

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 :

KEPONG PROSPECTING LIMITED

Appellant

- and -

S.K. JAGATHEESAN  
TSANG TAK CHUEN  
K.W. LIU  
CH'NG KEE HUAT  
PASUBATHY JAGATHEESAN  
LIU WAI SIONG  
C.K. LIU  
S.Y. TSANG

Third Parties  
Appellants

- and -

A.E. SCHMIDT (since deceased) and  
MARJORIE SCHMIDT (Widow) substituted  
for A.E. Schmidt deceased.

Respondent

---

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

---

Stephenson Harwood & Tatham,  
Saddlers Hall, Gutter Lane,  
Cheapside London E.C.2.

Solicitors for 1st Appellant.

Speechly Mumford & Soames,  
10, New Square,  
Lincolns Inn W.C.2.

Solicitors for 3rd Party  
Appellants.

Parker Garrett & Co.  
St. Michaels Rectory,  
Cornhill E.C.3.

Solicitors for the  
Respondent.

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 :

KEPONG PROSPECTING LIMITED Appellant

- and -

S.K. JAGATHEESAN  
 TSANG TAK CHUEN  
 K.W. LIU  
 OH'NG KEE HUAT  
 PASUBATHY JAGATHEESAN  
 LIU WAI SIONG  
 C.K. LIU Third Parties  
 S.Y. TSANG Appellants

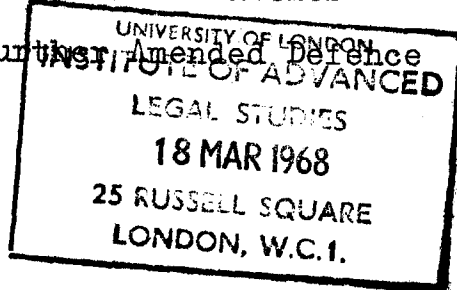
- and -

A.E. SCHMIDT (since deceased) and  
 MARJORIE SCHMIDT (Widow) substituted  
 for A.E. Schmidt deceased. Respondent

R E C O R D O F P R O C E E D I N G SI N D E X O F R E F E R E N C E

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	Order granting extension of time to appeal to His Majesty, the Yang di-Pertuan Agong.	1st September 1964
	Order granting leave to appeal to His Majesty, the Yang di-Pertuan Agong for Respondent	2nd September 1964
	Order granting leave to appeal to His Majesty, the Yang di-Pertuan Agong for Third Parties	28th September 1964
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	Order granting final leave to appeal to His Majesty, the Yang di-Pertuan Agong for the Third Parties.	
"P.13"	Copy of Letter from A.E. Schmidt to Messrs. Leong and Lai Ltd.	28th April 1955
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"P.18"	Copy of letter from Collector of Land Revenue, Muar to A.E. Schmidt	15th November 1953
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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 :

KEPONG PROSPECTING LIMITED Appellant

- and -

S.K. JAGATHEESAN  
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K.W. LIU  
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LIU WAI SIONG  
C.K. LIU  
S.Y. TSANG

Third Parties  
Appellants

- and -

A.E. SCHMIDT (since deceased) and  
MARJORIE SCHMIDT (Widow) substituted  
for A.E. Schmidt deceased. Respondent

RECORD OF PROCEEDINGS

No. 1

20

SPECIALLY INDORSED WRIT OF SUMMONS  
WITH AMENDED STATEMENT OF CLAIM

IN THE HIGH COURT AT KUALA LIMPUR

CIVIL SUIT 1959 No. 333

B E T W E E N

A.E. Schmidt and Chan Wing Building,  
Mountbatten Road, Kuala Lumpur. Plaintiff

- and -

Kepong Prospecting Ltd., of No. 79  
Ampang Road, Kuala Lumpur. Defendant

In the High  
Court at  
Kuala Lumpur

No. 1

Specially  
Indorsed Writ  
of Summons  
24th July 1959

with Amended  
Statement of  
Claim

28th June 1960

30

Dato Sir James Thomson, P.M.N. P.J.K., Chief  
Justice of the Federation of Malaya, in the name

In the High Court at Kuala Lumpur

and on behalf of His Majesty the Yang di-Pertuan Agong Tuanku Abdul Rahman Ibni Almarhom Tuanku mohamed.

No. 1

To Kepong Prospecting Ltd., of 79 Ampang Road, Kuala Lumpur.

Specially Indorsed Writ of Summons 24th July 1959 with Amended Statement of Claim

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 A.E. Schmidt.

10

28th June 1960

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

- Continued

WITNESS Sarwan Singh Gill, Registrar of the Supreme Court of the Federation of Malaya, this 24th day of July, 1959.

Sd: Lovelace & Hastings. Sd: Chan Siew Yoon, Senior Assitant Registrar, High Court, Kuala Lumpur.

20

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

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

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.60 with an addressed envelope to the Registrar of the Supreme Court at Kuala Lumpur

30

If the Defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance, unless such time is extended by the

Court or a Judge, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for judgment.

In the High Court at Kuala Lumpur

No. 1

Amended 28th day of June 1960, pursuant to Order of Court dated the 20th June 1960.

Specially indorsed Writ of Summons  
24th July 1959

AMENDED STATEMENT OF CLAIM

with Amended Statement of Claim  
28th June 1960  
- continued

10 ~~The Plaintiff's claim is for payment of the sum of \$14,457.18 due under an agreement in writing dated the 31st day of July 1954 entered into between one Tan Choo Seah and the Defendant company whereby the Defendant company undertook to pay to the Plaintiff 1% of the selling price of all ore sold from their mining land at Bukit Kepong in the State of Johore.~~

Particulars.

<u>Amount of ore sold</u>	<u>Price</u>	<u>1% Payment.</u>
<del>45,602 tons</del>	<del>\$1,457,418.00</del>	<del>\$14,457.18</del>

AMENDED STATEMENT OF CLAIM ANNEXED  
HEREETO.

20

Sd: Allen & Gledhill.

(Signed).

STATEMENT OF CLAIM

30 1. By (a) a Contract in writing dated 31st July 1954 and made between Tan Choo Seah of the one part and the Defendant Company of the other part and (b) a Contract in writing dated 26th September 1955 and made between the Defendant Company of the one part and the Plaintiff of the other part or alternatively by the one or the other of the said Contracts the Defendant Company agreed and undertook and has at all times thereafter been and still is legally bound to pay to the Plaintiff 1% of the selling price of all ore that should be sold from any portion of the land

In the High  
Court at  
Kuala Lumpur

No. 1

Specially  
indorsed Writ  
of Summons  
24th July 1959

with Amended  
Statement of  
Claim

28th June 1960  
- continued

at Bukit Kepong in the State of Johore in the said Contracts more particularly described. The Plaintiff will refer to the said Contracts at the trial of this action for their full terms and effect.

2. Since the dates of the said Contracts one has been sold and is still being sold from portions of the said land (though to what extent the Plaintiff is unable to state) but the Defendant Company has not (though requested by the Plaintiff so to do) rendered any accounts to the Plaintiff of such sales or paid over to the Plaintiff any of the money lawfully due and payable to him by the Defendant Company in the premises.

10

3. The Plaintiff has in consequence been unable to ascertain the sum now properly due and payable to him under the provisions of the said Contracts or of the one or the other of them and has not received any part thereof from the Defendant Company.

20

The Plaintiff claims :-

1. That an account be taken of all moneys payable by the Defendant Company to him under the aforementioned provisions of the said Contracts or of the one or the other of them.
2. Payments of the moneys found due to the Plaintiff upon the taking of the said account with interest thereon.
3. Appointment of a Receiver.
4. Costs.

30

Dated and re-delivered the 28th day of June,  
1960

Sd: Allen & Gledhill  
Solicitors for the Plaintiff.

~~And the sum of \$ (or such sum as may be allowed on taxation) for costs and also, in case the Plaintiff obtains an order for substituted service, the further sum of \$ (or such sum as may be allowed on taxation). If the amount claimed be paid to the Plaintiff or his Advocate & Solicitor or agent within four days from the service hereof, further proceedings will be stayed.~~

In the High  
Court at  
Kuala Lumpur

No. 1

Specially  
indorsed Writ  
of Summons  
24th July 1959

with Amended  
Statement of  
Claim

28th June 1960  
- continued

10

~~Provided that if it appears from the indorsement of the Writ that the plaintiff is resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, or if the Defendant is acting by order on or behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment in is given to the Plaintiff, his advocate and Solicitor or agent.~~

20

This Writ was issued by Messrs. Lavelace & Hastings, whose address for service is at No. 57, Klyne Street, Kuala Lumpur, solicitors for the said plaintiff who resides at Chan Wing Building, Mountbatten Road, Kuala Lumpur.

This Writ was served by me at Ampang Road, Kuala Lumpur on the defendant on the 24th day of July 1959 at the hour of 4 p.m.

Indorsed this 24th day of July 1959.

30

Signed: VRM. Ramayah.

Address Supreme Court, Kuala Lumpur.

Sd: Served by me on Messrs. Bannon & Bailey on 28th June 1960 at 10.20 a.m.

Received a copy hereof. Sd:  
For Bannon & Bailey,  
Advocates & Solicitors,  
Kuala Lumpur.  
28.6.60 at 10.20 a.m.

In the High Court at Kuala Lumpur

No. 1

Specially indorsed Writ of Summons 24th July 1959

with Amended Statement of Claim

28th June 1960 - continued

Sd: Served by me on Mr. M.N. Gumarasami 28.6.60 on 28th June 1960 at 10.40 a.m.

Received a copy Sd: for M.N. Gumarasami. Advocate & Solicitor, Kuala Lumpur.

No. 2

Further and Better Particulars of the Statement of Claim

15th July 1960

No. 2

FURTHER AND BETTER PARTICULARS OF THE STATEMENT OF CLAIM

IN THE HIGH COURT AT KUALA LUMPUR

CIVIL SUIT NO. 333 OF 1959

10

FURTHER AND BETTER PARTICULARS OF THE STATEMENT OF CLAIM

1. Copies of the Contracts dated 31st July, 1954 and 26th September 1955 referred to in the Statement of Claim are set out as Appendices A and B respectively hereto.

2. Particulars of the consideration moving from the Plaintiff under the Contract of 31st July 1954 and of the facts relied upon in proof of its enforceability by the Plaintiff.

20

(a) By a contract in writing a copy whereof is set out as Appendix C hereto dated the 2nd day of December 1953 made between Tan Choo Seah the person referred to in para 1 of the Statement of Claim of the one part and the Plaintiff of the other part the

said Tan Choo Seah undertook and became legally bound to ensure the payment to the Plaintiff of 1% of the selling price of all ore that should be sold from any portion of the land referred to in para 1 of the Statement of claim.

In the High Court at Kuala Lumpur

No. 2

Further and Better Particulars of the Statement of Claim

15th July 1960  
- continued

- 10 (b) Subsequently on the 27th day of July 1954 the said Tan Choo Seah and others procured the incorporation of the Defendant Company which was to take over the benefit of a Prospecting Permit held by the said Tan Choo Seah in respect of the said land. Prior to the date of the incorporation of the defendant Company the Plaintiff had acted as Mining Engineer and consultant in respect of the said land, and upon its incorporation the Defendant Company was able to enjoy the benefit of the work which the Plaintiff had so carried out. From 20 and after the date of the incorporation of the Defendant Company the Plaintiff agreed to and did in fact enter its service and work for it as a Mining Engineer and Consultant in respect of the said land. No express agreement was entered into at that time between 30 the Plaintiff and the Defendant Company regarding the compensation or remuneration of the Plaintiff for his said work and services but it was never intended that he should act gratuitously.

- 40 (c) By virtue of the Contract of 31st July 1954 referred to in the Statement of Claim the said Tan Choo Seah and the Plaintiff and the Defendant Company intended and arranged as follows :-

- (i) that the Defendant Company should take over the liability of the said Tan Choo Seah to pay the Plaintiff the sums specified in the said contract of 2nd December 1953 as aforementioned

In the High  
Court at  
Kuala Lumpur

No. 2

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960  
- continued

and that the said Tan Choo Seah should thereafter be released from personal liability to the Plaintiff in respect thereof and/or

(ii) that the Defendant Company would pay the said sums of money to the Plaintiff :

a. in compensation for the said work done and services rendered by the Plaintiff for the benefit of the Defendant Company prior to the date of its incorporation aforesaid and between the date of its incorporation and the 31st July 1954 and 10

b. by way of remuneration for the said service which the Plaintiff was then rendering to the Defendant Company and for the further said services which he had agreed to render to the Defendant Company thereafter. 20

(d) The Plaintiff continued after the date of the said Contract of 31st July, 1954 to perform the said services as a Mining Engineer and Consultant for the Defendant Company which he had promised and agreed to do as aforesaid. 30

3. Particulars of the consideration moving from the Plaintiff under the Contract of 26th September 1955 and of the facts relied upon in proof of its enforceability by the Plaintiff.

(a) Doubts having arisen as to the legal validity and enforceability of the contract of 31st July 1954 as between the Plaintiff and the Defendant Company it was agreed and arranged that a further contract in writing should be entered into and executed by them 40



confirming the terms as to the compensation and remuneration of the Plaintiff which had been agreed upon between them in 1954 as aforementioned.

In the High  
Court at  
Kuala Lumpur

No. 2

- 10 (b) If the said Contract of 31st July 1954 was not valid and enforceable as between the Plaintiff and the Defendant Company then the consideration for the said Contract of 26th September 1955 was the same as is set out in para. 2 (c) (i) and/or para. 2 (c) (ii) hereof save that the date 26th September 1955 should be substituted for the date 31st July 1954 referred to in the above paragraph.
- 20 (c) The Plaintiff continued after the date of the said Contract of 26th September 1955 to perform the said services as a Mining Engineer and Consultant for the Defendant Company in accordance with the arrangements in that behalf which had been agreed upon between them as aforementioned.
- 30 (d) If the said Contract of 31st July 1954 by itself is valid and enforceable as between the Plaintiff and the Defendant Company then the Plaintiff claims no further rights under the subsequent Contract of the 26th September, 1955.

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960  
- continued

Dated and delivered this 15th day of July 1960.

APPENDIX A      Stamp fee 50 cts.  
STAMP OFFICE  
5 AUG 1954  
KUALA LUMPUR

Appendix A

Intd.  
N.A.M.      AN AGREEMENT made this 31st day of July  
1954, Between TAN CHEW SEAH by his attorney A.E.  
Schmidt (hereinafter called the Permit Holder)  
of the one part and KEPONG PROSPECTING LIMITED  
40 (hereinafter called the Company) of the other

In the High  
Court at  
Kuala Lumpur

No. 2

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960

Appendix A

- continued

part.

WHEREAS the Permit Holder has been granted a permit being No. 10/53 dated 25.11.53 to prospect for minerals on all that land of an area approximately 1,000 acres in the Mukim of Bukit Kepong, District of Muar (hereinafter called "the said land" which expression shall be deemed to include all or any neighbouring land comprising the same mining project whether applied for before or after the date of this agreement).

10

AND WHEREAS the Company is a private limited company registered and incorporated in the Federation of Malaya and having a registered office at No.6, Ampang Street, Kuala Lumpur.

AND WHEREAS the Permit Holder is desirous that the Company should work his said rights under the Permit aforesaid and any mining lease or mining certificate to be granted to the Permit Holder in the future in respect of the said land for the consideration hereinafter appearing.

20

AND WHEREAS the Company has agreed to allot to the Permit Holder a number of fully paid up ordinary shares of \$1.00 each in consideration of the Permit Holder executing this agreement.

AND WHEREAS the Permit Holder has agreed with his attorney A.E. Schmidt that in consideration of his services rendered in the past, the present and to be rendered in the future he will insure that the said A.E. Schmidt is paid one per cent (1%) of the selling price of all ore that may be sold from any portion of the 1,000 acres of States Land at Bukit Kepong already referred to above.

30

AND WHEREAS the Company has agreed to take over the obligation of the Permit Holder to A.E. Schmidt in consideration of this agreement with such modifications as appear hereinafter.

NOW THEREFOR IT IS HEREBY AGREED as follows:

40

1. The Permit Holder shall permit the Company to prospect and work the said land whether under the Permit aforesaid or any future licence Mining Lease or Mining Certificate and shall not be entitled to any benefits therefrom save as a shareholder of the Company.

In the High  
Court at  
Kuala Lumpur

No. 2

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960

Appendix A  
- continued

10 2. The Permit Holder shall at all times here-  
after make such applications for mining,  
licences, leases, sub-leases or certificates in  
respect of the said land as the Company shall  
request and in the event of failure to do so  
within 14 days of being so requested in writing  
the Permit Holder shall be deemed to have agreed  
to the Company itself making such application  
for mining licence, lease, sub-lease or  
certificate as the Company shall think necessary.

3. In consideration of the above the Company  
shall :

20 (1) declare in its Articles of Association  
that the Permit Holder is one of the  
permanent directors, and

30 (2) allot to the Permit Holder one  
ordinary share of \$1.00 each in the  
capital of the Company credited as  
fully paid up for each and every share  
allotted to shareholders of the  
Company from time to time forcash  
so that the Permit Holder shall have  
50% of the shares issued **SAVE THAT**  
when 200,000 shares have been issued  
no further shares shall be allotted to  
the Permit Holder under the  
provisions of this sub-section.

4. The Company shall take over the obligation  
of the Permit Holder to pay A.E. Schmidt 1% of  
the selling price of all ore that may be sold  
from any portion of the 1,000 acres of State  
Land at Bukit Kepong with the following  
modifications :-

40 (1) the obligation shall be extended so  
as to include the said land as

In the High Court at Kuala Lumpur

No. 2

Further and Better Particulars of the Statement of Claim

15th July 1960

Appendix A - continued

defined in this agreement, and

- (2) the tribute of 1% shall be payable on the selling price of the ore as shown in the company's records.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

SIGNED by the said TAN CHOO SEAH in the presence of :-

Sd: Tan Chew Seah by his attorney A. E. Schmidt. P.A. 783/54 K.L.

10

Sd: N.A. Marjoribanks

The Common Seal of the said KEPONG PROSPECTING LIMITED is hereunder affixed in the presence of :-

(Common Seal) (Kepong Prospecting Limited).

Sd: N.A. Marjoribanks

Sd: A.E. Schmidt. permanent director

Sd: Lee Kok Peng. Director

20

Sd: Leong Kum Weng. Secretary.

Appendix B

APPENDIX B

No.8/60 Penalty under Section 47 of the stamp Ordinance of 1949 \$25/-

Stamp fee \$30/-

STAMP OFFICE 2 11 60 KUALA LUMPUR

Sd: Illegible. DY.COLLECTOR OF STAMP DUTIES, SELANGOR.

30

AN AGREEMENT made this 26th day of September

1955 Between KEPONG PROSPECTING LIMITED (hereinafter called the Company) of the one part and A.E. Schmidt of Kuala Lumpur (hereinafter called the Consulting Engineer) of the other part.

In the High Court at Kuala Lumpur

No. 2

Further and Better Particulars of the Statement of Claim

15th July 1960

Appendix B  
- continued

WHEREAS the Company entered into an agreement with Tan Chew Seah dated the 31st day of July 1954 a copy of which is attached hereto and marked Exhibit I (hereinafter referred to as the said Agreement).

10 AND WHEREAS the said agreement contained a clause namely clause 4 which reads as follows :-

"The Company shall take over the obligation of the Permit Holder to pay A.E. Schmidt 1% of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Land at Bukit Kepong with the following modifications:-

- 20
- (1) the obligation shall be extended so as to include the said land as defined in this agreement, and
  - (2) the tribute of 1% shall be payable on the selling price of the ore as shown in the Company's records".

AND WHEREAS it is deemed advisable that the Company should enter into this supplementary agreement with the Consulting Engineer.

NOW THEREFORE IT IS HEREBY AGREED that in consideration hereof and for the consideration hereinafter set out.

30 I. The Company shall in consideration of the services rendered by the Consulting Engineer for and on behalf of the Company prior to its formation, after incorporation, and for future services pay to the Consulting Engineer 1% (one per cent) of all ore that may be won from any portion of the said land (which expression shall bear the same meaning as given in the said agreement) by way of tribute which said tribute of 1% being calculated on the selling price of the ore as shown in the Company's records.

40

In the High Court at Kuala Lumpur

No. 2

Further and Better Particulars of the Statement of Claim

15th July 1960

Appendix B  
- continued

II. The Company's obligation as aforesaid shall in any event continue until the said land is worked out and shall not cease in the event of the death or retirement of the Consulting Engineer before that happening.

III. The obligations herein contained shall be binding on the successors in title assigns and personal representatives of the parties hereto as the case may be.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

10

The Common Seal of the said )  
KEPONG PROSPECTING LIMITED ) (Common Seal)  
was hereunto affixed in the ) Kepong Prospecting  
presence of :- ) Limited.

Sd: D.G. Ironside.

Sd: Tan Chew Seah  
(In Chinese).

SIGNED by the said A.E. )  
SCHMIDT in the presence of: )

Sd: A.E. Schmidt.

20

Sd: Leong Kum Weng.

---

EXHIBIT I

AN AGREEMENT made this 31st day of July 1954 Between TAN CHOO SEAH by his attorney A.E. Schmidt (hereinafter called the Permit Holder) of the one part and KEPONG PROSPECTING LIMITED (hereinafter called the Company) of the other part.

WHEREAS the Permit Holder has been granted a Permit being No.10/53 dated 25.11.53 to prospect for minerals on all that land of an area approximately 1,000 acres in the Mukim of Bukit Kepong, District of Muar (hereinafter called "the said land" which expression shall be

30

deemed to include all or any neighbouring land comprising the same mining project whether applied for before or after the date of this agreement).

In the High  
Court at  
Kuala Lumpur

AND WHEREAS the Company is a private limited company registered and incorporated in the Federation of Malaya and having a registered office at No.6, Ampang Street, Kuala Lumpur.

No. 2

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960

Appendix B  
- continued

10 AND WHEREAS the Permit Holder is desirous that the Company should work his said rights under the Permit aforesaid and any mining lease or mining Certificate to be granted to the Permit Holder in the future in respect of the said land for the consideration hereinafter appearing.

AND WHEREAS the Company has agreed to allot to the Permit Holder a number of fully paid up ordinary shares of \$1.00 each in consideration of the Permit Holder executing this agreement.

20 AND WHEREAS the Permit Holder has agreed with his attorney A.E. Schmidt that in consideration of his services rendered in the past, the present and to be rendered in the future he will ensure that the said A.E. Schmidt is paid one per cent (1%) of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Land at Bukit already referred to above.

30 AND WHEREAS the Company has agreed to take over the obligation of the Permit Holder to A.E. Schmidt in consideration of this agreement with such modifications as appear hereinafter.

NOW THEREFORE IT IS HEREBY AGREED as follows :-

- 40 1. The Permit Holder shall permit the Company to prospect and work the said land whether under the Permit aforesaid or any future licence Mining Lease or Mining Certificate and shall not be entitled to any benefits therefrom save as a shareholder of the Company.
2. The Permit Holder shall at all times

In the High  
Court at  
Kuala Lumpur

No. 2

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960

Appendix B  
- continued

hereafter make such applications for mining licences, leases, sub-leases or certificates in respect of the said land as the Company shall request and in the event of failure to do so within 14 days of being so requested in writing the Permit Holder shall be deemed to have agreed to the Company itself making such application for mining licence, lease, sub-lease or certificate as the Company shall think necessary.

10

3. In consideration of the above the Company shall :

(1) declare in its Articles of Association that the Permit Holder is one of the permanent directors, and

(2) allot to the Permit Holder one ordinary share of \$1.00 each in the capital of the Company credited as fully paid up for each and every share allotted to shareholders of the Company from time to time for cash so that the Permit Holder shall have 50% of the shares issued **SAVE THAT** when 200,000 shares have been issued no further shares shall be allotted to the Permit Holder under the provisions of this sub-section.

20

4. The Company shall take over the obligation of the Permit Holder to pay A.E. Schmidt 1% of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Land at Bukit Kepong with the following modifications :-

30

(1) the obligation shall be extended so as to include the said land as defined in this agreement, and

(2) the tribute of 1% shall be payable on the selling price of the ore as shown in the Company's records.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first

40



above written.

SIGNED by the said TAN CHOO SEAH )  
in the presence of :-

The Common Seal of the said )  
KEPONG PROSPECTING LIMITED is )  
hereunto affixed in the presence )  
of :-

In the High  
Court at  
Kuala Lumpur

No. 2

Further and  
Better  
Particulars of  
the Statement  
of Claim

15th July 1960

Appendix B  
- continued

APPENDIX C

Appendix C

STAMP OFFICE

Stamp Fee \$25.50

10 14 VII 60

KUALA LUMPUR

Tan Chew Seah  
No. 33A, Kerbau Road,  
Singapore

2nd December, 1953  
Sd: Tan Chew Seah (in  
Chinese)

A.E. Schmidt, Esq.  
Chan Wing Building,  
Kuala Lumpur.

20 Dear Sir,

Having received on 25/XI/53 my Prospecting  
Permit No. 10/53 over 1000 acres of State Land at  
Bukit Kepong, Johore I hereby agree to ensure  
that you are paid one per cent (1%) of the  
selling price of all ore that may be sold from  
any portion of the said land. This is in  
payment for the work you have done in assisting  
to obtain the Prospecting Permit and any work  
you may do in assisting to have mining  
operations started up. Please note my change of

30

In the High Court at Kuala Lumpur

address as above.

Yours faithfully,

No. 2

Sd: Tan Chew Seah  
(In Chinese).

Further and Better Particulars of the Statement of Claim

No. 88/60

Penalty under Section 47 of the Stamp Ordinance of 1949 \$25/-

15th July 1960

Sd: Illegible.

DY. COLLECTOR OF STAMP DUTIES  
SELANGOR.

Appendix C  
- continued

10

No. 3

No. 3

Defence and Counterclaim

DEFENCE AND COUNTERCLAIM

28th July 1960

IN THE HIGH COURT AT KUALA LUMPUR.

DEFENCE

1. The Defendant denies that it is legally bound to make to the Plaintiff the payment specified in the Statement of Claim or any payment.

(A) With respect to the Contract in writing dated the 31st day of July 1954 -

20

(i) The Defendant does not admit the said Contract. The said Contract purports to be executed by the Plaintiff acting under Power of Attorney. The Defendant does not admit that the said Power of Attorney authorised the Plaintiff to execute the said Contract;

(ii) The Plaintiff was not a party to the said Contract;

30

(iii) If the said Contract is valid (which is not admitted), the Plaintiff is entitled to receive under it only such payment as was liable to be made to him by Tan Chew Seah (or Tan Choo Seah);

In the High Court at Kuala Lumpur

No. 3

Defence and Counterclaim

28th July 1960  
- continued

10

(a) The Defendant does not admit that Tan Chew Seah was liable to make any payment to the Plaintiff;

20

(b) If Tan Chew Seah was liable to make any payment to the Plaintiff, that payment was 1% of the selling price in the Federation of Malaya of all ore sold from any portion of the 1,000 acres of State Land at Bukit Kepong less the usual deductions in respect of export duty, stevedoring, lighterage, and charges of a similar nature.

(B) With respect to the Contract in writing dated the 26th day of September 1955 -

30

(i) The said Contract is not admitted;

(ii) The said Contract was not executed in accordance with the Articles of Association of the Defendant and does not bind the Defendant;

(iii) The said Contract is void for uncertainty;

(iv) The said Contract is void for lack of consideration.

In the High  
Court at  
Kuala Lumpur

No. 3

Defence and  
Counterclaim  
28th July 1960  
- continued

2. The Defendant admits that it has not rendered any accounts to the Plaintiff. The Defendant denies that the Plaintiff is entitled to accounts.

3. The Defendant denies that it has agreed under the said Contract of 31st July 1954 to make the payment claimed or any payment to the Plaintiff in respect of services rendered by him to them for work done by him for them.

4. The Defendant says that the said Contract of 26th September 1955 was made at the request of the Plaintiff who at a Meeting of the Board of Directors of the Defendant produced the said Contract without prior notice and requested that the Defendant entered into it with him. The intention of the said Contract was that that part of the Defendant's obligation to Tan Chew Seah under the said Contract of 31st July 1954 referring to the Plaintiff should be implemented by binding the Defendant directly to the Plaintiff.

10

5. The Plaintiff was under no obligation to render any services to the Defendant under the said Contract of 26th September 1955.

20

6. Such work as the Plaintiff performed as a Mining Engineer or in the capacity which is described as "consultant" or "Consulting engineer" was done on his own behalf and not for the benefit of the Defendant under either of the said Agreements.

30

7. The work which the Plaintiff did perform for the benefit of the Defendant was fully paid for. The payment for such work was agreed upon between the Plaintiff and the Defendant and accepted by the Plaintiff as satisfactory payment for his services.

8. The Defendant denies that the Plaintiff rendered any services to it other than those in respect of which he was remunerated as stated in paragraph 7 herein.

9. The remedy of the Plaintiff (if any) is against Tan Chew Seah or the 3rd parties.

10. If the Defendant is liable to make any payment to the Plaintiff the payment is as described in paragraph 1 (A)(b) herein.

In the High  
Court at  
Kuala Lumpur

No. 3

Defence and  
Counterclaim

28th July 1960  
- continued

10

C O U N T E R C L A I M

11. The Plaintiff well knew on the 27th March 1957 that the Third Parties were agreeing to take over such obligation with respect to the payment of 1% tribute as the Defendant had to him. The Plaintiff was fully aware of the course of negotiations regarding this Agreement and was present while the said negotiations were proceeding.

20

12. From a date before 26th September 1955 and continuously thereafter until a date after 27th March 1957 the Plaintiff was Managing Director of the Defendant.

30

13. It was the duty of the Plaintiff as Managing Director of the Defendant to remind the Defendant of the existence of the said Contract of 26th September 1955 and to bring the existence of that Contract to the notice of the Defendant's legal adviser who was also present while the negotiations were proceeding.

14. In breach of the said duty the Plaintiff failed so to remind the Defendant and failed to bring the said Contract to the notice of the legal adviser.

In the High  
Court of  
Kuala Lumpur

---

No. 3

Defence and  
Counterclaim

28th July 1960  
- continued

15. In the premises the Plaintiff is liable to the Defendant to the extent of any sum payable to the Plaintiff by the Defendant under the said Contract of 26th September 1955.

Dated this 28th day of July 1960

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No. 4

FURTHER AND BETTER PARTICULARS  
OF THE DEFENCE

IN THE HIGH COURT AT KUALA LUMPUR

FURTHER AND BETTER PARTICULARS OF  
THE DEFENCE

---

In the High  
Court at  
Kuala Lumpur

---

No. 4  
Further and  
Better  
Particulars  
of the Defence

25th August  
1960.

The following are the particulars of the  
Defence :

Under paragraph 1 (B) (ii).

- 10           The said contract was not executed in  
accordance with Articles 101 nor was it  
duly authorised under Articles 82 (12)

Under paragraph 4.

The said request was made verbally  
by the Plaintiff at a Meeting of the Board  
of Directors of the Defendant held at the  
registered office of the Defendant on  
20th September 1955 at 4 p.m.

- 20           Dated and delivered this 25th day of August  
1960.

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No. 5

AMENDED DEFENCE AND COUNTER CLAIM

IN THE HIGH COURT AT KUALA LUMPUR

D E F E N C E

No. 5  
Amended  
Defence and  
Counter Claim  
1st March 1961.

1.   The Defendant denies that it is legally bound  
to make to the Plaintiff the payment specified in  
the Statement of Claim or any payment.

In the High  
Court at  
Kuala Lumpur

-----  
No. 5

Amended  
Defence and  
Counter  
Claim -  
1st March 1961  
continued

(A) With respect to the Contract in  
writing dated the 31st day of July  
1954 -

- (i) The Defendant does not admit the  
said Contract. The said Contract  
purports to be executed by the  
Plaintiff acting under Power of  
Attorney. The Defendant does not  
admit that the said Power of  
Attorney authorised the Plaintiff 10  
to execute the said Contract;
- (ii) The Plaintiff was not a party to  
the said Contract;
- (iii) If the said Contract is valid  
(which is not admitted), the  
Plaintiff is entitled to receive  
under it only such payment as was  
liable to be made to him by Tan  
Chew Seah (or Tan Choo Seah);
- (a) The Defendant does not admit 20  
that Tan Chew Seah was liable  
to make any payment to the  
Plaintiff;
- (b) If Tan Chew Seah was liable  
to make any payment to the  
Plaintiff, that payment was  
1% of the selling price in  
the Federation of Malaya of  
all ore sold from any 30  
portion of the 1,000 acres  
of the State Land at Bukit  
Kepong less the usual de-  
ductions in respect of export  
duty, stevedoring, lighter-  
age and charges of a similar  
nature.

(B) With respect to the Contract in  
writing dated the 26th day of  
September 1955 -



- (i) The said Contract is not admitted;
- (ii) The said Contract was not executed in accordance with the Articles of Association of the Defendant and does not bind the Defendant;
- (iii) The said Contract is void for uncertainty;
- (iv) The said Contract is void for lack of consideration.

In the High  
Court at  
Kuala Lumpur

\_\_\_\_\_  
No. 5

Amended  
Defence and  
Counter  
Claim -  
1st March 1961  
continued

10 2. The Defendant admits that it has not rendered any accounts to the Plaintiff. The Defendant denies that the Plaintiff is entitled to accounts.

3. The Defendant denies that it has agreed under the said Contract of 31st July 1954 to make the payment claimed or any payment to the Plaintiff in respect of services rendered by him to them for work done by him for them.

20 4. The Defendant says that the said Contract of 26th September 1955 was made at the request of the Plaintiff who at a meeting of the Board of Directors of the Defendant produced the said Contract without prior notice and requested that the Defendant entered into it with him. The intention of the said Contract was that that part of the Defendant's obligation to Tan Chew Seah under the said Contract of 31st July 1954 referring to the Plaintiff should be implemented by binding the Defendant directly to the Plaintiff

30 5. The Plaintiff was under no obligation to render any services to the Defendant under the said Contract of 26th September 1955.

6. The Plaintiff was appointed Managing Director of the Defendant at a Meeting of the Board of Directors of the Defendant held upon the 12th March 1955 with effect from the 27th July 1954 which was the date of incorporation of the Defendant. He was so appointed

In the High  
Court of  
Kuala Lumpur

No.5

Amended  
Defence and  
Counter  
Claim -  
1st March 1961  
continued

because of his knowledge of the affairs of the Defendant and his experience as a Consultant Mining Engineer. He was removed from office as Managing Director at a General Meeting of the Defendant on 19th May, 1957. The Plaintiff continued to be a Director of the Defendant until 2nd August 1959.

7. The Defendant, in return for his services was paid a salary of \$1,000/- from March 1955 until 9th September 1956 and \$2,000/- per month from 10th September 1956 up to and including April 1957. In addition he received various sums for travelling and other expenses. During the period when he was not in receipt of a salary he was remunerated in the same way as the other Directors. The said salary and remuneration covered all services rendered to the Defendant by the Plaintiff and was adequate remuneration therefor. 10

8. The Plaintiff has rendered no service to the Defendant since he ceased to be a Director. The Defendant denies that the Plaintiff rendered to it any services other than those for which he was remunerated as stated in paragraph 7. In particular the Defendant denies that the Plaintiff rendered to it any services in pursuance of either of the said contracts of 31st July 1954 and 26th September 1955. 20

9. The remedy of the Plaintiff (if any) is against Tan Chew Seah or the 3rd Parties. 30

10. If the Defendant is liable to make any payment to the Plaintiff the payment is as described in paragraph 1 (A) (b) herein.

#### C O U N T E R C L A I M

11. The Plaintiff well knew on the 27th March 1957 that the Third Parties were agreeing to take over such obligation with respect to the payment of 1% tribute as the Defendant had to him. The Plaintiff was fully aware of the course of negotiations regarding this Agreement and was present while the said negotiations were proceeding. 40

12. From a date before 26th September 1955 and continuously thereafter until a date after 27th March 1957 the Plaintiff was Managing Director of the Defendant.

In the High Court of Kuala Lumpur

No. 5

13. It was the duty of the Plaintiff as Managing Director of the Defendant to remind the Defendant of the existence of the said Contract of 26th September 1955 and to bring the existence of that Contract to the notice of the Defendant's legal adviser who was also present while the negotiations were proceeding.

Amended Defence and Counter Claim - 1st March 1961 continued

14. In breach of the said duty the Plaintiff failed so to remind the Defendant and failed to bring the said Contract to the notice of the legal adviser.

15. In the premises the Plaintiff is liable to the Defendant to the extent of any sum payable to the Plaintiff by the Defendant under the said Contract of 26th September 1955.

20 Dated and redelivered this 1st day of March 1961.

No. 6

FURTHER AND BETTER PARTICULARS OF THE AMENDED DEFENCE

IN THE HIGH COURT AT KUALA LUMPUR

FURTHER AND BETTER PARTICULARS OF THE AMENDED DEFENCE

No. 6 Further and Better Particulars of the Amended Defence.

1st May 1961

1. Under paragraph 1(A) (iii)

30 The particulars of the circumstance by reason of which it is not admitted that the said Contract is valid are set forth in the second and third sentences of paragraph 1(A) (i).

2. Under paragraph 1(A) (iii) (b).

At the Eighth Meeting of the Board of

In the High  
Court at  
Kuala Lumpur

          
No. 6

Further and  
Better  
Particulars  
of the  
Amended  
Defence  
1st May 1961  
continued

Directors of the Defendant held on or about 1st March 1956 the Plaintiff stated that he would accept 1% tribute on the f.o.b. price of the ore less export duty and the barge contract rate in settlement of the obligations of the Defendant under the Contract of 26th September 1955.

On or about 27th March 1957, in the premises of the Supreme Court at Kuala Lumpur, during negotiations between the Defendant and the Third Parties regarding the take-over by the Third Parties of such obligations as the Defendant had to him, the Plaintiff stated to the Third Parties that the 1% tribute which he claimed to be entitled to him from the Defendant was 1% of the value of the ore at the minehead. The Plaintiff intended the Defendant and the Third Parties to act up on these statements and the Defendant and Third Parties did so when they entered into an oral agreement made by the Plaintiff, the Defendant and the Third Parties that payments thereafter were to be made to the Plaintiff by the Third Parties in lieu of the Defendant and agreed to the terms of paragraph 10 of the Consent Order made by the High Court at Kuala Lumpur in Originating Motion No.6 of 1956 wherein one Lim Ngian Cher was the Applicant and the Defendant and the Third Parties were Respondents. 10 20

2. Under paragraphs 11 and 13.

The negotiations referred to are those particularized in paragraph 2 herein. The legal adviser was Mr. N.A. Marjoribanks. 30

Dated and delivered this 1st day of May, 1961.

No. 7

REPLY AND DEFENCE TO COUNTERCLAIM

IN THE HIGH COURT AT KUALA LUMPUR

Reply and Defence to Counterclaim

In the High  
Court at  
Kuala Lumpur

No. 7

Reply and  
Defence to  
Counterclaim

22nd July 1961

1. The Plaintiff joins issue with the defendant on its Defence except in so far as the same consists of admissions.
2. The Plaintiff denies para 11 of the Counterclaim and states that while consultations were going on in the Supreme Court building between the parties he was specifically denied admittance to the place where such consultations were going on.
3. The Plaintiff admits para 12 of the Counterclaim.
4. The Plaintiff does not admit that it was his duty to do what is alleged in paras 13 and 14 of the Counterclaim and in any event repeats para 2 hereof.
5. The Plaintiff denies para 15 of the Counterclaim and states that he is not liable to pay any sums of money at all to the Defendant.

Dated this 22nd day of July, 1961.

No. 8

AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

IN THE HIGH COURT AT KUALA LUMPUR

AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

No. 8

Amended Reply  
and Defence  
to Counter-  
claim.

16th July 1962

1. The Plaintiff joins issue with the defendants on its Defence except in so far as the same consists of admissions.

In the High  
Court at  
Kuala Lumpur

No.8

Amended Reply  
and Defence  
to Counter-  
claim -  
16th July 1962  
continued

1.A. The Plaintiff will contend that having regard to the Order of this Hon'ble Court dated the 27th day of March 1957 made in O.M. 6 of 1956 which order was made by consent of the defendant which was a party to the proceedings and which order provides inter alia -

10. The agreement between Kepong Prospecting Limited and Tan Chew Seah dated the 31st day of July, 1954 whereby 1% of the value of all ore sold from the mining land is to be paid by the Company to Mr. A.E. Schmidt shall be taken over by the Respondents numbered 1 to 7 and 9 but not 8 or their nominees and the Respondents numbered 1 to 7 and 9 but not 8 shall indemnify Kepong Prospecting Limited., against all claims which may be made against Kepong Prospecting Ltd., thereunder. 10 20

it is not open to the defendant to allege and prove on facts, or claim to establish on law that the agreements sued on were never made or if made were without any legal effect.

2. The Plaintiff denies para 11 of the Counterclaim and states that while consultations were going in the Supreme Court building between the parties he was specifically denied admittance to the place where such consultations were going on.

3. The Plaintiff admits para 12 of the Counterclaim. 30

4. The Plaintiff does not admit that it was his duty to do what is alleged in paras 13 and 14 of the Counterclaim and in any event repeats para 2 hereof.

5. The Plaintiff denies para 15 of the Counterclaim and states that he is not liable to pay any sum of money at all to the defendant.

Dated this 23rd day of July, 1961.

Dated this 16th day of July, 1962.

40

No. 9  
DEFENCE FOR THE 2ND, 3RD, 6TH AND 8TH  
THIRD PARTIES

IN THE HIGH COURT AT KUALA LUMPUR

Defence for the 2nd, 3rd, 6th and 8th  
Third Parties

IN PURSUANCE OF THE COURT ORDER DATED  
16th JULY, 1962

In the High  
Court at  
Kuala Lumpur

No. 9

Defence for  
the 2nd, 3rd  
6th and 8th  
Third Parties

6th August  
1962.

- 10 1. These 2nd, 3rd, 6th and 8th Third Parties deny that the Agreement dated the 31st day of July, 1954, and purporting to have been made between the Defendant and the said Tan Chew Seah was a valid and enforceable agreement.
2. The said agreement of the 31st day of July, 1954 was made by the Plaintiff without the authority of the said Tan Chew Seah.
- 20 3. Alternatively if contrary to the contention of these 2nd, 3rd, 6th and 8th Third Parties it be held that the Plaintiff was held out by the said Tan Chew Seah as having authority to enter into the said agreement of the 31st day of July, 1954, the Defendant had notice of the Plaintiff's lack of Authority by reason of the facts that the Plaintiff was a director of the Defendant and signed the said agreement on behalf of the Defendant well knowing that he had no authority to do so.
- 30 4. In the further alternative if contrary to the contention of these 2nd, 3rd, 6th and 8th Third Parties it be held that the said agreements of the 31st day of July, 1954, was lawful and enforceable they will say that the Plaintiff not being a party thereto had no rights or claims thereunder against the Defendant. Alternatively the Plaintiff ceased to render services to the Defendant after the 27th March, 1957 and is not entitled to claim commission thereafter.
5. In the further alternative the Plaintiff

In the High  
Court at  
Kuala Lumpur

            
No. 9

Defence for  
the 2nd, 3rd  
6th and 8th  
Third Parties  
- 6th August  
1962  
continued

on or about the 1st or 2nd days of March 1956 at the Eighth Meeting of the Board of Directors of the Defendant stated that he would accept one percent tribute on the f.o.b. price of the ore less export duty and the barge contract rate in settlement of the Defendant's obligation (which is denied) under the agreement between him and the Defendant dated the 26th day of September 1955. Thereafter the Plaintiff signed the Minutes containing the said statement and further entered into a written agreement recording the said statement. By the said statement the signing of the said Minutes and the said agreement and each of them the Plaintiff is estopped from denying the effect thereof; alternatively the same was an accord and satisfaction whereby the Plaintiff is precluded from claiming commission of one percent of the selling price of the ore from the Defendant. 10

6. These 2nd, 3rd, 6th and 8th Third Parties admit Clause 10 of the Order of Court dated the 27th day of March, 1957 and made in Kuala Lumpur Originating Motion No. 6 of 1956 but in and by reason of the foregoing these 2nd, 3rd, 6th and 8th Third Parties deny that they are under any liability to the Defendant thereunder. In addition these 2nd, 3rd, 6th and 8th Third Parties will rely on the Defendant's matters of defence in resisting the claim of the Plaintiff. 20

Dated and delivered this 6th day of August, 1962. 30



No. 10

REPLY BY THE DEFENDANT TO THE DEFENCE  
FOR THE 2ND, 3RD, 6TH AND 8TH  
THIRD PARTIES

IN THE HIGH COURT OF KUALA LUMPUR

REPLY BY THE DEFENDANT TO THE DEFENCE  
FOR THE 2ND, 3RD, 6TH AND 8TH  
THIRD PARTIES

In the High  
 Court at  
 Kuala Lumpur

No.10

Reply by the  
 Defendant to  
 the Defence  
 of the 2nd,  
 3rd, 6th and  
 8th Third  
 Parties.

14th August  
 1962.

