

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 25 of 1976

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA (Appellate Jurisdiction)

IN THE MATTER OF THE KONG THAI SAWMILL (MIRI) SDN. BHD.

and

IN THE MATTER OF THE COMPANIES ACT 1965

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B E T W E E N:

KONG THAI SAWMILL (MIRI) SDN. BHD. (First Respondent)

LING BENG SIEW (Second Respondent)

LING BENG SIONG (Third Respondent)

APPELLANTS

and

LING BENG SUNG (Applicant)

RESPONDENT

And by Cross-Appeal

B E T W E E N:

LING BENG SUNG (Applicant) APPELLANT ON  
CROSS-APPEAL

and

KONG THAI SAWMILL (MIRI) SDN. BHD. (First Respondent)

LING BENG SIEW (Second Respondent) and

LING BENG SIONG (Third Respondent)

RESPONDENTS ON  
CROSS-APPEAL

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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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V O L U M E II

Coward Chance,  
Royex House,  
Aldermanbury Square,  
LONDON EC2V 7LD

Stephenson Harwood & Tatham,  
Saddlers' Hall,  
Gutter Lane, Cheapside,  
LONDON EC2V 6BS.

Solicitors for the Appellants  
and the Respondent on the Cross-  
Appeal

Solicitors for the Respondent  
and the Appellant on the Cross-  
Appeal

No. 7

NOTES OF EVIDENCE

APPLICANT'S EVIDENCE

ANDREW PEATTIE - CROSS-EXAMINATION

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Andrew Peattie

—  
Cross-Examination

For Applicant: Mr. John Evelyn Vinelott, Q.C.;  
Mr. Peter Mooney; and  
Mr. Joseph Tang

For Respondents: Mr. Cholmondeley Darvall;  
Mr. G. Starforth Hill; and  
Mr. C.T. Wong

10

11th April, 1972

Parties as before

Time 9.05 a.m.

Mr. J.E. Vinelott

First affidavit is ANDREW PEATTIE dated 24th November,  
1971.

Mr. C. Darvall

Is this which Counsel relies?

Mr. J.E. Vinelott

20

Yes.

Mr. J.E. Vinelott

Reads affidavit of Andrew Peattie.  
Refers to Page 2 - (b):

"to authorise payment of preliminary expenses  
to Dato Ling Beng Siew of \$50,000/-."

Since affidavits filed -

Mr. C. Darvall

Objects to Counsel giving evidence from Bar as  
Mr. A. Peattie will be cross-examined.

30

Mr. J.E. Vinelott

Merely wishing to put Court up to date with picture.

In the High  
Court in  
Borneo

Time 10.45 a.m.

P.W.1 ANDREW PEATTIE. Affirmed states in English  
43 years. Attached to Andrew Peattie Co. -  
28 Kampong Nyabor Road, Sibiu.

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Notes of  
Evidence

Chartered Accountant. I passed an examination  
in connection with Companies' Act.

Applicant's  
Evidence

Q. You have been told of an offer of \$600/- per share to  
Beng Sung for his shares in Kong Thai Sawmills (Miri)  
Sdn. Bhd.

Andrew Peattie

A. Yes. I was told. I was not consulted in regard  
to that offer. 10

Cross-Examination

I was told by Mr. Henderson. I was not told by  
Beng Sung or Peter Mooney.

I am familiar with the books and accounts up till  
September, 1971.

Q. Is \$600/- a share fair and good price?

A. I will not be able to give the opinion unless I have  
examined the up-to-date accounts of Kong Thai and its  
subsidiaries and its investments, for a valuation to  
be taken. 20

I saw account up till September 1971.

Q. Taking those accounts and assets shown on the balance  
sheet, you agree \$600/- is a reasonable offer?

A. It will be reasonable where it is Kong Thai itself.  
I am unable to put a valuation on investments at such  
short notice. I saw the balance sheet on Saturday last.

Q. You would consider that if the Company's monies  
invested are successful that valuation would be very  
much high.

A. Yes. 30

Q. Upon the Companies merging and making profits from Kong  
Thai you would agree that \$600/- is reasonable.

A. I have to study the position. Omitting investments I  
think it is a reasonable price.

I am not an expert but one with experience.

I am aware that a licence requires that timber should be won during period of licence.

Q. There is no question of renewal of licence of a given area.

A. I understand a renewal may be possible.

I don't know in present circumstances renewal will be important.

I was approached to see how Company was run. My instructions were to investigate books and accounts and I made my report thereon.

In the High Court in Borneo

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Notes of Evidence

—  
Applicant's Evidence

—  
Andrew Peattie

—  
Cross-Examination

I was directed to make a report to Beng Sung. He gave me directions as to what I should do.

Q. His instructions were that you should seek out faults.

A. No. On Director's fees, entertainments, etc. and what were not properly incurred. These instructions were given to me orally.

I discovered in course of my investigation that the Company was advancing monies with Borneo Co. on exploratory ventures. I discovered two ventures abortive and unprofitable. The amount advanced would be written off. So far as the successful ventures were concerned the money advanced was charged into shares capitals which Companies were formed.

This happened in number of occasions. This was apparent to me from my examination that majority of investments had great hope of success.

My affidavit was affirmed by me personally on August 1971. Same affidavit in identical terms was then affirmed on 24th November, 1971.

Q. The consequence of re-affirmation on 24th November, 1971 was numbers of matters were untrue to your knowledge.

A. I have received additional information.

In a number of occasions where I affirmed 24th November, I received the information.

Q. You agree number of matters which you included on 24th November, 1971, there were untrue.

A. Yes.

In the High Court in Borneo

(Counsel for applicant - witness must be given precisely the statements which are untrue and not generally).

See Para 16. Page 4

No. 7  
Notes of Evidence

"I was unable, despite requests, to obtain from Kong Thai any sight of its returns and correspondence with the Inland Revenue for this year or any other year."

Applicant's Evidence

A. Yes. It is not true.

Q. So far as other matters are concerned, seeing account in various Companies - you did not bother to ask for them?

10

Andrew Peattie

(Witness refers to documents).

Cross-Examination

A. I was shown sub-agencies P.T. Kalimantan Sari and Kong Thai Lumber Sdn. Bhd.

Page 37 - Last para under A.

"No accounts have ever been produced to Kong Thai".

A. I have not checked on this one.

(Witness refers to accounts).

I have seen P.T. Kalimantan Sari.

I agree the last sentence at page 37 is not correct. On 24th November, 1971, I knew it was not correct.

20

Refers to Page 38:

"No accounts have ever been produced to Kong Thai".

That evidence is also false.

Refers to Page 2 - Para 4. You said:

"The first General Meeting was held on 16th January 1965. The minutes show that only Dato Ling Beng Siew was present and that he was Managing Director."

Q. That evidence is false?

30

A. According to my recollection it is correct.

(Witness shown Pages 1 and 2 of Minute Book)

According to my recollection there is one signature but there are 5 signatures.

According to the records my record shows one signature - it did not show the 4 other signatures.

My record does show the signature of the other 4 signatures against their shareholdings.

(Witness produces record note used to refresh his memory).

Q. There is nothing in the note to show that there were signatures against their holdings.

10 A. This is the note I took from the Minute Book.

Q. That it would be fair to say that you forgot that signatures of the directors present appeared at the top of the page but remembered that their signatures alongside their shareholdings.

A. Yes.

I agree my note does not say anything about signatures.

The minutes in my extract shows only one director and makes no reference to the signatures in the Minute Book.

The Minute Book does show that 5 directors were present.

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Time 11.35 a.m.  
Adjourned for 15 minutes

Sgd: B.T.H.Lee, J.

Time 11.55 a.m.

P.W.1 Andrew Peattie (on former oath)

At First General Meeting all shareholders were present. After the resolution all shareholders except His Excellency Tuanku Bujang were present.

This was a General Meeting where it was resolved that \$50,000/- was to be paid to Beng Siew.

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(Witness shown Minutes at Pages 3 and 4)

Witness reads heading of Minutes in Open Court.

In the High Court in Borneo

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Notes of Evidence

—  
Applicant's Evidence

—  
Andrew Peattie

—  
Cross-Examination

In the High  
Court in  
Borneo

Para 6 of my report did not mention the fact that it was a general meeting. I merely said a meeting of the Board of Directors.

—  
No. 7

This was a General Meeting at which the Managing Director's salary, percentage of profits and allowance were fixed.

Notes of  
Evidence

As well as the additional bonus to be divided amongst other directors.

—  
Applicant's  
Evidence

So far as accounts of Company are concerned they were kept in accordance with those resolutions.

10

—  
Andrew Peattie

Bonuses which were paid to Managing Directors were in accordance with those resolutions.

—  
Cross-Examination

Allowance which was paid to Managing Director were in accordance with the resolution.

This sum was paid to Managing Director for his past services was shown as preliminary expenses of Company.

They would be expenses which would not be deductible for income-tax purposes.

The Company adopted the practice of writing off of the preliminary expenses over a 10-year period.

20

So that 1/10 would be written off against nett profits each year.

This is not unusual accounting procedure.

In Para 8 - Page 3 - That bonus was paid in accordance with the authority at General Meeting.

Para 9 - I set out various sums of monies owed to Kong Thai in respect of shares.

There is nothing special about the issues. They were native - bumiputras shareholders.

Q. These were persons of little means interested in the area of operation.

30

A. I am unable to say.

Q. In course of investigation did you make enquiries as to the shareholders?

A. I did not. I am content that they had not paid for their shares.

In Para 10 - I drew attention to fact additional sum of \$5,000/- was paid to Managing Director. I said it was additional travelling expenses.

In the High Court in Borneo

Q. That is incorrect.

-----  
No. 7

Q. You discovered that they were money paid to natives in the working area.

Notes of Evidence

A. Yes. I discovered they were initial payments made to natives. \$9,700/- was the amount.

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Applicant's Evidence

I cannot recall whether \$5000/- was part of the \$9,700/-.

-----  
Andrew Peattie

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\$4,700/- was charged to log-working account. The remaining \$5,000/- was added to the preliminary expenses.

-----  
Cross-Examination

Q. Again this was to be written off every 10 years.

A. Yes.

Refers to Para 7 -

Q. "... in addition, what are described as Pre-Production Expenses of \$139,943.56.

A. I have full details of the break up expenditures figures with me.

20

I am not suggesting anything sinister when I used the words "what are described as .....".

Para 11. "The accounts show that \$1,150.45 was expended on a premium for a Personal Accident Policy for Dato Ling Beng Siew."

Q. That is not unusual for Managing Director to insure as such.

A. I have not had this item personally of any of my clients but I know that it has happened.

As Chartered Accountant I know this is not an unusual practice.

30

Para 14

Q. This is a mere rule of thumb rejection.

A. Not necessarily. This is normal to put in your claims. The tax people leave the onus on you. This is always a contentious matter with the tax departments.



In the High  
Court in  
Borneo

Para 15. I know the Company had power to make donations and also donations for charitable and national purposes incorporated in the powers of Company by Company Act.

—  
No. 7

Para 16. I was shown the correspondence at my second visit to the Kong Thai firm.

Notes of  
Evidence

Para 17. That bonus was paid in accordance with the authority of shareholders.

Applicant's  
Evidence

Para 18. I have seen the accounts. The words "Despite requests, I was not given the opportunity to see any accounts of this Company for this or any other year nor any information as to its capital structure of shareholders." is false when I swore the affidavit.

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—  
Andrew Peattie

P.T. Kalimantan Sari is a joint venture Company, as far as I can understand. This is one of the ventures which appears to be successful.

—  
Cross-Examination

Time 12.30 p.m.  
Adjourned to 2.30 p.m.

Sgd. B.T.H. Lee, J.  
11.4.72

Parties as before  
Time 2.30 p.m.

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P.W.1 Andrew Peattie (on former oath)

Para 20. Ling Beng Siew Sdn. Bhd. Sundry Debtors. That was an ordinary trading account which was paid regularly. (Witness shown accounts).

I agree. It is not an advance.

When I say:

"There is no explanation or authority for the advance and no interest appears to have been charged on it"

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it is wrong.

Q. You did not bother to check the account and you recklessly called them advance.

A. Yes.

Q. Not caring whether it was true or false and giving an adverse impression.

In the High Court in Borneo

A. No.  
I agree that it is not an advance.

Para 21. You stated:

"...the books show him drawing various monthly sums which on 31st August totalled \$228,058/-"

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No. 7  
Notes of Evidence

(Witness shown Ledger Account - asks to find account of Ling Beng Siew in 1966 and 1967).

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Applicant's Evidence

10 A. There is no account for Dato Ling Beng Siew in 1966 - 1967.

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Andrew Peattie

(Witness shown Ledger 1965 - 1966).

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Cross-Examination

I see there is an account for Dato Ling Beng Siew - During 1965 - 1966 the Company was an exempt Company.

In this regard I agree my affidavit is wrong.

During the year it had trade balances. That means the Company owed Ling Beng Siew money.

Q. It is quite misleading to say that monthly drawings made.

20 A. Yes.

Q. It is not debt entries. It is the end result.

A. Yes.

This figure \$228,058/- is the balance which is arrived at taking into account not only monies which had been advanced to or on behalf of Beng Siew but also monies which he had lent to the Company and repayments he had made.

Q. Do you agree the whole of para 21 is misleading - wrong year. It is not a total of advance.

30 A. Yes.

Q. It started off in credit.

A. Yes.

In the High Court in Borneo

No. 7

Notes of Evidence

Applicant's Evidence

Andrew Peattie

Cross-Examination

Q. You did not realise that the year is significant.

A. Yes.

Para 22.

"However the books show this firm drawing monthly sums which in September totalled \$351,067.88."

Q. This firm owed the Company \$351,067.88?

A. I have no doubt about the answer.

(Witness refers to Ledger Account).

Q. That is account which ran from October 1966 through the year?

A. Yes.

Q. From time to time there were payments made by firm to Company.

A. Yes.

Para 23.

Q. You make enquiries about these debtors. They were carrying timber extraction for Company.

A. Yes.

It is not an ordinary account.

The debt will be repaid after work carried out by Kong Thai.

What I meant was they sold the equipment.

I agree normally no resolution would be required.

Para 24. These were in accordance with resolutions of shareholders meetings.

Para 27. That is my view. I agree that is a point where Chartered Accountants have varying views.

I agree Chartered Institution issued instructions from time to time depending upon the country and it varies from time to time.

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I agree it is the accountant's view at that time.

Para 18. Loans to Beng Siew, etc. - abnormal

Q. That is incorrect because you agree there is no account of Ling Beng Siew.

A. Yes.

Q. This is the same error you made.

A. I agree it is not a loan but a trading account. When I say it is a loan, it is again untrue.

10 The profit of the Company was in excess of three millions.

The interest charged against Company was \$16,590/-.

Q. You agree that Para 28 is false and misleading.

A. Yes. I agree I had misled the Court.

Para 30.

Q. You suggest despatch moneys is peculiar and unexplained. In your enquiries you realised Sarawak United Sawmills Ltd. receives despatch moneys.

A. Yes.

20 Q. You agree in such forms of transactions there is dispute between the parties.

A. Sometimes.

Q. The amount payable can take considerable time to settle.

A. Yes.

Q. You will agree that when despatch money is payable by a Japanese Shipping Company further delays are involved because of exchange regulations.

A. I agree.

(Shows ledger folio referred to).

30 Q. You will agree that some of the payments received are from Japanese Companies.

A. Yes.

In the High  
Court in  
Borneo

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Notes of  
Evidence

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Applicant's  
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Cross-Examination

In the High  
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Notes of  
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Applicant's  
Evidence

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Andrew Peattie

—  
Cross-Examination

You say in your affidavit:

"No despatch moneys were received between 20th September 1966 and 28th February 1967 and then, on that one day, despatch money in respect of 11 ships was received. Some of these shippings were as early as March 1966. The total sum was \$40,483.84. No more despatch money was received till 28th April when despatch money for 12 ships totalling \$46,309.13 was paid."

Q. What you are saying is that \$86,792.97 was paid. How did you arrive at that figure? 10

(Witness calculates in witness box).

A. I made a mistake there. I agree it is a mistake in my affidavit.

Q. Did you make enquiries about the despatch moneys?

A. I did.

Q. Is it peculiar and unexplained?

A. It is longer than normal I expect some delay.

Q. Did you find out when moneys would be received?

A. I ask from Kong Thai. 20

I did not enquire from Sarawak United Sawmills Ltd. I did not enquire from that source.

Q. Was it not the terms of the Court's order.

A. Yes.

I agree this is an area where there is dispute.

Q. You have not sought enquiries from the source.

A. Yes.

Q. For all you know there were payments made.

A. It is possible.

Para 31. Chevrolet Impala KA 7000 30

"So far as the books and records show, Kong Thai has no business in Kuching."

Q. You know Kong Thai had business in Kuching when you swore the affidavit.

In the High Court in Borneo

A. Yes.

Q. You were aware there was a business running there.

No. 7

A. Yes.

Notes of Evidence

Q. You know because you were a tenant of the buildings yourself.

Applicant's Evidence

A. Yes. I paid rents. I receive receipts from Kong Thai. I entered into a lease as sub-lessee and Kong Thai is sub-lessor. When I said so in my affidavit I did not think about that.

Andrew Peattie

Q. You looked at the ledger to ascertain the form of the investment.

Cross-Examination

A. Yes.

(Shown Ledger Folio 40).

Aurora Land and Building. I know Aurora is in Kuching. From Folio 41 I know it was a business of furniture and fittings.

I know from Folio 42 that Aurora Hotel included amount of Goodwill.

Q. If you have any doubt Index would show Aurora Building.

A. Yes.

Yes it is false when I said Kong Thai has no business in Kuching.

Q. You want a person reading the affidavit to assume that there was no such basis.

A. Not really.

Q. This ledger shows that Aurora is a fixed assets of Kong Thai.

A. I do not know why I made that statement.

Q. You know Court's order casts an obligation and responsibility on you.

A. Yes.

10

20

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In the High  
Court in  
Borneo

I prepared a written document myself. I handed it to Beng Sung. I made four or five copies. He asked me for them. I typed them myself.

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No. 7

Legal Adviser - Peter Mooney - of Beng Sung prepared the affidavits.

Notes of  
Evidence

Q. Was it he (P. Mooney) who prepared the affidavits?

A. It is a joint venture.

Applicant's  
Evidence

It was written in long hand. The draft was not in the same format as the affidavit.

-----  
Andrew Peattie

The affidavit had everything in my report. 10

I affirmed first affidavit on 10th August, 1971.

-----  
Cross-Examination

I knew that proceedings had not started yet at that time.

Para 33. Chevrolet Impala Singapore

I know Borneo Co. has its office in Singapore.

That is Company had been conducting joint venture with Kong Thai.

Q. When you affirmed this affidavit you did not intend to imply that Kong Thai had no business in Singapore.

A. No. I meant no trading concern in Singapore. 20

Q. You intended Court to accept the words in their literal face meaning.

A. Yes.

Q. You know a lot of business was conducted in Singapore on behalf of Kong Thai

A. Yes.  
I agree I did not say so anywhere in my affidavit.

Q. To your knowledge and investigation you know it is necessary for officers of Kong Thai to travel to Singapore from time to time. 30

A. Yes.

- |    |  |                             |
|----|--|-----------------------------|
|    | Q. You know that this did not occur on isolated occasions.   | In the High Court in Borneo |
|    | A. Yes.  | —                           |
|    | Q. You agree there is nothing improper to use a car for senior officers and Directors in Singapore.      | No. 7                       |
|    | A. These are investment Companies.   | Notes of Evidence           |
|    | Q. So senior executives and Directors will have to seek person to use its car.                           | —                           |
|    | A. There are cars available.   | Applicant's Evidence        |
|    | Q. That is what Kong Thai did - for the services of its officers.  | —                           |
| 10 | A. Yes.  | Andrew Peattie              |
|    |  | —                           |
|    | <u>Para 34.</u> Two pieces of land - Green Road Kuching for \$155,000/- .                                | Cross-Examination           |
|    | Green Road is about 2 miles from Aurora Hotel.   |                             |
|    | I do not know the type of building. I spend about 10-12 days in Kuching. I know where Green Road was.    |                             |
|    | I did not enquire about the building in Green Road.  |                             |
|    | I agree that it is wrong to say Kong Thai has no office or other premises in Kuching.                    |                             |
| 20 | Aurora Hotel has facilities as a night club.   |                             |
|    | Q. Do you know one of the houses was used for visiting singers, musicians?                               |                             |
|    | A. I do not know about that.   |                             |
|    | Q. One was used to accommodate the Resident Director.  |                             |
|    | A. I know.   |                             |
|    | You could have in your affidavit given the reasons. The purchase of land was confirmed by the Directors. |                             |
|    | Q. One of the houses was later sold and it was sold at a profit on a purchase price of \$60,000.         |                             |
| 30 | A. Yes.  |                             |
|    | Q. That sale took place after a couple of years after purchase.  |                             |



In the High Court in Borneo

No. 7

Notes of Evidence

Applicant's Evidence

Andrew Peattie

Cross-Examination

A. Yes. I agree 28% capital profit was reasonable for the benefit of the shareholders of Company.

Para 35. \$791,374/- was invested in Hock Thai. This was within scope of power of Managing Director.

Q. He has been given full authority.

A. Yes.

(Mr. J.E. Vinelott. This is question of law - not for this witness. Objection to question.

Mr. Darvall - It is a question of fact).

Q. You have seen a minute giving power to Managing Director to make investments.

10

A. Yes.

Q. As a Chartered Accountant would you expect the purpose which a Finance Company would advance money - stated.

A. No.

When I say:

"Kong Thai's records do not disclose what the purpose of the investment was or what Hock Thai Finance Bhd. used the money for."

20

I would not expect any explanation in the accounts.

Para 36. Aurora Hotel - "Goodwill"

Goodwill has one or two meanings.

"Goodwill" may mean "location", "its name" or "profit ability".

It is measured by difference in price paid and the value.

Q. In present instance \$150,000/- was an amount paid which was not represented by tangible assets. Chartered Accountants would not know whether it represent one or other of the definitions given by you.

30

A. Yes.

I am an expert. I know what it meant and what it represents. I did not discover from anybody what it meant.

- |    |   |  |
|----|---|--|
|    | Q. What that knowledge and expertise yet you affirm that in your affidavit.   | In the High Court in Borneo              |
|    | A. I did not have the break down figures.<br>(Witness shown Ledger).<br>I agree it is of no great significance here.  | —<br>No. 7<br>Notes of Evidence          |
|    | Q. It makes no difference to shareholders what the answer was.  | —  |
|    | A. I agree.<br>I have experience in forestry accounts for about 10 years.   | Applicant's Evidence<br>—                |
| 10 | Practising in my own account firm for 5 years. Prior to that I was an employee.<br><br>I spent my complete time in accounts directly or indirectly connected with timber.<br><br>I have done so for about 2 years. Before that not so much.<br><br>I have a hotel bar and a restaurant in Brunei, No. 3, Pegawai, Brunei.<br><br>I agree that my hotel bar and restaurant does not qualify for the title "Hotel".   | Andrew Peattie<br>—<br>Cross-Examination |
| 20 | Q. When did you have last experience in hotel accounts?<br><br>A. About 5 years ago. Capital Hotel, Kota Kinabalu. That hotel has a bar, dining room.<br><br>Q. Where do you get your expertise in advising mark-up and running a hotel?<br><br>A. From friends in hotel industry, Singapore, Kuching.<br><br>Q. What is the name of the man in Kuching.<br><br>A. It happened long ago. I cannot remember his name.<br><br>Q. Mark-up varies from place to place.<br><br>A. I agree. |  |
| 30 | Q. It varies according to standard of hotel.<br><br>A. Yes.   |  |

In the High  
Court in  
Borneo

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Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Andrew Peattie

—  
Cross-Examination

Q. It varies according to the status of the bar.

A. Yes.

Q. So that mark-up is higher than in ordinary bar.

A. Yes.

Q. You agree prices are dropped in order to attract customers.

A. Yes.

If sales are low it is not surprising profit is lower.

It it is nightclub prices will be much higher than a hotel.

Q. Have you in affidavit drawn various aspects about Hotel? What you were implying if it were better runned, better results would be attained?

A. Yes.

I am not implying anything sinister about Aurora Hotel in my affidavit.

Q. You realise Hotel has undergone renovations.

A. Yes.

Q. You will agree that if Hotel is undergoing such change trade tends to drop off.

A. Yes.

Q. You state: "As to losses in Hotel during the period under review - this was not mentioned in Kong Thai's meeting".

A. There was no minute on that.

Q. You do not know one way or other whether there was any discussion.

A. Yes. No comment in minutes.

Q. The fact that there is no comments does not mean there was no discussion.

A. Yes.

Time 4.00 pm.  
Adjourned to 9.00 a.m.  
Sgd: B.T.H. Lee, J.  
11.4.72

12th April, 1972  
 Parties as before  
 Time 9.00 a.m.

In the High  
 Court in  
 Borneo

P.W.1 Andrew Peattie (on former oath)

—  
 No. 7

Para 38.

Notes of  
 Evidence

I made enquiries and I find that the Company had gone into liquidation. I did not mention this fact in my affidavit.

—  
 Applicant's  
 Evidence

I did not include this fact in my original report.

10 Mr. J.E. Vinelott

—  
 Andrew Peattie

This is privileged document - not a document which ought to be produced.

—  
 Cross-Examination

Mr. C. Darvall

20 This is tantamount that witness is in contempt of Court. Contravention of written undertaking. S.167 (5) of Companies Act. Learned friend says this is privileged. Unless law has recently been changed it has always been that a situation of privilege exist only between client and his legal adviser and even that has limitation because it is limited to legal advice which has been given. The only possible way in which this document can be privileged would be to bring into existence with the then intention of using it in litigation which was then in contemplation. If learned friend claims that is the situation I shall ask Court immediately to dismiss the suit because this is an application which can be brought only by a shareholder in his capacity as such, and it may not be brought by a Director as such. This document came in to existence because of a consent order made in pursuant of S.163 of Act. That is an order which can only  
 30 be made on the application of a Director.

Reads Section 163(5).

Mr. J.E. Vinelott

The claim that there is a contempt in anything done, is misconceived.

It was prepared for Dato Ling Beng Sung and it was disclosed by Peattie to him and no one else. It is the property of Beng Sung. It cannot be disclosed without his consent. He obtained it knowing that it might disclose matters which would lead to litigation.

In the High  
Court in  
Borneo

It has been the subject of discussion with his legal advisers and in those circumstances he claims privilege.

Mr. C. Darvall

No. 7  
Notes of  
Evidence

Counsel had personalities mixed up. As such it is clearly admissible on call and I make my call.

Applicant's  
Evidence

Anxious to look at this Report for cross-examination to cast a light of truth on his affidavit. Would like to see the original report.

Court adjourned for Counsel to look up authorities.

Andrew Peattie

Time 9.20 a.m.  
Sgd: B.T.H. Lee, J.

10

Cross-Examination

Parties as before  
Time 9.30 a.m.

Mr. J.E. Vinelott

I have been taken by surprise but I now withdraw my objection to production of Report.

Mr. C. Darvall

Asks for a short adjournment in order to read the report produced by Counsel for applicant.

Time 9.40 a.m.  
Sgd: B.T.H. Lee, J.

20

Parties as before  
Time 11.00 a.m.

P.W.1 Andrew Peattie (on former oath)

I prepared the affidavit more or less from the Report. I was assisted by Mr. Peter Mooney.

We went over together, the Reports and Schedules on which notes were taken. The affidavit was subsequently prepared.

Para 34:

"Kong Thai has no office or other premises in Kuching and it is nowhere explained what the reason for the purchase is."

30

Para 70:

1,801.35 was expended on electrical installations at the Green Road house. The records do not show who occupied the house. No rent was paid for it.

In the High Court in Borneo

—  
No. 7

Para 103:

"The Green Road land and building was sold during the year to Hock Thai Finance Corporation Bhd. Kong Thai never received rent for this property and there is nothing in the records to indicate why Kong Thai bought it."

Notes of Evidence

—  
Applicant's Evidence

10

Q. Those three paragraphs were taken from your report.

—  
Andrew Peattie

A. As far as I can recall.

—  
Cross-Examination

Refers to Report - which contains a letter dated 2nd June, 1971.

And at page 5 of Report. Para 9. Headed Fixed Assets Schedule B14.

This home is occupied free of charge by Mr. Cheng Yew Kiew.

Q. This is opposite to what you have said in your affidavit.

20

A. It is complete conflict with my letter.

A. And as such it is a lie.

A. I don't agree.

Q. You have three paras in affidavit in direct contravention of your report.

A. These are exceptions.

This house was bought not in connection with the timber Company but for Aurora Hotel.

Page 9 of Report 1968/9 Para 8:

30

"Includes an amount of 1,161.80 for expenses for house at Green Road, Kuching, occupied by Cheng Yew Kiew one of the Company's Directors. No rent is paid."

Yet you said no explanation was given in your para 69.

In the High  
Court in  
Borneo

At that time Cheng Yiew Kiew was not working for  
Kong Thai.

I agree he is Director of Kong Thai.

No. 7

Para 69 is not my wording. It is Mr. Peter Mooney's.

Notes of  
Evidence

Mr. P. Mooney had a copy of the Report.

Para 34. The wording is Mr. Peter Mooney's. He had  
available the report.

Applicant's  
Evidence

Q. When you came to read the affidavit did you not  
protest that it is different from Report?

Andrew Peattie

A. No.

10

Cross-Examination

Q. You realise Aurora Hotel is an asset of Kong Thai?

A. Yes. But the assets should have an independant set of  
accounts and entered into account of Kong Thai.

I agree Hotel was shown as an asset of Kong Thai.  
I am Accountant of some years experience.  
I understand accounts and branch account. I agree  
detail day to day account may be contained in branches  
books of accounts.

That Branch has no separate entity.

I agree it is part and parcel of head office and its  
structure. I agree so far as Hotel Aurora is concerned  
it is part and parcel of Kong Thai.

20

It is true it had no separate entity.

It is not normal to have separate accounts of its own.  
In fact it is in order.

I consider Green Road to be part of Aurora Hotel.

Q. Why did you deny that yesterday?

A. I cannot remember the questions yesterday.

(Counsel goes to next question)

(Mr. J.E. Vinelott. Asks if Counsel is withdrawing the  
question).

30

(Mr. C. Darvall. No.)

(Counsel - Then perhaps the same question should be asked  
of the witness).

Q. You know all along house was occupied by Resident  
Director.

A. Yes.

In the High Court in Borneo

Q. Yet you said in your records that there was no explanation.

A. Yes.

-----  
No. 7

Q. You suppressed that information

Notes of Evidence

A. I consider it not necessary.

Q. This is a matter of accounting procedure.

-----  
Applicant's Evidence

A. That is my opinion.

Cheng Yiew Kiew is in Kuching. He had a business in Kuching. I knew Aurora Hotel belonged to Kong Thai.

-----  
Andrew Peattie

10 The profit or loss of Aurora Hotel would affect the business of Kong Thai.

-----  
Cross-Examination

I disagree that Kong Thai cannot charge interest on Aurora Hotel.

It would debit an account to Aurora. The advances to Aurora would be retained in balance sheet of Kong Thai.

So income in Profit and Loss Account in Kong Thai would include an interest charged to Aurora. That would be reflected in the profits of the year.

20 Having increased the profits it would increase the income tax liability.

This is a cost accounting exercise.

Q. This is an opinion which accountants varies.

A. Yes.

I agree that statements in Director's Reports and Auditor's Report is a matter which Accountants vary.

I have expressed my own view and there is room for the opposite view and is not necessarily wrong. I am more expansive in the things I say.

30 When I made reference to Directors and Auditors Report I merely say I disagree with form adopted by the Auditor who is also a qualified accountant.



In the High  
Court in  
Borneo

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Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Andrew Peattie

—  
Cross-Examination

I agree in all the years there was no major qualification by auditors.

The reports are of the usual form.

Q. Since the shares were transferred to Beng Sung the company has paid dividends on those shares of 82.5%, 82.5%, 50% and again 50%.

A. Yes.

Q. This adds up to 265% in four years of the sum invested.

A. Yes.

Q. You agree that it is a handsome return.

A. Yes. On original shares.

10

These shares were not purchased at a premium. The Company had accumulated undistributed profits at time of purchase from Mukah Sawmills.

Beng Sung bought his shares at par from Mukah Sawmills.

Refers to Report 1966/67 Page 2 Para 4.

Directors' Bonus \$179,600

I agree that all Directors' bonuses, the Managing Director's bonus and salaries and Directors fees have all been paid in accordance with the authority given by shareholders in General Meeting. The authority is 20th January, 1965.

20

This was before Beng Sung became a shareholder of the Company in 31st January 1967.

Page 3(c). Ling Beng Siew Sdn. Bhd. \$16,562.00

"Again no interest appears to have been charged on this current account."

(d) Ling Beng Siew Personal Current A/c

(e) Ling Beng Siew & Co. Current A/c.

This is a true description of the Account. That character persisted right up to time of my investigation.

30

It is current account of the persons with Kong Thai.

Q. You have always referred them in your reports as current accounts.

In the High Court in Borneo

A. Yes.

(Witness checks the point from the Reports).

No. 7

Q. There is no suggestion that any of these are loan account.

Notes of Evidence

A. Yes.

I have described them as current accounts.

Applicant's Evidence

(Witness shown Account - 1966/67 Advances).

10 Advance for treatment in P.T. Kalimantan Sari

Andrew Peattie

I knew it was a possible investment. I knew later that these were indeed investments.

Cross-Examination

Refers to Para 18 of Affidavit.

"The sum of \$50,000/- was advances to P.T. Kalimantan Sari. Despite requests, I was not given the opportunity to see any accounts of this Company for this or any other year nor any information as to its capital structure or shareholders."

Q. You have agreed that statement was false.

20 A. I had access to account. Even at June 1971 I knew for what money was advanced.

Refers to 1967/68 Report.

Para 2 - Fixed Assets.

"(A) Motor Vehicles include the purchase of three new cars as under:-

- (a), (b) .....
- (c) Chevrolet Impala, SV 2144, for use in Singapore."

Q. In whose suggestion was this included in your affidavit.

30 A. It came out of discussion with legal adviser and may be with Beng Sung.

This was sometimes added to affidavit which was not in the original report.

In the High  
Court in  
Borneo

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Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Andrew Peattie

—  
Cross-Examination

I felt these items should be charged to various companies.

Refers to Para 33:

"So far as the books and records show, Kong Thai has no business in Singapore."

I agree that was investment coming out in Singapore.

Q. Business does not mean buying and selling of articles.

A. Yes.

Q. This invites discussions, feasibility studies, etc.

A. Yes.

Q. In your report of 5th June, 1971, to Beng Sung you made no mention in words similar or form in your affidavit.

10

A. Yes.

Q. This is an afterthought.

A. This is as a result of our discussions.

Refers to Report. Page 2.

"3. Aurora Hotel

Approval for the purchase of this was not minuted until after completion. Approved at a Directors Meeting held on 14th February 1969 but shown in this year's accounts as an Investment."

20

Q. You never had any doubt that this was an investment.

A. It was an investment.

I looked at Minutes of Association of Kong Thai. It had power to make such a purchase.

Q. You knew from your investigation it was not putting all its eggs in one basket.

A. Yes.

Q. So that when the lease expired, the Company will have business to carry on.

30

A. Yes.

Refers to offer of shares to Beng Sung at \$600/-.

In the High Court in Borneo

Q. Am I right in suggesting that \$600/- fair price of balance sheet.

A. What I mean is it is purely Kong Thai Timber business.

No. 7

Q. The position then would be that since Beng Sung purchased these shares he had received 265% return on the money investment.

Notes of Evidence

A. Yes.

Applicant's Evidence

10 Q. Something in excess of 6 times capital appreciation value and income in 4 years.

A. Yes.

Andrew Peattie

I agree capital increase in this case is a handsome accretion.

Cross-Examination

Q. This handsome accretion has been due to success of Company.

A. Yes.

Q. To genius of Beng Siew.

A. A matter of opinion.

Q. As a result of efforts of Board of Directors.

20 A. Yes.

Q. Beng Sung never attended any meeting?

A. According to minutes he had attended one meeting. It was Annual General Meeting.

I agree he had never attended a Directors' meeting.

Refers to Report 1967/68 Page 4

"2. Sundry Debtors

(a) Aurora Hotel Kuching \$312,128.80  
Current account with the above subsidiary company. No interest appears to have been charged."

30

I agree I was mistaken when I said it was a subsidiary company. It is a branch of Kong Thai.

In the High Court in Borneo

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Notes of Evidence

Applicant's Evidence

Andrew Peattie

Cross-Examination

Q. You will agree that if so, my contention that it should be charged interest, will have great weight.

A. Yes.  
It is a diverse business activity of Kong Thai under its own Company structure.

Refers to Para 6.

"5. Fixed Deposits  
During the year under review the Company's surplus funds were placed on Fixed Deposit with the Company's Bankers and earned interest of approximately \$40,000."

10

Q. By Company's Bankers you meant Hock Thai Finance Corporation Bhd. (see Para 35 of affidavit).

A. This is different. This does not refer to para 35.

The shares had to be sold because the Bank is a parent Company.

From my investigation the tax due to tax department has been paid by instalments.

In your affidavit you commented on purchase of a freezer.

20

I presume this equipment was for yacht Berjaya Malaysia.

Shown schedules of Report.

Yacht construction, Electric food freezer, radio set.

I agree these were part of the yacht construction. I did not go to the dockyard nor to the yacht to find out.

I knew from investigation that payments were made to P.T. Kalimantan Sari as part of Kong Thai's investment.

You drew attention to Auditors report and Directors report.

I agree that accountants can honestly disagree.

30

Time 12.25 p.m.  
Adjourned 2.30 p.m.

Sgd: B.T.H. Lee, J.  
12.4.72

Parties as before  
Time: 2.30 p.m.

In the High  
Court in  
Borneo

P.W.1 Andrew Peattie (on former oath)

\_\_\_\_\_  
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Refers to Report 1968/69. Page 1 - Para 3 -  
Advance to Malaysia Air Charter.

Notes of  
Evidence

It was another investment. It received full Board's  
approval.

\_\_\_\_\_

Para 4 - Prepayment - Hovercraft

Applicant's  
Evidence

Q. That was something you omitted in para 38.

\_\_\_\_\_

10 A. Yes.

Andrew Peattie

Q. It is necessary to have the full story.

\_\_\_\_\_

A. It is something new in this business. A small  
dividend was paid on liquidation.

Cross-Examination

Q. You don't suggest any blame to Directors of Company.

A. No.

Para 4 Page 4. Ling Beng Hui \$100,000

At time of investigation no interest was in fact put  
through book. He is not a director of the Company. He is  
No. 5 in Ling's family.

20 I did notice that at Board's meeting interest had to  
be charged. This has been done.

Para 5. Inche Harun Ariffin has been charged interest.  
He is paying off by instalments.

Witness shown Account Books

Ledger in the years 1970/71, 1971/72.  
There has been regular payments up to February of this  
year.

The account is, I agree, in order.

30 Q. If there is any blame in the business the blame ought  
to be equally shared by the Directors.

A. Yes.

In the High  
Court in  
Borneo

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Notes of  
Evidence

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Applicant's  
Evidence

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Andrew Peattie

—  
Cross-Examination

In neither case was a licence granted in respect of running the two banks i.e. Commercial Bank Brunei and Development Bank Brunei.

I have seen the preliminary expenses expended in these two Banks. I also saw two million dollars in respect of the two Banks were refunded.

Q. You referred to Despatch & Demurrage monies.

A. They were contained in the Schedule rather than as a separate report. No separate report was made.

Q. These shares in Kong Thai which were purchased by Beng Sung they were par value \$100/-. They were the same shares which 2nd respondent has offered to Beng Sung at \$600/-.

10

A. Yes.

Q. Kong Thai is not an exempt Company because it has over 20 shareholders. That being the maximum allowed under the Companies Act. In fact there was 21.

A. Yes.

Q. Mukah Sawmills had 63 shares in this capital in excess of 1.3 million.

20

A. Yes.

Q. You agree there was a change in the state of Company from exempt to non-exempt Company.

A. Yes.

Q. Berjaya Malaysia - cost of re-construction was authorised so was the purchase. Total cost stands at \$505,000/- not \$750,000/- suggested by my learned friend.

A. Yes.

Para 39 - The equipment is also included in the \$505,000/-. This equipment was included at the time of re-construction. 30

A. Yes.

I am satisfied now that it is bona fide purchase.

Para 40. \$984,627.01 Ling Beng Siew Sdn. Bhd.

Q. You agree that Kong Thai did not pay any interest on money borrowed from him.

- |       |  |                                   |
|-------|--|-----------------------------------|
| A.    | Yes.   | In the High<br>Court in<br>Borneo |
| Q.    | It is a current trading account.   | —                                 |
| A.    | Yes.   | No. 7                             |
|       | <u>(Shown 1/52 Ledger Account)</u>   | Notes of<br>Evidence              |
| Q.    | You will agree that there are many credit entries not mentioned in the affidavit.                        | —                                 |
| A.    | Yes I agree.   | Applicant's<br>Evidence           |
| Q.    | By end of July 1968 Ling Beng Siew Sdn. Bhd. was a creditor of the Company.                              | —                                 |
| 10 A. | Yes.   | Andrew Peattie                    |
|       | Q.   | —                                 |
|       | At the end of July - there was goods sold to Kong Thai and they would be paid in the course of business. | Cross-Examination                 |
| A.    | Yes.   |                                   |
| Q.    | This is a trading account between two Companies.   |                                   |
| A.    | Yes.   |                                   |
| Q.    | Why did you include para 40 in your affidavit.   |                                   |
| A.    | To show turn of cash.  |                                   |
| Q.    | Not suggesting that the money was for all times owing by Beng Siew to Kong Thai.                         |                                   |
| 20 A. | No.  |                                   |
| Q.    | What you have said could be misleading without having access to Ledger accounts.                         |                                   |
| A.    | I agree it was a turn over.  |                                   |
| Q.    | You are not suggesting anything wrong in this.   |                                   |
| A.    | No.  |                                   |
| Q.    | You refer to \$461,500. That was a bookkeeping error.  |                                   |
| A.    | Yes.   |                                   |
| Q.    | You drew attention to fact that error was adjusted.  |                                   |



In the High  
Court in  
Borneo

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Notes of  
Evidence

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Applicant's  
Evidence

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Andrew Peattie

—  
Cross-Examination

A. Yes.

Q. This is quite normal and usual.

A. Quite normal.

Q. Company has not suffered any loss at all.

A. Yes. No loss.

Para 41

Q. What you have done is to give total of debits without any reference to credit throughout the year.

A. Correct.

Q. When one goes to Ledger one does not see the picture as painted in the affidavit. 10

A. I give balance figures.

Q. You show tide going out, but you fail to show tide coming in.

A. Yes.

Q. You agree it was all paid up.

A. Yes.

Q. When account was struck it was possible to show the amount Managing Director would be entitled.

A. That is possible. 20

Q. So far as Managing Director is concerned his main source of income in this Company was the bonus to which he was entitled.

A. Yes.

Q. Which you agreed was authorised by the shareholders at the Directors' meeting.

A. Yes.

Q. What was drawn on current account had been repaid

A. Yes.

Q. Did you inspect voucher with bonus. 30

A. Yes.

Q. It was carried out correctly with the correct procedure.

A. Yes.

Para 42

Q. These were authorised.

A. It was subsequently authorised.

Para 42

Advances were made to various ventures with Borneo Company.

In the High Court in Borneo

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No. 7

Notes of Evidence

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Applicant's Evidence

—  
Andrew Peattie

—  
Cross-Examination

10 Q. Some of the Companies are now profitable and even now paying dividends.

A. Yes.

Q. When a Company is formed for a new venture one does not expect an immediate return.

A. Yes.

Q. What one expects is that the Company will suffer losses of the first few years of its establishment.

A. Yes. Two or Three years.

Q. It depends on the type of Company.

20 A. Yes. Many factors are involved.

Q. The successful man is to evaluate at those early stages with the aid of experts the likelihood of profit in the future.

A. Yes.

Q. That decision having been made the unsuccessful venture to be terminated and the successful venture preserved.

A. Yes.

30 Q. This is what Kong Thai had been doing in respect of the ventures.

A. Yes.

In the High  
Court in  
Borneo

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Notes of  
Evidence

Applicant's  
Evidence

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Andrew Peattie

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Cross-Examination

Q. You agree if the Directors have been right in running Kong Thai that they will continue the prosperity in this.

A. Yes.

Para 44

Q. This advance in fact was one for renovations of Aurora Hotel.

A. Yes.

I want interest to be charged for internal accounting reasons.

Para 45. Yew Piu Ing

I did make enquiries. I now know it refers to deceased persons - employee funeral expenses.

Q. This is a normal type of business payment.

A. Yes.

Para 46. Ling Lee Soon \$30,000/-

I now know advance has been transferred to Ling Beng Siew's Company account.

Para 47. Outstanding Bumiputra's shares

Half of dividend should have been repaid to reduce the debt. Some cases were done and some not.

Para 48. Ling Beng Hui \$100,000/-.

He is one of the three younger brothers.

Para 49. \$5,500/-

This was approved by Board of Directors. This was debited to preliminary expenses. Approved by Board's decision and written off over 10 years.

Bonus, Salaries Fees

Q. You agree they have been currently paid in accordance with authority of shareholders.

A. Yes.

10

20

30

Para 51. Fines and penalties.

- Q. These are normally charged to Contractor.
- A. In fact a small part were so charged. I understand this is under appeal and review.
- Q. This is a matter for commercial decision by Directors.
- A. Yes.
- Q. You may not agree but this is within the domain of the Directors.
- A. Yes.

In the High  
Court in  
Borneo

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Notes of  
Evidence

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Applicant's  
Evidence

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Andrew Peattie

10 Para 52. Donations

- Q. They have been authorised.
- A. Subsequently authorised.
- Q. You saw the receipt.
- A. Yes.
- Q. You will accept those receipts as evidence of payments.
- A. Yes.
- Q. It would appear that the Auditors have checked the bona fides of these payments.
- A. Yes.
- 20 Q. You know people indentify Ling Beng Siew with the Company.
- A. Can be.
- Q. He is one of 4 major Timber Companies in this area.
- A. Yes.
- Q. Certainly, you did not find any evidence that he received any benefit from his position as President of Sarawak Chinese Association.
- A. No.
- 30 Q. That applies to the whole amount of donations amounting to 1.3 million.

—  
Cross-Examination

In the High  
Court in  
Borneo

A. Yes.

Q. You did not suggest to any-one you found any jot or evidence.

No. 7

A. No.

Notes of  
Evidence

Para 53. Entertainments \$63,809.68

You pointed out \$20,291/- was disallowed by Inland Revenue.

Applicant's  
Evidence

Q. This is a matter of dispute.

A. Yes.

Andrew Peattie

Q. It does not mean that payment is not necessarily one the Company should have been made.

10

Cross-Examination

A. Not necessarily.

Q. It is one of those things which one can assess against profits earned.

A. Yes.

Para 54. Travelling Expenses.

Q. You will agree with the diverse nature of the business which company was embarking upon that it was necessary to travel to far places.

A. I agree it is necessary. I should have thought these should have been charged to investments.

20

Q. This is a matter of accounting and negotiations with Borneo Company.

A. Yes.

I did not go to Borneo Company's books to see what they charged in joint ventures.

Q. You will agree that the decision whether a person should travel by what means is within the domain of the Board of Directors.

