

23

23, 1968

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.5 of 1967

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

B E T W E E N :

YEW PHAIK HOON (M.W.) (Plaintiff) Appellant

- and -

QUAH OOI KEAT and  
QUAH OOI JIN (Defendants) Respondents

R E C O R D O F P R O C E E D I N G S

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UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
16 JAN 1969  
25 ABINGDON SQUARE  
LONDON, W.C.1.

(i)

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QUAH OOI JIN (Defendants) Respondents

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Exhibit No.	Description of Document	Date
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1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.5 of 1967

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

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B E T W E E N:

YEW PHAIK HOON (m.w.) (Plaintiff) Appellant

- and -

QUAH OOI KEAT and  
QUAH OOI JIN (Defendants) Respondents

---

RECORD OF PROCEEDINGS

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10

No.1  
WRIT OF SUMMONS

In the High  
Court at  
Johore Bahru

---

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT JOHORE BAHRU

Civil Suit 1962 No. 117

No.1  
Writ of  
Summons  
5th November  
1962

BETWEEN:

Yew Phaik Hoon (M.W.) Plaintiff

- and -

1. Quah Ooi Keat  
2. Quah Ooi Jin Defendants

---

20

DATO SIR JAMES BEVERIDGE THOMSON, P.M.N., P.J.K.,  
Chief Justice of the Federation of Malaya, in the  
name and on behalf of His Majesty the Yang di-  
Pertuan Agong.

To

(1) Quah Ooi Keat  
7, Jalan Pasar,  
Kluang

(2) Quah Ooi Jin,  
c/o Johore Lumbering Company Ltd.,  
Jalan Station,  
Kluang.

30

In the High  
Court at  
Johore Bahru

\_\_\_\_\_  
No.1  
Writ of  
Summons  
5th November  
1962  
(Contd.)

WE COMMAND YOU, that within (8) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Yew Phaik Hoon of No.2 Choon Guan Street, Singapore, Married Woman.

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

Witness, Vellere Rajatam Tiruvarangam,

10

Assistant Registrar of the  
Supreme Court of the  
Federation of Malaya,

the 5th day of November, 1962.

Sd. N.N. Leicester  
Plaintiff's Solicitor.

Sd. V.R.T. Rangan  
Assistant Registrar

High Court at Johore Bahru

Memorandum to be subscribed on the Writ.

20

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

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by Solicitor at the Registry of the Supreme Court at Johore Bahru.

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

30

Indorsements to be made on the writ before issue thereof.

The Plaintiff's claim is for a declaration that the defendants hold the lands registered in their joint names and particulars whereof are hereunder set out as Trustees for the Plaintiff and that they are not the beneficial owners. thereof:

In the High Court at Johore Bahru

No.1 Writ of Summons 5th November 1962 (Contd.)

- (1) Johore Grant for Land No. 17933 for Lot No. 1831 in the Mukim of Kluang, in the District of Kluang.
- 10 (2) Johore Grant for Land No. 17934 for Lot No. 1832 in the Mukim of Kluang, in the District of Kluang.
- (3) Johore Grant for Land No.17935 for Lot No. 1833 in the Mukim of Kluang, in the District of Kluang.

20 This Writ was issued by Mr. W.N.LEICESTER of c/o Mr. Omar Salleh, Messrs. M. Ismail & Co., Wong Shee Fun Building, No. 2D Jalan Ah Fook, Johore Bahru, whose address for service is c/o Mr. Omar Salleh, Messrs. M. Ismail & Co., Wong Shee Fun Building, No. 2D Jalan Ah Fook, Johore Bahru, Solicitor for the said Plaintiff who resides at No. 2 Choon Guan Street, Singapore.

Indorsement to be made within three days after service.

This Writ was served by me at on the defendant on the day of 1962, at the hour of

30 Indorsed this day of 1962

(Signed)

(Address)



- (1) A declaration that the Defendants hold the said properties as trustees for the Plaintiff.
- (2) An order that the Defendants do execute a transfer of the said properties to the Plaintiff.
- (3) Alternatively an order on the Commissioner of Lands to make a memorial on each of the Register and Issue documents of title registering the Plaintiff as proprietor thereof.
- (4) Such further and other relief as this Honourable Court shall deem fit.
- (5) Costs.

10

DATED and DELIVERED this 5th day of November, 1962.

Signed: N.N. Leicester

Solicitor for the Plaintiff

To: the Defendants

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In the High  
Court at  
Johore  
Bahru

---

No.2  
Statement  
of Claim  
5th November  
1962  
(Contd.)

In the High  
Court at  
Johore Bahru

No. 3  
PARTICULARS OF PARAGRAPHS 1 and 2 OF  
STATEMENT OF CLAIM

No. 3  
Particulars  
of Paragraphs  
1 and 2 of  
Statement of  
Claim  
4th April  
1963

PARTICULARS DELIVERED PURSUANT TO THE  
REQUEST OF THE DEFENDANTS' SOLICITOR  
CONTAINED IN HIS LETTER OF THE 17th  
DECEMBER 1962

Particulars as to Para. 1

The Trust was created in or about August  
1935 as the result of an oral arrangement  
between Yew Hun Eng and Yew Thaik Hoon. 10

Written confirmation of this trust  
relationship is to be found in a document dated  
the 29th day of June 1940.

Particulars as to Para. 2.

The request was oral.

Upon the acceptance by the Defendants of  
the transfer of the properties into their names.

The Trust is oral; and the request was  
made about the time of the said transfer and  
before it was completed. 20

Filed at Johore Bahru, Dated and Delivered  
this 4th day of April, this 4th day of April,  
1963 1963

Sgd. V.R.T.Rangam Sgd. N.N. Leicester  
Assistant Registrar, Solicitor for the Plaintiff  
Supreme Court, Johore Bahru.

To  
The above-named Defendants  
and their Solicitor, 30  
L.A.J. Smith, Esq.,  
c/o L.M. ONG ESQ.,  
No.79 (1st Floor) Jalan Ibrahim,  
Johore Bahru.

No.4  
AMENDED DEFENCE

In the High  
Court at  
Johore Bahru

No.4  
Amended  
Defence  
26th April  
1964

1. The First and Second Defendants put the Plaintiff to strict proof of the facts stated in paragraph 1 of the Statement of Claim.
2. The First and Second Defendants admit that on the 9th November, 1940, the properties referred to in paragraph 1 of the Statement of Claim were transferred by Yew Hun Eng to the Defendants in undivided shares, and the First and Second Defendants admit that no consideration passed from them to Yew Hun Eng or to any other person firm or corporation, but deny that they were to hold the properties as trustees of the Plaintiff and will say that the properties were transferred to the Defendants as beneficial owners thereof.
3. The First and Second Defendants also deny that the properties were transferred at the request of the Plaintiff.
4. The First and Second Defendants do not admit that the consideration expressed in the Conveyance was as is alleged by the Plaintiff for the purpose only of affixing stamps, and will further say that whether that was the purpose or not, the Plaintiff is estopped from alleging that the transfer was otherwise than for valuable consideration.
5. The First and Second Defendants will further say that the property the subject matter of the claim was given to them by Quah Hong Chiam in November, 1940.
6. If the property was not in fact the property of Quah Hong Chiam, it was with the full knowledge of the Plaintiff treated as the property of Quah Hong Chiam who has known of the transfer of the property by Quah Hong Chiam, her husband, and who by her conduct has agreed thereto.
7. The First and Second Defendants deny that there was any oral trust created as is alleged in the particulars to the Statement of Claim and in further answer thereto will say that the Plaintiff

In the High  
Court at  
Johore Bahru

is precluded from alleging any trust there being no note or memorandum in writing thereof at or before the commencement of the proceedings or any subsequent time.

No.4  
Amended  
Defence  
26th April  
1964  
(Contd.)

8. The said disposition of the property in the Statement of Claim was made as part of several dispositions of property and in which were the following:-

- (i) a house in Jalan Pasa, Kluang, from Yew Hung Eng, a nominee, to Lim Then. 10
- (ii) three houses in Jalan Mersing, Kluang to Quah Ooi Chim, and
- (iii) a rubber estate known as Yew Phaik Hoon Rubber Estate at the 5 m.s. Jalan Mersing, Kluang.

9. If contrary to the contentions of the First and Second Defendants the property claimed in the Statement of Claim were not gifted to the various beneficiaries but the said beneficiaries were intended to hold the said properties on trust for the Plaintiff or her husband, then the said arrangements were carried through with a view to fraudulently avoiding the provisions of the Estate Duty and the Income Tax Ordinances. 20

10. The income tax on the profits of the business and the property, the subject matter of the claim has been declared in the names of the First and Second Defendants who at all times had genuinely considered to the knowledge of the Plaintiff and her husband the income as belonging to them. 30

Re-dated and delivered this 26th day of April, 1964.

Sd. L.A.J. Smith

Solicitor for the Defendants.

To: The above-named Plaintiff  
and her Solicitor, Mr. N.N. Leicester,  
Johore Bahru.

9.

JUDGE'S NOTES OF EVIDENCE

PLAINTIFF'S EVIDENCE

No.5

OPENING BY PLAINTIFF'S COUNSEL

In Open Court

Coram: Azmi, J.

This 26th April, 1964

Notes of Evidence

C.H. Smith for Plaintiff

L.A.J. Smith for Defendants.

10 L.A.J.: I ask for leave to amend the Defence.  
I have given notice. Sd. Azmi.

C.H.: I don't ask for adjournment. I oppose  
amendment on the ground amendment raises new  
defence.

Para. 5 of Amended Defence:

- 1) First time gift pleaded - not in  
original Statement of Defence.
- 2) First time Quah Hong Chiam brought  
in.

20 Para. 6 development of para. 5.

Para. 7 - no comment.

Para. 8 - allegation of dispoal of  
property - new.

My strongest objection is against para. 9  
because of allegation of fraud against the Income  
Tax Ordinance.

I oppose amendment. Sd. Azmi.

30 L.A.J.: As to allegation of new case. Defendant  
entitled to amend as amendments deal with facts  
Plaintiff knew. If we have not pleaded gift,  
evidence given would point out to that.

Sg. Azmi

In the High  
Court at  
Johore Bahru

-----  
Judge's Notes  
of Evidence  
-----

No.5  
Opening by  
Plaintiff's  
Counsel

In the High  
Court at  
Johore Bahru

Judges Notes  
of Evidence

Plaintiff's  
Evidence

No. 5

Opening by  
Plaintiff's  
Counsel  
(Contd.)

I allow amendment. Costs occasioned by amendment to Plaintiff in any event.

As Plaintiff does not ask for adjournment trial to proceed immediately.

Sd. Azmi.

C.H. opens:

3 properties in Statement of Claim.

Relief - to transfer property to Plaintiff.

Plaintiff - woman of means - inherited from father.

10

Now blind.

In 1940 she was not blind, but uneducated. Business done by brother Yew Hun Eng.

Plaintiff placed property in names of Defendants as nominees and not as a gift.

She was owner of Johore Lumbering Company. Decided to turn it into a limited company and gave shares to members of her family.

The lands then vacant and subsequently planted with oil palm.

20

Now estate making profit.

Managed by the company of which 2 Defendants in part control.

Plaintiff's husband - Quah Hong Chiam - had no interest in property in any respect.

Para. 6 of Defence. Quah Hong Chiam cannot give away property not his own.

This is first time in writing we have indication of allegation that father gave property to the sons.

30

I suggest weakness of defence discovered and this is an attempt to patch up.

On question of law.

When property is conveyed from one to another and transferee paid no consideration, the law implies a resulting trust in favour of transferor.

See Underhill on Trust (11th Edn.) page 185 Article 29 - rebutted presumptions:

(a) .....

(b) if transferee is in loco parentis.

10 If in favour of a child- a gift. In this case no such presumption.

No gift if transfer by mother, see Bennet v. Bennet, 10 Ch. Div. 474.

Presumption of advancement by married woman, page 192 of Underhill on Trusts. Sayre v. Hughes, 25 Digest 513, 90.

No presumption if child is a step son. See Todd v. Moorhouse, Law Rep. 19 Eq. 69. See last paragraph at page 71.

20 No presumption where a fictitious consideration inserted in a deed. No presumption of a gift arose. Defendant admitted that consideration money did not pass.

See Willan v. Willan, Vol. 3, English Reports, 863 at page 866.

Also Bridgeman v. Green, Vol. 28, English Reports, 399, 400.

30 The law summed up in Halsbury Vol. 18 page 385, "In a voluntary conveyance..... resulting trust for the grantor."

And calls:

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.5

Opening by Plaintiff's Counsel (Contd.)

No.6  
EVIDENCE of YEW PHAIK HOON

In the High  
Court at  
Johore Bahru

Plaintiff - Yew Phaik Hoon a/s in Hokkien:-

Living at No.2, Choon Guan Street,  
Singapore. Wife of Quah Hong Chiam.

Judge's  
Notes of  
Evidence

I had a younger brother named Yew Hun Eng. He died more than 10 years ago. He was trustee of my father's estate. There was other trustee as well, i.e. my mother.

Plaintiff's  
Evidence:

No.6  
Yew Phaik  
Hoon  
Examination

In 1935 I borrowed money from Penang Branch of Chinese Overseas Bank. My mother and younger brother borrowed the money from the Bank but I don't know who made the arrangement but my husband knew about it. I did not take part in the dealing.

10

The loan was taken by the trustees on behalf of the estate of my father. I got the money. I repaid it eventually with my own money. I did not know much about it. Please ask my husband and my son. I am now blind.

P.1A (C.H. puts in receipts and marked  
to F Ex. PLA to F. L.A.J. does not object  
to these being put in as receipts.)

20

Before the war I owned the Johore Lumbering Co. I don't know if my husband had any share in the Johore Lumbering Co. before it became a limited company. Please ask my husband and son.

Before the war I purchased properties. My brother helped me to do that. He took money from me in order to do that. I provided the money and handed it to my brother for the three pieces of land. (Agreed Bundle put in and marked Exhibit A). They were bought from the Official Assignee. Transfer at p.11 of Agreed Bundle). I entrusted the work of paying taxes on lands to my brother. I provided the money.

Ex.A

30

My brother was a Penang man. Whilst managing my affairs he lived in Penang as well as in Kluang. His family then lived in Penang. He himself spent more time in Kluang. The 3 pieces of land are situated in Kluang. My

40

object in purchasing these lands was to plant them with oil palm. They were jungle lands. Eventually, they were planted with oil palms.

In the High  
Court at  
Johore Bahru

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The money came from "the kongsi". The Johore Lumbering Co. was converted into Johore Lumbering Co. Ltd. I don't know when the oil palms were planted. My brother eventually returned to Penang before the Japanese invasion. He executed a document in my favour.

Judge's Notes  
of Evidence

---

Plaintiff's  
Evidence

---

10 I cannot remember when the Johore Lumbering Co. became a limited Co., whether before or after the war.

No.6  
Yew Phaik  
Hoon  
Examination  
(Contd.)

20 Two or three months after my brother returned permanently to Penang he approached the two defendants to manage the property "on his behalf". My younger brother appointed Quah Ooi Keat and Quah Ooi Jin to look after the oil palm estate, which is my own property, in his place. The lands were not transferred to them. They were only to look after them in same manner my brother was doing. I did not intend to give them as a gift. I had several children. Why should I give to them? Besides one of them is not my own.

30 When my brother left he returned the property to me and the same was left to the Defendants to look after in place of my brother. The title deeds were kept with the company in Kluang. I don't know in whose possession. My son can say.

1st Defendant is my step son - born of my husband's wife in China. I was on friendly term with him. I saw him from time to time. I did not speak to him about the property.

2nd Defendant is my own son and in 1940 was on friendly terms with me. I saw him frequently.

40 Prior to Japanese invasion I never mentioned to any of them about giving them the property. They never mentioned anything of giving the property to them. They were not between themselves on good terms. I don't know who paid the land rents.

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

I don't know about payment by Rehabilitation Board. My husband and son would know about that. My husband and my son Quah Ooi Chim looked after my affairs.

I did not authorize my husband to give the property to the defendants. The property was not treated as that of my husband. It was my own and bought with my own money. Sd. Azmi.

No.6  
Yew Phaik  
Hoon  
Examination  
(Contd.)

Cross-Examined

Cross-  
Examination

Xxd. by L.A.J.: I know that the oil palm estate is known as Gim Tien Oil Palm Estate. 10

Q. Do you know that the Defendants were registered as owners of that estate under the Registration of Business Ordinance? A. I don't know about it. I don't know if my husband and my other son knew about it.

I came to know from people that the lands were in name of the 2 Defendants just before issue of writ of summons.

I did not transfer the land to the Defendants nor did I permit any person to do so. 20

My brother never consulted me about transfer of this property to the Defendants. He never told me he had transferred the land to defendants. Gim Tien Oil Palm Estate has been making good money. My profits on the estate have been put into the company. In other words I did not draw my profit.

I never looked into the books of the Company.

My husband was solely in charge of disposal of my profits on the estate. 30

For last few years I personally never made any claim on the profits of the company. I did not take the profits. I did not bother about it.

I do not know if I have to file income tax returns or that returns were made on my behalf. My husband would know about it.

In the High Court at Johore Bahru

There is estate known as Yew Phaik Hoon Estate at 5th milestone Mersing - Kluang road. That is my own rubber estate. That was transferred to me by Yew Hun Eng. Originally it belonged to my husband. Sd. Azmi.

Judge's Notes of Evidence

Plaintiff's Evidence

Adjd. to 2.30 p.m. Sd. Azmi.

No,6  
Yew Phaik Hoon  
Cross-Examination  
(Contd.)

10 Plaintiff - Yew Phaik Hoon (on former affirmation):

20 Xcd. by L.A.J.: I don't know if 3 houses in Jalan Mersing were bought from the funds of Johore Lumbering Co. Ltd. I don't know about a house in Jalan Pasar, Kluang, transferred from Yew Hun Eng to Lim Phien. Lim Phien is my husband's wife and mother of 1st Defendant. I knew that Yew Hun Eng bought a house in Jalan Pasar but I don't know if he had transferred it to Lim Phien. It was owned by my husband. Yew Hun Eng bought it from my husband whilst my husband was a bankrupt. This house was bought with money put up by my mother. It was \$13,000.00;

I don't know if it was looked after by Yew Hun Eng for me. I don't know if Yew Hun Eng was my husband's nominee.

D.2. (Grant No. 2536 put in and marked Ex. D2.)

Is it not a fact that Yew Phaik Hoon Estate was your husband's before he became bankrupt? A. Yes.

30 Q. Is it not also true the property in dispute was your husband's property before he became a bankrupt: A. Yes, but I bought it from the Official Assignee.

My husband's two partners were also made bankrupt. They were his cousins.

Soon after my husband's bankruptcy Kluang Saw Mill was started. I don't know if theoretically there were 2 partners in the Saw Mill business.

The saw mill was wound up in 1939.

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.6  
Yew Phaik  
Hoon  
Cross-  
Examination  
(Contd.)

My husband after that started another saw mill called Kahang Saw Mill.

I don't know if Kluang Saw Mill broke up because of quarrels between my husband and his two partners. I think it was due to its being a poor business. The ostensible name of owner of Kluang Saw Mills was Yew Hun Eng.

I don't know that for some time business of Kahang Saw Mill was making money and it was decided to buy property of my husband.

10

Q. Is it not a fact that sole income of Kahang Saw Mill was sole income of your husband and his family? A. I don't know about it. I then lived in Singapore.

Q. Is it not a fact that at that time you had no separate income? A. At that time I received support from my mother and I had jewelleries too.

Q. What kind of support did you get from your mother - how much a month? A. She did not give me something every month. She gave me when I needed money.

20

Q. Is it not true that in spite of all that your husband was substantially your main support? A. When my husband was a bankrupt my mother supported me.

My husband wanted to borrow money from my mother. She mortgaged her property to raise the money. She lent the money to my husband. He used the money for his business and saw mills. By that time my brother had already come here. The business was put into my brother's hands.

30

(Referred to business mentioned in para. 1 of agreement at page 10 of Agreed Bundle).

I don't know about this. Please ask my husband.

The original Johore Lumbering Co. was my business.

It was my husband's business.

By Court: Q. Was the Johore Lumbering Co. the property of your husband? A. I do not know.

Sd. Azmi

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.6

Yew Phaik Hoon  
Cross-Examination  
(Contd.)

Re-Examined

Re-xn: The money borrowed from the Overseas Chinese Banking Corpn. by my father's estate was taken by my husband. Actually as to details of how he spent the money, you should ask him.

Re-Examination

10 The money spent on buying land was my own money. I bought it for \$600/-. It partly came from my mother and partly from my old jewelleries.

To Court: It was jungle land.

Sd. Azmi

I cannot remember if my husband got his discharge after my brother had gone to Penang.

Sd. Azmi.

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No.7  
EVIDENCE OF QUAH HONG CHIAM

No.7  
Quah Hong Chiam  
Examination

P.W.2 Quah Hong Chiam a/s in Hokkien:

Living at Choon Guan Street, Singapore.  
Age 81. I am P.W. 1's husband.

I was owner of 3 pieces of lands. I became a bankrupt. After I have become bankrupt

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.7

Quah Hong  
Chiam  
Examination  
(Contd.)

they were sold to my wife's brother. He bought the lands on behalf of my wife P.W.l. Plaintiff's mother mortgaged her land to the Overseas Chinese Banking Corpn. and raised the money. At that time I had no money at all. It was her mother who provided the money.

The land was transferred to the defendants because Hun Eng wanted to leave for Penang and the defendants were to look after it.

I was still a bankrupt then. I got my discharge in 1938. The transfer was in 1940. Not true I gave the lands to Defendants.

10

In 1940 my business was going on and I made profit.

I had then saw mill business and brickworks business. I had two cousins as partners. In 1940 I was doing business alone. I had the saw mill and brickworks.

There was no necessity to conceal anything as I had got my discharge. The Johore Lumbering Co. became a limited company just before the war. The company cultivated the lands in dispute. Cultivation started in 1938. Most of the planting was done after the war.

20

The Johore Lumbering Co. was held by members of the family. If my wife died, the property would go to other shareholders who were members of the family. In same way if I should die before then. I was looking after Plaintiff's business.

30

There was no need at all why I should give the land to the two defendants. After all I had many children. I had 8 sons at that time and 7 daughters.

It was my wife who borrowed the money to buy the property.

I knew the property very well. It was on my advice she bought it. The idea came from all of us to buy the land. The money came from my wife.

40

Q. Why this transfer to the two defendants?  
 A. Because Yew Hun Eng wanted to return to Penang.

In the High Court at Johore Bahru

Q. Why was it not put in Plaintiff's name?  
 A. Plaintiff being a woman and did not know the affairs of the jungle and as her brother wanted to go to Penang, the land was transferred to Defendants. I told them to look after the property properly.

Judge's Notes of Evidence

Plaintiff's Evidence

10 I did not tell them the land was to be transferred to their names before the transfer and even after.

No.7

Quah Hong Chiam Examination (Contd.)

I told them to look after the land after the transfer. I told them that both of them should look after the property continuously.

20 After the war a loan was obtained from the Rehabilitation Board. I and 2nd Defendant arranged that. Money was required because the estate had been neglected. The loan was for \$50,000/-. The land was to be charged to the Board and the charge was signed by both Defendants. I received the money in cheques but cannot remember in how many. The money was paid into account of the limited company. The loan has been repaid. The kongsi spent the money, the profits were for the kongsi, but not for the defendants. My eldest son Quah Ooi Chim kept the grants.

30 The kongsi paid the quit rent. Income tax returns were prepared by me.

40 Each of my 8 sons had 6 shares. In addition 2nd Defendant had additional 4 shares because he won a prize in a lottery and paid in \$2,000/-. My sons did not pay anything for their shares. I have 24 shares. Plaintiff has 12. The other wife also owns 12 shares. 2 of my clansmen also owned shares because of their services to the estate. Each holds one share. Two relations hold shares too. Each holds 2 shares.

Quah Ooi Chim holds 3 houses. They don't belong to him. They are held as a nominee of the limited company. Another land in Pahang has

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.7

Quah Hong Chiam Examination (Contd.)

been put in 2nd Defendant's name. It is meant to be used as a burial ground.

No other sons are holding lands as nominees.

Sd. Azmi.

Adjd. to 10 a.m. tomorrow

Sd. Azmi.

27th April, 1964

Cross-Examined

Cross-Examination

C.S. 117/62 (continued).

Counsel as before.

10

P.W.2 Quah Hong Chiam (on former affirmation):

Xxd. by L.A.J.:

Q. Is it not a fact that the rehabilitation loan was applied for by 1st and 2nd Defendants as owners of the estate? A. 1st Defendant did not take part. It was I and 2nd Deft. who arranged for the loan and we went to Kuala Lumpur for that purpose.

The application was made in the name of Defendants but 1st Defendant did not bother to take any part in the estate. It was 2nd Defendant and I who worked for it.

20

I cannot say if both Defendants had signed the application as owners of the estate because I did not know English, but they were acting on behalf of the estate.

Q. Is it not a fact that the profits of the oil palm estate are recorded in the books of the Lumbering Co. as those of 1st and 2nd Defendants? A. That is not correct.

30

In the High Court at Johore Bahru

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Judge's Notes of Evidence

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Plaintiff's Evidence

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No.7  
Quah Hong Chiam  
Cross-Examination  
(Contd.)

- Q. How are the profits then recorded in the books of the Lumbering Co.? A. In books of Johore Lumbering Co. Ltd., it was recorded as item of sale of palm with the amounts.
- Q. Are the profits not recorded in the books of Johore Lumbering Co. separately as those of the oil palm estate? A. The accounts of the oil palm estate are not separated but grouped together with that of Johore Lumbering Co.
- 10 Q. Is it not a fact profit of oil palm estate is worked out by the Johore Lumbering Co. Ltd.? A. Yes.
- Q. Is it not a fact the income tax liable on that profit is being liable to the two Defendants? A. Yes, but the money payable for income was not paid by Defendants themselves but by the kongsi, i.e. the Johore Lumbering Co. Ltd.
- 20 Q. Which had appropriated to itself the profit of the oil palm estate? A. Yes.
- Q. All these happened because you dictated that to be so? A. Yes, I did so in accordance to business practice.
- Q. Is 2nd Defendant not the Managing Director of the Johore Lumbering Co.? A. Yes, but he was not the only person who took part in affairs of company, e.g. in charge of sale of timber.
- 30 Q. Has 1st Deft. not been acting as manager of the oil palm estate since 1960 or 1961? A. No, he was not manager of oil palm estate. 1st Defendant came back in 1960. He worked in the Johore Lumbering Co. but not on oil palm estate. Later on 1st Deft. worked in the oil palm estate. He took over from others. He said others could not do the work.

That was against my wish.

- 40 Q. He acted as if he had the right to do so as the owner, has he not? A. As to that, I would not know, but he kept the money in respect

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.7

Quah Hong  
Chiam  
Cross-  
Examination  
(Contd.)

of sale of oil, etc. He did not hand over the money to the Lumbering Co. I would not know if he kept the money because he said he was owner of estate.

- Q. You started this action because the defendants claimed that the oil palm estate was their own property? A. If both Defendants were of right mind, they cannot claim this as theirs because I and others physically worked the estate.

10

I bought oil palm plants and also I did so much work for it.

- Q. Was it not by virtue of family arrangement the profits were shared by all, i.e. according to what you said? A. Yes.

(Shown income tax return for year 1961 - 1962 and additional assessment and receipt and marked Exhibit D.3).

- Q. The figures were taken from books of Johore Lumbering Co.? A. Yes.

20

- Q. And supplied on your direction? A. The figures were taken from books in the office, and I was in Singapore. I admit I was head of the company.

- Q. Was it not a fact that the amount mentioned in ex. D.3 was paid by 1st Deft. himself and not by the company? A. 2nd Deft. paid it with money from the company and not his own.

- Q. I suggest that prior to that the company paid but in Ex. D.3 the 2nd Deft. paid with his own money? A. Since last year the 2nd Deft. collected the money himself and paid it himself. He did not credit the proceeds of sale to the Lumbering Co.

30

From 1948 to 1960 1st Defendant took no active part at all in either the Lumbering Co. or oil palm estate.

- Q. Further he received no salary or profit from Johore Lumbering Co. during that period? A. That is so, but his wife and children were

40

maintained by the Co. But not for period  
1948 - 1960.

In the High  
Court at  
Johore Bahru

(Shown income tax notice for 1951 and marked  
D.4 Exhibit D.4).

Judge's Notes  
of Evidence

Q. Was it not made at your direction and made  
from figures in books of Johore Lumbering  
Co.? A. This happened years ago. I cannot  
remember what happened. Very likely the figures  
were taken from the books of Co.

No.7  
Quah Hong  
Chiam  
Cross-  
Examination  
(Contd.)

10 Q. I suggest you signed the return yourself  
as acting Manager of Gim Tien Estate?  
A. I admit I signed it as acting Manager in  
the past but I cannot remember as for what  
year.

(Shown income tax statements for 1952, 1960,  
D.5 1961 and 1962 and marked D.5).

Q. You signed all the returns as manager of  
the oil palm estate? A. Yes.

20 Q. You never asked 1st Defendant to file the  
returns, i.e. whether he wished to or not?  
A. I explained the contents to him.

Q. He said you never explained the contents  
to him at all on any occasion? A. I explained  
to him.

Q. At no time has it ever been declared that  
the profit of the oil palm estate as income  
of the Lumbering Co.? A. That is so, but income  
tax in respect of oil palm estate was actually  
paid from funds of the Johore Lumbering Co.

30 Q. You chose to do this way because you paid  
lower rate of tax and as rate on income of  
company was at 30%? A. Not true that was done  
because less tax would be paid. My wife,  
Plaintiff, owned a rubber estate known as Yew  
Phaik Hoon Rubber Estate. I prepared her  
income tax return. I made income tax return  
and signed it on behalf of Plaintiff. One of  
my sons filled up the return for me as I don't  
40 know English. That son was Quah Ooi Chim. I  
signed the return but I cannot remember details.  
I signed as acting manager of the rubber estate.

In the  
High Court  
at Johore  
Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.7

Quah Hong  
Chiam  
Cross-  
Examination  
(Contd.)

That rubber estate was owned by me before my bankruptcy. It was Yew Phaik Hoon who bought it. I cannot remember if the transfer was made to name of Yew Hun Eng or Yew Phaik Hoon.

- Q. It is suggested it was you who bought it and gave it to your wife? A. I did not buy it. Yew Hun Eng bought it. Not true I told him to buy it. The towkay of Hup Soon told him to buy it.

Not true Yew Hun Eng transferred the rubber land to my wife because I told him to do so, but because they were brother and sister.

10

- Q. Was income of this rubber estate put into books of Johore Lumbering Co.? A. Yes.

- Q. In fact it is treated - as to managing financial matters - in similar way as the oil palm estate? A. Yes.

- Q. The income was utilized by the Lumbering Co. in same way as the income of oil palm estate? A. Yes. Plaintiff did not draw any salary from rubber estate. She did not get the income of rubber estate but she should get any money for expenses. I allowed this to be done.

20

- Q. Are those expenses entered in the income tax return? A. Yes.

(Shown Ex. D.2 to witness, i.e. Grant of Land held by Lim Phien)

That is land in name of first wife Lim Phien. It was owned by me before my bankruptcy. During my bankruptcy it was bought by Yew Hun Eng. After my discharge it was transferred to Lim Phien. Perhaps Yew Hun Eng bought it with his money. In 1934 Kluang Saw Mill was operated.

30

- Q. The money for purchase of the property from Official Assignee could have come from money of Kluang Saw Mill? A. I cannot remember as it happened long ago. I cannot be sure if the money came from Yew Hun Eng or the Kluang Saw Mill. In 1938 the property was transferred from Yew Hun Eng to my first wife.

40

Q. Did you tell Yew Hun Eng to put the property in name of your first wife? A. As it happened years ago I cannot remember, besides it was a trivial matter. That is only property my first wife got.

In the High Court at Johore Bahru

Judge's Notes of Evidence

Q. Is it not your intention that she should keep it after your death? A. This is more due to the fact that she was already in that house. I thought if anything should happen to me, it would be bad to leave without a house.

Plaintiff's Evidence

10

I did not transfer the house to her as I had no authority.

No.7  
Quah Hong Chiam  
Cross-examination  
(Contd.)

I cannot remember if the house was transferred to her on my instruction or not. She might have approached Yew Hun Eng for the transfer.

I don't know if my first wife had the money to pay for the property.

20

The assessment was paid regularly by Johore Lumbering Co. I supported her from income of Lumbering Company. I entered these in the income tax return of the company as deductions from income of the company.

Prior to my bankruptcy I was in partnership with two cousins, one of them was Quah Cheng Choh. Cheng Choh also became bankrupt with me. I think Yew Hun Eng also bought from Official Assignee land originally owned by Cheng Choh.

30

(Shown Two copies of extracts of E.M.R. 112 and 114, both originally in name of Quah Cheng Choh, then transmitted to Official Assignee, and then sold to Yew Hun Eng - marked D.6 Exhibit D.6).

(D.6 shown to witness)

Q. Are not the two title deeds in your possession? A. I cannot say if these two are in my possession because I cannot remember the numbers. I cannot remember if I have them. I cannot say if I arranged for purchase of this land as I have many small land titles.

40

D.7 (Shown copy of E.M.R. 351 and marked D.7).

In the High  
Court at  
Johore Bahru

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Judge's Notes  
of Evidence

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Plaintiff's  
Evidence

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No.7  
Quah Hong  
Chiam  
Cross-  
Examination  
(Contd.)

That is land on which I and my two cousins operated the mill known as Moh Seng Saw Mill. After my bankruptcy the saw mill operated under new name of Kluang Saw Mill.

- Q. Did not Kluang Saw Mill go into liquidation?  
A. Yes. Mill was carried on during my bankruptcy in name of Yew Hun Eng and Tan Cheng Wah.

Sd. Azmi.

Short adjournment. Sd. Azmi.

10

P.W.2. Quah Hong Chiam (on former affirmation):

Xxd. by Defence Counsel: There was another mill-Kahang Saw Mill. During my bankruptcy it was run in name of Yew Hun Eng. It was not my business. I did not take active part.

- Q. Are you seriously saying all the money from Kahang Saw Mill belonged to Yew Hun Eng and not to you? A. My brother Quah Kiat Yan was in charge. The proceeds of this mill never belonged to me.

20

- Q. During period of Kahang Saw Mill and Kluang Saw Mill 2nd Defendant had a personal account?  
A. He did not have any personal account.

- Q. 2nd Defendant was instructed by you to open an account in a French Bank in his personal name? A. That I cannot remember.

- Q. Subsequently that account was put in name of Kahang Saw Mill by 2nd Defendant on your instruction? A. That I cannot remember.

- Q. And when the account was opened in 1933, 2nd Deft. signed a promissory note to the Bank and pledged the Plaintiff's jewellery to enable 2nd Deft. to obtain overdraft facilities for your use? A. I cannot remember. It happened years ago.

30

- Q. Was not Johore Lumbering Co. started at same place occupied by the Kluang Saw Mill? A. Yes.

- Q. Was not Johore Lumbering Co. during your bankruptcy carried in name of Yew Hun Eng?  
A. Yes.
- Q. Whilst it was really your business? A. That time I had no authority. They were looking after it.
- 10 Q. Did you not regard the money made by that business your own in fact though not legally?  
A. At that time Yew Hun Eng and my wife got the profits.
- 20 Q. Was not land E.M.R. 351 owned by you? A. Yes. It was bought by Overseas Chinese Banking Corp. during my bankruptcy. It was mortgaged by me. It was subsequently rented by Quah Ooi Chim for purpose of carrying on the Johore Lumbering Co. I did tell Quah Ooi Chim that if he wanted to do business he must do something. I told him to rent the land from the Overseas Chinese Banking Corpn. Subsequently Quah Ooi Chim and Quah Ooi Jin bought the land in 1940.
- Q. Was it not bought from profits of Johore Lumbering Co.? A. Yes.
- Q. Do you say it belongs to the two or to the Johore Lumbering Co.? A. They bought it for benefit of the Johore Lumbering Co.
- 30 Q. Were you not in 1940 sole proprietor of the Johore Lumbering Co.? A. No. It then belonged to Yew Phaik Hoon, the Plaintiff. I was discharged from bankruptcy in 1938.
- Q. I put it to you that after your release from bankruptcy, you took over the Johore Lumbering Co.? A. Yes.
- Q. When Johore Lumbering Co. Ltd. was formed, the land was transferred by Ooi Jin and Ooi Chim to the Johore Lumbering Co. Ltd.? A. Yes.
- 40 Q. Because you told them to do so? A. Yes. That is so. Not true original shareholders of Johore Lumbering Co. were Quah Ooi Jin and Quah Ooi Chim. It was Plaintiff.
- Q. Ooi Chim and Ooi Jin were original directors?  
A. Yes.

In the High  
Court at  
Johore Bahru

—————  
Judge's Notes  
of Evidence

—————  
Plaintiff's  
Evidence

—————  
No.7  
Quah Hong  
Chiam  
Cross-  
Examination  
(Contd.)

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.7  
Quah Hong  
Chiam  
Cross-  
Examination  
(Contd.)

- Q. Subsequently you arranged for issue of shares to the various members? A. Yes.
- Q. Was not Quah Ooi Jin the person who signed all cheques in the Johore Lumbering Co. (i.e. in 1935 - 1940)? A. Both Quah Ooi Jin and Quah Ooi Chim signed cheques.
- Q. Was not Quah Ooi Chim then a Government servant? A. It was true he was a Government servant for some time but he signed cheques after he resigned from Government service. 10
- Q. Is it not a fact that Ooi Jin did all the administration of the Johore Lumbering Co.? A. Not true. I was managing it. Before it became a limited company, it was managed by Ooi Jin and Ooi Chim.
- Q. It was really your business though the administration was done by others? A. Ooi Jin could not do all the work himself. Other people also worked then. At that time it was Plaintiff's business. Sd. Azmi. 20

1.10 p.m.

Adjourned to 2.30 p.m.

Sd. Azmi.

2.30 p.m.

Counsel as before.

P.W.2 Quah Hong Chiam, on former affirmation:-

Xcd. by Defence Counsel:

- Q. Wasn't it you who arranged that the land of oil palm estate be transferred to names of 1st and 2nd Defendants? A. No. It was Yew Hun Eng who transferred the land to the Defendants. 30
- Q. Was it your suggestion or did he do it on his own? A. Perhaps it was my wife who told Hun Eng to transfer the lands to the defendants.