10 1. The Defendant joins issue with the Third Parties on their Defence.

20 2. On 27th March 1957, the Defendant agreed to grant a mining sublease to the Third Parties or their nominees. The tribute to be paid to the Defendant under the Sublease was agreed at \$2.70 per ton. This figure was agreed on the understanding that the Third Parties would take over the payment of 1% tribute to the Plaintiff. These arrangements were embodied in the Court Order dated 27th March 1957 which was made by consent. In the premises, the Defendant says that the 2nd, 3rd, 6th and 8th Third Parties are estopped from denying the validity and enforceability against them of the said agreement of 31st July 1954.

30 3. By virtue of the said Court Order, alternatively, by virtue of an oral agreement made in or about March 1957 between the Plaintiff, Defendant and Third Parties whereby it was mutually agreed that the Defendant's obligations under the contract of 31st July 1954 and 26th September 1955 should be taken over by the Third Parties, the Third Parties are estopped from denying liability in respect of the payment of the 1% tribute referred to in the said agreements to the Defendant or the Plaintiff.

Dated this 14th day of August, 1962.

In the High  
Court at  
Kuala Lumpur

No. 11

FURTHER AMENDED DEFENCE  
IN THE HIGH COURT OF KUALA LUMPUR

No. 11

Further  
Amended  
Defence.

14th August  
1962.

FURTHER AMENDED DEFENCE

1. The Defendant denies that it is legally bound to make to the Plaintiff the payment specified in the Statement of Claim or any payment.

- (A) With respect to the Contract in writing dated the 31st day of July 1954 - 10
- (i) The Defendant does not admit the said Contract. The said Contract purports to be executed by the Plaintiff acting under Power of Attorney. The Defendant does not admit that the said Power of Attorney authorised the Plaintiff to execute the said Contract;
- (ii) The Plaintiff was not a party to the said Contract; 20
- (iii) If the said Contract is valid (which is not admitted), the Plaintiff is entitled to receive under it only such payment as was liable to be made to him by Tan Chew Seah (or Tan Choo Seah);
- (a) The Defendant does not admit that Tan Chow Seah was liable to make any payment to the Plaintiff; 30
- (b) If Tan Chew Seah was liable to make any payment to the Plaintiff that payment was 1% of the selling price in the Federation of Malaya of all ore sold from any portion of the 1,000 acres of State Land at Bukit Kepong less the usual deductions in respect

of export duty, stevedoring, lighterage, and charges of a similar nature.

In the High  
Court at  
Kuala Lumpur

No. 11

Further  
amended  
Defence -  
14th August  
1962  
continued

(B) With respect to the Contract in writing dated the 26th day of September 1955 -

(i) The said Contract is not admitted;

(ii) The said Contract was not executed in accordance with the Articles of Association of the Defendant and does not bind the Defendant;

(iii) The said Contract is void for uncertainty;

(iv) The said Contract is void for lack of consideration.

(c) The said Contract dated 31st July 1954 and the said Contract dated 26th September 1955 or, alternatively, the first said Contract or the second said Contract were discharged as against the Defendant by novation with the Plaintiff's consent by virtue of paragraph 10 of the Order of this Honourable Court dated 27th March 1957 and made in Originating Motion No.6 of 1956. Alternatively, both the said Contracts or the said first Contract or the said second Contract were impliedly discharged by virtue of an oral agreement made in or about March 1957 between the Plaintiff, the Defendant and the Third Parties whereby it was mutually agreed that the Defendant's obligations thereunder should be taken over by the Third Parties.

2. The Defendant admits that it has not rendered any accounts to the Plaintiff. The Defendant denies that the Plaintiff is entitled to accounts.

3. The Defendant denies that it has agreed under the said Contract of 31st July 1954 to make the payment claimed or any payment to the Plaintiff in respect of services rendered by him to them for work done by him for them.

In the High  
Court at  
Kuala Lumpur

            
No. 11

Further  
Amended  
Defence -  
14th August  
1962  
continued

4. The Defendant says that the said Contract of 26th September 1955 was made at the request of the Plaintiff who at a Meeting of the Board of Directors of the Defendant produced the said Contract without prior notice and requested that the Defendant entered into it with him. The intention of the said Contract was that that part of the Defendant's obligation to Tan Chew Seah under the said Contract of 31st July 1954 referring to the Plaintiff should be implemented by binding the Defendant directly to the Plaintiff. 10

5. The Plaintiff was under no obligation to render any services to the Defendant under the said Contract of 26th September 1955.

6. The Plaintiff was appointed Managing Director of the Defendant at a Meeting of the Board of Directors of the Defendant held upon the 12th March 1955 with effect from the 27th July 1954 which was the date of incorporation of the Defendant. He was so appointed because of his knowledge of the affairs of the Defendant and his experience as a Consultant Mining Engineer. He was removed from office as Managing Director at a General Meeting of the Defendant on 19th May 1957. The Plaintiff continued to be a Director of the Defendant until the 2nd August 1959. 20

7. The Defendant, in return for his services was paid a salary of \$1,000/- from March 1955 until 9th September 1956 and \$2,000/- per month from 10th September 1956 up to and including April 1957. In addition he received various sums for travelling and other expenses. During the period when he was not in receipt of a salary he was remunerated in the same way as the other Directors. The said salary and remuneration covered all services rendered to the Defendant by the Plaintiff and was adequate remuneration therefor. 30

8. The Plaintiff has rendered no service to the Defendant since he ceased to be a Director. The Defendant denies that the Plaintiff rendered to it any services other than those for which he was remunerated as stated in paragraph 7. In particular the Defendant denies that the Plaintiff rendered to it any services in pursuance of either of the said contracts of 31st July 1954 and 26th September 1955. 40

9. The remedy of the Plaintiff (if any) is against Tan Chew Seah or the Third Parties.

In the High  
Court of  
Kuala Lumpur

10. If the Defendant is liable to make any payment to the Plaintiff the payment is as described in paragraph 1 (A) (b) herein.

No. 11

Further  
Amended  
Defence  
14th August  
1962 -  
continued

C O U N T E R C L A I M

10 11. The Plaintiff well knew on the 27th March 1957 that the Third Parties were agreeing to take over such obligation with respect to the payment of 1% tribute as the Defendant had to him. The Plaintiff was fully aware of the course of negotiations regarding this Agreement and was present while the said negotiations were proceeding.

12. From a date before 26th September 1955 and continuously thereafter until a date after 27th March 1957 the Plaintiff was Managing Director of the Defendant.

20 13. It was the duty of the Plaintiff as Managing Director of the Defendant to remind the Defendant of the existence of the said Contract of 26th September 1955 and to bring the existence of that Contract to the notice of the Defendant's legal adviser who was also present while the negotiations were proceeding.

14. In breach of the said duty the Plaintiff failed so to remind the Defendant and failed to bring the said Contract to the notice of the legal adviser.

30 15. In the premises the Plaintiff is liable to the Defendant to the extent of any sum payable

In the High  
Court of  
Kuala Lumpur

to the Plaintiff by the Defendant under the said  
Contract of 26th September 1955.

          
No. 11

Further  
Amended  
Defence  
14th August  
1962 -  
continued.

~~Dated and redelivered this 1st day of March  
1961.~~

Dated and redelivered this 14th day of  
August 1962.

No. 12

NOTES OF EVIDENCE OF HASHIM J.DEFENDANT'S EVIDENCE(i) WILLIAM VICTOR SYMES

D.W.1. William Victor Symes a/s in English.  
Asst. Warden of Mines, Johore.

In the High  
Court at  
Kuala Lumpur

No.12

Notes of  
Evidence of  
Hashim J.

10. I have in my charge the records relating to the mine at Bukit Kepong. P.P.No.10/53 was issued on 25.11.53. Delay in starting work was due to security problem and formation and training of the guard. Clearance was finally given on 28.6.54. The district war executive committee gave permission for an armed guard and in effect thus allowing prospecting to begin. On 30.6.54 the Warden of Mines Johore gave permission to prospects by pitting. There would be no prospecting prior to that. The permit No.1/54 was issued on 8.6.54 to Tan Chew Seah care of A.E. Schmidt (pltf). A letter was received by the Warden of Mines Johore on 15.6.54 from pltf. to say preliminary field observations had been carried out. A letter was sent to the principal geologist in K.L. on 15.8.54 by the Warden of Mines Johore to say that preliminary operations in the Bukit Kepong area held under permit No.10/53 commenced early last month. On 10.8.54 pltf. wrote to the Warden of Mines to say that approximately 40 men were employed at Bukit Kepong. On 17.9.54 pltf. again wrote to Warden of Mines forwarding a report on the prospecting carried out together with the plan showing the positions of the pits examined. At that time considerable delay was apparent with regard to this permit because they could not have security guard. Final clearance for the guard had to be obtained from the Director of Operations, in K.L. I cannot say about the degree of terrain.
- 20.
- 30.

Defendant's  
Evidence

12 (i)

William  
Victor  
Symes

Examined

CROSS-EXAMINED BY PLAINTIFF

40. XXN. by Ramani. I was not personally in charge of the Mines Department at that time. What I have started I have called for the records. What I have given is in respect of P.P.10/53. From the departmental view we then

Cross-  
examined by  
Plaintiff

In the High  
Court at  
Kuala Lumpur

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No.12

Notes of  
Evidence of  
Hashim J.

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Defendant's  
Evidence

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12 (i)

William  
Victor  
Symes

Cross-  
examined by  
Plaintiff  
continued

waited for the mine to start work. Permit 1/54 was only a permission for carrying out pitting in respect of P.P.No.10/53 under the rules and regulations of the Mines Enactment. P.L.1/55 was issued on 4.4.55. It was applied for on 18.9.54. The area in respect of P.L.1/55 is 740 acres. A plan was forwarded to Warden of Mines Johore showing the prospecting carried out under P.P.10/53, P.P.3/55, P.L.1/55 and P.L.3/55. On 15.3.55 pltf. sent a report of prospecting in respect of P.P.10/53 & P.P.3/55. First report contained 57 pits with regard to p.p.10/53 and second report contains both of 10/53 and 3/55 the number of pits would be more than 57. I cannot say exactly how many because the report is in my files. Part of this area falls within the Malay Reservation, Bukit Kepong Malay Reservation. One day after 5.9.55 the Warden of Mines received a copy of an application for a mining lease over a total area in respect of the 2 p.ps. Results of prospecting submitted by permit holder together with the plan of any area prospected are kept under confidential cover in the Mines Office concerned and are not kept in open files. I have not got a document dated 5.9.54 with me to-day. It will be in the confidential file. According to my file it would appear that on 24.11.55 a further pitting report with log sheets was sent to the Warden of Mines, Johore. The last sentence in the letter dated 24.11.55 is "the working is still proceeding" referring to prospecting work. Mooney requests Court to note that witness is being examined from the voluminous correspondence between the deft. company and the Mines Department which appears to be in the possession of the pltf. including prospecting plans. None of this correspondence and none of these plans are disclosed in pltf's affidavit of documents. I am shown a prospecting plan. I would presume that a plan of this type would be submitted to show the position of the pits dug. (1/D6). I have an extract from the C.L.M's file dated 10.12.55 to say that the executive council has approved the 2 mining leases. Any information with regard to how the security problem could be solved before 28.6.54 would be with the D.W.E.C. or C.P.O. I did not intend to suggest that because pltf. could not produce a security guard that clearance was not given until that date. I am not familiar with this area. I can only say that the security position was bad.

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CROSS-EXAMINED BY THIRD PARTIESIn the High  
Court at  
Kuala Lumpur

10. XXN. by Murphy. The last communication from Kepong Prospecting is dated 31.5.59. All the letters from Kepong Prospecting to which I have been referred by Mr. Ranani are signed by various people and not by any one particular person. The chop is the signature. Pltf. signed most of them. I see a large number of plans similar to 1D6. I cannot say whether one particular person drew such plans outside our department. We have a tracer to draw the plans.

No.12

Notes of  
Evidence of  
Hashim J.Defendant's  
Evidence

12 (i)

William Victor  
SymesCross-  
examined by  
Third Parties  
continuedRe-  
ExaminedRE-EXAMINED

20. Re-Xn. Pitting is relatively simple depending upon hardness of the ground. I am referring to the physical act of digging a trench. Planning for pitting can be difficult depending upon the area. The prospecting area of P.P.10/53 is 1,000 acres. The area in respect of the 2 mining leases were issued in L.496 is 875 acres 2 roads 0 poles. In M.L. 495 is 760 acres, total approximately 1635 acres.

(By consent witness is released from further attendance).

12. (ii) WILLIAM ROBERT HUSSAY

12 (ii)

D.W.2. William Robert Hussay a/s in English;William  
Robert  
Hussay

30. I have been a Mines manager on 3 mines. I am now a consulting engineer. I was formerly employed as a resident engineer with the deft. mining, Kepong Prospecting Co. This was at their mine at Bukit Kepong. I was thereafter employed by the Kepong Mines Ltd. as resident engineer and

Examined

In the High  
Court at  
Kuala Lumpur

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No.12

Notes of  
Evidence of  
Hashim J.

—  
Defendant's  
Evidence

—  
12 (ii)

William  
Robert  
Hussay

—  
Examined  
continued

mines manager at Bukit Kepong. I first saw Bukit Kepong during the X'Mas holidays in December 1956. I walked over the area. There was a narrow jungle track from the Bukit Kepong Village to the proposed mining area and I noticed it was virgin jungle and a few tracks and rentices led to the pitting that had been excavated to reveal the iron ore deposits. The pitting was not of the same age. A few of the pits had green moss on the sides of pits. I have seen a Japanese document and its translation in pltf's office. It would appear from the document that a Japanese party had come from Siam to Bukit Kepong round about 1928 and had found iron ore a few feet under the top soil. It did not give any technical data beyond that some ore was so many feet underneath the top soil. I would estimate that for the initial work involved \$2,000 or \$2,500 per month would be a reasonable fee. I mean in the preliminary work. Thereafter between \$500 and \$1,000 a month as a visiting consultant. The work involved in preliminary work prior to estimating the actual ore deposits and capital expenditure involved in opening that particular mine and estimating the financial return for the capital expenditure which has been expended entails considerable work and responsibility and technical knowledge is very considerable. I look at p.1 in D5. To acquire a knowledge on this "report of prospecting up to date" would require approximately 2 months, visiting the area, compiling statistics from the field workers. The digging the pits is included in the 2 months.

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Cross-  
Examined  
by  
Plaintiff

CROSS-EXAMINED BY PLAINTIFF

XXN. by Ramani. Pltf. is a very well known consulting engineer in Malaya. I have no experience of this country before the war, but after 1945. Pltf. is considered as a consulting engineer with a high reputation. When I started work there as resident engineer in December 1956 and most of the prospecting had been completed. Pltf. was the chief engineer. I was paid \$2,000 as resident engineer and travelling expenses. At that time I was living in K.L. when I was employed by Kepong Prospecting. I carried on until March 1960.

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10 My salary went to \$2,400 per month with free accommodation with a bonus of 5 cts. a ton on production. After Kepong Mines took over pltf. was for some time consulting engineer for the Kepong Mines. I knew pltf. was doing it for a nominal fee. I do not know how much it was. Pltf. spent many hours with me when he was consulting engineer for Kepong Mines planning the mines scheme. Pltf. was the chief engineer for a short period for Kepong Prospecting. Pltf. was giving his best while I was working with him. It was to his interest to give his best as he had a lot to gain by it. I would not agree that in December 1956 there was any extra work to do except to dig a few trial pits for the Japanese ore buyers who visited the area. There were many pits at Bukit Pasol but I cannot say how many. All the mining at this particular mine was basically easy but the jungle present the problem and it was a very bad bandit area. In 20 1954 it was even worse.

In the High Court at Kuala Lumpur

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No.12

Notes of Evidence of Hashim J.

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Defendant's Evidence

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12 (ii)

William Robert Hussay

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Cross-Examined by Plaintiff continued

CROSS-EXAMINED BY THIRD PARTIES

Cross-Examined by Third Parties

30 XKN. by Murphy. I was not brought in by pltf. I answered an advertisement and was interviewed by pltf. It was on pltf's recommendation I got the job. I got the job in October 1956. I do not have any engineering qualification. In 1957 I started working for Kepong Mines and pltf. was the consulting engineer. I do not know pltf. was getting \$300 a month. During the period May 1957 to December 1957 when we were both working for Kepong Mines pltf. advised on the levels and the positioning of the washing plants, the best area to work in which would give the quickest return on the ore and generally advised me on the equipment. Pltf. did not come to Bukit Kepong except on 2 occasions but I had contact with him in K.L. in his office. I could not have called on him more than 6 times. I would stay for about an hour on each occasion. That 40 would be the sum total of his work. I would expect him to be paid more than that. Pltf. was there to

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Court at  
Kuala Lumpur

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No.12

Notes of  
Evidence of  
Hashim J.

—  
Defendant's  
Evidence

—  
12 (ii)

William  
Robert  
Hussay

—  
Cross-  
Examined by  
Third  
Parties  
continued

do more if I wanted him to do more. The washing plant plans had been partially prepared by pltf. prior to our both joining Kepong Mines. I was trying to get the washing plant plans from pltf. during that period of 7 months. Plans were not complete. I got the plans roughly in December and when I got them they were not complete. My main concern at that time was not to get the plans for the washing plant but to build 10 miles of road. The only thing pltf. was required to do was to provide the plans for the washing plant. Pltf. was also to assist me in locating 168 owners of small rubber estates to whom we had to pay compensation for destroying the rubber trees. I asked him to do this not because he was the consulting engineer but he knew the people in that area.

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Adjourned to 2.30 p.m.

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Sd. M.M. Hashim  
18.3.63

Court resumes Parties as before.

D.W.2. William Robert Hussey (on former oath)  
states in English:-

XXV. by Murphy continues.

I thought pltf. was the best man to contact the smallholders because he had been in the district and knew the people for many years. The road was approximately 7 miles. The first 3 miles is a reserved road owned by the State of Johore. On the contrary the first 3 miles was the problem. The small holders had encroached on the first 3 miles with rubber and fruit trees. They got \$4/- per tree as compensation. The 168 people had encroached on the first 3 miles. The next portion after the first 3 miles was owned by the Sng estate and other small holders. The Sng estate was not to my knowledge owned virtually by the company. Pltf. put me into contact with some of the owners near Malacca. Pltf. put in contact with one of the Directors of the Company.

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Pltf. gave me advice as to where to go to contact some of the owners. The last 2 and not more miles was virgin forest. I got part of the washing plant plan in December, Pltf. did not give me the whole plan because the mechanical drive was rather complicated and to my knowledge was never finalised. Mr. Wilkins drew a plan on my recommendation over the telephone and pltf. was going to be dismissed as the consulting engineer.

10 That plan was eventually sent to me by the new consulting engineer that was engaged who was Mr. J.P. Wilkins, Iph. To my best of recollection I got the plan in February or April 1958. Mr. Chang came up to see me at Kepong and very often I went to see pltf. at K.L. with Chang. On every occasion Chang asked pltf. for the plan of the washing plant. Personally pltf. was not in the best of health at that time and conveyed it to us and possibly the drive was very complicated and it

20 would have taken pltf. a much longer time than Chang and I could afford. The expenses at my level were running at \$15,000 a month and the company could not do any mining because the washing plant was not ready. Wilkins produced the plan within 2 months. The plant has worked effectively as any other washing plant. Chang consulted me and I agreed Chang had to get somebody else to do the plan of the washing plant. I am shown a copy of a letter from Kepong Mines to pltf. terminating his

30 services. I knew that letter was going to be sent as I had been consulted about it. I agree that pltf. has not mining engineer's qualification. Possibly pltf. could not draw up the washing plant plan because he does not possess a mining engineer's qualification. I do not agree pltf. has not the ability to produce such a plan. I have a great deal of practical experience. I believe Chang was a Director of Kepong Prospecting in December 1956. My job at that time was to find out the cost of new

40 and second-hand equipment. No practical work was done at that time. When I did start it was in connection with the construction of the road as I was a constructional engineer in the army. It was after production that they brought in George Yipp. Wilkins was the consulting engineer since January 1958. I was asked to hand over to George Yipp on 10.3.60 but Yipp had arrived previously. Pltf. was a sick man between December 1956 to May 1957. Pltf. did not do anything during that period other than

50 writing a letter or not. I was also unable to do

In the High Court at Kuala Lumpur

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No.12

Notes of Evidence of Hashim.J.

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Defendant's Evidence

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12 (ii)

William Robert Hussay

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Cross-Examined by Third Parties continued

In the High Court at Kuala Lumpur

No.12

Notes of Evidence of Hashim J.

Defendant's Evidence

12 (ii)

William Robert Hussay

Cross-Examined by Third Parties continued

12 (iii)

John Puddicombe Wilkins

Examined

any work because of the case pending against Kepong Prospecting. During the whole time I was there pltf. did practically nothing.

No re-Xn. by M.

(Ramani submits that we seem to get away from the action. Nothing to do with pltf's work. Witness released.)

12 (iii) - JOHN P. WILKINS.

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D.W.3. John Puddicombe Wilkins a/s in English:-

Consulting Mining Engineer with an office in Ipoh.

I am a qualified mining engineer. I obtained my qualification at the Cranborne School of Mines. I have been a mining engineer since 1937. I have practised my profession in Thailand Sierra Leone and Malaya. I have been practising as a consulting mining engineer in Malaya since 1955. I am familiar with iron ore agreement between prospectors and miners. I have not come across a 1% tribute arrangement in these agreements. A percentage tribute arrangement is common in tin agreements. We do not have a percentage tribute in iron ore agreements because iron ore is based on the cost per ton. In a tin agreement the tribute is based on a percentage of the final cost. The cost of tin is quoted on the tin market and certain percentages are deducted by the

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Government for duty purposes assay charges and smelting charges and percentages due to tributes and the balance is paid to the miner or firm. As far as iron ore is concerned the tribute is mentioned in so many dollars and cents per ton. I am shown p.1 of D.5 - "report on prospecting to date". (Witness reads it to himself.)

In the High Court at Kuala Lumpur

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No.12

10 Kn. continues. The calculations there are fairly simple. There is a reference to assay value. The assay could be done by a mining engineer. It is normally not done by him. There is a reference to the estimated cost of production. This would take roughly a fortnight to do. After the area has been inspected to ascertain transport facilities and other factors one should be able to roughly estimate the capital required. The estimated cost of production is a separate operation from the estimate required of capital requirement. It would take roughly 2 weeks to estimate the capital.  
20 These two weeks would overlap the 2 weeks required to estimate the cost of production. I have acted as consultant for Kepong Mines since Jan. 1958. My remuneration is \$500 per month. I am in a position to assess approximately what had been done before my arrival. The previous consulting engineer had done considerable work in furthering the floatation of the mine as a mining unit. A reasonable monthly fee for that work would in my opinion be approximately \$1,000 depending upon the amount of time he spent on the job. I don't charge by the hour but I charge by the day which is \$100/- a day. I increased to \$100 a day since 1959. This would be a reasonable average rate depending upon the size of the office.  
30 Adjourned to 10 a.m. on 19.3.63.

Notes of Evidence of Hashim J.

—  
Defendant's Evidence

—  
12 (iii)

John Puddicombe Wilkins

—  
Examined continued

Sd: M.N. Hashim  
18.3.63.

19th March, 1963

Court resumes. Parties as before.

40 D.W.3. John P. Wilkins (on former oath) states in English:-

CROSS-EXAMINED BY PLAINTIFF

XXN. by Ramani. When one uses the word mining the normal accepted meaning is mining underground such

Cross-Examined by Plaintiff

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Court at  
Kuala Lumpur

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Notes of  
Evidence of  
Hashim J.

—  
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Evidence  
12 (iii)

John Puddicombe  
Wilkins

—  
Cross-  
Examined by  
Plaintiff  
continued

as mining coal by sinking shafts tunnels and things like that. Tin mining in this country with the exception of one underground mine can be termed surface or alluvial mining. The training at Cranborne School, the emphasis is on underground mining but it also includes alluvial mining. Alluvial mining requires skills of a structural, a bit of electrical and mechanical engineering. Tribute is money paid by the miner based on his production to the lessor of the mining lease. Tribute in respect of tin mining is of the value and quantity of the tin ore. I agree there is a local market for tin. I agree there is no local market for iron ore. The tin buyer or smelter pays the export duty. The export duty is royalty paid directly by the smelter to the Govt. In tin it excludes the value of the export duty. With iron ore it may be on the same principle depending on the agreement made between the mining lease owner and the miner. The term F.O.B. value does include export duty in the case of iron ore. The value is dependent on the F.O.B. price which includes the duty in respect of iron ore and in the case of tin it is deducted at source by the smelters. Tribute is based on the understanding that the final rate payable on the F.O.B. price. I am shown D.5. p.1 "report on prospecting to date". When I said yesterday it was fairly simple I meant the calculations were simple to arrive at the figures quoted at p.1 of D.5. Material for the calculations must be obtained. I read at p.1. "Bukit Nanong Besar - 30 acres - 1000,000 cu.yards 250,000 tons". Preliminary work must be done in prospecting to obtain these figures. The area has got to be prospected by pitting to obtain the depth of overburden and the depth of iron ore and also the acreage. Pits measured by dropping a tape measure from the surface to the bottom of the overburden and from that point to the bottom of the iron ore. Each pit has been measured and recorded. When the iron face is finished the pitting stops. Work of pitting is supervised by the kepals or the clerk in charge in the field who records the information for final inspection by the engineer in charge or other appointed agent.

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After measurements are taken the position of the pits are recorded on a plan. Samples are taken for recording the contents of iron ore. When all these things are done the calculation part is compiled in the office of the consulting engineer.

In the High Court at Kuala Lumpur

No.12

Notes of Evidence of Hashim J.

Defendant's Evidence

12 (iii)

John Puddicombe Wilkins

Cross-Examined by Plaintiff continued

Cross-Examined by Third Parties

CROSS-EXAMINED BY THIRD PARTIES

10. XXN. by Murphy. One computes every pit and records the depth of iron ore and then averages the depth of bed and the quality of the whole lot. It is usually done by the engineer. All the work at the field should be inspected by the person who signs the report. At times it is difficult to get the figures because the field workers have to wade through swamps. Apart from the physical difficulty there is not much mental difficulty provided the person who signs the report knows what he has to do. These calculations can be made by a knowledge of arithmetic and not necessarily by an engineer.
- 20 I did a drawing for the washing plant in 1958. I was asked to do it in January and I produced it I think in March. I did not get the help of any plan from pltf. D.W.2 told me what the area was like. I put up the actual drawing of the plan unaided. There was a drawing of a rotating screen which was not completed and I saw an incomplete trommel at the foundry. Not practical to complete the washing in accordance with the drawing of the trommel which I saw. As it was only half a plan I could not answer
- 30 to the question whether any competent engineer would draw such a plan for this particular washing plant. From the half plan and the trommel which I saw I would have some idea as to the type of washing plant contemplated by the engineer who prepared that plan. I do not consider that such a machine

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12 (iii)

John Puddicombe Wilkins

Cross-Examined by Third Parties continued

12 (iv)

Hew Kiang Main

Examined

contemplated by that engineer would be suitable for the purpose. I deal with similar types of machines at Cranborne School of Mines. I would have expected something better from a competent mining engineer.

No re-Xn.

(Ramani once again protests to waste of time. Issue not the capability of pltf. Noted. Case proceeds.)

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12 (iv) - HEW KIANG MAIN

D.W.4. Hew Kiang Main a/s in English:-

Qualified Accountant. I am an associate of the Australian Society of Accountants. I am a partner of Hew & Co. public accountants. My company is the secretaries of Kepong Prospecting Ltd. I have in my custody a minute book of Kepong Prospecting Ltd. together with the Memorandum and Articles of Association of Kepong Prospecting Ltd. I have also in my custody minutes book No.2 with a copy of the Amended Memorandum (admitted D7 and D8 respectively). I have also in my custody journal, ledger and cash book. (Admitted D9, D10 & D11 respectively). I have examined D9, D10 & D11 and I have made extracts from these books. I produce the extracts (admitted D9A, D10A & D11A). The extract from D9 refers to entries of the accounts of pltf. with Kepong Prospecting Ltd. D10A refers to a copy of the pltf's current account with Kepong Prospecting Ltd. D11A refers to payments by cheques made by Kepong Prospecting Ltd. to pltf. D9A is connected with D10A. D9 is used to record entries before posting to D10. D11A records entries in the cash book before posting to the ledger. According

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to D11A the total under the column salaries and wages amounts to \$23,666.66. In addition in D10A on the right hand side of the account against the date December 31st 1955 there is an entry for salary for March to December 1955 for \$10,000. Therefore the total salaries paid to pltf. is \$33,666.66. The total expenses paid to pltf. amounted to \$11,250.19 covering period July 1955 to April 1957. There is another \$1,000 advanced by Chua Ken San, Chairman of the Kepong Prospecting Ltd. to the pltf.

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Hew Kiang Main

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CROSS-EXAMINED BY PLAINTIFF

XKN. by Ramani. D10 is a full copy of pltf's current account. D9A & D11A are extracts of entries only in respect of pltf. There are no entries relevant to pltf. in the journal D9 before October 31st 1955.

(Ramani applies that he be allowed to cross-examine at a later date after studying D9, 10 & 11 - granted).

No questions by Murphy.

No Re-Kn.

12 (v) - CHUA KWANG SONG

12 (v)

D.W.5. Chua Kwang Song a/s in English:-

Chua Kwang  
Song

I am the managing director of Kepong Prospecting Ltd. the deft. company. I have been a director of this company since it began. I ceased to be a director on 5.9.56 when the third party were controlling the company. I became a director again in March 1957 immediately after the consent order. Pltf. was chairman and managing director of Kepong Prospecting Ltd. from the beginning till 1.10.56. On 1.10.56 pltf. ceased to be the chairman but remained managing director till 19.5.57. I look at page 13 of Pl. (Witness reads the portion marked in blue

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Chua Kwang  
Song

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Examined  
continued

pencil by me.) I now look at D5 p.3. (Witness reads the portion at the bottom marked in blue pencil by me.) I now look at p.33 of P1. (Witness reads portion marked by me in blue pencil.) Pltf. was appointed managing director of the mining due to his knowledge of the affairs of Kepong Prospecting Ltd. and also in his capacity as an engineer. I look at P1 page 14 - "adoption of agreement". I look at D5 p.5 - "provisions of staffs". I think the pltf. himself suggested that he should get a salary. I think it was the pltf. again who suggested the amount. I think the pltf. must have suggested the date as to the commencement of his salary. Pltf. was not paid any salary before because the company had no money at that time. The company had very little money on 4.7.55. It was not in a position on 4.7.55 to pay pltf. \$1,000 a month. The question of salary was raised by the pltf. himself at this meeting of 4.7.55. I look at p.3 of D.5 "future action". I now look at p.4 of D.5 "proposed trip to Japan". As far as I know the cost of a 1st class return trip to Japan at that time was about \$1,000. I look at p.29 of P.1 "appointment of Chief Engineer". Pltf's salary was increased to \$2,000 with effect from 10.9.56 as the result of the resolution passed at the meeting of 5.9.56. The company was incorporated on 27.7.54. There was very little work going on at Bukit Kepong in 1954 because of the emergency. Kepong was a very bad bandit area at that time. Besides the emergency there was no other reason why no work was done there. At that time in 1954 the company definitely had not enough funds to start mining operations. We were always short of money to pay the security guards up there. During these six months in 1954 after the company had been formed the pltf. had never visited the mine. I look at p.21 in P.1 "finance." I recollect this event. At that time my father was trying to ask his friends to subscribe to the company's capital and it was found that 1% tribute payable to pltf. was not welcome by my father's friends. So I was instructed to attend this meeting to convey that information and to request the pltf. to reduce that 1% tribute so that it could be more

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attractive. I look at p.23 in P.1. "finance" (reads). It is correct to say there was no money coming to the company at that time. The principal single item of expenditure of the company at that time was salary due to pltf. The entry of the third party into the company led to proceedings in Court. The view taken by me and my group of shareholders was that the 3rd party had got a lot of shares in an irregular manner. (A copy of a minute in D.9 put in admitted D8A). I look at D8A. This is a minute of the crucial meeting the outcome of which was that the 3rd party got the control of the company. I went to the Court with the 3rd party. Our object was to nullify the issue of shares to the 3rd party. After a preliminary hearing a settlement was discussed between my group and the 3rd party. It was discussed in this Court House but in the larger Court room next door on the 27.3.57. At that meeting it was agreed that the 3rd party would carry out the mining operation under a sub-lease and also that the obligation of 1% tribute to pltf. be taken over by the 3rd party. The 3rd party know of pltf's 1% tribute. I see p.25 in P.1. I read from the bottom at p.26. Mr. Jagatheesan is the first 3rd party in this action. I was involved myself in the discussion in the empty court room. There were many persons present at the discussion at that time. Chan & Jagatheesan were present, many lawyers present, among them I remember Cunarasani and Smith. They were on the side of the 3rd party. Smith was one of the 3rd party involved at that time. Marjoribanks, a lawyer represented Kepong Prospecting. I saw the pltf. around the Court House at that time. He was managing director of Kepong Prospecting at that time. It was agreed at that discussion between me and the 3rd parties that the 3rd party would take over the obligation of paying the 1% tribute to pltf. We first discussed the amount of tribute to be paid to us at \$3/- per ton and it was on the suggestion of the 3rd party that since they would take over the payment of 1% tribute to pltf. which was reckoned at more or less 30 cts. per ton so the net tribute to be paid to us would be \$2.70 per ton. This was agreed by us. And that was embodied in the consent order.

Adjourned to 2.00 p.m.

Sd: M.M. Hashin  
19.3.63.

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Song

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Court resumes.

Parties as before.

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D.W.5. Chua Kwang Song (on former oath) states  
in English:

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I look at p.20 of P.1. I read out paras  
2 & 3 at p.20. The supplementary agreement  
mentioned in Para. 3 became the second agreement  
in this case. I did not have prior notice that  
this agreement was going to be produced. Pltf.  
said it was to substitute the company for Tan  
Chew Seah as the payer of this tribute. 10

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12 (v)

There was no objection by the Board as far  
as I can remember. Chan Cheow Kiat speaks  
pigeon English. Gwee Yan Keng does not speak  
English at all. In 1955 my English was not so  
good. I improved my English during these  
cases. I have plenty of meetings with my  
Solicitors in respect of these cases. They  
spoke English. As far as I know there was no  
resolution to authorise any specific director  
to execute that agreement, meaning the 2nd 20  
agreement. Pltf. had originally some kind of  
agreement with Tan Chew Seah. I know Tan  
Chew Seah quite well. I am quite familiar with  
his business affairs. My familiarity extends  
back to 1955. As far as I know I don't think  
pltf. has rendered any service to Tan Chew Seah  
after 1955. In 1957 the Kepong Prospecting  
had actually no office of its own. We used  
the address of the Secretary's office. I look  
at p.46 in P.1. (reads). I know nothing 30  
about the document. I came across it in the  
course of this case. I first saw it when P.1  
was produced in Court. It would appear from  
XXn. of D.W.1. that pltf. was in possession of  
a number of documents belonging to Kepong  
Prospecting. I believed that pltf. was  
keeping behind some documents belonging to  
Kepong Prospecting. I did not know exactly  
what these documents were. I made an attempt  
to obtain these documents. The attempt was 40  
not successful.

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Chua Kwang  
Song

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Examined  
continued

CROSS-EXAMINED BY PLAINTIFF

XXN. by Ranani. I made the attempt on 12.2.58. I have a copy of the letter I wrote to pltf. (reads). The secretary wrote the letter. We instructed the secretary to obtain the records. I got this copy from the office file yesterday evening. I got this copy after listening to the evidence of D.W.1. D.W.1. did not say that pltf. had documents belonging to the company. I knew pltf. had some of the company's documents when I listened to the cross-examination of D.W.1. I told my counsel that we tried to recover the company's documents in the possession of pltf. I was either the managing director or chairman when the secretaries wrote that letter of 12.2.58 to the pltf. I could not find any reply to this letter in the secretary's file. I cannot remember why I wanted the documents in pltf's possession. If I had need for those documents I should have sent a reminder to pltf. but I did not do this. I believe there is no entry in any minutes after February 1958 to indicate that I complained about the non-reply to the secretary's letter dated 12.2.58. After this action was brought I had to file my defence. I am not aware of the rules of procedure. It did not occur to me that I had to call for all the documents which were then in the possession of the pltf. I was present in Court when leading Counsel for the pltf. opened his case. I cannot recall leading Counsel pointing out to 2 baskets in the Court and say that these represented the amount of work pltf. had to do. I recall seeing 2 baskets in Court. (Ranani asks for (56) in file).

XXN. continues. I was not told by my lawyers in the course of my giving the instructions that the pltf. had filed an affidavit giving a list of documents in his possession. [Ranani asks the Court to look at itens from 32 to 37 in the affidavit (56) in file. Court looks.] I look at page 18 of P.2. I am shown the original. I have not seen it before but I have seen its copy in the bundle. I might have seen when I interviewed my solicitors after the action began. I never saw the original or its copy before the action began. Tan Chew Seah has told me that there was no written agreement to pay 1% to pltf. but

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Plaintiff  
continued

there was a verbal agreement. I know there was an agreement relating to the 1%. I have no complaints about the first agreement. I look at the first agreement, P.3. This is the agreement which is referred to in the minutes of the first meeting of the company. I look at p.14 P.1, "adoption of agreement". (1st agreement p.10 in P.2 read by Ramani). I agree that the Permit Holder referred to in the agreement is Tan Chew Seah. I understand from this agreement that the company will take over the obligation to pay the 1% and to work the land. The company agreed to pay 1% of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Land at Bukit Kepong. According to this agreement I agree that so long as there is iron ore on this piece of land the company has to pay the 1% tribute. At that time the expression "the selling price" was not clearly defined. We did not ask the lawyers present at that meeting to explain this expression. I heard D.W.3 say this morning that there was no market for iron ore in this country as there is with regard to tin. I had no experience of iron ore before I joined this company. I know that my defence has been filed on behalf of the company setting that the 1% is not on the full value but subject to certain deductions. If we are liable we would pay 1% less deductions. I say this because it was agreed by pltf. I look at p.21 at P.1 "finance". This is what I referred to by saying it was agreed by pltf. Because the pltf. agreed at the meeting of 1.3.56 to accept 1% tribute less export duty and the barge export rate I claim that if we should be liable we should be liable less these deductions. Pltf. was not actually persuaded at that meeting to accept the 1% less deductions. It was explained to pltf. that the full 1% would be unattractive to any prospective financier. My father agreed to provide a substantial amount of capital but I cannot remember the amount. A figure of \$300,000 was mentioned. At that meeting the principal obstacles of finding money to carry on the operation was overcome. The \$300,000 was not produced by my father. I do not recall that pltf.

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withdrew this offer to accept 1% less deductions. It is my understanding that pltf's offer of 1% less deductions continued up to the time I gave instructions to my solicitors with regard to the defence. I look at p.25 in P.1. I was present at that meeting. I look at p.26 - "Invitation of Mr. S.K. Jagatheesan to the Meeting". I cannot remember having used the word "gross" at the meeting. I was referring only to a 1% tribute without further qualifying that. At the next meeting the minutes of the previous meeting was read and confirmed. I am shown the minutes of the 13th meeting, the meeting directly after the meeting of 4.8.56. The date of 13th meeting was 21.8.56. It says that the minutes of the Board meeting of 4.8.56 having been circulated were taken as read and subject to amendment of a few typing errors were confirmed. I sometimes did not read the draft minute. I am not in a position to say whether I read or not the draft minute relating to the meeting of 4.8.56. I know nothing relating to pltf's offer to reduce his 1% tribute being conditional to my father putting in \$300,000. I look back at p.26 in P.1. In most cases the draft minutes were prepared by the secretaries and shown to pltf. who resided in K.L. and later circulated to the other directors. I do not suggest that pltf. deliberately used the word "gross" in the minute. My English in 1956 was not so good as it is now. I did not know precisely what was recorded and that I kept quiet. I instructed my solicitors in the preparation of the defence. I look at p.20 in P.2. I look at (iii) (b) S/D. I instructed my solicitors in respect of para (iii) (b) S/D. Stevedoring, lighterage and charges of a similar nature is included in the expression "barge contract rate". I sought the opinion of the 3rd party as regards the meaning of "barge contract rate" and the result is para (iii) (b) S/D. I do not know the amount would be same in respect of "barge contract rate" and "stevedoring lighterage and charges of a similar nature".

Adjourned to 9.45 a.m. on 20.3.63.

Sd. M.M. Hashin  
19.3.63

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Song

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Court resumes. Parties as before.

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D.W.5. Chua Kwang Song (on former oath) states  
in English:-

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XXN. continues. I am shown p.21 of P.2. I cannot tell the Court what charges of a similar nature are. I turn to p.26 of P2 (amended defence). I see the same expression occurs there - "Charges of a similar nature".

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Defendant's  
Evidence

I am not prepared to say what they are. I do not know what the phrase "usual deductions" means. I turn to p.31. This is a letter

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12 (v)

from pltf's solicitors asking for further particulars. I see para 1(A) (iii) (b). I did meet my solicitors to answer this question.

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Chua Kwang  
Song

I asked my solicitors to give whatever answer they could. I cannot remember seeing the answer they gave. I told my solicitors I had no experience in mining and I left them to answer the questions. I turn on to p.34.

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Cross-  
Examined by  
Plaintiff  
continued

I read para 2 at p.34. I have read this para before. When pltf. asked what the deductions were my solicitors repeated "export duty and the barge contract rate".

I gave the information regarding the latter part of para.2 to my solicitors. I heard it from other sources and not from the pltf.

That was what I told my solicitors. By other sources I mean, one source was Tsang Tak Chuen and the other was Tan Chew Seah. I met Chang in his Singapore office and he told me so.

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Later when pltf. was asking for his money and I was trying to get pltf's claim paid I met Chang at his Singapore office and he told me.

That would be some time in 1959 about the time when this action was to be brought. Tan Chew Seah is not one of the third parties. He is one of the directors of our company. I did

not tell my lawyer that Tan Chew Seah had told me. I gave information to my lawyer to that effect so that the phrase "at the ninehead"

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was used. The information was that the charges should start at the Muar riverside at the stock pile at Bukit Kepong. I have been to this mine and I have seen where the stock pile is. Correct that first of all you incur lorry charges to take the ore to the stock

pile. From the washing plant the ore goes straight into the lorry. The lorry unloads it at the stock pile by mechanical process. There is a belt conveyor from the stock pile to the lighter or barge or tongkang. They all mean the same thing. The lighter travels a long distance before it gets to the steamer. I have not seen how the ore is loaded to the steamer from the lighter. By stevedoring I take it to mean loading and unloading from the lighter to the steamer. I do not know when export duty is paid. I presume somebody has to prepare the necessary documents for export. Chang did not explain to me that all these things are the deductions. I realise what pltf's counsel means. It slowly decreases the value of the 1%. I had no such information before I entered into the consent order. At the time when the consent order was made I did not know the mining operation that goes on now. At the time the consent order was being drawn up there was no discussion between me and other people including the pltf. about the deductions. I look at p.51 in P1, the consent order. I turn to p.53 para.10. Para.10 says that 1% of the value of all ore sold from the mining land be taken over by the third parties. I took some part in the negotiations before the consent order was drawn up. Gwee Yan Keng was friendly to every group and he took an active part in negotiating the settlement. My group was represented by Mr. Skrine and Mr. Rintoul solicitors. After the discussion in the other Court room we came back the same day to this Court room and produced a draft consent order. I look at p.10 in P.2 copy of the 1st agreement. It is dated 31st July 1954. I became associated with the formation of this company just a few months before the company was formed. I look at p.5 in P1. I was a party to that Deed dated 5.7.54. I was one of the financiers of the original syndicate. When I became associated with this company there were 4 persons who were interested in this mine. They were Tan Chew Seah, Chan Hian Chow, Gwee Yan Keng and Chan Cheow Keat. I know that pltf. had something to do with this. Of the 3 parties who signed the Deed (p.5) Chan Cheow Kiat was one of the 4 I have mentioned. I am not sure that when I signed the trust Deed on 5.7.54 I know that Tan Chew Seah had promised to pltf. 1% tribute. I came to know about

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continued

the 1% tribute when the first agreement dated 31.7.54 was produced at meeting. Until the 31st July 1954 I did not know that Tan Chew Seah had promised 1% tribute to the pltf. I look at p.13 in P1. I turn over to p.14 "adoption of agreement". The other directors who came with me to the meeting might have spoken about the 1% tribute before the meeting was held. I did not even know Tan Chew Seah at that time. I look at p.18 in P2. I am unable to have any opinion on the letter at p.18 in P.2. I first met Tan Chew Seah in 1955 when he attended one of the company meetings. He told me about the 1% tribute later after my first meeting with him. I am shown the original of letter in p.18 in P2. The Chinese signature on the original document is Tan Chew Seah. I am only reading the writing. I cannot say I am not familiar with his signature but it is not easy for me to identify it. (Admitted P.12). This conversation with Tan Chew Seah in respect of the 1% tribute took place around about the time we had our first case (1956). Tan Chew Seah could have spoken to my father about the 1% tribute before the meeting in March and I was present at that time. I look at page 10 in P2 - last para. I was present at the meeting when this agreement was approved and I was aware that we took over Tan Chew Seah's liability - para. 4 of the agreement. I did not go through this agreement very carefully but I am prepared to accept what is contained in it. On 31.7.54 I did not know that another application for another piece of mining contiguous to P.10/53 had been applied for. I subsequently knew that there was another portion of mining land contiguous to 10/53 and that 2 mining leases had been issued. I became a partner on 5.7.54. All I knew at that time was that a permit had been issued to prospect. I went there once but I cannot recall the particular day. I was not aware that Tan Chew Seah wrote a letter to the Warden of Mines in respect of the adjoining piece of mining land. I am not aware of the letter written by Tan Chew Seah on 26.7.54 to the C. of L.M. Johore requesting the Commissioner to expedite action in respect of Seah's application for the adjoining mining

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land. Subsequently I knew for a fact that the adjoining area was given to the company. I now agree that para 2. of the agreement dated 31.7.54 means that the adjoining land is included in the definition of "the said land". I cannot say whether pltf. should sue Tan Chew Seah. I turn to p.22 in P2. I look at para 9. I again say I left the matter to my lawyer. I cannot answer the question as to whether it would be fair for the company to say to pltf. to sue Tan Chew Seah. I now look at P4, the agreement dated 26.9.55. I had not at any time read the agreement subsequent to the meeting in which it was approved. Until this case this agreement slipped my memory. I accept first recital and 2nd recital (agreement 26.9.55). I do not wish to express any opinion on the 3rd recital. I deny this agreement of 26.9.55. I do not accept the agreement. If we accept we don't have to come to Court. It also applies to the agreement of 31.8.54. I look at p.21 in P1 - "finance". The impression I had at that meeting that pltf. was prepared to reduce his 1% tribute. I did not pay much attention as to how it was recorded. I turn to p.23 in P.1. "minutes". I did not pay much attention when the minutes were read. I had an impression that we had to pay 1% tribute to the pltf. My impression now is that liability was taken over by the 3rd party and if any tribute is payable to the pltf. it is for the 3rd party to pay. I am shown 2 affidavits dated 12.8.59 and dated 14.8.59. I filed these 2 affidavits. I read them. I read para. 5 of affidavit 12.8.59. I also read paras. 7 & 8. We have told pltf. verbally to demand payment from Kepong Mines before the action was brought. I look at my affidavit dated 14.8.59 - para. 4 (2) "ultimately" there means eventually. I do not mean that we have to pay in the meantime and eventually Kepong Mines have to pay us. I look at p.13 in P1. - para. 10. My understanding of indemnity is that if we have to pay we ask them to pay. (Ramani reads 43A in P1.). We are not liable to pay pltf. anything at all. I did not ascertain at any time the amount of work that had been done before the P.P. was issued. I did not ascertain the amount of work that had been done from the date of the issue of the permit to the date when prospecting was permitted in July 1954. After the company had been formed I attended most of the meetings. I was not aware of all the work

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continued

that had to be done but I was aware of some work that had been done. Difficult to say whether much or little work had been done. After I became director I believe that little had been done except to look for capital.

