

17, 1951

No. 2 of 1950.

# In the Privy Council.

UNIVERSITY OF LONDON  
 W.C.T.  
 12 NOV 1953  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

**ON APPEAL**  
 FROM THE APPEAL COURT IN HONG KONG.

31268

BETWEEN

FUNG KAI SUN (Defendant) - - - - - Appellant

AND

CHAN FUI HING, CHAN SIK TIN and CHAN KWOK NIM  
 (Plaintiffs) - - - - - Respondents.

## RECORD OF PROCEEDINGS

### INDEX OF REFERENCE

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	<i>IN THE SUPREME COURT OF HONG KONG ORIGINAL JURISDICTION</i>		
1	Amended Writ .. .. .	21st June 1939	1
2	Statement of Claim .. .. .	2nd August 1939	3
3	Defence and Counter-claim .. .. .	19th October 1939	5
4	Reply and Defence to Counter-claim .. .. .	7th November 1939	6
5	Amended Defence and Counter-claim .. .. .	Dated 19th October 1939 but amended on 14th December 1949	7
	<i>The Plaintiffs' Evidence as noted by the Chief Justice.</i>		
6	Chan Fui Hing—		
	Examination-in-Chief .. .. .	11th December 1939	9
	Cross-examination .. .. .	11th December 1939 12th December 1939	11 12

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
7	Chan Sik Tin—		
	Examination-in-Chief .. .. .	12th December 1939	13
	Cross-examination .. .. .	12th December 1939	15
	Re-examination .. .. .	12th December 1939	16
	Further examination .. .. .	3rd January 1940	16
8	Chan Kwok Nim—		
	Examination-in-chief .. .. .	12th December 1939	16
	Cross-examination .. .. .	12th December 1939	18
	Re-examination .. .. .	12th December 1939	19
	Further cross-examination .. .. .	3rd January 1940	19
	Further re-examination .. .. .	4th January 1940	21
9	Chan Ngok Lau—		
	Examination-in-chief .. .. .	12th December 1939	22
	Cross-examination .. .. .	12th December 1939	22
10	Chan Yan Po—		
	Examination-in-chief .. .. .	12th December 1939	23
	Cross-examination .. .. .	12th December 1939	23
11	Cheung Wai Man—		
	Examination-in-chief .. .. .	13th December 1939	23
	Cross-examination .. .. .	13th December 1939	24
	Re-examination .. .. .	13th December 1939	24
12	Chan Kwok Wing—		
	Examination-in-chief .. .. .	13th December 1939	24
	Cross-examination .. .. .	13th December 1939	25
13	Chan Kwok Shing—		
	Examination-in-chief .. .. .	13th December 1939	25
	Cross-examination .. .. .	13th December 1939	26
	Re-examination .. .. .	13th December 1939	26
14	Leung Kin Sau—		
	Examination-in-chief .. .. .	13th December 1939	26

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	<i>Defendant's Application</i>		
15	Application for Leave to amend Defence .. .. .	13th December 1939	27
	<i>Plaintiffs' Evidence continued</i>		
16	Hsu Ti Shau—		
	Examination-in-chief .. .. .	14th December 1939	27
	Cross-examination .. .. .	14th December 1939	30
	Re-examination .. .. .	14th December 1939	31
	<i>Defendant's Application</i>		
17	Argument and ruling on Application for amendment of Defence .. .. .	14th December 1939	32
	<i>Plaintiffs' Evidence</i>		
18	Yeung Pak Tik—		
	Examination-in-chief .. .. .	3rd January 1940	33
	Cross-examination .. .. .	3rd January 1940	33
	Re-examination .. .. .	3rd January 1940	33
19	Lee King—		
	Examination-in-chief .. .. .	3rd January 1940	34
	Cross-examination .. .. .	3rd January 1940	34
	Re-examination .. .. .	3rd January 1940	34
20	Wong Ping Han—		
	Examination-in-chief .. .. .	3rd January 1940	35
	Cross-examination .. .. .	3rd January 1940	35
21	Ngau Tai Yuen—		
	Examination-in-chief .. .. .	3rd January 1940	35
	Cross-examination .. .. .	3rd January 1940	37
22	Ho Hoi—		
	Examination-in-chief .. .. .	3rd January 1940	38
	Cross-examination .. .. .	3rd January 1940	38