- |       |  |  |
|-------|--|--|
| Q.    | At same time, you had three houses transferred to Quah Ooi Chim? A. 3 houses were transferred to Quah Ooi Chim to enable him to act on behalf of Yew Phaik Hoon.   | In the High Court at Johore Bahru                            |
|       |  | -----  |
| Q.    | Were not the houses built from funds of Johore Lumbering Co. and put in name of Quah Ooi Chim? A. Yes. Yew Hun Eng was manager of Kahang Saw Mill.   | Judge's Notes of Evidence                                    |
|       |  | -----  |
| 10 Q. | Was not 2nd Defendant assisting in business of Johore Lumbering Co. at time that Yew Hun Eng was managing the Kahang Saw Mill? A. This was a Chinese business. People in one section also were working in another section. In other words although 2nd Defendant was working in Johore Lumbering Co., he also assisted in Kahang Saw Mill. | Plaintiff's Evidence   |
|       |  | -----  |
|       |  | No.7<br>Quah Hong Chiam<br>Cross-<br>Examination<br>(Contd.) |
| Q.    | It is not a fact 2nd Defendant used to purport to supervise work of Yew Hun Eng at Kahang Saw Mill? A. Yes - Chinese style.  |  |
| 20 Q. | Was it not a fact that Yew Hun Eng left because he was 'fed up' with interference of 2nd Defendant? A. That is not true. He left because he wanted to go back to Penang. Not true he did not get on with 2nd Defendant.  |  |
| Q.    | It is suggested by 2nd Defendant that after Hun Eng had gone to Penang, you scolded him for having fallen out with him because the title of the land was still in his name? A. That is not true.   |  |
| 30 Q. | Subsequently you became more friendly with Hun Eng and you induced him to transfer the lands to the two defendants? A. That is not true.   |  |
| Q.    | Before Hun Eng left for Penang, all he ever had was a salary for being manager of Kahang Saw Mill? A. That is correct.   |  |
| 40 Q. | 1st Defendant says that you gave him to understand he was given $\frac{1}{2}$ undivided share in the oil palm estate because he was the only natural son of 1st wife and that this half share was to be his only share in inheritance? A. That is not true. He is the only natural son of my first wife.                                   |  |

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.7  
Quah Hong Chiam  
Cross-Examination  
(Contd.)

Q. If 1st Defendant did not get this half share, he would in fact get nothing? A. He has shares in the Johore Lumbering Co.

Q. But at that time the Lumbering Co. was not turned into a limited company? A. Yes. But at that time other sons had no share too.

Q. At that time you made various dispositions to various members of your family and you gave  $\frac{1}{2}$  share of the land to 1st Defendant? A. No truth in that. In 1940 price of palm oil was low. Little planting was going on and estate was not well looked after. Not true I had a serious illness in 1940. In 1938 I was 55 years old, I had not yet made a will in 1938. I have made wills. I knew if I transferred property before death no death duty would be paid.

10

Q. The idea of making the Johore Lumbering Co. a limited company was so that no estate duty would be paid? A. No. The company was changed into a limited company because I was still fit to do business. When the limited company was formed I gave members of family shares not as nominees but by way of distribution to them. Each share was then worth \$1,000/- though it costs more now. The profits were made and distributed among the members of the family.

20

(Shown a red book:

Concluding account of

30

Kahang Factory,

Kluang Factory,

Brick Factory,

Kluang Branch

D.8 dated 31.4.1941, marked Exhibit D.8).

This is year end account consisting of various items - i.e. total assets of Johore Lumbering Co.

D.9 (Shown another book marked Exhibit D.9).

This book in respect of 1941 - containing the shares of various people in the Johore Lumbering Co. Ltd. Dated 1.5.30th year of Chinese Republic (1941).

In the High Court at Johore Bahru

Sd. Azmi.

Judge's Notes of Evidence

Plaintiff's Evidence

No.7  
Quah Hong Chiam  
Cross-Examination  
(Contd.)

Re-Examined

Re-xd. by C.H.:

Re-Examination

- 10 Q. Who gave Yew Hun Eng money to buy the land from Official Assignee? A. Plaintiff and I handed money to Hun Eng to pay for it. It never became my property again. It belonged to Plaintiff. I treated my sons equally - equal shares in the company. I did not give any land to any of my sons. Plaintiff borrowed money from her father's estate and with that money my business was expanded. It put me on my feet again. None of my children paid any money for their shares. I gave them the shares. 2nd Defendant had some lottery money and paid \$2,000/- for 4 shares. That was before the Japanese invasion. Reference suggested gift to 1st Defendant - no reason why he should get a share merely because he was a son of 1st wife. He did nothing special that he should get  $\frac{1}{2}$  share. Neither wife suggested I should give preference to the two Defendants. Income tax was first collected in 1957. I got my discharge from bankruptcy in 1938. I had no money then. In 1939 business was very good.
- 20

Sd. Azmi.

30 To Court:

- Q. Why was the land put in the defendants' names

In the High  
Court at  
Johore Bahru  
—  
Judge's Notes  
of Evidence

and not in anyone else's or in Plaintiff's name? A. At that time Quah Ooi Chim already had a house to look after and cannot look after other property. It was put in Defendants' names because they have to look after the land.

—  
Plaintiff's  
Evidence

Q. Why not put your wife's name on grant?  
A. My wife was an ignorant woman.

Sd. Azmi.

—  
No.8  
Quah Hong  
Chiam  
Re-  
examination  
(Contd.)

No.8  
Quah Ooi  
Chim  
Examination

No.8  
EVIDENCE OF QUAH OOI CHIM

10

P.W.3 Quah Ooi Chim a/s in English:

Living at 914 East Coast Road, Singapore.

Secretary and director of Johore Lumbering Co. Ltd. since its incorporation.

I left Government Service in 1933 or 1934.

I am eldest son of P.W.2. My father became a bankrupt in 1932.

In 1935 I became lessee of the Johore Lumbering Co. from the Overseas Chinese Bank.

It was P.W.2's property before he became a bankrupt. It was taken over. Eventually it was purchased by the company. The transfer was to my name and 2nd Defendant. It was never a present to me or to the 2nd Defendant. After formation of company, both of us transferred it to the limited company. I received nothing as a result of that except the 6 shares, like other brothers.

20

P.10 I hold a Power of Attorney from my uncle Yew Hun Eng. (Put in certified copy of Power of Attorney and marked P.10). It gave me wide authority.

30

I am now 55 years of age.

I was the person who paid the interest on my mother's behalf to the Bank in Penang for a loan.

10 In March or February, 1935, she got the loan from the bank. At first a loan of \$10,000/- was negotiated. Subsequently another \$3,000/- was taken on trustees of my grandfather's estate giving security. The estate of my grandfather had no ready cash. The trustees mortgaged 3 houses in Penang for the loan.

The 3 pieces of land, subject matter of this Suit, were purchased from Official Assignee. My mother gave her money - \$600/-, to my uncle Yew Hun Eng through my father, telling him to tell my uncle to buy the lands for her.

At that time I had already left the Govt. Service and I was assisting him.

20 The circumstances of the purchase were known by the family.

My mother came from a wealthy Penang family. She had a lot of jewellery. She offered to raise loan to assist his business by giving these jewelleries as security. 2nd Defendant was aware of this too.

The land in question was never that of my father after purchase from Official Assignee.

30 I never heard that my father gave the land to the two defendants. I would certainly know if that happened.

I was registered owner of 3 houses in Kluang.

I acted as contractor.

The houses were never meant for me. 1st Deft. and I were doing the work of the Johore Lumbering Co., so any purchase was put in our respective names.

Q. Why was the property put into name of 2 Defendants? A. It was done because the two

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.8  
Quah Ooi  
Chim  
Examination  
(Contd.)

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.8  
Quah Ooi  
Chim  
Examination  
(Contd.)

defendants were doing the work of the company.

All the other brothers were still schooling then.

2nd Deft. is also registered owner of a rubber land which belongs to the limited Company. In my family it is common that assets of the company are held in names of various members of family.

The defendants never received any profits of the oil palm estate from the beginning right up to the time when my father started this action. 10

They never paid the assessments or quit rent for the lands in question.

P.W.2 tried to negotiate with the defendants for return of the lands about 10 years ago. I was in that negotiation.

They never said P.W.2 gave the lands to them. I never heard that my father intended to give the lands to them. 20

Sd. Azmi.

Cross-Examination

Cross-  
Examination

Xxd. By Defence Counsel:

I was not in Government Service any more in 1936.

In 1933 2nd Defendant was in school.

Not true an account was opened in 2nd Defendant's name.

I signed cheques on that French Bank after I left Govt. Service. I never signed in blanks. My father owned the Kluang Saw Mill before he became a bankrupt. 30

In 1933 my father used to tell me what bills to pay and issue cheques which I signed.

Kahang Saw Mill came into existence after bankruptcy of my father and his two cousins. Johore Lumbering Co. came into existence in 1935. Johore Lumbering Co. did not belong to my father in 1935. It belonged to my mother. She knew nothing about business. Took no part in the partnership. She was a sleeping partner. My uncle did the work.

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

10 2nd Defendant and I were managing the Johore Lumbering Co. 1st Defendant was working in the factory but not as the manager. The manager was a distant relation named Quah Teow Bok. He was not merely the kepala in charge of work.

I was in Singapore but used to go up and down.

Defendants were paid salaries by the Johore Lumbering Co. They were given money - not by father but by the cashier. My father did not order the payment.

No.8  
Quah Ooi  
Chim  
Cross-  
Examination  
(Contd.)

20 When we wanted money we just asked them.

In Singapore my mother would be asked. In Kluang the cashier. My father never. He only advised. He had not got even one cent interest in the Johore Lumbering Co. When he ceased to be a bankrupt he had nothing at all.

Whilst he was bankrupt, all done by nominees.

30 From 1935-1938, he was bankrupt. I and 2nd Defendant were managing the Johore Lumbering Co., Kahang Company and Kluang Co.

I was not employed by Yew Hun Eng. I was employed by my mother.

Property was put in my name because we were working in the business.

Q. You are holding the house on trust, what trust?  
A. Though in my name, it was not meant for me. She could do what she liked. I think she can sell. I know she can sell. She has a right to sell.

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.8  
Quah Ooi  
Chim  
Cross-  
Examination  
(Contd.)

Q. Has she right to give it away? A. Yes. It is up to her.

Q. When she dies? A. I would carry out her will. If no will, it will go to all my brothers and sisters. We consulted among ourselves.

Q. Was it told you by your father? A. Yes.

Q. Did you get it from your mother? A. No. Not true that answer I made up on the spot.

Legally the property would be mine.

On death of my father the houses are mine legally and no death duty would be paid.

10

Sd. Azmi.

5. p.m.

Adjourned to 10 a.m. tomorrow.

Sd. Azmi.

28th April, 1964

P.W.3 Quah Ooi Chim on former affirmation:

Xxd. by L.A.J.

The land and house now in my name were paid for from the profits of the Johore Lumbering Co.

20

Q. Firstly there was for purchase from Govt. a piece of land in Kluang?

Secondly, that your father conceived the idea of buying the land?

Thirdly, because he had not sufficient money,

Fourthly, he approached the United Motor Works of Singapore?

Fifthly, the land was being sold by Government for purpose of development?

30

Sixthly - having bought it the United Motor Works entered into contract to build 9 houses - 6 for them and 3 for you from profits of that contract?

In the High Court at Johore Bahru

10 A. At that time - in 1937 - when the Lumbering Company was doing very well, indeed our country then was preparing for war and sales of our timber were good. There were many logs offered for auction. It was an agreement among the buyers to re-auction among themselves. In the second auction the Company bid 3 lots. When this matter was finished the United Motor Works had houses in Kluang then. They authorized us to build their houses. They approached us and asked us if we were interested to build new houses for them. Having lots of our and necessary building materials it was a good proposition. So I entered as their contractor and undertook to build their houses - their 6 houses and ours. Therefore it is plain that we build our 3 houses from the profits we made. These were 3 houses put in my name.

Judge's Notes of Evidence

Plaintiff's Evidence

No.8  
Quah Ooi  
Chim  
Cross-  
Examination  
(Contd.)

20 Q. Suppose Johore Lumbering Co. goes bankrupt, would you regard the three houses as belonging to the Johore Lumbering Co. or you?  
A. Johore Lumbering Co. I would have handed over the property to Official Assignee. Johore Lumbering Co. was run from funds belonging to my mother. This loan of \$13,000/- was from the Bank. (Sees receipts Exhibit P.1)

30 Q. Have you any direct knowledge of the \$13,000/- loan?  
A. I have direct knowledge of it. My uncle Yew Hun Eng was one of the executors of my grandfather's estate. He was at liberty to do what he did in Penang. I cannot remember the date.

40 Q. The entry of amount of \$13,000/- coming from estate of your grandfather - a loan to your uncle on 13.11.1930 - \$10,000/-, and another \$3,000/- on 14.5.1935? A. I don't know of loan of \$10,000/- in 1930. I know of loan of \$3,000/-.

Q. Your uncle obtained that loan by virtue of a mortgage to the Overseas Chinese Bank? A. Yes.

In the High  
Court at  
Johore Bahru  
-----  
Judge's Notes  
of Evidence  
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Plaintiff's  
Evidence  
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No.8  
Quah Ooi  
Chim  
Cross-  
Examination  
(Contd.)

Q. In 1941 it would appear that there was a transfer of a mortgage from Overseas Chinese Bank of 1st part, Yew Hun Eng of 2nd part, and Quah Hong Chiam of 3rd part, do you know about that document? A. I do. I cannot say what was the amount.

Q. Was it \$10,000/-? A. Yes.

Q. Was it related to the original \$10,000/-?  
A. I don't know.

Q. Was that repayment of \$10,000/- loan?  
A. The repayment was proved by Ex. P.1.

10

(Exhibit P.1F shown).

It looks that Ex. P.1F refers to payment of \$10,000/-.

Ex. P.1F was the receipt of \$10,000/- being settlement of fixed loan. I paid this amount to the Overseas Chinese Bank from No.2 Choon Guan Street, Singapore, by bank draft out of funds of Jojore Lumbering Co. That is found in this extract of account. It says that it is a transfer of mortgage. The parties released as result of payment of \$10,000/- were (1) Yew Hun Eng, (2) Quah Hong Chiam.

20

The repayment was in 1941.

The interest of loan was paid by Johore Lumbering Co.

(Referred to exhibit at page 10 of Agreed Bundle).

1st part - From year 1937 our Company made a lot of money. Yew Hun Eng had several advances from my mother. When he returned to Penang he put \$6,000/-, sum mentioned in the agreement.

30

\$6,000/- were advance he got from my mother. So he puts it here as interest paid by my mother. The amount was not a round figure. My mother agreed to put it that way to please my uncle.

- Q. Does not it acknowledge debt \$6,000/- to Plaintiff by your uncle? A. Yes.
- Q. Do not the words "in respect of her payment of interest due to the Overseas Chinese Bkg. Corpn. Ltd. for the loan by the Estate of Yew Say Kheng, deced. (from 1934 - 1940) together with the assessment paid on Yew Hun Eng's behalf" define nature of the debt by your uncle to your mother? A. Yes.
- Q. Does that not mean that Yew Phaik Hoon has been paying interest to Overseas Chinese Bank which said interest was the legal liability of Yew Phaik Hoon? A. Yes. I wrote that document. That was not meant that way. It does not represent the true facts. The loan was really personal debt of my uncle to my mother. Paragraph 2 - "\$3,000/-" of the loan. My mother agreed to have \$3,000/- deducted from \$6,000/- loan. The \$3,000/- my mother had from the deceased is not same \$3,000/- in paragraph 2 of Agreement.
- Q. \$3,000/- was obtained by Yew Hun Eng from estate? A. No.
- Q. Did Yew Hun Eng not raise \$3,000/- in 1935 and did it not go to Johore Lumbering Co.? A. Yes.
- Q. \$3,000/- in agreement is offsetting \$3,000/- in Lumbering Co.? A. They refer to different transactions. \$3,000/- in agreement was doing away of personal loan of my uncle. My uncle got a loan from Johore Lumbering Co. at various times. Johore Lumbering Co. had to pay back to Bank \$3,000/-. Yew Hun Eng had taken \$6,000/- at various times.
- Q. Paragraph 2 - good work refers to that of Yew Hun Eng? A. Yes.
- Q. Yew Phaik Hoon agreed to forego \$3,000/- as regard for work done? A. Yes.
- Q. \$3,000/- loan to estate, was it ever paid back? A. It was paid - see Exhibit P.1D. That refers to payment in 1935.

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Plaintiff's  
Evidence

No.8  
Quah Ooi  
Chim  
Cross-  
Examination  
(Contd.)

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.8  
Quah Ooi Chim  
Cross-Examination  
(Contd.)

Yew Hun Eng did not get the \$3,000/-. He raised \$3,000/- as executor and paid it to Johore Lumbering Co. Johore Lumbering Co. paid it back.

Q. Para. 3 of Agreement - what business? Was Johore Lumbering Co. part of it? A. No. At that time Kahang Palm Estate was done in his name.

My mother was sole proprietress of Johore Lumbering Co. I can produce documents to show my mother was sole proprietress of the Johore Lumbering Co. There was a small book in Chinese in which it says "So and So" were proprietors, i.e. one Mr. Lee and my mother. I can produce it. The clerk wrote the document. Maybe Mr. Lee might have told him. At the time of this Document the oil palm estate was not returned to Yew Phaik Hoon yet. This includes 'business in Kluang' mentioned in para. 1 of Agreement.

10

Q. Is it not a fact in 1941 some one had to go and ask your uncle to execute a transfer of oil palm estate? A. My mother and my father went to ask him. I don't know of a letter asking my uncle to transfer. I was not present at any conversation between my uncle and mother and father asking uncle to transfer the oil palm estate.

20

Oil palm estate belongsto Johore Lumbering Co. 'businesses' in paragraph 1 of Agreement did not include Johore Lumbering Co.

30

Sd. Azmi.

Short adjournment

Sd. Azmi

Counsel as before.

P.W.3 Quah Ooi Chim on former affirmation:

Xxd. by L.A.J.

1st Defendant had refused to transfer the property for a number of years and negotiations

were being made for that purpose. They never dared say it was theirs. They were merely avoiding a claim by my mother and not by my father.

Sd. Azmi

In the High Court at Johore Bahru

Judge's Notes of Evidence

Plaintiff's Evidence

No.8  
Quah Ooi  
Chim  
Cross-  
Examination  
(Contd.)

Re-Examined

Re-examined by C.H.:

Re-  
Examination

10

Q. If it was your father who had owned this property at time it was transferred to 2 defendants, was there any reason for your father to make a claim? A. Nothing. My first explanation that I would carry out my mother's wishes if she died. If she had no will, I still would not say it was my property. It was definitely my mother's property - if she died it would belong to her estate.

It is a valuable property now. In 1940 it was not - value negligible.

20

(Referred Ex. D.8). I don't read Chinese.

The two loans - one of \$10,000/- and one of \$3,000/-. None of them referred to the loan in the Agreement (page 10 of Agreed Bundle).

Q. Reference re conveyance - when \$10,000/- was paid off, the mortgage was transferred? A. I know about it. It was transferred to my father. I don't know why. The loan was to my mother. I am not sure of what happened.

In the High Court at Johore Bahru

Judge's Notes of Evidence

No.8  
Quah Ooi Chim  
Re-Examination  
(Contd.)

(Referred to Agreement at page 10 of Agreed Bundle).

At time of agreement, my mother was not in financial difficulty. There was no reason to escape any liability in reference to the Agreement.

Reference para. 1 - the main business was the Kahang Saw Mill and all other properties were so intended to be included.

The loans of \$10,000/- and \$3,000/- were from the Bank and guaranteed by the estate of my grandfather. \$3,000/- in paragraph 2 of Agreement had no reference to the loan from the Bank.

10

It has never been disputed in 1941 onwards that Yew Hun Eng was a mere nominee.

Sd. Azmi.

That concludes Plaintiff's case.  
Sd. Azmi.

Judge's Notes of Evidence

Defendants' Evidence

No.9  
Opening by Defendants' Counsel

DEFENDANTS' EVIDENCE

No.9  
OPENING BY DEFENDANTS' COUNSEL

L.A.J.:

Plaintiff's claim - presumption and resulting trust.

This is not a case of a resulting trust because Yew Hun Eng had transferred the lands to Defendants. Cestius que trust has divested of its property by telling Hun Eng to transfer it.

20

30

Agreement at page 10 is agreement between Yew Hun Eng and Plaintiff. Nothing to do with us.

Presumption has nothing to do with this case.

43.

Declaration of Trust - Snell's Equity -  
p.116 Milroy v. Lord.

Sd. Azmi

1.10 p.m.

Adjourned to 2.30 p.m.

2.30 p.m.

Counsel as before.

L.A.J. (continues):

Refers Thom page 162.

10 Assets Coy. Ltd., against Mere Roihi & Ors.  
(1905) A.C. 176.

Resulting trust - not to bona fide  
purchaser for value.

Yew Hun Eng - trustee - no breach of trust.

He transferred it at request of cestius  
que trust - no resulting trust.

Intention of cestius que trust - to make  
a gift.

20 Under Torrens System bona fide purchaser  
acquires good title.

On facts of case I am going to say  
Defendants are not holding property as trustee  
for Plaintiff.

Refer page 9 of Pleadings.

Particulars of Trust

Plaintiff says trust is oral and made  
before completion of transfer.

Refer Agreed Bundle page 19. My queries.

Refer paragraph 1.

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Defendants'  
Evidence

No.9  
Opening by  
Defendants'  
Counsel  
(Contd.)

In the High  
Court at  
Johore Bahru

Paragraph 2 - Question 4  
- Question 5  
- Question 6

Judge's Notes  
of Evidence

Answers at page 9 of Pleadings.

Defendants'  
Evidence

On evidence Plaintiff knew nothing about  
it. Her husband knew nothing too.

No evidence of oral trust as alleged in  
answer to my question at page 9.

No.9  
Opening by  
Defendants'  
Counsel  
(Contd.)

No.10  
Quah Ooi  
Keat  
Examination

No.10

EVIDENCE OF QUAH OOI KEAT

10

D.W.1 Quah Ooi Keat a/s in Hokkien:

Living at No.7, Jalan Pasar, Kluang. I  
am proprietor with 2nd Defendant of the lands,  
subject matter of this Suit. Have been so since  
1940.

I claim those lands as mine.

I have heard Quah Ooi Chim as to negotiations  
to get the lands. My father was one who  
negotiated. He wanted a portion of it.

These lands are now oil palm estate.  
Before my father became a bankrupt they were  
his lands.

20

My father told me he applied and got  
the lands at \$1/- per acre with condition that  
he must plant oil palms.

My father then became a bankrupt and  
transferred to Official Assignee and lands  
subsequently purchased by Yew Hun Eng. After  
my father had become a bankrupt he could not  
do business himself in his name. So he made  
use of this person to do business.

30

But my father was personally in charge of managing the affairs. I don't know if my father had told him to buy the lands.

In the High Court at Johore Bahru

Later I worked in Kluang Saw Mill and in Johore Lumbering Co.

-----  
Judge's Notes of Evidence  
-----

My father was discharged in 1938.

Defendants' Evidence  
-----

10 I first came to know the lands were transferred to me just before the war. My father told me whilst travelling in a car. He told me that half of the oil palm estate goes to me, i.e. Kluang side, and the other half to a son of 2nd wife - Singapore side.

No.10  
Quah Ooi Keat  
Examination  
(Contd.)

For Kluang side - I am only son of my mother and includes my sisters and adopted elder brother.

20 My father also said he gave a half to me because I was more experienced in this matter of cultivation. From what I understood should my father die, I was to be given the responsibility of looking after the Kluang side including a grandmother who is now 90 years old.

After the war the oil palm estate got a loan from Rehabilitation Board. I was approached by my father to apply for a loan. I signed the application but did not go to Kuala Lumpur. The application was for a loan of \$100,000/-. Then my father told me to give him his money by my cheque.

30 I got that \$100,000/-. My father asked for the whole sum.

Finally I gave \$50,000/- to Johore Lumbering Co. Ltd. who are agents of Gim Tien Oil Palm Estate which is name of my estate. The other \$50,000/- continued to remain in the bank and finally went back to the Board.

When my father tried to get back the oil palm estate, I refused to do so.

Sd. Azmi.

In the High  
Court at  
Johore Bahru

Cross-examined

Xxd. by C.H.:

Judge's Notes  
of Evidence

I don't remember the name of account into which the \$50,000/- was put in. It was put into mine and 2nd Defendant's account.

Defendants'  
Evidence

2nd Defendant and I drew a cheque of \$25,000/- from that account.

No.10

Quah Ooi  
Keat  
Cross-  
Examination

Q. You and 2nd Defendant drew a cheque of \$25,000/- from that account in favour of your father? A. I cannot remember exactly. Altogether we paid \$50,000/-.

10

None of the money was spent by us.

Finally the loan of \$50,000/- was repaid to the Government.

Neither I nor my brother contributed towards repayment of the loan.

It was the Johore Lumbering Co. who got the loan.

Not true I was a mere nominee. The money was spent on the oil palm estate though done by Johore Lumbering Co.

20

Q. Have you contributed any money on the oil palm estate? A. I personally did not contribute money on the estate.

The loan money was sufficient to develop the estate.

The Lumbering Co. was my agent.

I never paid for my shares in the Johore Lumbering Co.

The oil palm estate has been making profits. I had not received any profits from the estate but indirectly I had benefited. That is, family expenses for my mother came from my father. I live together with my mother and so enjoyed the same food. We were maintained by my father up to date of writ of this summons.

30

I dare not grab at the profits though I have been given half of the estate.

Income Tax 1947. In my income tax return I say "in reference the oil palm estate refer Johore Lumbering Co. Ltd.". In other words Johore Lumbering Co. Ltd. paid the income tax as they were the agents.

10 During the Japanese occupation the title deeds of these lands were kept by my mother in our house. She did so until 1948 when I quarrelled with 2nd Defendant. Then my father took the grants from my mother.

Besides the oil palm estate I had 2 pieces of land. I applied for myself. I have had them for 5 to 6 years. My wife has 2 pieces too. They are new lands held under A.A.

I applied for those lands - being States lands.

20 (Para. 6 of Statement of Defence read to witness).

The land was that of my father and if not so, the transfer was made with Plaintiff's leave. I stand by what is stated in that paragraph. I know Quah Eng Heng. I don't know the circumstances under which the land was purchased. My agents paid the quit rent.

I was formerly director of the Johore Lumbering Co. until 1948.

2nd Defendant is Managing Director.

30 We could not make any entry in the books except proper entries.

Q. Why was entry not made that Johore Lumbering Co. was agent? A. I have no authority to do so.

My father wanted back part of the estate. It was a happy family estate then. The trouble started when 2nd Defendant and I had some difference in 1947. That was before the loan.

In the High Court of Johore Bahru

Judge's Notes of Evidence

Defendants' Evidence

No.10  
Quah Ooi Keat  
Cross-Examination  
(Contd.)

In the High Court at Johore Bahru

Judge's Notes of Evidence

Defendants' Evidence

No.10  
Quah Ooi Keat  
Cross-Examination  
(Contd.,)

Q. Why didn't 2nd Defendant make some entry in accounts that Johore Lumbering Co. was merely agent? A. That was taken for granted.

I knew that this property was meant for me.

I don't know if my father had any assets he did not give to the Official Assignee.

I don't know if he had any money to give to Yew Hun Eng. I believe he had some money during bankruptcy. Otherwise he could not have maintained his family.

10

Plaintiff's mother was not well off. I knew that off and on my father gave support to her. Plaintiff's father left an estate and Plaintiff had some valuable jewelleries. She could raise money on security of her jewelleries.

The sum paid to Official Assignee was \$600/-. Area 1,021 acres.

In 1940 my mother had 8 sons.

Quah Ooi Chim had 3 houses put in his name. I heard his evidence that he was holding as a trustee. He merely says it now but not before.

20

My adopted brother had 6 acres of land - given by my father. In 1940 price of this land was nearly same as cost of the 3 lands given to Quah Ooi Jin. The other brother got nothing. My father must have put into consideration of all matters with all his intelligence and experience when he transferred the lands to us and the houses to Ooi Chim.

30

Re-Examined

Re-Examination

Re-xd. by L.A.J.:

My father has 60 acres of vacant land in Jurong, Singapore, in his name.

He has 11 acres at Pasir Panjang. 2nd Defendant lives in a house on the Pasir Panjang land - his house is my father's house.

My father also has a house next to the Shaw House, and is building another.

The oil palm estate would only be a portion of his whole property.

My half brother gets about \$300/- a month from Johore Lumbering Co.

10 Before the issue of writ he never said the three houses belonged to all, nor did the Plaintiff. My father never said that the 3 houses belonged to us.

Plaintiff was already given a rubber land and a house in Singapore with a big compound.

My own mother has been given the house she is living in now.

Those who followed my father in his business were (1) I, (2) 2nd Defendant, (3) Ooi Chim, and (4) my adopted brother.

20 The houses put in name of Ooi Chim were meant for him.

My adopted brother is dead but Letters of Administration have been taken over the land and assets including 6 shares in Johore Lumbering Co. My father never said that the land in name of my adopted brother was for all.

I would not allow my name to be put up as owner of the oil palm estate to Income Tax people if that was not true.

Sd. Azmi.

30 4.45 p.m.

Adjourned to a date to be fixed by Asst. Registrar.

Sd. Azmi.

Certified true copy  
Sd. T. Nesathurai  
Secretary to Judge  
15/7/1964

In the High Court at Johore Bahru

Judge's Notes of Evidence

Defendants' Evidence

No.10  
Quah Ooi Keat  
Re-  
Examination  
(Contd.)

In the High  
Court at  
Johore Bahru

Civil Suit No. 117 of 1962 (contd.)

Coram: Azmi, J.

In open Court

Judge's Notes  
of Evidence

This 5th December, 1964

Defendants'  
Evidence

No.11  
EVIDENCE OF QUAH OOI JIN

C.H. Smith for Plaintiff

L.A.J. Smith for Defendants.

No.11  
Quah Ooi Jin  
Examination

L.A.J. calls:

D.W.2 - 2nd Defendant: Quah Ooi Jin a/s in  
English:

10

Address at No.15 Mat Jambol, Singapore

Son of Plaintiff. My father is P.W.2.

Prior to 1932 P.W.2 was doing business in  
food, sarongs and leather.

P.W.2 was bankrupt in 1932 - had two wives  
and 15 children. When he was bankrupt he had to  
do some business to support family. He could not  
use his name. He used other people's name. I  
was first one he used.

He took me to Bank of Indo China and asked  
me to sign 6 promissory notes, pledging security  
of several pieces of jewellery.

20

The account was opened by Kluang Saw Mill  
and signed by me.

All promissory notes were paid by me out  
of Kluang Saw Mill a/c. He asked me to operate  
a/c so that he could finance his new timber  
business, Kluang Saw Mill.

6 promissory Notes of \$500/- - total  
\$3,000/-.

30

Cheque books were kept by P.W.2. I  
signed all cheques.

P.W.2 kept all books of business. I was still in school.

P.W.2 requested me to sign all business accounts.

The money cashed from bank and signed by me was handed to Plaintiff for household expenses and safe keeping.

10 P.W.2 subsequently opened another saw mill in 1934 called Kahang Saw Mill because his cousin and former partner of his threatened to close Kluang Saw Mill because they had no share in the profits. So my father started the Kahang Saw Mill so that if Kluang Saw Mill were stopped by his cousin = break-up - he would be able still to continue his timber business.

P.W.2 brought Hun Eng, my uncle, from Penang as Manager of Kahang Saw Mill and gave him money to buy lands as his nominee.

20 The first land he bought was the rubber estate the United Motor Works. Second - he bought houses at Jalan Pasar.

Thirdly, he bought the jungle land of 1,000 acres from the Official Assignee.

Two small pieces of land belonging to P.W.2's cousin were also bought from money given by P.W.2.

From 1935 to 1937 I resided in Kluang.

30 I did most of the work. Johore Lumbering Co. was started in 1935. All the licenses for forest working areas, for lorries and to operate steam engine were applied by me in letter as Manager or owner as the regulations might require. I had full authority from P.W.2 to do so.

I signed cheques also.

I started cultivating oil palm estate in about 1939.

P.W.2 was released from bankruptcy in 1938.

In the High  
Court at  
Johore Bahru

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Judge's Notes  
of Evidence

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Defendants'  
Evidence

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No.10  
Quah Ooi Jin  
Examination  
(Contd.)

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Defendants'  
Evidence

No.10  
Quah Ooi Jin  
Examination  
(Contd.)

He asked Yew Hun Eng to transfer the rubber estate to Plaintiff. This was done. House No.7 Jalan Pasar to his other wife, 1st Defendant's mother.

In 1940 he asked Yew Hun Eng to transfer the oil palm estate to me and 1st Defendant. This was done.

P.W.2 told me before that, that he was worried by the oil palm estate. It was still in Yew Hun Eng's name. Hun Eng was not happy to transfer it to 1st Defendant and myself. 10

I and Hun Eng argued about the estate.

P.W.2 said he wanted to transfer oil palm estate to 1st Defendant and myself as he had given P.W.3 three houses whilst we had none. There was trouble between me and Yew Hun Eng.

P.W.2 and Plaintiff went to Penang finally the land was transferred. That was in 1940.

P.W.2 incorporated the Johore Lumbering Co. and the brick mortar into one company called Johore Lumbering Co. Ltd. and gave shares to all of us. After war Johore Lumbering Co. Ltd. became agents of the oil palm company and the rubber estate. The money from sales of oil palm was collected by Johore Lumbering Co. Ltd. and credited to account of oil palm estate. Oil Palm Estate paid all wages and got rent by cheques from Johore Lumbering Co. Ltd. 20

I and 1st Defendant are registered partners of the oil palm company. We got loan from the Rehabilitation Board as owners of the Oil Palm Estate. Board granted \$100,000 to us. P.W.2 wanted all this money to be paid to Johore Lumbering Co's banking account 1st Defendant refused. He agreed to give only \$50,000/- to Johore Lumbering Co. for development of Oil Palm Estate. At that time 1st Defendant was not working in Johore Lumbering Co. Ltd. and he was afraid that if the whole sum were given to Johore Lumbering Co. Ltd., Johore Lumbering Co. Ltd. would spend it on its own purposes and may not be able to repay the Board in the end. 1st 30 40

Defendant as owner had to carry burden of repayment. P.W.2. became angry. The loan was repaid by Johore Lumbering Co. by debiting account of Oil Palm Estate.

In the High Court at Johore

Income Tax returns were made by us as partners. P.W.2 knew that. He prepared the returns as Acting Manager of Oil Palm Estate. P.W.2 prepared returns for the rubber estate - my mother's estate.

Judge's Notes of Evidence

Defendants Evidence

10 I produce:-

- D.11 1) Indenture of 2.1.1934 (marked Ex.D.11)
- D.12 2) Indenture of 29.4.1935 (marked Ex.D.12)
- D.13 3) 2 Indentures of 12.5.1941 (Exhibits
- D.14 D.13 and D.14)
- D.15 4) Indenture of 28.2.1956 (marked Ex. D.15)

No.11  
Quah Ooi Jin  
Examination  
(Contd.)

Exhibit D.11 is for \$10,000/- made on 2.1.1934 from Overseas Chinese Banking Corporation to Administrator of Yew Say Kheng Estate.

20 Exhibit D.12 on 29.4.1935 for \$3,000/- from same bank.

So Administrator got \$13,000/- from mortgage of 3 houses to Bank. The Administrator raised the money to pay the death duty of Estate of Yew Say Kheng.

3rd document - indenture made by Administrator of Yew Say Kheng Estate to Bank.

Ex. D.13 and D.14 - transfer of mortgage to mortgagor.

30 In 1941 \$13,000/- were repaid to Bank by P.W.2 using Johore Lumbering Company's funds.

He got the houses assigned to him as security.

In 1956 when the Administrator paid him all the money he transferred back houses to Administrator.

In the High  
Court at  
Johore Bahru

Judge's Notes  
of Evidence

Defendants'  
Evidence

No.11  
Quah Ooi Jin  
Examination  
(Contd.)

That is true story of \$13,000/- and not as alleged by Plaintiff's witnesses.

In this case I received summons from my mother in 1962. Before issue of that writ she never said the land was not mine though she knew it is in my name.

The income tax was paid by P.W.2 in my name.

I produce two licences of Oil Palm Estate  
D.16 (marked D.16 and D.17)  
D.17

10

Sd. Azmi.

Cross-  
Examination

Cross-Examined

Xxd. by C.H.:

Q. This oil palm estate was put in your name in 1940? A. Yes.

5 pieces of padi land in 1940 were also put into my name.

P.W.2 gave to me as present to me. I did not transfer back. They are still in my name.

20

P.W.2 gave property to the adults only. For infants he gave shares. He also gave me shares of the Lumbering Co.

I heard P.W.3 swear that he was nominee.

In 1940 P.W.2's intention to give it to him. The rents of houses went to the Company - on rent account.

I only got receipts of oil palm company after this Suit started.

30

I did not make any claim in writing to be owner of oil palm to my mother or father. I was managing oil palm estate up to now.

No entry in books to indicate that they belong to me.

My mother had jewelleries when my father became bankrupt. Not true her family was rich.

In 1933 though my father was declared bankrupt he was quite well off. He sent my eldest sister to College in Singapore.

P.W.2 said he got money from P.W.1. I don't accept that.

This Suit started in 1962.

10 In 1964 defence was amended. I did not amend. Possibly I gave some facts.

I saw copy of defence.

Q. You put in alternative defence in para. 9 and you said to effect such arrangements were to fraudulently avoiding provisions of Estate Duty and Income Tax Ordinance?  
A. Ask my lawyers.

(Referred to para. 6 of Statement of Defence).

I stand by it.

20 Q. Neither you nor your brother keep the deed?  
A. Previously it was in 1st Defendant's custody, but when I quarrelled with 1st Defendant, P.W.2 took it away and kept in Kluang. I kept everything in the Company's safe.

Before quarrel 1st Defendant had possession of it.

I did not spend a cent of my own on estate.

30 Any payment of the loan was not made out of my own money.

I have no other income for income tax purposes.

Sd. Azmi.

No re-xn.

Sd. Azmi.

In the High Court at Johore Bahru

Judge's Notes of Evidence

Defendants' Evidence

No.11  
Quah Ooi Jin  
Cross-  
Examination  
(Contd.)

In the High  
Court at  
Johore Bahru

No.12  
DEFENDANTS' ADDRESS TO COURT

Judge's Notes  
of Evidence

L.A.J.:

P.W.2 intended two Defendants to benefit.

Defendants'  
Evidence

Refer Sayres v. Hughes (1868) L.R. 5 Eq. 376.

Not followed by Bennet v. Bennet. (1879)  
10 Ch. D. 474.

No.12  
Defendants'  
Address to  
Court

Receipt of income by father is not  
sufficient by itself to rebut gift from father  
to son. 10

In this case father intended to benefit  
the son.

Submit no evidence of trust.

Evidence exactly opposite to what Plaintiff  
pleaded, i.e. mother's property. If so, Defendants  
could not benefit. In this case it was really  
the father's property.

2 significant facts:

Page 8 of Plaintiff's evidence - "The  
original Johore Lumbering Co. was my business."  
Then said immediately afterwards, "It was my  
husband's business". When asked by Court she  
replied she did not know. 20

Refer to page 9, "The land was transferred  
to the defendants because Hun Eng wanted to leave  
for Penang and the defendants were to look after  
it." This is husband's evidence.

