

29

29, 1971

No. 44 of 1970

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

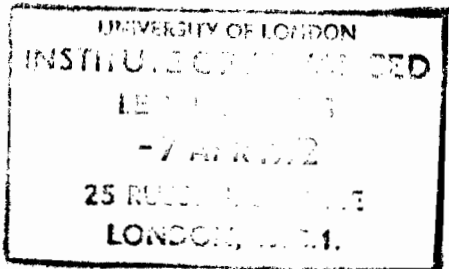
B E T W E E N :

THE GOVERNMENT OF THE STATE OF PENANG
and
THE CENTRAL ELECTRICITY BOARD OF
THE FEDERATION OF MALAYA
(Defendants) Appellants

- and -

BENG HONG OON alias
LIM BENG HONG (Married Woman)
OON GUAN YONG
OON PEH TCHIN and
OON PEH SENG
(Plaintiffs) Respondents

RECORD OF PROCEEDINGS



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Solicitors for the
Respondents.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

THE GOVERNMENT OF THE STATE OF PENANG
and
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RECORD OF PROCEEDINGS

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Notice of Motion for leave to amend Memorandum of Appeal	18th July 1969
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Order granting conditional leave to Appeal	11th May 1970

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

BETWEEN :

THE GOVERNMENT OF THE STATE OF PENANG
and THE CENTRAL ELECTRICITY BOARD OF
THE FEDERATION OF MALAYA
(Defendants) Appellants
- and -

BENG HONG OON alias
LIM BENG HONG (Married Woman)
OON GUAN YONG
OON PEH TCHIN and
OON PEH SENG (Plaintiffs) Respondents

RECORD OF PROCEEDINGS

No. 1

AMENDED WRIT OF SUMMONS

AMENDED
WRIT OF SUMMONS
(0.2 r. 3)

IN THE HIGH COURT AT PENANG

Civil Suit 1962 No. 118

Between

1. Beng Hong Oon alias Lim Beng Hong
2. Oon Guan Yong (m.w.)
3. Oon Peh Tchin
4. Oon Peh Seng .. Plaintiffs

And

1. The Government of the State of Penang
2. The Central Electricity Board of the Federation of Malaya .. Defendants

In the High Court of the Federation of Malaysia at Penang

No. 1

Amended Writ of Summons

17th April 1962

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Amended 18th day of June 1963 pursuant to Order of Court dated the 6th day of June 1963.

Sd. Ajaib Singh
Senior Assistant Registrar
Supreme Court, Penang.

In the High Court of the Federation of Malaysia at Penang

DATO SIR JAMES THOMSON, P.M.N., P.J.K. CHIEF JUSTICE OF THE FEDERATION OF MALAYA IN THE NAME AND ON BEHALF OF HIS MAJESTY THE YANG DI-PERTUAN AGONG.

- To 1. The Government of the State of Penang.
- 2. The Central Electricity Board of the Federation of Malaya.

No. 1

Amended Writ of Summons

17th April 1962 (continued)

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 Beng Hong Oon alias Lim Beng Hong, Oon Guan Yong, Oon Peh Tchin, Oon Peh Seng

10

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

WITNESS Sarwan Singh Gill Registrar of the Supreme Court in Federation of Malaya the 17th day of April, 1962.

Sd. Lim, Lim & Oon
.....

Plaintiffs Solicitors

Sd. Ajaib Singh
.....

Assistant Registrar,
High Court.

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 the last renewal, including the day of such date and not afterwards.

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

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

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In the High
Court of the
Federation of
Malaysia at
Penang

No. 1

Amended Writ
of Summons

17th April
1962
(continued)

1. The 1st Plaintiff as owner in fee simple in possession of Lot 275(3) Mukim 14 in the Northern District of Province Wellesley claims a declaration that the said Lot 275(3) is bounded on the west by the sea beach as set out in Indenture No. 4276 dated the 10th day of November 1852 and not by Lot 808 Mukim 14 in the Northern District of Province Wellesley.
- 10 2. The Plaintiffs as owners in equal shares in possession of Lot 275(1) Mukim 14 in the Northern District of Province Wellesley jointly and severally claim a declaration that the said Lot 275(1) is bounded on the west by the sea beach as set out in Indenture No. 4276 dated 10.11.1852 and not by the said Lot 808.
- 20 3. The Plaintiffs jointly and severally claim a declaration that as such co-owners they are entitled to that portion being alluvion above high water mark at ordinary spring tides which has adhered to and still is increasingly adhering the said Lots 274(1) and 275(3) by gradual slow imperceptible and natural degrees and part of which alluvion is now known as the said Lot 808.
4. The 1st Plaintiff claims a declaration that as owner in fee simple in possession of the said Lot 275(3) she is entitled to free and unrestricted access to the sea over every part of the said alluvion from every part of the said Lot 275(3).
- 30 5. The Plaintiffs claim a declaration that as co-owners of the said Lot 275(1) they are jointly and severally entitled to free and unrestricted access to the sea over every part of the said alluvion from every part of the said Lot 275(3).
- 40 6. The Plaintiffs claim that Lease dated the 12th day of August 1959 granted by His Excellency the Governor of the State of Penang to the second Defendant the Central Electricity Board of the Federation of Malaya and registered at the Land Office Butterworth as No. 831 of 1959 be declared null and void.
7. An Order for removal of the brick building fence or any erection on the said Lot 808.
8. An injunction restraining the Defendant, its

In the High Court of the Federation of Malaysia at Penang

agents and servants from further building or erecting on the said Lot 808.

9. Peaceable vacant possession of the said Lot 808.

10. Damages.

11. Other reliefs.

12. Costs.

No. 1

Amended Writ of Summons

17th April 1962 (continued)

Sd. Lim, Lim & Oon.

Solicitors for the Plaintiffs.

THIS WRIT was issued by Messrs. LIM, LIM & OON, of No. 29, Church Street, Penang whose address for service is at No. 29, Church Street, Penang, solicitors for the said Plaintiffs who resides at No. 2837 Bagan Jermal, Butterworth.

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A copy of this Writ was served by me at Legal Adviser Office at Supreme Court Building, Penang on the Defendant Mohamed Haji Ishar Chief Clerk Legal Adviser, Penang, on Wednesday the 18th day of April, 1962 at the hour of 9.35 a.m.

(Signed)

20

Indorsed the 18th day of April, 1962.

(Signed)

(Address) c/o Supreme Court, Penang.

No. 2

Further Amended Statement of Claim

3rd November 1966

No. 2

FURTHER AMENDED STATEMENT OF CLAIM

FURTHER AMENDED STATEMENT OF CLAIM

1. The first Plaintiff is the wife of the second Plaintiff. The third and fourth Plaintiffs are the sons of the first and second Plaintiffs. The fourth Plaintiff is a student residing in Essex, England and sues by his attorney the first Plaintiff.

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2. The second Defendant is a body corporate incorporated by statute under the Electricity Ordinance 1949 (No. 30 of 1949).

In the High Court of the Federation of Malaysia at Penang

No. 2

Further Amended Statement of Claim

3rd November 1966 (continued)

10

3. The first second third and fourth Plaintiffs are together the registered owners in equal undivided shares of the fee simple absolute in possession of the land known as Lot 275(1) situate in Mukim 14 in the Northern District of Province Wellesley (hereinafter referred to as Lot 275(1)) and the first Plaintiff is the registered owner of the fee simple absolute in possession of the land known as Lot 275(3) situated in the said Mukim and District (hereinafter referred to as Lot 275(3)).

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4. By an Indenture No. 4276 (hereinafter called "the Original Grant") dated the 10th November 1852 and made between the East India Company on behalf of Her Majesty Queen Victoria of the one part and Forbes Scott Brown of the other part the East India Company granted to the said Forbes Scott Brown all that piece of land (comprising inter alia the land now known as Lots 275(1) and 275(3)) situated in the Division of Bagan Bahroo in the District of Telok Ayer Tawar in Province Wellesley, bounded and measuring as follows, East by E.I. Company, and Boontah Loosoo's grounds Four thousand Nine hundred and thirty five feet West by Sea Beach Four thousand and sixty seven feet North by Road One thousand nine hundred and four feet South by Fakir and Che Mohamed's lands Eight hundred and ninety six feet agreeably to the Plan endorsed thereon, certified under the hand of Ian Moniet Land Surveyor, Estimated to contain an area of Ninety four square acres three square roods and eleven square poles together with the appurtenances TO HAVE and TO HOLD the same unto the said Forbes Scott Brown Esquire, his Executors, Administrators and Assigns, for ever. The Plaintiffs will refer to the Original Grant at the trial for the full terms and effect thereon.

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5. The Plaintiffs will at the trial refer to an Official Search to show the intermediate dealings in the lands upon which the Plaintiffs' titles are based.

6. By an Indenture dated the 9th August 1944 (Registered No. 59 Volume 893) a one undivided

In the High
Court of the
Federation of
Malaysia at
Penang

No. 2

Further Amended
Statement of
Claim

3rd November
1966
(continued)

fourth ($\frac{1}{4}$) share right title and interest in and to Lot 275(1) was conveyed to the first Plaintiff in fee simple.

7. By an Indenture dated the 26th June 1947 (Registered No. 147 Volume 903) Lot 275(3) was conveyed to the first Plaintiff in fee simple.

8. By an Indenture dated the 1st November 1952 (Registered No. 31 Volume 964) a further undivided fourth ($\frac{1}{4}$) share in and to Lot 275(1) was conveyed to the second Plaintiff in fee simple. 10

9. By an Indenture dated the 22nd June 1955 (Registered No. 70 Volume 985) the remaining two undivided fourth ($\frac{2}{4}$) share in and to Lot 275(1) was conveyed to the third and fourth Plaintiffs in fee simple as joint tenants.

10. Since the date of the Original Grant a strip of dry land (hereinafter called "the Alluvion") comprising an area of about four (4) acres or thereabouts has been forced by the action of the sea and now lies above the high water mark of ordinary tides along the westerly extremity of Lots 275(1) and 275(3). The Alluvion has increased gradually slowly imperceptibly and naturally through the years and is still increasing in like manner. 20

11. The Plaintiffs and their predecessors in title have for upwards of sixty years planted and cultivated coconut trees on the Alluvion and are and were at all material times together in possession thereof until they were wrongfully ousted from a part thereof by the first and second Defendants in the manner hereinafter alleged. 30

12. In the premises the Plaintiffs contend that the line of medium high tide of the sea between the ordinary spring and neap tides from time to time constitutes the westerly boundary of Lots 275(1) and 275(3) and that accordingly the first second third and fourth Plaintiffs are together entitled to the fee simple absolute in possession of that part of the Alluvion (hereinafter called "the Alluvion of Lot 275(1)") which lies along the westerly extremity of Lot 275(1) and the first Plaintiff is entitled to the fee simple absolute in possession of that part of the Alluvion (hereinafter called "the Alluvion of Lot 275(3)") which 40

lies along the westerly extremity of Lot 275(3).

13. In the alternative the first second third and fourth Plaintiffs are in the premises severally entitled to free and unrestricted access to the sea from every part of Lot 275(1) over every part of the Alluvion of Lot 275(1) and the first Plaintiff is entitled to free and unrestricted access to the sea from every part of Lot 275(3) over every part of the Alluvion of Lot 275(3).

10 14. The first Defendant well knowing that the Plaintiffs were together in possession of the Alluvion and that they claimed together to be entitled to the fee simple absolute in possession therefor purported by an Indenture of Lease dated the 12th August 1959 under the hand of His Excellency the Governor of Penang (registered at the Land Office Butterworth as No. 831 of 1959) to demise a portion (therein called Lot 808 Mukim 14 Northern District of Province Wellesley and hereinafter called "Lot 808") of the Alluvion estimated to contain an area of 119,287 square feet for a term of 33 years to the Second Defendant.

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15. In the premises the Plaintiffs contend that the said Indenture of Lease is and was at all material times null and void and of no effect.

16. Sometime about the year 1958 the second Defendant by its servants or agents wrongfully entered into possession of Lot 808 and has since that date wrongfully remained and threatened to continue to remain in wrongful possession thereof.

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17. Sometime about the year 1958 the second Defendant by its servants or agents wrongfully cut down coconut trees growing on Lot 808 and erected thereon a one storey brick building.

18. By reason of the acts of the first and second Defendants alleged in paragraphs 14, 15, 16 and 17 hereof the first second third and fourth Plaintiffs have suffered loss and damage. Further and in the alternative by reason of the aforesaid acts the first second third and fourth Plaintiffs have been denied free and uninterrupted access to the sea from every part of Lot 275(1) over every part of Lot 808 as is comprised in the Alluvion of Lot 275(1) and the first Plaintiff has been denied

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In the High Court of the Federation of Malaysia at Penang

No. 2

Further Amended Statement of Claim

3rd November 1966
(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

—
No. 2

Further Amended
Statement of
Claim

3rd November
1966
(continued)

free and uninterrupted access to the sea from every part of Lot 275(3) over every part of Lot 808 as is comprised in the Alluvion of Lot 275(3).

19. In the premises the second Defendant wrongfully retains possession of lot 808 and the first Defendant wrongfully retains possession thereof through the second Defendant.

20. The Plaintiffs therefore claim as follows:-

(1) The first Plaintiff claims against the first and second Defendants:-

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(a) A declaration that the line of the medium high tide of the sea between the ordinary spring and neap tides from time to time constitutes the westerly boundary of Lot 275(3).

(b) A declaration that the first Plaintiff is entitled to the fee simple absolute in possession of that part of the Alluvion which lies along the westerly extremity of Lot 275(3) and above the line of the medium high tide of the sea between ordinary spring and neap tides.

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(c) In the alternative a declaration that the first Plaintiff as the owner in fee simple in possession of Lot 275(3) is entitled to free and uninterrupted access to the sea over every part of such part of the Alluvion from every part of Lot 275(3).

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(d) In the further alternative a declaration that as against the first and second Defendants the first Plaintiff is entitled to possession of that part of the Alluvion which lies along the westerly extremity of Lot 275(3) and above the line of the medium high tide of the sea between ordinary spring and neap tides.

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- (e) (d) A mandatory injunction for the removal of the said fence and the said brick building erected on and any or whatever construction or constitution on Lot 808.
- (f) (e) Vacant possession of all that part of Lot 808 which adjoins Lot 275(3).
- (g) (f) Mesne profits from about the year 1958 until delivery of possession of all the Alluvion which adjoins Lot 275(3).
- (h) (g) Damages.

In the High Court of the Federation of Malaysia at Penang

No. 2

Further Amended Statement of Claim

3rd November 1966
(continued)

(2) The first second third and fourth Plaintiffs claim against the first and second Defendants:-

- (a) A declaration that the line of the medium high tide of the sea between the ordinary spring and neap tides from time to time constitutes the westerly boundary of Lot 275(1).
- (b) A declaration that the first second third and fourth Plaintiffs are together entitled in equal undivided shares to the fee simple absolute in possession of that part of the Alluvion which lies along the westerly extremity of Lot 275(1) and above the line of medium high tide of the sea between ordinary spring and neap tides.
- (c) In the alternative a declaration that the first second third and fourth Plaintiffs as the owners in equal undivided shares of the fee simple absolute in possession of Lot 275(1) are severally entitled to free and uninterrupted access to the sea over every part of such part of the Alluvion from every part of Lot 275(1).
- (d) In the further alternative a declaration that as against the first and second Defendants the first second

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In the High
Court of the
Federation of
Malaysia at
Penang

No. 2

third and fourth Plaintiffs are entitled to possession of that part of the Alluvion which lies along the westerly extremity of Lot 275(1) and above the line of the medium high tide of the sea between ordinary spring and neap tides.

Further Amended
Statement of
Claim

3rd November
1966
(continued)

- (e) ~~(d)~~ A declaration that the said Indenture of Lease dated the 12th August 1959 is void and of no effect. 10
- (f) ~~(e)~~ Vacant possession of all that part of Lot 808 which adjoins Lot 275(1).
- (g) ~~(f)~~ Mesne profits from about the year 1958 until delivery of possession of all the Alluvion which adjoins Lot 275(1).
- (h) ~~(g)~~ Damages.
- (3) (a) Costs.
- (b) Further or other relief.

Delivered this 3rd day of May 1962. 20

Re-Delivered this 18th day of June 1963.

Re-Delivered this 3rd day of November 1966.

Sd. Lim, Lim & Oon.

Solicitors for the Plaintiffs.

Amended 18th day of June 1963 pursuant to Order of Court herein dated the 6th day of June 1963.

(L.S.) Sd. Ajaib Singh
Senior Assistant Registrar
Supreme Court, Penang.

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Amended this 3rd day of November 1966 pursuant to Order of Court herein dated the 21st day of October 1966.

(L.S.) Sd. Anuar
Senior Assistant Registrar
High Court, Penang.

No. 3

AMENDED STATEMENT OF DEFENCE AND
COUNTER-CLAIM OF FIRST DEFENDANTS

In the High
Court of the
Federation of
Malaysia at
Penang

AMENDED STATEMENT OF DEFENCE OF DEFENDANT NO. 1

No. 3

Amended State-
ment of Defence
and Counter-
Claim of First
Defendants

28th February
1968

10 1. The First Defendant admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Amended Statement of Claim. The First Defendant will refer at the trial to the indenture No. 4276 referred to in paragraph 4 of the Amended Statement of Claim for the full terms and effect thereof.

2. With regard to paragraph 10 of the Amended Statement of Claim, the First Defendant admits that a strip of dry land above high water mark (hereinafter referred to as "Alluvion") has been formed along the western extremity of Lots 275(1) and 275(3), but makes no admission as to the manner in which such alluvion was formed.

3. Paragraph 11 of the Amended Statement of Claim is denied.

20 4. Paragraph 12 and 13 of the Amended Statement of Claim are denied.

30 5. With regard to paragraph 14 of the Amended Statement of Claim the First Defendant admits that by an indenture of lease dated 12th August 1959 under the hand of His Excellency the Governor of Penang Lot 808 Mukim 14 Northern District of Province Wellesley was demised to the 2nd Defendant, and denies that the Plaintiffs were ever in possession of or entitled to any fee simple in respect of the alluvion.

6. Paragraphs 15, 16 and 17 of the Amended Statement of Claim are denied.

7. Paragraph 18 of the Amended Statement of Claim is denied.

8. Paragraph 19 of the Amended Statement of Claim is denied.

9. The 1st Defendant denies paragraph 20(1)(d) of the further amended Statement of Claim of the Plaintiffs and aver that the Plaintiffs are not

In the High
Court of the
Federation of
Malaysia at
Penang

No. 3

Amended State-
ment of Defence
and Counter-
Claim of First
Defendants

28th February
1968
(continued)

entitled to a declaration sought for in that paragraph.

10. The 1st Defendant denies paragraphs 20(2)(d) and aver that the Plaintiffs are not entitled to a Declaration sought for in that paragraph.

11. The Defendant maintains:-

(a) that the land originally granted by the indenture dated 10th of November, 1852 was of a specific area of approximately 94 acres 3 roods 11 poles. 10

(b) that the western boundary of the said land as set out in the said indenture dated 10th November, 1852 was fixed and determined and not removable.

(c) that the ownership of Lots 275(1) and 275(3) does not give the Plaintiffs any right over the alluvion.

(d) that the alluvion is the property of the First Defendant.

(e) that the Plaintiffs having on their own accord and volition applied for temporary occupation licences over the alluvion are estopped from denying the First Defendant's title thereto. 20

(f) that the lease dated the 12th of August 1959 granted by His Excellency the Governor of Penang to the Central Electricity Board of the Federation of Malaya and registered in the Land Office as 831 of 1959 was lawfully granted and therefore valid in law. 30

(g) that the Plaintiffs are not entitled to any right whatsoever over the alluvion by reason of the ownership of Lots 275(1) and 275(3).

(h) That the Plaintiffs have not suffered any loss or damage by reason of the lease dated the 12th of August, 1959 of Lot 808.

10. The First Defendant prays that the Plaintiffs' claims be dismissed with costs. 40

COUNTER-CLAIM

1. In the year 1956 the First Plaintiff erected a fence on the land comprised in Lot 808 and thereby committed trespass. The said fence encroached onto the said lot to the distance of 141 feet approximately. The First Plaintiff has failed to remove the said fence in spite of requests by the First Defendant so to do.

2. The Defendant prays for:-

- 10 (a) an order requiring the First Plaintiff to remove the said fence.
- (b) damages for trespass.
- (c) costs.
- (d) and such other order as this Honourable Court may deem fit.

Dated this 28th day of February, 1968.

Sd. Ajaib Singh

(AJAIB SINGH)

20 Senior Federal Counsel for and on behalf of the First Defendant abovenamed whose address for service is c/o Attorney-General's Chambers, Malaysia, Kuala Lumpur.

To:

Messrs. Lim, Lim & Oon,
Advocates & Solicitors,
29 Church Street,
Penang.

30 (Solicitors for the Plaintiffs)

Messrs. Shearn, Delamore & Co.,
Advocates & Solicitors,
The Eastern Bank Building,
2, Benten,
Kuala Lumpur.

(Solicitors for the Second Defendant)

In the High Court of the Federation of Malaysia at Penang

No. 3

Amended Statement of Defence and Counter-Claim of First Defendants

28th February 1968
(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

DEFENCE OF SECOND DEFENDANTS

No. 4

Defence of
Second
Defendants

30th August
1963

1. The Second Defendants admit paragraphs 1, 2, 3, 4, 6, 7, 8 and 9 of the Further Amended Statement of Claim. The Second Defendants will refer at the trial to the Indenture No. 4276 referred to in Paragraph 4 of the Further Amended Statement of Claim for the full terms and effect thereof.

2. The Second Defendants in reply to Paragraph 10 of the Further Amended Statement of Claim admit that a strip of dry land above high water mark (hereinafter referred to as "Alluvion") had been formed along the Western Boundary of Lot 275(1) and 275(3) but make no admission as to the manner in which such alluvion was formed and puts the Plaintiffs to proof thereof. 10

3. The Second Defendants in reply to Paragraph 11 of the Further Amended Statement of Claim deny that the Plaintiffs or their predecessors in title had at the material time or at any time the alleged or any right to enter into possession of the land therein referred to or that they have entered into possession except by virtue of Temporary Occupation Licences. It is also denied that the Plaintiffs have been wrongly ousted therefrom by the Defendants. 20

4. The Second Defendants in reply to Paragraph 12 of the Further Amended Statement of Claim deny that the Plaintiffs are the owners of the land therein referred to. The Alluvion is and was at all material times the property of the State of Penang. 30

5. The Second Defendants in reply to Paragraph 13 of the Further Amended Statement of Claim deny that the Plaintiffs or any of them are entitled to free and unrestricted access to the sea as therein alleged.

6. The Second Defendants in reply to Paragraph 14 of the Further Amended Statement of Claim admit that on the 12th day of August 1959 they were granted a Lease for 33 years from the 12th day of December 1957 in consideration of a premium of \$7804/- and subject to the payment of an annual rent of \$1418/- in respect of 119,287 square feet of Lot 808 but 40

say that at the time of the signing of the said lease and at all material times thereafter the land in question was vested in the State of Penang. The said lease has been registered in the Land Office on the 17th day of September 1959.

In the High Court of the Federation of Malaysia at Penang

7. The Second Defendants deny Paragraph 15 of the Further Amended Statement of Claim.

No. 4

10 8. The Second Defendants in reply to paragraph 16 of the Further Amended Statement of Claim admit that they went into possession of the land in question but deny that they did so wrongfully. The Second Defendants went into possession and remain in possession by virtue of the lease referred to in paragraph 6 hereof to which they will refer at the trial for the full terms and effect thereof.

Defence of Second Defendants

30th August 1963
(continued)

20 9. The Second Defendants in reply to Paragraph 17 of the Further Amended Statement of Claim admit that they cut down the coconut trees and erected the building in question but maintain that they were bound so to do by virtue of the lease referred to in paragraph 6 hereof.

10. The Second Defendants deny Paragraphs 18 and 19 of the Further Amended Statement of Claim and also deny that any of the Plaintiffs are entitled to any of the relief asked for in Paragraph 20 of the Further Amended Statement of Claim.

11. The Second Defendants maintain:-

- 30 (a) That the land as originally granted by the Indenture dated the 10th day of November 1852 (No. 4276) was of a specified area estimated to contain 94 square acres, 3 square roods and 11 square poles.
- (b) That the Western Boundary of the said land as set out in the Indenture dated the 10th day of November 1852 was fixed and determined not moveable.
- (c) That the Western Boundaries of Lots 275(1) and 275(3) is in law not the sea beach.
- 40 (d) That the ownership of Lots 275(1) and 275(3) does not give the Plaintiffs any right over the Alluvion.

In the High Court of the Federation of Malaysia at Penang

No. 4

Defence of Second Defendants

30th August 1963 (continued)

- (e) That the Alluvion is and was at all material times the property of the State.
- (f) That the Plaintiffs having of their own accord applied for Temporary Occupation Licences over the Alluvion are estopped from denying the title of the State of Penang.
- (g) That the lease referred to in Paragraph 6 hereof was lawfully granted and is valid.
- (h) That the Plaintiffs are not entitled to any rights whatsoever over the Alluvion by reason of their ownership of Lots 275(1) and 275(3).

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12. Save as herein admitted each and every one of the allegations contained in the Further Amended Statement of Claim is denied as though set out herein individually and traversed seriatim.

Dated this 30th day of August 1963.

Sd. Shearn, Delamore & Co.

SOLICITORS FOR THE SECOND DEFENDANTS.

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No. 5

Amended Reply to Amended Statement of Defence of First Defendants' Defence and Defence to Counterclaim of First Defendants

16th July 1968

No. 5

AMENDED REPLY TO AMENDED STATEMENT OF DEFENCE OF FIRST DEFENDANTS' DEFENCE AND DEFENCE TO COUNTERCLAIM OF FIRST DEFENDANTS

AMENDED REPLY TO THE AMENDED STATEMENT OF DEFENCE OF THE FIRST DEFENDANTS AND DEFENCE TO COUNTERCLAIM OF THE FIRST DEFENDANTS

REPLY

1. The Plaintiffs join issue with the first Defendants on their defence save insofar as the same consists of admissions.
2. In reply to paragraph 11(e) of the Amended Statement of Defence of the first Defendants the second, third and fourth Plaintiffs deny that they

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applied for temporary occupation licences over the Alluvion. The Plaintiffs will maintain

In the High Court of the Federation of Malaysia at Penang

No. 5

Amended Reply to Amended Statement of Defence of First Defendants' Defence to Counterclaim of First Defendants

16th July 1968 (continued)

~~(i) that in 1954 and 1955 the first Defendants purported to grant temporary occupation licences for the occupation of the said Alluvion referred to in paragraph 10 of the Further Amended Statement of Claim. The Plaintiffs accepted the said temporary occupation licences because they were under a misapprehension as to their rights induced by representations made to the first Plaintiff by one Teoh Seng Hoo a clerk in the Land Office at Butterworth being a servant or agent of the first Defendants.~~

Particulars of the said representations

The said Teoh Seng Hoo came to the first Plaintiff's house in 1954 to inform her that if temporary occupation licences were not taken out the coconut trees planted by the Plaintiffs and their predecessors would be cut down and the temporary licences would be granted to another person other than the Plaintiffs, but if temporary occupation licences were taken out then the Plaintiffs could later be granted alienation.

(i) that at some date unknown to the first Plaintiff the first Defendants purported to grant a temporary occupation licence for the occupation of a stated but undefined area of the said alluvion referred to in paragraph 10 of the Further Amended Statement of Claim. The first Plaintiff, but not the second third and fourth Plaintiffs who did not know of any such purported grant, accepted the said temporary occupation licence being under a misapprehension as to her right induced by representation made to the first Plaintiff by one Teoh Seng Hoo a clerk in the Land Office at Butterworth being a servant or agent of the first Defendants.

Particulars of the said representation

The said Teoh Seng Hoo came to the first

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In the High
Court of the
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Malaysia at
Penang

No. 5

Amended Reply
to Amended
Statement of
Defence of
First
Defendants'
Defence to
Counterclaim
of First
Defendants

16th July
1968

(continued)

Plaintiff's house at some date unknown to the first Plaintiff but prior to the purported grant of the said temporary occupation licence to inform her that if temporary occupation licences were not taken out the coconut trees planted by the Plaintiffs and their predecessors would be cut down and the temporary licences would be granted to another person other than the Plaintiffs, but if temporary occupation licences were taken out then the Plaintiffs could later be granted alienation.

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(ii) that in the premises the Plaintiffs did not apply for the said temporary occupation licences of their own accord.

(iii) that the said temporary occupation licences were and are null and void because the said Alluvion was not at the time and never has been state land.

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(iv) the said temporary occupation licences were void for uncertainty in that they did not refer to any particular area of land.

(v)(iv) that in the premises the Plaintiffs are not estopped from denying the first Defendants' title to the said Alluvion for the reasons alleged in paragraphs 11(e) of the Amended Statement of Defence of the first Defendants or at all.

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DEFENCE TO COUNTER-CLAIM

3. The first Plaintiff admits that in the year 1956 she caused to be erected a fence on the land comprised in Lot 808 and that the said fence extended a distance of approximately 141 feet on the said Lot. The first Plaintiff denies that she committed trespass and maintains that by reason of the matters already set out in the Further Amended Statement of Claim herein she was entitled to erect the said fence. She will maintain that she is under no legal obligation to remove the same.

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4. Save as otherwise admitted each and every

allegation in the Counterclaim is denied and the Plaintiffs will further maintain that the Counterclaim as pleaded discloses no cause of action.

Dated and Delivered this 16th day of March, 1968.

Sd. Lim, Lim & Oon.

Solicitors for the Plaintiffs.

In the High Court of the Federation of Malaysia at Penang

No. 5

Amended Reply to Amended Statement of Defence of First Defendants' Defence to Counterclaim of First Defendants

16th July 1968 (continued)

No. 6

AMENDED REPLY TO DEFENCE OF SECOND DEFENDANTS

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AMENDED REPLY TO THE DEFENCE OF THE SECOND DEFENDANT

1. The Plaintiffs join issue with the Second Defendant on paragraphs 3 to 11 inclusive of its defence save insofar as the same consist of admissions.

2. In reply to paragraph 11(f) of the Second Defendant's defence the Second, Third and Fourth Plaintiffs deny that they applied for Temporary Occupation Licences over the alluvion and the Plaintiffs will maintain:-

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~~(i) that in 1954 and 1955 the First Defendant purported to grant Temporary Occupation Licences to them for the occupation of the said alluvion referred to in paragraph 10 of the Further Amended Statement of Claim. The Plaintiffs accepted the said Temporary Occupation Licences because they~~

No. 6

Amended Reply to Defence of Second Defendants

16th July 1968

In the High
Court of the
Federation of
Malaysia at
Penang

No. 6

Amended Reply
to Defence
of Second
Defendants

16th July
1968
(continued)

~~were under a misapprehension as to their rights induced by representations made to the First Plaintiff by TEOH SENG HOO a clerk in the Land Office at Butterworth, Province Wellesley, being a servant or agent of the First Defendant.~~

- (i) that at some date unknown to the first plaintiff the first Defendants purported to grant a temporary occupation licence for the occupation of a stated but undefined area of the said alluvion referred to in paragraph 10 of the Further Amended Statement of Claim. The first Plaintiff, but not the second third and fourth Plaintiffs who did not know of any such purported grant, accepted the said temporary occupation licence being under a misapprehension as to her right induced by representations made to the first Plaintiff by one Teoh Seng Hoo a clerk in the Land Office at Butterworth being a servant or agent of the first Defendants.

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Particulars of the said Representations

Particulars of the said representation

~~The said Teoh Seng Hoo came to the First Plaintiff's house in 1954.~~ The said Teoh Seng Hoo came to the first Plaintiff's house at some date unknown to the first Plaintiff but prior to the purported grant of the said temporary occupation licence to inform her that if Temporary Occupation Licences were not taken out the coconut trees planted by the Plaintiffs and their predecessors would be cut down and the Temporary Occupation Licences would be granted to another person other than the Plaintiffs, but if Temporary Occupation Licences were taken out then the Plaintiffs could later be granted alienation.

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- (ii) that in the premises they did not apply for the said Temporary Occupation Licences of their own accord;
- (iii) that the said Temporary Occupation

Licences were and are null and void because the said alluvion was not at the time and never has been State Land;

In the High Court of the Federation of Malaysia at Penang

(iv) the said temporary occupation licences were void for uncertainty in that they did not refer to any particular area of land;

No. 6

(v)(iv) that in the premises they are not estopped from denying the First Defendant's title to the said alluvion for the reasons alleged in paragraph 11(f) of the defence or at all.

Amended Reply to Defence of Second Defendants

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Delivered this 6th day of March 1967.

16th July 1968 (continued)

Sd. Lim, Lim & Oon

Solicitors for the Plaintiffs.

No. 7

No. 7

NOTES OF EVIDENCE

Notes of Evidence

In Open Court Before Gill J. 8th July, 1968.

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Enche Graham Hill with Enche Ho for the plaintiffs
Enche Ajaib Singh for the first defendant
Enche L. Kandan for the second defendant.

Graham Hill: Suit to determine ownership of land approximately 4 acres in area which the plaintiffs maintain has been created by the sea withdrawing over a period of time leaving the land high and dry. Lot numbers of the land have changed from time to time. The lots material for the purposes of this case are Lots 275(1) and 275(3) which belong to the plaintiffs.

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Plaintiffs' Counsel's Opening

The first defendant says that this is State land and never belonged to the plaintiffs and that a portion of it has been leased to the second defendants. The portion leased is not comprised in

In the High
Court of the
Federation of
Malaysia at
Penang

No. 7

Notes of
Evidence

Plaintiffs'
Counsel's
Opening
(continued)

Lot No. 808. The lessee must stand or fall by his landlord's title.

I put in a map which is agreed to by the other parties (put in and marked AB1). Lands shown on the top left corner of AB1. I put in an agreed bundle of title deeds (put in and marked AB2), an agreed bundle of survey maps (put in and marked AB3) and an agreed bundle of correspondence and miscellaneous documents (put in and marked AB4).

Refer to pleadings. Statement of claim. Plaintiffs' title set out in paragraphs 1 to 9, which are admitted by the Statements of defence of the two defendants. Paragraph 10 of the Statement of claim. Plaintiffs claim in paragraph 12 that they are entitled to the land. You can have a title which fluctuates in area. Claim in the alternative under paragraph 13. Claim under paragraph 20 of the Statement of claim.

10

I will hand up to Court a copy of my arguments on the case. Original ground at page 7 of AB2. Was the beach the fixed boundary? Intermediate titles are set out in AB2. Evidence of accretion is contained in the bundle marked AB3. First evidence of accretion in the survey maps produced in 1924. Title descends through various conveyances. Sub-division in 1935 shown at page. Subdivided areas passed under various conveyances. Page 64 as to Lot 275(3). No express reference to a plan in later conveyances. Plaintiffs' case that whatever was subject of the Grant in 1852 at page 7 of AB2 has passed intact and unaltered to the Plaintiffs. The question is, what did the original grantee get? Question of construing the original grant. That is the crux of the case.

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Alluvion was always occupied with the original land by the owners of the two lots. That means that the accretion passed to each successive owner. Refer *Doe d. Norton v. Webster* (1840) 113 E.R. 879, 882; *Watcham v. A.G. of the East Africa Protectorate* (1919) A.C. 533, 537. Evidence as to what passed under the original grant.

40

Defences disclosed. Main defence that it was a grant of a specific area. Defence that the western boundary was fixed and determined in the original grant and not removable. Estoppel by

reason of an alleged application for temporary occupation licence over the alluvion.

Law on the subject. Braddell on Straits Settlements Law Vol. I page 100; Stroud's Dictionary (3rd edition) Vol. 2 page 1138; *Scratton v. Brown* (1825) 107 E.R. 1140, 1144; *A.G. v. Chambers* 43 E.R. 486; *Parker v. Lord Advocate* (1904) A.C. 364, 368; *Scratton v. Brown* (1825) 107 E.R. 1140, 1145, 1146, 1147. First defendant in no special position. Refer to Norton on Deeds (2nd edition) page 294; Halsbury Laws of England (3rd edition) Vol. 39 page 561 paragraph 780; *Hull v. Selby Railway* (1839) 151 E.R. 139, 141; *R. v. Yarborough* 4 E.R. 1087, 1090, 1091, 1092 and 1093.

General principles relating to land abutting on the foreshore. Halsbury (3rd edition) Vol. 3 page 363, para 691; Halsbury (3rd edition) Vol. 39, page 560-1, paras 777-82, *Lopez v. Muddun Thakoor* (1870) 20 E.R. 625, 627; *R. v. Yarborough* 4 E.R. 1087; *Hull v. Selby Railway* 151 E.R. 139; *Brighton & Hove General Gas Co. v. Hove Bungalows Ltd.* (1924) 1 Ch. 372, 381, 391; *Gifford v. Lord Yarborough* 130 E.R. 1023 and 6 E.R. 491, 492.

No evidence that the land in dispute is land formed as a result of perceptible accretion. Refer to *A.G. v. Reeve* (1885) 1 T.L.R. 675; *A.G. v. Chambers*, *A.G. v. Rees* (1859) 45 E.R. 22, 27.

Whether general principles are displaced in the present case by the use of term "sea beach" in Grant No. 4276? Meaning of the term "sea beach". Ordinary dictionary meaning, Shorter Oxford Dictionary. Refer to *Cameron v. Gunn & Ainslie* 1848 20 Sc. Jur. referred to in 44 Empire Digest 66; *Mellor v. Treat* (1919) 121 L.T. 657, 658. Coast line meaning high water mark.

Case on which defendants right rely - *Musselburgh Magistrates v. Musselburgh Real Estate Co.* (1905) A.C. 491 which merely decided that "sea" and "sea beach" in terms of boundaries were two different things. Stroud's Dictionary (3rd edition) Vol. 4 page 2678.

If there is any discrepancy between the words of the deed and the plan annexed, the plan will be rejected as "falsa demonstratio". Refer to *Mellor v. Walmsley* (1904) 2 Ch. 525, 533.

Adjourned until 2.30 p.m. Sd. S.S. Gill.

In the High Court of the Federation of Malaysia at Penang

No. 7

Notes of Evidence

Plaintiffs' Counsel's Opening
(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

Resumed at 2.45 p.m.

Hill (continuing):

Principles in English cases where land has been specifically measured and abuts on the foreshore have been applied by the Privy Council in appeals from other countries. Refer to A.G. of Southern Nigeria v. John Holt & Co. (1915) A.C. 599, 610, 611; Secretary of State for India in Council v. Foucher & Co. (1934) T.L.R. 241 (P.C.), 1933 61 L.R. Ind.Att. 18 P.C. L.T.R. 242. Nothing in this case to exclude the doctrine of accretion. 10

No. 7

Notes of
Evidence

Plaintiffs'
Counsel's
Opening
(continued)

Plaintiffs' possession relevant. We can show possession of some of the land for 30 years, something on which accretion can enure. Refer to Megarry & Wade on the Law of Real Property (2nd edition) pages 954 & 960; Asher v. Whitlock (1865) L.R. 1 Q.B. 1, 5; Perry v. Glissold (1907) A.C. 73, 79; Nicholls v. Ely Beet Sugar Factory (1931) 2 Ch. 84. Once possession established onus of proving title shifts to defendant; Davidson & others v. Gent (1857) 156 E.R. 1400, 1403. 20

Estoppel by reason of the issue of T.O.L. The position of a licensee the same as that of a tenant: Refer to Tadman v. Henman (1893) 2 Q.B. 168, 171; Doe d. Knight v. Smythe (1815) 105 E.R. 862; Doe d. Johnson v. Baytup (1835) 111 E.R. 384. Plaintiffs did not enter into possession by virtue of the T.O.L. because they were already there.

In any event estoppel enures only during the tenancy (and a fortiori the licence) by which it is created. Refer to Woodfall on Landlord & Tenant (26th edition) Vol. 1 page 16; James v. Landon 78 E.R. 302. 30

Circumstances under which the T.O.Ls were issued clearly negatives any acquiescence by the plaintiffs.

Refer to AB4, pages 1 and 2 and correspondence between parties on the following pages. Lease to the C.E.B. at pages 75, 76 of AB2.

I now call evidence.

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P.W.1 Beng Hong Oon alias Lim Beng Hong a/s in English:

My address is 283, Bagan Jermal, Butterworth, Province Wellesley. I am the wife of the second plaintiff. I am an admitted Advocate & Solicitor of this Court and I practised as such as a partner with the firm of Lim, Lim & Oon until 1963 and now as an associate.

10 I am the first plaintiff named in these proceedings. The second plaintiff is my husband. The third and fourth plaintiffs are my sons. The fourth plaintiff is at the moment in England. I have the authority of the other plaintiffs to give evidence in this case in so far as it affects them.

I first came to live in my present house in April, 1938. My house stands on Lot 271(1), which is not the subject matter of this suit. It is near the lots which are the subject matter of dispute.

20 In June 1940 my family purchased $\frac{1}{4}$ share in Lot 275(1). I see page 49 of AB2. It is a conveyance from Goh Cheng Chuan to Tan Geok Kim who was the niece of my husband and was living with us. She held the land on a verbal trust for my husband. In August, 1940 Ng Khoen Kioen purchased $\frac{1}{4}$ share in the same lot from Goh Cheng Seng. He was my husband's nephew. He held the land on a verbal trust for my two sons who were then infants. They are now the 3rd and 4th plaintiffs. The conveyance
30 appears at page 53 of AB2.

I see conveyance at page 57 of AB2 whereby Goh Cheng Ee transferred to Ng Khoen Kioen another $\frac{1}{4}$ share in the same lot. The land was held on a verbal trust for the 3rd and 4th plaintiffs.

Under the conveyance at page 61 of AB2 I became the owner of the remaining $\frac{1}{4}$ share in the same lot.

40 My husband's niece transferred her $\frac{1}{4}$ share to my husband by the conveyance at page 68 of AB2. In June 1955 Ng Khoen Kioen transferred the two quarter shares in the same lot to the 3rd and 4th plaintiffs.

That completes the devolution of Lot 275(1) in equal shares to all four of us plaintiffs.

In the High Court of the Federation of Malaysia at Penang

No. 7

Notes of Evidence

Plaintiffs' Evidence

Beng Hong Oon

Examination

In the High
Court of the
Federation of
Malaysia at
Penang

No. 7

Notes of
Evidence

Plaintiffs'
Evidence

Beng Hong Oon

Examination
(continued)

On 26th June 1947 I became owner of Lot 275(3) by virtue of conveyance by Chew Kok Kim and Kiar Eng Goay to me. This conveyance appears at page 64 of AB2.

We are thus the owners of the lands which are the subject matter of this matter.

The title deeds were delivered to me by the vendors. The old title deeds were looted during the Japanese occupation. I did not ever recover the original title deeds. I officially requisitioned the searches of the title deeds. As a result of those searches I obtained certified copies of the title deeds, and they are set out in the agreed bundle AB2.

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The land comprised in Lot 271(1) on which I lived ran down to the sea. It was fenced by the previous owner. The fence surrounded the coconuts and was several yards from the trees and nearer the sea. There was in relation to Lot 271(1) land corresponding to the alluvion of Lots 275(1) and 275(3). The fence on Lot 271(1) enclosed part of the alluvion in relation to that lot. I occupied the whole of the area that was fenced. I now occupy a larger area. I was not allowed to live there during the occupation period. I returned to the house in November 1945 and I found that all the fences had been torn up by the Japanese. Only a few cement posts and gate posts were left. Cows and pigs used to come into the house because there was no fence. So I obtained permission from the Commanding officer of the Royal Sussex Regiment to use Japanese prisoners and I had a fence put up along the lines of the old fence. By that time the alluvion had increased. The land beyond the old fence had increased. During the Emergency I pushed the fence right up to the edge of the sea. The fence is still there.

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There was no fencing on the seaward side of Lots 275(1) and 275(3) when I purchased them, but there were houses built on the alluvion. Two of the houses were occupied by the former owners. One house was on the land itself and two on the alluvion. There were also other houses on the alluvion. The previous owners received ground rents on those houses on the alluvion which were occupied by other people, mainly fishermen. Those on the land itself were pig rearers or poultry farmers.

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My agents were introduced to the people, other than the owners, living on the lands when I purchased them. I in fact collected rents from them until 1941, until the Japanese came. My motor car driver used to collect the rents. He is dead now. I did not collect rent from the previous owners. The houses were all attap houses. There were more houses on the alluvion than on the land itself. There was no physical mark on the land to indicate where the lot ended and the alluvion began. There were some coconut trees on the lot itself. They were more than 70 years old, some of them not bearing. There were coconut trees on the alluvion. They were planted. There were about 200 of them. They were full-bearing. As one got nearer the sea the trees were younger. These trees have since been cut down by the Central Electricity Board.

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It was a restricted area during the Japanese occupation. People were not allowed to walk along the road because it was quite close to the aerodrome. The houses were demolished.

I planted one or two rows of coconut trees after I bought the lots. They were nearer to the sea. I think I planted the coconuts after the war.

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There was no fencing on the west side of Lots 275(1) and 275(3) when I bought them. I put up the fencing during the Emergency, in or about the year 1952, both on lots 275(1) and 275(3). I enclosed the area right down to the sea. This fencing was damaged by people from time to time. I repaired it. I did not allow any squatters on lot 275(1) or the alluvion. But there were squatters on lot 275(3) with the previous owners' permission. I did not permit any new tenants on lot 275(3).

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The alluvion on lot 271(1) on which I lived had increased between 1938 and 1962 by at least 50 feet. When I went back there after the Japanese occupation I found that the sea had gone further back. The alluvion increased gradually and imperceptibly. There is about 15 feet of alluvion beyond the fence today. There was a bigger increase of alluvion on lots 275(1) and 275(3). The process was similar to that on lot 271(1).

Adjourned until 9.30 a.m. tomorrow.

Sd. S.S. Gill.

In the High Court of the Federation of Malaysia at Penang

—————
No. 7

Notes of Evidence

—————
Plaintiffs Evidence

—————
Beng Hong Oon

Examination
(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

No. 7

Notes of
Evidence

Plaintiffs'
Evidence

Ayub bin Saub

Examination

Hearing continued. Counsel as before.

Enche Hill wishes to call the surveyor at this stage.

Counsel for other parties have no objection.

P.W.2 Ayub bin Saub a/s in English:

I practise as a surveyor at Room No. 106, First Floor, Malayan Banking Building, 9 Union Street, Penang. I am a licensed surveyor.

I was employed in the Government Survey Department from 1941 to 1960. I held posts in various parts of the country but mainly in Penang. Since 1960 I have been in private practice as surveyor.

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A "natural feature boundary" is a term known to surveyors. Generally, a natural feature boundary is a long river, stream or the sea. If I was asked to survey a piece of land bounded on one side by the sea beach I would consider the boundary along the sea beach to be the high water mark. I would calculate the position of that line from tide tables, 7 feet above sea level. It is the mean between the spring and neap tides. I would start off from a known beach mark and mark out along the beach the points where you have the height of 7 feet above sea level. Those points when joined would constitute the boundary mark. If the beach is level the boundary would be a straight line.

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If I was told that there were no tide tables, I would fix the boundary by looking at the debris brought in by the tide. That would be the line where the debris would be deposited as the water recedes. This would mean the actual physical observation of the sea beach.

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There is a term known to the surveyors as "right line boundary". The right line boundaries are boundaries as marked on the ground as close as possible to the natural feature boundary. I would mark it by boundary stones. A right line boundary is used only next to a natural feature boundary. If on a survey plan there is a right line boundary, the boundary stones would be shown.

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I am aware of the existence of an early survey

of Penang done by a Mr. Moniot. I am familiar with a book written by Mr. Walker Taylor entitled "Preparation and Use of Maps required under the Boundary and Survey Map Ordinance" published in 1952 by the Survey Department of what was then the Federation of Malaya. The book mentions at page 7 about the occupational boundaries having been probably defined by Mr. Moniot by circumferentor or plane table. A plane table survey is one of the methods of picking up details for the purpose of mapping. You have a flat surface which you put on a tripod. You orientate it to the north. You then pick out a particular feature on the ground by means of sight rule and chains. In this way you physically measure the distance. I could do a plane table survey on a line of rubbish on the beach if it was visible.

I see the plan at page 9 of AB2. This plan shows a natural feature boundary. It is after a proper survey called a revision survey has been carried out that one would get on some other plan a right line boundary. I do not see any control points or physical markers on the plan at page 9 of AB2. The line shown on this plan is the mean high water mark on the date when the survey was done.

XXd: Ajaib Singh:

There is an indication on the plan at page 9 of AB2 that it is a natural feature boundary by the reason of the words "sea beach" written on the plan. That is not a right line boundary. A right line boundary comes only after a revision survey.

The plan at page 1 of AB3 is not identical with the plan at page 9 of AB2. But the natural feature boundary line shown at page 1 of AB3 is the same as the natural feature boundary line shown at page 9 of AB2. The natural feature boundary line at page 1 of AB3 is also the mean high water mark.

I see page 2 of AB3. Lot 275 is shown there. The western boundary shown on this plan is the natural feature boundary. Point "1" shown on the boundary, I presume, is some sort of control point for plane table survey.

A right line boundary is a boundary marked on

In the High Court of the Federation of Malaysia at Penang

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Notes of evidence

Plaintiffs' Evidence

Ayub bin Saub

Examination (continued)

Cross-examination on behalf of First Defendants

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Evidence

Plaintiffs'
Evidence

Ayub bin Saub

Cross-
examination
on behalf of
First
Defendants
(continued)

the ground as close as possible to the natural feature boundary by a proper theodolite survey. A line away from a natural feature boundary is seldom called a right line boundary. It is possible to have a right line boundary along a natural feature boundary in a straight line. If the boundary is along a winding river then there may be many straight line boundaries.

The plan at page 2 of AB3 is not a revision survey plan. The plan at page 3 of AB3 is not a revision survey plan. This is still a plane table survey plan. I would describe the western boundary of Lot 275 on this plan as a natural feature boundary. The northern boundary of Lot 275 on this plan is a straight line separating it from another lot. There is a road on the eastern boundary of lot 275. The eastern boundary of lot 275 follows the western edge of the roadside drain. The southern boundary is a straight line separating lot 275 from another lot. There is a double line on the western side of Lot 275. The one nearer to the sea is not the boundary line. It is a control line joining Pints H and I. In all types of surveys we must have control points in order to limit the errors of our surveys. The control points can be planted anywhere. They do not signify boundary marks. They may be on the boundary or may not be on the boundary. Normally they are not. With the sea as natural feature boundary the control points are planted at salient points. There are various forms of control marks. They may be marks planted in the ground with beacons erected above. I would agree that there was land between the control point line and the western boundary of lot 275.

I see plan at page 4 of AB3. This is also a plane table plan showing lot 275 at the bottom. I cannot say what the double line which almost half way up the lot becomes a single line is. But lot 275 is marked at 275¹ which indicates subdivision. The subdivision may have been done at the request of the owner or on acquisition. Looking at the plan I would say that the method of plane table survey was adopted for the purposes of subdivision.

I see page 5 of AB3. I do not know what this plan is.

I see page 6 of AB3. This is a proper theodolite survey plan and not a plane table survey

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plan. It is a proper resurvey plan, but I cannot say under what law it was made. I am aware of the Boundaries and Survey Maps Ordinance, 1884 in Volume 3 of the Laws of the Straits Settlements, 1936. For a revision survey the request does not come from the owner. It is done by the Government of its own initiative. The owners are informed about it as required by law and given an opportunity to object. The revision survey plans are not open to the public for inspection, but any member of the public can obtain a copy on payment. The owners are given notices by the Collector of Land Revenue to attend for purposes of inspection and objection.

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Lot 275^I is shown on the plan at page 6 of AB3. The western boundary of Lot 275^I shown in this plan is a right line boundary. There is a strip of land between that boundary and the sea. According to scale the width of this strip of land varies from about 60 feet to about 100 feet. A theodolite survey is accepted as the final accurate survey for the purpose of issuing a title to the owners of the lots. No account is taken in this plan of the high water mark. Neap tide is the high tide and spring tide is low tide. A mean is taken of the two tides to determine the high water mark. It is done nowadays by looking at tide tables supplied by the Government. The area of lot 275 in this plan does not include the area from the boundary to the high water mark.

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I see plan at page 7 of AB3. It is a plan of lot 275 as subdivided. This is the plan referred to in the plan at page 6. I agree that this is a proper accurate and final plan of the subdivision of lot 275 prepared by the Survey Department. The date of this plan is 12th March, 1935. The plan at page 6 of AB3 is dated 30th December, 1924. In the survey plan of 1935 there is a bigger stretch of land between the boundary of lot 275 and the high water mark. There is a number shown on this strip of land - number 808. The width of this strip is more or less constant and is approximately 120 feet.

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I see plan at page 77 of AB2. This is a photostat copy of a plan showing Lot 808 adjoining Lot 275. The width of the northern boundary of Lot 808 is shown as 196 feet in this plan and the southern boundary 185 feet. This plan shows a

In the High Court of the Federation of Malaysia at Penang

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Notes of Evidence

Plaintiffs' Evidence

Ayub bin Saub

Cross-examination on behalf of First Defendants (continued)

In the High Court of the Federation of Malaysia at Penang

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Notes of Evidence

Plaintiffs' Evidence

Ayub bin Saub

Cross-examination on behalf of First Defendants (continued)

Cross-examination on behalf of Second Defendants

Re-examination

strip of land between the western boundary of Lot 808 and the high water mark, about one chain in width. It is constant throughout the whole length of the boundary.

Xxd: Kandan:

Walter Taylor was the Chief Surveyor of Penang for some years. His book is the only book I know of which speaks of the early surveys of Penang.

I see page 7 of AB3. The western boundary of the former lot 275 on this plan is a most accurate boundary because it was fixed under a modern survey. The seaward boundary of the strip of land beyond the western boundary of lot 275 is not a right line boundary. It is an indication of the sea line. I call it the sea line because the word "sea" appears on the plan. But for the word "sea" I would not know whether it is a sea line or any other boundary line. Similarly in the other plans in AB3 but for the word "sea" I would not know whether they were the natural feature boundaries or right line boundaries. That applies to the plan at page 9 of AB2.