Adjourned to 2 p.m.

Sd. M.M. Hashin  
20.3.63

Court resumes. Parties as before.

D.W.5. Chua Kwang Song (on former oath) states  
in English:-

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XKN. continues. Gwee Yam Keng spoke to me about the 1% tribute. It was not long before the formation of the company. I was about the time I was coming to that first meeting. Before the O.M. in 1956 Marjoribanks a lawyer was a director of Kepong Prospecting and he was also the legal adviser of the company. With regard to the September agreement I cannot recall if Marjoribanks mentioned at one of the meetings before the meeting of 26th September 1955 that there had to be a supplementary agreement. I am shown p.1 of D.5. We had many reports at that time of such kind, report on prospecting up to date. We had some report on the progress of prospecting at some directors' meeting. I am shown D.7. I look at the minutes of the 3rd meeting on 12.3.55. I read the paragraph under "Bukit Kepong". Pltf. would appear to do something as far as the company was concerned. Machinery at that time did not come to the picture yet. Pltf. tried to find some buyers for the ore. I do not know that the buying of iron ore in Japan is controlled by Government. I cannot remember if pltf. explained to the directors why it was necessary for him to go to Japan. (p.3 in D5 is read). I agree that pltf. was going to Japan on pleasure cum business. The \$10,000 was mentioned by pltf. At that time there were many Japanese buyers in Malaya and because of our financial position we would not want to send anyone to Japan at

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company's expense. I did not voice any objection at that time. I accepted the decision made by the board. The other directors at that time know the financial position of the company. After pltf. had returned from Japan he said he had contacted some buyers in Japan. That is all I can remember. (Ranani reads a letter from pltf. to secretaries of the company dated 28.4.55). This letter was communicated to the members of the board (put in as 1D13). I was told pltf. had brought some samples to Japan. In the meeting of 12.3.55 it was decided to make pltf. the managing director so as to give him some authority in Japan, authority to negotiate with the Japanese. Pltf. suggested that appointment to take effect from the date of the incorporation of the company. (Ranani reads article 101 of the articles at p.20 of the Memorandum). It was not discussed as far as I can recall at the meeting that pltf's appointment as managing director be antedated because of the provisions of article 101. I look at para "progress of field work" in the minutes of the meeting of 11.4.55 (Ranani reads the minutes). I now look at the minutes of the meeting of the 4th July 1955. (Ranani reads the minutes). I look at the minutes of the 6th meeting of 28.7.55. (Ranani reads the minutes). I now look at the minutes of the 7th meeting of 26.9.55. (Ranani reads). There were some copies of the draft second agreement on the table at that meeting. I look at the minutes of the 8th meeting of 1.3.56. (Ranani reads). I look at the minutes of 9th meeting of 11.3.56. (Ranani reads). I recall that at every subsequent meeting of the Board a budget for the following month was proposed and approved. I look at the minutes of the 10th meeting of 19.6.56. (Ranani reads). I look at the minutes of the 11th meeting of 18.7.56. (Ranani reads). I look at the minutes of the 12th meeting of 4.8.56. (Ranani reads). I look at the minutes of the 13th meeting of 31.8.56. (Ranani reads). It is correct that I developed a certain sense of displeasure to the pltf. from the 13th meeting. A meeting was held on 1.9.56. I cannot remember now where it was held. Possible the meeting was held at office of Sow Kong & Chung. It would be right to think that 4 directors were present at that meeting. Pltf. was not present at the meeting. At this meeting the new

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No.12

Notes of Evidence of Hashin. J.

—  
Defendant's Evidence

—  
12 (v)

Chua Kwang Song

—  
Cross-Examined by Plaintiff continued

In the High  
Court at  
Kuala Lumpur

\_\_\_\_\_  
No.12

Notes of  
Evidence of  
Hashin. J.

\_\_\_\_\_  
Defendant's  
Evidence

\_\_\_\_\_  
12 (v)

Chua Kwang  
Song

\_\_\_\_\_  
Cross-  
Examined by  
Plaintiff  
continued

secretaries Sow Kong & Chung were present. At this meeting we made allotments of shares in respect of the 28 applications which had been held up. Notice was given by Marjoribanks that he would on 5.9.56 at the Extraordinary Meeting, move a resolution that I and 3 other directors be moved from their office as directors of the company. Another resolution to be moved by Marjoribanks was to rescind the resolution passed by the 4 directors on 1.9.56. I now look at D8A (Ranani reads). As a result of this extraordinary general meeting 4 directors were removed and 4 new directors were appointed who represented the 3rd parties. As a result of this meeting proceedings were brought in Court in the O.M. These proceedings were ultimately settled by the consent order of March 1957. I was not a director of the company when it held its meeting on 5.9.56. After the consent order the old directors eventually went back to Kepong Prospecting and the new directors subsequently formed Kepong Mines Ltd. At the time of discussing the terms of the consent order it was agreed that that tribute of \$3/- be split up as \$2.70 cts. to Kepong Prospecting and tribute and remainder representing the 1% payable to pltf. It would be fair to say that at the time that 1% was taken to be equivalent to 30 cts. I won't be able to say offhand how much money has Kepong Mines paid by way of tribute to Kepong Prospecting.

Adjourned to 9.45 a.m. on 21.3.63.

Sd. M.M. Hashin  
20.3.63.

21st March, 1963

Court resumes.

Parties as before except Tara Singh for Murphy - "standing in".

Thomas Lee absent.

D.W.5. Chua Kwang Song (on former oath) states in English:-

The total amount of tribute we have so far received is \$2,106,326.01. The last cheque we received was 3 or 4 days ago. If I had received the \$3/- tribute pltf. would have received about \$200,000. When the consent order was made by party and the third parties knew that a sum of money would be due to the pltf. I have heard that



that my father's name was mentioned in the Mines Department as being a prospecting financier to this project. I look at page 4A in Pl. That letter said that the prospecting should be completed within one year. I don't know if the permit had to be extended. I look at p.19 in Pl. I think Ironside came to the meeting to be introduced to the directors. He did not take part in the meeting.

In the High Court at Kuala Lumpur

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No.12

Notes of Evidence of Hashin. J.

\_\_\_\_\_  
Defendant's Evidence

12 (v)

\_\_\_\_\_  
Chua Kwang Song

\_\_\_\_\_  
Cross-Examined by Plaintiff continued

CROSS-EXAMINED BY THIRD PARTIES

10 XXN. by Tara Singh: Up to 27th March, 1957 there was no ore mined at all. One of the reasons was we could not raise the money. We had the mine for 4 years without making any profit. On the 27th March 1957 everybody was eager to get the thing going. I presume "everybody" included the pltf. On 27th March 1957 the consent order was made. We were satisfied to allow the mine to be worked by others and we received the tribute. On 27th March 1957 I was present at the meeting which took place in the other Court room. We took about an hour to arrive at the figure of \$2.70. I and my party started with the figure of \$5/-. I cannot remember well whether the 3rd parties offered us at the hearing \$1.50. I and my party on 27th March 1957 was not interested in the pltf. but I had this tribute in mind. At the negotiations the actual terms of the tribute was not discussed. It was agreed that the 3rd parties would take over the liability of the 1% tribute. After that was agreed the only thing left was to decide what was to be paid to me and my party. There was no discussion between me and my party on the one hand and the 3rd parties on the other hand that the 1% was equivalent to 30cts. My negotiations ended at \$2.70. After I and my party agreed to the \$2.70 I went into the empty Court next door and informed my lawyers. Pltf. was in the corridor outside the empty Court at that time. The Third parties also went into the empty Court and informed their lawyers. We were gathered in the corridor outside the empty Court room. Pltf. came up to the gathering and asked what would happen to his 1%. I heard Tsang say that they would pay the 1% with the agreed deductions. I did not hear any objections from the pltf. I did not pay much attention to pltf's facial expression at that time. As far as his 1% was concerned pltf. was interested. The 1% tribute was settled in the corridor. The word "deductions" was mentioned but no mention of export duty lighterage and

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Cross-Examined by Third Parties

In the High  
Court at  
Kuala Lumpur

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No.12

Notes of  
Evidence of  
Hashim. J.

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Defendant's  
Evidence

12 (v)

Chua Kwang  
Song

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Cross-  
Examined  
by Third  
Parties  
continued

stevedoring. I look at p.21 in P1 - "finance". When the word "deductions" was mentioned in the corridor I had the impression that it meant expert duty and the barge contract rate. I have been to the mine area. I personally do not know the meaning of barge contract rate. But I do know that the ore has to be taken to the ship which is 8 miles from Muar Town in tongkangs. It is a long distance from the Mine to Muar Town. It is more than 40 miles. It was in 1956 that my father and his group of friends were going to put in \$300,000. 10  
Pltf. reduced his 1% because I told him that financiers would not come in because of the 1% and not solely because my father and his friends intended to put in \$300,000. The chairman at that time was the pltf. This was the first time I came into the iron ore mining business. I look at p.26 in P1. The company's secretary was always present at the Board meeting and took down notes and he wrote the minutes. The minutes were circulated before the subsequent meeting. We did not correct any previous minutes. We were not very serious in respect of minutes. We passed the minutes as a matter of form. Most of the work of the pltf. before 1957 was in trying to get financiers. The 20  
suggestion for the 1955 agreements came from the pltf. Pltf. told us why it was necessary to have the 1955 agreement. He said that Tan Chew Seah would be substituted by the company to pay the 1% tribute. To the best of my recollection it was not mentioned by pltf. that it might not be possible for him to sue on the 1954 agreement. I had a look at the 1955 agreement. When we were negotiating in the empty Court Room next door in 1957 the 1955 agreement slipped out completely from my mind. I and my party did not mention the 30  
1955 agreement to the 3rd parties. It was not mentioned. It was forgotten. Therefore it was not recorded. I look at p.53 in P1. I have seen some Plans drawn by the Pltf.

RE-EXAMINED

Re-  
Examined

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Re-Xn. My father and his friends did apply for more than \$300,000 shares. They did not get them. They were refused by the company which had pltf. as the chairman at that time. The special meeting held by me and 3 other directors was to issue these shares. A draft minute of the meeting was not circulated to all directors. The minutes were sent direct to the directors by the secretaries. Gwee Yan Keng was on very good terms with pltf. 40

12(VI) - NORMAN ALEXANDER MARJORIBANKS

D.W.6. Norman Alexander Marjoribanks a/s in English:-

Advocates & Solicitors, 57 Klyne Street,  
Kuala Lumpur.

In the High  
Court at  
Kuala Lumpur

No. 12 (vi)  
Notes of  
Evidence

Defendant's  
Evidence.

Norman  
Alexander  
Marjoribanks

Examined

10 I was the legal adviser to the Kepong  
Prospecting Ltd. from its inception until about  
March, 1959. Pltf. was on the board of the  
company. He was appointed Managing Director  
with effect from the date of the incorporation.  
I look at p.5 in D.5. Pltf. was paid \$1,000  
per month with effect from 1st March 1955. It  
is correct to say I was present when the  
resolution that pltf. should be paid this  
salary was passed. I cannot remember who  
brought up the question of salary. I cannot  
remember who suggested the amount. I cannot  
remember who suggested that it should be back  
dated to 1.3.55. I cannot remember that  
20 pltf's salary was increased \$2,000. It may be  
so. Pltf. certainly attended the various  
meetings of the directors and looked after the  
affairs of the company. Beyond that I cannot  
remember. I can only assume that he was paid  
a salary for attending the various meetings and  
looking after the affairs of the company. A  
dispute arose between old shareholders and new  
shareholders which led to proceedings in the  
High Court. A settlement was discussed in and  
30 outside the empty Court room next door on  
27.3.57. It was discussed that the third party  
being the new shareholders should take over the  
affairs of the company. I was present on that  
day in this Court room. I did not participate  
in the negotiations. The pltf. was present.  
To my recollection pltf. did not participate in  
the negotiations. The disputants reached  
agreement that day. The terms of the settle-  
ment was communicated to me. I was shown the  
40 draft order. I can assume pltf. knew the  
terms of the consent order. No objection made  
by pltf. I look at p.19 in P.1. I cannot say  
if the Board had any previous warning that the  
1955 agreement would be produced at that

In the High Court at Kuala Lumpur

meeting. I cannot possibly recollect whether the 1955 agreement was produced before the meeting.

No. 12 (vi)  
Notes of Evidence

CROSS-EXAMINED BY PLAINTIFF

Defendant's Evidence

Norman Alexander Marjoribanks

Cross-Examined by Plaintiff

XXN. By Ramani. I was going on leave about 1.10.55. The seal was affixed on the 1955 agreement before Ironside. On 26.9.55 the 2 permanent directors were pltf. and Tan Chew Seah. The 1955 agreement was an agreement between the company and pltf. Pltf. had to sign the agreement in his personal capacity. The other party to the agreement was Kepong Prospecting Ltd. It appears that pltf's signature was witnessed by Leong Kum Wong, the Secretary of the company. According to article 101 the seal of the company had to be affixed before a director and either a permanent director or managing director. Presumably they had to get the other permanent director to witness the affixing of the seal. Tan Chew Seah was not present at that meeting. There is a signature in Chinese in the 1955 agreement which I am prepared to assume is the signature of Tan Chew Seah. Ironside signed it as a witness. At that time prospecting was going on. Pltf. was looking for machinery abroad and in the country for the purpose of starting the mine. He was negotiating for the purchase of iron ore by the Japanese. Prospecting could not be carried on because of bandit trouble but pltf. was attending to all that. Pltf. was entered into voluminous correspondence with Govt. departments and the industry. Date of incorporation July 1954. Salary not back dated for a whole year. Pltf. was certainly put in a great deal of time and trouble on the company's behalf. I am not in a position to say how the actual figure of \$1,000 was arrived at. The 1954 agreement was executed before me. It was an agreement between Tan Chew Seah and Kepong Prospecting Ltd. By the terms of the agreement the company took over Tan Shew Seah's liability to pay 1% tribute to pltf. Pltf. in his personal capacity was not a party to this agreement. I look at the 1955 agreement. I

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cannot recall the circumstances when any discussion about the agreement arose. It is very likely that I prepared the 1955 agreement. The 1955 agreement was prepared on instructions. As the result of the instructions the agreement was prepared. (Mooney objects to questions leading up to the preparation of agreements when the express consent of counsel's client has not been obtained). I am shown P.12. I have seen this documents before. I don't recollect the documents being prepared in my office. I know Tan Chew Seah personally. I don't recall him coming to see me in connection with the drafting of P.12. I must have seen it some time during the formation of the company when I was one of the directors.

In the High Court of Kuala Lumpur

No. 12 (vi)  
Notes of Evidence

Defendant's Evidence

Norman Alexander Majoribanks.

CROSS-EXAMINED BY THIRD PARTIES

XN by Tara Singh. I look at 1954 agreement at p.3. I have my signature on the left hand side at page 3. The 2 directors' signatures are under the seal. I look at 1955 agreement. The signatures of Ironside and Leong Kum Wong are put in a place where a person signs as witness to a signature

Cross-examined by Plaintiff continued

Cross-examined by Third Parties

RE-EXAMINED

Re.Xn. I really cannot remember whether Kepong Prospecting purchased any machinery. Kepong Prospecting certainly purchased machinery for mining. To my recollection Kepong Prospecting did no mining. Certainly they attempted to do any mining. Attempts were frustrated by lack of capital. They did not do any actual mining. To my recollection they purchased certain machinery for the use of either prospecting or mining. I remember pltf's going to Singapore to try to buy certain second hand equipment. I cannot remember what the equipment was. To my recollection no machinery was bought from Japan. Certain negotiations pltf. conducted with Japanese representatives. Whether they came to any conclusion I cannot remember. Kepong Prospecting was not in a position to supply ore to anybody up to March 1957.

Re-examined

In the High  
Court of  
Kuala Lumpur

CASE FOR DEFENDANT

Adjourned to 2 p.m.

No. 12 (vi)  
Notes of  
Evidence

Sd. N.M. Hashim  
21.3.63

Court resumes. Parties as before.

Defendant's  
Evidence

PLAINTIFF'S CASE

Norman  
Alexander  
Marjoribanks

12(VII) DAVID CRAIG IRONSIDE

Re-examined.  
continued

P.W.1. David Craig Ironside a/s in English:-  
Advocate & Solicitor, F.of M. & Singapore.

Plaintiff's  
Evidence

12(VII)  
David Craig  
Ironside

I was a partner in the legal firm of Lovelace & Hastings in 1955 and I was associated among others with D.W.6. Lovelace & Hastings were the legal advisors of Kepong Prospecting Ltd. at that time. During the last 3 months of 1955, from 1.10.55 and December 1955 I acted as proxy for D.W.6 as a director for those 3 months. I went there with D.W.6 to be introduced to the directors before the meeting took place. I might have stayed for some little time but I did not participate at the meeting and left before the meeting concluded. My recollection is that the business of the meeting was not discussed in my presence. I look at the 1955 agreement. I look at p.2 of the agreement. I see my own signature there as one of the persons in the presence of whom this seal was affixed. There is a Chinese signature at p.2. The seal was affixed in my presence and in the presence of the Chinese signatory. I look at article 101 of the Memorandum. I signed the 1955 agreement as a director. I derived my authority from my appointment of 26.9.55. I could not have signed the 1955 agreement before 1.10.55. My recollection is that I was introduced to the Chinese signatory on the date the seal was affixed. It was in the company's secretary's office. On the first page of the 1955 agreement the numbers "26" is in ink and the

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word "September" is typed. All I can say is apparently from the date of the meeting which was on 26.9.55 I most certainly did not sign the 1955 agreement (P4) on that date. The exact date upon which I did sign I cannot say with certainty. I know that I signed some few days after D.W.6 left. It is impossible for me to tell exactly how many days after 26.9.55. My recollection is that D.W.6 actually left a few days after the 26th and again it was a few days after his departure I was called upon to sign. I am in no doubt that I signed it after 1.10.55.

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CROSS-EXAMINED BY DEFENDANT

XKN. by Moon-ey. I don't recognise the handwriting with regard to the number "26". It is certainly not in my handwriting. I most certainly would have read the agreement through. I never sign without reading. If it was dated before I read it I would have seen the date. The date, if it appeared on the document then, it may not have struck me as a matter of significance. My authority to sign that document accrued on 1.10.55. I signed it within the first few days of October. I would be aware as I was always aware that on 26.9.55 I did not have authority. I would have read the document through to acquaint myself with the substance. I also would wish to acquaint myself with the parties. If the date was inserted before I signed I did sign it nonetheless. I cannot say whether it was dated or not when I signed it. I can say that I did not sign it on 26th. I do most certainly recollect signing the document. The Chinese gentleman whose signature is in the document was present when I signed it. I saw him sign the document. I cannot now say the exact day D.W.6 went off on a holiday. I knew at that time for what period I had been appointed to act as a director and I most certainly would not have acted before the commencement of that period. Somebody has made a mistake to the date of the document. I can be quite certain I did not make the mistake of signing the document before

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In the High  
Court of  
Kuala Lumpur

No. 12 (vii)  
Notes of  
Evidence

Plaintiff's  
Evidence

David Craig  
Ironsides

Examined  
continued

Cross-  
examined by  
Defendant

In the High  
Court of  
Kuala Lumpur

1.10.55.

CROSS-EXAMINED BY THIRD PARTIES

No. 12 (vii)  
Notes of  
Evidence

XKN. by Tara Singh. I have simply no recollection of having been met by any significance of the date being wrong. If my attention had been caught by the word "September" I would of course have realised it was wrong. At the meeting of 26.9.55 I did not see anything or take part in the proceedings at all.

Plaintiff's  
Evidence

RE-EXAMINED

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David Craig  
Ironsides

Re-Xn. It was not intended I should take part in the meeting of 26.9.55 and I did not take part at all. The only reason I was there was to be introduced to the directors. I don't think I discharged any other function as a director apart from the signing of the 1955 agreement. I never attended any meeting of the directors. Whether or not pltf. signed he attended with me at the office of the secretaries to sign the document. Pltf. telephoned me to meet him at the secretaries' office. I did then meet him at the secretaries' office. I did not have possession of the 1955 agreement. I cannot be sure if pltf. signed first or whether he had already signed. My recollection was sometime on a Monday or a Tuesday.

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Cross-  
examined by  
Third Parties

Re-examined

12(viii)  
Gwee Yam  
Keng

12(viii) - GWEE YAM KENG

P.W.2. Gwee Yam Keng a/s in Teochew :-

Examined

I am at present the manager of Gali Besi Syndicate. I live at 3005 Bukit Beranang Malacca. I was at one time manager of the transport section of Muar Rice & Transport Co. Ltd. I ceased to be employed by them in 1952. After 1952 I became interested in iron ore mining. In 1952 I came to know of an area in Bukit Kepong where I believed there were rich deposits of iron ore. I learnt that the Japanese had been prospecting that land before. I obtained some samples of iron ore from that area. I communicated the knowledge of this area

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to 3 friends, Tan Chew Seah, Chan Cheow Kiat and Chan Hian Chor. When I obtained the samples of the iron ore from that area I sent them to Dr. Marshall of Singapore for analysis. As far as I remember Dr. Marshall's report was it was very rich in iron ore, over 60%. I and my 3 friends discussed and after discussion Tan Chew Seah was to apply. An application signed by Tan Chew Seah was filed. I cannot remember the date of the application but it was the end of 1952. I received a reply to the application. The reply was the area applied for was a black area because of the emergency and the application was refused as the approval could not be given just yet. I and my friends held a discussion. Then we looked up the chief clerk of the Mining Office Johore. He advised us to get a mining expert to be the adviser of the company. Without an expert we could do nothing. Then we went to the office of Chan Hian Chor at Johore Bahru. After discussion Tan Chew Seah recommended a mining expert, pltf. (identifies). Tan Chew Seah said pltf. had plenty of experience in mining. It was decided that I, Tan Chew Seah and Chan Cheow Kiat should go and see the pltf. Chan Hian Chor represented by Chan Cheow Kiat. We were to see pltf. to help us to get the prospecting permit. We went to see pltf. at the beginning of 1953. We saw pltf. at Chan Wing Building, K.L. We told pltf. about the condition of the land applied for and we also told him the application was refused as it was in a black area. We asked for his advice. He said he would do his best. We suggested to pltf. as he should come in as a partner. There was no mention as to the size of his share. At that moment we did not have much capital and we wished him to come in and share the business instead of paying him a fee. He paid out of pocket expenses. At first we did not reimburse him. After the establishment of the business we reimbursed him. Pltf. then took up the application on our behalf. As a result of his efforts the application was approved. It was P.P. No. 10/53. It was for 1,000 acres at Bukit Kepong. It was approved in November 1953. Pltf. had to work very hard to obtain the permit. The condition for the approval of the permit was

In the High  
Court of  
Kuala Lumpur

No. 12 (viii)  
Notes of  
Evidence  
Plaintiff's  
Evidence

Gwee Yam  
Keng

Examined  
continued

In the High  
Court at  
Kuala Lumpur

No. 12 (viii)  
Notes of  
Evidence

Plaintiff's  
Evidence

Gwee Yam  
Keng

Examined  
Continued

that pltf. had to employ a security officer with 35 armed men. We 4 and pltf. went to see the Warden of Mines and made clear to him we did not have sufficient money to prospect and that Chua Keng Sang would advance the money. D.W.5's father is Chua Keng Sang. Before the meeting with Warden of Mines I and Chan Cheow Kiat saw Chua Keng Sang who promised to advance the money. At that time I knew Chua Keng Sang well. He was the chairman of the Muar Rice & Transport Co. Ltd. I was then in his employment. After P.P.10/53 was approved pltf. arranged for prospecting to be carried out on the land. It was a difficult operation. First he had to engage a security officer. Then to engage armed men. Another difficulty was there was no fund. The armed men had to be trained. Arms had to be provided. Pltf. made arrangements for the arms. I have been to this area. It is jungle land, about 7 miles from the main road. Half the distance through kampong land and the other half through jungle. The first prospecting on the 1,000 acres resulted in discovering that the hill which contained more iron ore was outside the area covered by P.P.10/53. The hill was Bukit Pasol. The 1,000 acres covered by the P.P.10/53 had little iron ore. A further application was made to include Bukit Pasol and was the area adjoining the 1,000 acres. This application was for 1,200 acres. Further prospecting was carried out when the p.p. was obtained. Tan Chew Seah's name was entered for the application of this p.p. The second application was made in July 1954. Subsequently we received a p.p. in respect of the second application in P.P. 3/55. All the 1,200 acres in P.P. 3/55 was in the Malay Reservation area. There was great difficulty in getting this area and eventually through the effort of pltf. this area was taken out of the Malay Reservation area. After p.p.10/53 was issued and after the company was formed it was agreed that pltf. to collect a tribute. At first we offered him 3%. Pltf. thought it was too much and accepted only 1%. At that time we knew nothing about the buying and selling of ore and we thought we could make a big profit. We discussed among

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ourselves whether to keep pltf. as a partner or to give him a tribute. We decided to give him a tribute.

Adjourned to 10 a.m. on 22.3.63.

22nd March, 1963.

Court resumes. Parties as before.

Murphy present.

P.W.2. Gwee Yam Keng (on former oath) states in Teochew:-

In the High Court at Kuala Lumpur

No. 12 (viii)  
Notes of Evidence

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Plaintiff's Evidence

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Gwee Yam Keng

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Examined continued

- 10 Xn. continues. I am shown P.12. (read and interpreted to witness by Court Interpreter). I have not seen it before, but I have heard about it. All 4 of us, I, Chan Cheow Kiat, Chan Hian Chor and Tan Chew Seah agreed that P.12 be drawn up and given to Pltf. The purpose of P.12 was to set the arrangement with pltf. At that time in 1953 there was no local market for iron ore. Iron ore produced in Malaya was sold to Japan. The 1% tribute was on the sale price of iron ore. After the agreement in P.12 further prospecting was carried on the land. At that time there were 4 of us having shares in the iron mine and pltf. to get the 1% tribute. It was subsequently agreed that we should join ourselves into a limited liability company. I look at a document (copy at p.5 in P.1). (document explained to witness by Court Interpreter). I am not a signatory to the trust deed. At that time in 1954 I knew the
- 20 existence of the declaration of trust. I notice that Chua Kwang Song is one of the 3 signatories. Chua Kwang Song is D.W.5. D.W.5. was not one of the original partners. D.W.5. was invited into the group because he was a very close friend of Chan Cheow Kiat. He used to help Chan Cheow Kiat financially. I knew that Chan Cheow Kiat borrowed money from D.W.5 in connection with this project. D.W.5 is the son of Chua Keng Sang. D.W.5 was interested in
- 30 taking part in mining. At first I attempted to bring Chua Keng Sang into the Company. At first he agreed but he did not come in
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In the High  
Court at  
Kuala Lumpur

No. 12 (viii)  
Notes of  
Evidence

Plaintiff's  
Evidence

Gwee Yam  
Keng

Examined  
continued

personally and he sent his son, D.W.5. I have known D.W.5. for a long time. We are good friends. Subsequently the company was formed. I look at the Memorandum. The date of incorporation is 27.7.54. At that time (27.7.54) the second prospecting permit had been applied for but not been issued. The first permit was in the name of Tan Chew Seah. Tan Chew Seah made an agreement with the company and in that agreement it was mentioned about 1% to the pltf. That agreement includes subsequent permits. In that new company that was formed I was appointed a director. I am shown the 1954 agreement (explained to witness by Court Interpreter). I have seen it before. This agreement was put before the directors' first meeting for approval. All the directors approved of the agreement. The agreement is between Tan Chew Seah and Kepong Prospecting Ltd. In 1955 there was a subsequent agreement between pltf. and the company. I look at the 1955 agreement (explained to witness by Court Interpreter). This 1955 agreement was tabled at the Board meeting for approval and it was approved. I was present at that meeting. The 1% tribute was never changed. I look at p.21 in P.1. "finance" (para explained to witness by Court Interpreter). I was present at the Board meeting of 1.3.56. I remember this matter being discussed at that Board meeting. We were trying to get shares to operate the mine. We found it difficult. Chua Keng San had promised the company that he would buy shares from the company amounting to \$300,000. It was long before that meeting that he made the promise. At that meeting Chua Keng San requested the pltf. to reduce his tribute of 1%. He said that if pltf. could reduce his 1% tribute he would buy \$300,000 worth of shares. With his participation in the shares the operation of the mine could begin. I personally discussed with pltf. about the reduction of the 1% tribute. Pltf. said if operation could start immediately he was prepared to accept the term after deductions of export duty and barge freight from the sale price but the operation had to start immediately before he would agree. I look at the minutes of the meeting of

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28.7.55 (explained to witness by Court Interpreter). I was present at that meeting. (Counsel reads minute on para "Finance" and interpreted to witness by Court Interpreter).

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Xn. continues. I, Chan, Cheow Kiat, Chua Keng Sang and others went to inspect the mine. The \$300,000 was never produced in full. Keng Sang paid a certain sum of money which exceeded \$100,000. I cannot remember by how much it exceeded but it did not reach the \$300,000 mark. It was short of that mark by a lot. These sums were paid before and after the inspection of the mining. These sums expended by Chua Keng Sang did not form part of the promised \$300,000. The promised \$300,000 was to enable the mine to operate. The various sums of money expended by Chua Keng Sang were for prospecting. I know Jagatheesan. He applied for shares in Kepong Prospecting. He applied for \$700,000 worth of shares. Jagatheesan's application was brought to plaintiff and it was tabled at a Board meeting. It was then refused. Subsequently it was partly approved, 45% of the \$700,000. This approval of 45% was made at a meeting of the Board of Directors held on 4.9.56 (pps.25 - 28 in P.1). Subsequently there was an extraordinary general meeting held on 5.9.56. I was present at that meeting. The business of the meeting was to appoint new directors from the new shareholders. Before the meeting of 5.9.56 a meeting had been held by the old Board of Directors. At that meeting Chua Keng Sang brought an application for over \$200,000 worth of shares for approval. These applications were from various people. I now cast my mind back to the extraordinary general meeting. The new directors were to represent those people whose applications up to 45% had been approved. I recall the application of Chua Keng Sang was brought up later at the meeting when Jagatheesan's application was approved up to 45%. I cannot remember what happened then. I am shown a document. My signature appears on this document. (document explained to witness by Court Interpreter). I and those who signed the document called a meeting for the 1st of September 1956 to take place 4 days before the

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Examined  
continued

extraordinary general meeting. This meeting was not called by the managing director or chairman of the Board. It was not called by the company's secretaries. It was a special meeting called by 5 directors. At that special meeting certain resolutions were made in writing. The special meeting was called for allotment of shares. The applications made by Chua Keng Sang and his associates were approved at this special meeting, a little over \$200,000 shares. 10  
The shares of Jagatheesan were not dealt at this special meeting. What we had done at the special meeting was raised at the extraordinary general meeting. The resolution to remove me, D.W.5, Chua Kwang Song and Chan Cheow Kiat was discussed at the extraordinary general meeting. The resolution was passed. The other resolution was also passed. (notice of special meeting and notice vis-a-vis extraordinary general meeting admitted (P14 & P15 respectively). After the extraordinary meeting I and my 3 colleagues ceased to be directors of Kepong Prospecting. New directors representing Jagatheesan and his group were brought in. As a result of this litigation ensued in this Court. I am shown p.51 at P.1. I look at the heading of the consent order. Lim Ngian Cher the applicant represented the old shareholders and the 4 old directors who had been removed at the extraordinary general meeting. The applicant represented the group to which I belonged. The opposite party from 1 - 9 represented Jagatheesan's group. They were the new shareholders who had been brought in. The purport of the proceedings was to nullify the shares allotted to these 9 persons. I was present at these proceedings. The proceedings lasted 5 or 6 days. I was present all that time in Court. I did not give evidence in that case. There was a proposal to settle the matter and it was in fact settled. I personally took part in the negotiations for settlement. I took an active part in the negotiations. At or about the time of the proceedings relationship was good between the parties. In the negotiations I took the leading part for the old directors. D.W.5 was present with me. Chan Cheow Kiat and 20  
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Tan Chew Seah were also present. Tsang Tak Chuen and Jagatheesan took the leading part for the new directors. The negotiations took place in the empty Court room next door and along the passage outside the Court room. The negotiations took place for about 1½ hours. Finally it was agreed at \$3/- per ton be paid as tribute. The new shareholders were to pay the tribute and the old shareholders to receive. The working of the mine was to be carried out by the new shareholders. The tribute was payable as a result of the working of the mine. The Nepong Prospecting Ltd. gave a sub-lease to the new shareholders to work the mine. The old shareholders were to receive the tribute and the rate of tribute was \$3/- per ton of iron ore to be produced at Nepong mine. For every ton exported a tribute of \$3/- had to be paid. There was a discussion. Some wanted \$4/-. Some offered \$2.50 and finally it was agreed at \$3/-. It was my idea that one party to work the mine and the other party to receive the tribute. My idea was ultimately agreed to by the new directors. It was after that the amount of tribute was discussed. After we had all agreed we came back to this Court and told our lawyers the terms of the settlement. Among the lawyers Skrine and Smith took part in the negotiations. Skrine was for the old directors and Smith for the new directors. I look at p.53 in P.1. I look at para 9 (explained to witness by Court Interpreter). After having agreed to \$3/- tribute the old directors discussed again the matter among themselves. As the old directors had to pay pltf. 1% and as we worked it out that the 1% would come to 30 cts. and as we sold out iron ore in American dollars there was possibility of fluctuation we fixed the tribute at \$2.70. As between the old directors and the new directors it was agreed the tribute should be \$3/-. We decided to reduce the rate from \$3/- to \$2.70 because we were afraid of fluctuations of the exchange rates of the American dollar. Suppose 1,000 tons exported at the rate of \$30 per ton the sale value of ore would be \$30,000. Our tribute depends upon the quantity of ore exported. The price

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at which the ore is sold by the new directors is no concern of ours. Kepong Prospecting's contract with pltf. was 1% tribute on the sale price. From the example above we would get \$3,000. Tribute to pltf. is based on 1% on the selling price. Thus in the example set above pltf. should get \$300. Therefore if we receive \$3,000 and pay of \$300 to pltf. our net profit would be \$2700/-. Suppose the 1,000 tons is sold at \$40/- a ton, total selling price would be \$40,000. As far as our tribute is concerned we still get \$3,000 and we would pay \$400 to pltf. as his tribute, getting a net profit of \$2,600. If we had retained the obligations to pay the 1% to pltf. in one case we would have a larger profit and in another case a smaller profit.

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Adjourned to 2.30 p.m.

Sd. M.M. Hashin  
22.3.63.

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Court resumes. Parties as before.

(Note: Counsel agree that the case be resumed from 17th to 26th June excluding Saturdays and Sundays).

P.W.2. Gwee Yam Keng (on former oath) states in Teochow:-

Xn. continues: By the same token if the price of ore is \$20 a ton the price for the 1,000 tons will be \$20,000. We shall still get \$3,000 but pltf. will get \$200. Therefore our net profit will be more. The splitting of \$3/- into 2 parts, one part is a fixed amount and the other part varies. Therefore by the terms of the consent order the tribute under para.9 we will be always certain to get \$2.70 per ton whatever the price of ore is per ton. As a result of our discussion among the old directors the old directors will receive \$2.70 per ton plus 1% of the sale price. We informed the new directors of this arrangement of \$2.70 and 1%. We informed Jagatheesan and

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Tsang Tak Chuen. They accepted this arrangement of \$2.70 per ton plus 1% of the sale price. They had known how it worked out before so they did not ask me about the 1%. Pltf. was not present during the negotiations. Majoribanks was not present. I did not see pltf. come up to the group when the negotiations were nearly finalised and asked what about his 1%. If such a thing had happened I would have known it. Not to my knowledge that Tsang Tak Chuen answered in reply to the pltf. he Tsang would pay the 1% with deductions. We did not discuss about deductions when our group was discussing the 1% tribute. During the whole of the negotiations before we agreed to the consent order there was no discussion about deductions. From 31.7.54 to 5.9.56 I was a director of the company and I attended all the meetings. During this period pltf. was chairman and managing director. I look at p.13 in P.1. Except for Lee Kok Peng the other directors attended the meetings during the period. Sometime after early 1956 Chua Kwang Song became a director. I look at p.21 in P.1. D.W.5 speaks English. Chan Cheow Kiat knows some English. He does not fully understand English to be able to follow the meetings. I do not know English. Chua Keng Sang does not know English. Tan Chew Seah does not know English. At these meetings at first English was used and if interpretation into Chinese was required the Secretary Leong would do it. Sometime D.W.5 would do the interpretation. The non-English speaking directors would speak in Teochew and later this would be interpreted into English. I would use Malay when I wanted to address the Chairman direct. All the directors except Majoribanks understood some Malay. Malay was used if there was a discussion. I was not a director of any limited company prior to being a director of this company. I understood the expression "minutes of the meeting". I was given a copy of the minutes of all meetings. I would receive the minutes of the previous before the next meeting. The minutes were in English. Sometimes the minutes were produced at the meeting itself. I knew the function of the minutes was to have a record of what had happened and said at a previous meeting. If the

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previous meeting had been an important meeting I would ask a friend to read and interpret the minutes of that meeting. The minutes were read out at the meeting and if anybody did not understand the minutes would be interpreted to them. It happened quite often that the minutes had to be amended. I mentioned the 1% tribute to D.W.5 before he agreed to become a partner with us.

Adjourned to 17.6.63 - 26.6.63, except  
Saturdays and Sundays.

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Sd. M.M. Hashim  
22.3.63

Certified true copy  
Sd. C.S. Kumar  
Secretary to Judge.  
28.3.63.

In Open Court

C.S.333/59.

17th June, 1963.

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Court resumes.

Parties as before -

Ng Ek Toong with Selvarajah for pltf.

Sd. M.M. Hashim  
Judge  
17.6.63.

P.W.2. Gwee Yam Keng (reaffirmed) states in  
Teochow:-

Cross-  
examined by  
Defendant

CROSS-EXAMINED BY DEFENDANT

XXd. by Mooney. By establishment of the business I mean that the p.p. was passed by the Govt. Not a fact that pltf. was paid \$45,000 before the company had made a single cent. Pltf. was paid \$1,000 salary. The Company had made no profit until the time the third party came in. It made no profits until 1959. By company I mean Kepong Prospecting. I don't remember

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the actual entries of accounts. I know pltf's salary did not come up to \$45,000 but other expenses were necessary expenses by the company. Probably true that pltf. received \$45,000 by way of salary and expenses, before the company had made a cent. Pltf. asked for and received a salary before the company had made any profit. Pltf. was careful to put in any expenses incurred by him. Company paid for his expenses when pltf. went to Japan on business cum holiday. Pltf. is a man of many interests. Deft. company is one of his interests. Pltf. was not working full time for the deft. company. Difficult to arrange for prospecting on the land. At that time we did not know how to engage a security officer. I do not know how pltf. engaged a security officer. I cannot say whether it was difficult for pltf. to engage a security officer. I do not know whether it was difficult to get armed men. Pltf. did not train the armed men. I did not know that many other mining companies making similar arrangements for security measures as I was not a miner at that time. Pltf. was doing what hundreds of people in Malaya were doing to get armed men for security measures. We applied for p.p. in the land in the Malay Reservation and our application was refused. Pltf. went to the various departments to negotiate and eventually got the approval. I do not know the precise course of the negotiations. I and my partners knew very little about this and relied on pltf. I do know of certain difficulties met by pltf. as sometimes we moved together. All the difficulties were eventually solved. I do not know of any extra difficulty that pltf. had to overcome. I agree that at that time it was difficult for any mining company to start prospecting. We offered pltf. 3%. By we I mean Tan Chew Seah, Chan Cheow Kiat and I. I do not know whether Tan Chew Seah is in prison or not at present. None of us knew what the 3% would amount to. Similarly we did not know how much 1% would be. The 1% was the pltf's idea. I cannot remember pltf. drawing up an agreement at one time nor can I remember turning it down. There was no agreement ever presented by pltf. that was

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Keng

Cross-  
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Defendant  
continued

Cross-  
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Third Parties

turned down by me. The tribute was agreed to before the company was formed. I cannot remember whether pltf. produced an agreement in respect of the tribute at the first meeting of the company. I and my partners did not give a present to the pltf. Pltf. is using a Mini-Minor. As far as I knew he has no other vehicle. Pltf. had an Austin Princess at one time. When the company had only 4 partners we bought the Austin Princess for pltf. to use. Pltf. returned the car to me personally in 1962, probably in July or August. It was given to pltf. in about 1953. Pltf. had the exclusive use and possession of the car for about 9 years. It was not a reward for his services. The car was registered in pltf's name.

