had merely been "washed in the market". It being part of the Plaintiffs' case that the MAF Option Agreement was a sham and that the circumstances surrounding it were so suspicious as to add weight to their contention that Ives, Ng and Ho were untruthful witnesses, it will be necessary to say a little more about the MAF Option Agreement as we go on to consider the judge's findings as to credibility.

It is not contested that the learned judge directed himself correctly as to the burden of proof, but Mr. Sherrard does suggest that he allowed himself to make findings of fact where the evidence at most raised a suspicion. Moreover, he submits that the learned judge's general assessment of Ives, Ng and Ho is invalidated by the specific reasons he gives for disbelieving them. What in effect that amounts to is the suggestion that this was a case of "give a dog a bad name . . .". I do not see any escape from reviewing, as briefly as possible, each of the factors listed as supporting the general assessment.

(i) The learned judge thought it "to say the least remarkable" that Ng

should have found Choo Kim-san in the coffee shop on the morning after Ng's arrival for his first visit to Taipei. The Plaintiffs say that when one bears in mind that Choo Kim-san was a fugitive from justice who would not want to be recognized, particularly by persons from Hong Kong, it is indeed strange that he should have patronized a hotel frequented by visitors from Hong Kong. This is certainly no more than, to use Mr. Yorke's phrase, "one straw among many which may indicate the direction of the wind".

(ii) The learned judge thought it improbable that the Chows would have bought from a complete stranger 15,000,000 shares in a company of which they apparently knew nothing – even that it was in the hotel business. That comment was justified, but it is of no great consequence, when one is weighing the evidence of Ives, Ng and Ho, that they ought to have realized the unlikelihood that the Chows were nothing more than nominees.

(iii) Ng denied knowledge of the complicated arrangements by which the Syndicate raised funds for the purchase of the 3,226,000 shares under the MAF Option Agreement, those arrangements including the borrowing of money by two of Ng's employees, such money being paid not to the borrowers but to a firm in which Coe was a partner; which lent it to Coe, who lent it to the Syndicate. The learned judge thought that, as a member of the Syndicate, Ng must have known of these arrangements. Whether it is right to say that the denial belied his evidence is questionable, but it undoubtedly raised very grave suspicion.

(iv) The judge could not believe that the MAF Option Agreement could be genuine – as the witnesses said it was – when, to the knowledge of Ng, it gave an option to purchase nearly twice the number of shares that MAF Corporation owned and no satisfactory explanation was given as to where MAF Corporation would be able to obtain the balance. In truth, of course, on the date which appears on the Agreement (i.e. 30th March 1977) MAF Corporation owned no shares at all in San Imperial: only six days earlier it had transferred its entire holding to MAF Nominees. That transfer is peculiar by virtue of the manner in which it was recorded in the register: there are no less than six entries under the same transfer number, three of them indicating acquisitions totalling 3,000,000 shares and three indicating dispositions totalling 843,000 shares. Suspicion immediately arises that the intention was to avoid the appearance of the figure "2,157,000" or other figures which would be readily recognizable as combining to make 2,157,000. Any intention to deceive would, of course, be primarily that of the Registrars, but in this instance the Registrars at the material time were MAF Finance. Ho Chung-po, Choo Kim-san's lieutenant in Hong Kong, was a leading person in the MAF Group. It has been argued before us that it is most unlikely that this Agreement was executed on the date it bears and there is reason for suspicion as to that. This reason must be considered alongside the next one.

(v) The judge said that "if MAF could indeed acquire up to 6,000,000, the Syndicate would have too many shares on their hands, because the total acquired by the Syndicate for sale would then be more than half the total share capital of San Imperial". Ives's explanation for the extent of the option is simply that MAF Corporation insisted on having the figure of 6,000,000 put in. The MAF Option Agreement is certainly a very strange document, although perhaps not quite so strange as the Respondents maintain. The option as defined in Clause 1 is for the purchase of exactly 6,000,000 shares, but Clause 2 was not consistent with that and, upon exercise of the option, MAF Corporation was required to sell "the said shares .... (or should the intended vendor not have the full 6,000,000 shares so many shares as the intended vendor shall have ....)". It is submitted that the effect of Clause 3 was to prevent MAF Corporation's going into the market during the period between the signing of the agreement and the exercise of the option (which could have been as long as three months) and buying at the substantially lower market price shares which the Syndicate would be compelled to take at $1.50 a share. Ives admitted in evidence that that was the object. His admission seems to me of little weight: he made an admission as to the intention of the New Rocky Agreement which was clearly wrong, and I think the truth is that a somewhat hectoring cross-examination shook his confidence in his own abilities as a draftsman and his recollection of what he had been trying to achieve. I do not accept the interpretation of the MAF Option Agreement which was put to him. Whatever the parties may have hoped to achieve, I think the only reasonable interpretation of Clause 3 is that, however many shares might eventually be conveyed upon an exercise of the option, there should upon the signing of the Agreement be an immediate deposit of blank transfer forms in respect of so many shares as the vendor then had, together with the relevant certificates in respect of those shares. It is not for us to guess at the reason why the Agreement was drafted in that form, although I suppose it may have been to ensure that MAF Corporation did not dispose of such shares as they then had to someone else. The fact remains that it was never satisfactorily explained why the option was, in effect, for up to 6,000,000 shares when the Syndicate did not require so many. On the issue of credibility of the witnesses that is but another straw in the wind: it suggests that the witnesses were not being entirely frank, but the circumstances relating to this Agreement as a whole undoubtedly do raise grave suspicions.

(vi) The judge said that the failure of Ng to disclose in his affidavits the existence of the New Rocky Agreement was another indication that he was not being entirely frank. With respect I cannot agree. The learned judge himself says "it is difficult to see what useful purpose could be served by its suppression" and the reason for that must be that the existence of an altered Agreement was not material to the matters in issue in the interlocutory proceedings. The duty of a deponent is to make full and frank disclosure – but only of relevant facts. The affidavits were settled by counsel and they did not at first think the

New Rocky Agreement was relevant. They subsequently changed their minds and a further affidavit was filed. Ng should not be blamed for the omission.

(vii) A further criticism of Ng's affidavit and evidence does have more substance: he gave the impression that the Syndicate had acquired 8,000,000 shares in the stock market and denied that the true price at which the 23,000,000 shares were sold to Rocky was $1.63 a share. The first of these complaints is yet another straw in the wind, but the second could have been more serious. The price stated in the New Rocky Agreement was $1.50 and Ng's assertion was that a "finder's fee" which was to be paid in addition was not part of the price. Such a commission may often not be a part of the price but here there was clear evidence that it was: Ives, Ng and Coe were all brought to agree that the finder's fee was a device introduced, after the price had been fixed, with a view to making the price appear lower than it really was. Nevertheless the learned judge made no specific finding as to the price and when he came to calculate the debt owed by the Syndicate to Choo Kim-san in respect of the price of the 8,000,000 shares he did so on the basis of a price of only $1.50 a share. That necessarily involved (i) the rejection of the evidence that the price was $1.63 and (ii) a finding that the "finder's fee" was a commission which the Syndicate was entitled to keep for itself. The money paid under the New Rocky Agreement was found by the judge to total $19,389,446.67. That exceeds the amount payable for the 8,000,000 shares so far delivered, even at a price of $1.63. However, the judge garnished the Syndicate to the extent of $2,813,000 after giving credit for the $433,000 paid by Ng for the Lee and Fong shares, and that represented the price of those shares at $1.50 a share. In so far as the rest of the money paid by Rocky was in respect of a "finder's fee" the learned judge must have thought that the Syndicate was genuinely not accountable to Choo Kim-san.

(viii) The judge said it could not be true that Ng "had not even suspected that C.K. San might be in debt". It is unfortunate that in this connection he also said that "the Syndicate knew of . . . his past record of defrauding companies", as to which there was no evidence. Nevertheless the possibility that he might be in debt must have been clear to someone who knew of Choo Kim-san's arrest for frauds alleged to be in the region of $14,000,000 and of an action brought against him by Mr. Harilela.

(ix) The judge regarded the working draft agreement for the sale and purchase of shares by the Chows to the Syndicate as containing within itself indication of the untruthfulness of the Defendants' story. The validity of this criticism depends upon the judge's conclusion as to dates: he found that at the date when the working draft agreement was prepared Ives had not been told even that more than 15,000,000 shares were available let alone that there was a suggestion that the Lee and

Fong shares should be sold along with the Chows' 15,000,000. Moreover, the draft contemplated that all the shares would be sold at 60 cents a share, whereas the Lee and Fong shares were not sold at that price. I have already recorded that Ng claimed to have taken the working draft agreement with him on his fourth visit to Taipei and that that would be inconsistent with any statement in the interlocutory proceedings that it was not until the fourth visit that the first parcel of Lee and Fong shares was mentioned. It must be accepted that at the end of a gruelling cross-examination Ives gave a very lame explanation of his reason for drafting the document as he did: "this was only a very rough draft". We appears to have admitted that "from the beginning" he did not want to purchase the Lee and Fong shares and that it was therefore wrong to include them in the draft. Although there was re-examination about the provisions as to payment contained in the draft, there was none as to the extent of Ives's knowledge at the time he prepared it. If Ng had told him, as Ng said he himself had been told when the Lee and Fong shares were first mentioned to him, that all the shares would be sold together, it would not be surprising if Ives assumed that they would all be sold at the same price, but as the evidence stood the judge cannot be faulted for drawing an adverse conclusion as to the lumping of all the shares together. His inference that Ng changed his story as to the dates in order to rescue Ives, however, is less easily justified: an honest mistake as to the dates seems to me every bit as likely an explanation and one which can only be ruled out by assuming the very thing that is in question, that the witnesses were deliberately lying.

