

22

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 27 of 1970.

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA, HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

B E T W E E N:

SAW CHOO THENG and KHYE SENG LIM alias  
LIM KHYE SENG (Plaintiffs)

Appellants

- and -

SUNGEI BIAK TIN MINES LIMITED  
(Defendants)

Respondents

(In the matter of Civil Suit No. 615 of 1968 in the High  
Court in Malaya at Ipoh)

B E T W E E N:

Saw Choo Theng and Khye Seng Lim alias  
Lim Khye Seng

Plaintiffs

- and -

Sungei Biak Tin Mines Limited

Defendants

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

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 7 APR 1972  
25 RUSSELL SQUARE  
LONDON, W.C.1.

LEWIS, LEWIS & CO.,  
Hale Court,  
24, Old Buildings,  
Lincoln's Inn,  
London, WC2A 3AS.

Solicitors for the Appellants

GASTER, VOWLES, TURNER & LOEFFLER,  
Fenwick House,  
292, High Holborn,  
London,  
WC1V 7JN.

Solicitors for the Respondents

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA, HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

B E T W E E N:

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SUNGEI BIAK TIN MINES LIMITED  
(Defendants) Respondents

(In the Matter of Civil Suit No. 615 of 1968 in the High  
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B E T W E E N:

Saw Choo Theng and Khye Seng Lim alias  
Lim Khye Seng Plaintiffs

- and -

Sungei Biak Tin Mines Limited Defendants

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

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ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA, HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

B E T W E E N:

SAW CHOO THENG and KHYE SENG LIM alias  
LIM KHYE SENG (Plaintiffs) Appellants

- and -

SUNGEI BIAK TIN MINES LIMITED  
(Defendants) Respondents

10

(In the matter of Civil Suit No. 615 of 1968 in the High  
Court in Malaya at Ipoh)

B E T W E E N:

Saw Choo Theng and Khye Seng Lim alias  
Lim Khye Seng Plaintiffs

- and -

Sungei Biak Tin Mines Limited Defendants

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

NO. 1

COMPLAINT TO SENIOR INSPECTOR OF MINES

In the High  
Court in  
Malaya at  
Ipoh

MINES DEPARTMENT .....

SENIOR INSPECTOR'S COURT AT  
COMPLAINT

No. 1

Complaint to  
Senior  
Inspector of  
Mines

No. Of 19

The Complaint of Saw Choo Theng and Khye Seng  
Lim alias Lim Khye Seng of No. 4, CHURCH ST, in the  
State of PENANG, taken at GEORGETOWN, PG, before me  
the undersigned MAGISTRATE in and for the State of  
PENANG this 16 day of JULY, 1968 who deposes that

16th July 1968

30 1. We are the registered lessees of Mining



In the High Court in Malaya at Ipoh

Certificates Nos. 40, 41, 42 and 43 for Lots Nos. 2312, 2311, 3481, 3482, 3483 and 3489 in the Mukim of Sungei Tinggi in the District of Larut and Matang (hereinafter called "the mining land").

No. 1

Complaint to Senior Inspector of Mines

2. By a Memorandum of Sublease Presentation No.107 Volume 1 Folio 92 duly registered on the 21st day of August 1965, we subleased the mining land to Sungei Biak Tin Mines Limited (hereinafter called "the sublessee").

16th July 1968  
(continued)

3. It has come to our attention that the sublessee has planted or allowed to be planted about 60 acres of tapioca on Lots 2312 and 2311 aforesaid. In so doing the sublessee has contravened the provisions of Clause 4 of the said Memorandum of Sublease and has contravened the provisions of the Mining Enactment (F.M.S. Cap. 147).

10

4. The remedy sought is cancellation of the said sublease.

Witness to signature or mark of Complainant.

Taken before me the day and )  
year and at the place first )  
above written )

Sd. Saw Choo Theng

20

Sd. K.S.Lim

Sd. Tahirah Suleiman.

~~Senior-Inspector-of-Mines.~~

1st CLASS MAGISTRATE



3.

NO. 2  
STATEMENT OF CLAIM

In the High  
Court in  
Malaya at Ipoh

IN THE HIGH COURT IN MALAYA AT IPOH

Civil Suit No. 615 of 1968

No. 2

Statement of  
Claim

Between

Saw Choo Theng and Khye Seng Lim  
alias Lim Khye Seng,  
of No. 4, Church Street, Penang .. Plaintiffs

16th November  
1968

And

10 Sungei Biak Tin Mines Limited

STATEMENT OF CLAIM

1. The Plaintiffs are the registered lessees of Mining Certificates Nos. 40, 41, 42 and 43 for Lots Nos. 2312, 2311, 3481, 3482, 3483 and 3489 in the Mukim of Sungei Tinggi in the District of Larut and Matang (hereinafter called "the mining land").

20 2. By a Memorandum of Sublease Presentation No. 107 Volume 1 Folio 92 Registered on the 21st day of August, 1965, the Plaintiffs subleased the mining land to the Defendants.

3. In or about September, 1967 the defendants, their servants or agents or persons with the consent, permission or knowledge of the Defendants cut down approximately 60 acres of the said mining land which was then covered with budded rubber planted in 1960/61 without the consent or permission of the Plaintiffs and on or about February 1968 planted tapioca on the said approximately 60 acres again without the consent or permission of the Plaintiffs.

30 4. By reason of the above the Defendants are in breach of Clause 4 of the said sublease in that they have contravened the provisions of the Mining Enactment (F.M.S. Cap. 147) thereby rendering themselves liable to a cancellation of the said sublease under Clause 12 of the same.

5. A complaint was made to the Senior Inspector of Mines (North) at Ipoh on 17th June, 1968 against the

In the High  
Court in  
Malaya at Ipoh

No. 2

Statement of  
Claim

16th November  
1968

(continued)

Defendants for cancellation of the said sublease.

And the Plaintiffs pray for:-

- (i) Cancellation of the said sublease.
- (ii) Costs.
- (iii) Such other relief as the Court may deem just.

Dated this 16th day of November, 1968.

Sd. Skrine & Co.

Plaintiffs' Solicitors.

This Statement of Claim was taken out by  
Messrs. Skrine & Co., Straits Trading Building,  
No. 4, Leboh Pasar Besar, Kuala Lumpur, Solicitors  
for the Plaintiffs abovenamed.

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NO. 3  
AMENDED DEFENCE

In the High  
Court in  
Malaya at Ipoh

IN THE HIGH COURT IN MALAYA AT IPOH

No. 3  
Amended Defence

CIVIL SUIT NO. 615 OF 1968

16th April 1969

Between

Saw Choo Theng and Khye Seng Lim  
alias Lim Khye Seng

PLAINTIFFS

A n d

Sungei Biak Tin Mines Limited

DEFENDANTS

AMENDED DEFENCE

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1. The defendants admit paragraphs 1 and 2 of the Statement of Claim

2. As regards paragraph 3 the defendants deny that their servants or agents cut down 60 acres of rubber as alleged; nor did any person do so with their consent, permission or knowledge. If any rubber was cut down it was for the purpose of mining and done with the consent express or implied of the Plaintiffs.

20 3. The defendants deny that they their servants or agents planted tapioca on the said area; nor did anyone do so with their consent, permission or knowledge. If planting was done with their consent or permission the defendants say that such consent or permission was given subject to the approval of the Collector of Land Revenue and persons concerned.

30 3A. In the alternative the defendants say that if any tapioca planting was done at all it was done with the oral permission of one Mr. Tan Cheng Hock of Penang Road, one of the co-owners of the land and who was a representative or agent of the plaintiffs.

3B. In the alternative the plaintiffs knew of

In the High  
Court in  
Malaya at Ipoh

No. 3

Amended Defence

16th April 1969

(continued)

and condoned the planting of tapioca.

4. The defendants deny they are in breach of clause 4 as alleged in paragraph 4 or that they have contravened the provisions of the Mining Enactment.

5. The defendants admit paragraph 5 of the Statement of Claim.

Amended and redelivered 16 day of April 1969, pursuant to Order of Court dated the 7th day of April 1969.

Sd. Lim Cheng Ean & Co.

Defendants' Solicitors.

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NO. 4  
CERTIFICATE OF GROUNDS OF JUDGMENT

In the High  
Court in  
Malaya at Ipoh

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 615 OF 1968

No. 4

Certificate  
of grounds of  
Judgment

Between

Saw Choo Theng and  
Khye Seng Lim

Plaintiffs

17th July 1969

And

Sungei Biak Tin Mines Ltd.

Defendants

10

JUDGMENT

This is an application filed initially in the Court of the Senior Inspector of Mines, at Ipoh and transferred at the instance of the plaintiffs to the High Court for cancellation of a mining sub-lease on the ground of a breach of a clause thereof. The breach complained of was that the defendants, their servants or agents or persons with the consent, permission or knowledge of the defendants had in September, 1967 cut down the rubber trees on approximately 60 acres of the mining land being part of lots 2311 and 2312, and planted tapioca thereon, again without the consent and permission of the plaintiffs.

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The plaintiffs said that by this act the defendants had contravened the provision of the Mining Enactment (F.M.S. Cap. 147) and rendered themselves liable to a cancellation of this sub-lease.

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The defences to this action were many and varied. In the first place, it was denied that their servants or agents had cut down the 60 acres of rubber trees as alleged or that any person had done so with their consent, permission or knowledge. Then it was said that if any rubber was cut down it was for the purposes of mining and done with the consent expressed or implied of the plaintiffs.

The defendants further denied that they, their servants or agents planted tapioca in the said area or

In the High  
Court in  
Malaya at Ipoh

No. 4

Certificate  
of grounds of  
Judgment

17th July 1969  
(continued)

that anyone had done so with their consent, permission or knowledge. And it was also said that, if planting was done with their consent or permission, such consent or permission was given subject to the approval of the Collector of Land Revenue and persons concerned. Another defence added by an amendment was that the tapioca planting, if any, was done with the oral permission of one Tan Cheng Hock who was alleged to be one of the co-owners of the land and a representative or agent of the plaintiffs. At the trial after hearing the evidence for the plaintiffs, the defendants sought and obtained leave to add yet another defence that in the alternative the plaintiffs knew of and condoned the planting of the tapioca. Lastly, the defendants denied that they were in breach of clause 4 of the sub-lease or that they had contravened the Mining Enactment. 10

By reasons of these several defences, the plaintiffs were put to adduce so much evidence which in the light of the evidence of Chan Hing Choy, the Managing Director of the defendant company must be considered unnecessary and wasteful of time and costs. In his short examination-in-chief, this witness admitted that he it was who allowed a certain Gooi Bak Yeow to come on the land and cultivate it by the planting of tapioca. He had a reason for giving this permission. There was at that time pressure from Government and other public or semi-official authorities to allow people to come on unused mining lands to cultivate them by planting tapioca. That being so, he thought it was in the interest of the defendant company and by inference and extension of the plaintiffs also that rather than strangers a person known to him should be allowed to do the cultivation. Such a person would not be likely to demand compensation if and when the land was required for mining and would not be likely to cause trouble as a stranger would. All this might or might not be true, but if this evidence was to be given and in fact was given by the managing director, then it is not understood, at least not by me, why so many defences inconsistent with this admission were taken. The fact that they were taken must, therefore, lend substance to the charge of Mr. Mooney for the plaintiffs that the defence was a tissue of lies, in particular the defence of denial of the cutting down of the rubber trees, of the planting with tapioca and the denial that it was done by anyone 20 30 40

with their knowledge or consent or permission.

One of the defences left was that permission was obtained from Tan Cheng Hock, who was alleged to be a co-owner and a person with authority. Tan Cheng Hock was called by the defence and he proved to be a damp squib to them. He testified that he was at one time a shareholder and a director of the defendant company, but he was never an owner or part-owner of the plaintiffs' rubber estates. Despite my refusal to allow him to be cross-examined by counsel for the defendants on a receipt and a bill from Lim, Lim and Oon, the receipt and the bill were subsequently admitted as exhibits. The bill, however, merely stated that Chan Hing Fook and K.C. Choong had received from Tan Cheng Hock \$10,000/- on the 19th October, 1963 and that \$10,000/- was a one-tenth share of the deposit and prospecting expenses amounting to "\$110,000/-" (sic) and that Tan Cheng Hock was entitled to a 10% of the share capital of the defendant company then to be formed. The bill from Lim, Lim and Oon was addressed to the defendant company and referred to attendances on Tan Cheng Hock from April, 1963 to December, 1966. Both the bill and the receipt were antecedent to the felling of the trees in September, 1967 and did not allege in any way that Tan Cheng Hock had a share in the plaintiff's estate. It was remarked that counsel for the defendants never asked this witness whether he was a co-owner of the plaintiffs' Rubber estate and it was left to counsel for plaintiffs to extract this information from him under cross-examination. What Tan Cheng Hock testified was this. Khor Kuek Jin and Chan Hing Choy visited him to tell him that they were going to plant tapioca and to get information from him whether Lim Khye Seng was then in Penang. He alleged that Chan Hing Choy told him he saw no reason why he should not plant tapioca, on the analogy that if he had rented a house, he could sub-let to whomsoever he liked. Tan Cheng Hock said that he reminded Chan Hing Choy that that would be a breach of the Mining Enactment. Having regard to this evidence, I am of the view that the defence of due authorisation from a person in authority, namely Tan Cheng Hock, failed.