A. Yes.

30

- |                                       |  |                             |
|---------------------------------------|--|-----------------------------|
| Q.                                    | This is shown from year to year in circulated accounts of Company.   | In the High Court in Borneo |
| A.                                    | Yes.   | —                           |
| Q.                                    | They have been shown to shareholders at General Meeting for them to raise any questions if they wished to. | No. 7                       |
| A.                                    | There are one or two items which should in effect have been debited or paid by persons themselves.         | Notes of Evidence           |
| Q.                                    | You will agree it is desirable that a man should be accompanied by his wife.                               | Applicant's Evidence        |
| 10 A.                                 | I agree but not by his family.   | —                           |
| Q.                                    | A number of irregularities which was of an accounting nature have been attended to on your advices.        | Andrew Peattie              |
| A.                                    | Yes.   | —                           |
| Q.                                    | You draw attention to fact that there was no business in Kuching.  | Cross-Examination           |
| A.                                    | I mean no established branch office.   |                             |
| <br><u>Para 55. Legal expenses.</u>   |  |                             |
| Amount not allowed by Tax Department. |  |                             |
| 20 Q.                                 | This is a matter between taxpayer and Inland Revenue Department.   |                             |
| A.                                    | Yes.   |                             |
| Q.                                    | Basis is authority casts the onus on taxpayer.   |                             |
| A.                                    | Yes.   |                             |
| Q.                                    | Expenses are incurred for protection of Capital in Business.   |                             |
| A.                                    | Yes.   |                             |
| <br><u>Para 56. Dealt with</u>        |  |                             |
| <br><u>Para 57. Sarikei Shophouse</u> |  |                             |
| Q.                                    | You did not discover this building was rent-controlled.  |                             |
| 30 A.                                 | I found out premises was taken by someone who was bankrupt.  |                             |

In the High  
Court in  
Borneo

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Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Andrew Peattie

—  
Cross-Examination

Para 58. Advance to Malaysia Air Charter Ltd.

- Q. Another investment made. Commercial decision made by Directors.
- A. Yes.
- Q. You will agree one will not expect dividend for some time.
- A. Yes. This depends on management. I expect a bigger loss.
- Q. You know losses have been substantially reduced.
- A. Yes.

10

Para 59. Sundry Debtors.

- Q. You agree that account were made available later.
- A. Yes.
- Q. These are part and parcel of the investments.
- A. Yes.

Para 60.

We have dealt with Yew Pui Ing, Ling Lee Soon - has paid interest.

- Q. Chen Ko Ming's debt has been repaid.
- A. I have not seen the accounts.  
(Shown Folio 228 - Chen Ko Ming's account).  
Yes amount paid in full.

20

Para 61. These refer to Bumiputras.

The same comments apply as previously.

- Q. These may be a technical breach. Having regard to personalities involved and type of shares it is one for decision by the Board of Directors.
- A. Yes.

Para 62. Ling Beng Hui's debt.

Dealt with.

30

Para 63.

Q. You will agree you were shown accounts.

A. I agree there has been regular repayments. I have seen that interest was also charged. I saw the agreement between Kong Thai and Harun Ariffin. I agree this is a Company's affair.

In the High Court in Borneo

\_\_\_\_\_  
No. 7

Notes of Evidence

Para 64. Dato Ling Beng Siong.

Repayments have been made. It is a current account.

Applicant's Evidence

Para 65. \$2,558,066.75. Ling Beng Siew & Co.

10 I agree I have given only the debit side only.

Andrew Peattie

Ledger 153 - shown to witness.

\_\_\_\_\_  
Cross-Examination

There are large credit items. I agree this is a true current account.

I agree there were payments made throughout the year.

Q. He cannot work out the account unless the Profit and Loss Account was ready.

A. Yes.

Para 66. Aurora Hotel

Q. This is an internal movement of funds within the Company.

20 A. Yes.

Q. The records are owned by Kong Thai.

A. Yes.

What I mean is "Head office records".

When I say "There is no indication in Kong Thai's records of how this money has been spent".

I saw the accounts.

I know now the hotel has been conducted profitably.

If interest is charged it would be a loss.



In the High  
Court in  
Borneo

Para 67.

I agree there is an overall increase in mark up.

—  
No. 7

Q. You do not suggest anything improper for the three vehicles.

Notes of  
Evidence

A. When I asked for the use of cars I was unable to get an answer except in general terms. I did not travel in any of them from Airport.

Applicant's  
Evidence

Para 68. Malaysia Daily News Sdn. Bhd.

This is a new venture.

Andrew Peattie

Q. It will be necessary to rejuvenate from loss to profit and this will take time.

10

—  
Cross-Examination

A. Yes.

Q. It is nothing abnormal. This is within domain of Board of Directors.

A. Yes. But I would not recommend it.

(Shown accounts September 1971).

Net loss \$43,110/-. Then losses were reduced.  
P Profits increased in this year compared with 1970, from \$102,829/- to \$130,080/-.

Q. You will agree that there is a substantial improvement.

20

A. Yes.

Para 69. Berjaya Malaysia.

Q. Again you have received full explanation of moneys paid in accordance with authority of Board of Directors.

A. Yes.

Para 70. Green Road house.

Q. You do not suggest anything improper.

A. I am holding to my opinion that it should be in Aurora's Account and not Kong Thai account.

Para 71. (Account shown to witness. Profit & Loss of Kong Thai - Miri 1969)

30

Q. For this year 1969 provision for dividend \$680,000. You

put in your affidavit is after tax have been paid. As far as individual shareholders they get cash and deductible amount from Inland Revenue. So they get the full benefit of \$680,000 and not \$408,000/-.

In the High  
Court in  
Borneo

A. Yes.

—  
No. 7

10 These were the figures prepared. Exhibit P.1  
These figures (not admitted by Respondents) are in error in  
as much as they show that nett dividends paid to shareholders  
and don't show the full benefit of dividends received by the  
shareholders which works out to be of \$1,441,600 understated.

Notes of  
Evidence

Where the figures in Exhibit P.1 reads \$2,298,400/-  
the gross figure of benefit is \$3,740,000/-.

—  
Applicant's  
Evidence

Para 72.

Already agreed. It is correct and in accordance  
with authority of shareholders.

—  
Andrew Peattie

—  
Cross-Examination

Para 73.

Q. This is an ordinary trading account.

A. Yes.

20 Q. It is a well known fact that Beng Siew had an  
interest in Pan Sarawak Sdn. Bhd.

A. Yes.

But the technicality required by the Companies Act had  
not been complied with but the fact was one of common  
knowledge in this area. I mean the disclosure of interest  
in the Company.

Para 74. Donations.

Donations were made and approved.

As far as I know there is not a jot of evidence to  
suggest anything improper.

30 Q. You were looking for impropriety.

A. I was indeed.

Para 75. Entertaining.

This is a contentious matter except for golf clubs.  
I was told that the golf club was a spare golf set meant to  
entertain visitors in golf course.

In the High Court in Borneo

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Notes of Evidence

Applicant's Evidence

Andrew Peattie

Cross-Examination

Para 76

Q. You do not suggest anything incorrect.

A. No.

Para 77.

Q. What you meant is it is not connected with Kong Thai timber business.

A. Yes.

(Witness referred to AP. 9 Para (a))

"(a) Production had reduced because scarcity of trees in the forest. There was advancement made to Kong Thai Plywood (Pte) Ltd., Singapore for investment and as it would not be profitable, the company is in the course of winding up. Another advance of \$10,156.25 as investment was made to proposed company Kong Thai Glass (Pte) Ltd. for specialist from U.S.A. to make a survey, it was found not a profitable business....."

10

A. I expect Silica to be added to Kong Thai Glass Account and subsequently written off. It was not done.

Q. Report is for 1970. Your comments is for 1969. They were not available at that time.

20

A. Yes.

Q. You do not suggest anything improper.

A. No.

Q. You realise Company has wide objects.

A. Yes.

Q. You know there is a world shortage of antimony. Many Companies in various parts of the world is involved in exploration of antimony.

A. Yes.

Time 4.30 p.m.  
Adjourned to 9.00 a.m.

30

Sgd: B.T.H. Lee, J.  
12.4.72

13th April, 1972  
Parties as before.  
Time 9.15 a.m.

In the High  
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Borneo

P.W.1 Andrew Peattie (on former oath)

—  
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Para 78.

Notes of  
Evidence

These are personal bills. I won't know the amount which are personal.

—

Para 79.

Applicant's  
Evidence

I think this should be charged to Investment Companies.

—

10 They are high but I agree this is accounting procedure. I agree this is a big company and has diversified interests.  
(Shown Account Books)

Andrew Peattie

—

This contains other details of other directorships. The Companies Act requires this to be filed in accordance with provisions of Act.

Cross-Examination

It is a public document and available for inspection.

Beng Siew has been director since February 1969, in which Kong Thai is interested.

20 This appears to cover all the companies which we had discussed.

Para 80.

This is merely informative. I prefer that one of subsidiaries pay for Singapore car. From Director's fund of \$5,000,000 this is a minor report.

Para 81.

The cost of Berjaya Malaysia was approved. This is a private yacht from what I read in newspaper reports.

Q. Not wishing to malign the press it is not necessarily true what the press published.

30 A. Yes.

Q. You have no knowledge of Company's internal affairs.

A. Yes.

Q. You are unaware that Berjaya Malaysia was purchased for visiting areas in Indonesia which were not connected by commercial aircraft.

In the High Court in Borneo

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Notes of Evidence

Applicant's Evidence

Andrew Peattie

Cross-Examination

A. This is in connection with investment companies.

Q. This is an area belonging to Director's domain.

A. It could be.

Q. If you were Auditor it is not your function to contravene the decisions of Directors.

A. Yes. I would probably make an observation in my report as Auditor.

Para 82.

This is informative value of dividends received. I believe the dividends have increased recently.

10

Para 83.

Q. Bonus is not very important.

A. I have included this information such as this because I had not available the information. This does not indicate they have any criterion.

Mr. Peter Mooney, Beng Sung and I were present when the affidavit was drawn up.

Para 84.

Q. Is purely informative.

A. Yes.

20

Para 85.

Q. Dealt with. Merely an accounting matter.

A. Yes.

Para 86.

I could not discover any information that Beng Siew has disclosed to the Board in the purchase of shares in Sabah Agency so far as the records of Kong Thai are concerned.

Q. You are reporting a negative result.

A. Yes.

Para 87.

30

I agree there was no expertise in Sibu - in case of flooding.

Para 88

I agree the three companies are investment companies. These may be expenses for expansion of diversification of these companies.

The information I received was in August 1971. There was a technical fault in the first page of Affidavit and I had to re-affirm it on 24th November.

10 During the two days I had been back to Kong Thai I have been given additional information that I asked for in my previous visit.

I assumed that I was still re-affirming my original affidavit. I had no intention of misleading the Court.

The whole fact of the matter in my first affidavit is incorrect. I have discovered matters which do not appear in the affidavit.

Q. Did you make any supplementary affidavit.

A. I made a verbal report to Beng Sung.

20 Q. When you so reported you made clear some of the matters which appeared to be contentious in your affidavit no longer appear to be so.

A. Yes.

Q. I take it you were not asked to swear any supplementary affidavit so that these matters which appear to be contentious were not rectified.

A. No.

Q. It was not until I cross-examined you.

A. Yes.

Para 89.

This is merely informative as to investment.

30 Q. You do not suggest anything sinister in that para.

A. No.

In the High Court in Borneo

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Applicant's Evidence

—  
Andrew Peattie

—  
Cross-Examination

In the High  
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Para 90.

Amount owing by Bumiputra's Shares.

No. 7

They were still paid their dividends in full.

Notes of  
Evidence

There was an understanding originally that half the dividend would be paid up to reduce the debt. This happened in some cases and not in others.

Applicant's  
Evidence

Q. You are aware that Articles of Association of Company have provided for a Lien on the shares in respect of unpaid monies.

Andrew Peattie

A. Yes. Normally on uncalled up capital.

10

(Article 27).

Para 92. Ling Beng Hui's debt still remains unpaid.

Cross-Examination

Q. Did you make any enquiries whether he had acknowledged the debt or made any attempt to repay it.

A. Nothing - no books shown.

Q. The limitation period would have applied.

A. I did not enquire whether Beng Hui was trying to hide behind the Limitation Statute.

Q. That is a matter of significance.

A. A member of the staff of Kong Thai's office told me that the debt would be reduced by crediting dividends due to Beng Hui.

20

This is a loan - not a share like the bumiputras.

Q. This money paid to him is three times the par value of share capital belonging to him.

A. Yes.  
He is one of the three younger brothers.

Q. Did you in course of your investigation in August 1971 from Kong Thai to Ling Beng Hui see the letter 21st August 1971.

30

A. I cannot recall I saw the letter.

(Counsel for Applicant: Letter was dated 1971 so witness could not have possibly discover the letter)

Para 93.

I am satisfied that there had been repayments and interest charged from the Accounts Books.

In the High  
Court in  
Borneo

Para 94.

Q. \$15,700/- to P.T. Hutan Sari was payment made to an Indonesian shareholder.

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Notes of  
Evidence

A. Yes.

Q. This is a payment made in accordance with Indonesian laws.

Applicant's  
Evidence

10 A. In my opinion the experience I had with Indonesian companies it is not a requirement but it is usually embodied in agreements that foreign venture lends to the local investments necessary money to pay their part of their share capital. The Indonesian law says that local investors must own a certain percentage of capital. I have connection with forestry matters with Indonesia.

Andrew Peattie

Q. I take it as matter of conjecture how often the Indonesian partner shareholder pays their share.

20 A. It is usually repaid by withholding the dividends due to them.

It has not been written off but the account has been carried forward.

(Witness shown Kong Thai account 71/72).

There is a debt balance of P.T. Hutan Sari carried forward.

Cross-Examination

Para 95. Loan to Pau Tien Ha \$10,000/-.

Q. Have you observed that there was regular repayments of that loan at rate of \$1,000/- each month.

30 A. Yes.

Para 96.

Q. You agreed that Beng Siong account is a current account.

A. Yes and a Directors Account.

Q. Beng Siong is a Director.



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Applicant's  
Evidence

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Andrew Peattie

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Cross-Examination

A. Yes.

Q. Whether it is shown in the account is a matter for the auditor.

A. Yes.

Para 97. Ling Beng Siew & Co.

That is total of debit side.

(Shown Ledger Account 1969-70).

Q. Until 31st March there is a credit balance  $\$797,000/-$ .  
End of June  $\$29,254/-$  credit balance.

A. Yes.

Q. The account is squared at the end of financial year.

A. Yes.

(Shown Ledger Account)

Q. There would be interest payable by Company to Ling Beng Siew & Co., in the sum of  $\$25,000/-$  to  $\$30,000/-$ .

A. Yes.

Para 97 reflects the total cash withdrawn without taking into consideration the credit and interest.

In this case it is not a question of drawings but repayments by Kong Thai.

Para 97. Is more illuminating if Ling Beng Siew & Co. was in credit during the major portion of the year and Kong Thai repaid its indebtedness to it by payments amounting to  $\$1,210,762.93$ .

$\$150,000/-$  I was told was a wrong entry in the Ledger.

Q. No question of interest will arise because Ling Beng Siew's Account was in credit.

A. Yes.

Para 98.  $\$2,800/-$  paid to Wong Kwong Ching.

Q. He is a concessionaire.

A. I think so.

10

20

3

Q. In any case the amount was charged to Goldhill Lumber Sdn. Bhd. It was one of the joint ventures.

A. I think so. It was written off.

Para 99.

My previous pronouncement of what I consider to be correct accounting procedure apply.

I agree there is room for disagreement.

Para 100. Malaysia Daily News.

10 The payment of \$60,000/- is in accordance with Director's resolution.

In my opinion it is not a good investment even though the trend of account is approaching profitable basis.

Q. It is a matter of personal opinion.

A. Yes.

When you have a Company such as this it is the Company's diverse activities. It is spreading its activities in various fields. (Court - particularly when the concession will be over in two years' time).

Para 101 and 102. This is informative.

20 Para 103.

This is sold at a profit of \$17,700/- to Hock Thai Finance by Kong Thai. No rent had been charged during the period.

Q. The house was occupied by Resident Director of Kong Thai.

A. Yes.

It is a matter of business decision if rent was not charged.

Para 104.

30 Again this is informative. Shares were purchased in investment. Previously it appears as debtors now as investments.

Q. General standard practice in Kong Thai was monies were advanced for exploration into new ventures and capital invested.

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Andrew Peattie

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Cross-Examination

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Andrew Peattie

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Cross-Examination

A. Yes.

This was informative that Company was going to diversify its activities.

Para 105.

Q. When you swore the affidavit this para was false together with explanation you gave in this Court.

A. Yes.

Para 106. Pan Sarawak Co. Sdn. Bhd. is a company which supplied logging companies with equipment and Kong Thai has been purchasing its equipment from this Company.

10

A. Yes. Except Company's Act has not been complied with. There was no disclosure of its interest.

I asked for the book. It was not available at the time. I have since seen the book in Court today. There was a record of Directorship in the book. This Company is included.

Q. It is a matter of public record.

A. Yes.

Para 107. Hock Thai Finance Corporation Bhd.

The only significant fact is Company is run short of working capital probably due to diversification.

20

Q. It is not unusual.

A. Yes.

Q. If one had taken a conservative approach there would be no need for diversification. It is a commercial decision.

A. Yes.

Para 108. Borrowings from Bangkok Bank.

Same comments apply to para 107 on diversification. No authority was given by the Board.

30

Q. That was loan guaranteed by Beng Siew.

A. I think so.

(Witness shown Minutes of Directors).

17.12.71 at which Beng Siew, Ling Leck Hong, J. Bangact and Chen Siong Seng were present.

Beng Siew reported that Bangkok Bank Ltd. of Kuala Lumpur had approved a request to increase the limit of the overdraft facilities by \$500,000/- to a total of 2½ million dollars and the facility is as usual given under his personal guarantee. The meeting confirmed that the arrangement made was in order.

My affidavit was filed prior to the meeting.

10 Shows further minutes. October 1971 Overdraft facilities.

A. This is also after the filing of affidavit.

Para 109.

Q. This procedurally correct authority was given by Directors.

A. Yes.

Para 110. Merely informative and subject to my comments.

They were not normal sums of donations. It is not common either.

Q. You have seen on many occasions donations by companies.

A. In small amounts.

20 Q. The fact donations were known to Directors approved by Directors and Accounts were Audited.

A. Sometime afterwards by Directors.

Q. No qualification by Company Audit.

A. Yes.

Q. The accounts were presented which contained these donations at Annual General Meeting of Shareholders and approved.

A. Yes.

Para 111. Proxy was used.

30 There is no such thing as Directors proxy.

Para 112. Entertainment

This is a contentious matter.

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In the High Court in Borneo

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Cross-Examination

Para 113. Maintenance Green Road house.

This was transferred to Hock Thai Finance.  
What I meant was it was sold to Hock Thai for \$77,177.00.

Para 114. Payment to International Executive Corporation.

Q. This is for expense of exploration.

A. Yes.

Para 115 (2).

Q. You refer to Cheng Siong Seng. "Taiwan". Is it Tawau.

A. Yes.

Para 115 (3).

I know that this is expense for exploration. I know about this 10 days before the trial began. I had no time to rectify the mistake.

Q. You are not suggesting that anything untoward in Para 115.

A. It is of no consequence. It is for information and clarification.

Q. This has been approved by this Board. You are not alleging any malpractice.

A. No.

Para 116.

Cost would arise if the company used it or not. This is again informative.

Para 117.

This is purely informative and my remarks apply. I would prefer correct profits charged and not mixed up with other accounts.

Para 118.

This is again informative. I have since ascertained. There are other shareholders in investment companies which should bear their share of these expenses.

10

20

30

Q. You have not seen the accounts of the partners of the investment company and so you don't know what expenses have been borne by them.

A. Yes.

Q. Which by your strict formula should be charged to the investment companies.

A. Yes.

Time 11.00 a.m.  
Adjourned for 15 minutes.

10

Sgd: B.T.H.Lee, J.  
13.4.72.

Time 11.20 a.m.

P.W.1 Andrew Peattie (on former oath)

During the adjournment I was discussing with Beng Sung. We were discussing other things not this case.

Para 119. This is merely informative.

Para 120. This is informative of investments.

Para 120(C) - 7% to be charged in accounts.

Q. Have you seen the records to see if this is carried out.

20 A. No.

(Witness shown accounts. Ledger 1970/71. Folio 85 Page A and B).

I see Interest has been debited in respect of payments and credit has been given to the account. Where account has earned interest by Ling Beng Siew & Co. it has been shown in the books.

Para 121. No agenda, etc.

30 This was a meeting at which Beng Sung was not present. He did not attend Director's meeting. He received Directors fees. I do not know if he had received Bonus.

Q. You say in the Statement of no discussions because it was not stated in Minutes.

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Cross-Examination

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Cross-Examination

- A. Yes.
- Q. Do you know it is a long meeting (From 3.30 p.m. and finished at 5.00 p.m.) It went to 1½ hours. There must be discussions apart from adoptions.
- A. I won't know.
- Q. You don't suggest resolutions numbering 15 would take 1½ hours if there were no discussions.
- A. I am unable to say.
- Q. You are quite unable to say there is nothing on the face on your basis.
- A. From the minutes.
- Q. Is it reasonable to say there were discussions.
- A. I was unable to say. I base on the minutes
- Q. There appears to be no discussions.
- A. This is partly true.
- Q. You have no basis to base your opinion.
- A. It is my opinion.
- Q. No minute gives details of the meeting.
- A. I know that Counsel was referring to this Company Kong Thai.
- Q. It is quite apparent from the minutes to make narrative notes or any note of discussion.
- A. Yes.
- Q. In matters of business - only resolutions made are noted.
- A. Yes.
- I could not fairly say that there appears to be no discussion of the various items mentioned above.
- I am auditor for Mukah Sawmills. The directors of that Company are three younger brothers.
- Q. Is this Company successful or not.

10

20

30

(Shall I answer).  
(Counsel for applicant - It is a proper question)

In the High  
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A. It has been making losses. I recalled it has a paid up capital of \$900,000/-. The Company made a loss in December 1971.

—  
No. 7

Q. A loss in December 1970.

Notes of  
Evidence

A. As far as I can recall.

Loss of \$400,840/- in year ended December, 1969.

—  
Applicant's  
Evidence

A. I have not the records 1968 - \$120,689,000/-.

10 A. I must check.

—  
Andrew Peattie

I don't doubt the figures.

1967 - December - \$132,894.00.

I don't doubt the figure.

Year 31st December, 1966 - made loss of \$180,142.00.

I accept the figure.

—  
Cross-Examination

Q. The position is accumulated losses have now nearly wiped out the paid-up capital. Is there a deficiency.

A. I must check.

Q. There is an excess of liabilities over assets.

20 A. This is to the best of my recollections but I must check.

Q. Over the years of continued losses the Directors had drawn between them yearly remunerations of \$66,000/-.

A. That is correct.

Q. As Auditor of that Company have you ever qualified the balance sheet drawing attention to the state of affairs in which the Directors are continuing to pay themselves \$66,000/- each year in the face of continued loss.

A. I don't know. I have to check them.

30 December 1971. Did you draw attention to that fact.

I have not seen 1971. I have to check,

So far as December 1971 is concerned the Directors have continued to pay \$66,000/- between themselves.



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Andrew Peattie

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Cross-Examination

The Company is still trading.

The Mukah Timber Co. is a timber company carrying on the same business as Kong Thai but in a different area.

Ling Beng Sung is, I think, the Chairman of the Mukah Timber Co.

Q. Up till 1970, Ling Beng Sung was the Managing Director.

A. Yes. But I have to check.

I am also the Auditor of Kong Ming Bank. That is Company for which Beng Sung is Chairman of Directors. I should like to verify that also.

The Bank has been in existence for 6-7 years. It has yet to pay its first dividend.

It has made profits. I have to check that.

Para 122.

Q. You were supplied with information in December 1971.

A. Yes.

Para 123.

That is my opinion and the report is the opinion of the then Auditor.

A. Yes.

Para 124.

Q. Similarly in para 124 that is a difference of opinion between yourself and the then Auditor.

A. Yes.

Para 125.

Q. That again is a difference of opinion between yourself and the then Auditor.

A. Yes.

Para 126. It is merely informative.

Q. What you did there is that Directors there as a Commercial decision used this money from the Bank.

10

20

30

A. Yes.

Q. The philosophy of a bank overdraft in a trading concern such as Kong Thai is that if you can borrow money at a rate of interest less than the profits you will make by using that money in the business which is an advantage to the borrowing Company.

A. Yes.

Para 127.

10 I have not checked the physical assets of Kong Thai. I asked the staff at Kong Thai. To the best of that knowledge the assets have not been checked.

I have no doubt about Berjaya Malaysia now. I have no doubt about the Timber Licence. I have no doubt about the Aurora Hotel.

Q. You have seen transactions in books about investments in other Companies.

A. Yes. I have no doubt about those assets.

20 It is normal in timber Company to have a very high usage. From my examination of the records I would have expected to see assets scrapped and assets capitalised. Outboard and long boats have a very short existence because of rough usage.

One of the purposes of depreciation is to make provision for wear and tear of this machine.

Q. The yearly depreciation in addition to first year's major depreciation is intended to write off those assets in the books of Companies to the extent of the life of machinery.

A. Yes.

30 Q. This was being done by Kong Thai.

A. Yes.

Q. There is no real danger in that regard.

A. Reason why I bring this up is if the assets are scrapped the further allowance of depreciation would be allowed by tax authorities.

I agree the end result is the same.

In the High Court in Borneo

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Evidence

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Andrew Peattie

\_\_\_\_\_  
Cross-Examination

Q. You have no real fears that the assets shown in books are not real in Kong Thai.

A. I can say for major assets. The minor assets are subject to yearly depreciation.

Para 127. bothers two lines.

I am referring to ramp equipment.

Para 128. Ling Beng Siew.

He had been paid on behalf of P.T. Kalimantan Sari by Kong Thai.

The word "debited" in line 3 of para 128 ought to read "credited".

10

The other payments are by investment companies in which Borneo Company is the second other major holder which pay Beng Siew his monthly salary.

I do not suggest anything sinister in those payments.

There is nothing sinister about payment of expenses. Except that Beng Siew is a full-time Director of Kong Thai. He should have accounted for them to Kong Thai.

I understand he is occupied all the time in the business of Kong Thai and various other companies.

He is director of Hock Hua Bank.

20

Q. The Directors of Kong Thai are not unaware of fact he is working for other investment company.

A. No.

Q. Apart from suggestion you raised have you seen in any books of Kong Thai any suggestion by any other person that these Directors fees should be paid to Kong Thai.

A. No.

Q. You have agreed the main form of income which Beng Siew would receive is his share of Bonus.

A. Yes.

30

Q. In any case if one treats your suggestion as an intellectual argument it is one in which people share opposite views.

A. Yes. It always depends on Directors meeting.  
I do not suggest anything improper in Para 128.

In the High  
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Para 129.

Q. This is a misunderstanding by you. You know Kong Thai took up shares to value of \$149,900/-. Staff members took up shares \$104,000.

—  
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Notes of  
Evidence

A. I am aware of that.

I am satisfied that there is no substance in the query in respect of Para 129. I agree this is a matter of accounting procedure.

—  
Applicant's  
Evidence

10

Q. You do not suggest anything adverse.

—  
Andrew Peattie

A. No.

—  
Cross-Examination

Para 130. P.T. Indomark. \$15,000/-

I have been told it is an abortive venture.

(Shown Kong Thai Ledger 1970/71 Account No. 236).

Q. \$7,500/- of that has been written off as survey fees.

A. Yes.

Q. \$7,500/- has been transferred to Borneo Co.

A. Yes.

20 Q. This is an abortive joint venture and both should bear the expenses.

A. Yes.

Para 131.

Q. This is a joint venture Company with Borneo Co.

A. Correct.

Q. This debt of \$606,000/- was objected to by Borneo Co. and it was subsequently transferred to P.T. Kalimantan Sari.

A. Yes.

30 Q. This merely involves a difference of opinion and

In the High Court in Borneo

investment of accounts.

A. Yes.

Para 132.

No. 7

Q. This was expenditure in respect of obtaining timber concession involving exploration survey and other expenses.

Notes of Evidence

A. So I have now been told.

Applicant's Evidence

Para 133. (Asks witness to read para 133).

Andrew Peattie

P.T. Kalimantan Sari is an Indonesian joint venture.

Q. What you really say is that should be borne between Borneo Company and Kong Thai.

10

Cross-Examination

A. Yes. It should be a loan. I should have given the matter more thought.

Time 12.30 p.m.  
Adjourned to 2.30 p.m.  
Sgd: B.T.H. Lee, J.

Parties as before  
Time: 2.30 p.m.

P.W.1 Andrew Peattie (on former oath)

I have brought accounts for Mukah Company.

20

(Counsel for applicant - was under misapprehension - Mukah Company is exempt Company - will now object to production. They are not directly relevant to proceedings. They are confidential documents for purposes of exempt position Company).

(Mr. C. Darvall. Fact Company is an exempt position Company does not and cannot make the documents privileged. It merely means different procedures apply and representations. If documents are in Court I am entitled to see them whether they are exempt or not. Exempt is within the Companies Act, and not under the Evidence Act. It is relevant because one cannot say with certainty what they are. Going to motive and also to bona fides of applicant in these proceedings. Authorities are quite clear unless it is established by the applicant that the application is brought for the purpose of rectifying oppression and not for some other motive the

30

application must be dismissed as it is not bona fide. Asks to see them like letters of credit. Documents may prove something.

In the High Court in Borneo

(Mr. J.E. Vinelott. Evidence may be given of facts in issue and which are relevant only. Basis of relevance as suggested is these matters will go to bona fides of Dato Ling Beng Sung.

—  
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Notes of Evidence

10 Submission - whatever force that argument might have in relation to Beng Sung cannot have any application to this witness. He cannot be asked about the motives of Beng Sung in these proceedings. Ask Court that the evidence is irrelevant to any issue to which this witness evidence is connected.

—  
Applicant's Evidence

Exempt Companies - accounts are not published.

—  
Andrew Peattie

(Mr. C. Darvall. I am not asking from witness mouth the motives.

—  
Cross-Examination

(COURT: I rule that the documents are admissible.)

Refers to 1970 Accounts. Mukah. Profit and Loss 1970.

20 Q. There is a loss of \$365,141.00.

A. Yes.

Q. There has been increase of capital of \$900,000 to \$1,200,000/-.

A. Yes.

Of that capital sum 1970 - a total amount of \$1,082,613 leaving shareholders funds of \$17,387.00.

Increase in capital of \$300,000 was paid up in cash.

30 Company owed money to the Directors and that debt was satisfied by the Company issuing further shares to the directors.

Directors had lent money and they have also not drawn their salaries.

On assets side Goodwill \$166,115.00. This represents the balance taken over from previous credit accounts. This has in fact no saleable value unless Company was sold as a going-concern.

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Borneo

—  
No. 7

Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Andrew Peattie

—  
Cross-Examination

Q. If you remove Goodwill from asset the Company has a deficiency of capital of ~~£~~48,728/-.

A. Yes.

It has trade creditors of ~~£~~2,725,250/-.

Q. Do you anticipate a loss or profit for 1971.

A. I cannot say.

Q. Can you certify that at the date of 1971 Profit and Loss Account the Company appeared to meet its liability.

A. I cannot say that unless I have finalised the Account.

Q. Of sum of ~~£~~3,439,001/- what are current liabilities.

A. By sale of fixed assets of Company.

That I agree would not be payment in the course of business.

Q. You are looking the matter as a winding-up of Company and assets realised from book-value.

A. Trade creditors as I recall, consists of hire purchase agreements secured over the assets.

Q. This Company has three Directors, Ling Beng Sung, Ling Beng Hui and Ling Beng King.

A. Yes.

Q. These are the three youngest of six brothers.

A. Yes.

Ling Beng Sung is Chairman and Ling Beng Hui is Managing-Director.

My firm has checked the assets of this Company by visiting the sawmill and making test check covering the complete assets over a period of three years.

I could not say that as at 31st December 1970 the Company had approximately 1.5 million of plant machinery and equipment but merely that certain of those items had been checked and appropriate adjustments made.

Q. Despite this precarious situation the Directors

10

20

30

received emoluments of \$66,000/- in the year ended 31.12.70.

A. Yes.

For year ended 31.12.71 I cannot say as I have not looked at the accounts.

I cannot say whether the Company has made a profit or loss for the year 1971.

I think all three Directors lent money to the Company.

It is some years now. I must check.

In the High Court in Borneo

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Notes of Evidence

Applicant's Evidence

Andrew Peattie

Cross-Examination

10 Beng Hui borrowed \$100,000/- from Kong Thai. I do not know whether that sum was lent to Mukah Company. As far as Kong Min Bank is concerned, it made a small profit. It has not paid any dividend.

Page 35. Para 133A

This is purely informative except for the further sums of \$40,000/-.

Q. That was advanced so that the creditors of Kong Thai Plywood (Pte) Ltd. might be paid.

20 A. I have been told Kong Thai could have shielded behind the corporate veil and not pay the sum. I do not consider anything wrong or sinister in that action.

Para 134.

I am merely indicating there has been Company adjustment whereby Beng Siew accepted personal liability for the travelling expenses.

This was corrected some six months later. There is no significance in this correction.

Para 135.

30 This is a repetition. This has been rectified and is of no significance.

Para 136.

You agreed that the sums of \$680,000/- was provided for dividend and not \$408,000/- as shown in para 136 of the affidavit.



In the High Court in Borneo

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Notes of Evidence

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Applicant's Evidence

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Andrew Peattie

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Cross-Examination

That para is merely informative. I don't suggest anything sinister in the matter raised in that para.

Q. It is not suggested that an advance to a Director who was entitled to 4/5th of the bonus was sinister.

A. Yes.

Para 137. This is informative of a commercial decision.

Para 138. This has now been rectified.

Para 139.

Q. You are drawing attention to the fact that there has been a change of opinion as to the entitlement to share in the 1% bonus. It is merely informative and of no significance.

10

A. Yes.

Para 140.

Q. That is informative and of no significance also.

A. Yes.

Para 141.

Informative. I have still no information in regard to the car but I am not suggesting anything improper or any issue made of this.

20

Page 37 - Para 142.

Q. That is a summary of matters already raised in your affidavit.

A. Yes.

Q. That is informative and you do not suggest anything sinister therein.

A. Yes.

Para (B) Page 37. Sabah Agency Sdn. Bhd.

Same comments.

Para (C) Page 38. Singapore Moulding (Pte) Ltd.

30

I have not seen the accounts 31st December 1969, 1970.

(Accounts shown to witness).

I have now seen the accounts. They appear to be properly corrected and audited.

This is a venture which failed.

Para (D) Page 38 - Kong Thai Lumber Sdn. Bhd.

Same comments apply.

Para (E) Page 39 - Commercial Bank, Development Bank, Brunei.

This is a merely summary of what had been discussed before. The license were not received.

10 Donations. This is a summary of what I have discussed.

Q. Apart from minor matters of accounting or principles you have no other observations.

A. I would agree with the exception of donations.

I agree that this is within the domain of the Directors. They have subsequently to account for their actions to the shareholders at General Meetings.

I agree the accounts had been passed by the shareholders each year. This is without any dissenting shareholders.

20 Beng Sung became a shareholder in February, 1969.

Time 3.35 p.m.

Donations to political parties.

Para 74 Page 18, Para 110 Page 27.

I have wide experience of timber companies in this regard.

Q. Would you regard this donation as normal or unusual.

A. Unusual. That they are made to a political party of which Managing Director is the Chairman.

30 I do not consider it necessary in the earning of the profits that the donations are necessary. I consider it very excessive. I cannot recall of donations to political

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Cross-Examination

Re-Examination

In the High Court in Borneo

parties of this magnitude.

From my investigations of books the only thing unusual in respect of .....

No. 7

(Objection - does not arise in REN but in-chief and what has been said in the affidavit).

Notes of Evidence

(Court. Overrules objection).

Applicant's Evidence

Q. It there anything unusual in the ways donations are made.

A. The receipts were numbered consecutively 1 - 50.

Andrew Peattie

Q. Can you say whether the recipients of accounts was stated.

10

Re-Examination

A. Only some of them. I mean the person who sign the receipt.

Q. As regards the Annual Account. Can you say the recipients of donations were shown.

A. No. Only one figure was shown.

Para 16 (Page 4) and Para 37 (Page 8).

I swore the affidavit in August 1971. I was asked to swear on November 1971 again.

Between the two dates I received further information..

20

Q. Was there in the further information in your judgment affects the conclusions.

(Counsel for Respondent - witness has already given his answer which made it abundantly clear that he was reaffirming the affidavit. He did not apply his mind to this. Counsel is inviting the witness to commit perjury).

Mr. J.E. Vinelott

I will rephrase the question.

Q. What you have learned - was there anything in the two days which materially affect the affidavit?

30

(Mr. C. Darvall: This is a question for determination of this Court).

(Court: Confine witness to reaffirmation of Affidavit).

I don't think there is anything which will materially affect the affidavit which I re-affirmed.

In the High Court in Borneo

Refers to Reports:

These are manuscripts made by me when I examined the minutes.

No. 7

Notes of Evidence

66/67. Extract of Meeting.

Persons present are listed.

Applicant's Evidence

10 Q. When you extracted part of the minutes you recorded the minutes?

Andrew Peattie

(Mr. C. Darvall: Objects to question. Evidence has been given by this witness. From evidence given signatures of shareholders given and therefore was not included in his manuscripts notes. He may have forgotten some and remembered some.

Re-Examination

20 Very question suggest is improper contrary to statement volunteered by witness and as such is objectionable. It is attempt by witness to change evidence which he had volunteered by framing question with skill which suggested the answer).

(Court: Objection overruled.)

I inspected certain minutes. I copied what I saw in the minutes. I cannot recall any occasion when I did not do so.

Refers to Para 14 Page 4. Para 49 Page 11.

The sums mentioned were all separate sums.

Disallowance of Entertainment allowances.

Tax Department sometime disallows - usually a percentage is allowed. Normally 30-40%. Can vary widely.

30 Next step - look at expenses.

Submit vouchers and receipts for such expenses to Inland Revenue. This is if you think you have a case. Then there is correspondence between the Accountant handling of this correspondence and the Tax Department.

In the High Court in Borneo

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Notes of Evidence

Applicant's Evidence

Andrew Peattie

Re-Examination

Q. What is the end result?

(Mr. C. Darvall: I object. The correspondence relates to the allowance or otherwise of the said expenses).

P.W.1

I have seen the tax papers of Kong Thai.

Q. Can you say if there was an attempt to justify the full expenses?

(Mr. C. Darvall: Object on two grounds. This is a matter which properly should have been included in the affidavit. It is a matter of some importance and was not included and it should have been evidence given in chief and does not arise in cross-examination. Witness was not cross-examined as to the steps to be taken or whether they were proper or improper).

10

(Mr. J.E. Vinelott: Examined on this question. Disallowance followed the normal course. Refers to para 16 page 4 and Notes of Evidence Page 40).

(Court: Asks Counsel to proceed).

Q. Whether objection for disallowance of tax deduction was taken and whether the matter was contested.

20

(Mr. C. Darvall: Objects. Entitled to ask what is the usual course which is .... Door was never opened.).

(Mr. J.E. Vinelott: Refers to passage "This is a rule of thumb. A. Not necessarily").

(Court: Objection overruled.)

Q. Whether your inspection of correspondence there was an attempt to justify the full amount of expenses.

A. I cannot recall such correspondence.

Para 21. Account of Dato Ling Beng Siew.  
No. 183 - LING BENG SIEW.

30

Extract right column \$64,680.17 represents the balance column. It shows whether an account is in credit or debit. It starts in credit.

Next figure \$159,449,477 also credit.

December also credit.

February 7 is debit. The rest of the items are debits on the various dates.

Left hand column. Travellers cheques etc.

This was wrongly described as 1966/67 when it should have been 1965/1966.

Q. How would you describe the account?

A. It is a current account of one of the Directors.

Time 4.30 p.m.  
Sgd: B.T.H. Lee, J.  
13.4.72

14th April, 1972  
Parties as before  
Time 9.20 a.m.

P.W.1 Andrew Peattie (on former oath)

Para 31 (Page 7). Car

I agree Kong Thai owned a Hotel in Kuching. These are other business as far as I know.

Para. 34. Green Road Land.

In the original report I referred to it, because Kong Thai had no timber business in Kuching. I can see no purpose for the purchase as such.

Aurora Hotel

I agreed that where a hotel is undergoing reconstruction trade would tend to drop off.

In this particular case there would be a marked drop because there are so few hotels in Kuching that business would not drop off so much as other places.

(Mr. C. Darvall: Objects to question).

(Court: Ask witness to proceed)

Because there are so few hotels in Kuching so I qualified my statement which is to the effect that business would not drop off so much as in other places.

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Evidence

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Andrew Peattie

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Re-Examination

(Shown LING BENG SIEW & CO. Accounts). 1966/1967.

In debtor column there is some inter alienations. The figure is written in pencil - \$170,110.48 against December 29.

Similar figures appear in the account.

Right hand column shows the credit account.

February 2 is \$581/—.

March 31 - credit column. Credit of \$115/—. There is a pencil figure of \$696/—, and that is addition of \$581/— and \$115/—.

Over the page - credit in pencil \$696, and that is brought forward toto.

These figures should be in ink.

There is a credit \$280/—.

Underneath that is \$976.00 in pencil.

The actual credit are \$481, \$115 and \$280 up to that date.

There are two credits. One is \$150,091.88 and the other is \$200,000/—.

The left hand column shows drawings column DR is debit.

On page 1 - the total figure on the debit column is \$307,637.82.

Over the page the Dr. column represents debit account.

Q. How would you describe this account.

(Mr. C. Darvall: Objects)

(Mr. J.E. Vinelott: It is a perfectly question arising from re-examination).

(Court: Proceed)

I understood current account is used to record transactions where they are debited to a particular individual or company. Against this normal account items are debited and normally cleared at regular intervals.

10

20

30

They are in fact a record of transactions of that particular account.

1967/1968 Accounts - Ling Beng Siew Sdn. Bhd.

The fifth column represents the debit column, the next is the credit column.

The figure at the bottom - after February 26 is \$533,457.44. The right hand column is \$451,500/-.

That is the total of the items credited to this account up to February 26.

10 Over the next page - August 31 - 1 piece of land - I have no idea what this land represents.

Page 5. Ling Beng Siew & Co. 1968/1969

November 29. To remittance to Singapore \$500,000/-

December 24. Cheque \$479,489.50.

The last item after 31st March.

The figure \$744,093 is in pencil is the sum of the above 2 figures.

The next credit item is \$350,000 by donation.

Over the page - 6.

20 By Borneo Co.

By Kong Thai Plywood etc.

(What do they represent?).

(Mr. C. Darvall: objects - does not arise in cross-examination).

(Mr. J.E. Vinelott: Will leave this for the next witness).

You were asked about Singapore Moulding Pte. Ltd.

(Shown Balance Sheet)

This is balance of Singapore Mouldings Pte. Ltd.

30 \$1,123,791 - that represents the deficit between current assets and current liabilities.

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Re-Examination



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In other words, the current liabilities exceed the current assets by this figure of \$1,123,791.

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That is the account of the Company in which Kong Thai invested the monies.

Notes of  
Evidence

I refer to a Heading P.T. Kalimantan Sari.

You replied "I knew it was advance ended up in an investment".

Applicant's  
Evidence

What do you understand by the word "advance".

It is usually a form of cash to pay for expenses.

Andrew Peattie

Expenses can be salary, investigating expenses. These are preliminary expenses.

10

Re-Examination

When I came to the accounts it was transferred from Sundry Debtors to the investment Company and also by a minute of 10.6.1971 authorising this investment.

You were asked whether you visited the Yacht Berjaya Malaysia.

My appointment was for inspection of books and accounts and I did not inspect the assets.

The purchase of Berjaya Malaysia was rectified.

According to the books and records the purchase and reconstruction was not approved at the time of the purchase.

20

Para 40 (Page 10):

"On 29th December, Ling Beng Siew Sdn. Bhd. obtained from Kong Thai a cheque in its favour for \$461,500/-. On March 31st there is a credit entry of \$461,500/- in the account with the company of Ling Beng Siew Sdn. Bhd. and the explanation in the ledger is "Adjustment Wrong Posting". It would appear from an examination of this account that the first entry is simply an error. An examination of the account with the company of Ling Beng Siew & Co. shows that the \$461,500/- was debited to it as of 30th March. The effect is to have changed retrospectively the payment of 29th December from Ling Beng Siew Sdn. Bhd. to Ling Beng Siew & Co. Kong Thai's records contain no explanation of these transactions."

30

\$461,500/- is a book-keeping error.

(Mr. C. Darvall: Objects as this question has been answered).

In the High Court in Borneo

(Mr. J.E. Vinelott: If there is an ambiguity the purpose of re-examination is for clarification).

(COURT: Proceed)

No. 7

Notes of Evidence

Applicant's Evidence

Andrew Peattie

Re-Examination

10 The first entry is on 29th December. Debited to Ling Beng Siew Sdn. Bhd. with an amount of \$461,500/-. It would appear that sometime in March it was discovered that this entry had been debited to this account in error and should in effect have been debited to Ling Beng Siew & Co. It was then an adjusting entry was entered into the book transferring this item from Ling Beng Siew Sdn. Bhd. to Ling Beng Siew & Co.

Q. You said "there was no loss to Kong Thai"?

A. The entry was transferred from one account and I presume there is calculating of interest.

(Mr. C. Darvall: Objects to portion of answer not strictly to question asked).

Para 54 (Page 12)

It is necessary as you said in cross-examination.

20 Some are personal accounts.

There are some items which should have gone to personal accounts. A man can take his wife but not his family.

Q. What were the members of the family.

A. The son and daughter.

(By Court: I think they are teenagers).

Para 58. Malaysia Air Charter Ltd. shares.

You agree that advance was subsequently ratified.

The advance was not approved at the time it was made.

30 I had no access to the books of the Malaysia Air Charter Ltd.

Time 10.30 a.m.

Adjourned for 20 minutes

Sgd: B.T.H. Lee, J.

In the High Court in Borneo

Time 11.00 a.m.

P.W.1 Andrew Peattie (on former oath)

No. 7  
Notes of Evidence

Para 64. First sentence reads:

"Dato Ling Beng Siong obtained the sum of \$150,000/- from Kong Thai by drawing \$15,000/- per month for ten months"

Applicant's Evidence

You said "I agree this is a current account".

Para 66. Aurora Hotel

Andrew Peattie

Put to witness Hotel now being conducted properly.

Re-Examination

- Q. Have you yourself seen any accounts yourself. 10
- A. The accounts I was shown does not show profits on them.

Para 68. Malaysia Daily News Bhd.

Certain figures were put to you

And losses .....etc.

- Q. Judging from the figures and the accounts would you think it profitable?
- A. I do not think it would prove profitable.

I have to look at the accounts. I don't think it would alter my view. I do not think this is the type of investment for a timber company from my experience. 20

Para 73. Pan Sarawak Sdn. Bhd.

Put to you the fact that Beng Siew was a Director was common knowledge.

- Q. Whether the fact that he was a shareholder is to your knowledge.
- A. No.
- Q. You were shown Directors of Company, would that disclose the shares of Beng Siew in other Companies.
- A. No.