(x) Ives was cross-examined at length not only about the purpose of the MAF Option Agreement but also about the correct interpretation of the New Rocky Agreement and he was led to say that had he been drafting the latter Agreement at the date of the trial he would have used different words. It is now accepted that upon its true construction the New Rocky Agreement means precisely what he said he originally intended it to mean and Rocky was bound to purchase the 23,000,000 shares in one way or another. The judge relied upon the alleged mistake as indicating dishonesty on the part of Ives. That is now shown to have been unjustified.

(xi) The judge remarked on the unlikelihood that Choo Kim-san would sell his shares in Taiwan for 10 cents or 15 cents each, as Ives said in cross-examination that he probably had done, when the market value was 20 cents to 23 cents, or $1.60 to $1.70 for a controlling interest. I do not think that Ives did agree the figure at which Choo Kim-san must have sold: he merely agreed that it was something under 20 cents. His suggestion was that Choo Kim-san was in no position to stand out for anything approaching the market price and that everyone was disposed to drive a hard bargain with a fugitive from justice. This seems to me very much a matter of speculation and, whilst I would not hold that the

judge was wrong to rely upon it, I think little weight can properly be attached to it.

(xii) Ives explained how the Syndicate arrived at an assessment of the value of San Imperial before offering to pay the Chows 60 cents a share and had admitted that there were "unknowns" which might "detract from the net asset value of the company". The learned judge could not believe that "any genuine and serious valuation would have been arrived at in so casual a manner". Mr. Sherrard reasonably argues that the vital factor so far as the Syndicate was concerned was the price which Coe was willing to pay it. The Chows were not in a strong bargaining position themselves, but it was generally accepted that $1.60 to $1.70 would be the market rate for the controlling interest which Coe was seeking to acquire: it follows that the Syndicate was bound to make a very substantial profit and that a very rough valuation was all that was necessary to enable the Syndicate to decide upon a figure which the Chows (whether acting for themselves or as nominees of Choo Kim-san) would find too tempting to refuse. It is conceded that commercial men do sometimes reach decisions of this kind in a casual manner and in my view this was not a good reason for disbelieving Ives.

(xiii) Finally we come to the telex message asking for counsel's opinion to be obtained and to the reply. The judge made several criticisms of the Defendants' evidence concerning the outward message:

(a) that, if sent at all, the message ought to have been sent in December:

(b) that Ives must have been told that the message had still not been sent by lunch time on 4th January when Ng reported on his first visit to Taiwan and that after hearing that report Ives must have known it was no longer necessary to obtain counsel's opinion:

(c) that the message shows that the Syndicate was already aware on 4th January of the Lee and Fong shares registered in the name of Triumphant, although Ng said he was first told about them on his third visit to Taiwan (between 23rd and 27th Janaury).

Then the judge regarded the reply as advising against a purchase of shares from Choo Kim-san and he relied upon the fact that the reply was received the next day as indicating the urgency of the matter. I think Mr. Sherrard is right when he submits that it was not unreasonable to delay seeking counsel's opinion until there was at least a prospect that a purchase of shares could be arranged. It was not until 3rd January that Ng telephoned to Ives and told him that they were "likely to be in business". The telex message was drafted on the same day. It is true that if the Chows had made a genuine purchase from Choo Kim-san it became unnecessary to obtain counsel's opinion, but

Ives said he was sceptical about that transaction. Unless Ives was disbelieved as to that – and we are here considering one of the very reasons for disbelieving him – the opinion might have been required even then. It may be noted that the judge made the sending of the telex message his ground for finding, also, that Ng was not telling the truth when he said he saw the Chows on his first visit to Taiwan: the reasoning was that if Ng had known that the Chows had bought the shares he would have told Ives and Ives would have known that counsel's opinion was no longer required. The same objection can be taken to that conclusion. Moreover, it seems to me a dangerous assumption that Ives must have known he was not too late on the afternoon of 4th January to cancel the telex message he had drafted the day before. As for the disbelief of Ng's evidence, the point made is that the only shares mentioned to Ng prior to his third or fourth visit to Taiwan were the 15,000,000, so that he would not know of the Lee and Fong shares which were registered with Triumphant when Ives sent the telex message. The point has substance but it is putting the matter too high to say that the information must have come from Choo Kim-san, since the register of members of San Imperial was open for inspection. Indeed, it was not disputed that Ng searched the register twice. In relation to the reply it is hardly fair to use the commendable expedition of London counsel as a ground for questioning the credibility of Ives when he said he thought there was in December no urgency about obtaining the opinion. The judge's interpretation of the reply has been a subject of attack, for Mr. Sherrard submits that it in fact gave a green light to the purchase of shares from Choo Kim-san. The judge thought otherwise and Mr. Yorke rightly points out that he did so because the material part of the opinion was prefixed with the words "if client's sole motive is the commercial one of buying shares for himself" and the judge had previously found as a fact that that was not the sole motive.

It is not necessary for us to comment on the reasons given by the judge for disbelieving the evidence of Coe, for that evidence was concerned only with the subsequent transactions. Before reaching a conclusion whether the judge's decision based upon his assessment of the Syndicate members has been invalidated we must look at the nature of the transactions by which the Syndicate acquired their shares and some of the documents themselves. The judge not unreasonably thought it strange that Ng, whose only contribution to the scheme was to do what has been described as "the leg work", should as a further reward for his leg work be allowed to take for himself the profit arising from the dealing with the Lee and Fong shares, a profit of some $2,900,000. The explanation given was that the other members of the Syndicate did not want to put up the cash necessary to pay for these shares: the Fermay transaction was to be put through without cash until the final stage. Plausible though the explanation was, the judge was entitled to his doubts.

He had further doubts about the working draft agreement. Remarkably both sides rely upon the draft as conclusive proof of the righteousness of their cause. I have

already referred to the inclusion in this draft of the first batch of Lee and Fong shares, which Ng said in his evidence was first mentioned to him on his third visit to Taiwan, and to the uniform price of 60 cents a share. Other peculiarities were the omission of the names of the parties and the provision for payment by instalments with an option to the purchaser of accelerating the instalments. Those factors were heavily in favour of the Respondents in the light of the rest of the evidence, although perhaps not quite as heavily as Mr. Yorke submits. The omission of the names does not seem to me to carry the matter any further, whilst the provision for payment by instalments may, as Mr. Sherrard suggests, have been included merely as a basis for negotiation, the aim of the Syndicate being to buy the shares without having to produce the cash. The argument that payment by instalments was inconsistent with a sham because it opened the door to garnishee proceedings loses much of its force because of the option in favour of the purchaser of accelerating the instalments. It is then said by Mr. Yorke that the draft was originally designed as "window dressing to be left on the file" but, as I understand the argument, that it was later found to be a damning piece of evidence and was therefore hidden under a bushel instead of being put upon a candle-stick. That is a possibility, but one for which there is no solid foundation in the evidence.

The judge's decision as to the status (and, in two instances, the existence) of the Chows and Lee and Fong is an inference based upon the unlikelihood that anyone would have purchased from Choo Kim-san in the circumstances and upon the judge's view of the purpose of the subsequent transactions. His view of the purpose of the subsequent transactions was based upon their inherent nature and upon his disbelief of the parties concerned in them. Mr. Sherrard urges that the mere mention of Lee and Fong gives verisimilitude to the sales to them and to the Chows, because it would not assist Choo Kim-san to make sham sales to a plurality of purchasers. That is certainly an argument which must be thrown into the balance.

The crucial document is the Fermay Agreement, which must be viewed along with the rest of the Fermay transaction. The overriding contention of the Respondents is that here was a complicated transaction which was unnecessary, unsuitable for its alleged purpose and indicative of an intention to confuse anyone who might investigate it: its true purpose was to give an appearance of regularity whilst leaving the beneficial interest in the shares firmly in the hands of Choo Kim-san. When he said that the only purpose of creating Fermay was to enable the name of the registered owner to be changed and "to wrest from the Chows any semblance of beneficial interest", Mr. Ching was not, as I understand it, suggesting that the Chows had any more than a mere semblance of beneficial interest. The Appellants say that, whether or not their purpose could equally well have been achieved in some other way, the Fermay transaction was a reasonable and, indeed, normal procedure for attaining their ends. Those ends were that the Syndicate should be satisfied that the certificates tendered by the Chows were genuine and that, if the certificates were genuine, the beneficial interest should be transferred without encumbrance. If that were all, I would hold that there was insufficient evidence that the Fermay Agreement was a sham, but when one sees it in the context of the whole Fermay transaction a different picture emerges. The learned judge summed up the matter in one paragraph:

> "On the same day as the agreement was made, Chow and Hwang as first directors of Fermay ..... purported to hold a board

> meeting and resolved that Ng, Ho and Ives be authorized signatories of Fermay for the purpose of entering into any contract or signing on behalf of Fermay any document, receipt, contract, bought and sold note, transfer or any other document of any nature whatsoever and the signature of any one of them was to be binding on Fermay ..... Thus, by this resolution, Chow and Hwang relinquished their control of Fermay. And by clause 4 of the agreement . . . , they were estopped from claiming the balance of the purchase price amounting to $8.8 million. *There could be no acceptable reason for Chow and Hwang to repose such complete trust in the Syndicate."*

In other words the judge concluded that there was no question of trust involved: he thought that the Chows were never to receive the $8,800,000 at all. The $92,000 which they had had from Ng, being allegedly a deposit of $200,000 less fees payable on the increase of the capital of Fermay and stamp duties on the Bought and Sold Notes, was found to be the consideration they were to be given for their willingness to participate in a sham transaction. This was an inference which the judge drew from the unusual features of the transaction and from his rejection of the explanation given for those unusual features by the witnesses.