Another defence left is knowledge and condonation on the part of the plaintiffs. As to this, Lim Khye Sang, the second plaintiff, denied that he was ever informed of the cutting down of the rubber trees and the

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of grounds of  
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17th July 1969  
(continued)



In the High  
Court in  
Malaya at Ipoh

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Certificate  
of grounds of  
Judgment

17th July 1969  
(continued)

planting of the tapioca until some time after the event. When he came to know, he instructed his solicitors to write to the Senior Inspector of Mines, North Perak, lodging a preliminary complaint. This was the letter of 7th August, 1968 (page 9 of the agreed bundle A). Subsequently, he received a letter from Gooi Bak Yeow dated 5th November, 1968, asking for permission to harvest the tapioca already planted and making an offer to pay him a lump sum of \$2,000/- and a certain percentage of the crop harvested. It transpired that he had a meeting with this Gooi Bak Yeow on 5th November, and that this letter was written by Gooi Bak Yeow subsequently to that meeting by way of a written confirmation of his application and offer. It was, however, alleged by the defence that he knew of the cutting down of the rubber trees for the purpose of planting the tapioca in November, 1967, when he visited the mines. At that time the cutting down of the trees was in full swing and it was said he not only could not help seeing but he did see the cutting. The defendants produced Leong Wai Nyeen, their mining consultant (D.W.1), to say that he met Lim Khye Seng at a bridge across the Sungei Weng during a visit to the mines on the 8th November, 1967 and that at this bridge one must necessarily see the felling of the trees. This evidence from Leong Wai Nyeen was only given when he was recalled by the defendants. He said he had gone home after his first appearance in the witness-box and had found a diary which enabled him to recall this particular visit. When this diary was inspected, it was shown to contain merely the entry "Visited Sungei Biak, T.C. Wah 9.30-10.00 at Mine." There was no reference whatsoever to Lim Khye Seng but Leong Wai Nyeen said that he did introduce Tan Chin Wah, an Assistant Engineer of the Drainage and Irrigation Department, to Lim Khye Seng and that was the place of the introduction. It also enabled him to recollect the meeting. Lim Khye Seng, however, said that on that day when he visited the mines he had stood at a spot or spots from which he could not see the felling and that he was suddenly taken ill so that he cut short his tour of inspection and returned to Penang. He did not see the felling.

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There is therefore a conflict of evidence before me and the conflict arose from Leong Wai Nyeen whom I have no reason whatsoever to consider as a person with any interest in the matter or as likely to prevaricate. There is, however, a certain document

which, to my mind, enables me reasonably to ascertain the truth. On the day after he returned to Penang, Lim Khye Seng wrote a letter to the defendants (page 8 of the agreed bundle A) expressing his regret that the rubber trees planted in 1960 on the whole portion of lots Nos. 2236, 2237, 2238 and 2239 had been cut down and requesting information whether that particular area was being required for mining and when would it be actually mined. His concern sprang from the reservation to him as the sub-lessor of the right to tap the rubber trees on the mining lands and it was in his interest that no trees should be cut down and that all trees should be preserved for tapping until the last moment the land was reasonably required for mining. His concern regarding lots 2236, 2237, 2238 and 2239 which lay south of the Sungei Wang must reasonably be extended to lots 2311 and 2312 which lay across and north of the river and he would have queried the felling on lots 2311 and 2312 as he had done for the other lots, had he but known. To my mind, this letter clearly showed that Lim Khye Seng had in November, 1967, no idea whatsoever that the rubber trees on lots 2311 and 2312 were being felled. It might be that Leong Wai Nyeon was confused and that he gave evidence of what happened on another day as occurring on the 8th November. I find, therefore, that at this inspection on the 8th November, Lim Khye Seng did not acquire any information either by himself or from others that the rubber trees on lots 2311 and 2312 were being felled.

Evidence was also given by Ramadas (P.W. 5), the manager of the plaintiffs' rubber estates and the asst. manager of the defendants' mining company, a man, so to say, with a foot in each camp, that when he saw the rubber trees being cut down in September, 1967 he mentioned this (there was then, of course, no planting) in his monthly report at the end of that month. He was unable to say whether Lim Khye Seng saw this report. It was never suggested at any stage to Lim Khye Seng that he had seen this report. Even if he had, he would not have known of the planting with tapioca, which did not commence until February, 1968. But I think it is reasonably certain that he did not and the proof of this lay also in that letter of the 9th November, 1967.

This, in my view, disproves the defence that the plaintiffs knew of and acquiesced in the planting of the tapioca. The defendants could not therefore

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Court in  
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(continued)

bring themselves within the equitable doctrine of acquiescence: see Fry J. in Willmott v. Barber (1880) 15 Ch.D.96, approved in Electrolux Ltd. v. Electrix Ltd. and anor. (1953) 71 R.P.C. 23, at 32, to which my attention was drawn by Mr. Mooney for the plaintiffs.

So far as the plaintiffs are concerned, it is not very material whether the planter of the tapioca Gooi Bak Yeow was a licensee or a contractor for the deft. Company, though they contended that on the evidence, he was more likely a contractor than a licensee. After evidence was led, it became a common ground that Gooi Bak Yeow planted the tapioca. The defendants said they give him licence to come on the land and carry out his agricultural scheme but they denied very strenuously the suggestion of the plaintiffs that he was their contractor and was doing the work on their behalf. They explained that the pressure from the local council to permit tapioca planting by way of affording relief to the poor of the locality forced or led them to accept Gooi Bak Yeow as the devil they knew (if I may be permitted to use this term) in preference to angels they did not know. Gooi Bak Yeow, they expected, would give up the land at any time they wanted it for mining purposes and would not demand compensation as others, strangers, would. How Gooi Bak Yeow was set apart from the common run of mankind by this streak of honour in his character has never been made clear to me. I have listened in Court, with incredulity, I confess, to the many stories of persons lending money to friends without interest who were subsequently faced with having to resort to actions in Court for the return of their money and were met with defences of unconscionable money-lending. Be that as it may, Gooi Bak Yeow was obviously not a person belonging to that category of indigenious and indigent farmers whom the Government at that time desired to help. He was from a neighbouring district. He was a man of some substance, a man who could produce the capital to fell an area as considerable as 60 acres of rubber trees and plant the same with tapioca. He had the means, either by purchase or by hire, of using three tractors. These facts must distinguish him clearly from the class of poor people. There is in evidence a letter produced by the defendants themselves, from the Chairman of the Ayer-Terjun local Council, Trong, to them seeking their co-operation in making available their lands for

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the jobless. Where a person had such considerable means as Gooi Bak Yeow he could not be considered jobless. If he was not employed, his means would enable him to create an occupation or occupations for himself. But, of course the defendants said they would rather have Gooi Bak Yeow than any local people. Their fears, however, that the local people would not give up the land when they would require it and would demand compensation were however on their own evidence untrue, because their own witness, Leong Wai Nyeon, who was himself a member of a Government sub-committee set up to examine the use of mining lands under Temporary Occupation licences, produced a letter from the Senior Inspector of Mines assuring that the Temporary Occupation licences issued for such users would be subject to a term not exceeding one year and a further condition that on final expiry of the licences the question of compensation would not arise. There is, therefore, as far as I can see, on the evidence no reason whatsoever for the preference of Gooi Bak Yeow to the indigenous people in so far as the Government's proposal for the use of mining lands to help the poor is concerned. It is, in my view, clear on the evidence that the entry of Gooi Bak Yeow on the land for the planting of tapioca was not in furtherance of the objects of the Government. It was a commercial project. The area planted was considerable. The crop planted was inedible. It was for the production of commercial starch. The object was obviously profit and considerable profits at that. What the profit was expected to be was not established. Ramadas estimated the cost of felling, clearing and planting with tapioca at \$200/- per acre, or at about \$12,000/- for the whole of the 60 acres, and the yield at 400 piculs an acre. The price in 1968 at \$3/- a picul would result in a gross income of \$72,000/-. At \$2/- a picul on a production of 200 piculs per acre, as contended by Gooi Bak Yeow, the income would gross \$24,000/-. Even on his own estimate, the profits to be derived were not inconsiderable.

The status of Gooi Bak Yeow seemed to be a matter of serious importance to the defendants, and they strenuously contended that Gooi Bak Yeow was not their contractor. They stressed as proof that the financial matters connected with the felling and the tapioca planting did not appear in the books of their

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(continued)

mining company. That might well be so but, as anyone could readily appreciate, that was not conclusive. It might be, I stress, might be, that this meant if the undertaking was the mining company's that the transaction was kept from the income tax authorities or from the other shareholders. The defendants however stated that the kongsi house built to house the tapioca labourers was built at the expense of Gooi Bak Yeow but they were forced to admit after hearing the evidence of the plaintiffs that they supplied electricity to this kongsi house and what was more significant, they supplied food for these labourers. Chan Hing Choy tried to explain away the significance of this evidence by alleging that the defendant company was in the habit of providing free food to all its friends. This evidence must, of course, be seen in the light of all the other evidence. Gooi Ee Beng, one of the directors, showed very great concern when the tapioca was damaged by an estate labourer. His reaction to the damage to the crop of another person to whom he was in no way indebted and to whom, if I believe him he had already shown great generosity, was inordinate. Then again the concern shown not only by Gooi Ee Beng but also K.C. Choong and Khor Kuek Jin, all directors of the defendant company, that the crop should be successfully harvested was equally inordinate. They took the trouble to bring Gooi Bak Yeow, the planter, to see Lim Khye Seng and after him, Saw Choo Theng, the other trustee for the owners. When pressed for the reason why they went to such extraordinary lengths to help Gooi Bak Yeow to whom they were under no obligation to make compensation, they were in a quandary how to reply. They said they had no other intention except to help Gooi Bak Yeow but finally one of them (I think it was K.C. Choong) admitted that their intention was to induce the plaintiffs to stop the action and inferentially, to allow the crop to be harvested. This, in my view, did not satisfactorily answer the question. If Gooi Bak Yeow was a mere licensee, he would have entered the land subject to the risks attendant upon his failure to get the landowners' consent. Perhaps they felt a duty to Gooi Bak Yeow after having held out to him that they were the owners of the land, as the consent given to him to support a very late application for a Temporary Occupation licence (page 17 of the agreed bundle A) would suggest. But that was never part of their case and

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no word came from any of their mouths to suggest it, and I am left to conclude that this was not so. In the result there was no satisfactory explanation for their conduct and their concern.

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10 There is also the evidence of Ramadas of a dispute over the area actually felled and the determination of the amount due to the contractor, Gooi Bak Yeow by a survey, which I see no reason to disbelieve. Chang Hing Choy made a general denial but K.C. Choong failed altogether to make a denial of any sort or in any way to challenge this evidence.

20 Apart from this, the question that come to my mind are these. Is it within the bounds of ordinary human nature when not associated with any religious motive or practice to indulge in such an exhibition of altruism? In the context of the mining agreement, is it possible that the defendant company would deliberately set out to violate the reservation to the plaintiffs of the rights to the rubber trees for no gain whatsoever? Then, is it within the bounds of belief that the defendants should for no consideration whatsoever allow anybody, even someone they knew to make use of 60 acres of their land and to earn substantial profits without requiring rentals for the use of the land or a share of the profits? Mirabile dictu. The defendants said yes. They were prepared to give 60 acres of the land to be used for no return whatsoever. They explained that 30 they had no experience in tapioca planting and they also said that, if they were to embark on tapioca planting, they would require a meeting of the Board of Directors and change of their memorandum of association. They might have no experience by themselves of tapioca planting, but they could easily have engaged some one with the necessary expertise, and what is stranger, and more telling against the defendants, an examination of their memorandum of association showed at once that a Board meeting need 40 not be held as there was provision for such adventure. They also said that they were not sure whether the venture would result in a profit but, if Gooi Bak Yeow was only planting for himself, then surely it was no concern of theirs whether a loss eventuated. Any ordinary landlord would have demanded rents for the use of the land which would have been payable under any circumstances. At the very least, if the defendant company desired to help Gooi Bak Yeow, it

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could have stipulated for a share of the profits payable if the venture was commercially successful. It would have meant an improvement to its own profits to the extent of this share. Basically, the defendants were hard put to explain how they, hard-headed businessmen, persons who engaged in several mercantile propositions and mining adventures at the same time, could reasonably be expected to forego a certainty of gain. I know the necessity of warning myself against cynicism but having regard to the profits to be made from tapioca planting at this time, (in this respect I prefer the evidence of Ramadas to that of Gooi Bak Yeow) I am unable to accept the story of giving a large area to a stranger as being likely or remotely true. I have borne in mind that Gooi Bak Yeow was a relative of Gooi Ee Beng, one of the directors, but it was never alleged by the defendants that this relationship had anything to do with the user of the land, and it is also clear from the list of directors that this was not a family concern. The relationship of Gooi Bak Yeow to Gooi Ee Beng had, in my view, nothing to do with the selection of Gooi Bak Yeow. 10

On the whole of the evidence, I find myself compelled to the finding that Gooi Bak Yeow was not a planter in his own rights but a contractor who did the planting for and on behalf of the defendants. 20

Mr. Lim Kean Chye suggested that one of the issues in this case was whether the defendants were mistaken about the law when they gave their consent to Gooi Bak Yeow. This issue arose only if Gooi Bak Yeow was a licensee, and for the purpose of this submission I shall assume this to be so. But as to this, Chan Hing Choy in cross-examination when shown clause 15 of the mining agreement, while admitting the existence of this clause, endeavoured to play down its effect by saying it was inoperative and the plaintiffs could not legally tap the rubber on the land without obtaining a Temporary Occupation licence. He said also he came to know of this provision of law when he mined for iron-ore sometime in 1960. He repeated it was the responsibility of the estate owners to get the necessary permits. Now it is a common ground that the rights of lessees and sub-lessees of mining land relate to ores and metals under the ground and do not extend to surface rights and this is true whether the land is State land or land that has been surrendered to the 30 40

Government for conversion to mining land and that consequently an estate owner who had surrendered his cultivated land for conversion to mining land loses his right to the plants on the land. If he wishes to derive any benefits from the trees on the land, he must obtain a Temporary Occupation licence. In the case of surrendered land, I have no doubt a grant of a Temporary Occupation licence before he can tap the agricultural resources. That is the law and it was known to Chan Hing Choy. In my view, it could not, therefore, be said that the defendants were mistaken about the law when they gave their consent to Gooi Bak Yeow. Since Chan Hing Choy knew when he gave permission in 1967 and 1968 without acquiring due authorisation from Government he must have known that he was committing a breach of the Enactment if not an offence. The fact that the approval of the Government could not be obtained without the consent of the landowners could not be a mitigating factor in the relationship between the plaintiffs and the defendants. It follows that where there was no mistake, there could be no relief on this one ground.