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I cannot express any opinion on the statement in Taylor's Book at page 7 that Moniot's 1851-1854 survey was of occupational boundaries and that the complete set of plans is still intact.

I do not know what circumferentor survey means. It is my opinion that Moniot might have used plane-table survey.

I do not know what an obelisk is.

ReXd:

If I am given the details of the four sides of a piece of land comprised in a Grant I cannot ignore one of them for the purpose of my survey. If one of the boundaries of a plot occupied by somebody is the sea I would regard the sea as the natural feature boundary and would take it into account.

I see page 2 of AB4 where there is mention of Mukim XIV. That is the mukim in which lot 275 is situate. The notice mentions the sea as the

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boundary on the West. I do not know much about the sort of notice mentioned here. The plans would show the sea line when an owner went to inspect it, and not the high water mark. There would be no land between the sea and the owner's land.

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Notes of Evidence

Plaintiffs' Evidence

Ayub bin Saub

Re-examination (continued)

10 Control points can be planted anywhere. They may be points anywhere with a beacon on top. The beacon would be an erection with a diamond shaped signal which could be seen from a distance. The control point could be on land covered with water.

The plans referred to in the notification at pages 1 and 2 of AB4 would be plans of the type shown at page 3 of AB3. The western boundary of lot 275 on page 3 of AB3 is the inner line. If after reading the notification I went to see the plan I would expect to find the western boundary as indicating the sea. That could fix the control points in the sea or on the foreshore.

20 The plan at page 4 of AB3 shows lot 275^I, which indicates that the old lot 275 had been subdivided. Looking at the plan I cannot say where the rest of lot 275 is. There is nothing else on the plan to indicate subdivision.

The plan at page 5 of AB3 is a theodolite survey plan. The purpose of the plan is indicated by what the Government has written on it.

Court adjourned and resumed after 10 minutes.

P.W.1 Beng Hong Oon (on former oath)

Beng Hong Oon

30 Since I and my family have owned lots 275(1) and 275(3) we have received no notifications from the Government about subdivision or alteration of lot numbers. In particular I received nothing in connection with the creation of lot 808. It was only when I found that the coconut trees had been cut down that I made inquiries. I do not know who cut down the coconut trees. About 200 coconut trees were cut down. They were all on the seaside. They were the trees on what is now known as lot 808 that were cut down. The best of the trees were then valued at about \$18 per down. I think the Central Electricity Board paid about that much to have the trees cut down.

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Examination (continued)

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Plaintiffs'
Evidence

Beng Hong Oon

Examination
(continued)

I do not think I have in my possession any actual temporary occupation licence. I have looked for it but I have been unable to find it. I think my firm have asked for a copy. I produce a letter received from the Collector of Land Revenue, Butterworth (put in and marked P5).

There was a temporary occupation licence issued to me. As far as I can recollect temporary occupation licences were issued to me in 1954 and 1955. I did not apply for them without any approach from the Department. One Teoh Seng Hoo was a clerk in the Land Office, Butterworth. His wife was a friend of mine. They came to visit me one evening. Mrs. Teoh came to consult my husband. Mr. Teoh and I walked to the garden. He saw the extension of the fencing which I had made. He said that I had to get a temporary occupation licence from the Government for that area. I asked what for. He said that if I did not, someone else might apply and I would have someone squatting in front of me and my coconut trees might be cut down. I asked what was the area. He told me to make an estimate. I told him that I would go to the Land Office for the T.O.L. if I had the time. He said that he would get the T.O.L. ready for me and tell me how much to pay. He also said that if I continued taking out T.O.Ls and looking after the land I could later on ask for a Grant. There was no approach made by any of the other plaintiffs to the Government for a T.O.L. Mr. Teoh and Mrs. Teoh are now dead. My conversation with Mr. Teoh took place during the Emergency. I was very busy at the time.

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I see copy of letter at page 5 of AB4. There is other correspondence in AB4 relating to the dispute as to the Government's right to issue a T.O.L. to me. Before that I was rather busy.

I see copy of letter at page 14 of AB4 whereby I gave notice of action to the Central Electricity Board. Their reply disputing the claim is at page 17 of AB4.

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Adjourned until 9.30 a.m. tomorrow.

Sd. S.S. Gill.

10th July, 1968: Hearing continued. Counsel as before.

P.W.1 Beng Hong Oon (on former oath)

Xkd: Kandan:

10 I am giving evidence on behalf of all the plaintiffs. I am the attorney of the 4th plaintiff. The other plaintiffs are here. I know most of the facts. I am not appearing as the agent of the 2nd and 3rd plaintiffs. What I say in this case need not necessarily represent the views of the 2nd and 3rd plaintiffs. The 2nd and 3rd plaintiffs have authorised me to give evidence on their behalf. I did the legal transactions as regards the purchase of lots 275(1) and 275(3). My husband, the 2nd plaintiff, provided the money for lot 275(1). I provided the money for lot 275(3). All intermediate dealings with lot 275(1) were done by me, as was the case with lot 275(3). These dealings were done with the authority of my husband and my sons who were then infants and in England. The 3rd plaintiff was not an infant when the land was transferred to him in 1955. Neither of my sons is an infant now. When my sons became majors I still had authority to deal with the land.

30 I was called to the Bar here in 1927. I started the legal firm of Lim and Lim with my brother in 1927. The firm became Lim, Lim & Oon in 1950. I have been a practising lawyer for 41 years. I was a nominated member of the Federal Legislative Council from February 1948 to June 1955.

40 The visit of Mr. Teoh Seng Hoo to me was a social one. Mrs. Teoh had come to consult my husband who is a doctor. This was at my house on Lot 271(1), which is not one of the lots in this case. The house number is 2837, Bagan Jermal, Butterworth. Lot 271(1) is less than a quarter of a mile from lot 275 on the same side of the beach. Between 275 and lot 271 there are intermediate lots. The intermediate lots were occupied. There were houses on them. There were trees and shrubs. This was before the Japanese occupation. There were intermediate lots with houses, coconut trees and shrubs in 1955 when Mr. Teoh visited my house.

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Notes of Evidence

Plaintiffs' Evidence

Beng Hong Oon

Cross-examination on behalf of Second Defendants

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Notes of
Evidence

Plaintiffs'
Evidence

Beng Hong Oon

Cross-
examination
on behalf
of Second
Defendants
(continued)

There is now no access from lot 271 to lot 275 except by road or by the sea. The position was the same in 1955. The intermediate lots are not fenced and were not fenced in 1955.

When Teoh came to visit we walked to the garden towards the sea. I walked towards the alluvion on lot 271. Mr. Teoh mentioned to me about taking out a T.O.L. for the alluvion on which there were coconut trees. Pursuant to that suggestion a T.O.L. was given to me. Mr. Teoh mentioned about T.O.L. for all my lands. By that time I had fenced my adjoining lot 270(1). I said yesterday that I distinctly remember receiving T.O.Ls for 1954 and 1955. I knew that T.O.L. means temporary occupation licence of State Land.

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As far as I can remember I did not make a written application for a T.O.L. in respect of the lands west of lots 275(1) and 275(3). T.O.Ls in respect of lands west of lots 275(1) and 275(3) were issued in my name B.H. Oon.

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I cannot remember whether I made any verbal or written application for a temporary occupation licence to the Collector of Land Revenue, Butterworth. Mr. Teoh said to me that if I continued to take out T.O.Ls and look after the lands I could later ask for a Grant of the Land. I understood Mr. Teoh to mean a Grant from the government. I did not dispute Mr. Teoh's statement because I have had experience of some of my clients applying for Grants for lands in respect of which they had temporary occupation licences.

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(Mr. Kandan produces a Register of T.O.Ls for the years 1949 and 1950 which he wishes to show to the witness. Mr. Hill says that he has no objection to questions being asked on this and the Register being put in, but would like the Court to make a note that this Register was not produced before on discovery).

Mr. Ajaib: I wish to have it recorded that attempts were being made all the time to trace the records of the T.O.L. and that Mr. Hill was informed about it as soon as this Register was discovered.

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(Shown Register). I see this Register of T.O.Ls (marked D6 for identification) at page 32

of which my name appears as one of the persons to whom a T.O.L. has been issued to lands adjacent to lots 275(1) and 275(3).

Having seen the Register I agree that T.O.Ls were issued to me in 1949 and 1950 in respect of lands west of lots 275(1) and 275(3).

10 I am not sure of the date when Mr. and Mrs. Teoh called at my house. But I do say that I did not apply for T.O.Ls until Mr. Teoh gave me the suggestion. If Mr. Teoh had come to see me in 1954 it would be correct that I obtained T.O.Ls for 1954 and 1955 (shown Register). I see that this is a T.O.L. register for 1939 (marked D7 for identification) at page 40 of which there is a note that my T.O.Ls were cancelled.

I had a T.O.L. in respect of the land west of lot 275(1) until the end of 1955. I also had a T.O.L. in respect of the land west of lot 275(3) until the end of 1955.

20 (Shown a notice). I did not receive this Notice of Vacation of my T.O.L. No. 23035/55 dated 12th May, 1955 (marked D8 for identification). The signature of the recipient on this notice is that of Phee Joo Teik. I recognise the signature. Phee Joo Teik was a friend of the family. He was not then living on either of the lots.

30 I agree that the records show that I had T.O.Ls in respect of both lots in 1949 and 1950 and then in 1954 and 1955. I cannot remember whether I had T.O.Ls for a continuous period. I cannot remember whether I had T.O.Ls for the intermediate years.

Apart from what Mr. Teoh said to me, there was no other suggestion made to me that I should take out a T.O.L.

40 Tan Geok Kin, my husband's niece, is now in England. Ng Khoen Kioen lives somewhere in Penang. I am not calling him to give evidence. I am still the registered proprietor of lot 275(3). I sold lot 275(1) to developers, I think, some time in January 1964. I sold it to three persons who were in partnership. I do not remember their names. The sale was with the authority of the other plaintiffs. There was agreement with the

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Notes of Evidence

Plaintiffs' Evidence

Beng Hong Oon

Cross-examination on behalf of Second Defendants (continued)

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Evidence

Plaintiffs'
Evidence

Beng Hong Oon

Cross-
examination
on behalf
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Defendants
(continued)

purchasers that the alluvion was excepted from the conveyance, and I told them about this civil suit. I am not calling those purchasers as witnesses.

I was driven out from all the lands by the Japanese and I returned to them in November, 1945. I then found a considerable increase to the alluvion. I did not measure the alluvion, nor did anybody else to my knowledge. The State did it without my knowledge.

There were no brick buildings on any part of lot 275(1) or lot 275(3) or the alluvion. I had coconut trees planted on the alluvion by my gardener, who was one of the former owners, from 1946 or 1947 onwards. This gardener was Goh Cheng Chuan. On the whole of lot 275 there was one plank house which was the family house of the former owners. The other houses were all attap huts.

I first questioned the State's title to the alluvion in my letter of 28th June, 1955 (page 3 of AB4). Teh Seng Hoo died on 30.11.1960 and his wife died on 1.9.1954. His wife was ill when she came to see my husband.

I first thought of my right to the alluvion in 1955.

I see paragraph 6 of the second defendant's statement of defence. I accept the contents of that paragraph except that I deny that the land in question was ever vested in the State of Penang.

At no time did I surrender any of my T.O.Ls (shown a T.O.L.). This is the type of T.O.L. which was issued to me (marked D9 for identification).

Cross-
examination
on behalf
of First
Defendants

Xxd: Ajaib Singh:

I see Indenture at page 49 of AB2. This was the first of the conveyances to my family of the lands in question. I agree that it was a conveyance of a particular piece of land which was described in a particular way as lot 275¹ and estimated to contain a specified area. All subsequent conveyances to my family are described in

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the same way. I agree that the plan at page 7 of AB3 shows the exact locations of lots 275(1) and 275(3). At the time of the first conveyance I did not have a look at any survey plan of the area then in existence. I had a look at the land at the time of the conveyance. It was close to the lot on which I lived. My husband through me provided the money for the purchase.

10 I had previously dealt with T.O.Ls for my clients in respect of Government Reservation lands but never for alluvion.

I do not remember from how many people on the land I collected ground rent. Ground rent was purely nominal, a sum of 50 cents.

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Notes of Evidence

Plaintiffs' Evidence

Beng Hong Oon

Cross-examination on behalf of First Defendants (continued)

20 ReXd: When I dealt with the purchase of the lots on behalf of my family I as a lawyer investigated the title of the vendors in the usual way. I see page 51 of AB2. My signature appears there as having attested the conveyance. I had investigated the title before the conveyance was made. As part of the investigation of title I did not see the 1852 Indenture. I went back to the root of title for 30 years. I inspected the land. It did not occur to me at any time that the land did not extend to the sea.

Re-examination

When Mr. Teoh said to me that the alluvion was Government land I had no time to consider whether the Government had any title to it. At that stage I thought it was our land.

30 I do not know whether D8 or the letter at page 4 of AB4 is true. From 1955 I was disputing the right of the Government to issue T.O.Ls. I did not remove from the land within 30 days from 18th May, 1955.

I have no recollection of ever having made a written or verbal application for T.O.Ls.

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Plaintiffs' Evidence

Beng Hong Oon

Re-examination (continued)

At the time when my husband and any of my adult children were present in Penang they would be consulted. When my children were away from Penang I dealt with their affairs on their behalf.

The visit of Mr. and Mrs. Teoh to my house was before any T.O.L. was issued to me.

There were no houses on the alluvion of either of the two lots.

Hill: That is the end of the evidence for the plaintiffs. I would not hand up to the court a photostat copy of the report of the Scottish case of Magistrates of Musselburgh v. Musselburgh Real Estate Company Limited.

10

I make a formal application for the pleadings as filed to be accepted as the final pleadings. (No objection from Enche Ajaib Singh and Enche Kandan).

Court: Application granted.

Hill: I apply for amendment of paragraph 2 of the Reply by substituting para 2(1) draft delivered, by adding a new sub-paragraph (iv) and renumbering paragraph (iv) as paragraph (v). (No objection by Enche Ajaib Singh or Enche Kandan).

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Court: Amendment allowed.

Case for the plaintiff.

Court adjourned and resumed after 10 minutes.

First Defendants' Evidence

Piara Singh

Examination

Enche Ajaib Singh opens case for 1st defendant and calls evidence.

D.W.1 Piara Singh a/s in English:

I am the Assistant District Officer, Butterworth. I am also the Assistant Collector of Land Revenue. I assumed duties as such in July, 1967. I was in the same District in the same capacity for about 1½ years from 1960 to 1961.

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(Shown D6). This is a Register of Temporary Occupation Licences issued by the Collector of Land

Revenue, Butterworth for 1949 and 1950 (now formally marked D6). At page 32 there are two entries, in respect of lot 275(1) and lot 275(3), regarding T.O.Ls having been issued to Mrs. B.H. Oon. According to the Register the T.O.Ls were issued for the purpose of collecting fruits and sea frontage.

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10 When we receive an application for a temporary occupation licence in respect of any State land, the land is examined by the Collector of Land Revenue himself or his field officers. The first step is a written application by the applicant. An informal letter suffices. Until 1966 there was no prescribed form of application for a T.O.L. An application for a T.O.L. could be sent through some one.

Notes of Evidence

First Defendant's Evidence

Piara Singh

20 (Shown D9). This is the form of the T.O.L. issued (now formally marked D9). This form was introduced in 1959. Before that this was the form used (put in and marked D10). Prior to 1st January, 1966 the T.O.Ls were issued under the State Land Rules, 1923 issued vide Gazette Notification 2050 of 1923. The form of licence is set out in Schedule II of the Rules. D9 could have been issued earlier than 1959.

Examination (continued)

30 (Shown Register). This is a Register of T.O.Ls for the period 1959 to 1961 (now formally marked D7). At page 40 of this Register there is reference to 275(1) against the name Mrs. B.H. Oon and with a remark that the T.O.L. was cancelled.

I have not been able to trace the Registers of T.O.Ls issued during the period 1951 to 1958. I made a search. Search is still going on. The other Registers might have been destroyed by the previous collectors. There are no instructions as to how long the Registers should be kept. Under Financial General Orders counterfoils can be destroyed after 7 years.

40 T.O.Ls are issued on yearly basis. I cannot remember whether in the Land Office, Butterworth there are any pre-war records of T.O.Ls. Settlement Registers for the pre-war period are intact. Records of Conveyances are also intact. I am not aware of any other records having been lost or destroyed during the occupation period.

Adjourned until 2.30 p.m. Sd. S.S. Gill.

In the High Court of the Federation of Malaysia at Penang

Resumed at 2.45 p.m.

D.W.l Piara Singh (on former oath):

The word "adj." at page 32 of D6 means "adjacent". (Shown page 7 of AB3). There is reference on this plan to "D.O.P.W. 530-34". This refers to a District office file. I have not been able to trace it. That file would contain particulars of the surveys or any enquiries held pertaining to that land.

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Notes of Evidence

First Defendants' Evidence

Piara Singh

Examination (continued)

Cross-examination on behalf of Second Defendants

Xxd: Kandan:

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I see page 40 of D7. The word "adj." thereon means "adjacent" with reference to Lot 275(1). There are photostat copies of letters written by the District Office, Butterworth to the State Secretary, Penang seeking the State Secretary's permission to write off arrears of T.O.L. fees for the year 1957 onwards (put in and marked D11). This was an audit requirement to write off arrears of T.O.L. fees. D7 shows that cancellation of the T.O.Ls was done on 7th April, 1960.

20

The essential prerequisite for the issue of a T.O.L. is a written application by the person wanting a licence. If there is no written request, no action can be taken to issue the T.O.L. The applicant must himself or herself sign the application. I assume that Mrs. Oon must have made written requests for the T.O.Ls. I have looked for the written application from Mrs. Oon, but I have not been able to trace it. It could have been destroyed along with the counterfoils of the T.O.Ls. A written request is not necessary for a renewal of a T.O.L. All that is necessary in such a case is for the holder to pay the annual fee for the following year.

30

In the absence of the registers for the intermediate years I can only assume that the T.O.Ls were renewed annually by Mrs. Oon until they were cancelled.

I know a person called Phee Joo Teik. I do not know whether he ever worked for Mrs. Oon.

10 I see P5. I wrote that letter because Mrs. Oon asked for an early reply to her letter. On the day I sent that letter D7 was the only Register I had been able to trace. The other Register (D6) was discovered from the store about 4 or 6 days ago. I brought D6 to Penang on Monday and handed it to Mr. Ajaib Singh.

There is a store in which there are lots of Registers, bound volumes of Gazette Notifications and all sorts of other things. We have been carrying on a search. It is possible that some of the other T.O.L. Registers may be there. It is equally likely that they may not be there.

20 I am not quite sure whether the form in the schedule to the State Land Rules, 1923 was used when T.O.Ls were issued to Mrs. Oon. D10 is the form used in the former Federated Malay States. I am aware that it was sometimes used. Either the form in D9 or D10 was used for the T.O.Ls issued to Mrs. Oon. A fresh licence was issued each year.

Xxd: Hill:

30 Search for the documents began on Monday morning last. A search was also made when Mrs. Oon wrote in May, 1968 to ask for copies. So far as I know no searches were made prior to that.

When I wrote D5 I had found D7.

My personal experience of the Land Office, Butterworth is confined to the two periods I have mentioned. Between these two periods I was Assistant District Officer, Bukit Mertajam. I was also Assistant Collector of Land Revenue there. In 1949 and 1950 I was in Perak. I was not in Butterworth then.

40 D6 covers most of the Mukims in the District

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Notes of Evidence

First Defendants' Evidence

Piara Singh

Cross-examination on behalf of Second Defendants (continued)

Cross-examination on behalf of Plaintiffs

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Notes of
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First
Defendants'
Evidence

Piara Singh

Cross-
examination
on behalf of
Plaintiffs
(continued)

of Butterworth, 15 out of a total of 16. Hundreds of T.O.Ls are issued annually for the whole district.

I see page 32 of D6. D6 is printed for use for three years. I have no idea why D6 was not used for 1951. The Book provides two columns for fees, headed first half year and second half year. Beside each column there is a column for the receipt. But there is only one receipt shown on page 32 for the 1st half year and the second-half year. In my opinion the first amount shown is the annual amount due and the second amount preceded by the receipt number is the actual amount paid. This Register was not meant to be a T.O.L. Register like D7 which is the proper book. D6 was probably used because of the shortage of stationery immediately after the war.

10

I see entry relating to lot 275^I in D6. I do not know who made the entry in pencil (36,800 feet). The entry against lot 275^I speaks of "fruits and sea frontage". This could mean that the licence holder could plant fruit trees. The entry against lot 275³ speaks of "upkeep of coconut palms and sea frontage."

20

If there are trees already on State land and a T.O.L. is issued the licence holder is allowed to retain them and maintain them.

Page 40 of D7 does not indicate that the licences issued to Mr. Oon were continued until 1960. In fact no licence fees for 1959 was paid. If a licence is issued for a year and it is not renewed the following year the Land Office would send a reminder after some time. Practice may differ from office to office with regard to reminders. If an entry is brought forward from the previous year or years it would be cancelled at the end of the year if the fees is not paid in spite of the reminder.

30

Looking at D7 alone I would say that Mrs. Oon's name was brought forward from year to year and that the last valid licence she had was up to the end of 1958. D11 shows that the year of arrears for lot 275(1) was 1956 and for lot 275(3) it was 1957. This would seem to indicate that a licence was issued for lot 275(3) for 1956.

40

I would say that lot 275(3) should not have been included in D7 after the notice (D8) had been issued.

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First Defendants' Evidence

Piara Singh

ReXd:

Mrs. Oon wrote for true copies of Temporary Occupation Licences, if issued, for 1945. She did not ask for extracts from the T.O.L. Registers.

Cross-examination on behalf of Plaintiffs (continued)

D6 and D7 are Public documents.

Re-examination

10 When I took over in 1960 I continued to do the work done by the previous Assistant District Officer. I carried on the same practice as in the past.

Looking at D7 alone I would say that Mrs. Oon's name was carried forward from year to year until 1959, but reading D7 together with D11 I would say that T.O.Ls fees were paid only until 1955.

Once a T.O.L. is revoked the licence must be cancelled. We normally allow grace period to vacate the land, and if they fail to do so legal proceedings are commenced to evict them.

20 A clerk is assigned to keep the T.O.L. Register.

By Court:

Quite often no action is taken to evict for a long time after the licence is revoked, especially when the land is not immediately required for State purposes.

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Evidence

First
Defendants'
Evidence

Mohamed bin
Khamis

Examination

D.W.2 Mohamed bin Khamis a/s in English:

I am Chief Surveyor for the State of Penang. I became Chief Surveyor on 1st January, 1966. I have been in the Survey Department since 1934. I am a qualified Land Surveyor. I spent about 3 years in Brisbane, Queensland, Australia after spending 3 years at the Technical School in Kuala Lumpur. I finished the Australian and New Zealand Land Surveyors Course some time in April, 1958, after passing all the examinations.

10

I see plan at page 9 of AB2. According to records available this plan was prepared some time in 1852. I cannot tell the court whether the western boundary on this plan is a fluctuating boundary or a right line boundary. I cannot say what the thick line on the plan represents. If this plan is traced through the whole period from the time of Kelly's original to the modern period I may be able to say whether it is a fluctuating boundary or a right line boundary.

20

I am now looking at Kelly's original survey plan which is copied at pages 2, 3 and 4 of AB3 and which was made in 1891-1893. This plan is superior to the plan shown at page 9 of AB2. Kelly's original survey plan was made in accordance with the Boundaries Ordinance, 1884.

Kelly's plan shows that at the time of survey permanent boundary markers had been emplaced. Looking at lot 275 in this plan it is noticed that boundaries for Lot 275 appear to be right line boundaries throughout, the reason being the firm black straight lines from one boundary marker to another have been shown. From this I take it to mean that lot 275 has right line boundaries throughout. Mr. Kelly took the western boundary as a right line boundary. I therefore am inclined to the view that the western boundary on the plan at page 9 of AB2 is a right line boundary.

30

The plan at page 9 of AB2 was prepared by Moniot. When the Boundaries Ordinance of 1884 was implemented, Kelly was commissioned for the Survey plan. During the course of his survey he showed all the occupational boundaries of holdings including the holding comprised in lot 275. Kelly did a subdivision of Moniot's survey plan. That

40

is how lot 275 was created. I produce Kelly's survey map (put in and marked D12). The method of survey was more or less similar to the method employed by Moniot, namely, plane-table survey. Kelly's plan was pursuant to the provisions of the Boundaries Ordinance, 1884.

10 I have the original of the plan at page 1 of AB3. This is Moniot's survey plan. It is not quite the same as the plan at page 9 of AB2. The shape of the boundary at the south west end of the plan at page 9 of AB2 differs from the shape of the boundary at the south west end of the plan at page 1 of AB3. Another striking difference is that there are no dark lines passing through the plan at page 1 of AB3 as on the plan at page 9 of AB2.

20 The plan at page 3 of AB3 shows a part of Kelly's plan. I see lot 275 on this plan. I have the original of this plan. There are no lines on the western boundary of lot 275. The line on the left is shown in blue. From standard practice this blue line indicates traverse or control line and it is not the boundary line. One of the purposes of this line is to get round obstacles. The main purpose is control survey. Sometimes it may not be necessary to have any control lines. We have more than one type of markers to mark control points. Starting with primary triangulations, we have beacons on prominent land marks and
30 pipes in concrete along the roads or sometimes along a river and sometimes just cutting across the country. The boundary corners may also be taken as control points. If we ever have such a survey we show the lines joining the control points in blue. That is shown in this plan in relation to lot 275. The line on the right is shown in black straight joining two boundary markers quite distinct from control point markers. This black
40 line is the boundary and it is a right line boundary. The distance between the blue line and the black line is 8 to 9 feet.

It is not always that you have traverse or control line when surveying land along the sea. But the plan at page 3 of AB3 shows that traverse or control lines were used for the western boundary. Personally I would place my control markers on firm and stable ground and not in the sea. I would not

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First Defendants' Evidence

Mohamed bin Khamis

Examination (continued)

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place my control markers on sandy beach. Looking at the plan I cannot say how far from the sea the control line was placed. I produce the original of the plan at page 3 of AB3 (put in and marked D13).

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First Defendants' Evidence

Mohamed bin Khamis

Examination (continued)

I see the plan at page 4 of AB3. I produce the original from which this plan was copied (put in and marked D14). This plan shows part of Kelly's survey plan. Further than that it shows subdivision of Kelly's survey lots including lot 275. Lot 275 becomes lot 275^I because the boundaries were no longer identical. It is generally known as subdivision. The plan indicates that the boundary changed because of the widening of the road on the eastern side of the lot. The western boundary remained the same. The red lines on the Western side in red ink were put in later on. I do not know by whom or when. The line was put in to indicate the high water mark, the shore line, the beach or anything of that sort.

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I see the plan at page 5 of AB3. This is described as plan showing survey for fixating obelisks along sea coast. It had no connection with any particular lots in that area.

I see plan at page 6 of AB3. It was prepared in 1924. This is resurvey of lot 275(1) by modern methods under the Boundaries and Survey Maps Ordinance, 1911. By modern methods I mean theodolite and chain methods. This plan was also made in connection with the road reserve on the eastern boundary. The western boundary remained the same. That is a right line boundary. The words "alteration on this point not yet legalised" had something to do with the implementation of the National Land Code and Gazette Notification No. 50 of 1966.

30

I see the plan at page 7 of AB3. This plan is the survey made in connection with the subdivision of lot 275^I. This was made under the same Ordinance by modern methods.

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Cross-examination on behalf of Second Defendants

Xcd: Kandan:

I do not know about Moniot's methods of survey for fixing boundaries. Taylor in his book mentions occupational boundaries. I have a complete set of

Moniot's plans in my office. I do not know whether the occupation of any land is taken as the basis for fixing the boundary.

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Notes of Evidence

First Defendants' Evidence

Mohamed bin Khamis

Cross-examination on behalf of Second Defendants (continued)

Cross-examination on behalf of Plaintiffs

Xxd: Hill:

What is known about the earlier surveys is in Taylor's book. I have gone through the book, but I am not familiar with the contents. The work of the earlier surveyors was not accurate by modern standards.

10 It is within the competence of a surveyor to plot the mean high water mark along any given sea shore. If the sea shore is (a) straight and (b) level the resulting plot on the plan will be a straight line. It will then be a natural feature boundary. If as a result of this survey you plant markers or stone at each end of sea shore at mean high water level and then do a survey of the area, the line connecting the markers is still a natural feature boundary.

20 A right line boundary is a boundary of a holding joining one marker to another, and it should remain permanent. The mean high water mark is a natural feature boundary and if you put markers at either end it also becomes a right line boundary. So long as the mean high water mark remains on the line drawn between the markers the two boundaries will coincide. You cannot have a right line boundary and a fluctuating boundary at the same time.

30 Merely looking at page 9 of AB2 I cannot say whether the western boundary there is a natural feature boundary or a right line boundary. This being a very old survey, the words "sea beach" therein indicate that west of the line is the sea. I have come across the words "sea beach" in old survey plan.

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Defendants'
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Mohamed bin
Khamis

Cross-
examination
on behalf of
Plaintiffs
(continued)

If the words "sea beach" means the area between low and high water marks they could be or they could not be descriptive of the line. There is no indication of permanent markers on the plan at page 9 of AB2. I would normally expect to find markers on a right line boundary, particularly if adjacent to natural feature boundary. Under modern survey we could show the natural feature alongside the right line boundary.

In D13 the blue line on the western boundary is a control line. There is no indication on this plan of a natural feature boundary to the west of lot 275. The black line here is not the natural feature boundary. From the practical point of view it is not sensible to put markers on sandy beach. But it is possible. There are dots on the north side of this plan. That indicates sandy beach. That is not a natural feature boundary. I do not know why sand is not shown in other parts of the plan. I would show it if it was there.

I see plan at page 4 of AB3 which shows subdivision of lots in the areas shown as sandy areas on page 3 of AB3.

I would not put a control point on sandy foreshore because it would be washed away.

(Shown a plan). This is a copy of a part of Kelly's plan. It does not show the control line west of lot 275 but it shows the sea in blue to the west of lot 275 boundary line (put in and marked P15). If you superimpose the control line which is shown on D13 on this plan, you find that it is in the sea.

Plan at page 1 of AB3 is Moniot's plan. I cannot account for the difference between this plan and the plan at page 9 of AB2.

Kelly's survey followed occupational boundaries. He may or may not have followed Moniot's plan. If the occupational boundaries as he found them were different from Moniot's he would follow the occupational boundaries.

The subdivision survey plan on page 4 shows the same boundary on the west side. Given the

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choice, a surveyor will put his control points on State land rather than on private land.

10 If you are surveying a land for the issue of title and if you are given the boundaries of the land you would first survey the boundaries. You would then calculate the area. The result will be a map showing the area and the boundaries. You could not work out the area unless you were given the boundaries. If you were given the four bound-
aries, mathematically it would be possible to ignore one of the boundaries for purposes of survey. The regulations require that all lines should be surveyed.

Plans at pages 5, 6 and 7 of AB3 were prepared for the purpose shown on them. Plan on page 7 is referred to in the plan at page 6.

I heard Enche Ayub give evidence yesterday. I never served in Penang prior to 1.1.66.

20 I am not saying that Enche Ayub was wrong when he said that the western boundary as shown on the plan at page 9 of AB2 is a natural feature boundary. It could be either.

ReXd:

I cannot say what the dots near the letter "S" of the words "Sea Beach" on plan at page 1 of AB3 are. A right line boundary cannot be changed. I cannot say whether the sea starts from the line shown as the west boundary or further down.

30 Some of the older survey plans show natural feature boundaries and some don't. Normally it is very rarely that a natural feature boundary is a straight line. A straight line as a natural feature boundary is very rare.

D13 and P15 are supplementary copies of a portion of D12. D13 was hand drawn. P15 is a sun print taken from another document. D13 is an earlier plan. If you place D13 on top of P15 the control point line to the west of lot 275 is in the sea.

40 The dots on the north western top of D13 do

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Notes of Evidence

First Defendants' Evidence

Mohamed bin Khamis

Cross-examination on behalf of Plaintiffs (continued)

Re-examination

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not indicate any boundary at all.

D12 is the only published copy of the Survey of lot 275 made by Kelly under the Boundaries Ordinance, 1884.

No.7

Case for the First Defendant.

Notes of
Evidence

Kandan: I do not propose to call any evidence on behalf of the second defendants and would rely on the evidence produced by the first defendant.

First
Defendants'
Evidence

Adjourned until 9.00 a.m.

Mohamed bin
Khamis

Sd. S.S. Gill.

10

Re-
examination
(continued)

Counsel for
Second
Defendants'
Address to
the Court

Hearing continued: Counsel as before. 11th July 68

Enche Kandan addresses Court:

There are three major arguments for the defendants against the plaintiffs' case. They are (1) estoppel, (2) plaintiffs have not established accretion and (3) definition of the expression "sea beach".

On estoppel, the defence case is very strong. The plaintiffs are estopped for denying the first defendant's title to the alluvion adjacent to lots 275(1) and 275(3). The first plaintiff acted as the legal agent for all the plaintiffs in all dealings relating to the property. She has confirmed that she was speaking for all the plaintiffs in Court. All the actions she did and all the evidence she gave bind the other plaintiffs. The T.O.Ls were in the name of Mrs. Oon but she was acting for all the other plaintiffs all along. She said that the property had been in her family and she had been dealing with it all the time. The fact that the other plaintiffs have not come forward to give evidence shows that they have given

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their authority to the first plaintiff.

Mrs. Oon is not an ordinary litigant who does not know the law. In any event ignorance of the law is no excuse. First plaintiff a practitioner at the Bar for 41 years and a former member of the Legislative Assembly.

10 Estoppel arises because of the fact that in 1949 and 1950 T.O.Ls were issued to the plaintiffs in respect of the alluvion in question. From the records we have evidence that T.O.Ls were issued in 1954 and 1955. As for the interim period there is no record. Assuming she had T.O.Ls for this period and assuming that originally she obtained T.O.Ls on the representations of Mr. Teoh she applied for and got T.O.Ls on her own in 1954 and 1955. Evidence of A.D.O. that no T.O.L. could have been issued without a request.

20 The first ever dispute by Mrs. Oon as to the title to the alluvion is contained in letter at page 3 of AB4. In her own admission she was the licensee until the end of 1955. Estoppel in this country is governed by section 116 of the Evidence Ordinance, 1950. There was dispute during the period of licence, so that estoppel then applied. Law of estoppel here different from the law in England. Our law the same as in India; Refer to *Dukhimoni Dasi v. Tulse Charan* (1911) 13 Indian Cases 512.

30 Alleged prior possession by the 1st plaintiff. If there was no T.O.L. for the years 1951 to 1953, why did she apply for T.O.L. in 1954 and 1955 if she was there legally? She had no adverse possession in the case of alluvion adjacent to 275(1) before 1944 and in the case of alluvion adjacent to 275(3) before 1947. If she entered the alluvion it was either as a trespasser or as a licensee at will.

40 Circumstances under which 1st plaintiff says she obtained the T.O.Ls. Mr. Teoh was on a social visit when the alleged suggestion was made. No official approach made to her for taking out a T.O.L. In any event they were then on lot 270(1) which is about a quarter mile from the lots in question, and access from lot 270(1) to the other lots was as difficult then as it is today. She

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Counsel for Second Defendants' Address to the Court (continued)

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Counsel for
Second
Defendants'
Address to
the Court
(continued)

agrees that she did not dispute Mr. Teoh's statement that if she got a T.O.L. she might eventually get a grant.

The court should find that all plaintiffs are bound by the 1st plaintiff's application for T.O.Ls and that they are therefore estopped from denying the first defendant's title.

I agree with the law enunciated by Mr. Hill on the subject of accretion. I agree that accretion if gradual and imperceptible goes to the owner of adjacent land, subject to what I shall say on the question of "Sea Beach". Refer to para 10 of Statement of Claim. Second defendants have joined issue on that in paragraph 2 of their Statement of Defence. It is therefore for the plaintiffs to show that accretion was slow, gradual and imperceptible. Refer to Rajendur v. Lallji 20 Weekly Reporter 427. No onus on the defendants. The plaintiff has not discharged the onus. The earlier evidence of accretion is in the 1924 plan. Plaintiffs have to make out a prima facie case for the defendants to rebut. Refer to Stoney v. Eastbourne Rural District Council (1927) 1 Ch. 367, 397. The only evidence as to accretion was by Mrs. Oon.

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20

In the case of Magistrates of Musselburgh v. Musselburgh Real Estate Company Limited the court was concerned with the interpretation of a fen document. Likewise we have to construe the Indenture of 1852. Refer to Stroud's Dictionary Vol. 4 page 2678, 2677, 2681 and also to definition of foreshore in Stroud Vol. 2. Sea Beach does not mean foreshore and it does not mean sea shore or sea line. Sea Beach means that there is a strip of dry land between the fixed boundary of the adjacent land and the high water mark. Sea shore and foreshore are included in the word sea beach but that is not to say that they are the same.

30

Possessary title can only arise on proof of continuous possession for 60 years under the

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English Law. Even assuming that it is 30 years there is no evidence that plaintiffs had possession for 30 years. No proof that previous owners were in possession of alluvion. Twelve years adverse possession does not give title. Limitation Ordinance, 1926 (Chapter 16 of the Straits Settlement Laws) does not help the plaintiffs either.

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10 Plaintiffs not entitled to any damages, because no special damages have been pleaded and no general damages have been proved.

Counsel for Second Defendants' Address to the Court (continued)

Under section 30 of the National Land Code Penang and Malacca Titles Act, 1963 and section 353 of the National Land Code plaintiffs have to apply to the Commissioner of Land and not ask the court for a declaration.

20 Plaintiffs having sold their rights in Lot 275(1) in 1964, although the writ was filed in 1962, cannot be entitled to any of their prayer in so far as that lot is concerned. (Enche Hill objects to this point being raised at this stage. I do not think the Court can shut its eyes to the fact that the land has in fact been sold).

As regards plaintiffs' prayer 20(2)(e), the title of the second defendants having been registered is indefeasible. No evidence by which mesne profits in prayer 20(2)(g) can be ascertained.

Plaintiffs' claim should be dismissed with costs.

Enche Ajaib Singh addresses court:

Counsel for First Defendants' Address to the Court

30 As to the three main issues on which Enche Kandan argued, I adopt his arguments. On the estoppel issue I would urge that it is abundantly clear from the evidence that the 1st plaintiff on her behalf and on behalf of the other plaintiffs

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—

Counsel for
First
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the Court
(continued)

on her own volition applied for T.O.Ls to the alluvion adjacent to lots 275(1) and 275(3) as clearly as 1949, notwithstanding the amended paragraph 2(1)(i) of the Reply to the defence. No evidence that Mr. Teoh was acting as the agent of the Government, as he was on a social visit. There could have been no apprehension as to her right, because she acquired a particular piece of land of a definite area. Refer to U Po Shin & another v. Edward & others 1934 A.I.R. Rangoon 139. No such thing as pressure or ignorance of facts in this case. No evidence that prior to the T.O.L. the plaintiffs were ever in possession of the land in dispute.

10

Sea beach has a definite meaning apart from the meaning of the words "sea" or "sea shore" - Musselburgh's case. In Yarborough's case it was a question of the sea wall which was right on the sea, the purpose of which was to keep the sea away. In Scratton v. Brown the words used were "south at low water mark" and "north at high water mark" and the words used there are "sea shore" and "foreshore". In the case of Mellor v. Walmsley (1905) 2 Ch.164 the boundary was described as "on the west bounded by the seashore". In the case of A.G. of Nigeria v. John Holt & Co. (1915) A.C. 599, the words used were "lands bounded by the sea." In none of the cases was the word "sea beach" mentioned or considered.

20

D.W.2 said in evidence that he was unable to say by merely looking at plans at page 9 of AB2 showed the boundary to be a natural feature boundary or a right line boundary, but after going through the plans at pages 2 and 3 of AB3 he was inclined to the view that the western boundary of the lots in question was a right line boundary. He therefore said that the boundary in the plan at page 9 of AB2 was also a right line boundary.

30

Refer to page 2 of AB4 where under the heading "Mukim No. XIV, Bagan Ajam" the last boundary is described as "West as by the sea". That description can be taken to construe the Indenture No. 4276 of 1852 where the boundary was marked as sea beach as stated in the Indenture

40

itself.

Refer to Indenture at page 61 of AB2. This is a conveyance of a particular piece of land and that land has been described as lot 275(1). The other conveyances to the plaintiffs are similarly described. Section 6(1) of the Conveyancing and Law of Property Ordinance, 1986 (Chap.118) does not apply to any of the conveyances material for the purpose of this case.

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Notes of
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10 The word "sea beach" in the original grant quite clearly negatives a fluctuating grant.

Counsel for
First
Defendants'
Address to
the Court
(continued)

Enche Hill addresses Court:

Counsel for
Plaintiffs'
Closing
Speech

20 Plaintiffs' title is traced through the 1852 Grant and it is not disputed. The issue is basically the construction of the 1852 Grant. The deed says that the land is bounded by the sea beach. Sea beach is defined clearly in the Musselburgh case. Sea beach means sea shore. Both surveyors agree on this. No markers on Moniot's plan. The coast line a straight line. Even if it is a right line boundary there is no evidence that there was any stretch of land between it and the sea. In such a case the accretion accrues to the owner.

Evidence that there has been accretion over the years. Scottish law the same as the English law.

30 Nobody has disputed that Mr. Teoh visited Mrs. Oon. I do not dispute that T.O.Ls were issued. I do not accept that the T.O.Ls issued to Mrs. Oon were issued to her in her name and not to the other plaintiffs. T.O.Ls very vague, area not accurate.

In the High Court of the Federation of Malaysia at Penang

Plaintiffs in possession without T.O.Ls after 1956 and until the time of the writ.

Section 116 of Evidence Ordinance, 1950 does not apply in this case.

No. 7

Notes of Evidence

Counsel for Plaintiffs' Closing Speech (continued)

No difficulty as regards prayers in relation to lot 275(3). In regard to prayers in relation to lot 275(1) all that the court can do to make the order that she was entitled on the date of the writ. That would apply to paragraphs 20(2) (a), (b), (c) and (d). As regards claims under paragraphs 20(2)(e), (f) and (g) the orders can be made as of today. Mesne profits here mean the premium which the second defendants paid to the first defendant and the rent reserved and paid from the date of the lease to the date of the judgment. The order for mesne profits can only be made against the first defendant for an order in the alternative against the second defendant. Not asking for any damages.

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I ask for the order prayed for in the statement of claim.

20

C.A.V.

Sd. S.S. Gill.

No. 8
JUDGMENT OF MR. JUSTICE GILL

JUDGMENT OF GILL, J.

In the High
Court of the
Federation of
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Judgment of
Mr. Justice
Gill

19th February
1969

10 The four plaintiffs until some time after the
filing of this action were the registered owners in
equal undivided shares of the fee simple absolute
in possession of the land known as Lot 275(1)
situate in Mukim 14 in the northern district of
Province Wellesley (hereinafter referred to as "Lot
275(1)"), and the first plaintiff is the registered
owner of the fee simple absolute in possession of
the land known as Lot 275(3) situate in the same
Mukim and district (hereinafter referred to as
"Lot 275") They have brought this suit claiming,
inter alia, a declaration of their right and title
to and property in the land which has accreted to
the land comprised in the two lots as a result of
the receding of the sea on the western and seaward
boundary of the said lands over the period of years
20 since the original grant of the land.

30 The title to both lots is derived from the
original grant of a parcel of land to one Forbes
Scott Brown by the East India Company on behalf of
Queen Victoria of the United Kingdom of Great
Britain and Ireland and in pursuance of Act No. IX
of 1842 by Indenture No. 4276 of 10th November,
1852. The land alienated was described in the
Indenture as "all that piece of land situated in the
division of Bagan Bahroo in the district of Telok
Ayer Tawar in Province Wellesley bounded and
measuring as follows,

40 East by E.I. Company, and Boontah and
Icoosoo's ground Four thousand nine
hundred and thirty five feet
West by sea beach Four thousand and sixty
seven feet
North by road One thousand nine hundred and
four feet
South by Pakir and Che Mohamed's land Eight
hundred ninety six feet

agreeably to the plan endorsed thereon, certified
under the hand of I. Moniot Land Surveyor.
Estimated to contain an area of Ninety four Square

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Acres: Three Square Rood and Eleven Square
Poles together with appurtenances.

It is not clear how the area comprised in the original grant became subdivided into lots. However, it seems that from 1891 to 1893 lots 271 and 275, which constitute a part of the land alienated in 1852, were surveyed by Kelly, following the enactment of the Boundaries Ordinance 1884, and they appear with their present seaward boundaries in the map published under that ordinance vide G.N.363 of 27th June, 1895. The purchaser of lot 275 under the conveyance dated 28th August, 1897 therefore acquired it as land bounded by the sea beach to the west in accordance with Kelly's survey. 10

The title to lot 275 descended through conveyances dated the 18th February, 1903 and the 8th July, 1913 and it remained, subject to various mortgage transactions, the property of Goh Goh or his estate until 11th March, 1935. A resurvey was made in 1924 when the original boundary marks placed at the seaward boundary by Kelly's survey were found and adopted. Finally, following Kelly's boundary marks, lot 275 was subdivided in 1935 into the present lots 275(1), 275(3) and 275(4) in accordance with a survey made on 2nd February, 1935. 20

After intermediate titles an undivided fourth share in lot 275(1) was conveyed to the first plaintiff by an Indenture dated 9th August, 1944. A further undivided fourth share in the same lot was conveyed to the second plaintiff by an Indenture dated 1st November, 1952 and the remaining two undivided fourth shares were conveyed to the third and fourth plaintiffs as joint partners by Indenture dated 22nd June, 1955. As regards lot 275(3) it was conveyed, after intermediate titles, to the first plaintiff by an Indenture dated 26th June, 1947. 30

In all the instruments of conveyance subsequent to the original grant the property was described as comprised in Indenture No. 4276 and "known as lot 275(1) or 275(3) and estimated to contain" the area specified. There was no express reference to a plan and there was no reservation by any vendor at any stage of any interest in the property conveyed. This means that by virtue of 40

section 6(1) of the Conveyancing and Law of Property Ordinance (S.S. Chapter 118) and on the authority of Doe d. Norton v. Webster⁽¹⁾ each successive purchaser acquired each of the two lots with all the rights appurtenant thereto.

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10 Since the date of the original grant in 1852 the sea on the western boundary has receded leaving a fairly substantial accretion of land adjoining the land comprised in the original grant. As would appear from Kelly's survey no such accretion had been perceived or mapped by 1895 but there is clear indication of this accretion in the survey carried out in December, 1924. This accretion of land on the seaward boundaries on the west of and adjoining lots 271 and 275 is now comprised in lot 808 which was apparently surveyed some time in 1958. In August, 1959 the State Government of Penang as successors to the British Crown leased this lot to the Central Electricity Board for a period of 33 years.

20 The subject matter of the dispute in this case is that part of lot 808 which lies between the western boundary of lots 275(1) and 275(3) and the sea. The plaintiffs claim that this land has come into existence by a slow and imperceptible process of accretion since the date of the original grant and therefore forms part of their adjoining lands. On the basis of that claim they are asking for -

- 30 (a) a declaration that the line of medium high tide of the sea between the ordinary spring and neap tides from time to time constitutes the westerly boundary of their two lots;
- (b) a declaration that they are entitled to the fee simple absolute in possession of that part of the alluvion which lies along the westerly extremity of the two lots and above the line of the medium high tide of the sea between the ordinary spring and neap tides;
- 40 (c) in the alternative a declaration that they as the owners in fee simple in possession of the two lots are entitled to free and uninterrupted access to the sea over every part of the alluvion from every part of the lots;
- (d) in the further alternative a declaration that as

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against the first and second defendants they are entitled to possession of that part of the alluvion which lies along the westerly extremity of the lots and above the line of the medium high tide of the sea between the ordinary spring and neap tides;

- (e) a mandatory injunction for the removal of any fence or brick building erected on and any or whatever construction or constitution on lot 808;
- (f) vacant possession of all that part of lot 808 which adjoins the two lots;
- (g) mesne profits from about the year 1958 until delivery of possession of all the alluvion which adjoins the two lots; and
- (h) damages.

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It is clear that the second defendants derive their title from the first defendants and therefore stand or fall with them as do the various claims and counter-claims relating to the use to which the alluvion has been put by the parties. The defences disclosed in the pleadings are -

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- (i) that the original grant was for a specific area;
- (ii) that the western boundary was fixed and determined in the original grant and not removable;
- (iii) estoppel by reason of an alleged application for Temporary Occupation Licences over the alluvion.

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Apart from the defence of estoppel, therefore, the issue between the parties turns entirely on the construction of the original Indenture dated 10th November, 1852.

It will be convenient at the very outset to state briefly the general rules as to the construction of deeds of conveyance. Where in a grant of land there is a discrepancy between the parcels as described and any plan referred to, then, as far as that discrepancy extends, the description

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of the parcels will generally prevail: Horne v. Struben(2) Where a deed contains an adequate and sufficient definition of the property which it was intended to pass, any erroneous statement contained in it as to the dimensions or quantity of the property, or any inaccuracy in a plan by which it purports to be described will not vitiate this description: Mellor v. Walmesley(3). Where an instrument in the absence of a plan annexed thereto contains an ambiguity, evidence of user under it may be given in order to show the sense in which the parties used the language employed, whether the ambiguity be patent or latent, although direct evidence of the intention of the parties is inadmissible: Watcham v. Attorney-General of the East Africa Protectorate(4).

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The basis of the plaintiffs' claim, on the hypothesis that "sea coast" means the same thing as "sea" or "seashore", is that the boundaries of the two lots on the west extend up to the sea. Certain general principles apply where the boundary concerns land and water. Where a plot of land is described in a conveyance as being situate on and bounded by the "sea" or the "seashore", the boundary line between the seashore and the adjoining land, in the absence of usage, is the line of medium high tide between the ordinary spring and neap tides. The seashore up to the point of high water mark of medium tides, between spring and neap tides, is called the fore shore and it is ordinarily and prima facie vested in the Crown. In other words, in the absence of all evidence of particular usage, the extent of the right of the Crown to the seashore landwards is prima facie limited by the line of the medium high tide between the springs and the neaps: Attorney-General v. Chambers(5). The boundary of land abutting upon the seashore may vary from time to time, because as the medium high and low water marks shift, so does the boundary of the land: Scratton v. Brown(6).

Lord Hale, who has always been quoted as the highest English authority upon the question of maritime increment, in his work "De Jure Maris et Brachiorum Ejusdem", part 1, ch.4, says:

(2) (1902) A.C.454

(3) (1905) 2 Ch.164

(4) (1919) A.C.533

(5) 4 De G.M.& G.206

(6) 4 B & C. 485: (1825) 107 E.R. 1140

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"The increase per alluvionem is when the sea, by casting up sand and earth, doth by degrees increase the land, and shut itself out further than the ancient bounds went; and this is usual. The reason why this belongs to the Crown is because in truth the soil, where there is now dry land, was formerly part of the very fundus maris, and consequently belonged to the King. And indeed, if such alluvion be so insensible that it cannot be by any means found that the sea was there, idem est non esse at non apparere; the land thus increased belongs as a perquisite to the owner of the land adjacent."

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Blackstone (Vol.2 page 262) stated the general law as to accretion of land adjoining the fore shore and the sea very succinctly in the following words:-

"As to lands gained from the sea, either by alluvion, by the washing up of sand and earth, so as in time to make terra firma, or by dereliction, as when the sea shrinks back below the usual water mark; in these cases the law is held to be, that if this gain be by little and little, by small and imperceptible degrees, it shall go to the owner of the land adjoining. For de minimis non curat lex; and besides these owners being often losers by the breaking in of the sea, or at charges to keep it out, this possible gain is, therefore, a reciprocal consideration for such possible charge or loss; but if the alluvion or dereliction be so sudden and considerable, in this case it belongs to the King, for as the King is lord of the sea, and as owner of the soil while it is covered with water, it is but reasonable he should have the soil when the water has left it dry."

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The reason given by Blackstone for this rule of law is not generally accepted as being the true one, but the rule itself is settled beyond all question by numerous authorities starting with Scratton v. Brown(6). In Rex v. Yarborough(7) the only question before the Court was whether upon the evidence the accretion in question might properly be considered by

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(6) 4 B & C.485: (1825) 107 E.R.1140

(7) 3 B & C.91, 106: (1824) 107 E.R. 668, 674

the judge as "imperceptible". When dealing with this question, Abbot C.J. (Lord Tenterden) in delivering the considered judgment of the Court said that Lord Hale in his treatise "De Jure Maris" was speaking of the legal consequences of such an accretion, and did not explain what ought to be considered as accretion insensible or imperceptible in itself, but considered that as being imperceptible of which it could not be said with certainty that the sea ever was there. His Lordship then went on to say :

"An accretion extremely minute, so minute as to be imperceptible even by known antecedent marks or limits at the end of four or five years, may become, by gradual increase, perceptible by such marks or limits at the end of a century, or even of forty or fifty years. For it is to be remembered that if the limit on one side be land, or something growing or placed thereon, as a tree, a house, or a bank, the limit on the other side will be the sea, which rises to a height varying almost at every tide, and of which the variations do not depend merely upon the ordinary course of nature at fixed and ascertained periods, but in part also, upon the strength and direction of the wind, which are different almost from day to day. And, therefore, these passages from the work of Sir Matthew Hale are not properly applicable to this question. And considering the word 'imperceptible' in this issue, as connected with the words 'slow and gradual', we think it must be understood as expressive only of the manner of the accretion, as the other words undoubtedly are, and as meaning imperceptible in its progress, not imperceptible after a long lapse of time."