Although I think the learned judge was wrong in some of his reasons for disbelieving the witnesses, I find myself unable to say that the errors were such as to invalidate his finding that their explanation of the Fermay transaction was untrue. He was entitled to find that the whole transaction was a sham. It follows that the Syndicate's vendors had not divested themselves, at the time the New Rocky Agreement was entered into, of any beneficial interest they may have had.

That still leaves the question whether there was evidence upon which it could be found that the Chows, and Lee and Fong (if they existed), were nominees of Choo Kim-san. Mr. Sherrard concedes that he cannot here challenge the judge's finding as to the Chows. Lee and Fong did not have the legal title (which was in Asiatic or Triumphant) but they held the share certificates and instruments of transfer. They were "nominees" of Choo Kim-san to receive those documents but, as Mr. Vinelott has said, they might more accurately be described as Choo Kim-san's "agents". The absence of the Chows and Lee and Fong from the witness-box, and the non-appearance of the Chows in the proceedings, must in all the circumstances inevitably raise the greatest suspicions. It has been contended that there were insuperable difficulties about producing the evidence of all these persons before the court. It was not disputed that there were difficulties, but it is reasonably argued that if they were in truth insuperable that makes it all the more unlikely that the Chows and Lee and Fong would buy the shares for themselves and that the Chows would have handed their shares to Ng without retaining some kind of control over them. The fact that the Chows were willing to accept the entire Fermay transaction points strongly to the conclusion that they had no beneficial interest in the 15,000,000 San Imperial shares and their ignorance of their alleged vendor and of the business of San Imperial were in fact enough to raise the suspicions of Ng and Ives. The explanations for the dispelling of those suspicions were hardly convincing, but that fact of itself does not tend to prove that the Chows were nominees. Nor do I attach much weight to the fact that Ng never saw the share certificates and transfer forms together. More significant is the fact that the Chows were content to leave the shares registered in the name of Asiatic. I think

the learned judge was justified in finding as he did as to them. Lee and Fong were not party to the Fermay transaction and, so far as they were concerned, there was nothing inherently suspicious about their agreement with Ng. Nevertheless the finding that the Chows were "nominees" must increase the suspcion that Lee and Fong were in a similar position. I am not prepared to say that it was not open to the learned judge to find that they also were Choo Kim-san's "nominees".

The Appellant in Miscellaneous Proceedings No. 540 of 1977 was originally IPC but we gave leave for Rocky and Siu King Cheung Hing Yip Co. Ltd. ("SKC") to be joined, Rocky being the contracting party and SKC being the principal for whom Rocky was said to have been acting. The case of these Appellants was based in part upon the same grounds as that of the other Appellants but in addition upon the proper construction of the New Rocky Agreement. Throughout the trial it was assumed that the effect of that Agreement was to give Rocky an option whether it would or would not buy 23,000,000 San Imperial shares from Fermay. It is now, in my view rightly, accepted on all sides that the Agreement provided for an outright sale and purchase of the shares, the option conferred upon the purchaser as to 15,000,000 of those shares by Clause 4(b) being merely part of the "mechanics" whereby the sale was to be effected. The sale of all the shares was to be effected by the grant of an option for the purchase of the entire shareholding in Fermay (which held the 15,000,000 San Imperial shares) and by causing City Nominees Ltd. (a company which was the registered holder of the Syndicate's 8,000,000 shares and which was controlled by two partners of Messrs. Peter Mo & Co., of which Ives was a member) to convey to Rocky not less than 7,000,000 nor more than 8,000,000 of the Syndicate shares. The learned judge found that the New Rocky Agreement was not a sham. It would, therefore, have been effective to pass the beneficial interest in the shares to Rocky even though the Syndicate was a mere nominee of Choo Kim-san and it would have made no difference had the purchaser known that the Syndicate was a nominee.

We agreed that when we had stated our views upon the various issues argued before us we would leave counsel to suggest to us the terms of the orders which ought to be made.

JUDGMENT OF PICKERING, J.A.

Prior to the hearing of these consolidated actions in the court below, the Plaintiff, Lee Ing Chee had obtained a judgment in the High Court against the Defendant Choo Kim San (the 1st Defendant in the court below, hereinafter referred to as C.K. San) for a liquidated sum with interest and costs.

Similarly, but in an action in the High Court of Kuala Lumpur in Malaysia, Lee Kon Wah, another plaintiff in the consolidated actions in the court below, had obtained judgment against C.K. San also for a liquidated sum with interest and costs. The Malaysian judgment was duly registered in Hong Kong under the provisions of the Foreign Judgments (Reciprocal Enforcement) Ordinance, Cap. 319.

Finally, the Plaintiff, Malaysia Borneo Finance Corporation (M) Berhad (hereinafter referred to as MBF), in another action in the High Court of Kuala Lumpur in Malaysia, had obtained a similar type of judgment against C.K. San. That judgment was likewise registered as a judgment in the High Court of Hong Kong.

C.K. San held, either directly or through nominees, a large number of shares in a company called San Imperial Corporation Limited (hereinafter referred to as San Imperial) and on 15th July, 1977 the Plaintiffs, Lee Ing Chee and Lee Kon Wah, in execution of their judgments, obtained charging orders nisi in respect of the following shares:

(a) 422,560 San Imperial shares registered in the name of Asiatic Nominees, Ltd. (i.e. the second defendants in the consolidated actions in the court below, hereinafter called Asiatic)

(b) 400,000 San Imperial shares registered in the name of Triumphant Nominees, Ltd. (i.e. the third defendants in the consolidated actions in the court below, hereinafter called Triumphant)

(c) 15 million San Imperial shares registered in the name of Fermay Co. Ltd. (i.e. the seventh defendants in the consolidated actions in the court below, hereinafter called Fermay)

(d) 7,631,000 San Imperial shares registered in the name of IPC Nominees, Ltd. (i.e. the tenth defendants in the consolidated actions in the court below, hereinafter called IPC)

On the same day, the same two plaintiffs obtained garnishee orders nisi against the 4th Defendant, David Ng (hereinafter referred to as Ng), the 5th Defendant, Melville Ives (hereinafter referred to as Ives) and the 6th Defendant, Ho Chapman (hereinafter referred to as Ho) in respect of the sum of $8.8 million allegedly due and owing from Ng, Ives and Ho to the 8th Defendant in the court below, Chow Chaw-I (hereinafter referred to as Chow) and to the 9th Defendant, Hwang Shang Pai (hereinafter referred to as Hwang). Chow and Hwang are husband and wife. It was the Plaintiffs' contention that this sum of money was in fact due and owing to C.K. San by Ng, Ives and Ho (hereinafter collectively referred to as the Syndicate) as consideration for the purported sale to the Syndicate by Chow and Hwang as C.K. San's

nominees of the issued share capital of Fermay whose sole asset was 15,000,000 shares in San Imperial.

On 7th September, 1977 MBF obtained a charging order nisi in respect of:

(a) the same 422,560 San Imperial shares in the name of Asiatic,

(b) the same 400,000 San Imperial shares in the name of Triumphant,

(c) the same 15 million San Imperial shares in the name of Fermay,

(d) the same 7,631,000 San Imperial shares in the name of IPC, and

(e) 57,600 San Imperial shares registered in C.K. San's own name.

On the same day MBF also obtained a garnishee order nisi against Ng, Ives and Ho in respect of the same sum of $8.8 million and upon the same grounds.

On 14th September, 1977 MBF obtained another garnishee order nisi against the Syndicate in respect of the sum of $11,446,500 paid by a certain James Coe (hereinafter referred to as Coe) or his nominee, Rocky Enterprises Co. Ltd. (hereinafter referred to as Rocky) to Ng as consideration for the sale of 7,631,000 San Imperial shares by the Syndicate to Coe and/or Rocky, those shares being now registered in the name of IPC, the 10th Defendant in the court below. It is MBF's contention that this sum of money is in fact due from the Syndicate to C.K. San. The $11,446,500 represents the purchase price for the 7,631,000 shares at $1.50 per share.

In the consolidated actions in the court below the Plaintiffs sought to have made absolute the orders nisi or some of them. The 2nd to the 10th Defendants were joined in the proceedings by certain orders of the court but of those ten defendants only the 4th, 5th, 6th, 7th and 10th appeared and contested the Plaintiffs' claims. Coe was the 11th Defendant in one of the consolidated actions but is not an appellant herein. The 12th and 13th Defendants (6th and 7th Appellants) were added during the course of the Appeal.

