

44, 1949

No. 79 of 1947.

In the Privy Council.

UNIVERSITY OF LONDON
W.C.T.
12 NOV 1956
SCHOOL OF ADVANCED
LEGAL STUDIES

ON APPEAL

FROM THE COURT OF APPEAL OF THE COLONY OF SINGAPORE.

BETWEEN

31009

TAN TECK NEO (Defendant)

- Appellant

AND

1. GEORGE TAN (Defendant)
2. LEE CHIM TUAN (Plaintiff)
3. LEE PANG SOO (Plaintiff)
4. TAN SOON KENG (Plaintiff)
5. S. Q. WONG (Plaintiff)

- Respondent's.

RECORD OF PROCEEDINGS

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PART II
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*In the
High Court
of the
Colony of
Singapore.*

No. 1.
Originating
Summons,
23rd May
1946,
continued.

deceased his children surviving the date of distribution therein mentioned are entitled to share in the corpus of his residuary estate to the exclusion of their descendants or are entitled to any benefits therein upon and after the said date of distribution thereof.

2. Whether the annuities bequeathed by Clause 12 of the said Will as modified by Clause 7 of the said Codicil and the annuities bequeathed by Clause 4 of the said Codicil should continue to be paid after the date of distribution therein mentioned.

3. [*Note* : This paragraph is not printed as it merely asks for leave to appoint a corporate trustee in place of the Plaintiffs.] 10

4. That for the purposes of this summons the 1st Defendant, Lee Poh Neo, or some other fit and proper person, be appointed to represent all children of the above-named Lee Choon Guan deceased living at the date of distribution mentioned in the said Will and Codicil ; the 2nd Defendant, George Tan, or some other fit and proper person be appointed to represent all persons interested in opposing the claim of the surviving children of the said Lee Choon Guan to benefit under the said Will and Codicil after the said date of distribution and also to represent all persons interested in opposing the claims of the annuitants under Prayer 3 20 [*sic*] hereof ; and that the 3rd Defendant, Tan Teck Neo or some other fit and proper person be appointed to represent all the said annuitants.

5. That directions for service of this summons may be given.

6. That such further or other orders or directions may be given in the circumstances as may be meet.

7. That the costs hereof may be provided for.

Dated this 23rd day of May 1946.

(Sgd.) C. F. J. ESS,

Ag. Registrar. 30

No. 2.
Affidavit
of Lee
Chim Tuan
in support
of
Originating
Summons,
23rd May
1946.

No. 2.

AFFIDAVIT of Lee Chim Tuan in support of Originating Summons.

Originating Summons No. 6 of 1946.

I, LEE CHIM TUAN, of No. 10 Malacca Street, Singapore, Merchant, make oath and say as follows :—

1. Lee Choon Guan (hereinafter called the Testator) died at Singapore on the 27th day of August 1924 leaving a Will dated 11th March 1913 and a Codicil dated 16th April 1919.

2. Probate of the said Will and Codicil were granted by the Supreme Court of the Straits Settlements at Singapore on the 6th day of July 1925 40 to Lee Pang Seng, me, the said Lee Chim Tuan, Choa Eng Wan and

Lee Pang Chuan. The Plaintiffs are the present trustees of the said Will and Codicil.

3. *Note* : This paragraph is not printed in full as it merely set out the provisions of Clauses 13, 24, 25 and 26 of the Testator's Will which is printed in full among the Exhibits. The paragraph concluded as follows :—

The exhibit now produced and shown to me marked " A " is a true copy of the said Will.

10 4. *Note* : This paragraph is not printed in full as it merely set out the provisions of Clauses 8, 12 and 13 of the Testator's Codicil which is printed in full among the Exhibits. The paragraph concluded as follows :—

The exhibit now produced and shown to me marked " B " is a true copy of the said Codicil.

5. The " date of distribution " referred to in clause 12 of the said Codicil was accordingly 27th August 1945.

6. The Plaintiffs are in doubt as to the Testator's intentions regarding the distribution of his residuary estate on the occurrence of the date of expiry of 21 years after his death. He may have intended :—

20 (1) That on the occurrence of that date the beneficiaries then entitled to income should receive the share of the corpus attributable to that income, or

(2) That vesting of the corpus should take place on that definite date rather than be left to an indefinite date, leaving the income beneficiaries unaffected, or

(3) That on that date his own children should cease entirely to receive any benefits at all from his estate and the whole estate go then to remoter descendants.

7. Of the Testator's children mentioned in clause 8 of the Codicil :—

30 Lee Pang Seng died on 23rd February 1930 leaving a son and daughter.

Lee Sin Siang predeceased the Testator unmarried.

The others are all now alive, the 1st Defendant, Lee Poh Neo being one of them. The 2nd Defendant, George Tan, is one of the Testator's grandchildren, being son of Lee Poh Choo, daughter of the Testator.

The exhibit now produced and shown to me marked " C " is a family tree of the Testator's family showing all lawful descendants.

8. [*Note* : This paragraph set out the provisions of Clauses 11 and 12 of the Will and of Clause 7 of the Codicil.]

40 9. I, the said Lee Chim Tuan, am one of the annuitants mentioned in the above two clauses and the 3rd Defendant, Madam Tan Teck Neo, widow of the Testator, is the other.

10. [*Note* : This paragraph set out Clause 4 of the Codicil and concluded as follows : The annuitants therein mentioned were concubines of the Testator and are still alive.

*In the
High Court
of the
Colony of
Singapore.*

No. 2.
Affidavit
of Lee
Chim Tuan
in support
of
Originating
Summons,
23rd May
1946,
continued.

*In the
High Court
of the
Colony of
Singapore.*

11. The Testator has directed that all of the above annuities should be paid out of funds representing income and he has made no provision as to the payment after the date of distribution mentioned in his Will and Codicil.

No. 2.
Affidavit
of Lee
Chim Tuan
in support
of
Originating
Summons,
23rd May
1946,
continued.

Note : Paragraphs 12, 13 and 14 of the Affidavit dealt only with the question of the appointment of a corporate trustee raised by paragraph 3 of the Originating Summons.

SWORN to at Singapore this 23rd day
of May 1946. The deponent is } (Sgd.) LEE CHIM TUAN.
personally known to me.

10

Before me,

(Sgd.) YAHAYA A. RAHMAN

A Commissioner appointed to take affidavits etc.

No. 3.
Order
appointing
Defendants
to
represent
interests
under the
Will and
Codicil,
11th June
1946.

No. 3.

ORDER appointing Defendants to represent interests under the Will and Codicil.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.

Originating Summons No. 6 of 1946.

IN THE MATTER of the Trusts of the Will and Codicil of
Lee Choon Guan deceased dated respectively 11th March 20
1913 and 16th April 1919

(Seal) and

IN THE MATTER of the Trustees Ordinance.

Between 1. LEE CHIM TUAN
2. LEE PANG SOO
3. TAN SOON KENG
4. S. Q. WONG - Plaintiffs

and

1. LEE POH NEO
2. GEORGE TAN
3. TAN TECK NEO (Appellant) Defendants.

30

Before Mr. Justice RICHARD MOOR, in chambers.

IT IS ORDERED that prayer 2 of the Originating Summons herein be amended by substituting for the figure "18" in the first line thereof the figure "12" AND IT IS FURTHER ORDERED that for the purposes of this Originating Summons the 1st Defendant Lee Poh Neo be appointed to represent all children of the above-named Lee Choon Guan deceased living at the date of distribution mentioned in the Will and Codicil of the said Lee Choon Guan deceased and that George Tan the

2nd Defendant be appointed to represent all persons interested in opposing the claim of the surviving children of the said Lee Choon Guan deceased to benefit under his Will and Codicil after the said date of distribution and also to represent all persons interested in opposing the claim of the annuitants mentioned in clause 12 of the said Will as modified by clause 7 of the said Codicil and in clause 4 of the said Codicil mentioned in prayer 2 of the Originating Summons herein and that Tan Teck Neo the 3rd Defendant be appointed to represent the interests of all the said annuitants AND IT IS HEREBY FURTHER ORDERED that prayers 1, 2 and 3 of the
 10 Originating Summons be adjourned to open Court for argument upon a date to be fixed by the Registrar AND IT IS LASTLY ORDERED that the costs of all parties of and incidental to this application be costs in the cause.

In the High Court of the Colony of Singapore.

No. 3.
 Order appointing Defendants to represent interests under the Will and Codicil, 11th June 1946, continued.

Dated this 11th day of June 1946.

(Sgd.) C. F. J. ESS,
 Ag. Registrar.

No. 4.

AFFIDAVIT of Lee Chim Tuan in support of Originating Summons.

[*Note*: The Affidavit is not printed as it merely corrects certain
 20 mistakes in the family tree of the Testator and is not material to the question raised by paragraph 2 of the Originating Summons.]

No. 4.
 Affidavit of Lee Chim Tuan in support of Originating Summons, 17th June 1946.

No. 5.

JUDGMENT of Murray-Aynsley, C.J.

IN THE HIGH COURT OF THE COLONY OF SINGAPORE.
 Island of Singapore.

Originating Summons No. 6 of 1946.

No. 5.
 Judgment of Murray-Aynsley, C.J., 9th August 1946.

JUDGMENT OF MURRAY-AYNSLEY, C.J.