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
23	Lin Chan Ping—		
	Examination-in-chief .. .. .	3rd January 1940	39
	Cross-examination .. .. .	3rd January 1940	39
	Re-examination .. .. .	3rd January 1940	39
24	Lo Man Wai—		
	Examination-in-chief .. .. .	4th January 1940	39
	Cross-examination .. .. .	4th January 1940	40
	<i>The Defendant's Evidence as noted by Chief Justice</i>		
25	Lo Kwok Ming—		
	Examination-in-chief .. .. .	5th January 1940	40
	Cross-examination .. .. .	5th January 1940	41
	Further cross-examination .. .. .	8th January 1940	42
	Re-examination .. .. .	8th January 1940	43
26	Tam Chak Lam—		
	Examination-in-chief .. .. .	5th January 1940	43
	Cross-examination .. .. .	8th January 1940	44
27	Hong Ken Po—		
	Examination-in-chief .. .. .	8th January 1940	45
	Cross-examination .. .. .	8th January 1940	45
28	Lee Hon Chi—		
	Examination-in-chief .. .. .	8th January 1940	45
29	Ho Tiu Man—		
	Examination-in-chief .. .. .	8th January 1940	46
	Cross-examination .. .. .	8th January 1940	47
30	Francis Henry Loseby—		
	Examination-in-chief .. .. .	8th January 1940	47
31	Wong Chak Nam—		
	Examination-in-chief .. .. .	8th January 1940	48
32	Lei Lai On—		
	Examination-in-chief .. .. .	8th January 1940	48

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
33	Chan Chu Ching—		
	Examination-in-chief .. .. .	8th January 1940	49
	Cross-examination .. .. .	8th January 1940	49
34	Judgment of the Chief Justice on Trial of Action .. ..	19th December 1940	49
	<i>IN THE SUPREME COURT OF HONG KONG APPELLATE JURISDICTION</i>		
35	Notice of Appeal .. .. .	7th January 1941	57
36	Judgments of Sir Leslie Gibson C.J. and other members of the Full Court .. .. .	14th July 1949	58
37	Petition for Leave to Appeal to the Privy Council ..	26th August 1949	70
38	Order granting Leave to Appeal to Privy Council ..	1st December 1949	71

**DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL  
BUT NOT PRINTED**

NO.	DESCRIPTION OF DOCUMENT	DATE
39	Letter, Johnson Stokes & Master to Leo D'Almada & Co. .. ..	14th August 1939
40	Letter, Leo D'Almada & Co. to Johnson Stokes & Master .. ..	15th August 1939
41	Letter, Leo D'Almada & Co. to Johnson Stokes & Master .. ..	23rd August 1939
42	Letter, Johnson Stokes & Master to Leo D'Almada & Co. .. ..	24th August 1939
43	Letter, Leo D'Almada & Co. to Johnson Stokes & Master .. ..	24th August 1939
44	Letter, Johnson Stokes & Master to Leo D'Almada & Co. .. ..	18th November 1939
45	Letter, Leo D'Almada & Co. to Johnson Stokes & Master .. ..	20th November 1939
46	Letter, Johnson Stokes & Master to Leo D'Almada & Co. .. ..	9th December 1939
47	Notes of the opening Speech of the Plaintiffs' Counsel at the Trial ..	11th December 1939
48	Notes of the opening Speech of the Defendant's Counsel at the Trial ..	4th and 5th January 1940
49	Notes of the closing Speech of the Defendant's Counsel at the Trial ..	8th January 1940
50	Notes of the closing Speech of the Plaintiffs' Counsel at the Trial ..	9th, 10th and 11th January 1940