This decision was affirmed when the case went up to the House of Lords under the name of Gifford v. Lord Yarborough(8) in which it was held that land, not suddenly derelict, but formed by the alluvion of the sea, imperceptible in progress, belongs to the owner of the adjoining demesne lands, and not to the Crown. Best C.J. in delivering the main

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(8) 5 Bing. 163, 169; (1828) 130 E.R. 1023, 1025

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judgment of the House said:

"Here it will be observed that there is distinction made between lands derelict and lands formed by alluvion: which distinction, I think, is founded on the principle that I have ventured to lay down, namely, that alluvion must be gradual and imperceptible, but the dereliction of land by the sea is frequently sudden, leaving at once large tracts of its bottom uncovered, dry, and fit for the ordinary purposes for which land is used."

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In Re Hull and Selby Railway⁽⁹⁾ it was held that if the sea, or an arm of the sea by gradual and imperceptible progress, encroach upon the land of the subject, the land thereby covered belongs to the Crown. Alderson B. in speaking of the rule in question in the following passage of his judgment gives the same explanation as is given by Lord Hale:-

"I think the question is precisely the same, whether the claim is made as against the Crown or the Crown's grantee. Suppose the Crown, being the owner of the fore shore - that is, the space between high and low water mark - grants the adjoining soil to an individual; and the water gradually recedes from the fore shore, no intermediate period of the change being perceptible; in that case the right of the grantee of the Crown would go forward with the change. On the other hand, if the sea gradually covered the land so granted, the Crown would be the gainer of the land. The principle laid down by Lord Hale, that the party who suffers the loss shall be entitled also to the benefit, governs and decides the question. That which cannot be perceived in its progress is taken to be as if it never had existed at all."

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Baron Alderson's language was approved in Attorney-General v. Chambers⁽¹⁰⁾ in which Lord Chelmsford, after referring to the fact that the witnesses in the case for the Crown had alleged that the alluvial land had not been added to the main land gradually and imperceptibly, but rapidly, said:

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(9) 5 M & W 327, 332; (1839) 151 E.R. 139, 141
(10) 4 De G. & J. 55; (1959) 45 E.R. 22, 27

10 "Now, if by the word 'rapidly' witnesses mean 'perceptibly', then the Crown, and not the Defendant, would be entitled to these accretions. But if the witnesses merely mean, that at the expiration of some period of time they could perceive the changes which had taken place, although they could not discern them in their progress, then, I think, another important question may arise, and may call for determination, as to whether circumstances may not exist in which, though the changes were gradual, yet the original limits of the Crown's right, and of that of the owner of the adjoining land, are now capable of being distinctly ascertained.

20 "If there is no clear line of demarcation between the mainland and the seashore by the gradual encroachment or recession of the tide, all trace of the distinction between them will be completely obliterated, and there will be full scope for the rule of alluvion to operate. But suppose that the separation between the mainland and the seashore is distinct; as suppose the landowner puts up a wall to prevent the encroachment of the sea upon him, and the effect of the wall is to produce a gradual and insensible accretion, which cannot be perceived from day to day, but at the end of some long period is distinctly to be seen, ought this to become the property of the landowner?"

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His Lordship then said that Lord Tenterden in Rex v. Lord Yarborough⁽⁷⁾ seemed to think that it ought, and, having quoted the reasons for which Lord Tenterden said so as set out in the passage which I have cited above, went on to say as follows:-

40 "This, however, is not in accordance with the great authority upon this subject, Lord Hale (Hargrave's Law Tracts, p.28). He says, 'This jus alluvionis is de jure communi, by the law of England, the King's, viz., if by any marks or measures it can be known what is so gained, for if the gain be so insensible and indiscernible by any limits or marks that it cannot be known, idem est non esse et non apparere.' Lord Hale here clearly limits the law of gradual accretions to the cases where the boundaries of the seashore and adjoining land are

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so undistinguishable that it is impossible to discover the slow and gradual changes which are from time to time accruing, and when at the end of a long period it is evident that there has been a considerable gain from the shore, yet the exact amount of it, from the want of some mark of the original boundary line, cannot be determined. But where the limits are clear and defined, and the exact space between these limits and the new high water line can be clearly shewn, although from day to day or even from week to week the progress of the accretion is not discernible, why should a rule be applied which is grounded upon a reason which has no existence in the particular case?"

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In Attorney-General v. Reeve (10a) the Attorney-General on behalf of the Queen brought an information against a gentleman in Norfolk to establish a title of the Crown to some land lately added by accretion to the shore at Lowestoft in the County of Suffolk. Witnesses in the case gave evidence to the effect that since 1845 the line of ordinary high-water mark began to recede and the beach to advance, and that this advance of the beach could be plainly perceived from time to time as it went on. It was held that where accretions of land on the seashore are shown to have been perceptible by marks and measures as they took place, such accretions belong to the Crown, and not to the adjacent private owner. The court gave judgment accordingly for the Crown.

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In Attorney-General of Southern Nigeria v. John Holt & Co. (Liverpool), Ltd. (11) the respondents were in occupation of lands on the shore of the island of Lagos and there carried on businesses as African merchants. The lands had originally been granted by native grants to the respondents' predecessors in title, who in 1861 had obtained Crown grants. All the grants described the lands as bounded by the sea. About 1860 a wharf and two piers had been built upon the foreshore. At various dates subsequent to the Crown grants the respondents had carried out works on the foreshore to prevent incursion by the sea and erosion. Owing to these works a strip of land had been reclaimed below that which in 1861 had been high water mark. The respondents had built stores and sheds upon the reclaimed land and had for a period of

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from thirty to fifty years used it, together with the land granted and the piers and wharf, for the purposes of their businesses and had had exclusive possession. The Government of the island had knowledge of the reclamation and of the building upon and use of the reclaimed land. It was held by the Privy Council that the reclaimed land, not being the result of natural accretion, vested in the Crown as owner of the foreshore, but that the respondents continued to have the rights of riparian owners over the foreshore, and that there was to be presumed in the respondents' favour an irrevocable licence from the Crown to erect buildings and to store goods upon the reclaimed land and to use it generally for the purposes of their businesses. Lord Shaw of Dunfermline delivering the judgment of the Privy Council said (at pages 611 and 612);

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"In the first place, their Lordships are of opinion that when de facto the boundary was the sea under the different names already alluded to, there is nothing in the law or the nature of the case to prevent the application of the ordinary doctrine of accretion or dereliction to such a condition of things. On the one hand, if erosion had continued, their Lordships do not doubt that it would have been no defence against the claim of the Crown that the foreshore upon the line of inroad had de facto been transferred to the Crown as owners of the sea and its bed within territorial limits, and of foreshore, even although the line of the eroded foreshore had made considerable invasion into the measured plots of lands, as these were described in the titles. Upon the other hand, if accretions had been formed in the course of nature by the silting up of sand, gravel, and the like, and these accretions had been of the gradual character to be afterwards referred to, they would have been added to the land, notwithstanding the measurement in square yards or feet which the title contained.....

 Similarly, in their Lordships' opinion, properties scheduled or specifically measured but in fact abutting on the seashore are not excluded from the operation of the rule which adds to riparian lands the increment which is

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caused by natural and gradual accretion from
the sea....."

In Brighton and Hove General Gas Co. v. Hove Bungalows, Ltd.(12), it was held that the general law of accretion applies to a gradual and imperceptible accretion to land abutting upon the foreshore, brought about by the operations of nature, even though it has been unintentionally assisted by, or would not have taken place without, the erection of groynes for the purpose of protecting the shore from erosion. It was further held that the general law of accretion also applies where the natural accretion, gradual and imperceptible, abuts upon land of which the former boundary was well-known and readily ascertainable. In coming to this decision, Romer, J. followed the case of Attorney-General of Southern Nigeria v. John Holt & Co. (Liverpool), Ltd.(11) and disapproved of the dictum of Lord Chelmsford L.C. in Attorney-General v. Chambers(10) as being inconsistent with the decision of the House of Lords in Gifford v. Lord Yarborough(8). His Lordship says at page 392:

"But the attention of Lord Chelmsford had not been called to the fact that the case of Rex v. Lord Yarborough(7) had been taken to the House of Lords under the name of Gifford v. Lord Yarborough(8) and had there been affirmed. In that case the land gradually left dry by the action of the sea abutted upon land of which the former boundary was well-known and readily ascertainable, for that boundary was a sea wall. It was nevertheless held that the general law of accretion applied. The observations of Lord Tenterden therefore were not merely dicta, but went to the root of his decision, and that decision having been affirmed in the House of Lords, I am, I apprehend, bound by the statement of law enunciated by him, and am not at liberty to give effect to the views expressed by Lord Chelmsford in the passage that I have read, even if those views commended themselves to my mind."

In Secretary of State for India in Council v. Foucar & Co., Ltd. (13) the facts were as follows.

(12) (1924) 1 Ch.372 (13) (1934) 50 T.L.R. 241

Somewhere about 1892 an island began to form in the bed of the River Pegu, Burma, and parts of it having become from time to time fit for the cultivation of dhani palms, which, it was said, grew best below the high water mark, were granted out by the Government to different persons for that purpose. In the year 1922 the whole of the island as it then existed was acquired by the respondents. In the subsequent years further accretion occurred at the south east end of the island, and a portion which had been lost some years before by erosion reappeared. It was held by the Privy Council that the doctrine that gradual accretion enures to the land which attracts it is applicable to Burma, and that that general principle of accretion applied even where the former boundaries of the land on the waterfront were physically defined or capable of ascertainment.

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It is to be observed that in Gifford v. Lord Yarborough⁽⁸⁾ there was the clearest possible boundary to the land for which the accretion was claimed in the existence of a sea wall, and yet the doctrine was held to be applicable. That case therefore conclusively determined that where land is added to the sea shore by the gradual and imperceptible action of natural causes, the owner of the lands adjoining the accretions acquires in them a good title against the Crown, notwithstanding the existence of marks or bounds or other evidence by which the former, or a former, line of ordinary high water can be ascertained.

The two Privy Council cases to which I have referred are sufficient authorities for the proposition that in the absence of local legislation to the contrary, and there is none in force in Penang, the English doctrine of accretion is applicable to this case. In my opinion it is also applicable under the provisions of section 3(1) of the Civil Law Ordinance 1956, notwithstanding the provisions of section 6 of the same ordinance.

It is contended for the plaintiffs that there is no evidence in this case as there was in the case of Attorney-General v. Reeve^(10a) that the land in dispute is land formed as a result of perceptible accretion. That of course is perfectly true. And what evidence is there to the contrary? That case was brought by the Attorney-General on behalf of the

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Queen to establish the title of the Crown to some land added by accretion to the shore, and it was for him to prove his case. Witnesses in that case had given evidence to the effect that since 1845 the line of ordinary high-water mark began to recede and the beach to advance, and that this advance of the beach could be plainly perceived from time to time as it went on. In the present case however, the Crown is not the Plaintiff.

The Plaintiffs' next say on the authority of Attorney-General v. Chambers(10) that in any event the onus is on the first Defendants to establish perceptible accretion and not on the Plaintiffs to establish imperceptible accretion. I can find nothing in that case as an authority for any such proposition. That was another case brought for the purpose of having the title of the Crown to alluvium gained from the sea declared and established. The onus of establishing that was therefore naturally on the Attorney-General. I do not think that it is necessary for me to mention any authority for the general rule that it is for the Plaintiff to prove his case.

The only evidence in this case as to accretion is that of the first Plaintiff. Her evidence is that she first went to live in her present house on Lot 271(1) which is near the lots which are the subject matter of dispute in this case. The land comprised in Lot 271(1) on which she lived went down to the sea. It was fenced by the previous owners. The fence surrounded the coconuts and was several yards from the trees and nearer the sea. She occupied the whole of the area that was fenced. She was not allowed to live there during the occupation period. When she returned to the house in November, 1945 she found that all the fences had been burned up by the Japanese leaving only a few cement posts and gate posts. Cows and pigs used to come to the house because there was no fence, so she obtained permission from the Commanding Officer of the Royal Sussex Regiment to use Japanese prisoners to have the fence put up along the lines of the old fence. By that time the alluvium had increased. During the emergency she pushed the fence right up to the edge of the sea. The alluvion on Lot 271(1) had increased between 1939 and 1962 by at least 50 feet. There was in relation to Lot 271(1) land corresponding to the alluvion of Lots 275(1) and

275(3).

As regards to the lands which are the subject matter of dispute, her evidence is that there was no fencing on their seaward side when she purchased them, but there were houses built on the alluvion. Two of the houses were occupied by the former owners. One house was on the land itself and two on the alluvium. There were also other houses on the alluvion and the previous owners received ground rents on those houses on the alluvion which were occupied by other people, mainly fishermen. Those on the land itself were pig rearers or poultry farmers. There was no physical mark on the land to indicate where the land ended and the alluvion began. She put up the fencing on Lots 275(1), 275(3), and enclosed the area right down to the sea, during the emergency in or about the year 1952.

It is to be observed that admittedly there was no fencing on the seaward side of Lots 275(1) and 275(3) when the Plaintiffs purchased them. The fence was put up in 1952. As I shall state later in my judgment, the Plaintiffs were then in possession of temporary occupation licence in respect of the alluvion. Apart from the first Plaintiff's evidence no other evidence has been produced to corroborate her story that the previous owners received ground rents from people in occupation of houses on the alluvion. A number of fishermen are said to have lived on the alluvion but none of them has been called to give evidence in support of the first Plaintiff's evidence. It is common knowledge that people are in the habit of squatting on land without the owner's permission, although I would hasten to add that I am not allowing myself to be influenced by this fact in any way. I would state, however, that I am not satisfied on the evidence that people living on the alluvion, if in fact there were any such people, paid any ground rent either to the previous owners or to the Plaintiffs. Nor am I satisfied that the Plaintiffs have produced sufficient evidence to establish gradual and imperceptible accretion. Quite clearly such accretion began a long time ago and it was clearly indicated in the maps or plans published after the survey carried out in December 1924, but there is no evidence as to whether the original accretion was sudden or gradual. I do not think therefore that the Plaintiffs have proved their case as to accretion.

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It is further to be observed that this doctrine applied only in relation to land which is described in the original grant or in any subsequent conveyance as being bounded by the sea or sea shore. In the present case the land was described as being bounded on the west by Sea Beach in the original grant by Indenture No. 4276 which was referred to in all subsequent conveyances right down to the conveyances whereby the plaintiffs became the owners of lot 275(1) and 275(3). The westerly boundary of these two lots was in no way affected by the subdivision of the very large area comprised in the original grant. The ultimate issue therefore is whether the piece of land between the westerly boundary as shown in Moniot's plan attached to the original grant and the present medium high water mark which has come into existence as a result of the sea receding during the course of nearly a century forms part of the sea beach within the meaning of Indenture No. 4276 so as to defeat the plaintiff's claim, or does the expression "sea beach" include "fore shore" according to its normal signification in law so as to include only the land now washed by the sea up to the high water mark level during ebb time. 10

As I have stated above, in relation to the two lots in question there have been four surveys as follows:- 20

- (a) a survey made by Moniot in 1852 for the purpose of the original alienation; 30
- (b) Kelly's survey in 1891-1893, as a result of which the boundaries of lots 271 and 275 presumably became final under the Boundaries Ordinance, 1884 (Cap.130) in 1895;
- (c) a re-survey of 1924 confirming Kelly's boundaries; and
- (d) the survey made on the subdivision of 1935.

The general rule is that if there is any discrepancy between the words of the deed and the plan annexed the plan will be rejected as "false demonstration" (see Mellor v. Walmsley⁽¹⁴⁾). There is, however, 40

(14) (1904) 2 Ch. 525

to my mind, no discrepancy between the words of Indenture No. 4276 and Moniot's survey plan attached thereto. The four boundaries of the land comprised in the Indenture are clearly shown in the plan and the western boundary is shown as a straight line with a portion beyond it being delineated as sea beach. Kelly's plan was based on Moniot's plan and his plan also shows the western boundary as a straight line. The boundary is similarly shown in the survey plan issued after the resurvey of 1924 confirming Kelly's boundaries. As I have stated above, the first indication of accretion is shown in this survey plan.

Each party has produced a surveyor with considerable experience to give his opinion as to the nature of the boundary line on the west. Both of them agree that a natural feature boundary as a term known to surveyors means a long river, stream or the sea, and that right line boundary is a boundary marked on the ground as close as possible to the natural feature boundary. The evidence of the plaintiffs' surveyor (P.W.2) is that the plan at page 8 of AB2 (Moniot's plan) shows a natural feature boundary because of the words "sea beach" written on the plan and that he would describe the western boundary of lot 275 on the plan at page 3 of AB3 also as a natural feature boundary, although he says that on the plan at page 6 of AB3, which is dated 30th December, 1924, the western boundary of lot 275(1) is a right line boundary. He further agrees that the western boundary of the former lot 275 on the plan at page 7 of AB3 is a most accurate boundary because it was fixed under a modern survey and that the seaward boundary of the strip of land beyond the western boundary of lot 275 is not a straight line, it being an indication of the sea line.

The evidence of the defendants' surveyor (D.W.2) is that he cannot tell whether the western boundary on the plan at page 9 of AB2 (Moniot's plan) is a fluctuating boundary or a right line boundary, but that looking at Kelly's original survey plan which is copied at pages 2, 3 and 4 of AB3 and which shows that at the time of survey permanent boundary markers had been emplaced, he would say that the boundaries for lot 275 appear to be right line boundaries throughout, the reason being that firm black straight lines from one boundary marker to another have been shown. He goes on to say that Kelly took the

In the High Court of the Federation of Malaysia at Penang

—
No. 8

Judgment of Mr. Justice Gill

19th February 1969

(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

No. 8

Judgment of
Mr. Justice
Gill

19th February
1969

(continued)

western boundary as a right line boundary and that he therefore is inclined to the view that the western boundary on the plan at page 9 of AB2 is a straight line boundary. With regard to the plan at page 6 of AB2 prepared in 1924, his evidence is that this is a resurvey of lot 275 by modern methods under the Boundaries and Survey Maps Ordinance, 1911. This plan according to him was also made in connection with the road reserve on the eastern boundary, leaving the western boundary as the same, as a right line boundary. The rest of his evidence is as follows: "If the sea shore is (a) straight, and (b) level, the resulting plot on the plan will be a straight line A right line boundary is a boundary of a holding adjoining one marker to another, and it should remain permanent. The mean high water mark is a natural feature boundary and if you put markers at either end it also becomes a right line boundary You cannot have a right line boundary and a fluctuating boundary at the same time..... Kelly's survey followed occupational boundaries. He may or may not have followed Moniot's plan. I am not saying that Enche Ayub (P.W.2) was wrong when he said that the western boundary as shown on the plan at page 9 of AB2 is a natural feature boundary. It could be either A right line boundary cannot be changed. A straight line as a natural feature boundary is very rare."

Having studied the plans very carefully and having considered the evidence of the two experts I must say that I prefer the evidence of D.W.2, particularly in view of the evidence of P.W.2 that Kelly's survey plan shows the western boundary of lot 275 to be a right line boundary.

Whatever view I take of the evidence given by the surveyors, it is the construction of the words used in the original Indenture which is more important, and in this connection it is the meaning of the term "sea beach" which must decide the issue. "Sea beach" is probably, in its general acceptance, synonymous with "sea shore" or "foreshore"; but as a word of boundary it differs from "sea shore" as it does from "sea". In Musselburgh Magistrates v. Musselburgh Real Estate Co.(15), Macdonald, L.J.C., said:

"The north boundary, being the boundary

10 towards the sea, is described as the 'sea beach'. This, the defenders maintain, is equivalent to a boundary by the 'sea', which would carry the right of the defenders over the SHORE to low-water mark. It is true that in some early cases there are dicta which may be read as tending in that direction, but it has never been authoritatively decided that the two expressions must be read as meaning the same thing; and, giving the best consideration I can to the matter, I am unable to come to the conclusion that there is any ground for holding that 'sea' and 'sea beach', when used as descriptions of boundary, do mean the same thing. On the contrary, I think that they are essentially different. The word 'sea beach' seems to me to describe a boundary by which the subject given off is bounded to the exclusion of the thing described as the
 20 boundary. In other words, that when the subject is said to be bounded on the north by the 'sea beach', the line of boundary is reached when the beach is reached, and that to pass on to the beach is to pass the boundary, just as in the case of a boundary described as a certain wall or a certain building or a certain strip of plantation, when the wall or building is reached the extreme limit of the feu is reached, or when the plantation is
 30 entered the person entering it is past the boundary. The case is not the same as where a river or a road is named as a boundary. The water of a river and the surface of a road are peculiar, inasmuch as there are rights of coterminous and higher and lower heritors over the whole water of the river, and the rights of coterminous proprietors on either side of the road are restricted by the existence of the highway set apart for public traffic. But the
 40 solum in such cases, unless there is anything to the contrary in the titles, belongs to the proprietors: each up to the medium filum, subject to the flow of the river and the maintenance and use of the road respectively. But there is, and could be, no such presumption in the case of lands next the sea, and it appears to me that 'sea beach', as a boundary, must be held to exclude the beach itself, for that which is bounded by another thing cannot include the
 50 whole of that thing itself."

In the High Court of the Federation of Malaysia at Penang

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No. 8

Judgment of Mr. Justice Gill

19th February 1969

(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

No. 8

Judgment of
Mr. Justice
Gill

19th February
1969

(continued)

Lord Trayner said in the same case (at page 254):

"I think it has never yet been decided in express terms that a boundary 'by the sea' and one by the 'sea beach' are synonymous or were equivalents. There have been no doubt opinions to that effect expressed by eminent judges, from whom I venture to differ with great diffidence. But, as I think the question is still an open one, I feel bound to state my own view. It appears to me that the descriptions 'sea' and 'sea beach' are not only different in expression but apply to subjects which are distinct and different in themselves. 'Sea' and 'sea flood' may be the same, but 'sea' and 'sea beach' in my opinion are not. These two things are so distinguished and distinguishable that in ordinary parlance they could never be confounded; and they have not (as yet at least) acquired any technical meaning differing from their ordinary meaning. Their character is different, for the one is water and the other is land. As a boundary one of them is fluctuating, varying with the rise and fall of the tide; the other is practically fixed. Accordingly I am unable to treat 'sea' and 'sea beach' as synonymous or convertible terms. If they are not, then what does the boundary 'by the sea beach' confer on the defenders. The ordinary rule is that the thing by which a subject is bounded is excluded from the subject conveyed. It is not part of the subject conveyed, but is outside that subject. Applying this rule, the defenders' property extends to the sea beach, not beyond it."

This decision was affirmed by the House of Lords in *Musselburgh Real Estate Co. v. Musselburgh Magistrates* (16).

In view of the authorities which I have cited the conclusions at which I have arrived are as follows. If in a conveyance the land is described as being bounded on the west by the "sea shore" or the "sea", it would mean that the grantor never contemplated that he had remaining after executing such a deed any land or rights in lands to the west of the lands conveyed, so that any land added to the sea shore by the gradual and imperceptible receding of the sea would be held to be an accretion

subsequent to the deed and accordingly to be land which becomes the property of those claiming under the grantee. If the term "sea beach" is used as the boundary on the west of the land such boundary would be a permanent boundary so that any accretion to the land would be Crown property. As I have already stated, the boundary in the present case was a right line boundary and it did not extend right up to the sea or the seashore.

10 I now come to the plaintiffs' alleged possessory title. In this connection they contend that they are entitled to rely on the prior possession of themselves and their predecessors in title. But what evidence is there of the prior possession of their predecessors in title? As I have stated earlier, the only evidence in this connection is that of the first plaintiff, which is not supported by any of the previous owners of the lots in question. Her evidence is that the
20 alluvium was occupied mainly by fishermen. I do not see how she can claim personal knowledge of the fact that such fishermen paid any ground rent to the owners of the adjoining lands. The owners may well have passed over the land or used it for some other purposes, but I do not see how that could give them any possessory title. In Attorney-General v. Chambers (10) the turning of cattle upon alluvium by
30 the proprietor of land not separated from it by any boundary, although without interruption, was held not to be an assertion of right so acquiesced in as to raise a presumption of title. The first plaintiff's evidence in this connection, as I have already stated, is that there was no fencing on the west side of Lot 275(1) and 275(3) when she bought them and that she enclosed the area right down to the sea only when she put up the fencing during the Emergency in or about the year 1952.

40 It is common ground that at least from the year 1949 the plaintiffs were in possession of the accretion to the two lots under a Temporary Occupation Licence from the Collector of Land Revenue, Butterworth. I do not believe the story of the first plaintiff as to the circumstances under which she came to apply for such Temporary Occupation Licences. In any event, in the final analysis I must hold that these Temporary Occupation Licences were issued to her at her request. She has stated in evidence that she looked after the

In the High Court of the Federation of Malaysia at Penang

No. 8

Judgment of Mr. Justice Gill

19th February 1969

(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

—
No. 8

Judgment of
Mr. Justice
Gill

19th February
1969

(continued)

two lots and did every thing in connection with them on her own behalf and on behalf of the other plaintiffs. If therefore she was in possession of the alluvium by virtue of the Temporary Occupation Licences from 1949 to 1954, it was on her own behalf and on behalf of the other plaintiffs. In the circumstances I must hold that the Temporary Occupation Licences which she obtained were obtained on behalf of herself and the other plaintiffs. She had obviously no adverse possession in the case of the alluvium adjacent to Lot 275(1) before 1944 and in the case of alluvion adjacent to Lot 275(1) and Lot 275(3) prior to 1947. In view of the Temporary Occupation Licences which she obtained subsequently, she entered the allvion either as a trespasser or a licensee at will, and it is common ground that she was deprived of possession, rightly or wrongly, as from 1959. 10

The plaintiffs contend, on the authority of Esher v. Whitlock(17), that possession by itself gives a good title against all the world except some one having a better title to legal possession. I do not see how the doctrine enunciated in that case helps the plaintiffs because in the present case the first defendants, apart from having put the plaintiffs out of possession in 1958, are claiming a better right to legal possession. The plaintiffs also rely upon the decision of the Privy Council in Perry v. Glissold(18), but that was a case in which the rightful owner, apart from being out of possession, was unknown. They further rely on Nicholls v. Ely Beet Sugar Factory(19) in which it was held that in an action of trespass a defendant cannot set up a jus tertii against a possessory title. Again, I do not see how that case helps the plaintiffs because the first defendants are not setting up any jus tertii. 20 30

The plaintiffs further contend that, assuming that evidence of possession is established, the onus of proving title shifts to the defendants. They contend that in any event a plaintiff in an action of ejection is not deprived of the right to rely on his prior possession as against a mere wrongdoer because he put forward an imperfect title on account of some defect in proof. For this proposition 40

(17) (1865) L.R. 1 Q.B.1 (18) (1907) A.C. 73
(19) (1931) 2 Ch. 84

they rely on Davison v. Gent (20). I do not see how the first defendant in this case can be called a mere wrongdoer.

In the circumstances I must hold that the plaintiffs cannot succeed in their claim on the basis of their alleged, rather meagre, possessory title.

10 Finally, I come to the defence of estoppel, which in my opinion is fatal to the plaintiffs' case. It is one of the first principles of the law of estoppel, as applied to the relations between landlord and tenant, that a tenant is estopped from disputing the title of his landlord without first giving up possession to the landlord from whom he obtained possession in the first place. In other words, the tenancy estops the tenant while he is in possession as such. This is laid down in the first limb of section 116 of the Evidence Ordinance, 1950. It is common ground that a licensee is in the same position as a tenant.

20

The second limb of section 116 of the Evidence Ordinance says that "no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given". The plaintiffs in the present case contend that they did not enter into possession by virtue of the Temporary Occupation Licence. They say that they were already in possession and they disputed the right of the first defendant to issue Temporary Occupation Licences at all. As I have already stated, I do not accept the first plaintiff's story as to the circumstances under which she says the licences were issued. I have also previously referred to the plaintiff's evidence that she enclosed the area right down to the sea only when she put up fencing during the Emergency in or about the year 1952 and it is common ground that at least from the year 1949 and up to 1954 the plaintiffs were in possession of the accretion to the two lots under a Temporary Occupation Licence from the Collector of Land Revenue, Butterworth. If they entered upon the alluvium prior to that, it was either as trespassers or licensees at will. Having obtained a Temporary

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In the High Court of the Federation of Malaysia at Penang

No. 8

Judgment of Mr. Justice Gill

19th February 1969

(continued)

In the High
Court of the
Federation of
Malaysia at
Penang

No. 8

Judgment of
Mr. Justice
Gill

19th February
1969

(continued)

Occupation Licence in respect of the alluvium, they are estopped from denying the title of the first defendant to such alluvium by reason of the second limb of section 116 of the Evidence Ordinance. A licensee cannot be permitted under that section to deny that the licensor had a title to the possession of the property at the time when the licence was given to him to enter, though there was no relationship of licensor and licensee subsisting between the parties during the period sued for: Dukhimoni Dasi v. Tulsi Charan(21).

10

Before concluding, I must go back to what I said at the commencement of my judgment, namely, that the four plaintiffs are no longer the owners of Lot 275(1). In this connection, the evidence of the first plaintiff is as follows: "I sold lot 275(1) to developers, I think, some time in January 1964. I sold it to three persons who were in partnership. I do not remember their names. The sale was with the authority of the other plaintiffs. There was agreement with the purchasers that the alluvion was excepted from the conveyance and I told them about this civil suit. I am not calling those purchasers as witnesses." None of the purchasers was in fact called to give evidence in support of what the first plaintiff said, nor did the plaintiffs produce a copy of the conveyance by which the lot was sold. In the absence of such evidence, I am not prepared to hold that the alluvion was excepted from the conveyance. As the right to alluvion must depend upon ownership of the adjoining land and as the plaintiffs are no longer the owners of Lot 275(1), it is not possible for the court to make the declaration which they have sought in relation to that lot.

20

30

For the reasons I have stated, the plaintiffs' claim must fail. It is, therefore, dismissed with costs on higher scale.

Kuala Lumpur,
19th February, 1969

S.S. GILL
JUDGE HIGH COURT, MALAYA

40

Inche Graham Hill with Inche Ho for the plaintiffs
Inche Ajaib Singh for the first defendant
Inche L. Kandan for the second defendant

Salinan yang di-akui benar
Sd. Illegible 1.3.69

Setia-usaha Kapada Hakim Mahkamah Persekutuan,
Malaysia Kuala Lumpur.

No. 9
FORMAL JUDGMENT

In the High
Court of the
Federation of
Malaysia at
Penang

Before the Honourable Mr. Justice S.S. Gill

The 19th day of February 1969

In Open Court

No. 9

Formal
Judgment

19th February
1969

10

This suit coming on for trial on the 8th, 9th, 10th and 11th July 1968 before this Court in the presence of Counsel for the Plaintiffs for the 1st Defendant and for the 2nd Defendant and Upon Reading the pleadings and Upon Hearing evidence adduced for the Plaintiffs for the 1st Defendant and for the 2nd Defendant and Upon Hearing Counsel as aforesaid

IT WAS ORDERED that this action should stand for judgment and this action standing for judgment this day in the presence of Counsel for the Plaintiffs for the 1st Defendant and for the 2nd Defendant

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THIS COURT DOETH ORDER that the said action be and is hereby dismissed with costs to be taxed on the Higher Scale of the Second Schedule to the Rules of the Supreme Court 1957 and when taxed to be paid by the Plaintiffs to the 1st Defendant and the 2nd Defendant.

Given under my hand and the Seal of the Court this 19th day of February 1969.

By the Court

(L.S.) Sd. Abdul Kadir
Senior Assistant Registrar.
21 APR 1969

Entered this 19th day of February 1969 No. 65/69.



In the Federal
Court of
Malaysia

No. 10
NOTICE OF APPEAL

No.10
Notice of
Appeal
14th March
1969

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
Civil Appeal No. of 1969

Between

1. Beng Hong Oon alias Lim Beng Hong
(Married woman)
 2. Oon Guan Yong
 3. Oon Peh Tchin and
 4. Oon Peh Seng
- ... Appellants

And

1. The Government of the State of
Penang and
 2. The Central Electricity Board
of the Federation of Malaya
- ... Respondents

(In the matter of Penang High Court Civil Suit No.
118 of 1962

20

Between

1. Beng Hong Oon alias Lim Beng Hong
(married woman)
 2. Oon Guan Yong
 3. Oon Peh Tchin and
 4. Oon Peh Seng
- ... Plaintiffs

And

1. The Government of the State of
Penang and
 2. The Central Electricity Board of
the Federation of Malaya
- ... Defendants)
- 30

NOTICE OF APPEAL

TAKE NOTICE that Beng Hong Oon alias Lim Beng
Hong, Oon Guan Yong, Oon Peh Tchin and Oon Peh Seng,

the Appellants above named being dissatisfied with the decision of the Honourable Mr. Justice Gill given at Kuala Lumpur on the 19th day of February 1969 appeal to the Federal Court against the whole of the said decision.

Dated this 14th day of March 1969.

Sd: Lim, Lim & Oon

Solicitors for the Appellants.

In the Federal
Court of
Malaysia

No.10

Notice of
Appeal
14th March
1969

(continued)

- 10 To:- The Chief Registrar,
The Federal Court,
The Law Courts,
Kuala Lumpur.
- and to:- The Registrar,
The High Court in Malaya at Penang.
- and to:- The Attorney-General,
for and on behalf of the Government of
the State of Penang,
Attorney-General's Chambers,
Kuala Lumpur.
- 20 and to:- The 2nd Defendants or their Solicitors,
Messrs. Shearn, Delamore & Co.,
No. 2 Benteng,
Kuala Lumpur.

The address for service for the Appellants is at No. 29 Church Street Penang, the office of Messrs. Lim, Lim & Oon, their solicitors.

30 Received this 14th day of March, 1969,
Deposit of \$500/- lodged in Court this 14th day
of March, 1969. Entered in the List of Civil
Appeals this 14th day of March, 1969.

(L.S.)

Sd. Abdul Kadir

Senior Assistant Registrar.

In the Federal
Court of
Malaysia

No. 11

AMENDED MEMORANDUM OF APPEAL

No.11
Amended
Memorandum of
Appeal
29th July 1969

Beng Hong Oon alias Lim Beng Hong (married woman), Oon Guan Yong, Oon Peh Tchin and Oon Peh Seng, the first, second, third and fourth Appellants respectively appeal to the Federal Court against the whole of the decision of the Honourable Mr. Justice Gill given at Kuala Lumpur on the 19th day of February 1969 on the following grounds :-

1. That the learned Judge misdirected himself in holding that the burden of proof was on the Plaintiffs to prove that the accretion in land had been gradual and imperceptible. 10
2. That in the absence of direct evidence of whether the accretion to the Plaintiffs' land had been 'gradual and imperceptible' or 'rapid and sudden' the learned Judge should have held that the accretion had been gradual and imperceptible and that the alluvion belonged to the Plaintiffs and not to the Defendants. 20
3. That the learned Judge was wrong in law in holding that the Temporary Occupation Licences from 1949 to 1954 signed by the first Plaintiff created an estoppel against the Plaintiffs by virtue of S.116(2) of the Evidence Ordinance 1950 because it was not possible to establish to which parts (if any) of the Plaintiffs' lands the said Licences related.
4. That the learned Judge was wrong in law and/or in fact in holding that :- 30
 - (i) there is for the reasons given in his judgment no discrepancy between the words of Indenture No. 4276 and Moniot's Survey Plan attached thereto;
 - (ii) the western boundary of the said Survey Plan was a right line boundary;
 - (iii) the term "sea beach" connotes a permanent boundary so that any accretion would be Crown property;
 - (iv) there was no evidence of the prior possession⁴⁰ of the plaintiffs and their predecessors in title to support the plaintiffs possessory title
 - (v) the first defendant was not a wrong doer so as to bring into application the principal of Davison v Gent (I H N 744)

- (vi) the plaintiffs are estopped from denying the title of the first defendant to the alluvion; In the Federal Court of Malaysia
- (vii) the alluvion was not excepted from the conveyance in January, 1964, or, if this was correct, in failing to hold that no sale of Lot 275(1) took place at that time; No.11
- (viii) the Court could not make the declarations asked for because the plaintiffs are no longer the owners of Lot 275(1); Amended Memorandum of Appeal
29th July 1969
- (ix) in disbelieving the evidence of the first plaintiff as to the circumstances under which she came to apply for Temporary Occupation Licences, there being no evidence to contradict her version of what happened. (continued)

Dated this 29th day of July, 1969

Lim, Lim & Oon

Solicitors for the Appellants.

- 20 To:- The Chief Registrar, Amended 11th day of
The Federal Court, August 1969 pursuant
The Law Courts, to Order of Federal
Kuala Lumpur. Court dated 29th day
of July 1969.
- and to:- The Registrar, A.W.
The High Court in
Malaya at Penang. Chief Registrar
- and to:- The Attorney-General, Federal Court, Malaysia
for and on behalf of Kuala Lumpur
30 the Government of the
State of Penang,
Attorney-General's Chambers,
Kuala Lumpur.
- and to:- The 2nd Defendants or their Solicitors,
Messrs. Shearn, Delamore & Co.,
No. 2 Benteng,
Kuala Lumpur.

40 The address for service for the Appellants is at
No. 29 Church Street, Penang, the office of Messrs.
Lim, Lim & Oon, their solicitors.

In the Federal
Court of
Malaysia

No. 12

NOTES OF ARGUMENT RECORDED BY AZMI, LORD
PRESIDENT

No.12

Notes of
Argument recorded
by Azmi, Lord
President

Coram: Azmi, Lord President, Malaysia,
Suffian, Federal Judge, Malaysia,
Ali, Federal Judge, Malaysia.

29th July 1969

Penang, 29th July, 1969.

Graham Hill with Ahmad Ibrahim for Appellants
Ajaib Singh for 1st Respondent,
Kanda for 2nd Respondent.

Graham Hill: Motion for amendments.

All counsel have no objection Azmi. 10

No objection from Respondents. Azmi.

Amendments allowed. Azmi.

Pages 30 - 36 replaced - become amendments
to "Reply" allowed by Judge not
included in the Record. Azmi.

Issue - page 273 of 2nd Bundle -

Booklet "Your Land" para. 28

To decide whether land increased
by sea belongs to Plaintiffs as
owners of adjacent land or whether
it belongs to State. 20

I submit my written submission.

(Counsel reads his written submission
and explains as he goes on as
follows:)

Page 2 : Claim.

Not disputed land descends to present owner
properly.

Evidence of accretion :

(1) documentary - maps. 30

(2) Mrs. Oon's evidence page 3 of record.
Assuming Mrs. Oon correct, occupation of lot
and accretion to be treated as one.

In the Federal
Court of
Malaysia

Defence page 6 of Record.

No.12

Page 7 of Record.

Notes of
Argument
recorded by
Azmi, Lord
President

Page 12 - para. 11.

Musselburgh's case.

29th July 1969

p.431 - 1st column - last para.

Issue.

(continued)

10 Judge confused in holding that burden on
Plaintiffs to prove.

Therefore in Musselburgh's case what Court
meant as to burden was to prove the facts in
the first issue and not burden to prove that
it had been formed by gradual accretion.

Evidence of accretion - page 45 of 1st Record
of Appeal.

Page 46 - F.

20 No evidence from Defendants at all Mrs. Oon
talking of 30 years of increase.

I submit irreconcilable to hold otherwise.

Presumption under S.114 Evidence Enactment.

If burden is on us we have discharged it.

Page 13 para. 3.

Page 146 of Part II - F & G.

Authority 14A - page 703 "523 - definition of
sea-beach" = seashore.

Refer Musselburgh Magistrates case - Photostat
page 243

30 page 250 - issue sets - left column up to high
water mark.

In the Federal
Court of
Malaysia

No.12

Notes of
Argument
recorded by
Azmi, Lord
President

29th July 1969

(continued)

251 - left column
right column.

252

Judge misconstrued Musselburgh.

Sea shore = foreshore page 179 of submission.

Plaintiff's surveyor's evidence - page 48
of Record.

Said this is natural feature boundary.

Defendants' surveyor said it might be either.

Judge should not have dismissed Plaintiff's
witness. 10

Boundary in grant must prevail i.e. means
high water mark.

Page 21 of written submission - I say plan and
grant are at one.

Page 22 of written submission - para. 4.

Page 24 of written submission - Plaintiffs'
possessory title.

Primarily on question of burden of proof.

Page 27 of written submission - defence of
estoppel. 20

Reads page 27.

Estoppel.

Refers U.Po Shin - 1934 A.I.R.Rangoon 139

Photostat 23.

I do not refer this case in my written
submission.

Headnote (a) page 143.

Plaintiffs have been in possession long before
T.O.L. - misinterpretation by some one in
the office. 30

Page 28 of submission.

Area.

Page 120 of Record.

Page 121 of Record.

If Court is with me the judgment should be given
in our favour.

I say also that point was not in issue.

If not with me, Court has to accept what she said "I am owner of the alluvion".

Nothing I have said that appears to be contrary to the booklet given by Government.

I asked for declaration prayed for in the Statement of Claim.

Short Adjournment.

Azmi.

Counsel as before.

In the Federal
Court of
Malaysia

No.12

Notes of
Argument
recorded by
Azmi, Lord
President

29th July 1969

10 Ajaib 1st point page 273.

Singh.

Government booklet - that is not clear. It was issued by Deputy Prime Minister on land. Here circumstances different.

We say Plaintiffs never had any title to the alluvion.

Plaintiff must prove her claim.

Sec.101 onwards of Evidence Enactment.

Attorney-General v. Chambers 43 E.R.486 therefore the Attorney-General was the Plaintiff.

20 Sec.101 - 104 - up to Plaintiff to prove her case. It was for them to prove the accretion was slow and imperceptible. Plaintiff gave evidence - she said she saw land after Japanese occupation.

Judge - page 107 had considered all the evidence on behalf of the plaintiff. He came to conclusion : "Nor am I satisfied that the plaintiffs have produced sufficient evidence to establish gradual and imperceptible accretion."

30 Judge held not enough evidence.

2nd point - the question of original grant 1852 - western boundary - sea beach.

Page 80 of Record - A.-C.

I submit Judge rightly applied ruling in Musselburgh's case.

Refer page 112 of Record.

Page 114 of Record.

The question of estoppel.

Halsbury Vol.15 (3rd Edition) para. 402.

40 Para.426 - "clear and no ambiguity".

(continued)

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(continued)

Evidence of plaintiff page 56 G onwards.

Clear Mrs. Oon' applied for T.O.L.

To suggest Government invited Mrs. Oon to
get the licences -

It was Mr. Teoh, her friend, who suggested.

If the land was hers it would not be necessary
for her to apply for T.O.L.

1934 A.I.R. Rangoon - photostat 23 - "under
a mistake and in ignorance of facts relating
....."

10

(Ajaib distinguishes facts in the two cases).

Mrs. Oon eminent lawyer.

No pressure in suggestion by a friend.

It was voluntary act of her to apply for the
T.O.L. - she had it up to 1949.

Refers evidence of 2 surveyors.

Judge accepted Kelly's survey in 1924 -
boundary was fixed and subsequently sub-
division made.

Sec.104 - Evidence - not for him to prove in
negative.

20

Plaintiff has to prove it was a slow and
imperceptible process. I submit Judge
correctly with the view on "estoppel" and as
to indenture of 1852.

Refer Part III of Record - plan 1.

Page 232 - "sea beach".

Government surveyor's evidence that it was a
straight line boundary, which expressly excludes
the fore shore.

Therefore Plaintiff had failed to prove its
case Azmi.

Kandan: Page 62 of Vol.1 of Record.

Sec. 101, 102 of Evidence Enactment.

Sarkar page 877 - 11th Edition "Commentary"

Page 881 - "alluvion and diluvion"

Bottom "In a suit"

Photostat No. 22 - Maharajah Rejandra.

Page 431 - Plaintiff has to prove accretion.

1915 Vol. 26 I.C. 899

"Whether"

10 Trial Judge had advantage of watching the witness.

Estoppel : Dukhimoni Dasu v. Tulsi Charan
1912 I.C. 512 Vol. XIII.

"Certainty of Area" referred by Hill.

Halsbury Vol.15 para. 402

426 page 225.

Both paragraphs refer to representing in writing - nothing as to extent of the land.

Those paragraphs do not help Plaintiff.

20 No evidence as to area given in T.O.L. therefore presume whole alluvion.

Whole land "adjacent" to the lots therefore whole alluvion.

1924 I.C.(XIII) 544 - p.550

Sea Beach

Possessory Title - Mrs. Oon in 1938

Plaintiff 2 1952

(Hill: We are not claiming on basis of possessory title).

30 possessory title extinguished by T.O.L. in 1949.

U Po Shin 1934 A.I.R. Rangoon 139 page 143

Distinguished on facts from present case.

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(continued)

Mrs. Oon - 271
275

Page 58 of Record of Appeal - B 1 -
"Having seen"

No direct evidence of acreage of land in T.O.L.
but I submit it was in reference to whole
accretion.

I submit Plaintiffs had failed to discharge
their onus. See page 77 of 1st Record my
argument in Court.

10

I ask appeal be dismissed. Azmi.

Hill: I am not asking for foreshore - high water mark.

Estoppel - real test - which is attitude of
Plaintiffs - page 57 E.

"I did not dispute Mr. Teoh's statement....."

1955 onwards she was disputing right of
Government to issue T.O.Ls. - page 61 - D.

She did not take notice when in 1955 told
T.O.L. expired.

Page 244 - Mrs. Oon's letter to Government.

20

I submit of 2 surveyors, one is definite and
other doubtful.

I suggest Court accept the 1st.

Sec. 114(d) Evidence - Sarkar's notes.

Defendants to prove estoppel - they failed to
do so.

Onus on defendant to show this

I say this is a case of normal accretion.

I ask for order prayed in Statement of Claim.

C.A.V.

Azmi.

30

NOTES OF ARGUMENT RECORDED BY ALI, J.

29th July, 1969

Graham Hill (Dr. Ahmad Ibrahim with him) for appellants.

Ajaib Singh for respondent 1.

Kandan for respondent 2.

Hill puts in written submission.

In the Federal Court of Malaysia

No.13

Notes of Argument recorded by Ali, J.

29th July 1969

10

Applies for leave to amend memorandum of appeal.

Error in (1) for reasons given.

No objection by respondent for application.

Application granted in terms.

Refers to amended Reply - p.30 & 34 of Pt.1; amendment to reply put in - allowed to treat - effect vague in area - p.30 & 34 in Pt.1; 8A & 8 bundles and p.36 - now substituted by 'X'.

Only issue - p.273 of Pt.II para 28.

20

Hill - background picture given by trial judge correct. August 1959 State Government granted lease to 2nd defendant.

Refers to facts by the 1st respondent.

Evidence - (1) Documentary evidence - maps.

(2) Evidence of 1st respondent.

Refers to p.3 of submission. No reservation by any vendor.

Mrs. Oon in evidence.

Sec. 6 of the Conveyancing and Law of Property Ordinance.

30

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Occupation of lot with accretion was one.

Refers to defence.

Turns to law on alluvion.

Hill supplies photostat copies of reports.

Even if there is a sea wall, there is
still claim for accretion.

We say that sea beach means high water
mark.

Musselburgh case does not apply.

Sec. 114 of Evidence Ordinance.

10

Refers to photostat No.22 - 1st paragraph
p.427 and also 431.

Evidence of accretion.

Refers to pages 45 to 46 - Evidence.

Refers to photostat 14A - 'sea beach'
synonymous 'sea shore'.

Chambers Case

House of Lords case has nothing to do
with this case.

We never claimed the foreshore.

20

We say sea beach synonymous sea shore
which was foreshore in high water mark.

Then refers to evidence on boundary line.

Evidence of plaintiffs' surveyor and
defendants' surveyor.

No need to consider this if Court holds
deed points the sea shore as the boundary.

Plans on specific area do not matter -
can still have accretion.

Possessory title is relevant

30

We are not pleading jus tertii.

Trial Judge wrong on evidence - onus on defendant.

On Estoppel -

Area under T.O.L. Even if trial Judge right one cannot find estoppel as something not certain. Licensee cannot dispute title of the Licensor.

10 Appellant did not go on the land by T.O.L. She is already there.

Estoppel applies during tenancy.

Mrs. Oon's explanation should be accepted.

Case on estoppel - Sec. 114.
Photostat No.23 Rangoon case (U Po Shin) Case.
Misinterpretation led Mrs. Oon to take T.O.L.

No evidence of T.O.L. - Estoppel to be effective must be certain.

See Halsbury's

20 Finding by Trial Judge on sale of land - not in issue - p.121 of Record Pt.I. Lot 275 (1) sold - alluvion exempted.

Ajaib Singh - Point not in issue. I think it should not be taken against my client.

Conclusion: I ask for declaration - ask for it to be made effective from the date of writ.

Adjourns for 10 minutes

Resumes hearing.

Ajaib Singh - for 1st respondent - addresses.

30 Replies - p.273 - Document not law.

Plaintiffs do not have and never had title to the alluvion.

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(continued)

It is for plaintiffs to prove claim.
Sec.101 of Evidence Ordinance et seq.

We are not claiming the land.

Attorney-General v. Reeve.

Refers to p.80 - Yarborough's case.

Mellor v. Walmsley - (1905) 2 Ch.
164 - words "on the west bounded by the
sea shore". Never used words "sea beach".

Reads judgment - p.111.

On question of estoppel.

10

Refers to Halsbury, 3rd Edn. Vol.15,
p.402 & 426.

See p.57 of Pt.1.

Submits Trial Judge correct on estoppel and
considering words of the deed.

Kandan in reply -

Refers to P.62 - I also take objection.

Refers to sec.101, 102 & 103 of Evidence
Ordinance.

Refers to Sarkar on Evidence - p.881 on
alluvion.

20

Refers to (1915) I.C.Vol.26, p.899.

On Estoppel - refers to (1912) I.C. Vol.XIII,
p.512 - Dukkhimoni Dasi v. Tulsi Charan -
Photostat 'Y'.

Appellant deemed to have exercised right
over area.

Lastly submits Musselburgh case strictly
on point.

No proof 30 years possession.

30

Even if there is possessory title that was extinguished as from 1939.

Concludes - Issues : Burden of proof

Estoppel

Possessory title.

Hill - in reply -

I repeat I am not asking for foreshore - land up to beginning of foreshore.

Letter - p.244 of Pt. II.

10 Refers to Sarkar - sec.114.

Judgment reserved.

(Intld.) ALI.

In the Federal Court of Malaysia

No.13

Notes of Argument recorded by Ali, J.

29th July 1969 (continued)

No. 14

NOTES OF ARGUMENT RECORDED BY SUFFIAN F.J.

29th July, 1969

In open court.

In the Federal Court of Malaysia

G.S. Hill (Dr. Ahmad Ibrahim with him) for appellants.

Ajaib Singh for respondent 1.

Kandan for respondent 2.

No.14

Notes of Argument recorded by Suffian F.J.

20 Hill addresses:

Leave to amend memorandum of appeal granted - by consent.

29th July 1969

New pages 30 to 36A of Part 1 of record of appeal - instead of old pages 30 to 36. New pages were as amended with leave in lower court.

Issue is summed up at page 273 - Part II - question 28 - a booklet issued by Government.

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Notes of
Argument
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Suffian, F.J.

29th July 1969
(continued)

Answer there is in plaintiffs' favour - but respondent 1 does not say that now.

(Hands in written submission)

Elaborates.

Claim summarised, written submission, p.2

Plaintiffs' title - respondents do not dispute how it descended.

What is disputed in construction of deed 4276.

The alluvium lies between western boundaries vested in plaintiffs and the sea - alluvium came into being by slow process.

10

Ajaib Singh for respondent 1 addresses:

I shall deal only with disputed matters.

Page 273 - that is not the law, but only a document issued by Deputy Prime Minister re land. Government is in no way trying to get out of it. It presupposes proper title along the shore and any accretion belongs to owner. But here we say plaintiff never had title to alluvium.

20

Plaintiff claims - under Evidence Ordinance, section 101 onwards, she has to prove her claim. Government is not making a claim that it belongs to Government because of sudden accretion as in A.G. v. Reed (1884) 1 T.L.R. 675. There A.G. was making a claim, not here.

Plaintiff gave evidence.

Page 107, judge considered plaintiff's evidence and concluded she had not proved her case.

Slow and imperceptible - does not mean sudden. Anyway judge found accretion not imperceptible.

30

Question of original grant of 1852. All further conveyances since specify western boundary as sea beach (not seawall, sea, seashore, etc.)

I refer to my submission at page 80 to trial judge. In all of 4 cases cited by Hill "seabeach" not used - only in Musselburgh (1905) A.C.491 was it used. Refers to extracts from Musselburgh's judgment in Gill's judgment, page 111, line E2, 112, 114.

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Estoppel

15 Halsbury, para.402, 426.

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10 Teoh's visit was social, Teoh suggested plaintiff should apply for T.O.L. to get the title to the alluvium, page 36 (last para.). Not true it was Government who suggested plaintiff to apply for T.O.L. Plaintiff not an ordinary person but a lawyer of some experience.

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20 1934 A.I.R. Rangoon 139 U.Po Shin. There plaintiff had possession before entering agreement - here no possession, so plaintiff estopped - she knew her rights - and yet she voluntarily applied for T.O.L., applications for T.O.L. are always in writing.

Evidence of two surveyors

Government surveyor more qualified than Ayob. Judge accepted former's evidence.

Section 114, Evidence - plaintiff not expected to prove a negative but to prove her case that accretion was slow and imperceptible.

30 Plan at page 232 - western boundary given as sea-beach and a straight line. Government surveyor after seeing this was inclined to say it was a right line boundary and a natural feature boundary was rarely a straight line.

Kandan for respondent 2 addresses :

Page 62, line B - I did object to amendment but did not ask for adjournment.

Four N.E.B. staff quarters on the alluvium. Not a power station.

Evidence Ordinance - section 101. Plaintiff asserts a legal right and she must prove the imperceptibility of accretion.

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Sections 102, 103, 104.

Sarkar, page 277, 11th edition; 881 (on alluvium).

Illustration (b) to section 101 - alluvium was in our possession at time of the writ.

20 W.L.R. cited by Hill - (20) in his folder.

(1915) 26 Indian cases 899 (Xeroxed copy handed in) - headnote, 2nd para. - weight of evidence is not a question of law - trial judge rejected plaintiff's evidence. We had difficulty controverting plaintiff's evidence - no record - so plaintiff could say anything she liked.

10

Section 114, Evidence - presumption, If in 1938 (when plaintiff first came on the scene) there had been accretion, we can assume accretion in 1968. But it does not follow that if there was accretion in 1938 there had been accretion before that.