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CROSS-EXAMINED BY THIRD PARTIES

XXD. by Murphy. I knew very little about iron-ore mining in 1954. Deny that in 1954 I knew nothing about iron-ore mining. In 1954 I lived near an iron-ore mine in Batu Pahat. I knew that ore fetching 60% and about iron was profitable. In 1957 I knew more about iron-ore mining. I had visited iron-ore mines and learnt something about the trade. In 1957 the price of iron-ore in Muar was about \$30 per ton F.O.B. I obtained this information from Japs and others in Muar. There was no sale of iron-ore in Muar in 1957. At that time an Indian company offered to purchase from our company at 76 shillings per ton but there was no sale. There was an offer of 76 shillings and I thought this was about \$30. There was no sale of iron ore in Muar until 1959. I was one of the negotiators for Kepong Prospecting in 1957 outside this Court House. Not true that ever since I was associating with Tan Chew Seah that I was trying to get somebody to run the mine and get a tribute from him. Not true that the object of getting pltf. in was to run the mine. In 1956 I discovered that the 1% represented a few hundred thousand dollars. When I negotiated in 1957 outside this Court House it was for a certain percentage to be given to Kepong Prospecting and not to myself. I was negotiating for percentage of tribute to be

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given to Kepong Prospecting and that we would not operate the mine. Not true that I was negotiating for all the liabilities of Kepong Prospecting to be taken over by Kepong Mines. The 9 persons whom I call the new partners were to take over the running of the mine of the Kepong Prospecting and to pay us a certain sum as tribute but they were not to take over the liabilities of Kepong Prospecting. We argued outside this Court House between one or two hours about the sum to be given as tribute. Not right that we first suggested \$5/-. We first suggested \$4/-. a ton exported. For every ton exported we were to get \$4/- and the new partners were to bear the cost of running the mine. We were to get \$4/- nett. The new partners first offered \$2.50 per ton. They were to pay all the expenses of mining. The payment of pltf. was not mentioned. When we first discussed outside the Court House in respect of the \$4/- and the counter offer of \$2.50 we did not discuss about the tribute to pltf. When we first discussed the negotiations we knew that the new partners would be running the mine. We knew that they would be using the machinery at the mine taking the benefit of anything that had been done. The only personnel we had at that time was pltf. I knew that the new partners were to take over the pltf. The question of pltf. was not mentioned yet. By this I meant his tribute. We did not mention that the services of pltf. would be taken over by the new partners but I knew they would employ the pltf. I mean I guessed that the new partners would take over pltf. I and the company were under certain obligation to the pltf. Deny that from the beginning of the negotiations next door outside this Court House that the new partners would take over all the liabilities of running the mine including the 1% tribute to pltf. Deny that eventually we agreed at a tribute of \$2.70. We agreed upon at \$3/-. After we had agreed at \$3/- I and the old partners discussed among ourselves about pltf's tribute and we agreed that we would accept \$2.70 plus 1% and that we would be liable to pay pltf. 1%. By we I mean the old partners. After we had agreed to these terms

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continued

Re-examined

our lawyers and D.W.5 came back to this Court House and informed the Judge. So far as I was concerned I did not know whether or not pltf. would be employed by the new partners but he was to look to us for his 1% tribute.

RE-EXAMINED

Re-Xn. With regard to the negotiations next door it was my idea that the new partners would take over the running of the mine. The old partners had to sublease the land to the new partners. It was understood that all the expenses of running the mine was to be borne by the new partners. It was also understood that the new partners were to run the mine on the existing land at that time. There were some machinery on the land then. The new partners were to buy over the machinery then on the land. The price of the machinery was not mentioned at the negotiations next door. The issue at the negotiations next door was the amount of tribute to be paid by the new partners to the old partners. I suggested \$4/- on behalf of the old partners to Tsang Tak Chuen one of the new partners. When I suggested the \$4/- to Tsang I did not mention about pltf's tribute. My selling price I mean F.O.B. The \$2.70 was the fixed price and the 1% followed the price of iron ore in American dollars. 1% is based on the price of iron ore which fluctuate. The 1% was for the tribute for the pltf. The partners occasionally used the Austin Princess. In the course of his work he had to travel to Johore frequently. Pltf. presented a statement of expenses in respect of his Jap. trip and we paid according to the statement.

Adjourned to 2.30 p.m. 17.6.63.

Court resumes. Parties as before

12(ix)  
Leong Kum  
Weng

12(ix) LEONG KUM WENG

P.W.3 Leong Kum Weng a/s in English:-

Examined

Managing director of Leong & Lai Ltd.

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Secretaries & Accountants, No. 6, Ampang St.K.L.

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Weng

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I know pltf. We were the secretaries to  
Kepong Prospecting Ltd. We first started to be  
secretaries in either in 1953 or 1954. We  
attended the first meeting of the company. We  
ceased to be secretaries to Kepong Prospecting  
in 1956. There were some changes in the board  
of directors and we were served with a notice  
terminating our services. I attended almost  
10 all the meetings of the company; the general  
meetings and the directors meetings. Pltf.  
was the chairman of the board when we were the  
secretaries. At these meetings I took notes  
and prepared draft minutes for the approval of  
the board. The draft was usually approved by  
the Chairman and circulated before the next  
meeting with the notice for that next meeting.  
The minutes were taken as read and confirmed  
at that meeting. Any member was at liberty to  
20 make correction of these meetings at that  
meeting. I look at page 26 in P.1. (Witness  
reads last para in p.26.).

Kn. continues. These minutes were prepared by  
me. These minutes were prepared by me from  
notes taken by me at the meeting. The words  
"Gross sale of its ore" must have been  
mentioned at the meeting. Otherwise it would  
not have jotted in my notes. I look D.7  
minutes of the 11th meeting held on 18.7.56.  
30 I attended that particular meeting as secretary.  
I turn to the minutes of the 13th meeting held  
on 21.8.56. The minutes at p.26 in P.1 were  
the minutes of the 12th meeting held on 4.8.56.  
At the 13th meeting the minutes of the 12th  
meeting were taken as read and subject to  
amendment of a few typing errors were confirmed.  
The minutes of the 12th meeting had been  
previously circulated. I had the custody of  
the seal of the company. The seal of the  
40 company has to be affixed in the presence of  
one ordinary director and a permanent director.  
The permanent directors were the pltf. and Tan  
Chew Seah. I am shown P.4 (p.13 in P.2). I  
signed P.4 as a witness to pltf's signature.  
The parties executed this agreement in my  
office. Pltf. rang me up in my office to say

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Leong Kum Weng

Examined continued

that the parties would be coming to my office for the execution of P.4. When the parties arrived at my office the seal was affixed in accordance with the Articles. They were all together at the same time. Ironside was one of the parties who witnessed the affixing of the seal. Tan Chew Seah was the permanent director. I look at this date of P.4 dated 26th September 1955. Ironside was not a director on 26th September 1955. Ironside was a director when he attested to P.4. I look at p.20 in P.1 on the subject of Mr. N.A. Marjoribanks. The seal on P.4 must have been affixed on or after 1.10.55. Tan Chew Seah does not speak English. Normally I explained a document to him in Chinese. I explained the nature of P.4 before Tan Chew Seah attested it. I look at p.14 of P.1 under Adoption of Agreement. The agreement is at p.10 of P.2. The agreement which was adopted at that meeting was the agreement at p.10 in P.2. The agreement referred to at p.20 in P.1 refers to agreement P.4 dated 26.9.55. The date in P.4 is written in ink but it is not my handwriting.

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Cross-examined by Defendant

CROSS-EXAMINED BY DEFENDANT

XKD. by Mooney. I look again at p.20 in P.1 - para 2. I can say from memory that P.4 was signed during the first week in October 1955. I remember this particular leave of Marjoribanks because he told us at the meeting of the 26th September 1955 that he was going on leave. Deny that I am prevaricating. P.4 was sent to me from Marjoribanks's office. It had no date when it arrived. I read it before attesting the executions. I do not know if pltf. read it. Ironside might have read it. There was no date when I read it. I cannot remember whether the date was put in when I signed it. I read it before signing it. It is not the job of the company's secretaries to put the date on P.4. I have no qualifications. I do not know that it is the proper procedure to date an agreement on the day it is executed. The old directors terminated my services in Sept. 1956. I have not been informed who succeeded me. I was present at the Extra Ordinary Meeting on 5.9.56.

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D.8A. I look at the minutes in D.8A. I found out that Chong Sow Khong succeeded me as secretaries during the extra-ordinary meeting. I don't know Chong Sow Khong. I knew there was a secretary at that meeting. I did not know personally. I did not know the name of that secretary. I was not given any reason why me services were terminated. Not true that I was dismissed because I did everything the pltf. asked me to do. I never had any disagreements with the pltf. I do not know company law. Nor do I know any law about stamp duty (counsel reads at p.8 in D.8A).

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Leong Kum Weng

Cross-examined by Defendant continued

XKN. continues. Nobody asked me for this opinion. I do not know why I said it. I am shown P.3. I had not seen P.3 before it was tabled at the meeting. I again look P.4. I had not seen it before it was produced at the meeting of 26th Sept. 1955. P.4 was produced by pltf. at that meeting. I was not in the Court House this morning. I saw Tan Chew Seah in the Court premises at 2 p.m. this afternoon.

CROSS-EXAMINED BY THIRD PARTIES

Cross-examined by Third Parties

XKD. By Murphy. The only directors who spoke English when I was the secretary were pltf., Marjoribanks, Chua Kwong Song and Chan Cheow Kiat. The minutes were written by me and not by the pltf. Pltf. did not dictate the minutes to me. P.3 & P.4 were not circulated but tabled at the meeting. P.3 was discussed at the meeting. I now say there was no discussion on P.3 at the meeting. There was no discussion when P.4 was tabled. At that meeting Marjoribanks told the meeting that P.3 should be tidied up. Marjoribanks did not explain why P.3 should be tidied up. I do not know why there should be a supplementary agreement. I do not know what is the difference between P.3 & P.4. I do not agree that pltf. did what he wanted at the board meetings.

RE-EXAMINED

Re-Examined

Re-Xn. P.4 was tabled by pltf. P.4 was already a fair copy for execution when it was

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Re-examined  
continued

tabled at the meeting. P.4 was drafted in Marjoribanks' office. P.4 was not executed straightaway at that meeting because Tan Chew Seah was not present. I cannot remember whether there was any discussion on P.4 before it was tabled. No director made any comment when P.4 was tabled. Some of the directors present at the meeting looked at the supplementary agreement after it had been tabled by the pltf. When Marjoribanks spoke about tidying up the agreement I interpreted for him. I know that Ironside was then a partner of Lovelace & Hastings. Document was prepared by Lovelace & Hastings. Duty of lawyer to stamp that document. I think it is pltf's duty to date P.4. I was present at the meeting of 26.9.55 (p.19 in P.1). I took notes and prepared the minutes. At that time I knew that Marjoribanks was going to leave and Ironside to be his substitute. I would not have allowed Ironside to sign as a director if he was not one. There is no doubt that Ironside could sign on P.4. I was present at the extraordinary meeting of 5.9.56 as a shareholder. At that meeting Chong ceased to be secretary and my firm was reinstated as secretaries. I took down notes of the meeting when Chong left. Chong supplied me with notes and I prepared the minutes of that meeting. Subsequently my services were terminated again. I do not know who took over from me.

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Adjourned to 10 a.m. 18.6.63.

19th June, 1963.

Court resumes. Parties as before.

12(x)  
A.E. Schmidt

12(x) - A. E. SCHMIDT

P.W.4. A.E. Schmidt a/s in English :-

Examined

I am the pltf. in this case. I am consulting engineer. I came to Malaya in 1925. I am a chartered engineer which in my case embodies, chartered structural engineer, chartered electrical engineer, London, B. of Engineering, University of Queensland with honours. I have 2 first grade engineer

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certificates, one electrical and other steam and diesel. I am a registered professional engineer and I am a member of the Engineers Guild of London. I am not a member of the Institute of Mining and Metallurgy. All the mines in Malaya except one I would be qualified to work. The one exception is the mine at Sungei Lembing. In most of the mines in Malaya the work required is mechanical, electrical, structural and civil engineering. In S.Lembing it is necessary to employ underground miners for shafting and tunnelling. I say definitely that my qualifications are most suitable than those of a member of the Institute of Mining & Metallurgy. I know Tan Chew Seah. In 1952 Tan Chew Seah brought to my office 2 people whom I had not seen before. That was Gwee Yan Keng and Chan Cheow Kiat. They told me they had found what they believed to be a good deposit of iron ore. On their behalf Tan Chew Seah had applied for a permit to prospect the area. The area was near Bukit Kepong in the district of Muar. Their application they said had been refused because that portion of the district was not under control by the security forces. They told me that the application was made in the name of Tan Chew Seah because he had far more than the others access to an influence with important politicians and officials. They said probably they could not afford at that time to employ a firm of consulting engineers to press their application. They asked whether I would join them as a member of their syndicate and share in any proceeds of the venture. I agreed to do this. Some time considerably later I found out casually that there was another member called Chan Hian Chor. So that there were 5 of us when I joined them. It was obviously necessary to have a consulting engineer because their application had been refused and because of the grounds of the refusal. To be able to get a prospecting permit it is normally necessary to satisfy the government that you are capable of making use of it in particular that you have adequate technical and financial resources. The intention of all of us was to obtain a permit, prospect the land and obtaining a

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continued

mining title. After that to promote or find a company capable of exploiting the mineral deposit. I then began interviewing and writing to all the people who were obstructing the plan, that is to say, the State Government, the Land Office, the Police, Mines Department and the District War Executive Council. Everywhere I met a blank refusal on the ground the area was far too dangerous to enter. Shortly before I joined these people some months in fact, the police station at Bukit Kepong had been captured by the terrorists and all but one of the police were killed. I look at a file kept by me. It contains office copies of letters to and from officials. I look at the very first letter on 18.12.52. to the C.C.P.D. (witness reads letter). A permit was issued 10 or 11 months after I began work on this project. Before the permit was approved I had travelled thousands of miles and spent hundred of hours, interviewing, persuading and questioning the officers concerned. In the first instance there was no discussion as to how the proceeds of our venture were to be divided among the members. The agreement was simply that we would all, each and every one, to use his best endeavours to get the mining title that we desired. When it appeared that the permit was about to be issued 3 of our members came to my office and started a long conversation until I cut it shortly by asking them whether they wanted to buy me out. They said yes. I said for how much and they said 3% of the value of the ore. I made some calculations which gave me the impression that all of us could hope to get 5% of the value of the ore if we ever succeeded in getting it mined. So I advised them to change the offer to 1%. They did and I accepted it. We went to the office of Lovelace & Hastings and Marjoribanks drafted a letter confirming this, that is a letter from Tan Chew Seah, he being the applicant addressed to me (p.18 in P.2. (P.12)). I left the office without the letter but about 2 months later it was delivered to me and I saw that Tan Chew Seah had signed it. When we went to Lovelace & Hastings the permit had not been issued but when I received the letter the permit had

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continued

10 either been approved or issued. 21.10.53 was about the time we went to have the letter drafted. 2.12.53 is a day shortly before I received this letter duly signed. I am shown P.3 & P.4. I signed P.3 as an attorney of Tan Chew Seah. As soon as we received the permit we proceeded vigorously to give access to the place where the ore deposit was. We decided to join a limited company. This work was deputed to Chua Kwong Song, Chan Cheow Kiat and myself. We employed Lovelace & Hastings to draw up a declaration of trust, Memorandum and Articles for the company. I now look at the Trust Deed (admitted F.16). I look at D.7. The company was formed on 27.7.54 and called Kepong Prospecting Ltd. P.3 was made so that the company could enter into possession of the relevant assets of the syndicate. As I was actually no longer a member of the syndicate P.3 of course arranged that the company should pay to me 1% otherwise due from the syndicate. The company were to issue vendors shares to the other 4 partners in accordance with an agreed formula, as in Clause 3 sub-clause 2 of P.3. My 1% tribute is set out in Clause 4 of P.3. I know that several instalments were issued to Tan Chew Seah and his nominees. I cannot say if exactly 100,000 shares have been issued but I do know that approximately 100,000 shares were issued. The shares were allocated to them not for cash but in consideration of the property transferred to the company by Tan Chew Seah. P.3 was tabled and adopted at the first meeting of the directors of the company. I turn to p.13 of P.1. I produce the notice calling for the first meeting of the Board of Directors (admitted P.17). I now look at P.4. Considerable time before the date of P.4, at the end of one of our board meetings Marjoribanks referred to P.3. and said the position wanted tidying up. From a legal point of view a further document should be drafted and executed. We never questioned his legal advice anymore than they questioned my engineering advice. So there was general assent amounting to instructions to Marjoribanks to go ahead with that piece of legal business. P.4 was tabled at a meeting on 26.9.55. It was adopted. There were 3

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copies suitable for signature and other copies for filing and not for execution. The agreement was not executed there and then. It was not possible because there was not sufficient qualified people present to seal it in accordance with the articles. In particular it was necessary to have the signature of a permanent director attesting the seal. I was a permanent director but I had already signed in my private capacity. Tan Chew Seah the other permanent director was away in Singapore or Johore Bahru. I signed P.4 on 26.9.55. I wrote the date in P.4. It is in my handwriting. P.4 was sealed on the following Monday. I was present when it was sealed in the office of the secretaries, Leong & Lai. I arranged for the people to go to Leong's office. I returned from Ipoh on Sunday evening and the following day Tan Chew Seah appeared in my office. I immediately rang Ironside. Marjoribanks had gone to England. I arranged to forgather at the secretary's office for the purpose of affixing this seal. We did in fact gather. When we obtained the prospecting permit our first object was to enter upon the land and proceed with prospecting. We met with difficulties which appeared to be insuperable. I produce a letter from C.L.R. Muar (admitted P.18). It was necessary before breaking the ground at all to identify the boundaries by a survey. I sent my surveyors to do the work. When the area marked on the plan was pagged out on the ground one of the boundary lines ran right through the ore deposit that we had applied for with the result that more than half the iron ore was outside the permit boundary. Immediately I went to see the Chief Inspector of Mines because I realised the danger that some one else might apply for the portion of our deposit which was outside the permit area. He asked me to apply for the other portion. An application was made for 1200 acres but we found in the interim the area of the new application had been declared a Malay Reservation. After a very long time we managed to get this area excised from the Malay Reservation. Finally we were granted a permit on the extension area. After inspecting the topography I decided the first pits should be sunk. The positions were

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then marked on a plan in my office. I sent a field gang to measure the positions from the plan and transferred them to the ground. Then I arranged for gangs to go and dig a pit on each pag. I then measured what was revealed in the pits, took samples of the ore, classified it, weighed it and had it assayed. Report must be submitted for each month before the 5th day of the following month but there are occasions

10 when a special report is required. I sunk over 250 pits in the area. I came to the conclusion that a profitable mine could be operated on that deposit. I devised a mining scheme because that was necessary to obtain a mining title. Roads are portion of an iron mining scheme. In building that road I met the following difficulties - persuading the land owners to allow the construction at all - negotiating with the Kampong people who had planted crop in the road

20 reserve. To get authority to build a road through the cattle grazing reserve. To get permission to build a portion of the road on State land. The company paid compensation for the land used in building the road. But for my efforts that mine would certainly not have started. They would not have obtained the mining leases without my efforts. On 14.12.55 C.L.R. Muar wrote to say that mining leases had been approved on the old and the extension areas.

30 I expected from Kepong Prospecting Ltd. for everything I had done to obtain approval of the mining titles a sum equal to the value of 1% of the ore produced from the mine. For a period I was managing director of Kepong Prospecting. Appointment was made retrospective from the date of incorporation of the company. During that period I was paid various sums by the company as managing director. I was paid \$1,000 each month for a period, a few months after the incorporation.

40 At one meeting I told the board that I could not afford to carry on as managing director as I was losing \$1,000 a month out of my own pocket. I lost \$1,000 monthly by running the company car, renting my office, paying my staff and similar expenses. I provided the office for the company. The company had a registered office but they had no other administrative office other than mine. I

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look at p.30 in P.1. I did not want the job of Chief Engineer. At that meeting of 5.9.56 no one present indicated to me that the \$2,000 monthly to be paid to me as Chief Engineer was in lieu of the 1% tribute. First of all I tried to find among the shareholders and their friends people who would subscribe for further shares enough to provide the funds for opening the mine. Secondly I tried to find people outside the company in Malaya, Japan and India for the same purpose. Thirdly I tentatively offered to supply ore below the market price if the buyer would provide sufficient finance to start operating the mine. The last of these efforts resulted in the 3rd party in the present action apply for a large block of shares. I look at P.12.

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Adjourned to 2 p.m. 19.6.63.

Court resumes. Parties as before.

Menon for Selvarajah.

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P.W.4. A.E. Schmidt (on former oath) states in English:-

I look again at P.12. I look at P.3. Both state 1% of the selling price of ore. I look at P.4. Also 1% tribute. Selling price is the price the company obtains from selling the ore as shown in the sales contract which is the value of ore in the ship ready to sail (witness reads on "Finance" at p.21 in P.1). During the adjournment I was taken to the Lido Hotel and had a long discussion with some of the directors. Nett result of the discussion was that Chua Kwong Song would make or find or secure subscription for shares to the extent of \$300,000 and seeing that this would allow mining operations to begin I would accept less than the amount due under my contract. He did not produce \$300,000 and consequently the mine did not start operating and my offer lapsed. Chua Kwong Song was present at that meeting, P.26 in P.1 bottom). That certain party referred to in the minute referred to me. I was chairman at that 12th meeting. I tried to get the mine started. I

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and others tried to get capital. The third party after 3 months discussion with me applied for a block of 700,000 shares of \$1/- each. On my recommendation the application was refused but they were offered a smaller number. At that meeting the relationship among those present was cordial. Within a matter of days at least 2 of the old directors came to me and said they had made a terrible mistake. They said they had to get rid of the new shareholders, people who got portions of the 700,000 shares. The culmination was that one of the old shareholders started a case in this court against 10 of the new shareholders. There was an order by consent. (Order shown in P.1 at p.51). My 1% was not changed by this consent order. During the hearing of the case the trial Judge said he would give the parties  $\frac{1}{2}$  hour to discuss and immediately counsel and the parties left the Court House. Only 2 persons remained in this room. Myself and Marjoribanks. After about  $\frac{1}{2}$  hour I suggested to Marjoribanks that we should go and see what they were doing. He stayed in the Court and I went out to the passage way. In the Court next door I saw a large number of people sitting in 2 lines. I saw some of them were the people concerned in the case and I began to enter the door. I was peremptorily told to go away. So I came back to this Court and sat down near Marjoribanks again. About an hour later the Court resumed. Someone announced that a settlement had been reached. The Judge read out the terms which were to be this consent order. I cannot remember anyone asking me about para 10 of the Consent Order. I did not accept the third party in this case as being liable to pay the 1% to me. Mining operations started after the consent order was made. I have never been paid anything in respect of that 1%. On or about 1.4.59 I spoke to Chua Kwong Song in Muar and asked him what arrangements there were to be now that my instalments of 1% were falling due. He said "We don't propose to pay you". I said if he persisted in this I would have to sue Kepong Prospecting Ltd. I look at 33A in P.1. I wrote that letter. I entered into correspondence with Kepong Mines & Kepong Prospecting

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about the 1%. My correspondence is set out in P.1 from 33A to 50. Lovelace & Hastings were acting for me. The Austin Princess was bought in 1953. It was a second-hand car. It was in fact an Austin Sheerline. I do not know who paid for it. Gwee Yam Keng or Chan Cheow Kiat or Chan Hian Chor gave me the car. The syndicate promised the car and one of those must have paid for it. It was registered in my name. The syndicate had no name. I paid all expenses for running the car. I did not have the exclusive use of the car. Two other members of the syndicate sometimes used it.

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CROSS-EXAMINED BY DEFENDANT

XXD. by Mooney: I regard Kepong Prospecting as being liable to make this payment which I am seeking. It has not been my view any time that Kepong Mines should make it. I do not confirm that 33A in P.1 is the first demand. I wrote to Tsang Tak Chuen in 33A because I had spoken with him on this subject a short time before. I told him that Chua Kwong Song had refused to pay the 1%. He said, "Don't worry. You cannot trust those cheats and swindlers. I will see that they pay you". I wrote 33A because in the interim I found out that Tsang Tak Chuen had not paid the 1% to deft. company. I could not say now from whom I found that out. I do not consider Tsang Tak Chuen liable. I am informed that a photostat copy of the agreement was sent to them as requested in the letter at p.34 in P.1. I read p.39 in P.1. I corresponded with Tsang Tak Chuen because he posed as being very friendly and I thought he might be of some help in getting a solution of this matter. I do not consider that Kepong Mines were liable to pay the tribute to me direct. (Counsel reads minutes of directors meeting of 24.7.59 in P.8).

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XXN. continues: I had legal advice that Kepong Mines were liable to pay 1% tribute to me but I could not take action then because I was not a party to the Consent Order. I do not consider Kepong Mines liable. Structural engineering is most concerned with providing stable structure.

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I have no qualifications for prospecting. Practically any firm of consulting engineers could have done what I did in obtaining mining titles. I would accept Counsel's estimate that my 1% would have accrued to \$250,000 by now. I was doing other consulting engineering work for 3 to 30 companies during my practice. I was doing work for about 7 or 8 companies on the average when I was doing work for the syndicate.

10 I cannot say how many hours in my period I devoted to work for Kepong Prospecting. The work started in 1952. A very substantial part of the work was done before Kepong Prospecting was formed. Tan Chew Seah does not write English or Chinese. I cannot write or read Chinese. I look at p.18 of P.2. I was not the sole to give instructions for the drafting of the letter at p.18 in P.2. There is nothing in this letter that I should work for deft.

20 company as a mining engineer. It was never suggested that I should do all the work for nothing. I do not dispute that I have had approximately \$45,000 by way of remuneration and expenses. These expenses did not include any amounts for running the car nor did they include all of the expenses incurred in the company's business. I am shown D9A. I did charge some telephone calls. I cannot say now when I went by car or plane to Singapore in respect of the 2nd item. I agree that the air fare to Singapore and return would be about \$90. I cannot say whether this field clerk was a member of my staff or not - 2nd item. I agree that Kepong Prospecting was paying a portion of my expenses incurred for my work for them. Gwee Yam Keng lives in Malacca since I have known him. Tan Chew Seah has a house in Singapore and a flat or a house in Kuala Lumpur. I live in K.L. I have lived here since the

30 beginning of this affair. I look at P.3 in D.5. ("future action"). The cost for a return trip to Japan was \$1250, first class on the Chusan. I consider that I had some obligations to the company in return for the 1% tribute. I did not consider the meetings I might have in Japan would fall under these obligations. I did not consider the matter at all. I do not know who selected 1st March 1955 as the starting month

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of my \$1,000 salary. I do not think that the company was in no position to pay my salary. The company was in a position to pay my salary from that date. The company in fact paid my salary. The company had difficulty in meeting its monthly obligations including my salary. The third party knew of the liability of the 1% to me about 2 months before Jagatheesan attended the meeting. I did not know that the third parties were negotiating to take over the mining when there was a discussion next door. I think L.J. Smith and Skrine waved angrily at me when I attempted to enter the room next door. They did not speak. I saw Gwee Yam Keng several times during the proceedings. I did not see Chua Kwong Song in the next Court room. I was sufficiently interested. I did not inquire what the parties had agreed upon when they came back to this Court room. I was interested in my tribute. That did not prompt me to ask. I did not approve of the terms of the consent order. (Counsel reads min. dated 27.5.57 in D.8). 10 20

Adjourned to 9 a.m. 20.6.63.

20th June, 1963.

9.25 a.m. Court Resumes. Parties as before.

P.W.4 A.E. Schmidt (on former oath) states in English:-

XXN. continues. I do not recollect suggesting that the deft. should accept judgment on the 1954 agreement. (Counsel reads minutes of 20.7.59 in D.8 at p.3). 30

XXN. continues: Apparently I did suggest that deft. should accept judgment on the 1954 agreement. I regard the 1% as covering my services up to the approval of the mining titles. I have no further services to perform in respect of the 1% thereafter. The 1% is essentially the purchase price of my share in the syndicate. My contribution was to obtain approval of the mining titles. I declined the job of chief engineer because that would be becoming an 40

employee of the company and moreover full-time. It would entail closing down my consulting practice. I look at P.3. My recollection is that instructions for the preparation of P.3. were given by the syndicate. That does not mean in effect by me. I agree that some of the other members of the syndicate could not read P.3 at all. I do not agree that the benefits to me are enlarged by P.3. as compared with P.12.

10 I agree that P.12 gives me 1% over approximately over 1,000 acres of land. I agree P.3. gives me 1% over 1,000 acres of land plus an unspecified area of land. I think clause 4 of P.3 releases Tan Chew Seah from his obligation to pay the 1%. I spoke to Ironside some months before he gave evidence in this case. I expect I refreshed his memory and he refreshed mine. We discussed the circumstances and events about which he was asked to give evidence. I cannot

20 say if I discussed with Leong Kun Weng the evidence it was proposed he should give but as I fairly frequently conversed with him I cannot say I did not. I do not remember discussing the execution of P.4 with Leong Kun Weng. I am sure my solicitors took a statement from Leong. It was Marjoribanks' idea to made P.4. Marjoribanks was the legal adviser to the company at that time. He was also the solicitor who advised me on the institution of these

30 proceedings against the deft. and he in fact instituted on my behalf. I thought it was professional pride that made Marjoribanks introduce P.4. because he supervised the drafting of P.3 and later he came to the conclusion that P.3 might at some future time become inadequate. Marjoribanks said that I the recipient of the 1% was not a party to P.3. I did not think at that time that the only reason for making P.4 was to benefit me. I do not

40 suggest that the making of P.4 would benefit the deft. company. I do not know of any record in any of the Board meetings of any discussion in respect of P.4. I think it most likely that none of the directors saw the draft of P.4 before it was tabled. Indeed I did not see it myself until then. It was tabled in engrossed form ready for signature. I do not agree that P.4 improves my position as compared with P.3.

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Marjoribanks told the board that P.4 was to supplement P.3 and not to replace it. I do not know whether P.4 is a substitute for P.3 or whether it co-exists with P.3. I find clause 11 in P.4 in P.3 by implication. I do not find clause 11 in P.4 in P.3. I did not intend my personal representatives would work for the deft. company. P.3 was explained to the directors but there is no record in the minutes. The same applies to P.4. I had 2 reasons for not mentioning P.4 while negotiations were going on next door. One reason was that with 4 or 5 senior counsel present it did not occur to me that they might forget it. The second reason was it was no personal concern of mine. I thought the Judge made a final order that control. I thought the control of the mine and the operation of the mine passed to third parties that morning. I did not know until this moment that Kepong Prospecting Ltd. was Respt. 10 in O.M. 6/56. When the draft order came up for consideration I did not see any significance in the mention of any agreement. All that was important to me was the 1%. I paid no attention to which agreement was mentioned. The draft order came up for consideration by the board on 29.4.57 and on 27.5.57. I was present at both meetings. (p.46 in P.1 read by counsel - original produced and admitted P.19). I wrote the note on the bottom of P.19. Tan Chew Seah is quite capable of writing P.19. I estimated the sale price at \$30. Cost of delivering the ore \$18 giving a surplus of income over expenditure of \$12 per ton. I look at D8A. This was a stormy meeting. The point of the meeting was who would come into control of the company whether it would be Chua Kwong Song or Tsang Tak Chuen. When I said at the meeting that Clause 9 of our articles would be observed in future I intended to convey to them that Clause 9 would not be changed after their entry into the company. I deny that Clause 9 had been violated. Marjoribanks' proposal at that meeting was to remove all the directors except myself, himself and Tan Chew Seah. 2 proxies unstamped covering 2,000 shares. Tsang Tak Chuen had unstamped proxies for 58,500 shares. Jagatheesan was

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representative of Tsang Tak Chuen. He had unstamped proxies for 10,000 shares. I am shown p.4 of D9A. Paras 3 and 4 at the bottom of p.4 were read out to me. An offer was made to Lim Ngian Cher. I do not know why the 3rd parties settled the C.M. instead of contesting it. I saw no need for the 3rd parties to settle in the C.M. I look at p.6 in D8A, para. 3. I just ruled out everything they said because I considered them disruptive. Anything that was said and propounded at that meeting by the rowdy element I considered to be false, wrong and not worthy of attention. I wanted to see the motion carried.

CROSS-EXAMINED BY THIRD PARTIES

XKD. by Murphy. I did not think that my 1% would be more than  $\frac{1}{4}$  of what the other 4 would altogether get. At the end of 1953 I was the only one out of the 5 who had any knowledge of mining and I would be the only one out of the 5 who had any idea what 1% would amount to. The 4 wanted to get rid of me as a member of the syndicate at a price. The other 4 were prepared to pay me 1%. I judged that if we finally got a mining title we would be able to dispose of it for about 5% of the value of the ore in the ground. Being 5 of us I therefore advised them that to buy one person out they should pay 1%. 5% of the gross value without deducting for anything. The working of the mine produced more than 5%. I maintain I am right to get 1%. I expected them to get the same. I was asked to reduce my 1% because in my opinion Chua Kwang Song will always ask for a reduction. I was giving away money without knowing how much I was giving away. I cannot think of any case of iron-ore mine where anyone has received 1% tribute on the gross. I have not investigated any case in which anyone get a percentage on the gross. I knew Tsang Tak Chuen in connection with the Malaya Mining Co. of Ipoh. Not true that I attempted to interest him in the Kepong Prospecting. I spoke to Jagatheesan about Kepong Prospecting. I spoke to Jagatheesan with the idea of interesting Malaya Mining Co. to subscribe shares in Kepong

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Parties  
continued

Prospecting Ltd. I did take Tsang to see the mine at Bukit Kepong. I don't remember Jagatheesan speaking to Tsang over the phone in my presence on a number of occasions concerning subscriptions to Kepong Prospecting Ltd. I urged Tsang to subscribe for shares in Kepong Prospecting. I did not know that Tsang would take no shares in the company unless he was in complete control. Tsang did not tell me he would not buy shares unless he could control the company. I did not suggest that Tsang's group apply for 700,000 shares. The board had contact with Tsang and Jagatheesan before they applied for shares. No right that I was the only person to contact Tsang and Jagatheesan before they applied for shares. At that meeting it was for the purpose of my introducing Jagatheesan to the board. I was the contact with Tsang and Jagatheesan before Jagatheesan was introduced by me to the board at that meeting. I had been in contact with them for 3 months before that. Since 1955 I was always trying to get somebody to mine at the ground otherwise I was worthless. Jagatheesan had applied for 700,000 shares before meeting any other members of the board but myself. I would have told Jagatheesan that there were 750,000 new shares. Jagatheesan had applied for a majority holding in the shares. No true that I knew Jagatheesan's group would not join the company unless it had control over it. Not true that I invited Jagatheesan's group to join the company to control it. The object of the action was whether Kepong Prospecting or the new directors were to run the mine. I did not take part in the deliberations because I wanted the mine to be run. True that Tsang's group were the first people I approached who had mining experience to join the company. True I told Tsang and Jagatheesan that I would give them all the help I could. I just wanted their money and not their experience. I was pleased and not surprised when they applied for 700,000 shares. I knew that when they applied for 700,000 shares they wanted to control the mine. Not right that when I saw the group would control the company I did not want them to do so as I wanted to control the company. Up to

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that period the company was controlled by a board of directors of which I was an influential member. Not right I intended to keep that position. I objected to allotment of 700,000 because in my opinion after that the company would not be governed by a board of directors but by one man. I had an interest in the court case as I wanted to see the mining work started. I knew the fight next door was as to who was to run the company. I did not share any conversation with Tsang when the parties returned to this Court room. Chua Kwong Song (D.W.5) was lying when he said that I went up to the gathering and asked what would happen to my 1% with the agreed deductions. Nothing was said about my 1% in the court room and I did not ask about my 1%. I knew that the third parties were going to control the mine when the Judge announced it. The third parties were going to work the mine. I knew that my 1% would now be paid if they did the work. I did not ask who was going to pay it. I knew because of my agreement with Kepong Prospecting. I don't know whether the Judge mentioned about my 1%. Marjoribanks knew nothing at all what was going on in the next room. I got an allowance of \$300 a month from Kepong Mines. Hussey was taken by Kepong Mines. He is not a mining engineer. Kepong Mines looked to me for the washing plant. I never finished drawing up the plans for the washing plant. The reason was Kepong Mines did not provide the funds sufficient to do the work any further. The lack of washing plant held up mining operations. It is essential that such an installation as a washing plant shall fit the ground on which it is to be placed. It is therefore necessary to survey and measure the site and make plans of it before the washing plant plans can be completed. Kepong Mines did not supply funds enough to allow me to proceed any further than I was doing. Surveying information from the site was lacking. I frequently asked them for survey information from the site. Or alternatively for me to obtain the survey information by giving me the money. I wrote to Kepong Mines about this. I also spoke to Tsang over the phone about this. I think I

In the High  
Court at  
Kuala Lumpur

No. 12 (x)  
Notes of  
Evidence

Plaintiff's  
Evidence

A.E. Schmidt

Cross-  
examined by  
Third  
Parties  
continued

In the High Court at Kuala Lumpur

No. 12 (x)  
Notes of Evidence

did ask Tsang for money to do the survey. I asked him certainly more than once. He did not reply. The washing plant was holding up the working of the mine. Spending \$40,000 a month when the plant was not in action.

Adjourned to 2 p.m. 20.6.63

Court resumes. Parties as before.

Plaintiff's Evidence

P.W.4 A.E. Schmidt (on former oath) states in English:-

A.E. Schmidt

RE-EXAMINED

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Cross-examined by Third Parties continued

Re-Xn. The washing plant machinery was nearly completed. There was very little left to complete the machinery. Kepong Prospecting relied on me for their engineering advice. They relied on Marjoribanks for their legal advice. They had their opinions on other matters. The 100,000 shares to the other 4 partners would not be worth anything unless the mine was started. Kepong Mines is paying Kepong Prospecting Ltd. approximately 10% tribute. Kepong Mines are paying \$2.70 and should be paying in addition 1% which makes nearly \$3/-. The price of ore is nearly \$30/- F.O.B. Tsang intended to become the virtual proprietor. He wanted to mine the land. He gained the right to work the land in the consent order. I used my own judgment when Marjoribanks had refused to give their legal opinion at the extraordinary meeting. I was not chairman of the meeting of 29.4.57. No one present at that meeting mentioned P.4. The C.M. took about 5 days before negotiations for settlement. I was present throughout the hearing. I did not see Marjoribanks stand up nor did I hear him speak during the proceedings. When I signed P.4. I no longer regarded Tan Chew Seah as under any obligation to pay me the 1%. I look at p.13 of P.1.I turn to page 14 - "adoption of agreement". At that time I did not regard Tan Chew Seah as having obligation to me in respect of the 1%. This was after signing P.3. I look at p.7 in P.1. It is a copy of the P/A which I

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Re-examined

obtained from Tan Chew Seah.

Aik Tiong asks for a short adjournment to enable him to call a clerk in the Federal Registry to give evidence in respect of a P/A - adjourned 15 mins.

Court resumes. Parties as before.

In the High Court at Kuala Lumpur

No.12 (x)  
Notes of Evidence

Plaintiff's Evidence

A.E. Schmidt

Re-examined continued

No. 12 (xi)  
Lim Beng Jin

Examined

12(xi) - LIM BENG JIN

P.W.5. Lim Beng Jin a/s English :

Clerk in Selangor Registry, K.L.

10 I am in charge of P/As. I have here a register of P/A No.783/54. The name of the donor is Tan Chew Seah. The name of the attorney is A.E. Schmidt. Date of registration is 23.7.54. The date of revocation 18.9.56. Date of deposit of revocation 19.9.56. Copies of P/As. are kept in the Registry. I made a search for a copy of P/A 783/54 but I cannot find it.

No questions by Mooney.

No questions by Murphy.

A.E. SCHMIDT Recalled.

20 P.W.4. A.E. Schmidt (recalled) (on former oaths) states in English :-

I have a copy of P/A 783/54 given to me by Tan Chew Seah. I made this as a reference copy for use in my office. It was when I had P/A 783/54 in operation. This copy was in my possession all the time until I handed over to the lawyers in this case.

CROSS-EXAMINED BY DEFENDANT

XXD. by Mooney. The copy was done by one of my

No. 12 (x)  
A.E. Schmidt

Recalled

Cross-examined by Defendant

In the High Court at Kuala Lumpur

No.12 (xi) Notes of Evidence

Plaintiff's Evidence

A.E. Schmidt

Cross-examined by Defendant continued

Case for Plaintiff

clerks. I compared it with the original word by word.

No questions by Murphy.

(Copy of P/A admitted P.20).

CASE FOR PLAINTIFF

Aik Tiong addresses - deft's case and plaintiff's case having closed - the court to decide between defendant and third party - no concern of plaintiff vis-a-vis third party - refers to the notice - "That the question of the liability of the Third Parties with defendant be tried after the trial of the action subject to the directions then to be given upon the application of the defendant and the Third Parties (740) - file - refers to Notice to Third Parties (14) in file - refers to 1923 1 K.B.D. p.221 Barclays Bank v. Tom - read at 223.

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Mooney agrees with Aik Tiong's submission but does not agree the submission that the Court should give judgment now before proceeding to deal with the case of defendant against the Third Parties - refers to O.31 R.1 - plaintiff could ask for particulars from Third Parties - Annual Practice 1961 Notes to O.16A R.7 p.394. Court entitled to give any order under O.16A R.7 - refers.

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Ruling -

Adjourned to 9.30 a.m. 21.6.63.

21st June, 1963.

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Court resumes. Parties as before.

Ruling - Parties as before.

Murphy addresses Court. Plaintiff is not a party to the consent order and therefore cannot sue the defendant - refers to P.3 - plaintiff was not a party to P.3.

12(xii) - TSANG TAK CHUENTsang Tak Chuen a/s in English :Singapore. No.39 Lorong 29. Senior Partner  
Malaya Mining Co. of Ipoh.In the High  
Court at  
Kuala Lumpur12(xii)  
Notes of  
EvidencePlaintiff's  
EvidenceTsang Tak  
ChuenExamined  
continued

I first knew the plaintiff in 1954. He was then the consulting engineer to Malaya Mining Co. Plaintiff did explain to me about Kepong Prospecting Ltd. some time in 1955 or 1956. I know Jagatheesan. He was my representative in Ipoh for Malaya Mining Co. Plaintiff mentioned to me he had a mine in hand with everything ready for its operation and Kepong Prospecting Ltd. owned the mine. The mine was in Kepong about 40 miles from Muar. Plaintiff contacted Jagatheesan as Jagatheesan was acting for me. Jagatheesan might have spoken to plaintiff that Jagatheesan was representing me. Jagatheesan rang me up to say that plaintiff said we had to hurry up applying the shares otherwise someone else might apply for those shares. Before we put in our application I did not see the mine. Jagatheesan on my behalf put in for 700,000 shares. Plaintiff Jagatheesan and myself went to inspect the mine before the application. I inspected the ore and was quite happy with the ore. A long road had to be built before production. We had to build a washing plant and clear up the jungles for extraction of ore and build the loading point for loading the ore to the lighters. This would take 3 or 4 months. Plaintiff promised to give us all the held. Plaintiff promised to help us to get the control of the company. We told him we would not apply for a large block of shares unless we had control of the company. Plaintiff promised to give his services to operate the mine. He would give all the information such as washing plant plan, mining plan, road plan, stockpile areas and housing site. It is important to know where to dig for iron ore. We could obtain this information from plaintiff. He might have all these records. I think plaintiff had all this information. My original application was for 700,000 shares. Plaintiff told me that the company had a balance of slightly over 700,000 shares. Jagatheesan attended a meeting of the directors of Kepong Prospecting on my behalf after I had applied for 700,000 shares. I attended the extraordinary general meeting. Nothing came out of it except a High Court action. I was here every day while the action was in

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In the High  
Court at  
Kuala Lumpur

12(xii)

Notes of  
Evidence

Plaintiff's  
Evidence

Tsang Tak  
Chuen

Examined  
continued

progress, 3 days. Eventually the Judge adjourned for half an hour to enable us to settle. I went to the witness room with the old directors, among them Chua Kwong Song and Gwee Yam Keng. I did the bargaining on my side. All the old directors did the bargaining for the other side. Both the old directors and us agreed to the adjournment. We wanted to pay the old directors a tribute and we would work the mine. They started at \$5/-. I started at \$1.50. We ended up at \$2.70. We came to an agreement at \$2.70. Actually we forgot about plaintiff while we were bargaining. The old directors did not mention plaintiff at all. When we had come to an agreement we come back to this Court room to inform our lawyers. I saw plaintiff and Marjoribanks in this Court. I spoke to L.A.J. Smith my lawyer. We were talking rather loudly about the tribute of \$2.70. Marjoribanks must have heard it. I do not know which lawyer wrote down the terms of settlement. I had a conversation with plaintiff. Plaintiff came up to us when we were back in this Court room. Plaintiff said that as between the two parties the matter had been settled and he asked what about himself. I told him if plaintiff continued to give us his services we would take over his 1%. A little bit later I also asked plaintiff that his 1% should have deductions such as export duty, lighterage and stevedoring. Plaintiff immediately agreed. I read paragraph 10 of the consent order. I cannot remember how this was put in the order. We took over the mine in April, 1957. I heard the evidence of Hussey. He was employed by Kepong Prospecting. We took Hussey over, We did not pay plaintiff in April, May, June, July, August 1957. Plaintiff had to work for us for his 1%. Actually he has done something for us, such as handling over plans for the road, the stockpile site plan and some other information regarding machineries. We asked plaintiff for the washing plant plan after we took over the mining. He promised us month by month till December 1957. We started building the road from beginning of April 1957. I saw plaintiff two or three times during the

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period. Every time plaintiff met he asked money from me for his living. He said he was hard up. I asked for the washing plant plan. He replied as he was so busy trying to get money to live that he could not finish with the washing plant plan. Sometime in October or November 1957 I started paying plaintiff \$300 a month as a consulting engineer. We stopped paying plaintiff in January 1958 because plaintiff did not produce the washing plant plan. I employed another consulting engineer Wilkins immediately after we dismissed plaintiff. Wilkins produced the washing plant within 3 months. Without the washing plant we could not produce the ore. The washing plant was the important to the mine. If we had the washing plant plan we could have produced the ore some time in August 1957. In fact we first produced the ore in May 1958, 7 months delay. Our monthly expenses were about \$40,000 to \$50,000. I would definitely have paid plaintiff the 1% if he had worked for me.