Refer to page 20 - evidence of husband who  
said that Johore Lumbering Co. belonged to the  
Plaintiff. 30

Refer to page 19 in which husband agreed  
that Yew Hun Eng was managing Johore Lumbering  
Co. during his bankruptcy, and when asked whether  
it was really his business he replied, "That time  
I had no authority. They were looking after it."  
When asked whether he regarded the money made by

that business as his own in fact though not legally, his reply was that at that time Yew Hun Eng and his wife got the profits.

All income from the oil palm entered in books as income of the two Defendants.

All facts add up to this - P.W.2, the husband, as head of family did what he liked, and if one gets something in his name, it is to be treated as his finally.

10 I say if that is not the arrangement, then this arrangement is fraudulent in this respect: "If I died first it would be the sons', and if the sons died first, it would be mine." It is fraudulent because it is evading death duty.

20 Refer to evidence of P.W.3 - Quah Ooi Chim in which he said in effect that in reference to the land transferred to him, if his mother died, he would carry out her will, but if there was no will, property to go to all his brothers and sisters, after consultation. Witness admitted that this was as told to him from his father and not from his mother. But, if his father died, the houses would become his legally and no death duty would be paid.

The oil palm estate was registered in the names of the 2 Defendants and the 2 Defendants were in fact treated as owners of the land.

Sd. Azmi.

30

No.13  
PLAINTIFF'S ADDRESS TO COURT

C.H.:

2 questions in issue:

1. Who was beneficial owner of the property?  
Was it Plaintiff or husband?

Evidence: (a) Plaintiff's brother raised money to buy the land.

In the High Court at Johore Bahru

Judge's Notes of Evidence

Defendants' Evidence

No.12  
Defendants' Address to Court  
(Contd.)

No.13  
Plaintiff's Address to Court

In the High  
Court at  
Johore Bahru

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Judge's Notes  
of Evidence  
No.13  
Plaintiff's  
Address to  
Court  
(Contd.)

- (b) Documents page 10 of Agreed Bundle.  
Evidence of P.W.2.
- (c) No evidence P.W.2, i.e. husband,  
had any money while he was a  
bankrupt - except evidence of 2nd  
Defendant.
- (d) Admission of 1st Defendant at  
page 41 of Notes of Evidence  
that Plaintiff had some valuable  
jewelleries on security of which  
she could raise money.
- (e) Evidence of promissory notes being  
made - jewelleries - deposited in  
the Bank.

I submit strong evidence to show Plaintiff was  
doing something to help and had the means. Only  
written evidence is the "agreement".

## 2. Question whether it was a gift.

In 1940 - 2 main assets - oil palm estate  
and saw mill.

Oil palm estate registered in the names of  
2 Defendants, and saw mill was in the name of  
2nd Deft. and P.W.3. Then it became limited  
company.

Both defendants, as they had shown, were  
capable of looking after themselves - they could  
have made not that property belonged to them.

Vital points - whether they were real  
owners - note made in the account books.

No suggestion or record to show that  
Defendants were the owners of oil palm. They  
did not take profits. On question of law -  
fraud with reference to Estate Duty. L.A.J. said  
something - if Plaintiff died property would  
continue to be regarded as that of the Defendants.  
Refer [1962] 1 All E.R. p. 497 paragraph G.

Ref. Bennet v. Bennet. Page 36 of Notes  
of Evidence in which L.A.J. admits "Presumption  
has nothing to do with this case".

As regards Yew Hun Eng's transfer to Defendants, refer to Lewin on Trusts, 14th Edn. page 148 - party who advances money is the .....

In the High Court at Johore Bahru

Section 2 - "Resulting Trusts....."

Resulting trust in favour of man who advances money.

Underhill's Law of Trust page 185 Art. 29.

Sd. Azmi.

Judge's Notes of Evidence

No.13  
Plaintiff's Address to Court  
(Contd.)

10

No.14  
DEFENDANTS' FURTHER ADDRESS TO COURT

No.14  
Defendants' further address to Court

L.A.J.:

Chettiar v. Chettiar [1962] 1 All E.R. 494 at page 497. Though father still alive and death duty not yet paid, father could not get land back (if father is real owner).

Sd. Azmi.

C.A.V. Sd. Azmi.

20

This is a suit for a declaration that the property, hereafter referred to as the oil palm estate and registered in the names of the two Defendants, is held by them as trustees for the Plaintiff.

No.15  
Written Judgment of Azmi J.  
31st March 1965

30

No consideration passed from the Defendants to the transferor but the Defendants, though admitting such to be the case, claim that the Plaintiff is estopped from alleging that the transfer was otherwise than for valuable consideration. The Defendants also say in the Amended Defence filed just before the first day of hearing of the suit that the property was gifted to them by their father, Quah Hong Chiam, and that this property was treated previously by

In the High  
Court at  
Johore Bahru

—————  
No.15  
Written  
Judgment of  
Azmi J.  
31st March  
1965  
(Contd.)

the Plaintiff as the property of the said Quah Hong Chiam.

The Defendants deny that any oral trust was created as alleged by the Plaintiff and say that the Plaintiff is precluded from alleging any trust in the absence of any note or memorandum in writing. They further say that the disposition of the oil palm estate was made as part of several dispositions, such as the disposition of a house to one Lim Then, three houses, in Kluang to Quah Ooi Chim (P.W.3), and a rubber estate to the Plaintiff herself.

10

The Defendants also say that if it was intended that the various beneficiaries were to hold the properties as trustees, then they say that such arrangements were carried through with a view to fraudulently avoiding the provisions of the Estate Duty and the Income Tax Ordinances.

The oil Palm estate was originally the property of Quah Hong Chiam, P.W.2.

20

The Government of Johore alienated this land to him with a condition that it be cultivated with oil palm. He was then also the owner of a saw mill called the Johore Lumbering Company, a rubber estate and several houses in Johore.

He was declared a bankrupt by the Singapore High Court in 1932 and all the properties held in his name were subsequently transmitted to the official assignee of the then Straits Settlements. The oil palm estate was transmitted on 27th December, 1937, but about 3 months later on 27th March, 1938 it was transferred to Yew Hun Eng, a brother of Plaintiff and a Trustee of her father's estate, and indeed all the other properties of the bankrupt.

30

The Plaintiff said in her evidence that she paid \$600 for this land as it had not yet been developed. The 1st Defendant corroborated this.

According to the evidence, Yew Hun Eng managed all the property, but in 1940 he decided to return to Penang for good. Before his departure he signed the document referred to as

40

An Agreement (at page 10 of the Agreed Bundle) and dated 20th July, 1940.

In the High Court at Johore Bahru

This Agreement was drafted by Quah Ooi Chim, P.W.3, Plaintiff's eldest son. Among other things Yew Hun Eng admitted that "All businesses of Yew Hun Eng in Kluang and Singapore, the purchase of properties, etc. in the said places were all undertaken on Yew Phaik Hoon's behalf." The Agreement also admitted that  
 10 Yew Hun Eng was indebted to Yew Phaik Hoon, i.e. the Plaintiff, in the sum of \$6,000/-.

No.15  
 Written Judgment of Azmi J.  
 31st March 1965  
 (Contd.)

In paragraph 3 of the Agreement it is stated, "All documents made previous to this day in connection with the aforesaid business etc. become null and void."

It is Plaintiff's case that the agreement corroborated her story that all the properties bought in the name of Yew Hun Eng were her own and bought from money she borrowed  
 20 from her father's estate and borrowed by the latter from the Overseas Chinese Banking Corporation, and from the proceeds of sale of her jewelleryes.

As Quah Hong Chiam, P.W.2, put it, "After I have become bankrupt they (that is to say, the oil palm estate) were sold to my wife's brother. He bought the lands on behalf of my wife P.W.1. Plaintiff's mother mortgaged her land to the Overseas Chinese Banking Corpn. and raised the  
 30 money." Quah Hong Chiam is now 82 years old, and when this happened he was about 52 years old.

Quah Ooi Chim, P.W.3., the Plaintiff's eldest son, corroborated this story and said that \$10,000/- were first borrowed and then \$3,000/-. The Estate of his grandfather, having no ready cash, mortgaged three houses of the Estate to the Bank for the purpose.

In the Agreement there was a reference to a loan to Yew Hun Eng by Plaintiff, of which  
 40 she agreed to forego \$3,000/- in appreciation of Yew Hun Eng's service to her. There was also a reference in the Agreement as to how \$2,000/- of the loan should be disposed of. Incidentally, there would still be a balance of \$1,000/- to which no reference was made.

In the High  
Court at  
Johore Bahru

No.15

Written  
Judgment of  
Azmi J.  
31st March  
1965  
(Contd.)

The 1st Defendant is the stepson of the Plaintiff and the 2nd Defendant is Plaintiff's Younger son. Apparently, there are other children of Quah Hong Chiam, P.W.2, by Plaintiff and also by the first wife (1st Defendant's mother).

In reference to this alleged loan of \$13,000/-, the Defendants claim that this was a loan made by Yew Hun Eng and another for the purposes of paying off the estate duty due on the estate of Plaintiff's father and not one taken by the Plaintiff for the purpose of buying back the properties of their father, P.W.2, from the Official Assignee.

10

The document of title would show that on 18th November, 1940, the oil palm estate was transferred by Yew Hun Eng to the two Defendants.

According to Quah Hong Chiam, P.W.2, and Quah Ooi Chim, P.W.3, the oil palm estate was transferred to the two Defendants merely as trustees for Plaintiff and they were to look after the property for her.

20

I find from the evidence as a whole that so far as dealings with Government Departments were concerned, the property, in dispute had been regarded as that of the registered owners, but on the other hand none of the Defendants enjoyed the income as their own separate income until the dispute arose about this property, and all the debts due to the Government, for example income tax, were paid out from a common fund of the family.

30

The 1st Defendant himself explained that he was made a co-owner because he had the responsibility of looking after the members of the family in Kluang, including his grandmother. The 2nd Defendant, however, said in effect that so far as he was concerned, it was intended that he would be the owner of the other half for himself alone. His version of the story was that all the properties have always belonged to his father, who always had enough money, although openly he had become a bankrupt.

40

In so far as the oil palm estate is concerned, I hold the view on the evidence before me that it was bought from the Official Assignee by Yew Hun Eng on behalf of the Plaintiff, and Yew Hun Eng, therefore, held the land merely as trustee for the Plaintiff. He continued to look after the land until he decided to return to Penang. Because Yew Hun Eng was to look after the property the land was registered in his name. There seemed to be an idea in the family that the land must be registered in the land office in the name of whoever was to look after the property. On the facts of the case, therefore, I accept the evidence of the Plaintiff, her husband and her eldest son that when this property was transferred to the two Defendants after the departure of Yew Hun Eng to Penang, the two Defendants were to hold the property in trust for her.

In the High Court at Johore Bahru

No.15  
Written Judgment of  
Azmi J.  
31st March  
1965  
(Contd.)

With reference to Defendants' contention that if it was intended that the Defendants were to hold the oil palm estate as trustees, there would be fraud on the Government with a view to the payment of death duty on the death of the beneficial owner, I would say that the fraudulent purpose had not yet been carried out and on the authority of *Symes v. Hughes* (1870), L.R. 9 Eq. 475 referred in *Chettiar v. Chettiar* (1962) 1 All E.R. at page 497 - para. G - this defence must fail.

In any case it was never the intention of the parties to so defraud the Government either in the matter of death duties or in the matter of income tax.

I would therefore order that judgment be entered in terms of Plaintiff's claims in paragraph 4(1), (2) and (5) of the Statement of Claim against the Defendants, and Defendants to pay costs.

Sd. Azmi bin Haji Mohamed  
(AZMI BIN HAJI MOHAMED)  
JUDGE  
MALAYA  
31/3/65

Certified true copy  
Sd. Illegible  
Secretary to Judge 31/3/1965

In the High  
Court at  
Johore Bahru

No.16  
ARGUMENTS AS TO ORDER

In Open Court

No.16  
Arguments  
as to Order  
31st March  
and 5th May  
1965

This 31st March, 1965

Counsel as before.

I read my judgment.

L.A.J. Smith: I ask for stay of execution for  
14 days.

Sd. Azmi.

C.H. Smith: I have no objection if Defendants  
agree to make undertaking that no cheques be  
paid out in reference to the estate.

Sd. Azmi.

L.A.J.: I suggest that a Receiver and Manager be  
appointed.

Sd. Azmi.

C.H.: I agree.

Sd. Azmi.

Order: Stay of execution for 30 days pending  
filing of Notice of Appeal.

Stay to be continued until disposal of  
appeal on filing of Notice within 30 days and a  
Receiver and Manager be appointed by consent.  
Failing an agreement between parties as to  
appointment of Receiver and Manager, liberty to  
apply.

Sd. Azmi

In Chambers

This 5th May, 1965

C.H. Smith with Leicester for Plaintiff

L.A.J. Smith for Defendants.

C.H.: We have agreed to draft order with slight amendments to the one originally proposed. I ask Court to initial it.

In the High  
Court at  
Johore Bahru

Sd. Azmi.

L.A.J.: I agree to the draft order as amended.  
Sd. Azmi

Order initialled Sd. Azmi

No.16  
Arguments  
as to Order  
31st March  
and 5th May  
1965  
(Contd.)

10 L.A.J.: I have an application to make. I wish to ask for further argument in the case although the Court has given a written judgment. I propose to ask Court to reconsider judgment for following reasons:

- (1) as to evidence whether it was a gift or not;
- (2) question of illegality in reference to income tax returns - dishonesty. Refer to 1954 3 All E.R. 649 at page 652 - para. B to F beginning with the words "It must then be asked by" to "by way of qualification of those admissions."

20 I submit Court has wrongly allowed certain evidence in considering this matter.

C.H.: In my opinion Court may reopen this matter only if Court considers that errors was manifest on the face of it and only on new evidence being produced to the Court. I, therefore, submit that the Court should not reopen the matter at this state.

Sd. Azmi

I refuse to hear further arguments on principle.

30

Sd. Azmi

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Certified true copy

Sd. T. Nesathurai  
(T. Nesathurai)

Secretary to Judge  
21/5/1965

In the High  
Court at  
Johore Bahru

No.17  
ORDER OF COURT

No.17  
Order of  
Court  
9th May  
1965

THIS ACTION coming on on the 26th, 27th and 28th days of April 1964 and the 5th day of December 1964 for trial before the Honourable Mr. Justice Azmi bin Haji Mohamed in the presence of counsel for the Plaintiff and for the Defendants and UPON READING the pleadings and upon hearing the evidence and what was alleged by counsel for the Plaintiff and the Defendants THIS COURT DID ORDER that the said action should stand for judgment AND THIS ACTION standing for judgment this day in the presence of counsel for the Plaintiff and for the Defendants THIS COURT DOTH:

10

(1) Declare that the Defendants hold the following properties as trustees for the Plaintiff:

(a) Johore Grant for Land  
No. 17933 for Lot No. 1831  
in the Mukim of Kluang, in  
the District of Kluang.

20

(b) Johore Grant for Land  
No. 17934 for Lot No. 1832  
in the Kukim of Kluang, in  
the District of Kluang.

(c) Johore Grant for Land  
No. 17935 for Lot No. 1833  
in the Mukim of Kluang, in  
the District of Kluang.

(2) Order that the Defendants do execute a transfer of the said properties to the Plaintiff.

30

(3) Order alternatively that the Commissioner of Lands do make a memorial on each of the Register and Issue documents of title registering the Plaintiff as proprietor thereof.

(4) Order that the Plaintiff do recover against the Defendants the costs of this action to be taxed.

40

10 (5) Order that execution on the judgment herein be stayed for thirty days pending filing notice of appeal by the Defendants such stay to be continued until after the disposal of the appeal or until the appeal is withdrawn and that in the meantime all moneys received in connection with the Gim Tien Oil Palm Estate be paid to the Kluang Branch of United Malayan Banking Corporation Limited and all cheques drawn on the account at the said Branch be signed by Quah Ooi Chim on behalf of the Plaintiff, liberty to apply.

In the High Court at Johore Bahru

\_\_\_\_\_  
No.17  
Order of  
Court  
9th May 1965  
(Contd.)

Entered this 9th day of May, 1965 at 11.00 a.m. in Volume I Page 112.

20

Sd. Rengam

Asst. Registrar

{The Seal of the High  
Court, Malaya }

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In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.18  
NOTICE OF APPEAL

No.18  
Notice of  
Appeal  
27th April  
1965

TAKE NOTICE that Quah Ooi Keat and Quah Ooi Jin, the above named Appellants being dissatisfied with the decision of the Honourable Dato Justice Azmi given at the High Court of Johore Bahru on the 31st day of March 1965 appeal to the Federal Court against the whole of the said decision.

Dated this 27th day of April 1965

Sd: Quah Ooi Jin

10

Sd: Quah Ooi Keat

APPELLANTS IN PERSON

To:

The Chief Registrar,  
The Federal Court,  
Kuala Lumpur

The Assistant Registrar,  
High Court,  
Johore Bahru.

and to the Respondent and her Solicitors  
Messrs. Leicester & Chen  
of No. 27 Bank of China Building,  
(2nd Floor),  
Singapore.

20

The address for service of the Appellants is at  
No. 7 Jalan Pasar,  
Kluang, Johore.

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No.19  
MEMORANDUM OF APPEAL

In the  
Federal Court  
of Malaysia  
(Appellate  
Jurisdiction)

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No.19  
Memorandum  
of Appeal  
14th July  
1965

QUAH OOI KEAT and QUAH OOI JIN, the above named Defendants/Appellants appeal to the Court of Appeal against the decision of the Honourable Mr. Justice Azmi bin Haji Mohamed given at the High Court, Johore Bahru, on the 31st March, 1963, on the following grounds:-

- 10 1. The learned trial Judge was wrong in law in holding that when the property, the subject matter of the Suit, was transferred to the Appellants, it was transferred to them as trustees and not as beneficiaries for the reasons following:
  - (a) The Respondent by her pleadings alleged that the trust was a specific trust made orally about the time of the transfer and before the transfer was completed. No evidence was given at all of any such trust and by 20 particularising the trust was bound thereby and not entitled to rely on a resulting trust.
  - (b) At the time of the said transfer the Respondent's position vis-a-vis the Appellants was such that the transfer by the Respondent to the Appellants would in law raise a presumption of advancement and no evidence was given to rebut the presumption of advancement.
  - 30 (c) The learned Trial Judge wrongly relied on the subsequent acts of the Respondent or her agent, Quah Hong Chiam, in support of the Respondent's case.
  - (d) The learned trial Judge took into account in support of the Respondent's case acts by the Respondent or her agent, Quah Hong Chiam, which had no connection with the transfer.
  - 40 (e) The learned trial Judge wrongly sought to obtain the intention of the Respondent from what the Respondent or her agent, Quah Hong

In the Federal  
Court of Malaysia  
(Appellate  
Jurisdiction)

No.19  
Memorandum  
of Appeal  
14th July  
1965  
(Contd.)

Chiam, had done at different times and places and as expressed in his judgment "an idea in the family that the land must be registered in the Land Office in the name of whosoever was to look after the property." In addition, there was no evidence of any such idea in the family.

- (f) The learned trial Judge wrongly relied on an agreement with Yew Hun Eng as corroboration of the evidence of the Respondent or her agent, Quah Hong Chiam. 10
- (g) The learned trial Judge wrongly relied on the evidence of Quah Ooi Chim as corroborative evidence.
- (h) The learned trial Judge in arriving at his conclusion was wrong in law in considering that because the land had previously been registered in the name of Yew Hun Eng, Trustee of the land, that the subsequent transfer to the sons of Quah Hong Chiam was as trustees and not as beneficial owners. 20
2. The learned trial Judge having found as a fact that there was no intention on the part of the Respondent or the Appellants to defraud either the Estate Duty Ordinance or the Income Tax Ordinance should have gone on to find that the income tax returns filed by the Appellants stated the facts and should have held that the Appellants were entitled to the property referred therein beneficially. 30
3. The learned trial Judge should not have taken into account the subsequent acts of the Respondent or her agent as evidence in support of the Respondent's contention but only in support of the Appellants' case.
4. The learned trial Judge having found as a fact that the Respondent and Appellants had in dealings with the Government Departments regarded the property as that of the 40

registered owners should have gone on to hold that these acts supported the Appellants' case and that they were the beneficial owners thereof and that there was no evidence to negative this conclusion.

5. The verdict was against the weight of the evidence.

Dated this 14th day of July, 1965

Sgd.) L.A. J. SMITH

10 Solicitor for the Appellants

To: The Registrar,  
Federal Court,  
Kuala Lumpur

To: The Registrar,  
High Court,  
Johore Bahru

and to Messrs. Leicester & Chen,  
Solicitors for the above-named Plaintiff/  
Respondent, Singapore

20 The address for service of the Appellants  
is c/o L.A.J. Smith No. 18-H Battery Road, Singapore.

No.20

NOTICE OF MOTION

30 TAKE NOTICE that this Honourable Court will be moved by Mr. L.M. Ong of Counsel for Quah Ooi Keat and Quah Ooi Jin, the Appellants above-named on Saturday the 2nd day of October, 1965 at the hour of 10 o'clock in the forenoon or so soon thereafter as counsel can be heard for an order that the Appellants above-named may be at liberty to add the following grounds to their Memorandum of Appeal:-

6. The Learned Trial Judge should have held that the Plaintiff had not rebutted the presumption in favour of the Defendants

In the  
Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No.19  
Memorandum  
of Appeal  
14th July  
1965  
(Contd.)

No.20  
Notice of  
Motion  
25th  
September  
1965

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

\_\_\_\_\_  
No.20  
Notice of  
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25th  
September  
1965  
(Contd.)

or had not rebutted the indefeasibility of the Defendants' title under the Johore Land Enactment, they being the registered owners of the properties, the subject matter of the suit for more than twenty (20) years.

7. The Learned Trial Judge erred in not excluding the evidence by and for the Plaintiff to prove the resulting trust.

Dated this 25th day of September, 1965.

10

Sd: L.M. Ong

Solicitor for the above-named  
Appellants

To:

The above-named Respondent and her Solicitors Messrs. Leicester & Chen c/o Messrs. M. Ismail & Co., of No. 2-D, Jalan Ah Fook, Johore Bahru.

REGISTRAR

20

The Address for service of the Applicants is care of Mr. L.M. Ong, Advocate and Solicitor of No. 79 (1st Floor), Jalan Ibrahim, Johore Bahru.

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No.21  
ORDER ON MOTION

CORAM: THOMSON, LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA

ONG HOCK THYE, AG. CHIEF JUSTICE  
HIGH COURT IN MALAYA

IN OPEN COURT

THIS 3rd DAY OF OCTOBER 1965

In the  
Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No.21  
Order on  
Motion  
3rd October  
1965

O R D E R

10 UPON MOTION made unto the Court this  
day by Mr. Lim Kean Chye (Mr. L.M. Ong with him)  
of Counsel for the Appellants in the presence of  
Mr. C.H. Smith (Mr. N.N. Leicester with him) of  
Counsel for the Respondent AND UPON READING the  
Notice of Motion dated the 27th day of September,  
1965 AND UPON HEARING Counsel for the Appellants  
and Counsel for the Respondent as aforesaid IT IS  
ORDERED that the Appellants be at liberty to add  
the following grounds to their Memorandum of  
Appeal:-

20 "6. The Learned Trial Judge should have  
held that the Plaintiff had not rebutted  
the presumption in favour of the  
Defendants or had not rebutted the  
indefeasibility of the Defendants'  
title under the Johore Land Enactment,  
they being registered owners of  
the properties, the subject matter of  
the suit.

30 7. The Learned Trial Judge erred in not  
excluding the evidence by and for the  
Plaintiff to prove the resulting trust."

AND IT IS FURTHER ORDERED that the costs of and  
incidental to this application be taxed by a proper  
officer of the Court and be paid by the Appellants  
to the Respondent in any event.

Given under my hand and seal of the Court

In the  
Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

this 3rd day of October, 1965.

Sd: Hamzah bin Dato Abu Samah

CHIEF REGISTRAR  
FEDERAL COURT, MALAYSIA

No.21  
Order on  
Motion  
3rd October  
1965  
(Contd.)

No.22  
Notes of  
Argument  
of Thomson,  
Lord President  
3rd and 4th  
October 1965

No.22

NOTES OF ARGUMENT RECORDED BY THOMSON,  
LORD PRESIDENT, 3rd and 4th OCTOBER, 1965

Cor: Thomson, Lord President, Malaysia.  
Ong Hock Thye, Ag. Chief Justice.  
Ismail Khan, Judge.

10

3rd October, 1965

For Appts: Lim Kean Chye (L.M. Ong with him)

For Respt: C.H.Smith (N.N.Leicester with him)

Lim:

Appln. to add grounds of appeal

Smith:

Reference to "20 years" raises limitation  
or laches.

Object. Not raised in Court below.

Lim

Agree - delete reference to "20 years".

Court:

As prayed subject to deletion of words  
"for more than 20 years".

20

Costs to Respondent in any event.

Lim:

Relates facts.

Plaintiff claimed Land from Defendants -  
the sons.

Land in Johore.

1st Deft. is a step-son - son of husband  
by 1st wife and Plaintiff is 2nd wife. 2nd Deft.  
is natural son.

10 Plaintiff says 1938 land registered by her in  
her brother's name - Yew Hun Eng (the uncle). Ptff.  
provided the money. 1940 she told uncle to transfer  
land to Defts. to hold as trustees. We say what is  
pleaded is an express oral trust.

Sons say there was no trust. The property  
was really that of the father who was then bankrupt.  
(He was discharged in 1938). It was part of a scheme  
by the father to distribute his property before his  
death.

20 Father adjudged bankrupt 1932. After his  
discharge he had to get his business started again -  
it has been an extensive one. He started with the  
Kluang portion of his business. 2 wives - mothers  
of the two defendants. Ptff. was the second wife.

He brought Yew Hun Eng down from Penang  
to look after Kluang business.

Yew Hun Eng and his mother were administrators  
of the estate of the deceased father of Yew Hun  
Eng and Ptff.

30 Yew Hun Eng came to Kluang in 1935 when  
Quah Hong Chiam was still a bankrupt. He bought  
Quah Hong Chiam's properties from Official Assignee.  
Among these properties was the land in the instant  
case.

Ptff's case is that she had money of her  
own to buy the land. Administrator of her father's  
estate raised \$13,000 by way of mortgage from  
Oversea-Chinese Bank, Penang; subject of mortgage

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In the Federal  
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3 houses in Penang. She said she also sold jewellery and got some cash from her mother. She bought the land for \$600 and put it in the name of her brother Yew Hun Eng.

When father became bankrupt in 1932 he borrowed \$3,000 from Bank by using 2nd Deft. to sign I.O.U.s. With this he started his sawmill business again.

1935 Johore Lumbering Co. was formed when Yew Hun Eng came from Penang. It ran Kluang Sawmill and Kahang sawmill and it was this Company that ran the oil palm estate as the land in the instant case. Capital came from Rehabilitation Board in 1948. They started developing the land in 1939. 10

Our Lumbering Company had become quite prosperous by 1937.

1941 Quah was no longer bankrupt. So he formed Johore Lumbering Co. Ltd. and the assets of the sawmills were transferred to this Company i.e. all the assets of the former partnership. 20

Partnership never formally dissolved but it ceased to do business.

Capital of Johore Lumbering Company Ltd., was \$120,000 and shares allotted to members of the family as follows:-

Father	24
1st Wife	12
2nd Wife	12
Each of 7 sons - 6 shares	42
2nd Deft.	10
7 daughters - each 2 shares	14
2 clansmen - each 2 shares	4
2 relations - each a share	2
	<hr/>
	120
	<hr/>

30

Company ran all the family enterprises and kept all the profits. Nobody took dividends but each drew money for his needs and this was charged to father's account.

But there were other properties which

father had given to various members of the family.

Ptff. (2nd wife) in 1938 was given a rubber estate which was his present to her by Yew Hun Eng, her brother. She was given a house in Singapore. 1st Wife was given a house in Kluang.

Will prepare a schedule of the various distributions of property for information of Court.

10 Ptff. relied on agreement of 29.6.40 between her and Yew Hun Eng to make out Yew Hun Eng was a trustee.

This was drawn up by Quah Ooi Chim, ptff's son. This witness's evidence accepted by Judge.

Lim:

He also accepted Ptff's evidence but I submit it was unreliable. She knew nothing of what was going on, she lived in S'pore and she just accepted what her husband said.

20 She said she borrowed \$13,000 from Oversea-Chinese Bank, Penang. But she does not refer to the mortgages etc. of the Penang houses. But the mortgage was in evidence. Dated 2.1.34 - a year before Yew Hun Eng came to Kluang. Loan secured was \$10,000. But it relates it is for administration of father's estate.

Next mortgage was 29.4.35 for \$3,000.

Interest kept mounting up so they got Quah Hong Chiam to pay off the debt and the houses were conveyed to him - dd. 12.5.41.

30 28.2.56 agreement between Quah Hong Chiam and present administrators of Yew Hun Eng's father's estate. Penang houses re-conveyed to administrators for \$18,000. This shows that in 1935 Ptff. did not get \$13,000 from Yew Hun Eng but Yew Hun Eng borrowed the money for purposes of administration of his father's estate.

Yew Hun Eng paid off the bank in 1941 with money borrowed from Quah Hong Chiam.

A consideration of these documents shows

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In the  
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Ptff's evidence about the \$13,000 should not be accepted.

Ptff. must prove Defts. had notice of the trust and indeed that there was a trust and not a gift.

No. 22  
Notes of  
Argument of  
Thomson, Lord  
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3rd and 4th  
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Document of 29.6.40 makes the position clear. Ptff. acknowledges properties belonging to her are never vested in her. From this it follows other properties to go to other persons. This document substantially weakens Ptff's case. 10

Quah Hong Chiam said his wife did not know anything about the business.

But in 1938 rubber land was transferred into Ptff's name.

Defts' story was that land was transferred to them because they were doing the work of the Company.

About 1952 Ptff. tried to get land back.

Execution of transfer by transferee not required by Johore Land Code. 20

On evidence as a whole it seems Quah Hong Chiam changed his mind about the land which has increased from \$600 to \$700,000.

Income Tax returns were made by Defts. - though paid by Johore Lumbering Co. Ltd.

Our case is that the land was transferred by way of gift.

Conversations should not be relied on - Marshal v. Crutwell L.R. 20 Eq. C.328, 330.

Why did mother make gifts to 2 sons only - out of 8? 30

In cases like this it is important to ascertain motive.

In re Harrison 90 L.J. Ch. 186, 189.

There is a local case which was not

mentioned to Azmi, J.

Hj. Abdullah v. Abdul Majid (1949) M.L.J. 12

As to control of property -

Young v. Sealey [1949] Ch. 278.

In the instant case the motive was to benefit the beneficiaries.

On transfer to a person without his knowledge -

Standing v. Bowring 31 Ch. D. 282.

10 Old man distributed his shares in Johore Lumbering Co. Ltd. Is it not likely he was also interested to distribute the land in the instant case.

Title deeds to the land were with the 1st Deft's mother - the 1st wife of Quah Hong Chiam.

As to possession of title deeds -  
Warren v. Gurney [1944] 2 A.E.R. 472.

I now come to -

20 Shephard v. Cartright [1955] A.C. 431, 445, 447.  
the leading case regarding the presumption of advancement i.e. per Simonds passim.

Some other land still in name of Yew Hun Eng. This not claimed by anybody and this was intention of distribution.

Plaintiff tried to rebut presumption of advancement because one of the donees was only a step-son. Real question is whether donor is in loco parentis to donee. (Smith: I accept that).

30 It was suggested advancement did not arise in the case of a mother but here I rely on -  
Sayre v. Hughes L.R. 5 Eq. C. 376.

Though:

Bennet v Bennet 10 Ch. D. 474, 480.  
is to some extent contra.

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In the Federal  
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Underhill reconciles these 2 cases at  
11th Ed. p.192 and says the question is still  
open.

I say on the facts of this case the  
presumption arises.

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Fowkes v. Pascoe 10 Ch. App. 343.

Here trial Judge did not deal with the  
question of the presumption.

Dharmaratna v. Dharmaratna (1939) M.L.J. 310, 311.

But even if there be no question of  
advancement there is ample evidence that a gift  
was intended.

10

There is also a presumption of good title  
under section 29 of Johore Land Code. (Smith:  
Section 29A came into force in 1941. This transfer  
was executed in 1940).

As to resulting trust -

Tsang Chuen v. Li Po Kwai [1932] A.C. 715, 728.  
There was no consideration there.

Judge treated the Defts. as one person  
But he should have treated them as 2 persons - the  
evidence regarding them is very different. 1st  
Deft. had no notice.

20

The document at p.119 is conclusive.

Case for Appts.

Smith:

Ptff. and her husband when they gave  
evidence were both 80 years of age. They were  
rigorously cross-examined so there was much scope  
for discrepancy between them.

30

Judge did not deal with presumption in  
his judgment. No reason why he should do so.

"No consideration" was pleaded by Ptff.  
(Statement of Claim para. 3).

Where property is conveyed without consideration there is a trust.

Halsbury XXXVIII p.867.

The Venture [1908] p. 218, 229.

1st Deft. as a step-son with his own mother living there could be no presumption of any kind of gift.

Todd v. Moorhouse 19 Eq. C. 69, 71.

10 It was not a very attractive gift. 1,000 acres with heavy expense to plant with oil palms and heavy quit rent to pay. And there is no evidence that either Defts. had any money.

Possession of deed is not conclusive, but it is important - "sinews of the property". They were with the Company at Kluang, "my eldest son kept the grants".

As to when only some children benefited - Pole v. Pole 27 E.R. 901.

20 All the children provided for by shares in the Company after transfer to present Defts.

There were at that time only 3 adult sons - the 2 Defts. and P.W.3.

Income of oil palm land treated as income of Defts. and income tax paid on it with money from the Company. They did not include income from the oil palm land in their return of their own income.

30 From the beginning Income Tax in respect of the income from the oil palm land has always been assessed on the Defts' income, but the money for its payment came from the Company. In other words Defts. appeared to the outside world to be the proprietors but in reality they were not so.

The two Defts. were managing director and a director of Johore Lumbering Co. Ltd. and yet there was nothing in the books to suggest they were proprietors of the land.

In the Federal Court of Malaysia (Appellate Jurisdiction)

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In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

Lim:

4th October, 1965

I now refer to Johore Land Code s.65. I say this comes to the same thing. Present s.65 is the same as the original 1910 section 59.

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President  
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(Contd.)

Quah Hong Lian Neo v. Seow Teong Teck (1936)  
M.L.J.203. (Smith: Not asserting any right in rem. There is no question of fraud here. Title in Johore not indefeasible. Necessary to lodge caveat when equitable rights asserted -

Chang Lin v. Chong Swee Sang Innes 95, 106).

10

Smith:

Section 65 is not in point. It only applied to "instruments".

We are relying on our equitable rights.

We have caveated and are now proceeding under section 71. The effect is to preserve equitable rights and interests. S.K.Das on Torrens System in Malaya pp. 294, 298.

Abigail v. Lapin [1934] A.C. 491, 501.  
(Stopped).

20

To resume my argument of yesterday.

There were a large number of minors (15 - 16). But gifts were alleged to 2 only.

Funds to develop the land were provided by Johore Lumbering Co. Ltd., and it was not till 1948 that the loan was obtained which was not in contemplation at the time of the transfer.

The funds of the Company belonged to all the brothers and sisters and these were devoted to developing the land. This was the idea of a gift to 2 of the brothers only.

30

Adjd. to consider settlement.

Smith:

No settlement.

Court:

Proceed.

1st Deft. said his father told him lands transferred to him and 2nd Defnt. and that was first he knew of it.

Action started 1962. Defence amended at the trial in 1964, notice of amendment 2 days previously.

10 Original defence was estoppel. That was not proceeded with. Suggestion of a gift was the substantial defence argued at the trial.

And it was admitted in evidence negotiations were begun 10 years previously. But no entry in books and no assertion of title to the land.

Conveyance without consideration and so resulting trust. We also pleaded an oral trust and given particulars. This was supported by evidence of husband of Ptff.

20 I now come to the \$13,000. Mortgage recites it as borrowed for purposes of administration. But that is only ground on which an administrator can mortgage. But the fact that the mortgage was transferred to the husband shows the money was not for administration of estate for the husband had nothing to do with that.

Ptff. was from a moneyed family. Her brother was an administrator. He, to help his sister, raised money to salvage the property which had gone to Official Assignee in consequence of the bankruptcy.

30 Brother was admittedly a saviour and he executed the document dated June 1940.

Judge found it was Ptff's money that was used for the purchase.

Husband had no money but Plaintiff clearly had access to funds.

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(Appellate  
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President  
3rd and 4th  
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(Contd.)

In the Federal  
Court of  
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Jurisdiction)

Case for Respondent.

Lim:

After June 1940 Ptff's brother was no longer a trustee. Transfers were in November 1940.

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Notes of  
Argument of  
Thomson, Lord  
President  
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No evidence of what was spent on land in 1939 - 40. Timber Company was clearing forest land. No evidence that any money at all was spent on the land prior to 1940.

Oil palm estate only became an asset after the war.

10

Pole v. Pole (supra) not on all fours.

With reference to s.65 of Land Code I refer to s.3(c) of the Specific Relief (Malay States) Ordinance (No: 29/50).

C.A.V.

Intld. J.B.T.

4.10.65

15th May, 1966

For Appts: L.M. Ong

For Respondent: N.N. Leicester

20

Appeal allowed (L.P. diss:)

Costs.

Deposit to Appts.

Intld. J.B.T.

15.5.66

TRUE COPY

Sd. Tneh Liang Peng  
(Tneh Liang Peng)

Secretary to the Lord President

Federal Court of Malaysia.  
11.8.66

30

No.23

NOTES OF ARGUMENT RECORDED BY ONG  
 ACTING CHIEF JUSTICE, MALAYA

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In the Federal  
 Court of  
 Malaysia  
 (Appellate  
 Jurisdiction)

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Lim Kean Chye with L.M. Ong for appellant  
 C.H. Smith for Respondent.

No.23  
 Notes of  
 Argument of  
 Ong, Acting  
 C.J. Malaya  
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 October 1965

Lim: Application for 2 additional grounds of  
 appeal to be added, No.6.

10 Smith: feels he cannot object except to last 6  
 words of ground 6 - fresh point - not raised  
 below - apparently to raise limitation.

Lim: agrees to deletion of those 6 words.

Court: Pro tanto, then, amendment allowed, costs,  
 in any event, to respondent.

Lim: appeal against Azmi J's decision.

20 Mother's claim against step son and son -  
 she says in 1938 she had caused the 3 pieces  
 of land to be registered in her brother's  
 name, Yew Hun Eng; (para 1 of Statement of  
 Claim), the uncle, she providing the purchase  
 moneys - then in 1940 she told uncle to  
 transfer to the sons, who were to hold lands  
 as trustee for her - originally forest,  
 now under oil palm, situate at Kluang:  
 her specific allegations (para. 2 of  
 statement of claim) - and see "particulars" -  
 p.14 - accordingly, an express oral trust  
 alleged.

Sons say - no trust.