NO.	DESCRIPTION OF DOCUMENT	DATE
51	Notes of the Chief Justice on Appeal .. .. .	30th June, 5th, 6th, 7th and 14th July, 13th August and 2nd September 1949
52	Notes of the Puisne Judge on Appeal .. .. .	Do.
53	Notes of Acting Second Puisne Judge on Appeal .. .. .	Do.
54	Motion for Leave to Appeal to the Privy Council .. .. .	26th August 1949
55	Affidavit of Maurice Murray Watson in support of Petition for Leave to Appeal to the Privy Council .. .. .	26th August 1949
56	Order granting provisional Leave to Appeal to the Privy Council ..	2nd September 1949
57	Certificate of Compliance by the Appellant with formalities in connection with Appeal to the Privy Council .. .. .	29th November 1949
58	Summons for Final Leave to Appeal to the Privy Council .. ..	29th November 1949
59	Certificate of the Registrar as to Transcript of Record .. .. .	2nd December 1949
60	Certificate of the Chief Justice verifying Registrar's Certificate ..	5th December 1949

## EXHIBITS

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE	PAGE
D	Copy Mortgage of Inland Lot 1828 .. .. .	29th October 1937	72
H	Copy Second Mortgage of Inland Lot 1828 .. .. .	2nd November 1938	77
J	Letter, Chan Sik Tin to Chan Fui Hing .. .. .	24th May 1939	83

## EXHIBITS NOT TRANSMITTED TO THE PRIVY COUNCIL

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE
A	Passport of Chan Fui Hing.	
B	Assignment of 300 Des Voeux Road .. .. .	1925
C	Mortgage, Chan Fui Hing, Chan Sik Tin and Chan Kwok Nim to Overseas Bank .. .. .	16th May 1935
E1	Counterfoil Receipt .. .. .	14th October 1937
E2	Counterfoil Receipt .. .. .	28th October 1937

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE
E3	Counterfoil Receipt .. .. .	15th November 1937
F1	Counterfoil Receipt .. .. .	14th October
F2	Counterfoil Receipt .. .. .	4th November
G	Cash Book .. .. .	October 1937 to 19th December 1938
I	Accounts rendered by Chan Chung Wah.	
K	Letter.	
L	Specimen signatures of Chan Fui Hing.	
M	Retainer to Leo D'Almada & Co.	
N	Photographs of Chan Chung Wah.	
O	Document.	
P	Specimen signatures of Chan Sik Tin.	
Q	Retainer to Leo D'Almada & Co.	
R	Rent receipts.	
S	Mortgage to wife of Chan Kwok Nim .. .. .	1929
T	Mortgage to sister-in-law of Chan Kwok Nim.	
U	Specimen signatures of Chan Kwok Nim.	
V	Retainer to Leo D'Almada & Co.	
W	Rent Receipt .. .. .	8th November 1938
X	Rent Receipt .. .. .	20th July 1938
Y	Photograph Chan Kwok Shim's Wedding Group.	
Z	Marriage Certificate of Chan Kwok Shim.	
AA	Cheque No. H.K.043413.	
BB	Cheque No. 043412.	
CC	Cheque No. 043408.	
DD	Cheque No. 043406.	
EE	Cheque No. 043407.	
FF	Cheque No. 043404.	
GG	Cheque No. 043403.	
HH	Cheque No. 043405.	

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE
II	Cheque No. 043402.	
JJ	Assignment.	
KK	Signature card Overseas Bank.	
LL	Mortgage.	
MM	Schedule Book 405.	
NN	Power of Attorney .. .. .	13th October 1939
OO	Draft Second Mortgage.	
PP	Mortgage Register.	
QQ	Russ & Co.'s Register of Deeds.	
RR	Specimen signatures of Lo Kwok Ming.	
SS	Letter .. .. .	30th November 1938
TT	Deed of Surrender .. .. .	5th February 1934
UU	Envelope containing Power of Attorney.	
VV	Power of Attorney.	
WW	Search of dealings in property No. 164 Des Voeux Road.	
XX	Document in handwriting of Chan Chu Ching.	



# In the Privy Council.

## ON APPEAL FROM THE APPEAL COURT IN HONG KONG.

BETWEEN

FUNG KAI SUN (Defendant) - - - - *Appellant*

AND

CHAN FUI HING, CHAN SIK TIN and CHAN  
KWOK NIM (Plaintiffs) - - - - *Respondents.*

# 10 RECORD OF PROCEEDINGS

No. 1.