In the High Court at Kuala Lumpur

12(xii)  
Notes of Evidence

Plaintiff's Evidence

Tsang Tak Chuen

Examined continued

CROSS-EXAMINED BY DEFENDANT

Cross-examined by Defendant

XXD. by Mooney. The full production was in 1959. We started mining in May 1958. Plaintiff agreed with the arrangements that we were to pay him the 1%. The condition was plaintiff was to serve me. Plaintiff agreed that he would accept the 1% from me in place of Kepong Prospecting. On that basis the Court order was agreed to by all concerned. There was mention of an agreement before the consent order was made. The agreement of 1954 was mentioned. I remember plaintiff mentioned it. Plaintiff mentioned the agreement after I had agreed to pay the 1%. It was only mentioned when the Judge was writing it down. I did not see any written agreement at the time the consent order was made but I saw a copy of a written agreement of 1954 after the consent order was made. I was not exactly interested in the written agreement. I asked for a copy in 1959. The mine was in operation in 1959 and the plaintiff was demanding tribute from me. We are not bound on the 1955 agreement. We are morally liable to pay the plaintiff. Under the 1954 agreement but not under the 1955 agreement. Plaintiff mentioned the 1954 agreement to me. He was the man running the show and he knew how many agreements there were. It must be a result of plaintiff mentioning the 1954 agreement that it went into the consent order. As far as I know I did not hear plaintiff mention any other

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In the High Court at Kuala Lumpur

12(xii)  
Notes of Evidence

Plaintiff's Evidence

Tsang Tak Chuen

Cross-examined by Defendant continued

Cross-examined by Plaintiff

agreement. At one stage plaintiff instituted proceedings against Kepong Mines for payment of the 1% tribute. Plaintiff dropped these proceedings and commenced this action.

Marjoribanks was present in this Court in the O.M. While I was negotiating with the old directors outside this Court room I had not in my mind the 1% tribute to plaintiff. It never crossed my mind about the 1% tribute until the plaintiff spoke to me in this Court room. It is just a coincidence that 30 cts. is 10% of \$3/- and \$3/- is 10% of \$30/-.

In this case I would not bargain for 5 cents. In 1956 I became chairman of Kepong Prospecting. Kepong Prospecting had practically no funds apart from our share money.

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CROSS-EXAMINED BY PLAINTIFF

XXD. by Aik Tiong. When I went over to the witness room before the consent order was made plaintiff was in this Court room. The old directors went out with me. All the negotiations took place outside this Court.

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When we came back to this Court room he had already come to an agreement. Plaintiff's 1% was never mentioned at all during the negotiations outside this Court room. The terms of settlement which I and the old directors arrived at outside this Court room were \$2.70. tribute to the old directors and we could take over the sub-lease of the mine.

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We also settled our machinery. Plaintiff came to speak to me about his 1% after we had spoken to our lawyers about the terms of the settlement. After Plaintiff had agreed to receive 1% less deductions and to serve us I told this to my lawyer in this Court room. I did not speak to anybody else. I spoke to my lawyer in the presence of the others. Nobody said anything. I do not think there was any discussion in this Court room after the consent order was made and after the Judge left the Bench. I do not think I discussed this 1% with anybody that day after we left the Court.

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I am definite that when I came back to this Court room after the negotiations the settlement was not \$3/- tribute to defendants. Not true that the settlement was \$3/- tribute to the defendants but it was reduced to \$2.70 to



accommodate the 1% to the plaintiff. Plaintiff mentioned he had some interest and the 1% to me before we applied for the shares. Plaintiff said he had a 1% interest. Jagatheesan did tell me about the 1%. Jagatheesan told me that plaintiff had 1% but the 1% bearing deductions of export duty and barge contract. My understanding was the same up to the time of the consent order. Plaintiff told me when he promised to give his services to me that he was old and he had some interest in Kepong Prospecting Ltd., meaning 1% and so he wanted the mine to work as soon as possible so that he would get some income from the mine. I myself did not ask for the balance sheet of Kepong Prospecting when we applied for the 700,000 shares but Jagatheesan did inspect the books of the company. Before I made the application I saw some boring results.

10 Plaintiff gave me the boring results. I saw some of the analysed reports. I know plaintiff was paid \$1,000 monthly by Kepong Prospecting and also \$2,000 as chief engineer. I was the chairman of Kepong Mines Ltd. at the beginning and now I am chairman as well as managing director. I now own Kepong Mines Ltd. I have no written agreement with plaintiff. I have no correspondence with plaintiff regarding my acceptance to pay the

20 1% tribute to plaintiff. My company has not passed any resolution to the effect that it will pay plaintiff the 1% tribute.

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RE-EXAMINED

Re-Xn. When we came into the Board we read the minutes of all the meetings and we came to know about plaintiff's 1% less deductions in minutes of 1.3.56.

Adjourned to 2 p.m. 21.6.63.

Court resumes. Parties as before.

40 Aik Tiong Addresses Court - facts very straight  
-forward - relates the facts - old partners

In the High  
Court at  
Kuala Lumpur

12(xii)  
Notes of  
Evidence

Plaintiff's  
Evidence

Tsang Tak  
Chuen

Cross-  
examined by  
Plaintiff  
continued

Re-examined

In the High  
Court at  
Kuala Lumpur

12(xii)

Notes of  
Evidence

Plaintiff's  
Evidence

Tsang Tak  
Chuen

Re-examined  
continued

agreed that plaintiff should get 1%  
tribute - Kepong Prospecting Co. formed  
- refers to P.12 - 4 partners got  
100.000 shares - 1% tribute to plaintiff  
- these set out in P.3 - refers to P.4 -  
no attack on P.12 - plaintiff is not a  
party to P.3 - no privity of contract  
between plaintiff and defendant company -  
plaintiff could enforce his rights  
through Tan Chew Seah - P.3 tabled at  
first meeting - (p. 14 in P.1).  
Plaintiff adopted P.3 as between himself  
and the company and plaintiff had released  
Tan Chew Seah - caused a novation - to  
P.17 - refers to Marjoribanks second  
thoughts - P.4 came into existence - P.4  
was not executed straightaway as other  
permanent director was away - refers to  
evidence of Ironside - consideration in  
respect of 1% tribute - (p.18 of P.2) -  
"may do" - mining titles approved on  
14.12.1955 - plaintiff had no contract  
with Kepong Mines - plaintiff gave good  
consideration - amount that would be  
payable to plaintiff in respect of that 1% -  
selling price is equivalent to F.O.B.  
price - no local market for iron ore - all  
iron exported - purchased almost  
exclusively by Japanese exporters - refers  
to deductions - defence points to the mins.  
at p.21 of P.1 - plaintiff would agree to  
deductions if Chua Kwong Song would  
subscribe \$300,000 shares - conditions not  
fulfilled - offer lapsed - refers to P.25  
in P.1 - 1% referred to in the consent  
order - defence novation of contract by  
consent order - plaintiff was to look to  
third parties solely for the discharge of  
the 1% tribute - defendants discharged of  
their obligations to plaintiff - refers to  
the consent order - plaintiff is not a party  
to the consent order - plaintiff is not bound  
by that consent order - plaintiff perfectly  
entitled to stand by his contract with  
defendant company - limited liability  
companies strict proof must be given -  
refers to 1894 2 C.D. p.32 at p.53 -  
Rouse v. Bradford Banking Company - Vol. 5  
Chancery A.C. p.118 - In re Family Endowment

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Society - also at P.131 3rd Edition Halsbury Vol.8 - p.262 - Tan Chew Seah filed an affidavit in support of defendant company - plaintiff is entitled to 1% tribute on all ore sold against the defendant based on either P.3 or P.4 or both - and reliefs set out in the S/C.

In the High Court at Kuala Lumpur

12(xii)  
Notes of Evidence

10 Murphy addresses Court - refers to P.3 & P.4 - even if P.3 and P.4 are valid - plaintiff has not claim on P.4 - refers to Indian Contract Act - from p.20 - (Murphy hands a copy of the relevant portions) - disregard P.3 & P.4 - third party to pay defendant 1% on condition plaintiff did work for third parties - plaintiff did not work and therefore plaintiff could not have the 1% - P.3 & P.4 did not contain what the parties had agreed upon - only indemnity third party has to give is under the consent order - indemnity arises if defendant has to pay on the 1954 agreement.

Plaintiff's Evidence

Tsang Tak Chuen

Re-examined continued

20 Mooney addresses Court - refers to submission of Murphy - plaintiff has business only in the syndicate - refers to \$45,000 - wait for 4 years to get capital - difficulty to get capital because of the 1% tribute to plaintiff - refers to P.12 - P.12 has not been proved - Tan Chew Seah's signature on P.12 not proved - refers to P.3 & P.4 - both void - cannot pinpoint plaintiff's duties - P.3 & P.4 - consideration must be present - no such thing as part consideration - P.3 & P.4 fictitious -  
30 plaintiff cannot sue on P.3 - P.4 is fictitious - never intended for any future services - date of the execution of P.4 - refers to Leong's evidence - no one can say when P.4 was signed - P.4 abrogated by the consent order - oral agreement between plaintiff, defendant and third parties that 1% to be paid by third party - other possibility  
40 novation of P.4 by consent order - plaintiff approved the draft order at board meeting - Court order replaces everything that went before - plaintiff should have sued the third party - 1% less deductions - counter-claim must succeed - plaintiff managing director at that time - duty to exercise the

In the High  
Court at  
Kuala Lumpur

12 (xii)  
Notes of  
Evidence

Plaintiff's  
Evidence

Tsang Tak  
Chuen

Re-examined  
continued

same degree of care as in his own affairs  
- submits dismiss the claim with costs -  
P.3 & P.4 bad - counter-claim succeeds.

C.A.V.

Sd. M.M. Hashim  
Judge.

Certified True Copy.

Sd. C.S. Kumar  
Secretary to Judge.

10.11.63.

NO. 13JUDGMENT OF HASHIM J.IN THE HIGH COURT AT KUALA LUMPURJUDGMENT

This is a claim for 1% tribute of all iron ore sold from the Kepong Mines.

This case at first sight would appear to be very complicated but, in my opinion, it is not so when one goes into the case very carefully.

10 There are three parties in this case, the plaintiff, A.E. Schmidt, Kepong Prospecting Ltd., the defendants and Kepong Mines, the third parties.

The following facts are not in disputes:-

- 20 (1) Sometime in 1953 one Tan Chew Seah applied for a prospecting permit for iron ore at Bukit Kepong, Muar, Johore. Tan called in the plaintiff, a consulting engineer, to assist him in obtaining a permit, as the Kepong area was a very bad area vis-a-vis the Emergency. The plaintiff then interviewed various Government and police officials and thereby paved the way for the prospecting permit to be approved.
- (2) In September, 1953 the Johore Government intimated that it was prepared to grant a prospecting permit to Tan.
- 30 (3) On 2.12.53 Tan wrote a letter to the plaintiff. As this letter appears to be a very important document to the plaintiff I would quote it in full:-

"Having received on 25.11.53 my Prospecting Permit No.10/53 over 1000 acres of State Land at Bukit Kepong, Johore I hereby agree to ensure that you are paid one per cent (1%) of the

In the High Court at Kuala Lumpur

No.13

Judgment of Hashim J.

14th October 1963

In the High  
Court at  
Kuala Lumpur

No.13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

selling price of all ore that may be sold from any portion of the said land. This is in payment for the work you have done in assisting to obtain the Prospecting Permit and any work you may do in assisting to have mining operations started up. Please note my change of address."

- (4) On 5.7.54, plaintiff, Chua Kwang Song and Chan Cheow Kiat executed a Declaration of Trust making themselves trustees for an intended private company to be known as the Kepong Prospecting Ltd. 10
- (5) On 11.7.54 Tan executed a comprehensive Power of Attorney in Kota Bharu, Kelantan, in favour of the plaintiff. This Power of Attorney was registered in the Supreme Court Registry, Kuala Lumpur on 23.7.54 as P/A No. 783/54.
- {6) On 27.7.54 the Kepong Prospecting Ltd. was registered under the Companies Ordinance 1940. The "subscribers" were the plaintiff, Chan Cheow Kiat and Gwee Yam Keng both of Malacca. Plaintiff was described as a consulting engineer and the other two as merchants. 20
- (7) It was discovered that the area covered by Prospecting Permit No.10/53 had little iron ore and in July 1954 a further application for another 1200 acres was made to include B Bukit Pasol. The second application was also made in the name of Tan Chew Seah. The second application was approved in Prospecting Permit No. 3/55. So the Kepong Prospecting Ltd. had the permit to prospect the whole area covered by P.P.10/53 and P.P.3/55. 30
- (8) The Board of Directors of Kepong Prospecting Ltd. held its first meeting in Kuala Lumpur on 31.7.54. The following were appointed its first directors:- 40

1. The plaintiff who was appointed  
Chairman of the Board of  
Directors.
2. Tan Chew Seah.
3. Lee Kok Peng.
4. N.A. Marjoribanks, Advocate &  
Solicitor.
5. Chua Kwang Song.
6. Chan Cheow Kiat.
7. Gwee Yam Keng.

In the High  
Court at  
Kuala Lumpur

No.13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

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- (9) On 31.7.54 an agreement (hereinafter called the first agreement) was executed between plaintiff as attorney for Tan Chew Seah on the one part and Kepong Prospecting Ltd. on the other part. I would quote the following clauses as they would appear to be very material to the question at issue:-

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"AND WHEREAS the Permit Holder the agreed with his attorney, A.E. Schmidt (the plaintiff) that in consideration of his services rendered in the past, the present and to be rendered in the future he will ensure that the said A.E. Schmidt is paid one per cent (1%) of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Land at Bukit Kepong already referred to above. (the reference is that the Permit Holder has been granted a permit No. 10/53 dated 25.11.53).

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AND WHEREAS the Company has agreed to take over the obligation of the Permit Holder to A.E. Schmidt (the obligation is the letter dated 2.12.53 from Tan Chew Seah to the plaintiff referred to in (3) above) in consideration of this agreement with such modifications as appear hereinafter.

In the High  
Court at  
Kuala Lumpur

No.13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

The Company shall take over the obligation of the Permit Holder to pay A.E. Schmidt 1% of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Land at Bukit Kepong with the following modifications:-

- (1) the obligation shall be extended so as to include the said land as defined in this agreement, and 10
- (2) the tribute of 1% shall be payable on the selling price of the ore as shown in the Company's records."
- (10) The first agreement was signed by the plaintiff as attorney for Tan Chew Seah and plaintiff as permanent director of the Company, Lee Kok Peng a director and Leong Kum Weng the Secretary in the presence of NA. Marjoribanks. At this stage it is pertinent to quote Article 101 of the Memorandum and Articles of Association of the Company. I quote:- 20
- "The Seal of the Company shall be affixed to any instrument in the presence of at least one director and of the managing director or a permanent director and the said director and managing directors shall sign every instrument to which the seal shall be so affixed in the presence of each other and in favour of any purchaser or person bona fide dealing with the Company, such signatures shall be conclusive of the fact that the Seal has been properly affixed." 30
- On the surface this first agreement would appear to have been properly executed in accordance with Article 101. This first agreement was tabled and accepted at the first meeting of the Board of Directors held in Kuala Lumpur on 31.7.54. It would 40



appear that it was at this first meeting that Messrs Lovelace & Hastings, a legal firm of which a director Mr. N.A. Marjoribanks was a partner, was appointed the Company's Solicitors.

In the High Court at Kuala Lumpur

No.13

Judgment of Hashim J.

14th October  
1963  
(Contd.)

- 10 (11) It was at the seventh meeting of the Board of Directors held in Kuala Lumpur on 26.9.55 that a "supplementary" agreement (hereinafter called the second agreement) was tabled and be "approved and executed". This second agreement was intended to "supplement" the first agreement.
- 20 (12) From the time the Company was registered on 27.7.54. to 1.3.56 only a limited amount of work was done at the site in the way of "borings". Nothing was done to mine the ore due to lack of capital. At this eighth meeting of the Board of Directors on 1.3.56 the plaintiff informed the meeting that he would accept one per cent tribute on the F.O.B. price of the ore less export duty and the barge contract rate in settlement of the Company's obligation under the second agreement. It was at this meeting that the Company resolved to proceed with mining operations.
- 30 (13) The Company tried to find ways and means to raise capital to operate the mine and eventually invited Mr. S.K. Jagatheesan who represented a group of persons interested in investing capital in the Company to attend a meeting of the Board of Directors which was held in Kuala Lumpur on 4.8.56. Mr. Jagatheesan attended this meeting and after some discussion it was agreed that a total of 315,000 \$1/- shares be allotted to Mr. Jagatheesan and his associates not exceeding nine persons in all. It was also agreed at this meeting that Mr. Chua Kwang Son's application for 40 300,000 \$1/- shares be accepted.
- (14) There was then a struggle to control the Company between the old group represented by the original directors and the new group

In the High  
Court at  
Kuala Lumpur

No.13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

represented by Mr. Jagatheesan and his associates.

- (15) An extraordinary general meeting was held on 5.9.56. From the minutes of this meeting it would appear that the meeting was a stormy one. Both groups of directors attended the meeting. Some claimed that the meeting was irregular and invalid. The result of the meeting would appear to be that the new group ousted the old group on the Board of Directors. 10
- (16) At the fifteenth meeting of the Board of Directors held on 1.10.56 the plaintiff was removed as Chairman of the Board of Directors and Mr. Tsang Tak Chuen from Mr. Jagatheesan's group was appointed Chairman.
- (17) On 25.9.56 one Lim Ngian Cher, the holder of Share Certificate No.79 representing 5,000 shares in Kepong Prospecting Limited filed an Originating Motion in the Kuala Lumpur High Court in O.M. 6/56. He cited the new directors and Kepong Prospecting Limited as respondents. He applied that the names of the new directors be deleted as holders of ordinary shares under section 101 of the Companies Ordinance 1940. 20
- (18) The Motion came up before Sutherland, J. and a consent order was made on 27.3.57. The gist of the order was that the old directors replaced the new directors and the new directors were granted a sub-lease of the mining land and were allowed to work the mine. The new directors were to pay to Kepong Prospecting Limited at the rate of \$2.70 per ton of ore removed from and sold off the mining land according to the shipping or other sales documents. The new directors were also to take over from Kepong Prospecting Limited the payment of 1% tribute to the plaintiff. 30 40
- (19) As a result of this consent order Kepong

Mines Ltd. (the third parties) came into existence. From the evidence of Tsang Tak Chuen it would appear that he is at present the sole owner of Kepong Mines Limited.

In the High  
Court at  
Kuala Lumpur

No.13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

Plaintiff's claim is based on three documents:-

- (a) letter from Tan Chew Seah to plaintiff dated 2.12.53;
- (b) the first agreement; and
- (c) the second agreement.

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Tan Chew Seah's letter to the plaintiff would appear to be a personal one ensuring plaintiff that he would get 1% tribute of the selling price of ore sold from the mining land. This was in payment of the work plaintiff had done to obtain the prospecting permit and for any work plaintiff might do in assisting to have the mining operations started. There is evidence to indicate that plaintiff did a certain amount of work in getting the prospecting permit approved. There is also evidence to indicate that plaintiff did attempt to get certain people and a Japanese firm to finance the mining operations. In my opinion, Tan Chew Seah, the permit holder, had the right to offer the 1% tribute to plaintiff. This offer was put in legal form in the first agreement which was adopted and passed at the first meeting of the Board of Directors on 31.7.54. It was at this meeting that plaintiff was appointed the Chairman of the Board of Directors. Under the first agreement the Company agreed to take over the obligation of Tan Chew Seah to pay plaintiff the 1% tribute, the consideration being that Tan Chew Seah would permit the company to prospect and work the mining land.

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The first question for determination is whether plaintiff had the authority conferred on him by P/A No. 783/54 to execute the first agreement on behalf of his principal Tan Chew Seah.

In the High  
Court at  
Kuala Lumpur

No. 13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

A Power of Attorney is a formal instrument by which authority is conferred on an agent. Such an instrument is construed strictly and confers only such authority as is given expressly or by necessary implication. One of the most important rules for the construction of a power of attorney is regard must be had to the recitals which, as showing the scope and object of the power, will control all general terms in the operative part of the instrument. The scope and object of P/A No. 783/54 would appear to be in relation to the mining properties of Tan Chew Seah. There would appear to be no provision in the power of attorney whereby the plaintiff as attorney could enter into any agreement for his own personal benefit. No mention or reference is made in the power of attorney as regards the 1% tribute to be paid to plaintiff by Tan Chew Seah. In my opinion the plaintiff exceeded his authority when he executed the first agreement as an agent of Tan Chew Seah in respect of the 1% tribute to the plaintiff. If my view is correct then the first agreement would appear to be void. My view is strengthened when the second agreement is considered. According to the plaintiff the second agreement was drawn up on the advice of Mr. Marjoribanks who was of the opinion that "the position wanted tidying up". The inference would appear to be that there was some doubt as to the legality of the first agreement and it was considered advisable that the Company should enter into a supplementary agreement with the plaintiff. The second agreement was tabled at the seventh meeting of the Board of Directors held in Kuala Lumpur on 26.9.55. According to the minutes of that meeting it was resolved that the appointment of Mr. Ironside as proxy for and on behalf of Mr. Marjoribanks between 1.10.55 and 31.12.55 be approved. There is evidence to show that Mr. Marjoribanks the Company's legal adviser was going on leave about 1.10.55, and Mr. Ironside came into the picture as a partner of Messrs. Lovelace & Hastings, the Company's legal advisers. Mr. Ironside acted as a director of the Company in place of Mr. Marjoribanks from 1.10.55 to December 1955. The second agreement is dated 26.9.55 but is claimed to have been

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executed during the first week of October 1955. Mr. Ironside could not say when he signed the second agreement but he was positive he did not sign it before 1.10.55 as he was then not a director of the Company. Mr. Ironside contended that he read the second agreement before signing it but was not sure whether the date had already been written on the agreement when he read it. He stated that the date, if it appeared on the agreement then, might not have struck him as a matter of significance. The plaintiff in his evidence stated that he signed the second agreement on 26.9.55 and that he wrote the date, that is to say, he wrote "26th". Plaintiff also stated that the agreement was sealed on the following Monday. Mr. Ironside was positive he did not sign the agreement on 26.9.55.

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According to the second agreement plaintiff signed it as a party to the agreement in the presence of the Company's secretary. Plaintiff did not say in his evidence that he signed it in the presence of the Company's secretary. The common seal of the Company was affixed in the presence of Mr. Ironside and Tan Chew Seah. Tan Chew Seah was not called to give evidence as to his signature on the second agreement and on his letter to plaintiff dated 2.12.53. It seems rather strange that the central figure in this case has not been called to give evidence. According to the Company's secretary Mr. Leong Kum Weng he signed the second agreement as a witness to plaintiff's signature but he did not say when and where he signed as a witness to plaintiff's signature. According to Mr. Leong Kum Weng all the parties to the second agreement came to his office to execute the agreement. Mr. Leong Kum Weng also stated in his evidence that there was no date on the agreement when he read it but he remembered the agreement was executed during the first week in October 1955. There appears to be a contradiction here. If the plaintiff signed the agreement on 26.9.55 he could not possibly sign it during the first week in October 1955. The issue is whether the second agreement was executed in accordance with Article 101 of the Memorandum and Articles of Association of the Company. From the evidence

In the High  
Court at  
Kuala Lumpur

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Judgment of  
Hashim J.

14th October  
1963  
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Court at  
Kuala Lumpur

No.13

Judgment of  
Hashim J.

14th October  
1963  
(Contd.)

it would appear that there is a great deal of doubt that the agreement was properly executed. There was the Company's legal adviser, Mr. Ironside, who signed the agreement as a director. With great respect I am forced to come to the conclusion that Mr. Ironside's evidence is rather unsatisfactory. He was very hesitant in his evidence and would appear to be groping about in the dark. I am therefore forced to come to the conclusion that the second agreement was not properly executed in accordance with Article 101. Under the circumstances I am forced to arrive at the finding that plaintiff's claim must fail. I have the greatest sympathy for the plaintiff as it is quite clear from the evidence and the documents that he was promised the 1% tribute. It is also clear from the evidence that plaintiff was paid in all approximately \$49,000 as Chairman of the Board of Directors and as consulting engineer to the Company. It has been submitted that plaintiff cannot claim on the Consent Order of 27.3.57. Even in the Consent Order there is mention of the 1% tribute and Mr. Tsang Tak Chuen, the sole owner of Kepong Mines Ltd. has admitted in his evidence that he would have definitely paid the plaintiff the 1% tribute if plaintiff had worked for him. It is also clear from the evidence that plaintiff took no part in the affairs of the Company after he was ousted as Chairman of the Board of Directors.

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The claim is therefore dismissed with costs. As plaintiff's claim is dismissed the counter-claim of the defendant is also dismissed.

As regards the third party's costs this will be payable in the first instance by the defendant who will have to be indemnified in full by the plaintiff.

14th October, 1963.

Sd: M.M. Hashim  
Judge.

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NO. 14ORDERBEFORE THE HONOURABLE DATO JUSTICE HASHIM,  
JUDGE, MALAYAIn the High  
Court at  
Kuala LumpurNo.14

Order

14th October  
1963IN OPEN COURTThis 14th day of October, 1963.O R D E R

10 This suit coming on for hearing before the Honourable Dato Justice Hashim, Judge, Malaya, on the 16th day of July, 1962 in the presence of Mr. R. Ramani with Mr. Ng Ek Teong of Counsel for the Plaintiff, Mr. Peter Mooney of Counsel for the Defendant and Mr. T.C. Tang of Counsel for the 2nd, 3rd, 6th, 7th and 8th Third Parties and in the absence of Mr. M.N. Cumarasami Solicitor for the 1st, 4th and 5th Third Parties AND UPON READING the Pleadings of the Plaintiff and the Defendant AND UPON HEARING the evidence of the Parties IT WAS ORDERED that the trial of the

20 suit be adjourned to the 14th day of August, 1962 and the same coming on for hearing on the 14th, 15th, 16th and 17th days of August 1962 in the presence of Counsel aforesaid AND UPON HEARING the arguments of Counsel IT WAS FURTHER ORDERED that the suit be adjourned for continued hearing on the 5th day of September, 1962 and the same coming on for hearing on the 5th day of September 1962 in the presence of Counsel aforesaid AND UPON HEARING Counsel IT WAS FURTHER ORDERED

30 that the hearing be adjourned to the 18th day of March 1963 and the same coming on for hearing on the 18th, 19th, 20th, 21st and 22nd days of March 1963 before Mr. R. Ramani with Mr. Ng Ek Teong of Counsel for the Plaintiff, Mr. Peter Mooney with Mr. Thomas Lee of Counsel for the Defendant and Mr. Denis Murphy with Mr. T.C. Tang of Counsel for the Third Parties AND UPON HEARING further evidence of the Parties and arguments of Counsel aforesaid IT WAS FURTHER ORDERED that

40 the hearing of the suit be adjourned to the 17th to 26th days of June 1963 and the same coming on

In the High  
Court at  
Kuala Lumpur

No.14

Order

14th October  
1963  
(Contd.)

for hearing on the 17th, 19th, 20th and 21st days of June 1963 before Mr. Ng Ek Teong and Mr. K.A. Menon of Counsel for the Plaintiff, Mr. Peter Mooney with Mr. Thomas Lee of Counsel for the Defendant and Mr. Denis Murphy with Mr. T.C. Tang of Counsel for the Third Parties AND UPON HEARING further evidence of the Parties and arguments of Counsel aforesaid IT WAS FURTHER ORDERED that the suit do stand adjourned for judgment and the same coming on for judgment this day in the presence of Mr. Ng Ek Teong with Mr. K.A. Menon of Counsel for the Plaintiff, Mr. S.D.K. Peddie with Mr. Thomas Lee of Counsel for the Defendant and Mr. Denis Murphy with Mr. T.C. Tang of Counsel for the Third Parties IT IS ORDERED that the claim and Counterclaim be and are hereby dismissed AND IT IS ORDERED that the Third Parties' costs in this suit be taxed and be paid in the first instance by the Defendant to the Third Parties AND IT IS FURTHER ORDERED that the Plaintiff do indemnify the Defendant against the full amount of the costs payable by the Defendant to the Third Parties AND IT IS LASTLY ORDERED that the Defendant's costs of this suit be taxed and be paid by the Plaintiff to the Defendant.

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Given under my hand and the seal of the Court this 14th day of October, 1963.

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No.15

Memorandum of  
Appeal

20th December  
1963

NO. 15

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

Civil Appeal No. 70 of 1963

MEMORANDUM OF APPEAL

30

1. The learned Judge was wrong in finding that:-



(a) Power of Attorney No. 783/54 from Tan Chew Seah to the Plaintiff did not confer upon the Plaintiff authority to execute the first agreement (P3) on behalf of his principal; and

(b) the first Agreement (P3) was void.

10 2. The learned Judge further erred in finding that an inference that there was some doubt as to the legality of the first agreement (P3) could be drawn from the fact that the Company considered it necessary to enter into a supplementary agreement.

20 3. The learned Judge failed to appreciate that in executing the first agreement as the Attorney of Tan Chew Seah he was not so much conferring a benefit on himself but arranging for the Defendant Company to prospect and work the land held under Permit No. 10/53 dated 25.11.63. In doing so it became his duty to ensure that the obligations that were attached to the right to work the said land should also be transferred to the Defendant Company.

4. The learned Judge should have held that the first Agreement was a valid and binding document.

30 5. The learned Judge should have held that no inference that there was a doubt as to the legality of the first Agreement could be drawn from the fact that it was considered desirable to draw up a second Agreement as the purpose of the second Agreement was different though supplementary to the first Agreement.

40 6. The learned Judge failed to appreciate the fact that the first Agreement (P3) was in fact between Tan Chew Seah and the Defendant Company and that there was then no binding agreement between the Plaintiff and the Defendant Company by which Tan Chew Seah would be released from his obligations to the Plaintiff and the Plaintiff in turn enabled to look to the Defendant Company for the payment of his 1% tribute.

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No.15

Memorandum of  
Appeal

20th December  
1963  
(Contd.)

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No. 15

Memorandum of  
Appeal

20th December  
1963  
(Contd.)

7. The learned Judge was wrong in placing any significance in the fact that :-

(a) the Plaintiff did not say in his evidence that he signed the Second Agreement in the presence of the Company's Secretary although the Secretary admitted signing as witness to the Plaintiff's signature.

(b) Tan Chow Seah was not called to give evidence as to his execution of the second Agreement (P4).

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8. The learned Judge should have placed no weight in the dating of the second Agreement in considering its validity or its execution by the parties.

9. The learned Judge failed to appreciate that the Plaintiff having acknowledged that he had executed the second Agreement (P4) there was no legal requirement that his signature should further be proved as having been properly attested. 20

10. The learned Judge failed to appreciate with regard to the Secretary witnessing the Plaintiff's signature on the second Agreement that the Plaintiff signed at the meeting of the Board of Directors of Kepong Prospecting Company Limited held on the 26th September, 1955 and that the Company's Secretary was present at such meeting.

11. The learned Judge failed to take into account that the Defendant Company had already filed an affidavit by Tan Chew Seah in proceedings in the suit and the said Tan Chew Seah had in effect become a witness for the Defendant Company. 30

12. The learned Judge was wrong in finding that the Second Agreement (P4) was not properly executed in accordance with Article 101 of the Memorandum and Articles of Association.

13. The learned Judge should have held that the Defendant Company's seal was affixed in accordance with Article 101 of the Articles of 40

Association.

14. The learned Judge should further have held that the Plaintiff was entitled to assume that the Seal was properly affixed to the second Agreement and that the Defendant Company could not repudiate the second Agreement on the ground of any failure by its directors in complying with the requirements of its articles.

In the Federal  
Court of  
Malaysia

(Appellate  
Jurisdiction)

No.15

Memorandum of  
Appeal

20th December  
1963  
(Contd.)

10 15. The learned Judge failed to appreciate that there was no onus on the part of the Plaintiff to prove that the seal of the Company had been properly affixed in accordance with its Articles of Association once the Seal of the Defendant Company and the signatures of the two requisite directors was not disputed or proved.

16. The learned Judge should have found that the three documents :-

- 20
- (a) the letter from Tan Chew Seah to the Plaintiff dated 2.12.1953 (P12);
  - (b) the first Agreement dated 31.7.1954 (P3.);
  - (c) the second Agreement dated 26.9.1955 (P4).

being valid and binding the Plaintiff is entitled to succeed in his claim and should have entered judgment in his favour.

30 17. The learned Judge should in the context of the evidence have found irrespective of the validity of the first or second Agreement (P3 and P4) that there was nevertheless a valid and binding verbal agreement between the Plaintiff and the Defendant Company which is borne out fully by the conduct of all the parties and the minutes of the various meetings of the Defendant Company.

Dated this 20th day of December, 1963.

In the Federal  
Court of  
Malaysia

NO. 16

NOTICE OF MOTION

(Appellate  
Jurisdiction)

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

No.16

Notice of  
Motion

NOTICE OF MOTION

20th February  
1964

TAKE NOTICE that on the Monday the 2nd day of March 1964 at 10.00 o'clock in the forenoon or as soon thereafter as he can be heard Mr. Anthony Hills of Counsel for the abovenamed Appellant will move the Court for an order that the Appellant be at liberty under Federal Court (Civil Appeal) (Transitional) Rules 1963 No.22 (1) to amend the Memorandum of Appeal herein in the manner set out in the copy thereof attached hereto.

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Sd: Donalson & Burkinshaw  
Solicitors for the Appellant

Dated at Kuala Lumpur this 20th day of  
February 1964.

(L.S.)

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No.17  
AMENDED MEMORANDUM OF APPEAL  
 IN THE FEDERAL COURT OF MALAYSIA  
 (Appellate Jurisdiction)

In the Federal  
 Court of  
 Malaysia

Appellate  
 Jurisdiction

MEMORANDUM OF APPEAL

No.17  
 Amended  
 Memorandum  
 of Appeal

1. The learned Judge was wrong in finding that:

(a) Power of Attorney No. 783/54 from Tan Chew Seah to the Plaintiff did not confer upon the Plaintiff authority to execute the first agreement (P3) on behalf of his principal; and

(b) the first Agreement (P3) was void.

2. The learned Judge further erred in finding that an inference that there was some doubt as to the legality of the first agreement (P3) could be drawn from the fact that the Company considered it necessary to enter into a supplementary agreement.

3. The learned Judge failed to appreciate that in executing the first agreement as the Attorney of Tan Chew Seah he was not so much conferring a benefit on himself but arranging for the Defendant Company to prospect and work the land held under Permit No.10/53 dated 25.11.53. In doing so it became his duty to ensure that the obligations that were attached to the right to work the said land should also be transferred to the Defendant Company

4. The learned Judge should have held that the first Agreement was a valid and binding document.

5. The learned Judge should have held that no inference that there was a doubt as to the legality of the first Agreement could be drawn from the fact that it was considered desirable to draw up a second Agreement as the purpose of the second Agreement was different though supplementary to the first Agreement.

6. The learned Judge failed to appreciate the fact that the first Agreement (P3) was in fact between Tan Chew Seah and the Defendant Company and that there was then no binding agreement

In the Federal  
Court of  
Malaysia

Appellate  
Jurisdiction

No.17  
Amended  
Memorandum  
of Appeal  
(Contd.)

between the Plaintiff and the Defendant Company by which Tan Chew Seah would be released from his obligations to the Plaintiff and the Plaintiff in turn enabled to look to the Defendant Company for the payment of his 1% tribute.

7. The learned Judge was wrong in placing any significance in the fact that:-

- (a) the Plaintiff did not say in his evidence that he signed the Second Agreement in the presence of the Company's Secretary although the Secretary admitted signing as witness to the Plaintiff's signature. 10
- (b) Tan Chew Seah was not called to give evidence as to his execution of the second Agreement (P4).

8. The learned Judge should have placed no weight in the dating of the second Agreement in considering its validity or its execution by the parties. 20

9. The learned Judge failed to appreciate that the Plaintiff having acknowledged that he had executed the second Agreement (P4) there was no legal requirement that his signature should further be proved as having been properly attested.

10. The learned Judge failed to appreciate with regard to the Secretary witnessing the Plaintiff's signature on the second Agreement that the Plaintiff signed at the meeting of the Board of Directors of Kepong Prospecting Company Limited held on the 26th September, 1955 and that the Company's Secretary was present at such meeting. 30

11. The learned Judge failed to take into account that the Defendant Company had already filed an affidavit by Tan Chew Seah in proceedings in the suit and the said Tan Chew Seah had in effect become a witness for the Defendant Company.

12. The learned Judge was wrong in finding 40

that the Second Agreement (P4) was not properly executed in accordance with Article 101 of the Memorandum and Articles of Association.

In the Federal  
Court of  
Malaysia

13. The learned Judge should have held that the Defendant Company's seal was affixed in accordance with Article 101 of the Articles of Association.

Appellate  
Jurisdiction

No.17  
Amended  
Memorandum  
of Appeal  
(Contd.)

10 14. The learned Judge should further have held that the Plaintiff was entitled to assume that the Seal was properly affixed to the second Agreement and that the Defendant Company could not repudiate the second Agreement on the ground of any failure by its directors in complying with the requirements of its articles.

20 15. The learned Judge failed to appreciate that there was no onus on the part of the Plaintiff to prove that the seal of the Company had been properly affixed in accordance with its Articles of Association, once the Seal of the Defendant Company and the signatures of the two requisite directors was not disputed or proved.

16. The learned Judge should have found that the three documents:-

- (a) the letter from Tan Chew Seah to the Plaintiff dated 2.12.53 (P12)
- (b) the first Agreement dated 31.7.54 (P3);
- (c) the second Agreement dated 26.9.55 (P4).

30 being valid and binding the Plaintiff is entitled to second in his claim and should have entered judgment in his favour.

17. The learned Judge should in the context of the evidence have found irrespective of the validity of the first or second Agreement (P3 and P4) that there was nevertheless a valid and binding verbal agreement between the Plaintiff and the Defendant company which is borne out fully by the conduct of all the parties and the minutes of the various meetings of the Defendant Company.

In the Federal  
Court of  
Malaysia

Appellate  
Jurisdiction

No.17  
Amended  
Memorandum  
of Appeal  
(Contd.)

18. The learned Judge should have held that if there was no authority for the Plaintiff to enter into the first agreement on behalf of his principal, Tan Chew Seah, under the Power of Attorney filed herein, nevertheless his principal by his subsequent conduct ratified the Plaintiff's signing of the said agreement.

19. Quite apart from the question of the validity or otherwise of the second agreement the Plaintiff is entitled to rely upon the first agreement and to enforce his rights set out therein directly against the Defendant Company. 10

20. The Court will not permit the Defendant Company to approbate and reprobate the first agreement by accepting the benefits under the said agreement without at the same time conforming to all its provisions.

21. If which is denied the second and supplementary agreement (P4) was not duly sealed in accordance with the Articles of Association of the Defendant Company, the said P4 is notwithstanding a valid contract in writing between the Plaintiff and the Defendant Company and signed by an authorised person on behalf of the said Company subsequent to approval by the Board. 20

Dated this 20th day of December, 1963

Redated this            day of February, 1964

Sgd: BRADDELL & RAMANI  
Solicitors for the Appellant

Sgd: DONALDSON & BURKINSHAW

Solicitors for the Appellant 30



No. 18  
NOTICE OF MOTION  
IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR  
(APPELLATE JURISDICTION)

In the Federal  
Court of  
Malaysia  
holden at  
Kuala Lumpur

NOTICE OF MOTION

Appellate  
Jurisdiction

No.18  
Notice of  
Motion

10 TAKE NOTICE that on Monday the 2nd day of  
March 1964 at 10.00 o'clock in the forenoon, or  
as soon thereafter as he can be heard Mr.  
Anthony Hills of Counsel for the above-named  
Appellant will move the Court for an order that  
the Appellant be at liberty under Federal Court  
(Civil Appeal) (Transitional) Rules 1963 Nos.  
8(1) and 22(1) to re-amend his Amended Reply  
and Defence To Counterclaim in the manner set  
out in the copy thereof attached hereto.

Sgd: Donaldson & Burkinshaw  
Solicitors for the Appellant

20 Dated at Kuala Lumpur this 22nd day of February  
1964.

(L.S.)

In the High  
Court at  
Kuala Lumpur

No.19

RE-AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

IN THE HIGH COURT AT KUALA LUMPUR

No.19  
Re-Amended  
Reply and  
Defence to  
Counterclaim

RE AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

1. The Plaintiff joins issue with the Defendant on its Defence except in so far as the same consists of admission.

1.A. The Plaintiff will contend that having regard to the Order of this Honourable Court dated the 27th day of March 1957 made in O.M. 6 of 1956 which order was made by consent of the defendant which was a party to the proceedings and which order provides inter alia:

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10. The agreement between Kepong Prospecting Limited and Tan Chew Seah dated the 31st day of July, 1954 whereby 1% of the value of all ore sold from the mining land is to be paid by the Company to Mr. A.E. Schmidt shall be taken over by the Respondents numbered 1 to 7 and 9 but not 8 or their nominees and the Respondents numbered 1 to 7 and 9 but not 8 shall indemnify Kepong Prospecting Ltd., against all claims which may be made against Kepong Prospecting Ltd., thereunder.

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it is not open to the Defendant to allege and prove on facts, or claim to establish on law that the agreements sued on were never made or if made were without any legal effect.

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1.B. If which is not admitted the Power of Attorney referred to in paragraph 1(A)(i) of the

Defence did not authorise the Plaintiff to execute the said contract dated 31st July, 1954 the said Tan Chew Seah subsequently ratified the said contract, by carrying out the terms thereof.

In the High  
Court at  
Kuala Lumpur

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No.19  
Re-Amended  
Reply and  
Defence to  
Counterclaim  
(Contd.)

10 2. The Plaintiff denies paragraph 11 of the Counterclaim and states that while consultations were going on in the Supreme Court building between the parties he was specifically denied admittance to the place where such consultations were going on.

3. The Plaintiff admits paragraph 12 of the Counterclaim.

4. The Plaintiff does not admit that it was his duty to do what is alleged in paragraph 13 and 14 of the Counterclaim and in any event repeats paragraph 2 hereof.

20 5. The Plaintiff denies paragraph 15 of the Counterclaim and states that he is not liable to pay any sum of money at all to the Defendant.

Dated this 23rd day of July, 1961.

Re-dated this 16th day of July, 1962.

Re-redated this 22nd day of February, 1964

In the Federal  
Court of  
Malaysia  
holden at  
Kuala Lumpur

No.20

JUDGMENT OF THOMSON, LORD PRESIDENT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN  
AT KUALA LUMPUR

Appellate  
Jurisdiction

(APPELLATE JURISDICTION)

No.20  
Judgment of  
Thomson, Lord  
President

Cor: Thomson, Lord President, Malaysia.  
S.S. Barakbah, Chief Justice, Malaya.  
Tan, Judge, Federal Court.

1st June 1964

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This appellant is a Mining Engineer who, Metaphorically speaking, went on a journey from Jerusalem to Jericho. The first respondent (which I shall call "the Company") is a Limited liability company registered in the Federation of Malaya carrying on the business of mining and exporting iron ore. The other respondents who were joined as third parties in the original proceedings are a number of persons who were at one time shareholders in the Company. I do not think it is now seriously questioned that they are legally bound to indemnify the Company in respect of any liability it may be found to have to Mr. Schmidt in these proceedings.

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There are certain lacunae in the evidence. There is, however, no real controversy as to the facts of the case. The only question is whether upon these facts, particularly the admitted documents, the appellant is in these proceedings legally entitled to recover certain sums of money to which he would appear to have an extremely strong moral claim.

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The story commences in 1953 when one Tan Chew Seah and three associates were negotiating with the Government of the State of Johore for mining rights over an area of iron bearing land near Bukit Kepong.

This area was originally set out in a Prospecting Permit (No. 10/53) and covered 1,000 acres but the area ultimately involved was later substantially increased.

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10 Before, however, the matter could reach the stage of the issue of a Prospecting Permit, a necessary step under the local mining law towards the obtaining of actual mining rights, much had to be done and Mr. Tan and his friends who would appear to have been financial persons without technical knowledge and without practical experience of the organisation of a mining undertaking invoked the assistance of the appellant who is a well qualified mining engineer with many years of local experience.

20 A considerable amount of work had to be done and many difficulties had to be overcome. A survey had to be made and prospecting had to be done to meet the requirements of the Mines Department. The Communist War was still alive and Communist forces were active in the area in question. In consequence, to meet the requirements of the security authorities, armed guards for those carrying on this work had to be recruited and trained. Then, no doubt as a result of the notorious unreliability of inexperienced preliminary surveys in iron ore areas where the ore is near the surface, it was found that much of the deposit which the associates had in mind lay outside the area in respect of which application had been made for the  
30 Prospecting Permit and it was then found that this new area had been included in Malay Reservation and was therefore not available for mining until the Reservation boundaries were altered, a matter which involved lengthy negotiation with the appropriate authorities. In the event all these difficulties were overcome by the exertions of the appellant. It should, however, be observed that mining leases which were in respect of areas of 875 acres and 760 acres respectively, a total of 1,635 acres, were not  
40 finally approved till about December, 1955. One of these leases was in respect of a portion of the land to which the original Prospecting Permit (No. 10/53) related and the other was in respect of land covered by a later Prospecting Permit (No. 3/55) for which application was made some time in July, 1954. It is not clear on the evidence which lease corresponds to which Prospecting Permit and the point is of no importance.