As for the defence that the rubber was cut down for the purpose of mining, the defendants' own evidence showed quite clearly that if there was any truth in this, it was only obliquely true. The secondary purpose might be mining but as pointed out, this anticipation by such a long period would result in having to clear the new vegetation that would have grown in the meantime. There is no doubt that the primary and in my view, the whole purpose of the felling was to prepare the ground for tapioca planting.

Then the defendants said that their consent, which they now admitted, was given subject to the approval of the Collector of Land Revenue "and persons concerned." With the greatest of respect, I am not at all sure what this means. The position of law, as I understand it, is this: the intending planter has to obtain the consent of the sub-lessees and what is more important, the consent of the lessees before applying for governmental approval. There can be no approval by the government, in the case of an area of less than 10 acres by the land Officer or his deputy and in the case of a larger area by the Ruler in Council, without the prior consent of the lessees. Here, the consent of the sub-lessees

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was given without the approval of the lessees being obtained at any time and was given on the footing that they were the owners of the land. This is clear from the use of the phrase "our land" in the written consent (page 27 of the agreed bundle A), signed by two of the directors of the defendant company. The qualification in this consent that it was subject to the approval of the Senior Inspector of Mines and "any other relevant authority" is, with respect, meaningless without the consent of the lessees and could not be anticipatory of governmental approval. In my view, it does not afford any justification to the defendant company vis-a-vis the lessees, or even the Government, since planting without the prior permission of the Government is a breach of the Mining Enactments. The application of Gooi Bak Yeow on 3rd July, 1968, was a post-factum attempt to legalise the planting but it could not be legalised without the consent of the lessees. 10

Then in his submission, Mr. Lim Kean Chye suggested that a proper consideration should be given to the issue whether the defendants were not acting with the intention of protecting the mining rights on the land and further, irrespective of their intention, whether they did objectively benefit mining of the land. I must of course give due consideration to this submission. But if it was true that Gooi Bak Yeow was a licensee and the defendant company had made it a condition of the licence that he should give up the land whenever it was required for mining without any rights of compensation, then, I suppose it could be said that they were protecting or had the intention of protecting the mining rights. And since mining could not commence until the land was cleared, it could also be said that the defendants ultimately benefited the mining of the land, but only ultimately, since in this lush climate of ours, new vegetation would invariably spring up in the interval. Even if I am wrong in holding that Gooi Bak Yeow was not a licensee but a contractor, I fail, with respect, to see the point of this submission. Incidental or consequential effects could not and did not mask the primary motives for the planting. 20 30 40

The facts in this case, as I found them, all went against the defendant company. I think counsel for the defendants half-suspected that they would. He said nevertheless he was still before the



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(continued)

On behalf of the plaintiffs, Mr. Mooney contended that by reason of the felling and planting, the defendants were in breach of this clause 4 in that they had contravened the provisions of the Mining Enactment, rendering themselves liable to a cancellation of the sub-lease under clause 12 of the same.

Clause 4(b) of the sub-lease reproduced and enlarged Clause 4 of the statutory form of a mining sub-lease in Schedule X of the Enactment, which by s. 36(1) it was required to follow in substance except for such variations of form as the Collector of Land Revenue might permit. The enlargement was a provision making applicable to the sub-lease the express conditions contained in the Mining Certificates and was, as far as I can see, of no significance, either to the effect or validity of the clause. It was perhaps tautologous as it repeated Clause 4(a). However, the provision for the operation of the Mining Enactment must eliminate any doubt, if any was entertained, that the implied conditions to be observed by the lessee contained in s:16 of the Enactment were made applicable to the sub-lessees. Among such implied conditions was this:

s.16. There shall be implied in every mining lease in the absence of any express condition to the contrary the following covenants and conditions on the part of the lessee:

.....

(vii) that the lessee will not use or permit to be used any portion of the land for any purpose other than those mentioned in section 14 without the written authority of the Collector.

Now s. 14 contains the rights of the lessee, which are essentially the rights to the minerals and metals in the land but these rights do not, as agreed to by both sides to this dispute, extend to the surface except that by sub-section (iii) the right is reserved to use such portions of the land as may be required for the purpose of erecting such houses, lines, sheds or other buildings or of growing such plants and vegetables or of keeping such animals and poultry as may in the opinion of

the Senior Inspector be reasonable for the purpose of the mine or for the use of the labourers. On a proper construction, it is, I think, reasonably clear that agricultural user of mining land other than under s. 14 (iii) is a breach of the implied condition in s. 16(viii) of the Enactment.

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10 The defence had never for a moment contended nor do I think that it could ever contend that the growing of 60 acres of tapioca came within the saving provisions of section 14(iii). There was therefore a breach of s. 16(vii). That being so, it remains to be considered whether by their breach the defendants had, as claimed by the plaintiffs rendered themselves liable to a cancellation of the sub-lease.

20 The powers of the Senior Inspector of Mines to cancel at his discretion a sub-lease are contained in s. 97(ii) and exercisable for the grounds specified therein, of which the relevant provision is that

- (b) the sub-lessee has not worked the land in accordance with Clause 4 of the sub-lease in Schedule X or has by his default rendered the land liable to forfeiture under the Enactment.

30 Mr. Lim Kean Chye pointed out, I think, quite rightly, that forfeiture of the land arose only in the case of a breach of one of the conditions (i), (iii) and (v) of s. 16 as provided for in section 21, and that not one of these conditions was complained of as being broken. He therefore suggested that all that the defendants had rendered themselves liable to was a fine under s. 120.

40 With respect, it seems to me that on a proper interpretation, s. 97(ii)(b) is in two limbs which are not together cumulative but disjunctive. In my view, the language is sufficiently clear as to admit no other interpretation. Where a sub-lessee has not worked the land in accordance with clause 4 of the sub-lease in Schedule X, in the words of this clause, in an orderly, skilful and workmanlike manner and subject to the provisions of the Mining Enactment, he renders himself liable to a cancellation of his sub-lease, even though his breach, being neither of conditions (i), or (iii), or (v) of s. 16

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did not render the land liable to forfeiture under the Enactment. Ex hypothesi, forfeiture of the land is at the instance of the Government, whereas cancellation of the sub-lease is generally on the application of the lessee. Where, therefore, a sub-lessee is in breach of any of the other conditions, he may be liable to a fine under s. 120 but he also puts himself into a position whereby his sub-lease can be cancelled and he will find himself in this position when by reason of his breach, the lessee applies for a cancellation. 10

In this case, the sub-lessees had been in breach of s. 16(vii), since the planting of the tapioca either by them or by their licensee could not be said to be in the exercise of the right given in s.14(iii). Mr. Lim Kean Chye conceded that in a mining certificate the lessee had no surface rights at all but suggested that Clause 4 in Schedule X referred to the working of the mine which must be skilful, orderly and workmanlike and which must be subject to the provisions of the Mining Enactment and that a user which might be a breach of a condition did not detract from the manner in which the mine was worked and was not, per se, a breach of the provisions of the Mining Enactment. With respect, the interpretation sought by Mr. Lim Kean Chye on this Clause 4 in Schedule X seems to me to put an unnatural strain on the meaning of the words. That this is so, is in my view, apparent in the concession that a lessee has no rights whatsoever to the surface, except in so far as is necessary for his mining purposes and as is permitted by s.14(iii). It follows therefore that a user not otherwise permitted could not be said to be in accordance with the provisions of the Mining Enactment. It further follows that the sub-lessees, whether they had planted the tapioca or had permitted the planting, were in breach of s.16(vii) and therefore caught by the first limb of s. 97(ii)(b) and they had thereby, as claimed by the plaintiffs rendered themselves liable to a cancellation of their sub-lease, at the instance of the plaintiffs. 20 30 40

The discretion vested in the Senior Inspector of Mines now falls on me. It is of course axiomatic that this discretion must be exercised judicially. And judicially, I cannot but regard the action of the defendants as being reprehensibly high-handed. They had, in full knowledge, set out

to commit a deliberate breach of the agreement and the Mining Enactment and used the land without the permission of the proper landowners or of the Government to acquire considerable profits for themselves. Even if I am wrong in finding as a fact, that Gooi Bak Yeow was a contractor and not a licensee, a breach was nevertheless deliberately committed by them for permitting an illegal user. Further they had ignored the rights of the plaintiffs to the rubber trees reserved under Clause 15 of the sub-lease. The fact that until the trees matured the rights were only prospective, in my opinion, did not detract from the seriousness of their breach of agreement. The defence was a tissue of lies and whatever sympathy I had at the commencement of the case for the defendants evaporated with the evidence they led. If the defendants would ask the Court to exercise its equitable jurisdiction in their favour they must come with clean hands and this they had patently not done. Further, their villification of Lim Khye Seng was without foundation. This witness was cross-examined as to the purpose of this application and it was suggested to him that he was "gunning" for Chan Hing Choy from personal vindictiveness. I must presume that counsel for the defendants was acting on instructions but if there was any truth in it, it should be proved, to establish a ground for the exercise of the Court's discretion. But strangely, after making this allegation, the defendants made no serious attempt to prove it. Of the three witnesses to whom this remark was alleged to have been made, only one, D.W. 6, said anything to this effect. The other, D.W.5, did not say one word in proof. The third (Khor Kuek Jin) was not called as a witness, though I was advised from the Bar, that he was present in Court. When it comes to asking the Court to exercise its discretion in their favour, the entire defence must be seen to be regrettable but in view of this defence and the evidence, I cannot find, search as I have done any ground, in law or in equity, to relieve the defendants from the claim against them.

For the reasons above stated, I make an order for the cancellation of the sub-lease. The Plaintiffs will have the costs of the application.

Dated at Ipoh this 17th day of July, 1969.

Sd: Chang Min Tat, Judge.

Mr.P.J.Mooney for Plaintiffs.

Mr.Lim Kean Chye for Defendants.

50 TRUE COPY

Sd:

Secretary to Judge High Court, Malaya, Ipoh.

In the High  
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Malaya at Ipoh

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(continued)

In the High  
Court in  
Malaya at Ipoh

NO. 5  
O R D E R

IN THE HIGH COURT IN MALAYA AT IPOH  
CIVIL SUIT 1968 NO. 615

No. 5  
Order  
17th July 1969

Between

Saw Choo Theng and Khye Seng Lim  
alias Lim Khye Seng Plaintiffs  
And Sungei Biak Tin Mines Limited Defendants

BEFORE THE HONOURABLE MR. JUSTICE CHANG MIN TAT  
THIS 17TH DAY OF JULY 1969. IN OPEN COURT.

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ORDER

This Action coming on 26th and 27th June 1969 and the 2nd, 3rd and 4th July 1969 for trial before this Court in the presence Counsel for the plaintiffs and Counsel for the defendants AND UPON READING the pleadings And UPON HEARING the evidence and what was alleged by Counsel for the plaintiffs and for the defendants

THIS COURT DID ORDER that the said action should stand for judgment on 17th July 1969

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AND THIS ACTION standing for judgment this day in the presence of Counsel for the plaintiffs and for the defendants.

THIS COURT DOETH ORDER that the sublease presentation number 107 volume 1 folio 92 registered on the 21st day of August 1965 over Mining Certificates Nos. 40, 41, 42 and 43 for Lots Nos. 2312, 2311, 3481, 3482, 3483 and 3489 in the mukim of Sungei Tinggi in the District of Larut and Matang be and is hereby cancelled.

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AND IT IS FURTHER ORDERED that the plaintiffs costs of this suit be taxed by the Senior Assistant Registrar of this Court and paid by the defendants to the plaintiffs.

Given under my hand and the seal of the Court this 17th day of July, 1969.

TRUE COPY  
Sgd.

Senior Assistant  
Registrar,  
High Court, Malaya  
Ipoh.

Sdg.  
ABU BAKAR BIN AWANG

Senior Asst. Registrar,  
High Court, Ipoh

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NO. 6  
NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

CIVIL APPEAL NO.                      OF 1969

Between Sungei Biak Tin Mines Limited Appellants  
And Saw Choo Theng and Khye Seng  
Lim alias Lim Khye Seng Respondents

(In the matter of Civil Suit No. 615  
of 1968 in the High Court in Malaya at Ipoh

Between Saw Choo Theng and Khye Seng Plaintiffs  
Lim alias Lim Khye Seng  
And Sungei Biak Tin Mines Limited Defendants)

In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

No. 6  
Notice of Appeal

17th July  
1969

NOTICE OF APPEAL

TAKE NOTICE that Sungei Biak Tin Mines Limited being dissatisfied with the decision of the Honourable Mr. Justice Chang Min Tat given at the High Court at Ipoh on the 17 day of July 1969 appeals to the Federal Court against the whole of the said decision.

Dated this 17th day of July, 1969.

Sd: Lim Cheng Ean & Co.  
Solicitors for the Appellants

To: The Registrar,  
Federal Court,  
Kuala Lumpur.  
  
The Senior Assistant Registrar,  
High Court,  
Ipoh.

The Respondents abovenamed or their solicitors Messrs. Skrine & Company, Straits Trading Building, 4 Leboh Pasar Besar, P.O. Box 987, Kuala Lumpur.

The address for service for the Appellants is c/o M/s. Lim Cheng Ean & Company of Malayan Banking Chambers, 12 Station Road, Ipoh.