AMENDED WRIT OF SUMMONS.

(Form No. 1)

Amended in red ink this 21st day of June 1939.

Sd. J. P. MURPHY,

Deputy Registrar.  
Action No. 92 of 1939.

IN THE SUPREME COURT OF HONG KONG.  
Original Jurisdiction.

20 Between CHAN FUI HING, CHAN SIK TIN and  
CHAN KWOK NIM - - - - Plaintiffs  
and  
FUNG KAI SUN - - - - Defendant

No. 1.

George VI, by the Grace of God, of Great Britain, Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To Fung Kai Sun of 141, Caine Road, Victoria, in the Colony of Hong Kong, Gentleman.

30 We Command you that within eight days after the service of this writ on you, you cause an appearance to be entered for you in an action at the suit of Chan Fui Hing and Chan Sik Tin, both of No. 3 Bonham

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 1.  
Amended  
Writ,  
21st June  
1939.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

No. 1.  
Amended  
Writ,  
21st June  
1939,  
continued.

Road (Second Floor) Victoria aforesaid, retired Merchants and Chan Kwok Nim of No. 300, Des Voeux Road Central, Victoria aforesaid Gentleman and take notice that in default of your so doing, the Court may give leave to the plaintiff to proceed *ex parte*.

Witness, His Honour Sir Alasdair Duncan Atholl MacGregor, Kt. Chief Justice of Our said Court, the 17th day of June 1939.

Sd. J. P. MURPHY,  
Deputy Registrar.

#### STATEMENT OF CLAIM.

The Plaintiffs' Claim is: (1) For a Declaration by this Honourable Court that the following Indentures of Mortgage registered in the Land Office against all that piece or parcel of ground and premises known and registered in the Land Office as Inland Lot No. 1828 were not executed by the Plaintiffs in favour of the therein mentioned mortgagees or at all and that the said mortgages are therefore null and void and of no effect ~~in so far as the same purport to affect the Plaintiffs' shares and interest of the said property as tenants in common in equal shares with one Chan Kwok Nim~~ and for a further Declaration that the Plaintiffs are each of them entitled to their respective one equal undivided Third part or share of the said premises free from incumbrances. 10 20

(a) Indenture of Mortgage dated the 29th day of October 1937, purporting ~~purported~~ to have been executed by the Plaintiffs ~~together with one of the said Chan Kwok Nim~~ in favour of Fung Pok Om and the Defendant whereby the Plaintiffs purported to assign the property hereinbefore mentioned by way of mortgage to the said Fung Pok Om and the defendant as joint tenants to secure payment of the sum of \$55,000.- and interest as therein mentioned which said mortgage was registered in the Land Office on the 1st day of November 1937, by Memorial No. 155,813.

(b) Indenture of Mortgage dated the 2nd day of November, 1938, 30 purporting ~~purported~~ to have been executed by the Plaintiffs ~~together with one of the said Chan Kwok Nim~~ in favour of the defendant whereby the Plaintiffs purported to assign the property hereinbefore mentioned by way of mortgage to the defendant to secure payment of \$5,000.- and interest as therein mentioned which said mortgage was registered in the Land Office on the 3rd day of November, 1938, by Mem. No. 159,533, and was subject to the Indenture of Mortgage first above mentioned and to the principal sum and interest as therein mentioned.

(2) For an Order by this Honourable Court that the said above-mentioned two Indentures of Mortgage be set aside ~~in so far as the same~~ 40 ~~affects the plaintiffs' respective share and interest therein.~~

(3) Rectification of the Register in the Land Office accordingly.

- (4) Such further and other consequential relief.  
 (5) Costs.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdic-  
 tion.*

Sd. LEO. D'ALMADA & CO.,  
 Solicitors for the Plaintiffs.

This writ was issued by LEO. D'ALMADA & Co. of David House 67 Des Voeux Road Central, Victoria, Hong Kong, Solicitors for the Plaintiffs who reside at No. 3, Bonham Road (Second Floor) Victoria aforesaid.

No. 1.  
 Amended  
 Writ,  
 21st June  
 1939,  
*continued.*

Sd. LEO. D'ALMADA & CO.