Sarkar, page 989.

20

A.G. v. Reed. There Crown claimed land and so Crown must prove. I have not found single case where onus is on defendant.

Estoppel

Dukhimoni Dasi 13 Indian Cases 512.

Indeterminate area of T.O.L. area - see 15 Halsbury, paras. 402, 426.

The area became 4 acres only after survey in 1958, not before.

The T.O.L. covered the whole land - see evidence, p.62, 63, 64B1 - I agree this is only an inference and that there was no direct evidence.

30

Even if area is unknown, if plaintiff had occupied the area, she is estopped. (1924) Vol. 13, Indian Cases 544, 550.

Sea beach. Musselburgh is the only authority we can find. Seabeach is not the same as sea, sea-shore, sealine, etc.

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Possessory title. Plaintiffs have at most proved possession only since 1944 - came to the vicinity in 1938. (Hill says I do not claim possessory title as such, but it is relevant as to onus of proof).

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Even if plaintiffs had possessory title, their title was extinguished when they applied for T.O.L. in 1939.

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U. Po Shin (1934) A.I.R. Rangoon 139. There parties went in under mistake of fact. Here plaintiff knew what she was doing, she applied for T.O.L., she is a lawyer. There there was fraudulent misrepresentation, etc. - here no such thing.

Plaintiff's evidence on accretion. She lived on lot 271 - her evidence related to lot 271. As regards the other lots - she said accretion was similar to that for lot 271.

Page 58, line B2 - evidence on extent of law under T.O.L. No direct evidence of area but enough for inference that whole land was under T.O.L.

Page 77 F1 - pl. refer to my submission to trial judge.

Hill replies:

I do not ask for foreshore.

I base my claim to area between top of the foreshore and my land - based on the original grant. I don't claim to low water mark. I claim to high water mark.

Estoppel. Plaintiff's evidence, page 57E - she asked for T.O.L. knowing that it was common for T.O.L. holder to be given grant of land concerned. Page 61 letter D - she disputed Government's right to issue T.O.L. since 1955. Letter p.244 June 1955 to C.L.R. Butterworth - she disputed this - 4 years before the last T.O.L. Kandan spoke about.

Not true Government surveyor more qualified than ours. Also our surveyor's evidence is more positive.

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I don't dispute plaintiff had to prove her case - but I say that plaintiff having proved accretion slow and imperceptible, then it is presumed that earlier accretion was also slow and imperceptible.

Respondents must prove estoppel but have not. Plaintiff accepted T.O.L. only to ensure she would get tidy title to land.

Possessory title - if we can show we are in possession, then respondents must prove their title.

10

C.A.V.

No. 15

JUDGMENT OF AZMI, LORD PRESIDENT

In the Federal
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No.15

Judgment of
Azmi, Lord
President.

9th February,
1970

Coram : Azmi, Lord President, Malaysia,
Suffian, Federal Judge Malaysia
Ali, Federal Judge, Malaysia.

This is an appeal against the judgment of the High Court at George Town, Penang, dismissing the plaintiffs' claim for the following declaration:

20

(1) (a) a declaration that the line of the medium high tide of the sea between the ordinary spring and neap tides from time to time constituting the westerly boundary of lot 275(3) and 275(1).

(b) a declaration that the first Plaintiff is entitled to the fee simple absolute in possession of that part of the Alluvium which lies along the westerly extremity of the said two lots and above the line of the medium high tide of the sea between ordinary spring and neap tides.

30

(c) In the alternative, a declaration that the first Plaintiff as the owner in fee simple in possession of the said

two lots is entitled to free and uninterrupted access to the sea over every part of such part of the Alluvion from every part of the said two lots.

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10 (d) In the further alternative a declaration that as against the first and second Defendants the first Plaintiff is entitled to possession of that part of the Alluvion which lies along the westerly extremity of the said two lots and above the line of the medium high tide of the sea between ordinary spring and neap tides.

(e) a mandatory injunction for the removal of the said fence and the said brick building erected on and any or whatever construction or constitution on lot 808.

20 (f) vacant possession of all that part of lot 808 which adjoins the said two lots.

(g) Mesne profits from about the year 1958 until delivery of possession of all the Alluvion which adjoins the said two lots.

(h) damages.

30 First plaintiff was the owner of lot 275(3) but first plaintiff and the other three plaintiffs are owners of lot 275(1).

The first defendant was the Government of the State of Penang and the second defendant was a body corporate incorporated by statute under the Electricity Ordinance 1949.

The said two lots are parts of a land originally alienated to a person named Forbes Scott Brown by Queen Victoria described in the grant.

40 "as being situated in the division of Bagan Bahroo in the District of Telok Ayer Tawar in Province Wellesley bounded and measuring as follows:--

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East by East India Co. and Boontah
Loosoo's grounds 4,935 feet.

West by sea beach 4,067 feet.

North by road 1,904 feet.

South by Fakir and Che Mohamed's
land 896 feet, agreeably to the
plan indorsed thereon certified under
the hand of Ian Moniet, Land
Surveyor, estimated to contain an
area of 94 square acres 3 sq. roods,
11 square poles together with
appurtenances."

10

It is not necessary to refer to the various conveyances through which the plaintiffs finally became the owners of the said lots. It was the plaintiffs' case that since the date of the grant in 1852 a strip of dry land hereinafter referred to as the alluvion comprising an area of about 4 acres, has been formed by the action of the sea and now lies above the high water mark of ordinary tides along the westerly extremity of the said lots 275(1) and 275(3). They also alleged that the alluvion had increased gradually, slowly and imperceptibly and naturally, through the years and is still increasing in like manner.

20

The plaintiffs also alleged that they and their predecessors in title have for onwads 60 years planted and cultivated coconut trees on the alluvion and are and were at all material times together in possession thereof until they were wrongfully ousted from a part thereof by the defendants.

30

The plaintiffs contended that the line of medium high tide of the sea between the ordinary spring and neap tides from time to time constituted the westerly boundary of their said lands and that accordingly the plaintiffs were entitled to the fee simple absolute in possession of that part of the alluvion lying along the westerly extremity of lot 275(1) and that the first plaintiff was similarly entitled to that part of the alluvion lying along the westerly extremity of lot 275(3).

40

The first defendant in their defence admitted that a strip of dry land above the high water mark had been formed as alleged but made no admission as to the manner in which such alluvion was formed. It denied that the plaintiffs were ever in possession of or entitled to in fee simple in respect of the alluvion.

Further it maintained

- 10 (a) that the land originally granted by the indenture of 1852 was of a specific area and about 94 a. 3 r. 11 p.,
- (b) that the westerly boundary of the said land as set out in the said indenture was fixed and determined and not removable,
- (c) that the ownership of the said two lots did not give the plaintiffs any right over the alluvion,
- 20 (d) that the alluvion was the property of the first defendant,
- (e) that the plaintiffs having on their own accord and volition applied for temporary occupation licences (or T.O.L.) over the alluvion were estopped from denying the first defendant's title,
- (f) that the lease granted to the second defendant by the Governor of Penang was valid.

30 In its counter-claim it asked for an order removing certain fences constructed by the first plaintiff and damages for trespass.

The second defendant's case was substantially similar to that of the first defendant.

The learned Judge dismissed the claims.

Firstly he came to the view that the English doctrine of accretion is applicable to this case. The law as to accretion is set out by Halsbury Laws of England 3rd Edn. Vol.39 page 560 as follows:

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"Where tidal water recedes gradually and imperceptibly from the land, or land by alluvion or dereliction is added to the dry land or foreshore, so that it becomes situate above the high water mark of ordinary tides or above the low water mark, it belongs, if above the high water mark, to the owner of the dry land to which it is added, and, if above the low water mark to the owner of the foreshore."

10

(Rex v. Yarborough 1824 3 B. & C.91 affirmed sub nom Gifford v. Lord Yarborough 1828, 5 Bing.163 H.L.).

The learned Judge then went on to discuss the question of burden of proof and came to the conclusion that it is for the plaintiffs to prove their case.

From the evidence, it would appear that first plaintiff has been living since 1940 on her own land described as lot 271(1) which is near to lots 275(3) and 275(1). The learned Judge referred to the evidence of the first plaintiff that in the two lots under dispute there was no fencing on the seaward side when she purchased them but there were houses built on the alluvion, two of which were occupied by the former owners. There were also other houses on the alluvion but she put fencing on the said two lots subsequently and enclosed the area right to the sea during the emergency period sometime in 1952. The learned Judge also referred to the fact that the plaintiffs were then in possession of a temporary occupation licence in respect of the alluvion. He was not satisfied that the plaintiffs had proved that the previous owners had been in possession of the alluvion adjoining the two lots in question. He was also not satisfied that the plaintiffs had produced sufficient evidence to establish that the alluvion had been caused gradually and imperceptibly, though he agreed that such accretion began a long time ago and that it was clearly indicated in the maps or plans published after the survey carried out in December 1924. He also came to the view that the word "sea-beach" is not the same as the word "sea" or "sea-shore" under the authority

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30

40

of the judgment of McDonald L.J.C. in Musselburgh Magistrates v. Musselburgh Real Estate Co. (1) and therefore the term "sea-beach" connotes the permanent boundary with the result the doctrine of accretion would not apply. Then he referred to the question of possession and he came to the conclusion that he must also dismiss the plaintiffs' claim on this ground because the evidence was rather meagre.

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10. On the question of estoppel he upheld the defence's contention under the second limb of sec. 116 of the Evidence Enactment that the plaintiffs were estopped from denying the first defendant's title by the fact that they had applied and obtained temporary occupation licences for the two said lots, on the authority of the Judgment in the case of Dukhi Mohi Dasi v. Tulsi Charan (2)

- 20 Before us it was argued firstly, that the learned judge was wrong in holding that the burden of proof was on the plaintiffs to prove that the accretion in land had been gradual and imperceptible authority of the judgment of the Lord Chancellor in the Attorney-General v. Chambers, Attorney-General v. Rees, (3) I have gone through that case very carefully and I am afraid I am unable to find anything in it which states that the burden is always on the Crown in a dispute of that kind that alluvion was caused suddenly. I am inclined to agree with the trial Judge's view that in this instant case the burden is on the plaintiffs to show that the alluvion had been caused gradually and imperceptibly.
- 30

But, however, I have come to a different conclusion as to the question whether the plaintiffs have discharged their burden that the alluvion had been formed gradually and imperceptibly. It would appear to me that the learned Judge dismissed the plaintiffs' contention on this question on the ground that there is no evidence as to whether the original accretion was sudden or gradual though he had accepted the first plaintiff's evidence that the

- (1) 1904 S.C.L.R. 247, 252.
(2) 1912 I.C. 513
(3) 1859 45 E.R. 22

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alluvion had increased since 1938 and that it had increased gradually and imperceptibly. On this question it is to be remembered that the defendants had merely in their pleadings denied the plaintiffs' allegation that the alluvion had been caused gradually and imperceptibly, and called upon the plaintiffs to prove it. However, since it cannot be disputed by the defendants that the alluvion since 1938 had been caused gradually and imperceptibly, it would be in my view, a fair inference of fact that it had been probably formed before 1938 in like manner. It is also a fair inference that had it been caused by some violent act of nature or man the first defendant, being the Government of the State, would have known and suggested so. In the circumstances, I would therefore say the plaintiffs have discharged their burden and the trial judge should have come to the conclusion that the alluvion had been caused slowly, gradually and imperceptibly since the grant was made to Mr. Brown.

10

20

On the evidence before him the learned Judge rejected the plaintiffs' contention that they did not enter into possession of the alluvion by virtue of the temporary occupation licences as they were already in possession. The first plaintiff gave evidence as to the circumstances under which she said the licences were issued. According to her a clerk from the Land Office at Butterworth suggested to her that she applied for a temporary occupation licence and that unless she did that someone else might apply for it and then she would have someone squat in front of her and her coconut trees might be cut down. He also suggested to her that if she continued taking out the temporary occupation licence (which are issued annually) and continued to look after the land she could later on apply for a grant. In other words according to her, she applied for a temporary occupation licence, not because the land belonged to the Government but merely to prevent Government from giving permission to other people to squat on it. In my view the finding made by the learned Judge on this evidence should not be disturbed.

30

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The learned Judge further found that the

10 plaintiffs went into occupation of the alluvion by fencing it in 1952 after they had obtained the licence. Therefore, as licensees they could not under the second limb of sec.116 of the Evidence Ordinance deny that the first defendant had title to the possession of the land in question when the licences were given to them to enter and on the authority of the Indian case of Dukhimoni Dasi v. Tulsi Charan (supra) they cannot deny first defendant's title though there was no relationship of licensor or licensee subsisting between them during the period sued for. Jenkins C.J. in Dukhimoni Dasi's case did not appear to give reasons for the decision of the Court, because in reference to sec.116 of the Evidence Act, he merely said this :-

20 "Having regard to section 116 of the Evidence Act the defendant cannot be permitted to deny that the plaintiff had a title to the possession of the land at a time when the licence was given to enter into possession."

But N.R. Chatterjea, J. however, in the course of the argument of the appeal said :-

But in section 116 of the Evidence Act, there is no such expression as "during the continuance of the licence" as there is in the same section in the case of a tenant."

30 The headnote of the Indian Law Report reads as follows :-

40 "A licensee cannot be permitted under section 116 of the Evidence Act to deny that the licensor had a title to the possession of the property at the time when the licence was given to him to enter, though there was no relationship of licensor and licensee subsisting between the parties during the period sued for."

The above summary was cited in Sarkar on Evidence (11th Ed. Vol.2 page 1123).

The learned Judge in the instant case has

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apparently accepted the headnote of the report as laying down correctly the judgment of the Indian case.

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Let us now turn to the corresponding law in England.

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The authorities which settled the English law are conveniently collected in Spencer Bower and Turner on "Estoppel by Representation" 2nd Ed. (1966) paragraph 173 at page 170. I need only cite the following sentences taken from that paragraph :-

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"Generally speaking, not only any person who accepts a lease from another, but anyone who is let into possession or occupation by, or 'comes under' another, including a licensee, lodger, caretaker, servant and the like, by so doing acknowledges the title of that other to grant the right or licence by virtue of which he occupies the premises, and is accordingly estopped, so long as he remains in occupation, from controverting such title. But it must appear that the transaction is one of demise and nothing else and the party sought to be estopped must have his grant or receive his possession from the party raising the estoppel."

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Charles J. in Tadman v. Henman (5) fully recognised the absence of any distinction between the case of a licensee and a tenant. In his judgment in that case at page 171 he said this :-

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"But upon a comparison of that case (Doe d Johnson v. Baytup 3 A. & E.188) with that of Doe d. Knight v. Smythe (4 A M & E.347), I have come to the conclusion that its principle has no application to the case before me. All that it decides is that a defendant in ejectment who has got into possession by the plaintiff's licence cannot turn round upon the plaintiff and say, 'I am in possession; if you want to turn me out, show your title'; but if he wishes to dispute the plaintiff's title to the land, must first give up possession to the plaintiff, from whom he obtained it.

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(5) 1893 2 Q.B. 168

That case concedes that a tenant or licensee may always dispute his lessor's or licensor's title, provided he first gives up possession of the premises. But here, Mrs. Tadman had no possession of the premises to give up."

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In other words in England estoppel inures only during the continuance of the licence. In the instant case the plaintiffs at the time when they brought this action were no longer in possession by virtue of the temporary occupation licence. In this connection my attention was drawn since the hearing of this appeal to the case and the judgment of the Privy Council in the Ceylonese case of Terrunanse v. Terrunanse. (6)

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Their Lordships of the Privy Council had in that case occasion to consider the provision of sec. 116 of the Ceylonese Evidence Ordinance which in all respects corresponds to our own sec. 116. The question dealt by their Lordships in that case is different from that in the instant case but in my opinion, the following passage at page 1129 in their Lordships' judgment could be accepted as a general guidance to us when dealing with our Evidence Ordinance particularly with those provisions dealing with estoppel -

"The respondent concedes that he was a licensee of the land in dispute. His argument against the estoppel rests, as will appear, upon a narrow interpretation of the Ordinance. Section 116 is one of three sections that compose chapter X of the Ordinance, which is headed Estoppel. This chapter is a very condensed version of the English common law on estoppel in pais. Their Lordships consider that it must be interpreted, and if necessary expanded, in the light of the common law. The Ordinance is one of a number which follow the Indian Evidence Act, 1872. This Act, as is well known, was drawn up by Sir James Stephen. In 1876 he reproduced it in substance for English lawyers in his Digest of the law of Evidence. The object of the Digest was to supply a concise code and not an elaborate treatise and so principles are briefly stated; but in his introduction to the first edition

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Stephen said that it was 'intended to represent the existing law exactly as it stands.' Section 116 of the Ordinance corresponds with article 112 of the Digest. It is therefore in their Lordships' opinion legitimate, when applying section 116, to consult and give effect to the English cases, even if they appear to go further than the language of the section; and specific authority for so doing is given by section 100 of the Ordinance which provides that whenever in a judicial proceeding a question of evidence arises not provided for by the Ordinance or by any other law in force in Ceylon, such question shall be determined in accordance with the English law of evidence for the time being."

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I would, with respect, firstly adopt the words of their Lordships in reference to the present case and say that the learned High Court in India in the Dukhimoni Dasi's case had interpreted sec.116 narrowly. We should, therefore, as exhorted by their Lordships, consult and give effect to English cases, and in the circumstances I would come to the view that a licensee is estopped from controverting the title of his licensor only so long as he remains in occupation but not after he has given up possession.

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In view of my finding that the alluvion had been formed gradually and imperceptibly since Mr. Brown was given the grant of the land, there should be declarations prayed for in paragraphs (a) and (b) of Plaintiffs' claim. I would therefore allow the appeal with costs here and in the court below. The plaintiffs' deposit of \$500/- will be returned to them.

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Kuala Lumpur,
9th February, 1970.

Sgd. Azmi bin Haji Mohd.
LORD PRESIDENT,
MALAYSIA.

G. S. Hill, Dr. Ahmad Ibrahim, Oh Teik Aun for Appellants.

Solicitors : Lim, Lim & Oon, for Appellants.

Ajaib Singh Senior Federal Counsel for Respondent No.1.

V.L. Kandan for Respondent No.2.

Solicitors: Shearn Delamore & Co., for No.2

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10 In an action commenced in the High Court, Penang the appellants sued the Government of the State of Penang for declarations, the purpose of which was to establish rights of ownership over a piece of land about 4 acres in area. The Central Electricity Board was a necessary party by reason of the fact that a portion of the said land was leased to them by the State Government. The appellants' claim is founded on what is known as the rule of accretions, a rule recognised as being part of the English common law. This rule governs the question of ownership of land formed by alluvial deposits from the sea. It is comprehensively discussed by Lord Hale, a great authority on the law of maritime increment, in his work "De Jure Maris et Brachiorum Ejusdem" (Hargrave Law Tract). It received judicial consideration in the leading case of Rex v. Yarborough (1) which went to the House of Lords under the name of Gifford v. Lord Yarborough. (2) The rule is peculiar not only to the conditions in England for it seems to have been applied to territories like Burma and some parts of Africa. In Gifford v. Lord Yarborough (supra) Lord Chief Justice Best said :

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"All the writers on the law of England agree in this : that as the King is lord of the sea that flows around our coasts, and also owner of all the land to which no individual has acquired a right by occupation and improvement, the soil that was once covered by the sea belongs to him.

But this right of the sovereign might, in particular places, or under circumstances, in all places near the sea, be transferred to certain of his subjects by law. A law giving such rights may be presumed from either a local or general custom, such custom being reasonable, and proved to have existed from time immemorial.

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.....We think there is a custom by which lands from which the sea is gradually and imperceptibly removed by the alluvion of soil, becomes the property of the person to whose land it is attached, although it has been the fundus maris, and as such the property of the King".....

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The universal applicability of the doctrine was recognised in Hull and Selby Railway (3) by Lord Abinger, O.B. who said :

".....The principle there established is not peculiar to this country, but obtains also in others, and is founded on the necessity which exists for some such rule of law, for the permanent protection and adjustment of property".....

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In the Privy Council case of Lopez v. Muddun Mohun Thakoor (4) Lord Justice James said of the principle:

"This principle is one not merely of English law, not a principle peculiar to any system of Municipal law, but it is a principle founded in universal law and justice; that is to say, that whoever has land, whatever it is, whatever may be the accident to which it has been exposed, whether it be a Vineyard which is covered by lava or ashes from a Volcano, or a field covered by the Sea or by a River, the ground, the site, the property, remains in the original Owner."

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In the instant case the learned trial Judge has said :

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10 "The two Privy Council cases to which I have referred are sufficient authorities for the proposition that in the absence of local legislation to the contrary, and there is none in force in Penang, the English doctrine of accretion is applicable to this case. In my opinion it is also applicable under the provisions of section 3(1) of the Civil Law Ordinance 1956, notwithstanding the provisions of section 6 of the same ordinance."

It is not in doubt, therefore, that the rule applies to Penang. I wish only to add that there is nothing in the provisions of the Crown Land Ordinance, S.S. Cap.113 and the Crown Lands Encroachment Ordinance, S.S. Cap.114, to suggest any intention to exclude this rule.

20 This rule of accretion, though explained or described in various ways in the relevant authorities cited, does not appear to have been formulated in any accepted form by the Courts in England. In Rex v. Yarborough (5) the Head Note describes it in these terms :

30 "Lands formed slowly, gradually and imperceptibly, by alluvion on the sea shore, belong, by general immemorial customs to the owner of the adjoining lands, and not to the Crown."

In a passage from his work "De Jure Maris", Lord Hale explains the rule in the following words :

"The increase per alluvionem is when the sea, by casting up sand and earth, doth by degrees increase the land, and shut itself out further than the ancient bounds went; and this is usual. The reason why this belongs to the Crown is because in truth the soil, where there is now dry land, was formerly part of the very fundus maris, and consequently belonged to the King. And indeed, if such alluvion be so insensible that it cannot be by any means found that the

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sea was there, idem est non esse at non apparere; the land thus increased belongs as a perquisite to the owner of the land adjacent."

In his judgment the learned trial Judge also quoted a passage from Blackstone (Vol.2 page 262) which explains the rule thus :

"As to lands gained from the sea, either by alluvion, by the washing up of sand and earth, so as in time to make terra firma, or by dereliction, as when the sea shrinks back below the usual water mark; in these cases the law is held to be, that if this gain be by little and little, by small and imperceptible degrees, it shall go to the owner of the land adjoining. For de minimis non curat lex; and besides these owners being often losers by the breaking in of the sea, or at charges to keep it out, this possible gain is, therefor, a reciprocal consideration for such possible charge or loss; but if the alluvion or dereliction be so sudden and considerable, in this case it belongs to the King, for as the King is lord of the sea, and as owner of the soil while it is covered with water, it is but reasonable he should have the soil when the water has left it dry."

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In Re Hull and Selby Railway (supra) Alderson B. stated the rule in these words :

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".....Suppose the Crown, being the owner of the fore shore - that is, the space between high and low water mark - grants the adjoining soil to an individual and the water gradually recedes from the fore shore, no intermediate period of the change being perceptible; in that case the right of the grantee of the Crown would go forward with the change. On the other hand, if the sea gradually covered the land so granted, the Crown would be the gainer of the land. The principle laid down by Lord Hale, that the party who suffers the loss shall be entitled also to the benefit, governs and decides the question. That which cannot be perceived in its progress is taken to be as if it never had existed at all."

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It seems clear from the words of Lord Hale and Blackstone that, theoretically speaking, the minute particles of earth and sands or accretions, as they are sometimes described, originally belong to the Crown because they come from the soil under the sea. Under the rule thus explained, land formed by the accumulations of these accretions, slow, and gradual and unnoticed by the human eyes, belongs to the owner of the adjoining land. The reason for it is amplified by the words of Alderson B. in the case just referred to as underlined. These words have been cited with approval by Lord Chelmsford in Attorney-General v. Chambers (6) and also in Attorney-General v. Reeve. (7) There is, therefore a preponderance of authorities for the view that the manner of formation of alluvial land in order to attract the rule is a relevant matter for consideration. The first respondent, apparently aware of this, has taken up the point that in order to succeed in this claim the appellants must prove that the land they are claiming was formed in the manner stated in the rule. The point was taken up in paragraph 2 of the Amended Statement of Defence which is averred in these words:

"With regards to paragraph 10 of the Amended Statement of Claim, the First Defendant admits that a strip of dry land above high water mark (hereinafter referred to as "Alluvion") has been formed along the western extremity of Lots 275(1), and 275(3), but makes no admission as to the manner in which such alluvion was formed."

There is in this paragraph a clear admission that the land claimed is alluvial land and that it is now lying along side the western boundary of the appellants' lands. Quite clearly the State Government, the first respondent, knew that this land was alluvial land but was not in a position to say whether or not it was formed in the manner required by the rule. In the situation it was thought that in terms of the rule there was an onus on the appellants to prove that the land was formed slowly, gradually and imperceptibly. The learned trial Judge holding that there was such an onus concluded in these words :

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".....Quite clearly such accretion began a long time ago and it was clearly indicated in the maps or plans published after the survey carried out in December, 1924, but there is no evidence as to whether the original accretion was sudden or gradual. I do not think therefore that the Plaintiffs have proved their case as to accretion."

In my view as far as the owner of the adjoining land is concerned, it would be quite impossible for him to prove positively how the alluvial land was formed. This is especially so in the present case where ownerships of the adjoining lands have changed hands from time to time since 1890. To require the appellants to prove the manner of formation in order to bring the rule of accretion into operation is to impose on them an intolerable burden. The manner of such formation must always be a matter of assumption. The word "imperceptible" in the rule as explained by Lord Hale and Blackstone and also in the cases already referred to would be meaningless if there is such a thing as an onus of proving imperceptible increases of accretions. On the other hand, if the State Government in this case have claimed ownership of the alluvial land on the ground that it was formed suddenly or perceptibly, there must, of course, be the evidence to prove this in order to exclude the rule of accretion. The Crown succeeded in Attorney-General v. Reeve (supra) because there was such evidence. Lord Coleridge in that case said:

".....On the contrary, the witnesses, who had the best means of observing, are able by marks and measures to indicate what was gained. This is clear from the evidence given by John Henderson, late chief officer of the Coastguard at Lowestoft, and James Swan who lived there all his life, and has for the last 53 years been a harbour and gat pilot there. Henderson said that, shortly before the construction of the north pier there had been commenced, the beach above ordinary high-water mark immediately to the north of the pier began to advance, and the line or ordinary high-water mark to

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10 recede, and that this advance of the beach and receding of the line of ordinary high-water mark could be plainly perceived from time to time as it went on; that when the wind was blowing strong from north-west to north, with a high tide, it was often visible from day to day; and that he had frequently noticed during the prevalence of such winds that the line or ordinary high-water mark receded some 10 or 12 feet in a single tide, leaving an accretion of sand and shingle many feet in depth over the high-water mark of the previous tide. Swan's evidence, too, was to the effect that the progress of the beach and receding of the line of ordinary high-water mark were visible from month to month, and at times even from day to day. This having been proved by the evidence, we accordingly give judgment for the Crown."

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The distinction drawn by Best C.J. in Rex v. Yarborough (8) would assist in resolving the present difficulty. Best C.J. said :

30 "There is a great difference between land formed by alluvion and derelict land. Land formed by alluvion must become useful soil by degrees, too slow to be perceived. What is deposited by one tide will not be so transient as to be removed by the next. An embankment of a sufficient consistency and height to keep out the sea must be formed imperceptibly. The sea frequently retires suddenly, and leaves a large space of land uncovered. When the authorities relative to these subjects are considered, this difference will be found to make a material difference in the law which applies to derelict lands, and to such as are formed by alluvion."

40 However, even if there was any requirement that the appellants had to discharge an onus of proof the evidence in the case seems to have clearly established that as early as 1924 accretions have been noticed and that these have accumulated to such an extent that when the action was instituted by the appellants, the alluvion formed has grown to a size of about 4 acres in area. The reasonable inference could only be

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that over a period of about 38 years the alluvion has slowly, gradually and imperceptibly increased. With respect, therefore, I am unable to agree with the conclusion of the learned trial Judge that the appellants' claim would fail on this ground.

The Penang State Government have also pleaded two matters in their pleadings to resist the appellants' claim. They are :

(a) that the original land comprising the two lots 275(1) and 275(3) was of a specific area;

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and

(b) that its western boundary was fixed and determined and not removable.

But the authorities seem to be against the contention that the rule does not apply. As to (a), it is true that the original land as granted by Indenture 4276 was for an estimated area of 93 square acres 4 square roods and 11 square poles. That this does not exclude the rule seems clear from the decision in the Privy Council case of Attorney-General of Southern Nigeria v. John Holt & Co. (Liverpool) Ltd. (9) in which Lord Shaw of Dunfermline said:

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"Upon the other hand, if accretions had been formed in the course of nature by the silting up of sand, gravel, and the like, and these accretions had been of the gradual character to be afterwards referred to, they would have been added to the land, notwithstanding the measurement in square yards or feet which the title contained."

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The reason of this is not far to seek, and it is substantially to be found in that general convenience and security which lie at the root of the entire doctrine of accretion. To suppose that lands which, although of specific measurement in the title deeds, were de facto fronted and bounded by the sea were to be in the situation that their frontage to the sea was to disappear

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by the action of nature to the effect of setting up a strip of land (it might be yards, feet, or inches) between the receded foreshore and the actual measured boundary of the adjoining lands, which strip was to be the property of the Crown, and was to have the effect of converting land so held into inland property, would be followed by grotesque and well-nigh impossible results, and violate the doctrine which is founded upon the general security of landholders and upon the general advantage."

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As regards (b), except Attorney-General v. Chambers (supra) and possibly Attorney-General v. Reeve (supra), the weight of authorities would seem to favour the view that regardless of any clear line of demarkation the rule would apply. The following words in the passage from Lord Hale's treatise "De Jure Maris", already quoted have given rise to a conflict of views:

".....And indeed, if such alluvion be so insensible that it cannot be by any means found that the sea was there, idem est non esse at non apparere; the land thus increased belongs as a perquisite to the owner of the land adjacent."

Dealing with this particular passage Lord Tenterden (Abbott, C.J.) in Rex v Yarborough (10) said :

".....And considering the word "imperceptible" in this issue, as connected with the words "slow and gradual", we think it must be understood as expressive only of the manner of the accretion, as the other words undoubtedly are, and as meaning imperceptible in its progress, not imperceptible after a long lapse of time."

But in Attorney-General v. Chambers (supra) Lord Chelmsford taking a different view said at page 28:

".....Lord Hale here clearly limits the law of gradual accretions to the cases where the boundaries of the seashore and adjoining land are so undistinguishable that it is

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impossible to discover the slow and gradual changes which are from time to time accruing, and when at the end of a long period it is evident that there has been a considerable gain from the shore, yet the exact amount of it, from the want of some mark of the original boundary line, cannot be determined. But where the limites are clear and defined, and the exact space between these limits and the new high water line can be clearly shown, although from day to day or even from week to week the progress of the accretion is not discernible, why should a rule be applied which is grounded upon a reason which has no existence in the particular case?"

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In 1929 Romer, J. referring to this conflict of views, in Brighton and Hove General Gas Co. v. Hove Bungalows Ltd. (11) said :

".....But the attention of Lord Chelmsford had not been called to the fact that the case of Rex v. Lord Yarborough (1) had been to the House of Lords under the name of Gifford v. Lord Yarborough (2) and had there been affirmed. In that case the land gradually left dry by the action of the sea abutted upon land of which the former boundary was well-known and readily ascertainable, for that boundary was a sea wall. It was nevertheless held that the general law of accretion applied. The observations of Lord Tenterden therefore were not merely dicta, but went to the root of his decision, and that decision having been affirmed in the House of Lords, I am, I apprehend, bound by the statement of law enunciated by him, and am not at liberty to give effect to the views expressed by Lord Chelmsford in the passage that I have read, even if those views commended themselves to my mind."

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Following Romer, J., Sir George Lowndes, delivering the judgment in the Privy Council case of Secretary of State for India in Council v. Foucar & Co.Ltd.(12) said :

"In their Lordships' opinion, these cases

were rightly decided, and they think that the general principle of accretion applies even where the former boundaries of the land on the water front were known or capable of ascertainment. On the assumption, therefore, that this was the position by reference to the plans in evidence in the present case, they are unable to hold that this excludes the application of the doctrine."

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10 The learned trial Judge in this case has not considered this contention by the Respondent but it seems clear from his judgment that upon the authorities cited the contention would in any case fail.

20 One of the main questions considered by the trial Court relates to estoppel. This was raised by Penang State Government on the ground that the appellants have on their own accord and volition applied for temporary occupation licences over the alluvion. The contention was that the appellants are estopped in terms of section 116 of the Evidence Ordinance from denying the Penang State Government's title thereto. The learned trial Judge has concluded that this defence was fatal to the appellants' case. Section 116 reads as follows:

30 "116. No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy be permitted to deny that the Landlord of such tenant had at the beginning of the tenancy a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

40 In this case we are only concerned with the second limb of the section. So far as estoppel was based on the issues of temporary occupation licences by the State Government to the appellants the fact that the appellants had been so issued with these licences since 1949 was indisputable. They obtained these licences to enable them to collect fruits from the alluvion. They never physically lived on the alluvion. After 1957 or 1958 they were, according

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to the evidence, no longer issued with the licences. The Land Officer giving evidence for the defence has testified to the effect that as far as he was able to make out from the official records no temporary occupation licences were issued to the appellants after 1958. The lease granted by the Penang State Government to the Central Electricity Board, the second respondent, clearly suggests that the Board had gone into occupation of part of the alluvion, described as lot 808, sometime in December, 1957. At all events it was abundantly clear that when this action was instituted in 1962, the appellants were no longer in occupation or possession of the alluvion. This, in my judgment, is sufficient ground for saying that section 116 cannot apply. In some textbooks on Evidence, the estoppel in section 116 is treated as an estoppel by contract. It operates to prevent a tenant or a licensee from denying title because under a contract with a landlord or with a licensor there is implied an acknowledgment by such tenant or licensee of the landlord's or licensor's title. This acknowledgment of title is presumed to have led the landlord or the licensor to act to his detriment by giving up possession to the tenant or the licensee who, therefore, as long as he is still in possession, is estopped from denying the landlord's or licensor's title. This rule of estoppel also applies in England. A short passage from Foa's General Law of Landlord and Tenant, 8th Edition, would seem to support the view that section 116 of the Evidence Ordinance cannot apply to this case. At page 471 Foa's Book, the passage reads :

"So long as he retains possession, a tenant cannot dispute the title of the person who gave him that possession."

On the facts of the present case alone, I would respectfully disagree with the conclusion of the learned trial Judge that the appellants' claim can be defeated by estoppel. I would also go further to say this. So far as the rule of estoppel in section 116 is a rule of evidence, it is clearly designed to protect the landlord or the licensor from being defeated in his claim for possession of immovable property merely on the ground that he has no title or if he has

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title it is defective. In the ordinary way, section 116 is sometimes invoked by the plaintiff in an action for possession for non-payment of rents or for such similar breaches of contract. In the present case, we have the position in reverse where a defendant in an action is pleading estoppel. While this may not in itself be objectionable in law, it does appear somewhat odd. It is odd because we are not here concerned with a claim of possession. We are concerned with a claim for a declaration as to the right of ownership over an alluvion. The appellants are not denying anybody's title because title has yet to be determined. It is true that they have on their own accord and volition applied for temporary occupation licences. But these licences, as we all know, are licences issued under statutory powers and are issued in respect of Crown lands to enable the licences to make a limited use of such lands. The licence has to be applied for and, if granted, a certain prescribed fee is charged. A person applies for a temporary occupation licence simply because he recognises the authority of the Government over the Crown lands. Such recognition of Government authority cannot be placed on the same footing as an acknowledgment of title. In most cases the subjects are not in a position to know whether a particular piece of land is or is not Crown land. In this country including the State of Penang titles to land can only be ascertained from the Register of Titles. Such lands are described as alienated lands, i.e. land alienated by the Crown. Crown lands are usually those which have not been alienated and are nowhere to be found on the Register of Titles. In that sense it would be a misuse of the English Language to say that the appellants are denying the Government title to Crown land. The truth, as it seems to me, is that the appellants have applied for temporary occupation licence because that was the only way in which they could prevent the land from being given on a licence to some other persons. The first appellant may be a lawyer by profession but she could not be certain of her rights to the alluvion unless that is acknowledged by the State Government. From the exchanges of correspondence it would seem that since 1955, she had challenged the State Government's right to the alluvion. Her claim was disputed. It was only then that the appellants decided to come

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to the Court for a declaration. Strictly speaking, therefore, the appellants are not in any way disputing title and there is, therefore, no ground for invoking section 116 against them. In many of the cases of alluvion cited to the Court, only one seems to have been concerned with the question of estoppel. Although the facts giving rise to the plea of estoppel are not fully set out it would appear the Court was not impressed by the defence contention. I am of course referring to the Privy Council case of Secretary of State for India in Council v. Foucar & Co.Ltd. (13) Sir George Lowndes delivering the judgment of the Privy Council said :

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"It only remains to deal with the suggestion of estoppel based on the fact that some of the earlier grantees acquiesced in fresh grants being made by the Government of lands which they might, on the basis of this judgment, have claimed for themselves as accretions. Their Lordships fail to understand how any case of estoppel can be sustained against the respondents. Nothing is known as to the circumstances under which these fresh grants were made. The grantees may not have desired the additional lands : they may even have regarded a new holder, settled between them and the changes of the river, as an additional security to their own holdings; they may have been, and probably were, altogether ignorant of their rights, or unwilling to spend money in litigating with Government if they did know of them. But in any case the accretions were totally different from those now claimed by the respondents, and the non-claimer by them, cannot, in their Lordships' opinion, have any adverse effect upon the rights now claimed by the respondents."

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Therefore, for a number of reasons already stated I cannot agree with the trial Court's finding that estoppel is fatal to the appellants' claim.

One minor question raised by the appellants in this appeal was the observation made by the learned trial Judge in respect of the sale of

10 Lot 275(1). His Lordship was of the view that this sale would, in any case, prevent the Court from making a declaration of ownership in respect of the alluvion adjoining that land. I cannot foresee any difficulty in this for any such declaration, if made, would benefit the owner of the adjoining land, whoever he might be. I would, therefore, be beneficial to the purchaser of the lot unless reservation excluding the alluvion is made in the conveyance. Whether or not there is evidence of such a reservation would be a matter between the vendor and the purchaser. Until a dispute arises between them, I do not think it necessary for this Court to consider it.

In the Federal
Court of
Malaysia

No.16

Judgment of
Ali, F.J.

9th February
1970
(continued)

20 Up to now, so far as is necessary for the determination of this appeal, I have dealt with questions raised in the defence pleadings and have arrived at conclusions different from those of the trial Court. In that context, I would, therefore, allow this appeal to the extent that the appellants are entitled to declarations in terms of paragraph 20(I)(b) and paragraph 20(1)(d) of the Further Amended Statement of Claim.

The appellants have also asked for other declarations, one of which is in these terms:

30 "that the line of the medium high tide of the sea between the ordinary spring and neap tides from time to time constitutes the westerly boundary of the two lots under consideration."

(Paragraph 20(1)(a) and Paragraph 20(2)(a)).

40 In so asking they are apparently of the view that for the rule of accretions to operate there must be established that the western boundary of their lands, at the time of the original grant in 1852, and in fact the sea or the sea-shore; or to put in the words of Alderson B. in Re Hull and Selby Railway (supra) "the space between the high and low water mark". A considerable amount of documentary evidence and lengthy arguments were addressed to the trial Court on this question. Volumes of documentary evidence in this case relate to conveyances and maps, some of which, if not all, were for the purpose of showing that lots 275(1) and

In the Federal
Court of
Malaysia

No.16

Judgment of
Ali, F.J.

9th February
1970
(continued)

275(3) owned by the appellants form part of a larger area of land originally granted in 1852 and that the western boundary of the two lots mentioned are the same as that described for the larger area in the original Indenture 4276. Whether or not the western boundary was or was not the sea or the sea-shore is undoubtedly a question of fact which could only be established by evidence. The appellants have relied on the evidence of an experienced surveyor who, upon examining the plans and survey maps, have expressed the view that the western boundary was in fact a natural feature boundary, which means the sea. Another qualified Government surveyor was called by the Penang State Government and he was inclined to the view that the western boundary was a straight-line boundary, i.e.: a boundary having permanent markers on the ground, thereby suggesting a clear line of demarkation separating the appellants' lands from the sea. Either way, the evidence was far from being conclusive and the learned trial Judge probably had this in mind when he said this :-

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"Whatever view I take of the evidence given by the surveyors, it is the construction of the words used in the original Indenture which is more important, and in this connection it is the meaning of the term "sea-beach" which must decide the issue."

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Apart from the surveyors' opinion and the evidence of the surveyor maps or plans and Government Gazette notifications in which the word "sea" is used to describe the boundary, no other witness was called or was available to testify to the fact that the western boundary was the sea. In terms stated, the fact to be proved has not, therefore, been proved conclusively by evidence. But then it was so assumed at the trial that this fact could be established by construing the words of description "sea beach" in the original Indenture 4276. The learned trial Judge, construing these words to mean something quite different from the sea, concluded as follows :

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"In view of the authorities which I have cited the conclusions at which I have

arrived are as follows. If in a conveyance the land is described as being bounded on the west by the "sea shore" or the "sea", it would mean that the grantor never contemplated that he had remaining after executing such a deed any land or rights in lands to the west of the lands conveyed, so that any land added to the sea shore by the gradual and imperceptible receding of the sea would be held to be an accretion subsequent to the deed and accordingly to be land which becomes the property of those claiming under the grantee. If the term "sea beach" is used, as the boundary on the west of the land such boundary would be a permanent boundary so that any accretion to the land would be Crown property."

In the Federal
Court of
Malaysia

No.16

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Ali, F.J.

9th February
1970
(continued)

As can be expected the construction of the words could only lead the Court to the conclusion as to the grantor's intention in using those words. It did not, however, prove that the western boundary was in fact the sea. The words of the judgment would appear to suggest that the learned trial Judge was inclined to the view taken by the Lord Chelmsford in Attorney-General v. Chambers (supra) which, as I have earlier stated was not followed in Brighton Hove General Gas Co. v. Hove Bungalows (supra); and Secretary of State for India in Council v. Foucar & Co.Ltd. (supra). In construing the words "sea beach" as he did, the learned trial Judge found support mainly from the words of Macdonald L.J.C. and Lord Trayner in Musselburgh Magistrates v. Musselburgh Real Estates Co.(14) In that case the words "sea beach" fell to be construed clearly because the Court was considering the effect of a statutory provision in relation to an area over which the Harbour Commissioners claimed to have the statutory right of control. The bone of contention was that the Commissioners have no such right as the area belongs to the owner of adjacent land who relied on the words "sea beach" used in his Title Deed to support his contention. When this decision of the Court of Appeal was before the House of Lords the line of approach adopted was completely different as the House was of the view that the issue turned solely on the construction of the statutory provision under consideration. The meaning of the

In the Federal
Court of
Malaysia

No.16

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Ali, F.J.

9th February
1970
(continued)

words "sea beach" was not at all discussed by the House. In the instant case, the trial Court was not concerned with the construction of a statutory provision. Nor was it concerned with the intention of the grantor of the original land. The appellants wanted to show that the western boundary was in fact the sea or sea-shore. The simple truth is that they could not prove that fact by evidence. Construing the words of the Indenture was not going to help in any way for the grantor's intention what the western boundary should be might very well be different from what it in fact was. In any case, I fail to understand why it should be necessary to prove this fact or to put it differently why the appellants should want a declaration that the western boundary was the sea. The rule of accretion, as I understand it, following decisions in Hex v. Yarborough (supra), Brighton Hove General Gas Co. v. Hove Bungalows (supra) and Secretary of State for India in Council v. Foucar & Co.Ltd. (supra) does not seem to require such fact to be proved. Accretions must come from the sea and alluvion formed, therefore, can only attach itself to land having seaward boundary, that is land abutting or fronting the sea. If it does not so attach the owner of the adjoining land would have no ground to say that the alluvion has been added to his land. If it does, then quite clearly the seaward boundary must have been so close to the sea that it was possible for it to be reached by accretions washed up by the sea. In such a case the rule would operate regardless of any clear line of demarkation such as permanent boundary marks to separate the subject's land from the sea. On this view of the question I do not propose to discuss the authorities relating to the meaning of the words "sea beach".

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Another point raised by the appellants relates to possessory title or adverse possession. I would regard this as an alternative basis on which ownership to the alluvion is claimed. As between subject and subject it is not unusual for a claim on this basis to arise. It would arise when a person in long possession claims better title to land as against the legal

owner. (see Megarry and Wade on the Law of Real Property, 3rd Edition, pages 997-1000). Long and adverse possession pre-supposes lawful possession. So far as this is an action between the Crown and the subject the land in dispute must necessarily be assumed to be Crown land. The appellants' possession of the Crown land would be unlawful unless otherwise licensed. Their prior possession of the alluvion, was, therefore, unlawful. So was the prior possession of their predecessors in title. I have mentioned this to illustrate the fallacy of the contention that an alluvion can be claimed on the ground of adverse possession or possessory title. I realise, of course, that the claim was rejected by the trial Court on different ground. Even if the learned trial Judge was wrong in rejecting the evidence of the first appellant relating to prior possession he was right in rejecting the claim. So far as the claim involves accretions or alluvion the appellants' case must stand or fall by this rule of accretions. Fortunately for them the rule must, in the circumstances of this case, operate in their favour.

Before concluding, I must say a few words on the respondents' counter-claim which does not appear to have been considered by the trial Court. The respondents having succeeded on the main claim have not thought it necessary to ask for an order, either from the trial Court or from this Court. I should be content to assume that it was abandoned. At any rate, I would have dismissed it.

I would allow this appeal with costs here and below.

Sd.
(ALI BIN HASSAN)
Judge,
Federal Court, Malaysia.

Delivered at Kuala Lumpur
on 9th February, 1970.

Authorities cited:

- (1) 3 B & C, 91
- (2) 5 Bing 163; 130 E.R.1023
- (3) 5 M & W. 328, 332; 151 E.R.139, 140.

In the Federal
Court of
Malaysia

No.16

Judgment of
Ali, F.J.

9th February
1970
(continued)

In the Federal
Court of
Malaysia

No.16

Judgment of
Ali, F.J.

9th February
1970
(continued)

- (4) XIII Moore Ind. App.466,473; 20 E.R.625,627.
 (5) 1 Dow & Clark 178; 6 E.R.491.
 (6) 4 DEG & J.55; 45 E.R.22.
 (7) (1884-85) 1 T.L.R. 675, 678.
 (8) 11 Bligh N S.147, 4 E.R.1087, 1091.
 (9) (1915) A.C.599, 612.
 (10) 107 E.R.674 (3 B & C.91)
 (11) (1924) 1 Ch.372, 392.
 (12) (1934) 50 T.L.R.241; 243.
 (13) L.R. Ind.App.Vol.LXI. 1938-34 p.28;
 (1934)50 T.L.R. 241, 243.
 (14) (1904) Sc. L.R.247.

10

Counsel:

G.S.Hill, Dr. Ahmad Ibrahim, Oh Teik Aun for
appellants.

Solicitors: Lim, Lim & Oon for Appellants.

Ajaib Singh, Senior Federal Counsel for
Respondent No.1.

V.L. Kandan for Respondent No.2

Solicitors: Shearn & Delamore & Co. for
Respondent No.2.

20

No.17

Judgment of
Suffian, F.J.

9th February
1970

No. 17

JUDGMENT OF SUFFIAN, F.J.

I have had the advantage of reading my
Lord President's judgment, and with respect I
concur with his conclusion and reasons.

Delivered at Kuala Lumpur, Sd.
(M.SUFFIAN)
on 9th February, 1970. FEDERAL JUDGE,
MALAYSIA.

40

Salinan yang di-akui benar. Certified true copy
Sd.
Secretary to Judge,
Federal Court,
Malaysia, Kuala Lumpur.
19.8.1970.

135.

No. 18

ORDER OF FEDERAL COURT

In the Federal
Court of
Malaysia

Coram: AZMI, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA.

SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA.

ALI, JUDGE, FEDERAL COURT, MALAYSIA.

No.18

Order of
Federal Court

9th February
1970

IN OPEN COURT

THIS 9TH DAY OF FEBRUARY, 1970

O R D E R

10 THIS APPEAL coming on for hearing on the
29th day of July 1969 in the presence of Mr. G.
Starforth Hill (Dr. Ahmad Ibrahim and Mr. Oh Teik
Aun with him) of Counsel for the Appellants above-
named and Mr. Ajaib Singh, Senior Federal Counsel
for the First Respondent abovenamed and Mr. V.L.
Kandan of Counsel for the Second Respondent above-
named AND UPON READING the Record of Appeal herein
20 AND UPON HEARING what was alleged by Counsel for
the Appellants for the First Respondent and for
the Second Respondent as aforesaid IT WAS ORDERED
that this Appeal do stand adjourned for Judgment
AND the same coming on for judgment this day in
the presence of Mr. K.A. Menon Counsel for the
Appellants and Mr. K. Somasundram, Senior Federal
Counsel for the First Respondent and Mr. V.L.
Kandan of Counsel for the Second Respondent IT IS
ORDERED that this Appeal be and is hereby allowed
AND THIS COURT DOETH DECLARE

30 (i) that as at the date of the Writ herein, namely,
the 17th day of April, 1962, the line of the medium
high tide of the sea between the ordinary spring
and neap tides from time to time constituted
the westerly boundary of lot 275(3) Mukim 14
Province Wellesley North and of what was then
known as lot 275(1) Mukim 14 Province Wellesley
North which said lots accordingly include that

In the Federal
Court of
Malaysia

No.18

Order of
Federal Court

9th February
1970
(continued)

portion thereof now known as lot 808 Mukim XIV of the Northern District of Province Wellesley (hereinafter called lot 808) and the Alluvion thereto;

(ii) that the First Appellant is entitled to the fee simple absolute in possession of that part of the Alluvion (including the portion thereof comprised in part of lot 808) which lies along the westerly extremity of the said lot 275(3) and above the line of the medium high tide of the sea between ordinary spring and neap tides;

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(iii) that the First, Second, Third and Fourth Appellants are together entitled in equal undivided shares to the fee simple absolute in possession of that part of the Alluvion (including the portion thereof comprised in part of lot 808) which lies along the westerly extremity of what was then known as lot 275(1) and above the line of medium high tide of the sea between the ordinary spring and neap tides;

20

(iv) that the Indenture of Lease dated 12th August, 1959, under the hand of His Excellency the Governor of Penang (registered at the Land Office, Butterworth as No.831 of 1959) purporting to demise the portion of the said Alluvion known as lot 808 and estimated to contain an area of 119,287 sq. ft. for a term of 33 years to the Second Respondent is to the extent that the said lot 808 is comprised in the Alluvion aforesaid void and of no effect.

30

AND IT IS FURTHER ORDERED

(i) that all entries relating to the said Indenture of Lease dated 12th August, 1959 (registered No.831 of 1959) in favour of the Second Respondent in the register or any book or index kept at the Land Office, Butterworth, or at the office of the Commissioner of Land Titles Penang or such other appropriate registering authority be and are hereby cancelled;

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(ii) that the said Indenture of Lease dated 12th August, 1959 (registered No.831 of 1959)

in favour of the second Respondent be produced by the Second Respondent to the Commissioner of Land Titles Penang or such other appropriate registering authority for the purpose of cancellation;

In the Federal
Court of
Malaysia

No.18

Order of
Federal Court

9th February
1970
(continued)

10 (iii) that the said Commissioner of Land Titles Penang or such other appropriate registering authority be and is hereby directed to do all such things as may be necessary to give effect to these orders;

(iv) that the First and Second Respondents do forthwith remove the fences and brick buildings erected on and any or whatever construction or constitution on that part of the Alluvion aforesaid comprised in lot 808;

(v) that the first and Second Respondents do give up vacant possession of that part of the Alluvion aforesaid comprised in lot 808;

20 (vi) that the First and Second Respondents do pay mesne profits from the year 1958 until delivery of possession of all the Alluvion aforesaid;

30 (vii) that an enquiry be held by the Senior Assistant Registrar of the High Court at Penang as to the amount of the damages suffered by the Appellants and as to the amount of mesne profits payable hereunder by the Respondents or either of them such amounts when found to be paid by the First and Second Respondents to the Appellants;

AND IT IS ORDERED that the costs of this appeal and of the proceedings in Court below be taxed on the higher scale and be paid by the First and Second Respondents to the Appellants.

AND IT IS LASTLY ORDERED that the sum of \$500/- deposited in Court by the Appellants as security for the costs of this appeal be refunded to the Appellants.

40 GIVEN under my hand and the Seal of the Court this 9th day of February 1970.

Sgd.
CHIEF REGISTRAR
FEDERAL COURT, MALAYSIA

In the Federal
Court of
Malaysia

No. 19

ORDER GRANTING FINAL LEAVE TO
APPEAL TO HIS MAJESTY THE
YANG DI-PERTUAN AGONG.

No.19

Order granting
final leave to
appeal to His
Majesty, The
Yang Di-Pertuan
Agong.

Coram: AZMI, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA

GILL, JUDGE, FEDERAL COURT, MALAYSIA

ALI, JUDGE, FEDERAL COURT, MALAYSIA.

17th August
1970

IN OPEN COURT

THIS 17TH DAY OF AUGUST 1970

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O R D E R

UPON MOTION made unto this Court this day my Mr. Ajaib Singh, Senior Federal Counsel for the above-named Respondents, in the presence of Mrs. Beng Hong Con of Counsel for the Appellants AND UPON READING the Notice of Motion dated the 6th day of August, 1970, and the Affidavit of Ajaib Singh affirmed on the 6th day of August, 1970 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that final leave be and is hereby granted to the Respondents to appeal to His Majesty the Yang di-Pertuan Agong AND IT IS ORDERED that the costs of this application be costs in the cause.

20

GIVEN under my hand and the seal of the Court this 17th day of August, 1970.