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It is, however, necessary to mention the existence of the two leases and the two Permits to explain certain subsequent events on which it was sought, to my mind unjustly, to found some sort of accusation of bad faith against the appellant.

When it became clear to Mr. Tan and his associates and the appellant that their efforts to obtain substantial mining rights were about to be successful they agreed to form a private company, the present respondent Company, to exploit these rights. It was agreed among them that Mr. Tan and his associates who had provided, and were going to provide, the necessary money should have substantial allotments of shares in the Company while the appellant, who had received no remuneration whatsoever for all the work he had done, though he had been paid his expenses, should have a nominal shareholding, and in addition should be paid a tribute of 1% of the selling price of all iron ore produced and sold. In this connection Mr. Tan wrote the following letter to the appellant which is dated 2nd December, 1953:-

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"Having received on 25/XI/53 my Prospecting Permit No. 10/53 over 1000 acres of State Land at Bukit Kepong, Johore I hereby agree to ensure that you are paid one per cent (1%) of the selling price of all ore that may be sold from any portion of the said land. This is in payment for the work you have done in assisting to obtain the Prospecting Permit and any work you may do in assisting to have mining operations started up".

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Steps were taken to proceed with the formation of the Company and in the event it was incorporated on 27th July, 1954. At that date, it will be remembered, neither of the mining leases had been formally approved and the second Prospecting Permit (No. 3/55) had not been issued though application for it had been made.

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In the meantime, on 11th July, 1954,

Mr. Tan had executed a Power of Attorney in favour of the appellant. It related that Mr. Tan was frequently absent from the country and it enumerated certain of his mining interests including his rights under Prospecting Permit No. 10/53 in respect of what was called the Bukit Kepong Land and his potential rights under a Prospecting Permit for which he had applied in respect of what was called the Landkap land, which was clearly a reference to the Permit which was later issued as No. 3/55. It then gave the appellant extremely wide powers which it is not necessary to set out in detail to deal with these interests and to act on the grantor's behalf in connection with the incorporation and subsequent conduct of the affairs of the proposed Company.

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The first meeting of the Directors was held on 31st July, 1954, when the Company had still not yet acquired any of the mining rights which it had been formed to exploit. At that meeting the Board agreed to the execution of an agreement with Mr. Tan (which I shall call the "1954 Agreement") which was the basis of all the Company's subsequent activities.

That agreement referred to what it called "the said land" which was defined as including the land comprised in the land in respect of which Mr. Tan (who was called "the Permit Holder") held Prospecting Permit No. 10/53 and "all or any neighbouring land comprising the same mining project whether applied for before or after the date of this agreement." It recited, inter alia, that Mr. Tan was desirous that the Company should work his mining rights "in respect of the said land", that the Company had agreed to allot to him a number of fully-paid up shares and that he had agreed to ensure that the appellant should be paid 1% of the selling price of any ore sold from the land "in consideration of his services rendered in the past, the present and to be rendered in the future". It went on to provide that Mr. Tan was to permit the Company to work the land; that he was to make all such applications for mining leases and so forth as the Company might request; that he was to be a permanent director of the

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Company; and that he was to receive one fully-paid \$1 share for every share allotted to the other shareholders subject to a maximum of 200,000 shares. Then there was a provision concerning the appellant which was as follows:-

"The Company shall take over the obligation of the Permit Holder to pay A. E. Schmidt 1% of the selling price of all ore that may be sold from any portion of the 1,000 acres of State Lane at Bukit Kepong with the following modifications:-

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(1) The obligation shall be extended so as to include the said land as defined in this agreement, and

(2) The tribute of 1% shall be payable on the selling price of the ore as shown in the Company's records."

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That agreement was duly executed on behalf of the Company and was signed by the appellant on behalf of Mr. Tan by virtue of his power of attorney.

The Company then commenced its operations, to which it will be necessary to return, but at some time subsequent to the execution of the 1954 Agreement the appellant, or his legal advisers, began to have doubts as to whether his interests were adequately protected by that agreement. In the event a new agreement was drawn up which I shall call the "1955 Agreement". This agreement was adopted by the Directors on 26th September, 1955, and it was executed. It bears the date 26th September, 1955, but there has been some question, which will be dealt with later, as to whether it was actually executed on that day or a few days afterwards.

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The parties to that agreement were the Company and the appellant (who is called "the Consulting Engineer"). It



recited the fact of the 1954 Agreement which is attached to it and set out in full clause 4 of that agreement which has already been quoted. It then recited that "it is deemed advisable that the Company should enter into this supplementary agreement" with the appellant. The remainder must be quoted in full:-

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10 "I. The Company shall in consideration of the services rendered by the Consulting Engineer for and on behalf of the Company prior to its formation, after incorporation, and for future services pay to the Consulting Engineer 1% (one per cent) of all ore that may be won from any portion of the said land (which expression shall bear the same meaning as given in the said agreement) by way of tribute which said tribute of 20 1% being calculated on the selling price of the ore as shown in the Company's records.

II. The Company's obligation as aforesaid shall in any event continue until the said land is worked out and shall not cease in the event of the death or retirement of the Consulting Engineer before that happening.

30 III. The obligations herein contained shall be binding on the successors in title assigns and personal representatives of the parties hereto as the case may be."

40 For over two years the operations of the Company were organised and controlled by the appellant and it is clear from the evidence that this involved a great deal of work. He was one of the original Directors and was Chairman of the Board from the incorporation on 27th July, 1954, till 1st October, 1956. On 12th March, 1955, he was appointed Managing Director with effect from 27th July, 1954, from which date he had in fact been performing the duties of that office and continued as such till 5th September, 1956, when he was appointed Chief Engineer, an appointment he held till April, 1957, when his appointment was terminated. He ceased to be a Director on 2nd August, 1959.

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In its early stages the Company met with many difficulties. Some of these were technical and were overcome and some were due to a temporary falling off in the demand for iron ore and a consequent lack of customers at a profitable price. But the main difficulty was a shortage of capital. Money was constantly needed for the development of the mining area and money was short for none was for the time being coming in from sales of ore.

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In the course of the year 1956, however, the third parties became interested in the Company and in the event they provided a large amount of capital and acquired a considerable body of shares which led for the time being to their virtually obtaining control. There then ensued a dispute between them and the older shareholders which in the end led to litigation. It is not necessary here to discuss the course of this dispute beyond observing that it was terminated by an Order of the Court dated 27th March, 1957, which was made by consent of all the parties to the litigation including the Company.

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The effect of that Order was that the shares of the third parties in the Company were to be cancelled and they were to be granted a sub-lease of the Company's mining land. They were to work this land and pay the Company a tribute of \$2.70 on every ton of ore sold, the money they had paid in respect of the cancelled shares being treated as an advance on this tribute. There were a number of ancillary provisions but only one of these calls for mention here. That referred to the 1954 Agreement between the appellant and Mr. Tan and the material portions of it read as follows:-

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"The agreement between Kepong Prospecting Limited and Tan Chew Seah dated the 31st day of July 1954 whereby 1% of the value of all ore sold from the mining land is to

be paid by the Company to Mr. A.E. Schmidt shall be taken over by the Respondents..... or their nominees and the Respondents .....shall indemnify Kepong Prospecting Limited against all claims which may be made against Kepong Prospecting Limited thereunder."

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10 Throughout the dispute the appellant had sided with the third parties and the day following the Court Order his appointment as Chief Engineer was terminated. Thereafter though he continued to be a Director of the Company till some time in 1959 there is no evidence that he took any further part in the Company's affairs.

20 During all this time the appellant had received no payments under the 1954 or the 1955 Agreements and after some correspondence in which the Company took up the attitude that they did not object to his being paid provided the third parties did the paying he issued a Writ against the Company in the present proceedings on 28th June, 1960, in which he asked for an account to be taken of all moneys due to him by the Company under either or both the agreements, payment of the amount found due to him and appointment of a receiver.

30 The Company denied liability and said that in any event if anything was due by them under the agreements they were entitled to be indemnified by the third parties whom they impleaded. It is not necessary at this stage to set out all the grounds on which they denied liability because it is now clear that only two of them are of substance. As regards the 1954 Agreement they pleaded that it was not enforceable by the appellant against them as he was not a party to it. As regards the 40 1955 Agreement they pleaded that it was void for uncertainty and for lack of consideration. They also raised a somewhat curious counterclaim. They said they the appellant was well aware of the course of the 1956-1957 dispute between the Company and the third parties that was ended by

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the Consent Order of 27th March, 1957, that it was his duty as Managing Director to bring the existence of the 1955 Agreement to the notice of the Company's legal adviser (who, I would observe in parenthesis, had in fact drawn it up) that in breach of that duty he failed to do so and that he was therefore liable to the Company to the extent of any sum found to be payable to him by the Company under that agreement.

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The case came on for hearing before Hashim, J., and after a very protracted trial he dismissed both the claim and the counterclaim. He dealt with the legal difficulties in which the case abounded as General Booth used to say he was accustomed to deal with theological difficulties, that is to say he put them on the side of his plate like the bones in his fish. He held that the 1954 Agreement was void because the appellant signed it on behalf of Mr. Tan and the power of attorney which he held did not empower him to do so. He then held that the 1955 Agreement was void on the ground that the seal of the Company was not affixed to it in accordance with Article 101 of the Company's Articles because a Mr. Ironside who witnessed the affixing of the seal as a director was not when he did so a director.

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Against the decision of the High Court the appellant has now appealed.

For myself, I do not think the reasons on which the trial Judge based his decision can be supported.

As regards the 1954 Agreement he only considered so much of it as related to the payment of tribute to the appellant. He took the view that as the power of attorney did not contain any reference to

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this matter and did not in terms empower the appellant to make any agreement on behalf of Mr. Tan which was for his own personal benefit, so much of the agreement as related to the tribute was ultra vires the appellant's power and therefore void.

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10 Having read the Power of Attorney with some care I am unable to agree. It is unnecessary to quote it at length. It gives the attorney as full powers as can well be imagined to deal with Mr. Tan's mining rights, to act for him in the formation of a company to acquire and exploit these rights, to do everything necessary in that connection and to settle claims and so forth against Mr. Tan. The 1954 Agreement falls fairly and squarely within the four walls of that mandate. It was the instrument which enabled the Company to exploit Mr. Tan's rights, it was the instrument which gave Mr. 20 Tan his shares in the Company, it was the instrument which discharged Mr. Tan from his liability to the appellant which he had undertaken in his letter of 2nd December, 1953. Assuming responsibility for the payment of the tribute to the appellant was part, and only part, of the consideration given by the Company to Mr. Tan and I can see no reason why the making of the portion 30 of the agreement relating to it should be regarded as out with the very wide terms of the Power.

40 As regards the 1955 Agreement, this bears the date 26th September, 1955, and on that date Mr. Ironside who witnessed the affixing of the Company's seal as a Director was not a Director and he did become a Director until 1st October. Now the date which appears on the face of a document is evidence but it is not necessarily conclusive evidence as to the date on which it was in fact executed (see Ex parte Slater<sup>(1)</sup>) and in the present case there is a considerable body of evidence all of which, for what it is worth, goes to show that the seal of the Company was affixed and was attested by Mr. Ironside some time after 1st October.

(1) LXXVI L.T. 529.

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Mr. Ironside is a solicitor and was appointed legal adviser and a director of the Company as from 1st October at a meeting of the Board on 26th September when the agreement was approved. He was present at that meeting only to meet the other Directors but he left before it ended. Mr. Ironside's evidence was that he remembered signing the document, that he was positive he did not sign it on 26th September and that as a solicitor he always read documents before he signed them and would not have dreamt of signing anything he was not empowered to sign. He was therefore satisfied that he could not have signed this agreement before his appointment as a Director. He very candidly admitted, however, that he could not remember the precise date when the seal was affixed. The Judge rejected his evidence because he was "hesitant" and "would appear to be groping about in the dark", which he no doubt was more than seven years after the events to which his evidence related.

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There was, however, other evidence. The appellant's own evidence, upon which he was not cross-examined, was that he himself signed the document on 26th September but it could not then be sealed as Mr. Tan whose signature was necessary as that of a Permanent Director was away from Kuala Lumpur. He himself left Kuala Lumpur for a few days, and did not return till the following Sunday, that is 2nd October. The next day, that is 3rd October, Mr. Tan came to his office. He then rang up Mr. Ironside and the three of them went to the office of the Secretary and the document was sealed. His evidence was corroborated to some extent by Mr. Marjoribanks whose place as a director Mr. Ironside was taking temporarily. He said Mr. Tan was not present at the meeting of 26th September. It was more fully corroborated by a Mr. Leong who at that time was the Secretary. He was sure that the document was not sealed on 26th September but during the first week in October, though he could not remember the exact date. He did remember that the appellant

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rang him up, that the appellant and Mr. Tan and Mr. Ironside then came to his office and the seal was then affixed to the document and witnessed. In the light of all this evidence, which was not contradicted, it would appear that Mr. Ironside's groping, though in the dark, did not expiscate a wrong result and his evidence should have been accepted.

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10 Turning now to the real questions in issue in the case, it has already been said that the main grounds on which the respondents relied were that the 1954 Agreement was not enforceable by the appellant because he was not a party to it and that the 1955 Agreement was void for want of consideration and for uncertainty.

20 As regards the 1954 Agreement, it is only necessary to repeat the often quoted words of Lord Haldane in the case of Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd. (2)

30 "In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a jus quaesitum tertio arising by way of contract. Such a right may be conferred by way of property, as, for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract in personam."

Counsel for the appellant made a gallant attempt to avoid the consequences of that doctrine but as was said by Viscount Simonds in the case of Scruttons, Ltd. v. Midland Silicones Ltd.:- (3)

40 "If the principle of jus quaesitum tertio is to be introduced into our law, it must be done by Parliament".

I should add that at no stage of the case was any attempt made, which in any event would probably have been unsuccessful, to invoke the aid of the

(2) (1915) A.C. 847, 853  
(3) (1962) A.C. 446, 468

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case of Shamin v. Joory. (4)

That, however, does not get rid of the 1954 Agreement, Certainly that agreement was not enforceable by the appellant. But it was not void. It was a perfectly good contract between the Company and Mr. Tan. Under it the Company got a promise of the assignment of the mining rights the acquisition and working of which was its principal object. In consideration of this they gave a promise to Mr. Tan to allot to him a number of shares and to pay Mr. Schmidt his tribute. Both these promises were made for good consideration and performance of them could have been enforced at any time but, of course, only by Mr. Tan. As far as the Company was concerned there was no question of their paying for services rendered by Mr. Schmidt prior to its inception. They were paying for the assignment of Mr. Tan's mining rights. As far as the enforceability of their promise is concerned they might just as well have promised to pay the tribute to the Lost Dog's Home, only again the promise would not have been enforceable by that institution but by Mr. Tan.

Coming now to the 1955 Agreement, this cannot, as was at one stage contended, be regarded as a novation of the 1954 Agreement, in the technical sense at any rate, if only because Mr. Tan was not a party to it, though of course he must be presumed to have been aware of its existence and contents. It must, however, be read with the 1954 Agreement which was embodied in it.

When it is so read it is clear that so far as the appellant was concerned what he got was a promise that in the future he should have a personal right to recover from the Company the tribute which until then was only payable by virtue of a contract which, though perfectly good



and binding, was not enforceable by him alone.

For the respondents it is said that they got no consideration at all and in any event, and this is really but another way of putting their argument, the agreement is bad for uncertainty. I will deal with both aspects of this argument together but before doing so two observations fall to be made. One is that the agreement was drafted by the Company's own legal adviser and was adopted by the Directors. The other is that although the appellant's relations with the Company in their latter stages became increasingly unfriendly and in the end were completely broken off and although prior to the commencement of the present proceedings there was considerable correspondence between the solicitors on both sides there was never a breath of any suggestion that the Agreement was not valid and binding until the Company filed their first defence (they filed several others later) on 26th July, 1960.

Coming to the terms of the Agreement itself, it refers to the appellant as the "consulting engineer", not as managing director or chief engineer but as consulting engineer, and it is difficult to see that there is any uncertainty in that term. Then it talks of his "services" and as a matter of construction that would clearly seem to mean services as consulting engineer. Then the Company undertakes a new obligation which, be it remembered, was not to pay the tribute to the appellant but only to submit to his suing for it himself if necessary, "in consideration of the services rendered by the Consulting Engineer for and on behalf of the Company prior to its formation, after incorporation and for future services". So much of that as relates to any services prior to incorporation is of course ultra vires the powers of the Company and ipso facto void. But if he had rendered services after incorporation for which he had not been paid, as in fact he had done, this discharged the Company from the obligation to pay for them as on

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a quantum moruit. Again as regards future services it is perfectly clear the appellant undertook to give his services as consulting engineer as and when the Company required them and it is to be observed in this connection that there is no allegation on the pleadings (or suggestion in the evidence) that at any time he failed or refused to render such services.

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Then it has been said that the description of what the Company was to pay was uncertain. It was "tribute of 1% being calculated on the selling price of the ore as shown in the Company's records". On the face of it where is the uncertainty here? There has been some discussion relating to an offer which the appellant made at a later stage to modify this provision. But there is no question of uncertainty. The selling price of ore, like the selling price of anything else, is the price for which it is sold.

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Finally it has been said that there is uncertainty as to the time for which the obligations of the parties are to continue. But again it is perfectly clear that the Company's obligation is to continue "until the said land is worked out" and that of the appellant is to continue till his death or retirement. Each of these events will be clearly recognizable when it occurs.

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So much for lack of consideration and uncertainty.

For the sake of completeness, however, it will be desirable to refer to the circumstances in which the appellant was paid certain modest amounts by way of remuneration because it is said that all the services the appellant rendered to the Company were in fact paid for and this, it was suggested, in some way deprived the

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promises made by the appellant in the agreement of any value.

On the evidence the appellant was never at any time paid a cent for his services as a Director. On the 12th of March, 1955, at the Third Meeting of the Board of Directors he was appointed Managing Director but nothing was done about his remuneration. Then on 4th July, 1955, at the Fifth Meeting of the Board of Directors it was decided that he should be paid \$1,000 a month as Managing Director with effect from 1st March. That was the position when the Board at its seventh Meeting agreed to the execution of the 1955 Agreement on 26th September: the appellant was being paid \$1,000 a month as Managing Director but he had been paid nothing for all he had done during the seven months between the incorporation of the Company and 1st March, 1955. Then on 5th September, 1956, at the Fourteenth Meeting of the Board, the appellant's appointment as Managing Director was changed to that of Chief Engineer and his remuneration as such was fixed at \$2,000 a month which he received till he was dismissed on 28th March, 1957.

In all this it is difficult to see anything inconsistent with or indeed having any bearing upon the Board's having agreed to accept the appellant's right to enforce directly the Company's liability under the 1954 Agreement in return for his services as Consulting Engineer.

There is one other point. At the Eighth Meeting of the Board on 1st March, 1956, when the Company was in financial difficulties but when the Directors were well aware that the appellant was being paid a salary of \$1,000 a month as Managing Director he informed the Board that he would accept his 1% tribute under the 1955 Agreement on the basis that it should be calculated on the f.o.b. price of the ore less export duty and the expense of barge transport to the ships on which it was exported. There is, however, nothing to show that this offer was accepted and it is difficult to see why the appellant

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should be held to it now.

That only leaves the question of the counterclaim. This is without substance. In the first place at the material time the appellant was not Managing Director. In the second place there is not a scrap of evidence to show that anybody was ignorant of or required reminding of the existence of the 1955 Agreement. It had been drawn up by the Company's legal adviser who was acting for the Company in the litigation with the third parties; it was recorded in the Minutes of the Board's Meeting held on 26th September, 1955; and it was frequently discussed at subsequent Meetings as something that might be standing in the way of the Company obtaining financial assistance. In the third place it is clear from the evidence that the appellant was excluded from the discussions that led up to the Consent Order. And in the fourth place if it had been overlooked that fact did not affect the Company's position vis-a-vis the third parties, because the liability of the Company to the appellant was to pay the tribute provided for by the 1954 Agreement. The only difference made by the 1955 Agreement was to make that payment directly enforceable by the appellant himself. In the circumstances the Company is clearly entitled to indemnity as claimed by them at the hands of the third parties by reason of the Consent Order of 27th March, 1957.

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In all the circumstances I am of the opinion that in these proceedings the appellant should recover the amount of his tribute as at the date of the Writ, that amount to be ascertained on enquiry by the Registrar if it cannot be agreed, and that in the meantime a Receiver should be appointed as prayed.

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I would allow the appeal with costs.

(Sgd) J. B. THOMSON - LORD PRESIDENT  
FEDERAL COURT OF MALAYSIA

Kuala Lumpur - 1st June 1964

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ORDER OF THE FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
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(Appellate Jurisdiction)

BEFORE THE HONOURABLE DATO' SIR JAMES THOMSON,  
P.M.N., P.J.K. LORD PRESIDENT,  
FEDERAL COURT, MALAYSIA;

THE HONOURABLE DATO' SYED SHEH BARAKBAH,  
P.M.N., D.P.M.K., P.S.B., CHIEF JUSTICE,  
HIGH COURT IN MALAYA;

and

THE HONOURABLE MR. JUSTICE TAN AH TAH,  
JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

This 1st day of June, 1964

O R D E R

THIS APPEAL coming on for hearing on the 2nd,  
3rd, 4th and 5th days of March 1964 in the presence  
of Mr. A.L. Hills (Miss Chan Kheng Ying with him)  
of Counsel for the Appellant, Mr. Peter Mooney  
(Mr. Thomas Lee with him) of Counsel for the Respondents  
and Mr. Denis Murphy (Mr. T.C.Tang with him) of Counsel  
for the Third Parties AND UPON READING the Record of  
Appeal filed herein AND UPON HEARING Counsel aforesaid  
IT IS ORDERED that this appeal do stand adjourned for  
judgment and the same coming on for judgment this day  
in the presence of Mr. A.L. Hills of Counsel for the  
Appellant, Mr. Peter Mooney of Counsel for the Respondent  
and Miss O.S.Khaw of Counsel for the Third Parties  
IT IS ORDERED that the judgment of Dato' Justice Hashim  
delivered on the 14th day of October 1963 in the Court  
below be and is hereby set aside AND IT IS FURTHER  
ORDERED that the Respondent do pay to the Appellant  
tribute of One per centum (1%) of the selling price of  
all ore sold from the Respondent's mining land at  
Bukit Kepong in the State of Johore AND in the event of  
disagreement between the parties as to the amount so  
payable IT IS ORDERED that an account be taken by the  
Registrar of the Court of all moneys payable by the  
Respondent to the Appellant AND IT IS FURTHER ORDERED  
that a proper person be appointed Receiver AND IT IS  
ORDERED that the Counterclaim by the Respondent against  
the Appellant be and is hereby dismissed AND IT IS

In the Federal  
Court of  
Malaysia  
holden at  
Kuala Lumpur

Appellate  
Jurisdiction

No.21  
Order of the  
Federal Court

1st June 1964

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In the Federal  
Court of  
Malaysia  
holden at  
Kuala Lumpur

Appellate  
Jurisdiction

No.21  
Order of the  
Federal Court

1st June 1964  
(Contd.)

FURTHER ORDERED that the costs of this Appeal and of the suit in the Court below of the Appellant be taxed by the proper officer of the Court and paid by the Respondent AND THIS COURT DOETH DECLARE that the Defendant is entitled to be indemnified by the Third Parties against all liability under this Judgment AND IT IS ORDERED that the Defendant do recover against the Third Parties any amounts so paid by them under this Judgment and their costs in defending this action in the Court below and on appeal AND IT IS FURTHER ORDERED that the question of whether these costs be taxed as between solicitor and Client or as between party and party be reserved and the costs of the Third Party proceedings in the Court below and on appeal and Judgment herein to be taxed as between party and party by the proper officer of the Court AND IT IS LASTLY ORDERED that the sum of \$500/- (Dollars five hundred) deposited in Court as security for Respondent's costs be paid out to the Appellant or his solicitors.

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AND the parties are to be at liberty to apply.

GIVEN under my hand and the Seal of the Court this 1st day of June, 1964.

Sgd: Raja Azlan Shah  
Chief Registrar  
Federal Court, Malaysia  
Kuala Lumpur

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(L.S.)

No.22  
CERTIFICATE

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
Civil Suit No. 333 of 1959

In the High  
Court at  
Kuala Lumpur

No.22  
Certificate

C E R T I F I C A T E

24th December  
1964

IN PURSUANCE of the Order of the 14th day of  
September, 1964 herein and upon hearing Mr. A.L.  
Hills of Counsel for the Plaintiff and Mr. S.D.K.  
Peddie of Counsel for the Defendant in the absence  
10 of the Third Parties or their Counsel though duly  
served I HEREBY CERTIFY that the result of the  
Account taken and passed is as follows:

1. The Third Parties have received sums to the  
amount of \$25,666,274.00 in respect of the selling  
price of shipments of ore sold from the Defendant's  
mining land at Bukit Kepong.

20 2. The Plaintiff is entitled under the terms of the  
Order of the Court if Appeal dated the 2nd day of June,  
1964, to one percent of this said figure. This sum  
allowing two percent allowance for exchange fluctuation  
amounts to \$251,529.50.

3. The particulars of the above receipts and figures  
appear in the Account marked "AN.2" exhibit to the  
Affidavit of Anthony Niblock of Evatt and Company  
affirmed herein on the 10th day of December, 1964.

30 The evidence produced consists of the Order  
of the Federal Court in Civil Appeal No.70 of  
1963 dated 2nd day of June, 1964, the Order dated  
the 14th day of September, 1964, the Affidavit  
herein of the Managing Director of the Defendants  
dated the 12th day of October, 1964, and the  
Affidavit of Anthony Niblock on behalf of the  
Plaintiff dated the 10th day of December, 1964  
and the exhibits in the said Affidavits respect-  
ively referred to.

DATED this 24th day of December, 1964.

Sgd: Siti Norma Yaakob  
Senior Assistant Registrar,  
High Court, Kuala Lumpur.

40 (L.S.)

In the Federal  
Court of  
Malaysia

No.23  
CERTIFICATE

Appellate  
Jurisdiction

IN THE FEDERAL COURT OF MALAYSIA  
(Appellate Jurisdiction)

No.23  
Certificate

FEDERAL COURT CIVIL APPEAL No.70 of 1963

(K. Lumpur High Court Civil Suit No.333/59)

27th July 1965

COPY CERTIFICATE

(Under Rule 17 of the Federal Court  
(Appeals from the Federal Court)  
(Transitional) Rules, 1963).

10

I hereby certify that Marjorie Schmidt,  
in the opinion of the Court, is the proper  
person to be substituted or entered on the  
records in place of A.E. Schmidt, the  
Respondent (in the Appeal to his Majesty  
the Yang di-Pertuan Agong) who died  
intestate on the 1st day of January, 1965  
appointing his Widow the said Marjorie  
Schmidt as his Executrix and sole beneficiary.

GIVEN under my hand and the seal of the  
Court this 27th day of July, 1965.

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(Sgd.)

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Assistant Registrar  
Federal Court, Malaysia.



EXHIBITS

P.1. (1) - Letter - Tan Chew Seah  
to Plaintiff

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Tan Chew Seah,  
33A Kerbau Road,  
Singapore.

1st Sept. 1953

10 Mr. Smith (Engineer),  
Tan Yong Tai Hay,  
6th Floor,  
Kuala Lumpur.

Dear Sir,

re: Bukit Kepong Muar (Mine)

With reference to the application for the  
above mine, I have to inform you that all the  
papers are now in the office of the Warden of  
Mines, Johore Bahru.

20 I suggest that you contact the Warden of  
Mines, Johore, and advise me of the date when  
you will call.

Yours faithfully,  
(Sd. In Chinese)

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Exhibits

P.1.(1)  
Letter,  
Tan Chew Seah  
to Plaintiff  
1st September  
1953

Exhibits

P.1.(2)  
Letter,  
Plaintiff to  
Tan Chew Seah.  
5th September  
1953

P.1(2) Letter, Plaintiff to  
Tan Chew Seah

5th September 1953

Tan Chew Seah Esq.,  
33A Kerbau Road,  
Singapore.

Dear Mr. Tan,

Bukit Kapong

Ref. yours of 1.9.53 I have been in communication with the Warden and have arranged to be in his office on Saturday 12.9.53 when he expects to finalise his recommendation to Government. 10

Yours faithfully,  
Sd. Illegible.

P.1.(3)  
Letter,  
Plaintiff to  
Tan Chew Seah  
19th September  
1953

P.1(3) Letter, Plaintiff to Tan  
Chew Seah

19th September, 1953

Tan Chew Seah Esq.,  
45 Jalan Meldrum,  
Johore Bahru.

20

Dear Tan,

Bukit Kapong

I have spoken with the Warden of Mines and after a long discussion he has agreed to recommend the issue of the Prospecting Permit.

The two chief difficulties were (1) he has not inspected the area and (2) the S.W.E.C. were afraid we would claim damages if they allowed us to begin and then, later, had to order withdrawal.

He has agreed to waive the first and as

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regards the second we devised a formula which is likely to satisfy S.W.E.C.

So there are very good prospects of an early issue of the Permit.

Yours faithfully,

Sd. Illegible

P.1.(4) Letter, Tan Chew Seah to Plaintiff

Tan Chew Seah,  
45 Jalan Meldrum,  
Johore Bahru.

22nd September 1953.

Mr. A.E. Schmidt,  
Chan Wing Building,  
Kuala Lumpur.

Dear Sir,

Bukit Kepong

I have received your letter dated 19th September 1953 on the 21st inst. and have carefully noted the conditions meantime also received a memo from Collector of Land Revenue, Muar. Copy memo is attached herewith for your reference, please.

And beg you to reply the mentioned conditions to the Collector of Land Revenue with your best consideration please.

Yours sincerely,  
(Sd. In Chinese)

Exhibits

P.1.(3)

Letter,  
Plaintiff to  
Tan Chew Seah  
19th September  
1953  
(Continued)

P.1.(4)  
Letter Tan  
Chew Seah to  
Plaintiff

22nd September  
1953

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Exhibits

P.1.(5)  
Letter,  
Collector of  
Land Revenue  
to Tan Chew  
Seah  
20th September  
1953

P.1.(5) Letter - Collector of  
Land Revenue to Tan Chew Seah

No. (21) in DOM(L) 908/52  
Tel No. Muar 31

Office of the  
Collector of Land  
Revenue,  
Muar.

20th September, 1953.

Towkay Tan Chew Seah,  
45, Jalan Meldrum,  
Johore Bahru.

10

Reference your application for a Prospecting Licence for iron ore over 1,000 acres of state land in the Nukim of Bukit Kepong, Muar, the Warden of Mines and I are prepared to recommend to the Government the grant of a Prospecting Permit to you for a period of one year on conditions that:-

- (i) No consideration would be given to the subsequent issue of a mining title over the land unless a very thorough investigation of the property proves an adequate ore body to the satisfaction of the Government and the proposed mining operations, administration and financing of the project also meet with Government approval. 20
- (ii) In the event of serious deterioration in the security position, the Muar District War Executive Committee will require the immediate withdrawal of the prospecting party without any consideration of any claim for compensation you may claim; but that in the event of you making every effort to prospect and is subsequently required by the District War Executive Committee to withdraw, the prospecting permit will be renewed to allow the full twelve months for prospecting. 30

2. If you agree to the above conditions in writing I shall then forward my recommendation to the Government.

(Salem b.Sabtu)

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f. Collector of Land Revenue,  
Muar.

## P.1(6) Declaration of Trust

ExhibitsDECLARATION OF TRUSTP.1(6)  
Declaration of  
Trust

5th July 1954

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We, ALFRED ERNEST SCHMIDT, CHUA KWANG SONG and CHAN CHOW KIAT hereby DECLARE that we are the trustees for an intended private company to be known as KEPONG PROSPECTING LIMITED and that all sums of money received by us from persons making deposits on application for an allotment of shares are held by us in our capacity as trustees, and that all acts and things done by us in connection with the formation and preliminary work of the said intended company are done by us in our capacity as trustees.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 5th day of July 1954.

SIGNED SEALED AND DELIVERED  
by the above named Alfred  
Ernest Schmidt in the presence  
of:- } Sd: A.E. Schmidt

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Sd: N.A. Marjoribanks  
Advocate & Solicitor,  
Kuala Lumpur.

SIGNED SEALED AND DELIVERED  
by the above named Chua Kwang  
Song in the presence of: } Sd: Chua Kwang Song

Sd: J.A. Nathan  
Advocate & Solicitor  
Muar

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SIGNED SEALED AND DELIVERED  
by the above named Chan Chow  
Kiat in the presence of: } Sd: Chan Chow Kiat

Sd: J.A. Nathan  
Advocate & Solicitor  
Muar

Exhibits  
P.1(7)  
Power of  
Attorney  
Tan Chew Seah  
to Plaintiff  
11th July 1954

P.1(7) Power of Attorney Tan  
Chew Seah to Plaintiff

783/54

Dated 11th day of July 1954

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From:

TAN CHEW SEAH

To:

ALFRED ERNEST SCHMIDT

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POWER OF ATTORNEY

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Messrs. Lovelace & Hastings, 10  
Advocates & Solicitors,  
62 Klyne Street,  
Kuala Lumpur.

P/A revoked by Notice of Revocation  
Filed No. 44/56

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IMPRESSED STAMP  
50¢ 22, July 1954  
STAMP OFFICE KUALA  
LUMPUR

Exhibits

P.1.(7)  
Power of  
Attorney  
Tan Chew Seah  
to Plaintiff

11th July 1954  
(Continued)

POWER OF ATTORNEY

A POWER OF ATTORNEY created this 11th day of July 1954 by me TAN CHEW SEAH of No. 33A Kerbau Road, Singapore.

10 WHEREAS I have applied to the Government of the State of Johore for a prospecting permit to prospect for iron ore and other minerals about 1,000 acres of State Land situate in the Mukim of Bukit Kepong in the District of Muar (hereinafter referred to as the said Bukit Kepong Land).

AND WHEREAS I have been granted by the Government a prospecting permit No. 10/53 to prospect the said Bukit Kepong Land for minerals.

20 AND WHEREAS I have applied to the Government of the State of Johore for a prospecting permit to prospect for iron ore and other minerals about 1,000 acres of State Land situate in the Mukim of Sri Medan in the district of Batu Pahat (hereinafter referred to as the said Langkap Land).

AND WHEREAS the prospecting licence or permit has not yet been granted by Government.

30 AND WHEREAS one Gwec Yam Kong of No. 4D Pengkalan Rana, Malacca, has applied to the Government of the State of Johore for a prospecting licence to prospect for coal over an area of 14,000 acres of State Land situate in the Mukim of Bukit Serampang in the District of Muar (hereinafter referred to as the said Bukit Serampang Land).

AND WHEREAS I have a share or interest in the prospecting licence or permit when granted by Government to the said Yam Keng in respect of the said Bukit Serampang Land.

40 AND WHEREAS being frequently absent from the Federation of Malaya I am desirous of appointing an attorney to act for me in connection with the said prospecting permit over the said Bukit Kepong

Exhibits

P.1.(7)  
 Power of  
 Attorney  
 Tan Chew Seah  
 to Plaintiff  
 11th July 1954  
 (Continued)

Land and any prospecting permit or licence grant to me in respect of the Langkap Land and also my share or interest in the said Bukit Serampang Land and all concessions mining claims leases rights titles and privileges in respect thereof (hereinafter called my mining properties).

AND WHEREAS I have requested Alfred Ernest Schmidt of Chan Wing Building, Kuala Lumpur to act for me in relation to my mining properties which my attorney has consented to do.

10

NOW THIS DEED WITNESSETH that I hereby appoint the said ALFRED ERNEST SCHMIDT to be my true and lawful attorney for me and in my name to do and perform all or any of the following acts and things within the Federation of Malaya as he shall in my interest think proper that is to say:

1. TO CONTRACT for the sale assignment transfer alienation letting or disposal of and to sell assign transfer alienate let or dispose of all or any part or parts of my mining properties to any company corporation person or persons for such consideration or considerations and in such manner and either absolutely or for such term and subject to such conditions and with such covenants and provisoes as my attorney shall think proper and to receive from such company corporation person or persons the purchase money or other consideration to be paid or given for and in respect of the promises and upon such receipt to give good and sufficient discharge for the same.

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2. TO PROMOTE or form or cause to be promoted or formed or join with any other person or persons in promoting or forming and do all things necessary or proper to be done for causing to be formed and incorporated a company with limited liability with the object (inter alia) of acquiring and working all or any part or parts of my mining properties and to agree to settle on my behalf the memorandum and articles of association of such company, and to contract with such company or notwithstanding that my attorney may be a promoter or trustee himself thereof or may be or be about to become interested or concerned therein as a shareholder life director manager or in any other character or capacity.

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3. TO SIGN in my name as a director or



proposed director of any such company as aforesaid and to sign as such any prospectus or statement in lieu of prospectus of any such company as aforesaid.

4. TO SUBSCRIBE my name to the memorandum and articles of association of any such company as aforesaid.

10 5. TO SIGN in my name and file with the Registrar of Companies all such documents, returns, contracts and other things as may be necessary or required by the provisions of the Companies Ordinance to be so done.

6. TO TAKE in my name an allotment or allotments of any shares in any such company aforesaid and in my name to sell transfer and deal with such share or shares.

20 7. TO ATTEND vote at and otherwise take part in as my attorney and proxy all meetings held in connection with any such company as aforesaid and to sign proxies for the purpose of voting thereat or for any other purpose connected therewith as fully and effectually as I myself could do.

8. TO EMPLOY and pay solicitors brokers engineers accountants clerks and other agents and servants for effectually carrying out any of the powers contained in this power of attorney.

30 9. TO DEMAND, sue for, recover and receive by all lawful ways and means from all and every person whom it may concern all moneys, rents, debts, tributes, dues, goods and property whatsoever which now are or may hereafter become due, owing, payable or belonging to me upon or by virtue of any judgment, decree, bill, bond, promissory note, account or upon any instrument relating thereto; and upon receipt and recovery of the same to grant sufficient acquittances, releases and discharges and in case of non-payment or non-delivery to distrain and to take such  
40 action in law or other proceedings as may be necessary for the recovery of the same.

10. TO STATE, settle, adjust, compound and

Exhibits

P.l.(7)  
Power of  
Attorney  
Tan Chew Seah  
to Plaintiff  
11th July 1954  
(Continued)

Exhibits  
P.1.(7)  
Power of  
Attorney  
Tan Chew Seah  
to Plaintiff  
11th July 1954  
(Continued)

compromise all accounts, claims, demands and differences between myself and any other person or persons, and especially in connection with the agreement dated the 6th day of November 1952 made between myself, Chan Cheow Kiat, Chan Hian Chor and Gwee Yam Keng, and if advisable to refer any such matters to arbitration and for that purpose to sign, seal, and execute any agreement of reference or any instrument necessary.

11. TO PAY and settle all my lawful debts and obtain full and effectual receipts and releases for the same. 10

12. TO APPEAR before any Judge, Magistrate or any Public Officer in connection with any of the matters herein contained. To appeal from any order or judgment given against me.

13. TO ACT for and represent me in all matters connected with the aforesaid prospecting permit over the Bukit Kepong Land and my share or interest in the said Bukit Serampang Land. 20

14. TO ACCEPT the lease or leases or other mining title or titles which may be issued to me by the Government of the State of Johore in respect of the said Bukit Kepong Land and the said Langkap Land or any portion or portions thereof upon such terms as my said attorney may think fit and for that purpose to sign all necessary writings and other instruments relating thereto and to surrender same for cancellation, if advisable.

15. IN MY NAME to execute sign seal deliver and perfect all such instruments acts and deeds as may be deemed necessary and expedient for effecticwly doing any of the acts and things which by this power of attorney my attorney is empowered to do on my behalf. 30

16. TO CONCUR in doing any of the acts and things herein contained with any person or persons interested in the premises.

17. AND GENERALLY to do all acts and things and sign and execute all such documents as may be necessary for effectuating any of the purposes aforesaid as fully and completely as I myself could do if personally present. 40

11. AND I HEREBY agree to ratify and confirm all and whatsoever my said attorney shall lawfully do in the premises by virtue of these presents.

Exhibits

P.1.(7)  
Power of  
Attorney  
Tan Chew Seah  
to Plaintiff  
11th July 1954  
(Continued)

IN WITNESS WHEREOF I have hereunto set my hand and seal this 11th day of July, 1954.

SIGNED SEALED AND DELIVERED ) In Chinese  
by the said Tan Chew Seah in )  
the presence of:- ) (Sd. Tan Chew  
Seah)

10

Sd: Lee Saik Kee  
Solicitor

I, Lee Saik Kee, Advocate & Solicitor, opposite Court House, Jalan Langgar, Kota Bharu, Kelantan hereby certify that the signature of the donor above named was written in my presence on this 11th day of July 1954 and is, to my own personal knowledge according to information given to me by trustworthy and respectable persons namely Lim Teong Huat of Rantau Panjang, Kota Bharu and Lee Song Kee of Jalan Langgar, Kota Bharu which information I verily believe the true signature of Tan Chew Seah who has acknowledged to me that he is of full age and that he has voluntarily executed this instrument.

20

Witness my hand

Sd. Lee Saik Kee  
Solicitor

Registered No.783/54  
True Copy deposited in  
the Supreme Court,  
Kuala Lumpur on  
23/7/54

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Compared with original.

Sd. D. Anthony

Asst. Registrar, Supreme Court,  
Kuala Lumpur

Clerk

SUPREME COURT SEAL

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Exhibits  
P.1(8)  
Minutes of  
First  
Meeting  
Board of  
Directors,  
Defendant  
Company.  
31st July  
1954

P.1.(8) Minutes of First Meeting  
Board of Directors, Defendant  
Company

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Minutes of the first meeting of the Board of Directors of Messrs. Kepong Prospecting, Limited, held at the Registered Office of the Company, No. 6, Ampang Street, (1st Floor), Ampang Street, Kuala Lumpur, on Saturday the 31st July, 1954, at 3.00 p.m.

Present: Mr. A.E. Schmidt (Chairman)  
Mr. N.A. Marjoribanks 10  
Mr. Lee Kok Peng  
Mr. Chua Kwang Song  
Mr. Chan Cheow Kiat  
Mr. Gwee Yam Keng

In Attendance: Mr. Leong Kum Weng, representing the Secretaries, Messrs. Leong & Lai Ltd., Kuala Lumpur

Chairman: It was unanimously resolved that Mr. A.E. Schmidt be appointed the Chairman of the Board of Directors. 20

First Directors: It was resolved to confirm the appointment of Mr. A.E. Schmidt, Mr. Tan Chew Seah, Mr. N.A. Marjoribanks, Mr. Lee Kok Peng, Mr. Chua Kwang Song, Mr. Chan Cheow Kiat and Mr. Gwee Yam Keng as the first Directors of the Company.

Company's Memorandum and Articles of Association: The signed copy of the Memorandum and Articles of Association was tabled. It was resolved to adopt the same as the Company's Memorandum and Articles of Association. 30

Certificate of Incorporation: The Certificate of Incorporation of the Company, dated the 27th July 1954 was tabled at the meeting and duly noted by the Directors.

Common Seal: The Company's Seal was tabled. It was resolved to adopt the same as the Company's Common Seal, an imprint of which was imprinted on these Minutes.

(SEAL)

		<u>Exhibits</u>
	<u>Registered Office:</u> It was resolved that the Registered Office of the Company be situated at No. 6 Ampang Street, (1st Floor) Kuala Lumpur.	P.1(8) Minutes of First Meeting Board of Directors, Defendant Company
10	<u>Commencement of Business:</u> It was resolved that the Company do commence business as from the date of its incorporation, the 27th July 1954 and close its accounts on the 31st day of December every year.	31st July 1954 (Continued)
20	<u>Company's Bankers:</u> It was resolved that the Chartered Bank, Kuala Lumpur, be appointed the Company's Bankers and that a current account be opened with the said Bank. It was further resolved that the said banking account be operated upon generally by any one of the three Directors, namely Mr. A.E. Schmidt, Mr. N.A. Marjoribanks and Mr. Chan Cheow Kiat signing in conjunction with Mr. Leong Kum Weng, the Company's Secretary.	
30	<u>Appointment of Secretaries:</u> It was resolved to confirm the appointment of Messrs. Leong & Lai, Ltd., as Secretaries to the Company, doing Secretarial and accounts work, at a fee of \$150/- per month. The present secretarial fee fixed shall be subject to further increasement if the work of the Company be found voluminous in future.	
	<u>Appointment of Auditors:</u> It was resolved that Messrs. Yeong Siew Wah & Co., Certified Accountants, Kuala Lumpur, be appointed the Company's Auditors at an annual fee of \$350/- and that the Secretaries be authorised to notify the auditors to this effect.	
40	<u>Adoption of Agreement:</u> The copy of agreement dated the 31st July 1954, between Mr. Tan Chew Seah and Mr. A.E. Schmidt and the Company was tabled. It was resolved that the same be adopted. Notice of the agreement has been given to Mr. A.E. Schmidt and he accepts it in so	

Exhibits  
P.1(8)  
Minutes of  
First  
Meeting  
Board of  
Directors,  
Defendant  
Company  
31st July  
1954  
(Continued)

far as it relates to his dealings with Mr. Tan Chew Seah. It was further resolved that the Solicitors, Messrs. Lovelace & Hastings, Kuala Lumpur be instructed to proceed with the stamping of the said agreement.