No. 2.

STATEMENT OF CLAIM.

No. 2.  
 Statement  
 of Claim,  
 2nd August  
 1939.

10

1. The Plaintiffs are Gentlemen. The 1st Plaintiff resides at No. 78, Wing Lok Street, 1st floor, Victoria in the Colony of Hong Kong. The 2nd Plaintiff resides at No. 257, Lockhart Road, 1st floor, Victoria aforesaid. The 3rd Plaintiff resides at No. 300, Des Voeux Road Central, 2nd floor, Victoria aforesaid.

2. The Defendant is a Gentleman. He resides at No. 141, Caine Road, Victoria aforesaid.

3. On or about the 30th day of May 1925 by an Indenture of Assignment made between Chan Hing Lau of the first part, Chan Yan Po of the second part, Chan Fuk Sam, Chan Yim Shi and the 3rd Plaintiff of the third part and the 1st and 3rd Plaintiffs and one Chan Yam Tong of the fourth part the said Chan Hing Lau and Chan Yan Po assigned and the said Chan Fuk Sam, Chan Yim Shi and the 3rd Plaintiff confirmed unto the 1st and 3rd Plaintiffs and the said Chan Yam Tong as tenants in common in equal shares all that piece or parcel of ground together with the messuages, erections and buildings thereon now known as No. 300, Des Voeux Road Central, and No. 92, Wing Lok Street (hereinafter referred to as "the said property") known and registered in the Land Office as Inland Lot No. 1828.

4. The said Assignment was registered in the Land Office by Memorial No. 97,319.

5. On or about the 29th day of November 1927 by an Indenture of Assignment made between the said Chan Yam Tong of the one part and the 2nd Plaintiff of the other part the said Chan Yam Tong assigned to the 2nd Plaintiff all his interest and share in the said property.

6. The said Assignment was registered in the Land Office by Memorial No. 107,888.

30

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 2.  
Statement  
of Claim,  
2nd August  
1939,  
*continued.*

7. By virtue of the said Assignment mentioned in paragraph 5 hereof the 2nd Plaintiff became a tenant in common of the said property together with the 1st and 3rd Plaintiffs.

8. At all times material to this action the Plaintiffs held the said property as tenants in common in equal shares.

9. On or about the 1st day of November 1937 an Indenture of Mortgage dated the 29th day of October 1937 and purporting to have been executed by the Plaintiffs in favour of one Fung Pok Om and the Defendant whereby the Plaintiffs purported to assign the said property to the said Fung Pok Om and the Defendant as joint tenants by way of 10 mortgage to secure the payment of the sum of \$55,000.00 and interest was registered in the Land Office by Memorial No. 155,813.

10. On the 15th day of July 1938, a Certificate of Death of the said Fung Pok Om was registered in the Land Office by Memorial No. 158,307.

11. On or about the 3rd day of November 1938 an Indenture of Mortgage dated the 2nd day of November 1938 and purporting to have been executed by the Plaintiffs in favour of the Defendant by way of Mortgage to secure the payment of the sum of \$5,000.00 and interest thereon subject to the mortgage and the principal sum and interest mentioned in paragraph 9 hereof was registered in the Land Office by 20 Memorial No. 159,533.

12. The said Mortgages mentioned in paragraphs 9 and 11 hereof were not executed by the Plaintiffs or any of them or with their knowledge authority or consent.

13. The Plaintiffs therefore claim :—

(1) A declaration by this Honourable Court that the two purported Mortgages Memorial Nos. 155,813 and 159,533 respectively and purporting to have been executed by the Plaintiffs are forgeries and that they were and are null and void and of no legal effect. 30

(2) A declaration by this Honourable Court that the Defendant has no right in or title to the said property.

(3) Rectification of the Register of the Land Office.

(4) An account of all rents and profits relating to the said property received by the Defendant since he entered into possession of the same.

(5) An injunction against the Defendant from collecting or receiving the rents or otherwise acting as Mortgagee of the said property.

(6) Further and such other relief. 40

(7) Costs.

Dated the 2nd day of August, 1939.

(Sd.) LEO. D'ALMADA E CASTRO, Jr.,

Counsel for the Plaintiffs.