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

30

SECTION I, N.D. BAGAN AJAM M.D. 8 C-IV

PENANG & P.W. 8-C-IV

Harga \$3.50



Up-to-date within Town Limit discontinued

MUKIM 14, BAGAN AJAM, N. D.

From Sungai Puyu to Butterworth Road

8-D-III

MUKIM 14, BAGAN AJAM, N. D.

EXHIBIT AB 2.1.

LIST FOR REQUISITION FOR OFFICIAL SEARCH

Plaintiffs'
Exhibits

AB 2.1

List for
Requisition
for
Official
Search

- Lot 275 Mukim 14 P.W.N. for 34 years from 14/7/1897 to 20/4/1963
- Lot 270(1) Mukim 14 P.W.N. for 33 years from 8/12/30 to 20/4/63
- Lot 271(1) Mukim 14 P.W.N. for 35 years from 2/12/28 to 20/4/63
- Lot 275(1) Mukim 14 P.W.N. for 35 years from 31/5/28 to 20/4/63
- Lot 275(3) Mukim 14 P.W.N. for 28 years from 11/3/35 to 20/4/63

10

Sd. Lim Lim & Oon
Solicitors for the Applicant

EXHIBIT AB 2.2.

FORM OF REQUISITION FOR OFFICIAL SEARCH

DUPLICATE

FORM NO. 8

AB 2.2

Form of
Requisition
for
Official
Search

Form of Requisition for Official Search

20 Volume 11 Page - No. 19

COLONY OF SINGAPORE

REGISTRY OF DEEDS

Requisition on behalf of BENG HONG OON for

Plaintiffs'
Exhibits

AB 2.2

Form of
Requisition
for
Official
Search
(continued)

official search for the period of See List years,
i.e., from the day of 19 , to
the day of 19 , for all
instruments registered as affecting the following
land :-

Mukim	Resurvey lot		Particulars of Crown Title				Pri- vate Lot Nos. (if any)
	No.	Area a r p	Grant S.L.G. or Lease & No.	Term of years & rent (Lease only)	Dist- rict	Sur- vey No.	
14	270(1)	2 2 37	Ind.4276	-	P.W. North	-	-
"	271(1)	1 0 31.7	"	-	"	-	-
"	275(1)	7 3 36	"	-	"	-	-
"	275(3)	2 0 10	"	-	"	-	-

10

(Signature) Lim Lim & Oon

Solicitors for the Applicant Beng Hong Oon

20

Note:- This form must be made out in duplicate
and both copies signed by the applicant
or his solicitor and filed in the
Registry.

EXHIBIT AB 2.3FORM OF OFFICIAL CERTIFICATE OF
SEARCH OF LOT 275 MK.14 P.W.N.(Land 13)
ORIGINALPlaintiffs'
Exhibits

FORM NO. 9

Form of Official Certificate of Search
Volume 11 Page No. 19

AB 2.3

STATE OF PENANG
REGISTRY OF DEEDSForm of
Official
Certificate
of Search
of Lot 275
Mk.14 P.W.N.

I, KHOO HOCK SEANG, the Deputy Registrar of Deeds of the State of PENANG, having received a Requisition (a signed duplicate of which is attached hereto) for an official search against the land described in such requisition do hereby certify that I have caused an official search to be made against the said land, for all instruments registered within the period in the said requisition specified, as affecting such lands, and that the following is a complete list of such instruments :

Date of Deed	Place of Enrolment			Nature of Deed	Names of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
27.8.1897	12	138	28.9.1897	Lot 275 Mukim 14 <u>P.W.North</u> Conveyance	Elveira Hogan Executrix of the will of the late J. Hogan to Khoo Chew Eng	

Plaintiffs'
Exhibits

AB 2.3

Form of
Official
Certificate
of Search of
Lot 275 Mx.14
P.W.N.
(continued)

Date of Deed	Place of Enrolment			Nature of Deed	Names of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
27.8.1897	12	139	28.9.1897	Conveyance	Frank Arthur Palmer to Khoo Chew Eng	10
24.3.1887	17	155	23.3.1898	Deed Poll	Abdul Cander to Frank Arthur Palmer	
21.9.1898	37	146	30.5.1899	Memo: of Probate	Khoo Chew Eng Testator to Sim Peik Keow Executrix and Lee Toon Tock Executor.	
18.2.1903	133	46	6. 3.1903	Deed Poll	Lim Peik Keow & Lee Toon Tock Executor of Khoo Chew Eng decd. to Lim Huch Cheow	20
18.2.1903	133	47	6. 3.1903	Mortgage	Lim Huch Cheow to Lee Toon Tock	
22.3.1904	138	78	8. 4.1904	Mortgage	Lee Toon Tock to Mrs. H. Jones	30
2.7.1904	145	79	16.7.1904	Transfer of Mortgage	Lee Toon Tock to Oh Ooi Sin	
7.12.1904	154	129	8.12.1904	Reconveyance	Oh Ooi Sin to Lee Toon Tock	
14.3.1910	262	28	14.3.1910	St. Reconveyance	Harriet Jones to Lee Toon Tock	40

Plaintiffs'
Exhibits

AB 2.3

Form of
Official
Certificate
of Search of
Lot 275 Mk.14
P.W.N.
(continued)

Date of Deed	Place of Enrolment			Nature of Deed	Names of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
12.4.1911	288	195	27.4.1911	Lot 275 Mukim 14 P.W.North Mortgage	Lim Huck Cheow to Khoo Teng Pong & Khoo Soo Hie	
4.5.1912	310	130	20.5.1912	T/Mort- gage	Lee Toon Toak 1st pt. Lim Huck Cheow 2nd pt. to Khoo Teng Pong & Khoo Soo Nai 3rd pt.	
8.7.1913	335	78	31.7.1913	Recon- veyance	Khoo Teng Pong & Khoo Soo Nai to Lim Hock Cheow	
-do-	335	79	-do-	-do-	Khoo Teng Pong & Khoo Soo Hie to Lim Hock Cheow	
-do-	335	80	-do-	Deed Poll	Lim Hock Cheow to Goh Goh	
-do-	335	81	-do-	Mortgage	Goh Goh alias Gawe Goh to S.N.A.A.L. S. Allagapah Chetty s/o Aroonasalam Chetty	

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Plaintiffs'
Exhibits

AB 2.3

Form of
Official
Certificate
of Search of
Lot 275 Mk.14
P.W.N.
(continued)

Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
13.11.13	341	169	8.12.1913	Mortgage	Goh Ah Poo or Goh Poo 1st Pt. Goh Goh alias Gawe Goh 2nd Pt. S.N.A.A.L. S. Saminathan Chetty s/o Raman Chetty	10
13. 5.18	442	40	27.6.18	Mortgage	Lim Hong Tean 1st Pt. Goh Goh 2nd Pt. S.N.A.A.L. Alagapah Chetty s/o Aronashellum Chetty 3rd Pt.	20
23. 7.19	469	149	22.8.19	T/Mortgage	S.N.A.A.L.S. Alagapa Chetty s/o Arunasalam Chetty to S.N.A.A.L. Arunasalam Chetty s/o Alagapa Chetty	30
6. 5.20	498	20	4.6.20	Reconveyance	Arunasalam Chetty s/o Alagapah Chetty of S.N.A.A.L. to Goh Ah Poo or Goh Poo and Goh Goh alias Gawe Goh	40

Plaintiffs'
Exhibits

AB 2.3

Form of
Official
Certificate
of Search of
Lot 275 Mk.14
P.W.N.
(continued)

Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
14. 7.21	526	128	29. 8.21	St. Reconveyance	S.N.A.A.L. Arunasalam Chetty s/o Alagapa Chetty to Goh Goh alias Gawe Goh	
22. 1.23	555	187	3. 4.23	Ind. of Sale	Alagapah Chetty s/o Aroonasalam Chetty of S.N.A.A.L. to Goh Goh alias Gawe Goh	
-do-	555	188	-do-	St. Mortgage	Goh Goh or Gawe Goh or Goh Eng Goh to S.N.A.A.L. Aroonashellum Chetty s/o Alagapah Chetty	
20. 6.23	570	40	29.10.23	Probate	Goh Eng Goh or Gawe Goh or Goh Goh to Goh Cheng Ee and Goh Cheng Chuan Executors	

THE SEAL OF THE REGISTRY
OF DEEDS PENANG.Sd: Khoo Hook Seang
Registrar (L.S.)

Dated this 4th day of May 1963.

Plaintiffs' Exhibits

EXHIBIT AB 2.4

FORM OF OFFICIAL CERTIFICATE OF SEARCH OF LOT 275(1) MK.14 P.W.N.

AB 2.4

(Land 13)

ORIGINAL

Form of Official Certificate of Search of Lot 275(1) Mk.14 P.W.N.

FORM NO. 9

Form of Official Certificate of Search
Volume 11 Page - No.19

SETTLEMENT OF PENANG

REGISTRY OF DEEDS

10

I, KHOO HOCK SEANG, the Deputy Registrar of Deeds of the Settlement of PENANG, having received a Requisition (a signed duplicate of which is attached hereto) for an official search against the land described in such requisition do hereby certify that I have caused an official search to be made against the said land, for all instruments registered within the period in the said requisition specified, as affecting such lands, and that the following is a complete list of such instruments:

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Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
31. 5.28	675	117	3.7.28	Lot 275(1) Mukim 14 <u>P.W.North</u> St. T/ Mortgage	S.N.A.A.L. Aroonashellum Chetty s/o Alagapah Chetty to S.N.A.A.L. C.T. Sithambaram Chetty s/o Allagapah Chetty	

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Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
11. 1.35	783	100	19.3.35	Lot 275(1) Mukim 14 <u>P.W.North</u> St. Reconvey- ance	S.N.A.A.L. C.T. Sitham- baram Chetty s/o Allagapah Chetty to Goh Cheng Ee & Goh Cheng Chuan Extrs. of Goh Goh alias Gawe Goh alias Goh Eng Goh decd.	
31. 8.34	783	107	20. 3.35	O/Court	Originating Summons 1934 No.104 In the matter of the will of Goh Eng Goh alias Gawe Goh alias Goh Goh decd. And in the matter of Ordce. No. 36 (Conveyancing & Law of Pro- perty) And in the matter of Goh Cheng Ee & Goh Cheng Chuan Appli- cants	Allowed to sell & convey
5.11.38	837	62	20.11.38	Conveyance	Goh Cheng Ee & Goh Cheng Chuan to Goh Cheng Ee, Goh Cheng Chuan, Goh Seng Seng & Goh Seng Soo	Tenants -in- common

Plaintiffs'
Exhibits

AB 2.4

Form of
Official
Certificate
of Search
of Lot 275(1)
Mk.14 P.W.N.
(continued)

Plaintiffs'
Exhibits

AB 2.4
Form of
Official
Certificate
of Search
of Lot 275(1)
Mk.14 P.W.N.
(continued)

Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
5.11.38	837	63	30.11.38	St. Mortgage	Goh Cheng Ee & Goh Cheng Chuan to Guan Yong Oon	
29.11.38	838	101	29.12.38	St. Mortgage	Goh Cheng Seng alias Goh Seng Seng to Oon Guan Yong	1/4 und. share
14. 6.40	858	31	6. 7.40	St. Reconveyance	Guan Yong Oon to Goh Cheng Ee & Goh Cheng Chuan	2/4 und. share
-do-	858	32	-do-	Conveyance	Goh Cheng Chuan to Tan Geok Kim	1/4 und. share
-do-	858	33	-do-	St. Mortgage	Goh Cheng Ee to Goh Cheng Chuan	1/4 und. share
26. 8.40	861	37	6. 9.40	St. Reconveyance	Oon Guan Yong to Goh Cheng Seng alias Goh Seng Seng	1/4 und. share
-do-	861	38	-do-	Conveyance	Goh Cheng Seng alias Goh Seng Seng to Ng Khoen Kioen	1/4 und. share
27.11.40	865	75	10.12.40	St. Reconveyance	Goh Cheng Chuan to Goh Cheng Ee	1/4 und. share

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Plaintiffs' Exhibits
 AB 2.4
 Form of Official Certificate of Search of Lot 275(1) Mukim 14 P.W.N. (continued)

Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
27.11.40	865	76	10.12.40	Conveyance	Goh Cheng Ee to Ng Khoen Kioen	1/4 und. share
9. 8.04	893	59	26. 8.04	-do-	Goh Seng Soo to Lim Beng Hong	1/4 und. share
1.11.52	964	31	3. 3.53	Conveyance	Tan Geok Kim to Oon Guan Yong	1/4 und. share
22. 6.55	985	70	20. 8.55	-do-	Ng Khoen Kioen to Oon Peh Tohin & Oon Peh Seng as joint tenants	2/4 und. share
11. 3.35	785	60	24. 4.35	Conveyance	Goh Cheng Ee & Goh Cheng Chuan the Executors of Goh Eng Goh alias Goh Goh alias Gawe Goh decd. to M. Goh	
23. 6.38	832	143	22. 7.38	-do-	M.Goh to Chew Kok Kin & Kiar Eng Goay	Joint Tenants

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Lot 275(3)
 Mukim 14
 P.W.North

Plaintiffs'
Exhibits

AB 2.4
Form of
Official
Certificate
of Search
of Lot 275(1)
Mk.14 P.W.N
(continued)

Date of Deed	Place of Enrolment			Nature of Deed	Name of Parties	Remarks as to encroachment Back Lanes, etc.
	Vol.	No.	Date			
26. 6.47	903	147	31.7.47	Conveyance	Chew Kok Kin & Kiar Eng Goay to Beng Hong Oon	

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THE SEAL OF THE
REGISTRY OF DEEDS
PENANG

Sd. Khoo Hock Seang
Registrar (L.S.)

Dated this 4th day of May 1963.

EXHIBIT AB 2.5TRUE COPY OF INDENTURE NO. 4276

True Copy.

Sd. Khoo Hock Seang

Collector of Inland
Revenue PenangDIVISION OF BAGAN BAHROO
DISTRICT OF TELUK AYER TAWAR
PROVINCE WELLESLEYPlaintiffs'
Exhibits

AB 2.5

True copy of
Indenture
No. 4276
10th
November
1852

10 THIS INDENTURE made the Tenth day of November in the Year of Christ One thousand Eight hundred and Fifty two BETWEEN the East India Company on behalf of Her Majesty VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, Her Heirs and Successors of the first part, and Forbes Scott Brown Esquire of Province Wellesley of the second part.

20 WITNESSETH, that the said East India Company for and in consideration of Companys Rupees Four hundred and Seventy four, Annas One and Pie Six which have been paid to them by the said Forbes Scott Brown Esquire do in pursuance of Act. No. IX of 1842, and in virtue of all and every right, title, interest, power and authority whatsoever now vested in the said East India Company, grant, bargain, sell and release unto the said Forbes Scott Brown Esquire his Executors, Administrators and Assigns, all that piece of Land situated in the Division of Bagan Bahroo in the District of

30 Teluk Ayer Tawar in Province Wellesley, bounded and measuring as follows, East by E.I. Company, and Boontah and Ioosoo's grounds Four thousand nine hundred and thirty five feet West by Sea Beach Four thousand and sixty seven feet North by Road one thousand nine hundred and four feet South by Pakir and Che Mohamed's lands Eight hundred and ninety six feet agreeably to the Plan endorsed hereon, certified under the hand of

40 I. Moniot Land Surveyor, Estimated to contain an area of Ninety four square Acres Three Square Rood and Eleven Square Poles together with the appurtenances TO HAVE and TO HOLD the same unto the said Forbes Scott Brown Esquire his Executors, Administrators and Assigns, for ever.

Plaintiffs' Exhibits

AB 2.5

True copy of Indenture No. 4276 10th November 1852 (continued)

Subject nevertheless to the proviso hereinafter contained, that is to say: Provided always and these are upon the condition that the said Forbes Scott Brown Esquire his Executors, Administrators and Assigns, do and shall within the period of five Years from the date hereof, clear and cultivate one fourth part at least of the said land, and that if he or they shall fail so to do these Presents on the expiration of the period aforesaid shall then and thence forth be lawful to, and for the East India Company on behalf of the Crown, to enter into the said piece of ground, and the same to have hold and enjoy again as in their former Estate, and in the same manner to all intents and purposes as if these presents had not been executed.

10

IN WITNESS whereof, the Superintendent of Province Wellesley, with the sanction of the Governor of Prince of Wales' Island, Singapore and Malacca, as conveyed to him in a letter No. 69, dated the 15th February, 1845, by the Resident Councillor of Prince of Wales' Island, acting under the authority of the Governor General of India in Council, has affixed the Common Seal of the East India Company, and subscribed his Signature, and the said Forbes Scott Brown Esquire has Signed his name, and affixed his Seal hereto the day and Year aforesaid.

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Signed, Sealed, and Delivered, In the Presence of Sd. John Hogan } Signed Superintendent, Seal Province Wellesley.

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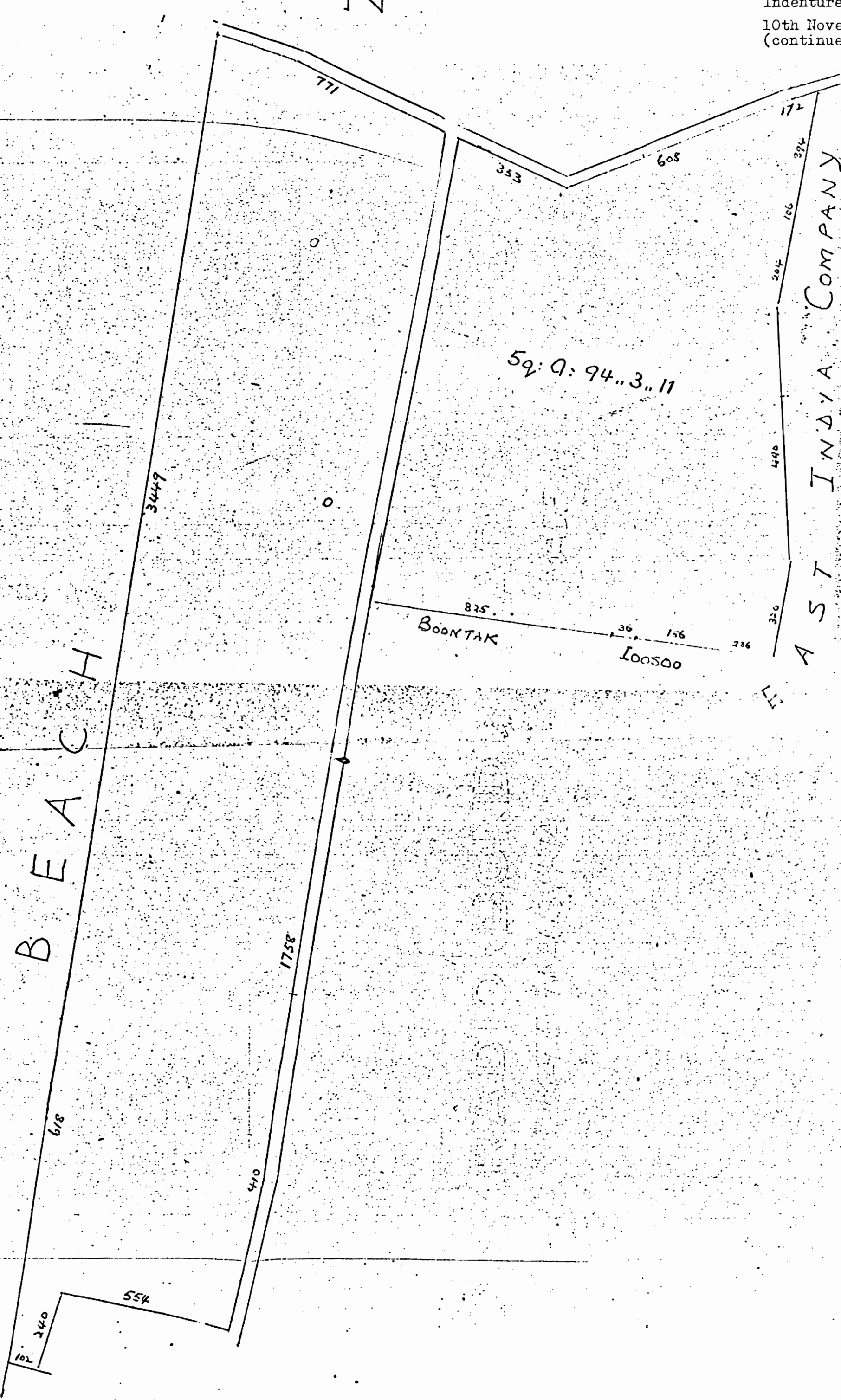
Sd. Signed F.S. Brown Seal

REGISTERED IN THE COLLECTOR'S OFFICE } PROVINCE WELLESLEY, NO. 4276 } THE 10 day of November, 1852. } Seal

Sd.

Collector Province Wellesley

N



B E A C H

E A S T I N D I A C O M P A N Y

59: 9: 94.. 3.. 11

BOONTAK

LOOSOO

EXHIBIT AB 2.6

TRUE COPY OF DEED REGD. NO. 492
OF 1881 IN FAVOUR OF WALTER SCOTT
PETHERBRIDGE

Plaintiffs'
 Exhibits

AB 2.6

492

Stamp 50¢
 STAMP OFFICE
 23 XII 63
 PENANG

True Copy

Sd. Khoo Hock Seang
 Dy. Collector of Land
 Revenue, Penang.

True Copy of
 Deed Regd.
 No. 492 of
 1881
 11th June
 1880

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The 30th May 1881

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This Indenture made the eleventh day of June 1880 Between the Honourable David Brown of Penang merchant the sole Acting Executor and Trustee of the last Will and Testament of the late Forbes Scott Brown deceased of the one part and Walter Scott Petherbridge Esquire also of Penang aforesaid merchant of the other part. Whereas the said Forbes Scott Brown in and by his said Will directed that the Majority of the Trustees on of the spot for the time being where any trust under the said Will was to be carried into effect should determine or if there be but one Trustee then he should determine as to all questions, acts and deeds to be done in the execution of such trusts and that it should not be necessary to consult absent Trustees And whereas the said David Brown is the only Executor and Trustee present in Penang. And Whereas in pursuance of a trust for this purpose contained in the said Will of the said Forbes Scott Brown deceased, the said David Brown as such sole acting Executor and Trustee as aforesaid has agreed with the said Walter Scott Petherbridge for the absolute sale to him of the hereditaments hereinbefore described and intended to be hereby granted and the inheritance thereof in fee simple in possession free from incumbrances at the price of Thirty-five thousand Dollars (\$35,000/-) as on and from the 6th day of May 1880. Now This Indenture Witnesseth that for effectuating the said sale and in consideration of the sum of Thirty-five thousand Dollars (\$35,000/-) to the said David Brown as such sole Acting Executor and Trustee as aforesaid paid by the said Walter Scott Petherbridge the receipt whereof the said David Brown as such sole Acting Executor and Trustee as

Plaintiffs' Exhibits

AB 2.6

True Copy of Deed Regd. No. 492 of 1881 11th June 1880 (continued)

aforesaid doth hereby acknowledge and from the same doth hereby release the said Walter Scott Petherbridge his heirs executors administrators and assigns he the said David Brown as such sole Acting Executor and Trustee as aforesaid doth hereby grant and release unto the said Walter Scott Petherbridge his heirs executors administrators and assigns. All those lands, tenements and hereditaments situate in the District of Tulch Remis in Province Wellesley and commonly known as "Teluk Remis Estate" All of which premises are more particularly described in the Schedule hereunder written Together with all rights, privileges, easements, advantages and appurtenances whatsoever to the said hereditaments or any part thereof Appertaining or with the same or any part thereof now or heretofore enjoyed or reputed as part or parcel thereof or as appurtenant thereto. And all the estate right title interest claim and demand whatsoever of him the said David Brown as such sole Acting Executor and Trustee as aforesaid in, to out, of or upon the same premises. To have and To Hold the said premises unto and to the use of the said Walter Scott Petherbridge his heirs, executors administrators and assigns for ever. And the said David Brown as such sole Acting Executor and Trustee as aforesaid doth hereby for himself his heirs, executors and administrators covenant with the said Walter Scott Petherbridge his heirs, executors administrators and assigns that he the said David Brown has not done or knowingly suffered or been part or privy to any act, deed or thing whereby the said premises hereby granted or any of them or any part thereof are is can or may be impeached incumbered or in anywise prejudicially affected.

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The Schedule referred to in the above written Indenture

No. of Indenture or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
1678	624	1	1	20	Kamis	Kamis	
1677	626	1	1	35	Md. Alif	Md. Alif	
Pt. 1676	627	2	0	23	Md. Assan	Md. Assan	

No. of Indenture or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
Pt. 1675	628	2	0	09	Brahim	Brahim	
Pt. 1674	629	1	1	14	Moomin	Leahmin	
" 1671	632	1	2	29	Md. Assan	Md. Assan	
do 1670	633	0	2	25	Pa Ali	Pa Ali	4244
10 1735	637	2	0	25	Sambun	Sambun	
1906	638	2	0	28	Pandak	Ali Exor. to Pandak	4091
1907	639	2	0	38	Ali	Ali	
1908	640	(1 1)	0 0	15 15)	Long Kitchil	Soorin, Long Kitchil	
1909	641	2	0	30	Docee	Docee	
{ 1916	642	1	0	16	Long	Puteh	
{ 1916	642	1	0	16	Long	Long	
20 1910	643	2	0	33	Md. Syed	Md. Syed	3742
1911	644	2	0	34	Panjang	Mahomed	3525
Pt. 1912	645	1 1	0 0	17 19	Pa Ali Pa Ali	Pa Ali	3743 3525
1913	646	2	0	38	Long Kitchil	Long Kitchil	3749
1914	647	2	0	38	Mut	Mahomed	3568
1905	648	2	0	38	Manis		
1915	649	2			Marican)		
4839	650	2	0	01	Boontah	Mahomed	3568
30 2352	651	0	1	38	Pah Mat	Mat Joosoh	3860

Plaintiffs'
Exhibits

AB 2.6

True Copy of
Deed Regd.
No. 492 of
1881
11th June
1880
(continued)

Plaintiffs'
Exhibits

AB 2.6

True Copy of
Deed Regd.
No. 492 of
1881
11th June
1880
(continued)

No. of Indenture or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Regis- try of Bill of Sale
		A	R	P			
2407	{ 652 653	0 1	0 1	0 0	Hajee Sahat	Awang	
2351	654	0	1	12	Nga	Soorie	
2350	655	0	1	16	Long Mun	Long Mun	
2349	656	0	3	3	Mat Joosoh	Mat Joosoh	3860
2348	657	0	3	17	Docee	Docee	
2347	658	0	3	37	Allang Amat	Allang Amat	3876
2346	659	0	3	37	Sahat	Sahat	3862
2345	660	1	0	09	Driss	Driss	3863
2034	661	1	1	37	Kamis	Kamis	4245
2343	662	1	0	36	Engha	Engha	
2361	663	1	1	10	Inten	Intan	
2033 2342	664	3	1	36	Md. Joonoos and Md. Saman	Arnallam Chitty	
2344	666	1	0	27	Man	Man	3861
1976	667	1	1	35	Md. Amin	Mahomed	
2073	668	1	1	35	Lebby Hoossain	Md. Hasan	
Pt. 1893	669	0	2	37	Mustapha	Mustapha	3112
1680	670	1	1	33	Abdullah	Abdullah	3096
1820	671	1	1	32	Merican	Leahmun	
1821	672						

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Plaintiffs' Exhibits

AB 2.6

True Copy of Deed Regd. No. 492 of 1881 11th June 1880 (continued)

No. of Indenture or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
1681	673	1	1	38	Siamut	Kamis	3914
1682	674	1	1	29	Mahomed	Mahomed	
1683	675	1	1	28	Muntuah	Muntuah	2233
1684	676	1	1	27	Gowar	Md. Saman	
1685	677	1	1	25	Md. Saman	Md. Saman	
1686	678	1	1	24	Sman	Sman	
1660	679	1	2	5	Abdullah	Sara and Abdullah	
4276	680	94	3	11			
3354	684	0	1	12	Moomin	G.M. Sandi-lands	1936
3879	686	0	2	25	Mahomed	do.	1936
4278	688	6	1	24			
5654	(4001) to (4008) (4010) to (4041) (4066) to (4077)	30	30	17			
4545	(620) (2560)	164	3	34	F.S.Brown	F.S.Brown	
5382	2550	0	1	7	F.S.B. & J.J.E. Brown		

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Plaintiffs'
Exhibits

AB 2.6

True Copy of
Deed Regd.
No. 492 of
1881
11th June
1880
(continued)

No. of Indenture or Grant	No. of Plan or Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
1689	615	1	3	2	Puteh	Puteh	
1667	616	1	2	3	Slaman	Slaman	
1690	617	1	1	37	Awang	Awang	
1666	618	1	1	13	Mat Sah	Janin	
1655	619	1	1	30	Pachee	Pachee	

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In Witness Whereof the said parties have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered)
in the presence of :-
Sd:- John A. Brown
Sd:- M.P. Drab

Sd:- David Brown (L.S.)
Executor
Sd:- W.S. Petherbridge
(L.S.)

EXHIBIT AB 2.7

TRUE COPY OF DEED REGD. NO. 493 OF
1881 IN FAVOUR OF DAVID BROWN AND
LAWRENCE COMBE BROWN

Plaintiffs'
Exhibits

AB 2.7

493

Stamp 50¢
STAMP OFFICE
23 XII 63
PENANG.

True Copy
of Deed
Regd. No.
493 of
1881
11th June
1880

10 This Indenture made the eleventh day of June 1880 Between Walter Scott Petherbridge of Penang merchant of the one part and the Honourable David Brown of Penang aforesaid merchant and Lawrence Combe Brown also of Penang aforesaid merchant of the other part.

20 Whereas by an Indenture dated the eleventh day of June 1880 (Registered No. of 188) and made between the said David Brown as the sole Acting Executor and Trustee of the last Will and Testament of the late Forbes Scott Brown deceased of the one part and the said Walter Scott Petherbridge of the other part the said David Brown as such sole Acting Executor and Trustee as aforesaid granted and released to the said Walter Scott Petherbridge as executors administrators and assigns. All those lands tenements and hereditaments situate in the District of Teluk Remis in Province Wellesley and commonly known as "the Teluk Remis Estate" all of which

30 said lands tenements and hereditaments are more particularly described in the Schedule to the Indenture now in recital annexed To Hold the same unto and to the use of the said Walter Scott Petherbridge his heirs, executors, administrators and assigns for ever. And Whereas the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown have agreed that the said lands tenements and hereditaments shall belong to them the said Walter Scott Petherbridge, David

40 Brown and Lawrence Combe Brown in the proportions and shares following that is to say two twentieth's thereof shall belong to the said Walter Scott Petherbridge and the remaining eighteen twentieths thereof shall belong to the said David Brown and Lawrence Combe Brown as tenants

Plaintiffs'
Exhibits

AB 2.7

True Copy
of Deed
Regd. No.
493 of
1881
11th June
1880
(continued)

in common in equal shares. And Whereas the said David Brown and Lawrence Combe Brown have requested the said Walter Scott Petherbridge to convey to them the proportions and shares in the lands tenements and hereditaments to which they the said David Brown and Lawrence Combe Brown are entitled under the agreement lastly hereinbefore mentioned and the said Walter Scott Petherbridge for the purpose of effectuating the said agreement and for the consideration hereinafter mentioned has consented so to do - Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of one dollar (\$1/-) to the said Walter Scott Petherbridge paid by the said David Brown and Lawrence Combe Brown on or before the execution of these presents the receipt whereof the said Walter Scott Petherbridge doth hereby acknowledge he the said Walter Scott Petherbridge doth hereby grant and release unto the said David Brown and Lawrence Combe Brown their heirs Executors administrators and assigns. All these Eighteen twentieth portions or shares of and in the lands tenements and hereditaments described in the hereinbefore recited Indenture of the eleventh day of June 1880 and in the Schedule to the said Indenture annexed and commonly known as "the Teluk Remis Estate", Together with all rights privileges easements advantages and appurtenances whatsoever to the said hereditaments or any part thereof appertaining or with the same or any part thereof now or heretofore enjoyed or reputed as part or parcel thereof or as appurtenant thereto. And All the estate right title interest claim and demand whatsoever of him the said Walter Scott Petherbridge in to and upon the said premises or any part thereof To have and to Hold the said premises unto and to the use of the said David Brown and Lawrence Combe Brown their heirs executors administrators and assigns as tenants in common in equal shares and the said Walter Scott Petherbridge doth hereby for himself his heirs executors and administrators covenant with each of them the said David Brown and Lawrence Combe Brown his heirs executors administrators and assigns respectively that notwithstanding anything by the said Walter Scott Petherbridge done or knowingly suffered he the said Walter Scott Petherbridge now hath power to grant the said premises hereinbefore expressed to be hereby granted in manner aforesaid free from incumbrances. And that all the said premises may be quietly entered

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into held and enjoyed by the said David Brown and Lawrence Combe Brown their heirs executors administrators and assigns respectively without any interruption by the said Walter Scott Petherbridge or any person claiming through or in trust for him - And that he the said Walter Scott Petherbridge and every person claiming through or in trust for him will at all times at the cost of the said David Brown and Lawrence Combe Brown their heirs executors administrators and assigns respectively execute and do all such assurances and things for further or better assuring all or any of the said premises hereinbefore expressed to be hereby granted unto and to the use of the said David Brown and Lawrence Combe Brown their heirs executors administrators and assigns in manner aforesaid as by the said David Brown and Lawrence Combe Brown their heirs executors and administrators and assigns respectively shall be reasonably required.

Plaintiffs' Exhibits

AB 2.7

True Copy of Deed Regd. No. 493 of 1881 11th June 1880 (continued)

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In Witness Whereof the said parties have hereunto set their hands and seals the day and year first hereinbefore written.

Signed Sealed and Delivered) in the presence of :-
Sd:- J.A. Brown
Sd:- M.P. Drab

Sd:-W.S.Petherbridge (L.S.)
Sd:-David Brown (L.S.)
Sd:- L.C. Brown (L.S.)

by his Attorney

David Brown

True Copy.

Sd:- Khoo Hock Seang

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Dy. Collector of Land Revenue,
Penang

Plaintiffs'
Exhibits

AB 2.8

True Copy
of Deed
Regd. No.
727 of 1881
8th August
1881

EXHIBIT AB 2.8

TRUE COPY OF DEED REGD. NO. 727 OF
1881 IN FAVOUR OF ABDUL CAUDER

727

STAMP OFFICE
23 XII 63
PENANG
Stamp 50 /

True Copy.

Sd. Khoo Hock Seang
Dy. Collector of Land Revenue
Penang.

This Indenture made the 8th day of August A.D. 1881 Between Walter Scott Petherbridge, David Brown and Lawrence Combe Brown severally of Penang merchants of the one part and Abdul Cauder of Penang aforesaid Trader of the other part. Whereas by an Indenture dated the 5th day of May 1880 Registered No. 726 of 1881 and made between Walter Scott and the said David Brown as the acting Executors and Trustees of the last Will and Testament of Forbes Scott Brown deceased of the one part and the said Walter Scott Petherbridge of the other part the remaining lands and hereditaments commonly known as Charles Hope Coconut Plantation mentioned and described in the First Schedule hereunder written were granted and released by the said Walter Scott and David Brown as such Executors and Trustees as aforesaid unto the said Walter Scott Petherbridge his heirs executors administrators and assings. And Whereas by another Indenture of even date with the last recited Indenture Registered No. 725 of 1881 and made between the said Walter Scott Petherbridge of the one part and the said David Brown and Lawrence Combe Brown of the other part the said Walter Scott Petherbridge in consideration of the sum of one dollar paid to him by the said David Brown and Lawrence Combe Brown did grant and release unto the said David Brown and Lawrence Combe Brown their heirs executors administrators and assigns nine undivided tenth parts or shares of and in the pieces of land and hereditaments mentioned in the firstly hereinbefore recited Indenture of the 5th May 1880 and also mentioned and described in the said first Schedule hereunder written. And Whereas by another Indenture dated the 11th day of June 1880 Registered No. 492 of 1881 and made between the said David Brown as the sole Acting

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Executor and Trustee of the last Will and Testament
 of the said Forbes Scott Brown deceased of the one
 part and the said Walter Scott Petherbridge of the
 other part the lands and hereditaments commonly
 known as the "Teluk Remis Estate" mentioned and
 described in the Second Schedule hereunder written
 were together with certain other small pieces of
 land not comprised in these presents granted and
 released unto the said Walter Scott Petherbridge
 his heirs executors administrators and assigns.
 10 And Whereas by another Indenture of even date
 Registered No. 493 of 1881 and made between
 Walter Scott Petherbridge of the one part and the
 said David Brown and Lawrence Combe Brown of the
 other part, the said Walter Scott Petherbridge in
 consideration of the sum of one dollar paid to him
 by the said David Brown and Lawrence Combe Brown did
 grant and release unto the said David Brown and
 Lawrence Combe Brown their heirs, executors
 20 administrators and assigns, eighteen undivided
 twentieth parts or shares of and in the lands and
 hereditaments mentioned in the lastly hereinbefore
 recited Indenture of the 11th June 1880. And
 also mentioned and described in the said Second
 Schedule hereunder written. And Whereas the said
 Walter Scott Petherbridge, David Brown and
 Lawrence Combe have agreed with the said Abdul
 Cauder for the sale to him of the said several
 pieces of land and hereditaments mentioned and
 30 described in the First and Second Schedules here-
 under written at and for the price of one hundred
 and ten thousand dollars (\$110,000/-). Now This
 Indenture Witnesseth that in pursuance of the
 said Agreement and in consideration of the said
 sum of one hundred and ten thousand dollars
 (\$110,000/-) to the said Walter Scott Petherbridge,
 David Brown and Lawrence Combe Brown paid by the
 said Abdul Cauder on or before the execution of
 these presents (the receipts whereof the said
 40 Walter Scott Petherbridge, David Brown and
 Lawrence Combe Brown do hereby acknowledge) they the
 said Walter Scott Petherbridge, David Brown and
 Lawrence Combe Brown do hereby grant and release
 unto the said Abdul Cauder his heirs executors
 administrators and assigns; all those lands tene-
 ments and hereditaments situate in the Division of
 Butterworth in the District of Fry in Province
 Wellesley commonly known as Charles Hope Cocanut
 Plantation And also the land tenements and

Plaintiffs'
Exhibits

AB 2.8

True Copy
of Deed
Regd. No.
727 of 1881
8th August
1881
(continued)

Plaintiffs'
Exhibits

AB 2.8

True Copy
of Deed
Regd. No.
727 of 1881
8th August
1881
(continued)

hereditaments situate in the District of Teluk Remis in Province Wellesley and commonly known as the "Teluk Remis Estate" all of which said several premises are more particularly mentioned and described in the First and Second Schedules hereunder written Together with all buildings, fences hedges, ditches, ways waters, watercourses liberties, privileges easements and appurtenances whatsoever to the said premises belonging or in anywise appertaining or usually held or occupied therewith or reputed to belonging or be appurtenant thereto. And all the Estate, right, title, interest, claim and demand of the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown and each of them in, to and upon the said premises. To have and To Hold all the said premises hereinbefore expressed to be hereby granted unto the said Abdul Cauder his heirs and assigns To the use of the said Abdul Cauder his heirs and assigns for ever. And the said Walter Scott Petherbridge so far as respects his one undivided ten part or share of and in the lands hereditaments and premises in the First Schedule hereunder written and commonly known as the "Charles Hope Cocconut Plantation" and so far as respects his two undivided twentieth parts or shares of and in the lands and hereditaments in the Second Schedule hereunder written and commonly known as Teluk Remis Estate hereby granted or intended so to be and the acts and deed relating thereto and not further or otherwise doth hereby separately for himself and for his heirs executors and administrators covenant with the said Abdul Cauder his heirs and assigns. And the said David Brown and Lawrence Combe Brown so far as respects their nine undivided tenth parts or shares of and in the land and hereditaments in First Schedule hereunder written and commonly known as the Charles Hope Cocconut Plantation and so far as respects their eighteen undivided twentieth parts or shares of and in the lands and hereditaments in Second Schedule hereunder written and commonly known as the Teluk Remis Estate hereby granted or intended so to be and the acts and deeds relating thereto and not further or otherwise do hereby separately for themselves and for their heirs, executors and administrators covenants with the said Abdul Cauder his heirs and assigns that notwithstanding anything by them the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown done omitted or knowingly

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suffered they the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown now have power to grant and dispose all the said premises hereinbefore expressed to be hereby granted to the use of the said Abdul Cauder his heirs and assigns and that the same premises shall at all times remain and be to the use of the said Abdul Cauder his heirs and assigns and be quietly entered unto and upon and held and enjoyed and the rents and profits received by them accordingly without any interruption or disturbance by them the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown or any person claiming through or in trust for them, and that free and discharged from or otherwise by them the said Water Scott Petherbridge, David Brown and Lawrence Combe Brown their heirs, executors or administrators sufficiently indemnified against all estates incumbrances, claims and demands created, occasioned or made by the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown or any person claiming through or in trust for them and further that they the said Walter Scott Petherbridge, David Brown and Lawrence Combe Brown and every person having or claiming any estate or interest in the said premises through or in trust for them will at all times at the cost of the said Abdul Cauder his heirs or assigns execute and do every such assurance and thing for the further or more perfectly assuring all or any of the said premises to the use of the said Abdul Cauder his heirs and assigns as by him or them shall be reasonably required.

Plaintiffs'
Exhibits

AB 2.8

True copy
of Deed
Regd. No.
727 of 1881
8th August
1881
(continued)

The First Schedule referred to in the above written Indenture

No. of Indenture	Date	Name of Grantee	Quantity of Land described in Indenture			Quantity of land now conveyed		
			A	R	P	ac	R	P
I. 4546	11th April 1853	Forbes Scott Brown	193	"	33	184"	0"	55
I. 4547	do	do	135	3	9	131"	2"	13
I. 4548	do	do	170	"	18	The Whole		

The Second Schedule referred to in the above written Indenture

Plaintiffs' Exhibits

AB 2.8

True Copy
of Deed
Regd. No.
727 of 1881
8th August
1881
(continued)

No. of Indt. or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
1677	626	1	1	35	Md. Aliff	Md. Aliff	
Pt. 1676	627	2	0	23	Md. Hassan	Md. Hassan	
" 1675	628	2	0	09	Brahim	Brahim	
" 1674	629	1	1	14	Moomin	Leahmin	
" 1671	632	1	2	29	Md. Assan	Md. Assan	
" 1670	633	0	2	25	Pa Alli	Pa Alli	4244
1735	637	2	0	25	Sambun	Sambun	
1906	638	2	0	28	Pandah	Alli Exor to Pandak	4091
1907	639	2	0	38	Alli	Alli	
1908	640	(1	0	15)	Long Kitchill	Soonin Long Kitchill	
		(1	0	15)			
1909	641	2	0	30	Docee		
Pt. (1916	642	1	0	16	Long	Puteh	
(1916	642	1	0	16	Long	Long	
1910	643	2	0	33	Md. Syde	Md. Syde	3742
1911	644	2	0	34	Panjang	Mahomed	3525
Pt. 1912	645	(1	0	17	Pah Alli	Pah Alli	3743)
		(1	0	9	Pah Alli	Mahomed	3525)
1913	646	2	0	38	Long Kitchill	Long Kitchill	3749
1914	647	2	0	38	Mat)		
1905	648	2	0	38	Manis)	Mahomed	3568
1915	649	2	0	38	Marican)		

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No. of Indt. or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
4839	650	2	0	01	Boontah	Mahomed	3568
2352	651	2	0	38	Pah Mat	Mat Joosoh	3860
2407	(652 (653	1	1	0	Hajie Sahat	Awang	
2351	654	0	1	12	Nga	Soorie	
2350	655	0	1	16	Long Mun	Long Mun	
2349	656	0	3	3	Mat Joosoh	Mat Joosoh	3860
2348	657	0	3	17	Docee	Docee	
2347	658	0	3	37	Allang Amat	Allang Amat	3876
2346	659	0	3	37	Sahad	Sahad	3862
2345	660	1	0	9	Driss	Driss	3863
2034	661	1	1	37	Kamis	Kamis	4245
2343	662	1	0	36	Engha	Engha	
2361	663	1	1	10	Intan	Intan	
2033 2342	664) 665)	3	1	36	Md. Joonoos Md. Saman	Amashel- lum Chitty	
2344	666	1	0	27	Man	Man	3861
1976	667	1	1	35	Md. Amin	Mahomed	
2073	668	1	1	35	Lebby Hoossain	Md. Hassan	

Plaintiffs'
Exhibits

AB 2.8

True Copy
of Deed
Regd. No.
727 of 1881
8th August
1881
(continued)

Plaintiffs' Exhibits

AB 2.8

True Copy of Deed Regd. No. 727 of 1881 8th August 1881 (continued)

No. of Indt. or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Registry of Bill of Sale
		A	R	P			
Pt.1893	669	0	2	37	Mustapha	Mustapha	3112
1680	670	1	1	33	Abdullah	Abdullah	3096
1820	671	1	1	32	Merican	Leahmun	
1821	672						
1681	673	1	1	38	Saimut	Kamis	3914
1682	674	1	1	29	Mahomed	Mahomed	
1683	675	1	1	28	Muntuah	Muntuah	2233
1684	676	1	1	27	Gowar	Md. Saman	
1685	677	1	1	25	Md.Saman	Md. Saman	
1686	678	1	1	24	Sonan	Sonan	
1660	679	1	2	5	Abdullah	Sara and Abdullah	
4276	680	94	3	11			
3354	684	0	1	12	Moomin	G.M.Sandi-lands	1936
3879	686	0	2	25	Mohomed	do	1936
4278	688	4	1	8			
5654	{4001 to 4008 4010 to 4041 4066 to 4077}	30	30	17			

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Plaintiffs'
Exhibits

AB 2.8

True Copy
of Deed
Regd. No.
727 of 1881
8th August
1881
(continued)

No. of Indt. or Grant	No. of Plan and Survey	Quantity of Land			Name of Original Owner	Name of Last Seller	No. of Regis- try of Bill of Sale
		A	R	P			
4545	620) 2560)	159	3	"	F.S. Brown		
5382	2550	0	1	7	F.S.B. & J.J.E. Brown		
1689	615	1	3	2	Puteh	Puteh	
1667	616	1	2	3	Slaman	Slaman	
1690	617	1	1	37	Awang	Awang	
1666	618	1	1	13	Mat Sah	Jamin	
1655	619	1	1	30	Pachee	Pachee	

In Witness Whereof the said parties have
hereunto set their hands and seals the day and
year first above written.

Signed Sealed and Delivered) Sd. - W.S.Petherbridge (L.S.)
in the presence of :-) Sd. - David Brown by
Sd. - J.A. Brown) Attorney L.C.Brown
Sd. - M.P. Drab) (L.S.)
Sd. - J.P.D. Murat) Sd. - L.C. Brown (L.S.)
Sd. - Abdul Cauder) (L.S.)

Plaintiffs'
Exhibits

EXHIBIT AB 2.9

AB 2.9

Certified
Copy of
Deed Regd.
No. 913
of 1885
1st May
1883

CERTIFIED COPY OF DEED REGD. NO. 913
OF 1885 IN FAVOUR OF FRANK ARTHUR PALMER

Stamp 50¢
STAMP OFFICE
6 VIII 63
PENANG.

The 10th December, 1885

Number of Registry:	913	
Date of Assignment:	1st May, 1883	10
Transferrers:	Abdul Chauder	
Transferees:	Frank Arthur Palmer	
Value of Consideration:	₹2000	
Number of Grant:	Pt. of Indenture No. 4276	
Date of Grant:	10th November, 1852	
Extent:	11 or - 243 jums - 108 ft.	
District:	Bagan Ajam div. Butterworth	
Name of Grantee:	-	
Period:	-	20
Boundaries:	East by Government Road 990 feet, West by sea Beach 990 feet, North by land of George Norris 696 feet, and South by land of Transferrer 653 feet. Registered No. 727 of 1881	
	initial: ?	

Certified copy.

Sd. Khoo Hock Seang
Dy. Collector of Land Revenue,
Penang. 5.8.63.

EXHIBIT AB 2.10CERTIFIED COPY OF DEED POLL REGD. NO. 155
VOLUME XVII IN FAVOUR OF ARTHUR PALMER

Certified Copy No. 97/63 Sheet No.1

Stamp \$3/-
25.3.87Stamp 50¢
Fee paid
FEDERATION OF MALAYA
13 VIII 63Plaintiffs'
Exhibits

AB 2.10

Certified
Copy of
Deed Poll
Regd. No.
155 Volume
XVII
24th March
1887

10 Know All Men by these presents that I Abdul
Cauder of Penang Trader in consideration of the sum
of Dollars Five hundred paid by Frank Arthur
Palmer for the purchase of the fee simple of the
hereditaments intended to be hereby granted (the
receipt whereof do hereby acknowledge) do hereby
grant, release and confirm unto the said Frank
Arthur Palmer in fee simple All the piece of land
situate in the Division of Butterworth in the
District of Bagan Ajam in Province Wellesley
20 comprised in part of Government Indenture No.
4276 dated 10th November 1852 and being part of
the land acquired right to by me the said Abdul
Cauder by Deed Poll dated 8th August 1881
Registered No. 727 of 1881 Estimated to contain
an area of Two square orlongs Seventy two square
Jumbas and one hundred and twelve square feet
and is bounded and measured as follows: East by
Bagan Ajam Road about one hundred and ninety feet
West by sea about Two hundred and nineteen feet
30 North by land of the said Frank Arthur Palmer
six hundred and forty feet and South by Mohamed
Khamis six hundred and twenty five feet.
Together with all ways, lights, sewers, water-
courses, rights, privileges easements advantages
and appurtenances whatsoever to the said here-
ditaments or any part thereof appurtenant, or
with the same or any part thereof held, used or
enjoyed or reputed as part thereof or appurtenant
thereto and all the estate and interest in the
40 said premises To Have and to hold the premises
unto the said Frank Arthur Palmer to the use of
the said Frank Palmer his heirs and assigns for
ever. And I do hereby covenant with the said
Frank Arthur Palmer his heirs and assigns, that
notwithstanding anything by me done, or knowingly
suffered I now have power to grant and release all

Plaintiffs'
Exhibits

AB 2.10

Certified
Copy of
Deed Poll
Regd.No.
155 Volume
XVII
24th March
1887
(continued)

and singular the said premises unto and to the use of the said Frank Arthur Palmer in fee simple, free from incumbrances And that all the premises may be quietly entered into, held and enjoyed by the said Frank Arthur Palmer his heirs and assigns without any interruption by me or any person lawfully or equitably claiming through me or in trust for me And that I and my heirs, executors and administrators and every person lawfully and equitably claiming through or in trust for I will, at all times at the cost of the said Frank Arthur Palmer his heirs or assigns execute and do all such assurances and things for further or better assuring all or any of the said premises to the use aforesaid.

10

In Witness Whereof I have hereunto set my hand and seal this twenty fourth day of March 1887.

Signed Sealed and delivered)
in the presence of) Sd:

Sd: W.A.B. Cullin

20

Sd: W.M. Cowan

Bart of D. Lot 275 M.XIV

Made by applicant Subdivision not necessary
Date 13.8.63 Area of whole Lot = 17.3.06^{a r p}

Checked by Gopalak Sd: R.B.
Date 14.8.63 24.9.97

Registered this 23rd day of March 1898 at
12.35 p.m. under Lot 275 M.XIV
(Title of Govt.Ind. 4276) District Bagan
Ajam P.W. in accordance with statement
presented in Vol. XVII Page 463 No. 155.

30

Sd: H.A. Heard. Seal of Registrar
Registrar of Deeds of Deeds
Penang Panang.

Certified to be a TRUE COPY of the Deed
registered No. 155 Volume 17 enrolled in this
Registry on the 23rd day of March 1898

Sd: Khoo Hock Seang
Dy.Registrar of Deeds,
Penang.

40

EXHIBIT AB 2.11COPY OF INDENTURE IN FAVOUR OF KHOO
CHEW ENG REGD. NO. 138 VOLUME XIIPlaintiffs'
ExhibitsAB 2.11

Stamp: \$24/-

Copy of
Indenture
Regd.No.
138 Volume
XII
27th
August 1897

10 This Indenture made the 27th day of August
1897 Between Elvira Hogan of Penang Widow Executrix
of the last Will and Testament of the late John
Hogan deceased as well as in her own right of the
one part and Khoo Chee Eng also of Penang of the
other part. Whereas by an Indenture dated the
8th day of March 1887 (Regd. No. 2777 of 1894) and
made between Frank Arthur Palmer of the one part
and the said John Hogan as Trustee of Mrs. E.
De Munnick of the other part the land and heredita-
ments hereinafter described and intended to be
hereby conveyed were conveyed by the said Frank
Arthur Palmer unto the said John Hogan in fee
simple by way of mortgage for securing payment of
20 the sum of Dollars Two Thousand One hundred
(\$2,100/-) and interest thereon And Whereas by
another Indenture dated the 8th day of Sept. 1893
(Regd. No. 2778 of 1894) and made between the said
Frank Arthur Palmer of the one part and the said
Elvira Hogan of the other part the same land and
hereditaments were subject to the said mortgage
firstly hereinbefore recited conveyed by the said
Frank Arthur Palmer unto the said Elvira Hogan in
fee simple by way of Mortgage for securing payment
30 of the sum of Dollars Five Hundred (\$500/-) and
interest thereon And Whereas the said John Hogan
died on or about the 21st day of April 1888 after
having duly executed his last Will and Testament
whereby he appointed the said Elvira Hogan sole
Executrix thereof and Probate whereof was on the
26th day of July 1888 granted by the Supreme
Court of the Straits Settlement at Penang to the
said Elvira Hogan And Whereas in Exercise of the
power of Sale conferred by the Conveyancing and
Law of Property Ordinance 1886 the said Elvira
40 Hogan as such Executrix as aforesaid as well as
in her own right has agreed to sell the said land
and hereditaments hereinafter described to the
said Khoo Chee Eng at the price of Dollars Four
thousand (\$4,000/-) Now This Indenture Witnesseth
that in pursuance of the said agreement and in
consideration of the sum of Dollars Four

Plaintiffs'
Exhibits

AB 2.11

Copy of
Indenture
Regd.No.
138 Volume
XII 27th
August 1897
(continued)

thousand (\$4,000/-) to Daniel Logan and Frederick John Caunter Ross of the firm of Logan & Ross Advocates and Solicitors as the present trustees of the said Mrs. E. De Munnieck paid by the Khoo Chew Eng on or before the Execution of these presents (the receipt whereof is hereby acknowledged) the said Elvira Hogan as such Executrix as aforesaid as well as in her own right as Mortgagee hereby conveys unto the said Khoo Chew Eng All that piece of land situate in the Division of Butterworth in the District of Bagan Ajam in Province Wellesley comprised in Govt. Indenture No. 4276 of 1852 being the whole of the land acquired right to by the said F.A. Palmer by Deed Poll Regd. No. 913 of 1895 which said piece of land is bounded and measured as therein described and is estimated to contain an area of about 11 orlongs 243 jumbas and 108 feet. To Hold the same unto and to the use of the said Khoo Chew Eng in fee simple. In Witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

10

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Signed Sealed and delivered)
by abovenamed- Sd: Elvira)
Hogan in the presence of:) Sd: Elvira Hogan (L.S.)