It was also resolved that the two Directors, Mr. A.E. Schmidt and Mr. Lee Kok Peng together with the Secretary, Mr. Leong Kum Weng be authorised to execute the agreement on behalf of the Company and that the Common Seal of the Company be affixed thereto.

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Share  
Allotments:

It was resolved that the following applications for shares be approved and that all the shares as applied therein be allotted:-

<u>No.</u>	<u>Names</u>	<u>Number of Shares</u>		
1.	Tan Jui Song	1,000	shares	
2.	Chua Kok Choon	2,500	"	
3.	Soo Kee	4,000	"	20
4.	Tan Thye Mow	3,000	"	
5.	Tay Say Keng	2,000	"	
6.	H.C. Saw	1,000	"	
7.	Chua Yong Song	5,000	"	
8.	Lee Hui Kiang	2,000	"	
9.	Leong Seng Jong	2,000	"	
10.	Kwek Kwang Poey	1,500	"	
11.	Lee Kok Peng	5,000	"	
12.	Lim Kwang Seng	2,000	"	
13.	G.G.G.T.Fay	2,000	"	30
		<u>33,000 shares</u>		

According to Clause 3 (2) of the agreement dated the 31st July 1954, 33,000 shares has now to be allotted as consideration to Mr. Tan Chew Seah and his nominees as follows:-

<u>No.</u>	<u>Names</u>	<u>Number of Shares</u>	<u>Exhibits</u>
1.	Tan Chew Seah	7,920 shares	P.1(8)
2.	Fatimah binti Haji Abdul Majid	330 "	Minutes of First Meeting
3.	Chan Cheow Kiat	8,250 "	Board of Directors,
4.	Gwee Yam Keng	8,250 "	Defendant
5.	Chan Hian Chor	8,250 "	Company
		<u>33,000 shares</u>	31st July 1954 (Continued)

10

It was resolved that the application for shares by Mr. Fay on the terms as suggested by him be approved, i.e. 10 cents per share on application and 10 cents per share monthly, until the whole sum due on his application is fully paid up. The Directors would reserve their rights to exercise their powers under "forfeiture clause" in the Articles in case Mr. Fay fails to meet his obligations with the Company in due time.

20

It was resolved that application for 4,000 shares from Mr. Chua Kwang Song be deferred to a later date, pending clarification of his disbursements on behalf of the Company prior to its formation. The meeting was informed that a sum of about 7,300/- was paid as "out-of-pocket" by Mr. Chua Kwang Song on behalf of the Company.

30

General:(a) Future Applicants for shares:

40

Mr. Lee Kok Peng asked the Chairman, as to what would be the position of the original applicants for shares in comparison with future applicants. The Chairman in reply assured Mr. Lee and the other Directors that future applicants might have to pay a premium on their shares, if prospecting of the property now in progress proves

Exhibits

P.1.(8)  
 Minutes of  
 First  
 Meeting  
 Board of  
 Directors,  
 Defendant  
 Company  
 31st July  
 1954  
 (Continued)

extremely favourable, as Clause 8 and 9 of the Articles of Association covers this point.

(b) Chairman's report of the progress of the Company.

The Chairman reported that one of the conditions attached to our Prospecting Permit was that, if the permit holder has not put in any work after three months from the date of the issue of the Permit, the Government might cancel the Permit. During the month of February, Mr. Fay was engaged as Security Officer and Field Supervisor at a salary of \$800/- per month. Mr. Fay's first duty was to have a batch of men trained as Special Constables to be stationed on the border of the Company's property, in order to fulfil part of the requirements to keep out Permit "Alive" and also to comply with requirements imposed on us by the Police under the Emergency Regulations, as the area was supposed to be bandit infested. The cost of the training of the Special Constables together with Mr. Fay's salary from February to June had been a costly affair, amounting to some \$10,000/- this has to be taken as a dead loss and which was inevitable. 10

The first application for shares was received on the 24th April 1954. 30

Mr. Leong Kum Weng of Messrs. Leong & Lai, Ltd., was interviewed on the 25th June 1954, in the course of which, the Chairman, on behalf of the other two Trustees agreed to appoint Mr. Leong to carry on the Secretarial, and accounts work of the Company at a fee of \$150/- per month with effect from 1st July 1954, and one of Mr. Leong's first duties was to get the Company incorporated. In this connection, we would say that Mr. Leong had done a splendid job, in that the Company was now registered and duly incorporated on the 27th July 1954. Field work was started on the 5th July 1954. Several old pits were located, some of 40



these pits reputed to be very rich in iron ore, are reported to be outside the area covered by our Permit. It is now proposed to submit an application for a Prospecting Licence to cover this area also. There is a lot of difference between a Prospecting Licence and a Prospecting Permit, because the former gives the right to the prospectors to select an area for the issue of Mining Lease from the Government after completion of prospecting, whereas in the case of a Prospecting Permit, this would not be so.

Exhibits

P.1.(8)  
Minutes of  
First  
Meeting  
Board of  
Directors,  
Defendant  
Company  
31st July  
1954  
(Continued)

10

(c) Handing over of duties by the Trustees to the Company

The Chairman next informed the meeting that prior to the formation of the Company, all responsibilities of the business rested on the shoulders of the Trustees, now that the Company is duly incorporated it was time that the duties usually handled by the Trustees be now handed back to the Company. Mr. Lee Kok Peng, on behalf of the Directors, thanked the Trustees for the hard work they had done in the past and proposed that the Trustees should hand over the affairs back to the Company. Mr. Gwee Yam Keng seconded and the notion carried unanimously.

20

30

(d) Insurance.

It was resolved that Mr. Chan Cheow Kiat be authorised to have the following insurance policies fixed up with a reputable firm on behalf of the Company:-

40

- (1) A Personal Accident Policy, with R. & C.C. cover in favour of Mr. Fay for \$10,000/-.

Exhibits

P.1.(8)  
 Minutes of  
 First  
 Meeting  
 Board of  
 Directors,  
 Defendant  
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 31st July  
 1954  
 (Continued)

(2) Workmen Compensation Insurance covering all the field workers according to the present rate of wages paid.

(e) Motor Car S. 6267

It was resolved that the above motor car be transferred to the name of the Company and that the Secretaries be authorised to have this Transfer carried into effect.

(f) Purchase of Typewriter.

10

It was resolved that a secondhand typewriter at a cost not exceeding \$200/- be purchased for Mr. Fay's use.

(g) Purchase of Refrigerator.

It was resolved that a secondhand Electrolux Refrigerator at a cost not exceeding \$400/- be purchased for Mr. Fay's use, as this was considered an essential item.

(h) Publicity.

20

The Meeting also agreed that the Chairman be authorised to do some publicity on behalf of the Company, by sending an article to the Straits Times or any paper.

(i) Circulation of Memorandum & Articles.

It was resolved that a copy of the Memorandum and Articles be sent out to every shareholder with the notice of allotment.

(j) Solicitor's retainer fees.

30

It was resolved that a Retainer fee of \$50/- p.m. be paid to the Company's Solicitors, Messrs. Lovelace & Hastings, Kuala Lumpur, with effect from 1st July 1954.

There being no further business, the meeting terminated at 5.55 p.m. with a vote of thanks to the Chair.

(Sgd) Leong Kum Weng (Sgd) A.E. Schmidt  
Secretary Chairman

Exhibits  
P.1.(8)  
Minutes of  
First  
Meeting  
Board of  
Directors,  
Defendant  
Company  
31st July  
1954  
(Continued)

P.1(9) Minutes of Seventh Meeting of Board of Directors, Defendant Company

10 Minutes of the Seventh meeting of the Board of Directors of Kepong Prospecting Limited, held at the Registered Office of the Company, No. 6, Ampang Street, (First Floor), Kuala Lumpur, on Monday, the 26th day of September 1955 at 4.00 p.m.

P.1(9)  
Minutes of  
Seventh  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
26th September  
1955

Present: Mr. A.E. Schmidt (Chairman)  
Mr. Chua Kwang Song  
Mr. Chan Cheow Kiat  
Mr. Gwee Yan Keng  
Mr. N.A. Marjoribanks

20 In Attendance:

Mr. Leong Kum Weng, representing Messrs. Leong & Lai, Limited, Kuala Lumpur, Secretaries of the Company.

Minutes:

The minutes of the Board Meeting held on the 28th July 1955, having been circulated, were taken as read and were confirmed.

Matters arising: .....  
.....

Share allotments:

30 It was resolved that the following allotment for shares be approved:-

Exhibits  
P.1(9)  
Minutes of  
Seventh  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
26th  
September  
1955  
(Continued)

Dr. T. Markandu	500 shares	
Mr. Chua Keng Sam	1,096 "	
	<u>1,596 shares</u>	

In pursuance of clause 3(2) of an agreement dated 31st July 1954 between the Company and Mr. Tan Chew Seah, it was resolved that Mr. Tan Chew Seah and or his nominees be allotted further shares to be credited as fully paid as follows:

Mr. Tan Chew Seah	395 shares	
Mr. Gwee Yan Keng	395 "	10
Mr. Chan Cheow Kiat	395 "	
Mr. Chan Hian Chor	395 "	
Madam Fatimah binti	} 16 "	
Haji Abdul Majeed		
	<u>1,596 shares</u>	

Correspondence:

(1) Mr. Moo Kwee Fatt

It was resolved that the Company do renew the application for the 3,000 acres at Gemas after receiving from Mr. Moo Kwee Fatt the \$5,000/- he has offered. 20

It was further resolved that on receipt of confirmation of the offer from Mr. Moo Kwee Fatt and his payment of \$10,000/- as deposit to the Company, his offer for boring the 10,000 acres at Serempang be accepted by the Company.

(2) Mr. N.A. Marjoribanks

It was resolved that the appointment of Mr. D.G. Ironside as proxy for and on behalf of Mr. Marjoribanks between 1st October 1955 and 31st December 1955 be approved. 30

(3) Supplementary agreement

It was resolved that the supplementary agreement as tabled with regard to payment of the 1% tribute to Mr. A.E. Schmidt be approved and executed.

(4) Langkap agreement

Exhibits

- .....
- Finance:
- .....
- Ore Sales Contract:
- .....
- General:
- .....

P.1(9)  
 Minutes of  
 Seventh  
 Meeting of  
 Board of  
 Directors,  
 Defendant  
 Company  
 26th  
 September  
 1955  
 (Continued)

Meeting terminated at 6.15 p.m. with a vote of thanks to the Chair.

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P.1(10) Minutes of Eighth Meeting of Board of Directors, Defendant Company

P.1(10)  
 Minutes of  
 Eighth Meeting  
 of Board of  
 Directors,  
 Defendant  
 Company.  
 1st March 1956

10 Minutes of the Eighth meeting of the Board of Directors of the Kepong Prospecting Ltd., held at the Registered Office of the Company, No. 6, Ampang Street (1st Floor) Kuala Lumpur, on Thursday, the 1st March, 1956 at 5.00 p.m. at the request of Mr. Chua Kwang Song and Mr. Chan Cheow Kiat, duly called by the Chairman.

20 Present: Mr. A.E. Schmidt (Chairman)  
 Mr. Chua Kwong Song  
 Mr. Chan Cheow Kiat  
 Mr. Gwee Yam Keng  
 Mr. N.A. Marjoribanks  
 Mr. Chua Keng San  
 Mr. Tan Chew Seah

In Attendance:

Mr. Leong Pak Seong representing Messrs. Leong & Lai Ltd., Kuala Lumpur, Secretaries of the Company and Mr. Lim Ngian Cher by invitation.

Mr. Marjoribanks:

The Chairman and the Directors welcomed

Exhibits  
P.1(10)  
Minutes of  
Eighth Meeting  
of Board of  
Directors,  
Defendant  
Company.  
1st March 1956

Mr. N.A. Marjoribanks back to the Board from  
England.

Minutes:

The minutes of the Board Meeting held on the  
26th September 1955, were read and confirmed.

Matters Arising:

.....

Universe Enterprise.

.....

Correspondence:

.....

Finance:

After some discussion, the meeting adjourned 10  
at 7.45 p.m. and resumed at the same place at 10.15  
a.m. on the next day.

Mr. A.E. Schmidt informed the meeting that he  
will accept one per cent tribute on the F.O.B. price  
of the ore less export duty and the barge contract  
rate in settlement of the Company's obligation under  
the agreement between him and the Company dated the  
26th December 1955.

Allotment:

.....

General:

20

It was resolved that the Company shall now  
proceed with mining operations.

It was resolved that the Next Board Meeting  
to be held at noon, the 11th March, 1956.

The Meeting terminated at 11.35 a.m. with  
a vote of thanks to the Chairman.

Chairman

P.1(11) Minutes of Ninth Meeting of Board of Directors, Defendant Company

Exhibits

P.1(11)  
Minutes of  
Ninth Meeting  
of Board of  
Directors,  
Defendant  
Company

11th March 1956

Minutes of the Ninth Meeting of the Board of Directors of the Kepong Prospecting Ltd., held at the Registered Office, No. 6 Ampang Street, (1st floor), Kuala Lumpur, on Sunday, the 11th March, 1956 at 12 noon.

Present: Mr. A.E. Schmidt (Chairman)  
Mr. N.A. Marjoribanks  
Mr. Chua Kwang Song  
Mr. Gwee Yam Keng  
Mr. Chan Cheow Kiat  
Mr. Chua Keng Sam  
Mr. Tan Chew Seah

10

In Attendance:

Mr. Leong Kum Weng, representing the Secretaries of the Company, Messrs. Leong & Lai Ltd., Kuala Lumpur.

20

Mr. Lin Ngian Cher attended the meeting by invitation.

Minutes:

The minutes of the Board Meeting held on the 1st., March 1956 were read and confirmed.

Rules (Finance):

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Share Transfer:

.....

Allotments:

.....

Budget:

.....

Printing of New Share Certificates:

.....

Exhibits

P.1(11)  
Minutes of  
Ninth Meeting  
of Board of  
Directors,  
Defendant  
Company  
11th March  
1956  
(Continued)

Finance:

The Chairman informed the meeting that the Budget which had just been discussed and approved, it was obvious that the Company was urgently in need of funds to carry on, and to find the necessary money, the Company would have to wait for new applications for shares, or to obtain a loan from someone, or raise money by the issue of debentures. The Chairman asked the meeting as to how the money could be found so that the Company could carry on. 10

Mr. Chua Keng San asked the Chairman for details in respect of:-

- (a) Existing liabilities of the Company.
- (b) Company's commitments in respect of its monthly salaries etc.

The Chairman in reply stated that from a rough estimate, the liabilities of the Company at date are:-

(a) Salary due to Managing Director	\$7,000.00	
Mr. Gwee Yam Keng	400.00	
Secretarial Fees	1,400.00	
Lovelace & Hastings	2,000.00	
	<u>\$10,800.00</u>	20

## (b) Monthly Salaries etc:-

Managing Director	\$ 1,000.00	
Gwee Yam Keng	400.00	
Secretarial Fees	400.00	
Lovelace & Hastings	50.00	
Abu Bakar	40.00	
Teh Siang Par	250.00	
Leow Poh Hua	200.00	
	<u>\$ 2,340.00</u>	30

Mr. Chua Keng San informed the meeting that from the Chairman's report, it appeared that the Company's funds were being absorbed in meeting its monthly re-current expenditure, such as overhead expenses and he further stated that as the Company had not yet attained a productive stage, he would sought



the opinion of meeting regarding the following suggestions:-

Exhibits

P.1(11)  
Minutes of  
Ninth Meeting  
of Board of  
Directors,  
Defendant  
Company

11th March  
1956

(Continued)

- 10 (1) That in respect of the outstanding liabilities of over \$10,000/- (due under (a) above) whether it would be possible to allot shares to the respective parties to clear up those debts, and
- (2) That something be done to reduce the monthly overhead expenses for the time being.

20 The Chairman informed the meeting that as a comparison, he would quote an instance in the case of the iron mine at Ipoh. This concern had to meet overhead expenses such as salaries etc. of about \$15,000/- per month, for over four months while waiting for the issue of their Mining Lease. So comparatively, our present overhead expenses of about \$2,000/- per month could be considered reasonable and negligible.

30 As to the question of allotting shares to the various parties in order to square up their debts, he personally, would have agreed to Mr. Chua's proposal, had it been made to him 3 or 4 months ago, but as he had now incurred those expenses, he was of the opinion that he was not in a position to agree to Mr. Chua's suggestions. As regards Mr. Chua's suggestions that all wages should cease he asked what was to become of the employees. Were they to be asked to wait on without pay or to go and find work elsewhere. Personally, he would not object to his salary being stopped for the time being, but he wished to suggest that the \$1,000/- per month should be paid to him either as an advance or a loan, so that he would be able to meet his own financial commitments monthly.

40 There being no further business, the meeting terminated at 2.00 p.m. with a vote of thanks to the Chair.

Chairman.

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Exhibits

P.1(12)  
Minutes of  
Twelfth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
4th August,  
1956

P.1.(12) Minutes of Twelfth Meeting of  
Board of Directors, Defendant Company

KEPONG PROSPECTING LIMITED

Minutes of the Twelfth Meeting of the Board of Directors of Kepong Prospecting Ltd., held at the Registered Office, No. 6, Ampang Street, (First Floor) Kuala Lumpur, on Saturday the 4th August 1956 at 11.00 a.m.

Present: Mr. A.E. Schmidt (Chairman)  
Mr. N.A. Marjoribanks  
Mr. Chua Kwang Song  
Mr. Tan Chew Seah  
Mr. Chan Cheow Kiat  
Mr. Gwee Yam Keng

10

Mr. S.K. Jagetheesan attended the adjournment session of the meeting by invitation.

In Attendance:

Mr. Leong Kum Weng, representing Messrs. Leong & Lai Ltd., Kuala Lumpur, Secretaries of the Company.

Minutes:

20

The minutes of the previous Board Meeting held on the 18th July 1956 having been circulated, were taken as read and confirmed by the Chairman.

Matters Arising:

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Correspondence:

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Field Report:

.....  
.....

Complaint by Mr. Tan Chew Seah:

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.....

Finance Committee:

.....  
 .....

Adjournment of Meeting:

On the proposal of Mr. N.A. Marjoribanks, seconded by Mr. A.E. Schmidt it was resolved that the meeting be adjourned at 1.00 p.m.

The Chairman declared that the meeting be adjourned accordingly.

Invitation of Mr. S.K. Jagatheesan to the Meeting:

- 10 On the proposal of Mr. A.E. Schmidt and seconded by Mr. N.A. Marjoribanks, it was resolved that Mr. S.K. Jagatheesan be invited to the meeting.

Mr. S.K. Jagatheesan:

- 20 On being invited to the meeting, Mr. S.K. Jagatheesan addressed the meeting, and stated that prior to getting together knowing each other, there was certain to be some apprehension. He further stated that he had learnt that this Company had had negotiations with some Japanese firms about finance. Coming to the question of the applications from himself and his associates for a block of 700,000 shares, it was their opinion that this would be the minimum requirements for putting the Company on its own footing. The conservative estimate which they had in mind was arrived at from their practical experience as miners and also data collected from some other sources. The reasons for their attaching the
- 30 conditions to their applications were:

- (i) insufficient mutual acquaintance between the parties;
- (ii) inadvisability of putting in capital to any concern, unless it was certain that the Company had not made any major commitments detrimental to the interests of the Company.

Exhibits

P.1.(12)  
 Minutes of  
 Twelfth  
 Meeting of  
 Board of  
 Directors,  
 Defendant  
 Company  
 4th August,  
 1956  
 (Continued)

Exhibits  
P.1.(12)  
Minutes of  
Twelfth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
4th August,  
1956  
(Continued)

In order to allay any fear or suspicion that the directors might have as to their intentions, they could give the following assurances:-

- (i) that neither he himself nor any of his associates was out to exploit the Company for his or their own benefit and interests;
- (ii) that all transactions and matters done on behalf of the Company in future would be done satisfactorily for the interests and benefit of all concerned.

10

Mr. Schmidt informed the meeting that the Company had not made any major commitments, except that the Company might have to pay a deposit for the acquisition of 6x10-ton diesel lorries. The Company had worked out certain schemes with estimates etc. to get the mine in production in the course of three months. In the case of other companies incurring heavy initial outlay, he was of the opinion that in most of the cases it was due to lack of technical knowledge. As regards this Company, no one could predict how much capital was actually required to get it started, though some estimates had been made in the past. He further stressed the point that there was no necessity of issuing all the shares in the Company's authorised capital at the present time.

20

Mr. Chua Kwang Song enquired whether Mr. Jagatheesan was aware:-

- (i) that the Company had an existing agreement whereby it had to pay 1% tribute to a certain party on the gross sale of its ore;
- (ii) whether he and his associates were prepared to reduce their original application for 700,000 shares, and
- (iii) how they were going to exercise future control over the Company.

30

Mr. Gwee Yam Keng raised the question as to whether Mr. Jagatheesan and his associates were prepared to pay any premium on shares, knowing that the original shareholders of the Company had put in their money on prospecting, when it was considered a gamble.

40

Dealing with the subject about shares, Mr. A.E. Schmidt stated that any future issue of shares would be offered to existing shareholders in accordance with the Articles of the Company.

In reply to the above queries raised, Mr. Jagatheesan on behalf of himself and his associates informed the meeting:-

- 10 (i) that he and his associates were aware of the existing arrangement of 1% tribute;
- (ii) that if the Company could eventually allot from 40 to 50% of their original applications, the matter would be considered;
- 20 (iii) that he and his associates had no intention of taking over control of the Company for their own benefit and it was their intention to carry on according to the policy as laid down by the present Board of Directors.
- (iv) As to premium for shares, they were not prepared to consider any such suggestions.

Mr. Chua Kwong Song proposed that an application for 300,000 shares at \$1/- be accepted.

30 Mr. Jagatheesan then pointed out the difficulty he would have allocating these among his associates because of the awkward ratio between 300,000 and 700,000.

The Secretary then suggested a compromise at 45% of the 700,000.

On the proposal of Mr. N.A. Marjoribanks, seconded by Mr. A.E. Schmidt, it was received that a total of 315,000 shares be made available for allotment at par to Mr. Jagatheesan and his associates not exceeding nine persons in all.

It was further resolved that Mr. Jagatheesan

Exhibits

P.1.(12)  
Minutes of  
Twelfth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
4th August,  
1956  
(Continued)

Exhibits

P.1.(12)  
Minutes of  
Twelfth  
Meeting of  
Board of  
Directors  
Defendant  
Company  
4th August,  
1956  
(Continued)

be invited to attend any future Board meetings that might be held before the proposed Extraordinary General Meeting.

The Chairman pointed out that there was no way in which he could be allowed to vote at such meetings but noted that it was evidently the intention of the Board that his views should be heard.

28 Share Applications for 233,500 shares:

.....  
.....

Share Allotments:

It was unanimously resolved that the following share allotments be approved:- 10

- To Mr. S.K. Jagatheesan and his Associates not exceeding 9 persons in all 315,000 shares
- To Mr. Leong Kum Weng 796 shares

General:

.....  
.....

There being no further business, the meeting terminated at 1.50 p.m. with a vote of thanks to the Chairman.

Secretaries Chairman. 20



P.1.(13) Minutes of Fourteenth Meeting  
of Board of Directors, Defendant Company

Exhibits

KEPONG PROSPECTING LIMITED

P.1(13)  
Minutes of  
Fourteenth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
5th September  
1956

MINUTES of the Fourteenth Meeting of the Board of Directors of Kepong Prospecting Ltd., held at the Registered Office, No. 6, Ampang Street, (First floor), Kuala Lumpur, on Wednesday, the 5th September 1956 at 2.40 p.m.

Present:

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- Mr. A.E. Schmidt (Chairman)
- Mr. N.A. Marjoribanks
- Mr. Ch'ng Kee Huat
- Mr. Tsang Tak Chuen
- Mr. S.K. Jagatheesan

In Attendance:

Mr. Leong Kum Weng, representing Messrs. Leong & Lai Ltd., Kuala Lumpur, Secretaries of the Company.

Minutes:

20

The minutes of the previous Board Meeting held on the 21st August 1956 having been circulated, were taken as read and were confirmed.

Matters Arising:

.....

Correspondence:

(8) Applications re post of Resident Engineer

30

The Chairman informed the meeting that in response to the Company's advertisement in the local papers for a Resident Engineer, 23 applications were received and tabled at the meeting. After discussion, it was resolved that the Managing Director be authorised to engage one for the post whom he deemed fit from among the applicants.

Exhibits

P.1(13)  
Minutes of  
Fourteenth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
5th September  
1956  
(Continued)

(9) Appointment of Chief Engineer

Mr. S.K. Jagatheesan informed the meeting that since the mine would be in active operation in the near future, he proposed that Mr. Schmidt be appointed the Company's Chief Engineer, as he was the most suitable man for the post. If Mr. Schmidt accepted the appointment, a Resident Engineer acceptable to the Chief Engineer would be appointed at the mine site to assist him in carrying out his instructions for all works at the mine. In reply Mr. Schmidt thanked Mr. Jagatheesan for his proposal and stated that for various reasons, he was unable to accept this appointment which had once been offered to him in the past, one of the reasons being that he could not be an executive at the mine, but he could only act in an advisory capacity. Mr. Schmidt further stated that regarding the applicants for the post of Resident Engineer he was going to interview, it would be a good idea if the prospective candidate be invited to a future Board Meeting to introduce himself to the Directors, so that each of the Directors could judge for himself the man they would like to engage. Mr. Marjoribanks suggested that the proposed Resident Engineer might be engaged on probation. After discussion, it was unanimously resolved that Mr. A.E. Schmidt's appointment be changed to Chief Engineer at a salary of \$2,000/- per month with effect from 10.9.56 on condition that he would have the services of a resident engineer to assist him at the mine site.

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20

30

Report of Mr. Chan Cheow Kiat

No report was received.

General:

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There being no further business, the meeting terminated at 5.10 p.m. with a vote of thanks to the Chair.

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P.1.(14) Minutes of Fifteenth Meeting  
of Board of Directors, Defendant Company

Exhibits

P.1.(14)  
Minutes of  
Fifteenth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
1st October  
1956

KEPONG PROSPECTING LIMITED

Minutes of the Fifteenth Meeting of the Board of Directors of Kepong Prospecting Ltd., held at the Registered Office, No.6, Ampang Street, (1st floor), Kuala Lumpur, on Monday, the 1st October 1956 at 2.30 p.m.

Present:

10

- Mr. A.E. Schmidt (Chairman at commencement of meeting)
- Mr. T.C. Tsang (Chairman towards termination of Meeting)
- Mr. N.A. Marjoribanks
- Mr. Ch'ng Kee Huat
- Mr. S.K. Jagatheesan

Leave of Absence:

Leave of absence was granted to Mr. L.A.J. Smith.

20

In attendance:

Mr. Leong Kum Weng, representing Messrs. Leong & Lai Limited, Secretaries.

Minutes:

The minutes of the previous Board Meeting held on the 5th September 1956 having been circulated, were taken as read, and with some minor amendments, were confirmed.

Matters Arising:

.....

Correspondence:

.....

30

Appointment of Managing Director & Chairman of the Board:

With regard to the appointment of the

Exhibits  
P.1.(14)  
Minutes of  
Fifteenth  
Meeting of  
Board of  
Directors,  
Defendant  
Company  
1st October  
1956  
(Continued)

Chairman of the Board of Directors, Mr. A.E. Schmidt resigned the post of Chairman of the Board in favour of Mr. Tsang Tak Chuen. On the proposal of Mr. Marjoribanks, seconded by Mr. Ch'ing Kee Huat, it was unanimously resolved that Mr. Tsang Tak Chuen be appointed the Chairman of the Board.

At this juncture of the meeting, upon assuming the duties of the Chairman of the Board, Mr. Tsang took the Chair and the meeting proceeded. Proposed by Mr. Tsang and seconded by Mr. S.K. Jagatheesan, it was 10  
unanimously resolved that a vote of thanks to Mr. A.E. Schmidt be recorded in the minutes for his past energetic services rendered throughout his tenure of office as Chairman of the Board since the inception of the Company.

It was resolved that no action was to be taken in respect of the existing appointment of the Managing Director.

New Budget:

.....

There being no further business, the meeting terminated at 4.57 p.m. with a vote of thanks to the Chair.

.....

P.1.(15) Minutes of Extraordinary General Meeting of Shareholders of Defendant Company.

Exhibits

P.1(15)  
Minutes of  
Extraordinary  
General Meeting  
of Shareholders  
of Defendant  
Company.  
19th May 1957

KEPONG PROSPECTING LIMITED

Minutes of the Extraordinary General Meeting of shareholders of Kepong Prospecting Limited held at the Registered Office, 79 Ampang Road, Kuala Lumpur on Sunday 19th May, 1957 at 11.00 a.m.

PRESENT:

- 10 Mr. Chua Kwang Song (Chairman)
- Mr. A.E. Schmidt
- Mr. Chua Keng Sam
- Mr. Gwee Yam Keng
- Mr. Tan Chew Seah
- Mr. Lee Kok Peng
- Mr. Lim Ngian Cher
- Mr. Lahkbir Singh
- Mr. Chua Yong Song
- Mr. Lee Hui Kiang
- 20 Mr. Goh Siew Chiang
- Mr. Lee Eng Lam

PROXIES:

.....

Resolution 1a:

.....

Resolution 2a:

Mr. Schmidt obtained permission to leave the meeting at this stage.

Resolution 3:

.....

Resolution 4 (i):

.....

Resolution 4(ii):

.....

Exhibits  
P.1.(15)  
Minutes of  
Extraordinary  
General Meeting  
of Shareholders  
of Defendant  
Company  
19th May 1957  
(Continued)

Resolution 4 (iii):  
.....

Resolution 5:  
.....

Resolution 6:

"That Mr. A.E. Schmidt be removed from his office as Managing Director of the Company and that such persons be appointed Managing Director until the 31st December 1957, unless removed from office before that date by a Resolution of a General Meeting of the Company as the meeting may see fit to appoint" was proposed by Mr. Lee Kok Peng, seconded by Mr. Lim Ngian Cher and carried unanimously with Mr. Lim Ngian Cher and carried unanimously with Mr. Lakhbir Singh abstaining from voting. 10

Two names for Managing Director were proposed namely Mr. Chua Kwang Song and Mr. Lee Kok Peng. The latter declined to stand and there being no other nominations Mr. Chua Kwang Song was duly elected.

The meeting terminated at 1.22 p.m. with a vote of thanks to the Chair proposed by Mr. Lee Kok Peng. 20

Kuala Lumpur.  
25th May, 1957.

P.1(16)  
Letter -  
Plaintiff  
to Second  
Third Party  
13th April  
1959

P.1.(16) Letter - Plaintiff to Second  
Third Party

C O P Y

13th April, 1959.

A.R. REGISTERED

Tsang Tok Chuan, Esq.,  
Kepong Mines Ltd.,  
2nd Floor Sze Hoi Tong Bank Bldg.,  
SINGAPORE 1.

30

Dear Mr. Tsang,

Would you please let me know why, you have not paid my 1% commission on the ore which has been

shipped from Bukit Kepong, also what your intentions are in the matter.

Exhibits

P.1.(16)  
Letter -  
Plaintiff  
to Second  
Third Party  
13th April  
1959  
(Continued)

(2) It is getting very embarrassing because everyone seems to have been told that the payments are due and it is not at all convincing when I simply say that I have not received them, without being able to give any explanation.

10 (3) I hope you will reply to this letter as soon as possible because I am being forced into a desperate situation.

Yours sincerely,

Sd: A.E.S.

P.1(17) Letter, Secretaries, Kepong Mines Ltd. to Plaintiff

P.1(17)  
Letter,  
Secretaries,  
Kepong Mines  
Ltd. to  
Plaintiff.

KEPONG MINES LIMITED  
2nd Floor Sze Hai Tong Bank Bldg.  
SINGAPORE  
P.O. Box No. 808.

20 MUAR OFFICE  
No.4, Jalan Junid,  
Muar, Johore (Malaya)  
P.O. Box No. 18.

KEPONG OFFICE  
Kampong Bukit Kepong,  
Muar District,  
Johore

Singapore.  
20th April, 1959.

Mr. A.E. Schmidt,  
Chan Wing Building,  
KUALA LUMPUR

Dear Sir,

30 With reference to your letter dated 13th April, 1959 addressed to our Managing Director Mr. Tsang, we shall be glad if you will be kind enough to send us a photostat copy of the agreement dated 31st July, 1954 between Mr. Tan Chew Seah and Kepong Prospecting Company Limited, as payment of commission to you will only be considered after perusal of the original agreement.

Yours faithfully,  
For Kepong Mines Ltd., Sd: ?  
Secretaries.

40 C.C. Mr. S.K. Jagatheesan, Ipoh Perak.

ExhibitsP.1(18) Plaintiff to Defendant Company

P.1(18)  
Letter -  
Plaintiff  
to  
Defendant  
Company  
30th April  
1959

30th April, 1959.

M/S Kepong Prospecting Ltd.,  
79, Ampang Road,  
Kuala Lumpur.

WITHOUT PREJUDICE

Dear Sirs,

With reference to our Agreement dated 26th Sept 1955 would you please remit the amounts due and overdue as provided in Clause 1 of the Agreement. 10

(2) I estimate the total now due at \$11,700/-. If you do not agree this figure please let me have your reasons in detail. In any case please do not let any such uncertainty delay the payment of the undisputed amount. The matter's now serious.

(3) It was no doubt expected when the High Court order was made on 27th March 1957 that Kepong Mines Ltd., would pay me direct as each shipment was cleared. But they have elected not to do this. It therefore becomes necessary for you to pay and claim from them under the indemnity given in para. 10 of the Order. 20

Yours faithfully,

Sd. A.E. Schmidt.

---

P.1(19) Letter, Secretaries Defendant  
Company to Kepong Mines Ltd.

Exhibits

KEPONG PROSPECTING LIMITED,  
12th May, 1959.

P.1(19)  
Letter,  
Secretaries,  
Defendant  
Company to  
Kepong Mines  
Ltd.  
12th May 1954

KPL/8

Kepong Mines Ltd.,  
P.O. Box 808,  
Singapore 1.

Gentlemen,

10

1% Tribute to Mr. A.E. Schmidt

We enclose a copy of a letter from Mr. A.E. Schmidt together with a copy of the Agreement with Mr. Tan Chew Seah for your attention.

Under Clause 10 of the Court Order dated 27th March 1957.

20

"the agreement between Kepong Prospecting Limited and Tan Chew Seah dated the 31st day of July 1954 whereby 1% of the value of all ore sold from the mining land is to be paid by the Company to Mr. A.E. Schmidt shall be taken over by the Respondents numbered 1 to 7 and 9 but not 8 or their nominees and the Respondents number 1 to 7 and 9 but not 8 shall indemnify Kepong Prospecting Limited against all claims which may be made against Kepong Prospecting Limited thereunder."

30

We trust you will respond to Mr. A.E. Schmidt's request accordingly. Should any action be instigated against the Company as a result of your failure to comply with Clause 10 of the Court Order we shall have no alternative but to join you as a party to the suit.

Yours faithfully,  
KEPONG PROSPECTING LTD., Sd: ?

Secretaries.

Your ref: SS/AR/12688/56  
Bannon & Bailey, P.O. Box 80, Kuala Lumpur.

Exhibits

P.1(19)  
Letter,  
Secretaries,  
Defendant  
Company to  
Kepong Mines  
Ltd.  
12th May 1954  
(Continued)

Mr. Chua Kwang Song,  
04275 Bukit Bahru,  
Malacca.

Mr. A.E. Schmidt,  
Chan Wing Building,  
Kuala Lumpur.

P.1(20)  
Letter,  
Plaintiff to  
Defendant  
Company  
18th May 1959

P.1(20) Letter Plaintiff to Defendant  
Company

18th May, 1959.

M/s Kepong Prospecting Ltd.,  
79, Ampang Road,  
Kuala Lumpur.

10

Dear Sirs,

I wrote to you on 30.4.59 regarding the payments overdue under our Agreement dated 26.9.55. I have had no reply but only a copy of your letter to Kepong Mines Ltd., dated 12.5.59. Am I to understand from the letter that you do not intend to honour the Agreement but invite me to recover by action in Court?

(2) If that is your intention you are proposing a useless waste of the Company's funds and as a shareholder I hereby make the strongest possible protest. 20

(3) Please let me know at your earliest convenience.

Yours faithfully,

Sd. A.E. Schmidt

cc. Bannon & Bailey.



201.

P.1(21) Letter - Plaintiff to Managing  
Director, Kepong Mines Ltd.

23rd May, 1959.

The Managing Director,  
Kepong Mines Ltd.,  
2nd Floor, Sze Hai Tong Bank Bldg.,  
Philip Street,  
Singapore 1.

Exhibits  
P.1(21)  
Letter,  
Plaintiff to  
Managing  
Director  
Kepong Mines  
Ltd.  
23rd May 1959

Registered

10 Dear Mr. Tsang,

1%

Could you please let me know the position regarding the commission payable to me on the ore shipped from Bukit Kepong. It must be about six weeks since you told me in Muar that you would treat the matter as urgent.

20 (2) I have enquired of Kepong Prospecting Ltd., and they seem to hint that I am expected to begin a court case on the matter. That I certainly do not want to do and, in fact, I cannot see any necessity for it in view of your intentions expressed from time to time.

Yours faithfully,  
Sd. A.E. Schmidt.

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Exhibits

P.1(22) Letter - Plaintiff to Second  
Third Party

P.1(22)  
Letter,  
Plaintiff to  
Second Third  
Party  
2nd June 1959

2nd June, 1959

Tsang Tok Chuen, Esq.,  
Kepong Mines Ltd.,  
2nd Floor, Sze Hai Tong Bank Bldg.,  
Philip Street,  
Singapore 1.

1% Commission  
-----

Dear Mr. Tsang,

10

I have not had a reply to my letter of 23rd May, 1959 so I assume that the message brought by Tan Chew Seah is intended to serve as such.

(2) But I could not understand the message. After a long conversation I came to the conclusion that he did not understand it himself. He was referring to "documents" without knowing what they were and was obviously confused between "per cent" and "cents per".

(3) I only gleaned that if I don't agree to your terms you will seek to cause delay by manoeuvres in Court.

20

(4) This is the first intimation that you contemplate litigation on the matter. Hitherto, on the contrary, you have said that you took over the obligation to me because otherwise you believed Chua Keng Sum would not honour our agreement without litigation.

(5) Since you apparently have "terms" in mind would you please let me know what they are.

Yours faithfully,

30

Sd: A.E. Schmidt.

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P.1(23) Letter - Plaintiff to Defendant  
Company

4th June, 1959

M/s Kepong Prospecting Ltd.,  
79, Ampang Road,  
Kuala Lumpur.

Exhibits

P.1(23)  
Letter  
Plaintiff to  
Defendant  
Company.  
4th June 1959

Dear Sirs,

10 Please let me have a reply to my letter  
dated 30th April, 1959 and 18th May 1959,  
together with a statement of the amount now  
owing under our agreement referred to therein.

Yours faithfully,

Sd: A.E. Schmidt.

cc. Bannon & Bailey.

P.1(24) Letter - Secretaries, Kepong  
Mines Ltd. to Plaintiff

KEPONG MINES LIMITED,  
Singapore.

9th June, 1959.

P.1(24)  
Letter -  
Secretaries,  
Kepong Mines  
Ltd. to  
Plaintiff  
9th June 1959.

20 Mr. A.E. Schmidt,  
Chan Wing Building,  
Kuala Lumpur.

Dear Sirs,

We acknowledge receipt of your three letters  
dated 27th April, 1959, 23rd May, 1959 and 2nd  
June, 1959 respectively addressed to our  
Managing Director.

30 In our letter dated 20th April, 1959 we  
have requested you to send us a photostat copy  
of the original agreement dated 31st July,  
1954 between Mr. Tan Chew Seah and Kepong  
Prospecting Co., Ltd. Kindly treat this matter  
as urgent, as we must peruse the photostat copy

Exhibits

of agreement before payment of commission.

P.1(24)  
Letter -  
Secretaries,  
Kepong Mines  
Ltd. to  
Plaintiff  
9th June 1959  
(Continued)

Yours faithfully,  
For Kepong Mines Ltd.,  
Sd: ?  
Secretaries.

c.c.

Mr. S.K. Jagatheesan,  
Ipoh, Perak.

P.1(25)  
Letter,  
Plaintiff to  
Secretaries,  
Defendant  
Company  
11th June 1959

P.1.(25) Letter - Plaintiff to Secretaries,  
Defendant Company

A.E. SCHMIDT, 10  
Chan Wing Building,  
Kuala Lumpur.  
11th June, 1959.

M/S Sow Khong & Chong,  
Sece. Kepong Prospecting Ltd.,  
79, Ampang Street,  
KUALA LUMPUR.

Dear Sirs,

Herewith a copy of the letter from Kepong Mines  
Ltd., which I showed you this morning. I hope you 20  
will send them the photostat they requested. It  
seems that since I am mentioned in the agreement I  
would be entitled to a copy. That could be sent to  
them by you.

(2) This is not an instruction in my capacity as  
Director. I think that would be improper under the  
circumstances. This is a personal request.

Yours faithfully,  
Sd: A.E. Schmidt

c.c.  
Kepong Mines Ltd.

P.1(26) Letter, Secretaries Defendant  
Company to Secretaries, Kepong Mines Ltd.

KEPONG PROS-  
PECTING LTD.

Exhibits

P.1(26)  
Letter,  
Secretaries,  
Defendant  
Company to  
Secretaries,  
Kepong Mines  
Ltd.  
16th June 1959

KPL/8

16th June, 1959.

Secretaries,  
Kepong Mines Ltd.,  
P.O. Box 808,  
Singapore.

10

Dear Sirs,

Mr. A.E. Schmidt has sent us a copy of your letter to him dated 9th June, 1959 and we are sending you accordingly a photostat copy of the Agreement dated 31st July, 1954 between Mr. Tan Chew Seah and the Company.

Yours faithfully,

KEPONG PROSPECTING LTD.,

Sd. Sow Khong & Chong  
Secretary.

20

c.c.

Mr. A.E. Schmidt,  
Chan Wing Building,  
Kuala Lumpur.

Mr. Chua Kwang Song,  
C4275 Bukit Bharu,  
Malacca.

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Exhibits

P.1(27)  
Secretaries  
Defendant  
Company to  
Plaintiff  
22nd June 1959

P.1(27) - Letter Secretaries, Defendant  
Company to Plaintiff

KEPONG PROSPECTING LIMITED

Registered Office & Secretaries:

Sow Khong & Chong,  
79 Ampang Road,  
Kuala Lumpur.

22nd June, 1959.

A.E. Schmidt, Esq.,  
Chan Wing Building,  
Kuala Lumpur.

10

Dear Sir,

We refer to your two letters of the 18th May  
and 4th June 1959.

It is our intention to act in the best interests  
of the Company as honourably and fairly as we  
possibly can. We have made inquiries of Kepong Mines  
Ltd., who are the nominees of the relevant  
respondents referred to in the Order of Court made  
in Originating Motion No. 6 of 1956. As you know  
they are ultimately liable to pay whatever moneys  
may be due to you under the Agreement dated the  
31st day of July 1954 between the Company and Tan  
Chew Seah.

20

The Managing Director of Kepong Mines Limited  
informs us that he is arranging to settle with you  
direct in connection with the said Agreement dated  
31st July, 1954. Will you please let us know whether  
or not this is the case, and what arrangements, if  
any, have been made between you and Kepong Mines  
Ltd.

30

As you are no doubt aware, you are not a party  
to the agreement of 31st July 1954.

Yours faithfully,  
Sd: ?

c.c.  
Mr. Chua Kwang Song,  
C4275 Bukit Bharu,  
Malacca.

Bannon & Bailey,  
P.O. Box 80,  
Kuala Lumpur.

P.1(28) Letter - Plaintiff to Secretaries  
Defendant Company

23rd June, 1959.

M/s Sow Khong & Chong,  
Kepong Prospecting Ltd.,  
79 Ampang Road,  
Kuala Lumpur.