Para 128. You set out various payments made to Beng Siew by various companies. 30

Look at Para 17 -

Q. That is not the only figure \$600/- drawn by Beng Siew as Director's fee.

A. The other consists of salaries plus percentage of the profits as a bonus.

\$1500/- per month are salaries.

Looking at the Register of Directors I would know what are Directorships. Beng Siew is in.

10 But looking at the Register I would not know the salaries Beng Siew was getting from other Companies.

Q. So far as record of other inquiries made by you was remuneration of the Companies ever disclosed to Kong Thai.

A. It was never disclosed according to the minutes of Board of Directors, Kong Thai.

It was common ground that Beng Siew was a shareholder in Sabah Agency, Kong Thai Lumber and Kalimantan Sari.

Q. Whether the shareholdings were ever disclosed.

(Mr. C. Darvall: Objection - no disclosure of holdings in cross-examination).

20 (Mr. J.E. Vinelott: He was cross-examined whether the Board of Directors would have known Beng Siew's interest in these companies).

(Mr. C. Darvall: I asked whether he was a Director).

(COURT: Objection sustained - Directorship and shares are two different matters).

Berjaya Malaysia Yacht

I was referring to timber companies of which I had knowledge when I said that they don't find it necessary to have a yacht.

30 They are companies with similar business in Indonesia.

Para 97. You said "I was told it was an inaccurate posting". The voucher was marked Chalfont.

What do you mean by the "Voucher".

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The original voucher was for \$150,000/- and had a notation on it as I recall Chalfont Investment. This was originally debited to Beng Siew's Co., and later transferred to Dato Ling Beng Siew personal account.

No. 7

Q. What do you mean by voucher.

Notes of Evidence

A. On every payment from the Company it is necessary to raise some form of authority for this payment. This is called the voucher and is normally authorised by a Director or other officer of the Company so expressed.

Applicant's Evidence

Mr. J.E. Vinelott

10

That concludes the re-examination.

Andrew Peattie

Time 11.30 a.m.

Re-Examination

Mr. J.E. Vinelott

Asks for witness to be released. Will be available on 24 hours notice.

Mr. C. Darvall

No objection on that undertaking.

COURT

Witness released subject to that undertaking.

Applicant's Evidence

P.W.2 DATO LING BENG SUNG. Affirmed states in England 38 years. 21, Wong Nai Siong Road, Sibu.

20

Dato Ling Beng Sung

Q. Do you have difficulty in understanding English language?

A. Simple - no Complicated - yes. Particularly so in legal terms. I was educated in Australia. Northern part. Queensland. I spent altogether 4 years in Australia. I studied economics in University of Queensland. It included study of commercial matters.

Cross-Examination

Q. Did it include legal subjects.

30

A. I think not.

- |  |                                    |
|--|------------------------------------|
| <p>Q. Were there any legal subjects in matter of law.</p>  | <p>In the High Court in Borneo</p> |
| <p>A. I don't know.</p>  | <p>—————</p>                       |
| <p>I did accounting principles. I studied very little commercial law. It was at the later stage of the course.</p>                         | <p>No. 7</p>                       |
| <p>I did not study Company Law.</p>  | <p>Notes of Evidence</p>           |
| <p>Q. Was it in the syllabus?</p>  | <p>—————</p>                       |
| <p>A. Could be. But I did not complete the course. I did not complete the degree course.</p>   | <p>Applicant's Evidence</p>        |
| <p>Q. Do you have a degree at all.</p>   | <p>—————</p>                       |
| <p>10 A. No.</p>   | <p>Dato Ling Beng Sung</p>         |
| <p>Q. Have you told anyone you do have a degree.</p>   | <p>—————</p>                       |
| <p>A. No.</p>  | <p>Cross-Examination</p>           |
| <p>I returned to Sarawak from Australia a few days before the death of my father. Christmas 1968 - 22nd or 23rd December. I mean 1958.</p> |                                    |
| <p>Q. How far did you go through the Degree course before you returned to Sarawak.</p>   |                                    |
| <p>A. I was finishing my second year. I have done examinations. Philosophy, accounting, economics.</p>                                     |                                    |
| <p>20 Q. Did you pass them.</p>  |                                    |
| <p>A. I pass philosophy. I did not pass accounting. Nor did I pass economics.</p>  |                                    |
| <p>Q. Would it be right to say you took four years to pass one examination and fail two others.</p>  |                                    |
| <p>A. Not entirely. I matriculated during the 4 years. I failed one subject to make the required units.</p>                                |                                    |
| <p>Q. How did you go to University without matriculation.</p>  |                                    |
| <p>A. I was accepted by University of Queensland.</p>  |                                    |
| <p>30 Q. What did you submit to the University as evidence of your academic attainments.</p>   |                                    |

In the High  
Court in  
Borneo

- A. My matriculation.
- Q. Did you see any newspaper in Sarawak which says you have a degree in Queensland University.

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Notes of  
Evidence

- A. I could have. I cannot remember.
- Q. Any newspaper where this statement appears.

Applicant's  
Evidence

- A. This may be Borneo Bulletin.
- Q. Have you or have you not seen the newspaper.
- A. It could be Borneo Bulletin.

Dato Ling  
Beng Sung

(Mr. J.E. Vinelott: objects and asks Counsel to refer specifically to newspaper).

10

Cross-Examination

(Mr. G.S. Hill: Entitled to conduct own cross-examination).

P.W.2: I could have seen but I don't remember.

- Q. I ask again "Have you or have you not seen a Press you have a degree in Queensland".
- A. I don't remember.
- Q. Do you recall a press-conference on yacht SRI TANIA.
- A. I have given many times.
- Q. Did you look at Second Respondent's affidavit.
- A. I glanced through it.  
(Shown R.20 D - Beng Siew's affidavit),  
"Dato Ling who graduated from Queensland University..."

20

I gave a press conference to Mr. Nigel Coventry from Brunei about boat. I told him all about the boat.

- Q. From where did he get the information that you graduated from Queensland University.
- A. I did not tell him about University. I told him I studied a course in economica. I did not tell him I was studying at that date.
- Q. Refers to next page "Terrorism leaves a \$150,000 ....."

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- |  |                                       |
|--|---------------------------------------|
| <p>A. Coventry saw me only once.<br/>I am not aware of special courses in Queensland University for those who have not matriculated.</p> | <p>In the High Court in Borneo</p>    |
| <p>Q. Is not such a course that you were doing.</p>  | <p>-----<br/>No. 7</p>                |
| <p>A. No. I was offered a course. You can refer to the Registrar of the University.</p>  | <p>Notes of Evidence</p>              |
| <p>Q. You see the pictures of the Wig and Gown R1, R2, R3 of Beng Siew's Affidavit.</p>  | <p>-----<br/>Applicant's Evidence</p> |
| <p>10 A. That is my photograph. R2 is Beng Hui. Beng Hui was also in Australia.</p>  | <p>-----<br/>Dato Ling Beng Sung</p>  |
| <p>Q. You have represented to your family that you have a degree.</p>  | <p>-----</p>                          |
| <p>A. No.</p>  | <p>Cross-Examination</p>              |
| <p>Q. Do students in University wear wig and gown?</p>   |                                       |
| <p>A. On Queen Mother's visit all undergraduates were asked to wear them. I did not wear on any other occasions.</p>                     |                                       |
| <p>Q. Why did you have photos taken.</p>   |                                       |
| <p>A. It is my hobby. I have taken photos in many forms, swimming. I did not take these photographs.</p>                                 |                                       |
| <p>20 Q. We heard in opening that you have made a large number of orders in Originating Motion.</p>                                      |                                       |
| <p>A. I have.</p>  |                                       |
| <p>Q. You asked for 61 different orders.</p>   |                                       |
| <p>A. I did.</p>   |                                       |
| <p>Q. At the end you have asked as an alternative that Kong Thai Company be wound up.</p>  |                                       |
| <p>A. As one of the possibilities.</p>   |                                       |
| <p>Q. Which of these are you really asking them, 61 orders or winding-up.</p>  |                                       |
| <p>30 A. This is for the Court.</p>  |                                       |
| <p>Q. Which of the two alternatives you wish to see Court grant you.</p>   |                                       |



In the High Court in Borneo

No. 7

Notes of Evidence

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Dato Ling Beng Sung

Cross-Examination

- A. Either No. 1 - 2nd Respondent be removed and receiver being approved or alternatively a winding-up.
- Q. Which of these remedies would you prefer if choice were left to you.
- A. I do not know the technicalities.
- Q. You are an experienced banker.
- A. For a few years. I have certain amount of experience of companies matters. I don't understand the relief I am asking. I am not familiar with the technicalities.
- Q. Had it been explained to you by your legal advisers what the orders mean.
- A. Yes.
- Q. Did you understand their explanation.
- A. Yes.
- Q. Then what is your choice.
- A. It is for Court to decide.
- Q. You are the applicant.
- A. I ask for 61 orders. In alternative I ask for winding up. Winding up is my second choice.

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Time 12.30 p.m.  
 Adjourned to 2.30 p.m.  
 Sgd: B.T.H. Lee, J.

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Time 2.30 p.m.

Mr. J.E. Vinelott

About Dato Stephen Kalong Ningkan. In view of his public position will give evidence under subpoena. Have asked him to attend tomorrow afternoon.

Mr. G. Starforth Hill

Why public position should make any difference?

COURT

No leave required.

30

P.W.2 Dato Ling Beng Sung (on former oath)

In the High Court in Borneo

Q. Do you understand what is involved in winding-up of a company.

A. To a certain extent.

Q. What do you think would happen if Kong Thai is going to be wound up.

A. All the assets of Company will be disposed of debts paid by the disposal of fixed assets. If there is anything left it goes to shareholders proportionately.

10 Q. What would you get.

A. I have not worked it out.

Q. Have your advisers worked out.

A. No. We do not know the value of fixed assets and investments.

Q. What are your own principal interests.

A. I have timber business and banking business. The timber is Mukah Sawmills and bank - Kong Ming bank and Hock Hua Bank.

20 My position in Mukah Sawmill is Chairman of the Board. The Managing Director is Ling Beng Hui.

Chairman of Board in Kong Ming Bank. The Managing Director is Ling Beng Hui.

Q. Do you devote most of your time in these Companies.

A. Yes and other Companies as well.

My principal source of income is Borneo Timber Company, dividends of Hock Hua Bank and Mukah Sawmills.

Q. From Peattie's evidence as far as Mukah Sawmills is concerned - you received \$66,000 with your brother as Director's fees.

30 A. The book value - yes.

By Book value I mean Director's fees have been drawn for the year or credited.

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Cross-Examination

Q. It is part of your income for tax purposes whether drawn or credited.

A. I am not too sure about that.  
In 1971 I don't think I have drawn the money.

Q. Were they credited to you.

A. I have not seen the 1971 account.

Q. You are Chairman of this Company.

A. The final accounts has not been drawn up.

Q. Are you telling the Court no decision has been made as to Director's fees.

A. I could have drawn.

Q. Have you?

A. I have not seen the accounts.

Q. Have you done so.

A. Maybe yes. I have to look at the accounts.  
I cannot recollect.

Q. Has any decision been changed.

A. The annual meeting has not taken place.  
Nothing has been discovered. I have never received any dividends from Mukah Sawmills.  
I draw Director's fees from Kong Ming Bank.  
My Director's fees is \$1600/- per month.  
I have not received any dividends from Kong Ming Bank.

Q. It is for Directors to recommend whether to pay dividends.

A. I think so.

Q. Peattie had said what the state of Mukah Sawmills was.

A. I have heard that.  
The goodwill is bought over as a going concern from the partnership.

Q. Is it an asset that can be sold so long as business of Company continues.

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- |       |  |  |
|-------|--|--|
| A.    | According to my understanding it can be sold.  | In the High Court in Borneo                      |
| Q.    | If you continue the business.  |  |
| A.    | I am not too sure I can sell the goodwill<br>I cannot use it to pay my creditors.  | ————<br>No. 7                                    |
| Q.    | From Mr. Peattie if you do not take the figures into account Company has not sufficient assets to pay its creditors.   | Notes of Evidence<br>————                        |
| A.    | I don't agree.   | Applicant's Evidence<br>————                     |
| Q.    | From what assets would you pay.  |  |
| 10 A. | Mukah Sawmills has contract work in Indonesia.<br>Forest is very good.<br><br>I have started this Indonesian venture in 1969.<br><br>I derive income from Kong Thai. I receive Director's fees - may be \$600/-. | Dato Ling Beng Sung<br>————<br>Cross-Examination |
|       | As a Director I received my share of the bonus.<br>Amount varies from year to year.  |  |
|       | As shareholder I receive regular dividends. Amounts of dividends was given by Mr. Peattie.   |  |
| 20 Q. | The figures for 1967 to 1970 inclusive added up to 265% on your capital.   |  |
| A.    | I accept what he said.<br><br>In addition to that I receive an offer to purchase my shares at 6 times their par value. Par value \$100/- at \$600/-.   |  |
|       | I was told of this offer a few days before the hearing. I did not reply to that offer.   |  |
|       | I did not consult my advisers on that offer. I did not make any counter-offer.   |  |
|       | If there were a winding-up I would be entitled to proceeds of various assets.  |  |
| 30 Q. | Did you enquire what you would get on winding-up. More or less than the offer made.  |  |
| A.    | I did not enquire since the offer came a few days before   |  |

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Cross-Examination

the hearing and I had no opportunity to enquire.

Q. Have you since then sought to consult.

A. No.

I would be impossible to assess the Company without going into the physical assets of the Company and all the subsidiaries.

Q. Would you agree on figures of dividends just quoted that Kong Thai is a highly successful Company.

A. It depends very much. The right management can make it more successful.

On these figures I am not prepared to say more fully the investments and of the physical assets.

There is no other companies where I have received 265% in 4 years.

Q. Your Counsel said you had been content to leave management of Kong Thai to Beng Siew.

A. Yes. That is correct.

Q. Mr. Peattie said success or failure is responsibility of Board not Beng Siew.

A. I do not agree with that.

Q. Have you personally contributed to anything in running of Kong Thai.

A. No.

Q. Do you think you have earned your Director's fees.

A. It was given to me since I am entitled to it. I did contribute in the early part of Kong Thai. I did not attend the Directors' meeting. I became first worried about affairs of Kong Thai in 1970 - i.e. early part of 1970.

Q. Up to that date you had received annually the accounts.

A. Yes, I do.

Q. You were free to attend the General Meetings if you wish to.

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- A. Yes.
- Q. When did you decide the annual accounts were not clear.
- A. The early part of 1970.
- Q. What in that account at the time was not normal and unexplained.
- A. The detailed report of account. Huge sums of donations were made to political parties.

In the High Court in Borneo

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Applicant's Evidence

10 The biggest sum over one million went to Sarawak Chinese Association when the 2nd Respondent is also the President of the party. Also expenses incurred by the Company debtor's account several million dollars. In the Auditors report auditor has mentioned nothing of this abnormal characteristics of these items. Some of these go back several years.

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Dato Ling Beng Sung

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Cross-Examination

- Q. You were not concerned about the earlier years.
- A. I was only concerned with detail account when the Court granted the order from 1964-1970.
- Q. 27th April, 1970 - Did you draft that letter.
- A. I drafted that with assistance from Tobin Hoo my Counsel. We live together. I sent that letter off.

20 I later obtained an order for Mr. Peattie to look at books.

That order was not opposed.

- Q. What instructions did you give to Peattie.
- A. I told him to go through the checking of any irregularities of accounts plus matters which I had set out in my letter.
- Q. Did you tell him in general to look for any evidence of mismanagement he can find.
- A. Not really.

30 I asked him to look for irregularities. Mr. Peattie did produce me the report. I have not got it here.

- Q. How did it reach you.
- A. He delivered it in person. I cannot remember the number of copies.

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Cross-Examination

(Counsel ask witness to produce Reports tomorrow morning).

- Q. Did you make any effort to find from Company the irregularities to which Mr. Peattie referred.
- A. No.
- Q. Do you know something which you complained of and have been dealt with and no longer in issue.
- A. Some of items were told to me by Mr. Peattie.
- Q. Did you attend any meeting between time Report received and these proceedings.
- A. I attended one meeting the Annual General Meeting of 1971 last month i.e. after proceedings concerned. 10
- Q. Your application contains a number of complaints.
- A. Yes.
- Q. These are listed in the Originating Motion.
- A. Yes.
- Q. Did you before you file give any notice to Company or either of two respondents of those complaints.
- A. No.
- Q. After you received Peattie's report, Mr. Peattie swore an affidavit. 20
- A. Yes.
- Q. And that affidavit was drafted in consultation with you.
- A. Yes.
- Q. You also affirmed an affidavit.
- A. Yes. The first time I affirmed was sometime in September 1971. Re-affirmed in 1972. My senior Counsel Mr. Mooney drafted the affidavit.
- Q. When affidavit was re-sworn in February, 1972, was it suggested that any part ought to be altered.
- A. No. 30

Refers to Affidavit

I left affairs of Kong Thai to my brother Beng Siew until Peattie produced his report. I did not know any before this. Until last A.G.M. I was asking for many details. None were given to me satisfactorily. Internal day to day working I have no information whatsoever.

Q. Did you know what particular kind of payments were authorised or not in any year.

A. I presumed they were authorised by Beng Siew.

10 Q. You did not in fact know what was authorised and what was not.

A. Not until Peattie's Report.

Q. When you say any particular item was not authorised it is what Peattie told you.

A. Yes.

Q. When he said certain items were not reported to Kong Thai that is what Peattie's told you.

A. Yes.

Q. Until then you did not know.

20 A. Yes.

I am not a member of Sarawak Chinese Association nor an office bearer.

Q. Have you any personal knowledge of internal affairs of S.C.A.

A. To some extent. I know who is the Chairman, who controls the party. Chairman is Ling Beng Siew. He controls the party.

Q. You say that on same basis as he controls Kong Thai.

A. No.

30 It is common knowledge of anyone. What other people told me and what I know.

I know many important decisions had to be given by the Chairman. I have not been at the meeting at which such meetings were held. I had been told.

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(Mr. J.E. Vinelott. Objects to line of questioning).

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Cross-Examination

- Q. Have you any information which was not told by somebody else.
- A. No.
- Q. Are you familiar with U.M.N.O. internal organisation.
- A. No.
- Q. What about Alliance and Pesaka or Olympic Council.
- A. No.
- Q. And until Mr. Peattie told you, have you no knowledge whether the donations were incurred with or without Board's authority.
- A. That is correct.
- Q. You said in your affidavit Kong Thai has no business in Kuching.
- A. That is correct.
- Q. You want to correct that.
- A. No.
- Q. Did you hear what Peattie said in his cross-examination.
- A. I have heard, but I don't agree with him that Aurora Hotel is a business.  
It is, but not a timber business. Kong Thai has no timber business in Kuching.  
I have information about this before Peattie's Report.
- Q. You have no knowledge what Kong Thai business is in Kuching or elsewhere.
- A. I read in Newspaper. Aurora was bought by Beng Siew as Director of Kong Thai.  
I know it when I swear this affidavit.  
Refers to Page 16 of Affidavit.  
Singapore business in Singapore. I heard what Peattie said. I agree with him.
- Q. You made observations about motor cars. Where do you live.
- A. I live in Sibü at the Bank Chambers. I have no residence in Kuching. The Company has.

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Q. Do you have any personal knowledge of the use which cars were put except from Peattie.

A. I have knowledge KA 7000 is used most of the time by 3rd Respondent. I saw this in Kuching. I have seen this 2-3 times a month for 2 to 3 minutes. I do not know the use to which this car was put but I was told.

This is true of all the cars.

I have seen KA 7000 used by 3rd Respondent for a period of years attending functions. I was told of what use cars were put. I know Mercedes Sport Car was bought by 3rd Respondent himself. It was used in Sibu subsequently he took car to Kuching and that car has been used and placed at his friend's place.

Q. Apart from what you were told you do not know.

A. I saw the friend used the car conveying friends in this car.

Q. Mr. Peattie has told us that all investments made by Kong Thai were authorised.

A. I do not agree. They were only authorised after I took action against the Company.

Q. If Peattie said otherwise it is wrong.

A. I am not in a position to criticise. This is a fact as all the investments were converted from the debtor accounts into the investment companies after I have taken these proceedings.

Q. How do you know that.

A. I was told by other directors of the Company and also from the report of Mr. Peattie.

Q. You have relied upon Peattie about the investment.

A. I have two ways to rely. On disclosure from other Directors to me and Mr. Peattie's report. That is all.

#### Aurora Hotel

When it was purchased it was in a state of repairs. I have not been in it lately. I have been in it since it was acquired by Kong Thai. I have seen some of the renovations.

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Cross-Examination

Q. You agree it is a comfortable hotel.

A. I cannot say it is comfortable. I saw the dining room. It was air-conditioned. I have not inspected any of the bedrooms. I have not been to the coffee shop. I was told it was making a profit but I have not seen the account of Hotel Aurora.

Q. You swear in the affidavit Aurora Hotel was not making a profit.

A. I refer to the period of my investigation. It is quite correct it was not purchased with authority of Board. I got it from Peattie and other Directors of the Company. Mr. Peattie misunderstood the position of Aurora Hotel. 10

Refers to Para 19 - page 7 Beng Sung's Affidavit

"The purchase was made by the Second Respondent without any authority from the Board and since the hotel has been used extensively for private and public entertaining...."

I heard this myself and from others.

I always see in newspaper the 2nd and 3rd Respondent entertaining. When I was in Kuching I saw this myself. From my friends in Kuching in business they also agree with this. 20

I was present on one occasion when political party was given. Many people were present at the party. Beng Siew himself, many of his S.C.A. members, Cheng Yew Kiew, Mr. Tan. That was some years ago.

According to divisionary of items of expenses of Aurora Hotel, I think Kong Thai paid the expenses. I cannot say the year and date. I have to go through the account. 30

Q. Apart from the dinner you were present were there any other dinners.

A. The hotel was used to entertain political visitors from West Malaysia. I have to through the account to find out.

Q. Any other occasions when you were present when this entertaining went on.

A. I have to refresh my memory. I am not in a position to say so at this moment. 40

Q. Is there anything wrong with two respondents in entertaining people in dining room.

A. No.

Para 20. Hovercraft.

I know the size of this machine roughly. I was told by the 2nd respondent himself. It is about 15 ft. in length, about 5-6 ft in width. This is not required for Kong Thai business. The 2nd respondent told me that this craft would be used for his political campaign should he join the State election. Would save time in travelling from place to place. Can cover places in less time.

It is half a year from publication.

I read the affidavit of Beng Siew once.

Q. Do you know this Hovercraft was never delivered.

A. I was told.

Q. It is a comparatively small machine for Niah River.

A. I don't agree. Other persons using Niah River for storing logs which are substantial. There are cargo boats using this river. It is quite useless to use a Hovercraft for this river where turning are so numerous. It would be most dangerous to use this craft in this river when logs are in progress of towing and there would be hardly any space. I have seen a hovercraft.

Q. Do you know that one of the merits of craft is to go over obstacles.

A. Yes.

It would not be able - as the hovercraft will have to attain a certain speed.

It can remain stationary. It would take a long time by this method.

Q. But you were not told by Eng Siew.

A. I did not make this up. He told me personally.

Time 4.15 p.m.

Adjourned to 9.00 tomorrow.

Sgd: B.T.H. Lee, J.

17/4/72.

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Cross-Examination

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In the High  
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18th April, 1972  
Parties as before  
Time 9.00 a.m.

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No. 7

Mr. G. Starforth Hill

Notes of  
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P.W.2 Dato Ling Beng Sung (on former oath)

These are the reports made by Mr. Peattie.

Applicant's  
Evidence

Refers to 1968-69. I cannot recollect whether there is a covering letter. I may have mislaid it with the other files.

—  
Dato Ling  
Beng Sung

I think these are the copies sent to me by Mr. Peattie. 10

Q. Are there any specific parties in the Aurora Hotel other than what you have seen in Accounts.

—  
Cross-Examination

A. I have gone through 1969-70 account incurred by 2nd and 3rd respondents.  
The schedules give a number of parties given by 2nd and 3rd respondents.  
The schedules do not give the nature of the entertainment and I cannot say which were the ones I attended.  
Apart from the accounts I am unable to say what they are as they happened a long time ago. 20

Refers to para 21 of Affidavit (Page 8)

Yacht Berjaya Malaysia

Q. Do you of your personal knowledge know what was in mind of Directors for the purpose of this yacht.

A. I was told by 2nd respondent that this is a pleasure launch. I was shown this yacht and I was in this yacht once.

Q. Do you know it is Company's intention to use this between Sarawak and Indonesia.

A. I was never told then. 30

Q. Were you present when decision of purchasing this yacht was made by either 2nd or 3rd Respondent.

A. No.  
I have not been in any trip. I was invited to attend the parties held in the yacht.  
I was told it was a pleasure craft.

I have seen this in the newspaper and I have information from mutual friends that it is a pleasure craft. I saw the boat in Sibu and in Kuching used purely for 2nd and 3rd Respondents private purpose. I have talked to persons and they say that it is for their own private purposes. This boat is treated as the property of Beng Siew according to the papers.

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Q. Who is it who paid for yacht Sri Tania.

10 A. Mukah Sawmills constructed the boat in the early part of 1968 or latter part of 1967. I cannot remember the cost. I think a little over \$100,000/- as stated in the books is the correct figure.

—————  
Applicant's  
Evidence

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Dato Ling  
Beng Sung

Q. In that year Mukah Sawmills was running at a substantial loss.

A. Could be.

Q. It was a loss of \$132,894/- for that year.

20 A. It could be. I will accept that the account is correct. The boat was used for trips between Sibu and Mukah during Director's inspection.

—————  
Cross-Examination

Q. Was it ever used for pleasure purposes.

A. In between times - yes. I do entertain on board this yacht Sri Tania. I have entertained visiting V.I.Ps. on board this boat.

Q. Was it ever published in press that the boat is yours and not the Company's.

A. I could have.

30 Q. Would the press make a mistake.

A. It may not be in my circumstances because Mukah Sawmills belonged to three shareholders, myself and two younger brothers, and also I am Chairman of the Board and this Company is owned by my brothers and there are no minorities.

(Witness shown Magazine Bena Negara)

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Beng Sung

\_\_\_\_\_  
Cross-Examination

The boat Sri Tania is on the cover of Magazine.  
There is an article about Sri Tania.

Q. Does the article indicate the boat was built  
and owned by you personally.

A. I admit it is a misleading article.

Q. Did you take any steps to remedy it.

A. I see no necessity as there are no minority  
shareholders.

See Page 2 of Article. Captions of Article.

"The luxury low-deck cabin featuring full  
length mirror".

That is not the correct description of the  
interior cabin.

The timber is local wood, the furniture is limited.

Q. This magazine is published by the group of Companies  
concerned with the fitting of the boat.

A. They are only concerned with the engine, not fittings.  
The engine is one 330 H.P. engine.

It is not necessary to correct the article.

If it is luxury, it is a mistake. Subsequently, the  
boat was sold to Kong Ming Bank for a sum of  
\$150,000/- I think.

It was paid in cash to Mukah Sawmills.

Q. Was it cash or credited.

A. Mukah Sawmills received a cheque.

Unfortunately the boat was not used as a floating  
bank for security reasons.

The cheque was paid to Mukah Sawmill current account  
with Kong Ming.

I cannot say if the account was overdrawn.

(To check account during adjournment).

Q. Peattie has said places where Kong Thai has business.

A. Could I have the specific places pointed out.

Q. You have said in your affidavit that 2nd Respondent  
used boat to Sabah, Singapore, Port Swettenham and  
Penang. How do you know.

A. I asked the people. They told me so. I saw in

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newspaper about the trips made by 2nd Respondent.  
 Re Sabah I saw personally the boat was brought to  
 Tawau from Sibiu on the occasion of Hock Hua Bank Sabah  
 Berhad opening. The boat was used for two nights for  
 entertaining on behalf of the Bank.  
 Apart from the opening ceremony he was engaged with  
 this opening all the time.  
 What he did in his spare time I do not know.

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Q. Nor do you know when he went to Singapore.

\_\_\_\_\_

Applicant's  
 Evidence

10 A. No.  
 In Port Swettenham I saw in the newspaper he took  
 Tengku Abdul Rahman for a trip. Also from 2nd  
 Respondent's conversation to his friends at parties.

\_\_\_\_\_

Dato Ling  
 Beng Sung

Q. Nor do you know what he did in Penang.

A. I was told he used the boat from Port Swettenham to  
 Penang taking Tengku Abdul Rahman and also housing  
 the boat in Penang for private parties.  
 I understood that the yacht was his own property.  
 After the purchase was approved by Board one year  
 later I knew the boat was not his.  
 The cost appeared in the Kong Thai's Account.

\_\_\_\_\_

Cross-Examination

Q. You received the accounts.

A. Not before that.  
 I understood that no Director apart from the 2nd and  
 3rd Respondents was ever permitted to take the boat for  
 a trip.  
 I am fond of sailing. I was not able to use this  
 boat because the boat was used by others. In the  
 cabin you can also see private photos of 2nd, 3rd  
 Respondents and other forms of photographs displayed  
 in this cabin.  
 Apart from Dato Ting Lik Hung - I learned about Dato  
 Ting Lik Hung from the affidavits filed.  
 I know this from what I have been told and what I  
 have seen.

Q. You were not on board and you were not there.  
 You were there on one occasion.

A. Boat goes to longhouses. I do not know who are in  
 the boat.

40 Q. Did you ask to have a trip yourself.

A. I ask 2nd Respondent once - early part of 1969.



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Dato Ling Beng Sung

Cross-Examination

Q. What was the response.

A. He asked me to check with Beng Siong. He gave excuse engine may not be functioning properly. I felt it rather unusual in a place like Singapore where a food freezer could be bought so easily. Why should food freezer be bought for the yacht. I am satisfied freezer is in the yacht. I am satisfied as regards the radio. I made the same comments. This would save the Company interests.

By Court:

If the freezer and radio are to be used for the yacht these freezer and radio can be bought at a later date when the renovation of the board would take a long time. The freezer and radio could be bought after the renovation instead of buying and storing them in a private place.

10

Mr. G. Starforth Hill

Please do not look at affidavit.

Mr. J.E. Vinelott

Objects.

Mr. G. Starforth Hill

20

Not to look at the answer before he answers the question.

P.W.2

There are certain thing which I would like to refresh my memory before I can answer.

Ling Lee Soon is son of 2nd Respondent. He never worked at Kong Thai at the material period.

Q. How do you know?

A. He is not on pay roll.

Q. No one is suggesting that.

30

A. He was studying in England.

Q. Does that prevent him to work for Kong Thai.

A. I know he was studying.

Q. Who told you he was not being paid.

A. From the books Peattie produced.

Refers to Para 25 - you said an original award of preliminary expenses of \$50,000/- was made by 2nd Respondent to himself without anyone also being consulted or given an opportunity to check.

(Witness asks to refer to para to refresh his memory - witness reads para).

Q. Is that correct?

10 A. That is correct at material time.  
I based this particular finding from Mr. Peattie's report.  
I listened to Peattie's evidence.

Q. Did you agree that he said it was a mistake. Peattie referred to the meeting on 16 January 1965. If there are 5 signatures then you are wrong.

A. It is not for me to say. I based my para 25 on Peattie's report.

Q. Were you a shareholder in 1965?

20 A. I cannot say.

Q. You were a shareholder and you are asking for relief as a shareholder of Kong Thai.

A. Yes.

Q. If you are not a shareholder then these matters are irrelevant.

A. This is a going concern and I am entitled even if I am not a shareholder.

Refers to Para 26.

Q. What do you mean by "protege".

30 A. Could be to do with person who derives assistance from another.  
The protege of 2nd Respondent - I refer to the relative of the wife of the 2nd Respondent.  
Protege is a him - a candidate.  
He derives aid from Kong Thai

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(Mr. G. Starforth Hill informs Court he has not got an answer to his 2nd question - what other reasons do you call him as "protege").

No. 7

A. No other reasons.

Notes of Evidence

Donations. I learned it from detailed reports and from information given to me by other Directors.

(Witness is reading Mr. Peattie's Affidavit).

Applicant's Evidence

Mr. G. Starforth Hill

Is he entitled to read Peattie's affidavit.

Dato Ling Beng Sung

Mr. J.E. Vinelott

Not entitled - except his own report.

10

Cross-Examination

Now I say I compared with the dates. The information was gathered from Peattie's Report.

I learnt from newspaper that the donation to Lions Club SibU was represented by 2nd Respondent to the press and to the club as his personal donation.

Refer Para 28. (Witness reads Para 28).

Q. Kong Sieng Ong is the private secretary and interpreter of 3rd Respondent. How do you know?

A. 3rd Respondent told me so. I saw them together.

20

Q. Do you know if Kong Sieng Ong had anything to do with Kong Thai.

A. No. At the time when 3rd Respondent was a Minister Kong Sieng Ong devoted his full time working for the 3rd Respondent. I don't think Respondent had at that time worked for Kong Thai. During the period he was a full time Minister.

Q. How do you know what Beng Siong did with his time?

A. He was a full Minister of State. The office was located in Kuching. He resided there most of the time. Kong Thai had no timber business in Kuching. Kong Thai has got later on Aurora Hotel.

30

Q. Are you also suggesting Beng Siong never come back to SibU.

- |    |  |                               |
|----|--|-------------------------------|
| A. | No. He comes back to SibU on holidays and to see his family.   | In the High Court in Borneo   |
| Q. | Kong Thai did own Aurora Hotel at this time.   | _____                         |
| A. | I am not too sure of the date. Beng Siong remained a Director most of the time. Kong Thai has no business dealings in Hong Kong, Taipei and Tokyo because logging is done in Niah District, Sarawak. The entire sale of logs of Company are under the exclusive agent of Sarawak United Sawmills, SibU. This information was obtained from Peattie's Report and also from 2nd Respondent.  | No. 7<br>Notes of Evidence    |
| 10 | I cannot remember when 2nd Respondent told me. I asked him why Kong Thai cannot export the logs itself. He said it would be better to channel the logs through Sarawak United Sawmills so that Sarawak United Sawmills can make commissions out of Kong Thai. He told me in early part of Company's business. After I became a shareholder. The discussion took place in my house in SibU. | Applicant's Evidence<br>_____ |
| 20 | Q. My instructions are that no such discussion took place.   | Dato Ling Beng Sung<br>_____  |
| A. | I was told personally. I cannot remember the exact date. It was after I became a shareholder. We talked about Company's business. I presume that all the sales have always been channelled through Sarawak United Sawmills.  | Cross-Examination             |
| Q. | Have you any information later.  |                               |
| A. | Two sources, one from Directors and from Peattie's Report.   |                               |

30 Time 10.35 a.m.  
Adjourned for 15 minutes.  
Sgd: B.T.H. Lee, J.

Time 11.00 a.m.

P.W.2 Dato Ling Beng Sung (on former oath)

Refer to Para 28:

"The trips mentioned in sub-para (b) of Paragraph 54 were private trips."

Q. How do you know?

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A. All sales are channelled through Sarawak United Sawmills. If there is any marketing to be done, expenses should be borne by Sarawak United Sawmills.

Q. Do you know what was done in those trips?

A. I was not with the Respondent therefore I am unable to know.

Q. Now?

(Mr. G. Starforth Hill informs Court that he has difficulty in getting straight answers from witness).

A. I maintain these trips are not trips made on behalf of Kong Thai. 10

Q. Do you know what these trips were for (for third time)?

A. I do not know what the trips are for.

Q. Kong Thai has no business in Indonesia?

A. Yes at that time.

Q. And no need to charter any plane.

A. Correct.

Q. Are you relying on Peattie's report regarding Indonesia. 20

A. From Peattie's Report and other Directors. I know Dato James Wong.

Q. He has substantial interest in timber business.

A. I think so.

Q. Limbang Trading?

A. Limbang Trading is the name of the Corporation that I know has been used in Sarawak. I do not know the others. I do not know he keeps a private aircraft.

Q. Do you know Kong Thai has interests in Indonesia timber. 30

A. Not at that time.

Q. Are you suggesting it improper for representatives of Kong Thai to visit Indonesia for proposed interests.

A. No. I think trips for exploration costs should be borne by the subsidiary of the Company or the joint venture. In this case the P.T. Kalimantan is a joint venture. Kong Thai has a certain percentage only. At this time the joint venture has not existed. I do not suggest this is a private journey.

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Para 35

Notes of Evidence

Q. Nissan 2000 car KA 9455 was not used by the Hotel.

-----  
Applicant's Evidence

10 A. It was used by the Hotel at a later stage when 3rd Respondent son left Kuching.

Q. Are you suggesting it was not used by the hotel.

-----  
Date Ling Beng Sung

A. It was used mainly by son of 3rd Respondent.

Q. Is it also used by the Hotel.

-----  
Cross-Examination

A. I don't know.

Para 41

"The Third Respondent does nothing for Kong Thai and his general factotum does even less."

Q. What have you done for Kong Thai?

20 A. At the beginning I contributed on many occasions in discussions with the 2nd Respondent at Niah. At the latter stage I did not.

Q. You know you never contributed anything to Kong Thai apart from capital for your shares.

A. Not correct. Discussions took place on many occasions up to the night in respect of Kong Thai affairs. Sometimes discussions took place at 11.00 p.m. and continues up to midnight.

Q. Your Counsel said you left your affairs of Kong Thai to Beng Siew.

30 A. Apart from participating in these in the early part of 1966 and 1967.

Q. You were not a shareholder in 1966.

A. I have to check.

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Cross-Examination

- Q. You became a Director in 1967.
- A. I could have.
- Q. Do you mean to say you took part in the discussions before you became a Director.
- A. Yes.
- Q. Since becoming a Director and Shareholder you did not do anything for Kong Thai.
- A. Yes I did not.
- Q. These discussions you said took place never took place.
- A. I did.  
Mukah Co. invested in Kong Thai in the earlier stage. I have not checked the dates. It is sometime in 1965. The shares were transferred to me at a later date. During the time Mukah Sawmills was the sole shareholder in that investment. I was also appointed as a Director.

10

Refers to Page 18

Night Club Bills.

- Q. What do you mean by Night Club.
- A. This is a place where food, drinks and floor shows are conducted. Others would refer to restaurants.
- Q. Which are Night Club and which are restaurants.
- A. This is supported by bills.  
I am familiar to some extent with Singapore.
- Q. What are Night Clubs in Singapore.
- A. Tropicana. I can have my dinner there and watch some floor shows. You can just pay for some drinks only.
- Q. It is primarily a restaurant with entertainment.
- A. Yes.
- Q. Have you examined the break-down of this bill.
- A. I cannot recollect at this instance. I went through

20

30

them with the Auditor.

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Borneo

Q. Mr. Peattie used the word "Night Club" so you also used the same term.

A. These expenses represent my views that expenses incurred by these entertainments are at these night club. I think night clubs cannot be considered as mere restaurants. Night Clubs do provide entertainments.

—  
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Q. You do not refer night clubs as places where one might well go in the middle of the night not for eating where there might be entertainment in one form or other.

—  
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Evidence

10

A. I do not mean that (Pause) (then continues). It could be either or both. I do not know what these night clubs were or whether they were properly described.

—  
Dato Ling  
Beng Sung

Q. Do you know when you swore the affidavit.

—  
Cross-Examination

A. Yes.

Q. What was your source of information.

A. I gather this from Peattie's report.

Q. You said "The 3rd Respondent has never travelled on Kong Thai's business".

20

A. Kong Thai has been run by 2nd Respondent and the 3rd Respondent has spent a great deal of time in politics and ministerial affairs. I have never seen him travelling to other oversea countries in respect of timber.

Q. Do you keep a watch on him every day.

A. No.

Q. Do you know where he goes to?

A. When he tells me I know. When he does not tell me I don't know.

30

The bills I have mentioned are taken from Peattie's Report. This is my only source of information.

Para 42.

Q. You have figures listed out? They are taken from



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Peattie's Report.

- A. Yes.
- Q. Who gave you the name of Aurora Hotel Sdn. Bhd.
- A. I got it from Peattie. I know there is no such Company now.
- Para 43. Kong Kuek Miew is personally known to me. He is a party member of SUPP.
- Q. How do you know he has not worked for Kong Thai.
- A. He has been a political figure.  
The sum in the form of salary paid to him is very high. 10
- Q. Do you suggest he did not work for Kong Thai.
- A. I consider him incompetent.  
Penghulu Poh and Pengarah Chundi did not work for Kong Thai.
- Q. How do you know?
- A. They were described as labourer hirers and I disagree.  
The Iban labourers are recruited to work as sundry jobs in the Niah Camp from the area concerned. 20  
These gentlemen reside in Igan. Niah is a different division from Igan. Niah is in the 4th Division and Igan is in the 3rd Division in Sibiu.
- Q. Do you know where the labour force for Kong Thai comes from?
- A. Yes. Labourers come from all over Sarawak.  
Iban labourers come from Niah.
- Q. This is what you presume.
- A. I presume that they are from Niah District.  
I don't know because I have not checked. 30
- Q. You do not know if Penghulu Poh and Pengarah Chundi do anything for Kong Thai.
- A. They are in Sibiu. They have their own business.  
I know they are not working for Kong Thai. They

are around in Sibü, and they are not working in office of Kong Thai Sibü. They are not present in Niah Camp.

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Q. How do you know?

A. I meet them.

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Q. How often do you go to Niah Camp.

Notes of Evidence

A. I have been there once.

Q. Do you know what these gentlemen do other than their regular jobs.

—  
Applicant's Evidence

10 A. From my personal observations and mutual friends I am given to understand that they do not work for Kong Thai.

—  
Dato Ling Beng Sung

Q. Your observation is confined to seeing them in Sibü.

—  
Cross-Examination

A. Yes.

Comments about payments made to them are my comments. Wong Yew Ming has never worked for Kong Thai. I know Kong Thai has an interest in newspaper. Wong Yew Ming is a newspaper man. I am not in a position to say when Wong Yew Ming had advised Kong Thai on newspapers.

20 Q. Chew Kwan Loke - you have heard Peattie's evidence.

A. I cannot recollect. I do not know what Chew Kwan Loke did in Singapore.

Q. Would it surprise you to say he is responsible for purchase of machinery in Niah Camp.

A. Yes. I thought all machinery was bought by 2nd Respondent.

Q. You do not know.

A. Yes. What I know is 2nd Respondent who bought them.

Q. Chew Kwan Loke is a clerk in Singapore.

30 A. I do not know. What is said in the affidavit is my view about Chew Kwan Loke.

Q. Chen Ko Ming - Do you know he is involved in prospecting minerals.

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A. No.

Q. Do you infer he had not done any work for Kong Thai.

A. Yes I do.

I was given to understand by 2nd Respondent that Mr. Chen left his previous job in Sarikei to join him in his development of S.C.A. political party.

Q. Does not stop him working for Kong Thai.

A. No.

If a person is paid a salary and is said to work for S.C.A. he would not be in a position as far as time is concerned to assist in Kong Thai's affairs.

10

Q. How do you know.

A. My observations.

I do not observe him every day.

Q. Put that 2nd Respondent told you is not true.

A. I heard it from him.

Q. Any other source.

A. I don't think so.

Para 45:

"The Second Respondent has shares in Kong Thai Lumber Sdn. Bhd. but has never revealed this to the Board of Directors or shareholders of Kong Thai despite the fact that Kong Thai Lumber Sdn. Bhd. is a subsidiary. In my submission, it is quite improper for him to have these shares and he ought to be ordered to disclose how they were paid for and to transfer them to Kong Thai on an appropriate payment. He is also a shareholder in Sabah Agency Sdn. Bhd. and the foregoing remarks and submission apply equally to that."

20

Q. You have not been to a Board meeting.

30

A. Yes.

Q. You cannot say on your own personal knowledge whether there was such disclosure.

A. Correct.

This was told to me by other Directors of the Company.

Q. As far as shareholders are concerned, all you can say it was not disclosed to you.

In the High Court in Borneo

A. I don't think so. The 2nd Respondent did not disclose his interest in the Companies to Ling Beng Thuang and Hii Yii Cheong.

-----  
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Q. How do you know that.

Notes of Evidence

A. They told me.

-----  
Applicant's Evidence

Para 48. Yii Sok Moi

10 I know he is not working for Kong Thai. I know he is in Sibn and he works for S.C.A. Sibn. My comments in respect of Penghulu Poh and Pengarah Chundi applies here.

-----  
Dato Ling Beng Sung

He is an older man and has much more experience. I assume he did not work for Kong Thai.

-----  
Cross-Examination

Para 52. Chalfont Investment Ltd. Hong Kong

(Witness refers to Peattie's affidavit and refers to his own affidavit).

The information comes from Peattie.

Q. That applies to the figures mentioned?

20 A. This is from the affidavit of Peattie. The 2nd Respondent shareholdings are also from Peattie.

Q. You do not know whether 2nd Respondent has disclosed his shareholdings to the shareholders.

A. No. From Peattie's Report and other Directors. Borneo Co. shareholdings is also from Peattie. Chalfont Investment is also from Peattie. That fact that Kong Thai Lumber Sdn. Bhd. has not made a profit is also from Peattie.

Q. Do you know that Kong Thai Lumber Sdn. Bhd. has made a profit.

30 A. Not at material time.

Q. Do you now know Kong Thai made money.

A. I know from 2nd Respondent. It was a small dividend.

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- Q. Is it larger than Mukah.
- A. Mukah Sawmill did not pay any dividend.
- Q. The information about shareholders in Chalfont was given by Peattie.
- A. I have also report from the Registrar of Societies Hong Kong of the share structure and also from Peattie. I do not have any interest in Hong Kong.

(Mr. J.E. Vinelott objects to question as this is going beyond this questioning).

Para 54. Mercedes No. KB 2651

- Q. What is the basis for that statement.
- A. This is a sports car. I have seen this car being used by the 3rd Respondent family and was kept by the 3rd Respondent family.
- Q. Have you got the right car?
- A. I confused it with another Mercedes 200.
- Q. You know it is used for business of Hotel.
- A. I don't. It could be. I do not know the trips made by Hotel. You cannot say exclusively used. It is kept by 3rd Respondent. I cannot dispute that it was used for hotel business as well.

10

20

Para 55. Malaysia Daily Newspaper.

The information comes from Peattie.

Para 57. P.T. Kalimantan Sari.

The information comes from Peattie's Report.

- Q. It sold its logs to Chalfont or Glendale.
- A. I apologise - The real company doing the marketing for P.T. Kalimantan Sari is United Singapore Lumber in Singapore.
- Q. When did you discover - same time?
- A. Two weeks after I swore the affidavit.

30

Second time by the end of February.

Q. Did you tell your legal advisers.

A. I did not.

Q. Is this the first time they know of this.

(Mr. J.E. Vinelott objects to question)

A. I did not tell Peattie this mistake. This is the first time I told anyone.

Q. You remember your Counsel said at opening - reference to Chalfont illegal profits.

10 (Mr. J.E. Vinelott - I did not say this at opening).

(Mr. G. Starforth Hill - Learned friend has made this observation. Chalfont made illegal profits at his opening of case).

Para 58. Sabah Agency Sdn. Bhd.

Q. Do you know that dividend has been paid.

A. This information came to me at A.G.M. meeting sometime last month.

Para 60. Bottom page 25

Q. There are a lot of figures with inter-alienations.

20 A. That information is from Peattie.  
I had the report which was published in the newspaper.

Para 61.

Q. Are you suggesting that political parties did not continue to act.

A. After prohibition all political meeting had ceased. That is my understanding.

Public meetings were prohibited. The General meeting of political parties were also banned.