The outcome in the court below was that the learned judge made absolute the charging order nisi in respect of the following San Imperial shares:

(a) the 422,560 shares registered in the name of Asiatic,

(b) the 400,000 shares registered in the name of Triumphant, and

(c) the 15 million shares registered in the name of Fermay.

As a result the garnishee order nisi in respect of the $8.8 million was discharged. The learned judge also discharged the charging order nisi in respect of the 7,631,000 San Imperial shares registered in the name of IPC, the 10th Defendant. In addition, but in favour of MBF only, the learned judge made absolute the charging order nisi in respect of the 57,600 shares registered in the name of C.K. San. As to MBF's garnishee order nisi in respect of $11,446,500 the learned judge made absolute

that part of the order nisi relating to $2,813,300, but discharged that part of the order relating to the balance of $8,633,200. I need not, at this stage, although I shall do so later, explain the basis upon which these figures of $2,813,300 and $8,633,200 were arrived at.

By their Notice of Appeal the 4th, 5th, 6th and 7th Defendants seek an order that the charging orders in respect of the 15,000,000 San Imperial shares registered in the name of Fermay Company Limited be discharged and that the garnishee order for $11,446,500 be discharged, not merely as to $8,633,200, but in its entirety. The 10th Defendant seeks an order that the charging orders nisi in respect of the 15,000,000 San Imperial shares to which I have referred be discharged.

By their Respondents' Notices of 24th and 29th April, 1978 the two Lees (who are not related) contend that so much of the judgment as adjudged that they did not at the trial continue to maintain that Ng, Ho, Ives, Fermay and IPC are also C.K. San's nominees (i.e. in addition to Chow and Hwang who were so held to be such nominees) should be varied to the extent that they (the Lees) have always and do maintain that Ng, Ho, Ives, Fermay and IPC were C.K. San's nominees and they contend that the judgment and orders in the court below should be affirmed upon that additional ground.

By a Cross Notice of Appeal dated 26th April, 1978 the Respondents MBF in all ill-drafted paragraph (1), seek an order that certain shares be made absolute. Such a Motion is, of course, nonsense and I take it that it must be assumed that what is really asked for is an order that the charging order in respect of those shares – 700,000 San Imperial shares forming part of the aforesaid 7,631,000 (mis-stated in the paragraph as 7,641,000) such shares – be made absolute. In the alternative an order is sought that as to the garnishee order nisi in respect of $11,446,500.00, so much of the order as relates to the sum of $1,050,000.00 (being the purchase price for the aforesaid 700,000 shares allegedly paid by Coe or his nominee Rocky to Ng) he made absolute.

I turn to the factual background which led to the orders in the court below and to this appeal. The Lees had worked with C.K. San in Malaysia and were said to be his lieutenants. C.K. San had a controlling interest in MBF, the 3rd Plaintiff, and held well over 15,000,000 shares in San Imperial, a Hong Kong company primarily concerned in the hotel business, the issued capital of which was $48.4 million in $1 shares. C.K. San wished to borrow substantially from MBF but being a Director thereof, could not do so under Malaysian law. He therefore entered into a device with the Lees whereby the Lees borrowed the money from MBF and passed it on to him. In June 1976 C.K. San was arrested in Hong Kong on charges of fraud but before he could be tried he jumped bail and fled to Taiwan. Thereupon a number of persons started to display an interest in the shares of San Imperial; Coe was desirous of obtaining a controlling interest in the Company and approached Ho and Ives to that end. At the end of 1976 Ng, Ives and Ho (the Syndicate) held discussions as to how they might obtain something in the region of 23,000,000 shares in San Imperial to sell to Coe. Ng had previously worked with C.K. San though the two had gone their separate ways for some years and Ng had become a stockbroker. Ives is a solicitor who had previously acted sometimes for, sometimes against C.K. San whereas Ho (despite the learned judge's apparent belief to the contrary) had been in no way previously

associated with C.K. San. As matters turned out Ng was the person who entered into the actual negotiations for the purchase of San Imperial shares whilst Ives handled the legal side of the matter and Ho lent to the Syndicate his general commercial supervision and some finance. According to the members of the Syndicate initial problems which they faced were as to the whereabouts of C.K. San, the legality or otherwise of buying San Imperial shares from him since he was known to be a fugitive from justice, and doubts as to whether C.K. San had not already effectively stripped the company of its assets or some of them.

Ng located C.K. San in Taiwan on 31st December, 1976. It was the Appellants' case that through C.K. San Ng came into contact with Chow and Hwang who were said to have purchased 15,000,000 San Imperial shares from C.K. San in November 1976 and that after protracted negotiations Ng, on 23rd March 1977, purchased those shares on behalf of the Syndicate at 60 cents per share: in the meantime Ng had also bought, on his own account, two lots totalling 2,164,200 San Imperial shares from a Mr. Lee and a Mr. Fong in Taipei at 20 cents each. These two lots of shares were to form part of the parcel to be sold to Mr. Coe. In connection with the 15,000,000 shares it was further the case of the Syndicate that for the purpose of proving the authenticity of the shares the shares were registered in the name of Fermay, a Hong Kong company incorporated by them for that purpose and as a vehicle for holding the shares.

Independently of these transactions, on 30th March 1977, the Syndicate entered into an agreement with Malaysian American Finance Corporation (Hong Kong) Limited (hereinafter referred to as MAF) whereby they were given the option to purchase 6,000,000 San Imperial shares at $1.50 per share. In fact, MAF had only 3,226,000 shares so this was the amount which the Syndicate purchased. The Syndicate also acquired further San Imperial shares on the local market at an average of 54 cents per share and some from private sellers at $1 per share.

As a result of these acquisitions the Syndicate was able to reach an agreement, on 30th April, 1977, with Coe's nominee company, Rocky for the sale to Rocky of 23,000,000 shares at $1.50 per share. Subsequently, as a consequence of interlocutory proceedings brought by the Respondents, charging or otherwise restraining C.K. San's San Imperial shares, the Agreement of 30th April, 1977 was replaced by a new agreement dated 12th May, 1977 under which Rocky was given an option to buy either the 15,000,000 shares or the share capital of Fermay the only asset of which was those 15,000,000 shares: the balance, which was to be not less than 7,000,000 nor more than 8,000,000 shares, remained an outright sale and purchase.

After the 8,000,000 shares were acquired by Rocky, they were registered not in Rocky's name but in the name of IPC, another nominee company controlled by Coe and, as we have seen, the 10th Defendant in the court below. It is Coe's case that the real purchaser was another of his companies called Siu King Cheung Hing Yip Co. Ltd. (hereinafter referred to as SKC). During the course of the appeal both Rocky and SKC were, as we have seen, added as Appellants.

It was the Defendants' case in the court below that all the above transactions were genuine and bona fide; that on the dates upon which the charging orders nisi

were made C.K. San had already divested himself of his beneficial interest in his San Imperial shares and that for that reason the orders nisi should not be made absolute.

On the other hand it was the case for the Respondents, the Lees, that all the transactions in respect of these shares were sham transactions; that the San Imperial shares in question were and still are beneficially owned by C.K. San and that at all material times the Appellants held and continued to hold the 15,000,000 San Imperial shares as C.K. San's nominees. The learned judge in the court below appears to have formed the view that whilst it continued to be maintained that Chow and Hwang were such nominees, Mr. Ching, leading counsel for the Respondents the Lees, did not, at the end of the hearing, continue to maintain that Ng, Ho, Ives, Fermay and IPC were also C.K. San's nominees. This would appear to have been a mis-apprehension on the part of the learned judge and Mr. Ching tells us that at no time did he abandon that contention – an assertion which is borne out by his learned junior's note taken in the court below.

The Respondent MBF, on the other hand, based their case not on nomineeship but on conspiracy claiming, in the opening sub-paragraph of paragraph 7 of their Statement of Claim, that for the purpose of avoiding and defeating the execution by MBF of their Malaysian judgment and to defraud C.K. San's creditors, the Appellants and each of them together with persons unknown, from about October 1976 onwards, conspired and combined amongst themselves in Hong Kong and elsewhere to sell or cause to be sold on behalf of C.K. San the 15,000,000 shares in the name of Fermay and the 7,631,000 shares (being part of the 8,000,000 shares) now registered in the name of IPC and to obtain on behalf and for the benefit of C.K. San the proceeds thereof. I shall return to the allegation of conspiracy, the particulars of which as given in the Statement of Claim do not appear to support the principal allegation set out above. MBF's allegation of conspiracy, however, stopped short at Coe and no such allegation was made against him. As an alternative to the conspiracy claim MBF claimed that all the transactions in respect of the shares in question were not bona fide at arm's length and for full value without notice of any defect in the vendor's title.