## No. 3.

## STATEMENT OF DEFENCE AND COUNTER-CLAIM.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 3.  
Statement  
of Defence  
and  
Counter-  
claim,  
19th  
October  
1939.

1. Paragraphs 2 and 10 of the Statement of Claim are admitted.

2. Save as aforesaid the Defendant does not admit any of the allegations contained in the Statement of Claim and puts the Plaintiffs to the proof thereof.

3. The Defendant further says that if the deeds referred to in paragraphs 9 and 11 of the Statement of Claim were executed by persons other than the Plaintiffs (which is denied) the Plaintiffs, by their conduct in allowing the said persons to have the custody or control of the documents of title to the property allowed or enabled the said persons to deal with the said property wherefore the Defendant was induced to believe and did believe that the said persons were the true owners of the said property, are now estopped as against the Defendant from saying that the said deeds were not executed by them or with their authority, knowledge or consent.

4. Immediately previous to the transaction alleged in paragraph 9 of the Statement of Claim the property in question was in mortgage to the Oversea-Chinese Banking Corporation Limited, the said property having been mortgaged by the true owners thereof to the said Oversea-Chinese Banking Corporation Limited by an Indenture of Mortgage dated the Sixteenth day of May 1935 and made between Chan Sik Tin, Chan Fui Hing and Chan Kwok Nim of the one part and the said Oversea-Chinese Banking Corporation Limited of the other part to secure banking facilities for the said Chan Kwok Nim together with interest thereon at the rate of seven per cent. per annum with monthly rests, which said deed was registered in the Land Office by Memorial No. 146,439.

5. The Defendant paid to the said Oversea-Chinese Banking Corporation Limited on the Thirtieth day of October 1937 the sum of \$37,729.11 being the principal, interest and costs then due and owing by the Mortgagors to the said Oversea-Chinese Banking Corporation Limited who thereupon reassigned the said premises to the Mortgagors.

6. If the deeds referred to in paragraphs 9 and 11 of the Statement of Claim are forged (which is denied) then the Defendant is entitled in equity to have the mortgage referred to in paragraph 4 hereof kept alive for his benefit.

## COUNTER-CLAIM.

1. The Defendant repeats paragraphs 4, 5 and 6 of the Statement of Defence herein.

2. The Defendant therefore claims :—

(1) A declaration that if the deeds referred to in paragraphs 9 and 11 of the Statement of Claim are forged (which is denied) then he is entitled to an equitable charge on the property comprised in the mortgage referred to in paragraph 4 of the Statement of Defence in respect of the said sum of \$37,729.11 together with

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

all interest which would have been payable under the said mortgage had the principal not been paid off. Such interest to be calculated until payment or judgment.

(2) Further or other relief.

(3) Costs.

No. 3.  
Statement  
of Defence  
and  
Counter-  
claim,  
19th  
October  
1939,  
*continued.*

Dated the 19th day of October, 1939.

Sd. H. C. MACNAMARA,  
Counsel for the Defendant.

No. 4.  
Reply and  
Defence to  
Counter-  
claim,  
7th  
November  
1939.

No. 4.

REPLY AND DEFENCE TO COUNTER-CLAIM.

10

1. Save in so far as it consists of admissions the Plaintiffs join issue with the Defendant upon his Defence.

2. In further answer to Paragraphs 4 and 5 of the Defence the Plaintiffs while admitting that the said property purports to have been mortgaged on the 16th May, 1935 to the Overseas-Chinese Banking Corporation, Ltd. deny that the said alleged mortgage was executed by the true owners of the said property. The said purported mortgage was prepared and executed and the said premises reassigned without the authority, knowledge or consent of the Plaintiffs who are the true owners thereof.

20

3. In further answer to Paragraph 5 of the Defence the Plaintiffs do not know and cannot admit that the Defendant paid to the said Bank on the 30th October, 1939 or at any other time the sum of \$37,729.11 or any other sum and that the said Bank thereupon reassigned the said property to the purported Mortgagors. If the said property was so reassigned the same was without the authority, knowledge or consent of the Plaintiffs.