Q. What was prohibited was any public manifestations.

30 A. Yes.

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Q. Provided that rule was observed the political parties were free to do what they wish.

A. No. They were not dissolved.

Q. Do you have any personal knowledge what political parties did at this time.

A. I had contacted some and they told me.

Q. Is this the only source of information S.C.A. has not conducted any meeting.

A. I do not know what else they did.

10

Para 62. Yien King

Q. Are you suggesting business entertainment cannot be done in private houses.

A. It can be done.

Refers to Para 112 of Peattie's Affidavit.

Q. Do you know what the purpose of this expenditure was.

A. I do not know.

Para 62.

Q. Do you now know Kong Thai was interested in Mining Business.

20

A. Not at material time. Now, I was told. I do not dispute that.

Time 12.30 p.m.  
Adjourned to 2.30 p.m.  
Sgd: B.T.H.Lee, J.  
18.4.72

Parties as before  
Time 2.35 p.m.

Mr. J.E. Vinelott

Refers to Dato Stephen Kalong Ningkan's affidavit.

30

Reads Stephen Kalong Ningkan's affidavit dated 16.4.72.

Reads extracts of Minutes of Meeting attached to Affidavit.

In the High Court in Borneo

Has been handed an affidavit sworn by Yao Ping Ling affirmed on 17 April 1972.

Mr. C. Darvall

No. 7

Asks Counsel not to disclose the contents of Affidavit at this stage.

Notes of Evidence

Mr. J.E. Vinelott.

Applicant's Evidence

Not reading it.

Dato Ling Beng Sung

Cross-Examination

10 P.W.3 DATO STEPHEN DALONG NINGKAN (affirmed states in English).

Dato Stephen Dalong Ningkan

Mr. C. Darvall

Cross-Examination

Asks for minute book before cross-examination. Dato Ningkan produces original minute in a sheet.

Q. The last para of your affidavit

"There are now produced and shown to me and exhibited hereto marked "SNAPM" the original Minutes of the Committee Meeting of the Party called to consider the report".

Q. You have produced certain sheets of paper.

20 A. The minute book is not here.

Q. Do I understand you have no minute book.

A. Yes.

Q. Decisions made by Council and no minute book is kept.

A. Yes.

I read the fact in Sarawak Tribune on 30th April, 1972. I saw the article myself.



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Cross-Examination

- Q. Have you been reading the report of this case.
- A. Yes, I did.
- Q. As far as you are aware it is an issue whether money has been paid to political parties.
- A. I was not aware of that. I have been following the reports.
- Q. You know that is a matter of importance in this case whether money has been paid or not.
- A. Yes.
- Q. You issued a statement in Sunday Tribune dated 16th April, 1972. 10
- A. Yes. It was with my authority that it was published.  
(Witness shown Sunday Tribune dated 16th April, 1972).
- Q. Is the portion shown in inverted commas an accurate report.
- A. I authorised publication of this to all newspapers - English and Chinese in Kuching. Not the Straits Times. Article Sunday Tribune produced and marked Exhibit R.1. Press statement - photostat produced and marked Exhibit R.2. 20  
SNAP has a number of branches. They are spread throughout Sarawak.
- Q. You are aware of the gravity of this matter and you called a meeting.
- A. Yes.
- Q. You were the only executive officer available.
- A. Yes.
- Q. Did you appoint Michael Bong as executive Officer and Joseph Samuel as executive secretary. 30
- A. Yes. The appointments were made long before this.
- Q. Knowing the gravity of matter you made wide enquiries whether money was paid by Kong Thai to SNAP.

- |    |  |                             |
|----|--|-----------------------------|
|    | A. Yes.  | In the High Court in Borneo |
|    | Q. What were the wide inquiries which you caused to be made.   | —                           |
|    | A. I checked the account books 1969 and the monthly returns of Revenue and Expenditure from Sibü.  | No. 7                       |
|    | Q. Did you make any enquiries from officials.  | Notes of Evidence           |
|    | A. I made enquiries from Sibü. I made enquiries from Joseph Tang, our Secretary and Mr. Yap Siew Hoe. I made enquiries from those persons available.   | —                           |
|    | Q. Did you make enquiries from other persons.  | Applicant's Evidence        |
| 10 | A. I did not try.  | —                           |
|    | Q. You knew that Form of authorities have been sent out from SNAP authorising local authorities to collect.  | Dato Stephen Dalong Ningkan |
|    | A. Yes.  | —                           |
|    | Q. Because you made a statement to press did you receive information from local authorities.   | Cross-Examination           |
|    | A. No.   |                             |
|    | Q. Do you agree that would have been a reasonable and prudent thing to have been done.   |                             |
| 20 | A. Yes. I did not. No person suggested to me that I should make the statement in a hurry.  |                             |
|    | I know Dato James Wong. In March 1969 he was Deputy Chairman and Chairman of Fund Raising Committee. I did not make enquiries from James Wong. I know he is away from Kuching.   |                             |
|    | Q. When was he contacted.  |                             |
|    | A. Friday night or Saturday night.   |                             |
| 30 | I contacted him. Brodie is away in Limbang - 5th Division. I did not attempt to contact him. He is the financial officer of Fund Raising Committee. As Chairman of the Party the signatures of James Wong and Brodie are familiar to me. |                             |
|    | (Witness shown document)   |                             |

In the High Court in Borneo

These are signatures of Dato James Wong as Chairman Fund Raising Committee and Mr. Brodie as Secretary Fund Raising Committee.

—  
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(Witness reads the Authority dated 5th March 1969).  
Produced and marked R.3.

Notes of Evidence

I know Roland Yao Ping Ling.

—  
Applicant's Evidence

I had not received any messages from anybody that I had made a mistake. I do not know whether official receipts were issued.

—  
We have official receipts.

10

Dato Stephen Dalong Ningkan

(Witness shown Receipts)

—  
These are receipts of Sarawak SNAP.

Cross-Examination

They are all signed by Mr. Pao Ping Ling.  
I do not doubt that they are SNAP receipts.

Q. What is the total amount in the receipts.

A. The amount is \$145,000/-.

They are donations to SNAP.

They are receipts given one to Kong Thai and three to Dato Ling Beng Siew.

They are dated 26.3.69 for \$10,000/-, \$50,000/- dated 26.4.69, \$25,000/- dated 9th May, 1969.

20

Receipts produced and marked Exhibit R.4, R.5, R.6 and R.7.

Q. You agree the letter of Authority authorised people of SNAP to collect funds.

A. Yes.

It seemed the amount was collected.

I admit I did not make enquiries from Fund Raising Committee. I admit it would have been a prudent and reasonable thing to do. As far as I am concerned the Press statement is correct.

30

Q. As far as it is Kuching.

A. It is correct.

As far as it is Sibuh Branch it is incorrect.

I did not enquire from Fund Raising Committee which I think was a prudent and reasonable thing to do. I cannot say from my knowledge whether Fund Raising Committee has received the monies.

It is wrong as it purports to cover the whole party. I have no knowledge of it. I have no receipts from Sibuh Fund Raising Committee.

Refers to Article

10

"I must reiterate on behalf of the Sarawak National Party, as its chairman, that SNAP as a political organisation, had never received, at any time as stated, such money from Kong Thai Sawmill or from Dato Ling Beng Siew."

I do not think it is wrong as I do not know it is wrong.

At the time I did not intend to make a mistake but I did not have the knowledge and I did make a mistake.

By Court: I am sorry for this. I should have made further enquiries into this matter.

20

I was asked to make the affidavit on Saturday night before publication of newspaper.

The Acting Financial Officer asked me to file the affidavit.

I did not intend to take sides.

Somebody drafted this. I do not know who did. He did not mention if anybody was interested to have the affidavit.

REN

I know one Charles Ingka. He was a party member of SNAP. He was expelled as a member in March.

30 (Mr. C. Darvall)

To desist from leading and not to question matters not arising from cross-examination.)

Q. Can you recognize the signature on the right hand side of second receipt 01051.

In the High Court in Borneo

—  
No. 7

Notes of Evidence

—  
Applicant's Evidence

—  
Dato Stephen Dalong Ningnan

—  
Cross-Examination

Re-Examination

In the High  
Court in  
Borneo

(Mr. C. Darvall: Witness has already given an answer.  
He cannot identify them).

\_\_\_\_\_  
No. 7

(Mr. J.E. Vinelott: Witness recognize on 1st receipt but  
I am asking the same question on 2nd receipt).

Notes of  
Evidence

(COURT: Objection overruled).

A. I cannot recognize the second signature on 01051.  
That is not the usual signature. If it is the  
signature of Charles Ingka it is not the usual signature.

\_\_\_\_\_  
Applicant's  
Evidence

Mr. Yap Siew Ho is our Assistant Secretary stationed in  
Sibu. He was dealing with our accounts.

10

\_\_\_\_\_  
Dato Stephen  
Dalong Ningnan

Q. Refers to Circular - R.3.

(Mr. C. Darvall objects to question)

\_\_\_\_\_  
Re-examination

Q. Did local authorities submit returns.

(Mr. C. Darvall. Not concerned with domestic matters).

(COURT: objection overruled).

A. No returns were sent by Sibu Branch. They were advised  
to send the returns.

Michael Bong the Acting Financial Officer spoke to Dato  
James Wong over the telephone.

Time 3.35 p.m.

20

(Witness released - no objection from both Counsel).

Dato Ling  
Beng Sung

P.W.2 Dato Ling Beng Sung (on former oath)

Para 67. Sng Ching Joo

\_\_\_\_\_  
Cross-examination  
(continued)

Q. How do you know he does not work for Kong Thai.

A. He is a businessman on his own.

The office in Kong Thai is situated in Sibu - Logging  
camp in Niah.

Para 72

- Q. Is this the car you referred earlier - the sports car.
- A. Yes.
- Q. You know 3rd Respondent concerns himself with hotel in Kuching.
- A. Yes.
- Q. Is there any reason why it cannot buy a sports car.
- A. It is a sports for pleasure.
- Q. Do you work in your car?
- 10 A. Yes. I get it to transport me from one place to another.
- Q. Does it make any difference whether it is sports or otherwise.
- A. Consumption is high. Space is limited. Cannot accommodate more officers.

It is wrong for Company to use the car for his family and for his friends. This is my opinion.

Para 77. This paragraph goes on to 6 pages.

Para 77 (a) is mainly a summary of what has been discussed.

- 20 (a) It would be in my idea that insurance policy be issued in favour of Company. But it was issued in favour of his wife without Board's approval. That is my opinion.

(b) Q. This is for Court to consider that.

A. I merely wish to point out. My legal advisers advised me to put it in.

(c) These are figures given by Peattie. My legal advisers asked me to use the word "misappropriation".

(d) These items are contained in my affidavit. These figures were given by Peattie.

- 30 (e) So in para (c). The words converted and misappropriated were advised by my legal counsel.

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Dato Ling  
Beng Sung

—  
Cross-examination  
(continued)

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Applicant's  
Evidence

—  
Dato Ling  
Beng Sung

—  
Cross-examination  
(continued)

(f) These were given by Mr. Peattie. These were not authorised by Board but later. They were given by Mr. Peattie. I asked Counsel what was the words for "missing funds". Legal Counsel advised me the words which I have used in the affidavit. So is the same with "connivance".

(k) I was told Aurora Hotel Sdn. Bhd. was a branch of Kong Thai.

(g) Mercedes 300 is car used by 3rd Respondent and kept by him in Sibü.

I am familiar with the practice of Company providing cars to its officers. 10

The 3rd Respondent is not holding any particular job apart from an ordinary Director. That is my view.

Q. Do you know what 3rd Respondent did in Kong Thai.

A. He is a Minister. He was staying mainly in Kuching. The car is left in his house when he goes to Kuching.

I was told by other directors of Company Ling Beng Siong did not work for Kong Thai. Apart from that I know nothing.

(h) The information about purchase of Hotel came from Peattie and other directors. I said it was run "dishonestly or incompetently". We all agree those words should be used. "We" means, myself and legal Counsel. 20

The reference to latter part about entertaining refers to earlier para today.

(i) Q. This has been dealt with - para 20.

A. Yes.

(j) Q. Is para 21 which has been dealt with.

A. Yes.

Running expenses of yacht was mentioned. 30  
\$189,027.80. Figures were given by Mr. Peattie.

(k) This refers to Para 36. This information was given by Peattie. In my opinion it is not a profitable investment.

Refers to last sentence (Page 36):

"The said sums were loaned or invested by the Second Respondent because he wished to have a vehicle for his own personal publicity in furtherance of his own personal and political ambitions."

In the High Court in Borneo

—  
No. 7

Notes of Evidence

—  
Applicant's Evidence

—  
Dato Ling Beng Sung

—  
Cross-examination (continued)

It is not an assumption on my part. I saw the newspaper report and I draw my conclusion from the newspaper and also the Malaysia Daily News was making losses because it was not a popular newspaper because of the political activities of both mainly on S.C.A. and its chairman.

10

Q. You heard loss figures had been reduced.

A. Yes.

Q. You know circulation has gone up to 3000 or thereabouts.

A. I do not know.

(1) The figures were given by Peattie. The words "converted" and "misappropriated" were chosen by my legal advisers and myself.

The income tax papers were not shown to auditor. He saw it at a later date.

20

Q. He saw it by the time you swore this affidavit.

A. On my re-affirmation the second time. Yes.

Peattie told me that there was no material difference. He told me he had seen the income tax papers. This was before I re-affirmed the affidavit.

Q. As of 12th February was the statement incorrect.

A. No. It is correct.

(Mr. G. Starforth Hill asks for the 3rd time)

Q. Do you maintain that as on 12th February this year statement is correct.

30

A. Yes.

(m) Personal telephone bills. I mean house telephone bills.

They were telephone bills by 2nd and 3rd Respondents at their houses.



In the High Court in Borneo

No. 7

Notes of Evidence

Applicant's Evidence

Dato Ling Beng Sung

Cross-examination (continued)

Q. Do you suggest that business cannot be done in houses.

A. The entire personal telephone bills expended by the Company could not be entirely used for the benefit of the Company.

Q. You are speculating?

A. I am assuming.

(n) The information contained in the paragraph listing 14 items all come from Peattie.

Q. You said "At no time have any accounts been supplied to Kong Thai by these companies or by the Second Respondent who is the proxy for Kong Thai at their meetings and who in all of these companies or in a number is a shareholder or director."

10

Who told you?

A. The information came mainly from Peattie.

It is also my personal experience from the Chairman of the Company. I refer to the 2nd Respondent Ling Beng Siew. (I now withdraw). As at date I got them from Peattie. I never received the accounts.

20

Q. You heard from Peattie some accounts were supplied by these Companies.

A. It could be.

No dividend.

Q. You know now that it is incorrect.

A. I don't think so.

This statement is still correct. I am not prepared to modify this statement in any way.

At no time has any explanation or information regarding this given. Second Respondent told me.

30

Q. Do you expect such information at Board meeting. Did you attend any of the meeting.

A. No.

Q. Then where did you get the information.

In the High  
Court in  
Borneo

A. From other directors.

This information about Kong Thai plywood was furnished to me by Peattie.

-----  
No. 7

Q. You know any explanation or information "Kong Thay Plywood" was given to Kong Thai.

Notes of  
Evidence

A. Not until the time the Company suggested the losses to be written off at the Director's meeting. It was told to me by other Directors.

-----  
Applicant's  
Evidence

10 Q. Have you checked Mukah Account whether cheque was paid.

A. \$150,000 was credited to Mukah Sawmills Current Account with Kong Ming Bank on 31st July, 1969.

-----  
Dato Ling  
Beng Sung

At that date the account was overdrawn to about \$300,000/-. It was a secured overdraft to extent of \$300,000/- or \$400,000.-. The boat was not part of the security.

-----  
Cross-examination  
(continued)

I became the shareholder in Kong Thai on 31st February, 1967.

I acquired shareholding interests in Mukah Sawmills in 1965.

20 Shares were transferred to me from Mukah Sawmills.

I was Director of Kong Thai on the shares held by me personally.

I became a Director of Kong Thai in early part of 1966.

Time 4.30 p.m.  
Adjourned to 9.00 a.m. tomorrow  
Sgd: B.T.H. Lee, J.  
18.4.72

Wednesday, 19th April, 1972

30 Resumption of hearing.

Parties as before

P.W.2 Dato Ling Beng Sung (on former oath)

(Witness shown Minutes - 3rd Annual General Meeting).

In the High  
Court in  
Borneo

On 2nd February, 1967 at page 22.

That is the list of directors who were elected at that meeting. My name does not appear in the list.

No. 7  
Notes of  
Evidence

(On the following page of Minutes). My name appears as Director on the following page. I became a Director in 1966.

(Court examines Minute Book dated 2nd February, 1967).

Applicant's  
Evidence

(Mr. G. Starforth Hill. Minutes speaks for itself).

I am familiar with Sandakan. I know Hotel called NAK.

Dato Ling  
Beng Sung

I think it belonged to Loi's family.

10

Cross-examination  
(continued)

Ngui Ah Kwee Sdn. Bhd. belongs to the same family I think.

Q. That family deals in timber business.

A. I am not too sure. Some of them have timber interests.

Q. Do you know Ngui Ah Kwee Sdn. Bhd. owns the hotel.

A. I do not know.

Q. The initials of the family is N.A.K.

A. I did not observe that.

Q. You have various sources of information.

A. From Peattie, newspaper reports, other directors.

20

Q. Are there any other sources?

(Mr. J.E. Vinelott. Objects. Witness has given the answer).

(Mr. G. Starforth Hill. Asking what other sources).

(COURT: Objection overruled).

A. A detailed report for 1969. There are no other sources.

REN

Q. The report for 1969. What was the report.

In the High Court in Borneo

A. A detailed report some of the items among the reports I like to mention now.

(Mr. G. Starforth Hill. What is the report - no answer from witness).

No. 7

A. Report came from another Director Hii Yii Cheong.

Notes of Evidence

Q. What was this report about?

Applicant's Evidence

(Mr. G. Starforth Hill. Unless the document is here will object to any question asked).

10 (Witness produces report).

Dato Ling Beng Sung

(Mr. G. Starforth Hill. Objects to production at this stage. It should have been produced at examination in-chief).

Re-examination

(Mr. J.E. Vinelott. This report came to light as a result of cross-examination). (It was not relevant in cross-examination-in-Chief but as a result of cross-examination).

20 (COURT: Would like Counsel to cite authorities on this point where Counsel wishes to produce a Report on re-examination stage.)

P.W.2

I spent two years in Queensland studying economics in University. The other two years were spent on matriculation.

I returned in Christmas 1958. I intended to return to Australia to study.

I have discovered .....

(Mr. G. Starforth Hill. This does not arise in cross-examination).

(COURT: Objection sustained).

30 Mukah Sawmills

I bought this from Ban Hin Sawmills. The partners were Ling Beng Siew, Ling Beng Thuang, Ling Beng Siong, Ling Beng Hui, Ling Beng King and myself.

In the High  
Court in  
Borneo

Q. Before you bought the partnership was it profitable?

A. Sawmill was not making a profit.

No. 7  
Notes of  
Evidence

After it was bought, a lot of capital was put in to modernize the sawmill and lots of investments are done by Mukah Sawmill.

Applicant's  
Evidence

The management was under Beng Siew. The new manager was Beng Thuang.

It was more profitable after we took over.

Dato Ling  
Beng Sung

Directors Meeting.

10

I was not given any Notice of Meetings. No notice at all. I was given short notice, sometimes in the morning, sometimes meetings took place during my absence. The notice was given through telephone. No agenda was given to me.

Re-examination

Detailed accounts

Q. What account are you referring to?

A. I refer to detailed accounts for the year 1969.

It was not Company's published accounts. The account was given to me by Mr Hii Yii Chong.

I was concerned with the donation accounts. The donation totalled was \$1.3 million. The capital of the shareholders fund was also only \$1.3 millions. I take it to mean the entire capital of the Company paid up by the shareholders was given away in the form of donations in one single year. The second item I became worried was the debtors account. The debtors account showed \$3.3 million. Among the debtors there were P.T. Kalimantan Sari, Sabah Agency, Kong Thai Lumber, Malaysia Air Charter.

20

Before 1969 were you anxious as a result of something told to you.

30

(Mr. G. Starforth Hill - rises to object)

(Mr. J.E. Vinelott - drops question).

Robin Hoo is my nephew. He is a lawyer practising in Sibiu.

KA 7000. I did not see the car used for picking guests for the hotel.

The 3rd Respondent special friend has been using this car in Kuching. The car is kept in this person's house.

Detailed Account. Despite huge profits made by Kong Thai very small dividends were paid to the shareholders.

Reason was -

(Mr. G. Starforth Hill. Objects ....)

Hovercraft.

10 I have not seen the Hovercraft mentioned in my affidavit. I have seen a bigger one 30-40% bigger than Hovercraft mentioned.

Q. Can it go over obstacles?

(Mr. G. Starforth Hill. He is not an expert)

(COURT: Evidence confine to personal knowledge).

A. They can go over obstacles provided obstacles is not too high above the water.

It cannot go over 2-3 ft but only 1-2 ft and within one foot.

20 The hill logs are very high. Niah Logs are about 1-1½ ft. To go over the obstacles the approach must be gradual.

I do not think Hovercraft can be safely used in Niah.

Sri Tania

Mukah has built four or five boats for its own purposes. It is built in Mukah in the boatyard.

30 Apart from a few plywood panelling used in the boat the entire material comes from local material. It is over \$100,000/-. That was sold by Mukah Sawmill. The other shareholders consented to the construction of this boat.

It was intended to be used as a floating bank for Rejang River. Owing to curfews it is not safe to use it from place to place.

In the High Court in Borneo

—  
No. 7

Notes of Evidence

—  
Applicant's Evidence

—  
Dato Ling Beng Sung

—  
Re-examination

In the High  
Court in  
Borneo

Beng Siong's movements

He told me personally e.g. trips to overseas. He and his interpreter are in Court now.

No. 7

Penghulu Poh and Pengarah Chundi

Notes of  
Evidence

I know these gentlemen. I know they had no permanent employment apart from their own. Penghulu Poh is a businessman himself in Igan. Pengarah Chundi has some business of his own near the same area.

Applicant's  
Evidence

I have personal knowledge of timber extraction.

Dato Ling  
Beng Sung

I usually hire sundry labourers from nearby the sawmill and logging-camp. This would save expenses.

10

Re-examination

Q. How far afield do you get your labourers.

A. They are between 3-4 miles from the logging camp or sawmills. That is the usual course in this case.

Berjaya Malaysia

2nd Respondent told me it is a private yacht. 2nd Respondent is throughout in Court in these proceedings.

Apart from personal and pleasure purposes entertaining and prestige he said nothing else.

Q. Anything about Indonesia?

20

(Mr. G. Starforth Hill. It is cross-examination and it is leading.)

(COURT: Objection sustained).

(Mr. J.E. Vinelott. That Counsel had stated that Counsel for Respondent are anxious on occasion that the Court should not record the full answers of the witness).

(Mr. G. Starforth Hill. I emphatically deny it. Asks Counsel to withdraw this observation).

(Mr. J.E. Vinelott. Notwithstanding this.)

(Court is not having such impression).

30

(Mr. J.E. Vinelott. How withdraws the remark.)

P.W.2

I have seen the boat sailing up and down Rejang River, Igan River and the Sarawak River.

The 1969 Report was shown to me on 1st May, 1970.

Mr. J.E. Vinelott

The report is available. It would be disclosed if Counsel for Respondent desires to see it. Makes no objection to cross-examination on its contents.

Mr. J.E. Vinelott

10 This witness has filed supplementary affidavits affirmed on 9th March, 1972.

Refers to Exhibit LBS 5A - 6B.

In the High Court in Borneo

---

No. 7

Notes of Evidence

---

Applicant's Evidence

---

Dato Ling Beng Sung

---

Re-examination

Mr. G. Starforth Hill

Tenders Dato Ling Beng Siew for cross-examination.

Understands English but his English is limited. Would give evidence in Foochow.

D.W.1 DATO LING BENG SIEW. Affirmed states in England 46 years.

Mr. J.E. Vinelott

20 Affidavit is in English. Records are all in English. Would ask Court to commence cross-examination in English. If there is difficulty then the Court can reconsider.

Court

Asks witness what language he elect to speak. Witness replies - in Foochow.

(D.W.1. Gives evidence in Foochow).

Q. Are you a public figure.

A. Difficult for me to say.

Respondent's Evidence

---

Dato Ling Beng Siew

---

Cross-Examination



In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination

I am a business man. I do some work for the public of Sarawak.

Q. You have very wide public interests.

A. All my business are listed in my affidavit.

Q. All listed there.

A. As far as I remember all four businesses in Malaysia are stated in my affidavit.

Q. The largest share capital is Hock Hua Bank.

A. Yes.

My father - as far as I can remember at the time of his death had about \$5,000 to \$10,000 shares in the bank.

10

Q. What was the issue capital of Bank at that time.

A. Between \$500,000 to \$600,000.

Q. You would agree your position in Hock Hua Bank is well-known.

A. After I became a Director I did my best for the bank. What impression I gave to the public I do not know.

Q. Would you agree that your position as Director .....

(Mr. G. Starforth Hill says - the answer has already been given).

20

Q. Before election in 1969 the Government was Sarawak Chinese Association, Pesaka and Bumiputra.

A. That time Alliance consists of Bumiputra, Pesaka, SCA and SNAP.

Q. SNAP was in the opposition?

A. Yes Snap had already left Alliance. Earlier before 1969 SNAP was in the Alliance. In latter stage of 1969 SNAP left the Alliance i.e. before the Election. It commences in 1969 Between March and April. It was then postponed until 1970.

30

Q. Election took place in 1969.

- |    |   |                                       |
|----|---|---------------------------------------|
| A. | I cannot remember.  | In the High Court in Borneo           |
|    | I am President of S.C.A. S.C.A. contested the elections.  | -----                                 |
| Q. | Do you agree elections took place in May 1969.  | No. 7                                 |
| A. | About that time.  | Notes of Evidence                     |
| Q. | No S.C.A. members were returned.  | -----                                 |
| A. | Some were returned in State Council and some in Parliament.   | Respondent's Evidence                 |
| 10 | Chia Sing Chin was returned in State Council. Cheng Yew Kiew was also returned in State. So was Dato Ling Beng Siong. Ting Ming Keong and Chen Ko Ming were returned in Parliament. | -----<br>Dato Ling Beng Siew<br>----- |
|    | I know Charles Ingka.   | Cross-examination                     |
| Q. | Dato Ningkan said in Court Charles Ingka was expelled from SNAP sometimes end of March 1969 and early April.  |                                       |
| A. | I know after he gave evidence in Court.   |                                       |
| Q. | Did you know of Charles Ingka expulsion when you heard of it from Dato Ningkan in Court.  |                                       |
| A. | After he came to Court to give formal evidence. Before that I heard people say, but I was not sure.   |                                       |
| 20 | Q. When did you hear Charles Ingka was expelled from SNAP.  |                                       |
| A. | At that time when I came to know, when Charles Ingka stood for election in the same ward as Dato Ningkan. I also heard rumours that the party was about to expel Charles Ingka.     |                                       |
|    | I heard rumours that party was taking steps to expel Charles Ingka. It happened before the election.  |                                       |
| Q. | Do you agree Charles Ingka stood as Independent candidate in Layar in 2nd Division.   |                                       |
| A. | Yes   |                                       |
| 30 | (Witness shown Receipts - R.4 01056 dated 26th March 1969 for \$10,000/-.)  |                                       |
| Q. | Whether you agree Dato cheque 233446 has reference to cheque given by you.  |                                       |

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination

A. Yes.

Q. Who gave you this receipt.

A. Mr. Yao Peng Ling.

(Witness shown Receipt R.5 - 01051 dated 9th April  
1969 for the sum of ~~50,000~~/-.)

I do not know who gave this receipt. After I looked  
at signature this receipt was originally handed to our  
Accountant.

I only gave instruction to our Accountant. I do now  
know whether payment was made by cheque or cash.

10

Q. Do you keep you pay cheques.

A. Personal or Companies.

Q. Your own pay cheques.

A. My personal cheques were kept in my office and some  
kept in my brief case.

Q. Have you your pay cheques for 1969.

A. This payment was not paid out by means of my personal  
cheque.

Q. How was it paid.

A. Some payments were made by personal cheques and later  
I recovered from Company. Some payments were made by  
the Company.

20

I am not certain whether it is my personal cheque or the  
company cheque.

Q. Will you make a search of your private cheques and  
see whether this is one.

A. Yes.

Q. And make a search of Company's cheques.

A. Yes.

Q. The second signature - is it Charles Ingka?

30

A. I don't know.

<p>Q. Did you obtain the receipt at the time.</p> <p>A. I did not see the receipt. I don't know.</p> <p>Q. Did you hear Dato Ningkan say that this money was never paid to Treasurer Head Office.</p> <p>A. I heard in Court.</p> <p>Q. You accept that.</p> <p>A. This is their affair I cannot interfere. I cannot give an opinion.</p> <p>10 (Refers to S.C.A. accounts - Dato Ling Beng Sung's Affidavit - Supplementary dated 9th March, 1972. LBS 5A, 5B).</p> <p>Q. It is headed Sarawak Chinese Association.</p> <p>A. Yes.</p> <p>Q. At foot is Mr. Chen Ko Ming (Secretary-General).</p> <p>A. Yes. He is S.C.A. Secretary-General.</p> <p>He is also an employee of Kong Thai. Lee Swee Hock is Treasurer of same Association.</p> <p>Q. This is a National Association spreading over the whole island.</p> <p>A. It is the whole State of Sarawak.</p> <p>20 Q. During the year 1968/1968 the accounts of Kong Thai showed over \$1,000,000 given to donations to S.C.A. Can you remember Kong Thai gave one million upwards to S.C.A. during the years 1968 and 1969.</p> <p>A. Yes.</p> <p>Q. Who is the money paid to.</p> <p>A. Donation was given to S.C.A. and received by S.C.A.</p> <p>As far as I remember S.C.A. has a bank account.</p> <p>Q. Is it in name of S.C.A.</p> <p>A. I am not sure.</p>	<p>In the High Court in Borneo</p> <p>—</p> <p>No. 7</p> <p>Notes of Evidence</p> <p>—</p> <p>Respondent's Evidence</p> <p>—</p> <p>Dato Ling Beng Siew</p> <p>—</p> <p>Cross-examination</p>
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In the High  
Court in  
Borneo

—

No. 7

Notes of  
Evidence

—

Respondent's  
Evidence

—

Dato Ling  
Beng Siew

—

Cross-examination

Q. Were these donations amounting over one million paid by cheque over to S.C.A.

A. Whether this payment was made by cheque or cash I don't know.

Q. Who had authority to draw on S.C.A. funds.

A. Signed by a few persons, Secretary Chen Kong Ming, Dato Ling Beng Siong and a few others, I cannot remember their names.

Q. Would you agree to add yourself and Lee Swee Hock.

A. Lee Swee Hock is in charge of Kuching office not Sibu office. Sibu office is Chen Ko Ming, Dato Ling Beng Siong and two others. The Treasurer is Chen Ko Ming. He is also Secretary.

10

Q. With what account was S.C.A. kept.

A. I think it is Hock Hua Bank.

Q. Can you produce account of S.C.A. with Hock Hua Bank in 1968-1969.

A. The account of Association in respect of 1968-1969 was stolen. The office was broken in and books taken.

Q. Can you produce copy of account.

20

(Mr. G. Starforth Hill. This is in possession of bank).

(Mr. J.E. Vinelott. He is President of Hock Hua Bank and S.C.A. is entitled to ask for a copy of account in Hock Hua Bank).

A. This matter I have to consult members of my party and I have to consult this Bank as well.

Q. Whom do you have to consult.

A. I have to consult the Secretary Chen Ko Ming and branch Chairman of the party and some other executive members.

Q. Does the S.C.A. have rules governing its constitution.

30

A. Yes.

Q. May I have a copy of them.

- A. I may get one from Kuching office.
- Q. Will you consult those persons and if they agree get a copy from Hock Hua account with S.C.A.
- A. Yes.
- Q. You say the records of Sibü Branch were stolen.
- A. Yes, including other documents. Sometime in the beginning of 1971.

In the High Court in Borneo

—  
No. 7

Notes of Evidence

—  
Respondent's Evidence

The matter was reported by the Association to Police Station. I do not know the date.

- 10 Q. What did the burglar take?
- A. When the office was broken in it was found members record was lost, account books, correspondence and some other documents as well.
- It was reported by me and I cannot remember the details.
- Q. Are the accounts produced by the Association audited.
- A. They were audited. We appointed an auditor who audited the account. He will know more than I do.

Dato Ling Beng Siew

—  
Cross-examination

(Court is told Auditor is dead).

- 20 Q. Did you or Association asked for a copy of the accounts or from the Auditor's successor.
- A. I do not know up to what stage the Auditor did.
- Q. Will you enquire from Auditor what copies of document he has in his possession.
- A. Yes.
- Q. Can you produce any documentary evidence showing that these monies were received by the S.C.A. i.e. \$1,000,000 plus.
- A. I have receipts.
- I believe Peattie has seen those receipts.
- 30 Q. How was this money spent by S.C.A.
- A. This is the business of the party.

In the High Court in Borneo

No. 7

Notes of Evidence

Respondent's Evidence

Dato Ling Beng Siew

Cross-examination

Q. You are the President.

A. I am Chairman. How the money is spent is the party's affair.

Q. It must be very big sum for Sibü Branch to receive in one year.

A. Generally speaking the amount is large. As far as our Company is concerned, it is not necessarily large.

Refers to LBS 5A.

(Mr. G. Starforth Hill. Must not treat this document as the truth of the contents.)

10

(Mr. J.E. Vinelott. Refers to Receipts for special donation from members - in Receipt - \$1600.00 and yet in 1969 a sum of \$1,000,000 was received)

A. This is very common.

Q. Is it usual for Sibü to receive such a large amount.

A. Yes.

Q. Has Sibü branch received any donation since the books were stolen.

A. We did not ask for donations.

When I say "No", I mean there is no large donations. I cannot remember unless I refer to account book.

20

(Mr. J.E. Vinelott. Would like to know the total amount of donation received after books had been stolen.)

Q. You cannot remember how \$1,000,000 was spent.

A. Not in detail. This is a matter for the party. I cannot remember exactly.

Money mostly spent during the election campaign. Money was distributed to candidates who stood for election. Committee members will decide how money was to be used.

Q. Can you say how money was spent.

30

A. I cannot say. It is the Committee matter.

Q. You are a member of the Committee.

A. Yes.

Q. Can you remember how the money was spent.

A. I cannot remember now.

Q. From your knowledge as the Chairman responsible for spending the money can you say how it is spent.

A. I have so much business to deal with. I cannot remember everything in my head. It was mostly spent on election campaign.

In the High Court in Borneo

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Respondent's Evidence

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Dato Ling Beng Siew

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Cross-examination

10

Time 12.30 p.m.  
Adjourned to 2.30 p.m.  
Sgd: B.T.H.Lee, J.  
20.4.72

Time 2.30 p.m.

D.W.1 Dato Ling Beng Siew (on former oath)

After the adjournment I contacted Chen Ko Ming. I instructed him to get the information about donations and let me have them as soon as possible.

Q. Can you let me have them tomorrow morning.

20 A. Yes.

Q. Can you also get a copy of the account S.C.A.has with the Hock Hua Bank.

A. I have already informed Hock Hua Bank.

Q. Can you produce the information tomorrow?

A. Few moments ago I contacted the Secretary. The Secretary said he would refer the Bank's legal advisers. I don't remember I am the Chairman of the Bank.

Q. Do you know who are the legal advisers.

30 A. I cannot remember.

Q. Please refresh your memory about that tomorrow.



In the High  
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Respondent's  
Evidence

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Dato Ling  
Beng Siew

—  
Cross-examination

A. Yes.

Q. Does the S.C.A. as a State organisation have a  
Financial Committee.

A. There is an executive committee. Financial matters  
are also dealt with by executive Committee. I cannot  
remember the members of the Committee.

I am a member of the Executive. Chen Ko Ming is also  
a member. As far as I can remember Dato Ling Beng Siong is  
also a member.

Q. Is Lee Swee Hock a member. 10

A. He is a member of Kuching Committee not Sibü. Lee  
Swee Hock is the Treasurer of the SCA.

Q. Who are Executive members of Association as a whole.

A. I am a member, Chen Ko Ming and Lee Swee Hock. I  
cannot remember if Dato Ling Beng Siong is a member.

The Committee seldom meets. Possibly once a year.

Q. Does it approve accounts at its annual meeting.

A. Once recently it discussed the affairs of the Association.  
Meeting held before elections in 1969 approved accounts.

Elections were part held in 1969 and suspended during  
the Emergency. 20

Q. Did executive committee approve accounts in 1970.

A. There were meetings in 1968 or 1969.

Q. You mean executive committee did not meet since 1968.

A. As far as I can remember there was no meeting after  
the meeting held in 1968 or 1969 until meeting held  
two months ago.

When Emergency was proclaimed not only our party but  
other parties ceased to have meetings.

Q. Is that true of Sibü Branch. 30

A. Yes. No meeting since state of Emergency.

- Q. The Emergency was declared in 15th May 1969.
- A. Possibly.
- Q. There was no activity after 15th May, 1969.
- A. Meeting ceased.
- Q. How were decisions of SibU Branch made after 15th May, 1969.
- A. There were no actual meeting. Few of us gathered and decide matters ourselves. They were Chen Ko Ming, Dato Ling Beng Siong, myself, I cannot remember the names of others.
- 10 Q. What about the national body. How were decisions made after 15th May, 1969.
- A. There was no meeting.
- Q. Was there a similar small body.
- A. Possibly.
- I was a member of this body. It all depends. Certain gatherings I was not present. When I was present, I cannot remember at this moment. Sometimes he was not there. Sometimes Lee Swee Hock is also not there. Dato Ling Beng Siong is seldom in the meetings.
- 20 Q. Did this small group after 15th May, 1969 decide how \$1,000,000 was to be spent.
- A. Yes. In SibU.  
I was a member of that small group.
- Q. How was this money spent.
- A. First on party election campaign, and when other political party needs assistance and certain amount would allocated from this donation.
- Q. The election campaign stopped in May 1969.
- 30 A. Yes.
- Q. Was any money spent on campaign after May 1969.
- A. Although the party stopped the outside activities since that date the party still continued its activities in office.

In the High  
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Respondent's  
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Dato Ling  
Beng Siew

—  
Cross-examination

In the High Court in Borneo

Outwardly the activities ceased but inwardly the party is still active.

No. 7  
Notes of Evidence

Q. After May 1969 no money was spent in election expenses.

A. Money is still being used. I cannot remember. It is the affairs of the party.

Q. How is the election expenses paid.

Respondent's Evidence

A. I cannot remember exactly. This is the affair of the party.

Q. Did the small party discuss how the money is to be spent.

10

Dato Ling Beng Siew

A. Sometimes we contacted through telephone. Because of the emergency we did not contact one another.

Cross-examination

"We" I mean Chen Ko Ming and some others in Sibu including myself.

Q. Did you pay the election expenses without reference to anyone else.

A. So far as I remember I used to contact others. "Others" being Chan Ko Ming and Beng Siong and some others as well. I remember Mr. Ling Beng Hung. I think he was a member of the Executive Committee.

20

Q. Why did you not mention this before.

A. When I am in the witness box I forgot.

Q. When money was spent as they are described how were they paid.

A. Some paid from Kong Thai in cash and cheques. Some payments were made by my personal cheques and cash.

Q. From whom were the personal cheques made out.

A. Personal cheques were issued to the donees or to other persons for payment of bills of S.C.A. and sometimes of bills of other parties.

30

Q. Were these payment part of the one million dollars plus.

A. Yes.

- Q. Did you get these moneys from Kong Thai.
- A. After I made the payments I would then recoup the sum from Kong Thai because it formed part of the donations from Kong Thai.
- Q. How many candidates were there from the area covered by Sibu Branch in 1969.
- A. I cannot remember exactly now.
- Q. What is the area covered by Sibu Branch.
- A. It covered the whole 3rd Division.  
 10 I think there were 5 candidates for 3rd Division.
- (Witness to supply a list of names of candidates).
- Sarawak has more than 10 branches of S.C.A.
- Q. Do these branches keep branch accounts.
- A. I do not know exactly.
- I have sent for a copy from Kuching of the SCA Constitution.
- Q. Do the branches send a copy of the accounts to Kuching.
- A. No.
- Q. What was the purpose of this large donation from  
 20 Kong Thai to SCA.
- A. SCA is a partner in the Alliance. Alliance is the ruling Government. The interest of our Company will be served and will be enhanced.
- Q. SNAP is not a member of the Alliance.
- A. Before 1966 it was a founder party of Alliance but no longer so after 1966.
- Q. Why then did you make a donation of \$145,000/- in 1969.
- A. Reason is after 1966 after the political crisis SNAP  
 30 withdrew from the Alliance. I tried my best to get the party to return. Some wanted to return some did not.
- I did my best to get them back in the Alliance. That

In the High Court in Borneo

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 Dato Ling Beng Siew

—  
 Cross-examination

In the High  
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Borneo

is why there was such donation for their financial help. Those who wanted to come back to Alliance came to me for assistance.

—  
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Notes of  
Evidence

Q. Was Charles Ingka one of them.

A. Yes, he was.

Q. He approached you for personal assistance.

A. He did not come personally to see me. Mr. Yao Peng Ling came to see me personally on behalf of the SNAP party.

Respondent's  
Evidence

Charles Ingka indicated to me at Aurora Hotel that he wanted to come back to Alliance. He was dissatisfied with party Chairman and wanted to leave the party. I cannot remember whether he approached me for financial assistance.

10

—  
Dato Ling  
Beng Siew

—  
Cross-examination

Q. This financial assistance was for election expenses.

(Mr. G. Starforth Hill. Objects as he did not ask for financial assistance)

I cannot remember. I cannot remember their names. Yao Peng Ling is one of the senior active members of SNAP.

Q. Did Yao Peng Ling approach you for assistance for those who were dissatisfied with SNAP.

20

A. There was a confusion in the SNAP internally. Charles Ingka was dissatisfied with the Chairman. He wanted to stand for election to compete in the same ward in which the Chairman - Dato Ningkan - was. So, Yao Peng Ling asked me for financial assistance. If those candidates were returned they would be free to join which party they choose.

Q. Yao Peng Ling came to you for financial assistance for dissatisfied members of SNAP.

A. Yes.

30

Q. You gave him \$145,000/-.

A. Yes.

Q. And charged it to Kong Thai.

A. Donated by Kong Thai.

(Witness shown Receipts No.01056 dated 26.3.69).

It was my cheque.

In the High  
Court in  
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Q. The receipt was given to you personally.

A. I did not see the receipt before. I will check if it is my cheque.

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Evidence

The next Receipt is 01054 - ~~50,000/-~~ dated 26.4.69.  
I have to check whether it is my personal cheque.

Q. You know Yao Ping Ling swore an affidavit.

-----  
Respondent's  
Evidence

A. Yes.

10 Q. You know he said 2nd receipt is signature of Charles Ingka.

-----  
Dato Ling  
Beng Siew

A. Yes.

-----  
Cross-examination

Q. Do you dispute that.

A. I cannot express an opinion.

Q. Do you accept on that date 9.4.1969 Charles Ingka had been expelled from SNAP.

A. As far as I could remember there was only rumours that he would be expelled. I do not know for a fact whether he was expelled.

20 Q. You know there was movements to get him expelled.

A. I only heard a rumour that party was taking steps to expel him.

Q. Yet those donations were put in as donations for SNAP.

A. At that time Yao Ping Ling did not mention which party the donations should be made to.

Q. Purpose of donations to SCA was to keep in power a Government favourable to activities of Kong Thai.

(Mr. G. Starforth Hill Objects. Not actual words used by witness).

30 Q. The interests of the Company will be served.

A. Yes.

In the High  
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Evidence

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Dato Ling  
Beng Siew

—  
Cross-examination

Q. In 1962 the 3 younger brothers apply to Court for accounts for Kong Thai Sawmills which is a partnership.

A. I touched on this in my affidavit.

Q. In those proceedings you say you cannot furnish accounts for more than 2 years for current account following the practice of your father. You have destroyed the books of accounts.

A. I cannot remember what happened 10 years ago.

Q. Do you remember filing an affidavit saying that your father made a practice of destroying the past books except those preceding the current books of account by two years.

10

A. I cannot remember unless I am referred to the affidavit.  
(Witness shown affidavit).

I agree the 2nd page contains my signature. But I say the contents of the 1st page is questionable.

(Witness asks to read Para 6. Reads).

Q. That is the reason advanced by you for being unable to produce the account in Kong Thai partnership.

A. I need time to recall but I remember that was my late father's practice.

20

Q. That was the time your younger brothers asked for accounts but you were unable to do so except for those two preceding years.

A. In that proceedings if one goes to the details of the case it involves other matters. I cannot remember. It was my father's practice. We followed the practice. I was instructed by my father to do so.

Q. Do you remember you took an action for dissolution.

A. This is a long time ago. I do not understand why this family feud should be brought up in Court in this case again.

30

(Mr. J.E. Vinelott. This case is Civil Cause No. 2/1962).

Q. You were asked for books 1955-1958.

A. I cannot remember.

In the High Court in Borneo

Q. Your solicitors were Messrs. Reddie & Co.

A. I think so.

—  
No. 7

Q. Did they write to say 1955-1958 books cannot be produced because they were destroyed.

Notes of Evidence

A. I cannot remember.

(Witness shown letter dated 15th February, 1963).

—  
Respondent's Evidence

This does not concern Kong Thai Company.

Q. You were concerned with Lee Seng Thai Company.

—  
Dato Ling Beng Siew

10 A. Those were the facts.

Q. In these proceedings you were asked to produce accounts of S.C.A. you said they were stolen.

—  
Cross-examination

A. This is a fact.

Q. Robbers took nothing else but documents.

A. I have said so.

Time 4.30 p.m.  
Adjourned to 8.30 a.m.  
Sgd: B.T.H. Lee, J.  
20.4.72

20 D.W.1 Dato Ling Beng Siew (on former oath)

Cross-examination (continued)

In 1959 after my brothers' return there was serious disputes.

About policy of Kong Thai.

Dispute was concerned with management of Sawmill and also Kong Thai MK (Ming Kee), and its policy. This was inherited from my father.

Q. Did you use this very insulting expression

(Counsel hands over the expression - "SAR NU NAIR JIA" English Translation - "FUCK YOUR MOTHER"). (Court Interpreter - The last word in Foochow should be omitted. The English translation is correct).

30



In the High Court in Borneo

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Notes of Evidence

Respondent's Evidence

Dato Ling Beng Siew

Cross-examination (continued)

(Mr. J.E. Vinelott. Is quite satisfied with the translation).

A. I cannot remember whether I uttered those words. I agree it is very insulting.

Q. Did your brother threatened in newspaper that he would sever relationship with you.

A. I cannot remember exactly. Seem to me no. Now I say there was a threat.

Q. When threat was made did you immediately apologise.

A. During the argument both sides used unpleasant words. After argument being the elder brother I apologised. 10

Q. Did your brother agree to withdraw the threat if you will give a written announcement.

A. It seems so.

Q. Is this the written apology which you signed.

A. Yes.

Q. You agree in 1971 there was a deficit of working capital just under 4 million in respect of Kong Thai.

A. I have to check with the Accountant. I cannot remember well now. It is quite common in business to have deficit in capital. We obtain loan from others. 20

Q. I am talking of Kong Thai and subsidiaries. You are Chairman of this Company and other Companies.

A. Yes.

(Witness shown account)

A. I can read ordinary simple accounts.

COURT: I passed Junior Middle Chinese and 5th Standard English. Spent one year in 5th Standard. Started in St. Thomas School and continued in Methodist School, Sibui) 30

(Witness shown - figure of upwards of 3 millions).