The issues therefore in the court below were (1) whether on the dates that the charging orders nisi were made C.K. San had already divested himself of his beneficial interest (if any) in any or all of the San Imperial shares referred to and (2) if so, whether the purchase prices under any transactions held to be valid were in fact payable to C.K. San. It is necessary to examine in some detail what came to be known during the course of the appeal as the Fermay transaction being the process whereby that company was incorporated and became the registered holder of the 15,000,000 San Imperial shares. C.K. San was in the habit of carrying many of his shareholdings in the name of nominees either natural or juristic and one such company was Asiatic Nominees Limited as to which the evidence was that the company existed for no other purpose than to hold shares belonging beneficially to C.K. San. It was in the name of Asiatic that the 15,000,000 San Imperial shares were registered. On 8th March, 1977 Fermay was incorporated by or on behalf of the Syndicate with a capital of 1,000 $1 shares of which only two were issued to the subscribers, they being two solicitors in the firm of Peter Mo & Company in which firm Ives was a partner. At that date, Chow and Hwang were holding certificates for the 15,000,000 San Imperial shares registered in the name of Asiatic together with transfer forms

already executed on behalf of Asiatic but with the name of the transferee left blank. On 23rd March, 1977 the subscribers, by writing under hand, appointed Chow and Hwang as the first directors of Fermay. At 11 a.m. on the same date at an extra-ordinary general meeting in Hong Kong the subscribers to Fermay voted an increase in that company's share capital to $9,000,000. Simultaneously Chow and Hwang held a board meeting in Taipei at which they approved the increase of capital and resolved that Fermay should purchase from "the shareholders" (an intended reference to themselves) the 15,000,000 San Imperial shares at 60 cents per share or $9,000,000, the purchase price to be satisfied by the issue of 8,999,998 $1 shares of Fermay fully paid up for cash at par. On the same date at a further board meeting in Taipei Chow and Hwang resolved that the members of the Syndicate (Ng, Ives and Ho) acting jointly or by any one or more of them acting singly should be authorized signatories of Fermay for the purposes of entering into any contract or signing on behalf of the company any document, receipt, contract, bought and sold note, transfer or any other document of any nature whatsoever and that the signature of any one of the Syndicate should be binding upon the company.

Still on the same date, 23rd March, 1977, Chow and Hwang executed what is now a very much disputed Agreement for Sale to the Syndicate. That agreement recited the incorporation of Fermay, that the share capital was $9,000,000 and that the entire share capital had been alloted to Chow and Hwang who were the beneficial holders thereof; a further recital was to the effect that the sole asset of Fermay was its holding of 15,000,000 shares of $1 each in San Imperial which shares were expressed to be free from all encumbrances. Under the Agreement Chow and Hwang sold or purported to sell to the Syndicate the whole of the issued capital of Fermay in consideration of the sum of $9,000,000 of which $200,000 was to be paid on the date of the Agreement and the balance upon completion which was expressed to take place within 90 days from the date of registration of the 15,000,000 San Imperial shares in the name of Fermay. It was further provided that Chow and Hwang should deliver to the Syndicate all the necessary share transfers duly signed by Chow and Hwang in blank together with their certificates for the Fermay shares against payment of the balance of the purchase price. Delivery of the Fermay shares and transfer to the Syndicate was expressed to be proof of payment of the balance of the purchase price and Chow and Hwang were to be estopped from denying payment after delivery. The Agreement went on to provide that upon completion of the purchase Chow and Hwang would cause a meeting of the Board of Fermay to be convened to approve the transfer of the Fermay shares to the Syndicate or its nominees and would cause the Syndicate or its nominees to be appointed directors of the company whereupon Chow and Hwang should resign from the company. At the same time Chow and Hwang each signed a blank share transfer form containing no name of vendor, of purchaser, of the name of any company and no description or number of shares; the forms were also left undated and unwitnessed.

At some point Chow and Hwang signed an undated and unaddressed letter of resignation from the Board of Directors of Fermay and passed a resolution appointing Ng managing director of Fermay.

All the documents signed by the Chows (with the possible exception of the two last-mentioned) were so signed in Taipei on 23rd March, 1977 having been taken

there from Hong Kong by Ng, a member of the Syndicate. On 26th March Ng returned to Hong Kong with those documents.

On 28th March, 1977 the certificates for the 15,000,000 San Imperial shares, which had reached Hong Kong by a route and hand unknown, were submitted to the San Imperial Registrars together with the forms of transfer from Asiatic completed by the insertion of Fermay as transferee and Ng signed as authorized signatory for Fermay. On the same date Fermay was registered as holder of the 15,000,000 shares in the San Imperial register of shareholders and new certificates were issued to Fermay. Still on the same date bought and sold notes in respect of the purchase by Fermay of the 15,000,000 San Imperial shares from Chow and Hwang were signed by Ives on behalf of Chow and Hwang (as vendors) and again by Ives on behalf of Fermay (as purchaser).

The net result of all these transactions was that Fermay acquired title to the 15,000,000 shares in San Imperial whilst Chow and Hwang voluntarily relinquished to the Syndicate all control over Fermay-apparently in return for some $200,000 since by clause 4 of the Agreement for the sale to the Syndicate of the Fermay shares, chow and Hwang were estopped from claiming the balance of the purchase price amounting to $8.8 million. It is also to be observed that of the $200,000 ostensibly received by Chow and Hwang only $92,000 remained in their possession since they had to pay the balance for stamp-duties on the bought and sold notes and a fee for increasing Fermay's capital from $2 to $9,000,000. The learned judge found that there could be no acceptable reason for Chow and Hwang to repose such complete trust in the Syndicate and for my part I consider that finding unassailable.

The learned judge found that the Agreement dated 23rd March, 1977 made between Chow and Hwang on the one part and the members of the Syndicate on the other was a sham and nullity. This of course was the Agreement whereby Chow and Hwang undertook to sell to the Syndicate the whole of the issued share capital of Fermay in consideration of the sum of $9,000,000. At the same time the judge found that the Plaintiffs MBF had failed to prove the conspiracy alleged by them and he made no finding that the members of the Syndicate were the nominees of C.K. San. The judge having found that Chow, Hwang, Lee and Fong were all nominees of C.K. San, his description of the Agreement of 23rd March 1977 as a "nullity" must be construed as meaning that it was inefficacious to pass anything more than the legal estate in the shares. Some of the grounds of appeal were thus predictable. So it is that the Syndicate and Fermay in their Notice of Appeal alleged that, in the light of his finding that MBF had failed to prove the conspiracy alleged by them and of the fact that he made no finding that the members of the Syndicate were nominees of C.K. San, the judge erred in holding that the Agreement of 23rd March, 1977 was a sham and nullity. It was also alleged that for the same reasons the finding that C.K. San had not divested himself of his beneficial interest, if any, in the 15,000,000 shares registered in the name of Fermay could not be upheld. Conversely MBF's Cross-Notice of Appeal complained that the learned judge had failed upon his own finding of fact and/or law to hold that the conspiracy alleged was proved. The two Lees, by their Respondents' Notices, asked that the judgment be varied as to the judge's belief that they did not at the trial continue to maintain that Ng, Ho, Ives, Fermay and IPC are

also C.K. San's nominees and say that the judgment and orders in the court below should be affirmed upon the additional ground that those individuals and companies were in fact such nominees.

Thus what is alleged in this area of the conflict is illogicality in the judgment it being urged on the one hand that if conspiracy and nominee status were not proved, then the finding that the Agreement of 23rd March, 1977 was a sham cannot be sustained and on the other hand that in view of that finding, findings of conspiracy and nominee status should inevitably have followed. I have already indicated that in my view the learned judge's cry of "Sham!" in regard to the Agreement of 23rd March, 1977 was unassailable for nobody in his senses would have done what Chow and Hwang purported to do under that Agreement, that is, to part with all control over the issued capital of Fermay in return for a nett 1% of the stated purchase price thereof. In theory both the legal estate and the beneficial interest in that capital passed to the Syndicate. In practice the legal estate did pass but it is inconceivable that had the beneficial interest reposed in the Chows they would have allowed that also to pass in return for so derogatory a consideration. There can be no doubt that the beneficial interest in the Fermay share capital remained all along in the person who had purportedly conveyed his beneficial interest in Fermay's sole asset, the 15,000,000 San Imperial shares, to Chow and Hwang, namely C.K. San. The finding that Chow and Hwang were the nominees of C.K. San was not seriously contested by Mr. Sherrard who described himself as "stuck with it" whilst maintaining that that finding did not necessarily imply either conspiracy or a further finding that the Syndicate members were also C.K. San's nominees. Nor does it of itself necessarily imply either of those matters. It is incumbent however to look at the whole of the surrounding circumstances and I will turn first to MBF's complaint that the learned judge should have found a conspiracy proved.

What the judge said about that was, having first found that there was no evidence against Coe of any deceit or intention to mislead on his part.

> "On the evidence I am also of the view that MBF has not made out a case of conspiracy against the Syndicate as described in paragraph 7 of their Statement of Claim."

Unfortunately it is not entirely clear what the learned judge meant here because there is an unhappy dichotomy in paragraph 7 of the Statement of Claim which first alleges that

> " For the purpose of and with the intent to avoid and/or defeat the execution of the Registered Judgment by the Plaintiffs as aforesaid and to defraud Choo Kim San's creditors generally the Defendants and each of them together with persons unknown from about October 1976 onwards conspired and combined amongst themselves in Hong Kong and elsewhere to sell or cause to be sold on behalf of Choo Kim San the 15,000,000 shares in the name of Fermay and the 7,631,000 shares in the name of IPC and to obtain on behalf and for the benefit of Choo Kim San the proceeds of the sale of the same."