Filed this 17th day of July 1969 and \$500/- deposited in Court vide Receipt No.X 779385 of 18.7.69

Sd:  
Senior Assistant Registrar, High Court, Malaya  
Ipoh



In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

NO. 7  
MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO. X 81 OF 1969

No. 7  
Memorandum of  
Appeal

26th August  
1969

Between  
Sungei Biak Tin Mines Limited Appellants  
And  
Saw Choo Theng and Khye Seng Lim alias  
Lim Khye Seng Respondents 10

(In the matter of Civil Suit No. 615 of  
1968 in the High Court in Malaya at Ipoh

Between  
Saw Choo Theng and Khye Seng Lim alias  
Lim Khye Seng Plaintiffs

And  
Sungei Biak Tin Mines Limited Defendants )

MEMORANDUM OF APPEAL

Sungei Biak Tin Mines Limited, the appellants  
abovenamed appeal to the Federal Court against the  
whole of the decision of the Honourable Mr. Justice  
Chang Min Tat given at Ipoh on the 17 day of July  
1969 on the following grounds:- 20

1. The learned trial judge failed to exercise his  
discretion judicially in refusing the defendants'  
application that the case be heard by another judge  
on the grounds of possible apparent prejudice by the  
trial judge.
2. The learned trial judge erred in holding that  
the alleged acts of the defendant company amounted to  
a breach of the Mining sub-lease. 30
3. That the learned trial judge erred in law in  
holding that a breach of s. 16(vii) rendered the sub-  
lease liable to a cancellation under s. 97(ii)(b) of  
the Mining Enactment.
4. That the learned trial judge in the exercise of

the discretion under s.97 (ii) misdirected himself in law in holding that the defendants were asking the Court "to exercise its equitable jurisdiction in their favour" and in applying principles of equity.

5. If principles of equity are applicable in the exercise of the discretion under s.97(ii) the learned trial judge misdirected himself in law in acting on wrong equitable principles.

10 6. That there has been no, or no proper, exercise by the learned trial judge of the discretion under s. 97(ii).

7. The learned trial judge erred in law in failing to hold that the plaintiffs were bound by the acts and omissions of their manager, servant and agent, one Ramadas.

8. The plaintiffs being bound by their manager, servant and agent, Ramadas, acquiesced in and/or waived the alleged breaches of the Mining sub-lease by the defendant company.

20 9. The learned trial judge erred in ordering the cancellation of the said sub-lease without considering whether damages were a sufficient remedy for the alleged breaches of the said sub-lease.

10. The learned trial judge erred in ordering the cancellation of the said sub-lease without giving the defendant company an opportunity to remedy the alleged breaches of the said sub-lease.

Dated this 26th day of August, 1969.

30 Sgd: Lim Cheng Ean & Co.  
Solicitors for the appellants

To:

1. The Registrar,  
Federal Court,  
Kuala Lumpur.
2. The Senior Assistant Registrar,  
High Court,  
Ipoh.
3. The respondents abovenamed or  
their solicitors,  
Messrs. Skrine & Company,  
Straits Trading Building,  
4, Leboh Pasar Besar,  
P.O. Box 987,  
Kuala Lumpur.

In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

No. 7

Memorandum of  
Appeal

26th August  
1969

(continued)

In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

NO. 8  
JUDGMENT OF ONG HOCK THYE, C.J.

Cor: Ong Hock Thye, C.J.  
Gill, F.J.  
Ali, F.J.

No. 8  
Judgment of  
Ong Hock Thye,  
C.J.  
9th December  
1969

This appeal raises for the first time the proper interpretation of clause 4 in the statutory form of mining sub-lease, as prescribed by Schedule X of the Mining Enactment (Cap. 147), which provides -

"4. That the sub-lessee shall work the said land in an orderly skilful and workmanlike manner and subject to the provisions of the Mining Enactment and shall be liable to indemnify the sub-lessor for any expenses which he may incur, whether as fine inflicted on him or otherwise, on account of any breach of this condition by the sub-lessee." 10

The action arose out of an application made originally in the Court of the Senior Inspector of Mines - which was transferred for adjudication to the High Court in Ipoh at the instance of the sub-lessors - for cancellation of a sub-lease on the ground of breach of a condition thereof by the sub-lessees. The breach complained of lay in the planting of tapioca on 60 acres of the mining land, either by the sub-lessees or with their connivance, which the sub-lessors claimed was such contravention of the Mining Enactment as rendered the sub-lease liable to cancellation in accordance with an express condition therein. 20 30

The facts may be set out in a few words, since the findings of the trial judge are not challenged in this appeal. The sub-lessors, now respondents, had, on August 7, 1965 subleased approximately 188 acres of mining land to the appellants. Part of the land, comprised in Lots 2312 and 2311, was under young rubber still not ripe for tapping. While carrying on mining operations elsewhere on the sub-leased land, the appellants caused or permitted the felling of about 60 acres of this rubber for the planting of tapioca, without the respondents' knowledge or consent. This occurred between September 1967 and 40

February 1968. Complaint was first made to the Senior Inspector of Mines on June 17, 1968, followed by an application to the Mines Court on July 16, 1968 for cancellation of the sub-lease. The statement of claim was filed in the High Court on November 16, 1968 and judgment given for cancellation of the sub-lease on July 17, 1969. Evidence adduced at the trial showed that the total value of tin-ore won in 1967 by the appellants' mining operations was \$1,297,826.71, on which the tribute paid to the respondents, at the rate of 15 per cent, was \$192,638.74. The total value of tin-ore won in 1968 was \$1,071,644/-. The gross profits from the tapioca crop - without allowing for expenses incurred - which the appellants would have stood to gain by their default was, according to conflicting estimates, as high as \$72,000/- or as low as \$24,000/-. In the judge's view, even the lesser figure was "not inconsiderable".

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The question which now falls to be determined is whether the user of the land for tapioca constituted such a breach of clause 4 of the sub-lease as entitled the respondents to its cancellation. This clause consisted of two paragraphs: (a), which is not to be found in clause 4 of Schedule X, and (b), which followed the form in the Schedule, with the addition of the following words "or any of the express conditions contained in the said Mining Certificates or Mining Leases to be issued in place thereof". For present purposes, however, the departure from the prescribed form is wholly irrelevant and immaterial. It will be necessary only to refer to clause 4 in the Schedule as quoted at the beginning of the judgment.

Under Section 97(ii)(b) of the Mining Enactment "the Senior Inspector shall have power in his discretion to cancel a sub-lease upon proof to his satisfaction that the sub-lessee has not worked the land in accordance with clause 4 of the sub-lease in Schedule X, or has by his default rendered the land liable to forfeiture under this Enactment."

Here it may be observed that there is a distinction between cancellation of a sub-lease -- which would be at the instance of the sub-lessor -- and its forfeiture. In the latter case, action is taken to that effect by the State, in accordance with provisions laid down by section 22. The penalty of

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(continued)

forfeiture, however, is provided expressly for breach or non-observance of certain specified covenants or conditions only, as set out in three sub-sections of section 16, none of which, it was conceded, had been broken.

The alleged breach or default, which the respondents managed to prove and on which they founded their right to cancellation, was in respect of sub-section (vii) of section 16, setting out a condition which "shall be implied in every mining lease in the absence of any express condition to the contrary", namely -

10

"(vii) That the lessee will not use or permit to be used any portion of the land for any purpose other than those mentioned in section 14 without the written authority of the Collector."

The permitted user referred to above may be described as ancillary to mining, namely, the use of "such portions of the land as may be required for the purpose of erecting such ..... buildings, or of growing such plants and vegetables or of keeping such animals or poultry, as may in the opinion of the Senior Inspector of Mines be reasonable for the purposes of the mine or for the use of the labourers": see section 14(iii).

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Under clause 12 of the sub-lease it was provided that the same "shall be liable to cancellation at any time at the discretion of the Senior Inspector of Mines or the Court upon proof, inter alia of a breach of clause 4 in Schedule X, reproduced verbatim."

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In the view of the learned trial judge, the agricultural user of mining land, other than under the saving provisions of section 14(iii), constituted a breach of the implied condition stated in section 16(vii). The planting of 60 acres of tapioca could not reasonably be considered as within the contemplation of that sub-section. Thus it only remained for him to determine the question of law whether or not the sub-lessees rendered themselves liable to cancellation of their sub-lease. The conclusion he came to is best expressed in his own words:

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"It seems to me that on a proper

interpretation, s.97(ii)(b) is in two limbs which are not together cumulative but disjunctive. In my view the language is sufficiently clear as to admit of no other interpretation. Where a sub-lessee has not worked the land in accordance with clause 4 of the sub-lease in Schedule X, in the words of this clause, in an orderly, skilful and workmanlike manner and subject to the provisions of the Mining Enactment, he renders himself liable to a cancellation of his sub-lease, even though his breach, being neither of conditions (i) nor (iii), nor (v) of s.16, did not render the land liable to forfeiture under the Enactment. Ex hypothesi, forfeiture of the land is at the instance of the Government, whereas cancellation of the sub-lease is generally on the application of the lessee. Where, therefore, a sub-lessee is in breach of any of the other conditions, he was liable to a fine under s.120, but he also puts himself into a position whereby his sub-lease can be cancelled and he will find himself in this position when, by reason of his breach, the lessee applies for a cancellation.

"In this case, the sub-lessees had been in breach of s.16(vii), since the planting of tapioca by them or by their licensee could not be said to be in the exercise of the right given in s.14(iii) .... It follows, therefore, that a user not otherwise permitted could not be said to be in accordance with the provisions of the Mining Enactment. It further follows that the sub-lessees, whether they had planted the tapioca or had permitted the planting, were in breach of section 16(vii) and therefore caught by the first limb of s.97(ii)(b) and they had thereby, as claimed by the plaintiffs, rendered themselves liable to a cancellation of their sub-lease, at the instance of the plaintiffs." (The italics are mine).

The question before this Court is whether the words of clause 4 in Schedule X are rightly applied to the facts of this case. To this and I derive inspiration from the following dicta in the judgment of Lord Reid in Griffiths v. J.P.Harrison (Watford) Ltd.(1)

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No. 8

Judgment of  
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(continued)

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(1) (1962) 2 W.L.R. 909, 915.

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(continued)

"Any decision by any court or other tribunal whether the words of an Act apply to the facts of a particular case must, unless the matter is concluded by authority, ultimately depend on its knowledge of the usage of the English language in ordinary affairs of the kind with which the particular Act is concerned. The court or tribunal may be assisted by legal principles or by so-called rules of construction, but these cannot solve the question. The question whether the words of an Act apply to particular facts is generally called a question of law. 10  
But to my mind it is in reality neither a question of law nor a question of fact. It cannot be solved either by the application of legal principles or by evidence. A court or tribunal could no doubt proceed by first translating the words of the Act into other words (whether or not those other words be called the 'meaning' of the words of the Act) and then 20  
seeing whether those other words apply to the particular facts. But we have been warned time and again that it is dangerous and wrong to proceed in that way. The question is whether the words of the Act apply to the facts of the case."

The two limbs of section 97(ii)(b) which are said to be disjunctive lie within the first half of paragraph (b), since the latter half concerns liability to forfeiture which admittedly has no application. 30  
The dichotomy, therefore, requires that clause 4 be paraphrased thus: (a) that the sub-lessee shall work the said land in an orderly skilful and workmanlike manner and (b) that he shall work the said land subject to the provisions of the Mining Enactment. The common factor in both parts is, nevertheless, the working of the said land.

We have thus approached the crux of the matter, involving an exercise in semantics. What does "working the land" mean? Mr. Lim Ewe Hock, on behalf of the appellants, submits that, if construed, as it must be, in the context of the Mining Enactment, "working" any mining land means "getting or winning ore from the land" or "carrying out mining operations" thereon, but cannot be held to include generally any form of "user of the land" -- which was undoubtedly the view taken by the judge. 40  
His contention, in other words, is that user of the land for agricultural purposes is not such working of

the land as would bring it within the purview of the word "work" in the context of section 97(ii)(b) -- unless the words "use" and "work" are to be treated as synonymous in relation to mining land; user of such land in contravention of section 16(vii) does not necessarily connote a breach of section 97(ii)(b).

10 Mr. Mooney, on the other hand, submits that "working the land", in its ordinary and natural meaning, is wide enough to cover its tilling and cultivation. Throughout the Enactment, he points out, a distinction appears to have been drawn between "land" and "mine", but in both section 97(ii)(b) and clause 4, the term used is "working the land", and not "working the mine"; consequently, the obligation set out in clause 4 should apply to the land and not merely to the mine; "work", according to the Oxford English Dictionary, means "bestow labour upon" and planting of tapioca upon  
20 or tilling of land is certainly working it.

With respect I incline to the view that the dictionary meaning is only to be used with caution. Indeed, when I was referred to the 12th definition of "work" on page 2449 of the Oxford English Dictionary, I find that it means --

30 "To bestow labour or effort upon: esp. (a) to till, cultivate (land) OE. (b) To get (stone or slate from a quarry, ore or coal from a mine, etc.) by labour; also with a quarry, etc. as object. ME."

The dictionary meaning is thus equally applicable to the working of a land by a farmer or a miner. While on this point, it will not be out of place to quote Professor W.A. Wilson, whose article Questions of Degree appeared recently in The Modern Law Review - (2)

40 "Any word has a field of possible application, a range of things, events or situations to which it might conceivably apply. This range can be ordered to some extent. Some of the cases are certainly covered by the word; some are marginal; some could be covered by the word only by a violent stretching of the

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In the  
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natural use of language. The judge's task is to select the point in the order at which the line is to be drawn."

Similar difficulties have often arisen in the homeland of the English language : see again Griffiths' case<sup>(1)</sup> where Lord Denning said (on page 920):

No. 8

Judgment of  
Ong Hock Thye,  
C.J.