Under Current account.  
 Current liabilities - \$7,326,267.14.  
 Difference of 2 - deficit \$3,978,125.  
 Investment \$3,299,780.70.

In the High  
 Court in  
 Borneo

Q. You agree the working capital deficit is \$3,978,125.85

—  
 No. 7

A. I agree with the accounts

Notes of  
 Evidence

Q. Look at left hand column. \$4,071.07  
 Deficit \$4,689,094.

There is a deficit working capital.

—  
 Respondent's  
 Evidence

10 1969 a/c Deficit 3.4 millions

In all these years if you ignore fixed assets there is a very large deficit of working capital.

—  
 Dato Ling  
 Beng Siew

A. Yes.

—  
 Cross-examination  
 (continued)

Investment in Indonesia. When profit is made it reduces the Company's deficit. It is quite common in business. The practice is to use \$1/- for \$10/- business.

Q. The liabilities include a large loan to Hock Thai Finance, 2.5 millions.

A. Yes. It is secured loan.

20 Q. And an overdraft of 2.1 millions with Bangkok Bank.

A. Yes. It is also a secured loan on my personal guarantee.

Q. Is that secured?

A. Yes. Bank was satisfied with my personal guarantee.

Q. Do you agree that none of fixed assets could be sold without bringing the Company's business to an end.

A. I agree.

Q. Do not assets include a logging road for bringing logs to the river in the accounts of 2.4 millions.

30 A. Yes.

Q. Do you agree that the road is worth nothing if the concession comes to an end.

In the High  
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Borneo

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Evidence

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Dato Ling  
Beng Siew

—  
Cross-Examination  
(continued)

A. According to Income Tax there is allowable income in that event.

The road can be sold. We may make a profit. There is a forest area nearby. Anybody who is granted a concession may ask me for the use of the road.

Q. When the concession comes to an end the road also comes to an end.

A. Can be renewed from time to time.

Q. If not renewed the title to road will go.

A. I cannot say whether my right to road will cease. 10

Q. Is it not a condition of concession that on expiry of concession roads belongs to Government.

A. Terms and conditions of concessions vary. I have not seen my terms.

Q. Under this concession you have no title to land, the land belongs to Government.

A. I don't agree.

Q. Can you produce a copy of this concession.

A. Yes.

Q. Over the life of this Company it has made profits to something like 25 millions. 20

A. Yes in the accounts.

Q. The distribution to shareholders before deduction of tax is  $5\frac{1}{4}$  millions.

A. This appears in the accounts.

Q. Disregarding fixed assets the liabilities for some 3 years had exceeded current assets.

A. Yes.

Q. Net profit for 1971 is shown as  $\$287,029$ .

A. Yes. 30

Q. Net provision for tax provision is  $\$447,200$ .

Mr. J.E. Vinelott

Net loss \$173,550.  
Net profit \$273,344.

Mr. C. Darvall

Points out that other figures were not included.

Mr. J.E. Vinelott

Net profits \$273,644.  
Provision for tax \$447,200.  
Net loss being difference \$173,555.  
10 Add back to that net Dividend \$34,501.  
Profits on sale of assets and shares \$183,307.  
Leaving a net balance of \$44,253.

Q. How is it provision for taxation is larger than the net profit of Kong Thai?

A. This is a question for my accountant. I am afraid I am unable to explain at this moment in such a hurried way.

Mr. J.E. Vinelott

20 I will not trouble witness with this now until after the adjournment.

Q. Have you detailed account of Kong Thai for 1971.

A. In office.

(Court: Perhaps Counsel can agree to certain facts and figures, and in areas of disagreement witness can be examined to save time).

Q. You have entered into a number of joint ventures with Borneo Company.

A. Yes.

Q. Represented for most part by Mr. K. Gould.

30 A. Yes. He is Chairman of Borneo Company.

Q. Large part of expenses of travelling in Singapore, Hong Kong, Taiwan and large part of expenses of entertaining are attributed to these joint ventures.

In the High Court in Borneo

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Notes of Evidence

—  
Respondent's Evidence

—  
Dato Ling Beng Siew

—  
Cross-examination (continued)

In the High Court in Borneo

No. 7

Notes of Evidence

Respondent's Evidence

Dato Ling Beng Siew

Cross-examination (continued)

A. A portion was attributed to joint ventures and the other portion to Kong Thai business.

Q. How large of the proportion are joint ventures.

A. I cannot say now.

Q. Is it larger part or smaller part.

A. It is difficult to say.

Mr. J.E. Vinelott

Reads joint ventures and asks witness to say what are not joint ventures.

Sabah Agency Sdn. Bhd.

Kong Thai Lumber Sdn. Bhd.

P.T. Kalimantan Sari.

Singapore Mouldings (Pte) Ltd.

Kalimantan Utan (not joint venture)

Pahang Concession (no such name)

Goldhill Lumber Sdn. Bhd.

P.T. Indomark ( has not started. It was joint venture)

Borneo Mining (I am not sure)

Glass Project (no)

Kong Thai Plywood (Pte) Ltd. (Borneo Company was with us in joint venture. Since then we look for a different site in Johore for operation. The venture has not collapsed).

United Singapore Lumber (Pte) Ltd. (I have one share. Borneo Company one share. I hold the share in trust for Kong Thai. Indonesian Investment in United Singapore Lumber was supposed to sell timber and log and sawn timber from P.T. Kalimantan Sari.

The Indonesian part is called P.T. Utan Sari. The greater share is held by Kong Thai recently because of difficulty on the part of Indonesian partners).

Mr. J.E. Vinelott

I would like to see the account.

Mr. G. Starforth Hill

Am instructed these were available to Mr. Peattie.

Q. Did the joint ventures include Chalfont Investments Ltd. and Glendale Investments Ltd.

10

20

30

- |   |   |
|---|---|
| <p>A. The joint ventures of Kong Thai and Borneo Company does not include Chalfont and Glendale.</p> <p>Q. You and brother Ling Beng Siong are large shareholders in these two companies.</p> <p>A. Yes.</p> <p>Q. Have you received any dividends.</p> <p>A. Once recently. I cannot remember the figure.</p> <p>Q. Have you received any loans from these Companies.</p> <p>A. I cannot say now.</p> <p>10 Q. Have you seen accounts of the companies.</p> <p>A. Yes.</p> <p>Q. Have you got them.</p> <p>A. In Hong Kong.</p> <p>(<u>Mr. J.E. Vinelott.</u> Asks witness to produce the accounts which he has received as shareholder).</p> <p>(<u>D.W.1</u> I can produce the Balance Sheet. I will ask the Company to send the profit and loss account).</p> <p>(<u>Mr. J.E. Vinelott.</u> Asks for detailed account under the control or custody of witness).</p> <p>20 (<u>D.W.1</u> If this is not objected to by other shareholders in Company, then I will bring in the accounts).</p> <p>Q. Will you produce correspondence in respect of loan accounts with these Companies.</p> <p>A. If it is not objected by the Companies I will.</p> <p>(<u>Mr. J.E. Vinelott.</u> Ask the witness to produce accounts without qualification).</p> <p>(<u>Mr. G. Starforth Hill.</u> Will you specify the documents).</p> <p>(<u>Mr. J.E. Vinelott.</u> I was told we have seen them. I want detailed accounts of Sabah Agency 1969-71.</p> <p>30 (<u>Mr. G. Starforth Hill.</u> Asks for list).</p> | <p>In the High Court in Borneo</p> <p>_____</p> <p>No. 7</p> <p>Notes of Evidence</p> <p>_____</p> <p>Respondent's Evidence</p> <p>_____</p> <p>Dato Ling Beng Siew</p> <p>_____</p> <p>Cross-examination (continued)</p> |
|---|---|

In the High Court in Borneo

(Mr. J.E. Vinelott. Kong Thai Lumber 1969 - 71  
Kalimantan Sari 1969 - 71  
United Singapore Lumber 1969 - 71

No. 7

These can be handed to my Junior in Sibn. I am much concerned with Chalfont and Glendale accounts.)

Notes of Evidence

(Mr. G. Starforth Hill. Asks Court for Notes of Evidence in due course).

Respondent's Evidence

Time 10.30 a.m.  
Court adjourned to dates to be fixed.  
Sgd. B.T.H. Lee, J.  
21.4.72

10

Dato Ling Beng Siew

MONDAY, 13TH NOVEMBER, 1972

Cross-examination (continued)

Resumption of hearing.  
Parties as before.

D.W.1 DATO LING BENG SIEW. Affirmed states in Foochow.

Q. You were referred to S.C.A. accounts at the last hearing. You say it was stolen. What enquiries have you made?

A. I have already answered the loss of account at last hearing. I have reported matter to police.

20

At the time of formation of S.C.A. we appointed the late Auditor Mr. P.C. Chiew to be auditor. I do not know whether the late Auditor was busy. I enquired from the firm and they say it was not certain whether the accounts were audited or not.

The office of S.C.A. was broken into. The members records and account books were stolen.

(Counsel refers to page 198 Para B).

"Q. Are the accounts produced by the Association audited.

30

A. They were audited. We appointed an auditor who audited the account. He will know more than I do.

(Court is told Auditor is dead)."

D.W.1

At the meeting we decided to appoint an Auditor. To the best of my knowledge I believe he audited the accounts. Later I made enquiries from the successor. He said the accounts were not audited. I was surprised. He said the Association did not pay auditor's fees.

Q. Have the S.C.A. accounts ever been audited.

A. The first Chairman of S.C.A. was Dato William Tan, Speaker of Council Negri.

10 When I became Chairman I enquired from Auditor about the accounts. I asked the successor to late auditor. The answer was there was no such instructions.

No audit was ever done since I became Chairman. I think it is 8 - 9 years since I became Chairman.

Q. Before you became Chairman were accounts audited.

A. I cannot remember.

Q. What auditor's fee was unpaid.

A. I cannot remember.

20 Q. Will you enquire from the Auditor what was the fee and for what year.

A. I will.

Q. You refer to resolution - at what time was Auditor appointed.

A. I think it was at the first meeting when I was only a member and Dato William Tan was the Chairman.

Q. Is it a fact that there is no records for financial years 1968/1969 for S.C.A. except with Hock Hua Bank.

30 A. As soon as I became a Chairman there were accounts. The accounts were lost when the thief broke into the office.

Q. That was March 9, 1971.

A. Round about that date but I am not definite.

Q. The burglar took documents and nothing else.

In the High Court in Borneo

-----  
No. 7

Notes of Evidence

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Respondent's Evidence

-----  
Dato Ling Beng Siew

-----  
Cross-examination (continued)



In the High Court in Borneo

No. 7  
Notes of Evidence

Respondent's Evidence

Dato Ling Beng Siew

Cross-examination (continued)

- A. Records of members cards, association documents, accounts books, etc.
- Q. How did the thief gain entry.
- A. I do not know the details. A member of the Association Yu Suk Mui told me.
- Q. Do you think this is a serious matter.
- A. I consider this serious, especially the members cards. I did not realise the importance of the accounts. I was concerned about the members cards. Should they fall into the hands of the subversive elements then our lives would be in danger.

10

(Press informed that the last sentence should not be published).

I consider this a serious matter.

- Q. Do you know no investigation were conducted by the Police?
- A. On information received from Yii Suk Mui I informed Chen Ko Ming with instructions that he report the matter to the proper authorities.

(Mr. J.E. Vinelott. Produces three letters dated 20.10.72, 23.10.72 and 26.10.72).

20

"Ref: 35/20 Divisional Constabulary Headquarters,  
Royal Malaysia Police,  
Sibu.  
20th Oct., 1972.

Dato Ling Beng Sung,  
Kong Ming Bank Berhad,  
21, Wong Nai Siong Road,  
Sibu.

Sir,

Re Dato Ling Beng Sung  
vs  
Kong Thai Sawmill (Miri) Sdn. Bhd.  
Dato Ling Beng Siew  
Dato Ling Beng Siong

30

Further to my letter of same series dated 16.10.72, it is confirmed that a report was lodged to the police by one

Yii Suk Mui on the 9.3.71 that the office of No. 2, Kampong Nyabor was broken into and that certain documents were found missing, please.

Sgd: Chong Kit Foh  
Officer-in-Charge District  
Royal Malaysia Police  
Sarawak Component  
Sibu "

"Dato Ling Beng Sung P.N.B.S., A.B.S.,

10

Kong Ming Bank Berhad,  
21, Wong Nai Siong Road,  
Sibu, Sarawak,  
Malaysia.  
Sibu 23rd October, 1972.

The Officer-in-Charge District  
(For Attention of Mr. Chong Kit Foh),  
Central Police Station,  
Sibu.

Dear Sir,

20

Re: Dato Ling Beng Sung  
vs.  
Kong Thai Sawmill (Miri) Sdn. Bhd.  
Dato Ling Beng Siew  
Dato Ling Beng Siong

I thank you for your letter of 20th October, 1972 confirming that a report was lodged to the police by one Yii Suk Mui on the 9.3.71 that the office of No. 2 Kampong Nyabor was broken into and that certain documents were found missing.

30 I shall be very grateful if you can further enlighten me on the following facts:

- (a) The time in which Yii Suk Mui lodged the report.
- (b) The manner in which the broken in was discovered and by whom and at what time.
- (c) Any investigations carried out by the Police as a result of the report lodged and
- (d) Any prosecution being conducted in Court to prosecute the culprit?

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

In the High  
Court in  
Borneo

Your co-operation in the matter is much appreciated.

Yours faithfully,  
Sgd:  
Dato Ling Beng Sung."

—  
No. 7

Notes of  
Evidence

"35/20

Divisional Constabulary Headquarters,  
Royal Malaysia Police,  
Sibu.  
26th October, 1972.

Respondent's  
Evidence

Dato Ling Beng Sung,  
Kong Ming Bank Berhad,  
21, Wong Nai Siong Road,  
SIBU, Sarawak.

10

Dato Ling  
Beng Siew

Dear Sir,

Cross-examination  
(continued)

Re: Dato Ling Beng Sung  
vs.  
Kong Thai Sawmill (Miri) Sdn. Bhd.  
Dato Ling Beng Siew  
Dato Ling Beng Siong

I refer to your letter dated 23/10/72 and append below  
are the details:-

20

- a) The report was received at 1110 hours.
- b) It is not known how the office was broken into.
- c) No investigation was carried out on the report.
- d) No.

Sgd: Chong Kit Foh  
Officer-in-charge District  
Royal Malaysia Police  
Sarawak Component  
SIBU "

- Q. Do you find difficulty in reading the English letters.
- A. I find it difficult to follow without some explanation.

30

The proceedings in our meetings are conducted in  
English. The minutes are written in English. The  
correspondence in all the Companies in which I am concerned  
are also in English. We also receive some correspondence  
in Chinese.

- |       |  |                                    |
|-------|--|------------------------------------|
| Q.    | Do you have an interpreter to explain the minutes of Meeting before you sign them.   | In the High Court in Borneo        |
| A.    | Some members in the Meeting do not understand English. The Secretary had to explain what happened at the meeting.  | —<br>No. 7                         |
| Q.    | Do you yourself understand without the assistance of an interpreter.   | Notes of Evidence                  |
| A.    | I understand simple English. When I am in difficulty I would ask the Secretary to explain.   | —<br>Respondent's Evidence         |
| 10 Q. | You are a member of Council Negri.   | —                                  |
| A.    | Yes.   | Dato Ling Beng Siew                |
|       | I was a frequent speaker. I spoke in English. I only read out the draft which was prepared by my Secretary. My son Alex studied in England. I corresponded with him in English. My Secretary typed out on the directions given by me in reply. | —<br>Cross-examination (continued) |
|       | The Annual General Meeting of the Company are conducted mostly in Foochow, and also in English.  |                                    |
|       | In some companies, they are conducted in English.  |                                    |
| 20    | Some directors speak Foochow only. There are natives who speak Iban and the Secretary will explain in Iban and Malay.  |                                    |
|       | There is one named Bangau who speaks English. The Governor is one of the members of Kong Thai. He speaks Malay. Dato Ling Beng Siong speaks Foochow.   |                                    |
|       | I remember the Governor attends meetings but I cannot say which meeting. I cannot remember how many meetings he attended.  |                                    |
| 30 Q. | Suggest - you speak fluent English and that you normally correspond in English.  |                                    |
| A.    | I learned English for a few months. I cannot speak English fluently. I cannot read difficult English.  |                                    |
|       | The business correspondence are conducted in English by my Secretary.  |                                    |
|       | If I go slowly and carefully I may get the gist of the meaning of the letters.   |                                    |

In the High  
Court in  
Borneo

After I have been explained by the interpreter I now understand the letters.

—  
No. 7

Without the interpretation I have a general idea. I find it difficult to follow.

Notes of  
Evidence

I do not have interpreters with me when I travel. Only when I attend business ventures.

—  
Respondent's  
Evidence

Because the Company cannot afford a Secretary I do not engage a Secretary. It will mean additional commitments for the Company.

—  
Dato Ling  
Beng Siew

I am Chairman of the Borneo Company. Meetings are conducted in English. Normally the Manager of Borneo Company attends the meetings. Because it is an English Company, Foochow cannot be used. When there is any difficulty the Manager, Lim Beng Hung would explain to the members. As far as I can remember Lim Beng Hung attends most of the meetings.

10

—  
Cross-examination  
(continued)

Chalfont and Glendale meetings are conducted in English. I seldom attend the meeting as they are held in Hong Kong.

I had only discussions with the Directors. As far as I remember I never attended any of the meeting of Chalfont and Glendale.

20

Time 10.45 a.m.

Adjourned for 15 minutes.

Sgd: B.T.H. Lee, J.

12.11.72

Time 11.00 a.m.

D.W.1 Dato Ling Beng Siew (on former oath)

(Mr. Vinelott: Three letters. These documents be marked Ex. K.T.S. 41 for identification.)

Q. According to the correspondence KTS 41 the Police has replied that no investigation was carried out on the report.

30

A. Yes.

Q. Do you agree the police does not consider this important.

A. We have difference point of view. I consider it serious.

Q. You agree that it is apparent that Malaysian Police did not consider that the complaint important.

In the High Court in Borneo

(Mr. Starforth Hill: Objection to that. It has been answered).

—  
No. 7

A. It is the police function.

Notes of Evidence

Q. Did you ask police to carry out investigation.

A. I instructed Yii Suk Mui to do so. I have no time as I am always away from Sibu most of the time.

Respondent's Evidence

10

Q. Did you ascertain whether police had undertaken any investigation.

A. I left the matter in the hands of Yii Suk Mui. I cannot remember whether I asked the police to carry out investigations.

—  
Dato Ling Beng Siew

Q. Did you ascertain what steps have been taken and with what results.

A. I have already explained. I am very busy.

Q. Was it not important to you that the thief had been tracked down and identified.

A. I have given instructions to Yii Suk Mui.

—  
Cross-examination (continued)

20

Before the police can give us information that the thief has been traced I cannot say.

I was worried as the safety of members of S.C.A. were concerned.

Q. Was it vital to you whether the records were stolen by an ordinary burglar or a member of the subversive elements.

A. It is up to the police. Some of the members of the S.C.A. were killed and we cannot press on the police for information.

30

I am of opinion an ordinary thief will not steal cards and documents. I think it is the work of the Communist.

Q. Did you tell the police that the situation was grave.

A. The matter was reported to the police. We cannot do anything to press the police.

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

It was only my belief it was taken by subversive elements. I have no evidence to support my belief. How it was reported I do not know.

Q. Did you tell Yii Suk Mui that the documents might have been taken by insurgents.

A. I cannot say whether Yii Suk Mui had included my opinion in the report. He could have.

Q. Was it your belief then Yii Suk Mui had explained to the police the fear you entertained that the insurgents had possession of the documents.

10

A. I believe it was explained by Yii Suk Mui. If Yii Suk Mui had a chance he would have explained.

Q. Did you at the time believe Yii Suk Mui had explained the possibility of that fact to the police.

A. I believe so, if Yii Suk Mui was asked the question.

Q. Did you expect Yii Suk Mui to explain to the police fears that the documents had been stolen by insurgents.

A. I expected him to explain.

Q. Did you ask Yii Suk Mui to report these fears.

A. I did not expressly ask him to do so.

20

Q. It is apparent from letters that the matter was not explained to the police.

(Mr. Starforth Hill: Where is the portion in the letter which says so).

Q. Would you agree that had these fears been expressed to the police, the police would have made some investigations into them.

A. After Yii Suk Mui had lodged the report it is up to the Police.

Q. If you had told Yii Suk Mui would you expect the police to carry out the investigations.

30

A. I expected the police to carry out investigation.

Q. Would you expect the police to enquire how the premises were entered.

- A. The police should conduct investigations when a complaint is made. In the High Court in Borneo
- Q. Would it not be for the police to ascertain how the documents were stolen. \_\_\_\_\_
- A. When a report was lodged by Yii Suk Mui police would take necessary action. No. 7
- Q. Would you expect the police to come to speak to you about the burglary. Notes of Evidence
- A. I have already instructed Yii Suk Mui but the police did not contact me. I left the matter to Mr. Yii. I was desirous to get results but the matter is not within my control. I was too busy and I forgot about it. \_\_\_\_\_
- Refers to K.T.S. 42. Bank Statements of S.C.A. with Hock Hua Bank (original with the Bank). Respondent's Evidence
- (Mr. Starforth Hill: Up to Plaintiff to produce the originals). \_\_\_\_\_
- Refers to Exhibits Volume One. Page 25 H\* Dato Ling Beng Siew
- Refers to Peattie Affidavit. Para 74 \_\_\_\_\_
- 20 "Donations by Kong Thai during the year came to \$1,304,743.49. Of this sum \$1,009,800.69 was paid to Sarawak Chinese Association. \$234,896.40 was paid to other political parties as follows:-
- |                    |             |
|--------------------|-------------|
| Pesaka             | \$80,851.40 |
| SNAP               | 145,000.00  |
| MCA (Kuala Lumpur) | 9,045.00    |
- 30 The payments to Sarawak Chinese Association were 63 in number. 50 payments were made on various dates beginning in October 1968 up to September 1969. The receipts given for these payments by Sarawak Chinese Association are consecutively numbered 1101 to 1150. 13 payments were made on various dates beginning in November 1968 up to July 1969 and the receipts are consecutively numbered 1301 to 1313."
- Refers to Exhibits Volume One Page 25 H\*
- List of Donations to Sarawak Chinese Association for the year ended 30th September, 1969, and the receipts Nos.

\* See page 1408, Vol.V



In the High Court in Borneo

given by S.C.A., and refers KTS 42.

D.W.1

The accounts refers to K.T.S. with Hock Hua.

No. 7  
Notes of Evidence

Q. Is this the account disclosed by your solicitors.

A. Yes.

Respondent's Evidence

Q. Did the SCA have any other account with any other banks.

A. As far as I remember Hock Hua Bank only.

Dato Ling Beng Siew

(Mr. Starforth Hill: Directs that tapes be kept by Registrar).

10

Cross-examination (continued)

(COURT: Order Tapes to be in custody of the Registrar).

Time 12.30 p.m.

Court adjourned to 2.15 p.m.

Sgd: B.T.H. Lee, J.

13.11.72

Time 2.15 p.m.

D.W.1 Dato Ling Beng Siew (on former oath)

When we obtained forest concession in respect of the land we had a shareholders meeting. We pointed out that the concession was granted by the Alliance Government.

20

Funds was required for Election campaign and other expenses.

Alliance was comprised of Pesaka, Snap, SCA and Bumiputra. SCA played an important role by giving financial assistance.

Q. How were donations made, by cheque or cash?

A. Some by cheques and some in cash.

The monies were paid sometimes to Bumiputra, sometimes to Pesaka, sometimes by cheques from the Company and sometimes by myself. I recovered from the Company payments made on my own account. I was authorised by the Board of Directors and shareholders to make the donations.

30

This authorisation was made at first meeting of shareholders. In the High Court in Borneo  
(Counsel will give the date of first meeting later).

Refers to Typewritten Notes of Evidence Page 196 Para B:

"Q. During the year 1968/69 the accounts of Kong Thai showed over \$1,000,000 given to donations to S.C.A. Can you remember Kong Thai gave one million upwards to S.C.A. during the years 1968 and 1969.

A. Yes.

Q. Who is the money paid to.

10 A. Donation was given to S.C.A. and received by S.C.A."

I did say so. I must refer to the accounts of the company and my own accounts and counterfoil of my own cheques.

Q. Can you bring the accounts and cheques to Court.

A. Yes.

Q. Your account to Court given at the first hearing was incorrect then.

20 A. At that time I had no time to explain. Although the donations were made to other parties the accounts were posted to S.C.A. accounts.

Q. Are you now saying that the previous evidence given at page 196 of the typewritten Notes of Evidence as incorrect.

A. It was correct.

The SCA was the treasurer of the Alliance although the donations were made to other parties.

Q. Then all the donations were not made to SCA as a political party.

30 A. SCA was responsible for all accounts and issuing of receipts for the donations.

Q. Were the cheques given to Pesaka and Bumiputra.

In the High Court in Borneo

—  
No. 7

Notes of Evidence

—  
Respondent's Evidence

—  
Dato Ling Beng Siew

—  
Cross-examination (continued)

In the High  
Court in  
Borneo

No. 7

Notes of  
Evidence

Respondent's  
Evidence

Dato Ling  
Beng Siew

Cross-examination  
(continued)

A. Yes.

Q. Why were the amounts not shown as having been paid to Pesaka or Bumiputra.

A. It is posted into our Company's accounts.

(Counsel asks for the accounts recorded in Volume One Page 25 H & I)\*.

Q. Will the accounts show to whom the donations were given.

A. They are with our Accountants.

(Mr. Starforth Hill: Mr. Peattie has seen all the accounts and they are all available).

10

(Mr. Vinelott: Refers to Peattie's Affidavit dated 24.11.71. Page 40(d):

"The ledger shows payments to various political parties including Party Bumiputra but receipts appear to be given in the name of Sarawak Chinese Association. The receipts numbered 1302 to 1313 given by Sarawak Chinese Association in fact appear to represent the following payments :-

1302 Bumiputra	10,000	7th November 1968	
1303 Pesaka	5,000	7th November 1968	
1304 Bumiputra	50,000	15th February 1968	20
1305 Tunku's Fund	5,000	2nd April, 1968	
1306 Bumiputra	5,000	2nd April, 1968	
1307 Perikatan Bahagia Council	5,000	2nd April, 1968	
1308 Pesaka	5,000	29th April, 1968	
1309 Alliance	30,000	23rd May, 1968	
1310 Malay National Volleyball Competition	5,000	2nd June, 1968	
1311 (?)	5,000	2nd June, 1968	30
1312 Reimbursement to Dato Ling Beng Siew	300,000	28th July, 1968	
1313 Alliance Party - Tengku	50,000	28th July, 1968")	

There are also payments made to UMNO. It is a member of the Alliance.

Q. Is it active in Sarawak.

A. The President of UMNO is also the President of the Grand

\* p.25H - see p.1408, Vol.V  
p.25I - see p.1409, Vol.V

Alliance and Sarawak Alliance is a member of the Grand Alliance.

In the High Court in Borneo

Q. Has the UMNO contested in the Elections in Sarawak.

A. Relationship between UMNO and Bumiputra is very close.

No. 7

Q. When was SCA made Treasurer of Alliance.

Notes of Evidence

A. Since formation of Sarawak Alliance. 1962 or 1963. SNAP was a member of the then Alliance.

Respondent's Evidence

SCA was elected at the Alliance meeting sometime in 1962 or 1963. It was recorded in the minutes of the meeting.

Dato Ling Beng Siew

10

Q. Can we have a copy.

A. I have to get it from Temenggong Jugah. The secretary was Dato Ningkan.

Cross-examination (continued)

Q. Were all donations given to parties of Alliance made to SCA by Kong Thai.

A. According to the Books at Election campaign - yes.

(Refers to Peattie's Affidavit. Page 18)

"74. Donations by Kong Thai during the year came to \$1,304,743.49. Of this sum, \$1,009,800.69 was paid to Sarawak Chinese Association. \$234,896.40 was paid to other political parties as follows :

20

Pesaka	\$80,851.40
SNAP	145,000.00
MCA (Kuala Lumpur)	9,045.00"

Q. Was Pesaka a member of Alliance.

A. Yes.

Q. Why was the donation made through SCA.

A. It is a matter of convenience. I must say. I am not familiar with the figures.

30

At the time I merely informed the Accountant. I am not aware how the account was posted.

Refers to Page 40 of Mr. Peattie's Affidavit.

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

"(d) .... 1303 - Pesaka - ~~5~~5,000 7th Nov. 1968".

- Q. Why was the account in the Company's ledger in the name of SCA.
- A. I only give instructions as to donations.
- I do not know how the Accountant enter the accounts and in which party's name.
- Q. Was the payment under 1303 and 1308 to Pesaka made by a cheque from Kong Thai Account.
- A. I am unable to say unless I see the Company's Account.
- Q. Will the Company's account give you the information.
- A. I think I will trace the account.
- Q. Were the receipts given by SCA given at a time when the recording of receipts were made.
- A. I remember our Auditor informed our Company that written chits were not sufficient and official receipts were required.
- Q. When was that.
- A. I cannot remember.
- Q. Is it before 1969 or after,
- A. It is round that period.
- Q. Was it as a result of this advice these receipts were issued.
- A. I was not responsible for account. The Accountant will be able to answer this.
- Q. Were receipts given by SCA each time payments were made by Kong Thai.
- A. I am not responsible for accounts. The accounts section is in a separate building.
- Q. When were the receipts given.
- A. Our Accountant can tell.

10

20

30

The receipts were usually signed by Secretary General of SCA. I am not sure. I have to check.

In the High Court in Borneo

Q. Most of the accounts were paid into your account and you say were disbursements made by you.

—  
No. 7

A. When I am in Kuala Lumpur and Donations made to UMNO and since SCA is in Sarawak, I would issue personal cheques to the party. I ask for reimbursements on my return. Some items which were required to be paid would be paid into my account and I would pay them out of my account.

Notes of Evidence

10

Respondent's Evidence

Q. When you get reimbursements did the Company ask for receipts from SCA.

—

A. On my return I instruct my Accountant about adjustments. I do not know about receipts.

Dato Ling Beng Siew

—

Q. When you came back from your trip and you made payments you ask Company to make disbursements.

Cross-examination (continued)

A. I ask the Company to credit SCA accounts. I showed the counterfoil of my cheque in respect of payments made. I did not pay attention to which account the Accountant credited the payments made.

20

Sometimes when I am busy the accounts would be adjusted some two months later.

Q. Did the Accountant then debit the Company with the amounts.

A. I only show the Accountant the amounts spent and I do not know what the Accountant did. I now know what the accountant has done.

30 The SCA General Secretary is Chen Ko Ming. He was employed by Kong Thai to make preliminary enquiry before the Company made any investments. He also assists in administration of Kong Thai.

Q. Chen Ko Ming signed the receipts and the Company credited Beng Siew with the amount.

A. Not in every case.

Q. Who authorised the credit of accounts to Beng Siew's account.

A. I informed my accountant of donations made through me and payments were made to me by cheques.

In the High Court in Borneo

Q. That was done on your authority.

A. Yes. The authorisation was agreed to by other shareholders.

This was discussed at the Shareholders Meeting. The late Auditor said that there was no need to record this in the Resolution of Shareholders Meeting.

The resolution was made. It was to the effect that we should assist the election campaign.

No. 7  
Notes of Evidence

Respondent's Evidence

Q. Why was this not included in Dato Ling Beng Siew's affidavit.

10

Dato Ling Beng Siew

A. I am not versed in law. I was not asked on this point. I now recall this matter.

Cross-examination (continued)

(Counsel for Respondent informs Court that the Manager of Hock Hua Bank Headquarters has come with 6 cheques - pursuant to a subpoena Duces Tecan. Cheques now in custody of Registrar. - Witness is released).

Refers to Volume One (Page 25 A)\*

Minutes of Directors Meeting held on 10th June 1970.

"Donation: It was resolved and approved the donations of M\$1,304,742.49 made during the year ended 30.9.69. The donations included those made in the names of directors with receipts in the names of Dato Ling Beng Siew and Dato Ling Beng Siong. Details per schedules attached."

20

D.W.1

This meeting approved the donations made in 1969. Those present were myself, Dato Ling Beng Siong, Lau Hui Kang and Dato Ting Lik Hung.

This resolution was made 9 months after donations were made.

30

Q. Did you give a note to accountant of amounts paid.

A. Sometimes I give a telephone call to Accountant.

I give him the name of the party and the amount involved. Accountant is in a separate building. I asked him to give me a cheque for the amount.

\* See page 1401, Vol.V

- |       |  |                               |
|-------|--|-------------------------------|
| Q.    | Did you give the Accountant merely the total or the items.   | In the High Court in Borneo   |
| A.    | As far as I remember I gave details. Sometimes I write on a piece of paper. Sometimes I inform him over the telephone. | —<br>No. 7                    |
| Q.    | Did you confirm what the amounts are for.  | Notes of Evidence             |
| A.    | I cannot remember. Possibly I confirmed it.  | —                             |
| Q.    | What happened to the notes.  | Respondent's Evidence         |
| A.    | The accountant knows about them.   | —                             |
| 10 Q. | Have you made a search for these papers in the course of these proceedings.  | Dato Ling Beng Siew           |
| A.    | I was looking for cheques and counterfoils.  | —                             |
| Q.    | Do you know what a payment voucher is.   | Cross-examination (continued) |
| A.    | I do not know.   |                               |
| Q.    | You are familiar with the procedure. Payments by companies authorised by Directors.                                    |                               |
| A.    | I am familiar with business matters not with accounts.   |                               |
|       | <u>(Mr. Starforth Hill: Another witness, Manager of Chartered Bank Sibul, has tendered 6 cheques)</u>                  |                               |
| 20    | Witness released.  |                               |

Time 4.15 p.m.  
 Adjourned to 9.00 a.m. tomorrow  
 Sgd: B.T.H. Lee, J.  
 13.11.72

Tuesday, 14th November, 1972  
 Resumption of hearing.  
 Parties as before.  
 Time 9.00 a.m.

Mr. C. Darvall

30 Assistant Registrar of Societies is here in Court.

Mr. J.E. Vinelott

There is no affidavit by Counsel for plaintiff.



In the High  
Court in  
Borneo

Mr. C. Darvall

He is a servant of the Crown.

—  
No. 7

Notes of  
Evidence

COURT

Since the Assistant Registrar is a civil servant  
and an independent witness Court will take his evidence.

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

Respondent's  
Evidence

D.W.2 YING TEN PING. Affirmed states in English.  
Registrar of Societies, Kuching. No. 9, Temple Street,  
Kuching. Acting Registrar of Societies. Foochow.

—  
Ying Ten Ping

In the course of my duties I received accounts of S.C.A.

—  
Examination

Q. Have you accounts for January-December 1968,  
1st January - 31st December, 1969. 10

A. Yes.

I have also received accounts from a branch of SCA  
Sarikei. That is for 1969-70. I have the original  
accounts.

Mr. Chen Ko Ming signed as Secretary General and Mr. Lee  
Swee Hock as Treasurer of 1968 and 1969 for SCA Headquarters,  
Kuching.

In a case of society where there are branches it is  
quite normal to receive accounts from branches. 20

On 29th June, 1971, I received 2 requests for certified  
copies of statements of accounts of SCA for the year 1967  
and 1968 in one request.

On the same day another request was made for certified copies of statement of accounts of SCA for the years 1969 and 1970.

In the High Court in Borneo

Apart from these two requests there was a 3rd request for certified true copies of accounts in respect of Sarikei accounts for the years 1969-70. The request was made on 8th January 1972 by Mr. Clarence Tan Sek Boon. The first two requests were also made by the same person.

No. 7  
Notes of Evidence

These are the only requests.

10 Mr. Clarence Tan came to the office and I handed him the accounts personally. I told Clarence Tan that there were headquarters seals of SCA on the accounts.

Respondent's Evidence  
Ying Ten Ping

Before Mr. Tan wrote for the 3rd request I wrote him about Sarikei accounts on 6.1.72. I produce the letter dated 6.1.72. Produced and marked Ex. R.8

Examination

Witness shown Exhibits LBS 5A, LBS 5B, LBS 6A and LBS 6B. Affidavits dated 9.3.72.

20 These are accounts supplied from my office but signed by Tham Mung Kong. It was not signed by me. I am certain our Department has supplied statement of accounts to one person only.

From our records one copy only was supplied to the applicant.

XX<sup>n</sup>. Mr. J.E. Vinelott reserves his cross-examination and will call witness at a later stage.

D.W.1 DATO LING BENG SIEW (On former oath)

Dato Ling Beng Siew

Q. You said Auditor's fee was not paid. What were the years.

Cross-examination (continued)

30 A. I have contacted Miss Chiew. She told me there is no record regarding auditor's fee. She could not find the record for the past years.

Miss Chiew is an Accountant attached to P.C. Chiew's Accountant firm.

Q. Is it true your enquiries did not show that any fees were unpaid.

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

A. Miss Chiew could not find any record of payment of fees by SCA.

Q. You can produce the cheques and accounts you undertook to produce.

A. Yes I have them.

Cheque of 8th October, 1968, drawn on Chartered Bank. This is my private cheque. Paid to Bumiputra for \$10,000/-.

The next cheque is dated 8.10.68. Paid to Pesaka for \$5,000/-.

The next cheque. Penang Basketball & Volleyball Association dated 8.12.68 for \$5,000/-. This was paid by me personally. 10

The next cash cheque dated 12.2.69 for \$50,000. This is donation to Bumiputra. It was endorsed by a Senior Officer of Bumiputra. His name is (witness writes in a piece of paper) - Sarawak Chief Minister, Dato Abdul Rahman. It was a cash cheque.

The next is Parti Bumiputra dated 15.1.69 for \$5,000/-.

The next cheque is for Parti Perikatan Bahagian, Rawang for \$5,000/-. This is dated 11.2.1969. 20

The next cheque is \$5,000/- dated 7.2.69. Paid to Bumiputra.

The next is a receipt for \$50,000/- dated 5 April 1969 paid to Ting Lik Hung. He is the Managing Director of Hock Hua Bank and Chairman of Foochow Association and Chairman of Pan Malaysian Foochow Association.

Cheque dated 25.4.69 for \$5,000/- to Party Pesaka Sarawak. This is cheque from my private account.

Cheque dated 22.4.69 for \$5,000 to Mr. Ting Ming Kiong. He is a candidate for SCA. He is a Member of Parliament. This is my private cheque. 30

Cheque dated 23.4.69 for \$5,000/-. This is my private cheque. The endorser is Cheng Yew Kiew. He is a senior officer of SCA. Candidate for Election. He is a member of Council Negri.

Receipt dated May 13, 1969, for \$10,000/-. This was paid by me personally. Endorsed by Sidi Munan. He was

candidate for Election for Pesaka. At present he is Political Secretary to the Chief Minister, Sarawak.

Debit dated 13 May 1969 is attached to the Receipt to Mr. Sidi Munan.

Cheque dated 13.4.69 for \$300,000/- paid to UMNO Special Fund. This was paid to Prime Minister Tun Abdul Razak.

Cheque dated 13 April 1969 for \$20,000/- to UMNO Bahagian Pekan. The endorser of this cheque is the same as the other cheques. The receipt is not signed by the same person.

10 The cheque for \$30,000/- dated 13.4.69 was paid to UMNO Special Fund. This is my private cheque. This person is the same who endorsed the cheque for \$300,000/-.

Receipt dated 8.5.69 for \$3,000/- being Election Funds signed by Shii Dai Seng. Candidate of SCA who stood for Election.

A receipt dated 8.5.69 for \$3,000/- signed by Clarence Tan.

A receipt dated 8.5.69 from Lo Yik Fong for \$3,000/-. He was SCA candidate for Election.

20 Debit Note dated 7.5.69 for \$9,000/-.

Salary and Transport Allowance for November 1968 for \$1,205.00.

The Debit Note dated 2.1.69 - payment made to Dato Teo Kui Seng. He was an SCA candidate who stood for Election.

I know one of the persons listed in the list of Salary and Transport Allowance.

She is Miss Kwan Poh Choo. She is an employee of SCA Kuching Branch.

30 The above are in respect of payments from my personal cheques.

These are the cheques issued by me in respect of donations which were referred to by me yesterday.

Time 10.30 a.m.  
Adjourned for 15 minutes  
SGD: B.T.H. Lee, J.

In the High  
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Borneo

—  
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Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

Time 11.00 a.m.

In the High  
Court in  
Borneo

D.W.1 Dato Ling Beng Siew. (On former oath)

—  
No. 7

(Mr. J.E. Vinelott: The cheques, etc. produced and marked KTS 43).

Notes of  
Evidence

These are all the documents I am able to discover in respect of personal payments.

—  
Respondent's  
Evidence

As far as I can remember everything was recorded in the Minutes of meeting.

—  
Dato Ling  
Beng Siew

Q. As Treasurer of Alliance did SCA produce any accounts to other members showing the receipts and payments.

10

A. The accounts were in the Sibu SCA office. After the burglary I am unable to produce them.

—  
Cross-examination  
(continued)

As Chairman of the party it was not my responsibility to produce accounts.

SCA as Treasurer was more concerned with the raising of funds.

Q. Where not the other members of the Alliance concerned with the funds.

A. I think so, but I am not sure.

The set up of the Alliance was not properly organised. The receipts of fund did not come to the SCA.

20

(Question asked for the third time).

Q. Was it required to produce accounts to members of the Alliance how monies are spent.

A. Accounts in respect of office expenses e.g. rent, salaries were accounted for but not in respect of donations raised.

Refer to Peattie's Affidavit dated 24.11.71.

Page 20:

"All payment vouchers to Sarawak Chinese Association were authorised by Dato Ling Beng Siew or Dato Ling Beng Siong."

30

Q. Do you accept that all payment vouchers were authorised by you or Dato Ling Beng Siong.

- |   |   |
|---|---|
| <p>A. I have to go to the documents. I believe most of them were signed by me or Dato Ling Beng Siong.</p>  | <p>In the High Court in Borneo</p> <hr/> <p>No. 7</p>                 |
| <p>Q. Will you look them during lunch time and see which were not authorised by you.</p>  | <hr/>   |
| <p>A. Yes.</p> <p>I know the general meaning of Payment Vouchers.</p>   | <p>Notes of Evidence</p> <hr/>  |
| <p>Q. Were payments under 1303 and 1308 to Pesaka made by cheques from Kong Thai Account.</p>   | <p>Respondent's Evidence</p> <hr/>                                    |
| <p>Refers to <u>Exhibit Volume I</u> Page 25I.*</p>   | <hr/>   |
| <p>10 Refers to Receipt Nos. 3103 and 1308. See Exhibit KTS 43.</p> <p>Receipt No. 1303 - This refers to Cheque No. 233433 dated 8.10.68 for \$5,000/-. This is my personal cheque.</p> <p>Receipt No. 1308 - This refers to cheque S.797188 dated 22 April 1969 for \$5,000/-.</p> | <p>Dato Ling Beng Siew</p> <hr/> <p>Cross-examination (continued)</p> |
| <p>Q. What procedure was followed when you got back from your trips in respect of accounts with SCA.</p>  |   |
| <p>A. I gave written instruction or oral instructions to Accountant.</p> <p>(Witness shown a sample of note from file).</p>   |   |
| <p>20 "Mr. Chen Siong Seng.</p> <p>Please transfer dollars five thousand from Kong Thai (Miri) Sawmill Ltd. to SCA - signed 12 Oct.1968."</p> <p>This is signed by me.</p> <p>I expect the Accountant to make out a cheque to me or pay me cash.</p>                                |   |
| <p>Refers to Page 25H*. <u>Exhibits Volume I.</u></p>   |   |
| <p>Q. Were the receipts given at the time or round about the time payments were made.</p>   |   |
| <p>A. I believe they were issued after the Election.</p>  |   |
| <p>30 Q. Were the receipts given all the same time after the Election.</p>  |   |

\* p.25H - see p.1408, Vol.V  
 p.25I - see p.1409, Vol.V

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Notes of  
Evidence

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Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

A. I am not responsible for this. I stay in Sibu for a few days in a month.

Our SCA Accountant is Chen Ko Ming.

I did not say the receipts were issued after the Election. That is my belief.

Q. When was the Election.

A. April or May 1969. Another in 1970.

Q. Which May 1969 or 1970.

A. Chen Ko Ming was responsible for this. I heard that notes which are informal receipts cannot be used. Formal receipts are required. 10

Q. When did you hear about it. Was it before or after your brother enquired into this.

A. I think it is before proceedings commenced.

Q. You said the receipts was issued after Election. Was it the 1st Election or 2nd Election in 1970.

A. I think it is after the 1970 Elections, but I am not sure.

Q. The formal receipts were issued after you have been advised the notes were insufficient. 20

A. Yes.

Q. What notes or temporary receipts are these.

A. This is a matter which the Accountant can say.

Some of the documents are in Court. Some are not.

Q. On 10 June 1970 a meeting was held which approved these donations.

A. It is in the meeting.

Q. Four Directors attended. There were 11 Directors at that time?

A. I have to look at the minutes. 30

Q. Was the intention of the resolution given to all the Directors.

A. This is done by Secretary who informs the Directors or issue notices to them.

In the High Court in Borneo

Refers to Dato Ling Beng Siew's Affidavit dated 14.3.72. Exhibit 24.

—  
No. 7

Agreement between Kong Thai Sawmill and Inche Harun Ariffin.

Notes of Evidence

The director who signed this is Dato Ling Beng Siong. The next is the Secretary.

—  
Respondent's Evidence

Q. The Testation is as follows:

10 "The common seal of the above named Kong Thai Sawmill (Miri) Sdn. Bhd. was by the authority of a resolution of the Board of Directors thereof hereto affixed in the presence of.."

—  
Dato Ling Beng Siew

Was there a resolution to this effect.

—  
Cross-examination (continued)

A. I have to check this.

Refers to Page 24 of Peattie's Affidavit dated 24.11.71. Para 93:

20 "Inche Harun Ariffin's debt increased from \$10,000/- to \$13,000/- since he received a further advance of \$3,000/-. Interest should have been charged at 6½% but no interest in fact was debited to or paid by him."

Q. Was any receipt given by Harun Ariffin in respect of the additional advance.

A. I have to check.

Q. Was the additional advance approved by resolution.

A. I will check.

Refers to Page 51 (d) of Henderson's Affidavit

30 (d) Harun Ariffin (Mr. A.D. Peattie's affidavit paras 63 and 93) was the Malaysian Federal Secretary in Sarawak. He was given a loan of \$10,000 in March, 1969 and signed an agreement providing for interest at 6½% per an annum and repayment over 18 months. The loan agreement was made under the Common Seal of the Company, affixed under witness by Dato Ling Beng Siong and Eng Kheng Hin, the Secretary. The granting of the loan was approved by the Board at a meeting held



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Notes of  
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Respondent's  
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Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

on 10th June, 1970. On 7th October, 1969, a further advance of \$3,000 was made to him. This has not been approved by the Board and no loan agreement was drawn up. Interest has now been taken up on the account. No repayment instalments were paid in the period under review. However, in July and August, 1971 the Company received repayment of \$500 in each month."