Sd. R.A.P. Hogan.

On this 27th day of August 1897 before me Reginald A.P. Hogan a Solicitor of the Supreme Court of the Straits Settlements practising in the Strait Settlements personally appeared Elvira Hogan who of my own personal knowledge I know to be the identical person whose name Elvira Hogan is subscribed to the above written instrument and acknowledge that she had voluntarily executed this instrument.

30

Witness my hand and seal.
Sd. Reginald R.A. Hogan (L.S.)

Part D. Lot 275
M.XIV
Subdivision not necessary
Area of whole lot.
A. R. P.
17 3 06
Sd. R.B.
23.9.97.

40

Registered this 28th day of September 1897 at
2-21 p.m. under Lot 275 M.XIV (Title Govt. Ind. 4276)
District Bagan Ajam P.W. in accordance with state-
ment presented in Vol. XII Page 481 No. 138.

Plaintiffs'
Exhibits

AB 2.11

Sd. A.N. Henid.
Registrar of Deeds,
Penang.

Copy of
Indenture
Regd. No.
138 Volume
XII 27th
August 1897
(continued)

(The Seal of the Registry of Deeds, Pg.)

EXHIBIT AB 2.12

AB 2.12

10

COPY OF DEED POLL IN FAVOUR OF KHOO
CHEW ENG REGD. NO. 139 VOLUME XII

Copy of Deed
Poll Regd.
No. 139
Volume XII
27th
August
1897

Stamp: \$3/-

20

Know all men by these presents that I Frank
Arthur Palmer at Penang in consideration of the sum
of Dollars Five hundred (\$500/-) to me paid by
Khoo Chew Eng also of Penang (the receipt whereof I
hereby acknowledge) do hereby grant unto the said
Khoo Chew Eng his heirs, executors, administrators
and assigns ALL that piece of land messuages and
hereditaments situate in the division of Butterworth
in the District of Bagan Ajam in Province Wellesley
being part of the land comprised in Government
Indenture No. 4276 of 1852 containing an area of
about Two Orlongs seventy two jumbas and One
hundred and twelve square feet being part of Lot
. of Mukim To Hold the same premises
unto and to the use of the said Khoo Chew Eng his
heirs, Executors, Administrators and Assigns. In
Witness whereof I have hereunto set my hand and seal
this 27th day of August in the year One thousand
eight hundred and ninety seven (A.D. 1897).

30

Signed Sealed and Delivered)
in the presence of:-) Sd: F.A. Palmer
Sd: Edmund A.B. Jeremiah (L.S.)

On this 27th day of August A.D. 1897, before
me Frederick J.C. Ross a Solicitor of the Supreme

Plaintiffs'
Exhibits

AB 2.12

Copy of Deed
Poll Regd.
No. 139
Volume XII
27th August
1897
(continued)

Court of the Straits Settlements practising in the
Strait Settlements Penang personally appeared
Frank Arthur Palmer who of my own personal knowledge
I know to be the identical person whose name
"F.A. Palmer" is subscribed to the within written
instrument and acknowledged that he had voluntarily
executed this instrument.

Witness my hand and seal.

Sd. Frederick J.E. Ross (L.S.)
Solicitor,
Penang.

10

Pt. D. Lot 275

Mukim XIV

Subdivision not necessary

Area of whole lot.

A. R. P.

17 3 06

Sd. R.B.

23.9.97.

Registered this 28th day of Sept. 1897 at 2-22 p.m.
under Lot 275 M.XIV (Title Govt. Ind. 4276)
District Bagan Ajam P.W. in accordance with
statement presented in Vol. XII Page 485 No. 139.

20

Sd. A.N. Henid

Registrar of Deeds,
Penang.

(The Seal of Registry of Deeds, Pg.)

Plaintiffs'
Exhibits

Certified Copy No. 153/63 Sheet No. 2

AB 2.13

P.W. North

Lot 275 Mk. XIV

Certified
Copy of Deed
Poll Regd.
No. 46,
Volume 113
18th February
1903
(continued)

A. R. P.
17 3 06

Sd. L.E.P.W.
S.D.O.
5.3.03

Registered this 6th day of March 1903 at 2.01 p.m.
Under Lot 275 Mukim XIV
Title P.W. 4276
District North P.W. in accordance with Statement
presented in Vol. CXIII Page 136 No. 46

10

Sd: - M. Hallifax
Registrar of Deeds,
Penang.

(The Seal of The Registrar of Deeds Penang)

On this 18th day of February A.D. 1903, before
me Arthur C. Capel a Solicitor of the Supreme Court
of the Straits Settlements practising in the Straits
Settlements personally appeared Lim Peik Keow and Lee
Toon Tock who of my own personal knowledge I know to
be the identical person whose names Lim Peik Keow
as Executrix as aforesaid and Lee Toon Tock as
Executor as aforesaid are subscribed to the within
written instrument and acknowledged that they had
voluntarily executed this instrument.

20

Witness my hand and Seal
Sd. Arthur C. Capel
Solicitor (L.S.)
Penang.

30

Certified to be a TRUE COPY of the Deed THE SEAL OF
registered No. 46 Volume 113 THE REGISTRY
enrolled in this Registry on the 6th OF DEEDS
day of March 1903. PENANG.

Sd. Khoo Hock Seang
Dy. Registrar of Deeds, Penang.

Made by Applicant
Date 4.12.63.
Checked by A. David
Date 9.12.63.

EXHIBIT AB 2.14

CERTIFIED COPY OF DEED POLL IN FAVOUR
OF GOH GOH REGD. NO. 80 VOLUME 335

Plaintiffs'
Exhibits

AB 2.14

Stamp \$60/-
9.7.13.

Stamp 50¢
FEE PAID
FEDERATION OF MALAYA

STAMP OFFICE
11 XII 63
PENANG.

Certified
Copy of Deed
Poll Regd.
No. 80
Volume 335
8th July
1913

Certified Copy No. 157/63 Sheet No. 1

10 Know all Men by these Presents that I Lim Huck
Cheow of Datch Kramat Road, Penang, trader in
consideration of the sum of Dollars Ten thousand
(\$10,000/-) to me paid by Goh Goh of permatang
Tengah Province Wellesley planter (the receipt
whereof I hereby acknowledge) do hereby convey
20 unto the said Goh Goh his heirs, Executors admini-
strators and assigns All those two pieces of land
messuages and hereditaments situate in the District
of Ragan Ajam north of Province Wellesley part
comprised in Indenture No. 4276 of 1852 acquired
right to by me by Deed Poll dated 18th February
1903, Registered No. 46 of 1903 Volume CXIII
Page 136 Estimated to contain an area of A 17
R 3 P 06 and known as Lot 275 Mukim XIV Together
with five attap houses thereon.

To Have and To Hold the said premises unto
and to the use of the said Goh Goh his heirs,
Executors, Administrators and assigns for ever.

In Witness Whereof I have hereunto set my
Hand and Seal this 8th day of July in the year
one thousand nine hundred and thirteen (A.D.1913)

30 Signed Sealed and Delivered)
in the presence of :-)
Sd:
Sd: Jno. J. Jambu
Sd: Pawanchee

Sd:

L.S.

P.W. North
Mukim 14

Lot
275

A. R. P.
17 3 06

Sd: C.H.G.C.
D.O.B.

Plaintiffs' Exhibits

Registered this 31st day of July 1913 at 12.34 p.m. Under Lot 275 Mk. XIV.

AB 2.14

Title Ind. 4276
District North P.W. in accordance with Statement presented in Vol. CCCXXXV Page 210 No. 80.

Certified Copy of Deed Poll Regd. No. 80 Volume 335 8th July 1913 (continued)

Sd: HABERT C. SELLS
Registrar of Deeds,
Penang.

(The Seal of The Registrar of Deeds Penang)

On this 8th day of July A.D. 1913, before me H.H. aboorlcader a Solicitor of the Supreme Court of the Straits Settlements practising in the Settlements personally appeared Lim Huck Cheow who from information given to me by trustworthy and respectable persons viz:- Lim Hong Thean of Permatang Toh Jayah P.W. and Pawan Chee of Penang Street, Penang I verily believe to be the identical person whose name "Lim Huck Cheow" in Chinese Characters is subscribed to the within written instrument and acknowledged that he had voluntarily executed this instrument.

10

20

Witness my hand and Seal

(Signed)

H.H. abdoolcader (L.S.)
Solicitor,
Penang.

Certified to be a TRUE COPY Made by Applicant of the Deed Date 4.12.63. registered No. 80 Volume 335 Checked by A. David enrolled in this Registry on the 31st Date 9.12.63 day of July 1913

30

Sd. Khoo Hock Seang
Dy. Registrar of Deeds, Penang.

THE SEAL OF THE REGISTRY OF DEEDS
PENANG.

EXHIBIT AB 2.15CERTIFIED COPY OF STATUTORY RECONVEYANCE
IN FAVOUR OF GOH GOH REGD. 187 VOLUME 555

Stamp 50¢
STAMP OFFICE
11 XII 63
PENANG.

Stamp \$1/-
24/1/23

Certified Copy No. 158/63 Sheet No. 1

Plaintiffs'
Exhibits

AB 2.15

Certified
Copy of
Statutory
Reconveyance
Regd. No.
187 Volume
555 22nd
January 1923

10 This Indenture of Statutory Reconveyance made
the 22nd day of January A.D. 1923 Between Alagapah
Chitty son of Aroonasalam Chetty money lender of
the firm "Shavena Navena Ana Ana Lana" of Penang
(hereinafter termed "the Mortgagee") of the one
part and Goh Goh alias Gawe Goh of Permatang
Tengah, P. Wellesley planter (hereinafter termed
"the Surety") of the other part; Supplemental to
an Indenture of Statutory Mortgage dated 13th May,
1918, Registered No. 40 Vol. CCCCXLII of 1918
20 and made between one Lim Hong Team (the Mortgagor)
of the first part, the Surety as Surety of the
second part and the Mortgagee of the third part,
Whereas there is still remaining a balance sum of
Dollars One thousand Seven hundred (\$1,700/-)
being principal money and interest due under that
Indenture after the sales of the lands belonging
to the said Mortgagor Lim Hong Team and known as
Lots 909II, 936 and 933 Mukim X P.W. North, also
30 comprised in the said Indenture at an auction
held on the 3rd January 1923. Now this
Indenture Witnesseth that in Consideration of the
premises and in consideration of the said sum of
\$1,700/- and interest now paid by the Surety to
the Mortgagee (the receipt whereof is hereby
acknowledged) he the Mortgagee doth hereby
reconvey unto the Surety All the lands and
premises situate in the District of P.W. North
Mukim XIV (I) Indenture No. 4276 Lot 275 (II)
Indenture No. 4544 Lot 485 and (III) Indenture
40 No. 4544 Lot 498 now vested in the said Mortgagee
under the said Indenture.

To Hold to the Surety Goh Goh alias Gawe
Goh discharged from all principal money and
interest secured by and from all claims and
demands under the said Indenture.

Plaintiffs'
Exhibits

In Witness Whereof the said parties have here-
unto set their hands and seals at Penang the day
and year first hereinbefore written.

AB 2.15

Certified Copy No. 158/63 Sheet No. 2

Certified
Copy of
Statutory
Reconveyance
Regd. No.
187 Volume
555 22nd
January 1923
(continued)

Signed Sealed and Delivered)
in the presence of :-
Sd: A.M. Ismail
Clerk to Mr. A.C. Capel.
P.W. North
Mukim XIV

Sd:-

L.S.

10

		A.	R.	P.
Lot 275	=	17	3	06
" 485	=	1	2	02
" 498	=	9	3	24

S. N. K.
C. L. R.
6. 2. 23

Registered this 3rd day of April 1923 at 11.50 a.m.
Under Lots 275, 485 & 498 MK. XIV.
Title Inds. 4276 & 4544
District North P.W. in accordance with
Statement presented in Vol. DLV Page 709 No. 187.

20

Sd:- G.B. Baptist
Deputy Registrar of Deeds,
Penang.

(The Seal of The Registrar of Deeds)
Penang

Certified Copy No. 158/63 Sheet No. 3

On this 22nd day of January A.D. 1923, before
me Arthur C. Capel a Solicitor of the Supreme Court
of the Straits Settlements, practising in the Straits
Settlements, Penang, personally appeared, Alagapah
Chetty who of my own personal knowledge I know to be
the identical person whose name Shavena Niavena Ana
Ana Iana Alagapah Chetty in Tamil is subscribed to
the within written instrument and acknowledged that
he had voluntarily executed this instrument.

30

Witness my hand and seal
Sd:- Arthur C. Capel
Solicitor, Penang.

(L.S.)

40

185.

Made by Applicant
Date 4.12.63.
Checked by A. David
Date 9.12.63.

Certified to be a TRUE COPY
of the Deed registered
No. 187 Volume 555
enrolled in this Registry
on the 3rd day of April
1923.

Sd: Khoo Hock Seang
Dy. Registrar of Deeds,
Penang.

Plaintiffs'
Exhibits
AB 2.15

Certified
Copy of
Statutory
Reconveyance
Regd. No.
187 Volume
555 22nd
January 1923
(Continued)

10

EXHIBIT AB 2.16

CERTIFIED COPY OF ORDER OF COURT MADE IN
O.S. 1934 NO. 104 REGD. No.107 VOLUME 783

Stamp 50¢
STAMP OFFICE
11 XII 63
PENANG.

AB 2.16
Certified
Copy of
Court Order
Regd. No.
107 Volume
783 31st
August 1934

Certified Copy No. 159/63 Sheet No. 1

Originating Summons 1934 No. 104

In the Supreme Court of the Straits Settlements
Settlement of Penang

20

In the Matter of the Will of Goh
Eng Goh alias Gawe Goh alias
Goh Goh deceased

and

(L.S.) In the Matter of Ordinance No. 36
(Conveyancing and Law of Property)

and

In the Matter of Goh Cheng Ee and Goh
Cheng Chuan

Applicants

30

Before Mr. Justice Whitley.

In Chambers

Upon the application of Goh Cheng Ee and Goh Cheng

Plaintiffs'
Exhibits

AB 2.16

Certified
Copy of
Court Order
Regd. No.
107 Volume
783 31st
August 1934
(continued)

Chuan the applicants abovenamed made by way of Originating Summons this day and upon reading the joint affidavit of the said applicants sworn to on the 17th day of August 1934 and filed herein on the 18th day of August 1934 and upon hearing what was alleged by the Solicitor for the applicants It Is Ordered that the applicants be allowed to sell and convey Lots 275(1) and 498 Mukim 14 Northern District Province Wellesley either in parcels or in entirety at a price not below \$357/- an acre.

10=

Dated this 31st day of August 1934.

By Order.

Sd: Tan Hock Aun

Ag. Registrar

Certified Copy No. 159/63 Sheet No. 2

P.W. North
Mk.14

Lot	A.	R.	P.	
275(1)	16	3	10	20
498	9	3	10	

Sd:- C.E. Robless

A. C. L. R. B'worth

13.3.35.

Registered on the 20th day of March 1935 at 2.15 p.m.
Under Lots 275(1) and 498 Mukim 14
Title Inds. 4276 and 4544
District North P.W. in accordance with Statement
presented in Vol. 783 Page 425 No. 107.

Sd:- Hector V. d'Aranjo

Registrar of Deeds, Penang.

(The Seal of The Registrar of Deeds Penang)

30

Certified to be a TRUE COPY Made by Applicant
of the Deed registered No.107 Date 4.12.63
Volume 783 enrolled in this Checked by A. David
Registry on the 20th day of Date 9.12.63.
March 1935.

Sd: Khoo Hock Seang

Dy. Registrar of Deeds, Penang.

THE SEAL OF THE REGISTRAR OF DEEDS
PENANG.

40

EXHIBIT AB 2.17CERTIFIED COPY OF CONVEYANCE IN FAVOUR
OF M. GOH REGD. NO. 60 VOLUME 785

Stamp 50¢
STAMP OFFICE
11 XII 63
PENANG.

Stamp \$6/-
11.3.35.

Plaintiffs'
Exhibits

AB 2.17

Certified
Copy of
Conveyance
Regd. No.60
Volume 785
11th March
1935

Certified Copy No. 156/63 Sheet No. 1

10 This Indenture made the 11th day of March
1935 Between Goh Cheng Ee and Goh Cheng Chuan the
executors of the Estate of Goh Eng Goh alias Goh
Goh alias Gawe Goh (deceased) of Bagan Ajam, P.W.
(hereinafter called the Vendors) of the one part
and M. Goh of Sunnybeach, Butterworth (herein-
after called the Purchaser) of the other part
Witnesseth that in consideration of the sum of
Dollars Nine hundred and twenty eight only (\$928/-)
paid by the Purchaser to the Vendors on or before the
20 execution of these presents (the receipt whereof
the Vendors hereby acknowledge) the Vendors hereby
convey unto the Purchaser All the land and here-
ditaments more particularly described in the
Schedule hereto to Hold the same unto the Purchaser
in fee simple.

The Schedule above referred to

30 All that piece of land messuages and here-
ditaments situate in the Northern District of
Province Wellesley comprised in Indenture No. 4276
estimated to contain an area of 2 acres 0 rood
10 poles and known as Lot 275(3) Mukim 14 together
with all the attap houses thereon.

In Witness Whereof the parties hereto have
hereunto set their hands and seals the day and
year first above written.

Signed Sealed and Delivered)
in the presence of :-) Sd:- (L.S.)
Sd:- G.H. Goh,) Sd:- (L.S.)
Solicitor,
Penang.

Plaintiffs' Exhibits

AB 2.17

Certified Copy of Conveyance Regd. No.60 Volume 785 11th March 1935 (continued)

Certified Copy No. 156/65 Sheet No. 2

P.W. North
Mukim 14

Lot	A.	R.	P.
275(3)	2	0	10

Sd: C.E. Robless

A. C. L. R. B'worth
22.3.35.

Registered on the 24th day of April 1935 at 11.31 a.m. Under Lot 275(3) Mukim 14 Title Ind. 4276 District North P.W. in accordance with Statement presented in Vol. 785 Page 237 No. 60. 10

Sd: Hector V. d'Aranjo
Registrar of Deeds, Penang.

(The Seal of The Registrar of Deeds Penang)

Certified Copy No. 156/63 Sheet No. 3

On this 11th day of March 1935, before me Guan Ho Goh a Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements, personally appeared Goh Cheng Ee and Goh Cheng Chuan of my own personal knowledge I know to be the identical persons whose names Goh Cheng Ee and Goh Cheng Chuan in Chinese Characters are subscribed to the within written instrument and acknowledged that they had voluntarily executed this instrument. 20

Witness my hand and Seal

Sd: G.H. Goh
Solicitor, (L.S.)
Penang.

30

Made by Applicant	Certified to be a TRUE COPY
Date 4.12.63	of the Deed registered No. 60
Checked by A. David	Volume 785 enrolled in this
Date 9.12.63	Registry on the 24th day of
	April 1935.

Sd: Khoo Hock Seang

Dy. Registrar of Deeds, Penang.

THE SEAL OF THE REGISTRY
OF DEEDS, PENANG.

EXHIBIT AB 2.18

CERTIFIED COPY OF CONVEYANCE IN FAVOUR OF
CHEW KOK KIN AND KIAR ENG GOAY (LOT 275(3))

Certified Copy No. 155/63 Sheet No. 1

Stamped \$16-50
5.7.38

Stamp 50¢
STAMP OFFICE
11 XII 63
PENANG.

Plaintiffs'
Exhibits

AB 2.18

Certified
Copy of
Conveyance
(Lot 275(3))
23rd June
1938

10 This Indenture made the 23rd day of June 1938
Between M. Goh of Sunnybeach Butterworth Province
Wellesley (hereinafter called the Vendor) of the one
part and Chew Kok Kin and Kiar Eng Goay husband and
wife of 241 Beach Street Penang (hereinafter called
the Purchasers) of the other part Witnesseth that in
consideration of the sum of Dollars Two thousand and
seven hundred (\$2,700/-) paid by the Purchasers to
the Vendor on or before the execution of these
presents (the receipt whereof the Vendor hereby
acknowledges) the Vendor hereby conveys unto the
20 Purchasers All the land and hereditaments more
particularly described in the Schedule hereto To
Hold the same unto the Purchasers as joint tenants.

The Schedule above referred to

30 All that piece of land and hereditaments
situate in the Northern District of Province
Wellesley comprised in Indenture No. 4276 and con-
veyed unto the Vendor by an Indenture dated the
11th day of March 1935 (Registered No. 60 Volume
785) which said piece of land is known as Lot
275(3) Mukim 14 and is estimated to contain an area
of 2 acres and 10 poles.

In Witness Whereof the parties hereto have
hereunto set their hands and seals the day and
year first above written.

Signed Sealed and Delivered)
in the presence of :-) Sd: M. Goh (L.S.)
Sd:- G. H. Goh
Solicitor,
Penang.

Plaintiffs'
Exhibits

Certified Copy No. 155/63 Sheet No. 2

P.W. North
Mukim 14

AB 2.18

Lot	A.	R.	P.
275(3)	2	0	10

Certified
Copy of
Conveyance
(Lot 275(3))
23rd June
1938
(continued)

Sd: S.T. Stewart
f. C. L. R. P.W.
14.7.38.

Registered on the 22nd day of July 1938 at 12.13 p.m.
Under Lot 275(3) Mk. 14
Title Ind. 4276

District North P.W. in accordance with statement
presented in Vol. 832 Page 565 No. 143.

10

Sd: Hector V. d'Aranjo
Registrar of Deeds,
Penang.

(The Seal of The Registrar of Deeds Penang)

Certified Copy No. 155/63 Sheet No. 3

On this 23rd day of June 1938 before me Guan
Ho Goh an Advocate & Solicitor of the Supreme Court
of the Straits Settlements practising in the Straits
Settlements, personally appeared M. Goh who of my
own personal knowledge I know to be the identical
person whose name M. Goh is subscribed to the
within written instrument and acknowledged that
she had voluntarily executed this instrument at
Butterworth.

20

Witness my hand

Sd: G.H. Goh

Certified to be a TRUE COPY of the Deed
registered No. 143 Volume 832 enrolled in this
Registry on the 22nd day of July 1938.

30

Sd: Khoo Hock Seang

Dy. Registrar of Deeds, Penang.

Made by Applicant
Date 4.12.63
Checked by A. David
Date 9.12.63.

THE SEAL OF THE REGISTRY
OF DEEDS PENANG

EXHIBIT AB 2.19CERTIFIED COPY OF CONVEYANCE IN FAVOUR OF
GOH CHENG EE AND 3 OTHERS REGD.NO.62 VOL.837Stamp \$5/-
7.11.38.Stamp 50¢
STAMP OFFICE
11 XII 63
PENANG.

Certified Copy No.154/63 Sheet No.1

Plaintiffs'
ExhibitsAB 2.19Certified
Copy of
Conveyance
Regd. No.62
Volume 837
5th November
1938

10 This Indenture is made the 5th day of November, 1938 Between Goh Cheng Ee and Goh Cheng Chuan both of Butterworth, P.W. (hereinafter called the Executors) of the one part and Goh Cheng Ee, Goh Cheng Chuan, Goh Seng Seng and Goh Seng Soo all also of the same place (hereinafter called the Devisees) of the other part.

20 Whereas Goh Eng Goh alias Gawe Goh alias Goh Goh late of Batang Tengah, P.W. (hereinafter called the Testator) duly made his Will dated the 14th day of April, 1923 and appointed the Executors to be the Executors thereof and after giving certain specific and pecuniary legacies and making certain specific devises, devised and bequeathed the residue of all his property to Goh Cheng Ee, Goh Cheng Chuan, Goh Seng Seng and Goh Seng Soo in equal shares.

30 And Whereas the Testator died on the 20th day of June, 1923 without having revoked or altered his said Will and the said Will was on the 12th day of September, 1923 duly proved in the Registry of the Supreme Court, Penang by the Executors (Probate Reg. No. 40 Volume DLXX).

And Whereas at the date of his death the Testator was entitled inter alia to the land and hereditaments specified in the Schedule hereto in fee simple but subject to an Indenture of Statutory Mortgage dated the 22nd day of January 1923 (Reg. No. 188 Vol. DLV) for the sum of \$6,700/-)

40 And Whereas the Executors had paid off the Mortgage debt and interest and had obtained a re-conveyance dated the 11th day of January, 1935 (Reg. No.100 Vol. 783) of the mortgage property.

Plaintiffs'
Exhibits

AB 2.19

Certified
Copy of
Conveyance
Regd. No.62
Volume 837
5th November
1938
(continued)

And Whereas the Devisees have all attained the age of 21 years.

And Whereas the Executors have duly paid all funeral and testamentary expenses of the Testator and all the debts which have come to their knowledge and they have also paid the pecuniary and satisfied the specific bequests and devises in the said Will contained.

And Whereas the said hereditaments described in the Schedule hereto are now vested in the Executors upon trust to sell the same and liberty to sell and convey the said hereditaments was also allowed to the Executors by an Order of the High Court, Penang dated the 31st day of August, 1934 (Reg. No. 107 Vol. 787). 10

And Whereas the said Goh Cheng Ee, Goh Cheng Chuan, Goh Seng Seng and Goh Seng Soo desire to terminate the said trust for sale and in stead thereof to make a partition thereof of the said hereditaments into four equal parts in severalty. 20

And Whereas the Devisees have requested the Executors to assent to the residuary devise as in the manner herein mentioned.

Now this Indenture Witnesseth as follows :-

1. In consideration of the premises the Executors as personal representatives of the Testator hereby assent and convey unto the said Goh Cheng Ee, Goh Cheng Chuan, Goh Seng Seng and Goh Seng Soo All the land and hereditaments more particularly described in the Schedule hereto To Hold the same unto the said Goh Cheng Ee, Goh Cheng Chuan, Goh Seng Seng and Goh Seng Soo in fee simple as tenants in common. 30

2. The said Goh Seng Seng and Goh Seng Soo for themselves and their successors in title hereby release the Executors and their estates from all actions, claims and proceedings in respect of the said residuary estate of the Testator or the trusts affecting the same.

The Schedule above referred to

All that piece of land and hereditaments situate 40

in the Northern District of Province Wellesley comprised in Indenture No. 4276 which said piece of land is known as Lot 275(1) Mukim 14 and is estimated to contain an area of 7 acres 3 roods and 36 poles.

Plaintiffs' Exhibits

AB 2.19

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Certified Copy of Conveyance Regd.No.62 Volume 837 5th November 1938 (continued)

10 Signed Sealed and Delivered) Sd:- (L.S.)
 in the presence of :- } Sd:- (L.S.)
 Sd:- } Sd:- (L.S.)
 Sd:- }

The right thumb print and seal of Goh Seng Soo (L.S.)

P. W. North

Mukim 14

Lot	A.	R.	P.
275 ¹	7	3	36

20 Sd:- S.G. Stewart

f. C. L. R. P.W.
 10.11.38.

Registered on the 30th November 1938 at 3.09 p.m. Under Lot Nos. and Titles given in the Schedule presented in Volume 837 Page 245 No. 62.

Sd: J. L. Harvey
 Registrar of Deeds,
 Penang.

(The Seal of The Registrar of Deeds Penang)

30 On this 5th day of November 1938 before me Beng Hong Oon an Advocate & Solicitor of the Supreme Court of the Straits Settlements practising in the Straits Settlements personally appeared Goh Cheng Ee, Goh Cheng Chuan, Goh Cheng Seng and Goh Seng Soo who from information given to me by trustworthy and respectable persons, viz:- Ooi Kim Leong and Tan Cheow both of Butterworth, P.W., I verily believe to be the identical persons whose

Plaintiffs' Exhibits

AB 2.19

Certified Copy of Conveyance Regd.No.62 Volume 837 5th November 1938 (continued)

names Goh Cheng Ee, Goh Cheng Chuan and Goh Cheng Seng in Chinese characters and Goh Seng Soo by his right thumb print and seal are subscribed to the within written instrument and acknowledged that they had voluntarily executed this instrument at Bukit Mertajam, P.W.

Witness my hand

Sd: B.H. Oon

Advocate & Solicitor, Penang.

10

Made by Applicant Date 4.12.63. Checked by A. David Date 9.12.63.

Certified to be a TRUE COPY of the Deed registered No. 62 Volume 837 enrolled in this Registry on the 30th day of November 1938.

Sd: Khoo Hock Seang Dy. Registrar of Deeds,

Penang.

AB 2.20

EXHIBIT AB 2.20

Conveyance Regd. No. 32 Volume 858 14th June 1940

CONVEYANCE IN FAVOUR OF TAN GEOK KIM
REGD. NO. 32 VOLUME 858

20

Stamp \$24/- Penang.

This Indenture made the 14th day of June, 1940 Between Goh Cheng Chuan of Bagan Jermal, Butterworth, Province Wellesley (hereinafter called the Vendor) of the one part and Tan Geok Kim (spinster) also of Bagan Jermal, Butterworth, Province Wellesley (hereinafter called the Purchaser) of the other part Witnesseth that in consideration of the sum of Dollars Three thousand only (\$3,000/-) paid by the Purchaser to the Vendor on or before the execution of these presents (the receipt whereof the Vendor hereby acknowledges) the Vendor hereby conveys unto the Purchaser All the land and hereditaments more particularly described in the Schedule hereto To

30

hold the same unto the Purchaser in fee simple.

Plaintiffs'
Exhibits

The Schedule above referred to

AB 2.20

All the one undivided fourth (1/4) share right title and interest in and to all that piece of land messuages and hereditaments situate in the Northern District of Province Wellesley comprised in Indenture No. 4276 which said piece of land is known as Lot 2751 Mukim 14 and is estimated to contain an area of 7 acres 3 roods and 36 poles.

Conveyance
Regd. No.
32 Volume 858
14th June
1940
(continued)

10

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered) Sd:
in the presence of) L.S.

Sd:
Sd:

On this 14th day of June, 1940, before me Beng Hong Oon, an Advocate and Solicitor of the Supreme Court of the Straits Settlements, practising in the Straits Settlements, personally appeared Goh Cheng Chuan who from information given to me by trustworthy and respectable persons, Viz: Ooi Kin Leong of Sungei Puyu, Butterworth, P.W. and Goh Cheng Ee of Bagan Jermal, Butterworth, P.W. I verily believe to be the identical person whose name Goh Cheng Chuan in Chinese characters is subscribed to the within written instrument and acknowledged that he had voluntarily executed this instrument at Bukit Mertajam, P.W.

20

30

Witness my hand

Sd: B. H. Oon
Advocate & Solicitor,
Penang.

P. W. North

Mukim 14
Lot a r p
275¹ 7 3 36
(und.sh:)

Sd:
f. C. L. R., P.W. 20.6.40.

Plaintiffs'
Exhibits

Registered on the 6th July, 1940 at 11.12 a.m.
Under Lot Nos. and Titles given in the Schedule
presented in Volume 858 Page 125 No. 32.

AB 2.20

Sd:

Conveyance
Regd. No.
32 Volume 858
14th June
1940
(continued)

Deputy Registrar of Deeds,
Penang.

197.

Dated this 14th day of June, 1940

Goh Cheng Chuan

to

Tan Geok Kim

Plaintiffs'
Exhibits

AB 2.20

Conveyance
Regd. No.
32 Volume 858
14th June
1940
(continued)

C O N V E Y A N C E

LIM & OON,
Solicitors,
287 Cross Street,
Bukit Mertajam,
Province Wellesley.

10

Registered on the 6th July, 1940 at
11.12 a.m. Under Lot Nos. and Titles
given in the Schedule presented in
Volume 858 Page 125 No. 32.

Sd.

L.S.

Deputy Registrar of Deeds, Penang.

Plaintiffs'
Exhibits

EXHIBIT AB 2.21

AB 2.21

Conveyance
Regd. No. 38
Volume 861
26th August
1940

CONVEYANCE IN FAVOUR OF NG KHOEN
KHOEN REGD. NO. 38 VOLUME 861

Stamp \$24/-
Penang

This Indenture made the 26th day of August 1940 Between Goh Cheng Seng alias Goh Seng Seng of Bagan Jermal, Butterworth, Province Wellesley (hereinafter called the Vendor) of the one part and Ng Khoen Kioen also of the same place aforesaid (hereinafter called the Purchaser) of the other part Witnesseth that in consideration of the sum of Dollars Three thousand (\$3,000/-) only paid by the Purchaser to the Vendor on or before the execution of these presents (the receipt whereof the Vendor hereby acknowledges) the Vendor hereby conveys unto the Purchaser All the land and hereditaments more particularly described in the Schedule hereto To hold the same unto the Purchaser in fee simple.

10

20

The Schedule above referred to

All that the one undivided fourth (1/4) share right title and interest in and to all that piece of land messuages and hereditaments situate in the Northern District of Province Wellesley comprised in Indenture No. 14276 which said piece of land is known as Lot 275¹ Mukim 14 and is estimated to contain an area of 7 acres 3 roods and 36 poles.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

30

Signed Sealed and Delivered)
in the presence of) Sd: L.S.
The right thumb print
of Lim Siew Geok (f)
Sd.

On this 26th day of August 1940, before me, Beng Hong Oon an Advocate and Solicitor of the Supreme Court of the Straits Settlement, practising in the Straits Settlements, personally appeared Goh Cheng Seng alias Goh Seng Seng who

40

from information given to me by the trustworthy and respectable persons, viz:- Lim Siew Geok (f) and Lim Eng Soon both of Butterworth, P.W., I verily believe to be the identical person whose name Goh Cheng Seng in Chinese characters is subscribed to the within written instrument and acknowledged that he had voluntarily executed this instrument at Butterworth, P.W.

Plaintiffs' Exhibits

AB 2.21

Conveyance Regd. No. 38
Volume 861
26th August 1940
(continued)

10

Witness my hand

Sd: B. H. Oon

Advocate & Solicitor

Penang.

P. W. North

Mukim 14

Lot
275¹

a. r. p.

7 3 36

(und. Sh:)

Sd:

C. L. R., P. W.

29.8.40

20

Registered on the 6th September 1940 at 3.01 p.m.
Under Lot Nos. and Titles given in the Schedule
presented in Volume 861 Page 149 No. 38.

Sd:

Deputy Registrar of Deeds,
Penang.

Plaintiffs'
Exhibits

Dated this 26th day of August, 1940

AB 2.21

Conveyance
Regd. No. 38
Volume 861
26th August
1940
(continued)

Goh Cheng Seng alias Goh Seng
Seng

to

Ng Khoen Kioen

C O N V E Y A N C E

LIM & OON,
Solicitors,
287 Cross Street,
Bukit Mertajam,
Province Wellesley.

10

Registered on the 6th September 1940 at 3.01 p.m.
Under Lot Nos. and Titles given in the Schedule
presented in Volume 861 Page 149 No. 38

Sd.

REGISTRAR OF DEEDS
PENANG.

EXHIBIT AB 2.22

CONVEYANCE IN FAVOUR OF NG KHOEN
KIOEN REGD. NO. 76 VOLUME 865

Plaintiffs'
Exhibits

AB 2.22

Stamp \$24/-
28.11.40
Penang.

Conveyance
Regd.No.76
Volume 865
27th November
1940

10 This Indenture made the 27th day of November,
1940 Between Goh Cheng Ee of Bagan Jermal,
Butterworth, P.W. (hereinafter called the Vendor)
of the one part and Ng Khoen Kioen also of Bagan
Jermal, Butterwrth, P.W. (hereinafter called the
Purchaser) of the other part Witnesseth that in
consideration of the sum of Dollars Three thousand
(\$3,000/-) only paid by the Purchaser to the
Vendor on or before the execution of these
presents (the receipt whereof the Vendor hereby
acknowledges) the Vendor hereby conveys unto the
Purchaser All the land and hereditaments more
particularly described in the Schedule hereto To
20 hold the same unto the Purchaser in fee simple.

The Schedule above referred to

All the one undivided fourth (1/4) share
right and title and interest in and to all that
piece of land messuages and hereditaments situate
in the Northern District of Province Wellesley
comprised in Indenture No. 4276 which said piece
of land is known as Lot 275¹ Mukim 14 and is
estimated to contain an area of 7 acres 3 roods
and 36 poles.

30 In Witness Whereof the parties hereto have
hereunto set their hands and seals the day and
year first above written.

Signed Sealed and Delivered) Sd:
in the presence of) L.S.
Sd:
Sd: B.H. Oon
Solicitor

40 On this 27th day of November, 1940 before
me, Beng Hong Ocn, an Advocate and Solicitor
of the Supreme Court of the Straits Settlements,
practising in the Straits Settlements, personally

Plaintiffs'
Exhibits

AB 2.22

Conveyance
Regd.No.76
Volume 865
27th November
1940
(continued)

appeared Goh Cheng Ee who of my own personal knowledge I know to be the identical person whose name Goh Cheng Ee in Chinese characters is subscribed to the within written instrument and acknowledged that he had voluntarily executed this instrument at Bukit Mertajam P.W.

Witness my hand

Sd: B.H. Oon

Advocate & Solicitor,
Penang.

10

P. W. North

Mukim 14

Lot	a r d
275 ¹	7 3 36

(und: Sh.)

Sd:

C. L. R., P.W.

3.12.40.

Registered on the 10th December 1940 at 10.41 a.m.
Under Lot Nos. and Titles given in the Schedule
presented in Volume 865 Page 301 No. 76.

20

Sd:

Deputy Registrar of Deeds, Penang.

DATED this 27th day of November 1940

Plaintiffs'
Exhibits

AB 2,22

Goh Cheng Ee

to

Ng Khoen Kioen

Conveyance
Regd.No.76
Volume 865
27th November
1940
(continued)

C O N V E Y A N C E

LIM & OON,
Solicitors,
287 Cross Street,
Bukit Mertajam,
Province Wellesley.

10

Registered on the 10th December 1940 at
10.41 a.m. Under Lot Nos. and Titles given
in the Schedule presented in Volume 865
Page 301 No. 76

Sd:

Deputy Registrar of Deeds, Penang.

Plaintiffs'
Exhibits

EXHIBIT AB 2.23

AB 2.23

CERTIFIED COPY OF CONVEYANCE IN FAVOUR
OF LIM BENG HONG - LOT 275(1) - 1/4 SHARE
REGD. NO. 59 VOLUME 893

Certified
Copy of
Conveyance
Regd.No.59
Volume 893
9th August
1904

STAMP OFFICE Stamp \$28.00
Stamp 50¢ 10.8.04.
11 XII 63
PENANG.

Certified Copy No. 151/63 Sheet No. 1

(sic)

This Indenture made the 9th day of August
2604 Between Goh Seng Soo of Bagan Jermal, Province
Wellesley (hereinafter called the Vendor) of the
one part and Lim Beng Hong of No. 5 Bangkok Lane,
Penang, married woman (hereinafter called the
Purchaser) of the other part Witnesseth that in
Consideration of the sum of Dollars Two thousand
eight hundred (\$2,800/-) only paid by the Purchaser
to the Vendor on or before the execution of these
presents (the receipt whereof the Vendor hereby
acknowledges) the Vendor hereby conveys unto the
Purchaser All the land and hereditaments more
particularly described in the Schedule hereto To
Hold the same unto the Purchaser in fee simple.

10

20

The Schedule above referred to

All that the one undivided fourth (1/4) share
right title and interest in and to All that piece
of land and hereditaments situate in the Northern
District of Province Wellesley comprised in
Indenture No. 4276 which piece of land is known as
Lot 275(1) Mukim 14 estimated to contain an area
of 7 acres 3 roods and 36 poles and was conveyed
to the Vendor by a Devisé dated the 5th day of
November 1938 (Regd. No. 62 Vol. 857)

30

In Witness Whereof the parties hereto have
hereunto set their Hands and Seals the day and
year first above written.

Signed Sealed and Delivered } R.T.P. and Seal of
in the presence of :- } Goh Seng Soo

Sd:-

(L.S.)

Sd:- Lim Chuan Teik

40

Registered on the 26th August 2604(sic) at 11.40 a.m.
Under Lot Nos. and Titles given in the Schedule
presented in Volume 893 Page 233 No. 59

Plaintiffs'
Exhibits

AB 2.23

Sd: Haji Murshid

(The Seal of The Registrar
of Deeds Penang)

Registrar of Deeds,
Penang.

Certified
Copy of
Conveyance
Regd.No.59
Volume 893
9th August
1904
(continued)

Mk. 14 P. W. North

Lot A. R. P.
275(1) 7 3 36 (1/4
und.sh.)

10

(Chop)
Guncho B'worth
14.8.2604(sic)
P.W.N.32

Transaction in the following property is
hereby permitted within 3 months from the date
hereof:-

Name of Vendor Goh Seng Soo of Bagan
Jermal, P.W.

Name of Purchaser Lim Beng Hong of 5
Bangkok Lane, Penang.

20

Nature of Transaction Conveyance

Lot/Mukim/T.S.No. & Area Lot 275(1) Mukim 14
P.W.N. (1/4 und. sh.)

House No. & Locality

Amount of consideration \$2,800.00

Dated this 2nd day of August 2604 (sic)

Conveyance d/- 9.8.04
presented for endorsement (Chop) (Chop)

(Chop)
Guncho B'worth
14.8.04.

Zaimukacho
Penang Shu Seicho

30

Plaintiffs'
Exhibits

AB 2.23

Certified
Copy of
Conveyance
Regd.No.59
Volume 893
9th August
1904
(continued)

On this 9th day of August 2604,(sic) before me,
G.M. Yusoff Magistrate officiating at Butterworth
personally appeared Goh Seng Soo of Bagan Jermal,
P.W. who from information given to me by trust-
worthy and respectable persons, viz:- Goh Cheng
Ee of 2311 Bagan Ajam, Butterworth and Lim Chuan
Teik of 152 Kampong Bengali, Butterworth I verily
believe to be the identical person whose name
"Goh Seng Soo" by his right thumb print and Seal
and subscribed to the within written instrument
and acknowledged that he had voluntarily executed
this instrument at Butterworth, Province Wellesley.

10

Witness my hand

Sd: G.M. Yusoff
Magistrate
Butterworth.

Certified to be a TRUE COPY of the Deed
registered No. 59 Volume 893 enrolled in this
Registry on the 26th day of August 2604 (sic)

Made by Applicant
Date 4.12.63
Checked by A. David
Date 9.12.63.

20

Sd: Khoo Hock Seang
Dy. Registrar of Deeds, Penang.

THE SEAL OF THE REGISTRY OF DEEDS
PENANG.

AB 2.24

EXHIBIT AB 2.24

Conveyance
Regd.No.147
Volume 903
26th June
1947

CONVEYANCE IN FAVOUR OF BENG HONG OON
(LOT 275(3)) REGD.NO. 147 VOLUME 903

Stamp \$34.00
26.VI 47
STAMP OFFICE PENANG

30

This Indenture made the 26th day of June 1947

Between Chew Kok Kin and Kiar Eng Goay of 241 Beach Street Penang husband and wife (hereinafter called the Vendors) of the one part and Beng Hong Oon of Butterworth, married woman, (hereinafter called the Purchaser) of the other part Witnesseth that in consideration of the sum of Dollars Four thousand and one hundred and twenty five (~~3~~4125/-) only paid by the Purchaser to the Vendors on or before the execution of these presents (the receipt whereof the Vendors hereby acknowledge) the Vendors hereby convey unto the Purchaser all the land and hereditaments more particularly described in the Schedule hereto To hold the same unto the Purchaser in fee simple.

Plaintiffs'
Exhibits

AB 2.24

Conveyance
Regd.No.147
Volume 903
26th June
1947
(continued)

10

The Schedule above referred to

All that the one piece of land messuages and hereditaments situate in the Northern District of Province Wellesley comprised in Indenture No. 4276 known as Lot 275³ Mukim 14, estimated to contain an area of 2 acres and 10 poles, which said piece of land was conveyed to the Vendors by an Indenture dated the 23rd day of June 1938 (Regd. No. 143 Vol. 832)

20

In Witness Whereof the parties hereto have hereunto set their Hands and Seals the day and year first above written.

Signed Sealed and Delivered }
in the presence of

Sd: Chew Kok Kin (L.S.)
Sd: (L.S.)

Sd: M.T. Merican
Sd. Ooi Paik Tatt

30

On this 26th day of June 1947 before me, K.S. Pillai an Advocate and Solicitor of the Supreme Court of the Malayan Union practising in the Malayan Union Penang personally appeared Chew Kok Kin and Kiar Eng Goay who from information given to me by trustworthy and respectable persons viz: M. T. Merican of 2 Mandalay Road Penang and Ooi Paik Tatt of 24 Maccullum Street, Penang, I verily believe to be the identical persons whose names "Chew Kok Kin" and Kiar Eng Goay in Chinese characters are subscribed to the within written instrument and acknowledged that they had voluntarily executed this instrument at Penang.

40

Witness my hand Sd: K. S. Pillai
Advocate & Solicitor, Penang.

Plaintiffs'
Exhibits

AB 2.24

Conveyance
Regd.No. 147
26th June
1947
(Continued)

P. W. (N)
Mukim 14
Lot 275(3)

2a. or. 1Op.
Sd:
C.L.R., B'W
3.7.47.

Registered on the 31st July 1947 at 11.38 a.m.
Under Lot Nos. and Titles given in the Schedule
presented in Volume 903 Page 585 No. 147.

10

Sd:
Dy. Registrar of Deeds, Penang.

THE SEAL OF THE
REGISTRY OF DEEDS
PENANG.

Dated this 26th day of June, 1947

Chew Kok Kin & Kiar Eng Goay

to

Beng Hong Oon

Plaintiffs'
Exhibits

AB2.24

Conveyance
Regd.No.147
26th June
1947
(continued)

C O N V E Y A N C E

Lot 275(3) Mk.14 P.W.N.

LIM & OON,
Advocates & Solicitors
287 Cross Street,
Bukit Mertajam,
Province Wellesley.

Plaintiffs'
Exhibits

EXHIBIT AB 2.25

AB 2.25

CONVEYANCE IN FAVOUR OF OON GUAN YONG
(LOT 275(1) - 1/4 SHARE) REGD.NO.31
VOLUME 964

Conveyance
Regd.No.31
Volume 964
1st November
1952

Stamp \$90.00
STAMP OFFICE
12 XI 52
PENANG.

This Indenture made the 1st day of November, 1952, Between Tan Geok Kim, spinster, presently of No. 55 Glenbuck Court, Surbiton, Surrey, England, (hereinafter called the Vendor) of the one part and Oon Guan Yong, general medical practitioner of No. 2837 Bagan Jermal, Butterworth, Province Wellesley (hereinafter called the Purchaser) of the other part.

10

Witnesseth that in consideration of the sum of Dollars Nine thousand only (\$9000/-) paid by the Purchaser to the Vendor on or before the execution of these presents (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner hereby conveys unto the Purchaser All the land and hereditaments more particularly described in the Schedule hereto To Hold the same unto the Purchaser in fee simple.

20

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

30

The Schedule above referred to

All the one undivided fourth (1/4) share right title and interest in and to All that piece of land and hereditaments situate in the Northern District of Province Wellesley comprised in Indenture No. 4276 which said piece of land is known as Lot 275(1) Mukim 14 and is estimated to contain an area of 7 acres 3 roods and 36 poles

Signed Sealed and Delivered)
by Lim Swee Ngor, the duly } Sd: Tan Geok Kim
Constituted attorney of the } by her Attorney
said Tan Geok Kim in the } Lim Swee Ngor L.S.
presence of

40

Sd: B.H.Oon Solicitor Penang.

On this 1st day of November, 1952 before me Beng Hong Oon, an Advocate and Solicitor of the Supreme Court of the Federation of Malaya, practising in the Federation of Malaya, Settlement of Penang personally appeared Lim Swee Ngor the duly constituted attorney of Tan Geok Kim who of my own personal knowledge I know to be the identical person whose name "Lim Swee Ngor" preceded by the words "Tan Geok Kim by her attorney" is subscribed to the within written instrument and acknowledged that she had voluntarily executed this instrument at Penang.

10

Plaintiffs' Exhibits

AB 2.25

Conveyance
 Regd.No.31
 Volume 964
 1st November
 1952
 (continued)

Witness my hand

Sd: B. H. Oon

Advocate & Solicitor

Penang.

Registered on the 3rd day of March 1953 at 3.03 p.m. Under Lots Nos. and Titles given in the Schedule presented in Vol. 964 Page 124 No. 31.

20

THE SEAL OF THE
 REGISTRY OF DEEDS
 PENANG.

Sd: Yeap Kee Aik
 Dy. Registrar of Deeds, Penang.

P.W. North
 Mukim 14

Lot	a r p
275 ¹	7 3 36

30

Sd:

Collector of Land Revenue,
 Butterworth P.W.

8.12.52.

Plaintiffs'
Exhibits

Dated this 1st day of November, 1952

AB 2.25

Tan Geok Kim

to

Conveyance
Regd.No.31
Volume 964
1st November
1952
(continued)

Oon Guan Yong

C O N V E Y A N C E

LIM, LIM & OON,
ADVOCATES & SOLICITORS,
287, CROSS STREET,
BUKIT MERTA JAM.

EXHIBIT AB 2.26

CONVEYANCE IN FAVOUR OF OON PEH TCHIN
AND OON PEH SENG (LOT 275(1)-2/4 SHARE)
REGD. NO. 70 VOLUME 985

Plaintiffs'
Exhibits

AB 2.26

10	\$122.00 STAMP OFFICE PENANG 7 X 55	\$66.00 STAMP OFFICE PENANG 29 VI 55	\$122.00 STAMP OFFICE PENANG 12 X 55	Deficient Stamp Duty Reduced Penalty	\$122.00 122.00 <u>\$244.00</u>
----	--	---	---	---	---------------------------------------

Conveyance
Regd.No.70
Volume 985
22nd June,
1955

Sd:
Dy. Collector of Stamp Duties
Penang.

20 This Indenture made the 22nd day of June, 1955
Between NG KHOEN KIOEN of No. 2837 Bagan Jermal,
Butterworth, Province Wellesley Clerk (herein-
after called the Vendor) of the one part and OON
PEH TCHIN and OON PEH SENG both of No. 55 Glenbuck
Court, Surbiton, Surrey, England, Students (herein-
after called the Purchasers) of the other part
Witnesseth that in consideration of the sum of
Dollars SIX THOUSAND AND SIX HUNDRED only
(\$6,600.00) paid by the Purchasers to the Vendor
on or before the execution of these presents (the
receipt whereof the Vendor hereby acknowledges)
the Vendor as beneficial owner hereby conveys unto
the Purchasers All the land and hereditaments more
particularly described in the Schedule hereto To
30 Hold the same unto the Purchasers in fee simple
as joint tenants.

The Schedule above referred to

All that the two-fourth (2/4) undivided share
right title and interest in and to All that piece
of land and hereditaments situate in the Northern
District of Province Wellesley comprised in
Indenture No. 4276 known as Lot 275(1) Mukim 14
and estimated to contain an area of 7 acres 3 roods
and 36 poles.

40 And Also All that the one-third (1/3) undivided
share right title and interest in and to All that

Plaintiffs' Exhibits

AB 2.26

Conveyance Regd.No.70 Volume 985 22nd June 1955 (continued)

piece of land and hereditaments situate in the Northern District of Province Wellesley comprised in Indenture No. 4276 known as Lot 273(1) Mukim 14 and estimated to contain an area of 1 acre 1 rood and 01.7 poles.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed Sealed and Delivered) in the presence of Sd: Ng Khoen Kioen L.S. 10 Sd: Chang Min Tat Advocate & Solicitor Penang.

On this 22nd day of June 1955, before me, Chang Min Tat an Advocate and Solicitor of the Supreme Court of the Federation of Malaya, practising in the Federation of Malaya, Settlement of Penang, personally appeared Ng Khoen Kioen who of my own personal knowledge I know to be the identical person whose name "Ng Khoen Kioen" is subscribed to the within-written instrument and acknowledged that he had voluntarily executed this instrument at Penang.

20

Witness my hand, Sd: Chang Min Tat Advocate & Solicitor, Penang.

P. W. NORTH MUKIM 14

Lot a r p 30 275(1) (2/4 und. sh.) 7 3 36 273(1) (1/3 und. sh.) 1 1 01.7

Sd: Gunn Chit Tuan Dy. Collector of Land Revenue Bitterworth, P. W. 16.7.55.

Registered on the 20th day of August 1955 at 10.33 a.m. Under Lots Nos. and Titles given in the Schedule presented in Vol. 985 Page 280 No. 70. 40

THE SEAL OF THE REGISTRY OF DEEDS PENANG. Sd: Dy. Registrar of Deeds Penang.

Dated this 22nd day of June, 1955

Plaintiffs'
Exhibits

AB 2.26

to

Conveyance
Regd.No.70
Volume 985
22nd June
1955
(continued)

Lots 275¹ & 273¹ Mk. 14
P.W.N.

C O N V E Y A N C E

LIM, LIM & OON,
Advocates & Solicitors
287 Cross Street,
Bukit Mertajam,
Province Wellesley.