There are two points of interpretation to be considered, both arising on distribution of the estate, viz. what interest do the children of the
 30 testator take, if any, and are certain annuities to continue.

Under the original will the position was simple ; the surplus of income was to be paid over, and this was to continue till distribution, which was after the death of the last survivor of the children. In effect they were given interests which would last for their lives apart from forfeiture. The codicil fixes the date of distribution at 21 years from the death of the testator. As things have turned out, certain of the children are still alive

*In the
High Court
of the
Colony of
Singapore.*

No. 5.
Judgment
of Murray-
Aynsley,
C.J.,
9th August
1946,
continued.

If distribution takes place in accordance with clause 24 of the will and the words of the will and codicil are literally applied, then the interests of the surviving children will be cut short. It is, however, argued that the interests of these children are preserved by a doctrine which is found set out in Jarman, Vo. 1, 7th Ed. at p. 164. This of course is only a rule of construction and therefore can only apply where the will and codicil together leave some doubt as to the testator's intention. I think here that the testator's intention is perfectly clear. If the provisions of clause 24 are carried out the provisions of clauses 11-14 cannot be applied any longer. It is contended that "distribution" in clause 24 is to be taken to mean 10 merely vesting. But to do so does violence to the language of the will and codicil. Such a doctrine as that involved can easily lead to absurdity because the object of a codicil is to alter a will.

The other question gives rise to more difficulty. The annuities are of two kinds. In the will (clause 6) the trustees were directed to purchase an annuity for one Ah Lee. By clause 4 of the codicil this was revoked and instead the trustees were directed "to pay" certain monthly sums "during their respective lives" to four persons. "Such payments shall be apportioned equally between the two funds." This must refer to clause 11 of the will. The other annuities were created by clause 12 of the 20 will and modified by clause 7 of the codicil.

It should be noted that in the will the payments are to be made "during her life" and during his lifetime, while in the codicil there are no words to this effect.

Both in the will and the codicil the payments are to be made out of the income; the words in the codicil are "such monthly payments shall be apportioned equally between the two funds referred to in clause 11 of my said will." Clause 11 clearly provides for two funds to be created out of the income of the trust properties. Elsewhere, notably in clause 17 of the will, the phrase is used "income of the aforesaid two funds." This 30 language is inconsistent with the language of clause 11, and I take it to be merely a case of loose drafting. I think it is clear from the express reference to clause 11 in one case and the implied reference in the other case that the annuities in both cases were to be made out of income in the hands of trustees, and therefore when this income ceases the periodical payments must cease too, although expressed to be for life. In this my opinion coincides with that of Huggard C.J. in interpreting another clause creating another class of annuities.

In view of this it is unnecessary to decide what meaning should be attached to the omission of words signifying "for their lives" in clause 7 40 of the codicil.

(Sgd.) C. M. MURRAY-AYNSLEY,
Chief Justice.

Supreme Court,
Singapore, 9th August, 1946.

True Copy.

(Sgd.) A. P. FERNANDEZ,

P.S. to C.J.

No. 6.
ORDER.

*In the
High Court
of the
Colony of
Singapore.*

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
Island of Singapore.
~~Court of Appeal.~~

No. 6.
Order,
9th August
1946.

Originating Summons No. 6 of 1946.

IN THE MATTER of the Trusts of the Will and Codicil of
Lee Choon Guan deceased dated respectively 11th March 1913
and 16th April 1919

10

and

IN THE MATTER of the Trustees Ordinance.

Between 1. LEE CHIM TUAN
2. LEE PANG SOO
3. TAN SOON KENG
4. S. Q. WONG -

Plaintiffs
(Respondents)

and

20

1. LEE POH NEO
2. GEORGE TAN
3. TAN TECK NEO (Appellant) - - Defendants.

Originating Summons No. 6 of 1946.

Before the Honourable THE CHIEF JUSTICE.

In Open Court.

THIS COURT DOTH ORDER AND DECLARE :—

30

(1) That upon the true construction of Clause 24 of the Will and Clause 12 of the Codicil of the said Lee Choon Guan deceased his children surviving the date of distribution therein mentioned are not entitled to any share in the corpus of his residuary estate or to any income arising therefrom or other benefits therein after the date of distribution.

(2) That the annuities bequeathed by Clause 12 of the said Will as modified by Clause 7 of the said Codicil and the annuities bequeathed by Clause 4 of the said Codicil cease to be payable after the date of distribution.

40 1946.

AND THIS COURT DOTH FURTHER ORDER that the costs of all parties of and incidental to the originating Summons be taxed as between Solicitor and Client and be paid out of the estate of the said Lee Choon Guan deceased AND THIS COURT DOTH LASTLY ORDER that prayer 3 of the Originating Summons be adjourned into Chambers till 16th August

Dated this 9th day of August 1946.

(Sgd.) A. V. WINSLOW,
Dy. Registrar.

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 7.
Notice of
Appeal,
28th August
1946.

No. 7.

NOTICE OF APPEAL.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.

Island of Singapore.

Court of Appeal.

Originating Summons No. 6 of 1946.

IN THE MATTER of the Trusts of the Will and Codicil of
Lee Choon Guan deceased dated respectively 11th March 1913
and 16th April 1919

and

10

IN THE MATTER of the Trustees Ordinance.

Between 1. LEE CHIM TUAN
2. LEE PANG SOO
3. TAN SOON KENG
4. S. Q. WONG - - - - - Plaintiffs
(Respondents)

and

1. LEE POH NEO
2. GEORGE TAN
3. TAN TECK NEO (Appellant) - - - Defendants. 20

TAKE NOTICE that TAN TECK NEO, the 3rd Defendant (Appellant) herein will appeal to the next Court of Appeal in the Colony of Singapore against so much of the Judgment of the Honourable Mr. Charles Murray-Aynsley, Chief Justice, herein given on the 9th day of August, 1946 as relates to the annuities given to the class of annuitants under the Will of the abovenamed Lee Choon Guan deceased who were represented herein by the abovenamed 3rd Defendant, the Appellant.

Dated the 28th day of August, 1946.

Solicitors for the abovenamed

3rd Defendant (Appellant). 30

To
The Registrar, Supreme Court, Singapore.

To
Messrs. Allen & Gledhill,
Solicitors for the abovenamed Plaintiffs.

To
Messrs. Chan, Laycock & Ong,
Solicitors for the abovenamed 1st Defendant.

To
Messrs. Eber & Koek,
Solicitors for the abovenamed 2nd Defendant. 40

No. 8.
MEMORANDUM OF APPEAL.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

IN THE MATTER of the Trusts of the Will and Codicil of Lee Choon Guan deceased dated respectively 11th March 1913 and 16th April 1919.

and

IN THE MATTER of the Trustees Ordinance.

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 8.
Memoran-
dum of
Appeal,
9th
October
1946.

10 Between 1. LEE CHIM TUAN
2. LEE PANG SOO
3. TAN SOON KENG
4. S. Q. WONG - - - Plaintiffs

and

1 LEE POH NEO
2. GEORGE TAN
3. TAN TECK NEO - - Defendants.
(Appellant)

MEMORANDUM OF APPEAL.

20 Tan Teck Neo the abovenamed 3rd Defendant (Appellant) the person appointed by the Order of Court made in these proceedings on the 11th June 1946 to represent the interests of the class consisting of the "annuitants" specified in Clause 12 of the will of the abovenamed Lee Choon Guan deceased (hereinafter referred to as "the Testator") as modified by Clause 7 of the Codicil to the said will, and the "annuitants" specified in Clause 4 of the said Codicil, appeals to the Court of Appeal against so much of the Judgment of the Honourable Mr. Charles Murray-Aynsley, Chief Justice, delivered in these proceedings on the 9th August 1946 as relates to the "annuities" given to the members of
30 the said class of "annuitants" for the reasons following, viz. :—

1. The learned Chief Justice was wrong in holding in effect that it was the intention of the Testator, as expressed in his Will and codicil, that the "annuities" given by Clause 12 of his will, as modified by Clause 7 of the Codicil thereto, and the "annuities" given by Clause 4 of the said Codicil should cease to be payable after the date at which the Testator directed the division of his residuary real and personal estate.

40 2. The learned Chief Justice was wrong in holding that it was "unnecessary to decide what meaning should be attached to the "omission of words signifying "for their lives" in Clause 7 of the Codicil."

3. The learned Chief Justice should have held that the gifts of the "annuities" given by Clause 12 of the Testator's will, as

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 8.
Memoran-
dum of
Appeal,
9th
October
1946,
continued.

modified by Clause 7 of the Codicil thereto, and also the gifts of the "annuities" given by Clause 4 of the said Codicil, were all clear gifts of "annuities" for the respective lives of the "annuitants" the intended donees of such "annuities", and that such clear gifts were not expressly or by necessary implication partially revoked or cut down by any of the provisions of the will and codicil of the Testator.

Dated at Singapore this 9th day of October 1946.

(Sgd.) SISSON & DELAY,

Solicitors for Tan Teck Neo 10
the abovenamed Appellant.

No. 9.
Judgment
of Carey,
Acting C.J.,
8th
February
1947.

No. 9.

JUDGMENT of Carey, Acting C.J.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
In the Court of Appeal.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

Hearing : Singapore, 11th December, 1946.