"Try as you will, the word 'trade' is one of those common English words which do not lend themselves readily to definition, but which all of us think we understand well enough. We can recognise a 'trade' when we see it, and also an 'adventure in the nature of trade'. But we are hard pressed to define it."

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9th December  
1969

(continued)

In Hardwick Game Farm v. Suffolk Agricultural Poultry Producers Association<sup>(3)</sup> one of the issues was whether, under the Fertilisers and Feeding Stuffs Act 1926, pheasants and partridges were "poultry" within the meaning of section 2(2) of the Act. In the view of Sellers L.J., agreeing with Havers J. -

20

"Unlike 'cattle', there is no definition of 'poultry' in the Act. In the light of all the argument in this case 'poultry' cannot have been left undefined because what it embraced was regarded as clear and beyond doubt. It might perhaps be said that 'poultry' in some usage is to be contrasted with game. Pheasants and partridges are clearly game in that they are shot for sport and frequently bred and preserved to be shot for sport. They have, however, this in common with poultry, that they are both used for human consumption, and it is for the ultimate preservation for food for human consumption that the legislation has sought to protect the rearing of cattle and poultry in the manner of the Act of 1926."

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Davies L.J., however, thought otherwise -

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"No ordinary person would, in my view,

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(1) (1962) 2 W.L.R. 909

(3) (1966) 1 W.L.R. 287, 304, 310, 324.

consider that pheasants and partridges are or would be included in the word 'poultry'. In common parlance there is a marked distinction between 'poultry' and 'game'."

Diplock L.J., who shared the same view, said:

"'Poultry' is a common English word. -- There is nothing in the statute to indicate that it should be construed in anything but its ordinary sense and this is for the court to decide. I do not think that the ordinary educated Englishman would call pheasants 'poultry'."

With respect, I would adopt what fell from Lord Reid as well as the majority in the case just cited. The Enactment was one passed to amend and consolidate the law relating to mining and its definition section states that -

"'mining land' or 'land' means land comprised in a mining lease or mining certificate."

Section 16(vii) accordingly prohibits, in effect, any user of mining land, or any portion thereof, for purposes other than those mentioned in section 14, without the written authority of the Collector. The judge's finding of fact in this respect goes unchallenged, as it must. By section 18 "the implied covenants and conditions specified in section 16 ..... shall continue binding on the lessee notwithstanding that he may have sub-leased the land or any part thereof". Consequently, section 120, which provides specific penalties for infringing conditions of title, apply - by way of fine - for wrongful user of land. This point was made by the judge in his judgment.

In contradistinction to user, however, section 97(ii)(b) provides the sub-lessor with the remedy of cancellation "where the sub-lessee has not worked the land in accordance with clause 4 of the sub-lease in Schedule X."

Reverting to the majority view expressed in the Hardwick Game Farm case, I think I am on safe ground in holding that, in common parlance, "user" of land means its user in general terms, including user for

In the  
Federal Court  
of Malaysia  
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No. 8

Judgment of  
Ong Hock Thye,  
C.J.

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1969

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In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

No. 8

Judgment of  
Ong Hock Thye,  
C.J.

9th December  
1969

(continued)

the specific purposes described in sub-sections (i) to (v) of section 14; whereas, again in common parlance, "working" mining land should be given a more restricted meaning as confined to mining operations and ancillary activities.

If this is the true view, as I think it is, it follows that clause 4 of Schedule X - whether dichotomous, as the learned judge construed it, or otherwise - confers cancellation powers on the Senior Inspector of Mines, or the Court in his place, only where the sub-lessee's liability thereto arises by reason of his default in working the land either "in an orderly skilful and workmanlike manner" or default in working it "subject to the provisions of the Mining Enactment". In either case, "work" relates primarily to mining - certainly not agricultural user. In the words of Lord Reid then, I would apply this criterion: as far as my knowledge of usage of the English language extends to its application to the ordinary affairs of miners, I think a miner "works" land when he mines it. When he uses it for some other purpose he does not do so qua miner - as the facts clearly show in this case. Consequential on this view, and again following their Lordships of the Courts in England, I would hold that, when clause 4 speaks of the sub-lessee working the land "subject to the provisions of the Mining Enactment," the provisions understood as so referred to would, in common parlance, be those set out in considerable detail under the heading of Regulation of Mining Operations in Part IX of the Enactment, sections 77 to 94.

While on the subject of the wording of clause 4 and its application to the facts of this case, it is significant to observe that the sub-lessees -- insofar as the primary object and purpose of the sub-lease is concerned, as well as the primary interests of sub-lessors -- were to all intents and purposes devoting their undivided attention to the task of mining, with creditable results and strictly in compliance with mining regulations and the terms and conditions of their sub-lease. That they erred by an infringement of section 16(vii) alone, in no way, even remotely, affected their mining operations elsewhere upon the sub-leased land. The penalty for infringement of section 16(vii) is expressly provided: it does not include cancellation of a sub-lease. For the latter remedy the respondents had to rely on clause 12 of

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the sub-lease which merely was a reproduction of section 97(ii)(b), which in turn falls back on clause 4 of Schedule X. For the reasons above stated it is my view that an infringement of section 16(vii) does not in law constitute a breach of clause 4. There is consequently no call for the exercise of discretion: on this point I think any expression of my views would be supererogatory.

10 With all respect I am unable to agree with the conclusion of the learned trial judge. I would allow this appeal with costs. As to the costs in the Court below, I have no doubt that, even had the appellants been wholly successful there, the learned trial judge would have felt obliged, in the circumstances, to refuse them their taxed costs of the action in full. This is abundantly clear from his judgment and in my view he would be right to do so. I would therefore order that the appellants costs in the court below be allowed at  
20 50 per cent of the amount taxed.

(Sgd.) H. T. ONG  
CHIEF JUSTICE,  
HIGH COURT IN MALAYA

Kuala Lumpur,  
9th December, 1969.

Lim Ewe Hock Esq. (Kim Kean Chye Esq. with him)  
for appellants.

P. Mooney Esq. for respondents.

30 TRUE COPY  
Sgd: Tneh Liang Peng  
(TNEH LIANG PENG)  
Secretary to Chief Justice  
High Court  
Malaya 29 JAN 1970

In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

No. 8

Judgment of  
Ong Hock Thye,  
C.J.

9th December  
1969

(continued)

NO. 9

ORDER OF FEDERAL COURT OF MALAYSIA.

In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

CORAM: ONG HOCK THYE, CHIEF JUSTICE,  
HIGH COURT IN MALAYA;

GILL, JUDGE, FEDERAL COURT, MALAYSIA

ALI, JUDGE, FEDERAL COURT, MALAYSIA.

No. 9

Order of  
Federal Court  
of Malaysia

IN OPEN COURT

THIS 9TH DAY OF DECEMBER 1969

9th December  
1969

O R D E R

THIS APPEAL coming on for hearing the 13th and 14th days of November 1969 in the presence of Mr. Lim Ewe Hock and Mr. Lim Kean Chye of Counsel for the Appellants abovenamed and Mr. P. J. Mooney of Counsel for the Respondents abovenamed AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel for the Appellants and for the Respondents as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Mr. Lim Kean Chye of Counsel for the Appellants abovenamed and Mr. P. J. Mooney and Mr. Alex Lee of Counsel for the Respondents abovenamed

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IT IS ORDERED that this appeal be and is hereby allowed and that the judgment of the Honourable Mr. Justice Chang Min Tat given on the 17th July 1969 be and is hereby set aside:

AND IT IS ORDERED that the Respondents do pay the Appellants the taxed costs of this appeal but the Appellants are to have half of their taxed costs in the Court below:

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

GIVEN under my hand and the seal of the Court this 9th day of December, 1969.

(L.S.)

Sd. A.W.AU

CHIEF REGISTRAR,

FEDERAL COURT, MALAYSIA.

NO. 10

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

CORAM: ONG, CHIEF JUSTICE,  
HIGH COURT IN MALAYA;  
  
GILL, JUDGE,  
FEDERAL COURT, MALAYSIA;  
  
ALI, JUDGE,  
FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 26TH DAY OF JANUARY, 1970

O R D E R

UPON MOTION made unto Court this day by Mr. Peter Mooney of Counsel for the Respondents abovenamed in the presence of Mr. Lim Kean Chye of Counsel for the Appellants AND UPON READING the Notice of Motion dated the 30th day of December, 1969 and the Affidavit of Khye Seng Lim alias Lim Khye Seng affirmed on the 13th day of December 1969 AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that leave be and is hereby granted to the Respondents abovenamed to appeal to His Majesty the Yang di-Pertuan Agong from the judgment of this Court given on the 9th day of December, 1969 upon the following conditions:

(1) That the Respondents abovenamed do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia, in the sum of \$5,000/- (Dollars Five Thousand Only) for the due prosecution of the appeal, and the payment of all such costs as may become payable to the Appellants abovenamed in the event of the Respondents abovenamed not obtaining an order granting them final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondents abovenamed to pay the Appellants' Costs of the Appeal as the case may be; and

In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

No.10

Order granting  
Conditional  
Leave to  
appeal to His  
Majesty the  
Yang di-  
Pertuan Agong

26th January  
1970

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In the  
Federal Court  
of Malaysia  
holden at  
Kuala Lumpur  
(Appellate  
Jurisdiction)

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No.10

Order granting  
Conditional  
Leave to  
appeal to His  
Majesty the  
Yang di-  
Pertuan Agong

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26th January  
1970

(continued)

(2) That the Respondents abovenamed do within the said period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

AND IT IS ORDERED that the costs of and incidental to this application be made costs in the cause.

GIVEN under my hand and the Seal of the Court this 26th day of January, 1970.

(L.S.)

Sd. Eusoff Chin

DEPUTY REGISTRAR,  
FEDERAL COURT, MALAYSIA.

NO.11  
ORDER GRANTING FINAL LEAVE TO APPEAL TO HIS MAJESTY  
THE YANG DI-PERTUAN AGONG.  
IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)  
FEDERAL COURT CIVIL APPEAL NO.X.81 OF 1969

In the  
 Federal Court  
 of Malaysia  
 holden at  
 Kuala Lumpur  
 (Appellate  
 Jurisdiction)

Between

Sungei Biak Tin Mines Limited Appellants  
 And

10 Saw Choo Theng and Khye Seng Lim alias Respondents  
 Lim Khye Seng  
 (In the Matter of Civil Suit No. 615 of  
 1968 in the High Court In Malaya at Ipoh

No.11  
 Order granting  
 Final Leave to  
 Appeal to His  
 Majesty the  
 Yang di-  
 Pertuan Agong

Between

Saw Choo Theng and Khye Seng Plaintiffs  
 And  
 Sungei Biak Tin Mines Limited Defendants)

20th April  
 1970

20 CORAM: SUFFIAN, AG. LORD PRESIDENT, MALAYSIA;  
GILL, JUDGE, FEDERAL COURT, MALAYSIA;  
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT  
THIS 20TH DAY OF APRIL, 1970

O R D E R

30 UPON MOTION made unto the Court this day Mr.  
 S.D.K. Peddie of Counsel for the Respondents above-  
 named in the presence of Mr. Lim Kean Chye of Counsel  
 for the Appellants AND UPON READING the Notice of  
 Motion dated the 7th day of April, 1970 and the Affi-  
 davit of Peter Mooney affirmed on the 4th day of  
 40 April 1970 AND UPON HEARING Counsel as aforesaid for  
 the parties IT IS ORDERED that Final Leave be and is  
 hereby granted to the abovenamed Respondents to appeal  
 to His Majesty the Yang di-Pertuan Agong from the  
 decision and Order of the Federal Court dated 9th day  
 of December 1969 AND IT IS ORDERED that the Appellants  
 be at liberty to object before the Judicial Committee  
 of the Privy Council to the inclusion in the Record of  
 Appeal of the disputed documents described in the Note  
 to Volume 1 of the Appeal Record filed for use in the  
 Privy Council AND IT IS ORDERED that the costs of and  
 incidental to this application be made costs in the  
 cause.

Given under my hand and the Seal of the Court  
 this 20th day of April, 1970.

Sd. HDJI MOHD AZMI  
 Chief Registrar  
 Federal Court, Malaysia.



In the High  
Court in  
Malaya at Ipoh

E X H I B I T S  
EXHIBIT A - AGREED BUNDLE

Exhibit A -  
Agreed Bundle

Sub-index No.1

Memorandum of  
Sub-lease

EXHIBIT A PAGE 1

FEDERATION OF MALAYA

MEMORANDUM OF SUBLEASE

SCHEDULE X

(Section 36)

DISTRICT OF LARUT & MATANG

MUKIM OF  
SUNGEI TINGGI

NO:107 Vol.1 Folio 92

10

We Saw Choo Theng of No. 31 Gurney Drive Penang and Khye Seng Lim alias Lim Khye Seng of No. 29 Church Street Penang in their own right and as trustees hereinafter called the Sub-lessors being the registered lessees of six (6) pieces of mining land at Sungei Wang and Sungei Wang Catchment Area in the Mukim of Sungei Tinggi, District of Larut & Matang described in:-

No:	Nature of Title and Number.	Lot No.	A R E A	Date	
1.	Mining Certificate No.40	2312	18. 2.12	13.5.65	
2.	Mining Certificate No.41	2311	81. 1.00	13.5.65	
3.	Mining Certificate No.42	{ 3481 3482 3483 }	{ 53. 3.34 7. 1.30 8. 0.37 }	26.5.65	
4.	Mining Certificate No.43	3489	18. 1.20	28.5.65	30

and subject to such encumbrances, liens and interests as are endorsed thereon :

In consideration of the sum of Dollar One (\$1/-)

paid to us by Sungei Biak Tin Mines Limited having its registered office at Chartered Bank Chambers Penang hereinafter called the Sub-lessee the receipt of which we hereby acknowledge and of the payment of tribute as hereunder set forth.