That appears to allege a clear intention to sell the beneficial interest in the shares and obtain the proceeds of sale for C.K. San. Under the "Particulars" of

conspiracy however it is alleged in sub-paragraph 3(6) that by a *purported* agreement dated 23rd March, 1977, Chow and Hwang *purportedly* agreed to sell and the Syndicate agreed to buy 15,000,000 shares in San Imperial held in the name of Asiatic for the sum of $9,000,000. Clearly the reference to 15,000,000 San Imperial shares was incorrect for what was agreed to be sold was the issued capital of Fermay and the 15,000,000 shares were merely the sole asset of Fermay. That mistake apart however, it is apparent that what was being alleged in the Particulars was a sham agreement. Clearly the two allegations cannot stand together. What then did the learned judge mean when he said that MBF had not made out a case of conspiracy against the Syndicate as described in paragraph 7 of their Statement of Claim? Reading paragraph 7 as a whole it emerges that the actual allegation is one of a sham agreement (nobody has attempted to suggest that "purported" or "purportedly" refer to mere matters of form or execution) and once that is recognised it becomes apparent that the allegation is mis-stated in the opening paragraph of paragraph 7. Yet it is that part of paragraph 7 to which the judge must have referred when he said that MBF had not made out a case of conspiracy against the Syndicate "as described in paragraph 7 of their Statement of Claim" for he had already found the allegation contained in the Particulars, namely that the Agreement of 23rd March, 1977 was a sham, to be correct. The finding then, was of no conspiracy of the type alleged in the opening substantive paragraph of paragraph 7 and the judgment was silent as to whether there was any conspiracy of the type alleged in the Particulars. Should, indeed could, the judgment properly have remained so silent? I venture to think not and that from the finding of a sham Agreement a finding of conspiracy against the Syndicate should inevitably have followed. For what was the purpose of the sham? If the effect of the sham Agreement was, as the judge found, to leave the beneficial interest in the Fermay share capital in C.K. San whilst giving the appearance of transferring it, that could only redound to the prejudice of his creditors and indeed it is difficult to conceive of any other motive for the Agreement than the frustration of C.K. San's creditors. For the proceeds of sale, when received, could be concealed whereas a widely known holding of many shares in San Imperial, could not. But Ives at least – and his knowledge must be imputed to the Syndicate as a whole – knew of the existence of large creditors of C.K. San being aware, as is apparent from the contents of his telex to London solicitors dated 3rd January, 1977 and seeking counsel's opinion, of the charges of fraud outstanding against C.K. San and hence of the concomitant claims of those alleged to have been defrauded. It is true that C.K. San had not and still has not been tried on these charges but the fact, known to Ives, of his jumping bail and fleeing Hong Kong was in no way calculated to cast doubt on the validity of any pecuniary claims of those who alleged fraud.

It must follow that although the judgment was silent as to conspiracy on the part of the Syndicate in relation to paragraph 7(3)(b) of the Statement of Claim, conspiracy there was between the Syndicate members, Chow and Hwang and C.K. San in whom the beneficial ownership of the 15,000,000 San Imperial shares remained. That tacit finding of conspiracy did not extend to IPC.

Were the members of the Syndicate the nominees of C.K. San? The learned judge was under the impression that at the end of the hearing in the court below it was no longer maintained by the Plaintiffs, the Lees, that Ng, Ives, Ho, Fermay and IPC were C.K. San's nominees though that allegation in regard to Chow and Hwang

remained. It now appears to be accepted on all sides that the allegation was never withdrawn in regard to any of the seven defendants above mentioned and that that was so is borne out by the note of Mr. Ching's junior. The questions are what would the learned judge's finding have been had he not been under the erroneous impression that the issue of the alleged nomineeship of Ng, Ives, Ho and Fermay was no longer live and would any such finding – one way or the other – have been inevitable? The learned judge had already found that the Agreement of 23rd March, 1977 was a sham; that Chow and Hwang were acting as C.K. San's nominees at all times; that the Syndicate was aware of this; and that the beneficial interest in the San Imperial shares still remained with C.K. San. In the light of those findings, and especially the last, Ng, Ives, Ho and Fermay could have had no other status except that of nominees of C.K. San. For the Syndicate held a vice-like grip upon Fermay which in turn owned the 15,000,000 San Imperial shares the equity of which still reposed in C.K. San – a fact which must have been known to the Syndicate since the judge had found that they knew that Chow and Hwang were merely the nominees of C.K. San. In agreeing to pay $9,000,000 (as to any claim for $8.8 million of which they had contrived to render unenforceable) for the share capital of a company the only asset of which was known by them to be beneficially owned by C.K. San, the Syndicate could only have been intending either to steal the 15,000,000 San Imperial shares from C.K. San – of which there is no suggestion – or acting as his nominees. In my view had the learned judge not been under the impression that it was not necessary for him to determine the issue he would have been driven inexorably, on his own findings, to the further finding that Ng, Ives, Ho and Fermay were all nominees of C.K. San holding the legal estate in Fermay, and hence in the 15,000,000 San Imperial shares, for his benefit.

In forming that view I have placed reliance upon the judge's finding (inter alia) that the Agreement of 23rd March, 1977 was a sham and this may be an appropriate place to deal with the suggestion that the judge was guilty of the elementary error of reaching that conclusion upon the basis that since the Syndicate were dealing with nominees whom they knew to be nominees therefore the Agreement was a sham. I acquit the learned judge of any such error. The conclusion of sham flowed inevitably from the terms of the Agreement itself under which Chow and Hwang, in consideration of $200,000, parted with the share capital of Fermay and estopped themselves from ever enforcing their claim to the balance of the purchase price of $8,800,000. Clause 4 of the document meant, on its face, that if Chow and Hwang should, by reason of their trust in the Syndicate, or even in error or for any other reason whatever hand over the share certificates with transfers signed in blank without receiving payment of their $8,800,000, the fact of delivery should be proof of payment of the $8,800,000 which payment Chow and Hwang should be estopped from denying. That reeks of sham without the necessity for any extrinsic evidence though in fact we know that on Ives' own admission the Fermay shares were held not by Chow and Hwang but by him, that the Syndicate also held blank instruments of transfer intended to be used in relation to the Fermay shares so that Chow and Hwang did not have control of their own shares in the company, their share holdings being, again on his own admission, "completely at (Ives') mercy". Although the document reeks for itself, such extrinsic evidence may, I apprehend, legitimately be looked at to ascertain the true nature of the transaction envisaged by the Agreement of 23rd March, 1977 the more so since the Lees andMBF were alleging fraud and maintaining that the

object of the Agreement was unlawful as constituting a device to defraud C.K. San's creditors. Thus it is that whether the Agreement be taken at its face value or looked at in the light of the surrounding circumstances, the provision that "on completion the Vendors shall deliver to the Purchaser all the necessary transfers duly signed by the Vendors in blank together with their respective certificates for the Fermay shares against payment of the balance of the purchase price" was entirely spurious for the Agreement itself estopped them from claiming the approximately 99% balance of the purchase price if they were incautious enough to hand over the shares without simultaneously obtaining that price whilst the surrounding circumstances show that the certificates and the blank share transfers were already in the possession of the purchasers who could effect transfers of the shares to themselves at any time and then claim that the vendors were estopped in regard to the $8,800,000 the balance of the purchase price.

For the authenticity of the Agreement of 23rd March, 1977 Mr. Sherrard placed considerable reliance upon the New Zealand case of *Paintin and Nottingham Ltd.* v. *Miller Gale and Winter*[1] and in particular upon the following passage at 175 from the judgment of Turner J.:

> "In my opinion everything that was done so far was (1) within the powers of the parties to do it (2) done with all due form (3) effective to do what it purported to do, provided that what was apparently intended by the document was indeed the genuine intention of the parties. The whole of the evidence supports the view that it was, and Wilson J. did not find in any wise to the contrary. All that I have said as yet does not of course prevent the transaction, though not a 'sham', from being subject to some defeasance prescribed or allowed by the law – but that is not the point at this stage of the argument. What is at present being discussed is whether it was a 'sham' or a genuine effective transaction.
>
> Wilson J. held that the transaction was a 'sham'. There was in my respectful opinion nothing of the nature of a 'sham' about it. The word 'sham' is well on the way to becoming a legal shibboleth; on its mere utterance it seems to be expected that contracts will wither like one who encounters the gaze of a basilisk. But by a 'sham' is meant, in my opinion, no more and no less than an appearance lent by documents or other evidentiary material, concealing the true nature of a transaction, and making it seem something other than what it really is. The word 'sham' has no applicability to transactions which are intended to take effect, and do take effect, between the parties thereto according to their tenor, even though those transactions may have the effect of fraudulently preferring one creditor to others, and notwithstanding that they are deliberately planned with this in view. If such is their effect, there are statutes and rules of law designed to thwart the intentions of those who enter into them; but the fact that the law discountenances such transactions as these does not render them 'shams'."

In fact that passage does not support the Appellants' case for the rub lies in the phrase "effective to do what it purported to do, provided that what was apparently

(1) (1971) N.Z.L.R. 164.

intended by the document was indeed the genuine intention of the parties." In that case all the evidence supported the view that what was apparently intended by the document was indeed the genuine intention of the parties but in the present case the evidence points inexorably in the opposite direction that is to "an appearance lent by documents or other evidentiary material, concealing the true nature of a transaction, and making it seem something other than what it really is." On the present facts that case cannot assist Mr. Sherrard.