Plaintiffs' Exhibits

EXHIBIT AB 2.27

LEASE 1182

AB 2.27

ORIGINAL

Issued vide RCP/1074;
DOB. 313/54

Lease 1182
12th August
1959

FEDERATION OF MALAYA

Sd:

STATE OF PENANG

Collector of Land Revenue,
Butterworth, P.W.

LEASE No. 1182

10

[The State Land Ordinance (S.S. Chapter 113).]

THIS LEASE made the 12th day of AUGUST, 1959, under the Lands Ordinance (S.S. Chapter 113) BETWEEN His Excellency the Governor of the State of Penang (hereinafter called the LESSOR) of the one part and The Central Electricity Board of the Federation of Malaya (hereinafter called the LESSEE which expression where the context so admits shall include successors in title) of the other part.

WITNESSETH as follows :

20

a That in consideration of the sum of Dollars Seven thousand and Eight hundred and four only (\$7,804.00) paid as premium and of the

a

b That in consideration of the b annual rent hereby reserved and of the covenants and conditions on the part of the LESSEE to be performed and observed whether expressed or implied herein by virtue of the provisions of Sections 4 and 6 of the Lands Ordinance the LESSOR HEREBY DEMISES unto the LESSEE ALL that land described in the Schedule hereto and delineated on the plan attached hereto and thereon edged in Green TO HOLD the same unto the LESSEE for the term of Thirty-three (33) years from 12th December, 1957 YIELDING AND PAYING without demand on the First day of January in every year in advance at the Land Office at Butterworth, P.W. or such other place as the Collector of Land Revenue of the district in which the land is situate may from time to time appoint

30

40

the yearly rent of Dollars One thousand Four hundred and Eighteen only (\$1,418.00)

Plaintiffs'
Exhibits

AB 2.27

Lease 1182
12th August
1959
(continued)

10 THE LESSEE HEREBY COVENANTS with the LESSOR, his SUCCESSORS and ASSIGNS, that the LESSEE (i) will pay to the LESSOR, his SUCCESSORS and ASSIGNS, the annual rent at the time and in the manner aforesaid and (ii) will maintain in substantial repair all landmarks by which the boundaries of the land demised are defined, and c (iii) will not assign or demise such land during the term of Ten (10) years to be computed from 12th December, 1957 and will not thereafter assign or demise such land in parcels or otherwise than the entirety thereof without the consent in writing of the LESSOR first obtained. c

20 It shall be a condition of the LEASE that the LESSEE will farm, cultivate, manure and manage the whole of the land demised in a good, clean and husband like manner to the satisfaction of the Collector of Land Revenue of the district in which the land is situate and will keep the whole thereof in good heart and condition and will not allow any part to become impoverished, injured or deteriorated.

30 It shall be a further condition of this LEASE that the LESSEE shall not plant or suffer or permit to be planted on the land demised any rubber plant, that is to say, any of the following plants, Hevea Brasiliensis (Para Rubber), Manihot Glaziovii (Ceara Rubber), Castilloa Elastica, Ficus Elastica (Rambong), or any other plant which the Governor by notification in the Gazette shall have declared to be a rubber plant.

It shall be a further condition of this LEASE that the LESSEE will comply with any directions issued or which may hereafter be issued for the cultivation of any regulated crop notified or which may hereafter be notified as regulated by Rule or other regulation under the Lands Ordinance.

40 It shall be a further condition of this LEASE that the LESSEE will comply with the provisions of the Rice Cultivation Ordinance (S.S. Chapter 145) if such provisions are applied to the land hereby demised (or any part thereof) in the manner prescribed by law; and will further comply with all statutory and other provisions and regulations for

Plaintiffs' Exhibits

AB 2.27
Lease 1182
12th August
1959
(continued)

the time being in force relating to the cultivation of padi.

It shall be a further condition of this LEASE that by the day of _____, 19____, there shall have been erected on the land demised a substantial building to the specifications and satisfaction of

It shall be a further condition of this LEASE that the LESSEE will not erect, or cause or suffer or permit to be erected, on the land demised any dwelling, shelter, enclosure or store without the previous consent in writing of the Collector of Land Revenue of the district in which the land is situate.

10

SPECIAL CONDITIONS (IF ANY)

PROVIDED ALSO that it shall be a further condition of this LEASE that --

- (1) Alienated for the purpose of quarters which must be built within 2 years from the date of alienation;
- (2) The Lessee will pay and discharge all taxes, rates and assessments whatsoever now or hereafter to become payable for or in respect of the said land hereby demised.

20

II. AND IT IS HEREBY AGREED that if there shall be any failure by the LESSEE to perform or observe any covenant, condition, stipulation, agreement or provision herein contained or implied by any written law for the time being in force, then the LESSOR may at any time thereafter re-enter upon the demised property or any part thereof and thereupon this demise shall absolutely determine without prejudice to any remedy or right of action under the Government Proceedings Ordinance 1956 or otherwise which might accrue in respect of any of the tenant's covenants herein contained or implied in the manner hereinbefore described.

30

III. IT IS HEREBY FURTHER AGREED that the burden of the aforesaid covenants conditions shall run with the land demised.

40

IV. IT IS HEREBY FURTHER AGREED that --

Plaintiffs' Exhibits

If the LESSEE is desirous of dividing or partitioning the land hereby demised, he may apply to the LESSOR to accept the surrender of this LEASE and to demise the land comprised herein in parcels:

AB 2.27
Lease 1182
12th August
1959
(continued)

10 Whereupon the LESSOR, if satisfied with the title of the LESSEE and on payment by the LESSEE of all costs and expenses of or consequent upon such application, and if satisfied also that the parcels will be of such size that they can be efficiently managed may in his discretion accept a surrender of this Lease and may issue in lieu thereof to the LESSEE Leases of the said land in such portions as the LESSEE desires. Such Leases shall be subject to the same terms and conditions as are herein mentioned.

20 Provided that no such division or partition shall be allowed unless all arrears (if any) of rent under this LEASE has been paid and PROVIDED FURTHER that in no Lease issued in virtue of this Clause shall a less rent than fifty cents per annum be reserved.

IN WITNESS WHEREOF I, Raja Tun Uda bin Raja Muhammad Seri Maharaja Mangku Negara Governor of the State of Penang, have hereto set my hand and affixed the Public Seal of the State and * the LESSEES has/have hereto set his/their hands and seals * the LESSEE has caused its Common Seal to be hereto affixed the day and year first above written.

30 SIGNED, and the PUBLIC SEAL) of the State was hereto affixed by the Governor in the presence of : } Sd: Governor, Penang.

Sd.
State Secretary, Penang.

L.S.

SIGNED SEALED AND DELIVERED) by the said in the presence of :

Plaintiffs' Exhibits

AB 2.27

Lease 1182
12th August
1959
(continued)

THE COMMON SEAL of
The Central Electricity
Board of the Federation
of Malaya was hereto
affixed in the presence
of :

Sd. Deputy Chairman,
CENTRAL ELECTRICITY BOARD
Federation of Malaya.

Sd: REGISTRAR
OF TITLES
STATE OF
SELANGOR

Sd. Secretary
CENTRAL ELECTRICITY BOARD
Federation of Malaya.

10

SCHEDULE

ALL that piece of land known as Lot 808 and
situate in the Mukim of 14 District of Butterworth,
P.W. North in the State of PENANG as delineated on
the plan attached hereto and thereon edged in Green
and containing by admeasurement an area of 119,287 sq.
ft. acres roods poles.

PARTICULARS OF REGISTRATION

No. 831

Registered at the District/Land Office,
Butterworth, Province Wellesley this 17th day of
September, 1959, under the number noted above.

20

Engrossed by:
Examined by :

Sd.
Dy. Collector of Land Revenue
District Officer,
Butterworth.

Certified under Sec. 3 of the Land and Mining Plans (Photographic Copies) Ordinance, 1950, to be an accurate Copy of Plan 30567 made on 20.10.1958.

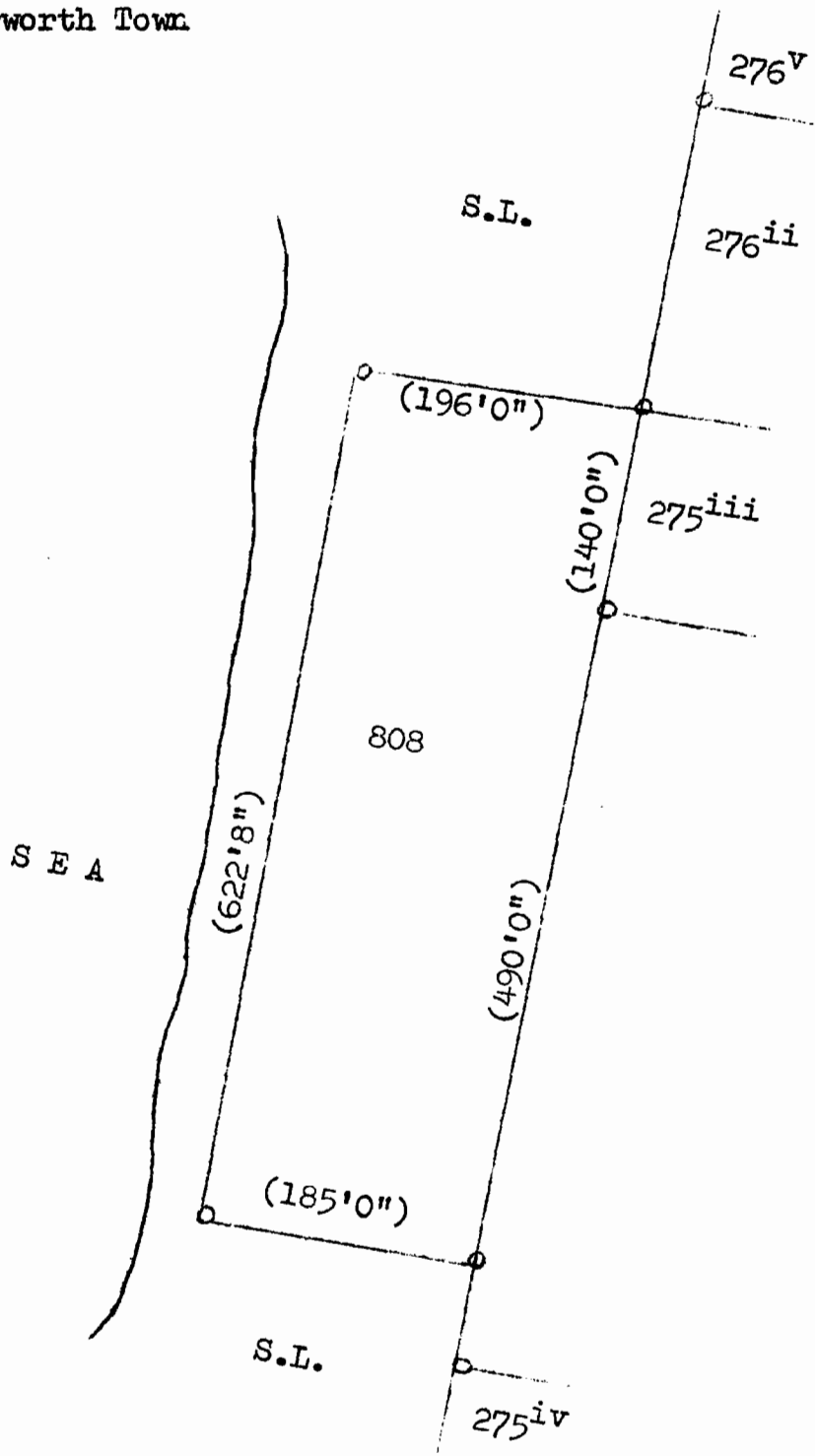
Lot 808
Mukim 14
NORTHERN DISTRICT
PROVINCE WELLESLEY
Scale 2 Chains to an Inch
Butterworth Town

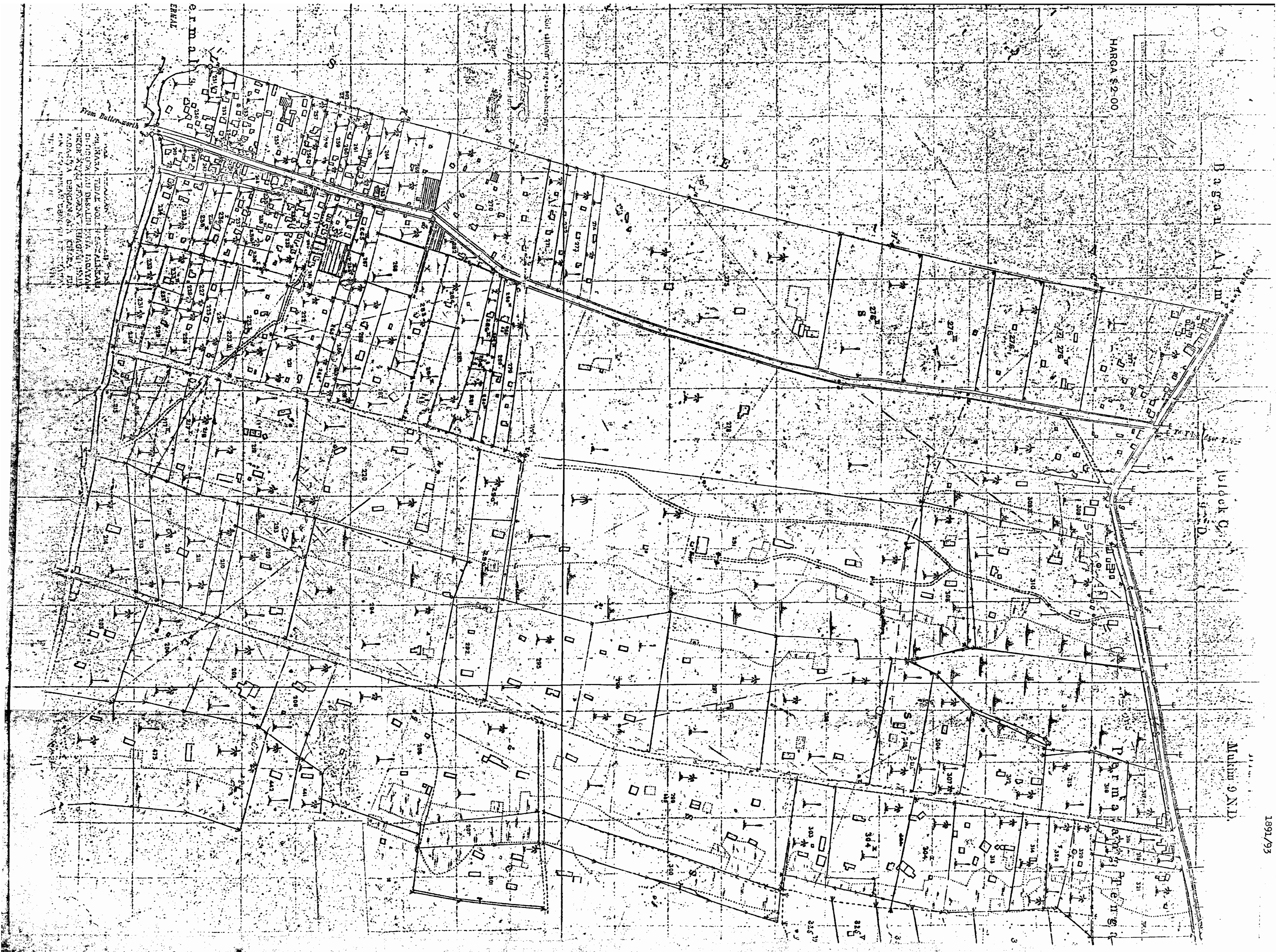
Sd.
Chief Surveyor,
Penang.

Plaintiffs'
Exhibits

AB 2.27

Lease 1182
12th August
1959
(continued)





Plaintiffs' Exhibits
 AB.3-2
 Plan of Block Sheet
 (Kelly Plan)
 1891/93

XVI. 6

KETUA JURU MUKIM
KOTA BUKIT
Check No. F 2108/19
Terdah. 16. 4. 1916

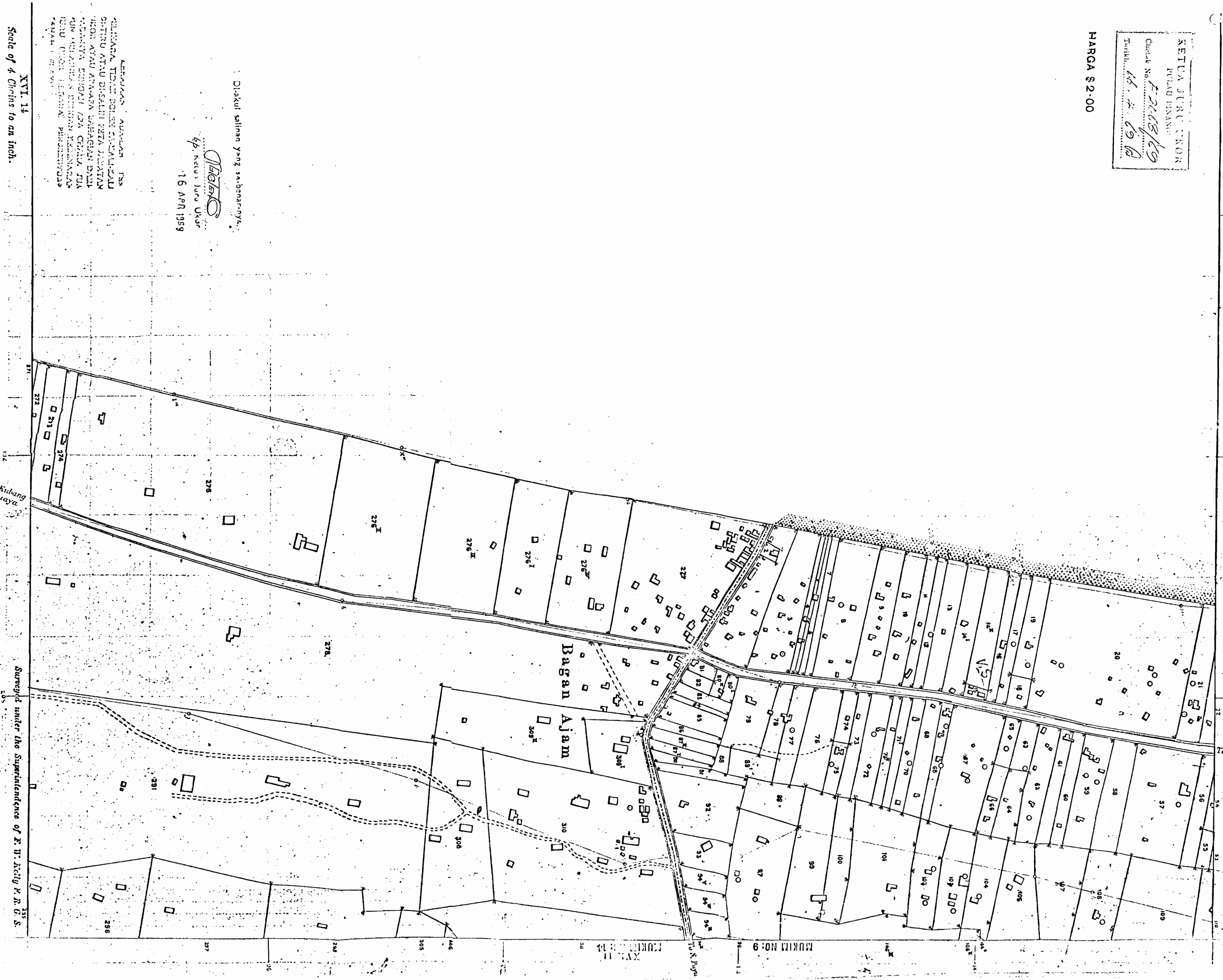
HARGA \$2.00

Di-aku salinan yang sa-benar-nya.

M. K. D.
bp. Ketua Juru Ukur
16 APR 1959

LEMBAGA ANGGARAN PISA
SILHANA TIDAK BOLEH CAKUPKAN
SHIRU ATAU DISALIN BETA JAWATAN
KOR ATAU AYAKAN WARANGAN BUKU
MENDANYA BERGALI DA CHALVA TUA
MUN PERAMBAK BERIKAN KESANAKAN
KORU KORU LEMBAK PERANGKAPAN
KORU KORU

XVI. 14
Scale of 4 Chains to an inch.



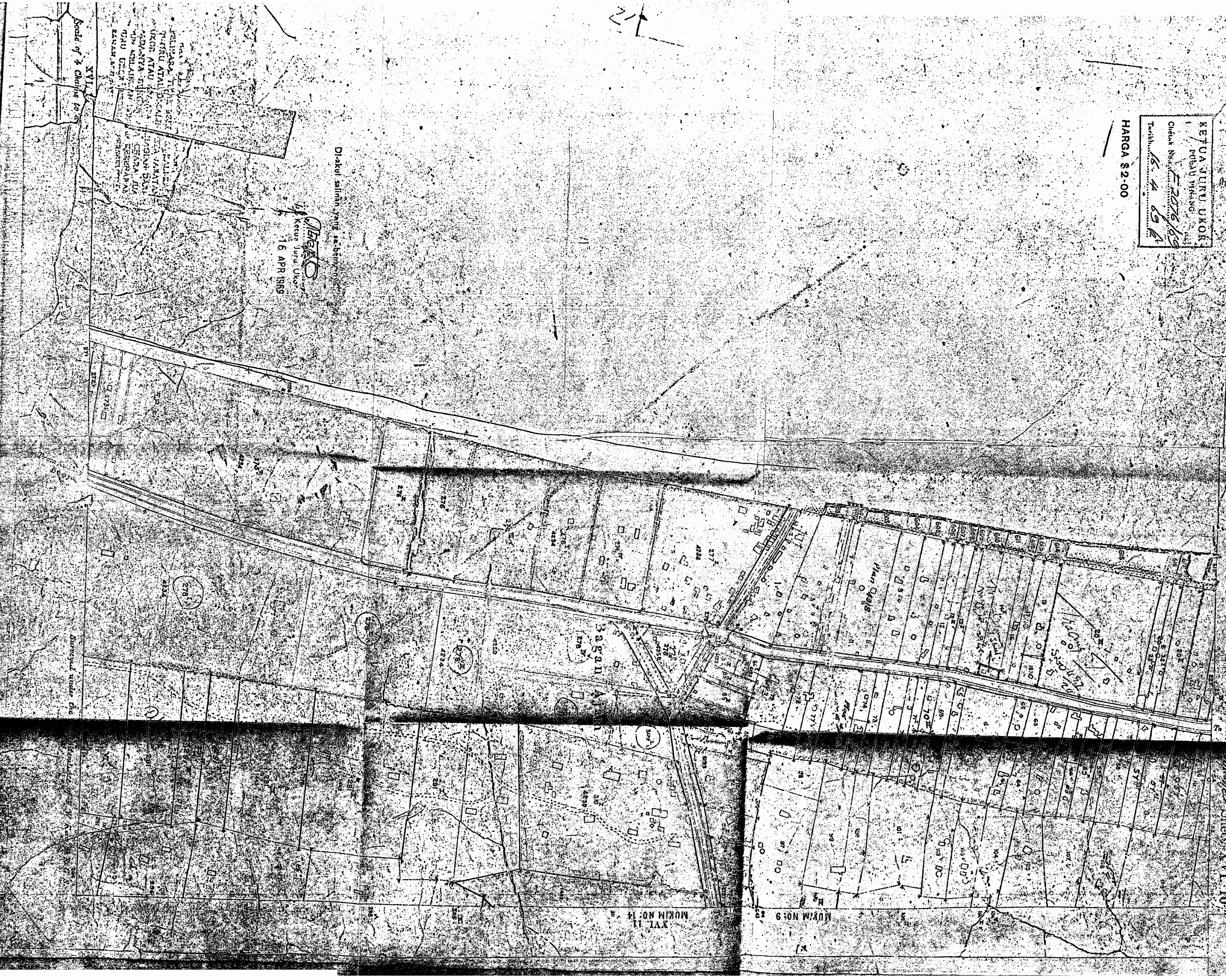
Marginal Sheet XVI. 10

Surveyd under the Superintendence of F. W. Kelly R. R. G. S.

XVI. 6

KEPUA JURU UKOR
POLAH WILANG
Client No. F 2076/159
Tarih 16 4 69

HARGA \$2-00



Di-akui salinan yang sah dengan
MAGRO
Keuas Juru Ukor
16 APR 1969

Scale of 4 Changes to 1

Sheet XVI. 10

XVI. 11
MUKIM NO. 14

MUKIM NO. 9

AB.3-5

Plan No.1174 showing survey for fixation of obelisks along sea coast Mukim 14 P.W. North

9th December 1924

REKORD JURU UKUR PULAU PINANG

Cetakan No. F-2651/69

Tarikh 5 MAY 1969

HARGA \$2.00

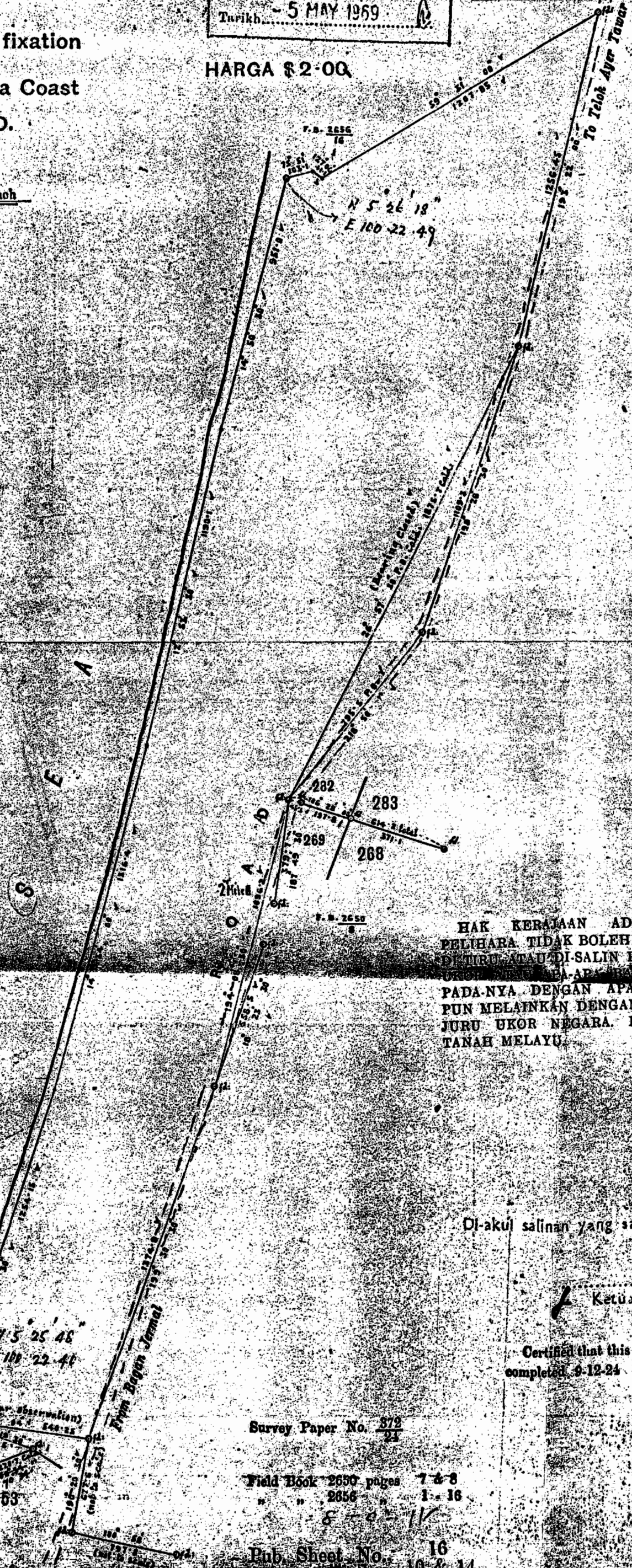
PLAN

Showing survey for fixation of Obelisks along Sea Coast

MUKIM 14, N. D.

P. W.

Scale 4 Chains to an Inch



HAK KERAJAAN ADA-LAH TERPELIHARA TIDAK BOLEH SA-KALI-KALI DITIRU ATAU DISALIN PETA JABATAN UTAMA ATAU APA-APUN DARI PADA-NYA DENGAN APA CHARTA JUAH PUN MELAINKAN DENGAN KEBENARAN JURU UKUR NEGARA PERSEKUTUAN TANAH MELAYU.

Height taken from Solar Obsn: at A (Fort Cornwallis Meridian) 1st Class Survey

Drawn by *Barwood* 20-12-24
 Checked by *K. H. H. H. H.* 7-1-25
 by *Barwood* 7-1-25
 by *W. H. H. H.* 7-1-25

Di-akui salinan yang sa-b- ar-ny-
[Signature]
 Ketua Juru Ukur
 5 MAY 1969

Certified that this plan correctly represents a survey completed 9-12-24 by me personally

[Signature]
 Assistant Surveyor

Survey Paper No. 372
 Field Book 2650 pages 7 & 8
 " " 2656 " 1 & 16
 " " 8-0-11
 Pub. Sheet No. 16
 10 & 14

PLAN

Showing excisions for widening the Main Road
between Portions 277 & 278

MUKIM 14, N. D.

P. W.

Scale 4 Chains to an Inch

HARGA \$ 2.00

Note
For subdivision of Portion 278 see plan 4250

No	Per	Area
1	278 ^{1/4}	0a. 1r. 03p.
2	278 ^{1/2}	0a. 0r. 09p.
3	278 ^{3/4}	0a. 0r. 30p.
4	278 ^{1/4}	0a. 1r. 24p.
5	275 ^{1/4}	0a. 1r. 20p.
6	276 ^{1/4}	0a. 0r. 13p.
7	276 ^{1/2}	0a. 0r. 09p.
8	276 ^{3/4}	0a. 0r. 14p.
9	276 ^{1/4}	0a. 0r. 09p.
10	276 ^{1/2}	0a. 0r. 12p.
11	277 ^{1/4}	0a. 0r. 15p.



No	Bearings	Distances
1	N 76° 30'	37.15
2	S 61° 32' 00"	71.00
3	S 45° 17' 00"	104.75
4	S 63° 32' 00"	151.10
5	S 69° 19' 00"	222.82

Former Lot	Mukim	New Lot	Section	TOWN
277 ^{1/4}		31		
276 ^{1/4}		32		
276 ^{1/2}		33		
276 ^{3/4}		34		
278 ^{1/4}		35		
279		36		

Note: -
Care due to the change of lot numbers on this Plan are certified by me.

Di-akui oleh saya
Ketua Juru Ukur
K. J. S. S. S.

Amendment made due to Gaz. Notn.
P.U. No. 50 of 30-6-55.
Ketua Juru Ukur

Certified that this plan correctly represents a survey completed 30-12-24 by me personally.

MAI KERTAMAN ADALAH IBA
ALIHAN TIDAK BOLEH SAKALIKAN
DI TIRU ATAU DIGALIN PETA JALAMAN
USOR ATAU AYANYI BAHAGIAN DARI
PADANYA DENGAN APA CERAHA DAN
MUN MELALIFAN DENGAN KESIMPULAN
TURU CECAT KERTAMAN KERTAMANYA

Survey Paper No. 408

Scale 1" = 40 Chains

Sheet No. 16

Vol. 14 pp 188-189
19 " 180 to 195

Second Class Survey

Drawn by P. W.

Examined by P. W.

Plan approved by P. W.

Cal

PLAN

of Portions 275^I, 275^{III} & 275^{IV} See Note

MUKIM 14

NORTHERN DISTRICT
PROVINCE WELLESLEY

Scale Four Chains to an Inch

Original Plan 4234

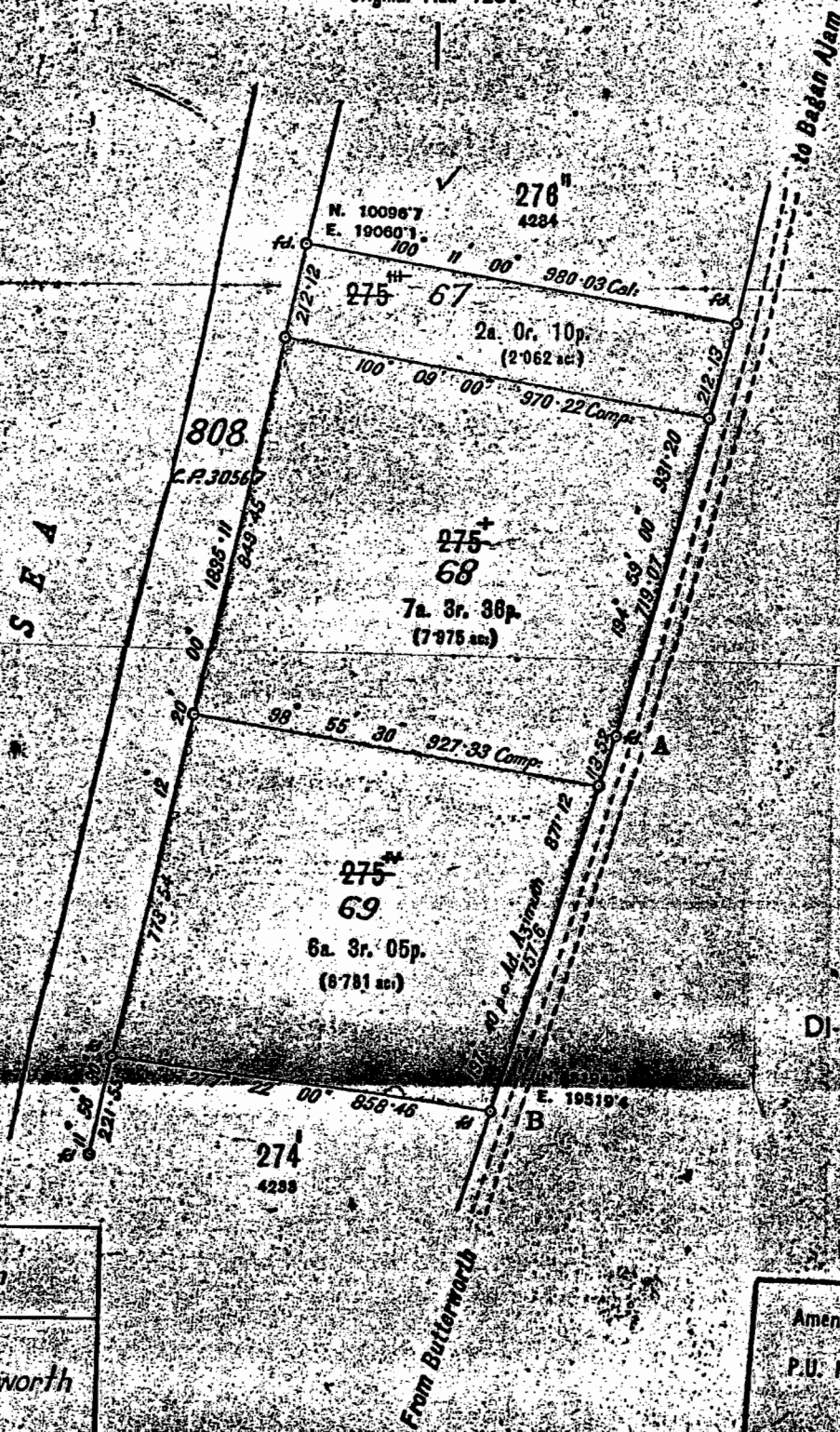
Plaintiffs' Exhibits

AB.3-7

Plan of Lots 275(1),
275(3) and 275(4),
Mukim 14. P.W. North

2nd February 1935

HARGA \$ 2-00



Di-akui salinan yang sa benar

Ketua Juru Ukur

8 APR 1935

Mukim	New Lot	Section	Town
	67		
	68	1	Butterworth
	69		

Amendment made due to Gaz. Notn
P.U. No. 50 of 30-6-66.
Ketua Juru Ukur

PERKARA KERAJAAN ADALAH TER
TELHARA TIDAK BOLEH SA-KALI-KALI
DI-TIRU ATAU DI-SALIN PETA JABATAN
UKUR ATAU APA-APA BAHAGIAN DAR
PADANYA DENGAN APA CHARA JUA
PUN MELAINKAN DENGAN KEDENARAN
JURU UKUR NEGARA MERSERTITIAS
TANAH MELAYU

Survey completed on 2-2-35
by S. Murugasoo

From A to B
Cornwallis Meridian

Almazom 8.3.35

Almazom 8.3.35

W. N. 11.3.35

49 p1

Survey Paper No. 584 - 84

D. O. P. W. " 580 - 84

Field Book 6009 pages 1 - 4

Std. Sheet No. 8 - C - II & C - IV

Assistant Surveyor

Plan No. 2867

EXHIBIT AB 4.
COPY OF GOVERNMENT NOTIFICATION No. 363

Plaintiffs'
Exhibits

PUBLIC RECORD OFFICE COPY
(Pursuant to Statute 6 & 7 Elizabeth II)

AB 4. 1-2

Colonial Office, Straits Settlements, Government Gazettes Volume 30 1895 January-June <u>[C.O.276/30]</u>	Copy No. 616 C/E
--	------------------------

Copy of
Government
Notification
No. 363
27th June 1895

STRAITS SETTLEMENTS GOVERNMENT GAZETTE, JUNE 27, 1895
657

10 No. 363.- GENERAL NOTICE UNDER SECTION 15 OF
ORDINANCE VIII OF 1884.

All persons owning, occupying or otherwise interested in any lands situated within those portions of the Northern District of Province Wellesley in the Settlement of Penang, which are bounded as follows:-

Mukim No. I, Kuala Muda.

North by the River Muda.
South by the Tumbus River or Canal.
20 East by the Road from Sungei Tumbus Village to River Muda.
West by the Seashore from Kuala Tumbus to Kuala Muda.

Mukim No. IV, Penaga

North and North-East by the Sungei Tumbus and the Main Road from Sungei Tumbus Village to Simpang Ampat, Permatang Sintoh.
South by the Main Road from Simpang Ampat, Permatang Sintoh to Titi Abdul and thence
30 by Titi Abdul River to the Sea.
West by the Sea.

Mukim No. V, Lahar Ikan Mati.

North by the Canal running from Sungei Tumbus to Tanjong Rambai.
South and South-West by the Road from Simpang

Plaintiffs'
Exhibits

AB 4. 1-2

Copy of
Government
Notification
No. 363

27th June 1895

(continued)

Ampat, Permatang Sintoh to Permatang Bertam and Road from Sungei Tumbus Village to Simpang Ampat, Permatang Sintoh.
East by the Road From Permatang Bertam to Lahar Ikan Mati and thence by Lahar Ikan Mati to Tanjong Rambai.

Mukim No.VII, Telok Ayer Tawar.

North and North-West by Titi Abdul River and Road from Titi Abdul to Simpang Ampat, Permatang Sintoh. 10
South by Lots 1 VI and 1 III Mukim VII and Permatang Kuching Road.
East by Mukim VIII.
West by the Sea.

Mukim No. VIII, Bertam.

North by Road from Permatang Binjai to Kapala Batas and Road from Pajak Song to Ararendang.
South by Road from Ararendang to Permatang Toh Jayah. 20
East by Bertam Estate and Road from Nior Sabatang to Simpang Ampat, Ararendang.
West by Mukim VII.

Mukim No. IX, Telok Remis.

North by Road from Main Penaga Road through Permatang Kuching to Simpang Ampat, Pekan Darat.
South by Road from Sea to Maklom.
East by Road from Simpang Ampat, Pekan Darat to Maklom. 30
West by the Sea.

Mukim No. X, Sungei Dua and Maklom.

North by Road from Permatang Toh Jayah to Simpang Ampat, Permatang Buloh.
South by Road from Maklom to Sungei Dua.
East by Road from Sungei Dua to Simpang Ampat, Permatang Buloh.
West by Road from Permatang Toh Jayah to Maklom. 40

Mukim No. XI, Permatang Krai.

North by Road from Simpang Ampat, Permatang
 Buloh to Simpang Tiga, Ararendang.
 South by the Rivers Prai and Jarak.
 East by Road from Simpang Tiga, Ararendang to
 Nior Sabatang, and from Nior Sabatang to
 Padang Manorah.
 West by Road from Aor Gading Ferry to Simpang
 Ampat, Permatang Buloh.

Plaintiffs'
 Exhibits

AB 4. 1-2

Copy of
 Government
 Notification
 No. 363

27th June 1895

10 Mukim No. XII, Sungei Kreh.

North by the Kreh River and Road from Simpang
 Ampat, Ararendang to Tassek Glugor.
 South by the Jarak River.
 East by the Kedah Frontier.
 West by the Road from Simpang Ampat, Ararendang
 to Nior Sabatang and from Nior Sabatang to
 Padang Manorah.

(continued)

Mukim No. XIII, Jarak.

20 North by the Jarak River.
 South by the Kulim River.
 East by the Kedah Frontier.
 West by the Rivers Prai and Jarak.

Mukim No. XIV, Bagan Ajam.

30 North by the Main Road from the Sea at Bagan
 Ajam to Sungei Puyu.
 South by the Road from Jetty at Bagan Tuan
 Kechil to Pontoon Bridge, Bagan Serai.
 East by the River Prai and by the Road from
 Bagan Lalang to Sungei Puyu.
 West by the Sea.

Mukim No. XV, Kuala Prai and
 Butterworth.

North by Road from Jetty at Bagan Tuan Kechil
 to Pontoon Bridge, Bagan Serai.
 South and East by the Prai River.
 West by the Sea.

40 are hereby informed that the maps of the said Sub-
 divisions of the said District are now open to
 inspection every day (Sundays and Government Holidays
 excepted) at the District Office, Butterworth, and at

Plaintiffs'
Exhibits

the Revenue Survey Office, Penang, between the hours of 10 A.M. and 4 P.M. (Saturdays 1 P.M.).

AB 4. 1-2

Copy of
Government
Notification
No. 363

Any person who may have any objection to make to any boundary shown in the said maps is hereby required to submit a written statement of such objection within three months from the date of publication of the present notice.

27th June 1895

A. W. S. O'SULLIVAN,

(continued)

Acting Senior District Officer
and Collector of Land Revenue.

10

DISTRICT OFFICE,
Butterworth, 20th June, 1895

I certify that the foregoing is a true and authentic copy

6 MAY 1963

(Sgd.)

Assistant Keeper of the Public
Records.

EXHIBIT AB4.3
COPY OF LETTER FROM B.H.OON TO COLLECTOR OF
LAND REVENUE BUTTERWORTH

Plaintiffs'
Exhibits

AB4.3

Our Ref: BHO/R/C

LIM, LIM & OON,
ADVOCATES & SOLICITORS

28th June, 1955

Copy of
Letter from
B.H.Oon to
Collector of
Land Revenue
Butterworth

28th June 1955

10 The Collector of Land Revenue,
District Office,
Butterworth.

Dear Sir,

Will you kindly inform me :-

- (i) How and under what authority the accretion abutting on Lots 274(1), 275(1), 275(111) 275 (IV), 276(11) etc. Mukim 14 P.W.N. is claimed to be Crown Land?
- (ii) What is the westward boundary of the above lots according to their original Title or Grant?
- 20 (iii) A photostat print of these lots in my possession dated 28th May 1955 shows the west boundary as being a fixed line. How and when was this fixed boundary established?

Your early reply will be appreciated.

Yours faithfully,

Sd. B. H. Oon.

Plaintiffs'
Exhibits

EXHIBIT AB4.4
COPY OF LETTER FROM COLLECTOR OF LAND REVENUE
BUTTERWORTH TO LIM, LIM & OON.

AB4.4

Copy Letter
from Collector
of Land
Revenue Butter-
worth to Lim,
Lim & Oon
21st November
1955

Ref: No: DOB 168/55/6
Tel B'worth 61

District Office,
Butterworth P.W.
21st November, 1955

Messrs.Lim, Lim & Oon,
Advocates and Solicitors,
Penang.

Sirs,

Crown Land adjoining Lots 274(1)
275(1) etc. Mukim 14 P.W. North
(Bagan Ajam)

10

I am directed to refer to your letter Ref.
BHO/R/C dated 28th June 1955 on the above matter and
to inform you that the abovementioned lots were
covered by Indenture No:4276 of 1850 and the plan
drawn thereon shows the western boundary as a straight
line joining one point to the other.

2. The present survey made in 1924 adopted the
original boundary marks found at the western
boundaries according to Kelly's survey, which marks
are identical with that shown on the Map published
under the Boundaries Ordinance (now Cap. 130 of the
S.S. Laws) by G.N. NO: 363 of 27.6.1895.

20

3. The Land outside the said western boundaries of
the lots is therefore Crown Land. I am also to
point out that the said land outside the western
boundaries are and have been held under Temporary
Occupation Licences from the Crown.

30

I am, Sirs,

Your obedient servant.

Sd. Gunn Chit Tuan

For Collector of Land Revenue
Butterworth.

EXHIBIT AB4.5
COPY OF LETTER FROM B.H.OON TO COLLECTOR OF
LAND REVENUE BUTTERWORTH

Plaintiffs'
Exhibits

AB4.5

LIM, LIM, & OON
ADVOCATES & SOLICITORS

Copy Letter
B.H.Oon to
Collector of
Land Revenue
Butterworth

BHO/KS

16th March, 1956

The Collector of Land Revenue,
Butterworth

16th March,
1956

Crown Land adjoining Lots 274(1), 275(1)
etc. Mukim 14 P.W. North (Bagan Ajam)

10

Dear Sir,

I refer to your letter DOB 168/55/6 dated the
21st November, 1955.

I cannot agree with the statement in paragraph
one with regard to the western boundary. If it was
intended when the land was alienated that the boundary
was to be straight line it would or could have been
so stated in the Indenture instead of the description
"West by sea beach Four thousand and sixty seven
feet".

20

As it is, this description is definite and
admits of no ambiguity that the Sea beach is the
boundary on the west. Wherever the sea beach happens
to be, that is the western boundary of the land.

In the circumstances it is my contention that
the Government has no claim at all to the land lying
between the Sea beach and my land. I claim this land
it cannot be deemed to be Crown Land.

30

The Government therefore has not the right to
have issued Temporary Occupation Licences.

Yours faithfully,

Sd. B. H. Oon.

Plaintiffs'
Exhibits

AB4.6

Copy Letter
Hogan Adams
& Allan to
Collector of
Land Revenue
Butterworth
8th November,
1958

EXHIBIT AB4.6
COPY OF LETTER FROM HOGAN, ADAMS & ALLAN
TO COLLECTOR OF LAND REVENUE BUTTERWORTH

Our ref: RDH/BBW

HOGAN, ADAMS & ALLAN,
ADVOCATES & SOLICITORS

4A & B BEACH STREET,
LOGAN'S BUILDING,
PENANG.

8th November, 1958

Sir,

Lots 271(1), 275(1) & 270(1) Mukim 14
P.W. North

10

Mrs. B. H. Oon has handed us your three notices all dated the 3rd September 1958 relating to the land adjoining the above properties.

2. Mrs. Oon was in the United Kingdom in September and the notices were only received by her on her return to Malaya on November 4th.

3. Our client, and her co-owners, decline to remove from the said pieces of land. Although it is correct that she accepted a T.O.L. in respect of the land, she has always made it clear that the land in fact belongs to her and to her co-owners.

20

4. The land in question was formerly covered by the sea which gradually and imperceptibly receded. There is no doubt that where the sea so recedes, the land uncovered goes as an accretion to the land adjoining, in this case the land belonging to our client.

5. We are further instructed that recently persons have entered on the land so belonging to our client, and have plucked coconuts from the trees growing thereon. Will you please inform us if this was done with your consent or connivance, and if so the names of the persons so trespassing.

30

We have the honour to be,

Sir,

Your obedient servants,

Sd. Hogan, Adams & Allan.

The Collector of Land Revenue,
Land Office,
Butterworth,
P.W.

40

EXHIBIT AB4.7
COPY OF LETTER FROM COLLECTOR OF LAND REVENUE
BUTTERWORTH TO HOGAN, ADAMS & ALLAN

Plaintiffs'
Exhibits

AB4.7

Ref: DOB. 168/55(42)
Tel: B'worth 61

District Office,
Butterworth P.W.

12th December, 1958

Copy Letter
Collector of
Land Revenue
to Hogan Adams
& Allan

12th December
1958

Messrs. Hogan, Adams & Allan,
Advocates & Solicitors,
4-A & B Beach Street, Penang.

10 Gentlemen,

T.O.L. on State Land adjoining Lots 270(1),
271(1) and 275(1) Mukim 14 P.Wellesley North

I have the honour to refer to your letter
RDH/BBW of the 8th November 1958.

20 2. This matter has been the subject of lengthy corres-
pondence since the year 1955 and was subsequently
closed in 1956 upon the final opinion of the then
Legal Adviser, after consultation with the Commiss-
ioner of Lands, Federation of Malaya, and the
Solicitor-General who were in full agreement that the
accretion land is State Land.

3. With regard to your paragraph 4 would you please
refer to the copy of the Legal Adviser's opinion that
was forwarded to your client under cover of my letter
No: (37) of this series dated 31st December, 1956.

30 4. Referring to your paragraph 5 - the accretion
land (State Land) adjoining Lots 275(1) and 275(3)
Mukim 14 P.W. North has been alienated to the Central
Electricity Board with the approval of the State
Government.

5. At the present your client is still encroaching
upon the State Land and should be advised to remove
forthwith.

I have the honour to be,
Gentlemen,
Your obedient servant,

sd. Mohd. Ghazali

Collector of Land Revenue,
Butterworth.

40 CL/wap

(Mohd. Ghazali)

Plaintiffs'
Exhibits

EXHIBIT AB4.8
COPY OF LETTER FROM HOGAN, ADAMS & ALLAN TO
COLLECTOR OF LAND REVENUE BUTTERWORTH

AB4.8

Copy Letter
Hogan, Adams
& Allan to
Collector of
Land Revenue
Butterworth

HOGAN, ADAMS & ALLAN,
ADVOCATES & SOLICITORS

4A & B, BEACH STREET,
LOGAN'S BUILDING,
PENANG.

Our Ref: RDH/BBW

Your Ref: DOB.108/55(42)

18th December
1958

18th December, 1958.

Sir,

10

T.O.L. on State Land adjoining Lots
270(1), 271(1) and 275(1) Mukim 14
P.W.North

We have the honour to acknowledge the receipt of
your letter of the 12th instant, which however was
received only on December 16th.

2. Our client does not agree that the accretion is
State Land. We have been instructed to commence
proceedings against the State and the Central
Electricity Board for a declaration that our client is
entitled to the land in question and for ancillary
relief. 20

3. The copy of the Legal Adviser's opinion referred
to in the 3rd paragraph of your letter was handed by
us to our client and she will return it to us to be
forwarded to you in due course.

We have the honour to be,

Sir,
Your obedient servants,

Sd. Hogan Adams & Allan

30

The Collector of Land Revenue,
Butterworth,
P.W.

c.c. to Mrs. B.H.Oon,
c/o Messrs. Lim, Lim & Oon,
PENANG.

EXHIBIT AB4.9
COPY OF LETTER TO B.H.OON TO THE COLLECTOR OF
LAND REVENUE BUTTERWORTH

Plaintiffs'
Exhibits

AB4.9

BHO/sk

1st November, 61

The Collector of Land Revenue,
Butterworth.

Copy Letter
B.H.Oon to
Collector of
Land Revenue
Butterworth

Sir,

1st November
1961

E.I. Indenture of 1852

10 I have the honour to request you to let me
have a history of Lots 271(1), 275(1) and 275(3)
Mukim 14 Province Wellesley North from A.D.1852. I
undertake to pay your search fees.

Yours obediently,

Sd. B.H. Oon.

EXHIBIT AB4.10

COPY OF LETTER FROM COLLECTOR OF LAND REVENUE
TO LIM, LIM & OON.

AB4.10

Copy Letter
Collector of
Land Revenue
to Lim, Lim &
Oon

20 Tel: Butterworth 61.

District Office,
Butterworth, P.W.

2nd November, 1961.

Messrs.Lim, Lim & Oon,
Advocates & Solicitors,
3844 Bagan Luar Road,
BUTTERWORTH P.W.

2nd November
1961

E.I. Indenture 4276 of 1852

30 Reference to your BHO/sk of 1st November, 1961,
can you kindly elaborate on the "history" you
require concerning Lots 271(1), 275(1) and 275(3)
Mukim 14, Province Wellesley North.

Sd. Illegible.

Collector of Land Revenue,
Butterworth, P.W.
(Abu Mansor bin Haji Hassen)

Plaintiffs'
Exhibits

EXHIBIT AB4.11
COPY OF LETTER FROM B.H. OON TO COLLECTOR OF
LAND REVENUE BUTTERWORTH

AB4.11

Copy Letter
B.H. Oon to
Collector of
Land Revenue
Butterworth

Mrs. B.H. Oon

BHO/sk

4th November
1961

4th November, 61

The Collector of Land Revenue,
Butterworth,
Province Wellesley.

E.I.Indenture 4276 of 1852

10

In reply to your memo of 2/11/61 the history
required includes information as follows:-

In the Indenture of 1852 the area of the land
granted by the East India Company to John Forkes
Brown was about 94 acres.

When did it become known as Lots 271 and 275
and then when did Lots 271 and 275 become known as
Lots 271(1) and 275(1) and the reasons for the
subdivision.

When was Lot 275(1) subdivided again and the
reason therefor.

20

Was there a revision survey at any time after
1852.

Sd. Illegible.

Advocates & Solicitors.

EXHIBIT AB4.12
COPY OF LETTER FROM DISTRICT OFFICER BUTTERWORTH
TO LIM, LIM & OON

Plaintiffs'
Exhibits

AB4.12

Ref: No. DOB 168/55/(63)
Tel. No. B'worth 90.

Land Office,
Butterworth,

7th December 1961

Copy Letter
District Officer
Butterworth to
Lim Lim & Oon

7th December
1961

Messrs. Lim, Lim & Oon,
Advocates & Solicitors,
3844 Bagan Luar Road,
Butterworth.

10

Re: E.I. Indenture 4276 of 1852.