- 30 - owner of lands, in fact, was the father,  
 a bankrupt (discharged in 1938)
- in any event this transfer was part of a  
 scheme of disposition by the father of all  
 his property.
- Adjudged bankrupt in 1932 - how to effect  
 his own recovery? - and so revive his  
 business in Kluang? - 1st wife living in  
 Kluang, mother of 1st defendant - 2nd wife

In the Federal  
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No.23  
Notes of  
Argument of  
Ong, Acting  
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3rd and 4th  
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(Contd.)

(plaintiff) living in Singapore; they had 6 sons and several daughters, one son being 2nd Defendant - Quah Hong Chiam asked the uncle to come over from Penang to look after his business. Yew Hun Eng (uncle) and Yew Hun Eng's mother were administrators of Estate of Yew Say Kheng, father of plaintiff and Yew Hun Eng.

- When uncle came over in 1935 (while Quah Hong Chiam was still bankrupt) he proceeded to buy back properties of bankrupt from Official Administrator - which included the lands in question. 10
- Plaintiff said he had his own money to buy these lands (refer to them as 'oil palm' land) - administrators of her father's estate raised \$13,000 by mortgage of assets to Oversea-Chinese Banking Corpn. (Penang) consisting of 3 Penang houses plus some of her own jewellery and some cash given her by her mother - she bought this oil-palm land for \$600/- and had registration made in the name of Yew Hun Eng. 20

As to family activities during and after bankruptcy of Quah Hong Chiam:-

When Quah Hong Chiam became bankrupt in 1930, he borrowed \$3,000/- from a Singapore bank by getting 2nd Defendant to sign an I.O.U. to the Bank in 1932. With this he restarted sawmill business (evidence of 2nd defendant not challenged). 30

In 1935 Yew Hun Eng came. The Johore Lumbering Co. was formed - "our Kongsii". This Company ran the Kluang Sawmill, the Kahang Sawmill and it was Johore Lumbering Co. which supervised and managed the oil palm land. (The Capital \$50,000 came from the Rehabilitation Board. This was in 1948).

The land was jungle in 1939 - then, of course, it was not yet under oil palm. 40

The Johore Lumbering Co. became quite prosperous by 1937 on account of good timber prices.

In 1941 Quah Hong Chiem was no longer bankrupt (discharge in 1938). He formed the Johore Lumbering Co. Ltd. Assets of the Kluang & Kahang Sawmill taken over.

In the Federal Court of Malaysia (Appellate Jurisdiction)

Johore Lumbering Co. transferred all its assets to the Limited Co. The partnership was never formally dissolved, but became defunct. There was no partnership agreement.

\_\_\_\_\_

No.23

Notes of  
Argument of  
Ong, Acting  
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3rd and 4th  
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10 The Limited Co. was capitalised at \$120,000. The father gave shares therein to the family: he kept 24 shares, each wife had 12; each son 6 (8 sons in all); except that 2nd defendant had 10 instead of 6; 7 daughters had 2 each; 2 clansmen, 2 each; 2 relations 1 share each; total 120.

(Contd.)

20 This company ran the family enterprises and kept the profits. Nobody took any dividends from the Company. Members of family, requiring money, drew on the father's account in the Co.

Besides above properties of company, the father had given properties to others -

(1) the plaintiff (2nd wife) was given a rubber estate in 1938 transferred to her by Yew Hun Eng; he also had given to her a house in Singapore;

30 (2) 1st wife in 1938 was also given a house in Kluang, the one she then occupied and still occupies.

(3) The 1st son (Ooi Gee) an adopted son of 1st wife, had 6 acres of land, including the 6 shares, in Johore Lumbering Co. Ltd.

(4) The next son, Ooi Chim (P.W.3), was given 3 houses in Kluang.

(5) Then the 2 defendants, each having  $\frac{1}{2}$  share in oil palm land plus the 6 shares.

40 (6) Ooi Jin (2nd Defendant) had in

In the Federal  
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Malaysia  
(Appellate  
Jurisdiction)

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3rd and 4th  
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(Contd.)

addition 5 pieces of padi land.  
The plaintiff relied on the document  
on p.119 of the record, dated 29.6.1940.  
It was P.W.3 (Ooi Chim) who drafted this  
agreement.

Azmi J. (at p. 95) accepted evidence  
of plaintiff, her husband and eldest son  
(P.W.3) as stated on p.95, E4.

Submit: plaintiff's own evidence was so  
unreliable that she should not have  
been believed. Her husband in fact was  
the boss of all the enterprises. 10

- p.23 D3 - (in fact Yew Hun Eng died  
in 1945)

- p.28 (XXN. by L.A.J. Smith) reLim Phien.

- p.30 D - O.C.B.C. moneys taken by  
husband, how he spent, "ask him".  
- note the \$600 - where it came from.

But from start, husband restored his  
fortune by borrowing \$13,000 from  
Oversea-Chinese Banking Corpn., Penang. 20

(N.B. she did not refer to the mortgage  
and reconveyance - see p.180 - mortgage  
by Yew Hun Eng to Bank on 2.1.34 - one  
year before Yew Hun Eng went to Kluang.  
- amount of loan \$10,000 (p.181 E)

- Yew Hun Eng required money for his  
father's estate; deceased died in  
1930.

- nobody had alleged any breach of trust  
by Yew Hun Eng. Next loan appears on  
p.188 - 29.4.1935 for \$3,000. 30

That was how estate came to owe  
\$13,000.

Interest started mounting; Yew Hun  
Eng got Quah Hong Chiam (plaintiff's  
husband) to pay such interest.

Arrangement was, if Quah Hong Chiam

paid off the debt, Estate would transfer the properties mortgaged to him.

Fulfilment by indenture on p.198 on 12.5.1941.

Now, see p.203, for indenture dated 28.2.56.

10 (Yew Hone Whye & Yew Eng Thoon being administrators in succession to Yew Hun Eng) - see last para on p. 204 - reconveyance for \$18,000 paid by administrators to Quah Hong Chiam.

Submit - this 1956 document shows that Yew Hun Eng borrowed the \$13,000 for the Estate, and not for the plaintiff or her husband's purposes.

Had Yew Hun Eng given \$13,000 to his sister, why should administrators pay again to Quah Hong Chiam the \$10,000 capital plus \$8,000 interest.

20 Hence, plaintiff's evidence is flatly contradicted by these documents - and she could not have had any part of the \$13,000

See p.24C of Plaintiff's evidence et seq.

P.25 - "Yew Hun Eng approached the defendants .....I did not intend gift." cf. "I came to know from people etc. (p.27). Brother never consulted me.

30 Submit the Plaintiff must prove that defendant had notice of the trust; and further, that there was in fact such a trust and not a gift. Hence P.119 is important.

Submit by reason of Clause 2 - all properties not returned to her were no longer hers.

She (or Quah Hong Chiam) caused the transfer to be made to her sons because the property was no longer hers.

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Can she give any evidence contrary to  
s.92 of Evidence Ordinance.

Can anyone infer subsistence of a trust  
after what was stated in Clause 2.

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Father's evidence - p.31 et. seq.

Submit - plaintiff's ignorance not a  
good reason for transfer to the defendants -  
why not in Quah Hong Chiam's own name? He  
had been discharged from bankruptcy 2 years  
earlier - 1938.

10

P.47 - "wife who told Yew Hun Eng to  
transfer to defendants".

See p.55 B3 - (Plaintiff tried to get back  
the lands 10 years ago).

Submit - truth lies in 1st Defendant's  
version - p.69 C.

For form of transfer - see p.121.

L.M. Ong: only E.M.R. & leases require  
acceptance by transferee.

For Judge's view: see p.94, F3

20

p.33 - A - for Quah Hong Chiam's version -  
"I told them to look after etc."

Submit - this is not good enough - what  
happened was that Quah Hong Chiam changed  
his mind later, as land had gone up in  
value.

P.W.3 supported P.W.2 as regards Income  
tax returns - which were in name of  
defendants - but paid for by Johore  
Lumbering Co.

30

Did Quah Hong Chiam not intend the  
disposition to be in lieu of testamentary  
ones?

Was there not a scheme prior to death -  
rather than trust?

Defendants admit they are still maintained by their father.

Quah Hong Chiam was lying re the \$13,000.

Marshall v. Crutwell, L.R. 20 Eq. 328 & 330.

Was the arrangement in the instance case made even for reasons of convenience?

What was the motive?

10 Submit - Donee can do what he likes with his income, including giving it back - his interest being in the corporations only.

In re Harrison, 90 L.J. Ch. 186, 189  
Haji Abdullah's case, (1949) M.L.J. 12

As to control of property

See Young v. Sealey, (1949) Ch.278 @ 288 (Romer)

P.95 E "idea in the family"

Standing v. Bowring, 31 Ch. D. 282

20 (Transfer of property to a person without his knowledge, effect of).

Strong support in Quah Hong Chiam's evidence at p.50 C

13.1.38 - 1021 acres for \$600 (then forest land)

Planting had only been done when transfer was made to these defendants.

1940, value then for transfer stamping purposes \$36,000.

30 Title deeds retained by 1st defendant's mother (who resides in Kluang) - (1st defendants evidence not challenged on this point).

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Warren v. Gurney, (1944) 2 A.E.R. 472

Shephard v. Cartwright, (1955) A.C. 431

Advancement - presumption of gift etc.  
@ 445, 447 (top)

Lord Reid @ p.456 on Income Tax.

12.50 p.m. to 2.30 p.m.

Resumed at 2.30 p.m.

Lim: (continuing):

See pp.161 and 163

p.161 is E.M.R. 112

p.163 is E.M.R. 114

- both still in name of Yew Hun Eng

- no claim against Yew Hun Eng or his  
Estate

2 points of law argued in court below:

Presumption of advancement -

- submit it applies

- question is whether donor is in loco  
parentis to donee

Sayre v. Hughes, L.R. 5 Eq. C. 376

- (see head-note and p.381)

Bennet v. Bennet, 10 Ch. D. 474, (Contra)  
@ 479 - 480

Underhill (11th Ed). p.192

"Moral presumption of an intention."

Submit - facts of this case support  
presumption of advancement.

Fowkes v. Pascoe, 10 Ch. App. 343

The Judge did not deal at all with the question whether the presumption did arise.

In the Federal Court of Malaysia (Appellate Jurisdiction)

Dharmaratna v. Dharmaratna (1939) M.L.J. 310, 311

Even if no presumption arises, there was in any event, ample evidence of intention to make a gift.

Further:

- 10 Johore s. 29(a) - same as s.42 Land Code (s.29(a) came into force by Ord. 3/41)  
Re: indefeasibility of title of regd. proprietor.

Para 3 of Statement of Claim - transfer for no consideration - resulting trust?

TSANG Chuen v. Li Po Kwai (1932) A.C. 715, 728

- 20 If money advanced - a resulting trust may arise - but no consideration is different from a purchaser paying money and taking transfer in name of another.

Position of both defendants must be separately dealt with. 1st Defendant had no notice whatsoever of any trust - 2nd defendant admitted he knew Yew Hun Eng refused to transfer.

Summarising -

- p.119 - document is conclusive - that by June 1940 there was no subsisting trust.
- 30 P.W.3 said - while father was bankrupt he did everything in name of nominees.
- Plaintiff's discharge was in 1938 - what need to transfer to the defendants and not to Quah Hong Chiam himself?
- She "(plaintiff)" knew only from people of the transfer to defendants.

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The \$13,000 was borrowed 1 year before Yew Hun Eng came to Kluang - hence not for revival of Quah Hong Chiam's businesses.

From the judgment it was difficult to tell what the Judge thought except that as Yew Hun Eng held properties on trust, the defendants must similarly hold same on trust.

Judgment placed much weight on the \$13,000 quite wrongly.

10

Smith: (3.35 p.m.)

Plaintiff and husband were about 80 years old when giving evidence - were XXD at length - naturally, then, slight discrepancies arose - Court accepted their evidence and P.W. 3's. True, no mention made in judgment of presumption of advancement.

The authorities cited on advancement make it clear he must have had it in mind.

20

See para 3 of Statement of Claim - which was pleaded as distinct from para 2.

When property conveyed for no consideration there is a resulting trust.

38 Hals. 867 (para 1461).

The Venture, L.R. (1908) P.218 @ 229  
Farwell J.

Consider the Presumption:

30

- (1) 1st Defendant - a stepson - own mother alive - submit no presumption can arise so far as he is concerned.

Todd v. Moorhouse, 19 Eq. Cases 69 @ 71

- (2) Commonsense - why having 15 children of her own - she would give  $\frac{1}{2}$  share to a stepson?

- (3) Ample evidence to rebut the presumption - on the facts - large sum required to develop - no evidence the defendants had enough assets to undertake the liability - Financing was by the Limited Co. -

In the Federal Court of Malaysia (Appellate Jurisdiction)

The Rehabilitation loan helped.

At all times land was under control of the Co.

In 1940 - there were odd assets -

10 Main assets being -

- (1) Sawmills & Brickworks, in the name of 2nd son & Ooi Chim - (see p.46) which were duly transferred by them to the Co.

20 (2) The oil palm lands in name of 2 sons, the defendants. Oil palm estate not yet bought into bearing - hence no transfer back to Company - the moment was not right or opportune or convenient for retransfer.

3 houses (see p.34 top) P.W.3 himself makes statement against own interest.

Possession of title deeds - though not conclusive - plaintiff's evidence (page 25 F, 33 D) cf. p. 69 C 1st deft., and p.82 F 2nd defendant.

Neither defendant had titles since 1948 - date of quarrel (p. 82 F and p. 72 A)

30 Another contributory point against presumption - Does father of great number of sons give to select 2? Strength of presumption reduced.

Pole v Pole, 27 E.R. 901, 902

When Company was formed, the father distributed shares to sons equally - this was after date of transfer to defendants - father treated all equally.

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Why our 1,000 acres to the 2 defendants only.

Reason for using their 2 names - at the time only 3 adult sons - 2 defendants and P.W.3.

P.W.3 held title to Sawmill & Brickworks.

Defts. held title to Oil Palm Estate.

True, income tax on oil palm estate treated as defendant's income, but money to pay came from the Co.

10

See p.71.

p. 144 et seq. 146, 147

Counsel are agreed that from the time Income tax came into force - Income tax in respect of income from oil palm land had always been assessed on defendants, but the money to pay tax came from the Co.

Vis-a-vis the outside world these 2 defendants were and are the owners.

These 2 defendants were Managing director and Director of the Limited Co. - yet there was nothing in the books to say they were the owners. They could have done so with perfect safety. (p.82)

20

4.30 p.m. Adjourned to 4.10.65.

Monday, 4th October 1965: (resumed)

Smith (continuing) - Lim has a word to say.

Lim - re Johore Land Enactment.

s. 65 (unregistered instrument invalid) -

same as original s.59 of 1910 Enactment.

30

Quah Hong Lian Neo v. Seog Teong Teck, (1936) M.L.J. 203.

See headnote - (see p.209 for s.59 of

1910 Enactment).

Innes Reports - p.106 - Chang Lin v. Chong Swee Sang

Innes 95, 106 - "indefeasible owner"

(Smith - I am not asserting a right in rem).

Smith - s. 65 only applies to instruments  
- but plaintiff not relying on unregistered instrument.  
- relying, rather, on equitable rights.  
- caveat had been lodged.  
- now acting under s.71  
- caveat to preserve equitable interests.

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10

S.K. Das. Torrens system in Malaya, p.294, 298

Abigail v. Lapin, (1934) A.C. 491, 501

Returning to the point where it was left yesterday:

20

unlikelyhood of gift of such large piece of land, to two sons, among a large number of children.

The funds to develop and maintain this land came from the Company.

Neither plaintiff nor Quah Hong Chiam anticipated getting Rehabilitation loan.

Until then funds used came from the Co. consisting of brothers, sisters etc.

If gift suggested, how could it be in the circumstances?

30

p. 71 - 1st Defendant's acknowledgment that he had personally contributed nothing towards the estate.

p. 78 - "I started cultivating oil palm estate in about 1939".

Another point:

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p.55 B - they never claimed lands as  
given to them.

Adjourned at 10.45 a.m.

Resumed at 2.30 p.m.

Counsel as before.

Smith:

p. 69 C - 1st defendant said "I first  
came to know etc."

Neither plaintiff nor Quah Hong Chiam  
was XXD. on this.

10

- refer Defence (p.16)

amended 1964 - paras 1 - 4 were as originally  
pleaded.

- para. 5 - gift suggested after 2 years.

Negotiations for return of the land  
since 10 years ago - despite that they  
never made entries in the books, nor  
asserted otherwise their ownership of  
the lands.

Plaintiff's case:

20

(1) Conveyance without consideration -  
resulting trust.

(2) Oral trust - as to which see Quah  
Hong Chiam at p.33 (1st 3 lines)

As to the \$13,000, mortgage recites  
borrowing for administration purposes -  
that, of course, was only ground on  
which the administrator could borrow.

Transfer of mortgage to Quah Hong Chiam  
shows he was concerned therein.

30

Otherwise, why get mixed up in it.

Plaintiff came from rich family -  
brother was administrator and he to help

sister, raised money to salvage properties from hands of Official Administrator.

An illiterate lady naturally would leave her affairs to her husband, and do what he told her, raise money from the father's estate to finance purchases; Yew Hun Eng was admittedly a nominee, and he executes the document of 29.6.1940 to regularise matters.

10 Azmi, J. held it was plaintiff's money which was used for purchase. She had money, jewellery - the only one with funds - or access to funds.

Submit - judgment below based on facts and good law.

Lim in reply

1. 38 Halsbury:

20 What if Yew Hun Eng was not a trustee after 29.6.40? The transfers being in November 1940.

2. Timber Co. was working the forest - for its own profit - no evidence that any money was spent before 1940.

3. Oil palm estate only became an asset after the war.

4. p. 82 - "no entry in books to indicate they belong to me."

But, Oil palm estate was in separate account - and see p.79

30 (Smith points out - p.35)

See Specific Relief Ord. - s. 3(c)

Johore Lumbering Co. Ltd. paid defendants' income tax - out of oil palm estate properties.

C.A.V. Sd: H. T. ONG

Certified true copy, Sd: B.E.Nettar  
(B.E.Nettar),  
Secretary to Judge, Federal Court,  
Kuala Lumpur

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NOTES OF ARGUMENT RECORDED BY  
ISMAIL KHAN, J.

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3rd October, 1965

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Notes of  
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Ismail Khan,  
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3rd and 4th  
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Mr. Lim Kean Chye for appellants

Mr. C.H. Smith, Mr. Leicester with him, for  
Respondent.

Motion:

Mr. Lim Kean Chye applied to add two  
further grounds. 10

Mr. C.H. Smith objects to words "for  
more than 20 years."

Mr. Lim Kean Chye agrees these words to  
be deleted.

Subject to deletion of such words, leave  
to add further grounds allowed.

Costs in any event to respondent.

Mr. Lim Kean Chye now deals with appeal.

See Statement of Claim, page 11,  
paragraph 2. 20

Defendants contend paragraph 2 shows  
plaintiff's claim is based on express trust.  
Defendants say no trust at all, but property  
was the father's. In 1940 father was no longer  
bankrupt. Part of scheme by father to dispose of  
his property.

In 1932 father made bankrupt. Had extensive  
business interests. Wanted to revive his business  
in Johore. Had two wives - first in Kluang, mother  
of first defendant; second in Singapore, who is the 30  
plaintiff, and had a son, second defendant. When  
father became bankrupt, he asked his brother to  
look after interests.

Plaintiff and Yew Hun Eng were administrators  
of deceased's father.

Yew Hun Eng came over in 1935 to Kluang and proceeded to buy properties of bankrupt from Official Assignee and among these were 3 pieces of land, subject of the suit.

In the Federal Court of Malaysia (Appellate Jurisdiction)

10 The plaintiff's case was that she had some money to buy 3 pieces of land. She says administrators of her father's estate raised \$13,000/- on mortgage from Overseas Chinese Bank of 3 houses in Penang. Plaintiff says she also had jewellery and cash. Bought 3 pieces for \$600/-, then jungle, in the name of Yew Hun Eng. When he became bankrupt in 1932, he borrowed \$3,000/- from the Bank in Singapore by getting his son to sign I.O.U. chits. He started sawmill. In 1935, the Johore Lumbering Company was formed, referred to by family as kongsi. It was running Kluang Sawmill, Kahang Sawmill. Johore Lumbering Company supervised oil palm estate on 3 pieces of land, subject of suit. Capital from Rehabilitation Board.

20 Jungle land, 3 pieces, started to be cleared in 1939. Johore Lumbering Company prospered by 1937. In 1941 Quah Hong Chiam no longer bankrupt. He formed Johore Lumber Company Ltd., and put assets of sawmill in this Johore Lumber Company Ltd. Johore Lumbering Company's assets were transferred to Johore Lumbering Company Ltd. Johore Lumbering Company ceased to do business. Gave shares in Johore Lumber Company Ltd. to members of his family.

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30 Old-fashioned family. Nobody took out any dividends, but each member took out his money from the Company. There were other properties which the father had given to members of the family.

40 In 1938 plaintiff was given a rubber estate and transferred, and plaintiff was given a house in Singapore. First wife was given a house in Kluang in 1938. Ooi Ghée had 6 acres of land in addition to his 6 shares. Ooi Chim (P.W.3) was given 3 houses in Kluang. The two defendants' half share in oil palm estate, and 6 shares and 5 pieces of padi land.

Plaintiff relied on document - page 119 of record - agreement dated 29.6.40. P.W.3 drew up this agreement. Judge said in his judgment - at page 95 - he accepted evidence of plaintiff, P.W.2 and P.W.3 that defendants held property in trust. See evidence of plaintiff - unreliable. Judge should

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not have accepted it. Plaintiff did not appear to know anything. See pages 23, 28 and 30. Plaintiff said husband revived fortune by borrowing \$13,000/- Makes no mention of mortgage and reconveyance which gives a different picture - page 180. This mortgage was in 1934, one year before Yew Hun Eng came to Kluang. Mortgage for \$10,000/- - page 181, recital at letter B. Money required for purposes of Yew Say Kheng's estate. Plaintiff did not allege breach of trust by Yew Hun Eng and did not challenge recital.

Next loan - page 188 - made on 29.4.35 for \$3,000/-.

Between 1934 and 1941 interest mounting and paid by P.W.2. If P.W.2 paid debt the property would be transferred to him - See page 198, but see indenture 28.2.56 at page 203. Yew Hong Whye and Yew Eng Thoon now administrators of Yew Say Kheng's estate - page 204. This shows in 1935 plaintiff and her husband never got \$13,000/-, but Yew Hun Eng borrowed money for estate - see plaintiff's evidence at page 24, page 27. This has bearing on plaintiff's statement of claim that lands held on trust by defendants. Plaintiff must prove defendants had notice of trust and there was a trust and not a gift. Agreement important - page 119. Says all properties had been returned to her. In November, 1940, Yew Hun Eng transferred to two defendants - pages 31, 47, 55.

Truth in first defendant's version - page 69.

P.W. 2's evidence - page 33. This is not enough to support claim. P.W.2 had changed his mind after appreciation in value of land. P.W.2 supports second defendant in respect of income tax. Question is, is this part a scheme for distribution of property to the beneficiaries on transfer to defendants subject to a trust?

(1875) 20 Equity, 328, 330.

If transfer to two defendants was for convenience, why pick on the two defendants?

See In Re Harrison, 90 L.J. Chancery 186.

Haji Abdullah, 1949 M.L.J. 12.

Young v. Sealey, 1949 Ch. 278.

See page 95 E of record. Not supported by P.W.2 or any evidence.

Standing v. Bowring, 31 Ch. D. 282.

See page 50 of record. Suggest other properties were also given by way of distribution. Each could be drawn upon accounts in company's books.

10 Title deeds of 3 pieces of land with first defendant's mother in Kluang. See first defendant's evidence.

Warren's Case (1944) 2 A.E.R. 472.

Shephard v. Cartwright, 1955 A.C. 431, 456.

Adjourned to 2.15 p.m.

I.K.

2.30 p.m.

As before.

20 Page 161, 1963. Lands mentioned therein still in name of Yew Hun Eng. No attempt made to claim these lands from Yew Hun Eng. Clear they were given to him.

Question, is donor in position of loco parentis?

Doctrine of advancement applies.

Sayre v. Hughes, 1868 L.R. 5 Equity 376, 381.

Bennet v Bennet (1879) 10 Ch. D. 474, 480.

30 Underhill on Trust, 11th Ed. p. 192.

If plaintiff left everything to her

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husband to decide, cannot it be presumed his motive was to benefit the two sons? Judge did not deal with the question of presumption of advancement.

Dharmaratna's Case, 1939 M.L.J. 311.

Even if no presumption of advancement, ample evidence in favour of gift to defendants.

Another presumption of good title - section 29A, Johore Land Enactment.

(Mr. C. H. Smith says this section came into force after execution of transfer to defendants). 10

Plaintiff cannot use alternative argument because of no consideration there is resulting trust.

Tsang Chuen v. Li Po Kwai, 1932 A.C. 715, 728.

Judge treated two defendants as one person. Evidence is different in each case.

First defendant had no notice of trust. Document at page 119 is conclusive. Transfer to defendants not affected by it. 20

When discharged, P.W. 2 did things in name of nominee but he did so after discharge.

Nothing to show if Judge decided that then defendants had notice of trust or that there was a resulting trust.

Judge influenced by \$13,000/- loan. Judge forgot clause 2 of document - page 119.

I.K.

Mr. C. H. Smith:

Plaintiff and husband when giving evidence about 80 Years old. Cross-examined at considerable length, so discrepancies possible. Court, however, accepted evidence and those who gave evidence on their behalf. Admit no mention of presumption in judgment. Presumption was before Judge and authorities cited to him. 30

It is said we have not proved paragraph 2 of Statement of Claim, but see paragraph 3. If gift, no question of consideration.

Halsbury, 3rd Ed., Vol. 38, page 607, paragraph 1461. Transfer into another's name.

The Venture, L.R. 1908, Probate, p.118.

First defendant's mother living no presumption of any gift.

10 71. Todd v. Moorhouse, 19 Equity Cases, p. 69,

Plaintiff with 15 children of her own. Why must she give to first defendant?

Ample evidence to rebut presumption in favour of second defendant.

One thousand acres of land to develop on oil palm estate. Nothing to show second defendant had undertaken such liability. This could be undertaken by a company. This was what happened. Loan obtained and whole time under control of company.

20 Two main assets:-

(1) land for oil palm;

(2) sawmill and brickworks in name of P.W.3, second son Ooi Chim, and these transferred to company.

Oil palm estate not transferred as land not developed. Loan had to be obtained. Time not ripe for transfer.

30 Possession of deeds not conclusive. Evidence on this differs - see evidence of plaintiff (page 25); evidence of P.W.2 (page 33); evidence of D.W.1 (page 69); evidence of D.W.2 (page 82) which contradicts D.W.1.

From 1948 onwards neither defendant had title - see page 72.

Against presumption, if father has many children and transferred property to one or two - see Vol. 27 English Reports, 901, 902.

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When Company formed, distributed shares among sons, daughters and relatives. This after transfer to defendants of nearly 1,000 acres.

Reason for putting property in name of sons. At that time only two adult sons.

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Father was old. Return to be made in respect of lands, convenient to be in defendants' names.

Income treated as defendants' income  
Money did not come from defendants to pay income tax but from Company. This is not included in their income tax - see Page 71 F; page 144, 146. 10

From beginning income tax in respect of income from oil palm land has always been assessed on defendants but money for its payment had come from the Company.

To the outside world the defendants were owners of the land. The two defendants were managing directors of the Company, but nothing in the books of Company to show they were owners - see page 82. 20

Adjourned to tomorrow at 10 a.m.

I.K.

4th October 1965

As before.

At this stage Mr. Lim Kean Chye, with the consent of Mr. C.H. Smith, applies to make further submissions on section 65 of the Johore Land Enactment.

Section 65 of the Johore Land Enactment says land shall pass subject to fraud. Section 65 same as section 59 of 1910 Enactment. 30

1936 M.L.J. 203, 209.

Innes Report, p.106.

Mr. C.H. Smith resumes his submission.

Section 65 applies only to instruments.  
We are not relying on unregistered instruments.  
Our claim is based on equity. We have filed a  
caveat - section 71 of Johore Land Enactment.  
Effect of caveat is to preserve equitable interest.

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Das on Torrens System, p.294, 298.

Abigail v. Lapin, 1934 A.C. 491, 501.

Unlikely there would be gift of 1,000  
acres to two sons.

10

Money needed to develop land only in  
1946. Loan for rehabilitation applied for.  
Before loan applied for money for development was  
paid out of funds of Company which belong to  
brothers and sisters of two defendants. Two  
defendants paid nothing for development - see  
page 71, page 78 B.

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Notes of  
Argument  
of Ismail  
Khan, J.  
3rd and 4th  
October 1965  
(Contd.)

Estate in cultivation in 1939. Page 55 B.

I.K.

C. A. C.

20

Certified true copy

Sd. Illegible

Secretary to Judge,

High Court,

Seremban

11.8.66.

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

No. 25  
JUDGMENT OF THOMSON, LORD PRESIDENT,  
MALAYSIA

No. 25  
Judgment of  
Thomson,  
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15th May 1966

This is an appeal in an action of which the subject matter is three pieces of land amounting to a little over 1,000 acres comprised in Johore Land Grants Nos. 17,933, 17,934 and 17,935 which I shall call the oil palm land.

The Plaintiff is the second wife of one Quah Hong Chiam. The defendants are her step son, the son of Quah Hong Chiam by his first wife Lim Phen, and her own son by Quah Hong Chiam and they are the registered proprietors of the land in question. 10

The plaintiff claimed that the defendants held this land as trustees for her and are not the beneficial owners and she asked for a declaration to that effect and for consequential relief. As originally pleaded the defence was a denial of the plaintiff's claim but at the commencement of the trial, some eighteen months after the issue of the writ, this was amended to include averments that the land was given to the defendants by the plaintiff's husband either for himself or with the knowledge and consent of the plaintiff. Alternatively if it was given to them in trust this was done with a view to fraudulent avoidance of the law relating to death duty and income tax. 20

In the event Azmi, J., gave judgment for the plaintiff as prayed and against that judgment the defendants have now appealed. 30

The story is a confused one and none the easier to elucidate because the witnesses are speaking of events that occurred some twenty-five years ago and that one Yew Hun Eng who would have been probably the most important witness died some twenty years ago. Certain facts, however, are admitted and others are no longer in controversy.

Some time prior to 1932, and certainly from as early as 1917, the plaintiff's husband, Quah Hong Chiam, who like herself is now over eighty, was carrying on business in the timber trade and acquiring interests in land in the State of Johore. He was also, it would appear, carrying 40

on some sort of business in Singapore which was at that time part of the Colony of the Straits Settlements.

In 1932 he became bankrupt, receiving and adjudication orders being made by the High Court of the Straits Settlements on 25th November, 1932.

10 We are not concerned with Quah Hong Chiam's business in Singapore, but after the bankruptcy his timber business in Johore was carried on by the plaintiff and one Yew Hun Eng, who was her brother and the administrator of the estate of her deceased father, under the name of the Johore Lumbering Company. The principal business would appear to have been felling and selling timber growing on the oil palm land in respect of which prior to his bankruptcy Quah Hong Chiam had some sort of occupation rights.

20 On 2nd January, 1934, Yew Hun Eng borrowed \$10,000 from a Bank in Penang giving by way of security a mortgage on some houses in Penang the property of the estate of the plaintiff's deceased father, and this money was used for the purposes of the Johore Lumbering Company and on 29th April, 1935, he borrowed a further sum of \$3,000 on the same security which was used for the same purposes. These loans were ultimately repaid in full out of the funds of the Company. Then on 24th August, 1935, Yew Hun Eng entered into an agreement with the  
30 Official Assignee in the Straits Settlements who granted him an irrevocable power of attorney. This agreement is not in evidence but it would appear to have been an agreement for the sale of the oil palm land which at that time was still State land.

40 Then on 1st October, 1937, Quah Hong Chiam was granted his discharge in bankruptcy suspended for a year and on 17th October, 1937, Grants of the oil palm land in his name were obtained from the State of Johore. The total consideration as expressed in the Grants was \$3,055 and I think we are entitled from our own knowledge of the local land laws to say that this money must have been paid to the State by somebody and that there could have been no question of a notional consideration being expressed for the assessment of stamp duty. The quit rents for the first year amounted to about \$500, a fact which may explain certain

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discrepancies in the evidence. On 27th December Quah Hong Chiam transferred the land to the Official Assignee and on 13th January, 1938, Yew Hun Eng as attorney of the Official Assignee under the power of 24th August, 1935, transferred the land to himself.

On 1st October, 1938, Quah Hong Chiam's discharge in bankruptcy became effective and the following year cultivation of oil palms was commenced on the oil palm land which had by this time been cleared of timber.

10

Some time in 1940 Yew Hun Eng returned to Penang where he died on 17th November, 1944. But on 29th June, 1940, before he left Johore he and the plaintiff executed an agreement. That recited that Yew Hun Eng owed the plaintiff \$6,000 being money which she had since 1934 paid to the Bank in Penang by way of interest on the money Yew Hun Eng had borrowed on mortgage. It then recorded that:-

20

"It is hereby agreed that

1. All businesses of Yew Hun Eng in Kluang and Singapore, the purchases of properties, etc. in the said places were all undertaken on Yew Phaik Hoon's behalf.
2. All these are now vested and returned to Yew Phaik Hoon in a satisfactory manner."

A few months later, on 9th November, 1940, Yew Hun Eng executed a transfer of the oil palm land in favour of the defendants. The consideration expressed in the transfer was \$36,000 but it is admitted that this was for purposes of stamp duty and no money was paid. The transfer was registered but the documents of title, and this is admitted by the defendants, in some way came into the possession of the plaintiff who retained them. And there is no evidence that they have at any time been in the possession of either of the defendants.

30

In addition to the oil palm land the properties controlled by Quah Hong Chiam include a sawmill elsewhere, a rubber estate which was ostensibly owned by the plaintiff, a brickworks and some houses. And of course there was still

40

the timber business although the oil palm land, after it had been cleared of timber and planted with oil palms, was less intimately connected with the timber business.

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10 Some time in May, 1941, a limited liability company called the Johore Lumbering Company was formed to deal with these various undertakings. In this there were 96 shares which were distributed amongst the family. Quah Hong Chiam held 24 shares, the plaintiff and the first wife held 12 shares each, seven of his eight sons, including the first defendant held 7 shares each, the second defendant, his other son, who had contributed some money of his own, held 10 shares, the remaining shares were held by other relatives and clansmen.

20 After the incorporation of the Company all payments in respect of the oil palm land were made by the Company and all the income from it was received by the Company. The actual management was in the hands of the two defendants but they drew remuneration from the Company and income tax in respect of the oil palm land revenue was paid by the Company although it was declared to the Inlands Revenue as the income of the defendants. From 1948 till 1957 the oil palm land was charged to the Industrial Rehabilitation Finance Board to secure a loan of \$100,000 of which half was used for the purposes of the Company and half remained in the Bank and it is significant that when this loan was repaid and the charge to the Board discharged there is no evidence of the defendants having attempted to secure the return to themselves of the title deeds of the land.

30 It is not clear just when differences arose between the parties but on 11th December, 1959, the defendants registered the "business carried on under the name Gim Tien Oil Palm Estate" and the writ in the present proceedings was issued on 5th November, 1962.

40 At this stage it will be desirable to pass from the facts of the case that appear to be tolerably clear from the documentary evidence to the more controversial parol evidence that was given as to the transfer of the oil palm land to the defendants, a transfer which of course made them registered proprietors with an indefeasible title by reason of the provisions of the Johore Land Enactment.

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The plaintiff, an illiterate blind woman now over eighty years of age, very candidly admitted that she did not know or did not remember very much about the business and that everything had been arranged by her husband, Quah Hong Chiam, and her brother, Yew Hun Eng.

Money was borrowed from the Bank in Penang on her behalf by Yew Hun Eng who was the administrator of her deceased father's estate but the arranging was done by her husband. Before the war she owned the Johore Lumbering Company but she did not know if her husband had a share in it. Before the war she purchased land including the oil palm land. She gave her brother money to buy the land and he bought it from the Official Assignee. The land was originally jungle but eventually it was planted with oil palms the money for this coming from the Johore Lumbering Company. Before her brother returned to Penang he appointed the two defendants to look after the oil palm estate that was then coming into existence as such and which she regarded as her property. She did not intend to give the land to the defendants as a gift. Why should she do so, she had other children and in any event the first defendant was only a step-son? She did not at any time authorise her husband to give the oil palm land to the defendants, and nobody told her the land had been transferred to them. She first knew about the present proceedings in 1962. She was cross-examined at length but though she was clearly reduced to a state of confusion and it became very clear that her recollection of the events of which she spoke was very imperfect and that throughout she had been content to leave the management of all business matters to her husband and her brother, nevertheless she insisted to the end that her husband used the money borrowed by her brother on the security of her father's estate for the purposes of the family business and that the oil palm land was bought with what she regarded as her money.

Quah Hong Chiam, himself 81 years of age, said that he "owned" the oil palm land before he was made bankrupt. By "owned" he clearly meant that he had some sort of occupation rights. After he became bankrupt the land was bought by the

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10 plaintiff's brother out of money he had borrowed  
as administrator on the security of the plaintiff's  
father's estate. Later when Yew Hun Eng returned  
to Penang the land was transferred to the  
defendants because they were to look after it.  
The land was cultivated by the Johore Lumbering  
Company and most of the cultivation was done after  
the War, that is after the Company had been  
incorporated. There was no reason why he should  
10 give the land to the defendants, after all he had  
six other sons and all his sons including the  
defendants were shareholders in the Company. The  
land was not transferred to the plaintiff because  
she was a woman and "did not know the affairs of  
the jungle". After the War a loan of \$50,000 was  
raised on the land and this money was paid into the  
account of the Company which spent the money and  
kept the profits. The Company paid the quit rents  
on the land and income tax on the profits and he  
20 himself prepared the income tax returns.

This evidence was not materially shaken  
in cross-examination. The main additional fact  
elicited was that at all material times the actual  
management of the oil palm land had been in the  
hands of the defendants. But the witness adhered  
to his position that the profits of the oil palm  
land were at all times treated as profits of the  
Company.

30 The other witness for the plaintiff was  
Quah Ooi Chim, her son by Quah Hong Chiam, who had  
been secretary of the Johore Lumbering Company  
since its incorporation and who had previously  
managed it during his father's bankruptcy during  
which time he regarded it as the business of his  
mother. His evidence supported that of his father  
and mother. The money to purchase the oil palm land  
was provided out of the money borrowed from the Bank  
in Penang and by his mother out of her savings. He  
himself was the registered proprietor of some land  
40 in Kluang but he did not regard it as his own  
property but that of the Company. The oil palm  
land was put in the names of the defendants because  
they were managing it and the younger brothers were  
still at school. At no time had the defendants  
received any profit as such from the oil palm land  
though they had been maintained by the Company nor  
had they paid any quit rents as assessment in  
respect of it.

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Both the defendants gave evidence.