In the High  
Court in  
Malaya at Ipoh  
          

10 DO HEREBY SUBLEASE to the Sub-lessee all those six (6) pieces of mining land (hereinafter referred to as the said land) and estimated to contain 187 acres 3 roods and 13 poles, more or less, for the respective periods of the said mining leases to be issued in place of the said Mining Certificates and all renewals or extensions thereof less one day subject to the provisions of the Mining Enactment, and to the following conditions, restrictions and exceptions:

Exhibit A -  
Agreed Bundle  
          

Sub-Index No.1  
          

Memorandum of  
Sub-lease

(continued)

1. That the Sub-lessee shall pay to the Sub-lessors, or their duly appointed agent, tribute upon all ore removed from the said land at the rate of fifteen (15) per cent.

20 2.(a) That the said tribute shall be paid immediately after each and every sale of ore of which sales the Sub-lessors shall have at least 24 hours' notice in writing or verbally and the right to be present at such sale and to purchase the ore at the price it is being offered for sale.

30 (b) That all ore won from the said land shall be delivered to either the Straits Trading Co. Ltd. of Eastern Smelting Co. Ltd. for sale and that the tribute shall be deducted and paid to the Sub-lessors direct by the said smelting company.

3. That the Sub-lessee shall be liable upon suit before the Senior Inspector or any Court to pay to the Sub-lessors the sum of \$100/- as a penalty for each and every breach of the conditions above set out which they may commit.

40 4. (a) That the Sub-lessee shall perform and observe all the conditions expressed in the said Mining Certificates (Photostat copies of which have been taken by the Sub-lessee as it hereby acknowledges) or the Mining Leases to be issued in place thereof.

(b) That the Sub-lessee shall work the said land in an orderly skilful and workmanlike manner and subject to the provisions of the Mining Enactment and

In the High  
Court in  
Malaya at Ipoh  
          

Exhibit A -  
Agreed Bundle  
          

Sub-Index No.1  
          

Memorandum of  
Sub-lease

(continued)

shall be liable to indemnify the Sub-lessors for any expenses which they may incur, whether as fine inflicted on them or otherwise, on account of any breach by the Sub-lessee of this condition or any of the express conditions contained in the said Mining Certificates or Mining Leases to be issued in place thereof.

5. That the Sub-lessors or their duly appointed agent or agents may at all reasonable times enter upon and view the said land, and may inspect the working and any books of account of ore produced from the said land. 10

6. That the Sub-lessee shall render to the Sublessor a monthly statement of all ore won or raised from the said land showing:-

(a) The actual output of ore won up to the end of the last working day of the month.

(b) Each and every sale of tin ore certified by the buyers thereof.

7. That the Sub-lessee shall insure and keep insured all their employees in accordance with the provisions of the Workmen's Compensation Enactment or any other enactment relating thereto. 20

8. That in the event of any damage being caused either to the planted areas of the Sub-lessors adjoining the said land or to the properties of others, then the cost of repairing such damage shall be paid by the Sub-lessee to the Sub-lessors.

9. That the Sub-lessee shall in each period of 3 months produce from the said land at least such quantity of ore as shall be equal to the quota allotted to the Sub-lessors for the said period of 3 months under their certificate of production (if any) Provided that this clause shall only apply should the quota system be enforced. 30

10. That the Sub-lessors shall be liable to pay to the State the annual rent due upon the said land.

11. That the Sub-lessee shall not be entitled to transfer or assign this Sub-lease without the written authority of the Sub-lessors. 40

12. That this Sub-lease shall be liable to

cancellation at any time at the discretion of the Senior Inspector or the Court upon proof:-

In the High Court in Malaya at Ipoh

(a) That the Sub-lessee has failed to pay to the Sub-lessors the amount of any moneys which the Sub-lessee is by the terms of this Sub-lease bound to pay for a period of two months from the date at which such payment became due.

Exhibit A - Agreed Bundle

10

(b) That the Sub-lessee has not worked the land in accordance with Clause 4 of this Sub-lease or has by its default rendered the land liable to forfeiture under the Mining Enactment.

Sub-Index No.1

Memorandum of Sub-lease

(c) That the Sub-lessee has not during a period of six months employed at least 188 labourers or labour-saving apparatus equivalent thereto as prescribed in Section 16(iii)(b) of the Mining Enactment for not less than one month in mining the land.

(continued)

20

(d) That the Sub-lessee has committed a breach of Clause 11 of this Sub-lease.

13. The Sub-lessee shall at its own expense make full and sufficient arrangements for the disposal, control and retention of all tailings, tailings slime and water from the said land and shall be responsible for all damages caused to any property including the property of the Sub-lessors by reason of the insufficient control or retention of the said tailings.

30

14. That the Sub-lessee shall commence work on the said land within three months from the date hereof failing which it shall pay to the Sub-lessors the sum of Dollars One thousand as liquidated damages and this Sub-lease shall thereupon become null and void.

15. The Sub-lessors shall be entitled to tap the rubber trees on the said land for their own use until such time as the same shall be required for mining.

40

Sub-lessors

{ Sd: Saw Choo Theng  
{ Khye Seng Lim alias  
{ Lim Khye Seng by his  
{ Attorney  
{  
{ Sd. M.T.Goh

In the High  
Court in  
Malaya at Ipoh

I do hereby accept this Sub-lease to be held by  
me as Sublessee for the term and subject to the  
conditions, restrictions and exceptions above set  
forth.

Exhibit A -  
Agreed Bundle

Sd: Chan Hing Choy  
Sub-lessee

KENNEDY, BURKILL & CO., LTD.,

Sub-Index No.1  
                  

Sd.  
Secretary

Memorandum of  
Sub-lease

Dated this 7th day of August 1965.

10

(continued)

Memorial made in the Register of Mining Certificates  
Nos: 40, 41, 42 and 43 folio  
this 21st day of August 1965 at 10.30 a.m.

Sd: Illegible

Collector of Land Revenue

(L.S.)

District of Larut & Matang,  
State of Perak.

I, PEH TCHIN OON, an Advocate & Solicitor of  
the High Court in Malaya, practising in the State  
of Penang, hereby testify that the signature of one  
of the Sub-lessors written in my presence on this  
10th day of August 1965 is according to my own  
personal knowledge the true signature of SAW CHOO  
THENG in his own right and as trustee who has  
acknowledged to me that he is of full age and that  
he has voluntarily executed this instrument.

20

As witness my hand this 10th day of August,  
1965.

Sd. P. T. Oon,  
Solicitor,  
Penang.

30

I, Peh Tchin Oon, an Advocate & Solicitor of  
the High Court in Malaya, practising in the State  
of Penang, hereby testify that the signature of  
the attorney of one of the Sub-lessors written in  
my presence on this 11th day of August 1965 is

according to my own personal knowledge the true signature of Ma Tai Goh who has acknowledged to me that she is of full age and that she has voluntarily executed this instrument.

In the High Court in Malaya at Ipoh

As witness my hand this 11th day of August, 1965.

Sd. P.T. Oon,  
Solicitor,  
Penang.

Exhibit A -  
Agreed Bundle

Sub-Index No.1

Memorandum of  
Sub-lease

10

I, PEH TCHIN OON, an Advocate & Solicitor of the High Court in Malaya, practising in the State of Penang, hereby certify that on this day the Common Seal of SUNGEI BIAK TIN MINES LIMITED was duly affixed to the above written instrument in accordance with the rules and regulations of the said Company.

(continued)

As witness my hand this 7th day of August 1965

Sd. P.T.Oon  
Solicitor,  
Penang.

20

Exhibit A Page 7  
MAJLIS TEMPATAN AYER TERJUN,  
TRONG.

Sub-Index No.2

Bil ( ) dlm. MTAT. Date, 5th-July, 1967  
REGISTERED (TRONG NO.599)

Letter from  
Chairman Ayer  
Terjun Local  
Council to  
defendants

TO: The Manager,  
Sungei Biak Tin Mines Ltd.,  
No. 191, Penang Road,  
Penang.

Dear Sir,

30

Sub: APPLICATION THE LAND FOR CULTIVATION

I understand that there is approximately 100 over acres of vacant land at your Tin Mines Field in the Mukim of Ayer Terjun, Trong, of which has not been mining yet.

2. I, on behalf of our local people to seek your kind permission and favourably consideration to confirm our request for granting them to cultivate the

In the High  
Court in  
Malaya at Ipoh

said land, so as to prevent any state that  
it might affect their family, as they are jobless  
at present. And they are willing to return the said  
land without compensation after the year harvest if  
you required.

Exhibit A -  
Agreed Bundle

Your sympathetic on this matter will be deeply  
appreciated.

Sub-Index No.2

I am looking to hear from you seonest.

Thank you.

Letter from  
Chairman Ayer  
Terjun Local  
Council to  
defendants

Yours faithfully,

10

(Sgd.)

Chairman,  
Ayer Terjun, Trong.

Chairman,  
AYER TERJUN LOCAL COUNCIL.

(continued)

To  
The Manager.

I strongly support the application submitted  
by the Chairman, Ayer Terjun. I shall be very  
thankful if you will kindly consider this request  
and I am quite confident the people residing in this  
locality will be ever grateful if their request  
could be granted.

20

(Sgd.)

SULI DEWAN UNDANGAN NEGERI PERAK  
(KAWASAN TAIPIING)  
TAIPIING.

---

Exhibit A Page 8

9th November, 1967

In the High  
Court in  
Malaya at Ipoh

The Secretary,  
Sungei Biak Tin Mines Limited,  
Chartered Bank Chambers,  
PENANG.

Exhibit A -  
Agreed Bundle

Dear Sir,

Sub-Index No.3

Re: Sungei Biak Estate

Letter from 2nd  
Plaintiffs to  
Defendants

10 I regret to note from my last inspection of the  
above estate on 8th November 1967 that the rubber  
trees planted in 1960 on the southern portion of old  
lots 2236, 2237, 2238 and 2239 have been cut down  
and that the estate has been prevented from tapping  $\frac{2}{3}$   
the same. In the event will you please inform me:-

- (a) Whether that particular area will be  
required for mining and
- (b) When it will actually be mined?

Yours faithfully,

Sgd. Lim Khye Seng

20

Exhibit A Page 9

Sub-Index No.4

SKRINE & CO.  
Kuala Lumpur.

7th May 1968

Letter from  
solicitors for  
plaintiffs to  
Senior  
Inspector of  
Mines Perak

The Senior Inspector of Mines (North),  
Station Road,  
IPOH.

Dear Sir,

re: Sungei Biak Tin Mines Ltd.

30 We act for Messrs. Saw Choo Theng and Lim Khye  
Seng who are the registered lessees of six pieces of  
mining land in the Mukim of Sungei Tinggi, District of  
Larut and Matang. Particulars of the lands and the  
mining certificates are set out in the annexure to



In the High  
Court in  
Malaya at Ipoh

this letter. Our clients have subleased the lands to Sungei Biak Tin Mines Ltd.

Exhibit A -  
Agreed Bundle

It has come to our clients' attention that the sublessee has cut down the existing rubber trees over a very substantial area and has planted tapioca over this area.

Sub-Index No.4

This has taken place without the permission or knowledge of our clients and despite protest by the Manager of our clients' adjacent rubber estate.

Letter from  
solicitors for  
plaintiffs to  
Senior  
Inspector of  
Mines Perak

We are instructed by our clients to inform you of this and to inform you that they disapprove strongly of the action of the sublessee.

10

(continued)

Our clients have consulted us on this matter and when it has been investigated further we anticipate that we should be communicating with you again.

Yours faithfully,

Sgd. Skrine & Co.

Encl:

c.c. to:-

20

1. The Inspector of Mines, Taiping, Perak.
2. The Collector of Land Revenue, District of Larut and Matang, Taiping, Perak.

Sub-Index No.5

Exhibit A Page 12

Translation of  
letter from Senior  
Inspector of  
Mines to  
solicitors for  
plaintiffs and  
to defendants

TRANSLATION

Pejabat  
Merinyu Kanan Galian,  
Perak, Ipoh.

27 hb Mei, 1968.

- (1) Sharikat Skrine  
Bangunan Straits Trading  
4, Leboh Pasar Besar,  
(Jalan Market), Kuala Lumpur
- (2) Tuan Pengarah  
Sungei Biak Tin Mines Berhad,  
191, Jalan Penang, Penang.

30

Tuan,

re: Mining Certificates Nos. 40-43  
Sungei Wang, Mukim Sungei,  
Tinggi, Perak

I refer to the matter in respect of planting of tapioca on part of the above mining lands after cutting down the rubber trees. In my view the lands are mining lands and I have no objections to cutting down the rubber trees. But in accordance with Mining Enactment (Cap.147), planting of tapioca on the lands cannot be done by any body except with the approval of the Collector of Land Revenue, granted under the National Land Code. An investigation was made by the Inspector of Mines, Kuala Kangsar who consulted the Manager, Sungei Biak Tin Mines Berhad who are at present working the lands. The Manager said, he does not know who the owner of the tapioca is. According to Mining Enactment (Cap.147), the lessee and the sub-lessee are responsible for this matter and they ought to take steps in this matter (through the Collector of Land Revenue or Police, if necessary) against the illegal planter of the tapioca.

Saya yang menurut perintah,

Sgd: Tham Weng Sek

(THAM WENG SEK)

B.P. MERINYU KANAN GALLIAN  
PERAK.

s.k. M.G., Kuala Kangsar,  
G.K.K. A - 112

P.K.T., Larut & Matang,  
Taiping.

In the High  
Court in  
Malaya at Ipoh

Exhibit A -  
Agreed Bundle

Sub-Index No.5

Translation of  
letter from  
Senior  
Inspector of  
Mines to  
Solicitors for  
plaintiffs and  
to defendants

(continued)

10

20

---

In the High  
Court in  
Malaya at Ipoh

Exhibit A Page 13

SKRINE & CO.,  
Kuala Lumpur.