Coram. Carey Ag. C. J. Malayan Union, Jobling and Brown J.J. Singapore.

JUDGMENT OF CAREY, AG. C.J.

20

In this Originating Summons the questions for determination, in so far as this appeal is concerned, are—

1. Whether upon the true construction of Clause 24 of the Will and Clause 12 of the Codicil of the said Lee Choon Guan deceased his children surviving the date of distribution therein mentioned are entitled to share in the corpus of his residuary estate to the exclusion of their descendants or are entitled to any benefits therein upon and after the said date of distribution thereof.

2. Whether the annuities bequeathed by Clause 12 of the said Will as modified by Clause 7 of the said Codicil and the annuities bequeathed by Clause 4 of the said Codicil should continue to be paid after the date of distribution therein mentioned. 30

A representation order was made whereby the appellant was appointed to represent the annuitants mentioned in Clause 12 of the Will as modified by Clause 7 of the Codicil and those mentioned in Clause 4 of the Codicil.

After hearing in Open Court, judgment was delivered by the Chief Justice, Singapore, and it was ordered and declared on the 9th August, 1946, as follows :—

(1) that upon the true construction of Clause 24 of the Will and Clause 12 of the Codicil of the said Lee Choon Guan deceased his children surviving the date of distribution therein mentioned are 40

not entitled to any share in the corpus of his residuary estate or to any income arising therefrom or other benefits therein after the date of distribution ;

(2) that the annuities bequeathed by Clause 12 of the said Will as modified by Clause 7 of the said Codicil and the annuities bequeathed by Clause 4 of the said Codicil cease to be payable after the date of distribution.

The 3rd Defendant has appealed against so much of the said judgment as relates to the annuities given to the class of annuitants under the Will of Lee Choon Guan Deceased who were represented by the said 3rd Defendant.

The substance of the appellant's contention is that the monthly payments directed to be made during life by Clause 12 of the Will as subsequently altered by Clause 7 of the Codicil, and the monthly payments directed to be made during life by Clause 4 of the Codicil should continue to be payable notwithstanding the extinction of the fund out of which they were payable, and that the corpus is chargeable therewith.

By Clause 12 of his Will the testator directed his trustees to pay to his wife Tan Teck Neo (the appellant) during her life \$1000/- per month, subject to reduction in the event of her re-marriage, and to Lim Chim Tuan \$100/- per month during his lifetime. He directed such monthly payments to be paid, as to one half, out of the income of his house and other leasehold property and mortgages and, as to the other half, by the income from his other investments.

By Clause 11 of his Will the testator, after providing for the remuneration of his trustees, and for his and his wife's funeral expenses, after giving certain legacies and directing the purchase of an annuity, devised and bequeathed all other "the rest and residue of my real and personal estate not hereby or by any codicil hereto otherwise disposed of (hereinafter called 'my residuary trust estate') to my Trustees upon trust to collect receive possess hold and deal with the same according to the directions hereinafter contained, that is to say, to collect the income rents profits and dividends arising therefrom and to divide the same into two separate funds one of which funds shall consist of the income derived from my house and other real and leasehold property including any property which may at the time of my decease be in mortgage to me to secure any loan or loans, and the other of which funds shall consist of the income derived from my other investments. Each fund shall bear its own casual or incidental expenses such as quit rents assessments repairs stamp fees cost of collection and the like, out of revenue. In the event of any realisation of any investment or the sale of any house or other part of my real or leasehold property or the redemption or calling-in of any mortgage, the proceeds thereof shall be re-invested in accordance with the provisions of clause twenty (20) hereof, but such re-investments and any subsequent variations thereof shall be impressed with the nature of the original investment as it stood at the date of my death, and the income rents profits and dividends shall be appropriated according to the directions given in this clause."

Clause 13 of the Will directs the trustees, after providing for the outgoing payments and charges in the Will before set out to divide the residue of the income rents and profits derived from his house and other real and leasehold property and mortgages at the end of every month into

*In the
Court of
Appeal
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Singapore.*

No. 9.
Judgment
of Carey,
Acting C.J.,
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continued.

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 9.
Judgment
of Carey,
Acting C.J.,
8th
February
1947,
continued.

thirty equal parts or shares and to pay the same in specified proportions to certain specified children, and Clause 14 further directs "that with regard to the other of such funds as shall consist of the income derived from my other investments, my Trustees shall accumulate the same, investing accumulations from time to time at their discretion in accordance with the provisions of clause twenty (20) hereof and at the expiration of every period of five (5) years from the date of my death divide such accumulated income, together with any rents, profits, and interest accrued thereon, amongst my children referred to in clause thirteen (13) hereof in the same proportions in which the income from my house and other real and leasehold property and mortgages is to be divided amongst them." 10

In Clause 24 of the Will the testator directed his trustees upon the death of the last survivor of his children referred to in Clause 13, to divide the whole of his residuary, real and personal estate amongst his grand-children and, if deceased, their children per stirpes in the proportion in which his said children or their issue shared in the income thereof.

Six years later the testator made a Codicil to his Will inter alia appointing another executor and trustee, increasing the remuneration of the trustees, increasing certain legacies and adding further legacies.

Clause 4 of the Codicil reads "I hereby revoke clause 6 of my Will 20 and in place thereof I direct my Trustees to pay the sum of Dollars One hundred and twenty (\$120) each per month during their respective lives to Ang Lee Neo (otherwise known as Ah Lee) Wee Bee Neo (otherwise known as Seah Lew) Fan Ah Gan and Tan Chwee Neo. Such payments shall be apportioned equally between the two funds referred to in Clause 11 of my said Will. I further bequeath to the presently expected child of Tan Chwee Neo a legacy of Dollars Fifteen thousand (15,000) if he or she should survive me."

Clause 6 of the Codicil is also an express revocation of another clause of the Will whereby an estate for life in his house, given to his wife, was 30 enlarged into an absolute gift.

Clause 7 of the Codicil obviously relates to Clause 12 of the Will, which it does not expressly revoke, but provides that "in lieu of the monthly payment of Dollars One thousand (\$1,000) bequeathed to my said wife Tan Teck Neo (reducible to Dollars One hundred (\$100) per month if she should remarry) I bequeath to my said wife a monthly payment of Dollars Two thousand (\$2,000/-) (irrespective of her remarriage) and in lieu of the monthly payment of Dollars One hundred bequeathed to Lee Chim Tuan by the said clause of my said Will I bequeath a monthly payment of Dollars Two hundred (\$200). Such monthly payment shall 40 be apportioned equally between the two funds referred to in clause 11 of my said Will."

Clause 8 of the Codicil substitutes a division of "the residue of the income" referred to in Clause 13 of the Will for the division directed to be made in such Clause 13, and in Clause 9 of the Codicil in lieu of the period of five years referred to in Clause 14 of the Will the testator directed "the division of the accumulated income" to take place every three years.

In Clause 12 of the Codicil the testator directed that the date of the distribution of his residuary, real and personal estate should take place 21 years after the date of his death instead of on the date of the death of 50 the last survivor of his children as provided in Clause 24 of his Will.

The testator died on the 27th August 1924 and accordingly the date of distribution was the 27th August, 1945.

The wife of the testator survived him and is still living, as is Lim Chim Tuan and as are the persons to whom the trustees were directed by Clause 4 of the Codicil to make monthly payments for their lives apportioned equally between the two funds referred to in Clause 11 of the Will.

10 It should be noted that by Clauses 4 and 6 of the Codicil the testator expressly revoked Clauses 6 and 8 respectively of his Will and substituted other provisions, so that Clauses 6 and 8 are entirely eliminated whereas by Clause 7 of the Codicil the Testator merely substituted certain provisions for those in Clause 12 of his Will, so that the said Clause of the Will and that of the Codicil, altering it, have to be construed together. Therefore when in Clause 12 of his Will the testator directs a payment of a certain sum monthly to his wife during her life and in Clause 7 of the Codicil he directs that in lieu of such monthly payment he bequeaths a monthly payment of another amount to her, one must take the latter monthly payment as also being expressed to be "during her life." *In re Boddington* (1884) 25 Ch. D. 685.

20 It is possible that at the time of making his Will the testator had reason to think that his wife and the others to whom specific monthly payments were directed to be made, would not survive the last of his children. Whether or not the survivorship of such beneficiaries entered his mind when, by the Codicil, he altered the date of distribution to 21 years after his death, there is nothing to indicate. However that may be, is not for one to conjecture. To ascertain the intention of the testator as expressed in his Will and Codicil is the task that confronts a Court on questions affecting the construction of a Will.

30 The monthly payments in question were directed to be made from two sources viz. (1) "the income of my house and other real and leasehold property and mortgages" and (2) "the income from my other investments."

40 It is significant to note the other references in the Will to these funds. In Clause 13 the testator refers to "the residue of the income rents and profits derived from my house and other real and leasehold property and mortgages," in Clause 14 to "the other of such funds as shall consist of the income derived from my other investments" and "my trustees shall accumulate the same" and divide "such accumulated income . . . in the same proportions" in which the income from my house and other real and "leasehold property and mortgages is to be divided," in Clause 15 to "the income of any child dying," in Clause 17 to "the income of the aforesaid two funds." This I take, as the learned Chief Justice, Singapore, has termed it to be "a looseness in drafting." The general scheme of the Will warrants the transposition of the words so as to read "the aforesaid 2 funds of income"—and in Clause 24 he directs the division of the whole of his residuary, real and personal estate among the children then living and the issue of children then dead of his children "in the proportion in which my said children or their issue shared in the income thereof."