A. This advance including interest has I believe been fully settled by Inche Harun. Payment was made by cheque. I will check with the Accountant.

10

Q. You know that this loan to Federal Chief Secretary was a breach of the Anti-Corruption Laws.

A. I did not know of this.

Originally Harun wanted a loan from Hock Thai Finance to construct his house. As far as I know the Board of Directors required applicant for loans to provide security. Without security then applicant requires somebody as a guarantor.

At that time he intended my younger brother to be the guarantor. This was against the Bank's regulation. This cannot be done in respect of loans for a sum more than \$5,000/-. 20  
Hock Thai Finance could not grant him the loan. It was considered easier to obtain a loan from our Company.

Q. You say loan can be granted for a sum not more than \$5,000/- without a guarantor.

A. Yes.

Q. Harun was given \$10,000/- without guarantee.

A. Yes.

Q. The agreement was drawn up without further reference to Harun.

A. Agreement was signed by Harun Ariffin himself.

30

Q. Was any explanation given to him that the loan was given by Kong Thai and not Hock Thai.

A. I believe he had received letters and he was aware of the position.

Q. Did the letter explain the position.

A. No. But it made mention of the fact that Security is required.

Q. Did the letter say that Dato Ling Beng Siong was willing to become surety for Harun Ariffin.

In the High Court in Borneo

A. Possibly.

Q. Why was the advance made by Kong Thai Sawmill and not Hock Thai.

No. 7

Notes of Evidence

A. I have already explained.

As far as I know my younger brother is a Director and Directors cannot stand surety for a loan for more than \$5,000/-. It is better to get the loan from our Company without security.

Respondent's Evidence

10

Q. Is it dangerous for official to get a loan from the Company who gets a concession from the Sarawak Government.

Dato Ling Beng Siew

A. Harun Ariffin was not the person responsible for Sarawak Forest Concession. He was the liaison officer between the Federal Government and State Government.

Cross-examination (continued)

I believe Harun had received letters from Hock Thai Finance. He knew about the position. Furthermore my younger brother knows the matter relating to securities. He was in urgent need of funds for building a house. The quickest way is to get a loan from Kong Thai Sawmills. There is no security required.

20

Q. If Beng Siong is willing to become surety then he could get the loan.

A. He cannot as the loan is over \$5,000/-.

Q. Is it in the regulations of Hock Hua Bank.

A. It is the regulation of Bank Negara.

Q. Was this explained to Harun.

A. He knows about it.

In the High  
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Borneo

D.W.2 Ying Ten Ping (on former oath)

XX<sup>n</sup>. I have the file with me.

—  
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Evidence

I have the two letters requesting for the Statement of Accounts. I produce them. (Produced and marked Ex.KTS 44).

Letters dated 29.6.71 and 8.1.72.

—  
Respondent's  
Evidence

Also Letters dated 6.1.72, 5.1.72, 3.1.72 and letter dated 4.1.72.

There are altogether 7 letters.

—  
Ying Ten Ping

REN No questions.

—  
Cross-examination

(Witness is released).

10

Dato Ling  
Beng Siew

D.W.1 Dato Ling Beng Siew (on former oath)

I have discovered that some payment vouchers were signed by Ling Beng Tuang.

—  
Cross-examination  
(continued)

Q. Are they related to SCA.

A. Yes.

(Witness refers to file of Payment Vouchers).

I have been able to trace two vouchers signed by Ling Beng Tuang.

One dated 18.10.68 for \$5,000/-. The other voucher is dated 31.12.68 for \$10,000/-. These are the Payment Vouchers I have been able to find during lunch time.

20

(Mr. J.E. Vinelott: Asks for copies to be made of originals KTS 45).

(COURT: Allows copies to be made accompanied by a Court Official).

(Refers to Minutes of Meeting - produced and marked KTS 46. At page 64. The meeting is dated 19 October 1971).

DW1

These are two separate meetings and two separate resolutions passed.

(COURT: Counsel to supply relevant photostat copies of documents referred to).

(Witness examines Minute book KTS 46).

I can only trace resolution for granting loans.

I cannot find the resolution relating to fixing the common seal.

10 The minutes at page 64 relates to resolution to Harun for the additional loan.

Q. Is there a receipt to the additional loan.

A. Yes. I can produce it.

(Witness produces Receipt for ~~5~~3,000 dated 3.10.67 signed by Inche Harun. KTS 47.

And Voucher and receipt for ~~5~~10,000 dated 3.3.1969 being loan to Harun. KTS 48).

KTS was signed by me approving the loan.

Q. How are the repayments of loans made.

20 A. I am not aware of the repayments. I only signed the voucher.

Q. Did the Company's account show how repayments were made.

A. I have to look at account books. I only know the loan has been paid.

Q. Heavy expenses were incurred because you had to travel extensively.

30 A. Yes. Owing to fluctuation of timber prices we have to travel. Our timber market includes Japan, Taiwan and European countries. I have therefore to travel to find better markets for the timber.

Q. And to extend your interests in Indonesia.

A. Yes. Especially Kalimantan area on preliminary studies

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—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

In the High Court in Borneo

and to approach the Government for forest concessions for Kalimantan Sari.

—

Q. You have joint interests with Borneo Co.

No. 7

A. Yes.

Notes of Evidence

Q. You dealt with Mr. Gould and Mr. Hacking.

—

A. Yes.

Respondent's Evidence

These joint ventures included Kalimantan Sari, Kong Thai Lumber, Sabah Agency, Singapore Moulding, Plywood (abortive), Pahang Concession and Goldhill Lumber, P.T. Indomark (abortive) and Malaysian Air Charter.

Dato Ling Beng Siew

P.T. Amtang Kalimantan has no connection with Kong Thai Sawmill.

10

Cross-examination (continued)

Q. Was it a joint venture with Borneo Company.

A. Yes.

United Singapore Lumber is joint venture.

There are two shares. One in my name and other in Borneo Company at the beginning.

Q. And now.

A. I have to refer to the books.

(Accounts of Companies produced and marked KTS 49).

20

Refers to United Singapore Lumber Accounts at p.5 - Balance Sheet.

<u>Fixed Assets</u>	<u>Costs</u>	<u>Accumulated Depreciation</u>	
Motor Vehicles	₹8,685	₹1,737	₹6,948
Furniture and fittings	1,056	158	898
Office equipment	935	140	795
	<u>10,676</u>	<u>2,035</u>	<u>8,641</u>

Q. What sort of office is United Singapore Lumber.

A. The Company has ₹2/- capital. The Company buys the logs and sawn timber from Indonesian and Malaysia and Singapore and sell them to foreign countries.

30

- |  |   |
|--|---|
| <p>Q. Does it buy all or substantially all the logs produced by Kalimantan Sari.</p>   | <p>In the High Court in Borneo</p> <hr/>    |
| <p>A. Yes substantially all the logs from Kalimantan Sari.</p> <p>United Singapore Lumber then sells it to other buyers.</p> <p>It acts as a broker earning commission.</p>  | <p>No. 7</p> <p>Notes of Evidence</p> <hr/> |
| <p>Q. What sort of office has the Company? .</p>   | <p>Respondent's Evidence</p> <hr/>          |
| <p>10 A. It shares the MSA now SIA building. Space is over 1000 sq. feet. There are two rooms and one large hall for general office. One room is used by Directors. One by the Manager. The hall is occupied by the staff. The hall is shared with other Companies such as Singapore Moulding.</p> | <p>Dato Ling Bend Siew</p> <hr/>            |
| <p>Q. There are how many employees.</p>  | <p>Cross-examination (continued)</p>        |
| <p>A. The Manager can say. Although I am Managing Director I am not concerned with staff. I can find out. I prefer not to guess. The office is twice as large as this Court.</p> <p>I think there are more than 10 desks. The employees work outside the office.</p>                               |   |
| <p>20 Q. Could you find out how many employees there are, during the adjournment.</p>  |   |
| <p>A. Yes.</p>   |   |
| <p>Q. How often do you visit this place.</p>   |   |
| <p>A. Recently, I think at least once a week.</p>  |   |
| <p>Q. Before this.</p>   |   |
| <p>A. I have no records. I think 2 or times a month. I cannot say how long I spent in the office in 1969.</p> <p>If there is business I remain there the whole day. Recently I visited the place more than once a week.</p>  |   |
| <p>30 Q. Is this a minor office.</p>   |   |
| <p>A. We start with \$2/- now we make a profit of about \$400,000 - \$500,000/-.</p>   |   |
| <p>Q. It is not your major business.</p>   |   |

In the High Court in Borneo

A. It is one of our companies.

Refers to Profit and Loss Account Page 8.

No. 7

"Less:

Administrative expenses:	
Salaries	107,932
Directors Remuneration	28,500"

Notes of Evidence

Q. Was the Directors Remuneration paid to you.

Respondent's Evidence

A. I have to look at the accounts.

Dato Ling Beng Siew

I am Managing Director. I receive a salary. I cannot remember the figure. It is more than \$1,000.00.

10

Cross-examination (continued)

Q. Directors Remuneration was \$28,500. How many directors are there.

A. I draw salary over \$1000. I have to check other items.

Q. If it is not your salary - where is it.

A. I cannot give details without reference to the accounts.

Q. You approve the accounts.

A. Yes.

Q. The account shows one director receiving \$28,500.

A. Yes. It could be an error in typewriting.

Q. There are two directors. One is Gould.

20

A. Later on there were more directors.

Q. I am referring to 1969.

A. I must check this.

Refers to Henderson's affidavit marked KTS 50

(Mr. Starforth Hill: For identification)

Refers to page 27.

United Singapore Lumber (Pte) Ltd.

"Incorporated in Singapore on 25th March 1969 with

an authorised capital of \$3,000,000 divided into 1,500,000 "A" Ordinary and 1,500,000 "B" Ordinary shares of \$1 each. At 31st December 1970, the issued share capital was 2 "A" Ordinary shares of \$1 each, fully paid, held one each by Dato Ling Beng Siew and Kenneth Gould. The first Directors were Dato Ling Beng Siew and Kenneth Gould. The latter retired on 5th July 1971 and was replaced by John Norman Hacking."

In the High  
Court in  
Borneo

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Notes of  
Evidence

10 Q. Mr. Henderson say you and Gould were the two directors until 5 July 1971.

A. Since it is in the affidavit I believe it to be true. If that is incorrect I will inform the court.

Respondent's  
Evidence

Q. Either Gould or you receive \$28,500 or both of you received \$28,500.

Dato Ling  
Beng Siew

A. As far as I can remember I draw \$1,400 or \$1,500 a month.

—  
Cross-examination  
(continued)

I will write to the Company.

(Mr. J.E. Vinelott: You can ring up Singapore or send a telegram).

20 Q. Was this remuneration approved by Board of Directors, Kong Thai Sawmill.

A. That is my personal service and reward to me. I do not know why it should be approved by Directors of Kong Thai Sawmill.

Q. You are an expert in the field of timber.

A. I cannot claim to be one.

Q. You have been so far most of your life.

A. Quite a number of years.

Q. Experienced in dealing and extracting timber.

30 A. Yes. In some Companies I am managing director. In some only Director.

Q. Are you familiar with the prices of timber bought and sold in these parts.

A. I know the market situation.



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Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

- Q. In May 1969 - what was the average price of Indonesian Ramin logs Class IV.
- A. I can say the price is not good generally. Average price is \$60 - \$70 per hoppers ton. Malaysian currency. It is free on board.
- Q. What is position in May 1971.
- A. Price was going up. The average was over \$70/- per hoppers ton.
- Q. What about July 1970.
- A. I cannot remember.

10

Time 4.30 p.m.  
Adjourned to 9.00 a.m.  
Sgd: B.T.H. Lee, J.  
14.11.72

Wednesday 15th November, 1972.

Resumption of hearing.  
Parties as before.  
Time 9.00 a.m.

Mr. J.E. Vinelott

I find the originals are addressed to Kong Thai and I have only copies of the letters written by Harun Ariffin.

20

Mr. Starforth Hill

That leaves open the question whether Harun gives evidence by Affidavit or some other way.

D.W.1 DATO LING BENG SIEW (on former oath)

- Q. Will now show you letters from Dato Harun Ariffin dated 1.5.72, 15.5.72 and Statement of Accounts. Refers to Statement of Accounts dated 30.4.72.
- A. This is prepared by our Accountant.
- Q. Who was the original letter dated 1.5.72 addressed to (produced and marked EX. KTS 51).
- A. I do not know.

30

- |    |   |                               |
|----|---|-------------------------------|
| Q. | Could you check from Dato Ling Beng Siong whether the letter was addressed to him.  | In the High Court in Borneo   |
| A. | Yes.  | —                             |
| Q. | Apparently from that letter when Harun wrote it he had not received your statement of account dated 30.4.72.  | No. 7                         |
| A. | I cannot say whether he had received the previous accounts from Kong Thai.  | Notes of Evidence             |
|    | Refers to Letter dated 15.5.72.   | —                             |
|    | (Counsel for Respondent says he has not got the original letter).   | Respondent's Evidence         |
| 10 |   | —                             |
|    | <u>Para 2:</u>  | Dato Ling Beng Siew           |
|    | "As I am not aware of the second loan of <del>£</del> 3,000/-, and the payments which have been debited to my account, I shall be much obliged for some clarification." | Cross-examination (continued) |
| A. | I have not seen this letter.  | —                             |
| Q. | Could you ask your brother whether he has received this letter and search the Company's records as well.  |                               |
| A. | Yes.  |                               |
|    | <u>D.W.1</u>  |                               |
| 20 | Q. Have you anything else apart from KTS 45.  |                               |
| A. | Last night I instructed our Accountant for the chits but the accountant has left the office. His assistant conducted checks. He told me all have been handed in.        |                               |
| Q. | Are there any documents alleging repayments of <del>£</del> 500/- per month.  |                               |
| A. | They are in the statement of accounts dated 30.4.72.  |                               |
| Q. | Are there any documentary evidence showing repayments of <del>£</del> 500/- per month by Dato Harun.  |                               |
| A. | This is the extract of accounts.  |                               |
| 30 | Q. The Statement of Account says payment are made in cash.  |                               |
| A. | That is so according to the statement and as far as I know repayments were made in cash.  |                               |

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Cross-examination  
(continued)

Q. Do you know Dato Harun at this time lived in Kuala Lumpur.

A. I am not sure when he left for Kuala Lumpur.

Q. How many staff has United Singapore Lumber.

A. There are 11 employees excluding out-door staff.

The out-door staff travel to countries like Indonesia. I was unable to get the number of out-door staff. The office staff had left yesterday. I contacted the Manager for the information.

Q. Is the in-door employees more than the out-door staff. 10

A. I cannot remember myself. The manager is responsible for this.

Refers to United Singapore Lumber accounts for 1969 - Page 8.

Q. Have you found out the amount of Directors Remuneration.

A. I myself draw \$1,500/- per month. Mr. Gould is not paid.

Q. That means \$18,000/- for one year.

A. During the beginning of 1968 I was not paid. I was paid in arrears for 19 months. That accounts for \$28,500.

Q. The heading "Profit & Loss Account for the period 25 March 1969 to 31 December 1969" is not correct then. 20

A. The account has been properly prepared. There is nothing wrong.

Q. The Company was incorporated in 1969.

A. Actually we commenced work in 1968. I was paid from commencement of work but not from date of incorporation.

I received a total amount of \$28,500.

Q. The salaries amounted to \$107,932.

A. Yes.

The 1970 accounts were passed by a Board of Directors. 30

Refers to page 8 of Profit & Loss Account.

Q. Four lines from bottom - Directors Remuneration \$18,000/-. Was that paid to you.

In the High Court in Borneo

A. I have to see the accounts. According to calculation of \$1,500/- I think it has been paid to me.

\_\_\_\_\_

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Refers to page 9 of Accounts 1971.

Notes of Evidence

Q. Directors Remuneration \$18,000 and above that Salaries and bonus \$230,933.

A. It is in the account.

\_\_\_\_\_

Respondent's Evidence

Q. To whom was the bonus paid.

10 A. I have to look at the account books. If the law allows information as regards other companies then I will ask for it.

\_\_\_\_\_

Dato Ling Beng Siew

Kong Thai Sawmill owns 48% of the Capital and therefore Kong Thai Sawmill does not own the majority of shares. It is a question whether the company will allow me to examine their accounts.

\_\_\_\_\_

Cross-examination (continued)

Borneo Co. and some others own 52% of the capital.

Refers to Henderson's Report.

20 Q. This report was prepared by Mr. Henderson on instruction of your solicitors.

A. I know this report. He made that report after he had gone through the accounts.

Refers to Mr. Henderson's Affidavit sworn on 8th March, 1972.  
See Para 3:

30 "In September 1971 I was instructed by the solicitors for the Respondents to examine the books and records of Kong Thai Sawmill (Miri) Sendirian Berhad, the abovenamed first Respondent (in this affidavit referred to as "Kong Thai") and of any other companies or firms mentioned in the said affidavits which I might think it necessary to examine to the extent that those companies and firms might be under the control of one or other of the Respondents and to report upon the allegations made in the said affidavits."

(Mr. Starforth Hill: The affidavit has not been read).

Q. Do you accept Mr. Henderson's statements.

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(continued)

A. We employ him to make a report and this is the report.

Refers to Page 27 of Mr. Henderson's Report.

"United Singapore Lumber (Pte.) Limited

Incorporated in Singapore on 25th March 1969 with an authorised capital of ~~£~~3,000,000 divided into 1,500,000 "A" Ordinary and 1,500,000 "B" Ordinary shares of ~~S~~1 each. At 31st December 1970, the issued share capital was 2 "A" Ordinary Shares of ~~S~~1 each, fully paid, held one each by Dato Ling Beng Siew and Kenneth Gould. The first Directors were Dato Ling Beng Siew and Kenneth Gould." 10

A. I accept the record up to time he prepared the report.

Q. Has it changed.

A. There were some changes. Whether it was before or after I cannot tell.

Q. You agree you held one share for Kong Thai Sawmill.

A. Since commencement of Kalimantan Sari we were in joint venture with Borneo Company. Later on we formed this company on the same basis. There is a relationship between Kalimantan Sari and this Company. 20

Kong Thai has the same share in this Company as in Kalimantan Sari.

At that time of incorporation of this company I and Mr. Gould were registered as shareholders. We contributed ~~£~~1/- each as capital. I do not know what is meant by "trust".

Q. You are not prepared to say you are trustee for Kong Thai in respect of that share.

A. I do not know what the term implies.

Q. Do you claim ~~£~~1/- share is your own property. 30

A. I do not claim so.

Q. Will you inquire what changes in United Singapore Lumber since Mr. Henderson made the report.

A. This Company has a good reputation abroad. If this is reported it will affect the company's reputation. Every person has its own reputation.

It should be appreciated we started with \$2/- capital. The questioning of these details is malicious. We have made a profit of about \$400,000 - \$500,000.

(Mr. J.E. Vinelott: D.W.1 can consult his lawyer whether he would claim privilege in respect of the question asked).

Time 10.30 a.m.  
Adjourned for 15 minutes  
Sgd: B.T.H. Lee, J.  
15.11.72

10

Time 11.00 a.m.

D.W.1 DATO LING BENG SIEW (On former oath)

- Q. Are you prepared to make enquiries as regards the questions asked.
- A. I will do my best to make necessary enquiries.
- Q. You say United Singapore Lumber has \$2/- capital.
- A. Yes.
- Q. It was financed at its early stage with a large loan of \$600,000 from Kong Thai.
- A. I have to ascertain the position.

20 Refers to Henderson's Report Page 27.

Q. Last paragraph:

"The records of Kong Thai Sawmill (Miri) Sdn. Berhad show the following balances representing advances on account of United Singapore Lumber -

At 30.9.69	\$606,000
30.9.70	30,026"

- A. That is the record of Mr. Henderson. If there is any discrepancies I will clarify them.
- 30 Q. Do you agree at that time Kong Thai had borrowed \$2,000,000 from Kuala Lumpur and \$1,000,000 from Hock Thai Finance.
- A. That is recorded in accounts.

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Cross-examination  
(continued)

Q. You said "United Singapore Lumber is in same position as Kalimantan Sari".

A. Yes, at the beginning.

Q. Are all shareholders in Kalimantan Sari shareholders in United Singapore Lumber.

A. At the beginning the meeting agreed the shareholders of United Singapore Lumber to be the same shareholders of Kalimantan Sari.

It was the intention of shareholders that United Singapore Lumber were to buy timber from Kalimantan Sari only. 10

It was not decided whether shareholders in Indonesia would share in the Singapore Company.

As share distribution was not solved possibly it was decided to have a share of 2 shares in United Singapore Lumber.

Q. Are all the shareholders in United Singapore Lumber shareholders in Kalimantan Sari.

A. For the first two years the profit was not attractive and for certain unknown reasons the Indonesian Shareholders decided not to join as shareholders in United Singapore Lumber 20

Q. Is it true Kalimantan Sari until recently had made heavy losses.

A. I have to explain. In every sawmill in the first few years there were teething troubles such as expenses. Workers are not familiar with the work. The main reason is the low price for timber.

In 1971 as far as I can remember it shows a profit of over 6 million Indonesian rupias.

This year we expect better results. 30

Q. You agree that United Singapore Lumber has made profits and in recent years greater profit.

A. In the beginning we intended to buy timber from Kalimantan Sari only. We then got the supplies from other suppliers, in Singapore Indonesia and West Malaysia, so it is natural to make better profits.

Refers to Page 7 of United Singapore Lumber Account.

Page 7 - 1969 - Trading profit before Taxation ~~£~~12,535  
 Page 6 - 1970 - Trading profit before Taxation ~~£~~118,176  
 Page 7 - 1971 - Trading profit before Taxation ~~£~~356,075

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Refers to page 24-27 of Henderson's Report P.T. Kalimantan Sari.

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(Mr. J.E. Vinelott: The net profit (1970) loss for the year =  
120,097,136.98 rupias.)

Notes of  
Evidence

(Mr. C. Darvall: That is ~~£~~80,647/- of 150 rupias to ~~£~~1/-  
Malaysian upon conversion).

Respondent's  
Evidence

10 Q. In 1969 and 1970 the accounts show losses on exchange  
of rupias 30,644,232 and rupias 21,814,678 respectively.

Dato Ling  
Beng Siew

A. Yes.

(Mr. J.E. Vinelott: Now we know the profits have increased  
about twice in 1971).

Cross-examination  
(continued)

Q. Is ~~£~~1,500 p.m. salary authorised by Kong Thai Sawmill  
Board.

A. The payment of salaries of Kalimantan Sari is  
authorised by Kalimantan Sari.

Q. Was that disclosed to Kong Thai Sawmill.

20 A. It was often reported in the meetings. My younger  
brother Dato Ling Beng Sung never attended the meeting.  
If he were present he would have got the information.

It is possible that salary of ~~£~~1,500 p.m. was later  
paid by United Singapore Lumber by transfer in the account.

From then I cease to draw my salary from Kalimantan  
Sari. I ceased to draw completely from Kalimantan Sari.

Q. Was that in place of Kalimantan Sari.

A. I will look at the accounts.

(Mr. Starforth Hill: The books are in Indonesia).

30 Q. Have you any personal records of your own.

A. I will check my own accounts.

Q. You agree with Mr. Henderson that timber was sold to  
United Singapore Lumber.



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Cross-examination  
(continued)

A. Not all timber produced by Kalimantan Sari but most.

Q. Why did Kalimantan Sari make such losses in the early years.

A. I have already explained. Workers inexperienced. Low price of timber, etc.

Q. What was the price of timber in July 1970.

A. There was a narrow margin of fluctuation between 1969 and 1970.

Q. There is not very much increase between 1969 and 1970.

A. Yes.

Q. Refers to P.T. Kalimantan Sari Invoices (Produced and marked K.T.S. 52) - Page 2.

A. I do not know where these invoices come from.

Q. (Shown Invoice No. 1/61/KSP 1969. Free on Board \$8.80 U.S.) = Malaysian \$27.00.

A. I cannot answer unless I check my accounts.

Q. See Invoice 5/62/KSP 69. Free on Board U.S. \$10.00 - Malaysian \$30.00. See Invoice 30/70/PTK. F.O.B. U.S. \$16.00 - Malaysian \$48.00. Invoice No. 37/72/PTK - Price US \$12.50 - Malaysian \$37.00.

Could you enquire whether the documents in P.T. Kalimantan Sari or Borneo Co. corresponds with these Invoices.

A. It is unnecessary to check up original invoices. According to Invoices here I can point out that the timber referred to Mixed Ramin - Jenkong and Jelutong - See Invoice 1/61/KSP/1969 dated 27.1.69.

The price of Jenkong and Jelutong is very low. If it is mixed light hard wood the price is low. Mixed Ramin should be read mixed light hard wood. There is no "mixed Ramin".

Q. What about Invoice 5/62/KSP/69 dated 16.6.69. That is Indonesian Ramin Logs Class IV.

A. This is about half the market price. Class IV is low quality timber.

10

20

30

Q. But you said Ramin logs Class IV is \$60.70 per hoppers ton.

A. But I referred to Milling logs.

Q. What is Class IV logs.

A. It is "U" logs.

There is no Class IV Ramin. Only those inexperienced in timber will call it Class IV Ramin. There is no proper term for Sarawak "U" Logs. So they used the word Ramin Class IV. Yesterday I referred to Milling logs.

10 Q. If these are described as Milling Logs Class IV the price is quite different.

A. The prices between Milling Logs and Class IV are different.

Milling logs compared with F.A.Q. would be different again. "F.A.Q" is "Fair Average Quality". "U" logs are bad quality rejected logs.

Q. When I asked you about Ramin Log Class IV, what do you think.

A. I treated it as Milling Logs or F.A.Q.

20 Q. What was average price in 1969 for Milling Logs Ramin Class IV.

A. There is no market price. Any reasonable price is accepted. If not sold the logs will sink.

Q. What is average price of Class IV non-milling logs.

A. I gave the answer just now. It refers to this timber.

I myself as an experienced timber man would say Class IV Ramin are rejected logs and non-milling logs.

30 (COURT: "Non-milling" logs means logs unsuitable for sawing. Some saw millers use this type of timber. They consider it is a waste if they are thrown away. They try their best to get certain parts of the logs sawn. Most sawmillers refuse to buy these type of logs. Non-milling logs are mostly used for broom handles).

Q. You say Class IV Ramin are not milling logs and are rejected logs.

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Cross-examination (continued)

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Cross-examination  
(continued)

- A. Although I have been a long time in timber business I do not claim I am an expert.
- Q. You said yesterday the average price of Indonesian Ramin Class IV logs was \$60-70 per hoppertons.
- A. I was under the impression you referred to milling logs.
- Q. Why did you say Ramin Class IV are non-milling logs.
- A. When I say that and after referring to the invoices I notice the logs are of very poor quality and are treated as rejected ones.

Time 12.30 p.m.

Adjourned to 2.15 p.m.

Sgd: B.T.H. Lee, J.

15.11.72

10

Time 2.15 p.m.

D.W.1 Dato Ling Beng Siew (on former oath)

- Q. Who received the letter dated 15.5.72 from Dato Harun.
- A. My younger brother has seen the letter but is untraced.

(Mr. Starforth Hill: We have looked for original letter but has not been able to trace it).

20

- Q. What about the outside staff in United Singapore Lumber.
- A. After adjournment I put a call to Singapore. I was unable to contact the Manager. I left a message to operator to get me a connection to Singapore at 5.00 p.m.
- Q. Any change in the reduction of shareholding of Kong Thai Sawmill from 50% to 48%.
- A. I told the Court Kong Thai Sawmill owned 48%.
- Q. How did it happen that 50% in Mr. Henderson's Report has become 48%.
- A. As far as I know there were some changes in the capital structure. Whether it is before or after the Report I do not know.

30

The change was brought about by utilising the profits to increase the capital. The capital was increased when we made some profit. We invested the profit into the Company as capital. The capital was therefore increased. I will check and find the details.

(Mr. J.E. Vinelott: At time of Henderson's Report there were two issued shares. One held by Mr. Gould, one held by Dato Ling Beng Siew which he does not claim to belong beneficially to him. That one share is equal to 50% of the issued capital. The 48% is the figure witness gave as the purported share held by or on behalf of Kong Thai Sawmills).

Q. Is the classification of timber required by Indonesian Regulations.

A. There is no Regulations.

Q. Is the classification common in business circles in Malaysia.

A. As far as Sarawak is concerned the export of logs are divided into two classes. One is F.A.Q. and the other milling logs.

Q. Is this classification accepted in Malaysia.

A. It is.

In addition to this classification some timber merchants adopted other classifications such as "U" logs and so on.

Q. Is Class IV Ramin common in Indonesia.

A. At that time most of Indonesian were not experienced in Ramin timber. It was something new. There is no grading regulations of timber in Indonesia. The classification was adopted by some timber merchants for their own convenience. As long as the purchasers understand them they continue to use it.

Q. Is there any regulation in force in Indonesia today.

A. As far as I know they do not have the classification as we have here. They have possibly Grade I or Grade II Ramin. Our Manager knows better.

Q. When I asked you Ramin Class IV logs you understand what I mean.

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Cross-examination  
(continued)

A. I thought you made a mistake. You are not in timber business. I thought you were referring to "milling logs".

(Mr. J.E. Vinelott: Informs Court that the answer at page 265 ought to be:

A. I treated it as milling logs or F.A.Q. (Average)).

(Mr. Starforth Hill: Agrees with this. That is what his note says).

Q. If classification Ramin Class IV is not used in Indonesia and Malaysia then where is it used. 10

A. Most sawmills will not accept these logs. I did not say they are completely unusable.

Q. If description of Ramin Class IV is not commonly used in Indonesia and Malaysia where is it used.

A. This description is used by individual sawmillers. There is no regulation.

Q. If the sawmiller saw the description Ramin Class IV what would they understand that to mean.

A. People will go and see what the logs are.

Q. If they saw the description Indonesian Ramin Class IV what would they understand. 20

A. They will not understand what the logs are, without looking at the timber. The grading of sawmillers are different. They may say it is Class IV. Some may say it is Class III.

Q. Will the Sarawak timber merchants given the description ever take this as referring to as "milling" logs.

A. Without looking at the logs most of them will not accept that.

Q. Suppose a timber merchant accepted the offer of logs under description, Indonesian Ramin Class IV logs, and knew nothing else about the logs would he be surprised if he did not get milling logs. 30

A. If one has not been receiving Indonesian timber before there should be an additional phrase guaranteeing that they are milling logs.

- |       |  |                               |
|-------|--|-------------------------------|
| Q.    | If there is no additional phrase you will not accept it as milling logs.   | In the High Court in Borneo   |
| A.    | He will accept if the purchaser has seen them or he has seen purchases by other merchants. The exporters' reputation and also his past dealings are important.   | —<br>No. 7                    |
|       | Refers to <u>K.T.S. 52 P.T. Kalimantan Sari 1st page.</u>  | Notes of Evidence             |
|       | "RAMIN (S)". (S) mean small. RAMIN (Milling).  | —                             |
|       | It is US\$12.50 = \$37 Malayan Hoppers ton.  | Respondent's Evidence         |
| Q.    | Was it not the market price of Milling logs Class IV.  | —                             |
| 10 A. | I do not understand your question.   | Dato Ling Beng Siew           |
| Q.    | Was \$12.50 US (\$37) Malayan the price of Ramin Class IV.   | —                             |
| A.    | The price is stated in the invoice. It was the price as shown in the Invoices. I am not responsible for all these small details.                                 | Cross-examination (continued) |
| Q.    | There is no distinction in price between Ramin (S) and Ramin (Milling).  |                               |
| A.    | I think our Manager knows this better.   |                               |
| Q.    | As an experienced timber merchant is price of Ramin (S) same as Ramin (Milling).   |                               |
| 20 A. | Milling logs can be small or large. It was mixed together and the price was the average price.   |                               |
| Q.    | They are not mixed and separate tonnage.   |                               |
| A.    | Ramin (S) and Ramin (Milling) are rafted together. They are not rafted separately. Only when they come to classification they are having different descriptions. |                               |
| Q.    | They are rafted separately.  |                               |
| A.    | They are rafted together. It is only in specifications they are described differently.   |                               |
| Q.    | You keep a watch on the prices of timber.  |                               |
| 30 A. | I study the world market in respect of timber. Day to day transactions are left to the Managers such as administration.  |                               |

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Cross-examination  
(continued)

- Q. You keep a watch on movements of timber prices.
- A. My responsibility includes assisting the manager and to see that he gains experience in management and to see that the timber sold by manager were in accordance with the market price.
- Q. Is the loss suffered by Kalimantan Sari and profits made by United Singapore Lumber due to buying the timber of Kalimantan Sari for less than the market price.
- A. If you say this you had to be careful. This is malicious. United Singapore Lumber used to accept timber from Kalimantan Sari and earning commission. 10

If this sort of statement that United Singapore Lumber bought from Kalimantan Sari for below the market price this will cause Kalimantan Sari to make a loss is reported, this will affect the reputation of our Company. This might mislead the Indonesian shareholders.

- Q. It is not the case is it that United Singapore Lumber sells timber for Kalimantan Sari on commission if United Singapore Lumber buys timber from Kalimantan Sari and sells on its own part. 20
- A. Actually we sold timber on behalf of Kalimantan Sari on commission according to tonnage.
- Q. The accounts of United Singapore Lumber for each year sales by United Singapore Lumber shows less the costs of the sales and profit of the deals and not on commission on the persons behalf.
- A. We do not record the commission in the account but the sales.

Say one ton of timber is sold for \$50/- we will pay \$47.50. \$2.50 is treated as a commission. It will be equivalent to \$50/- per ton less 5%. 30

- Q. What proportion of timber sold by United Singapore Lumber came from Kalimantan Sari.
- A. I cannot say without looking at the books. Mostly supplied by Kalimantan Sari. I cannot guess at the percentage supplied.

Refers to United Singapore Lumber 1969 account - last page.

"Sales \$3,129,745

Less:

Cost of sales:

Logs purchased	\$2,608,667	
Shipping and Supervision	25,112	
Freight	<u>281,008</u>	<u>2,914,787</u>

Gross profit 214,958 "

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10 Q. This shows United Singapore Lumber was buying timber and selling timber.

A. Yes.

—  
Dato Ling  
Beng Siew

Q. Where is reference to sales on commission.

A. We have an agreement among the Directors of Kalimantan Sari that United Singapore Lumber sells timber for Kalimantan Sari to earn commission. It is not stated in the invoice nor in the accounts.

—  
Cross-examination  
(continued)

20 We are selling at the price average of 5% higher. We treated it as commission. It was agreed that we should make a commission not in excess of 5%. It is not recorded as commission in invoices and actually meant as such. The word "document" should read "Invoices".

Q. Did you explain this to Mr. Henderson.

A. I seldom meet him. He used to contact our staff. I may have forgotten to tell him.

Refers to Henderson's Report Page 27.

"I have been informed that the bulk of the timber produced is sold to United Singapore Lumber (Pte.) Ltd."

and again 10 lines from bottom:

30 "The Company buys and sells timber and has been in operation since March 1969."

Q. Obviously Mr. Henderson has no knowledge of the commission arrangement.

A. The word "commission" does not appear in the Invoices. Only those who are concerned with this business knows about it. You may either call it commission or profit.



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Cross-examination  
(continued)

Mr. Henderson only looks at account books and the Invoices do not state commission.

Q. You exhibited Mr. Henderson's Report to your affidavit. Did you read it.

A. I did go through the Report. I cannot remember everything.

Q. Is it not important to correct this statement of Mr. Henderson.

A. Everything is in account books which shows clearly the position.

Q. You said the only persons who know about it are the persons concerned with it.

A. I treat the matter as unimportant. I treat commission as profit. I do not know accounts.

Q. Looking at the accounts no one will know it is commission.

A. I do not know accounts. As long as there is income I don't mind if it is commission or profit.

Q. Who knows about this.

A. Mr. Gould knows about it. He is President of Kalimantan Sari.

The Indonesian shareholders also know about this including all the directors in both companies.

Q. Is this in writing.

A. I cannot remember. I will find it.

Q. Is a note of agreement found among the papers of United Singapore Lumber.

A. I don't know. I do not pay attention to small details.

Q. Could you find tomorrow what tonnage was bought and sold by United Lumber.

A. Yes.

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Time 4.20 p.m.

Adjourned to 9.00 a.m. tomorrow.

Sgd. B.T.H. Lee, J.

15.11.72

THURSDAY, 16th November, 1972.

Resumption of hearing.  
Parties as before.  
Time 9.00 a.m.

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

D.W.1 Dato Ling Beng Siew (on former oath)

It will take sometime to get the information from Pontianak. The people in Singapore will take some time to obtain information about staffing from Pontianak.

10 The list in Singapore does not give full details of outdoor staff. I have given instructions to get the information as soon as possible.

In respect of bonuses I have the information bonus and salaries were all paid to the staff. The Director was not paid bonus. Bonus are shared by all the staff.

Q. What is the amount of bonus.

A. I cannot say now. If the question were asked earlier, I would have come with the information. I will contact the Singapore office.

20 The capital of United Singapore Lumber is \$200,000/-. Before 1st April, 1971, the share distribution was the same as P.T. Kalimantan.

(COURT: P.T. Kalimantan is the same company as Kalimantan Sari).

The shareholding of United Singapore Lumber is as follows: Kong Thai Sawmill 48%; Borneo Co. 30%; myself 7%; P.T. Hutan Sari 15%.

I hold 7% in trust for the Senior staff of Kalimantan Sari.

P.T. Hutan Sari represents the Indonesian share holders.

30 Q. Who is the senior staff.

A. They are in the list which I have prepared. There are altogether 6 members of the staff.

(Mr. Starforth Hill: produces Trust Deed - produced and marked Ex. KTS 53).

In the High  
Court in  
Borneo

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Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

- Q. Are the two persons at page 2 of Ex. KTS 53 the beneficiaries of United Singapore Lumber.
- A. I have a separate list of United Singapore Lumber.
- Q. Do you hold in trusts for the persons named in United Singapore Lumber.
- A. Not 7%, but I hold in trust for two persons.
- They are (1) Chen Siong Seng; (2) Ting Ka Sing. These include shareholdings of other senior staff.
- Q. Could you ask your solicitors to prepare a list for the Court.
- (Mr. Starforth Hill: I will prepare a list from Singapore).
- Q. When did you become a trustee for 7% of Kalimantan Sari and United Singapore Lumber.
- A. Since formation of the Companies. We all understood that it was our past practice and the Board of Directors knew about it. 7% of the shareholdings in Kalimantan Sari were held by senior staff. United Singapore Lumber adopted the same practice.
- Q. Was there a resolution of Board of Kong Thai authorising you to settle or dispose of shares of Kalimantan Sari and United Singapore Lumber in favour of other persons.
- A. Whether there was any resolution passed by Kong Thai Sawmill is their business but Kalimantan Sari has their own Board of Directors.
- Q. Is there no resolution of Kong Thai Sawmill.
- A. Kalimantan Sari need not necessarily accept a resolution of Board of Directors of Kong Thai Sawmill.
- Q. Same as United Singapore Lumber.
- A. Yes.
- Q. What was proportion of timber sold by United Singapore Lumber which in 1969 came from P.T. Kalimantan Sari.
- A. I am not familiar with the accounts. But as far as I can ascertain the figure of total sales according to the balance sheet 1969 is ~~£~~3,129,745. The supply from

10

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Kalimantan Sari was ~~£~~3,117,981.41.

There is a small amount from other companies.

(Mr. J.E. Vinelott: Informs Court what witness has referred to as balance sheet is in fact Trading and Loss).

Q. What tonnage is represented by these sales.

A. 34,309,569 tons. That represents the total sales.

Q. Have you discovered whether the commission is in writing.

10 A. On 19.3.1971 a meeting was held in Indonesia. The agreement was executed on 23.11.1971.

Q. Is that the only commission agreement.

A. Yes.

(Mr. Starforth Hill: It is on its way by air)

Q. Is salary received from Kalimantan Sari additional to salary you received from United Singapore Lumber or whether one replaced the other.

A. At the beginning Kong Thai Sawmill paid me salary on behalf of Kalimantan Sari.

20 It was discovered that the Kalimantan Sari had not passed a resolution in respect of this matter, whereas United Singapore Lumber was already incorporated. This item of account was transferred from Kalimantan Sari to United Singapore Lumber.

Q. When is that.

A. In 1969.

Q. After this have been received, any salary from Kalimantan Sari.

A. No as far as I can remember.

Refers to Henderson's Report. See page 27:

30 "Until February, 1970, Dato Ling Beng Siew was paid a salary of ~~£~~1,500 per month by P.T. Kalimantan Sari.

In the High Court in Borneo

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Notes of Evidence

—  
Respondents's Evidence

—  
Dato Ling Beng Siew

—  
Cross-examination (continued)

In the High  
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Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

The amount was actually paid by KTS, and debited to the account of P.T. Kalimantan Sari."

I cannot remember until I make further enquiries. Last night I conducted enquiries from United Singapore Lumber. They cannot give details in respect of Kalimantan Sari.

Q. In early April this year you were asked whether you could produce Forest concession of Kong Thai Sawmill.

(Mr. Starforth Hill: I have it here).

(Mr. J.E. Vinelott: Produced as KTS 54).

Q. You were handed certain Invoices. Do you accept they are copies of the Invoices. 10

A. Before I check I cannot say whether they are the copies.

Q. Do you recognise the signatures.

A. Signed by an Indonesian. I cannot say who signed it.

The prices in the Invoices as shown to me are check prices fixed by Indonesian Government irrespective of grade of Ramin timber. Letters of credit are sent to Indonesia based on check price in respect of all timber exported. Therefore Invoices did not show the sale price. It only shows Government check prices. So the selling price was higher than the check price. The balance would be paid to United Singapore Lumber, Singapore. That money was used to repay loans from Borneo Company and supplies of machinery used in the timber area. 20

At the end of every year the accounts of both Companies would be adjusted.

Q. Invoice price is the price in which Indonesian timber duty is paid.

A. Indonesian Government has a tax called "ATO". This has to be paid before timber is exported. 30

Q. This is tax to be paid.

A. Yes.

Q. The check price is the price fixed by the Government which is not the same thing as the actual price shown on Invoices.

In the High  
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Borneo

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A. As far as I know in Letter of Credit with Indonesian Government the price of exported timber must follow check prices fixed by the Government. So I believe the price in the Invoice is the same as the check price.

No. 7

Q. The price shown in Letter of Credit is that shown in the Invoice and that this is the price of which export duty is covered.

Notes of  
Evidence

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A. I believe so but I do not know the full details.

Respondent's  
Evidence

---

Q. Are you a shareholder in P.T. Antung Kalimantan Sari.

10 A. Yes.

That is log extraction company.

Dato Ling  
Beng Siew

---

Q. Has that company tractors, machinery, equipment etc. bought by Kong Thai Sawmill.

Cross-examination  
(continued)

A. As far as I know Antung Kalimantan Sari used to hire Tug boats from Kong Thai Sawmill. I am not sure whether logging trucks were sold to Antung Kalimantan Sari. I have to check the account books.

Refers to Singapore Mouldings.

Q. That Company built a factory in 1969.

20 A. Yes. Sometime around that period.

Q. It made a heavy loss in its first two years.

A. Moulding business is a complicated business.

First the technical side is a problem. So is the question of marketing. All companies of this type cannot make profit at the beginning. Similarly is the case of Borneo Company. At the early stage they lose nearly the entire capital in the early years. After that the profits came to more than 1 or 2 million dollars profit a year.

So Singapore Moulding is not an exception.

30 Q. Is Singapore Moulding still operating.

A. Yes. We have fixed additional machinery.

Q. It is still making a loss.

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Respondent's Evidence

Dato Ling Beng Siew

Cross-examination (continued)

A. We believe the financial situation will change after the new machinery is in operation.

Q. At the moment you are still making a loss.

A. Yes.

Refers to Singapore Moulding's Statement of Accounts

(Mr. Starforth Hill: Informs Court this is Ex. 119 of the big bundle).

(Mr. J.E. Vinelott: See page 7).

Profit & Loss Account. Deficit balance.

Q. If stocks figure of \$688,840 are over-valued (when it is not) the Company would be insolvent because liabilities are in excess of Assets.

10

A. I am not good at accounts. By looking at accounts I do not understand. The interpretation is not very clear to me.

(Interpreter: I am not a qualified accountant).

(Mr. J.E. Vinelott: Will deal with this later).

Time 10.30 a.m.  
Adjourned for 15 minutes.  
Sgd: B.T.H. Lee, J.  
16.11.72

20

Mr. Starforth Hill

Mr. Lee Swee Hock is here for two days already. Will read his affidavit this afternoon and subject to Court's permission to be cross-examined.

Mr. J.E. Vinelott

No objection.

D.W.1 Dato Ling Beng Siew (On former oath).

Refers to page 7 of Singapore Mouldings.

Q. Half of the shares are held by Borneo Company and half by Kong Thai Sawmill (Refers to page 29 of Henderson's Report).

30

A. It is in the accounts.

Q. If the assets is \$675,317 and stocks are valued at \$688,840, then if the stocks is valueless then the Company is insolvent.

A. I don't understand.

(Mr. Starforth Hill: This is purely mathematics).

(Mr. J.E. Vinelott: Turn to page 9 and page 6 (Page 140 of Original Exhibit)).

10

"In the absence of proper stock-taking procedures and adequate stock records, we are unable to verify to our satisfaction the stock of raw materials amounting to \$407,059 at the balance sheet date."

Q. Is it the case that there is an outstanding claim against this company for something over 1¼ million dollars from a United States buyer.

A. I cannot follow you.

20

As far as I can remember there was an American Company which placed an order for the purchase of our goods. Our goods were ready but that Company did not take delivery of the goods. We received an explanation from the Company that their customer was unable to pay for the goods they ordered and that American Company requested us to hold on the goods ordered by them. We had instructed our Counsel to pursue the matter. The matter is still in the hands of our legal Counsel.

Q. Are the American Company taking action against you in respect of specification and quality.

30

A. It is always the case for a newly formed Moulding Company facing such claims due to lack of qualified technicians and which affect the quality of our products. It is possible that the buyer will make a claim.

Q. Have they made the claim.

A. There was a decision by the Board of Directors. I cannot remember the details.

Q. You have heard a possible claim by the buyers - 1¼ million Malaysian dollars.

A. As far as I can remember we are claiming a large sum

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Notes of  
Evidence

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Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)



In the High  
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Borneo

from them. There was another buyer who is  
claiming against us in respect of quality.

Q. How much is the claim for.

No. 7

A. I have to look up the correspondence.

Notes of  
Evidence

Refers to Page 8 of Singapore Moulding. (Page 142 of  
Original of Exhibits).

Respondent's  
Evidence

Q. Who were the Directors emoluments paid in the 2 years.  
1970 - \$13,835. In 1971 - \$24,000.

Dato Ling  
Beng Siew

A. I remember there was a decision made by the shareholders  
to pay me \$2,000 per month. It is possible the emoluments 10  
in 1970 and 1971 were paid to me. For detailed  
information I have to refer to the books.

Cross-examination  
(continued)

Q. Was there a resolution by shareholders of Singapore  
Moulding.

A. That is what I can remember.

Q. At that meeting of shareholders did you represent  
Kong Thai Sawmill.

A. Kong Thai Sawmill was a shareholder. I was elected  
Managing Director (witness refers to record).

Q. If you are in doubt you can give the information after 20  
the adjournment.

A. Yes.

Refers to Burglary in Sibu S.C.A. Office.