The first defendant said he and the second defendant were the proprietors of the oil palm land and there was no trust of any sort. His father had some sort of occupation rights in the land before his bankruptcy. Then during the bankruptcy the land was purchased from the State in his own name by Yew Hun Eng in whose name his father was carrying on business. After his discharge his father transferred the land to himself and the second defendant. His father told him he had done so while they were travelling in a car. He understood that his father was giving him the land because he was experienced in cultivation and when his father died he would have to look after it and maintain an aged grandmother. He knew about the loan from the Industrial Rehabilitation Finance Board for which he had signed the application at his father's request. It was actually \$100,000 but of this \$50,000 remained in the Bank and was never used. The balance of \$50,000 was given by him to the Johore Lumbering Company whom he regarded as agents for the Gim Thien Oil Palm Estate (the business name which he and the second defendant later registered) and was ultimately repaid by the Company to the Board. He personally had never contributed anything to the Lumbering Company and he had paid nothing for the shares he received when it was incorporated. He had not received any of the profits from the oil palm estate but he had been maintained by the Company and the Company had paid his income tax though he had been assessed in his own name.

The evidence of the second defendant was similar. During the bankruptcy his father had carried on business in the names of a number of people including himself. During that period his uncle Yew Hun Eng came from Penang and managed his father's sawmill at Kahang and while doing so bought a number of pieces of land including the oil palm land with money provided by his father. He himself did most of the work of managing the Johore Lumbering Company and he started cultivating oil palms on the oil palm land in 1939. In 1940 his father asked Yew Hun Eng to transfer the oil palm land to the first defendant and himself. His father had told him he was worried about the oil palm land as it was still in Yew Hun Eng's

name and the latter did not wish to transfer it. His father said he wished to transfer the oil palm land to the first defendant and himself as he had already given three houses to their brother Quah Ooi Chim.

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10 When the Johore Lumbering Company was incorporated all the family were given shares in it. It became the agent for the oil palm estate. It collected the receipts from the sales of oil and paid all wages and credited the oil palm estate with rent. The loan from the Industrial Rehabilitation Finance Board was paid to the Company and the repayment was debited to the oil palm estate.

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Before departing from the evidence two observations fall to be made.

20 There was a great deal of evidence, of which it has not been considered necessary to dissect the details but which was never really denied, that from time to time pieces of land were acquired during Quah Hong Chiam's business career which would appear to have been regarded as family property but which were registered in the names of individual members of the family. Some houses were registered in the name of Quah Ooi Chim, some rubber land was registered in the name of the plaintiff, some town land was registered in the name of Quah Hong Chiam's principal wife Lim Phen.

30 Then there were various references in the evidence as to the way various matters were dealt with in the accounts of the Johore Lumbering Company both before and after its incorporation. But although two books of account were put in evidence no attempt was made by counsel on either side to draw their contents to the attention of the trial Judge or to base any argument on their contents. In the circumstances the Judge, in my view wisely, refrained from examining their contents and for myself I have followed his example. Nothing would be more likely to produce wrong results than for a Judge to embark on a private examination of a set of commercial books without assistance. 40 The books were there and witnesses who said that certain matters were treated in certain ways should have been invited to indicate the particular entries which they considered supported what they had said.

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Azmi, J. dealt with the case in a long and careful judgment. He considered the evidence in some detail and said:-

"I find from the evidence as a whole that so far as dealings with Government Departments were concerned, the property in dispute had been regarded as that of the registered owners, but on the other hand none of the Defendants enjoyed the income as their own separate income until the dispute arose about this property, and all the debts due to the Government, for example income tax, were paid out from a common fund of the family."

10

He then went on:-

"in so far as the oil palm estate is concerned, I hold the view on the evidence before me that it was bought from the Official Assignee by Yew Hun Eng on behalf of the Plaintiff, and Yew Hun Eng, therefore, held the land merely as trustee for the Plaintiff. He continued to look after the land until he decided to return to Penang. Because Yew Hun Eng was to look after the property the land was registered in his name. There seemed to be an idea in the family that the land must be registered in the land office in the name of whoever was to look after the property. On the facts of the case, therefore, I accept the evidence of the Plaintiff, her husband and her eldest son that when this property was transferred to the two Defendants after the departure of Yew Hun Eng to Penang, the two Defendants were to hold the property in trust for her."

20

30

He then proceeded to find that even if the object of the transaction was to effect some sort of fraud on the Government in connection with death duty that fraudulent purpose had not yet been carried out, all the parties being still alive, but that in any case there was never any intention to effect any fraud in connection with either death duty or income tax. And with regard to income tax I would pause here to observe that it is difficult to understand why that particular hare was ever raised

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in view of the fact that income tax was unknown in this country before 1947. Since that date it is impossible to say whether or not the income tax has been defrauded but nothing of the sort could have been contemplated in 1940.

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Coming to my own views of the case I would make the preliminary observation that here we encounter the recurring difficulty of applying an alien system of law to the affairs of people who through ignorance of its nature conduct their affairs in disregard of it. In particular they regard a "business" as something having a legal existence of its own, irrespective of whether its assets are in the eyes of our law owned by an individual or jointly by partners or by a limited liability company. When things go well, and they generally do go well, no harm is done but when disputes arise and they have recourse to the Courts the difficulties of ascertaining the rights of individuals can become formidable.

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Apart from the legal framework of the present proceedings it is clear that it is the basic position of the plaintiff and her husband that everything connected with the various enterprises in which they are concerned belongs to their family, that Quah Hong Chiam as head of the family has the final say in dealing with these enterprises and everything connected with them and that the defendants are trying to obtain more than their fair share of the family property, and to acquire it prematurely. The real question to be decided is whether or not law and equity as we know them as applied to such facts as emerge from the evidence produce results consonant with that attitude.

For myself I would attach little value to the evidence of the parties. It relates to events which occurred 25 years ago and is distorted by the ordinary frailty of memory and by family quarrels regarding which much has been hinted but little has been said. Moreover Yew Hun Eng whose evidence could have thrown much light on the matter has long since died.

It was the plaintiff's case that the land was bought by Yew Hun Eng in his name out of her savings and money borrowed on the assets of

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her father's estate of which she was a beneficiary. She left the entire management of her affairs to her husband and he transferred the land into the names of the defendants as a matter of convenience for the management of the family property. Why should any special provision have been made for the defendants when no special provision was made for the other members of a large family? It may be that her rights are not absolute, that is a matter which may arise in subsequent litigation, but on her view of the facts she is clearly entitled to a declaration as against the defendants that so far as the land is concerned they are bound by a trust in her favour, though of course there can be no question of any equitable rights in the land.

17

The defendants' case is that even if Yew Hun Eng held the land as a trustee for the mother the evidence made out that the father had the mother's authority to give it to them as a gift so as to provide for them when he was no longer able to control the family property. But in any event Yew Hun Eng held the land not as trustee for the mother but for the father and so they are entitled to pray in aid the presumption of advancement.

20

Here I would say that I am not overlooking the presumption that arise in the matter. Yew Hun Eng was himself affected by a trust and on the transfer by him to the defendants without consideration there was a presumption that in relation to it they were subject to a trust in favour of the person for whom Yew Hun Eng held it in trust. If that person was the plaintiff that presumption operated alone though of course if that person was her husband then the presumption of advancement operated per contra in favour of the defendants.

30

For myself I would say that the evidence is so nicely balanced as to entitle the defendants to succeed if it were not for three considerations which to my mind definitely swing the balance of probability in favour of the plaintiff.

40

In the first place, on the basis of credibility the trial Judge clearly preferred the evidence of the father and the mother to that of the defendants. In a case of this nature that may not be of paramount importance but still the

plaintiff is entitled to the benefit of it.

In the second place there is the significant fact that transfer to the defendants was before and not after the incorporation of the Johore Lumbering Company and yet the defendants were given the same share in that Company as the other sons for whom no special provision had been made.

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10 And in the third place there is the matter of the possession of the title deeds, the grants issued by the State of Johore.

20 There is no suggestion that those deeds have at any time been in the possession of either of the defendants though they must have been presented to the Land Office when transactions in relation to the land had to be registered. For many years they were in the possession of the plaintiff. Then they were kept with the papers of the Johore Lumbering Company at Kluang and they have been produced in the present case as the plaintiff's documents.

30 To my mind this is the circumstance to which considerable weight should be given. Scawin v. Scawin (1) was a case where a father had bought shares in the name of his son but had retained the share certificate. It was argued that the well-known presumption of the purchase by the father in the name of his son was a gift by way of advancement applied but Sir J.L. Knight Bruce, V.C., said (at p. 67):-

"The father may certainly, even in cases where the doctrine of advancement is held to take place, receive the title-deeds and the dividends; but although those circumstances may exist in such cases, yet they are circumstances in favour of the father, especially where the son is adult."

40 A hundred years later, in the case of Warren v. Gurney (2), the Court was concerned with a house which had been bought by a father in the name of his daughter but the title deeds of which had been retained by the father. Here, again, the question of advancement arose and Morton, L.J., said this (at p.473):-

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"The second contention put forward by  
counsel for the appellants was that, on the  
admissible evidence, the judge was not  
justified in coming to the conclusion that  
the defendants had rebutted the presumption  
of advancement. In my view, there was ample  
evidence to justify that conclusion of the  
judge. In the first place, there is the fact  
that the father retained the title deeds from  
the time of purchase to the time of his death.  
I think that is a very significant fact,  
because title deeds, as it was said in COKE  
ON LITTLETON, are 'sinews of the land'. One  
would have expected the father to have  
handed them over, either to the plaintiff  
or her husband, if he had intended the Gift".

10

In all the circumstances of the case I  
would dismiss the appeal.

Sd: J.B. Thomson  
LORD PRESIDENT  
FEDERAL COURT OF MALAYSIA

20

Johore Bahru  
15th May 1966

Lim Kean Chye Esq., (L.M. Ong Esq. with him)  
for Appellants.

C.H.Smith Esq. (N.N. Leicester Esq. with him) for  
Respondent.

(1) (1841) 1 Y. & C. Ch. C.65 (2) (1944) 2 A.E.R.472

TRUE COPY

Sd: Tneh Liang Peng  
(Tneh Liang Peng)  
Secretary to the Lord President  
Federal Court of Malaysia. 24/5

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No.26  
 JUDGMENT OF ONG, ACTING CHIEF  
 JUSTICE OF MALAYA

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In the Federal  
 Court of  
 Malaysia  
 (Appellate  
 Jurisdiction)

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 No.26  
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 Ong, Acting  
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The appellants are a stepson and one of the sons of the respondent and this appeal is against the decision of the High Court in Johore declaring that three pieces of land, registered in their names since November 18, 1940, were held by them as trustees for the respondent, and ordering  
 10 that they transfer the said lands to the respondent and pay the costs of the action. I shall refer to the respondent and the appellants hereafter as the plaintiff and first and second defendants respectively.

The plaintiff, Yew Phaik Hoon, is an illiterate woman and the wife of Quah Hong Chiam who owns considerable valuable property situated mainly in Singapore. They are both over 80 years old. Quah Hong Chiam has another wife, Lim Phien, who resides in  
 20 Kluang, Johore. By these two wives he has 8 sons and 7 daughters. The first defendant is the only natural son of Lim Phien (another being adopted) and the second defendant is the second son of Yew Phaik Hoon, the eldest being Quah Ooi Chim, a witness for the plaintiff.

The history of this case goes back over 30 years, when Quah Hong Chiam was doing business in a comparatively small way. Before he went bankrupt in 1932 he was already in possession, as  
 30 approved applicant, of three pieces of State land in Johore, containing a total area of 1021 acres 3 roods 20 poles, all of which was forest. To exploit this grant he was operating the Moh Seng Sawmill, in partnership with two kinsmen, since special conditions of the grant had required that all hardwood timber should be extracted by him before the jungle was burnt and the land used for cultivation of West African oil palm. This had since been fully  
 40 accomplished, with the result that the land is now a valuable oil palm estate.

Though bankrupt, Quah Hong Chiam had then a large family to support and he remained undischarged until 1938. Of course his business capabilities did not lay fallow in the meantime and he in fact resumed the lumber business with funds

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raised from a bank through his son, the second defendant. From the ashes, as it were, of Moh Seng rose, first, the Kluang Sawmill and the Kahang Sawmill, then the Johore Lumbering Co., and, about the same time also, a brickworks. Being unable to trade or carry on business in his own name, he had to do so through nominees. In all cases the nominee who lent his name was his brother-in-law, Yew Hun Eng, who was brought over to Johore from Penang in 1935. Yew Hun Eng was Yeoh Phaik Hoon's brother, who was administrator of their father's estate. He returned to Penang in 1940 - two years after Quah Hong Chiam was discharged from bankruptcy - and died in November 1944.

10

Soon after Yew Hun Eng came to Johore, he negotiated and bought over in his own name from the Official Assignee all the properties of the bankrupt. They included the lands to be cultivated with oil palm, for which the price paid was only \$600 under an agreement dated August 24, 1935. On March 27, 1938, the transfer of these lands from the Official Assignee was registered in the name of Yew Hun Eng, who, on November 9, 1940 executed a transfer thereof to these defendants for the consideration therein expressed of \$36,000. This transfer was registered on November 18, 1940, and the defendants are still on the register as proprietors.

20

In her statement of claim the plaintiff stated that Yew Hun Eng held the said lands in trust for her, that he transferred them on November 9, 1940 at her request to the defendants, who have since held them as trustees, and that no consideration in fact passed from them to her, notwithstanding the recital of \$36,000 as having been paid.

30

In the further particulars delivered it was stated that the request to Yew Hun Eng was oral, that the alleged trust was created upon the acceptance by the defendants of the transfer of the property into their names and that the trust was oral and the request to them was made about the time of the transfer and before it was completed.

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By their defence the defendants admitted that no consideration passed from them to any person for the transfer, but they denied the alleged trust and claimed to be beneficial owners. They further denied that the transfer was made at the request of the plaintiff and contended that the property was given to them by Quah Hong Chiam as his own, or if not, it was knowingly treated as the property of Quah Hong Chiam by the plaintiff who agreed to the transfer. It was also further contended that the transfer was made as part of several dispositions of property to various members of the family of Quah Hong Chiam. Finally, there was a plea of illegality which, in my view, does not fall to be considered.

The trial Judge, on the evidence, found that "so far as dealings with Government Departments were concerned, the property in dispute had been regarded as that of the registered owners, but on the other hand none of the defendants enjoyed the income as their own separate income until the dispute arose about this property, and all the debts due to the Government, for example, income tax, were paid from a common fund of the family". After considering the evidence on both sides he came to the conclusion that Yew Hun Eng had bought the palm oil lands on behalf of the plaintiff and, therefore, held them as trustee for the plaintiff; that because Yew Hun Eng was to be in charge thereof the property was registered in his name; that "there seemed to be an idea in the family that the land must be registered in the land office in the name of whoever was to look after the property"; consequently, he accepted the evidence of the plaintiff, her husband and eldest son, Quah Ooi Chim, that when the property was transferred to the defendants after the departure of Yew Hun Eng to Penang, they were to hold the property in trust for her.

This decision, plainly, was based on the Judge's inferences from primary facts. The primary facts, however, were not stated. In considering the validity of the inferences I think it is essential to ascertain what were the primary facts found.

A simple analysis of the statement of claim shows that, in order to succeed, the plaintiff must prove, first, that the said lands were in fact held by Yew Hun Eng in trust for her and no other;

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secondly, that the transfer was at the request of the plaintiff herself; and thirdly, that her motive or intention at the time of the transfer was to substitute the defendants as trustees in the place of Yew Hun Eng and not to benefit them personally.

With regard to the above three points, certain essential primary facts had to be considered. I shall confine myself to facts not in dispute, whether by admission or otherwise. It is undoubtedly true to say that, quite apart from being totally illiterate, the evidence clearly establishes that the plaintiff "knew nothing about business"; in the words of Quah Ooi Chim. This is strengthened by her own admissions. As regards the source of her funds for the purchase from the Official Assignee, she alleged that she obtained a loan in 1935 from the Penang branch of the Oversea-Chinese Bank. Yet she admitted, "I don't know who made the arrangement but my husband knew about it. I did not take part in the dealing..... Please ask my husband and my son". In fact the Bank loan was granted to Yew Hun Eng, not the plaintiff. She did not know how the loan was utilised; one had to ask her husband. Of the Johore Lumbering Co., supposed to belong exclusively to her, she said: "I don't know if my husband had any share in the Johore Lumbering Co. before it became a limited company. Please ask my husband and son". Of the oil palm estate to which she lays claim as sole beneficial owner, she did not even know when the oil palms were planted, nor anything regarding the post-war loan given by the Rehabilitation Board, which was used to restore the estate after the years of neglect which supervened while Malaya was under Japanese Occupation; she did not know that the defendants were registered as owners of this estate under the Registration of Business Ordinance; she never looked into the books and her husband had at his absolute disposal all her profits from the estate; she did not even take the profits because she "did not bother".

It is again true to say that Quah Hong Chiam at all times had the management and control of all his wife's affairs, virtually as though he were the true owner of every piece of property of which she was alleged to be beneficial owner. There is not an iota of evidence to the contrary.

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10 Piling Pelion on Ossa, the most important and conclusive fact in this admission, in her own words: "I came to know from people that the land in question were in the names of the two defendants just before the issue of the writ of summons. I did not transfer the lands to the defendants nor did I permit any person to do so. My brother never consulted me about transfer of this property to the defendants. He never told me he had transferred the land to the defendants". Nowhere in the judgment does it appear that this admission was considered by the learned trial Judge.

20 This admission, in my opinion, is fatal to the plaintiff's claim because, firstly, Yew Hun Eng could not have held the lands as trustee for her if he could dispose of her beneficial interest otherwise than on her directions and in breach of trust; secondly, the transfer was not made by Yew Hun Eng at her request as alleged since she personally knew nothing about it till 1962; and thirdly, the fact that she knew nothing of the transfer for over twenty years necessarily contradicts her allegation that the transfer was to the defendants merely as trustees, with no intention to benefit them personally.

30 From this admission and the evidence as a whole, I think there can be no doubt that Yew Hun Eng, transferred the lands at the behest of Quah Hong Chiam. It is to be observed that there is no allegation of any breach of trust against Yew Hun Eng. As Quah Hong Chiam managed all plaintiff's affairs and she was ignorant of the transfer, it must have been carried out pursuant to instruction from no other than Quah Hong Chiam.

40 Since he, in all but name, possessed all the powers and privileges of ownership, whereas the plaintiff had none, I think the truth is that Yew Hun Eng held the lands in trust for Quah Hong Chiam rather than the plaintiff, whose beneficial ownership was a mere fiction serving to provide a shield for the bankrupt.

In support of her claim the plaintiff had alleged that the purchase moneys came from her. She said: "The money spent on buying land was my own money. I bought it for \$600. It partly came from my mother and partly from my old jewelleries". I very

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much doubt that she used her own moneys when all other property but this had allegedly been purchased with the Bank loan. Nevertheless, even assuming this to be true, I fail to see how that fact per se is at all material to the question: for whom did Yew Hun Eng hold the land as trustee? Providing the purchase moneys did not ipso facto make Yew Hun Eng a trustee on her behalf unless there is unambiguous proof - of which there is none - strong enough to displace the abundant evidence on the record that Yew Hun Eng was a mere tool and false front for the bankrupt.

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It was the plaintiff's case that, for all the purchases made from the Official Assignee, except the palm oil lands, the moneys had been borrowed by her from the Oversea Chinese Banking Corporation on the security of property belonging to her deceased father's estate, and that she must be considered the true owner, for no other reason than that the purchase moneys came from her. In my view the plaintiff's story does not bear scrutiny, she was never a debtor of the Bank.

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The truth is that the Bank gave to Yew Hun Eng, as administrator, two loans of \$10,000 and \$3,000 secured by a first and second mortgage of three Penang houses belonging to the estate of Yew Say Kheng, deceased, who died in July 1930. The first indenture (Ex.D11) was dated January 2, 1934, and in the recital thereof it was stated that the loan of \$10,000 was necessary in the course of administration of the testator's estate. The second mortgage to the Bank (Ex.D12) was executed on April 29, 1935. It was redeemed (see Ex.P.1D) by repayment of \$3,000 to the Bank on September 30, 1937, leaving only the first mortgage outstanding. By an indenture dated May 12, 1941 the Bank transferred this mortgage to Quah Hong Chiam upon his paying off the debt due by Yew Hun Eng (see Ex.D.14). Quah Hong Chiam himself was repaid on February 28, 1956 by the administrators de bonis non of the estate of Yew Say Kheng, twelve years after the death of Yew Hun Eng, (see Ex. D.15).

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It cannot, therefore, be true that the first loan of \$10,000 was utilised for Yew Eng's purchases from the Official Assignee. Otherwise, upon repayment of this loan to the Bank, there should be no reason for Quah Hong Chiam becoming

mortgagee in place of the Bank, nor for him to be paid off in 1956.

As to the \$3,000 secured on the second mortgage, this had been repaid before Quah Hong Chiam's Discharge, while Yew Hun Eng was still nominally owner of all the enterprises he held as trustee. If this sum was in fact used for the benefit of the bankrupt, then Yew Hun Eng, as the mortgagor, had himself seen to the repayment and that was the end of the matter. In any event, even if the moneys were used for the purchases, there was not a scrap of evidence that they were advanced by Yew Hun Eng to the Plaintiff, or that she made herself personally responsible for the repayment. On the contrary, there was ample evidence that it was Quah Hong Chiam who was the debtor, if he in fact received any moneys from Yew Hun Eng at all. He wanted funds to re-establish himself in business and he succeeded in doing so. Yew Hun Eng in those circumstances must be held to have made the advance to Quah Hong Chiam at his request since he was active in the negotiations with the Bank. There was never any pretence on the part of Quah Hong Chiam or his son Quah Ooi Chim, that during the former's bankruptcy he was not carrying on business as usual, although in the name of Yew Hun Eng. Furthermore, upon his discharge, he should have had no assets of his own. As Quah Ooi Chim said: "He had not even one cent interest in the Johore Lumbering Co. When he ceased to be a bankrupt he had nothing at all. Whilst he was bankrupt, all (was) done by nominees". Nevertheless, Quah Hong Chiam in cross-examination was unable to deny that, after his discharge from bankruptcy he was able to take over the Johore Lumbering Co. from Yew Hun Eng as his own - there is no evidence or suggestion that he ever bought it back from his wife - and he then proceeded to convert it into a limited company and to distribute shares therein to members of his family. If this concrete instance is proof of anything, surely it is proof that the Johore Lumbering Co. was at all times held by Yew Hun Eng in trust for Quah Hong Chiam, and not the plaintiff. Since this main enterprise was in reality Quah Hong Chiam's, what other inference can be drawn except that its subsidiary, the oil palm estate, was equally his?

In my opinion a finding on the true ownership

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of the Johore Lumbering Co. is again sufficient to decide the issues in this case. Ever since the palm oil estate was transferred to the defendants in 1940 they had not spent a cent of their own on its development. Nether, for that matter, were they ever out of pocket in any way. From the very beginning the Johore Lumbering Co. supplied the development funds. The company also subsequently took the profits. Until shortly before this litigation the defendants only drew such moneys as they required and left the balance of profits at the disposal of their father. Apparently the learned trial Judge considered these facts consistent with the alleged trust, and he went on to accept the plaintiff's explanation that the transfer was purely because Yew Hun Eng was leaving Johore to reside permanently in Penang. With all respect I do not think this reason was plausible enough. Even though he was going back to reside permanently in Penang, Yew Hun Eng for all necessary purposes could have given to both or either of the defendants a power of attorney. He had given one to Quah Ooi Chim on September 27, 1935 (see Ex. p10). Hence he could not have been unaware that a transfer was wholly unnecessary merely to invest them with powers of management. Why not a transfer to the plaintiff herself, had she been the true beneficial owner? Why not to Quah Hong Chiam himself who actually held the reins? He had already been discharged from bankruptcy for two years and was no longer incompetent to accept the transfer in his own name.

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Furthermore, what evidence is there of the trust? The plaintiff herself knew nothing of the transfer. Quah Hong Chiam had merely this to say: "Plaintiff being a woman did not know the affairs of the jungle. As her brother wanted to go to Penang the land was transferred to defendants. I told them to look after the property. I did not tell them that the land was to be transferred to their names before the transfer and (or?) even after. I told them to look after the land after the transfer. I told them that both of them should look after the property continuously". In my view these words are far from sufficient to impose any trust on the defendants. To derogate from the grant, which resulted from an absolute transfer, the creation of the trust must be clear and

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unequivocal. Were the exhortations of Quah Hong Chiam in any way inconsistent with a gift of lands which at the time were of negligible value?

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10 It is true that Quah Hong Chiam, through the Johore Lumbering Co., financed the development of the estate as the defendants had no means of their own. After the estate began to show a profit I do not think it unnatural or unreasonable that the defendants were content to let their father recoup himself what he had spent in the past. The income was theirs not only to spend on themselves, but also to give away. Because they allowed their father to take the income it does not follow that their title to the estate was in jeopardy. They both had shares in the Johore Lumbering Co. and they had drawn on the company for all their requirements without let or hindrance. All this is not inconsistent with a gift of the estate by their father in 1940. Therefore, it seems to me  
20 that Quah Hong Chiam had second thoughts only after the estate had become very valuable property. Hence for the past ten years he, but not the plaintiff, had been trying to persuade the defendants to make a retransfer. He did so because he thought himself morally entitled to have the property returned. To quote his own words: "If both the defendants were of right mind, they cannot claim this as theirs because I and others physically worked the estate. I bought the oil palm plants and also I  
30 did so much work on it." This seems to me the true basis for his claim. His state of mind today, as so revealed, is proof of what it was in 1940. He must have thought at the time that the defendants would never presume to disobey his every behest at a future date. In that belief he must have thought that, by making the transfer he could save payment of estate duty on his death, while, in his lifetime, he retained the advantage of enjoying all the profits and he could count on the defendants' implicit obedience in distributing the property according  
40 to his wishes. As it turned out, in this expectation he was wrong. Above all, I think it should be remembered that, when the transfer was executed by Yew Hun Eng in 1940, there was no evidence that Quah Hong Chiam had ever taken any legal advice on how to create a trust. To an unlettered and untutored Chinese merchant who knows no English the alien concept of a trust must surely have been an

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unknown mystery. How then could he have created something of the very existence of which he was ignorant? Had he consulted solicitors the execution of a trust deed would have been inevitable. The very fact that there was no such instrument is in my view conclusive proof that he never took advice, and having failed to do so, it was impossible for him to have created any oral trust as alleged, even assuming that he was acting on the plaintiff's behalf in causing the transfer to be made. 10

Finally I think there was ample evidence to support the defendants' contention that the palm oil lands were a gift which took place at or about the time when the members of the family shared in a distribution of property by Quah Hong Chiam. First, a house No.7 Jalan Pasar, Kluang, held under Grant 2536 (Ex.D2) was transferred by Yew Hun Eng to Lim Phien on November 16, 1938. The premises were originally the property of Quah Hong Chiam and bought by Yew Hun Eng from the Official Assignee. Quah Hong Chiam admitted that these premises now belong to Lim Phien beneficially. Secondly, three houses in Jalan Mersing, Kluang, which were built from funds of the Johore Lumbering Co. were and still are registered in the name of Quah Ooi Chim who said: "On the death of my father the houses are mine legally", though he went on to state that he held them subject to directions from his mother as to their disposal. Thirdly, an estate in Kluang, known as Yeoh Phaik Hoon Rubber Estate, which originally was the property of Quah Hong Chiam and was purchased from the Official Assignee, is now registered in the name of the plaintiff as owner. Fourthly, the second defendant stated in his evidence, which was uncontradicted, that five pieces of padi land were put in his name as a gift of Quah Hong Chiam and no claim has yet been made for their return. Fifthly, the evidence of the first defendant, also uncontradicted, disclosed that 6 acres of land were given to his adopted brother in 1940, of approximately equal value to the three pieces of jungle land transferred to himself and the second defendant. Lastly, shares in the limited company were distributed to every member of the family. 20 30 40

For the various reasons stated above I

need only mention, in passing, that I do not consider the agreement of June 29, 1940 (which was relied on by the plaintiff as evidence of the alleged trust) of any value towards establishing her case. As plaintiff she had failed miserably to discharge the onus which lay on her.

I would allow this appeal, with costs here and in the court below, and set aside the order dated March 31, 1965.

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Sgd: H. T. Ong  
JUDGE,  
FEDERAL COURT  
MALAYSIA

Johore Bahru

15th May 1966

Mr. Lim Kean Chye with L.M. Ong for  
appellants

Mr. C. H. Smith (N.N. Leicester with him)  
for respondent.

20 Certified true copy

Sgd: Illegible

Ag. Secretary to Judge,  
Federal Court,  
Malaysia.

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JUDGMENT OF ISMAIL KHAN, J.

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I have had the advantage of reading the judgments of the Lord President and Ong Ag. C.J. Since they have arrived at different conclusions it falls on me to express my own independent opinion.

There are two preliminary observations which I should like to make for a start. First, I think that it is as important in this case as in Esso Petroleum Co. Ltd. v. Southport Corporation, 10  
(1) that the issues should be determined strictly according to the pleadings and particulars delivered. If this is lost sight of, as the Court of Appeal did in the Esso Case, then there arises the possibility of error. As Lord Radcliffe said, "If an appellate Court is to treat reliance upon them as pedantry or mere formalism, I do not see what part they have to play in our trial system". Later, he observed, 20  
"In my view, where the question is, as here, as to the sufficiency of evidence, the state of the pleadings is of more importance than the way in which the case is shaped in argument".

Secondly, I think that the distinction between specific findings of fact and findings which are inferences from specific facts found must be borne in mind. Where the trial judge arrived at findings which are really inferences from primary facts, it is important to know what those primary facts were, since the validity of such inferences needs to be tested by the grounds which form their basis. If this is done the appellate court can readily see either that the inferences are irresistible or that there are flaws of reasoning which had escaped attention. This is especially necessary where there is a conflict of evidence and the evidence of one set of witnesses is preferred to that of the other. Where, on the other hand, grounds for the inferences are not forthcoming, one may be for- 30  
given for thinking that they are founded on nothing more substantial than superficial general impressions which, of course, are easily liable to error. In this connection 40  
(1) (1956) A.C. 218.

I would refer to the observations of their Lordships in Benmax v. Austin Motor Co. Ltd. (2)

Having made these observations I turn now to the present case. I do not propose to set out the whole of the relevant facts since this has been done with care and precision by Ong Ag. C.J.

I shall deal first with the plaintiff's case according to her pleadings. By her statement of claim the plaintiff of course undertook to discharge the onus of proof that the palm oil lands were held in trust for her by her brother Yew Hun Eng until the 9th November, 1940 and that on that date the properties were transferred by him to the defendants as trustees for herself. In the further and better particulars delivered, it was alleged that originally "the trust was created in or about August 1935 as the result of an oral agreement between Yew Hun Eng and Yew Phaik Hoon". From the record, however, I can find absolutely nothing to that effect in the evidence of the plaintiff herself. As she had nothing to say on this point I do not see how either her husband, Quah Hong Chiam, or her son, Quah Ooi Chim, could repair the omission by supplying corroboration as to a transaction of which, she as a party, was unable to say a word in support of the fact alleged in the particulars. Next, as to the "written confirmation of this trust relationship" alleged to be found in the document of 29th June, 1940, I agree with Ong Ag. C.J. In my opinion, it is worthless. Quah Ooi Chim (P.W.3), who wrote it, had admitted that, in a material particular, "It does not represent the true facts". Moreover, as evidence of a trust affecting the palm oil lands the document is worse than useless since on the date thereof, 29th June, 1940, it declared in clause 1 that "all businesses of Yew Hun Eng in Kluang and Singapore, the purchases of properties, etc.....were all undertaken on Yew Phaik Hoon's behalf", but in clause 2 "all these are now vested and returned to Yew Phaik Hoon....". Had clause 2 borne any reference at all to the palm oil lands, these lands should have been vested and returned to the plaintiff on or before 29th June, 1940, whereas the palm oil lands were not transferred by Yew Hun Eng until 9th November, 1940.

As to the trust binding the defendants, it was alleged in the further and better particulars that "the request was oral", made "upon the acceptance

(2) (1955) 1. A.E.R. 326

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by the defendants of the transfer of the properties into their names", and that "the trust was oral and the request made about the time of the said transfer and before it was completed". On this point I quote the plaintiff's own evidence; which needs no further comment: "I came to know from people that the lands were in name of the two defendants just before issue of writ of summons. I did not transfer the land to the defendants nor did I permit any person to do so. My brother never consulted me about transfer of this property to the defendants. He never told me he had transferred the land to defendants".

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Neither the statement of claim nor the further and better particulars had been amended. Consequently, the plaintiff's claim, as it stands, must fail. Even if the defendants had offered no evidence, there could have been no other result. It never was the duty of the defendants to answer any case which was not pleaded against them. On this ground alone I am satisfied that this appeal should succeed.

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However, as this case is likely to go further, I shall proceed to deal with the other relevant points. With respect, I agree with the findings of primary facts stated by Ong Ag. C.J. in his judgment. He has dissected, analysed and accurately set out all relevant facts and events. On the basis of those primary facts, not forgetting the surrounding circumstances, which become relevant when one has to look into the affairs of a Chinese family, I think he was correct in his reasoning and inferences. After all, Ong Ag. C.J. is not only a "very experienced Judge", as the learned Lord President declared in a recent case, but he is also of the same race as the parties and thus better able to read the Chinese mind. Although the entire ground has already been adequately covered in his judgment, I think it will not be out of place to add a few of my own observations.

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We are considering the affairs of a family which at all relevant times was a well-knit one. The father was the man of business; he was solely at the helm, even though, while under the disabilities of a bankrupt, he had to do so under cover. What went on during this period was thus described by the plaintiff herself: "My husband

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10 wanted to borrow money from my mother. She mortgaged her property to raise the money. She lent the money to my husband. He used the money for his business and saw-mills. By that time my brother had already come here. The business was put into my brother's hands". Coming from the mouth of the plaintiff herself I am well satisfied that those few words contained a large sub-  
stratum of truth. Although illiterate and blind in  
20 recent years, I am satisfied, on going through her evidence, that her mental faculties were by no means impaired on account of old age. If there was any appearance of confusion, I do not think it was at all due to the cross-examination, but rather to her reluctance to tell the whole truth.

The fact of the matter is that all her life she was content to leave the entire management of business affairs in her husband's capable hands. As the events proved he was worthy of her confidence.  
20 Such being the case, it was only natural that no question could ever have arisen, whether during or after his bankruptcy, requiring any clear distinction to be drawn between property that was his and hers respectively. A false front had been found in the person of Yew Hun Eng. Sheltered by his name no embarrassing inquiries could arise from any quarter for going behind his nominal title. Yew Hun Eng was paid a salary. Yet there was no evidence that his sister not Quah Hong Chiam, was his employer. After  
30 Quah Hong Chiam's discharge, he took over all the existing enterprises and Yew Hun Eng retired to Penang, having outlasted his usefulness. The plaintiff's husband thereafter distributed his property among various members of his family. The plaintiff herself had no say in the distribution whatever and it is to be noted that one of the beneficiaries was the other wife of Quah Hong Chiam whom the plaintiff had no obligation to provide for.

40 Regarding such distribution of property, I would observe that all the disposals and transfers only took place after, and not before, Quah Hong Chiam's discharge from bankruptcy in 1938. Hence I do not agree that it would be in accord with the evidence to say that from time to time pieces of land were acquired during Quah Hong Chiam's business career which would appear to have been regarded as family property but which were registered in the names of

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individual members of the family. The learned trial Judge on this point took the view that "there seemed to be an idea in the family that the land must be registered in the land office in the name of whoever was to look after the property". Such being the case he therefore accepted the evidence of the plaintiff, her husband and her eldest son "that when this property was transferred to the two defendants after the departure of Yew Hun Eng to Penang, the two defendants were to hold the property in trust for her". I have anxiously examined the evidence, but with the greatest respect, I think that whatever evidence there is on this point came only from Quah Hong Chiam, who is interested in seeking to recover the palm oil land, and from Quah Ooi Chim who stands, in the event, to gain very considerably. Furthermore, such a conclusion is contradicted, first by the evidence of Quah Ooi Chim himself who said of the three houses registered in his name "Legally the property would be mine. On death of my father the houses are mine legally and no death duty would be paid". Secondly, Lim Phien, the first wife of Quah Hong Chiam, was given the house she resides in, and according to Quah Hong Chiam himself, it was gift to her: to quote his own words: "That is the only property my first wife got.....I thought if anything should happen to me it would be bad to leave her without a house". Thirdly, the Yew Phaik Hoon Rubber Estate was acknowledged to be the plaintiff's own property, though originally it was Quah Hong Chiam's. Yet this estate was not transferred to her for the alleged reason that "land must be in the name of whoever was to look after the property", because she was incapable of managing it.

Before I conclude, I shall touch briefly on two other points. As regards the \$10,000 mortgage, it was transferred by the Bank as mortgagees to Quah Hong Chiam on 12th May, 1941 and Quah Hong Chiam was finally paid off on 28th February, 1956. This is indisputable proof that the \$10,000 was never used in the manner alleged by the plaintiff. Quah Ooi Chim (P.W.3) who claimed to know so much about everything had no explanation to offer.

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Finally, on a question of law, I do not think that English authorities, whether on a gift by a mother to a child, or a gift to a stepson, can apply to the affairs of a polygamous Chinese family. Chinese family custom is manifestly different from English ways. For my own part I am also satisfied that, on the facts, gift of the palm oil estate must have been made to the defendants, unencumbered by a trust in any form.

10 It is true that the father, or the Johore Lumbering Company on his instructions, financed the development of this estate, but he was clearly in a position to protect his investment or advances by collecting repayments, as he in fact did. Any moneylender or finance company lending moneys for similar purposes cannot lay claim to beneficial ownership of the developed property on that account. Hence I cannot see why the father or mother should have any better right. Retention

20 of title deeds by a creditor, by way of security, is in my view, a sufficient explanation for the defendants leaving the titles in the custody of the parent or parents, especially as the parties were on good terms.

I would allow this appeal, set aside the order of the court below, and dismiss the claim with costs.

Sgd: Ismail Khan  
(Ismail Khan)

30 Judge  
High Court, Malaya

Johore Bahru,  
15th May 1966

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Mr. Lim Kean Chye with L.M.Ong for appellants  
Mr. C.H. Smith for respondent

Certified true copy  
Sd: Illegible  
Secretary to Judge,  
High Court,  
Seremban

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20.5.66.

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No.28  
ORDER OF THE FEDERAL COURT

IN OPEN COURT

THIS 15th DAY OF MAY, 1966

No.28  
Order of  
Federal Court  
15th May 1966

THIS APPEAL coming on for hearing on the 3rd and 4th days of October, 1965 in the presence of Mr. Lim Kean Chye (Mr. L.M.Ong with him) of Counsel for the Appellants above-named and Mr. C.H. Smith (Mr. N.N.Leicester with him) of Counsel for the Respondent above-named AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that this Appeal do stand adjourned for judgment and the same coming on for judgment this day in the presence of Mr. L.M. Ong of Counsel for the Appellants above-named and Mr. N.N. Leicester of Counsel for the Respondent above-named IT IS ORDERED that this Appeal be and is hereby allowed and that the judgment of the Honourable Dato Justice Azmi bin Haji Mohamed dated the 31st day of March, 1965 in favour of the Respondent be set aside and that judgment be entered for the Appellants AND IT IS FURTHER ORDERED that the costs of this Appeal and of the Defendants/Appellants in the High Court be taxed and be paid by the Respondent to the Appellants AND IT IS LASTLY ORDERED that the sum of Dollars Five hundred (\$500-00) paid into Court by the Appellants as security for this Appeal be refunded to the Appellants.