50 These and other references are only intelligible on the understanding that the testator intended to create and created two funds of income to

*In the
Court of
Appeal
of the
Colony of
Singapore.*
—
No. 9.
Judgment
of Carey,
Acting C.J
8th
February
1947,
continued.

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 9.
Judgment
of Carey,
Acting C.J.,
8th
February
1947,
continued.

exist and be disposed of periodically, until the 21st anniversary of his death, and then the provisions for the creation of the funds ceased to apply and the funds no longer existed.

I have unsuccessfully endeavoured to find in the Will support for the appellant's contention that these funds constituted corpus or that there were four funds of which two were corpus and two the income of such two corpus funds. Any such construction to my mind would be doing violence to the language used by the testator.

The appellant contends that the trustees are now obliged to purchase annuities out of the residuary estate so as to continue the monthly payments during their lives to the persons whom the appellant represents. Had this been the intention of the testator, in revoking Clause 6 of his Will whereby he directed the purchase of an annuity for Ah Lee, he would not have altered such direction. When he expressly revoked the direction to purchase an annuity out of such part of his real and personal estate as his trustees should think fit and instead directed his trustees to pay a monthly sum to Ah Lee and three other named persons during their respective lives out of the two funds referred to in Clause 11 of his Will, he must be taken to have intended that annuities should not be purchased and it is not competent now for the appellant to maintain that the provision of Clause 6 of the Will should be given effect to as regards charging the estate with the purchase of an annuity. 10 20

In the case of *Foster vs. Smith* (1846 Ch. 1 Phillips 628) the testator devised his freehold and leasehold estates to trustees on trust to receive the rents, issues and profits thereof when and as they should become due and payable and thereout to pay to his wife, if she should survive him, a clear annuity of £200 during the term of her natural life, and from and immediately after the decease of his wife, then upon the further trust to convey his freehold estate to his three sisters their heirs and assigns for ever and to assign his leasehold estate to his three sisters for the residue of the terms unexpired. On the death of the widow there was an arrear of annuity, owing to insufficiency for some years, of the rents of the estate. 30

The then Lord Chancellor, Lord Lyndhurst in his judgment upsetting, on appeal, the judgment of the Vice-Chancellor, who had held the opinion that the annuity was a charge on the corpus of the estate, said :—

“ there can be no doubt that, if the trust had simply been to receive the rents, issues, and profits of the estates, when and as the same should become due and payable, and thereout to pay to his wife, if she should survive the testator, an annuity of £200 for her life, that this would have been a charge upon the rents etc., until the whole amount of the annuity with the arrears had been paid. And the trustees after the death of the widow would have been bound to apply the rents, etc., accordingly. But in this case a new trust arises on her death; for the trustees are directed, ‘ from and immediately after ’ that event, to convey the estate to the sisters; and if they perform their trust, which I think they are bound to do, they would be disabled from applying the subsequent rents to the discharge of the arrears. To obviate this, it is proposed to construe the direction to convey to the sisters on the death of 40 50

the widow, as if it has been a direction to convey, subject to the annuity. But this would be essentially to alter the testator's will; in fact to make a new will. And I think there is nothing in the will to justify it."

The principle applied there seems to me to be in point herein.

In the present case the testator specifically directed that the monthly payments to his wife under Clause 12 of the Will as amended by Clause 7 of the Codicil and those under Clause 4 of the Codicil were to be apportioned between the two funds of income provided for in Clause 11 of his will. Such funds were more than ample to satisfy the monthly payments, and the indications are that the testator did not contemplate or intend that the latter should form a charge on corpus. When, by his direction, those funds ceased to exist the monthly payments also ceased.

In my view the decision of the learned Chief Justice Singapore, was correct, and this appeal must be dismissed. As I understand my learned brothers have arrived at the same conclusion it is ordered accordingly and that the costs of the parties be allowed out of the estate. The application for the allowance of a second counsel for the Respondents is granted.

20 Dated this 27th day of January, 1947.

(Sgd.) C. W. V. CAREY,

Judge.

Delivered on 8th February 1947 at Singapore by me in the absence of Mr. Justice Carey.

(Sgd.) GEOFFREY L. JOBLING,

J.

Certified true copy.

(Sgd.) HENG PENG HOE

P.S. to Jobling J.

20.3.47.

30

No. 10.

JUDGMENT of Jobling, J.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.

In the Court of Appeal.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

Hearing: Singapore, 11th December, 1946.

Coram: Carey Ag. C.J. Malayan Union, Jobling and Brown JJ. Singapore.

JUDGMENT OF JOBLING J.

40 This is an appeal from so much of the judgment of 9th August 1946 of the learned Chief Justice Singapore as relates to the annuities given by

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 9.
Judgment
of Carey,
Acting C.J.,
8th
February
1947,
continued.

No. 10.
Judgment
of
Jobling J.,
8th
February
1947.

*In the
Court of
Appeal
of the
Colony of
Singapore.*

Clause 12 of the Will of Lee Choon Guan as modified by Clause 7 of the Codicil to the said Will and by Clause 4 of the said Codicil. The Learned Chief Justice in that judgment held that the annuities in both cases were to be paid out of income in the hands of the trustees and that therefore when this income ceases the periodical payments must cease too, although expressed to be for life.

No. 10.
Judgment
of
Jobling, J.,
8th
February
1947,
continued.

Counsel for the appellant did not dispute that if the annuities were payable out of income they would cease when the income ceased but contended that they were definite bequests and a charge on the whole of the estate. It was also urged on the authority of *Harbin vs. Masterman* 10 (1896 1 Chancery page 351) that the annuitants were entitled to have annuities purchased for them and that therefore the distribution of the residuary estate need not be postponed by a continuance of the annuities : Counsel relied upon the opening words of Clause 11 of the Will namely :— “ I devise and bequeath all other the rest and residue of my real and personal estate not hereby or by any codicil hereto otherwise disposed of (hereinafter called my ‘ residuary trust Estate ’) to my Trustees upon trust . . . ” and contended that the annuities were definite bequests by the Will and Codicil and therefore excluded from the trust. Such a construction seems to me to be inconsistent with the whole tenor of the 20 Will. In my view the plain intention of Clauses 11, 12, 13 and 14 is first to create a trust of two separate funds and then to direct the trustees how to dispose of the income received from those funds. I can find no words in these Clauses that are in any way inconsistent with such an intention and in fact Counsel was only able to refer us to two phrases in the whole of the Will which might be said to be so inconsistent. In Clauses 17 and 18 the phrases “ the income of the aforesaid two funds ” and “ the income of the share of such deceased ” are inconsistent with the language of Clause 11 but they are not sufficient to throw doubt on the plain words of Clauses 11 to 14 and I agree with the Learned Chief Justice that they are merely the 30 result of loose drafting.

The directions in Clauses 12, 13 and 14 are unmistakable directions to pay out of the income derived from the residuary trust estate and they cannot therefore be said to be a disposal of part of the testator’s real and personal estate to bring them within the opening words of Clause 11.

I find therefore that the annuities given by Clause 12 of the Will were originally directed to be paid out of income. This clause was altered as to the amounts of the annuities by Clause 7 of the Codicil which contains the following words “ such monthly payments shall be apportioned equally between the two funds referred to in Clause 11 of my said Will.” 40

These words confirm the original instruction to pay from the two funds of income created by Clause 11 and there is nothing in them or elsewhere in Clause 7 of the Codicil which gives any indication that the testator intended to revoke his original instruction and direct payment of the enhanced annuities from a different source. I find therefore that the annuities given by Clause 12 of the Will as modified by Clause 7 of the Codicil were directed to be paid from income received by the Trustees.

The other annuities the subject of this appeal are those referred to in Clause 4 of the Codicil. This Clause specifically revoked Clause 6 of the Will and discloses different intentions of the testator. In place of one 50 annuitant there are to be four ; the amount of the payments is increased

and instead of a direction to purchase an annuity out of the real and personal estate, there is a direction to make monthly payments which "shall be apportioned equally between the two funds referred to in Clause 11 of my said Will."

*In the
Court of
Appeal
of the
Colony of
Singapore.*

10 The two funds referred to in Clause 11 are funds of income derived from the residuary trust estate and, therefore, as in the case of Clauses 12, 13 and 14 of the Will, the directions in Clause 4 of the Codicil are directions to pay out of the income of the residuary trust estate and cannot be said to be a disposal of the testator's real and personal estate such as is referred to in the opening words of Clause 11.

No. 10.
Judgment
of
Jobling, J.,
8th
February
1947,
continued.

In my view therefore the annuities payable under Clause 12 of the Will as modified by Clause 7 of the Codicil and also the annuities payable under Clause 4 of the Codicil are a charge on the income of the residuary trust estate. On the date fixed for the distribution of the residuary trust estate that estate vested in the beneficiaries and the income therefrom ceased. With the failure of the income the annuities payable out of it must cease too.

I am of opinion therefore that the decision of the Learned Chief Justice Singapore was correct and this appeal must be dismissed.

20

(Sgd.) GEOFFREY L. JOBLING,
Judge.