(15) dlm Galian Pk. 2-2535  
PM/TLH/11621/68

20th June, 1968

Exhibit A -  
Agreed Bundle

Sub-Index No.6

Letter from  
solicitors for  
plaintiffs to  
Senior  
Inspector of  
Mines

Merinyu Kanan Galian,  
Pejabat Merinyu Kanan Galian, Perak,  
IPOH.

Dear Sir,

10

Sijil Galian 40, 41, 42 dan 43  
Sungei Wang, Mukim Sungei Tinggi  
Perak

We enclose herewith a Memorandum of Complaint  
under Section 99 of the Mining Enactment (F.M.S. Cap.  
147) for filing with you. Please acknowledge  
receipt.

Yours faithfully,

Sgd: Skrine & Co.

Encl:

20

Sub-Index No.7

Memorandum of  
complaint of  
Plaintiffs

Exhibit A Page 14

MEMORANDUM OF COMPLAINT

under

Section 99 of the Mining Enactment  
(F.M.S. Cap. 147)

by

Saw Choo Theng and Khye Seng  
Lim alias Lim Khye Seng.

To:- The Senior Inspector of Mines (North),  
Station Road,  
Ipoh

30

1. Saw Choo Theng and Khye Seng Lim alias Lim Khye  
Seng are the registered lessees of Mining Certificates

Nos. 40, 41, 42 and 43 for Lots Nos. 2312, 2311, 3481, 3482, 3483 and 3489 in the Mukim of Sungei Tinggi in the District of Larut and Matang (hereinafter called "the mining land")

In the High Court in Malaya at Ipoh

2. By a Memorandum of Sublease Presentation No.107 Volume 1 Folio 92 duly registered on the 21st day of August 1965, the said Saw Choo Theng and Khye Seng Lim alias Lim Khye Seng subleased the mining land to Sungei Biak Tin Mines Limited (hereinafter called "the sublessees").

Exhibit A - Agreed Bundle

Sub-Index No.7

Memorandum of complaint of plaintiffs

(continued)

3. It has come to the attention of the lessees that the sublessee has planted or allowed to be planted about 60 acres of tapioca on Lots 2312 and 2311 aforesaid. In so doing the sublessee has contravened the provisions of Clause 4 of the said Memorandum of Sublease and has contravened the provisions of the Mining Enactment (F.M.S. Cap.147).

4. The remedy sought is cancellation of the sublease.

Dated this 17th day of June, 1968.

Sgd: Saw Chor  
Sgd: Khye Seng Lim  
.....

Lessees.

By A Page 17

JOEY BAK YEOW,  
I.C. No. 3947229,  
Main Road,  
Changkat, Nibong Tebal, P.W.  
3rd July, 1968.

Sub-Index No.8

Letter from Gooi Bak Yeow to District Officer, Larut and Matang

Tima P. Daerah,  
Larut Matang,  
Perak.

Permission for T.O.L. to cultivate Tapioca under M.C. 40, 41 and 43 Mukim Sungei Tinggi, Perak.

I have the honour to apply for your kind permission for a T.O.L. to cultivate Tapioca on land held under M.C. 40, 41 and 43 in the Mukim of Sungai Tinggi, Perak.

The owner of the said land has no objection and

In the High Court in Malaya at Ipoh

given me his consent to do so.

I have the honour to attach herewith the consent letter together with a plan for your kind perusal.

Exhibit A - Agreed Bundle

Hoping that my humble request will be granted by your honour and awaiting for your kind and early approval.

Sub-Index No.8

Thanking your honour very much in advance.

Letter from Gooi Bak Yeow to District Officer Larut and Matang

I have the honour to be,

Sir,

Yours obediently,

10

(continued)

(Sd.) COEY BAK YEOW (in Chinese)

Copy to:  
The Managing Director,  
Sungei Biak Tin Mines Sdn. Berhad,  
No. 191 Penang Road, Penang.

Sub-Index No.10

Exhibit A Page 20

Letter from Gooi Bak Yeow to 2nd plaintiff

Mr. Gooi Bak Yeow,  
2345, Caledonian Estate,  
Nibong Tebal.

5th November, 1968.

20

Mr. Lim Khye Seng,  
The Trustee of Sungei Biak Estate,  
PENANG.

Dear Mr. Lim,

I wish to inform you that I have planted tapioca in the Sungei Biak Estate. Frankly, I do not know really there is so much complication in the estate matter, otherwise I would have not done so. It was through the backing of Mr. Khor Kuek Jin that I have done it. Since I have planted tapioca which is almost harvesting period, hereby I would implore your kindness to allow me to do the harvesting. After that I am quite agree to compensate the land which I have planted by way of :-

30

(1) taking a lump sum of \$2,000.00

(2) certain percentage of the crop harvested.

I would appeal to you to allow me to carry on the planting in order that I can earn a small living.

Your kind considerations to this matter is much appreciated.

Thanking you in advance.

Yours faithfully,

Sd. (In Chinese)

Gooi Bak Yeow.)

In the High Court in Malaya at Ipoh

Exhibit A - Agreed Bundle

Sub-Index No.10

Letter from Gooi Bak Yeow to 2nd plaintiff

(continued)

10

Exhibit A Page 21

LIM KHYE SENG  
No. 4, Church Street,  
Penang, Malaysia.

30th November, 1968.

Sub-Index No.11

Letter from 2nd plaintiff to Gooi Bak Yeow

REGISTERED

Mr. Gooi Bak Yeow,  
No. 2345, Calendonian Estate,  
Nibong Tebal,  
Province Wellesley.

Dear Sir,

re: Sungei Biak Estate

20

With reference to your interview with me together with Messrs. Khor Kuek Jin, Gooi Ee Beng and K.C. Choong on 5th November 1968 and your letter of the same date I write to inform you that I have consulted the beneficiaries of Sungei Biak Estate as promised.

30

I regret that I have been requested by the beneficiaries to inform you that they have been advised by their solicitors that since proceedings have been instituted against Sungei Biak Tin Mines Ltd. in respect of the tapioca planted on the said land they are not in a position to consider your request to allow you to harvest the tapioca or your offer of compensation.

Yours faithfully,

(Signed) K. S. Lim

Trustee,

Sungei Biak Estate.

In the High  
Court in  
Malaya at Ipoh

Exhibit A Page 27

TO WHOM IT MAY CONCERN

Exhibit A -  
Agreed Bundle

Sub-Index No.12

Consent of  
Gooi Bak Yeow  
to cultivate

We refer to your verbal request to our Company for permission to cultivate tapioca on our land held under M.C. 40, 41 & 43 in the Mukim of Sg. Tinggi, Perak, we hereby consent to allow Mr. COEY BAK YEOW - I.C. No. 3247229 to do so subject to the approval of the Pemungut Khazanah Tanah, Taiping and any other relevant authorities.

Our consent is given also on the condition that should the Company require the above-said land for mining, the Company shall give one month's written notice to the cultivators who shall at their own costs and expenses remove or collect the crop and vacate the land without any compensation from the Company.

10

Confirmed by :

Sd. Gooi Ee Beng  
.....

Approved by:

Sd. Chan Hing Choy  
.....

20

\_\_\_\_\_

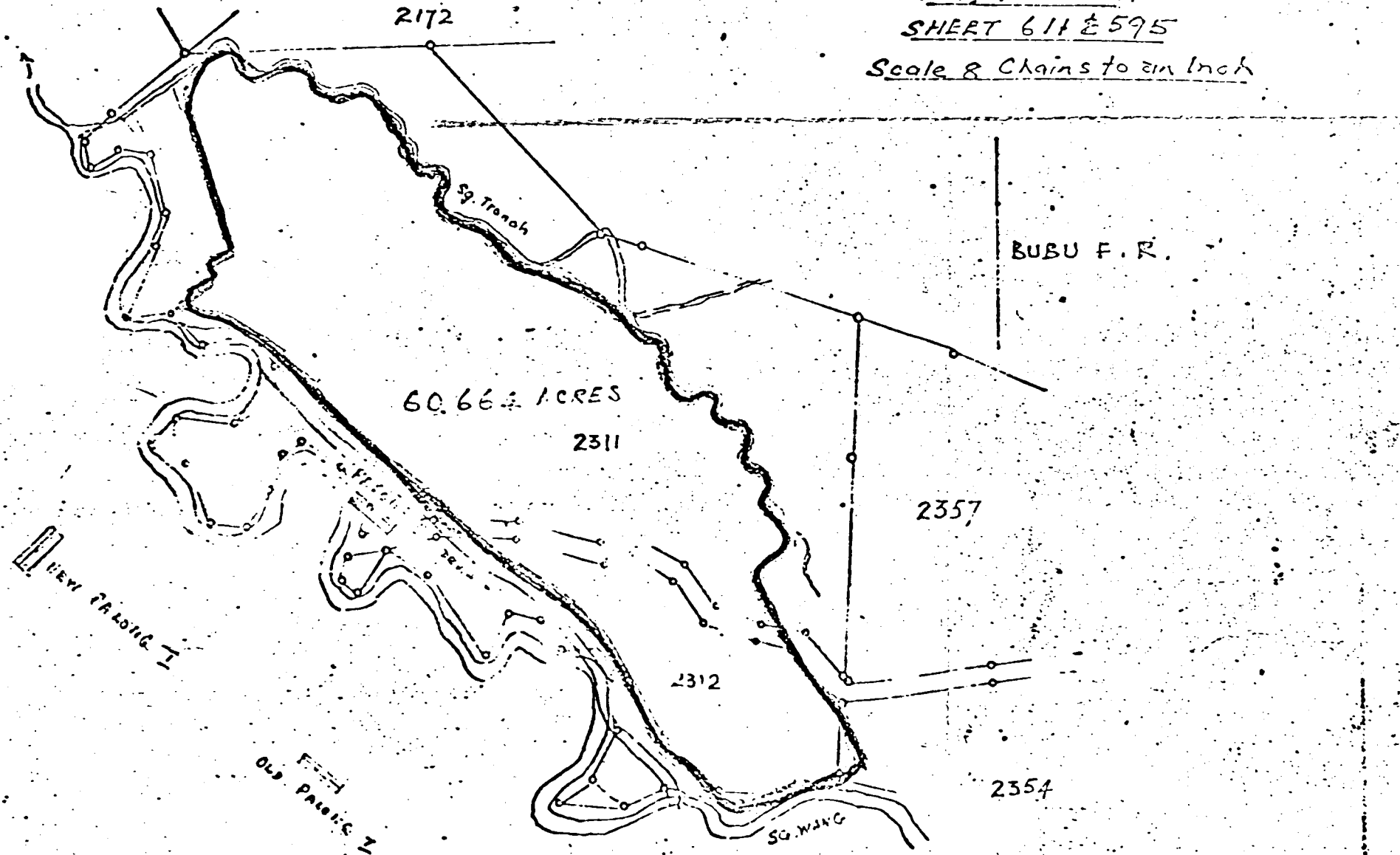
Exhibit A Page 28

Exhibit A -  
Agreed Bundle

Sub-Index No. 13

Sketch Plan of  
lots 2311 and  
2312.

SG. BIAK ESTATE AYER IEKJUN  
VIA TRONG.  
SHEET 611 & 595  
Scale 8 Chains to an Inch

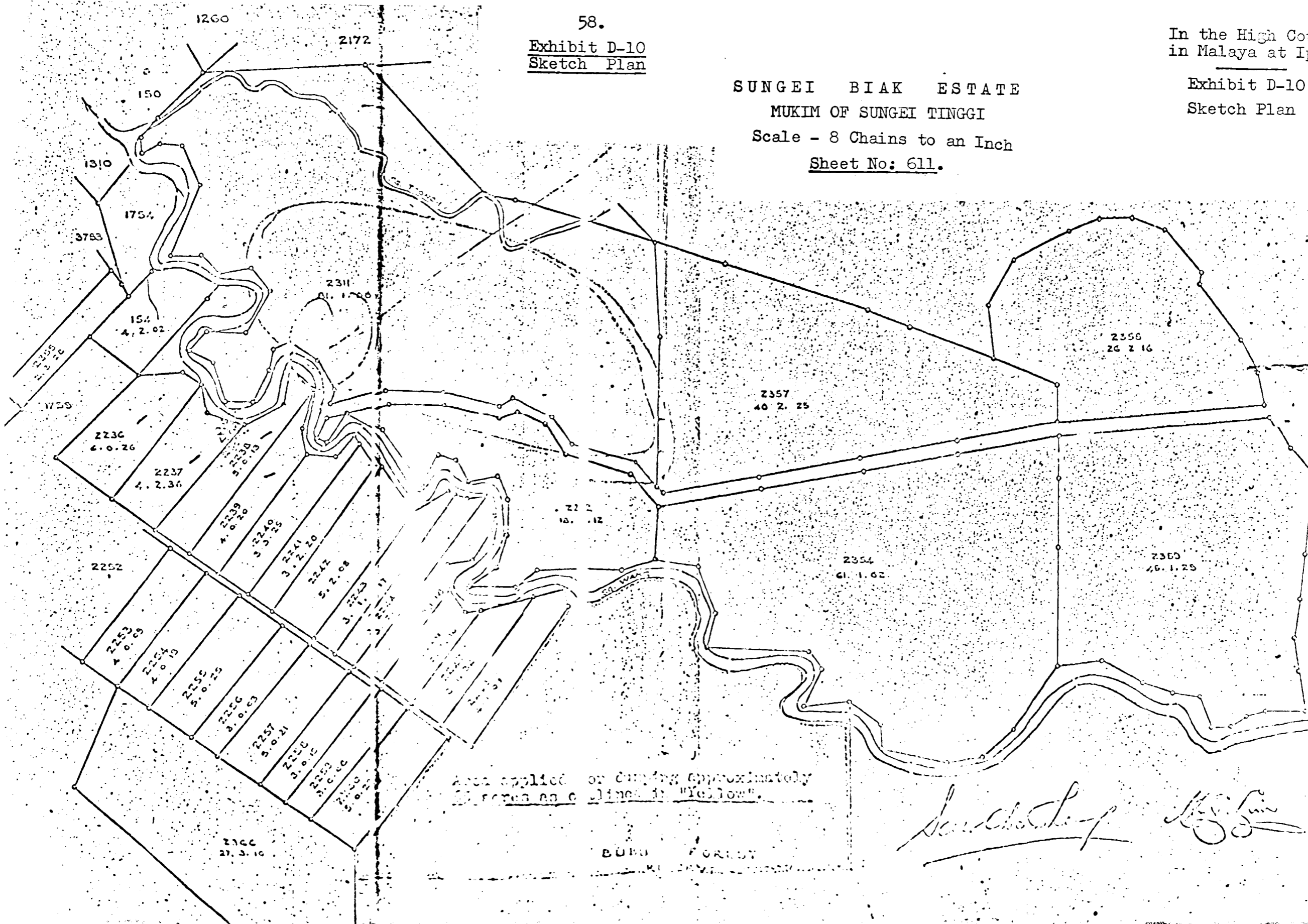


AREA PLOUGHED AND PLANTED WITH TAPIoca  
OUTLINED IN RED = 60.664 ACRES

SURVEYED BY: [Signature]  
10/1/1912



SUNGEI BIAK ESTATE  
MUKIM OF SUNGEI TINGGI  
Scale - 8 Chains to an Inch  
Sheet No: 611.