10

20

GIVEN under my hand and the Seal of the Court, this 15th day of May, 1966.

30

Sgd: Pawan Ahmad bin  
Abraham Rashid

CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA.

(L.S.)

---

No.29

ORDER GRANTING FINAL LEAVE TO APPEAL TO  
HIS MAJESTY THE YANG DI-PERTUAN AGONG

In the Federal  
Court of  
Malaysia  
(Appellate  
Jurisdiction)

CORAM: SYED SHEH BARAKBAH, LORD PRESIDENT,  
FEDERAL COURT OF MALAYSIA  
AZMI, CHIEF JUSTICE, HIGH COURT, MALAYA  
AND  
ONG HOCK THYE, JUDGE, FEDERAL COURT  
OF MALAYSIA

No.29  
Order granting  
final leave  
to appeal to  
His Majesty  
the Yang di-  
Pertuan Agong  
23rd January  
1967

IN OPEN COURT

10

THIS 23rd DAY OF JANUARY 1967

O R D E R

UPON MOTION made unto Court this day by  
Mr. T. G. Dunbar on behalf of Mr. N.N. Leicester  
of Counsel for the Respondent in the presence of  
Mr. L.M. Ong of Counsel for the Appellants AND UPON  
READING the Notice of Motion dated the 5th day of  
January 1967 and the Affidavit of Yew Phaik Hoon  
affirmed on the 9th day of December 1966 and filed  
herein on the 13th day of December 1966 AND UPON  
20 HEARING Counsel as aforesaid IT IS ORDERED that  
Final Leave be and is hereby granted to the above-  
named Respondent to appeal to His Majesty the Yang  
di-Pertuan Agong against the whole of the Judgment  
and Orders of the Federal Court of Malaysia given  
herein at Johore Bahru on the 15th day of May 1966  
AND IT IS FURTHER ORDERED that the costs of this  
Motion be costs in the cause.

Given under my hand and the seal of the Court  
this 23rd day of January, 1967.

30

Sgd: HAMZAH BIN DATO' ABU SAMAH

CHIEF REGISTRAR  
FEDERAL COURT  
MALAYSIA

EXHIBITS

PART II

E X H I B I T S

D.2  
Johore  
Government  
Grant No.  
2536  
8th November  
1917

"D.2"  
JOHORE GOVERNMENT GRANT No. 2536

GOVERNMENT OF JOHORE

GRANT FOR LAND

Annual Rent \$2.00

Register of Grants

Vol. XXVI

Folio 36

10

District of Johore Bahru No.2536

Know all men by these presents that I, IBRAHIM SULTAN and Sovereign Ruler of the State and Territory of Johore in consideration of the payment of dollars Two hundred do hereby, in accordance with and subject to the provisions of "The Land Enactment 1910" grant unto Kuah Hong Chiam all that piece of land situated in the Township of Kluang containing by measurement - acres - roods - 07 - 34 poles, more or less which said piece of land, with the dimensions, abuttals and boundaries thereof, is delineated on the plan drawn on these presents and more particularly on Revenue Survey plan number 652 deposited in the Survey Office, Johore Bahru, to hold for ever subject to the payment therefor of the annual rent of dollars two and to the provisions and conditions contained in the said Enactment and also to the special conditions hereunder written.

20

30

SPECIAL CONDITIONS

That within the period of one year to be computed from the date hereof the Grantee shall cause to be erected and completed upon the land comprised herein a substantially built brick house constructed in accordance with a plan which shall have first been approved by the Town Board, Johore Bahru

40

EXHIBITS

In Witness whereof, I the Sultan, have hereunto set my hand and the Public Seal of the State of Johore Bahru this eighth day of November One thousand nine hundred and seventeen

Registered at Johore Bahru this twenty sixth day of November One thousand nine hundred and seventeen

D.2  
Johore  
Government  
Grant No.  
2536  
8th November  
1917  
(Contd.)

No. 2536

No. of Former Title Nil

10 Presentation No. 6274

Corresp. No. 334/17

The Seal  
Sd: Illegible  
Commissioner for Lands & Mines

R 2249

17

No. 17268 Register of Charges BK XIII  
Fol. 150 From Kuah Hong Chiam to Quah  
Choo Tong Produced and Entered at Johore  
Bahru at 10.30 o'clock in the forenoon  
20 30 October 1921

Sd: Illegible

DISCHARGE OF CHARGE BK XIII FOL 150  
Presentn. 33482 to Quah Choo Tong  
Recorded 10th July 1926 at 12 o'clock  
in the noon

Sd: Illegible

No. 43974 Register of Charge BK XXXII FOL 70  
From Kuah Hong Chiam to Asiatic Petroleum Co.  
(S.S.) Ltd.  
30 PRODUCED AND ENTERED AT JOHORE BAHRU 9.40  
o'clock in the forenoon 15th December 1928.

Sd: Illegible

No. 61453 Register of Transmission BK VI FOL 178  
From Kuah Hong Chiam who has been adjudged Bankrupt  
vide Misc. Doc. P.61451 and 61452 Vol.II folios 69

EXHIBITS

D.2  
 Johore  
 Government  
 Grant No.  
 2536  
 8th November  
 1917  
 (Contd.)

and 70 To The Official Assignee of the Property to  
 Kuah Hong Chiam a Bankrupt (Singapore Bankruptcy  
 No.952/32 subject to the above Charge P.43974  
 Vol. XXXII Folio 70. PRODUCED AND ENTERED AT  
 JOHORE BAHRU at 10.00 o'clock in the forenoon  
 4th April 1933

Sd: Illegible

PRESTN. 68145 DISCHARGE BK VIII VOL. 57  
 DISCHARGE OF CHARGE XXXII FOL. 70 By  
 Asiatic Petroleum Co. (S.S.) Ltd.  
 Recorded 19th November 1934 at 10.30  
 o'clock in the forenoon.

10

Sd: Illegible Seal

No. 68146 Register of Transfer BK CII  
 Fol 28 From the Official Assignee  
 property of Quah Hong Chiam to  
 Yew Hun Eng

Produced and Presented at Johore Bahru  
 At 10.30 o'clock in the forenoon 1st  
 November 1934.

20

Sd: Illegible Seal

No. 68147 Register of Charges BK LII  
 From Yew Hun Eng To The Eastern Auto  
 Company Limited

Produced and Entered at Johore Bahru  
 at 10.30 o'clock in the forenoon 1st  
 November 1934.

Sd: Illegible Seal

Prestn. 80234 Discharge Bk. XVII FOL. 194  
 Discharge of Charge Bk. LII Fol. 150 to Eastern  
 Auto Co. Ltd. Recorded 1st July 1937 at 10.45  
 o'clock in the forenoon.

30

Sd: Illegible Seal

No. 85840 Register of Transfer BK CXXX Fol. 173  
 from Yew Hun Eng to Lim Phien

EXHIBITS

Produced and Entered at Johore Bahru at 3.20 o'clock in the afternoon 16 November 1938.

Sd. Illegible Seal

D.2  
Johore  
Government  
Grant No.  
2536  
8th November  
1917  
(Contd.)

D.11

INDENTURE, YEW HANN ENG AND OVERSEA  
CHINESE BANKING CORPORATION

D.11  
Indenture,  
Yew Hann  
Eng and  
Oversea  
Chinese  
Banking  
Corporation  
2nd January  
1934

10	FEDERATION ) OF MALAYA ) § / § ) FEE PAID ) 0050	Stamp \$20/- 4.1.34	STAMP OFFICE -9 V 64 PENANG  1700	Impressed Stamp of Registry of Deeds Penang
----	--	------------------------	--	---

THIS INDENTURE is made the 2nd day of January 1934 Between Yew Hann Eng of Nos.102 and 104 Malay Street, Penang (hereinafter called the Mortgagor) of the one part and Oversea Chinese Banking Corporation Limited a company incorporated in the Straits Settlements and having its registered office at China Building Chulia Street Singapore (hereinafter called the Bank) of the other part

20 WHEREAS Yew Say Kheng late of Malay Street Penang (hereinafter referred to as the Testator) duly made his Will dated the 11th day of April 1912 and thereby appointed Yew Hann Teong to be the executor thereof

AND whereas the Testator died on the 17th day of July 1930 without having altered or revoked his said Will

Following words in margin of Copy Deed

30	Made by Applicant Date 23.5.64 Checked by illegible Date 2.5.64	Certified to be a TRUE COPY of the Deed, registered No.85 Volume 738 enrolled in this Registry on the 19th day of January 1934 Sd: Illegible Registrar of Deeds, Penang
----	--	--

EXHIBITS

D.11  
 Indenture,  
 Yew Hann  
 Eng and  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 2nd January  
 1934  
 (Contd.)

And Whereas the said Yew Hann Teong  
 predeceased the Testator

And Whereas Letters of Administration  
 with the Will annexed of the estate of the  
 Testator were granted to the Mortgagor on the  
 18th day of November 1930 by the Supreme Court  
 of the Straits Settlements at Penang.

And Whereas the lands and hereditaments  
 hereinafter conveyed and more particularly  
 described in the Schedule hereto were vested in 10  
 the Testator at the time of his death for an  
 estate in fee simple in possession without a right  
 in any other person to take by survivorship free  
 from incumbrances.

And Whereas in the course of the  
 administration of the estate of the Testator and  
 for the purposes thereof occasion has arisen for  
 the sum of \$10,000/- and the Mortgagor has  
 requested the Bank accordingly to advance to him 20  
 the said sum which the Bank has agreed to do upon  
 having the repayment thereof with interest secured  
 to him in manner hereinafter appearing

Now This Indenture Witnesseth as follows:-

1. In pursuance of the said agreement and in  
 consideration of the sum of Dollars Ten thousand  
 only (\$10,000/-) now paid by the Bank to the  
 Mortgagor (the receipt whereof the Mortgagor  
 hereby acknowledges) the mortgagor hereby  
 covenants with the Bank to pay to the Bank on 30  
 the 2nd day of February 1934 the sum of \$10,000/-  
 with interest thereon from the date hereof at  
 the rate of 70 cents per \$100/- per mensem And  
 also so long as any principal money remains due  
 under these presents after the said 2nd day of  
 February 1934 to pay to the Bank interest thereon  
 monthly at the rate aforesaid.

2. For the consideration aforesaid the  
 Mortgagor as such administrator with the Will 40  
 annexed as aforesaid hereby conveys unto the Bank  
 all the lands and hereditaments more particularly  
 described in the Schedule hereto To Hold the same  
 unto the Bank in fee simple subject to the

EXHIBITS

proviso for redemption hereinafter contained.

D.11  
 Indenture,  
 Yew Hann  
 Eng and  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 2nd January  
 1934  
 (Contd.)

10 3. Provided that on payment on the 2nd day of February 1934 by the Mortgagor or other the personal representatives for the time being of the Testator or the persons for the time being entitled to the equity of redemption in the premises to the Bank or its successors or assigns of the sum of \$10,000/- with interest thereon at the rate aforesaid from the date hereof the premises shall at the request and cost of the person or persons making such payment be duly reconveyed to him or them.

20 4. The Mortgagor hereby covenants with the Bank that during the continuance of this security the Mortgagor or other the personal representatives for the time being of the Testator will keep all buildings for the time being subject thereto insured against loss or damage by fire in the sum of \$18,000/- and will make all payments required for the above purpose as and when the same shall be due and on demand produce to the Bank the policy or policies of such insurance and the receipt for each such payment And that if the Mortgagor shall make default in any of the above matters the Bank may at its discretion insure and keep insured the said buildings to the amount aforesaid and that its expense of so doing shall be repaid to the Bank by the Mortgagor on demand and until so repaid shall be added to the principal moneys hereby secured and bear interest accordingly.

30

40 5. The Mortgagor hereby covenants with the Bank that during the continuance of this security the Mortgagor will keep all buildings for the time being subject thereto in good and substantial repair and that if he shall neglect to do so the Bank may at its discretion enter upon the said premises from time to time in order to repair and keep in repair the said buildings without thereby becoming liable as a mortgagee in possession and that its expense of so doing shall be repaid to the Bank by the Mortgagor on demand and until so repaid shall be added to the principal moneys hereby secured and bear interest accordingly.

EXHIBITS

D.11  
 Indenture,  
 Yew Hann  
 Eng and  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 2nd January  
 1934  
 (Contd.)

6. The Mortgagor hereby covenants with the Bank that so long as any money remains owing on the security of these presents to pay all quit rents, assessments, rates, taxes and other charges in respect of the mortgaged properties and the buildings on the mortgaged properties as and when the same shall become due and when required by the Bank to produce to the Bank the receipt for each such payment and if default shall be made in any such payments and if the Bank shall thereupon pay any such quit rents, assessments, rates, taxes or other charges on demand to repay to the Bank all payments made by the Bank for such purpose and to pay interest at the rate aforesaid from the date of demand until repayment on any moneys not repaid on demand as aforesaid and all such moneys and interest shall be charged on the mortgaged properties.

10

7. If the Mortgagor shall pay every monthly interest on the said sum of \$10,000/- on the day on which the same shall become due under the covenants in that behalf hereinbefore contained or within fourteen (14) days thereafter as to which time shall be of the essence of the contract and observe and perform the covenant to insure and keep the mortgaged premises in proper repair and to pay all quit rents assessments rates and taxes hereinbefore contained the Bank shall not require payment of the principal sum hereby secured until the expiration of twelve (12) calendar months computed from the date hereof But upon any sale made under the provisions of Ordinance No. 36 (Conveyancing and Law of Property) or any modification or amendment thereof before the expiration of the aforesaid period the Purchaser shall not be concerned to see or inquire whether such sale is consistent with this proviso and if a sale be made in breach thereof the title of the Purchaser shall not impeach on that account.

20

30

40

8. The Mortgagor shall not be at liberty to pay off the said principal sum of \$10,000/- or any part thereof before the expiration of the aforesaid period of twelve (12) calendar months unless the Bank its successors or assigns shall

EXHIBITS

be willing to receive the same earlier nor to pay the same on or after the expiration of the aforesaid period without giving the usual notice of intention so to do.

D.11  
Indenture,  
Yew Hann  
Eng and  
Oversea  
Chinese  
Banking  
Corporation  
2nd January  
1934  
(Contd.)

10 9. It is hereby declared that the power of sale conferred on mortgagees by Ordinance No. 36 (Conveyancing and Law of Property) shall apply to these presents with this variation that the power may be exercised by the Bank if default is made in payment of the money hereby secured for one (1) calendar month instead of three (3) calendar months after service or the notice required by Section 25 of the said Ordinance but this provision shall not affect a Purchaser nor put him upon inquiry whether such default has been made.

In Witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written

20 The Schedule above referred to

1. All that piece of land and hereditaments situate in the North East District of Penang being part of the land comprised in Grants Nos. 1798, 1755, 505 and 1729 which said piece of land is estimated to contain an area of 1424 square feet and said to form Lot 44 Town Subdivision 17 Together with the house erected thereon bearing No. 24 Maxwell Road, Penang.

30 2. All that piece of land and hereditaments situate in the North East District of Penang comprised in Grant No. 1716 which said piece of land is estimated to contain an area of 3619 square feet and said to form Lot 119 Town Subdivision 22 Together with the houses thereon Nos. 102 and 104 Malay Street, Penang.

Signed Sealed and Delivered) Sd: In Chinese  
by the said Yew Hann Eng } Characters (L.S.)  
in the presence of:-

40 Sd: Khoo Soon Chee  
Solicitor  
Penang

EXHIBITS

D.11  
 Indenture,  
 Yew Hann  
 Eng and  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 2nd January  
 1934  
 (Contd.)

On this 2nd day of January 1934 before me  
 Khoo Soon Chee a Solicitor of the Supreme  
 Court of the Straits Settlements, practising  
 in the Straits Settlements, personally appeared  
 Yew Hann Eng who of my own personal knowledge  
 I know to be the identical person whose name  
 Yew Hann Eng in Chinese characters is subscribed  
 to the within written instrument and acknowledged  
 that he had voluntarily executed this instrument.

Witness my hand and seal.

10

Sd: Khoo Soon Chee  
 Solicitor  
 Penang

(L.S.)

N. E. D.

T. S. 17

Grants 1798, 1755, 505 and 1729

Lot 44

s.a. 1424 sq. ft.

T. S. 22

Grant 1716

20

Lot 119

s.a. 3619 sq. ft.

Sd: Hector V. D'aranjo

Dy. C L R  
 8.1.34

Registered on the 19th day of January 1934 at  
 2.21 p.m. Under Lots 44 T.S. 17 and 119 T.S.22.  
 Title Gts. 1798, 1755, 505 and 1729 Gt. 1716.  
 District N.E.Penang in accordance with statement  
 presented in Vol.738 Page 337 No.85.

30

(Seal of  
 Registrar  
 of Deeds  
 of Penang)

Sd: Hector V. D'aranjo  
 Dy. Registrar of Deeds Penang

149.

P.I.A.  
BANK RECEIPT

No. 1720

EXHIBITS

P.I.A.  
Bank Receipt  
4th March  
1935

OVERSEA CHINESE BANKING CORPORATING LTD.

Successor to

The Oversea Chinese Bank, Limited

(Penang Branch)

Penang 4 March 1935

10 Received from Estate of Yew Say Kheng  
(deceased) the sum of Dollars Seventy only On  
Account of Interest on Fixed loan of \$10,000/-  
from 2/2/35 to 1/3/35.

Oversea Chinese Banking  
Corporation Ltd. Successor to  
for The Oversea Chinese Bank Ltd.  
(Penang Branch)

4 MAR 1935

Sd: Illegible

Manager

20 Stamp 4 cts.

4 APR 1935

Collector

150.

EXHIBITS

P.I.B  
Bank Receipt  
11th April  
1935

P.I.B  
BANK RECEIPT

No. 1741

OVERSEA CHINESE BANKING CORPORATION LTD.

Successor to

The Oversea Chinese Bank Limited

(Penang Branch)

Penang 11 April 1935

Received from Estate of Yew Say Kheng  
(decd) the sum of dollars seventy only on account  
of Interest on Fixed Loan of \$10,000/- from  
2/3/35 to 1/4/35.

10

Oversea Chinese Banking  
Corporation Ltd.

Successor to

for The Oversea Chinese Bank Ltd.

(Penang Branch)

Sd: Illegible

Manager

Collector

20

Sd. Illegible

EXHIBITS

D.12

INDENTURE, YEW HANN ENG AND OVERSEA  
CHINESE BANKING CORPORATION

D.12  
Indenture  
Yew Hann Eng  
and Oversea  
Chinese  
Banking  
Corporation  
29th April  
1935

Stamp \$6/- 30.4.35	FEDERATION OF MALAYA \$ / ¢ 00050 FEE PAID	STAMP OFFICE -9 V 64 PENAG 1700	Impressed Stamp of Registry of Deeds Penang
------------------------	--	--	---

10 THIS INDENTURE is made the 29th day of April 1935 Between Yew Hann Eng of Nos. 102 and 104 Malay Street, Penang (hereinafter called the Mortgagor) of the one part and Oversea-Chinese Banking Corporation Limited a Company incorporated in the Straits Settlements and having its registered office at China Building Chulia Street, Singapore, (hereinafter called the Bank) of the other part

20 Whereas Yew Say Kheng late of Malay Street Penang (hereinafter referred to as the Testator) duly made his Will dated the 11th day of April 1912 and thereby appointed Yew Hann Teong to be the executor thereof

And Whereas the Testator died on the 17th day of July 1930 without having altered or revoked his said Will.

-----  
The following words appear in margin of copy Deed

Made by Applicant  
Date 23.5.64  
Checked by: Illegible  
Date 25.5.64

Certified to be a TRUE COPY of  
the Deed registered No.4 Volume  
756 enrolled in this Registry  
on the 14th day of May 1935  
Sd: Illegible  
Registrar of Deeds, Penang.

EXHIBITS

D.12  
 Indenture,  
 Yew Hann  
 Eng and  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 29th April  
 1935  
 (Contd.)

And Whereas the said Yew Hann Teong  
 predeceased the Testator

And Whereas Letters of Administration  
 with the Will annexed of the estate of the  
 Testator were granted to the Mortgagor on the  
 18th day of November 1930 by the Supreme Court  
 of the Straits Settlements at Penang.

And Whereas the lands and hereditaments  
 hereinafter conveyed and more particularly  
 described in the Schedule hereto were vested in  
 the Testator at the time of his death for an  
 estate in fee simple in possession without a  
 right in any other person to take by survivorship  
 free from incumbrances. 10

And Whereas in the course of the  
 administration of the estate of the Testator and  
 for the purposes thereof occasion has arisen for  
 the sum of \$3,000/- and the Mortgagor has  
 requested the Bank accordingly to advance to him  
 the said sum which the Bank has agreed to do upon  
 having the repayment thereof with interest secured  
 to him in manner hereinafter appearing 20

Now This Indenture Witnesseth as follows:-

1. In pursuance of the said Agreement and in  
 consideration of the sum of Dollars Three thousand  
 only (\$3000/-) now paid by the Bank to the  
 Mortgagor (the receipt whereof the Mortgagor  
 hereby acknowledges) the Mortgagor hereby  
 covenants with the Bank to pay to the Bank on the  
 29th day of May 1935 the sum of \$3,000/- with  
 interest thereon from the date hereof at the rate  
 of 70 cents per \$100/- per mensem And also so  
 long as any principal money remains due under  
 these presents after the said 29th day of May ,  
 1935 to pay to the Bank interest thereon monthly  
 at the rate aforesaid. 30

2. For the consideration aforesaid the Mortgagor  
 as such administrator with the Will annexed as  
 aforesaid hereby conveys unto the Bank all the  
 lands and hereditaments more particularly described  
 in the Schedule hereto To Hold the same unto the  
 Bank subject to a prior mortgage dated the 2nd day  
 of January 1934 (Registered No. 85 Volume 738) and 40

EXHIBITS

D.12  
 Indenture,  
 Yew Hann Eng  
 and Oversea  
 Chinese  
 Banking  
 Corporation  
 29th April  
 1935  
 (Contd.)

made between the Mortgagor of the one part and the Bank of the other part to secure the principal sum of \$10,000/- and interest thereon as therein mentioned in fee simple subject to the proviso for redemption hereinafter contained

3. Provided that on payment on the 29th day of May 1935 by the Mortgagor or other the personal representatives for the time being of the Testator or the persons for the time being  
 10 entitled to the equity of redemption in the premises to the Bank or its successors or assigns of the sum of \$3,000/- with interest thereon at the rate aforesaid from the date hereof the premises shall at the request and cost of the person or persons making such payment be duly reconveyed to him or them.

4. The Mortgagor hereby covenants with the Bank that so long as any money remains owing on the security of these presents to pay all quit  
 20 rents assessments, rates taxes and other charges in respect of the mortgaged properties and the buildings on the mortgaged properties as and when the same shall become due and when required by the Bank to produce to the Bank the receipt for each such payment and if default shall be made in any such payments and if the Bank shall thereupon pay any such quit rents, assessments, rates, taxes or other charges on demand to repay  
 30 to the Bank all payments made by the Bank for such purpose and to pay interest at the rate aforesaid from the date of demand until repayment on any moneys not repaid on demand as aforesaid and all such moneys and interest shall be charged on the mortgaged properties.

5. If the Mortgagor shall pay every monthly interest on the said sum of \$3,000/- on the day on which the same shall become due under the covenant in that behalf hereinbefore contained or within fourteen (14) days thereafter as to  
 40 which time shall be of the essence of the contract and to pay all quit rents assessments rates and taxes hereinbefore contained the Bank shall not require payment of the principal sum hereby secured until the expiration of six (6) calendar months computed from the date hereof

EXHIBITS

D.12  
 Indenture,  
 Yew Hann Eng  
 and Oversea  
 Chinese  
 Banking  
 Corporation  
 29th April  
 1935  
 (Contd.)

But upon any sale made under the provisions of Ordinance No. 36 (Conveyancing and Law of Property) or any modification or amendment thereof before the expiration of the aforesaid period the Purchaser shall not be concerned to see or inquire whether such sale is consistent with this proviso and if a sale be made in breach thereof the title of the Purchaser shall not be impeached on that account

6. The Mortgagor shall be at liberty to pay off the said principal sum of \$3,000/- or any part thereof before the expiration of the aforesaid period of six (6) calendar months unless the Bank its successors or assigns shall be willing to receive the same earlier nor to pay the same on or after the expiration of the aforesaid period without giving the usual notice of intention so to do. 10

7. It is hereby declared that the power of sale conferred on mortgagees by Ordinance No. 36 (Conveyancing and Law of Property) shall apply to these presents with this variation that the power may be exercised by the Bank if default is made in payment of the money hereby secured for one (1) calendar month instead of three (3) calendar months after service of the notice required by section 25 of the said Ordinance but this provision shall not affect a Purchaser nor put him upon inquiry whether such default has been made 20 30

In Witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written

The Schedule above referred to

1. All that piece of land and hereditaments situate in the North East District of Penang being part of the land comprised in Grants Nos. 1798, 1755, 505 and 1729 which said piece of land is estimated to contain an area of 1424 square feet and said to form Lot 44 Town Subdivision 17 Together with the house erected thereon bearing No.24 Maxwell Road, Penang. 40

EXHIBITS

2. All that piece of land and hereditaments situate in the North East District of Penang comprised in Grant No. 1716 which said piece of land is estimated to contain an area of 3619 square feet and said to form Lot 119 Town Subdivision 22 Together with the houses thereon Nos. 102 and 104 Malay Street, Penang.

D.12  
 Indenture,  
 Yew Hann Eng  
 and Oversea  
 Chinese  
 Banking  
 Corporation  
 29th April  
 1935  
 (Contd.)

10 Signed Sealed and Delivered)  
 by the said Yew Hann Eng } Sd: In Chinese  
 in the presence of :- } Characters (L.S.)

Sd: Khoo Soon Chee  
 Solicitor,  
 Penang

20 On this 29th day of April 1935 before me Khoo Soon Chee a Solicitor of the Supreme Court of the Straits Settlements, practising in the Straits Settlements personally appeared Yew Hann Eng who of my own personal knowledge I know to be the identical person whose name Yew Hann Eng in Chinese characters is subscribed to the within instrument and acknowledged that he had voluntarily executed this instrument

Witness my hand and seal

Sd: Khoo Soon Chee  
 Solicitor,  
 Penang (L.S.)

N. E. D. Penang

T.S.17

Grants 1798, 1755, 505 and 1729

30 Lot 44

s.a. 1424 sq. ft.

t. s. 22

Grant 1716

Lot 119

s.a. 3619 sq. ft.

Sd: Hector V. D'aranjo  
 DY. C L R  
 2. 5.35

EXHIBITS

D.12  
Indenture,  
Yew Hann Eng  
and Oversea  
Chinese  
Banking  
Corporation  
29th April  
1935  
(Contd.)

Registered on the 14th day of May 1935 at 11 a.m.  
Under Lots 44 T.S. 17 and 119 T.S.22  
Title Gts. 1798, 1755, 505 and 1729 Gt. 1716  
District N.E. Penang in accordance  
with statement presented in Vol. 756  
Page 13 No. 4.

(Seal of  
Registrar  
of Deeds  
Penang)

Sd: Hector V D'aranjo  
Dy. Registrar of Deeds Penang

10

P.I.C  
Bank Receipt  
8th July 1935

P.I.C.  
BANK RECEIPT

No. 1821

OVERSEA-CHINESE BANKING CORPORATION LTD.

Successor to

The Oversea Chinese Bank Limited

(Penang Branch)

Penang 8 July 1935

Received from Estate of Yew Say Kheng  
(decd) the sum of dollars Twenty one only on account<sup>20</sup>  
of Interest on fixed loan of \$3,000/- from 30/5/35  
to 29/6/35.

Oversea-Chinese Banking  
Corporation Ltd.

Successor to  
for the Oversea Chinese Bank Ltd.

Sd: Illegible  
Manager

Stamp 4 cts.

8 JUL 1935

Collector Sd: Illegible

30

P.10POWER OF ATTORNEY YEW HUN ENG TO QUAH  
OOI CHIMP.10  
Power of  
Attorney  
Yew Hun Eng  
to Quah Ooi  
Chim  
27th  
September  
1935Singapore Stamp 50¢  
28.9.35

KNOW ALL MEN BY THESE PRESENTS that I YEW HUN ENG of Kahang, Kluang Johore, Merchant do hereby nominate constitute and appoint QUAH OOI CHIM of No.2 Choon Guan Street, Singapore, Merchant to be my true and lawful Attorney in Singapore and the State of Johore with power and authority for my said attorney appointed as aforesaid for me and in my name or in the name of my said firm of Kahang Sawmill or otherwise to do, execute, and perform all or any of the facts deeds and things following that is to say

1. To superintend, manage, conduct and carry on my said business now carried on by me alone or in co-partnership with others under the style or firm of Kahang Sawmill at Kahang Kluang Johore or elsewhere (hereinafter called the said firm) according to the usual and regular course thereof in as full and effectual a manner as I could have done if personally present.

2. To employ agents, assistants, clerks, servants and workmen from time to time, to dismiss the same and others to engage and employ in their stead

3. To contract for, buy, sell pledge or deposit goods, wares and merchandise and to receive and take possession of such goods and merchandise and to effect insurance thereon and to sign seal and execute all Bonds, Deeds, Bills of Lading or instruments respecting any goods, wares, or merchandise and all and every usual and customary mercantile transfers contracts, engagements, guarantees or undertaking which I or the said firm from time to time may or might be called upon or required to sign or execute and could sign or execute if personally present and acting in the conduct or management of the said firm of Kahang Sawmill.

4. To endorse any Cheques, Bills of Exchange,

EXHIBITS

P.10  
 Power of  
 Attorney  
 Yew Hun Eng  
 to Quah Ooi  
 Chim  
 27th  
 September  
 1935  
 (Contd.)

Drafts or Promissory Notes respectively drawn upon or payable to me or to the said firm or order and also to draw and sign cheques upon any bank with whom I shall from time to time have an account whether in my name or that of the said firm and to sign, draw or make Bills of Exchange, Drafts and Promissory Notes with power also to discount and negotiate any of the said Bills of Exchange, Drafts, Acceptances or Promissory Notes.

5. To accept Bills of Exchange drawn upon me or the said firm. 10

6. To borrow such sum or sums of money as my said Attorney shall think fit from any person or persons, firm or Company or Corporation either for my private purposes or those of the said firm and in particular to overdraw any account that I may for the time being have at any bank and to give such security for the same whether by mortgage, charge or lien upon any movable or immovable property as my said Attorney may think fit. 20

7. To demand and by all legal and effectual means to recover and receive from any person or persons firm Company or Corporation all moneys, goods, chattels, effects and things which now are or shall hereafter become or appear to be due owing, payable or belonging to me or the said firm whether the same be monies or securities for money now or hereafter due or owing or belonging upon any bond, note, Bill of Exchange, Balance of Account Current, Consignment Contract, Agreement Decree Sentence, Judgment or Execution, Banker's Deposit Note or Banker's Deposit Account or for rent or arrears of rent. 30

8. To examine, state, settle, liquidate and adjust all accounts depending between me or the said firm and any person or persons firm Company or Corporation whomsoever.

9. Upon the recovery or receipt under the powers herein contained of any monies, goods chattels, effects or things due owing payable or belonging to me or the said firm to sign and give or sign, seal and deliver such goods and sufficient receipts or other discharges as may be necessary 40

EXHIBITS

or expedient with receipts shall exempt the person or persons making such payment or delivery from all responsibility of seeing to the application of the moneys therein expressed to be received or things delivered

P.10  
Power of  
Attorney  
Yew Hun Eng  
to Quah Ooi  
Chim  
27th  
September  
1935  
(Contd.)

10 10. In case of neglect refusal or delay on the part of any person or persons firm Company or Corporation to make and render just true and full accounts payment delivery and satisfaction in the premises him them or any of them thereunto to compel and for that purpose to make such claims and demands, arrests, seizures, levies, attachments, distrainments and sequestrations or commence sue and prosecute to judgment and execution, such actions, suits and proceedings at law or in equity as my said attorney shall think necessary or expedient or to petition for or otherwise procure adjudication or bankruptcy against such person or persons or a winding up order against any such Company or  
20 Corporation

30 11. In case any person or persons who is or are or shall be indebted to me or the said firm shall have a Receiving Order made against him or them or shall become a Bankrupt or Bankrupts or be declared insolvent or have his or their affairs liquidated or any order shall be made for winding up or the liquidation of any such Company or Corporation to represent and act for me or the said firm in all such proceedings and to prove such debt or debts and receive the dividends or dividends payable in respect thereof and to vote at or appoint proxies to vote at any meeting of the Creditors of such Debtors or Bankrupts Company or Corporation winding up or in liquidation.

40 12. To appear before any judges, Magistrates, Consuls or other Officers in any Court or Courts or Consulate and then and there to sue plead answer, defend and reply in all matters causes actions or proceedings, brought by or instituted by or against me or the said firm or in respect of my affairs or the affairs of the said firm

13. In case of any difference or dispute with any person or persons firm, Company or Corporation concerning all or any of the matters hereinmentioned to submit all or any such differences and disputes

EXHIBITS

P.10  
 Power of  
 Attorney  
 Yew Hun Eng  
 to Quah Ooi  
 Chim  
 27th  
 September  
 1935  
 (Contd.)

to arbitrations in such manner as my said Attorney shall see fit and to sign such agreement or submissions to arbitration containing such terms and provisions as my said Attorney shall think fit.

14. To compound, compromise and accept part in lieu of and satisfaction for the payment of the whole of any debt or sum of money owing or payable to me or the said firm or grant an extension of time for payment of the same, either with or without taking security or otherwise to act therein and in respect thereof in such manner as to my said Attorney shall appear to be expedient or proper. 10

15. To manage or superintend the management of and to let lease or demise all or any of the messuages, lands, tenements and hereditaments of or to which I or the said firm am or are now or shall become seised possessed or entitled in Singapore or the State of Johore. And to erect or pull down and repair houses and other buildings or otherwise improve all or any of the said premises and to insure houses, buildings and other property against loss or damage by fire and to make allowances to and arrangements with all or any of the tenants or occupiers for the time being of the said messuages, lands, tenements and hereditaments and to accept surrenders of leases and tenancies. And to take and use all lawful proceedings and means for evicting and ejecting defaulting tenants and occupiers from all or any of the said premises and determining the tenancies or occupation thereof and for obtaining, recovering and retaining possession of all or any of the premises held or occupied by such defaulters. 20 30

16. To purchase or take on lease on such terms as my said Attorney shall think expedient such lands tenements of hereditaments as he may think fit.

17. To mortgage or charge and either by private contract or Public Auction, sell, exchange and dispose of all or any of the messuages, lands, tenements and hereditaments of or to which I or the said firm am or are now or shall become seised, possessed or entitled in Singapore or the State of Johore. 40

EXHIBITS

P.10  
 Power of  
 Attorney  
 Yew Hun Eng  
 to Quah Ooi  
 Chim  
 27th  
 September  
 1935  
 (Contd.)

18. To execute and do all such conveyances, transfers, mortgage, charges, leases, assurances and things of and relating to the aforesaid lands and with such covenants as shall be required or as my said Attorney shall deem fit for all or any of the purposes herein.

10 19. To consent to and carry into effect a dissolution of the said firm or any other partnership now or hereafter subsisting between myself and others and to sell my interest and share in the goodwill and other assets of the business of the said firm or any other partnership now or hereafter subsisting between myself and others.

20. To concur with any other person or persons firm, Company or Corporation in the exercise of all or any of the powers herein contained.

20 21. And generally in and about the premises to execute and do every deed, agreement and thing requisite for all or any of the purposes herein mentioned and act in relation thereto as fully and effectually as I could do if personally present.

30 22. I empower my said Attorney to substitute and appoint one or more Attorney or Attorneys in substitution for or under him with the same or more limited powers and authorities as are hereinbefore expressed or conferred and such substitution or substitutions at pleasure to revoke and cancel and with power to appoint another or others in the place or places of such substitute or substitutes and such powers and authorities conferred on such substitute or substitutes may be exercised by such substitute or substitutes as aforesaid either severally or jointly with other or others empowered to act under these presents.

40 I hereby undertake for myself and my heirs executors and administrators to ratify allow and confirm all and whatsoever my said Attorney or his substitute or substitutes shall lawfully do or cause to be done or lawfully purport to do by virtue of these presents including in such confirmation whatsoever shall be done between the date of this Power of Attorney becoming void or cancelled by reasons of any event for the time being unknown to

EXHIBITS

P.10  
 Power of  
 Attorney  
 Yew Hun Eng  
 to Quah Ooi  
 Chim  
 27th  
 September  
 1935  
 (Contd.)

my said Attorney or his substitute or substitutes  
 doing, executing or performing the act, deed or  
 thing to be ratified, allowed or confirmed and the  
 date of such event becoming known to my said  
 Attorney or his substitutes or substitute doing,  
 executing or performing the act deed or thing  
 to be ratified allowed or confirmed

AS WITNESS my hand and seal this Twenty  
 seventh day of September One thousand nine  
 hundred and thity five (1935)

10

Signed sealed and delivered by )  
 the above named YEW HUN ENG )  
 after the same had been )  
 interpreted and explained to )  
 him in the Hokkien Language ) Sd: Y.H.Eng (L.S.)  
 by Loh Peng Khawn in the )  
 presence of:- )

Sd: N.N. Leicester  
 Solicitor  
 Singapore & Johore

20

On this 27th day of September A.D. 1935  
 before me Nelson Norbett Leicester a Solicitor  
 of the Supreme Court of The Straits Settlements  
 practising in the Straits Settlements personally  
 appeared Yew Hun Eng who of my own personal  
 knowledge I know to be the identical person whose  
 name "Y.H.Eng" is subscribed to the above written  
 instrument and acknowledge that he had voluntarily  
 executed this instrument

30

Witness my hand and seal

Sd: N.N. Leicester (L.S.)

Examined Low Hock Kiat

True Copy  
 Sd: Illegible  
 Asst. Registrar

Seal of the Registrar of the  
 Supreme Court,  
 Singapore.

Office Copy  
 Sd: W.A. Noel Davis  
 Registrar

Registered No. 21035  
 True copy deposited in the Supreme Court,  
 Johore Bahru on 1st day of Oct. 1935

40

Sd: Illegible - Assistant Registrar, Supreme  
 Court, Johore Bahru

Memorandum No. 142435  
Fees (1.00) has been  
paid in stamps.  
Dated 1/10/35

Intld. for Registrar

EXHIBITS

P.10  
Power of  
Attorney  
Yew Hun Eng  
to Quah Ooi  
Chim  
27th  
September  
1935  
(Contd.)