Singapore, 8th February, 1947.

No. 11.

JUDGMENT of Brown J.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.
In the Court of Appeal.

No. 11.
Judgment
of
Brown, J.,
8th
February
1947.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

Hearing : Singapore 11th December 1946.

30 *Coram* : Carey, Ag. C.J., Malayan Union, Jobling and Brown, JJ.,
Singapore.

JUDGMENT OF BROWN J.

40 I agree. By Clause 11 of the Will the residue of the estate "not hereby or by any codicil hereto otherwise disposed of" is devised and bequeathed to the Trustees as a "residuary trust estate" with the direction that they are to collect the income arising from it and divide it into two separate funds—one fund consisting of the income from his immoveable property, the other consisting of the income from his investments. The short point is whether the annuities given by Clauses 4 and 7 of the codicil are bequests which are "otherwise disposed of" by the codicil so as to take them out of the provisions of Clause 11 of the Will.

In the Court of Appeal of the Colony of Singapore.

No. 11.
Judgment of Brown, J., 8th February 1947, *continued.*

If they are "otherwise disposed of" by the codicil, as the appellant contends, the question at once arises in what manner are they otherwise disposed of" and from what source other than the income from the residuary trust estate is the disposition to be made. The mere fact that these annuities are dealt with by separate provisions in the codicil does not mean that they are bequeaths payable out of the corpus of the estate, because the two clauses of the codicil expressly state the sources from which they are to be paid. Clauses 4 and 7 of the codicil provide that these annuities "shall be apportioned equally between the two funds referred to in Clause 11 of my said Will." In other words the source from which these annuities are to be paid is the income from the residuary trust estate. And to pay them out of any other source would be to contravene the express intention and direction of the testator that they are to be paid out of the two funds of income created by Clause 11. It follows that when the income from these two funds ceases the annuities must cease also, because there will be no source from which they can be paid. 10

In my opinion the appeal must be dismissed.

Singapore, 8th February, 1947.

(Sgd.) T. A. BROWN,

True Copy.

Judge.

(Sgd.) ENG SENG HOI,
P.S. to Hon'ble Mr. Justice T. A. Brown,
Supreme Court,
Singapore.

20

No. 12.
Order dismissing appeal, 8th February 1947.

No. 12.

ORDER dismissing Appeal.

IN THE SUPREME COURT OF THE COLONY OF SINGAPORE.

In the Court of Appeal.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

IN THE MATTER of the trusts of the Will and Codicil of Lee Choon Guan deceased dated respectively 11th March 1913 and 16th April 1919. 30

(Seal.) and

IN THE MATTER of the Trustees Ordinance.

Between 1. LEE CHIM TUAN
2. LEE PANG SOO
3. TAN SOON KENG
4. S. Q. WONG - - - - Plaintiffs

and

1. LEE POH NEO
2. GEORGE TAN
3. TAN TECK NEO - - Defendants

40

8th February 1947.

This Appeal coming on for hearing on the 11th day of December 1946 before the Honourable Mr. Cecil William Victor Carey, Acting Chief

Justice, Malayan Union, the Honourable Mr. Geoffrey Lionel Jobling, Judge, and the Honourable Mr. Thomas Algernon Brown, Judge, in the presence of Counsel for the above-named Tan Teck Neo (Appellant) and for the above-named George Tan (Respondent), and upon reading the Record of Appeal filed herein on the 9th day of October 1946 and upon hearing what was alleged by Counsel on both sides, It was ordered that this appeal should stand for judgment, And the same standing for judgment this day in the presence of Counsel as aforesaid **THIS COURT DOTH ORDER AND ADJUDGE** that this Appeal be dismissed out of Court **AND THIS COURT DOTH FURTHER ORDER** that the costs of the Appellant and of the Respondent be taxed as between Solicitor and Client and paid out of the estate of the above-named Testator Lee Choon Guan deceased and doth certify for two counsel for the Respondent **AND THIS COURT DOTH LASTLY ORDER** that the Accountant-General do pay out to the Appellant or her Solicitors Messrs. Sisson & Delay the sum of \$500- deposited by the Appellant as security for the costs of this Appeal.

In the Court of Appeal of the Colony of Singapore.

No. 12.
Order dismissing appeal, 8th February 1947, continued.

10

Entered in Volume XLIX. Pages 391 & 392. At 11.45 a.m. on the 18th day of February 1947.

20

By the Court.

(Sgd.) H. A. FORRER,

Registrar.

No. 13.

PETITION for leave to appeal to His Majesty in Council.

IN THE COURT OF APPEAL.

In the High Court of the Colony of Singapore,
Island of Singapore.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

No. 13.
Petition for leave to appeal to His Majesty in Council, 21st March 1947.

30 **TO THE HONOURABLE THE JUDGES OF THE COURT OF APPEAL.**

THE HUMBLE PETITION of TAN TECK NEO, the above-named Third Defendant (Appellant), of No. 29, Amber Road, Singapore, in the Colony of Singapore, Widow.

SHEWETH :—

[Note : Paragraphs 1 to 8 inclusive of the Petition are not printed as they merely recite all the previous proceedings and other relevant documents which are printed in their appropriate places in the Record of Proceedings.]

9. Your Petitioner is advised and humbly submits that the said Judgment of the Court of Appeal is erroneous and ought to be reversed on the grounds—

40

(i) That the Court of Appeal was wrong in rejecting the third ground of Appeal* set out in Paragraph 7 hereof supra.

*NOTE :—
This is the ground set out in paragraph 3 of the Memorandum of Appeal to the Court of Appeal (Document No. 8).

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 13.
Petition for
leave to
appeal to
His
Majesty
in Council,
21st March
1947,
continued.

(ii) That the Court of Appeal should have held—

(a) That according to the true construction of the Will and Codicil of the said Lee Choon Guan deceased the gifts of the annuities of \$2,000.— per month and \$200.— per month made by Clause 12 of the Will as modified by Clause 7 of the Codicil thereto and also the gifts of the four annuities of \$120.— each per month made by Clause 4 of the said Codicil to the annuitants respectively therein specified were all clear gifts of annuities for the respective lives of the annuitants the intended donees of such annuities and that apart from the directions contained in 10
Clauses 4 and 7 of the said Codicil that such monthly payments should be apportioned equally between the two funds referred to in Clause 11 of the Testator's said Will payment of the said monthly sums was charged upon the whole corpus of the estate of the Testator.

(b) That the said directions contained in Clauses 4 and 7 of the said Codicil that the said monthly payments should be apportioned equally between the two funds referred to in Clause 11 of the Testator's said Will were not and were not intended to be or to operate so as to revoke in whole or in part the gifts of the 20
said annuities to the respective donees thereof for life and that the gifts of the said annuities were not expressly or by necessary implication partially revoked or cut down by the said directions or by any other provisions of the Will and Codicil of the Testator.

10. Your Petitioner therefore prays for a certificate that this case as regards value and nature is a fit one for appeal to His Majesty in Council

AND Your Petitioner as in duty bound will ever pray etc. etc.

Dated this 21st day of March 1947.

SISSON & DELAY,

30

French Bank Building, Singapore,
Solicitors for the Petitioner, Tan Teck Neo.

It is intended to serve this Petition upon the Plaintiffs and upon George Tan the 2nd above-named Defendant the representative of the grandchildren of the said Lee Choon Guan deceased.

I, TAN TECK NEO, of No. 29 Amber Road, Singapore, the above-named 3rd Defendant and Appellant, make oath and say that the statements contained in the foregoing Petition are to the best of my knowledge information and belief in all respects true.

Sworn at Singapore this 21st day
of March 1947 by the Deponent
Tan Teck Neo

(Sgd.) TAN TECK NEO 40
Now
Mrs. LEE CHOON GUAN

Before me,

(Sgd.) H. R. L. DYNE,
A Commissioner for Oaths &c.

No. 14.

ORDER granting leave to appeal to His Majesty in Council.

IN THE COURT OF APPEAL.

In the High Court of the Colony of Singapore.
Island of Singapore.

Appeal No. 1 of 1946.

Originating Summons No. 6 of 1946.

IN THE MATTER of the Trusts of the Will and Codicil of
Lee Choon Guan deceased dated respectively 11th March
1913 and 16th April 1919

10

and

IN THE MATTER of the Trustees Ordinance

Between 1. LEE CHIM TUAN
2. LEE PANG SOO
3. TAN SOON KENG
4. S. Q. WONG

- - - Plaintiffs

and

1. LEE POH NEO
2. GEORGE TAN
3. TAN TECK NEO (Appellant)

Defendants.

20

Before THE HONOURABLE MR. CHARLES MURRAY AYNSLEY Chief
Justice in open Court.

Upon the Petition of the above-named 3rd Defendant (Appellant) Tan Teck Neo preferred unto this Court on the 21st day of March 1947 for a Certificate that having regard to its value and nature this case is a fit one for appeal to His Majesty in Council from the judgment of the Court of Appeal given herein on the 8th day of February 1947, AND UPON READING the said Petition and the Affidavit of the 3rd Defendant (Appellant) Tan Teck Neo sworn to and filed herein on the 21st day of

30 March 1947 verifying the said Petition AND UPON HEARING what was alleged by Counsel for the Petitioner and for the above-named Plaintiffs and for the above-named 2nd Defendant George Tan the person appointed to represent all persons interested in opposing the claims of the "annuitants" represented in these proceedings by the 3rd Defendant (Appellant) Tan Teck Neo THIS COURT DOTH CERTIFY that this case is from its value and nature a fit one for appeal to His Majesty in Council and that the third Defendant (Appellant) Tan Teck Neo do have liberty to appeal accordingly and DOTH ORDER that security for the costs of said Appeal be for the sum of \$2,000/- and DOTH LASTLY ORDER that the

40 costs of and incidental to this application be costs in the Appeal.