It was Mr. Sherrard's further contention that the learned judge's express finding that the Agreement of 23rd March, 1977 was a sham and the implicit finding that the whole of the Fermay transaction was similarly tainted, was reached upon the basis of a false assessment of the credibility of Ng and Ives. I do not think that this was so for the judge, having expressed the view that Ng and Ives were not truthful witnesses and that their oral evidence was unreliable in almost all material particulars, went on to say that he would therefore rely mainly upon documentary or undisputed evidence. Mr. Sherrard complained that the judge did not go on to do this but I trust that I have said enough to emphasize that the content of the Agreement of 23rd March, 1977 and the history of Fermay from its incorporation pointed unequivocally to the spurious nature of the transactions between Chow and Hwang and the Syndicate. Having said that, I agree entirely that some of the illustrations put forward by the learned judge as demonstrating the lack of credibility of these two witnesses were misconceived but despite the sometimes unhappy selection of examples made by the learned judge the fact remained that the whole tenor of the lengthy evidence given by Ng and Ives was to deny what on the facts and the documents was undeniable. So that the criticism of the judge's conclusion of sham on the basis of a false assessment of the credibility of Ng and Ives is misplaced. All that happened was that some of the learned judge's illustrations were misguided and unfortunate; but he might just as easily have chosen other examples as for instance what came to be known as the blue card, a document which was withheld by the Syndicate until late in the trial and the production of which was enforced by an adjournment for that purpose. The blue card proved to be the key to the underlying reason for the entry by Ng and Ho on behalf of the Syndicate into the option agreement for the purchase of San Imperial shares from MAF. Associated with the withholding of the blue card, which withholding cloaked the existence of certain share transactions, was the programming of a computer print-out to omit those transactions. This was never explained.

I have already related that quite apart from the acquisition of control by the Syndicate of the 15,000,000 San Imperial shares, Ng, a member of the Syndicate, acquired on his own account some 2,164,200 such shares. These were purchased in two parcels of 514,200 and 1,650,000 shares and the vendors were said to be two Taiwanese called Lee and Fong, friends of Chow and Hwang. The purchase price in each case was 20 cents a share and the negotiations were conducted between Ng on the one side and Chow on the other although, according to Ng, he did once meet Lee and Fong in a restaurant with Chow and other friends of theirs. The two parcels were shown to have originated from the hands of Asiatic and Triumphant respectively being nominee companies of C.K. San and to have found their way into MAF. The learned judge doubted the existence of Lee and Fong and considered that if they did in fact exist they were probably C.K. San's nominees. He found that there was no or no

genuine acquisition of the shares by Lee and Fong from C.K. San and that the Syndicate knew that. Mr. Sherrard made the point that if these 2,164,200 shares were in fact the property of C.K. San it would have been quite unnecessary to have dealt with them in a manner different from that which governed the sale of the 15,000,000 shares; nor, counsel argued, would it be likely, if the whole 17,164,200 had belonged to C.K. San, that some would have been sold at a price of 20 cents and the bulk of 15,000,000 at 60 cents. I concede that it is difficult to know why the 2,164,200 shares were dealt with differently from the 15,000,000 and at a different price but, as Mr. Yorke said in the course of the trial – a remark endorsed by the judge – we shall never know all that really happened and the circumstances surrounding the transaction in the 2,164,200 shares, including their source and the very shadowy existence of Lee and Fong, are such that this court would not be justified in interfering with the learned judge's finding as to the beneficial ownership of those shares.

The appeal of IPC must be allowed and may be dealt with quite briefly. Under the agreement of 12th May, 1977 Ng granted Rocky (a company under the control of James Coe as is IPC) an "option" to purchase either the whole of the Fermay shares or the 15,000,000 San Imperial shares registered in the name of Fermay. The Agreement contained the following sentence

> "The option shall be exercisable by the Purchaser as soon as the injunctions in the High Court Action No. 252 of 1977 and the attachment order in High Court Action No. 2459 of 1976 and/or any other restrictions on dealing with the shares are lifted and discharged."

Under a rigorous cross-examination Ives, who had drafted the document, eventually agreed that the word "exercisable" meant that the option was not binding upon Rocky. That was an unhappy admission because it stemmed from looking at the word in isolation. At the hearing of the appeal both sides agreed that the word had to be construed as "exercised" so that Rocky was bound to take up the option and was thus in the position of an innocent third party who had acquired rights in the 15,000,000 shares of San Imperial. Upon being informed that Rocky considered itself so bound, Mr. Yorke, for MBF, abandoned his proposed cross-appeal and said that he did not resist the appeal of IPC. I am concerned not to give any impression of allowing an appeal by consent of the parties and it is not because the parties are ad idem on this matter that I concur in allowing the appeal of IPC but because upon a consideration of the whole of the Agreement of 12th May, 1977 I am satisfied that the word "exercisable" in the extract set out above can only properly be construed as conferring an obligation upon Rocky to take up the option – which is not strictly an option to buy but an obligation to buy – the "option" being to buy either the whole of the shares of Fermay or alternatively the 15,000,000 San Imperial shares registered in the name of Fermay. The alternative construction, that is that Rocky was under no obligation to purchase one or the other would make nonsense of two other provisions in the same document, namely, the grant to Rocky of a general and irrevocable proxy in respect of the 15,000,000 shares involving the right to attend all meetings of San Imperial and to vote thereat and the description of the "option" granted to Rocky as "permanent and irrevocable". It seems to me inconceivable that the Vendor under the Agreement intended to grant an option in perpetuity with no

obligation to exercise it whilst in the meantime the holder of the option was to be endowed with all the voting rights in respect of the shares the subject, directly or indirectly, of the option.

Having said that I cannot but agree with the draftsman who said that, in retrospect, the word "exercised" would have better served the intention of the parties. However that may be I am fully satisfied that the interpretation of Rocky's obligation eventually accepted by the draftsman under cross-examination and apparently adopted by the learned judge, was incorrect. It is for this reason and not by virtue of the agreement of the parties upon the question that I would allow the appeal of MBF.

Some explanation is needed of the fact that although the Agreement with which I have been dealing was between Ng and Rocky, it was IPC and not Rocky which became the 10th Defendant in the court below. This arose because by the same Agreement Ng had undertaken to cause City Nominees Ltd., a company under the control of the Syndicate, to transfer to Rocky not less than 7,000,000 nor more than 8,000,000 San Imperial shares being additional to the 15,000,000. The shares eventually so transferred were registered, at Coe's request, not in the name of Rocky but in that of IPC; so that in attacking that shareholding, the Plaintiffs in the court below were interested not in Rocky but in IPC.

Of the 8,000,000 San Imperial shares purchased by Rocky from Ng under the Agreement of 12th May, 1977 some 7,631,000 were the subject of the charging order nisi which order the learned judge discharged. As to the garnishee order nisi in respect of $11,446,500, the price paid by Rocky for these shares, the judge discharged the order nisi to the extent of $8,633,200 as not being due from the Syndicate to C.K. San but made the order absolute as to $2,813,300. This latter figure represented the purchase price of $3,246,300 paid by Rocky for the shares allegedly acquired by Ng from Lee and Fong but excluded from that purchase price the sum of $433,000 which Ng had already paid to Chow for the shares. There was some suggestion during the course of the appeal that this deduction should not have been made but in fact the learned judge was right to make it. The $3,246,300 had been received by the Syndicate for the Lee and Fong shares the equitable interest in which the judge had found remained in C.K. San. The money was therefore due from the Syndicate to C.K. San: but the Syndicate had already paid $433,000 to Chow, who was C.K. San's nominee so that the Syndicate were entitled to set off that payment against the price which they received from Rocky for the Lee and Fong shares. The sale from Lee and Fong to the Syndicate being a spurious one in the sense that the equitable interest in the shares remained in C.K. San, there was of course no necessity for the Syndicate to have paid this advance sum of $433,000 and whether they paid it as a means of getting ready cash to C.K. San in Taiwan or for some other reason remains a mystery – but pay they did and the judge was right to have regard to that fact. The Syndicate's indebtedness to C.K. San was not $3,246,300 but $2,813,300 and that was all that could be the subject of the garnishee order absolute.

Mr. Waite suggested in the course of his address for his clients, the Plaintiffs in the court below, that they were not entitled to the garnishee order absolute in the sum of $2,813,300 since Rocky having paid the money over, it was no longer capable

of being the subject of the garnishee order. To claim the benefit of such an order, Mr. Waite said, it would have to be held that the purchase monies in the hands of the Syndicate were impressed with a trust for C.K. San, the judgment debtor. This, as I understand it, was precisely the basis on which the judge did make his order. The monies were garnisheed not in the hands of Rocky but in those of the Syndicate and both the order nisi and the order absolute reflect this referring to monies received by Ng or alternatively by Ng, Ives and Ho, the three members of the Syndicate. Certainly the Syndicate was in no doubt as to that as is evidenced by the contents of the Notice of Appeal filed on behalf of Ng, Ives, Ho and Fermay.