EXAMINED

1. Sd. Illegible
2. Sd: Illegible

10 I certify that this is a true copy  
of the original

Sd: V. R. T. Rangan

Asst. Registrar Supreme Court,  
Federation of Malaya, Johore Bahru

9 Mar 1963

Sup. Court, Johore Bahru  
Praecipe No. 498/63  
Fee paid in Stamps  
\$11/- Sd. Illegible  
9.3.63 clerk

20 SUPREME COURT Johore Bahru  
Civil Suit No. 117/1962  
Exhibit marked P 10 Put in  
by P.W. 3 (Quah Ooi Chim)

This 27th day of April 1964

Sd: V. R. T. Rangan

Asst. Registrar - 9 MAR 1963

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EXHIBITS

P.I.D.  
Bank Receipt  
30th  
September  
1937

P.I.D.  
BANK RECEIPT

Official Receipt      Office of Issue Penang  
No.5                      Date 30th Sept. 1937

Oversea Chinese Banking Corporation Limited  
(Incorporated in the Straits Settlements)

Head Office, Singapore

Received from Estate of Yew Say Kheng  
(decd) the sum of Dollars Three thousand only.  
Being part payment of Fixed Loan of \$13,000/-      10

Sd: Illegible  
Manager

\$3,000/-

Stamp 4 cts.

P.I.E.  
Bank Receipt  
30th  
September  
1937

P.I.E.  
BANK RECEIPT

Official Receipt      Office of Issue Penang  
No.130                      Date: 30th Sept. 1937

Oversea-Chinese Banking Corporation Limited  
(Incorporated in the Straits Settlements)      20

Head Office, Singapore

Received from Estate of Yew Say Kheng  
(decd) The sum of Dollars ninety-one only  
Being Interest on Fixed Loan for \$13,000/-  
at 7% A from (\$3,000/- for Sept.  
\$11,000/- from 2/9/37 - 1/10/37

Sd: Illegible  
Manager

\$91.00  
Stamp 4 cts.



EXHIBITS

SPECIAL CONDITIONS

A1 & A2  
 Johore  
 Government  
 Grant No.  
 17933  
 17th October  
 1937  
 (Contd.)

The land comprised in this grant shall be used solely for the cultivation of West African Oil Palm (*Elaeis Guineensis*) and such catch crops as may be approved in writing by the Commissioner of Lands and Mines.

2. An area equal to not less than one quarter of the area comprised herein shall be brought under full and effective cultivation within five years, one half within ten years and three quarters within fifteen years from the date of approval of occupation, viz. the 1st day of January, 1933

10

3. Any portion of the land comprised in this grant which may be required for a public road or railway within ten years from the date of registration of this grant shall be given up by the Grantee free from charge to the Government

4. All hardwood timber shall be extracted from the land comprised in this grant before the jungle is burnt.

20

TRANSMISSION BY BANKRUPT in consequence of the bankruptcy of the above named Quah Hong Chiam on the day of estate in within land became transmitted to	) No.108691 REGISTER OF CHARGES BK LXXXI Fol. 196 From Quah Ooi Keat & Quah Ooi Jin To Industrial Rehabilitation Finance Board PRODUCED AND ENTERED at J. Bahru at 10.35 o'clock in the fore noon 16th December 1948
The Official Assignee, Straits Settlements	
as appears by Misc. DOC Vol.VII Folio 126 & 127 Pres. 82275 & 82276.	
Johore Bahru at 2 entered 27th Dec. 1937	
Presentation No.82277	
Transmission No. Vol.X Folio 109	

30

(Seal)  
 Commissioner of Lands &  
 Mines, Johore

(Seal)  
 Commissioner of Lands  
 & Mines, Johore

EXHIBITS

No. 83261 REGISTER OF TRANSFERS  
BK CXXVI Folio 190 From  
The Official Assignee,  
S.S.  
To  
Yew Hun Eng  
Produced and Entered at  
J.B. at 9.55 o'clock in  
10 the forenoon 27th March,  
1938

} PRESENTATION 141077  
DISCHARGE  
BK LIII Folio 78  
DISCHARGE OF CHARGE  
BK LXXXI  
Folio 196 by  
Industrial  
Rehabilitation  
Finance Board  
RECORDED on 10th Sept.  
1957 at 12.25 o'clock  
in the after noon

A1 & A2  
Johore  
Government  
Grant No.  
17933  
17th October  
1937  
(Contd.)

(Seal)  
Commissioner of Lands &  
Mines, Johore

(Seal)  
Commissioner of Lands  
& Mines, Johore

No. 94777 REGISTER OF TRANSFERS  
BK CXLVI Folio 2 From  
Yew Hun Eng  
To  
Quah Ooi Keat & Quah Ooi Jin  
20 Produced and Entered at J. Bahru  
at 11 o'clock in the forenoon  
18th November 1940

(Seal)  
Commissioner of Lands & Mines,  
Johore

---



EXHIBITS

No. of Former Title NIL Sd: Illegible  
 Presentation No: 81675 Commissioner of Lands  
 & Mines  
 Corresp. No. C.L.M.780/26  
 (Seal)  
 Commissioner of Lands  
 & Mines, Johore

A4 & A5  
 Johore  
 Government  
 Grant  
 No. 17934  
 17th October  
 1937  
 (Contd.)

## SPECIAL CONDITIONS

- 10 1. The land comprised in this grant shall be used solely for the cultivation of West African Oil Palm (*Elaeis Guineensis*) and such catch crops as may be approved in writing by the Commissioner of Lands and Mines.
- 20 2. An area equal to not less than one quarter of the area comprised herein shall be brought under full and effective cultivation within five years, one half within ten years and three quarters within fifteen years from the date of approval of occupation, viz: the 1st day of January, 1933, or within such further period as may be approved by His Highness the Sultan in Council and endorsed thereon.
3. Any portion of the land comprised in this grant which may be required for a public road or railway within ten years from the date of registration of this grant shall be given up by the Grantee free from charge to the Government
4. All hardwood timber shall be extracted from the land comprised in this grant before the jungle is burnt
- 30 TRANSMISSION BY BANKRUPT in consequence of the bankruptcy of the abovenamed Quah Hong Chiam on the day of estate in within land became transmitted to The Official Assignee, Straits Settlements as appears by Misc.DOC.Vol. VII Folio 126 & 127 Pres. 82275 & 82276. Johore Bahru at 2 entered 27th Dec. 1937 Presentation No. 82277 Transmission No.VOL.X Folio 109 (Seal)
- 40 No. 108691 REGISTER OF CHARGES BK LXXXI Fol. 196 From Quah Ooi Keat & Quah Ooi Jin To Industrial Rehabilitation Board PRODUCED AND ENTERED at J. Bahru at 10.35 o'clock in the forenoon 16th December 1948
- Commissioner of Lands & Mines Johore Commissioner of Lands & Mines, Johore

EXHIBITS

A4 & A5  
 Johore  
 Government  
 Grant No.  
 17934  
 17th October  
 1937  
 (Contd.)

No.83261 REGISTER  
 OF TRANSFERS  
 BK CXXVI Folio 190 From  
 The Official Assignee, S.S.  
 To  
 Yew Hun Eng  
 Produced and Entered at J.B.  
 at 9.55 o'clock in the  
 forenoon 27th March 1938

(Seal)  
 Commissioner of Lands &  
 Mines, Johore

10

PRESENTATION 141077  
 DISCHARGE BK LIII Folio 78  
 DISCHARGE OF CHARGE BK LXXXI  
 Folio 196 by  
 Industrial Rehabilitation  
 Finance Board  
 RECORDED on 10th Sept.1957  
 at 12.45 o'clock in the  
 afternoon

(Seal)  
 Commissioner of Lands &  
 Mines, Johore

20

No. 94777 REGISTER OF TRANSFERS  
 BK CXLVI Folio 2 From  
 Yew Hun Eng  
 to

Quah Ooi Keat & Quah Ooi Jin  
 Produced and Entered at J. Bahru  
 at 11 o'clock in the forenoon  
 18th November 1940

(Seal)  
 Commissioner of Lands & Mines,  
 Johore.

30



EXHIBITS

A7 & A8  
 Johore  
 Government  
 Grant No.  
 17935  
 17th October  
 1935  
 (Contd.)

## SPECIAL CONDITION

1. The land comprised in this grant shall be used solely for the cultivation of West African Oil Palm (*Elaeis Guineensis*) and such catch crops as may be approved in writing by the Commissioner of Lands and Mines.

2. An area equal to not less than one quarter of the area comprised herein shall be brought under full and effective cultivation within five years, one half within ten years and three quarters within fifteen years from the date of approval of occupation, viz, the 1st day of January, 1933, or within such further period as may be approved by His Highness the Sultan in Council and endorsed thereon.

10

3. Any portion of the land comprised in this grant which may be required for a public road or railway within ten years from the date of registration of this grant shall be given up by the Grantee free from charge to the Government

20

4. All hardwood timber shall be extracted from the land comprised in this grant before the jungle is burnt.

TRANSMISSION BY BANKRUPT in consequence of the bankruptcy of the above named Quah Hong Chiam on the day of estate in within land became transmitted to

The Official Assignee,  
 Straits Settlements.  
 as appears by Misc. DOC Vol.VII  
 Folio 126 & 127 Pres. 82275 &  
 82276. Johore Bahru at 2  
 entered 27th Dec. 1937  
 Presentation No. 82277  
 Transmission No. Vol. X Folio 109

30

(Seal)  
 Commissioner of Lands & Mines,  
 Johore

40

EXHIBITS

No. 83261 REGISTER OF TRANSFERS  
BK CXXVI Folio 190 From  
The Official Assignee, S.S.  
To

Yew Hun Eng

Produced and Entered at J.B. at  
9.55 o'clock in the forenoon  
27th March, 1938

(Seal)

10 Commissioner of Lands & Mines,  
Johore

A7 & A8  
Johore  
Government  
Grant No.  
17935  
17th October  
1935  
(Contd.)

No. 94777 REGISTER OF TRANSFERS  
BK CXLVI Folio 2 From  
Yew Hun Eng

To

Quah Ooi Keat & Quah Ooi Jin  
Produced and Entered at J. Bahru  
at 11 o'clock in the forenoon  
18th November 1940

(Seal)

20 Commissioner of Lands & Mines,  
Johore

A.11

TRANSFER OF LAND NOS. 17933, 17934  
and 17935 OFFICIAL ASSIGNEE TO YEW  
HUN ENG

A.11

Transfer of  
Land Nos.  
17933, 17934  
Official  
Assignee  
to Yew Hun  
Eng  
13th January  
1938

Stamp Duty \$61-50  
Stamp Office: Johore Bahru  
Dated ---

Stamped in due time  
(Under Section 38)  
Sd: Illegible  
Collector of Stamp  
Duties

30

For the purposes of Stamp duty, I assess the  
value of the land (at \$10/- per acre) at \$10,218-75  
(Stamp Duty: \$61-50) Dated 23rd Feb. 1938

Sd: Illegible

Collector of Stamp Duties, Johore Bahru

Issued under the provision of Section 17 of the  
Land Enactment and certified a true copy

Sd: Illegible

40 Commissioner of Lands and Mines, Johore  
(Seal) 110/62

T R A N S F E R

I, THE OFFICIAL ASSIGNEE, Singapore, of the  
property of Quah Hong Chiam, a Bankrupt (Singapore

EXHIBITS

A.11  
 Transfer of  
 Land Nos.  
 17933, 17934  
 & 17935  
 Official  
 Assignee to  
 Yew Hun Eng  
 13th January  
 1938  
 (Contd.)

Bankruptcy No. 959 of 1932) being registered as Proprietor (subject to the annual rents of \$150-50, \$119-70 and \$240-90) of all those pieces of land containing the respective areas of 300 acres 3 roods 20 poles, 239 acres 1 rood 00 poles and 481 acres 3 roods 00 poles or thereabouts and situate in the Mukim of Kluang in the District of Kluang and comprised in the Government of Johore Grants for land Nos. 17933, 17934 and 17935 respectively.

In pursuance of an Agreement for sale and the Irrevocable Power of Attorney dated 24th August, 1935 made between myself of the one part and Yew Hun Eng of the other part (Registered No.219 of 1936 in the District Registry of Kluang and No. 1193 in the Register of Powers of Attorney, Kluang), do hereby transfer to the said YEW HUN ENG of No. 104, Malay Street, Penang, Trader all my right and interest in the said pieces of land. 10

IN WITNESS whereof I have hereunto subscribed my name this thirteenth day of January One thousand nine hundred and thirty-eight (1938) 20

Signed in the presence of      The Official Assignee,  
 Sd: Khoo Soon Chee,              Singapore, of the  
       Solicitor,                      property of Quah  
       Penang                            Hong Chiam, a  
   bankrupt by his  
   Attorney  
   Sd: Illegible

The signature "Yew Hun Eng" in Chinese was made in my presence this thirteenth day of January, 1938 and I know of my own personal knowledge that such signature is of the proper hand-writing of the person described as "Yew Hun Eng" Trader of No.104 Malay Street, Penang, the duly constituted attorney of the Official Assignee, Singapore, of the property of Quah Hong Chiam, a bankrupt (Singapore Bankruptcy No. 959 of 1932) 30

P/A dated 24/8/35  
 Regn: No.219 of 1936      Sd: Khoo Soon Chee  
 Registry, Kluang          Advocate and Solicitor, Penang 40

A.10  
AGREEMENT, YEW HUN ENG AND PLAINTIFF

EXHIBITS

A.10  
Agreement  
Yew Hun Eng  
and Plaintiff  
29th June 1940

10 THIS AGREEMENT made this 29th day of June 1940 between Yew Hun Eng on the one part who hereby acknowledges the debt of Dollars Six thousand (\$6,000/-) due to Yew Phaik Hoon (m.w.) on the other part in respect of her payment of interest due to the Oversea Chinese Bkg. Corpn. Ltd. for the loan by the Estate of Yew Say Kheng, decd. (from 1934/1940) together with the assessment paid on Yew Hun Eng's behalf.

It is hereby agreed that

1. All businesses of Yew Hun Eng in Kluang and Singapore, the purchases of properties, etc. in the said places were all undertaken on Yew Phaik Hoon's behalf.
- 20 2. All these are now vested and returned to Yew Phaik Hoon in a satisfactory manner, and who in appreciation of my good work Yew Phaik Hoon has agreed to forego the sum of dollars Three thousand (\$3,000/-) as regard for the work done.
3. All documents made previous to this day in connection with the aforesaid business etc. become null and void.
- 30 4. When the time comes for the distribution of the properties of Yew Say Kheng, decd. among the respective claimants, Yew Hung Eng and Yew Eng Thoon, respectively would then be requested to pay Yew Phaik Hoon the sum of Dollars One thousand (\$1,000) each towards the debts.
5. The balance of Dollars One thousand (\$1,000/-) to be paid and spent towards the funeral expenses of Madam Lim Kim Kee at the time of her death

In witness hereof, we affix our signatures herein

Signature of Yew Hun Eng } Sd: Yew Hun Eng  
in the presence of :- } (in Chinese)

Sd: Yew Hong Why

Signature of Yew Phaik Hoon } Sd: Yew Phaik Hoon  
in the presence of :- } (in Chinese)

40 Sd: Quah Ooi Chim

EXHIBITS

A.12  
Transfer  
of Land  
Nos.17933,  
17934 and  
17935 Yew  
Hun Eng to  
Defendants  
9th November  
1940

A.12  
TRANSFER OF LAND NOS. 17933, 17934 and 17935  
YEW HUN ENG TO DEFENDANTS

Stamp Duty: 288/-  
Stamp Office: Johore Bahru  
Stamped in due time  
(Under Section 38)  
Sd: Illegible  
Dated 18.11.62

Issued under the  
provision of Section  
17 of the Land  
Enactment and certified  
a true copy.

Commissioner of Lands and Mines  
Johore  
(Seal)

10

T R A N S F E R

I, YEW HUN ENG of No.104, Malay Street, Penang, Trader being registered as the proprietor (Subject to the annual rents of \$301-00, \$239-30 and \$481-80 of all those pieces of land containing the respective areas of 300 acres 3 roods 20 poles, 239 acres 1 rood 00 poles and 481 acres 3 roods 00 poles or thereabouts situate in the Mukim of Kluang in the District of Kluang and comprised in Government of Johore Grants for land Nos. 17933, 17934 and 17935 respectively.

20

IN CONSIDERATION of the sum of Dollars Thirty six thousand (\$36,000/-) paid to me by Quah Ooi Keat and Quah Ooi Jin both of No.4, Jalan Pasar, Kluang, Johore, Traders, the receipt of which sum I hereby acknowledge, do hereby transfer to the said Quah Ooi Keat and Quah Ooi Jin all my right, title and interest in the said pieces of land.

IN WITNESS whereof I have hereunto subscribed my name this 9th day of November 1940

30

Signed in the presence of: Sd: Illegible  
(in Chinese)

Lim Kheng Kooi, Solicitor,  
Penang

The signature "In Chinese" was made in my presence this 9th day of November, 1940 and I verily believe of my own personal knowledge that such signature is of the proper handwriting of the person described as Yew Hun Eng of No.104, Malay Street, Penang, Trader.

40

Sd: Lim Kheng Kooi,  
Advocate & Solicitor, Penang

PRESENTATION No. 94777  
 Transfers VOL. CXLVI Fol.2  
 REGISTERED AT JOHORE BAHRU  
 the 18th of November 1940  
 at 11.00 o'clock in the  
 forenoon.

(L. Seal) Sd. Illegible

Compared by  
 Sd: Illegible  
 Sd: Illegible  
 26/12/62.

EXHIBITS

A.12  
 Transfer of  
 Land Nos.  
 17933, 17934  
 and 17935  
 Yew Hun Eng  
 to Defendants  
 9th November  
 1940  
 (Contd.)

---

P.I.F  
BANK RECEIPT

P.I.F.  
 Bank Receipt  
 15th January  
 1941

10 Official Receipt  
 No. 331

Office of Issue  
 Penang

Date 15th January 1941

Oversea-Chinese Banking Corporation Limited  
 (Incorporated in the Straits Settlements)

Head Office, Singapore

Received from the Estate of Yew Say Kheng

The sum of Dollars Ten thousand only.

Being Settlement of Fixed Loan.

₹10,000/-

Sd: Illegible

EXHIBITS

D.13

D.13  
Indenture,  
Oversea  
Chinese  
Banking  
Corporation  
and Yew Hann  
Eng  
12th May 1941

INDENTURE, OVERSEA CHINESE BANKING  
CORPORATION AND YEW HANN ENG

FEDERATION OF )		( STAMP OFFICE
MALAYA )	Stamp \$1-	( -9 V 64
\$ 000 50 )	14.5.41	( PENANG
FEE PAID )		( 1700

Impressed Stamp  
of Registry  
of Deeds  
Penang 10

THIS INDENTURE is made the twelfth day of  
May 1941 between the within-named Oversea-  
Chinese Banking Corporation Limited (hereinafter  
called "the Mortgagees") of the one part and  
the within-named Yew Hann Eng (hereinafter  
called "the Mortgagor") of the other part

Witnesseth that in consideration of all  
principal money and interest due under the within- 20  
written Indenture Of Mortgage (Registered No. 4  
Page 13 in Volume 756) having been paid (as the  
Mortgagees hereby acknowledge) the Mortgagees as  
Mortgagees convey to the Mortgagor all the lands  
and premises now vested in the Mortgagees under  
the within-written Indenture

TO HOLD to the Mortgagor discharged from  
all principal money and interest secured  
by and from all claims and demands under the  
within-written Indenture 30

In Witness whereof the parties hereto  
have hereunto set their hands and seals the  
-----

The following words appear in margin of copy  
Deed:

Made by Applicant )	Certified to be a TRUE COPY of the Deed registered No. 43 Volume 823 enrolled in this Registry on the 17th day of May 1941 Sd: Illegible	40
Date 23.5.64 )		
Checked by: Illegible )		
Date 25.5.64. )		

Registrar of Deeds, Penang

EXHIBITS

day and year first above written )

10 Signed Sealed and Delivered by  
 Oversea-Chinese Banking  
 Corporation Limited by its  
 attorneys Yeo Tiam Siew  
 acting under a Power of  
 Attorney dated the 4th day  
 of January 1933 and deposited  
 in the Registry High Court  
 Penang bearing Registered  
 No. 293/35 and Lim Ewe Hock  
 acting under a Power of  
 Attorney Dated the 5th day  
 of May 1936 and deposited  
 in the Registry High Court  
 Penang bearing Registered  
 No. 115/36 in the presence of )

Oversea-Chinese  
 Banking  
 Corporation Ltd.  
 by its Attorneys

Sd: Yeo Tiam  
 Siew (L.S.)  
 Sd: Lim Ewe  
 Hock (L.S.)

D.13  
 Indenture,  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 and Yew  
 Hann Eng  
 12th May 1941  
 (Contd.)

Sd: Lim Cheng Ean

20 Advocate & Solicitor  
 Penang

30 On this 8th day of April AD. 1941 before  
 me, Lim Cheng Ean an advocate and Solicitor of  
 Supreme Court of the Straits Settlements  
 practising in the Straits Settlements personally  
 appeared Yeo Tiam Siew and Lim Ewe Hock the  
 attorneys of Oversea-Chinese Banking Corporation  
 Limited who of my own knowledge I know to be the  
 identical persons whose names "Yeo Tiam Siew" and  
 "Lim Ewe Hock" preceded by the words "Oversea  
 Chinese Banking Corporation Ltd. by its attorneys"  
 are subscribed to the above written instrument  
 and acknowledge that they had voluntarily executed  
 this instrument at Penang.

Witness my hand

Sd: Lim Cheng Ean

Advocate and Solicitor  
 Penang

N. E. D. Penang  
 T.S. 17

40 Lot 44 - 1424 sq. ft.  
 TS 22

Lot 119 - 3525 sq. ft.

Sd: Tay Hooi Soo

Dy. C.L.R. - 23.5.41

EXHIBITS

D.13  
Indenture,  
Oversea  
Chinese  
Banking  
Corporation  
and Yew  
Hann Eng  
12th May 1941  
(Contd.)

Registered on the 17th day of May 1941 at 10.00  
a.m. Under Lot 44 T.S. 17. 119 T.S. 22  
  
Title Gts. 1798, 1755, 505, 1729, 1716  
  
District N E Penang in accordance  
with statement presented in Vol. 823  
Page 169 No.43.

Sd: Tay Hooi Soo

Deputy Registrar of Deeds, Penang

(Seal of Registrar of  
Deeds Penang).

10

D.14  
Indenture,  
Oversea  
Chinese  
Banking  
Corporation  
and Yew Hann  
Eng and  
Quah Hong  
Chiam  
12th May 1941

D.14  
INDENTURE, OVERSEA CHINESE BANKING  
CORPORATION AND YEW HANN ENG AND QUAH  
HONG CHIAM

FEDERATION )  
OF MALAYA )  
          \$    ¢ )  
          000 50 )  
FEE PAID    )

STAMP OFFICE  
-9 V 64  
1700

THIS INDENTURE is made the twelfth day of  
May 1941 Between the Oversea Chinese Banking  
Corporation Ltd. a Company incorporated in the  
Straits Settlements and having its registered  
office at China Building, Chulia Street, Singapore  
(hereinafter called "the Mortgagees") of the first  
part, Yew Hann Eng of No. 104 Malay Street,  
Penang, Trader (hereinafter called "the Mortgagor")  
of the second part and Quah Hong Chiam of No.2  
Choon Guan Street, Singapore, Gentleman (herein-  
after called "the Transferee") of the third part

20

30

The following words appear in margin of Copy Deed:

Made by Applicant      Certified to be a TRUE COPY  
Date 23.5.64            of the Deed registered No.44  
Checked Illegible      Volume 823 enrolled in this  
Date 25.5.64            Registry on the 17th day of  
                                 May 1941

Sd: Illegible  
Registrar of Deeds, Penang

EXHIBITS

Whereas by an Indenture of Mortgage (hereinafter called "the Principal Indenture") dated the 2nd day of January 1934 Registered No. 85 Page 337 in Volume 738 and made between the Mortgagor of the one part and the Mortgagees of the other part the hereditaments hereby assured and more particularly described in the Schedule hereto were conveyed to the Mortgagees in fee simple by way of mortgage to secure the repayment of the sum of \$10,000/- then lent by the Mortgagees to the Mortgagor as administrator with the Will annexed of the Estate of Yew Say Kheng deceased with interest thereon at the rate therein mentioned

D.14  
 Indenture,  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 and Yew Hann  
 Eng and  
 Quah Hong  
 Chiam  
 12th May  
 1941  
 (Contd.)

And Whereas the Transferee at the request of the Mortgagor paid to the Mortgagees on the 15th day of January 1941 the said sum of \$10,000/- (which sum was the only sum then owing on the security of the Principal Indenture) and has requested the Mortgagees to execute such transfer as is hereinafter contained which the Mortgagees have agreed to do.

Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of \$10,000/- paid by the Transferee to the Mortgagees (the receipt whereof the Mortgagees hereby acknowledge) the Mortgagees as mortgagors and at the request of the Mortgagor hereby assign to the Transferee all that the said sum of \$10,000 secured by the hereinbefore recited Principal Indenture and all interest calculated from the said 15th day of January 1941 on the said sum and the full benefit of all powers rights remedies and securities in the Principal Indenture contained and thereby expressly and impliedly conferred upon the Mortgagees To Hold the same unto the Transferee his personal representatives and assigns absolutely

And this Indenture also Witnesseth that in further pursuance of the said Agreement and for the consideration aforesaid the Mortgagees as mortgagors at the Request of the Mortgagor hereby convey unto the Transferee All the hereditaments described in the Schedule hereto and all other premises (if any) which are now

EXHIBITS

D.14  
Indenture,  
Oversea  
Chinese  
Banking  
Corporation  
and Yew Hann  
Eng and  
Quah Hong  
Chiam  
12th May 1941  
(Contd.)

vested in the Mortgagor subject to redemption by virtue of the said Principal Indenture To Hold the same unto the Transferee in fee simple which all such powers rights and remedies but subject to such equity of redemption as is now subsisting with regard to the said premises by virtue of the said Principal Indenture

In Witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written

10

The Schedule above referred to

1. All that piece of land and hereditaments situate in the North East District of Penang being part of the land comprised in Grants Nos. 1798, 1755, 505 and 1729 which said piece of land is estimated to contain an area of 1424 square feet and said to form Lot 44 Town Subdivision 17 Together with a house erected thereon bearing No. 24 Maxwell Road, Penang.

2. All that piece of land and hereditaments situate in the North East District of Penang comprised in Grant No. 1716 which said piece of land is estimated to contain an area of 3619 square feet and said to form Lot 119 Town Subdivision 22 Together with the houses thereon Nos. 102 and 104 Malay Street, Penang.

20

Signed Sealed and Delivered by )  
The Oversea-Chinese Banking )  
Corporation Limited by its )  
attorneys Yeo Tiam Siew acting )  
under a Power of Attorney )  
dated the 4th day of January )  
1933 and deposited in the )  
Registry of the High Court )  
Penang bearing Regd. No.293/35 )  
and Lim Ewe Hock Acting under )  
a Power of Attorney dated the )  
5th day of May 1936 and )  
deposited in the Registry )  
High Court Penang bearing )  
Regd. No. 115/36 in the )  
presence of:- )

Oversea-Chinese  
Banking Corporat-  
ion Ltd. by its  
Attorneys

30

Sd: Yeo Tiam  
Siew (L.S.)

Sd: Lim Ewe Hock  
(L.S.)

40

Sd: Lim Cheng Ean  
Advocate and Solicitor,  
Penang

EXHIBITS

On this 8th day of April AD 1941 before me Lim Cheng Ean an Advocate and Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appear Yeo Tiam and Lim Ewe Hock the attorneys of Oversea-Chinese Banking Corporation Limited who of my own personal knowledge I know to be the identical persons whose names "Yeo Tiam Siew" and "Lim Ewe Hock" preceded by the words "Oversea-Chinese Banking Corporation Ltd. by its attorneys" are subscribed to the within written instrument and acknowledged that they had voluntarily executed this instrument at Penang.

D.14  
 Indenture,  
 Oversea  
 Chinese  
 Banking  
 Corporation  
 and Yew Hann  
 Eng and  
 Quah Hong  
 Chiam  
 12th May 1941  
 (Contd.)

Witness my hand  
 Sd: Lim Cheng Ean,  
 Advocate and Solicitor,  
 Penang

N. E. D. Penang  
 T.S. 17

Lot 44 - 1424 sq. ft.

T.S. 22

Lot 119 - 3525 sq. ft.

Sd: Tay Hooi Soo

Dy. C.L.R.  
 23.5.41.

Registered on the 17th May 1941 at 10.01 a.m.  
 Under Lot Nos. and Titles given in the Schedule  
 presented in Volume 823 Page 173 No. 44

Sd. Tay Hooi Soo

Deputy Registrar of  
 Deeds, Penang.

(Seal of Registrar  
 of Deeds Penang)

EXHIBITS

D.4

INCOME TAX ASSESSMENT ON FIRST DEFENDANT

D.4  
Income Tax  
Assessment  
on First  
Defendant  
21st March  
1953

Please quote                      FEDERATION OF MALAYA  
this number in                      FORM J  
all                                      INCOME TAX  
communications:                      NOTICE OF ASSESSMENT  
Asst. No.                              /

Year of Assessment ending 31st  
December 1951

Mr. Quah Wee Kiat      OFFICE OF COMPTROLLER OF                      10  
7, Jalan Pasar,              INCOME TAX P.O. Box 75  
Kluang                              MALACCA

In pursuance of the Income Tax Ordinance 1947,  
I have made an assessment on you as detailed  
below in respect of your income.

Application is hereby made for the payment  
of the undermentioned income tax for the year  
ending 31st December 1951 due WITHIN ONE MONTH  
OF THE DATE OF SERVICE OF THIS NOTICE

If you dispute this assessment you must give      20  
me notice of objection in writing stating pre-  
cisely the grounds of your objection WITHIN THIRTY  
DAYS from the date of service of this notice of  
assessment and return this notice of assessment to  
me at the above address.

If you give notice of objection you must,  
nevertheless, pay WITHIN ONE MONTH that portion  
of the tax, if any, which is not in dispute.

Date 21st March 1953                      Sd. Illegible                      30  
for Comptroller of Income  
Tax

	§		§
AMOUNT OF ASSESSMENT:		ASSESSABLE INCOME	
Trade, profession, etc.		B/forward	3694
Share of Partnership income			
Gim Tien Oil Palm Estate			
		3234	
Tien Seng		<u>460</u>	3694

185.

EXHIBITS

AMOUNT OF ASSESSMENT:  
(Contd.)

₹

₹

D.4  
Income Tax  
Assessment  
on First  
Defendant  
21st March  
1953  
(Contd.)

ASSESSABLE INCOME

B/forward

3694

Employment, Pension

etc. Salary

2160

Bonus etc.

Quarters.

10

Net Annual Value of  
residence owned and  
occupied or of  
beneficial  
occupation residence

Rents and income from  
property.

Dividends, interest,  
royalties, etc.

Total

5854

20

Personal Reliefs:

Personal 3000

Wife 2000

5000

Child or

Children

Life Assurance

Provident Fund

and W. & O.

Contributions

CHARGEABLE INCOME

854

30

TAX PAYABLE:

Tax on first ₹500

15.00

Tax on balance ₹354

at 4%

14.16

Total ₹854

29.16

Less

TAX PAYABLE

29.16

EXHIBITS

D.5.  
Income Tax  
Assessment  
on First  
Defendant  
21st March  
1953 and  
various

D.5

INCOME TAX ASSESSMENTS AND DEMANDS ETC.  
ON FIRST DEFENDANT

---

FEDERATION OF MALAYA

(I.T.9)  
ORIGINAL

FORM J  
INCOME TAX  
NOTICE OF ASSESSMENT

Year of Assessment 1952 ending  
31st December, 1952

Please quote this  
number in all  
communications:  
Asst. No. CG/46487

10

Mr. Quah Wee Kiat,  
7, Jalan Pasar,  
Kluang

Comptroller of  
Income Tax, Stadthuys  
P.O. Box No. 75  
Malacca

In pursuance of the Income Tax Ordinance 1947,  
I have made an assessment on you as detailed below  
in respect of your income.

20

Application is hereby made for the payment of  
the under-mentioned income tax for the year ending  
31st December 1952 due WITHIN ONE MONTH OF THE DATE  
OF SERVICE OF THIS NOTICE.

If you dispute this assessment you must give me  
notice of objection in writing stating precisely the  
grounds of your objection WITHIN THIRTY DAYS from  
the date of service of this notice of assessment to  
me at the above address.

If you give notice of objection you must,  
nevertheless pay WITHIN ONE MONTH that portion of  
the tax, if any which is not in dispute.

30

Date: 21st March 1953

Sd: Illegible  
for Comptroller of Income Tax

---

AMOUNT OF ASSESSMENT:		§	§
Trade, profession, etc.			ASSESSABLE INCOME
Share of Partnership income			B/Forward 6,472.00
Gim Tien Oil Palm			Personal reliefs:
Estate 2667			Personal
Tian Seng Oil Palm			3000
Estate <u>645</u>	3,312	Wife 2000	750 5,750.00
Employment, Pension, etc.			Life
10 Salary 2,160			Assurance
Bonus etc.			Provident
<u>1,000</u>	3,160		Fund and
Quarters			W. & O.
			Contributions
Net Annual Value of residence owned and occupied or of beneficial occupation of residence			CHARGEABLE INCOME 722.00
20 Rent and income from property			TAX PAYABLE:
			Tax on first
			§500 15.00
			Tax on balance
			§222 at 8% 8.88
			<u>23.88</u>
Dividends, interest royalties etc.			
Total	6,472	Total §722	
Deductions for: Gifts to approved institutions			
ASSESSABLE INCOME		TAX PAYABLE	23.88
C/forward	6,472		

EXHIBITS

D.5  
Income Tax  
Assessment  
on First  
Defendant  
21st March  
1953 and  
various  
(Contd.)

EXHIBITS

D.5

Income Tax  
Assessments  
and Demands  
etc. on First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

FEDERATION OF MALAYA (I.T.9 - Rev. 8/60)

---

Please quote this FORM J ORIGINAL  
number in all INCOME TAX  
communications: NOTICE OF ASSESSMENT  
Asst. No. CG/46487 Year of Assessment 1960 ending  
31st December, 1960

Inche Quah Wee Kiat, DEPARTMENT OF INLAND REVENUE,  
alias Quah Ooi Keat, GOVERNMENT BUILDING,  
7, Jalan Pasar, P.O. Box 719,  
Kluang, Johore JOHORE BAHRU

10

Date 25th February, 1961

In pursuance of the Income Tax Ordinance, 1947,  
I have made an assessment on you as detailed below.

Application is hereby made for the payment of  
the under-mentioned income tax for the year ending  
31st December, 1960, due WITHIN ONE MONTH OF THE  
DATE OF SERVICE OF THIS NOTICE

If you dispute this assessment, you must give  
me notice of objection in writing, stating  
precisely the grounds of your objection, WITHIN  
THIRTY DAYS from the date of service of this  
notice of assessment to me at the above address.

20

If you give notice of objection you must,  
nevertheless, pay WITHIN ONE MONTH that portion of  
tax, if any, which is not in dispute.

Sd: Illegible

for Comptroller of Income Tax

EXHIBITS

AMOUNT OF ASSESSMENT		§	§	D.5
1.	Trade, profession, etc.		ASSESSABLE INCOME	Income Tax
			B/Forward	Assessments
				and Demands
2.	Share of partnership income		13,909	etc. on First
	Gim Tien Oil Palm	11,509	PERSONAL	Defendant
3.	Employment, Pension, etc.		RELIEFS:	21st March
	Salary		Personal	1963 and
	Bonus		2000	various
	Quarters		Wife 1000	(Contd.)
10	Benefits in Kind		Child or	
			Children	
			1250	
			4250	
4.	Net Annual Value of residence owned and occupied or of beneficial occupation of residence		Life Assurance Provident Fund and W. & O. Contributions	
5.	Rents and income from property	2,400		
20	6. Interest		CHARGEABLE INCOME	9659
	Total	13,909	TAX PAYABLE:	
	Deductions for:		Tax on first	
	gifts to approved institutions		₹7500	600.00
			Tax on Balance	
			₹2159 at 12%	259.08
	ASSESSABLE INCOME			
	C/Forward	13,909		859.08
			Total	₹9659
			Less	
			TAX PAYABLE	859.08

EXHIBITS

FEDERATION OF MALAYA

ORIGINAL

D.5  
Income Tax  
Assessments  
and Demands  
etc. on First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

Please quote  
this number  
in all  
communications:  
Asst. No. CG/46487

FORM J  
INCOME TAX  
NOTICE OF ADDITIONAL  
ASSESSMENT

Year of Assessment 1960 ending  
31st December, 1960

Mr. Quah Wee Kiat, DEPARTMENT OF INLAND REVENUE  
No. 7, Jalan Pasar, GOVERNMENT BUILDING,  
Kluang, Johore P.O. BOX 719,  
JOHORE BAHRU

10

Date: 18th March, 1961

In pursuance of the Income Tax Ordinance,  
1947, I have made an additional assessment on you  
as detailed below.

Application is hereby made for the payment of  
the under-mentioned additional income tax for the  
year ending 31st December 1960, due WITHIN ONE  
MONTH OF THE DATE OF SERVICE OF THIS NOTICE

20

If you dispute this additional assessment,  
you must give me notice of objection in writing,  
stating precisely the grounds of your objection,  
WITHIN THIRTY DAYS from the date of service of  
this notice of additional assessment.

If you give notice of objection you must,  
nevertheless, pay WITHIN ONE MONTH that portion  
of the additional tax, if any, which is not in  
dispute.

Sd: Illegible

30

for Comptroller of Income Tax

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EXHIBITS

D.5  
Income Tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

## FEDERATION OF MALAYA

Please quote                      INCOME TAX                      ORIGINAL  
this number in                      NOTICE OF ASSESSMENT  
all communications                      Year of Assessment 1959  
Asst. No.CG/46487                      ending 31st December 1959

DEPARTMENT OF INLAND REVENUE,  
GOVERNMENT BUILDING,  
P.O. BOX 719  
JOHORE BAHRU

Date: 18th March, 1961

10

Mr. Quah Wee Kiat,  
No.7, Jalan Pasar,  
Kluang, Johore

In pursuance of the Income Tax Ordinance,  
1947, I have made an assessment on you as detailed  
below.

Application is hereby made for the payment of  
the under-mentioned income tax for the year ending  
31st December 1959, due WITHIN ONE MONTH OF THE  
DATE OF SERVICE OF THIS NOTICE

20

If you dispute this assessment, you must give  
me notice of objection in writing, stating  
precisely the grounds of your objection, WITHIN  
THIRTY DAYS from the date of service of this  
notice of assessment to me at the above address

If you give notice of objection you must,  
nevertheless, pay WITHIN ONE MONTH that portion  
of the tax, if any, which is not in dispute.