With reference to your letter BHO/sk of 4th
November, 1961 I furnish the following "history" of
the lot in question:-

a) at some stage for which no records exist lot 271
and 275 were surveyed by Kelly and marked as separate
lots with areas respectively 1a. Or. 36p. and 17a. 3r.
06p. These two lots were of course parts of the
original lot.

20

b) a revision survey in 1924 was carried out in
conjunction with the widening of the road reserve.
Lots 271 and 275 became 271(1), 271(2) and 275(1)
and 275(2) Lots 271(1) and 275(1) had precise areas
of 16a. 3r. 10p. and 1a. Or. 31.7p.

c) a subdivision took place in 1935 and lot 275(1)
became the present lots 275(1), 275(3) and 275(4).

2. Please remit \$2/- being search fee.

Sd.:

District Officer,
Butterworth.

30



Plaintiffs'
Exhibits

EXHIBIT AB4.13
COPY OF LETTER FROM LIM, LIM & OON TO
COLLECTOR OF LAND REVENUE BUTTERWORTH

AB4.13

Copy Letter
Lim Lim & Oon
to Collector of
Land Revenue
Butterworth

BHO/sk

DOB 168/55(63)

9th December 1961

9th December
1961

The Collector of Land Revenue,
Butterworth,
Province Wellesley.

Re: E.I. Indenture 4276 of 1852

10

We enclose \$2/- for search fee as advised in
your letter of December 7th 1961.

Please acknowledge receipt.

With regard to paragraph (b) of your said letter
we do not admit that there was a revision survey in
1924.

It was only a subdivision for purposes of
excising a portion for road reserve and not for the
purpose of fixing the boundaries under the Boundaries
and Survey Ordinance.

20

The area obtained was only an estimated one.

The owner's rights under the principle of
accretion were not impaired or prejudiced thereby.

Sd. Lim, Lim & Oon.

Advocates & Solicitors.

Encl: \$2/-

EXHIBIT AB4.14
COPY OF NOTICE NO. 87 OF 1962 FROM LIM, LIM & OON TO
THE STATE SECRETARY, THE CENTRAL ELECTRICITY BOARD
AND THE LEGAL ADVISER PENANG.

Plaintiffs'
Exhibits

AB4.14

A.R. REGISTERED

LIM, LIM & OON,
ADVOCATES & SOLICITORS,
FEDERATION OF MALAYA,
29, CHURCH STREET,
PENANG.

NO. 87 OF 1962.

Ref: COL/HS

Copy of Notice
No. 87 of
1962 from Lim
Lim & Oon to
the State
Secretary, the
Central Elec-
tricity Board
and the Legal
Adviser Penang

13th March
1962

NOTICE OF ACTION

The State Secretary,
Penang.

The Central Electricity Board,
Chartered Bank Building,
Butterworth.

The Legal Adviser,
Penang.

Re: Lot 275¹ & 3² Mukim 14 Province Wellesley
North

Our clients Beng Hong Oon alias Lim Beng Hong
(m.w.) the last registered owner of Lot 275² Mukim
14 P.W.N., and the joint owner with Oon Guan Yong,
Oon Peh Tchin and Oon Peh Seng of Lot 275¹ Mukim
14 P.W.N. have instructed us to write to you as
follows:-

By virtue of the action of the sea adjoining
the said lands alluvion above high water mark at
ordinary spring tides has adhered to and is still
increasingly adhering to the said lands by gradual
slow imperceptible and natural degrees. As a
result of such natural accretion our clients claim
to be entitled to such alluvion and further claims
to be entitled to free and unrestricted access over
every part of the portions of the said pieces of land
lying between their frontages and the sea to the
sea from every part of the western frontages of the

Plaintiffs'
Exhibits

AB4.14

Copy of Notice
No. 87 of
1962 from Lim
Lim & Oon to
the State
Secretary, the
Central Elec-
tricity Board
and the Legal
Adviser Penang

13th March
1962

(continued)

said pieces of land.

Our clients understand that you claim such accretion to be Crown land and that you seek to exercise the right of ownership over it.

We are therefore instructed to which we hereby do give you formal notice to remove whatever erections you may have caused to be put up on such accretion land and further to refrain from doing any act as would obstruct free access or egress to and from the sea by our clients.

10

We are further instructed to demand from you vacant possession of the said portion of alluvion.

Failing a satisfactory reply from you within three days from the date hereof our instructions are to issue a writ.

Dated this 13th day of March 1962.

Sd. Lim, Lim & Oon

Advocates & Solicitors
Penang.

c.c. Collector of Land Revenue
Penang

20

Butterworth By Despatch Book on 14/3/62.

EXHIBIT AB4.15
LETTER FROM PENASIHAT UNDANG2 PULAU PINANG
TO LIM, LIM & OON.

Plaintiffs'
Exhibits

AB4.15

Our ref: No.(7) in LAP 1128 LEGAL ADVISER'S CHAMBERS,
HIGH COURT BUILDING,
PENANG.

Letter from
Penasihat
Undang2 Pulau
Pinang to Lim
Lim & Oon

Messrs. Lim, Lim & Oon,
Advocates & Solicitors,
No. 29 Church Street,
Penang.

15th March, 1962

15th March,
1962

10

Re: Lot 275¹ & 3² Mukim 14
Province Wellesley North

I acknowledge receipt of your Notice of Action
reference COL/HS dated 13th March, 1962.

2. I regret I find myself unable to advise the
State Government to accede to your demand for vacant
possession of the portion of alluvion referred to in
your Notice of Action. I would therefore
respectfully suggest that this matter be referred to
the Supreme Court with the object of obtaining a
declaratory judgment on the right of ownership of
the land in question.

20

Received: 16 Mar.1962
Replied

Sd. Illegible
(WAN SULEIMAN)
PENASIHAT UNDANG2
PULAU PINANG

WS/JB

Copies to: The State Secretary, Penang.
The Central Electricity Board,
Chartered Bank Building, Butterworth.
The Collector of Land Revenue, Penang.

30

Wrote C.E.B., Butterworth
16/3/62

Plaintiffs'
Exhibits

AB4.16

Letter from
Lim, Lim & Oon
to the District
Manager, Central
Electricity
Board,
Butterworth
16th March,
1962

EXHIBIT AB4.16
COPY OF LETTER FROM LIM, LIM & OON TO THE
DISTRICT MANAGER, CENTRAL ELECTRICITY
BOARD, BUTTERWORTH.

COL/HS
WEL/10/4/4/165

16th March, 62

The District Manager,
Central Electricity Board,
of the Federation of Malaya,
P.O. Box WD.202,
Butterworth,
Province Wellesley.

10

Dear Sir,

Notice of Action No. 87 of 1962
Re: Lot 275¹ & ² Mukim 14 Province
Wellesley North

We are in receipt of your letter of the 14th
March 1962.

We refer you to letter No. (7) in LAP.1128 dated
15th March 1962 which we have received from the
Penasihat Undang², Pulau Pinang (Legal Adviser's
Chambers), a copy of which was sent to you. In
the meantime we would request you to stop cutting
down any more trees in the above-mentioned lot
pending a Court declaratory judgment on the right of
ownership of the land in question.

20

Yours faithfully,

Sd. Lim, Lim & Oon.

EXHIBIT AB4.17
LETTER FROM SHEARN DELAMORE & CO. TO LIM, LIM
& OON.

Plaintiffs'
Exhibits

AB4.17

SHEARN DELAMORE & CO.,
Amalgamated with
DREW & NAPIER.

The Eastern Bank Building, Letter from
2 the Embankment (2nd Floor) Shearn
Kuala Lumpur, Delamore &
Malaya. Co. to Lim,
Lim & Oon

22nd March, 1962

22nd March
1962

SD(NY) 2897/611

10 Messrs. Lim, Lim & Oon,
Advocates & Solicitors,
29 Church Street,
PENANG.

Dear Sirs,

Lot No. 808, Mukim 14 Province Wellesley
North

20 We act on behalf of the Central Electricity
Board of the Federation of Malaya who have handed us
the Notice of Action issued by you on behalf of your
clients in respect of the property above mentioned.

We have instructions from our clients to contest
your claim and to receive service of any writ you
may decide to issue.

Yours faithfully,

Sd. Shearn Delamore & Co.

c.c. The State Secretary,
PENANG.

Received 23 MAR 1962
Replied.....

Plaintiffs' Exhibits

AB4.18

Letter from Timbalan Pemungut Hasil Tanah Butterworth to Lim, Lim & Oon.

24th July 1963

EXHIBIT AB4.18-19
LETTER FROM TIMBALAN PEMUNGUT HASIL TANAH BUTTERWORTH TO LIM, LIM & OON.

Ref: DOB/17/61 ()
Tel: No: 31661

Pejabat Daerah,
Butterworth, P.W.

24th July, 1963

M/S Lim, Lim & Oon,
29, Church Street,
Penang.

Certified copies of Deed Polls for Lot 275(1) Mukim 15 & Lots 275(1) and 275(3) Mukim 14, P.W. North

10

Reference your letters BHO/PT/LSP and BHO/PT/HS with the respective dates 19.7.63 and 20.7.63, I regret to inform you that certified copies of Deed Polls of the above cannot be obtained from this office. However, I am to advise you to refer to the Registrar of Deeds, Penang, if you wish to apply for these.

2. Certified copy of the entry in our Settlement Register for part of Lot 2 75 Mukim 14 is appended below:-

20

Demarcation Lot No: 275(1)

Regd. No. of latest conveyance or date of unregistered & consideration paid

No. & Date of Crown

Lease: Indenture No. 4276 of 1852

Name of Owner:

Goh Cheng Ee & Goh Cheng Chuan

- 40-DLXXV.175m9
12.9.23

- 1. Goh Cheng Ee
- 2. Goh Cheng Chuan
- 3. Goh Seng Seng
- 4. Goh Seng Soo

- 62-837
5.11.38

30

Tan Geok Kim

- 32-858 \$3,000/- ($\frac{1}{4}$ sh)
14.6.40

Ng Khoen Kioen

38-861 \$3,000/- ($\frac{1}{4}$ sh)
26.8.40

Ng Khoen Kioen

76-865 \$3,000/- (-do-)
27.11.40

Lim Beng Hong

 \$2,800/- (-do-)
9.8.2604

	Oon Guan Yong	31-964 \$9,000/-(-do-) 1.11.52	Plaintiffs' Exhibits
	(Oon Guan Yong for		
	(Oon Peh Tchin &	(-do-)	
	(Oon Peh Seng JT.	<u>10.11.52</u>	<u>AB4.18</u>
	Oon Peh Tchin &	70-985 \$6,600/-(2/3 sh)	Letter from
	Oon Peh Seng as	22.6.55	Timbalan
	JT		Pemungut Hasil
10	<u>Prior Devolution:</u>	T of M.to S.N.AA.L.C.T.Sithambaram Chetty \$4,000/- <u>117-DCLXXV</u> <u>31.5.28w.498.</u>	Tanah Butter- worth to Lim, Lim & Oon
	R/C. <u>100-783</u> Vol. 498.		24th July, 1963
	<u>11.3.35</u>		
	M <u>63-837</u> Guan Yong Oon \$500/-($\frac{1}{2}$ und.Sh. <u>5.11.38</u> of 1 & 2)		(continued)
	R/C. <u>31-858</u> <u>14.6.40</u>		
20	M <u>101-838</u> Oon Guan Yong \$150/- ($\frac{1}{2}$ und.Sh. <u>29.11.38</u> of 3)		
	R/C. <u>37-861</u> <u>26.8.40</u>		
	M <u>33-858</u> Goh Cheng Chuan \$800/-($\frac{1}{4}$ und.Sh.of <u>14.6.40</u> No.1)		
	R/C. <u>75-865</u> <u>27.11.40</u>		
	<u>Remarks:</u>	O/C No.1040 of 1934 to be allowed to sell <u>107-783</u> <u>31.8.34</u>	

Area according to new Survey: 7 Acres 3 Roods 36 Poles

30	<u>Demarcation Lot No: 275(3)</u>	<u>Regd. No. of latest conveyance or date or unregistered & consideration paid.</u>
	<u>No. & Date of Crown Lease:</u> 4276 of 1852	
	<u>Name of owner:</u> Goh Cheng Ee &)	<u>60-785</u> \$928/-
	Goh Cheng Chuan)	<u>11.3.35</u>
	(M Goh	
	(Chew Kok Kin)	<u>143-831</u> \$2,700/-
	(Kian Eng Goay)	<u>23.6.38</u>
	(
	Beng Hong Oon	<u>147-903</u> \$4,125/-
		<u>26.6.47</u>

40 Area according to New Survey: 2 Acres 0 Rood 10 Poles.

3. Regarding your para 3 of above letters, you are invited to make searches in respect of any

Plaintiffs' Exhibits

information you require in our Settlement Register on payment of Search Fee. Please remit a sum of \$2/- being Search Fee for part of Lot 275 Mukim 14.

AB4.18-19

Letter from Timbalan Pemungut Hasil Tanah Butterworth to Lim, Lim & Oon

Sd. Illegible.
Timbalan Pemungut Hasil Tanah,
Butterworth.
(LIM BOR YEE)

24th July, 1963

Received 26 JUL 1963

Replied

10

(continued)

HKK/-

AB4.20

Letter from Collector of Land Revenue Butterworth to Secretary Central Electricity Board

EXHIBIT AB4.20

LETTER FROM COLLECTOR OF LAND REVENUE, BUTTERWORTH TO THE SECRETARY, CENTRAL ELECTRICITY BOARD.

18th December 1957

Ref DOB.313/54(42)
Tel B'worth 64.

District Office,
Butterworth, P.W.

18th December, 1957

The Secretary,
Central Electricity Board,
Federation of Malaya,
Kuala Lumpur.

20

Sir,

Land for Senior Officers' Quarters for the Central Electricity Board at Butterworth.

I have the honour to refer to your application dated 23rd August, 1957 for a piece of State Land for the above mentioned purpose.

2. The State Government has agreed to the alienation of the most southerly two acres of the area delineated on the plan attached to your application on the following terms:

30

Title: 33 year lease.
Premium: \$2,850 per acre.
Quit Rent: \$518 per acre.
Special conditions: (1) Alienated for the purpose of quarters which must be built within 2 years from the date of alienation.
10 (2) That the Lessee will pay and discharge all taxes rates and assessments whatsoever now or hereafter to become payable for or in respect of the said land hereby demised.

Plaintiffs'
Exhibits
AB4.20
Letter from
Collector of
Land Revenue
Butterworth
to Secretary
Central
Electricity
Board
18th December
1957
(continued)

3. Would you please inform me as soon as possible if these terms are acceptable to you.

20 I have the honour to be
Sir,
Your obedient servant,
(Sgd.)

Collector of Land Revenue,
Butterworth.
(V.G. Bennett.)

c.c. Area Manager, C.E.B., Ipoh.
District Manager, C.E.B., B'worth

Plaintiffs'
Exhibits

EXHIBIT AB4.21
COPY OF LETTER FROM LIM, LIM & OON TO THE
LEGAL ADVISER PENANG

AB4.21

Copy Letter
from Lim, Lim
& Oon to the
Legal Adviser
Penang

23rd July
1964

BHO/HS

23rd July 1964

The Legal Adviser,
Penang.

Dear Sir,

Penang Civil Suit No.118 etc. of 1962

We are instructed by our clients to bring
officially to your notice a Statement of Policy of
the Federal Government on the subject of the National
Land Code (Penang & Malacca Titles) Act. 10

The statement of policy is by none other than
the Deputy Prime Minister who is also the Minister
for Rural Development.

We are instructed in particular to draw your
attention to paragraph 28, and to indicate our
clients' respect for the morally just and legally
correct approach of the Federal Government to this
problem. 20

In the context of the statement of Federal
Policy we find it difficult to understand how the
State Government of Penang can resist our clients'
claim in this action, and although the Defence is
overdue, we are instructed to give you a further
fortnight from today and, if necessary, even further
time, so that the attitude of the State Government
of Penang may be clarified in the context of the
statement of policy of the Federal Government in its
application to our clients' claim. 30

Yours faithfully,

Sd. Lim, Lim & Oon

EXHIBIT AB4. 22-35
BOOKLET ENTITLED "YOUR LAND"

Plaintiffs'
 Exhibits

Y O U R L A N D
 NEW LAND REFORMS
 PENANG AND MALACCA

AB4.22-35
 Booklet en-
 titled "Your
 Land"

FOREWORD BY THE HON'BLE
 THE DEPUTY PRIME MINISTER

The National Land Code
 (Penang and Malacca Titles) Act.

10 If you own land in Penang or Malacca or are
 thinking of buying, selling or otherwise dealing in
 land there, then this pamphlet will be of interest to
 you - and I hope of value too.

20 You have probably already heard that during the
 course of this year a new land law with the above title
 is to be introduced into these two States. When you
 are told as now that your land is becoming subject to
 entirely new laws it is only natural that you should
 feel some concern or even alarm and I therefore
 assure you straightaway that the new Act is intended
 only for the benefit of land-owners and of every one
 concerned in land-dealings.

Briefly, the Act will convert the land systems in
 Penang and Malacca to the same system that is current
 in the other States of the Federation and those
 persons who already own land in those States or who
 have friends owning land there will immediately
 appreciate the advantages of the change.

30 One of the main innovations will be the introduc-
 tion of registration of title and together with other
 provisions of the law the general result will be:-

- (i) to protect the interests of every land-
 owner by guaranteeing his boundaries and
 his title;
- (ii) greatly to simplify the procedure for
 transacting dealings in land and to make
 the process shorter and cheaper;

Plaintiffs'
Exhibits

AB4.22-35

Booklet
entitled
"Your Land"

(continued)

(iii) to decentralise land administration so that rural smallholders can transact all their business in district headquarters;

(iv) to take away no rights that land-owners at present enjoy and place no new burdens of any kind upon them.

I hope these assurances and the contents of this pamphlet will dispel any misgivings you may have felt. If you read on you will find answers to those questions which it is expected that land-owners will be asking. If you do not find an answer to the question which is troubling you then please write to or go and see your District Officer or your State Commissioner of Lands and Mines or the Commissioner of Land Titles, Penang and Malacca, who has his main office in the Government Offices, Penang.

10

(Sgd.)

(TUN ABDUL RAZAK BIN HUSSAIN)

Deputy Prime Minister and
Minister of Rural Development

20

THE NEW LAND REFORMS - IN QUESTION AND ANSWER

GENERAL

1. I hear that the new law is going to change the whole land system. I have got used to the old methods which have been working quite well for generations. Why is Government upsetting everything now?

Government wants:-

- (i) every land-owner to have a title which is clear and beyond doubt;
- (ii) dealings in land to be made simple and cheap.

30

2. How is Government going to do this?

Government is bringing in the system already used in the other 9 States of the Federation. This system has given no trouble in the 50 or 60 years that it has been used; if you have friends living in those States they will tell you how easy and straightforward it is.

3. But I am quite satisfied with my title and my title-deeds and I don't see how any change will improve them.

10 In place of a bundle of documents you cannot really understand you will get a Replacement Title i.e. a single piece of paper with a plan of your land on it and clearly naming you as the title holder.

Replacement Titles

4. Will this new title be just as good as my old?

It will be better because:-

- 20 (i) it will be clear, definite and easy to understand;
- (ii) Government will guarantee your title as correct. In future you can always prove that you own the land by simply showing your title.

5. I have got a very old title and I still think that it must be better than anything new.

30 If you want to keep your old title documents you may still do so after Government has inspected them and marked them as replaced by the new title. In future you will find that if you wish to sell, it is the new title that people will be interested in not the old?

6. Will this new title be issued at once?

No, there are a hundred and thirty thousand new titles to be issued and this cannot be done in a day or a week. A few people will be lucky and get a title early but in most cases you will have to wait for several months or even years. Everyone cannot be first.

Plaintiffs'
Exhibits

AB4.22-35

Booklet
entitled
"Your Land"

(continued)

Plaintiffs'
Exhibits

AB4.22-35

Booklet
entitled
"Your Land"

(continued)

7. I see that I will be all right once the new title issues but in the meantime, how shall I prove that I own the land?

You will still be holding your title-deeds and moreover Government is preparing a complete Register of all lands in the two States showing exactly who is believed to own all land and all leases, mortgages, etc.

The Interim Register

8. Where is this Register to be found and what is it called?

10

The Register will be kept in the two State Registries in Georgetown and in Malacca.

This new Register is to be called the "Interim Register" and that is a new official title you should make yourself familiar with since you will hear a great deal of it in the future.

9. The Interim Register may help Government but will it help me? Will I be able to see it myself?

20

Yes, on payment of a nominal fee you will be able either to inspect the Register or to obtain a written extract of the particulars relating to your land.

10. You say that the Interim Register will contain the names of people whom Government believes to own land or leases, etc. Do you mean that there will be a doubt about the rights of people named in the Register?

Under the old system of registration of deeds Government only knows what vendors and purchasers have registered and it is quite possible that existing Government records are not in fact absolutely correct. If people have neglected to register deeds or take out probate on wills and so on, then Government's records are obviously going to be defective.

30

11. Do you mean that in the Interim Register Government may have entered somebody else as the owner of my land?

40

It is not very likely but as explained above it could happen owing to faults or omissions in registration of deeds. If you have the least doubt as to whether deeds relating to your land have been registered in the past, then you would be well advised to make a search of the Interim Register.

Plaintiffs'
Exhibits

AB4. 22-35

Booklet
entitled
"Your Land"

(continued)

12. Supposing I find that the land is registered in somebody else's name what happens then? Am I to be turned out of my land?

10 No, if you find in the Interim Register anything which you maintain is wrong you should immediately put in a claim to the Commissioner asking him to amend the Interim Register.

13. I know nothing about law or matters of that kind. How am I to make a claim?

You can get a simple form from your District Officer and if you are in any difficulty he will help you fill it up, and send it for you to the Commissioner.

20 Issue of New Titles

14. What must I do to get my old title changed into a new one?

You will not need to do anything at all. The change from old to new titles will be done quite automatically by the Government. On the day when the new system is introduced your name will be recorded in the new Register as the owner of the land you hold.

30 15. I am an old man and if my new title is going to be better than my old I would like to have it before I die.

If you have some special reason for wanting your new title you can go to the Land Office and make an application for special urgent consideration of your case. If there is nothing wrong with your old title Government will then issue you a new one as early as possible.

16. How much will I have to pay to get a new title?

You will pay nothing except the actual fee for

Plaintiffs' Exhibits

AB4. 22-35

Booklet entitled "Your Land"

(continued)

the new document and for the photostat plan on it. It seems only right that you should pay for the materials used since this document of title is something you have never possessed before. All the work of investigating your rights is being done without any charge at all.

17. Do I have to pay survey fees?

Normally there will be no survey fees to pay. In some cases however where a new survey is required through some fault or omission of your own then you will be charged for the work done e.g. where you have sold a portion of your land without having a proper survey made.

10

18. I am holding my land under a life interest. How will Government recognise the interest of the beneficiaries?

Since you have only a life interest in your land you are in a sense holding it in trust for your successors.

In practice you will be recorded in the Register as the "owner for life, as trustee". Your own personal rights will be protected by the words "owner for life" and the rights of the beneficiaries will be protected by the words "as trustee".

20

The registered number of the conveyance or other deed which established your life interest and the interest of the beneficiaries will be recorded and upon your death that deed can be used to effect transmission to the lawful beneficiaries.

Buying and Selling and other Dealings in Land

30

19. Government says that it is going to make dealings in land cheap and simple. What exactly will the difference be in future?

Any man who wishes to sell or lease or charge his land will be able to do so by filling in a simple form in the Land Office: the Government will then mark the change on the new title registers.

If, for example, you sell your land the name of the purchaser will be written on to your title to show that he now owns it and not you; the title

40

will then be passed to him.

20. But what happens while I am waiting for my new title? If I don't get it for 2 or 3 years does that mean I cannot sell my land?

No. You can sell it in exactly the same way by filling in the simple form. The only difference as far as you are concerned will be that a copy of the form will be added to your title deeds and the whole bundle handed to the new owner.

10 Government however will have marked the change in the Interim Registers and when the new title is issued it will be given direct to the new owner with his name on it.

21. I have leased the land to Mr. X. Does he continue to be the lessee or must I give him a new lease?

20 You need do nothing at all. On the day when you are recorded in the Interim Register as the owner of the land Mr. X will automatically be recorded as the lessee and the registered number of his lease will be recorded also.

22. I have mortgaged my land to Mr. Y. Does he continue automatically to be the mortgagee?

Yes. The position will be the same as with a lessee. Mr. Y will be recorded in the Register as the holder of a mortgage over your property and the registered number of that mortgage will be noted on the title.

30 23. What will happen to the right of way I am enjoying over my neighbour's land.

If you have a definite lawful right of way over neighbouring land and that right is not disputed by your neighbour then your right of way will be confirmed and guaranteed by the State. An endorsement will be made both on your title and upon your neighbour's title that this right of way exists so that at no time in the future can your rights be disputed.

40 24. Under the new system what must I do if I wish to investigate the title to land I am buying?

Plaintiffs'
Exhibits

AB4. 22-35

Booklet
entitled
"Your Land"

(continued)

Plaintiffs'
Exhibits

AB4. 22-35

Booklet
entitled
"Your Land"

(continued)

Once the new system is fully established and final title has been issued there will never be any necessity for you to carry out an investigation since all conditions and obligations will have been recorded once and for all on the document of title itself and you will see at a glance the names of the owner and of any charge or other interested party.

Until Government investigations are complete and the new title issued, your rights of investigation remain precisely as they are at the moment. However, reference to the Interim Register will make your task much easier.

10

Dealings in Sub-Divisions of Land

25. I have just entered into an agreement to buy a housing plot on one of the big new housing estates. I understand that it may be years before the land is properly surveyed and sub-divided. What is going to happen to me?

A very special provision has been included in the new law to deal with cases like yours. The developer of the estate will be required to deposit a plan showing how he proposes to sub-divide his land and on which your housing plot and that of all other purchasers will be clearly shown. Records will then be opened for each one of these plots of land. Your interest will be protected at once and it is also possible that you may get a final guarantee title long before you could have expected finality under the old system.

20

26. Do you mean that I can register my agreement with the Commissioner of Land Titles?

30

No, it will not be possible for you to do that any more than it was possible under the old system for you to register an agreement. The point is that once the sub-divisional plan has been filed with the Registrar the developer will be able to draw up a formal transfer of the land without further delay. It is this transfer that will be registered.

Sea-ward and Stream-ward Boundaries

27. My land has fluctuating boundaries. Will the Government change this?

40

Yes. As stated above Government wants every man

to have a clear and definite title and this means that the boundaries themselves must be fixed.

Plaintiffs'
Exhibits

28. During the last 10 years my land on the shore has been built up by deposition of sand and the seashore is now two or three hundred yards further out than it was 10 years ago. Does Government intend to take this new land away from me?

AB4. 22-35

Booklet
entitled
"Your Land"

10 No. Government will confirm your ownership of it. Wherever the sea coast may be on the appointed day, i.e. the day on which the new law takes effect, there will your boundary be recorded.

(continued)

29. Some years ago I built a sea-wall at great expense at the bottom of my garden at the point to which the sea then reached. My neighbour did not and the sea has advanced over his land for a hundred yards or more. Does Government propose to say that the new seashore is at the level reached on my neighbour's land?

20 No. By building the sea-wall you stabilised the coastline opposite your land and Government will confirm that your land projects further into the sea than your neighbour's.

30. During the last 5 years the sea has been invading my land and washing it away. My boundary is now a hundred feet further back than it was when I bought the land. I do not think it fair for Government to say that my boundary has changed. I paid for the land and I want to keep it even if it is under the sea.

30 Government cannot be responsible for what in law are "acts of God". If your land was sufficiently valuable to you you could have protected it by building a sea-wall. Since you did not you have no one to blame but yourself.

40 You must also understand that Government has not changed the law in this matter at all. Under the laws which have been in force in Penang since its foundation in 1783 the property in the foreshore has always vested in the Government and if the foreshore advances on to your land the Government has the legal right to claim its property.

Plaintiffs'
Exhibits

Miscellaneous

AB4. 22-35

Booklet
entitled
"Your Land"

(continued)

31. Should I lose my title what happens to my rights?

Under the new system should you lose the issue document of title which has been given to you, it will always be possible for you upon a statutory declaration of the loss and upon payment of a small fee to obtain a copy of the title which will be as effective as the original that was lost.

32. I'm told I am going to get an E.M.R. title only. Is there any difference between the status of a Grant and a title by Entry in the Mukim Register?

10

There is no difference in status as regards certainty of title and its guarantee by the Government. So far as your own powers are concerned there is one minor distinction i.e. if you wish to raise a loan on the land by means of a "charge" the form of charge used differs in the two cases. The essence of this difference is that a chargee of E.M.R. land cannot sell the land without first obtaining an Order from the Collector. A chargee of land under Grant has greater freedom of action.

20

Should this minor difference be of significance to you, then if you hold land on the Mukim Register it will always be possible for you to apply for the Mukim Register title to be exchanged for a Grant title. For this however you will need to pay a scheduled fee.

33. I hear that Government is also going to introduce a Small Estate Distribution Act. Will this have any effect upon the disposal of my land when I die?

30

The Act will only apply to your land if the value of your whole estate on death, i.e. not only the land but all other property you possess, is less than \$5,000/-. If your estate is worth more than that, no matter how big or how little the value of the land, it will make no difference at all since the Act will not apply and your land will be subject to the Probate and Administration Ordinance.

In any event if your land is subject to this new Act you need have no fear of its effect. Its whole object is to make the winding up of your affairs

40

simpler and more expeditious. The law applied will be the same as in the High Court but the work will be done at the Land Office of your own district.

34. My land has been in the family since the time of my great-grandfather but no one has ever given me any document to prove I own it although I know my father got it from his father,

10 It looks as though neither you nor your father nor perhaps your grandfather ever bothered to go to the High Court to obtain distribution of a deceased's estate. If so this new legislation gives you the opportunity to regularise your position and to have yourself registered as the true owner.

Your first step should be to apply for a search of the Interim Register to find out precisely in whose name your land is registered. After that you should go to your District Officer and ask for his advice and help. He will be able to arrange for an enquiry to be held.

Plaintiffs'
Exhibits

AB4. 22-35
Booklet
entitled
"Your Land"

(continued)

Plaintiffs'
Exhibits

EXHIBIT AB4.36 & 37
LETTER FROM SHEARN DELAMORE & CO. TO LIM, LIM
& OON

AB4. 36 & 37

Letter from
Shearn
Delamore &
Co. to Lim,
Lim & Oon

SHEARN, DELAMORE & CO. Advocates, Solicitors &
Amalgamated with Notaries Public,
DREW & NAPIER P.O. Box 138
(Kuala Lumpur) The Eastern Bank Building,
2 Benteng, Kuala Lumpur,
Malaysia.

20th February
1967

BHO/PT/CK
S.D. (S) 2897/611

10

20th February, 1967

Messrs.Lim, Lim & Oon,
Advocates & Solicitors,
29, Church Street,
PENANG.

Dear Sirs,

Penang High Court Civil Suit No.118/62 -
Beng Hong Oon & ors. vs. The Government
of the State of Penang and another.

20

1. We refer to your letter of the 13th and 14th instant and we apologise for the slight delay in attending to this matter.
2. Please be informed that we will rely on our existing Statement of Defence in answer to the Plaintiffs' further Amended Statement of Claim.
3. For this purpose the words, "Amended Statement of Claim" wherever they appear in the existing Statement of Defence should read, "Further Amended Statement of Claim".
4. To save costs, we trust you will agree that this amendment can be made at the trial but if you insist that we should file a formal Statement of Defence merely to make this amendment we will do so.
5. Finally, could you please note that we are reserving the right to make any further amendments to the existing Statement of Defence before the trial should we think fit to do so, but in this event we will make the application in the usual way.

30

Yours faithfully,

40

Sd. Shearn, Delamore & Co.

O./20

c.c. Peguam Negara,
Jabatan Peguam Negara,
Kuala Lumpur.
(Your Ref: AG. 3666 Untok: Inche Au Ah Wah)

EXHIBIT P. 5
LETTER FROM PEMUNGUT HASIL TANAH BUTTERWORTH
TO SHARIKAT LIM LIM & OON

Plaintiffs'
 Exhibits

P. 5

Bil.No. PDB 113/68(2)

Pejabat Tanah,
 Butterworth.

Bil.No. Pg. 31661

23hb Mei, 1968

Letter from
 Pemungut Hasil
 Tanah Butter-
 worth to
 Sharikat Lim,
 Lim & Oon

23rd May 1968

Sharikat Lim, Lim & Oon,
 Peguam2chara & Peguam2bela,
 29, Church Street,
 Pulau Pinang.

10

Tuan2,

Penang High Court Civil Suit No. 118 of 1962
 Beng Hong Oon & ors - Plaintiffs

vs

The Govt. of the State of Penang & another
 - Defendants

I have the honour to refer to your letter BHO/
 PT/TTH dated 4th May, 1968 on the above matter and
 have to inform you that records pertaining to TOLs
 issued during period 1945 to 1958 are not available.
 Records which are available are from 1959 onwards and
 these show that no TOL has been issued over any part
 of the land on the sea-beach adjoining Lots 275(1)
 and 275(3) Mukim 14, P.W.North during the said period.

20

2. As regards your para. 2, I am to inform you that
 my file on this subject had been forwarded to the
 Legal Adviser, Penang some years back and is still
 with him. I am therefore unable to provide you with
 the copies of notices applied for and would advice
 that you write to the Legal Adviser on this matter.

30

Saya yang menurut perintah,

(Sgd.) Piara Singh

Pemungut Hasil Tanah,
 Butterworth.

(Piara Singh)

s.k. Legal Adviser,
 Penang.

XVI.6

Sheet XVI.19

KETUA JURU UKOR
PEKAT PINANG

Cheque No. F308/169
Tarikh: 16 Apr 1969

HARGA \$2.00

HARGA \$2.00

HAR. TERPAJAN. ADA. LAH. TER
PELHARA. TIDAK. BOLEH. SAKALIKALI.
DI. TIRU. ATAU. DI. SALIN. PETA. JABATAN.
UKOR. ATAU. APA. APA. BAGI. BAGI. DAN.
PADA. NYA. DENGAN. APA. CHA. JUA. JUA.
PUN. MELAINKAN. DENGAN. KEBERKATAN.
JURU. UKOR. NEGARA. PERSEKUTUAN.
TANAH. MELAYU.

Di-ikuti salinan yang sa-benar-nya.

[Signature]
Ketua Juru Ukor
16 APR 1969

MAK. KEMUKAN. ADALAH. TER.
PELHARA. TIDAK. BOLEH. SAKALIKALI.
DI. TIRU. ATAU. DI. SALIN. PETA. JABATAN.
UKOR. ATAU. APA. APA. BAGI. BAGI. DAN.
PADA. NYA. DENGAN. APA. CHA. JUA. JUA.
PUN. MELAINKAN. DENGAN. KEBERKATAN.
JURU. UKOR. NEGARA. PERSEKUTUAN.
TANAH. MELAYU.

Scale of



1949
YEARS 1950
19

DISTRICT P. W. (M.)

MUKIM
TOWN SUB-DIVISION 14

Annual Rent	Arrears	Total due	Receipt	First Half-year	Lot No.	Receipt	Second Half-year	Arrears Credits	Arrears P.A.A. D. R. P.	Remarks
231										
250 (1) ① 250 (2) 251 252 253 (1) ② 253 255 255 (1) - 3	Ang Ee Yew			6 - /		21880	6 - /			14,000 sq. ft. short term crops one shed on land
269										
264										
270 1	Mrs B. H. Don			6 - /		228914	6 - /			22,000 sq. ft. Fruits & Seafrontage
270 2	Doi Kean Huan			12 - /		221192	12 - /			28,000 sq. ft. Up-keep of coconut plants site of house.
271 1	Mrs. B. H. Don			5 - /		228915	5 - /			2200 sq. ft. Fruits & seafrontage
273										
275 1	Mrs. B. H. Don			20 - /		228916	20 - /			5,000 Fruits & seafrontage (36,000 sq. ft. ?)
275 2	Mrs. Peng Hang Don			6 - /		228917	6 - /			14,000 sq. ft. Up-keep of coconut plants
275 3	Ang Theam Hock			12 - /		36123	12 - /			50,000 sq. ft. Fruits & seafrontage.
276 A	Teoh Beng Hock			20 - /		36041	20 - /			24,000 sq. ft. Fruits & seafrontage
276 B	Ang Gark In (1)			12 - /		36042	12 - /			24,000 sq. ft. Fruits & seafrontage
276 2	V. Karuppayan			15 - /		228931	15 - /			26,000 sq. ft. Fruits & seafrontage
276 3	Ang Goo			20 - /		36116	20 - /			41,000 sq. ft. Site for house 2850
276 4	Doi Teng			18 - /		36191	18 - /			40,000 sq. ft. Fruits & seafrontage
276 5	Lim Cheng Teik			10 - /		228908	10 - /			20,000 sq. ft. sea frontage
277 A	Che Dah bti. H. Abdulla			10 - /		36111	10 - /			7,000 Fruits & seafrontage
277 B	Tan Hock Leong			20 - /		68309	20 - /	20/10/47	1/15 sh. 1	
277 3	Man b. M.					68247				2,038
277 4	16 Man.					68248				2,027 } veg 1/10/47

14

Ex D7 REGISTER OF TEMPORARY

OCCUPATION LICENCES 1959

RESIDENCE NO.	OCCUPANT	LOCALITY	PURPOSE	AREA A-R-P	RENT PAYABLE
579	Lee Chew Kim	Amoy St.	Short Term Canteen	2-2-36	12-00
578	Lim Chin Cheang	Amoy St.	Short Term Canteen	2-1-25	12-00
58(A)	Mak Keehek M. Che Teh.	Amoy St.	Street Stall	3-3-04	24-00
576(C)	A. Jaisamy	Amoy St.	Street Stall	200 sq. ft.	2-50
545	Ang Chek Siew	Amoy St.	Short term canteen	1-2-16	8-00
545	Cheng Ching Hock	Amoy St.	Short term canteen	1-2-16	8-00
555(C)	Lim Kak Ling	Amoy St.	Short term canteen	3-1-16	16-00
4270(C)	Lim B. H. Lee				12-00
4271	Lim B. H. Lee				10-00
4272	Lim B. H. Lee				10-00
517(A)	Musaib b. Abdullah		Street stall	400 sq. ft.	16-00
73(C)	Lim Hean Hock		Street stall	10,800 sq. ft.	8-00
555(A)	Lim Ah Meng				
555(B)	Lim Ah Meng				
555(C)	Lim Ah Meng				
555(D)	Lim Ah Meng				
555(E)	Lim Ah Meng				
555(F)	Lim Ah Meng				
555(G)	Lim Ah Meng				
555(H)	Lim Ah Meng				
555(I)	Lim Ah Meng				
555(J)	Lim Ah Meng				
555(K)	Lim Ah Meng				
555(L)	Lim Ah Meng				
555(M)	Lim Ah Meng				
555(N)	Lim Ah Meng				
555(O)	Lim Ah Meng				
555(P)	Lim Ah Meng				
555(Q)	Lim Ah Meng				
555(R)	Lim Ah Meng				
555(S)	Lim Ah Meng				
555(T)	Lim Ah Meng				
555(U)	Lim Ah Meng				
555(V)	Lim Ah Meng				
555(W)	Lim Ah Meng				
555(X)	Lim Ah Meng				
555(Y)	Lim Ah Meng				
555(Z)	Lim Ah Meng				

NUMBER OF LICENCE AND DATE OF ISSUE		REMARKS
1185878	12-00	DOB 105/59
607	12-00	Temporary Occupation Licence ref Lot 17(1) Block 14, P.W. North Conditions
1185884	24-00	(a) Street Stall to be sited 70' from the centre of road, and (b) To vacate site on two weeks notice when site is required by Government.
1185250	2-50	
1185366	8-00	
1185710	8-00	
1181571	16-00	
		Area cancelled with 20/2/56 and 15-1-60
		7-1-60
1185717	16-00	Off. No. 116/59, Dist. 105/59 1/12/59
1185724	8-00	200/58/56, 200/58/57, 200/58/58, 200/58/59, 200/58/60, 200/58/61, 200/58/62, 200/58/63, 200/58/64, 200/58/65, 200/58/66, 200/58/67, 200/58/68, 200/58/69, 200/58/70, 200/58/71, 200/58/72, 200/58/73, 200/58/74, 200/58/75, 200/58/76, 200/58/77, 200/58/78, 200/58/79, 200/58/80, 200/58/81, 200/58/82, 200/58/83, 200/58/84, 200/58/85, 200/58/86, 200/58/87, 200/58/88, 200/58/89, 200/58/90, 200/58/91, 200/58/92, 200/58/93, 200/58/94, 200/58/95, 200/58/96, 200/58/97, 200/58/98, 200/58/99, 200/58/100

REGISTER OF TEMPORARY

OCCUPATION LICENCES

Defendants' Exhibits

D7

Register of T.O.L. for the year 1959 (continued)

OCCUPANT	LOCALITY	PURPOSE	AREA	RENT PAYABLE		NUMBER OF LICENCE AND DATE OF ISSUE			
				\$	c				
599		n/a 2873 n/a		12	00	3046	12-00		
598		" 2874 n/a		12	00	3007	12-00		
608(4)		" 2875 n/a		24	00	3068	24-00		
Pt. 576(1)		" 2876 n/a		2	50	2274	2-50		
Pt. 545				8	00	2845	8-00		
Pt. 545		" 2877 n/a		8	00	3012	8-00		
Pt. 535(1)				16	00	2335	16-00		
Pt. 530(1)									
Pt. 271(1)									
Pt. 275(1)									
Pt. 27(1)		" 2878 n/a		16	00	3057	16-00		
277(1)		" 2877 n/a		4	00				
555(1)		Street 5-11. 400 sq ft		12	00				
of Adj. 277(1)		Street 5-11. 400 sq ft		6	00	3042	6-00		

200/205/66, 205 min. d. 29.7.59
 * Cancelled. see below.
 17005
 20.6.60
 17005
 20.6.60

* Cancelled: T.O.L. not renewed.
 Notice to Renew No. 2002899
 issued on 19-5-60.
 PEGAWAI DARRAH,
 BUTTERWORTH
 26.12.61

10 4.50

10 4.50

REGISTER OF TEMPORARY

OCCUPATION LICENCES

D7
Register of T.O.L. for the
year 1959 (continued)

OCCUPANT	LOCALITY	PURPOSE	AREA	PA	NUMBER OF LICENCE AND DATE OF ISSUE		REMARKS
599		x		12-00	L258417	12-00	Notice to Remove No. 005661 issued on 18.1.62.
598		y		12-00	L260107	12-00	Notice to Remove No. 005662 issued on 18.1.62.
608(4)		v		24-00	L258422	24-00	Notice to Remove No. 005663 issued on 18.1.62.
Pt. 576(1)		y		2-50	L258743	2-50	Notice to Remove No. 005664 issued on 18.1.62.
Pt. 545		y		8-00	L257877	8-00	Notice to Remove No. 005665 issued on 18.1.62.
Pt. 545		y		8-00	L257755	8-00	Notice to Remove No. 005666 issued on 18.1.62.
Pt. 555(1)		T		16-00	L257737	16-00	Notice to Remove No. 005667 issued on 18.1.62.
Adj: 270(1)							
Adj: 271(1)							
Adj: 275(1)							
Pt. 17(1)				16-00	L260054	16-00	
273(1)							
Pt. 555(1)							
Pt. of Adj. 277(1)				6-00	L2664004	6-00	

Notice to Remove No. 005661
issued on 18.1.62.

Notice to Remove No. 005662
issued on 18.1.62.

Notice to Remove No. 005663
issued on 18.1.62.

Notice to Remove No. 005664
issued on 18.1.62.

Notice to Remove No. 005665
issued on 18.1.62.

Notice to Remove No. 005666
issued on 18.1.62.

Notice to Remove No. 005667
issued on 18.1.62.

MIKANA TEGAWAI DAB
BUTTERWORTH, P.V.
18/1/62

Notice to Remove No. 005661
issued on 18.1.62.

Notice to Remove No. 005662
issued on 18.1.62.

Notice to Remove No. 005663
issued on 18.1.62.

Notice to Remove No. 005664
issued on 18.1.62.

Notice to Remove No. 005665
issued on 18.1.62.

Notice to Remove No. 005666
issued on 18.1.62.

Notice to Remove No. 005667
issued on 18.1.62.

EXHIBIT D. 8
NOTICE OF REVOCATION

Defendants'
Exhibits

D. 8

DOB.173/53 I/21A/12.5.55 21A DOB. 173/53I.

NOTICE TO REMOVE ISSUED PURSUANT TO RULE NO. 30 OF THE CROWN LANDS RULES, 1923

Notice of
Revocation

12th May 1955

Mrs. B.H.Oon
C.L. adj: Lot 275(3) Mk 14 P.W.North

10 Temporary Occupation Licence No. 23035/55 is hereby revoked (~~or has expired~~) and you are hereby required to remove from the land occupied under the said licence within 30 days of service of this notice. The land is required for a housing scheme.

District Office, (Sgd.)

Butterworth. 12th May 1955 Collector of Land Revenue, Butterworth.
(FOR DUPLICATE)

20 Received the original of this notice (L.S.)
this.....day of..... 19.....?

(Sgd.)

Signature of recipient

Served by me Hussain
at
on 18.5.55

.....
Land Bailiff.

Defendants' Exhibits
D9
T.O. Licence
1st April
1954

L 2 No. 20063 /

EDD

SCHEDULE I
CROWN LANDS ORDINANCE (CHAPTER 113)
TEMPORARY OCCUPATION LICENCE

1. This licence does not create a tenancy and, as against the Crown, does not give exclusive right to occupation of the land described overleaf. It may be revoked at any time without notice or compensation and is issued subject to Rules 24 to 29 inclusive of the Crown Land Rules, 1947 and also to the following conditions (and to the special conditions endorsed hereon).

2. This licence is not transferable or assignable in any manner whatsoever and must be produced on demand to any Collector or Deputy Collector of Land Revenue or any Land Bailiff.

3. No fish ponds shall be constructed or permitted to be constructed on the land occupied under this licence.

4. No permanent buildings shall be constructed or permitted to be constructed on the land occupied under this licence.

5. No rubber, coconut or fruit trees shall be planted or permitted to be planted on the land occupied under this licence, nor any crop other than short term crops.

6. The licensee shall comply with the reasonable requirements of any Government Health Officer.

7. Breach of any condition of this licence renders the licence liable to immediate cancellation.

SPECIAL CONDITIONS

ISSUED PURSUANT TO THE
CROWN LAND RULES, 1947

Ismail bin Bakar

Identity Card No. P 126433

is hereby permitted to occupy (subject to the conditions overleaf) for the period from 1-1-54 to 31-12-54.

the portion of Crown Land described below at a fee of \$ 4-00 (Dls. Four only) the receipt of which is hereby acknowledged.

A. Ismail
Collector of Land Revenue



LAND OFFICE,
Butterworth
SINGAPORE

The 3/1st day of April 19 54

DESCRIPTION OF LAND

Mukim 3 - Lot 604 - P.W.N.

Description Vegetables

Area 0a - 3r - 14p.

This licence must be produced on renewal

بارا لىين اين يلا مندق توكور

更換時，請將此證申帶上

Handwritten notes and signatures: "Cl. No. 2309", "1/4/-", "21/4/54", "2/4"

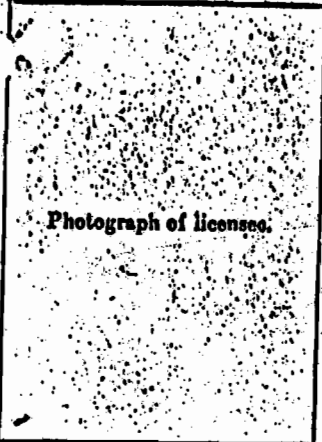
D10

AUDIT COPY

No 450328

Ptg. 22/30.
(Land Code 70)

LICENCE FOR TEMPORARY OCCUPATION OF STATE LAND
OR LAND ALIENATED FOR MINING PURPOSES



Photograph of licensee.

No. in register.....

Fee.....

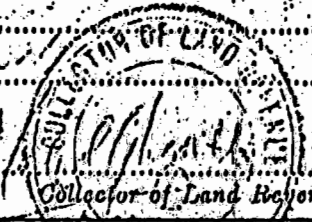
Date.....

Name and address of licensee.....

Purpose for which licence is granted.....

Area.....

Locality..... Mukim.....



This licence is not transferable and may at any time be cancelled by the Collector upon payment of such compensation if any as the..... may deem fit. Planting of permanent crops is forbidden.

This licence is not valid beyond..... unless renewed. If renewed a separate official receipt showing the period of validity of the renewal must be obtained for each renewal.

ادالہ لیسین این تہادالہ بولہ داؤکرکن کفد نام اورغ لاین دان بولہ دیملکن اولہ ازان قتموہوہ خزانہ تانہ فد بیڈا ماس دہن تہاد صباہر
ف ۲ کروکین کفد بی مندودتکی تانہ ایحد . ملک دتکھکن برقد برنام اوکر ۲ بی ککل داتس تانہ لیسین این
مسک لیسین این تہادالہ بولہ دگوناکن لکی کمتین برقد..... مایکن دگنتی دہن لیسین بی ہزار . فد کیف ۲
کی صباہرو لیسین ہمدتہ مدانہ سکفیل راسیہ کراچی ایشرفٹ ہمسجوتکن ددالمن اکن ازمقاہ بی بولہ دگوناکن لیسین ہزار ایحد .

此執照不能轉讓別人，地稅司將此執照時，批消，毋須賠償。此地不准種植有長久性質之植物。此執照發生效力至止，屆時須將執照在展期，在每次展期時，領取照人須取回註明有效日期之官廳正式收條一張。

இந்த அனுமதி நேரடியாகவே மாற்றக்கூடாது. இந்த அனுமதி எப்போதும் சந்தர்ப்பமில்லாத அளவு சந்தர்ப்பமில்லாத அனுமதிக்குச் சட்டப்படி கட்ட வேண்டிய கட்டி எடு செய்யப்படும். அது..... அபிவிருத்திக்குப் பொருத்ததானால், சான்றுபலப் பதிவுச் சட்டம் இடக்கூடாது.
இந்த அனுமதிக்குப் புதுப்பிப்புக்கான.....சான்றுபலப் பதிவு இது செய்யப்படும். புதுப்பிப்புக்கான புதுப்பிப்புச் சட்ட சந்தர்ப்பமில்லாத சான்றுபலப் பதிவுக்குப் பொருத்தமான விசாரணைகள் மேற்கொள்ளப்படும்.

EXHIBIT D.11A
LETTER FROM DISTRICT OFFICER BUTTERWORTH

Defendants'
Exhibits

D11A

Ref. No. DOB 283/56(5A)

District Officer
Butterworth, P.W.

Letter from
District
Officer
Butterworth

Tel. B'worth 61

29th October 1957

29th October
1957

State Secretary,
Penang.

Temporary Occupation Licence
Arrears to be written off

10

In accordance with S.S.G.O.167(4) I forward
herewith for approval a list of arrears of Temporary
Occupation Licence fees to be written off, because
the Lots have been unoccupied.

JOHN NG HOONG KEM

District Officer,
Butterworth.

288.

DOB 283/56(5A)

TEMPORARY OCCUPATION LICENCE
Arrears to be Written Off - 1957

Claim	Lot No.	Cultivation	Area A.R.P.	Amount \$ s	Remarks
1956 3	300 ft.	Resv. Vegetable	1.2.02	8,00	1956 Abandoned vide DOB 200/57(3)
1955 3	300 ft.	Resv. "	1.2.02	16.00	- do -
1955 3	300 ft.	Resv. "	1.2.02	16.00	- do -
1955 3	300 ft.	Resv. "	1.200	16.00	- do -
1955 4	1003(3)	"	1.1.33	16.00	- do -
10 1955 14	275(3)	Picking coconut	10,300 sq.ft.	6.00	Notice to Quit vide DOB 173/53/3 (Land acquired for Housing Scheme)
				<u>878.00</u>	

John Ng Hoong Kem
District Officer,
Butterworth

EXHIBIT D.11B
LETTER FROM DISTRICT OFFICER BUTTERWORTH

Defendants'
Exhibits

D.11B

Ref.No. DOB 283/56(10A)

District Office,
Butterworth, P.W.

Tel. B'worth 61

22nd October, 1958

Letter from
District
Officer
Butterworth

The State Secretary,
PENANG

22nd October
1958

Temporary Occupation Licence
Arrears to be written off

10 In accordance with S.S.G.O.167(4) I forward
herewith for approval a list of arrears of Temporary
Occupation Licence fees to be written off.

(Sgd.)

District Officer,
Butterworth

P.22/10/58

DOB 283/56(10A)

Temporary Occupation Licence Arrears to be written off.

Makim	Lot No.	Cultivation	Area A.R.P.	Amount	From the year of Arrears	Remarks
14	Adj.270(1)	Fruits & Sea Frontage.	22,000 sq.ft.	12.00	1956	Dues unpaid. Licence cancelled vide DOB 168/55.
14	Adj.271(1)	-----do-----	7,200 sq.ft.	10.00	1956	----- do -----
14	Adj.275(1)	-----do-----	5.0.00	40,00	1956	----- do -----
15	493(1)"T"	Vegetable	0.2.33	12.00	1955	Unoccupied vide DOB 86/57(12)
16	578	Nipah	6.2.25	126.00	1955	Dues unpaid Licence cancelled vide DOB 234/58.
			Total	<u>200.00</u>		

278.

(Sgd.)

District Officer,
Butterworth

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

B E T W E E N :

THE GOVERNMENT OF THE STATE OF PENANG
and
THE CENTRAL ELECTRICITY BOARD OF
THE FEDERATION OF MALAYA
(Defendants) Appellants

- and -

BENG HONG OON alias
LIM BENG HONG (Married Woman)
OON GUAN YONG
OON PEH TCHIN and
OON PEH SENG
(Plaintiffs) Respondents

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane,
Cheapside,
London, E.C.2.
Solicitors for the
Appellants.

COWARD CHANCE & CO.,
St. Swithin's House,
Walbrook,
London, E.C.4.
Solicitors for the
Respondents.