Dated this 2nd day of April 1947.

By the Court.

(Sgd.) TAN THOON LIP,

Dy. Registrar.

*In the
Court of
Appeal
of the
Colony of
Singapore.*No. 14.
Order
granting
leave to
appeal to
His
Majesty
in Council,
2nd April
1947.

*In the
Court of
Appeal
of the
Colony of
Singapore.*

No. 15.

ORDER admitting appeal to His Majesty in Council.

IN THE COURT OF APPEAL.

In the High Court of the Colony of Singapore.
Island of Singapore.

Civil Appeal No. 1 of 1946.

No. 15.
Order
admitting
appeal to
His
Majesty
in Council,
8th
September
1947.

Originating Summons No. 6 of 1946.

IN THE MATTER of the Trusts of the Will and Codicil of
Lee Choon Guan deceased dated respectively 11th March
1913 and 16th April 1919

10

and

IN THE MATTER of the Trustees Ordinance.

- Between
1. LEE CHIM TUAN
 2. LEE PANG SOO
 3. TAN SOON KENG
 4. S. Q. WONG - - -

Plaintiffs
(Respondents)

and

1. LEE POH NEO
 2. GEORGE TAN
 3. TAN TECK NEO - - - - - Defendants
- (Appellant)

20

Before The Honourable Mr. JUSTICE BROWN in Chambers.

Upon the application on the part of the 3rd Defendant (Appellant) Tan Teck Neo made by way of Summons in Chambers No. 494/47 this day and upon hearing the Solicitors for the Applicant and for the 2nd Defendant (Respondent) the Solicitors for the Plaintiffs (Respondents) and for Gladys and Dorothy Lee also attending IT IS ORDERED that the Appeal herein to His Majesty in Council be admitted and that the costs of this application be costs in the appeal.

30

Dated this 8th day of September, 1947.

(Sgd.) TAN THOON LIP

Dy. Registrar.



PART II
EXHIBITS.

Exhibits.

A.
Will of
Lee Choon
Guan,
11th March
1913.

A.—WILL of Lee Choon Guan.

O.S. No. 6 of 1946.

This is the Exhibit marked "A" referred to in the Affidavit of Lee Chim Tuan sworn to before me this 23rd day of May 1946.

(Sdg.) YAHYA A. RAHMAN

A Commissioner to take oaths etc.

COPY WILL OF LEE CHOON GUAN.

- 10 1. THIS IS THE LAST WILL AND TESTAMENT of me LEE CHOON GUAN of No. 10 Malacca Street Singapore Merchant.
2. I revoke all former Wills Codicils and Testamentary dispositions made by me and declare this to be my last Will.
3. I appoint LEE CHIM TUAN of No. 81 Amoy Street Singapore, CHOA ENG WAN of No. 27-3 Killiney Road Singapore and my son LEE PANG CHUAN at present residing in England if and when he shall attain the age of 21 years (hereinafter called "my Trustees" which expression shall include the Trustees or Trustee for the time being of this my Will whether original or substituted) to be the Executors and Trustees
- 20 of this my Will and in case any one or more of them shall die during my lifetime or shall refuse or be unable (from any cause other than infancy) to act in the office of Executor and Trustee, then I appoint my son LEE PANG SOO if and when he shall attain the age of 21 years to fill any vacancy which may occur in the office of Executor and Trustee hereof by reason of such death refusal or inability to act as aforesaid, and if after such appointment there shall yet occur any vacancy in the office of Executor and Trustee by reason of the death refusal or inability (from any cause other than infancy) to act of any of the said Trustee then I appoint my son
- 30 LEE SIN SIANG if and when he shall attain the age of 21 years to fill such vacancy and I direct that as from the time when my said son Lee Pang Chuan shall attain the age of 21 years and, in the event of his death during my lifetime or before attaining the age of 21 years or refusing or being unable to act as Trustee, of my son Lee Pang Soo attaining the age of 21 years and, in the event of the death of the latter or his refusal or inability to act as Trustee, of my son Lee Sin Siang attaining the age of 21 years, there shall always be three Trustees who shall act in the execution of the trusts of this my Will, and I further direct that all cheques be signed and all matters affecting the execution of the trusts of this my Will must be signed and carried out by at least two of my Trustees and not otherwise. And
- 40 if at any time prior to my son Lee Sin Siang attaining the age of 21 years the number of Trustees who shall have actually proved this my Will shall fall to one I direct that the one surviving Trustee shall appoint, on such terms as he may think fit, one or two persons to be additional Trustees of this my Will.
4. In lieu of any commission which may be allowed by law or custom I give to each of my Trustees as remuneration for their services while they

Exhibits.

A.

Will of
Lee Choon
Guan,
11th March
1913,
continued.

act as Trustee the sum of Dollars One hundred and fifty (\$150) per month so long as they act as my Trustee, such remuneration to be deemed to accrue de die in diem.

5. I give and bequeath the following legacies which shall vest immediately on my death, but shall be payable to such legatees as have attained the age of 21 years or married under that age within six months after my death and to such legatees as shall not have attained the age of 21 years upon he or she attain the age of 21 years or marrying under such age but such legacies shall not carry interest until paid :—

To my brother Lee Keng Tye Dollars Five thousand (\$5,000). 10

To my brother Lee Keng Ann Dollars Three thousand (\$3,000).

To my brother Lee Keng Hoon Dollars Three thousand (\$3,000).

To my brother Lee Keng Jin Dollars Three thousand (\$3,000).

To my brother Lee Keng Chye Dollars Three thousand (\$3,000).

To my brother Lee Keng Jian Dollars Three thousand (\$3,000).

To my brother Lee Keng Siong Dollars Three thousand (3,000).

To my sister Lee Geok Hong Dollars Three thousand (\$3,000).

To my sister Lee Geok Lin Dollars Three thousand (\$3,000).

To my sister Lee Geok Kin Dollars Three thousand (\$3,000).

To my sister Lee Geok Joon Dollars Three thousand (\$3,000). 20

To my sister Lee Geok Swee Dollars Three thousand (\$3,000).

To my sister Lee Geok Tin Dollars Three thousand (\$3,000).

To Lay Gwat Neo, a concubine of my late father Lee Chen Yan, at the date of the execution of this my Will residing at Majenta Cottage, Killiney Road, Singapore, Dollars Three thousand (\$3,000).

To Bo Tan, Lin Ueow, Ah Lian, Ah Ho, Ah Yeow, other concubines of my late father Lee Cheng Yan all at the date of the execution of this my Will residing at Majenta Cottage, Killiney Road, Singapore, the sum of Dollars Five hundred (\$500) each.

To my servant Ah Cheow, at the date of the execution of this 30 my Will residing at Majenta Cottage, Killiney Road, Singapore, if he shall be in my service at the time of my death, the sum of Dollars Four hundred (\$400).

To my servant Ah Heng, at the date of the execution of this my Will residing at Majenta Cottage, Killiney Road, Singapore, if he shall be in my service at the time of my death, the sum of Dollars Three hundred (\$300).

To my servant Ah Quee, at the date of the execution of this my Will residing at my house in Stanley Street, Singapore, if he shall be in my service at the time of my death, the sum of Dollars 40 Two hundred (\$200).

6. I direct my Trustees, as soon as possible after my death to purchase out of such part of my real and personal estate as they may think fit an annuity of Dollars Four hundred and eighty (\$480) payable in monthly instalments of Dollars Forty (\$40) each for my concubine Ah Lee, at the date of the execution of this my Will residing at Majenta Cottage, Killiney Road, Singapore, during her life.

7. I further give and bequeath the following legacies which shall vest immediately on my death, but shall be payable one year after my death, but shall not bear interest during such year :—

To Lee Chim Tuan Dollars Fifteen thousand (\$15,000).

To Lee Siang Gan Dollars Ten thousand (\$10,000).

Exhibits.
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A.
Will of
Lee Choon
Guan,
11th March
1913,
continued.

8. I devise my house No. 127A Tanjong Katong Singapore together with the land used or occupied therewith and all the furniture and effects which may be therein at the time of my death to my wife Tan Teck Neo for her life with remainder to my son Lee Pang Seng for life, with remainder
10 to my son Lee Pang Chuan for life, with remainder to my son Lee Pang Soo for life, with remainder to my son Lee Sin Siang for life, with remainder to my grandson Lee Siew Bin, son of Lee Pang Sen, absolutely, but I direct that no life interest for the time being in possession shall be liable for repairs, wear and tear, or depreciation.

9. I direct that my Trustees shall pay all the aforesaid charges and also the funeral expenses of myself and my wife Tan Teck Neo out of such part of my real and personal estate as they in their absolute discretion may think fit.