Sd: Illegible

for Comptroller of Income Tax

30

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		\$	\$	<u>EXHIBITS</u>
AMOUNT OF ASSESSMENT:				D.5
	1. Trade, profession, etc.		7,912.00	Income Tax Assessments and Demands etc. on
	2. Share of partnership income Gim Tien Oil Palm Estate	2,920		First Defendant 21st March 1963 and various (Contd.)
10	3. Employment, Pension, etc. Salary etc. Bonus, etc. Quarters	2,592	6,250.00	
	4. Net Annual Value of residence owned and occupied or of beneficial occupation of residence		1,662.00	
	5. Rents and income from property	2,400		
20			75.00	
	6. Dividends, interest, royalties, etc.		9.72	
			<hr/> 84.72	
	Total	7,912		
	Deductions for: Gifts to approved institutions			
	ASSESSABLE INCOME			
30	C/forward	7,912	84.72	

EXHIBITS

INCOME TAX RECEIPT No. 341587

D.5  
Income Tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

OFFICIAL RECEIPT FORM L No. 341587

FEDERATION OF MALAYA  
INCOME TAX ORDINANCE 1947

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Received from	Assessment Number	Date	₹	¢
---------------	----------------------	------	---	---

---

INCHE QUAH WEE KIAT @	CG 46487	61 Apr. 14	453	29
-----------------------	----------	------------	-----	----

QUAH OOI KEAT 7 Jalan  
Pasar, Kluang, Johore

10

---

Sd: E. S. Thomas

FEDERATION OF MALAYA  
(I.T.9 - Rev. 8/60)

EXHIBITS

D.5  
Income Tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

Please quote this number in all communications: Asst. No. CG/46487

FORM J  
INCOME TAX  
NOTICE OF ASSESSMENT

ORIGINAL

Year of Assessment 1961 ending 31st December, 1961

10 Inche Quah Wee Kiat, alias Quah Ooi Keat, 7, Jalan Pasar, Kluang, Johore.

DEPARTMENT OF INLAND REVENUE,  
GOVERNMENT BUILDING,  
P.O. Box 719,  
JOHORE BAHRU

Date: 16th December, 1961

In pursuance of the Income Tax Ordinance, 1947, I have made an assessment on you as detailed below.

Application is hereby made for the payment of the under-mentioned income tax for the year ending 31st December, 1961, due WITHIN ONE MONTH OF THE DATE OF SERVICE OF THIS NOTICE

20 If you dispute this assessment, you must give me notice of objection in writing, stating precisely the grounds of your objection, WITHIN THIRTY DAYS from the date of service of this notice of assessment to me at the above address.

If you give notice of objection you must, nevertheless, pay WITHIN ONE MONTH that portion of tax, if any, which is not in dispute.

Sd: Illegible

for Comptroller of Income Tax

EXHIBITS

	\$		\$
D.5 Income Tax Assessments and Demands etc. on First Defendant 21st March 1963 and various (Contd.)		AMOUNT OF ASSESSMENT:	ASSESSABLE INCOME
		1. Trade, profession, etc.	B/Forward 19,952
		2. Share of partner- ship income. Gim Tien Oil Palm 14,658	PERSONAL RELIEFS:
		3. Employment, Pension, etc. Salary 2,592 Bonus Quarters Benefits in Kind	Earned income 259 Personal 2000 Wife 1000 Child or Children 1250 4,509 10 Life Assurance Provident Fund and W. & O. Contri- butions.
		4. Net Annual Value residence owned and occupied or of beneficial occupation of residence	CHARGEABLE INCOME 15,443
		5. Rents and income from property 2,400	TAX PAYABLE: 20
		6. Interest 302	Tax on first \$1500 1,650
		Total 19,952	Tax on balance \$443 at 18% 79.74
		Deductions for:	<u>1,729.74</u>
		Gifts to approved institutions	
		ASSESSABLE INCOME	Total \$15,443
		C/Forward 19,952	Less 30
			TAX PAYABLE 1,729.74

EXHIBITSINCOME TAX RECEIPT No. 442231

OFFICIAL RECEIPT

FORM L

No.442231

FEDERATION OF MALAYA  
INCOME TAX ORDINANCE 1947

D.5  
Income tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

Received from	Assessment Number	Date	₹	¢
INCHE QUAH WEE KIAT @ QUAH OOI KEAT 7 Jalan 10 Pasar, Kluang, Johore.	CG 46487	JAN 62 17	1729	-74

Sd: E. S. Thomas

EXHIBITS

FEDERATION OF MALAYA (I.T. 9 Rev. 11/61)

D.5  
Income tax  
Assessments  
and Demands  
etc. on  
First Defendant  
21st March  
1963 and  
various  
(Contd.)

Please quote  
this number  
in all  
communications:

FORM J  
INCOME TAX  
NOTICE OF ASSESSMENT

Year of Assessment 1962 ending  
31st December, 1962

Inche' Quah Wee Kiat, Jabatan Hasil Dalam Negeri  
alias Quah Ooi Keat, Bagunan Kerajaan, Peti  
7, Jalan Pasar, Surat Pos No. 719,  
Kluang, Johore. Johore Bahru

10

Date 1st December 1962

In pursuance of the Income Tax Ordinance, 1947,  
I have made an assessment on you as detailed  
below.

Application is hereby made for the payment of  
the under-mentioned income tax for the year ending  
31st December, 1962, due **WITHIN ONE MONTH OF THE  
DATE OF SERVICE OF THIS NOTICE**

If you dispute this assessment, you must give  
me notice of objection in writing, stating  
precisely the grounds of your objection, **WITHIN  
THIRTY DAYS** from the date of service of this  
notice of assessment to me at the above address.

20

If you give notice of objection you must,  
nevertheless, pay **WITHIN ONE MONTH** that portion of  
tax, if any, which is not in dispute.

Sd: Illegible

for Comptroller of Income Tax

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EXHIBITS

AMOUNT OF ASSESSMENT	§	§	<u>EXHIBITS</u>
1. Trade, profession, etc.			D.5
2. Share of partnership income.		5,832	Income tax Assessments and Demands etc. on First Defendant 21st March 1963 and various (Contd.)
3. Employment, Pension, etc.			
Salary	3,432		
Bonus etc.			
Quarters			
Benefits in Kind			
4. Net Annual Value of residence owned and occupied or of beneficial occupation of residence		4,593	
5. Rents and income of property.	2,400		
6. Dividends, interest, royalties etc.		1,239	
Total	5,832		
Deductions for:			
Gifts to approved institutions		74.34	
ASSESSABLE INCOME C/forward	5,832		
			TAX PAYABLE:
			Tax on first \$1239 @ 6%
			Tax on balance @ %
			<hr style="width: 100px; margin-left: auto; margin-right: 0;"/> 74.34
			Total \$1,239
			Less
			TAX PAYABLE 74.34

EXHIBITS

D.5  
Income tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

## FEDERATION OF MALAYA

Please quote this FORM J ORIGINAL  
number in all INCOME TAX  
communications: NOTICE OF ADDITIONAL ASSESSMENT  
Asst. No. CG/46487 Year of Assessment 1962 ending  
31st December, 1962

Inche Quah Wee Kiat DEPARTMENT OF INLAND REVENUE,  
alias Quah Ooi Keat, GOVERNMENT BUILDING,  
7, Jalan Pasar, P.O. Box 719  
Kluang Johore Bahru

10

Date 5th. January, 1963

In pursuance of the Income Tax Ordinance 1947,  
I have made an additional assessment on you as  
detailed below.

Application is hereby made for the payment  
of the undermentioned additional income tax for  
the year ending 31st December 1962, due WITHIN  
ONE MONTH OF THE DATE OF SERVICE OF THIS NOTICE.

If you dispute this additional assessment you  
must give me notice in writing, stating precisely 20  
the grounds of your objection, WITHIN THIRTY DAYS  
from the date of service of this notice of  
additional assessment.

If you give notice you must nevertheless pay  
the full amount of the tax WITHIN ONE MONTH that  
portion of the additional tax, if any, which is not  
in dispute.

Sd: Illegible

for Comptroller of Income Tax

EXHIBITS

		§			§	D.5 Income Tax Assessments and Demands etc. on First Defendant 21st March 1963 and various (Contd.)
	AMOUNT OF ADDITIONAL ASSESSMENT		Total B/forward	18,752		
	1. Trade, profession, etc.		DECREASED IN DEDUCTIONS FOR			
	2. Share of partner- ship	18,752	Gifts approved institutions			
	3. Employment, Pension etc.		Personal Reliefs:			
			Earned Income	657		
10	Salary Bonus etc. Quarters		Personal Wife Child or Children Life			
	4. Net Annual value of residence owned and occupied or of beneficial occupation of residence		Assurance Provident Fund and W. & O. Contri- butions	657		
	5. Rents and income from property		ADDITIONAL CHARGEABLE INCOME	18,095		
20	6. Dividends, interest, royalties etc.		TAX PAYABLE:			
			1261 @ 6%	75.66		
			2500 @ 8%	200.00		
			Tax on \$2,500 @ 10%	250.00		
			Tax on \$2,500 @ 12%	300.00		
			Tax on \$5,000 @ 15%	750.00		
			\$4,334 @ 18%	780.12		
			Total	2,355.78		
30			REDUCTIONS IN Tax allowed as set-off for Tax deducted etc. dividends from Empire Tax relief Double Taxation relief			
	Total C/Forward	18,752	Amount Tax pay- able	2,355.78		

EXHIBITS

FEDERATION OF MALAYA  
(I.T. 56 Rev. 11/61)

D.5  
Income Tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

Please quote  
this number in  
all communications  
Asst. No. CG/46487

INCOME TAX  
AMENDED ASSESSMENT

ORIGINAL

Year of Assessment 1961 ending  
31st December 1961

Inche' Quah Wee Kiat Jabstan Hasil Dalam  
alias Quah Ooi Keat Negeri Bagunan  
7 Jalan Pasar, Kerajaan  
Kluang, Johore Peti Surat Pos No.719  
Johore Bahru

10

Date 5th January, 1963

The assessment for the above year, of which  
notice was sent to you on 5th March 1962 has been  
amended as shown below.

The amount shown below against TAX PAYABLE  
less any amount previously paid for this year  
of assessment, should be paid WITHIN ONE MONTH  
OF THE DATE OF SERVICE OF THIS NOTICE

20

Sd: Illegible

for Comptroller of Income Tax



EXHIBITS

AMOUNT OF ASSESSMENT		§	ASSESSABLE INCOME	
			B/Forward	17,600.00
1.	Trade, profession, etc.			
2.	Share of Partner- ship income	14,658	PERSONAL RELIEFS:	
			Earned	
			income	43
			Personal	2000
			Wife	1000
			Child or	
			Children	1250
				4,293.00
10	3. Employment, Pension, etc. Salary Bonus, etc. Quarters Benefits in Kind		Life Assurance Provident or Pension Funds.	
		432		
4.	Net Annual Value of residence owned and occupied or of beneficial occupation of residence		CHARGEABLE INCOME	13,307.00
5.	Rents and property income from property	2,400	TAX PAYABLE:	
			Tax on first	
			\$10,000	900.00
			Tax on balance	
			\$3,307 at 15%	496.05
20	6. Interest	110		<u>1,396.05</u>
	Total	17,600	Total	\$13,307
	Deductions for: Gifts to approved institutions:		Less	
	ASSESSABLE INCOME c/forward	17,600	Tax payable	1,396.05

D.5  
Income Tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

EXHIBITS

D.5  
Income Tax  
Assessments  
and Demands  
etc. on  
First  
Defendant  
21st March  
1963 and  
various  
(Contd.)

INCOME TAX RECEIPT No. 573090

OFFICIAL RECEIPT      FORM L      No. 573090

FEDERATION OF MALAYA  
INCOME TAX ORDINANCE 1947

Received from	Assessment Number	Date	₹	¢
INCHE QUAH WEE KIAT @ CG Quah Ooi Keat 7 Jln Pasar, Kluang Johore	46487	63 Feb.12	2,430.12	

10

Sd: E. S. Thomas

Comptroller of Income Tax

D.15

INDENTURE, QUAH HONG CHIAM TO YEW HONG  
WHYE and YEW ENG THOON

---

EXHIBITS

D.15  
Indenture,  
Quah Hong  
Chiam to  
Yew Hong  
Whye and Yew  
Eng Thoon  
28th February  
1956

Stamp \$1-00  
14.3.56

Stamp  
(50 cts.)

Stamp Certified to be a true  
(Office) Copy of the Deed  
3/8/54 registered No.11  
Volume 944 enrolled  
in this Registry on  
the 27th day of March  
1956

Sd: Illegible  
Dy. Registrar of Deeds

---

10

THIS INDENTURE made the 28th day of February 1956  
Between Quah Hong Chiam of No.2 Choon Guan Street,  
Singapore, Gentleman (hereinafter called the  
Transferee) of the one part and Yew Hong Whye and  
Yew Eng Thoon both of No.104 Malay Street, Penang  
(hereinafter called the Administrators) of the other  
part

20

Supplemental to (1) an Indenture of Mortgage  
dated the 2nd day of January 1934 (Registered No.  
85 Volume 738) and made between Yew Hann Eng the  
Administrator with Will annexed of the Estate of  
Yew Say Kheng deceased as Mortgagor of the one part  
and Oversea-Chinese Banking Corporation Limited  
(hereinafter called the Bank) as Mortgagee of the  
other part whereby the two (2) pieces of land and  
hereditaments comprised therein and more particularly  
described in the Schedule thereto were conveyed unto  
the Bank by way of mortgage for securing the principal  
sum of Dollars Ten thousand (\$10,000/-) with  
interest thereon as therein mentioned and (2) an  
Indenture of Transfer of Mortgage dated the 12th  
day of May 1941 (Registered No. 44 Volume 823)  
and made between the Bank as mortgagee of the  
first part, the said Yew Hann Eng as mortgagor  
of the second part and the Transferee as Transferee  
of the third part whereby the benefit of the said  
Indenture of Mortgage was transferred and assigned  
to the Transferee and the said lands and  
hereditaments were conveyed to the Transferee  
subject to redemption thereunder

30

40

And Whereas the said Yew Hann Eng the Mortgagor

EXHIBITS

D.15  
 Indenture,  
 Quah Hong  
 Chiam to  
 Yew Hong  
 Whye and Yew  
 Eng Thoon  
 28th February  
 1956  
 (Contd.)

died on the 17th day of November 1944  
 leaving part of the Estate of the said Yew Say  
 Kheng deceased unadministered.

And Where Letters of Administration  
 de bonis non with the Will annexed of the Estate  
 of the said Yew Say Kheng deceased were granted  
 to the Administrators by the Supreme Court of  
 the Federation of Malaya in the High Court at  
 Penang on the 31st day of March 1953 in Probate  
 No.10 of 1953 (Registered No. 173 Volume 935).

10

And Whereas the said principal sum of  
 \$10,000/- and \$8,000/- being interest to the  
 date of these presents is due and owing under  
 the aforementioned Indenture of Mortgage and  
 Indenture of Transfer of Mortgage.

And Whereas the Administrators are now  
 desirous of paying off the Principal sum of  
 \$10,000.00 and the interest amounting to  
 \$8,000.00 and of having the said lands and  
 hereditaments comprised in the aforesaid  
 Indentures reconveyed to them in manner herein-  
 after appearing

20

Now This Indenture Witnesseth that in  
 consideration of the principal sum of \$10,000.00  
 and \$8,000.00 being arrears of interest to the  
 date of these presents amounting together to  
 \$18,000.00 now paid by the Administrators to the  
 Transferee (the receipt whereof the Transferee  
 hereby acknowledges) the Transferee as transferee  
 and Mortgagee hereby conveys unto the Administrators  
 all those two (2) pieces of lands and hereditaments 30  
 more particularly described in the Schedule hereto  
 now vested in him under the aforesaid Indenture  
 of Mortgage and Indenture of Transfer of Mortgage  
 To Hold the same unto the Administrators as part  
 of the Estate of Yew Say Kheng deceased in fee  
 simple freed and discharged from all principal  
 money and interest due under the aforesaid two (2)  
 Indentures and from all claims and demands in  
 respect thereof.

In Witness Whereof the parties hereto  
 have set their hands and seals the day and year  
 first herein before written

40

EXHIBITS

The Schedule above referred to

All that piece of land and hereditaments situate in the North East District of Penang being part of the land comprised in Grants Nos. 1798, 1755, 505 and 1729 which said land is known as Lot 44 Town Subdivision 17 and estimated to contain an area of 1424 square feet Together with the house erected thereon bearing No.24 Maxwell Road, Penang and

D.15  
Indenture,  
Quah Hong  
Chiam to  
Yew Hong  
Eng Thoon  
28th February  
1956  
(Contd.)

10 All that piece of land and hereditaments situate in the North East District of Penang comprised in Grant No. 1716 which said piece of land is known as Lot 119 Town Subdivision 22 and is estimated to contain an area of 3619 square feet Together with the two (2) houses erected thereon bearing Nos. 102 and 104 Malay Street, Penang

Signed Sealed and Delivered)  
by the said Quah Hong Chiam } Sd. In Chinese  
in the presence of } Characters

20 Sd: N.N. Leicester (L.S.)  
Solicitor Singapore

30 On this 28th day of February A.D. 1956 before me Nelson Norbett Leicester an Advocate and Solicitor of the Supreme Court of the Colony of Singapore practising in Singapore personally appeared QUAH HENG CHIAM who of my own personal knowledge I know to be the identical person whose name "In Chinese" is subscribed to the within written instrument and acknowledged that he had voluntarily executed this instrument at Singapore.

Witness my hand

Sd: N.N. Leicester

N.E.D.  
Penang T.S. 17  
Lot 44 = 1424 sq. ft.  
T.S. 27  
Lot 119 = 3525 sq. ft.  
Sd: Lim Bor Yee Made by Applicant  
Dy. C.L.R. Date 3.8.64  
Penang Checked by Sd: Illegible  
Mar. 16 1956 Date 4.8.64

40

EXHIBITS

D.15  
 Indenture,  
 Quah Hong  
 Chiam to  
 Yew Hong  
 Eng Thoon  
 28th February  
 1956  
 (Contd.)

Registered on the 27th day of March 1956 at  
 3 p.m. Under Lots Nos. and Titles given in  
 the Schedule presented in Vol. 944 Page 44 No.11.

Sd: Lim Bor Yee

Dy. Registrar of Deeds Penang

A.13  
 Permit to  
 Purchase  
 Sodium  
 Arsenite  
 10th March  
 1958

A.13  
PERMIT TO PURCHASE SODIUM ARSENITE

(Med. 54)

THE SCHEDULE

No. 007557

FORM II

PERMIT TO PURCHASE, STORE AND USE SODIUM ARSENITE 10  
 THE POISONS (SODIUM ARSENITE) REGULATIONS, 1949

Permission is hereby given to MR. QUAH OOI  
 JIN Manager/Proprietor of Gim Tien Oil Palm  
 Estate Kluang, Johore to purchase and store Sodium  
 Arsenite for agricultural and/or horticultural  
 purposes to be used in Gim Tien Oil Palm Estate,  
 Kluang only, 1,021 acres.

Dated this 10th day of March, 1958

Permit expires on 28th February, 1959

Sd: Illegible

20

Principal Medical Officer,  
 JOHORE

EXHIBITS

A.14  
CERTIFICATE OF REGISTRATION OF  
BUSINESS NAME

A.14  
Certificate  
of  
Registration  
of Business  
Name  
11th  
December  
1959

FORM D (B.R.30)

(RULE 13)

CERTIFICATE OF REGISTRATION  
THE REGISTRATION OF BUSINESSES ORDINANCE, 1956

Gim Tien Oil Palm Estate,  
Station Yard,  
Kluang

10

Registration No. 46129

This is to certify that the Business carried on under the name Gim Tien Oil Palm Estate, has this day been Registered until the 31st December, 1962 in accordance with the provisions of the Registration of Business Ordinance, 1956 under the number shown hereon.

Dated at Kuala Lumpur this            day of DEC.11  
1959

20

R. F. WHITE

Registrar of Businesses

THIS CERTIFICATE IS VALID ONLY WHEN RECEIPTED BELOW

RECEIVED the sum in

Date            Receipt No.            Registration No.

11 DEC            30738-0            46129 M(3)  
1959

Amount \$ 5-00

EXHIBITS

D.3  
Income Tax  
Assessments,  
Demands etc.  
on 2nd  
Defendant  
12th January  
1963 and  
various

D.3  
INCOME TAX ASSESSMENTS, DEMANDS ETC.  
ON 2nd DEFENDANT

---

FEDERATION OF MALAYA - (I.T. 61-Rev.8/60)

Please quote INCOME TAX  
this number in NOTICE OF ADDITIONAL  
all communications: ASSESSMENT  
Asst. No. CG.43215 Year of Assessment 1961  
ending 31st December, 1961

Inche Quah Ooi Jin Department of Inland Revenue, Government  
Station Yard, Building, P.O. Box.719  
Kluang Johore Bahru  
Date 12th January 1963 10

In pursuance of the Income Tax Ordinance, 1947, I have made an additional assessment on you as detailed below.

Application is hereby made for the payment of the undermentioned additional income tax for the year ending 31st December 1961 due WITHIN ONE MONTH OF THE DATE OF SERVICE OF THIS NOTICE 20

If you dispute this additional assessment you must give me Notice of objection WITHIN THIRTY DAYS from the date of service of this additional assessment.

If you give notice of objection you must nevertheless, pay the full amount of the tax WITHIN ONE MONTH OF THE DATE OF SERVICE OF THIS NOTICE

Certified true copy 30  
Sd: Illegible  
for Comptroller of Income Tax

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EXHIBITS

AMOUNT OF ADDITIONAL ASSESSMENT		§	TOTAL B/forward	§	
				§3147	D.3
	1. Trade, profession, etc.		ADJUSTMENTS IN DEDUCTION FOR Gifts to approved Institutions		Income Tax Assessments, Demands etc. on 2nd Defendant
10	2. Share of partnership income Gim Tien Oil Palm Estate \$14657 Less assessed \$11510/-	§3147/-	Reliefs: Earned Income Personal Wife Child or Children Life Assurance Provident Fund W & O Contributions		12th January 1963 and various (Contd.)
	3. Employment, Pension, etc. Salary Bonus etc. Quarters Benefits in Kind				
20	4. Net Annual Value of residence owned and occupied or of beneficial occupation of residence		Additional Chargeable Income	§3147/-	
			Tax payable Tax on \$640 at 18%		115/20
	5. Rents and income from property		Tax on \$2507 at 20%		501/40
30	6. Dividends, interest, royalties, etc.		Tax on \$ at		
			\$ 3147 Total	616-60	
	Total C/forward	§3147/-	REDUCTIONS IN Tax allowed as set off for: Tax deducted from dividends etc. Empire Tax Relief Double Taxation Relief		
40				616-60	

EXHIBITS

D.3

Income Tax  
Assessments,  
Demands etc.  
on 2nd  
Defendant  
12th January  
1963 and  
various  
(Contd.)

FEDERATION OF MALAYA (I.T. 61-Rev. 8/60)

Please quote this number  
in all communications: Asst. No. CG/43215

INCOME TAX  
NOTICE OF ADDITIONAL ASSESSMENT

Year of Assessment 1962 ending 31st December,  
1962

Inche Quah Ooi Jin      Department of Inland Revenue,  
Station Yard,              Government Building,      10  
Kluang                      P.O. Box 719  
                                    Johore Bahru

Date 12th January 1963

In pursuance of the Income Tax Ordinance,  
1947, I have made an additional assessment on you  
as detailed below.

Application is hereby made for the payment  
of the undermentioned additional income tax for  
the year ending 31st December 1962 due WITHIN ONE  
MONTH OF THE DATE OF SERVICE OF THIS NOTICE      20

If you dispute this additional assessment  
you must give me Notice of Objection WITHIN THIRTY  
DAYS from the date of service of this additional  
assessment.

If you give notice of objection you must  
nevertheless, pay the full amount of the tax  
WITHIN ONE MONTH OF THE DATE OF SERVICE OF THIS  
NOTICE.

Certified true copy

Sd: Illegible

30

for Comptroller of Income Tax

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	§	§	<u>EXHIBITS</u>
		7183	D.3
AMOUNT OF ADDITIONAL ASSESSMENT	TOTAL B/forward		Income Tax Assessments, Demands etc. on 2nd Defendant 12th January 1963 and various (Contd.)
1. Trade, profession etc.	ADJUSTMENTS IN DEDUCTION FOR Gifts to approved Institutions. Reliefs:		
2. Share of partnership income Gim Tien Oil Palm Estate \$19183 10 Less assessed \$12000	Earned Income Personal Wife Child or Children Life Assur- 7183		
3. Employment, Pension, etc. Salary Bonus etc. Quarters Benefits in kind	ance Provident Fund W & O Contributions  Additional Chargeable Income	7183	
20 4. Net Annual Value of residence owned and occupied or of beneficial occupation of residence	Tax payable Tax on \$3550 at 20% Tax on \$3633 at 22%	710.00 799.26	
5. Rents and income from property	Tax on at		
	<u>\$7183</u>	<u>1509.26</u>	
30 6. Dividends; interest, royalties, etc.	REDUCTIONS IN Tax allowed as set-off for:		
Total C/forward	7183 Tax deducted from dividends etc. Empire Tax Relief Double Taxation Relief		
		<u>1509.26</u>	
40			

EXHIBITS

D.3  
Income Tax  
Assessments,  
Demands etc.  
on 2nd  
Defendant  
12th January  
1963 and  
various  
(Contd.)

(I.T. 17)

FEDERATION OF MALAYA

FORM K

INCOME TAX DEMAND NOTE

ORIGINAL

(Section 84(1) of the Income Tax Ordinance 1947)

Year of Assessment 1961 (Add.)

To: Inche Quah Ooi Jin  
Station Yard,  
Kluang

Asst. No. X/CG/43215

In pursuance of the provisions of Section 84(1) of the Income Tax Ordinance 1947, application is made for payment of the Income Tax shown below of which you were notified by Assessment Notice dated 12/1/63 and which was not paid by the due date. In accordance with the aforesaid provisions of the Ordinance a penalty of 5 per cent of the tax payable has been added. 10

	₹	¢
Tax Assessed		
Amount of tax paid	616	- 60
Amount of tax stood over		20
Balance	616	- 60
Five per cent addition	30	- 83
Total amount due	647	- 43

IF THE SUM OF ₹647-43 IS NOT PAID TO ME WITHIN ONE MONTH OF THE DATE OF SERVICE OF THIS NOTICE, ACTION WILL BE TAKEN WITHOUT FURTHER WARNING TO COMMENCE LEGAL PROCEEDINGS FOR THE RECOVERY OF THIS AMOUNT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 86 OF THE ORDINANCE  
Date 14/3/63

Department of Inland Revenue,  
Suleiman Building,  
Kuala Lumpur,

(Comptroller of Inland  
Revenue - 9 APR 1963  
Kuala Lumpur  
Federation of Malaya).

Sd: Illegible  
Comptroller of Income  
Tax

EXHIBITS

D.3  
Income Tax  
Assessments,  
Demands etc.  
on 2nd  
Defendant  
12th January  
1963 and  
various  
(Contd.)

Certified true copy of the above-mentioned  
Assessment Notice attached herewith.

10 (I.T. 17)

FEDERATION OF MALAYA

FORM K ORIGINAL

INCOME TAX DEMAND NOTE

(Section 84(1) of the Income Tax Ordinance 1947)

Year of Assessment: 1962

To: Inche Quah Ooi Jin  
Station Yard,  
Kluang

Assessment No. X/CG/43215

20 In pursuance of the provisions of Section 84(1)  
of the Income Tax Ordinance 1947, application is  
made for payment of the Income Tax shown below of  
which you were notified by Assessment Notice dated  
12/1/63 and which was not paid by the due date. In  
accordance with the aforesaid provisions of the  
Ordinance a penalty of 5 per cent of the tax payable  
has been added.

30 Certified True copy  
of the above-  
mentioned Assess-  
ment Notice attached  
herewith.

<u>Tax Assessed</u>	1,509 26
Amount of tax paid	
Amount of tax stood over	
Balance	<u>1,509.26</u>
Five per cent addition	<u>75.46</u>
Total amount due	<u>1,584.72</u>

EXHIBITS

D.3  
Income Tax  
Assessments,  
Demands etc.  
on 2nd  
Defendant  
12th January  
1963 and  
various  
(Contd.)

IF THE SUM OF \$1,584-72 IS NOT PAID TO ME  
WITHIN ONE MONTH OF THE DATE OF SERVICE OF THIS  
NOTICE, ACTION WILL BE TAKEN WITHOUT FURTHER WARNING TO  
COMMENCE LEGAL PROCEEDINGS FOR THE RECOVERY OF  
THIS AMOUNT IN ACCORDANCE WITH THE PROVISIONS OF  
SECTION 86 OF THE ORDINANCE.

Date 14/3/63

Department of Inland Revenue,  
Suleiman Building,  
Kuala Lumpur

Sd: Illegible

10

Comptroller of Income Tax.

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INCOME TAX RECEIPT No. 587900

OFFICIAL RECEIPT      FORM L      No. 587900

FEDERATION OF MALAYA

INCOME TAX ORDINANCE 1947

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Received from	Assessment Number	Date	₹	¢
CHE QUAH OOI JIN	SG 43215	63 APR 10	2232	15
STATION YARD KLUANG				

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20

Sd:      E. S. Thomas

D.6

EXHIBITS

D.6  
 Certified  
 Abstract in  
 respect of  
 E.M.R. No.  
 112 and 114  
 Mukim of  
 Kluang  
 (Undated)

Register of the Mukim of Kluang

Serial No.	Survey No. if difference	No. Nature of Title	Name of Owners
112	118	S.S. 41/22	Sapi binte Sura Yew Hun Eng
Area	Boundaries	Nature of Cultivation and Locality	Special Condition
10	A-R-P N.M. Lot 131 & 4 3 05 132 S. Road Reserve E.M. Lot 119 W.M. Lot 117	Fruit Trees Kluang	

Subsequent proceedings	Annual Rent	Remarks
Registered this 6th day of July 1925	§ 4-00 §30-00	CLRJB 725/23 S.D. 529/23

Sd: Illegible  
 Collector

20 Extract issued this 27th day of September 1925

Sd. Illegible  
 A Collector

Mutations No. 25 Transfer No.17  
 Vol. 1 Transferred this 31st day of January 1927  
 To: HJ. ALI BIN HJ. MD. NOOR

Sd: Illegible  
 A.C.L.R.

EXHIBITS

D.6  
 Certified  
 Abstract  
 in respect  
 of E.M.R. No.  
 112 and 114  
 Mukim of  
 Kluang  
 (Undated).  
 (Contd.)

Mutation No. 179 Transfer  
 No. 91 Vol.1 Transferred  
 this 26th day of September  
 1927 to: HAJI EHWAN BIN HAJI  
 SULAIMAN and HAJI MOHAMED SABARI  
 BIN MOHAMED YASIN

Sd: Illegible  
 A.C.L.R.

Mutation No. 501 Transfer No.39  
 Vol.2 Transferred this 7th day of  
 November 1928 from HAJI MOHAMED  
 SABARI BIN MOHD. YASIN on his  
 undivided half share to: Quah  
 Cheng Chok

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Sd: Illegible  
 A.C.L.R.

Mutation No. 631 Transfer No.122  
 Vol.2 Transferred this 8th day  
 of April 1929 to QUAH CHENG CHOK

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Sd: Illegible  
 A.C.L.R.

Journal No.182 Transmission No. Misc.  
 Vol. 1 Fol. 56 to Official Assignee  
 Singapore under Receiving Order in  
 Bankruptcy No. 959/32 Registered this  
 20th day of April 1933.

Sd: Illegible  
 C.L.R. Kluang

Journal No. 593 Register  
 of Transfer Vol. 1 Fol. 299  
 to YEW HUN ENG  
 Registered in the Land Office Kluang  
 this 2nd day of July 1935

30

Sd: Illegible  
 C.L.R. Kluang

EXHIBITS

In accordance with section 4 of the Land Enactment (No.1 of the Laws of Johore) rent on the land held under this title has been covered by the Ruler in Council to the sum of \$30-00 (Dollars thirty) with effect from 1st January 1952.

D.6  
Certified  
Abstract in  
respect of  
E.M.R. No.  
112 and 114  
Mukim of  
Kluang  
(Undated)  
(Contd.)

Sd: Illegible  
a Collector of Land Revenue  
Kluang

10

Certified true copy  
Sd: Illegible

Asst. Collector of Land Revenue  
Kluang.

Prepared by Sd: Illegible

Checked Sd: Illegible

Receipt No. \$3  
583989



EXHIBITS

D.6  
 Certified  
 Abstract in  
 respect of  
 E.M.R. No.  
 112 and 114  
 Mukim of  
 Kluang  
 (Undated)  
 (Contd.)

Register of the Mukim of Kluang

Serial No.	Survey No. if different	No. Nature of Title	Name of Owners
114	120	S.S. 43/22	Serimen bin Sos Yew Hun Eng

Area A R P	Boundaries	Nature of Cultivation and Locality	Special Condition
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4A 1R 05P N.M.Lot  
 132/165 S.  
 Road  
 Reserve  
 E.M.Lot 121  
 W.M.Lot 119

Coconut  
 Kluang

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Subsequent proceedings	Annual Rent	Remarks
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Registered this 6th day of July 1925

3.60  
 27.00

CIRJB 725/23  
 S.O. 529/23

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Sd: Illegible

A Collector

Extract issued this 7th day of July 1925

Sd: Illegible

A Collector

Mutation No. 385 Transfer  
 No.182 Vol.1 Transferred  
 this 13th day of June 1928  
 To Quah Cheng Chok

Sd: Illegible  
 A Collector

30

EXHIBITS

Journal No.182 Transmission No. Misc.  
Vol. 1 Fol. 56 To Official Assignee  
Singapore Under Receiving Order in  
Bankruptcy No. 939/32 Registered this  
20th day of April 1933

Sd: Illegible

Journal No. 593 Register of Transfer  
Vol. 1 Fol. 299 to YEW HUN ENG  
Registered at the Land Office, Kluang  
this 22nd day of July 1935

Sd: Illegible

C.L.R. Kluang

Prepared by Sd: Illegible  
Checked by Sd: Illegible  
Receipt No. 2 583989/20

Certified true copy  
Sd: Illegible  
Asst. Collector of Land  
Revenue, Kluang.

D.6  
Certified  
Abstract in  
respect of  
E.M.R. No.  
112 and 114  
Mukim of  
Kluang  
(Undated)  
(Contd.)

20 In accordance with section 4 of the  
Land Enactment (No.1 of the Laws of  
Johore) rent on the land held under  
this title has been covered by the  
Ruler in Council to the sum of \$27-00  
with effect from 1st January 1952

Sd: Illegible

a Collector of Land Revenue  
Kluang

EXHIBITSD.7

D.7  
 Certified  
 Abstract  
 in respect  
 of E.M.R.  
 No. 351  
 Mukim of  
 Kluang  
 (Undated)

Serial No.	Survey No. if different	No. Nature of Former Title	Name of Owner
351	365	S.S.10/21	KWA HONG CHIAM 2 O.C. Banking Ltd. 3 QUAH OOI CHIM & QUAH OOI JIN 4 JOHORE LUMBERING CO. LTD.

AREA	BOUNDARIES	NATURE OF CULTIVATION AND LOCALITY	SPECIAL CONDITIONS	10
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5A-OR-10P	N. Lot 913 S. Sungei Semberong E. Road, to Mersing W State Land.	SAWMILL		
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Subsequent proceedings	Annual rent	Remarks	20
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Registered this 22nd day of August 1928	§15-80 §31-50	CIR610/25 S0632/25	
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Sd: Illegible

A Collector

Extract issued this 30th day of  
 September 1928

Sd: Illegible

A Collector

Journal No. 68 Register of Charge  
Vol. 1 Fol. 11 To The Oversea  
Chinese Bank Limited Registered  
at the Land Office, Kluang this  
7th day of November 1931.

Sd: Illegible

C.L.R. Kluang

Journal No. 182 Transmission No. Misc.  
Vol. 1 Fol. 56 to Official Assignee  
10 Singapore under Receiving Order in  
Bankruptcy No. 952/32. Registered  
this 20th day of April 1933

Sd: Illegible

C.L.R. Kluang

JOURNAL No. 307 Discharge of Charge  
Vol. 1 Fol. 20  
By Oversea Chinese Bank Limited  
This 30th day of May 1934.

Sd: Illegible

20 A.C.L.R. Kluang

Journal No. 302 Register of Transfer  
Vol. 1 Fol. 156 To Oversea Chinese  
Banking Corporation Limited. Registered  
at the Land Office Kluang this 30th day  
of May 1934

Sd: Illegible

A.C.L.R.

Journal No. 2656 Register of Transfer  
Vol. 6 Fol. 58 To QUAH OOI CHIM and  
30 QUAH OOI JIN Registered at the Land Office  
Kluang this 26th day of February 1940

Sd: Illegible

C.L.R. Kluang

EXHIBITS

D.7  
Certified  
Abstract  
in respect  
of E.M.R.  
No. 351  
Mukim of  
Kluang  
(Undated)  
(Contd.)

EXHIBITS

D.7  
 Certified  
 Abstract  
 in respect  
 of E.M.R.  
 No. 351  
 Mukim of  
 Kluang  
 (Undated)  
 (Contd.)

Journal No. 3735 Register of Transfer  
 Vol. 7 Fol. 138 To Johore Lumbering  
 Company Limited. Registered at the Land  
 Office Kluang this 12th day of August 1941

Sd: Illegible

A.C.L.R. Kluang

Journal No. 4902 Register of Charge  
 Vol. 1 Fol. 8 To Industrial Rehabilitation  
 Finance Board. Registered at the Land Office  
 Kluang this 5th day of February 1948

10

Sd: Illegible

A.C.L.R. Kluang

Journal No. 293 Discharge of Charge  
 No. 9/52 Charge Vol. 1 Fol. 8 Discharge  
 this 14th day of October 1952

Sd: Illegible

A.C.L.R. Kluang

Certified true copy

Sd: Illegible

Asst. Collector of Land Revenue  
 Kluang

20

(SEAL)

Prepared by Sd: Illegible

Checked Sd: Illegible

Receipt No. \$5/- 583989/204/64

In accordance with section 4 of the Land  
 Enactment (No.1 of the Laws of Johore) rent  
 on the land held under this title has been  
 covered by the Ruler in Council to the sum  
 of \$31.00 and cents 50 (Dollars Thirty one  
 and Cents fifty) with effect from 1st January  
 1952.

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Sd: Illegible  
 a Collector of Land Revenue, Kluang

18.11.58



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O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

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B E T W E E N:

YEW PHAIK HOON (M.W.) (Plaintiff) Appellant

- and -

QUAH OOI KEAT and  
QUAH OOI JIN (Defendants) Respondents

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R E C O R D O F P R O C E E D I N G S

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

COWARD, CHANCE & CO.,  
St. Swithin's House,  
Walbrook,  
London, E.C.4.

Solicitors for the Appellant

Solicitors for the Respondents