(Mr. J.E. Vinelott: I have two more letters to be attached  
to the bundle of documents. It is now an ordinary exhibit.)

Mr. Starforth-Hill: With additional two correspondence  
agree they can now be marked without formal proof of  
documents.

There are now 5 letters. Produced and marked Ex. KTS 41.

Mr. J.E. Vinelott: There is another agreed Exhibit KTS 55. 30  
Letter with Annexure from Police).

Refers to KTS 55 - Complaint by Yii Suk Mui.

Q. There is no suggestion he was reporting it on your

instruction or that he entertained any fear that they were taken by subversive elements.

A. The report was lodged by him not in my presence. I do not know what report was made.

Q. He reported this to prevent any allegation against himself.

A. That is what he said.

Refers to Chalfont Investments.

Page 20 and 20A of Mr. Henderson's Report.

In the High Court in Borneo

\_\_\_\_\_

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Notes of Evidence

\_\_\_\_\_

Respondent's Evidence

\_\_\_\_\_

Dato Ling Beng Siew

\_\_\_\_\_

Cross-examination (continued)

10 Q. Inchcape (H.K.) is part of same group of Companies as Borneo Company.

A. Looking at it it seems so. For details I have to look at the books.

Q. Mr. K. Gould was the person whom you dealt with in respect of Borneo Co. and Chalfont.

A. I remember the business of this Company is in the hands of another man in Hong Kong.

There is another representative in the Company under Mr. Gould.

20 Q. Who is chairman of Chalfont Investments Ltd.

A. I have so many companies I cannot remember who is Chairman.  
I am Director of Chalfont and Glendale.

Q. At date of Mr. Henderson's report were you Director of Chalfont.

A. I was Director of Chalfont in 1969.

Q. Were you Director in Glendale.

A. I have to check.

(Witness looks at page 20A).

30 I now say I am.

I agree generally with the Report of Henderson. I cannot give a definite answer. Some portion of the affidavit

In the High Court in Borneo

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Notes of Evidence

Respondent's Evidence

Dato Ling Beng Siew

Cross-examination (continued)

were not correct. For instance Chalfont and Glendale are only contractors. No licence has ever been issued to these two companies. So far as I can remember Chalfont is the contractor for Pan Nusantara. Glendale is contractor for U.I.F. United Investment. I do not know what "F" stands for. This is controlled by Peter Wong. At the early stage he was shareholder of Glendale.

Horseford Nominees Ltd. is a Hong Kong Company. Is a shareholder in Glendale. I do not know the details of Horseford Nominees.

Q. Any financial interests in U.I.F.

A. I have none. Not even a cent. My two younger brothers allege that I have interests in this. This cause other brothers and Ling Beng Tuang a lot of misunderstanding. Possibly this is a malicious intention. I do not know why.

Time 12.30 p.m.  
Adjourned 2.15 p.m.  
Sgd: B.T.H. Lee, J.

Time 2.15 p.m.

10

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Mr. Starforth Hill

Reads affidavit of Lee Swee Hock dated 16.6.72.  
Hon. Treasurer of S.C.A.

Lee Swee Hock

D.W.3 LEE SWEE HOCK. Affirmed states in English.  
(Mr. D. Dawson produces constitution of S.C.A.)

Examination

Refers to page 2 of Constitution.

Clause 7:

"A Ward Branch shall elect the following office-bearers who shall form the Ward Working Committee:-

- (a) - (c) .....
- (d) An Honorary Secretary and an Assistant Secretary;
- (e) - (f) ....."

30

Page 3 - District Assembly

Clause 12(c) provides for an Honorary Treasurer.

(Mr. Starforth Hill: The Constitution is in Chinese and I have just received the English version).

In the High Court in Borneo

Page 4 - Divisional Assembly

Clause 16(c) provides for an Honorary Treasurer.

—  
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Page 5 - Central General Assembly

Notes of Evidence

Clause 21(c) provides for an Honorary Treasurer-General.

I am only an Honorary Treasurer Headquarters not Honorary Treasurer-General.

—  
Respondent's Evidence

10 Q. Is there such an appointment as Honorary Treasurer-General.

—  
Lee Swee Hock

A. I am unable to say. As far as I am concerned there is no Honorary Treasurer-General.

—  
Examination

Page 7 - Clause 33. Payment of subscription

All monies goes to Secretariat. The paid Executive Secretary who is assisting the Secretary-General of S.C.A. is responsible for the business of S.C.A. Kuching.

If there is any money I will check money with Receipt books.

Q. You check money from the whole of Sarawak.

20 A. That is not within my province. Although Clause 33 says that all subscriptions are collected in the Secretariat in practice this is not followed.

The Headquarters only deals with its own subscriptions. There is only one Secretary-General for S.C.A. In 1st Division Headquarters there is a paid Executive Secretary to assist the Secretary General.

Apart from the Honorary Treasurer there is no other Treasurer-General.

Clause 32 - Subscriptions includes donations by members.

30 The Secretary-General of S.C.A. is Chen Ko Ming. He is not in Court. I was not in Court yesterday. Chen Ko Ming comes to Sibü frequently.

Refers to Page 12.

In the High Court in Borneo

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Respondent's Evidence

Lee Swee Hock

Examination

"(c) Honorary Treasurer-General and Honorary Treasurer."

Q. The duty of Honorary Treasurer-General is to receive subscription donations, funds paid, and to pay them into appropriate banking account etc. and does any one carry out the duties.

A. There is no Honorary Treasurer-General.

If the funds comes to 1st Division I receive it but other Division receives their funds of their own Division.

That is the request of the Assistant Registrar of Societies. 10

It may be in the Constitution but we do not follow it in practice.

Q. There is a breach of the Constitution.

A. There is no breach. We send our accounts to central working Committee. The Wards send their accounts to the District Treasurer.

The District Treasurer or Treasurers in other Division had to submit their accounts to Central Committee. Whether they have done so is not my business. I have carried out my part of the duty.

20

Q. The Central Committee has the accounts.

A. I cannot tell.

Sibu Branch is in the Third Division. I do not know who is the Treasurer of the Third Division. I am member of S.C.A. I am only responsible for the 1st Division.

Refers to Affidavit Page 2:

"Para 4: I submit annually the Statement of Accounts of the Association to the Registrar of Societies as being prepared by the Executive Secretary of the Association; and though the same does not include the other Divisions' Accounts, the Registrar of the Societies nevertheless accepts it without requiring further addition or alteration. I have made clear to the Registrar of Societies before my submission of the annual account that it only relates to the Headquarters of the First Division."

30

Q. Why do you want to make it clear.

A We wanted his advice. My paid Executive Secretary told me. I have signed so I am responsible.

In the High Court in Borneo

My paid executive secretary dealt with the Registrar of Societies.

—  
No. 7

The accounts are headed Sarawak Chinese Association. It is signed by Mr. Chen Ko Ming as Secretary-General. I signed as Honorary Treasurer.

Notes of Evidence

There is a seal on it "S.C.A. HQ".

—  
Respondent's Evidence

10

Q. Is there anything to show that they relate only to a Division of S.C.A.

A. It is from Headquarters. My signature indicates it came from Headquarters.

—  
Lee Swee Hock

The Central Committee may be anywhere, e.g. 3rd Division, Bintulu, etc. Headquarters is in Kuching.

—  
Examination

Even Assistant Registrar of Societies has accepted it is coming from Kuching.

XX<sup>n</sup>.

Cross-examination

Refers to Rule 32.

20

That relates to subscription paid by members and not by non-members.

Page 7. Special Donations.

Q. Do you know when such a request was made.

A. Once we had an occasion to contribute towards wages of staff.

Refers to Rule 123.

Permit creation of Special Funds.

(Witness released).

In the High Court in Borneo

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Notes of Evidence

Respondent's Evidence

Dato Ling Beng Siew

Cross-examination (continued)

D.W.1 Dato Ling Beng Siew (on former oath)

Q. Before September 1969 there were three Indonesian concessions held by PANUS ANTARA, JAMAKER, PER HUTARA given to U.I.F. Singapore.

A. I have enquired about Chalfont and Glendale. I am not qualified to answer the question.

After 1971 I am no longer a shareholder nor a Director of Chalfont and Glendale.

Q. I am asking about 1969.

A. I have to say I am no longer Director. I cannot make a statement in Court regarding these companies. 10

Because these two companies are having legal actions against the Indonesian Concessionaire. At the same time Kong Thai Sawmill have no investments in these two companies.

If the cross-examination continues in this manner I am afraid this may affect the present legal actions and reflect on the parties concerned.

Refers to Glendale Balance Sheet page 2 of 1970

Issued and fully paid	HK\$600,000.00	
Profit & Loss Appropriation Account	2,097,979.84	20

Q. When these accounts were signed were you a Director?

A. I was. I signed as Director.

Q. By far the largest form of loan is due to Sabah Agency - \$596,981.02.

A. This is nothing strange. Sabah Agency are the contractors. When they consigned the timber and send the invoices to Chalfont and Glendale they have to accept the invoices and credited to their accounts. Then they have to apply to bank for remittances to the Sabah Agencies. This figures appearing in current account is common. 30

Q. What about the amount due to Kong Thai Plywood (Pte) Ltd. - \$2,166.08.

A. This is a matter of \$1,000 or \$2,000. This is not worth while entering into.

Q. What is it.

A. I cannot say without looking at accounts.

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Refers to Page 5 Glendale Investments.

Sabah Agency Sdn. Bhd.

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Q. That is payment to Sabah Agency for extracting logs  
\$4,140,802.76.

Notes of  
Evidence

A. According to the accounts yes.

Respondent's  
Evidence

Q. What is Royalty payments to Forest Concessionaire  
HK\$2,857,315.94.

—  
Dato Ling  
Beng Siew

10 A. This is what we call premium. It is possibly royalty  
or premium. This payment is made to U.I.F. not to  
Government.

Q. Does this payment represent a payment to U.I.F. for the  
right to work the concession.

—  
Cross-examination  
(continued)

A. It is all contained in the agreement. The agreement  
is with U.I.F. and Glendale.

(Mr. J.E. Vinelott: I have not seen the agreement).

Q. You are willing to disclose the agreement.

A. It is not in my possession.

20 (Mr. Starforth Hill: The figures given in the accounts  
are all Hong Kong figures).

Refers to Page 2 of Glendale 1969.

Chalfont Investment Ltd. H.K. \$3,045,308.32.

Q. Is this Company wholly formed by a loan from Chalfont  
and hire purchase loan.

A. There are no details in the accounts. Whether it is  
H/P or not I cannot tell.

This was signed two years ago. I cannot remember  
now.



In the High  
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Borneo

Page 4

Sabah Agency Sdn. Bhd.

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Notes of  
Evidence

Extraction costs of timber HK\$1,441,153.81  
Compensation to contractor for  
suspension of work 200,000.00

Respondent's  
Evidence

Glendale according to contract price allowed the Sabah Agency to extract timber in the concession.

The Sabah Agency are contractors for Glendale to extract timber from the forest concession according to correct market contract price.

Dato Ling  
Beng Siew

Q. Kong Thai Lumber is also a contractor.

A. No. They are contractors for Chalfont.

Q. But the next item shows Kong Thai Lumber Sdn. Bhd. Extraction costs of timber 96,792.50.

A. I do not understand this.

Refers to Chalfont accounts.

Page 2 (1959) Accountants

Bank overdraft HK\$4,562,158.94  
and on right hand side,  
Glendale Investment Ltd. HK\$3,045,803.34

Q. What happens is Chalfont borrowed money from bank and lent the moneys to Glendale.

A. As I am no longer a Director of the Company it is no good for me to disclose the question of overdraft from Company. This if reported will affect the Company's reputation. The accounts are clear.

Q. If you object to that question I will not ask it.

A. The accounts have been shown in Balance Sheet.

Q. Would I be justified to say that the loan is an interest free loan.

(Mr. Starforth Hill: What is the relevance).

A. Looking at the statement I cannot say.

10

20

30

Page 4 of 1969 accounts.

Sabah Agency

Extraction costs

HK\$1078,048.21

In the High  
Court in  
Borneo

Kong Thai Lumber Sdn.

Extraction Costs of timber

HK\$ 773,831.71

—  
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Notes of  
Evidence

Kong Thai Lumber does the extraction for Chalfont and Sabah Agency for Glendale.

Q. It looks as though Sabah Agency and Kong Thai Lumber are extracting timber for Chalfont.

Respondent's  
Evidence

10 A. I do not know the details. The forest concession where Kong Thai Lumber and Sabah Agency work were adjacent to each other.

—  
Dato Ling  
Beng Siew

Q. Is payment to Jamaker the same as the royalty.

—  
Cross-examination  
(continued)

A. Same nature.

Refers to Page 5 of 1970.

P.T. Pan Hutan Husantara.

Q. This is payment of royalty to a different concessionaire.

A. As far as I know it is the same concession.

20 In 1969 the forest concession was under the charge of Jamaker. Until 1970 it was transferred to P.T. Pan Hutan Nusanantara.

Time 4.30 p.m.

Adjourned to 9.00 a.m.

Sgd: B.T.H. Lee, J.

16.11.72

FRIDAY, 17th NOVEMBER, 1972.

Resumption of hearing.

Parties as before.

Time 9.00 a.m.

30 (Mr. Starforth Hill: Produces present shareholding in United Singapore Lumber).

D.W.1 Dato Ling Beng Siew (on former oath)

Q. Have you the information about Bonus in United Singapore Lumber.

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Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

- A. I have informed Singapore to prepare a list.
- Q. And agreement between United Singapore Lumber and Kalimantan Sari.
- A. I have a copy of the agreement.
- Q. You were going to check Mr. Henderson's statement that you received salary from Kalimantan Sari up to 1970.
- A. The Board of Directors of P.T. Kalimantan Sari had no resolution passed in respect of this matter. My salary was paid by Kong Thai Sawmill and charged against Kalimantan Sari's account. As Kalimantan Sari has no authority to pay this salary the account was transferred to United Singapore Lumber. This is my recollection. I will enquire about this. 10
- Q. You were going to produce minutes of the meetings of United Singapore Lumber.
- A. You have not asked for this yesterday.
- Q. Can you give minutes of Singapore Moulding.
- A. I sent a message to Singapore for the information yesterday.
- Q. When was share capital of United Singapore Lumber increased. Did Mr. Gould and you alter the shareholding. 20
- (Mr. Starforth Hill: I am instructed that share allotments of ~~£~~199,998 which together with 2 subscribers shares came to ~~£~~200,000. The date is 21st February, 1972. Dividend was declared).
- Q. Who are Horseford Nominees.
- A. I am no longer a Director having sold my shares. I do not wish to talk about Companies where I am no longer a Director.
- This may affect their legal proceedings between the parties. I am not prepared to give the answers. 30
- Q. What happened to your shares in Chalfont and Glendale.
- A. I sold my shares in 1971. I cannot remember the month.
- Q. Is it before or after proceedings started.
- A. Before I think.

Mr. Henderson does not know about this. These are Hong Kong Companies.

Q. But Mr. Henderson said in evidence you were shareholders in Chalfont and Glendale on your instructions.

(Mr. Starforth Hill: Mr. Henderson has not given evidence).

Q. I mean report.

A. I only ask him to assist me to go through the accounts. I did not study the Report properly.

Q. You saw his report before you prepared the affidavit.

10 A. I cannot remember although I have read it. I have found some mistakes. I found a clause to the effect that Chalfont and Glendale had concessions in Indonesia.

Q. They had sub-concession.

A. No.

Q. They paid royalty tax.

A. Yes. They served as a contractor.

Q. Was sale of your shares before or after 21st April, 1971.

A. I cannot remember.

Q. Can you find out the date.

20 A. I have to enquire from Hong Kong. I have no record here.

Q. Could you check the date of sale, person sold and the amount of sale.

A. Yes.

Q. Your affidavit exhibited two documents - R.28 and 29. Agreement between Chalfont Investments and Kong Thai Lumber. Agreement between Glendale Investment and Sabah Agency.

30 Refers to Corrective Affidavit of Ling Beng Siew dated 19.4.72. Para 2 :

"Since the date of the said exhibits R 28 and R 29

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—  
Cross-examination (continued)

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Beng Siew

—  
Cross-examination  
(continued)

amendments to the said agreements have been made between the parties thereto and there are now produced and shown to me marked R 30 and R 31 the current contracts which are now operative in place of exhibits R 28 and R 29".

Q. Were the agreements signed by you on behalf of Kong Thai Lumber.

A. Yes.

Q. Other agreements Sabah Agency and Glendale are also signed by you on behalf of Sabah Agencies. Who signed on behalf of Glendale.

10

A. Mr. Gould.

Q. Earlier agreement Chalfont and Kong Thai Lumber who signs.

A. Mr. Gould signed for Chalfont.

Q. The supplemental agreements were signed by the same persons.

A. I signed for Sabah Agencies and Kong Thai Lumber and Mr. Gould for Chalfont and Glendale.

Refers to Mr. Henderson's Report.

20

Page 21 - Sabah Agency Sdn. Berhad.

(Mr. J.E. Vinelott: reads Page 21 and 22).

I have to check and if there is anything incorrect I will inform the Court. Ling Lee Soon mentioned as Director is my son.

Q. The 'other interested persons' mentioned in line 4 of Page 22 are Sabah Agencies.

A. I cannot say whether it is Chalfont or Peter Wong.

Q. Was the Borneo Company another interested party.

A. Yes.

30

Q. After you have checked may we take it you agree with the figures.

A. At present I agree with figures mentioned but I must check.

(Mr. J.E. Vinelott: When I ask the witness whether he agrees with the Statement of Mr. Henderson I accept that any expression of agreement by the witness will be subject to subsequent correction in cross-examination or re-examination, when he has had an opportunity of checking his own records.

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Mr. Starforth Hill: This only refers to Kong Thai Lumber and Sabah Agencies. This is unusual way of dealing. Until he says he agrees it cannot be taken as having been agreed.)

—  
Respondents  
Evidence

10 Q. Do you accept these figures.

A. Should I find any discrepancies I will tell the Court.

"I am satisfied that during 1969 and part of 1970 Dato Ling Beng Siew was paid a salary of \$1,800 per month by Sabah Agency. Up to February, 1970, the amount was actually paid to Dato Ling Beng Siew by KTS. and debited to Sabah Agency Account."

—  
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—  
Cross-examination  
(continued)

This is correct.

20 "Sabah Agency began its contracting work in 1969 and, in the period ended 31st December 1969 it made a loss of \$252,934. During the year ended 31st December 1970 it made a profit of \$636,671 before tax. After providing for taxation and writing off pre-production expenses and the loss brought forward, there was a balance of \$49,299 from which a dividend of 7½% less tax amounting to \$40,500, was paid leaving \$8,799 to be carried forward."

(Mr. Starforth Hill: The figures are given why waste the time of Court.)

30 D.W.1: That is figure shown in Report. If there is any discrepancies I will tell the Court.

(Mr. J.E. Vinelott: The figure is \$130,452 from the account.)

Q. The only business of Sabah Agency is extracting timber for Glendale.

A. Yes.

"Kong Thai Lumber Sdn. Berhad.

Incorporated in Sabah on 28th December, 1968 with authorised share capital of \$300,000 divided into

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Cross-examination (continued)

shares \$100 each. On 15th April 1970 the authorised capital was increased to \$1,000,000. At 31st December 1970, the issued share capital was \$900,000, being 9,000 shares of \$100 each.

The Directors are -

Dato Ling Beng Siew:	Named in the Articles
Dato Ting Lik Hung:	- do -
Kenneth Gould:	Appointed 23.6.71
John Normal Hacking:	- do -
Ling Lee Soon:	- do -

10

- A. I will find out if there are any discrepancies.
- Q. The share is held by you as trustee.
- A. Yes.

"The remarks above regarding advances made to Sabah Agency apply equally well to the advance made for the account of Kong Thai Lumber. At the various balance dates the amounts outstanding were -

30.9.69	\$344,368.03
30.9.70	\$341,436.91

At 31st March 1970, interest at 8% per annum was taken up on all the advances made to Kong Thai Lumber Sdn. Bhd. up to the 31st December 1969 and at 30th September 1971 on balance outstanding up to that date."

20

- A. Subject to checking I will agree to that.

"I am satisfied that during 1969 and part of 1970 Dato Ling Beng Siew was paid a salary of \$1,800 per month by Kong Thai Lumber. Only \$3,600 is charged as Director's salary in the Accounts for the year ended 31st December 1970 so that the salary must have been paid in respect of January and February only. Up to February 1970, the amount was actually paid by Kong Thai Sawmill (Miri) Sdn. Berhad and debited to Kong Thai Lumber account."

30

- A. Subject to checking I will agree with that.

"Kong Thai Lumber began its contracting work in 1969 and, in the period ended 31st December 1969 made a loss of \$86,666 after writing off preliminary expenses. During the year ended 31st December 1970, it made a profit before tax of \$216,796. After providing for

taxation and writing off the loss brought forward, there was a balance of \$45,130 from which a dividend of 7½% less tax, amounting to \$40,500, was paid leaving \$4,630 to be carried forward."

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A. Subject to checking.

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(Mr. J.E. Vinelott: The corresponding figure for 1971 is \$183,918):

Notes of Evidence

(Mr. Starforth Hill: Both figures given by Counsel for Applicant are correct.)

—  
Respondent's Evidence

10 Q. Do you agree that Kong Thai Lumber as contractor extract timber for Chalfont.

—  
Dato Ling Beng Siew

A. Yes as sub-contractor.

Q. The only business of Glendale was exploiting a concession and only business of Sabah Agency was extracting timber for Glendale for that concession.

—  
Cross-examination (continued)

A. You have forgotten something. Chalfont and Glendale are contractors for Indonesia Concessionaire. Sabah Agency and Kong Thai Lumber are the sub-contractors extracting timber for the contractors - Chalfont and Glendale.

20

Q. You say Glendale was a contractor for Indonesia Concessionaire.

A. Yes.

Q. And Sabah was sub-contractor.

A. Yes.

Q. The only business of Sabah is sub-contractor and Glendale is contractor.

A. Yes but the nature of contract are different.

30

Q. As far as I can remember the only business of Glendale is contractor to Indonesia Concessionaire.

A. Yes but these contracts are of a different nature.

Q. What is the difference

A. The contract between Chalfont, Glendale and Indonesia Concessionaire is that Indonesia Concessionaire receive premium from the contractors.



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Cross-examination  
(continued)

At the time of export of timber it will be in the names of Indonesian Concessionaire. All the necessary export documents are in the name of Indonesian Concessionaire. Chalfont and Glendale have to supply expensive machinery equipment.

Sabah Agency is responsible for labour and receive payments according to tonnage.

Q. Do you agree Glendale had no other business except as contractor to Indonesian Concessionaire.

A. It is not a question whether I agree or not. This is timber business which is quite different. 10

Chalfont and Glendale are contractors. They also buy and sell timber and they charter vessels.

Q. Is this something they do to work the concession.

A. Yes.

Q. The charter vessels are used to ship the timber away from the concession.

A. Yes.

Q. The work of Glendale is shipping timber from concession, selling it and supplying machinery all for the purpose of the concession. 20

A. Generally yes.

(Mr. Starforth Hill: Wants it recorded - witness asks Counsel for applicant to repeat the question as he is confused. Counsel declined to do so.)

(Mr. J.E. Vinelott: Counsel invites witness to add anything which he wishes.

(Mr. Starforth Hill: Witness then began by asking Counsel to repeat the question.)

D.W.1: Is Counsel referring to Chalfont or Glendale. 30  
(Mr. J.E. Vinelott: Glendale).

Glendale has also a sub-contract with Sabah Agency for extracting timber. Glendale pay sub-contract fee according to tonnage of timber extracted. Glendale has to supply a lot of capital such as issuing letters of credit to the

Indonesian timber concessionnaires to buy the timber log because forest concession are theirs including logs. That is what I remember.

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Q. The position is the same with Chalfont and Kong Thai Lumber.

—  
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A. Yes.

Notes of Evidence

Q. Chalfont are contractors for Indonesian Concessionaires. Kong Thai Lumber are sub-contractors for Chalfont.

—  
Respondent's Evidence

10 A. Yes. Again the nature of sub-contract and contract is different.

The sub-contractor incur no risks whereas Chalfont and Glendale more risky.

—  
Dato Ling Beng Siew

Kong Thai Lumber and Sabah Agency incur no risks.

—  
Cross-examination (continued)

Q. Chalfont borrowed from a bank a sum of 4½ million dollars and lent 3 million dollars to Glendale.

A. I am no longer a Director and I refuse to answer that.

Q. Does that appear in the accounts.

A. When this is reported it will affect the reputation of the Companies.

20 Q. Why is this malicious.

A. Since it is in the accounts it is clear.

Q. Why are you so anxious about it.

A. This affects the Company's reputation because a company borrows money. I have no more share in the Company.

Q. What is there improper about it.

A. This question has been put to me again and again.

(Mr. Starforth Hill: There is nothing improper about it. It affects reputation of Company).

30 D.W.1: According to our Chinese customs, Company borrowing money is a confidential matter. Lending money would be different matter. Counsel has asked the question repeatedly. It is I feel malicious.

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Dato Ling Beng Siew

Cross-examination (continued)

Q. I have asked the question and I have not got the answer. Why did Chalfont borrow the money and lent it to Glendale, instead of Glendale borrowing this money.

A. I cannot remember as this happened a long time ago.

Q. Can you remember whether the loan from Chalfont to Glendale was free of interest.

A. I cannot remember.

Q. Will you accept that there is no reference to interest on the account. If it is interest free the effect of the loan was to increase the profits of Glendale at expense of Chalfont.

10

A. I cannot give my opinion. I cannot explain. I have not made enquiries.

Q. Why do you say my questions are inspired by malice.

A. I think it is better not to continue with this question.

Q. Your Counsel has said that it was malicious when cross-examining applicant.

(Mr. Starforth Hill: I have not said so).

Q. It is part of your Respondent's case it is malicious.

20

A. I told Court according to Chinese customs it is no good to be owing money.

I am no longer a shareholder of this Company.

Time 11.00 a.m.  
Adjourned for 30 minutes.  
Sgd: B.T.H. Lee, J.  
17.11.72

Time 11.30 a.m.

D.W.1 Dato Ling Beng Siew (on former oath)

Q. Do you agree in 1970 and 1971 and 1972 costs of living, equipment, expenses, etc. has been rising.

30

A. In certain regions cost of living has increased year after year.

Q. No one has found a way of stopping it.

A. Generally yes.

Q. Wages and prices tended to go up.

A. Yes.

Q. Over the years the costs of extracting timber has gone up.

A. Yes. In principle.

Refers to R.29 of Dato Ling Beng Siew's Affidavit.  
Agreement between Glendale and Sabah Agency.

10 Q. You agree Glendale has right to exploit and extract timber from timber concessions in Kalimantan.

A. I represented Sabah Agency.

This agreement may have been drafted on instructions by Mr. Gould or a lawyer. I only read through the agreement and I do not understand legal terms. I paid attention to figures and our responsibility.

Q. Do you agree with the statement I read out i.e. exploiting and extracting timber.

A. I agree it is part of the agreement.

20 Q. Do you agree Glendale has right to exploit and extract timber.

A. I agree.

Q. You said Glendale was a contractor but here the agreement says Glendale has a right to exploit and extract timber.

A. Glendale has no forest licence in Kalimantan. The licence refers to concession licence of Indonesians.

(Mr. J.E. Vinelott: The answer is the licence is not the licence held by Glendale).

Clause 2 reads

30 "The Employer shall pay to the Contractor M\$50.00 (Malaysian Dollars Fifty only) or such other sum as may from time to time be agreed per ton of 50 cubic feet FOB ocean vessel(s) loading at P. Numukan."

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Cross-examination (continued)

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Cross-examination  
(continued)

A. That is the term of contract.

(Mr. J.E. Vinelott: The Contractor provides labour, build roads, bridges, provide trucks.

The employer provides heavy machinery).

Q. Refers to Clause 18.

"This Agreement shall automatically determine on the 17th day of December, 1987, unless previously determined by three months notice in writing given at any time by either party."

The agreement was made on 23rd December, 1969.  
Agreement will run for 18 years.

10

A. That is in agreement. Now that you pointed this out I realise it.

Q. Under this Agreement Sabah Agency was bound to carry out works for Glendale to a fixed price per ton.

A. It is a term in the agreement.

Q. Given that agreement and in view of the increasing cost the time would come when Sabah Agency would make a loss.

A. That is your impression but this is not the fact.

20

Sabah Agency is not the only contractor working in that region. There were many other Companies working as contractors, in that region. The contract price was almost similar. According to our survey some other contractors prices were even lower. As far as I can ascertain our contract price was better.

Q. Sabah Agency was set up specially to do this work for Glendale.

A. At that time yes.

Q. Never done any other work except extracting timber for Glendale.

30

A. No.

Q. Do you agree under the contract if prices continue to increase Sabah Agency is bound to lose.

- |       |   |                               |
|-------|---|-------------------------------|
| A.    | At the early stage of formation the preliminary expenses cost us more and later on we had signed contract price.  | In the High Court in Borneo   |
|       |   | —                             |
| Q.    | Under that agreement of 23.12.69, unless altered over the years if prices went on rising Sabah Agency was bound to lose.  | No. 7                         |
|       |   | Notes of Evidence             |
|       |   | —                             |
| 10 A. | It is difficult to say. It depends whether the staff is experienced or not. It does not mean following the fixed price one will suffer loss because cost of living is rising.   | Respondent's Evidence         |
|       |   | —                             |
|       | Timber merchants are aware of this. I do not agree with your statement.   | Dato Ling Beng Siew           |
|       |   | —                             |
| Q.    | Have you seen a contract of this type for 18 years.   |                               |
| A.    | Agreement is a matter of formality to a business man. I am not well educated. I am not qualified in economics. I learn business through experience. I started as a hawker in a longhouse. I have only one principle in business. Trust each other. Agreement is only a formality. | Cross-examination (continued) |
| 20 Q. | Is it true that over a period of a year or 18 months the price of \$50/- per cubic foot has ceased to produce a reasonable margin of profit for Sabah and had to be increased.  |                               |
| A.    | At the beginning when Glendale gave the contract to Sabah Agency it was interest of Glendale to see that Sabah Agency makes a profit.   |                               |
|       | Although at a preliminary stage the Agency makes some loss in the business it was quite common because the preliminary expenses was higher.   |                               |
| 30    | There was some loss in the first few years but this is quite normal.  |                               |
|       | Glendale increased the price of Sabah Agency because I made a request to Mr. Gould on behalf of Sabah Agency in respect of increase of contract price.  |                               |
| Q.    | If price was not increased in April 1971 the contract would be unprofitable to Sabah Agency.  |                               |
| A.    | I cannot answer this unless I have made a detailed examination.   |                               |

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Cross-examination  
(continued)

Now I say it is not necessary. It depends upon experienced staff.

Q. Why was the price increase on 21st April, 1971 from \$50 to \$57.50.

A. I represented Sabah Agency. I made a request to Mr. Gould for an increase of price to see that Sabah Agency can make a profit. Our intention was to see Sabah Agency makes a profit. The answer is yes.

Q. That increase of prices could not be made without the consent of Glendale.

10

A. I represented Sabah Agency. I did my best to approach Glendale for the benefit of Sabah Agency. It is obvious that both parties must agree.

Q. You have travelled a great deal in connection with business and incurred entertainment expenses and travelling expenses.

A. I cannot say unless I see the accounts. When the trip abroad is made for the benefit of a Company I will charge the company concerned.

Q. You incurred expenditure in connection with joint ventures with Borneo Company.

20

A. I cannot remember.

The Borneo Company on their own also incurred expenditure. Their travelling expenses were not charged to the Company's account.

The travelling expenses are used for marketing purposes to foreign countries such as Japan.

And in respect of entertainment expenses we have to entertain the present and potential buyers and other personalities who have some relationship without business or those who will help us in our future business.

30

Q. Is this the reason for buying Yacht Berjaya Malaysia.

A. No. It was in connection with my travelling expenses.

Q. You also incurred expenses in joint ventures.

A. I have to look at account books.

Q. A large part of your expenses was incurred with joint ventures with Borneo Company.

In the High Court in Borneo

A. Only a small part of expenses were used for joint ventures as far as I can remember.

Q. This included Indonesian ventures.

A. I cannot remember.

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Notes of Evidence

Yacht Malaysia

Q. One of purposes to travel to Indonesia is to keep an eye on your interest there.

Respondent's Evidence

10 A. Berjaya Malaysia was originally a gun boat. It was bought by a Singapore second-hand dealer from the British navy. We found the price was cheap. It was slightly over \$50,000/-.

Dato Ling Beng Siew

We thought we could use the boat to travel to Niah where Kong Thai Sawmill is situated.

Cross-examination (continued)

At that time there was no access road to Niah. The communication is by water, and also the forest concession in Pontianak Indonesia. There is no air service between Kuching and Pontianak at the early stage.

20 On examination of this boat we were satisfied. The structure of boat is of light metal which is anti-corrosive.

Q. Was one of the purposes of the purchase of the Yacht to visit Pontianak.

A. That is what I have explained. There were many reasons why we bought it. That is one of the reasons.

Q. Pontianak is the centre of timber business in Kalimantan. Why do you want to visit Pontianak.

30 A. The forest concession is in Pontianak within the province of Pontianak. The area is very large. At that time we intended to visit Pontianak and Miri (Kong Thai Sawmill).

Q. You said in your evidence boat is a good investment and worth more to the company.

A. At that time I considered the boat after renovation. Should we find it unnecessary we can still make a profit on a sale of the boat.



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—  
Cross-examination  
(continued)

Q. You remember you were willing to take over the yacht (Page 46 of Affidavit).

A. I don't remember that.

(Witness shown Page 46. Reads)

At that time there was a certain gentleman who offered to buy this boat for use as a casino plying between Penang and Pulau Langkawi. It was also intended to get a licence to Medan, Indonesia.

At that time if we were desirous and took quick steps we could sell the boat with profit.

Because of these proceedings we did not continue with the offer. The situation has now changed.

Q. You were willing to take over the yacht on that basis.

A. The situation has now changed. The purchaser had already changed his plan. He decided to buy a hovercraft. I have lost the opportunity to sell this.

Q. Is it this your view that the yacht is worth more than what has been spent on it.

A. I will say according to the book value it will fetch a higher value.

(Mr. J.E. Vinelott: Dato Harun has sworn an affidavit.

Mr. Starforth Hill: If Dato Harun say he received only \$10,000/- and not \$13,000/- I will want to cross-examine him.)

Time 1.35 p.m.

Adjourned to 9.00 on Monday.

Sgd: B.T.H. Lee, J.

17.11.72

MONDAY, 20th November, 1972

Resumption of hearing.

Parties as before.

Time 9.15 a.m.

Mr. J.E. Vinelott:

Harun has agreed to file affidavits and supplementary affidavits.

10

20

30

Mr. Vinelott reads the affidavits dated 16th November, 1972 and supplementary affidavit dated 20.11.72.

Mr. C. Darvall

This witness is called by the applicant in his case in chief though he closed his case, and we do raise objection as we might, but this is not to be taken as any precedent. Should my learned friend wish to tender any additional evidence which should have been in his case in chief.

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Cross-examination  
(continued)

P.W.4 DATUK HARUN BIN ARIFFIN. Affirmed states in English.

10 XX<sup>n</sup>.

Q. Are you aware Mr. Vinelott put this question to Dato Ling Beng Siew: "You know that this loan was given to was a breach of the Corruption Laws.

A. I do not know.

Applicant's  
Evidence

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Datuk Harun  
Bin Ariffin

---

Cross-examination

(Mr. C. Darvall: We make no such allegation. We say that the allegation is wrong both as a matter of law and of facts. Our attitude is different from that of Mr. Vinelott).

20 Q. That so far as the payments and loans of \$10,000/- to you were concerned, was that payment made on account of your doing or forbearing to do anything in respect of any matter or transaction whatsoever or likely to take place.

A. No.

Q. As a public officer it is not intended to cause you to do or forbear to do anything.

A. No.

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Datuk Harun Bin Ariffin

Cross-examination

Q. This was a loan to assist you in building a house.

A. Yes.

Q. And at that time you were a friend of Dato Ling Beng Siong.

A. Yes.

Q. And at the time (1969) he was Minister of Youth and Culture and you were the Federal Secretary.

A. Yes.

My office was on the second floor I think. Dato Ling Beng Siong's office was on the 5th or 6th floor of the same building.

10

(Mr. C. Darvall: What we are suggesting you have a lapse of memory, one being a person who is lending money and the second as a fact of the loan.)

(Witness asked to sign two or three times on a piece of paper)  
(Witness shown document KTS 47).

It appears to be my signature but I am not sure.

Q. Can you point to any differences.

(COURT refers to Section 73 of Evidence Ordinance.)  
Specimen signatures produced and marked R 9.

20

Q. Your house was nearly completion in October 1969.

A. I have a record in my Diary.

Furnishing the house is a long process and all the furniture are not bought at the same time.

I do not understand what is meant by house was nearly completed.

Q. You wish to borrow a further sum of money to allow you to furnish the house.

A. It is not so.

Q. You approached Dato Ling Beng Siong for this loan to assist you in this furnishing.

30

A. I am afraid not.

Q. I suggest you went to office of Dato Ling Beng Siong when he helped you with ~~£~~3,000/- cash and you signed a receipt for that sum.

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A. No.

-----  
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Q. When you say "No" are you saying absolutely "No".

Notes of Evidence

A. I did not ask for the money and I did not receive the ~~£~~3,000/-.

-----  
Applicant's Evidence

Q. There is a receipt which appears to be signed by you.

A. Yes.

-----  
Datuk Harun Bin Ariffin

10 Q. You have sworn affidavit and attached two letters written by Kong Thai Sawmill.

(Refers to HA 9 - Letter dated 12th May, 1972).

-----  
Cross-examination

Q. With that letter you received a cheque for ~~£~~12,925.00 and a cheque for overpayment ~~£~~1,743.58 and you did not reply to that letter.

A. No.

Q. You did not bank the cheque.

A. I did not.

20 Q. You received a letter dated 18th May, 1972, HA 7 which indicates that there was a crossing of letters earlier and refers you to payment voucher and your acknowledgment receipt of ~~£~~3,000/-. You did not reply to that letter.

A. No.

Q. So you did not reply to either letters. In addition you had received a detailed account and explanation of those account. (Ex. HA 6).

A. Yes.

30 I did not bank the cheque nor did I reply to either of the letters.

Q. You made no suggestion having received those letters that there was any mistake or misunderstand.

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Cross-examination

- A. I did not reply as I do not wish to cause any embarrassment at all.
- Q. You realised there was a mistake or misunderstanding you believed the officers of the Kong Thai Sawmill.

A. I notice there are mistakes.

- Q. You did not see fit to write to Kong Thai Sawmill so that the difference could be explained.

A. No. I did not.

- Q. You said a cheque was sent in settlement of the amount owing in the sum of \$12,925 (Ex. HA 10).

(Witness asked to calculate how he arrived at that figure).

Court adjourns to enable witness to calculate.  
Court adjourned for 15 minutes.

10

P.W.4

I am unable to make the calculations.

- Q. Your calculation would show \$1,866.60 less than the cheque you paid.

A. Yes.

The calculation was based on  $6\frac{1}{2}\%$  for 3 years and two months. I made the calculation with a friend, Abdul Aziz. He is in the police Special Branch.

20

(Witness shown cheque for \$10,000/-).

The signature on the back of cheque is mine.  
(Mr. C. Darvall: Produced and marked R 10).

According to original agreement the loan had to be settled by September 1970.

- Q. You did not make any repayments until you sent the cheque in May 1972.

A. Yes.

- Q. Do you recall having seen Dato Ling Beng Siong in 1970 during Hari Raya.

30

A. Yes.

In the High  
Court in  
Borneo

Q. Did he ask you about repayments to Kong Thai Sawmill.

A. I don't think so.

Q. You received receipts for subsequent payments made.

A. No.

(Witness shown Receipt No. 0856 - 28th July, 1971 - ~~₹~~500/-).

A. I did not receive this by post.

Q. Receipt No. 0874 - 27th August 1971 for ~~₹~~500/-.

A. I did not receive this by post. I am quite sure.

Q. Receipt No. 0901 - 28th September, 1971 - ~~₹~~500/-.

10 A. I did not receive this.

Q. Receipt No. 0923 - 29th October 1971 - ~~₹~~500/-.

A. I have not received the receipts.

Q. Receipt No. 0942 - 29th November 1971 - ~~₹~~500/-  
addressed to yourself.

A. I cannot recall receiving that.

Q. Receipt No. 0958 - 29th December 1971 - ~~₹~~500/-  
addressed to yourself.

A. I did not receive this.

Q. Can you recall - you might have received.

20 A. I could. I have forgotten.

Q. Did you receive any receipts prior to May 1972.

A. No.

Q. Receipt No. 0970 - 31st June 1972 - ~~₹~~500/-.

A. I did not receive the original of that receipt.

Q. Can you give any possible explanation.

A. I cannot.  
It was calculated at  $6\frac{1}{2}\%$  per annum on the sum of  
~~₹~~10,000/-.

—  
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—  
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Datuk Harun  
Bin Ariffin

—  
Cross-examination

Q. That calculation does not accord with the cheque you paid.

A. Yes.

Q. How did the error occur.

A. I cannot say.

Q. After you received the cheque for over-payment from Kong Thai Sawmill did you make a recalculation of amount you should pay.

A. I did not.

Q. Did it not raise a query in your mind as to correctness of your correction. 10

A. No. I was under the belief my calculation was correct.

(Mr. C. Darvall:  $6\frac{1}{2}\%$  of  $\$10,000$  is  $\$650$ . And for 3 years =  $\$650 \times 3 = \$1950$  and you add to it for extra 2 months = the amount you paid was  $\$2925$  above the  $\$10,000$ . Omitting the two months it is almost  $\$1,000/-$  difference).

Q. Quite apparent to you that the additional two months interests would not make up the difference between  $\$1950$  and  $\$2925$ .

A. Yes. 20

Q. When were you asked to make the affidavit.

A. I think it was on 14th of this month. That is last Tuesday.

Now I say it is on 15th Wednesday. That was the first time I was ever asked to make an affidavit.

Q. Did you refuse.

A. I asked for time to consider but I never refused.

I swore the affidavit on 16th November when I agreed to it. Prior to 15th November I have never been asked to make an affidavit. I was not asked to make a statement prior to the 15th November. 30

A lawyer, Raja Aziz asked me to make an affidavit. Aziz prepared the affidavit. The second affidavit was prepared by Joseph Tank of Sibiu.

(Witness shown K 51).

Prior to 2.15 p.m. on 15th November I did not indicate to anyone that I would not swear any affidavit.

(Mr. C. Darvall: Refers to page 248)

(Mr. J.E. Vinelott: I did not say so)

(COURT: Reads out Court notes:

"Mr. J.E. Vinelott:

Inche Harun will give evidence to the effect that he had not received the additional advance and that neither payment of principal nor interest has been paid by him as alleged.

Time 12.30 p.m.  
Adjourned to 2.15 p.m.  
Sgd: B.T.H. Lee, J.  
14.11.72

Mr. Starforth Hill

Mr. Vinelott did say before adjournment these observations. The Company's records show monthly repayments before these proceedings. The payments were not made and the entries are false in the Company's books.

Mr. Vinelott

Confusions above.

Mr. Starforth Hill

No objection if Dato Harun files his affidavit and he will be cross-examined.

Mr. Vinelott

"Not in a position to file an affidavit. It concerns his private capacity. In the circumstances he will not swear an affidavit. Steps will be taken to secure his attendance.")

(Mr. J.E. Vinelott: That is my responsibility whether witness will swear an affidavit or not.)

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Datuk Harun Bin Ariffin

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Cross-examination

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(Witness shown Ex. 51)

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Q. Have you shown Ex. 51 to anyone prior to making the affidavit.

A. I have. I showed Ex. P.51 to the Chief Minister of Sarawak. I did not show this to any practising lawyer, not even to Raja Aziz. I did not give copies to Chief Minister.

Applicant's  
Evidence

Q. Do you know how copies got into the possession of applicant.

A. No.

10

Datuk Harun  
Bin Ariffin

Q. You did not make available to anyone so that copies could be made.

A. No. I did not.

Cross-examination

Q. During 1969 you had nothing to do with granting of forest concession and had nothing to do with forest matters.

A. Yes. I have nothing to do with forest matters.

Q. You cannot think how the receipt for \$3,000 came into existence.

A. I cannot.

20

I would not deny it looks like my signature on Receipt for \$3,000/- (KTS 47).

Q. I put it as your mental acceptance or rejection of this receipt being KTS 47. You think it is more probable.

A. If I were shown the piece of paper without the contents I would say it is my signature.

Re-examination

REN.

(Refers to KTS 47).

I cannot remember signing that document. The document is not signed by me.

30

(Refers to HA 9 dated 12th May, 1972)

I had not replied this letter.

In the High Court in Borneo

Q. Do you remember whether you had telephone conversation with KTS following that letter.

A. I had telephone someone in Kong Thai Sawmill. I cannot say whether it was before or after receipt of this letter. It was about the time of the letter I spoke to Mr. Cheng Yew Kiew. I telephoned him.

No. 7

Notes of Evidence

Q. What induced you.

A. I wanted to know my accounts.

Applicant's Evidence

10 Q. Was there any discussion as to the amount.

(Mr. C. Darvall: Objects as to form of question. It was excluding the possibility of the whole.)

Datuk Harun Bin Ariffin

(Refers to letter of 18th May, HA 7).

Re-examination

Q. You did not reply as you did not want to cause embarrassment to your friend Dato Ling Beng Siong.

(Mr. C. Darvall: Objects to question. That the portion Counsel is relying upon was not in answer to the question asked. This question was asked, he replied and answer was 'No'. The reason was not a reason which was a volunteered reason because he was not asked. Cannot rely upon that portion of the evidence volunteered and not in answer to question in order to found this question in re-examination. This had added weight when one considers that only this morning a supplementary affidavit by this witness was sworn and filed. There was plenty of opportunity to raise such questions in Examination-in-Chief).

20

(Mr. J.E. Vinelott: My friend asks a question and got an answer. I am entitled to question on re-examination. Question of volunteered question is irrelevant).

30 (COURT: Proceed)

P.W.4

The receipt purported that I received \$3,000/-. According to HA 7 it was suggested that the money was paid to me on 10th October. If I write I would ask for further clarification. So I decided not to write.

The calculation of interest was made with Abdul Aziz. We did the calculation together.

In the High Court in Borneo

I know the difference between compound and simple interest. I left that part of calculation to Abdul Aziz.

(Witness released - Parties have no objection).

No. 7

Time 11.30 a.m.

Notes of Evidence

Adjourned for 15 minutes.

Sgd: B.T.H. Lee, J.

Applicant's Evidence

Datuk Harun Bin Ariffin

Re-examination

Applicant's Evidence

Mr. J.E. Vinelott:

Putting Mr. Peattie for further cross-examination.

Andrew Peattie

P.W.1 MR. ANDREW PEATTIE. Affirmed states in English.

Further Cross-examination

Refers to Dato Ling Beng Sung's Supplementary Affidavit dated 9.3.72.

10

Refers to LBS 5A, 5B, 6A and 6B.