10. I direct that my Trustees shall expend a sum not exceeding
20 Ten thousand dollars (\$10,000) on my funeral expenses and a sum not exceeding Five thousand dollars (\$5,000) on the funeral expenses of my wife Tan Teck Neo.

11. I devise and bequeath all other the rest and residue of my real and personal estate not hereby or by any codicil hereto otherwise disposed of (hereinafter called my "residuary trust estate") to my Trustees upon trust to collect receive possess hold and deal with the same according to the directions hereinafter contained, that is to say to collect the income rents profits and dividends arising therefrom and to divide the same into two separate funds one of which funds shall consist of the income derived
30 from my house and other real and leasehold property including any property which may at the time of my decease be in mortgage to me to secure any loan or loans, and the other of which funds shall consist of the income derived from my other investments. Each fund shall bear its own casual or incidental expenses such as quit rents, assessments, repairs stamp fees cost of collection and the like, out of revenue. In the event of any realisation of any investment or the sale of any house or other part of my real or leasehold property or the redemption or calling in of any mortgage, the proceeds thereof shall be re-invested in accordance with the provisions of clause twenty (20) hereof, but such re-investments and any
40 subsequent variations thereof shall be impressed with the nature of the original investment as it stood at the date of my death, and the income rents profits and dividends shall be appropriated according to the directions given in this clause.

12. After paying all necessary and proper outgoings and retaining in hand so much as they may think desirable in order to provide for assessments repairs and emergencies and for equalization of the monthly divisions hereinafter referred to, I direct my trustees to pay to my wife Tan Teck Neo during her life (so long as she shall remain my widow) the sum of One thousand dollars (\$1,000/-) per month, but if she shall marry
50 again the said sum of One thousand dollars (\$1,000) per month shall be

Exhibits.
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 A.
 Will of
 Lee Choon
 Guan,
 11th March
 1913,
continued.

reduced to One hundred dollars (\$100) per month. Thereafter I direct my Trustees to pay to Lee Chim Tuan in addition to the remuneration to which he may be entitled as a Trustee, the sum of One hundred dollars (\$100) per month during his lifetime. The monthly payments set out in this clause shall be paid as to one half from out of the income of my house and other real and leasehold property and mortgages and as to the other half by the income from my other investments. The first of such monthly payments shall be made one month after my death.

13. After providing for the outgoing payments and charges hereinbefore set out I direct my Trustees to divide the residue of the income 10
 rents and profits derived from my house and other real and leasehold property and mortgages at the end of every month into thirty equal parts or shares and to pay to my son Lee Pang Seng seven (7) of such equal parts or shares, to my son Lee Pang Chuan (6) of such equal parts or shares, to my son Lee Pang Soo five and a half ($5\frac{1}{2}$) of such equal parts or shares, to my son Lee Sin Siang five (5) of such equal parts or shares, to my daughter Lee Poh Lian two and a half ($2\frac{1}{2}$) of such equal parts or shares, to my daughter Lee Poh Choo (2) of such equal parts or shares, and to my daughter Lee Poh Neo the remaining two (2) of such equal parts or shares. In the event of any legitimate child or children being born to me 20
 after the execution of this my Will (hereinafter called "afterborn") I direct my Trustees to increase the number of thirty parts or shares to such number as may be necessary to enable them to give to each afterborn son two (2) equal parts or shares, and to each afterborn daughter one (1) equal part or share, and I direct them to pay to each such afterborn son two (2) equal parts or shares and to each afterborn daughter one (1) equal part or share.

14. I further direct that with regard to the other of such funds as shall consist of the income derived from my other investments, my Trustees shall accumulate the same, investing accumulations from time to 30
 time at their discretion in accordance with the provisions of clause twenty (20) hereof and at the expiration of every period of five (5) years from the date of my death divide such accumulated income, together with any rent profits, and interest accrued thereon, amongst my children referred to in clause thirteen (13) hereof in the same proportions in which the income from my house and other real and leasehold property and mortgages is to be divided amongst them.

15. In case any of my children referred to in clause thirteen (13) hereof shall have died before my decease or before the date of distribution of the aforesaid two funds or either of them shall have arrived, unmarried 40
 or if married leaving no issue, his, her or their income shall go to and be divided amongst the survivors of my children or their descendants in the proportions prescribed in clause thirteen (13) hereof.

16. In case any of my children referred to in clause thirteen (13) hereof shall have died before my decease or before the date of distribution of the aforesaid two funds or either of them shall have arrived leaving issue then the shares of any child so dying shall go to and devolve upon the child or children or remoter issue of such deceased child of mine who being male attains the age of twenty one years or being female attains that age or marries (whichever event shall first happen) and if more than one in 50
 the proportion of two (2) shares to each male and one (1) share to each

female, but so that the child, children or remoter issue of any deceased child of mine shall take between them in the aforesaid proportions only such share as their parent or parents would have taken had she or he survived and attained a vested interest.

Exhibits.
 A.
 Will of
 Lee Choon
 Guan,
 11th March
 1913,
continued.

17. I declare that if any child or children of mine or any other person or persons entitled to share in the income of the aforesaid two funds shall if a male under the age of twenty one years or if a female under that age and unmarried then my Trustees shall be empowered to retain the income due to such child or children or other person or persons and may
 10 at their absolute discretion make such allowances out of such share of income (or the accumulations thereof) as they may think necessary desirable or adequate for the benefit maintenance education or advancement of such child or children or other person or persons and shall accumulate the balance of such income on behalf of each such child or person and pay the same to him or her or them on his her or their attaining the age of twenty one years or (in the case of a female) marrying under that age and in case any such child or person shall die under the age of twenty one years or in the case of a female under that age and unmarried,
 20 his or her share of the accumulations of such income shall go to and be divided amongst the brothers and sisters of such child or person in the proportion of two (2) shares to each brother and one (1) share to each sister and if only one brother or one sister, then the whole to such brother or sister, provided that if there be no brother or sister living at the time such accumulations shall fall back into and form part of my residuary trust estate.

18. I direct that the widow of any son or remoter male issue of mine dying before the date of distribution of my residuary trust estate referred to in clause 24 hereof shall be entitled to be paid monthly during her lifetime the sum of One hundred dollars (\$100) out of the income of the
 30 share of such deceased son or remoter male issue before the same shall go over under the provisions of this my Will.

19. In case any child of mine shall have died before the date of distribution of my residuary trust estate referred to in clause 24 hereof leaving no issue his or her share shall (subject to the provision in the last preceding clause) go to and be divided amongst my other children in the proportions referred to in clause 13 hereof, but in case any of my other children shall have predeceased such child leaving issue then such issue shall take the share to which his or her or their parent would have been entitled if alive and if more than one in the proportions of two (2) shares
 40 to a male and one (1) share to a female.

20. I direct that my trustees may at any time either realise or retain during such time as they may in their absolute discretion think fit any or all, of my existing investments and I declare that any moneys in the hands of my Trustees may be invested upon the purchase or mortgage of freehold or leasehold property in any part of the world (but in the case of leasehold property held for any term whereof not less than fifty (50) years shall be unexpired at the time of investment) or in or upon the shares in any Company registered in the Straits Settlements or Federated Malay States which has paid dividends of not less than seven (7) per centum per annum
 50 for the five years preceding the time of investment or upon any other investment which may be for the time being sanctioned by law as a trustee

Exhibits.
 —
 A.
 Will of
 Lee Choon
 Guan,
 11th March
 1913,
continued.

investment, with power to vary such investments from time to time for others of the nature aforesaid and such reinvestments in the same way from time to time vary, and I further declare that any stock shares or debentures given on any sale or reconstruction of any company in exchange for any stock shares or debentures in any company or syndicate which may form part of my estate may be retained by my Trustees as if they were original investments.

21. I declare that no Trustee of this my Will shall be liable for any loss not attributable to his own dishonesty or to the wilful commission of any act known by him to be a breach of trust and in particular for no loss occasioned by the non-insurance of any of my houses or other property. 10

22. I empower my Trustees to appoint from time to time upon such terms as they may think fit any person or persons to be their attorney or attorneys for the purpose of exercising any of the trusts or powers herein expressly or by implication given to my Trustees with respect to any property belonging to me situated outside the island of Singapore.

23. I declare that if any person who is or may become a legatee or beneficiary under this my Will shall commit permit or suffer any act default or process whereby his or her interest or any part thereof would but for this present provision, become vested in or payable to any other person or persons then such interest insofar as it is then unpaid or unsatisfied shall absolutely cease and determine as if such person were dead and any gift over of such interest shall then come into operation. 20

24. Upon the death of the last survivor of my children referred to in clause 13 hereof, I direct that my Trustees shall sell call in and convert into money if they in their absolute discretion think fit the whole of my said real and personal estate or such part thereof as shall not consist of money or at their absolute discretion make such partition or appropriation of the property and investments (or any part thereof) as they may think fit and shall divide the whole of my residuary real and personal estate among the children then living and the issue of children then dead of my children referred to in clause thirteen (13) hereof (hereinafter called the "residuary legatees") per stirpes in the proportion in which my said children or their issue shared in the income thereof but so that the members of each stirps shall inherit as between themselves in the proportion of two (2) shares to a male and one (1) share to a female, and in case any one or more of the residuary legatees shall have died leaving issue such issue shall take the share which his or her or their parent or ancestor would have taken if he or she, had lived to attain a vested interest and if more than one in the proportion of two (2) shares to a male and one (1) share to a female. 30 40

25. If any one or more of my children shall have died leaving no child or children or remoter issue living at the date of final distribution then the share which would have passed to the stirps of such child or children as dying as aforesaid shall be divided among the stirps of my other children which are then represented by living descendants in the proportions in which my said children share in the income as set out in paragraph 13 hereof, such accruing share to be divisible among the representatives (if more than one) of each stirps in the same manner as the original share.