DEFENCE TO COUNTER-CLAIM.

1. The Plaintiffs repeat Paragraphs 1-3 of the Reply.

2. They deny that the Defendant is entitled to an equitable charge 30 on the said property in respect of the sum of \$37,729.11 or any other sum.

Dated this 7th day of November, 1939.

Sd. LEO. D'ALMADA E CASTRO, Jr.,  
Counsel for the Plaintiffs.

## AMENDED STATEMENT OF DEFENCE.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

—  
No. 5.  
Amended  
Defence and  
Counter-  
claim,  
dated 19th  
October  
1939 but  
amended  
on 14th  
December  
1949.

1. Paragraphs 2 and 10 of the Statement of Claim are admitted.

2. Save as aforesaid the Defendant does not admit any of the allegations contained in the Statement of Claim and puts the Plaintiffs to the proof thereof.

3. (A) The Defendant further says that as the deeds referred to in paragraphs 9 and 11 of the Statement of Claim were executed by persons other than the Plaintiffs, the Plaintiffs by their conduct in allowing the said persons to have the custody or control of the documents of title to the property allowed or enabled the said persons to deal with the said property wherefore the Defendant was induced to believe and did believe that the said persons were the true owners of the said property, are now estopped as against the Defendant from saying that the said deeds were not executed by them or with their authority, knowledge or consent.

3. (B) The Defendant further says that the Plaintiff alleging himself to be Chan Kwok Nim is not the Chan Kwok Nim referred to in paragraph 3 of the Statement of Claim, but is fraudulently impersonating the said Chan Kwok Nim referred to in the said paragraph.

3. (C) The first and second Plaintiffs, Chan Fui Hing and Chan Sik Tin, were, before these proceedings were instituted, well aware of the said impersonation, wherefore their claim against the Defendant is fraudulent and void.

3. (D) In the alternative the Defendant says that the first and second Plaintiffs and, if the third Plaintiff is the person referred to in paragraph 3 of the Statement of Claim as Chan Kwok Nim (which is denied) then the third Plaintiff also, are, by reason of their conduct in standing by with full knowledge that the deeds referred to in paragraphs 9 and 11 of the Statement of Claim were forged now estopped as against the Defendant from saying that the said deeds were not executed by them or with their authority knowledge or consent.

## PARTICULARS.

On or about the 24th day of May 1939 the Plaintiffs were aware that one Chan Chung Wah, a brother of the Plaintiff Chan Kwok Nim, had forged the said deeds, or had entered into a conspiracy with two other persons to defraud the Defendant, nevertheless, they did not inform the Defendant until the 23rd day of June 1939 that the said deeds had been forged and did not disclose to the Defendant that the said Chan Chung Wah was the forger or a party to the said conspiracy, until the 11th day of December 1939 but kept silent and deliberately refrained from doing any act whatsoever which might have resulted in the apprehension of the said Chan Chung Wah or the seizure of his property. The said keeping silent and refraining deprived the Defendant of any opportunity of obtaining restitution from the said Chan Chung Wah of the monies or any part thereof advanced by the Defendant on the said mortgages.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.-*

No. 5.  
Amended  
Defence and  
Counter-  
claim,  
dated 19th  
October  
1939 but  
amended  
on 14th  
December  
1949,  
*continued.*

4. Immediately previous to the transaction alleged in paragraph 9 of the Statement of Claim the property in question was in mortgage to the Oversea-Chinese Banking Corporation Limited, the said property having been mortgaged by the true owners thereof to the said Oversea-Chinese Banking Corporation Limited by an Indenture of Mortgage dated the Sixteenth day of May 1935 and made between Chan Sik Tin, Chan Fui Hing and Chan Kwok Nim of the one part and the said Oversea-Chinese Banking Corporation Limited of the other part to secure banking facilities for the said Chan Kwok Nim together with interest thereon at the rate of seven per cent. per annum with monthly rests, which said deed was registered in the Land Office by Memorial No. 146,439. 10

5. The Defendant paid to the said Oversea-Chinese Banking Corporation Limited on the Thirtieth day of October 1937 the sum of \$37,729.11 being the principal, interest and costs then due and owing by the Mortgagors to the said Oversea-Chinese Banking Corporation Limited who thereupon reassigned the said premises to the Mortgagors.