Q. These are accounts of Sarawak Chinese Association Headquarters.

A. I know these now. I know this at the last hearing. In April. That is where I heard evidence to that effect.

I saw the documents. I did not think they were the complete accounts. I could not say whether they were Headquarters accounts or not.

20

Q. When did you first form that opinion.

A. It was during the hearing.

Q. Did you tell anybody that they were not accounts of the whole association.

A. I could not remember whether I discussed with anybody at that time.

Q. You formed that view some date between Mr. Henderson's Affidavit and the hearing.

A. No. I did not see Mr. Henderson's report until I arrived in Sibu.

I formed that opinion when I saw the accounts and I cannot recall having informed anybody about this.

10 I saw Ling Beng Sung's affidavit the same time I saw Mr. Henderson's Report.

REN. No questions.

(Witness released).

In the High Court in Borneo

-----  
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Notes of Evidence

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Applicant's Evidence

-----  
Andrew Peattie

-----  
Further Cross-examination

D.W.1 DATO LING BENG SIEW (On former oath).

(Mr. J.E. Vinelott: To produce Minutes of Meeting of members of Singapore Moulding.

Mr. Starforth Hill: Produces Minutes of Meeting.

Mr. J.E. Vinelott: Prepared to accept this. Produced and marked KTS 56.

20 Mr. Starforth Hill: Produces Resolutions of Directors - United Singapore Lumber.

Mr. J.E. Vinelott: Prepared to accept this. Produced and marked KTS 57).

Q. Have you been able to discover the bonus of United Singapore Lumber.

A. I have found the record of bonus in respect of Singapore side.

(Mr. J.E. Vinelott: Has a copy of it handed to me by Mr. Starforth Hill but prefers not to hand to Court at the moment).

Respondent's Evidence

-----  
Dato Ling Beng Siew

-----  
Cross-examination (continued)

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Borneo

D.W.1

I wish to ask that the bonus be not published as it concern the bonus to the staff. It should be treated as Confidential.

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Notes of  
Evidence

Q. When did you sell the shares in Chalfont.

(Mr. Starforth Hill: No objection but repeat same objection on these applications. There are only two prayers.

Respondent's  
Evidence

Item No. 50 which is prayer asking Court to order the accounts of a number of companies, of which Chalfont and Glendale are included. There is no other prayers for other Companies. Alternatively Company - that Kong Thai Sawmill be wound up. Refer to page 16 Para B 24(b) of submission on Law by Counsel for Appellant.

10

Dato Ling  
Beng Siew

Cross-examination  
(continued)

If my learned Counsel is right in winding-up order there is no possible justification for fishing expedition for amount of purchase in these shares. This is not an enquiry. It is an application for certain orders under certain sections of Company Acts. Proceedings are not inquisitorial in nature. The orders asked - line of questioning cannot come within Item 50.

20

All the orders have been complied with. Originating Motion Page 10 Prayer No. 50. Also prayer 5 Page 2.

Mr. J.E. Vinelott: Has explained. The central issue is Dato Ling Beng Siew have diverted the money into their own pockets. If he has that is oppression.

Mr. Starforth Hill: Where does the prayer include purchase of shares.

Mr. J.E. Vinelott: Prayer No. 6.

"That the Second and Third Respondents do transfer or surrender to Kong Thai their entire shareholding in Kong Thai at a valuation to be fixed by the Court and that until the said shareholding is transferred or surrendered neither of them do exercise any voting rights as shareholders;"

30

Must know how much the shares were sold.  
Submit - entitled under that head to know how much it was sold for.

Mr. Starforth Hill: Sold in December 1971.

On evidence so far led it is impossible for Court to express the view on the worth of the shares in any of these Companies. Court has no evidence led on what their value is. Clearly if there is an order the question of price is the subject matter of enquiry.

In the High Court in Borneo

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To pick little isolated cases will not assist in the overall figures.

Notes of Evidence

Offer made to Ling Beng Sung to buy his shares. Did not even refer to Accountant whether they were fair or not. Not an inquisition. If Court is satisfied after hearing. Applicants case that profits of Glendale and Chalfont be gone into and no dispute that Respondent sold them.

—  
Respondent's Evidence

10

Mr. J.E. Vinelott: I would be horrified as my friend as regards value of shares. If it relates to value must be able to cross-examine on that point.)

—  
Dato Ling Beng Siew

Time 12.35 p.m.  
Ruling adjourned until after lunch  
Sgd: B.T.H. Lee, J.  
20.11.72

—  
Cross-examination (continued)

20

Time 2.30 p.m.

COURT

The accounts of Chalfont and Glendale have been asked for have been supplied. The valuation of share will be subject matter of a different exercise if Court so orders. All questions directed to that end disallowed.

D.W.1

Q. You are Managing Director of Chalfont in 1969.

A. I am not sure. I have to check.

30 Q. Do you sign documents as Director.

A. I cannot remember.

(Agreement shown to witness - between Glendale and United Investment dated 18th December, 1969).

I confirm this is a photostat copy of an Agreement. I signed as Managing Director of Glendale Investments. Produced and marked KTS 58.

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Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

Q. What is the width and depth of Yacht Berjaya Malaysia.

A. It is over 20 ft. in width.

At the time of buying the yacht the part below the yacht was very shallow. After the renovation by adding in metal, steel sheets and other renovation works the body became heavier so it is deeper in the water.

Q. The yacht is too wide and too deep to navigate the Niah river.

A. We go up to river mouth of Niah River by means of ocean liners. From the mouth of Niah to logging station by speed boat. 10

It is navigable by yacht but this is a matter for Marine Department.

We used our own boats sometimes by Government boats. To save time we go to logging station by speed boats.

Q. The yacht was registered in your name until Mr. Peattie's Report.

A. When the yacht was in renovation in Singapore, after completion it must be licensed first before it could proceed to Sarawak. 20

If the yacht was registered in name of Company in accordance with Marine Regulations they require stricter safety regulation. If it is registered in a private person the regulations will be relaxed.

The registration was left in the hands of Cheng Yew Kiew. Why it was registered in my name - Cheng Yew Kiew explained to me the position. He said there was no difficulty in the transfer of name of owner in the licence. Subsequently the name was changed. I cannot remember when this was done.

Q. The costs of transfer is over \$5,000/-. 30

A. There was a transfer fee. I cannot remember the figure.

(Refers to Henderson's affidavit page 57).

"The boat was originally registered in the name of Dato Ling Beng Siew and, during the year ended 30th September, 1970, \$5,011 was expended by way of stamp duty and registration fee to transfer ownership to KTS."

That is shown in the statement.

In the High  
Court in  
Borneo

Q. Mr. Henderson say the total cost is \$553,000/- Mr. Peattie says the total cost is \$560,000. The difference may be due to transfer fee.

—  
No. 7

A. As far as I can understand the figure is \$505,698.

Notes of  
Evidence

Q. Would you be prepared to undertake to buy over the boat.

A. I do not understand the question. As far as I know I have authority from the Company to invest money and to purchase equipment.

—  
Respondent's  
Evidence

10 At the time of buying the yacht I consider this cheap and worthwhile. The money spent on the yacht are shown in Account books.

—  
Dato Ling  
Beng Siew

The balance sheet for each year was approved, by the General Meeting. It is regrettable my younger brother Dato Ling Beng Sung was not present at the meeting, otherwise he would have known it very well.

—  
Cross-examination  
(continued)

Q. If this Company is wound up, the Liquidator will want to sell the yacht. Do you understand this possibility.

(Mr. Starforth Hill: When is this?

20 Mr. J.E. Vinelott: Sometime April next year).

A. I do not have this obligation. Why should I accept it at the price offered. There was an opportunity in the past. The company lost the chance.

If it is decided that yacht must be sold I will find a buyer. What price it ought to be sold is left to the Company. There was a prospective buyer who wished to convert the yacht into a casino.

Q. But you said you were prevented to do so in view of these proceedings.

30 A. I was. If there were no such proceedings, I would arrange for the sale of the yacht.

Q. Is it the case that the concession held by Kong Thai Sawmill is almost worked out.

A. Our licence expires sometime in 1975. We are still working in the concessions. On the expiry in 1975 we can still apply for extension. Our sawmill licence



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—  
Cross-examination  
(continued)

is for a period of 10 years. We still have 7 or 8 years work.

We feel timber in the concession is sufficient for the sawmill to work up to 7 or 8 years.

Q. The large part is cleared and that you are going over the areas worked.

A. We are still working in a large timber area and also going over the area worked.

Q. What proportion of area remains unworked.

A. I have to see the report of the surveyor before I give an answer. 10

Q. Are you in a position to give what production figures are month for month.

A. That depends on weather. Good weather better production. Bad weather less production. I will look up records for month to month production.

Q. The production of timber have fallen drastically because you have worked up most of the areas.

A. According to experienced timber merchants extraction goes further into remote areas from river bank. The production is bound to fall and sometime the area which is further away from the river is more hilly. These factors affects the average monthly production. 20

I agree the production figures have fallen. I cannot say as to the extent.

Q. Number of persons employed have been reduced.

A. Only certain sections have been reduced a bit.

Q. Some of the equipment have been let or sold out to P.T. Untang.

A. No. That refers to Kong Thai Lumber not Kong Thai Sawmill. 30

Q. At the end of concession you agree the road and bridges will be the property of Government.

A. This will happen after the expiration of Sawmill's

licence and forest concession. That will be 7 or 8 years later.

Q. But roads and bridges will be property of Government.

A. Licence has 7 or 8 years to run. There are still a lot of forest areas unworked adjacent to our concession. I believe in the near future Government will try to licence the adjacent areas.

In the High Court in Borneo

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Dato Ling Beng Siew

—  
Cross-examination (continued)

Without extension of our licence we have still 7 or 8 years. If it is extended then we can continue working.  
10 If the licence expired and the adjacent areas are licensed. If neighbouring areas are not licensed or if it is licensed to somebody else, the licensee can discuss with us for using the roads of our Company.

It is unfortunate that my younger brother did not attend the meeting. If he had he would know about this.

Q. Do you draw a difference between sawmill licence and forest concession licence.

A. They are related although they are different licences.

(Witness refers to Forest Timber Licence KTS 54 - Clause 25)

20 "25.—(1) On the termination of this licence under clause 22, 23, 24 or under the provisions of section 93 of the Forests Ordinance, or on the expiry of this licence, if it is not renewed, the Licensee shall within a period of six months from the date of termination or expiry, as the case may be, or within such longer period as the Conservator may in any special case approve, remove from the licensed area all buildings and plant used in his operations.

30 (2) At the end of the period aforesaid all buildings, plant and timber remaining in the licensed area shall become the property of the Government and the Licensee shall have no claim to compensation.

(3) All roads and bridges made by the Licensee shall in any case become the property of the Government and the Licensee shall have no claim to compensation."

Q. It is clear from Clause 25(3) the property becomes the property of Government.

A. Yes, I agree.

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Dato Ling  
Beng Siew

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Cross-examination  
(continued)

Q. You agree production figures have reduced considerably.

A. I agree. I will check further. But I hope the figures will not be disclosed.

(Mr. J.E. Vinelott: Agreements between Glendale and Sabah Agency, and Chalfont and Kong Thai Lumber.)

(Witness shown agreements). They are not originals.

(Mr. Starforth Hill: Have instructed that this be done. They are not in this country. When they will arrive I cannot say.)

Q. What was the market price of Ramin Boards in June 1972. 10

A. The Free On Board price in Pontianak, Sibuluan, and Miri are different. Secondly whether it is Government check price or purchase price of the buyer.

Q. Free on board in Singapore. Sawn timber - they are board, strip, short, square. Board prices differ as to width  $\frac{1}{2}$ " , 1" or  $1\frac{1}{4}$ " or  $1\frac{1}{2}$ ". Ramin Board is 6" wide or more; strip 2" and 5".

A. I will try to give an answer. Ramin Board 1" thick - 6" wide or more. 6 ft long or more. Good quality.

Q. What is the price in June 1972 in Singapore. 20

A. I cannot give a correct answer.

Q. \$275/- per ton.

A. About that price in Singapore.

Q. In Pontianak.

A. There is a difference of \$20 - \$30/- less in Pontianak.

Q. If  $1\frac{1}{2}$ " thick.

A. This depends on whether it is made by buyer. It will be a few dollars more per ton. Sale of timber is the responsibility of the Manager.

I agree I keep an eye on the Manager. 30

Q. Is there anything else in Invoice which would materially affect an invoice in respect of sawn timber.

- |    |    |  |  |
|----|----|--|--|
|    | A. | I am not clear about this question.  | In the High Court in Borneo            |
|    | Q. | Ramin strips - market value in Singapore of Ramin strip 1" thick 2-5" wide and 6 ft. long.   | -----                                  |
|    | A. | The price of Ramin Strips depends on European market. Whether the stocks are large. If there are large stocks the price will be less.  | No. 7<br>Notes of Evidence             |
|    | Q. | ₹190/- per ton in Singapore in June 1972.  | -----                                  |
| 10 | A. | I am not sure. If the strip is of good grading it would fetch the market price. If of poor grading there is no price.  | Respondent's Evidence                  |
|    | Q. | Is ₹190/- per ton a fair price.  | Dato Ling Beng Siew                    |
|    | A. | As far as I can remember the price is very different from what you say. If the grading is standard the price would be higher. The minimum price is ₹220/- per ton I think. But I have to confirm with the Manager. | -----<br>Cross-examination (continued) |
|    | Q. | What about minimum price of strips not of best quality.  |  |
| 20 | A. | There are strips of poor cutting, sizes, are different. Blue stains, old stock. They are of awkward sizes the prices will differ.  |  |
|    | Q. | What is the bottom price.  |  |
|    | A. | I cannot give the price off-hand. I have to examine the plank, and the condition of timber. The timber merchant will appreciate this difficulty. Ramin is sold in bundles and in pieces.                           |  |
|    | Q. | The price given is in cubic ton.   |  |
|    | A. | Some are given in cubic meter and cubic feet. Cubic feet is by means of hoppers. Cubic meter is used in Indonesia.   |  |
| 30 |    | One hoppers ton equals to 50 cubic feet - ton is more than cubic meter. The price given is hoppers ton.  |  |
|    | Q. | If you see a description Ramin - Indonesia Timber what do you understand by that.  |  |
|    | A. | Normally a buyer who buys Indonesia sawn timber will send someone to go to inspect the sawn timber first unless they are very familiar with each other and can   |  |

In the High  
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trust one another. They will rely upon the description in the invoice. If the description is different then the buyer can claim back.

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If you want the information I can get the information from Singapore. What I have told the Court is my own belief. My Manager is responsible for the details. If I can be shown the relevant Invoice I may be able to ascertain the prices.

Respondent's  
Evidence

Q. You know shares of this Company (Kong Thai Sawmill) have been allotted to a group of people described as Natives. 10

Dato Ling  
Beng Siew

A. As far as I remember the bumiputras are unable to pay for their shares.

(I request that share capital be not published in the papers).

Cross-examination  
(continued)

Q. Is that the reason why they were not allowed to pay for the reasons given.

A. They have no money to pay. When they receive the dividends they will be deducted from the capital or if possible we will try to get a loan from somewhere else to pay up capital. 20

Q. "Natives" are not ignorant or uneducated persons.

A. That is not my meaning.

Q. The shares are given to Linggi Jugah and Edward Jugah, sons of Tan Sri Jugah, who is a prominent member of the Iban community.

A. I would ask that these may not be published.

Q. Are they too poor to pay for their shares.

(Refers to Page 3 of Affidavit of Andrew Peattie).

A. They did not pay anything. The shares held by bumiputras are paid by other shareholders. They are not necessarily poor but for details I have to make further enquiry. 30

Q. Do you wish to retract the answer you gave that they have no money to pay.

A. No. But there are other reasons.

- |  |   |
|--|---|
| <p>Q. That these four distinguished persons are not able to pay for their shares is nonsense.</p> <p>A. For detailed explanation I will make further enquiries.</p> <p>(<u>Mr. Starforth Hill</u>: These shares were allotted long before the applicant became a shareholder).</p> <p>Q. The shares were given to the Jugah boys before they were paid.</p> <p>(<u>Mr. J.E. Vinelott</u>: Produces Share certificates. Produced and marked KTS 59).</p> <p>10 Q. You negotiated for the purchase of the hotel Aurora.</p> <p>A. At the time of purchase of the hotel I asked another Director to inspect the hotel, in particular the roof garden. Whether there was any damage to roof garden. If there is sinking it would mean the foundation is not sound. If not, it would be worthwhile.</p> | <p>In the High Court in Borneo</p> <p>_____</p> <p>No. 7</p> <p>Notes of Evidence</p> <p>_____</p> <p>Respondent's Evidence</p> <p>_____</p> <p>Dato Ling Beng Siew</p> <p>_____</p> <p>Cross-examination (continued)</p> |
|--|---|

Time 4.30 p.m.  
 Adjourned to 9.00 tomorrow  
 Sgd: B.T.H. Lee, J.  
 25.11.72

20 TUESDAY, 21st NOVEMBER, 1972  
 Resumption of hearing.  
 Parties as before.  
 Time 9.10 a.m.

D.W.1 Dato Ling Beng Siew (on former oath)

Yacht Berjaya was transferred to Kong Thai Sawmill on 10th April, 1970. We travel to Niah by own boat, namely Sri Guthro which was bought second-hand. The boat is no longer in use. Originally it was not meant as a tug boat but we used it as such.

30 Certificate of Malaysian Registry of Berjaya Malaysia produced and marked KTS 60.

The Regulation in Singapore is different from Sarawak Regulations. The matter was left in the hands of Cheng Yew Kiew.

It was registered in my name because of the safety regulations. Cheng Yew Kiew told me about it.

In the High Court in Borneo

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No. 7

Notes of Evidence

—  
Respondent's Evidence

—  
Dato Ling Beng Siew

—  
Cross-examination (continued)

- Q. There is in fact no difference in Regulations between a private Company and an individual.
- A. This was what Chen Yew Kiew told me.
- Q. There is in fact no difference. Do you accept this.
- A. If it is so, Cheng Yew Kiew has not given me the correct information.
- Q. Reasons for transferring shares to certain persons. Why were the shares issued.
- A. We credited the shares to the person as a loan to shareholders. We also issue share-certificates to shareholders.
- Q. Why were they issued without calling upon these persons to pay for them.
- A. It is the policy of Government. We have to give whatever assistance to Bumiputras.
- Q. Why did you select these particular individuals.
- A. The reason is Tan Sri Temenggong Jugah is a good friend of the family. We treat his children as our brothers.
- Q. You agree these four persons were unable to pay for their shares.
- A. At that time they did not pay.
- Q. They are not too poor.
- A. This is a question not suitable to be asked from a business man.
- Q. These four persons are in a good situation.
- A. As far as I know Linggi was still studying in England. He had no money.
- Q. But he comes from a wealthy family.
- A. It is the policy of Government to assist Bumiputras.
- Q. They are from wealthy families.
- A. I am not sure about their financial position.

10

20

30

Q. You agree these persons are influential or related to influential persons.

A. They are good friends to my late father. We gave the shares because of this friendship and not for any other reasons.

10 Temenggong Jugah is a leader of the Iban community. Temenggong Oyong Lawai Jau is a good friend of my family. Whenever he visits Sibu he would spend a night in my house. I did not know he was senator at that time. I know he is a good man and his community respect him.

Q. He is a leader of Baram community.

A. Possibly he is a leader there. I am not living there so I am not sure.

Q. You agree he is a member of Council Negri and was a member of Supreme Council.

A. I cannot remember. I know his late father is a good friend of my late father. He is Linang.

20 During the 2nd World War his father helped our family very much. During that time I used to trade in the longhouses as a hawker. They had an old engine and they helped us and hired the engine to operate a rice-mill. This has a deep impression in my mind. With that rice-mill, the livelihood of our family was solved.

Q. Do you agree Jonathan Banggau was a Member of Parliament.

A. I am not sure now.

Refers to KTS 52. Invoices P.T. Kalimantan Sari.

Q. You said you did not recognise the signature at page 1.

30 A. At that time I could not make out. I guess this is signature of Wong Siong King. He is Manager of Kalimantan Sari, Pontianak.

Q. His signature is familier to you.

A. He signs documents sometimes in Chinese and sometimes in English. It is easier to recognise when he signs in Chinese.

(Witness shown page 47 of Trust Deeds - KTS 53).

In the High Court in Borneo

—  
No. 7

Notes of Evidence

—  
Respondent's Evidence

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Dato Ling Beng Siew

—  
Cross-examination (continued)



In the High  
Court in  
Borneo

Trust Deed made between Dato Ling Beng Siew and Wong  
Siong King.

I see the signature of Wong Siong King.

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Notes of  
Evidence

Q. That signature was made only two weeks ago.

A. Yes.

Respondent's  
Evidence

Q. When I asked you about signature of KTS 52 you said  
you could recognise.

A. I cannot remember and recognise the signature of  
every person.

Dato Ling  
Beng Siew

Q. Not even your own Manager in Pontianak. 10

A. I pay more attention to contents of Deed. I do not pay  
attention to signature and I cannot remember the signature.

Cross-examination  
(continued)

Q. You agree the contract was originally taken in your  
name but the agreement was in the Company's name.

A. Original intention was in Company's name. I did not  
pay attention in which name it was made.

Q. Did you obtain any independent expert valuation of  
Aurora Hotel.

A. Not necessary. I can judge for myself.

Q. Did you get independent advice on its profitability  
as a hotel. 20

A. It was not necessary.

Q. Did you obtain a report as to soundness of structure  
of hotel.

A. There was no time for us to get an expert opinion as  
regards structure. There were many competing buyers  
at that time.

Q. You have no business experience in running a hotel.

A. I was interested in this type of business because I  
travel frequently and live in hotels. I could see  
hotels were making profits and especially so in foreign  
countries. It is good business. 30

In the High  
Court in  
Borneo

—  
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Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

Q. Do you look at profit and loss account of hotels.

A. I do not look at accounts. But accommodation was difficult to obtain in hotels especially in Hong Kong.

Q. There were personal advantages to you for a Company to own a hotel.

A. That is not my point of view.

Q. You can take your friends to dinner and entertain them in the hotel.

10 A. I do not agree with you. I was of opinion that hotels help the Company to make profits. All what I have done is for the benefit of the Company.

Q. Is it sometimes a nice thing to be able to give parties, accommodate friends, have a suite yourself the hotel. Is that not a personal advantage.

A. There was keen competition in getting the hotel at that time. I had to get the hotel for the benefit of the Company. The condition of hotel was no good and there was no suite.

20 Q. Do you have a permanent suite and do you frequently rent this suite.

A. Sometimes when all rooms were occupied, I occupied even single room. If all rooms were occupied I occupy a suite. I seldom visit Kuching to entertain friends.

Q. You only rarely entertain friends.

A. As far as I remember when my friends invite me and I invite them. I have simple tastes. If I go out to eat, I eat at stalls. When I entertain I have to entertain them properly.

30 Q. Mr. Peattie has in his affidavit which is unchallenged said that you have incurred expenses in entertainment and some bills were not paid.

A. The accounts were duly audited by Company auditor and inspected by the Accountant employed by Dato Ling Beng Siew and also passed by Annual General Meeting of the Company.

Refers to Malaysia Daily News.

In the High  
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Borneo

Notes of  
Evidence

Respondent's  
Evidence

Dato Ling  
Beng Siew

Cross-examination  
(continued)

Kong Thai Sawmill has invested in Malaysia Daily News.  
The accounts has been shown in the account.

- Q. Did you take any independent advice before you embarked on this venture.
- A. I am not qualified in Economics. Whatever I did I depended on my own observation and my own knowledge. I did not get an independent opinion. I was of opinion it was profitable. It is a fact we make profit now.
- Q. Do you agree with Mr. Henderson's Report that in recent years the Kong Thai Sawmill was under capitalised. 10
- A. I am not very familiar with this matter. I am not qualified in economics. I do business based on my past business experience. Most of our business are making profit. With \$2/- capital we made a profit of \$400,000 - \$500,000.
- Q. At the time you made investments in Aurora and Newspaper did you consider the Company had spare money and available for investment.
- A. I was of opinion that our Company had a good reputation. Most of businessmen trust me and I believe they would trust me too and support me notwithstanding the fact that the Company had no spare money. 20
- Q. Do you agree that the Company had no spare money.
- A. I do not pay attention to the financial situation of the Company. I cannot remember now.
- Q. Would you agree that your brother Dato Ling Beng Siong, an active politician, take view newspaper had indirect personal advantages.
- A. I do not agree. During the time before formation of Malaysia I had shares in Tai Tung Newspapers. I am of opinion that if Pressis well managed like Sea Hua Daily, Straits Times, Nanyang Newspaper, Sin Chiew Daily, they make great profits. 30
- Q. Did you or your Company make reports to Forest Departments about monthly tonnage.
- A. I cannot say.
- Q. Can you get it.

Mr. Starforth Hill: There are a number of occasions during the hearing when Counsel has asked for information.

In the High Court in Borneo

Mr. J.E. Vinelott: Witness does not know and I am entitled to the information.)

—  
No. 7

Q. Your Company keeps a control working map which shows the areas of the concessions and the dates they are worked out.

Notes of Evidence

A. This is in charge of logging camp Manager.

—  
Respondent's Evidence

Q. A copy is kept by Forest Department.

10 A. I am not sure. (May I request that Counsel list out the necessary details he wants to know and I will find out to save time.)

—  
Dato Ling Beng Siew

Q. Is it possible to find out the areas which have been worked and which have not.

—  
Cross-examination (continued)

A. It is possible.

Time 10.30 a.m.  
Adjourned 15 minutes  
Sgd: B.T.H. Lee, J.

Time 11.15 a.m.

20 Mr. J.E. Vinelott: Hands in Constitution of Sarawak Chinese Association. Produced and marked KTS 61. Agreement between Chalfont and Kong Thai Lumber dated 31.10.69. Produced and marked KTS 62. Agreement between Glendale and Sabah Agency dated 23rd December 1969. Produced and marked KTS 63. Agreement between Chalfont and Kong Thai Lumber dated 31st October 1969. Produced and marked KTS 64. These exhibits are R.28, Chalfont and Kong Thai Lumber R 29, Glendale and Sabah.

30 Mr. Starforth Hill: KTS 62 and KTS 63 are originals from which Exhibits of corrective affidavit of Dato Ling Beng Siew were taken. R.28 and R.29.

COURT: Observes agreements are not stamped and must be impounded.

Counsel for Applicant undertakes to have documents stamped.)

(Witness shown Ex. KTS 62)

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Notes of  
Evidence

Respondent's  
Evidence

Dato Ling  
Beng Siew

Cross-examination  
(continued)

In Clause 2 the amount paid by the Employer to Contractors is ~~£~~50/- per ton.

There is an interlineation made in April 1971 "or such other sum as may from time to time be agreed".

(Witness shown Ex. KTS 64)

- Q. This document KTS 64 is a document from which R.28 was prepared.
- A. I signed the document. This is only a draft copy. Clause 2 - The price per ton is ~~£~~45/-.
- Q. Why the difference. 10
- A. That is a draft copy. The Secretary has not put his signature and the Company's seal has not been affixed. Some terms were still under negotiation. That accounts for the difference in price.
- Q. Why did you exhibit R.28 to the affidavit.
- A. We asked the staff in office to get the document and the staff were in a hurry and they got the draft agreement. That is why the document was exhibited in my affidavit. It was a mistake.
- Q. Did you swear the affidavit before you saw it. 20
- A. I did not go through all the details. Some parts I required someone to explain. When I read the last part I forget the first part.
- Q. The relationship between Sabah Agency and Glendale on one hand and Kong Thai Lumber and Chalfont on the other hand was an issue of greatest importance in this case.
- A. Yes. I know only as a businessman I am concerned in contract price. I do not know what importance it has in legal proceedings.
- Q. Then you did not check at that time the draft contract was affixed. 30
- A. Later on I found it was a mistake.
- Q. Is there a resolution of Board authorising you on behalf of the Companies to sign these documents.
- A. I cannot remember now.

In the High  
Court in  
Borneo

Q. You agree first year incurred heavy expenses and not yet earning a profit.

A. That is all in the books. I believe the expenses were heavy.

—  
No. 7

Q. You had to buy a lot of equipment.

Notes of  
Evidence

A. That is normal case. Roads had to be built. Timber had not been produced.

Q. You had to borrow money.

Respondent's  
Evidence

A. We found it necessary. You borrowed money and placed the machinery as security.

10

Q. You borrowed from Ling Beng Tuang, Lau Hui Kang and Hu Yu Chong.

Dato Ling  
Beng Siew

A. As far as I can remember I obtained loans from people. All the persons who gave the loans have confidence in the Company.

—  
Cross-examination  
(continued)

Q. You also borrowed from Kong Ming Bank, owned by your Younger brothers.

A. Yes. But after I had helped my younger brother Dato Ling Beng Sung to get a licence to run the bank.

20

Q. You asked your brother to lend and he agreed to if you give him a Bill of Sale.

A. I am Chairman of Hock Hua Bank. Ling Beng Sung is Chairman of Kong Ming Bank. If they want our business they also have to do business with Hock Hua Bank. I should also have business with Kong Ming Bank.

Q. At this time Kong Thai Sawmill owed a number of people over a million dollars but not yet producing a profit.

A. I believe the Company owed people at that time.

(Witness shown KTS Balance Sheet as at 30th September, 1965).

30

I agree Kong Thai Sawmill owed Kong Ming Bank \$141,340.64 and other \$913,898.20.

Main Assets were \$1,806,798.00.

(Witness shown page 4)

In the High  
Court in  
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I agree Creditors are	Ling Beng Tuang	₪50,000.00
	Hu Yu Chong	₪50,000.00
	Lau Hui Kang	10,000.00
	Jardine Waugh	187,249.07

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Notes of  
Evidence

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Respondent's  
Evidence

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Dato Ling  
Beng Siew

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Cross-examination  
(continued)

Q. The situation at this time you were very short of working capital and cannot buy machinery.

A. I agree. The Company was in its preliminary stage and require capital. The sundry creditors trusted our Company. Bank loans were obtained in accordance with the Regulations of Central Bank.

10

Q. At that stage no one could be certain how business of Company would turn up.

A. Experienced businessman looking at timber concession will know Company will make profit.

The man in street will say rumours. Whether they are malicious or not I do not bother.

Q. Result, at this time you find it difficult to raise capital.

A. I am of different opinion.

Q. Why do you mention the malicious rumours.

20

A. Experienced businessmen have a different opinion. The man in street have different views.

Q. Has malicious rumours any effect.

A. Generally it did not affect the operation much. The rumours in the street are not pleasant to hear.

Q. You told the Court in April the Company is finished.

A. I agree. That is the rumour. Actually our work in timber extraction was proceeding on well and I have confidence.

Q. At this time you were finding difficulty in getting money because of the rumours.

30

A. The rumours will not affect the Company in getting capital.

Q. In this situation your younger brother agreed to grant

loan of over a million dollars provided you give a Bill of Sale over assets of Kong Thai Sawmill.

In the High Court in Borneo

A. It is the same transaction as Borneo Timber Company.

The Kong Ming Bank was desirous of getting business from Borneo Company. Kong Ming Bank - my younger brother wanted it because there are many transactions in the form of letters of credit. Whatever loan can be obtained from Kong Ming Bank can be obtained from Hock Hua Bank also.

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No. 7

Notes of Evidence

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Respondent's Evidence

\_\_\_\_\_

Dato Ling Beng Siew

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Cross-examination (continued)

10 I did execute a Bill of Sale to Kong Ming Bank. As far as I can remember if a Director in a Bank is also a Director of another Company, and the Company desirous to get a loan from the bank, the loan will be granted upon security.

At that time I was also appointed as Director of Kong Ming Bank backed by my younger brother.

I became a Director as from the commencement of Kong Ming Bank's business.

Q. On 9th August, 1965, Kong Thai gave a Bill of Sale to Kong Ming Bank.

20 (Witness shown a document - Bill of Sale. Produced and marked KTS 67).

I believe so. This is the same with Hock Hua Bank.

(Witness shown document - Bill of Sale dated 24.11.65. Produced and marked KTS 68.)

(Witness shown Page 5 of KTS 66).

"1 AEC Leyland Logging Truck	-	£27,525.00
1 Stone Crusher	-	£17,179.25

Refers to Schedule of KTS 67.

"Schedule

Cost at Niah

30

One AEC Logging Truck with Trailer	
Chasis No. 0854820	
Engine No. A196/277	£27,855.00

One Black Stone Stone Crusher	
Engine No. OPH 28837	
Patent No. 451423	
H.P. 22	£17,179.25"



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Notes of  
Evidence

—  
Respondent's  
Evidence

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Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

Q. After this your overdraft with Kong Thai Sawmill continued to increase.

A. I cannot say until I look at the account.

Q. Your overdrafts were as follows:

30th September, 1965	£141,329.39
31st December, 1965	£197,349.65
5th April, 1966	£204,181.92
12th May, 1966	£312,567.95

A. I believe that is correct.

We had a prior arrangement that whatever we loan from Hock Hua Bank, we should borrow from Kong Ming Bank. We had to buy additional machinery. We need these capital and so the Bill of Sale would go up.

10

Q. In beginning of October 1965, the first Bill of Sale was already fully committed equal to loan and your brothers were not prepared to lend further moneys at that stage but were prepared to help you to buy further machinery by subscribing for capital in the Company.

A. I think my younger brother Dato Ling Beng Sung should say according to his conscience. What he said is not true.

20

Q. The first shipment of logs by Kong Thai Sawmill was not made until October 1965 in order to make the shipment you wanted the money from Kong Ming Bank.

A. Any loan obtainable from Kong Ming Bank can be arranged with Hock Hua Bank.

Time 12.35 p.m.

Adjourned to 2.15 p.m.

Sgd: B.T.H. Lee, J.

Time 2.20 p.m.

30

D.W.1 Dato Ling Beng Siew (on former oath)

Kong Thai Sawmill 62 & 63. Chalfont, Kong Thai Lumber and Glendale and Sabah Agency.

Q. On those documents there were interlineations and on one document Chalfont and Kong Thai Lumber the figure

50/- appear and on Glendale and Sabah Agency 45/-.

In the High  
Court in  
Borneo

A. Yes.

Q. The document with alterations were made before execution.

—  
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A. I still maintain the answer. The amendments were done at time of execution of document. When the parties went through they made the amendment and then executed the document. That was done on 31st October, 1969 in KTS 62 (64 R.28). On 31st December, 1969 in KTS 63 (and on KTS 69 and R.29).

Notes of  
Evidence

—  
Respondent's  
Evidence

Q. Have you any doubt that the documents were executed on those dates.

—  
Dato Ling  
Beng Siew

A. It was done around that date.

Q. Have you any reason to doubt the documents were done other than the dates shown.

—  
Cross-examination  
(continued)

A. I cannot be sure.

Q. The dates shown on KTS 62 and 63 are the same as dates shown on R.28 and R.29.

A. I cannot remember.

20 (Witness shown the dates).

Q. You swore a corrective affidavit on 19th April, 1972.

Para 2:

"Since the date of the said exhibits R 28 and R 29 amendments to the said agreements have been made between the parties thereto and there are now produced and shown to me marked R 30 and R 31 the current contracts which are now operative in place of exhibits R 28 and R 29."

30 Q. What you said is after the date KTS 64 and 65 they were amended. You also said KTS 62 and 63 were made when they were executed.

A. Amendments were made earlier.

Q. What is the amendments you are referring to. To contract price and interlineations.

In the High  
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Borneo

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Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

- A. I can only remember in principle. Those two exhibits attached to my affidavit were drafts which required to be corrected and ought to be excluded.
- Q. If you wish to say R 28 and R 29 are drafts why do you not say so in corrective affidavits that they were drafts and supplemented by the exhibits attached to your affidavit.

A. When I gave instructions I gave in Foochow how it was reduced into English I do not know. I only know facts are facts. The common seal was not fixed.

10

Q. Did you not go through the affidavit and check the contents of it.

A. I gave instructions to my solicitors. We are Foochows.

Q. Suggests R 28 and R 29 were signed by you, subsequently altered and re-executed without the date of agreement being altered.

A. I still maintain that these two documents were drafts. After signing they were subject to alterations.

(Mr. J.E. Vinelott: Your father died in November, 1955. Your mother died in December 1958. At the dates your brother Ling Beng Sung and Ling Beng Hui were in Australia).

20

Q. Your father was a person of the highest repute in Foochow community.

A. My father was respected by our community as well as Government officials. As children we do our best to maintain the good reputation.

Q. Your father was a man with very wide interests.

A. Ling Beng Sung, I believe, did not tell Counsel properly.

Q. Do you agree your father had wide interests.

A. My father passed away. I feel that we are infilial to our late father for having come to Court for a Court case.

30

We were all the time trying to maintain our father's good reputation and never expected that my younger brother will start such a law suit in a Court.

Whether or not my father had wide interests I will

write it out in a paper.

Q. Did your father make promises for the sons. He and your mother and 6 sons each had equal shares in the Chinese partnership in all the assets.

A. I do not wish to give evidence concerning my parents but if Counsel insists I will give. My late father lost in his business during pre-war days.

Q. Your father had a partnerships Kong Thai (Ming Kee).

A. This question cannot be answered "Yes" or "No". I have to explain.

10

During the Japanese occupation I tried my best to help the family - even to the extent of doing hawking business in longhouses in order to prevent the whole family from starvation. Later on I entered into a contract for a Japanese Company concession. There I made some money to support the family. After the 2nd World War I was thinking that the family is large. I must find ways and means to maintain them. At that time I even hired a small fishing boat - not even 10 tons - using sails. It took 10 days to go to Singapore and I did barter trade in rubber and rubber scrap. I did this for one year. I considered that this type had no future. Moreover that type of boat was dangerous. As I had obtained some experience in forest work I started a sawmill business.

20

So all the business was in our Father's name.

Even after death of my father, donations to schools and other charitable organisations I made in name of my late father.

30

I spent \$200,000 in a private school in the name of late father, Ling Chu Ming School in order to remember my parents.

My younger brother had been a Director of the said school.

Because we are offsprings of my parents all the business were made in the name of parents.

In the High Court in Borneo

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Notes of Evidence

\_\_\_\_\_  
Respondent's Evidence

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Dato Ling Beng Siew

\_\_\_\_\_  
Cross-examination (continued)

In the High Court in Borneo

\_\_\_\_\_

No. 7

Notes of Evidence

\_\_\_\_\_

Respondent's Evidence

\_\_\_\_\_

Dato Ling Beng Siew

\_\_\_\_\_

Cross-examination (continued)

(BY COURT: My father only assisted in accounts and keeping an eye on business.)

Q. Are you saying you are the motive power behind this and this is all due to your own efforts.

A. I am not making up the story. Most of Sibu people are familiar with my father's story. It is a fact it was all due to my efforts.

Q. Your father built the business through his efforts and obtained the forest concession.

A. As far as I know my father was an area headman. He was willing to render services to community and to help the Government. 10

Q. Your father got the licence.

A. I obtained the sawmill licence in the name of Kong Thai (Ming Kee).

Q. Is it known that your father obtained this through his own hard work.

A. Possibly the Queens Counsel was informed by my younger brother.

Q. Your father built up this Kong Thai Sawmill through his hard work. 20

A. I do not agree with the statement.

Q. You say you built this business yourself. It is due to your own efforts.

A. As an elder brother I had to bear the hardship for the family. It is due to my own efforts. I refer to Kong Thai (Ming Kee). It is no longer in existence. It was a partnership.

Q. In the year 1955 your father died - the partnership had substantial profits - \$440,000/- 30

A. I cannot remember the figure.

(Witness shown accounts). Produced and marked KTS 69.

Q. After your father died you and your brother Ling Beng Siong managed Kong Thai (Ming Kee).

- |    |   |                               |
|----|---|-------------------------------|
| A. | As far as I can remember my 3rd younger brother Ling Beng Siong did all he could to assist in the business. Most of the decisions were made by me.  | In the High Court in Borneo   |
|    |   | —                             |
| Q. | That is 1956, 1957 and 1958.  | No. 7                         |
| A. | Even earlier than this.   | Notes of Evidence             |
|    |   | —                             |
| Q. | In 1956, the net profit was \$50,984.35. In following year 1957 profit was \$207,082.39. In 1958 profit was \$148,892.61. The total profit was \$406,958. Which compares with \$440,000 in year your father died. | Respondent's Evidence         |
|    |   | —                             |
| 10 | In 1968 your mother died and Beng Sung came home and decided to stay to look after business.  | Dato Ling Beng Siew           |
|    |   | —                             |
| A. | It is not so. I have to explain. In 1956, 1957 and 1958 we have very small capital compared with other sawmills.  | Cross-examination (continued) |
| Q. | In 1959 Ling Beng Sung managed this business.   |                               |
| A. | The fact mother died in 1958. During Christmas my younger brother Beng Sung came back from Australia in 1959 he then tried to get the control of the family.  |                               |
| 20 | He threatened me that part of Managing Director should be given to him. He wanted the answer within two hours. He would published in paper to sever our relationship.   |                               |
| Q. | This is untrue. You offered an apology. Do you agree in 1959 Dato Ling Beng Sung was appointed Managing Director of Kong Thai (Ming Kee).   |                               |
| A. | After the quarrel I decided to appoint him Managing Director. I allowed him because he claimed he was qualified in Economics.   |                               |
| Q. | By that document Dato Ling Beng Sung was appointed Managing Director.   |                               |
| 30 | A. Yes he was appointed as such.  |                               |
| Q. | Your arrangement with your brother was in 1960 January. See Page 49* of Exhibit Volume One. You signed an apology.  |                               |
| A. | That I cannot remember. We had frequent quarrels  |                               |
| Q. | It was not the quarrel that preceded the appointment  |                               |

\* See page 1440, Vol.V

In the High  
Court in  
Borneo

—  
No. 7

Notes of  
Evidence

—  
Respondent's  
Evidence

—  
Dato Ling  
Beng Siew

—  
Cross-examination  
(continued)

of your brother as Managing Director.

- A. I cannot remember which occasion it was.
- Q. After your brother was appointed Managing Director in March 1959 the profits in 1st year was \$667,900.30. In 1960 \$467,190.68. In 1961 \$481,923.27. Total is just under 4 times what they were in the preceding 3 years.
- A. At the early stage there were few people who knows of Ramin timber.

At the beginning both Ramin log and sawn Ramin timber prices were low. I have many buyers in Europe. I was the 1st Sarawak Chinese to go to Europe to explain to buyers about the uses of Ramin timber to promote sales. This was in 1963-1964. Then in 1966 the Ramin market was extended to America. I was the first Sarawakian to go to America to promote the market. During that time sales were made to Europe, America and Japan.

10

So the relevant time 1959 price of Ramin was steadily going up.

Profits or loss of Sawmills entirely depends on timber prices.

20

- Q. Don't you agree your brother as Managing Director produced a spectacular increase in profits.
- A. It is a mockery. It is not a fact. The most important thing is to secure the area of forest concession. To secure a good forest concession will make money. I want my younger brother conscientiously to say whether he had obtained any or even an acre of concession for the Kong Thai Sawmill.
- Q. Would you agree that in 1959 the effective management was taken over by your brother.
- A. Although I was not Managing Director, I was still the Chairman. Important matters depend on my advice.
- Q. Is it a coincidence that when your brother was Managing Director the profits shot up in a spectacular way.
- A. It is because price of timber went up.
- Q. In 1959 export tax was introduced. In 1961 timber market was depressed.

30

- |       |   |                                  |
|-------|---|----------------------------------|
| A.    | I cannot remember. As far as I know at the beginning the Ramin price was only \$25/- per ton. Later on the price went up to \$100/- or more per ton. I think it was sometime in 1959 or 1960. | In the High Court in Borneo<br>— |
| Q.    | Do you agree 1959 export tax was introduced and in 1961 the price of timber was depressed.  | No. 7                            |
| A.    | When the price goes up it is bound to fluctuate. Even then the price were much better than in earlier years.  | Notes of Evidence<br>—           |
| Q.    | That striking increase was a coincidence.   | Respondent's Evidence<br>—       |
| 10 A. | Yes.  |                                  |
| Q.    | Would you agree with me after 1959 your brother Ling Beng Sung sacrificed his studies in Queensland and came back and carried this business for the benefit of the family.                    | Dato Ling Beng Siew<br>—         |
| A.    | Whether he sacrificed his study or cannot continue with his studies is matter for him.  | Cross-examination (continued)    |
| Q.    | He came here in 1959 to interfere with and gain a personal advantage is totally unfounded.  |                                  |
| 20    | (COURT: Asks Counsel to reframe question to make translation easier by Court Interpreter).  |                                  |
| Q.    | You agree that when Ling Beng Sung stayed in Sibiu, he did not do so out of a desire to gain a personal advantage.  |                                  |
| A.    | Actually he came back to interfere in the business.   |                                  |
| Q.    | Was it for personal gain.   |                                  |
| A.    | It is my opinion that at that time he could not continue his studies and he came back for personal power and personal gain.   |                                  |
| 30    | (Witness shown an extract of See Hua Newspaper dated 5th January, 1960). Produced and marked KTS 71.  |                                  |
|       | (Interpreter corrects the translation which is purported to be done by one of the brothers. First sentence should read:   |                                  |
|       | "Ling Beng Sung gave up his studies" and not "Ling Beng Sung sacrifices his further studies").  |                                  |



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—  
Cross-examination  
(continued)

On reading those words an intelligent person will understand the meaning behind the publication especially the words "not fighting for power and personal gain".

In my view one is not worried the public will misunderstand. If he is fighting for power and personal gain it need not adopt this phrase.

I can see that he was afraid that the public could see a youth after coming back from his studies fought for power and personal gain. So I was requested to make this statement which was actually prepared by them and sent for my signature. 10

I was trying to prevent brothers to go to the extreme so I signed the statement.

Q. You intended to publish it as shown in the publication

A. I do not agree with you because I feel that as I was the elder brother I tried to give way to him in order to prevent a critical stage or even to go to Court.

Q. You signed the document and agreed it to be published and yet you did not believe it to be the truth.

A. I can only say that it is the only way to settle the dispute at that time. I agreed to publication under my signature of a statement which I believe to be untrue. This was done to maintain family harmony. 20

Q. Having agreed to the statement, without any qualification your conduct is dishonourable.

(Mr. Starforth Hill: Objects to question. Going into conduct of a person).

(Mr. J.E. Vinelott: Withdraws question)

Time 4.30 p.m.

Adjourned to 9.00 tomorrow

Sgd: B.T.H. Lee, J.

21.11.73 30

O N A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA (Appellate Jurisdiction)

IN THE MATTER OF THE KONG THAI SAWMILL (MIRI) SDN. BHD.

and

IN THE MATTER OF THE COMPANIES ACT 1965

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B E T W E E N:

KONG THAI SAWMILL (MIRI) SDN. BHD. (First Respondent)

LING BENG SIEW (Second Respondent)

LING BENG SIONG (Third Respondent)

APPELLANTS

and

LING BENG SUNG (Applicant)

RESPONDENT

And by Cross-Appeal

B E T W E E N:

LING BENG SUNG (Applicant) APPELLANT ON  
CROSS-APPEAL

and

KONG THAI SAWMILL (MIRI) SDN. BHD. (First Respondent)

LING BENG SIEW (Second Respondent) and

LING BENG SIONG (Third Respondent)

RESPONDENTS ON  
CROSS-APPEAL

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Appeal

Solicitors for the Respondent  
and the Appellant on the Cross-  
Appeal