26. If any son of mine or remoter male issue in the direct male line shall have died before the date of final distribution leaving a lawful widow 50

who shall be living at such date, such widow shall at the date of final distribution receive the sum of Five thousand dollars (\$5,000) out of the capital sum divisible among the stirps of which her deceased husband had been a member but if any remoter male issue in the female line shall have died before the date of final distribution leaving a lawful widow who shall be living at such date, such widow shall at the date of final distribution receive the sum of Two thousand and five hundred dollars (\$2,500) out of the capital sum divisible among the stirps of which her deceased husband had been a member.

Exhibits.
—
A.
Will of
Lee Choon
Guan,
11th March
1913,
continued.

10 27. No gift during my lifetime to any person who may benefit under the provisions of this my Will shall be deemed to be in satisfaction part satisfaction or ademption of any legacy or interest given hereunder.

28. I direct that my Trustees shall have the power at their uncontrolled discretion to employ and pay out of my estate any professional assistance which they may deem necessary or desirable without being liable to any of the persons beneficially interested in respect of any act so done by them but nothing in this clause contained shall prohibit my Trustees for applying to the Court if they should think fit or prevent any person benefitting under this my Will from doing so.

20 IN WITNESS WHEREOF I the said LEE CHOON GUAN have to this my Will which I have executed in duplicate and which is contained in this and the preceding eight sheets of paper (which I have signed for the purpose of identification) set my hand this Eleventh day of March One thousand nine hundred and thirteen.

SIGNED by the abovenamed Testator as
and for his last Will and Testament
who at his request, in his presence
and in the presence of each other,
have hereunto subscribed our names
as witnesses.

(Sgd.) L. CHOON GUAN.

30 (Sgd.) LANCELOT E. GAUNT,
Advocate & Solicitor,
Singapore.

(Sgd.) RICHARD PAGE,
Advocate & Solicitor,
Singapore.

Exhibits.

B.
Codicil of
Lee Choon
Guan,
16th April
1919.

B.—CODICIL of Lee Choon Guan.

O.S. No. 6 of 1946.

This is the Exhibit marked " B " referred to in the Affidavit of Lee Chim Tuan sworn to before me this 23rd day of May 1946.

Before me,

(Sgd.) YAHYA A. RAHMAN,

A Commissioner to take Oaths, etc.

COPY CODICIL TO WILL OF LEE CHOON GUAN.

THIS IS A CODICIL to the last Will and Testament dated Eleventh March one thousand nine hundred and thirteen (1913) of me LEE CHOON GUAN of No. 10 Malacca Street Singapore Merchant. 10

1. In addition to the Executors and Trustees appointed by my said Will I direct that my son LEE PANG SENG shall also be an Executor and Trustee and I direct that in place of three trustees there shall always be four trustees of my said Will.

2. In lieu of the remuneration of Dollars One hundred and fifty (\$150) per month to be paid to each of my Trustees for their services as directed by clause 4 of my said Will I direct that a sum of Dollars Two hundred (\$200) each per month shall be paid to each of my Trustees so long as they continue to act as a Trustee. 20

3. In lieu of the legacy of Dollars Three thousand (\$3,000) bequeath to Lay Gwat Neo by clause 5 of my said Will I bequeath to her the sum of Dollars Five thousand (\$5,000). In lieu of the legacies of Dollars Five hundred each to Bo Tan, Lin Yeow, Ah Lian and Ah Yeow I bequeath to each of them a legacy of Dollars One thousand (\$1,000). To my servant Ah Wah if he shall be in my service at the time of my death I bequeath the sum of Dollars Five hundred (\$500).

4. I hereby revoke clause 6 of my Will and in place thereof I direct my Trustees to pay the sum of Dollars One hundred and twenty (\$120) each per month during their respective lives to Ang Lee Neo (otherwise known as Ah Lee) Wee Bee Neo (otherwise known as Seah Lew) Fan Ah Gan and Tan Chwee Neo. Such payments shall be apportioned equally between the two funds referred to in clause 11 of my said Will. I further bequeath to the presently expected child of Tan Chwee Neo a legacy of Dollars Fifteen thousand (\$15,000) if he or she should survive me. 30

5. In addition to the legacies bequeathed by clause 7 of my said Will I bequeath to Lee Chin Huk a legacy of Dollars Ten thousand (\$10,000) and a legacy of Dollars Fifteen thousand (\$15,000) each to Lee Poh Wah, Lee Pang Teck and Lee Poh Swee (the adopted daughter of Ang Lee Neo). Such legacies shall vest and become payable on the legatees respectively attaining the age of twenty one years and during the infancy of any legatee I direct my Trustees to expend a sum of Dollars One thousand two hundred (\$1,200) each on the maintenance and education of each infant legatee, such payments to be borne equally by the two funds referred to in clause 11 of my said Will. 40

6. I hereby revoke clause 8 of my said Will and devise my house No. 127A Tanjong Katong Singapore together with all furniture motor cars and other effects which may be on the premises at the time of my death to my wife Tan Teck Neo absolutely. Such premises shall be deemed to include Lots 9, 15, 16, 29 and half 17 as shown on the plan attached to an Indenture dated 14th October 1901 and made between Lee Cheng Yan of the one part and myself of the other part.

Exhibits.
—
B.
Codicil of
Lee Choon
Guan,
16th April
1919,
continued.

7. In lieu of the monthly payment of Dollars One thousand (\$1,000) bequeathed to my said wife Tan Teck Neo (reducible to Dollars One hundred (\$100) per month if she should remarry) I bequeath to my said wife a monthly payment of Dollars Two thousand (\$2,000) (irrespective of her remarriage) and in lieu of the monthly payment of Dollars One hundred bequeathed to Lee Chim Tuan by the said clause of my said Will I bequeath a monthly payment of Dollars Two hundred (\$200). Such monthly payment shall be apportioned equally between the two funds referred to in clause 11 of my said Will.

8. In lieu of the division of the funds referred to in clause 13 of my said Will I direct that the residue of income therein referred to shall be divided into thirty equal shares of which eight shall be payable to my son Lee Pang Seng, six each to my sons Lee Pang Chuan, Lee Pang Soo and Lee Sin Siang and four each to my daughters Lee Poh Lian, Lee Poh Choo and Lee Poh Neo and I direct that if I should leave any posthumous child or children born of a wife married to me with full ceremonies my Trustees shall increase the said number of thirty eight shares so as to provide for and pay to each posthumous son three shares and each posthumous daughter two shares.

9. In lieu of the period of five years referred to in clause 14 of my said Will I direct the division of accumulated income to take place every three years.

10. In lieu of the sum of Dollars One hundred referred to in clause 18 of my said Will I direct that the sum of Dollars Three hundred shall be substituted.

11. With regard to clause 23 of my said Will I direct that in the event of any share under this my Will become forfeited in accordance with the provision of clause 23 of my said Will I direct my Trustees to hold such share upon trust to pay or apply the income thereof or so much thereof as my Trustees in their uncontrolled discretion shall think fit unto and for the maintenance or for the benefit of the person who has forfeited his or her share his wife (or her husband as the case may be) and issue and shall hold so much of such income as they shall not pay or apply in the exercise of the discretionary trust or power aforesaid upon the like trust as if the said person were dead and shall hold the capital after the death of such person in trust for the child or children of such person in the proportion of two shares to a male and one to a female.

12. In lieu of the date of distribution being the date of the death of the last survivor of my children referred to in clause 24 of my said Will I direct that the date of distribution shall be twenty one years after the date of my death.

Exhibits.
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 B.
 Codicil of
 Lee Choon
 Guan,
 16th April
 1919,
continued.

13. In lieu of the sum of Dollars Five thousand (\$5,000) mentioned in clause 26 of my said Will I substitute the sum of Dollars Fifteen thousand (\$15,000) and in lieu of the sum of Dollars Two thousand five hundred (\$2,500) mentioned in the said clause I substitute the sum of Dollars Five thousand (\$5,000) and I declare that in the construction of the words "lawful widow" referred to in the said clause 26 of my said Will I mean only a widow who has been married with the full ceremonies of a "first wife."

In witness whereof I have hereunto set my hand this Sixteenth day of April One thousand nine hundred and nineteen (1919). 10

Signed by the said Lee Choon Guan the
 Testator as a Codicil to his Will in the
 presence of us present at the same time
 who in his presence and in the presence
 of each other subscribe our names as
 witnesses

(Sgd.) L. CHOON GUAN

(Sgd.) RICHARD PAGE,
 Advocate & Solicitor,
 Singapore.

(Sgd.) LAURENCE ALVIS,
 Clerk to Messrs. Allen & Gledhill,
 Solicitors, Singapore.

20

C.
 Family
 Tree of
 Lee Choon
 Guan.

C.—FAMILY TREE of Lee Choon Guan.

[*Not printed.*]