I would dismiss the appeal of Ng, Ives, Ho and Fermay whilst allowing that of IPC. In regard to the Respondents' Notice of Lee Ing Chee and Lee Kon Wah I would affirm the judgment in the court below upon the additional ground that the learned judge ought to have held that Ng, Ives, Ho and Fermay were C.K. San's nominees. We will hear counsel as to the orders which should flow from this result. 10

Sherrard, Q.C. & R. Tang (Peter Mark & Co.) for 1st-4th Appellants.
Vinelott, Q.C. & Martin Lee (Philip K.H. Wong & Co.) for 5th-7th Appellants.
Waite, Q.C., C. Ching, Q.C. & P. Fung (Deacons) for 1st and 2nd Respondents.
Waite, Q.C., Yorke, Q.C., D. Chang & W. Poon (Johnson, Stokes & Master) for 3rd Respondent.

ORDER OF THE COURT OF APPEAL

Supreme Court of Hong Kong Court of Appeal

No. 54

Order of the Court of Appeal dated 22.3.1979

UPON HEARING Counsel for the 10th, 12th and 13th Defendants/Appellants and Counsel for the Respondents and Counsel for the 4th, 5th, 6th and 7th Defendants/Appellants

IT IS ORDERED that:–

1. Subject to paragraph 10 hereof the Appeal by the 4th, 5th, 6th and 7th Defendants/Appellants be dismissed.

2. The costs of this Appeal be paid by the 4th, 5th, 6th and 7th Defendants/Appellants.

3. The Appeal by the 10th, 12th and 13th Defendants/Appellants be allowed with costs against the Respondents together with costs of the trial at first instance.

4. All the costs of the 10th, 12th and 13th Defendants/Appellants of the trial at first instance and of this Appeal be included in the Respondents' costs and be paid by the 4th, 5th, 6th and 7th Defendants/Appeallants to the Respondents.

5. By consent as between the Respondents and the 10th, 12th and 13th Defendants/Appellants the 10th, 12th and 13th Defendants/Appellants do have the costs of all interlocutory proceedings herein as against the Respondents notwithstanding any previous orders to the contrary.

6. Notwithstanding paragraph 5 hereof the 4th, 5th, 6th and 7th Defendants/Appellants shall not by reason only of the aforesaid consent order be liable to pay such costs, if any, of those interlocutory proceedings as the 10th, 12th and 13th Defendants/Appellants and Mr. James Coe or any one or more of them have previously been ordered to pay to the Respondents.

7. The sum of $2,813,300.00 now deposited in Court be paid out forthwith to the Respondent Malaysia Borneo Finance Corporation (M) Berhad or its solicitors Messrs. Johnson, Stokes & Master.

8. The whole of the Order made by the Honourable Mr. Justice Yang on the 21st December 1977 be discharged.

9. The Injunction Orders made by the Honourable Mr. Justice Li on the 15th July 1977 in High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings Action No. 155 of 1977 and extended by the Honourable Mr. Justice Yang on the 25th January 1978 restraining the 4th, 5th, 6th, 7th and 10th Defendants from selling, transferring, disposing of and dealing with or causing to be sold, transferred, disposed of or dealt with the 15 million shares of $1 each of San Imperial Corporation Limited previously registered in the name of Fermay Company Limited and now registered in the name of Marvin Kin Tung Cheung the Receiver be discharged.

Supreme Court of Hong Kong Court of Appeal

No. 54

Order of the Court of Appeal dated 22.3.1979

10. The Charging Order absolute made herein by the Honourable Mr. Justice Yang on the 25th January 1978 insofar as it relates to the said 15 million shares of $1 each of San Imperial Corporation Limited be discharged.

11. The Prohibition Order made by the Honourable Mr. Justice Yang on the 25th January 1978 as extended by the Order of the Honourable Mr. Justice Yang on the 2nd February 1978 whereby San Imperial Corporation Limited was prohibited from registering any transfer or from distributing any dividends bonus shares or other interests in respect of the said 15 million shares of $1 each of San Imperial Corporation Limited be discharged.

12. Paragraph 5 of the Injunction Order made herein by the Honourable Mr. Justice Yang on the 11th April 1978 insofar as it relates to the 10th Defendant be discharged.

13. For the avoidance of doubt, all restrictions placed by the Court on the said 15 million shares of $1 each of San Imperial Corporation Limited as would hamper or prevent the 4th, 7th and 10th Defendants, Siu King Cheung Hing Yip Company Limited, Rocky Enterprises Company Limited or James Coe from carrying out the Agreement dated the 12th May 1977 made between the 4th Defendant and Rocky Enterprises Company Limited are hereby lifted.

14. There be liberty to apply for an Order for an enquiry by the Registrar as to what damages if any the 10th, 12th and 13th Defendants/Appellants have suffered by reason of the various interlocutory injunctions given at various stages on the applications of the Respondents.

15. There be general liberty to all parties to apply.

16. This Order be served upon the 1st, 8th and 9th Defendants by advertisement in one English and one Chinese newspaper in Taiwan.

Dated the 22nd day of March 1979.

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

NOTICE OF APPLICATION FOR LEAVE TO APPEAL TO PRIVY COUNCIL

Supreme Court of Hong Kong Court of Appeal

No. 55

Notice of Application for Leave to Appeal to Privy Council dated 26.3.1979

TAKE NOTICE that the Court of Appeal will be moved at 9:30 o'clock in the forenoon on Wednesday the 11th day of April, 1979 or so soon thereafter as Counsel for the 4th, 5th, 6th and 7th Appellants can be heard for leave to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court dated 22nd March 1979 in accordance with the attached Notice of Motion.

Dated this 26th day of March, 1979.

(Sd.) Peter Mark & Co.
Solicitors for the 4th, 5th,
6th and 7th Appellants

10

Supreme Court of Hong Kong Court of Appeal

No. 56

Notice of Motion for Leave to Appeal to Privy Council dated 27.3.1979

NOTICE OF MOTION FOR LEAVE TO APPEAL TO PRIVY COUNCIL

TAKE NOTICE that the Court of Appeal will be moved on Wednesday the 11th day of April, 1979 at 9:30 o'clock in the forenoon at the sitting of the Court or so soon thereafter as Counsel can be heard, by Counsel on behalf of the abovenamed 4th, 5th, 6th and 7th Appellants for an Order that leave be granted to the 4th, 5th, 6th and 7th Appellants to appeal to Her Majesty the Queen in Her Privy Council from the Judgment of this Honourable Court pronounced by the Court on the 22nd day of March 1979 the 4th, 5th, 6th and 7th Appellants undertaking to comply with the provisions of the Rules and Instructions concerning Appeals to Her Majesty the Queen in her Privy Council. 10

Dated this 27th day of March, 1979.

(Sd.) ROBERT TANG
Counsel for the 4th, 5th, 6th and 7th Appellants

ORDER OF COURT OF APPEAL GRANTING LEAVE TO APPEAL TO PRIVY COUNCIL

Supreme Court of Hong Kong Court of Appeal

No. 57

Order of Court of Appeal Granting Leave to Appeal to Privy Council dated 11.4.1979

UPON READING the Notice of Motion herein dated the 27th day of March 1979 on behalf of the 4th, 5th, 6th and 7th Defendants (David Ng Pak Shing, Melville Edward Ives, Ho Chapman and Fermay Company Limited) for conditional leave to appeal from a Judgment of the Court of Appeal given on the 22nd day of March 1979 to the Judicial Committee of the Privy Council pursuant to the Order in Council regulating appeals from the Court of Appeal for Hong Kong to Her Majesty the Queen in Council;

AND UPON HEARING Counsel for the Defendants and Counsel for the Plaintiffs;

IT IS ORDERED that the 4th, 5th, 6th and 7th Defendants do have leave to appeal to Privy Council on condition that:

(1) the 4th, 5th, 6th and 7th Defendants do enter into sufficient security, to the satisfaction of the Court, in two sums of $30,000 each within 14 days; and

(2) the 4th, 5th, 6th and 7th Defendants do prepare and dispatch the Records to England within 6 months.

AND IT IS ORDERED that the money in Court be paid out to M.B.F. upon sufficient security be entered to the satisfaction of the Court.

AND IT IS ORDERED that the costs of this application be costs in the appeal.

Dated this 11th day of April, 1979.

(Sd.) S. H. Mayo
S. H. Mayo
Registrar
(L.S.)

(DOCUMENT WITHDRAWN)

NO. . . . . OF 198

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 12 OF 1978

(On appeal from High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)

BETWEEN

DAVID NG PAK SHING	*1st Appellant*	(The 4th, 5th, 6th and 7th Defendants in High Court Action No. 2459 of 1976, High Court Miscellaneous Proceedings No. 155 of 1977 and High Court Miscellaneous Proceedings No. 540 of 1977)
MELVILLE EDWARD IVES	*2nd Appellant*	
HO CHAPMAN	*3rd Appellant*	
FERMAY COMPANY, LTD.	*4th Appellant*	

and

LEE ING CHEE also known as LEE HAI HOCK	*1st Respondent*	(The Plaintiff in High Court Action No. 2459 of 1976)
LEE KON WAH	*2nd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 155 of 1977)
MALAYSIA BORNEO FINANCE CORPORATION (M) BERHAD	*3rd Respondent*	(The Plaintiff in High Court Miscellaneous Proceedings No. 540 of 1977)

RECORD OF PROCEEDINGS

Volume IV

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