Area applied or changed approximately shown as a line in "Yellow".

BURU FOREST

*Handwritten signature*

EXHIBIT P 14A  
COPY OF MINING CERTIFICATE NO. 40 (WITHOUT PLAN)

21 EXHIBIT P.14A

FEDERATION OF MALAYA

MINING CERTIFICATE  
Mining Cert. Volume I Folio 40

SCHEDULE III

In the High  
Court in  
Malaya at Ipoh

Exhibit P14A  
Copy of Mining  
Certificate  
No. 40  
(without plan)

Section 11(i) of the Mining Enactment of the  
Federated Malay States (Cap. 147)

10 This is to certify that permission has this day been granted to SAW CHOO THENG AND LIM KHYE SENG AS TRUSTEES of No. 29, CHURCH STREET, PENANG to enter upon, occupy and mine the land hereinafter described, subject to the provisions of the Mining Enactment of the Federated Malay States and to the employment thereon of not less than nineteen (19) labourers and pending the issue of a mining lease under the said Enactment which Mining Lease will expire on 12th day of May, 1980.

20 DESCRIPTION OF THE LAND

District Larut & Matang.  
Mukim Sungei Tinggi  
Locality Sungei Wang Catchment Area.  
Position Lot: 2312  
Approximate area 18 acres 2 roods 12 poles.

Dated at Taiping this 13th day of May 1965.

Application No. 5/63

Certificate No. 40

30

(Sgd.)  
Collector of Land Revenue  
District of Larut & Matang  
State of Perak.

In the High Court in Malaya at Ipoh

Premium -	1406.30	}	To - 1311/13.5.65
Rent -	37.50		
Registration -	10.00		
D.C. Fees	3.00		
	<u>1456.80</u>		To 1312/13.5.65

Copy of Mining Certificate No. 40 (without plan)

Pres. No. 83

21 EXHIBIT P.14A

(continued)

TERMS OF LEASE APPROVED

Period: Fifteen (15) years to expire on the 12th day of May, 1980. 10

Express Conditions:

- (i) No mining operations or deposit of tailings shall take place within one chain on either bank of the Sungei Wang unless a satisfactory scheme has been approved by Government for the deviation of the Sungei Wang and completed before commencement of such mining operations or deposit of tailings and any dumping within a further two chains shall be up to existing ground level only. 20
- (ii) No mining operations or deposit of tailings shall take place within 30 feet of the access road reserve unless the access road has been deviated to the satisfaction of the Collector of Land Revenue, Larut and Matang.
- (iii) Mining operations on the land hereby leased shall be conducted on a closed circuit system whereby the discharge of mining effluent into the drainage system is strictly 30 prohibited.
- (iv) The land hereby leased shall be mined for tin and other minerals except iron.

(Sgd.)

Pres. No. 107 Sublease Vol. 1 Folio 92 by Saw Choo Theng & Lim Khye Sing as Trustees to Sungei Biak Tin Mines Limited for the period of the said Mining Certificate/Mining Lease & any renewals thereof, this 21st day of August, 1965 at 10.30 a.m.

(Sgd.)

EXHIBIT 14 B

COPY OF MINING CERTIFICATE NO. 41 (WITHOUT PLAN)

22 EXHIBIT P.14B

FEDERATION OF MALAYA

MINING CERTIFICATE

Mining Cert. Volume 1 Folio 41.

SCHEDULE III

Section 11 (i) of the Mining Enactment of the Federated Malay States (Cap. 147)

10 This is to certify that permission has this day been granted to SAW CHOO THEENG AND LIM KHYE SENG AS TRUSTEES of NO. 29, CHURCH STREET PENANG to enter upon, occupy and mine the land hereinafter described, subject to the provisions of the Mining Enactment of the Federated Malay States and to the employment thereon of not less than eighty two (82) labourers and pending the issue of a mining lease under the said Enactment which Mining Lease will expire on 12th day of May, 1980

20 DESCRIPTION OF THE LAND

District: Larut & Matang  
Mukin Sungei Tinggi  
Locality Sungei Wang Catchment Area.  
Position: Lot: 2311  
Approximate area 81 acres 1 rood 00 pole  
Dated at Taiping this 13th day of May 1965  
Application No. 5/63  
Certificate No. 41

(Sgd.)

30 Collector of Land Revenue  
District of Larut & Matang  
State of Perak.

In the High Court in Malaya at Ipoh

Exhibit 14B

Copy of Mining Certificate No. 41 (without plan)

In the High  
Court in  
Malaya at Ipoh

Premium -	6093.80	)	
Rent -	162.50	)	T.O. 1311/13.5.65
Registration -	10.00	)	
D.C. Fees	<u>3.00</u>	)	T.O. 1312/13.5.65
	<u>6269.30</u>		

Exhibit 14B

Copy of Mining  
Certificate  
No. 41  
(without plan)

Pres. No. 94

22 EXHIBIT P14B

(continued)

TERMS OF LEASE APPROVED

Period Fifteen (15) years to expire on the 12th day  
of May, 1980

10

Express Conditions:

- (i) No mining operations or deposit of tailings shall take place within  $\frac{1}{2}$  chain on either bank of the Sungei Tronoh unless a satisfactory scheme has been approved by Government for the deviation of the Sungei Tronoh and completed before commencement of such mining operations or deposit of tailings and any dumping within a further one chain shall be up to existing ground level only.
- (ii) Mining operations on the land hereby leased shall be conducted on a closed circuit system whereby the discharge of mining effluent into the drainage system is strictly prohibited.
- (iii) The land hereby leased shall be mined for tin and other minerals except iron.

20

(Sgd.)

Pres. No. 107 Sublease Vol. I Folio 92 by Saw Choo Theng & Lim Khye Seng as Trustees, to Sungei Biak Tin Mines Limited for the period of the said Mining Certificate/Mining Lease & any renewals thereof, this 21st day of August, 1965 at 10.30 a.m.

30

(Sgd.)

EXHIBIT 14 C

COPY OF MINING CERTIFICATE NO. 42 (WITHOUT PLAN)

23 EXHIBIT P14C

FEDERATION OF MALAYA

MINING CERTIFICATE M.C.42  
Mining Certificate V2 I Folio 42

SCHEDULE III

Section 11 (i) of the Mining Enactment of the Federated Malay States (Cap. 147)

10 This is to certify that permission has this day been granted to SAW CHOO THENG AND LIM KHYE SENG AS TRUSTEES of c/o United Mining Engineering 13 Borley Street Ipoh to enter upon, occupy and mine the land hereinafter described, subject to the provisions of the Mining Enactment of the Federated Malay States and to the employment thereon of not less than Seventy (70) labourers and pending the issue of a mining lease under the said Enactment which Mining Lease will expire on the 25th day of May 1980.

20 DESCRIPTION OF THE LAND

District Larut and Matang  
Mukim Sungei Tinggi  
Locality Sungei Wang  
Position Lots 3481, 3482, & 3483  
Approximate area 69.630 acres  
Dated at Taiping this 26th day of May, 1965.  
Application No. 5/63  
Certificate No. M.C. 42  
Pres. No. 95

30 (Sgd.)  
Collector of Land Revenue  
District of Larut & Matang

In the High Court in Malaya at Ipoh

Exhibit 14C

Copy of Mining Certificate No. 42 (without plan)

In the High  
Court in  
Malaya at Ipoh

Premium:	5231.30	}	T.O. 1311/26.5.65
Rent:	138.50		
Reg.	10.00		
D.C.Fees	<u>3.00</u>		
	<u>5583.80</u>		T.O. 1312/26.5.65

Exhibit 14C

Copy of Mining  
Certificate  
No. 42  
(without plan)

23 EXHIBIT P14C

TERMS OF LEASE APPROVED

(continued)

Period: Fifteen (15) years to expire on the 25th day of May 1980

Express Conditions

10

- (i) No mining operations or deposit of tailings shall take place within one chain on either bank of the Sungei Wang unless a satisfactory scheme has been approved by Government for the deviation of the Sungei Wang and completed before commencement of such mining operations or deposit of tailings and any dumping within a further two chains shall be up to existing ground level only.
- (ii) No mining operations or deposit of tailings shall take place within  $\frac{1}{2}$  chain on either bank of the unnamed stream unless a satisfactory scheme has been approved by Government for the deviation of the unnamed stream and completed before commencement of such mining operations or deposit of tailings and any dumping within a further one chain shall be up to existing ground level only. 20
- (iii) Mining operations on the land hereby leased shall be conducted on a closed circuit system whereby the discharge of mining effluent into the drainage system is strictly prohibited. 30
- (iv) The land hereby leased shall be mined for tin and other minerals except iron.

(Sgd.)

Pres. No.107 Sublease Vol.I Folio 92 by Saw Choo Theng & Lim Khye Seng as Trustees, to Sungei Biak Tin Mines Limited for the period of the said Mining Certificate/ Mining Lease & any renewals thereof, this 21st day of August, 1965 at 10.30 a.m. 40

(Sgd.)

EXHIBIT P14 D

COPY OF MINING CERTIFICATE NO. 43 (WITHOUT PLAN)

24 EXHIBIT P14D

FEDERATION OF MALAYA

MINING CERTIFICATE M.C.43  
Mining Certificate Volume I Folio 43

SCHEDULE III

Section 11 (i) of the Mining Enactment of the  
Federated Malay States (Cap. 147)

- 10 This is to certify that permission has this day been granted to Saw Choo Theng and Lim Khye Seng of c/o United Mining Engineering 13 Horley Street Ipoh to enter upon, occupy and mine the land hereinafter described, subject to the provisions of the Mining Enactment of the Federated Malay States and to the employment thereon of not less than Nineteen (19) labourers and pending the issue of a mining lease under the said Enactment which Mining Lease will expire on the 27th day of May 1980.

20 DESCRIPTION OF THE LAND

District Larut and Matang

Mukim Sungei Tinggi

Locality Sungei Wang

Position Lot 3489

Approximate area 18.375 acres.

Dated at Taiping this 28th day of May 1965

Application No. 6/63

Certificate No. M.C. 43.

30

(Sgd.)

Collector of Land Revenue

District of Larut &  
Matang

State of Perak

In the High  
Court in  
Malaya at Ipoh

Exhibit P14D

Copy of Mining  
Certificate  
No. 43  
(without plan)



In the High	Premium	-	1387.50
Court in	Rent	-	137.00
Malaya at Ipoh	Reg.of Title	-	10.00
	D.C.Fees	-	<u>3.00</u>

Exhibit 14D 1537.50

Copy of Mining  
Certificate  
No. 43  
(without plan)

24 EXHIBIT P.14D

TERMS OF LEASE APPROVED

(continued)

Period: Fifteen (15) years to expire on the 27th day of May, 1980

Express Conditions:

10

(i) No mining operations or deposit of tailings shall take place on the land hereby leased unless the access road has been deviated to the satisfaction of the Collector of Land Revenue, Larut and Matang and a satisfactory scheme has been approved by Government for the deviation of the Sungei Wang and completed before commencement of such mining operations or deposit of tailings.

20

(ii) Mining shall be conducted on a closed circuit system whereby the discharge of mining effluent into the drainage system is strictly prohibited.

(iii) The land hereby leased shall be mined for tin and other minerals except iron.

(Sgd.)

Premium -	§ 1387.50
Rent -	32.00
Reg.of Title -	10.00
D.C. Fees	<u>3.50</u>
Total	<u>§ 1437.50</u>

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Pres. No.107 Sublease Vol.1 Folio 92 by Saw Choo Theng & Lim Khye Seng to Sungei Biak Tin Mines Limited for the period of the said Mining Certificate/ Mining Lease & any renewals thereof this 21st day of August, 1965 at 10.30 a.m.

(Sgd.)

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA, HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

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B E T W E E N:

SAW CHOO THENG and KHYE SENG LIM alias  
LIM KHYE SENG (Plaintiffs) Appellants

- and -

SUNGEI BLAK TIN MINES LIMITED  
(Defendants) Respondents

(In the matter of Civil Suit No. 615 of 1968 in the High  
Court in Malaya at Ipoh)

B E T W E E N:

Saw Choo Theng and Khye Seng Lim alias  
Lim Khye Seng Plaintiffs

- and -

Sungei Biak Tin Mines Limited Defendants

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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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LEWIS, LEWIS & CO.,  
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Solicitors for the Respondents