Exhibits  
P.1(28)  
Letter,  
Plaintiff to  
Secretaries,  
Defendant  
Company  
23rd June 1959

Dear Sirs,

10 I am most gratified to read of your intentions in the second para of your letter dated 22.6.59.

(2) When the ore ships first began sailing I proposed to Kepong Mines Ltd., that they simplify procedure regarding my commission by issuing an order on their bank to pay 1% of receipts for ore to my account even though I have no Agreement directly with them. But to date I have received no payment or any written proposal regarding it.

20 (3) The delay has been so long that I have come to doubt their intention to pay and I have handed the file to my lawyers for their attention.

Yours faithfully,  
Sd: A.E. Schmidt

---

Exhibits

P.1(29) - Letter Plaintiff's Solicitors  
to Defendant Company's Solicitors

P.1(29)  
Letter  
Plaintiff's  
Solicitors to  
Defendant  
Company's  
Solicitors.  
24th June, 1959

24th June, 1959.

NAM/CAK/375/59

Messrs. Bannon & Bailey,  
Advocates & Solicitors,  
Kuala Lumpur.

Dear Sir,

In re: Mr.A.E. Schmidt & Kepong  
Prospecting Ltd.

10

-----  
We have been consulted by Mr. A.E. Schmidt in connection with the non-payment of his 1% commission due to him by the above Company on agreements dated 31st day of July 1954 entered into between the Company and one Tan Chew Seah on 26th September 1955 entered into between the Company and himself.

We understand that copies of the relevant letters have been sent to you and that you are fully conversant with the position.

Our client looks to the Company to pay his commission although no doubt by virtue of Clause 10 of the order of Court dated 27th day of March, 1957 and made in Originating Motion No.6 of 1956 your clients have a right to claim indemnity.

20

Our client has already written to your clients requesting an account but none has been supplied.

Your clients have the right to inspect the accounts of Messrs. Kepong Mines Ltd., under the terms of the sub-lease, so that they should know the selling price of the iron ore and the amount sold.

30

In view of the long delay in this matter our client has instructed us to issue a writ against your clients unless payment of the 1% commission is made within seven days from the date of receipt hereof.

Yours faithfully,  
Sd. Lovelace & Hastings.

-----



P.1(30) Letter - Plaintiff to Kepong  
Mines Ltd.

Exhibits

M/S Kepong Mines Limited,  
40-B, Philip Street,  
Singapore 1.

P.1(30)  
Letter,  
Plaintiff to  
Kepong Mines  
Ltd.

29th June 1959

Dear Sirs,

10 I hereby write to inform you that I  
have agreed to my acceptance of 10 cts (Ten  
cents only) a ton on the export quantity of  
the Kepong Iron Ore, as my commission in  
substitution for the 1% (One per cent only)  
which was originally agreed upon by your  
Company, Mr. Tan Chew Siah M/S Kepong  
Prospecting Co., Ltd., and myself.

Therefore my commission of 1% (One per  
cent) mentioned in the High Court Order No. is  
hereby rescinded and the Deed to that effect  
becomes null and void.

Yours faithfully,

20

Sd: A.E. Schmidt

M/s Lovclace & Hastings,

For your information I was handed this on  
Friday by Tan Chew Seah with a verbal message  
demanding my signature under threats of  
horrible but unspecified reprisals.

29.6.59.

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Exhibits

P.1(31)  
Letter,  
Defendant  
Company's  
Solicitors  
to Plaintiff's  
Solicitors

29th June, 1959

P.1(31) Letter, Defendant Company's  
Solicitors to Plaintiff's Solicitors

BANNON & BAILEY

Your Ref: NAM/CAK/375/59  
Our Ref: JS/LPE/12688/56

Laidlaw Building,  
Kuala Lumpur.

29th June, 1959

Messrs. Lovelace & Hastings,  
Advocates & Solicitors,  
No. 57, Klyne Street,  
Kuala Lumpur.

10

Dear Sirs,

re: Mr. A.E. Schmidt & Kepong  
Prospecting Ltd.

We thank you for your letter of the 24th  
June.

Unfortunately nobody appears to have a copy  
of the Agreement to which you refer dated 26th  
September 1955. Before your client takes any  
violent action in this matter we should be  
obliged if you would let us have a copy of this  
Agreement and time to consider it.

20

Yours faithfully,

Sd. Bannon & Bailey.

---

P.1(32) - Letter, Plaintiff's Solicitors  
to Defendant Company's Solicitors

30th June, 1959.

NAM/CAK/375/59  
JS/LPE/12688/56

Messrs. Bannon & Bailey,  
Advocates & Solicitors,  
Kuala Lumpur.

Dear Sirs,

10

re: Mr. A.E. Schmidt & Kepong  
Prospecting Ltd.

-----  
We thank you for your letter of the 29th  
instant, and enclose herewith for perusal and  
return a signed office copy of the agreement  
of the 26th September 1955.

As this is the only copy we have we shall  
be obliged if you will yourselves take a copy  
and return our signed copy to us in due course.

Yours faithfully,

Sd: Lovelace & Hastings.

20

ENCL:

P.1.(33) Letter, Defendant Company's  
Solicitors to Plaintiff's Solicitors

BANNON & BAILEY  
NAM/CAK/375/59  
JS/LPE/12688/56

Laidlaw Building,  
Kuala Lumpur.

2nd July, 1959.

M/s Lovelace & Hastings,  
Advocates & Solicitors,  
Kuala Lumpur.

Exhibits

P.1(32)  
Letter,  
Plaintiff's  
Solicitors to  
Defendant  
Company's  
Solicitors

30th June, 1959

P.1.(33)  
Letter,  
Defendant  
Company's  
Solicitors to  
Plaintiff's  
Solicitors.  
2nd July 1959

30

Dear Sirs,

re: Mr. A.E. Schmidt & Kepong  
Prospecting Ltd.

-----  
We thank you for your letter of the 30th

Exhibits

P.1.(33)  
Letter,  
Defendant  
Company's  
Solicitors  
to  
Plaintiff's  
Solicitors.  
2nd July 1959  
(Continued)

June. We return herewith signed copy of agreement dated 26th September, 1955.

We are taking our clients' instructions in connection with this agreement, which may take a little time to obtain, but we will do our best to obtain instructions and write to you further as quickly as possible.

Yours faithfully,  
Sd: Bannon & Bailey.

P.1.(34)  
Letter,  
Plaintiff's  
Solicitors  
to Defendant  
Company's  
Solicitors.  
3rd July 1959

P.1.(34) Letter, Plaintiff's Solicitors to  
Defendant Company's Solicitors

10

3rd July, 1959

NAM/CAK/375/59  
JS/LPE/12688/56

Messrs. Bannon & Bailey,  
Advocates & Solicitors,  
Kuala Lumpur.

Dear Sirs,

re: Mr. A.E. Schmidt & Kepong  
Prospecting Ltd.

20

We thank you for your letter of the 2nd instant returning signed copy of the agreement.

We note that it may take a little time to get instructions from your clients but no doubt they will be guided by your advice in the matter.

We do not imagine that our client will put up with any further delay in settling his claim and we trust that you will expedite matters.

Yours faithfully,  
Sd: Lovelace & Hastings.

30

P.1.(35) Order in Kuala Lumpur High Court  
Originating Motion No. 6 of 1956

Exhibits

IN THE SUPREME COURT OF THE FEDERATION OF  
MALAYA

P.1(35)  
Order in Kuala  
Lumpur High  
Court  
Originating  
Motion No. 6  
of 1956  
27th March  
1957

IN THE HIGH COURT AT KUALA LUMPUR

ORIGINATING MOTION No. 6 of 1956

In the Matter of KEPONG PROSPECTING LIMITED

and

In the Matter of the Companies Ordinance,  
1940 - 1956

10

Lim Ngian Cher

Applicant

versus

1. S.K. JAGATHEESAN
2. Tsang Tak Chuan
3. K.W. Liu (f)
4. Ch'ng Kee Huat
5. P. Jagatheesan (f)
6. Liu Wai Siong (f)
7. C.K. Liu
8. L.A.J. Smith
9. S.Y Tsang
10. Kepong Prospecting Ltd. Respondents

20

Before The Honourable Mr. Justice Sutherland,  
Judge, Federation of Malaya.

IN OPEN COURT

This 27th day of March, 1957

UPON HEARING Mr. J.S.H. Skrine of  
Counsel for the Applicant, Mr. M.N. Cumarasami of  
Counsel for the first, second, third, fourth,  
fifth, sixth, seventh and ninth Respondents and  
Mr. L.A.J. Smith the eighth Respondent in person  
and Mr. N.A. Marjoribanks of Counsel for the 10th  
Respondent above named AND UPON HEARING the  
Notice of Motion dated the 17th day of September,  
1956, the Affidavits filed in support thereof and  
in reply thereto AND UPON HEARING the evidence

30

Exhibits  
P.1(35)  
Order in Kuala Lumpur High Court  
Originating Motion No. 6 of 1956  
27th March 1957  
(Continued)

on oath of the Applicant Lim Ngian Cher, Goh Siew Chian, Chua Kwang Song, Tan Chew Seah, Chua Keng San and S.K. Jagatheesan BY CONSENT IT IS ORDERED as follows:-

1. That the Register of the members of the 10th Respondent (hereinafter referred to as "Kepong Prospecting Limited") be rectified by deleting the names of the following persons therefrom as the holders of the Ordinary Shares set opposite to their respective names:-

10

1. S.K. Jagatheesan	45,000 shares
2. Tsang Tak Chuen	157,500 "
3. K.W. Liu (f)	45,000 "
4. Ch'ng Kee Huat	45,000 "
5. P. Jagatheesan (f)	9,000 "
6. Liu Wai Siong	4,500 "
7. C.K. Liu	4,000 "
8. L.A.J. Smith	500 "
9. S.Y. Teang (f)	4,500 "

---

315,000 Shares

---

20

and the notice of such rectification be given to the Registrar of Companies.

2. That the issue of the shares aforesaid be cancelled and are hereby declared void ab initio.

3. That the Resolution passed by Kepong Prospecting Limited at an Extraordinary General Meeting of the Company held on the 5th day of September 1956 be declared void and that the same be expunged from the records of the Company.

4. That the Directors of Kepong Prospecting Limited be hereby declared to be:-

30

- (i) A.E. Schmidt
- (ii) Tan Chew Seah
- (iii) Chua Kwang Song
- (iv) Chan Cheow Kiat
- (v) Gwee Yam Keng
- (vi) Chua Keng San
- (vii) N.A. Marjoribanks

5. Kepong Prospecting Limited shall grant to the Respondents numbered 1 to 7 and 9 but not 8 or

40

their nominees a valid and registrable Sub-lease of the land held under Johore Mining Certificate No. 547 and of any other land in the Mukim of Bukit Kepong over which Kepong Prospecting Limited may now or hereafter hold a mining title relating to iron ore on terms and conditions similar to those in the Mining Sub-lease relating to Mining Certificate No. 547 and made between Kepong Prospecting Limited and the Respondents 1 to 7 and 9 but not 8.

10

6. The Respondents numbered 1 to 7 and 9 but not 8 shall use their best endeavours to produce and to ensure that their nominees produce ore and sell the same anywhere in the following quantities:-

During the first year ... 100,000 Tons

Thereafter ... .. 150,000 " per annum

and to start such production as soon as they or their nominees are registered as sub-lessees of the Mining Land now registered in the name of Kepong Prospecting Limited provided always that there is a market for the sale of such ore and provided further that production and sale thereof is not prevented by Act of God or any unforeseen circumstances.

20

7. Kepong Prospecting Limited shall indemnify the first nine Respondents in respect of all acts done by such Respondents while acting as Directors and shareholders of Kepong Prospecting Limited.

30

8. Kepong Prospecting Limited agrees to complete with all reasonable despatch the agreements as to rights of way made between Kepong Prospecting Limited and others.

9. The tribute payable to Kepong Prospecting Limited under any Mining Sub-leases registered pursuant to this Order shall be at the rate of \$2.70 per ton of ore removed from and sold off the mining land according to shipping or other sale documents.

40

10. The agreement between Kepong Prospecting Limited and Tan Chew Seah dated the 31st day of

Exhibits  
P.1(35)  
Order in Kuala Lumpur High Court  
Originating Motion No. 6 of 1956  
27th March 1957  
(Continued)

Exhibits

P.1(35)  
 Order in Kuala  
 Lumpur High  
 Court  
 Originating  
 Motion No. 6  
 of 1956  
 27th March  
 1957  
 (Continued)

July 1954 whereby 1% of the value of all ore sold from the mining land is to be paid by the Company to Mr. A.E. Schmidt shall be taken over by the Respondents numbered 1 to 7 and 9 but not 8 or their nominees and the Respondents numbered 1 to 7 and 9 but not 8 shall indemnify Kepong Prospecting Limited against all claims which may be made against Kepong Prospecting Limited thereunder.

11. The sum of \$110,250.00 paid by the first nine Respondents to Kepong Prospecting Limited in respect of the shares which have been cancelled pursuant to this Order shall be treated as an advance by the Sub-lessees of the mining land sub-leased pursuant to this Order and be repaid by Kepong Prospecting Limited to the Sub-lessees by the Sub-lessees deducting 50% of the tribute by them until such advance is fully repaid. 10

12. The Respondents numbered 1 to 7 and 9 but not 8 or their nominees do purchase from Kepong Prospecting Limited all existing machinery at the said mine at Bukit Kepong for the sum of \$78,966.00 which shall be paid for by instalments as follows:- 20

- (a) \$30,000.00 to be paid to Kepong Prospecting Limited forthwith;
- (b) \$24,000.00 to be paid on or before the first day of April, 1958;
- (c) \$24,966.00 to be paid on or before the 1st day of April, 1959.

13. The Respondents numbered 1 to 7 and 9 but not 8 or their nominees shall do all in their power to assist Kepong Prospecting Limited to get registered in the name of Kepong Prospecting Limited a mining title or titles over land in the Mukim of Bukit Kepong and a renewal of any mining title now or hereafter registered in the name of Kepong Prospecting Limited in the Mukim of Bukit Kepong. 30

14. The costs of the Applicant which are agreed at \$7,000.00 be paid by Kepong Prospecting Limited and the costs of the first nine Respondents which are agreed in the aggregate at \$7,000.00 be also paid by Kepong Prospecting Limited. No Order as to the costs of Kepong Prospecting Limited. 40

Senior Assistant Registrar,  
 High Court, Kuala Lumpur.



P.17. Notice of First Directors' Meeting  
of Defendant Company on 31st July 1954

KEPONG PROSPECTING, LIMITED

Notice is hereby given that the first Directors' Meeting of the above-named Company will be held at the Registered Office, No. 6, Ampang Street, (1st floor), Kuala Lumpur on Saturday, the 31st July 1954 at 3.00 p.m.

Exhibits

P.17  
Notice of  
First  
Directors  
Meeting of  
Defendant  
Company on  
31st July  
1954

11th July 1954

10

A G E N D A

1. To appoint a Chairman of the Board of Directors.
2. To confirm the first directors as named in the Memorandum and Articles of Association.
3. To adopt the signed copies of the Memorandum and Articles of Association.
4. To table the Certificate of Incorporation of the Company.
- 20 5. To adopt the Common Seal of the Company.
6. To confirm the Registered Office of the Company be situate at No. 6 Ampang Street (1st Floor), Kuala Lumpur.
7. To confirm the date of commencement of business and the closing of the Company's yearly accounts.
8. To discuss the appointment of Bankers of the Company.
- 30 9. To confirm the appointment of Secretaries of the Company and to fix their remuneration.
10. To appoint auditors and fix the remuneration.
11. To adopt the two agreements with Tan Chew Seah and A.E. Schmidt respectively.

Exhibits

P.17  
 Notice of  
 First  
 Directors'  
 Meeting of  
 Defendant  
 Company on  
 31st July  
 1954  
 11th July 1954  
 (Continued)

12. To deal with application for shares  
 and share allotments.
13. To transact any other business that  
 may arise.

By Order of the Board

Leong & Lai Ltd.

(Sgd) Illegible  
 Secretaries.

Kuala Lumpur,  
 27th July 1954

10

To: Mr. A.E. Schmidt,  
 Chan Wing Building,  
 Kuala Lumpur.

D.5(1)  
 Minutes of  
 Second Meeting  
 Board of  
 Directors,  
 Defendant  
 Company  
 11th September  
 1954

D.5.(1) Minutes of Second Meeting, Board  
 of Directors Defendant Company

Minutes of the Second Meeting of the Board of  
 Directors of Kepong Prospecting Limited, held at  
 the Registered Office, on Saturday, the 11th  
 September, 1954, at 3.00 p.m.

Present:

20

Mr. A.E. Schmidt (Chairman)  
 Mr. N.A. Marjoribanks  
 Mr. Gwee Yam Keng  
 Mr. Chan Cheow Kiat.

In Attendance:

Mr. Leong Kum Wing, representing the Secretaries,  
 Messrs. Leong & Lai Ltd., Kuala Lumpur.

Minutes:

The Minutes of Board Meeting held on the 31st  
 July, 1954 were read by the Secretary and confirmed  
 by the Chairman.

30

Report on Prospecting to date:Exhibits

The Chairman and Consulting Engineer, Mr. A.E. Schmidt, produced a plan showing locations of the various pits measured by the filed workers as at date. According to figures and information from the field books, he has made his calculations for the information of this Meeting as follows:-

D.5(1)  
Minutes of  
Second  
Meeting,  
Board of  
Directors,  
Defendant  
Company  
11th September  
1954  
(Continued)

10	<u>Names</u>	<u>Area</u> (Acres)	<u>Overburden</u> (Cu.Yards)	<u>Iron Ore</u> (Tons)
	Bukit Nanong			
	Besar	30	100,000	250,000
	Bukit Batu	30	100,000	250,000
	Bukit Aboh	60	250,000	500,000
	Bukit Fasol	130	320,000	1,000,000
		250	770,000	2,000,000
		250	770,000	2,000,000

20 A Specimen of Iron Ore was taken. The assay value was 65.9% iron. This assay value is different from an actual sample, and it would be reasonable to estimate the assay value at 64%, when an actual sampling takes place.

The Chairman further reported that the estimated cost of production per ton:-

30	(i) Mining and Washing	\$ 5.00
	(ii) Transport from Mine to River	2.50
	(iii) Transport by River to Ship	5.50
	(iv) Administration etc.	1.00
	(v) Export Duty	3.00
	Working Cost.	\$ 17.00

The recovery of iron ore, as a very conservative estimate, should be 1,000,000 tons. Cost of production (roughly) at \$20/- per ton and sales \$25/- per ton. It is to be expected that a \$5,000,000/- profit would be made in three years.

The Estimated Capital required for the project would be \$2,000,000/-.

Exhibits  
 D.5(1)  
 Minutes of  
 Second  
 Meeting,  
 Board of  
 Directors,  
 Defendant  
 Company  
 11th September  
 1954  
 (Continued)

Details of Capital Expenditure could not be itemised at the moment, as this had to be revised from time to time.

Accounts:

The Trial Balance as at 31st July, 1954 was tabled and was taken as correct. Subject to minor adjustments in one or two titles in the 'Names' of the Accounts.

Immediate future Policy of the Company:

(i) Bukit Kepong

10

The Chairman informed the meeting that for an application of a Mining Lease, the Company will have to meet the payment of premium \$150,000/- based at the calculation of \$100/- an acre on 1,500 acres, covered by our application. The Company might not be in a position financially to meet this obligation at the moment. He then suggested as an alternative, an application for a Prospecting Licence be submitted, in which case a deposit of \$300/- shall be payable. After completion of Prospecting, a further application would be submitted over a selected area for a Mining Lease on whatever area the Company thought worthwhile. After discussion, it was resolved that Mr. A.E. Schmidt, be instructed to prepare and submit an application for a Prospecting Licence.

20

(ii) Serempang Area

It was resolved that an agreement be made between Mr. Gwee Yam Keng and the Company, enabling the latter to take over his rights in the Permit, in consideration of paying a 10% tribute on coal produced from the area.

30

It was further resolved that the Company would apply for a Mining Lease for coal if prospects are favourable and Mr. Gwee Yam Keng (together with his interested parties) will give an undertaking to Company in support of the application, by indicating that he has no objection to such a procedure being taken by the Company.

40



Exhibits

D.5(2)  
Minutes of  
Third Meeting  
of Board of  
Directors of  
Defendant  
Company  
12th March  
1955  
(Continued)

Leong & Lai, Limited, the Secretaries of the  
Company.

Minutes:

.....

Future Action:

The Chairman informed the meeting that some-  
time back, he had made verbal offers for the disposal  
of the Company's iron ore to the United Trading Co.,  
Ltd., recently. Through the good offices of the  
Japanese Consul-General, Singapore, Messrs. Gosho  
had written to the Company regarding purchase of  
iron ore and the supply of heavy machinery to us  
etc., which means that the Company would have to  
send an Engineer to Japan for negotiations. The  
estimated expenses might be in the region of  
\$10,000/- as professional fees. The Chairman pointed  
out that he would be due for a holiday very soon  
and that he offered to make the trip to Japan on  
behalf of the Company, provided the Company is  
prepared to re-imburse him to the extent of \$2,500/-  
to enable him to make tentative arrangements to  
be approved by a Board Meeting on his return. The  
offer was accepted, proposed by Mr. Chua Kwang  
Song and seconded by Mr. Gwee Yam Keng.

10

20

Managing Director:

It was resolved that Mr. A.E. Schmidt be  
appointed the Managing Director of the Company  
with effect from date of the incorporation of  
the Company.

.....

Secretary

.....

Chairman



D.5(3) Minutes of Fourth Meeting of Board of Directors, Defendant Company

Exhibits

D.5(3)  
Minutes of  
the Fourth  
Meeting of  
Board of  
Directors of  
Defendant  
Company  
11th April  
1955

Minutes of the fourth Meeting of Board of Directors of Kepong Prospecting Ltd., held at the Registered Office of the Company, No. 6 Ampang Street (1st Floor), Kuala Lumpur, on Monday, the 11th April, 1955 at 4.30 p.m.

Present:

10

- Mr. A.E. Schmidt (Chairman)
- Mr. N.A. Marjoribanks
- Mr. Gwee Yam Keng
- Mr. Chua Kwang Song
- Mr. Chan Cheow Kiat
- Mr. Tan Chew Seah.

In Attendance:

Mr. Leong Kum Weng, representing Messrs. Leong & Lai, Ltd., the Secretaries of the Company.

Minutes:

.....

Proposed Trip to Japan:

20

The Chairman reported that the passage which he had booked on the "Chusan" for the proposed trip to Japan had exceeded the original estimate of \$1,000/- by about \$300/- and he informed the meeting that there is a possibility of the \$2,500/- as originally estimated being increased and asked the meeting to meet any extra cost that may arise, as there was no other boat available at the moment.

30

It was resolved that the extra cost for the trip be approved.

.....

Secretary

.....

Chairman

Exhibits

D.5 (4) - Minutes of Fifth Meeting of Board of Directors, Defendant Company

D.5(4)  
Minutes of  
Fifth Meeting,  
Board of  
Directors,  
Defendant  
Company  
4th July 1955

Minutes of the fifth Meeting of Board of Directors of Kepong Prospecting Limited, held at the Registered Office of the Company, No. 6, Ampang Street, Kuala Lumpur, on Monday, the 4th, July 1955 at 2.30 p.m.

Present:

- Mr. A.E. Schmidt (Chairman)
- Mr. N.A. Marjoribanks
- Mr. Gwee Yam Keng
- Mr. Chan Cheow Kiat
- Mr. Chua Kwang Song.

10

In Attendance:

Mr. Leong Kum Weng, representing Messrs. Leong & Lai, Limited, the Secretaries of the Company.

Minutes:

.....

Provisions for staffs:

It was resolved that the Managing Director Mr. A.E. Schmidt be paid a salary of \$1,000/- per month with effect from 1st March 1955.

20

.....

.....

Secretary

Chairman

\_\_\_\_\_



D.5(5) Minutes of Extraordinary General Meeting of Shareholders, Defendant Company

Exhibits

KEPONG PROSPECTING LIMITED

D.5(5)  
Minutes of  
Extra-ordinary  
General  
Meeting of  
Shareholders,  
Defendant  
Company.  
5th September  
1956

Minutes of an Extra Ordinary General Meeting of shareholders of the Company held at the Registered Office, 6, Ampang Street, Kuala Lumpur on Wednesday, 5th September, 1956 at 11 a.m.

Present:

10                   Messrs. A.E. Schmidt (in the chair)  
                          N.A. Marjoribanks  
                          and others.

In Attendance:

Mr. Chang Sow Khone representing the Secretaries.

The Chairman opened the Meeting....

20                   This Company was formed primarily for the purpose of prospecting for iron ore. The idea being that a mining company or companies would probably be formed to exploit any discoveries that might be made.

About a year ago you endorsed your Directors' opinion that it would be more advantageous for this Company ourselves to operate a mine on the deposit which had been discovered at Bukit Kepong and you increased the authorised capital of the Company for the purpose.

30                   Since then your Directors have spent a very great amount of time and energy in seeking the required capital on acceptable terms. Many offers were received with unacceptable conditions attached. A common attitude by prospective investors has been "you have failed, therefore we will take over your business for a song." Whereas the Company had succeeded in its object of finding a payable deposit and had not yet shown any signs of success or failure in mining that had not begun.

.....  
Chairman

Exhibits

D.5(6) Minutes of Fourteenth Meeting,  
Board of Directors, Defendant Company

D.5(6)  
Minutes of  
Fourteenth  
Meeting,  
Board of  
Directors,  
Defendant  
Company  
23rd March  
1957

KEPONG PROSPECTING LIMITED

Minutes of the Fourteenth Directors' Meeting of  
Kepong Prospecting Limited held at 6 Ampang Street,  
Kuala Lumpur on Thursday 28th March, 1957 at 11 a.m.

Present:

- Mr. Chua Kwang Song (Chairman)
- Mr. A.E. Schmidt
- Mr. N.A. Marjoribanks
- Mr. Tan Chew Seah
- Mr. Gwee Yam Keng
- Mr. Chua Keng Sam
- Mr. Chan Cheow Kiat

10

In Attendance (By Invitation):

Mr. Chang Sow Khong of Sow Khong  
& Chong.

Mr. J. Skrine of Bannon & Bailey.

.....

Resolutions:

- 4. That notice be given to Mr. A.E. Schmidt terminating his employment with the Company in his capacity as Chief Engineer as from 1st May 1957.

20



D.8(1) - Minutes of Sixteenth Meeting  
Board of Directors, Defendant Company

Exhibits

D.8(1)  
Minutes of  
Sixteenth  
Meeting, Board  
of Directors  
Defendant  
Company  
29th April 1957

KEPONG PROSPECTING LIMITED

Minutes of the Sixteenth Meeting of the Board of Directors of Kepong Prospecting Limited, held at the Registered Office 79 Ampang Road, Kuala Lumpur on Monday 29th April, 1957 at 2.30 p.m.

10

Present: Mr. Chua Kwang Song  
Mr. A.E. Schmidt  
Mr. Chan Cheow Kiat  
Mr. Gwee Yam Keng  
Mr. Tan Chew Seah

Apologies: Mr. Chua Keng Sam

Absent: Mr. N.A. Marjoribanks

In Attendance: Mr. J. Skrine of Bannon & Bailey.  
Mr. Chang Sow Khong & Chong Chin  
Hin representing the Secretaries Sow Khon & Chong.

1. Confirmation of Minutes.

.....

20

2. Matters Arising from the Minutes:

.....

3. Court Order:

The Court Order was tabled and minor amendments discussed and approved. M/s Bannon & Bailey would incorporate these into the order.

4. Mining Sub-lease:

.....

5. Mr. Hussey's Compensation:

.....

6. Right of Way:

.....

Exhibits

D.8(1)  
Minutes of  
Sixteenth  
Meeting, Board  
of Directors  
Defendant  
Company  
29th April 1957  
(Continued)

- 7. & 9. Budget and Outstanding Bills:  
.....
- 8. Coal Mining Lease:  
.....
- 10. Assignment of Insurance Policies:  
.....
- 11. Any other Matters:  
.....

There being no other business the meeting terminated at 6.00 p.m.

Sd: K.S. Chua

19.5.57

D.8(2) Minutes  
of Seventeenth  
Meeting, Board  
of Directors,  
Defendant  
Company  
27th May  
1957

D.8(2) Minutes of Seventeenth Meeting,  
Board of Directors, Defendant Company

10

KEPONG PROSPECTING LIMITED

Minutes of the adjourned Seventeenth Meeting of the Board of Directors of Kepong Prospecting Limited, held at the Registered Office 79 Ampang Road on Monday 27th May 1957 at 10.00 a.m.

Present: Mr. Chua Kwang Song (Chairman)  
Mr. Chua Keng Sam  
Mr. A.E. Schmidt  
Mr. Tan Chew Seah

In Attendance:

20

Mr. Chang Sow Khong representing the Secretaries Sow Khong & Chong.

Correspondence:

(a) Yap Eng Boon

Mr. Chua Keng Sam reported .....

(b) Assignment of Insurance Policies

Exhibits

The Secretaries tabled.....  
.....

D.8(2)  
Minutes of  
Seventeenth  
Meeting, Board  
of Directors,  
Defendant  
Company  
27th May 1957  
(Continued)

(c) Court Order

10

M/s Bannon & Bailey had submitted the final draft of the court order for approval. Mr. Chua Keng Sam referred to clause 6 and asked whether tribute would be paid (in the first year) on 100,000 tons even though production fell short of the figure. Mr. Schmidt said that he thought the tribute would not be paid on ore not produced. He said there would be difficulty in proving that M/s Tsang and Associates has not used their best endeavours to produce ore and also in determining what the first year is.

20

Mr. Chua Keng Sam was in favour of some form of guarantee covering production as he afraid that the production mentioned in the court order may not be achieved. It was then pointed out amendments has already been approved at the 16th Directors Meeting and this Meeting then approved the court order.

.....  
.....

There being no other business the meeting terminated at 1.12 p.m.

Sd: K.S. Chua

7.6.57.



Exhibits

D.8(3)  
Minutes of  
Twenty-ninth  
Meeting,  
Board of  
Directors,  
Defendant  
Company  
20th July  
1959

D8(3) Minutes of Twenty-ninth Meeting,  
Board of Directors, Defendant Company

KEPONG PROSPECTING LIMITED

Minutes of Twenty ninth Directors Meeting held  
on Monday 20th July 1959 at 2.30 p.m. at No. 79  
Ampang Road, Kuala Lumpur.

Present: Mr. Chua Kwang Song (Chairman)  
Mr. Tan Chew Seah  
Mr. Lee Eng Lam  
Mr. Yeo Liew Chea  
Mr. A.E. Schmidt

10

Absent: Mr. Chua Keng Sam  
Mr. Chan Hian Chor

In Attendance:

Mr. Hew Kiang Main representing the  
Secretaries.

1. Confirmation of Minutes.

.....

2. Matters Arising:

(a) Mining Sub-lease.....

(b) Deposit .....

(c) Mine Progress Report .....

20

3. Account and Report:

.....

4. Annual General Meeting:

.....

5. Rotation of Directors:

.....

6. Any other Business:

(a) Payments:

.....

(b) 1% Tribute to Schmidt:Exhibits

Mr. Schmidt reported that according to his legal adviser the 1% tribute was payable to him by Kepong Mines Limited. This was the position under the Court Order but Mr. Schmidt was not a party in the Court Order.

D.8(3)  
Minutes of  
Twenty-ninth  
Meeting,  
Board of  
Directors,  
Defendant  
Company  
20th July  
1959  
(Continued)

10

Unless Kepong Mines Limited committed an offence Kepong Prospecting Limited could not take action against the other company but Kepong Mines Limited has the obligation to indemnify Kepong Prospecting Limited. Mr. Schmidt said he was therefore compelled to take action against Kepong Prospecting Limited in order that Kepong Mines Limited may also feel the action.

20

Mr. Schmidt could proceed against Kepong Prospecting Limited on the 1955 Agreement. In this event he would have a clear judgment against Kepong Prospecting Limited but it would not affect Kepong Mines Limited. As a shareholder he was unwilling to involve the Company in further law suits.

30

The Alternative was for Kepong Prospecting Limited to accept judgment under the 1954 Agreement. Although Mr. Schmidt was not a party to this Agreement mentioned in the Court Order. If this was done Kepong Mines Limited would then become liable to indemnify Kepong Prospecting Limited under the Court Order and be forced to pay accordingly.

40

The other Directors expressed the view that the Company would like to assist Mr. Schmidt to obtain his tribute but would prefer not to be involved directly in the dispute. The Chairman said that he would consult the Company's legal adviser Mr. Skrine as soon as the latter returned from short leave.

Exhibits

(c) Dividend:

D.8(3)  
Minutes of  
Twenty-ninth  
Meeting,  
Board of  
Directors,  
Defendant  
Company  
20th July  
1959  
(Continued)

.....

Termination:

There being no other business Mr. Schmidt declared that it gave him great pleasure to propose a vote of thanks to the Chair. The proposal was unanimously endorsed.

Sd: K.S. Chua  
Chairman.

Kuala Lumpur.  
23rd July 1959.



D.9.A - Extract from Defendant Company's Journal

KEPONG PROSPECTING LIMITED

<u>Date</u>	<u>Particulars</u>	<u>Ledger Folio</u>	<u>Dr.</u>	<u>Cr.</u> (Journal Folio 17)
1955 Oct. 31	Travelling Expenses - A.E. Schmidt - Malacca - Singapore	54	₹90.84	
	Sundry Expenses - Telephone & Telegram	41	40.16	
	To A.E. Schmidt being your Expense A/C as at 2/9/55	74		₹131.00
"	Sundry Expenses - Telephone & Trunk Calls (Sept)	41	37.80	
	Travelling Expenses - S'pore trip	54	150.00	
	- do - - "			
	Hotel	54	125.50	
	Salaries & Wages - Pd. field clerk	44	320.00	
	Sundry Expenses - "	41	124.50	
	- do - - Photostate	41	15.50	
	To A.E. Schmidt Being your Expenses A/C for Sept. 1955 (a/c dated 4/10/55)	74		773.30

233.

Exhibits

D.9A.  
Extract from  
Defendant  
Company's  
Journal

Exhibits

D.9A  
 Extract from  
 Defendant  
 Company's  
 Journal  
 (Continued)

<u>Date</u>	<u>Particulars</u>	<u>Ledger Folio</u>	<u>Dr.</u>	<u>Cr.</u> (Journal Folio 17)
1955 Oct. 31	Sundry Expenses - Telephone & Trunk Calls	41	38.20	
	Travelling Expenses - Pd Tan Choo Siah (Advance for?)	54	150.00	
	Travelling Expenses - A.E.S. to S'pore & B. Kepong	54	253.00	
	Travelling Expenses - A.E.S. Rest House		48.50	
	- do - A.E.S. Hotel S'pore	54	262.00	
	- do - A.E.S. Ferrries		6.00	
	- do - A.E.S. To S'pore	54	48.00	
	Salaries & Wages - Field Clerk Oct	44	420.00	
	To A.E. Schmidt Being your Expense A/C for Oct. 1955 (Statement of 31.10.55)	74		1,225.70

(Journal Folio 21)

<u>Date</u>	<u>Particulars</u>	<u>Ledger Folio</u>	<u>Dr.</u>	<u>Cr.</u>
10	Travelling Expenses - A.E.S. to S'pore etc. Salary & Wages - Pd. Field Clerk etc. Nov. Sundry Expenses - Photostate - Shui Kat Co. Stationery A/C - Level Bk. Ink. etc. To. A.E. Schmidt Being Your Expense A/C for Nov. as per Statement J 8/12/55	56 45 47 74	608.50 405.00 14.00 3.80	1,031.30
20	Travelling Expenses - A.E.S. 8th to 10th Dec. Salary & Wages - Field Clerk Stationery A/C - Maps To A.E. Schmidt Being your Expenses A/C for Dec. Statement of 31/12/55	56 45 48 74	107.25 148.00 7.75	263.00
"	Sundry Expense To A.E. Schmidt Being Trunk Fees etc. Dec. Statement dated 8/2/56	42 74	109.60	109.60
30	Salaries & Wages To A.E. Schmidt Being Salary for Managing Director from March to December 1955 @ \$1,000.- per month	44 74	10,000.00	10,000.00

Exhibits  
 D.9A  
 Extract from  
 Defendant  
 Company's  
 Journal  
 (Continued)

(Journal Folio 19)

Exhibits

D.9A  
Extract from  
Defendant  
Company's  
Journal  
(Continued)

<u>Date</u>	<u>Particulars</u>	<u>Ledger Folio</u>	<u>Dr.</u>	<u>Cr.</u>
1956				
May 31				
10	Sundry Expenses - Telephone June	42	61.00	
	- do - " July	42	47.75	
	Travelling Expense - A.E.S. B. Kepong 5/3	56	83.16	
	- do - T.C.S. S'pore 7/3 to 10/3	56	137.00	
	- do - A.E.S. Hotel (Cathay)	56	136.05	
	- do - T.C.S. Sea View	56	62.80	
	- do - A.E.S. Ferry	56	3.00	
	Charges - ? Report	6	33.00	
	Sundry Expense - Telephone etc. - do - Air Mail	42	15.00	
	Postages	42	6.15	
	To A.E. Schmidt	74		584.91
	Being Your Expense A/C as per statement J 14/3/56			
20				
"	Travelling Expenses - Bukit Kepong & Sungei Mantri 4& 5/4	56	80.00	
	Travelling Expenses - Ferry	56	6.50	
	Sundry Expenses - Telephone March	42	63.50	
	To A.E. Schmidt	74		150.00
	Being Your Expenses a/c for Mar. to Apr. statement 11/4/56			
30				
	Travelling Expense - A.E.S. Malacca 22/4/56	56	66.00	
	Sundry Expense - A.E.S. Telephone a/c	42	2.70	
	To A.E. Schmidt	74		68.70
	Being Your Expenses a/c as per statement 8/6/56			

<u>Date</u>	<u>Particulars</u>	<u>Ledger Folio</u>	<u>Dr.</u>	<u>Cr.</u>
1956				(Journal Folio 31)
May 31	Sundry Expenses - Telephone May	42	27.30	
	Salaries & Wages ? 6 days To A.E. Schmidt Being Your Expense A/C per statement 8/6/56	45 74	134.50	161.80

Exhibits

D.9A  
Extract from  
Defendant  
Company's  
Journal  
(Continued)

D.10A. EXTRACT FROM DEFENDANT COMPANY'S  
LEDGERA. E. SCHMIDTIN ACCOUNT WITH KEPONG PROSPECTING LIMITEDD.10A.  
Extract from  
Defendant  
Company's  
Ledger

<u>1954</u>			<u>1954</u>		
Sept. 30	To amount transferred to Salaries & Wages A/C (Trustees hands)	₹2,241.48	March 31	By Cash	₹ 441.48
			May 31	" "	1,800.00
		<u>₹2,241.48</u>			<u>₹ 2,241.48</u>
<u>1955</u>			<u>1955</u>		
10 Jan. 28	To Cash (Advance A/C)	₹5,000.00	July 29	By Cash (Expense A/C)	₹ 1,124.60
July 29	" "	1,000.00	Oct. 31	" Your Expense A/C Statement dated 2/9/55	131.00
Aug. 13	" "	124.60		" Your Expense (Sept) Statement dated 4/10/55	773.30
Oct. 6	" " Advance to Singapore	1,500.00		" Your Expense (Oct) Statement dated 31/10/55	1,225.70
Nov. 6	" "	1,000.00	Dec. 31	" Salary for March to Dec. 1955	10,000.00
Dec. 16	" "	1,661.30		" Your Expense A/C Nov. Statement 8/12/55	1,031.30
30	" " (T.T.) G.Y. Kong	300.00		" Your Expense Dec. Statement 31/12/55	263.00
	" Balance c/d	4,072.60		" Your Expense Dec. Statement 8/2/56	109.60
		<u>₹14,658.50</u>			<u>₹14,658.50</u>
<u>1956</u>			<u>1956</u>		
20 March 5	To Cash	₹2,000.00	Jan. 1	By Balance b/d	₹ 4,072.60
June 13	" "	965.41	May 31	" Your Expenses A/C 14/3/56	584.91
July 10	" "	246.00		" " 11/4/56	150.00
26	" "	4,072.60		" " 8/6/56	68.70
	Advance (C. Keng Sam on 12/3/56)	1,000.00		" " 8/6/56	161.80
	Expense A/C wrongly credited (Statement 6/8/56)	68.70	Dec. 31	" Balance	3,314.70
		<u>₹8,352.71</u>			<u>₹ 8,352.71</u>

D. 11 A - EXTRACT FROM DEFENDANT COMPANY'S CASH BOOK  
KEPONG PROSPECTING LIMITED - PAYMENTS TO A.E. SCHMIDT.

D.11A  
 Extract from  
 Defendant  
 Company's  
 Cash Book

Date	Particulars	Cash Book Folio	Bank	Travelling Expenses	Salaries & Wages	Current Account
<u>1954</u>						
June 22	By Travelling Exp. AES	5	96.50	96.50		
July 6	" " " AES	6	101.20	101.20		
Aug. 31	" " " AES	7	98.60	98.60		
Oct. 30	" " " AES	10	101.00	101.00		
Malacca and Muar						
10 Nov. 30	" Travelling Exp. - Pd. AES	12	72.00	72.00		
Dec. 4	" " " - Pd. AES	13	200.00	200.00		
" 13	" " " - AES Muar - B?					
" 30	& S'pore 5 to 9 Dec. Sundry Exp. AES Dec.	13 13	206.75 94.00	206.75 94.00		
<u>1955</u>						
Jan. 28	By A.E. Schmidt - Advance	15	5,000.00			5,000.00
" 31	" Travelling Exp-AES ? etc.	15	94.50	94.50		
" 31	" " - Seremban Muar etc.	15	108.00	108.00		
20 Mar. 4	" " - Pd. AES	20	250.00	250.00		
" 21	" " "	20	124.80	124.80		
" 21	" " "	20	126.00	126.00		
" 31	" " "	20	97.50	97.50		
Apr. 4	" " - Passage to Japan	23	1,049.54	1,049.54		
" 6	" " - AES	23	500.00	500.00		
" 11	" Passage AES ?	23	256.85	256.85		
July 29	" Pd. AES & TC. Smith	32	1,039.00	1,039.00		
" 29	" A.E. Schmidt	32	1,000.00			1,000.00
Aug. 13	" " "	34	124.60			124.60
30 Oct. 6	" " ? to Singapore	38	1,500.00			1,500.00
Nov. 6	" " Advance	41	1,000.00			1,000.00
Dec. 16	" " "	43	1,661.30			1,661.30
" 30	" " "	44	300.00			300.00
<u>1956</u>						
Mar. 5	By A.E. Schmidt	45	2,000.00			2,000.00
June 13	" " Pd. a/c	47	965.41			965.41
July 10	" " "	49	246.00			246.00
" 26	" " "	49	4,072.60			4,072.60
40 Aug. 31	" Salaries & Wages A.E. Schmidt - January to August	51	8,000.00		8,000.00	
Sept. 20	" Travelling Exp. - Pd. AES. August	52	312.57	312.57		
" 20	" " (Ipoh)	52	47.27	47.27		
" 29	" Salaries & Wages Sep.	54	1,666.66		1,666.66	
Oct. 3	" Travelling Exp. - Pd. AES 21.9.56 to 29.9.56	55	391.15	391.15		
" 31	" Salaries & Wages - AES Oct.	56	2,000.00		2,000.00	
50 Nov. 29	" Salaries a/c - AES Nov.	57	2,000.00		2,000.00	
Dec. 13	" Travelling Exp. - Pd. AES	57	327.75	327.75		
" 29	" Salaries & Wages - AES Dec.	57	2,000.00		2,000.00	
<u>1957</u>						
Jan. 28	By Salaries A/C - Pd. AE.Schmidt Jan.	59	2,000.00		2,000.00	
Mar. 4	" " - Pd AES Feb	59	2,000.00		2,000.00	
Mar. 26	" " - March	59	2,000.00		2,000.00	
Apr. 29	" Salary April Schmidt	60	2,000.00		2,000.00	
			<u>₹47,231.55</u>	<u>₹5,694.98</u>	<u>₹23,666.66</u>	<u>₹17,869.91</u>

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 :

KEPONG PROSPECTING LIMITED Appellant

- and -

S.K. JAGATHEESAN  
TSANG TAK CHUEN  
K.W. LIU  
CH'NG KEE HUAT  
PASUBATHY JAGATHEESAN  
LIU WAI SIONG  
C.K. LIU Third Parties  
S.Y. TSANG Appellants

- and -

A.E. SCHMIDT (since deceased) and  
MARJORIE SCHMIDT (Widow) substituted  
for A.E. Schmidt deceased. Respondent

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

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Stephenson Harwood & Tatham,  
Saddlers Hall, Gutter Lane,  
Cheapside London E.C.2.

Solicitors for 1st Appellant.

Speechly Mumford & Soames,  
10, New Square,  
Lincolns Inn W.C.2.

Solicitors for 3rd Party  
Appellants.

Parker Garrett & Co.  
St. Michaels Rectory,  
Cornhill E.C.3.

Solicitors for the  
Respondent.