6. If the deeds referred to in paragraphs 9 and 11 of the Statement of Claim are forged (which is denied) then the Defendant is entitled in equity to have the mortgage referred to in paragraph 4 hereof kept alive for his benefit. 20

#### COUNTER-CLAIM.

1. The Defendant repeats paragraphs 4, 5 and 6 of the Statement of Defence herein.

2. The Defendant therefore claims :—

(1) A declaration that if the deeds referred to in paragraphs 9 and 11 of the Statement of Claim are forged (which is denied) then he is entitled to an equitable charge on the property comprised in the mortgage referred to in paragraph 4 of the Statement of Defence in respect of the said sum of \$37,729.11 together with all interest which would have been payable under the said mortgage had the principal not been paid off. Such interest to be calculated until payment or judgment. 30

(2) Further or other relief.

(3) Costs.

Dated the 19th day of October, 1939.

(Sgd.) H. C. MACNAMARA,  
Counsel for the Defendant.



## EVIDENCE of Chan Fui Hing.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiff's  
Evidence.*

*No. 6.*

*Chan Fui  
Hing,  
11th  
December  
1939.  
Examina-  
tion.*

CHAN FUI HING : *dd. ad. D'Almada.*

Aged 69 : a native of Sha Kau village, Shun Tak.

Other Pfs. are my clansmen.

I am retired from grocery business in Mauritius where I worked for 40 years.

I retired in 1929.

I am British subject.

10 This is my passport (A).

From Mauritius I came to South China five times.

Last time I came was 1924 when I stayed in China three years.

I paid visits to Hong Kong and stayed at Kwong Fuk Sing firm at 300 Des Voeux Road.

That property is now owned by us three Pfs.

I bought my share in 1925 from five persons, Chan Hing Lau, Chan Yuen Shi, Chan Yam Po, Chan Fuk Sam and Third Pf.

I executed assignment in connection with purchase.

This is it (B).

20 I point out my signature (last but one).

I wanted a good investment for my capital.

In Mauritius I was treasurer of Chinese Chamber of Commerce and subsequently Chairman.

I have no other property in Hong Kong.

I have property in Sha Kau, Shun Tak.

I own 90 acres there which used to produce income of \$900 a year.

I now get only \$600 a year.

I also own five houses in Sha Kau worth \$15,000.

Up to a year ago I had deposit of \$30,000 with firm in Canton.

30 When I bought share in property 300 Des Voeux Road third Pf. also bought a third of it.

Two years later second Pf. bought the remaining third of the property.

Since I bought up share the title deeds were kept in the Kwong Fuk Sing firm.

That firm closed down seven years ago.

Title deeds were then given by second Pf. to Chan Chung Wah, younger brother of third Pf.

Since then Chan Chung Wah has collected rents for us.

He remitted rents regularly till last year and submitted accounts.

40 He paid Crown rent, rates and taxes.

I remember going to Solicitor's office to sign assignment (B).

Except on that occasion I have not been to a solicitor's office.

I now know that in 1929 and 1934 third Pf. executed mortgage of his share.

I now know that in 1935 mortgage was executed purporting to be signed by myself and my fellow Pfs.

I look at the document shown me (Ex. C).

The signature on it is not mine.

This (C) is mortgage to Overseas Bank.

50 First learned of this mortgage from my solicitors in May, 1939.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 6.  
Chan Fui  
Hing,  
11th  
December  
1939,  
Examina-  
tion,  
*continued.*

Before that I had no idea of its existence.

It purports to have been executed by me on 16th May, 1935.

I can't remember coming to Hong Kong that year.

I didn't come here in May that year.

My nephew was married in Sha Kau on 15th May, and wedding dinner took place on 16th May.

I remember that my clansman Chan Kwok Ching was at the wedding.

I did not hear of mortgage to Deft. for \$55,000 till May, 1939.

I look at this document (Ex. D).

The signature Chan Fui Hing on it is not mine.

10

It was executed on 29th Oct. 1937.

I did not come to Hong Kong at all in Ting Chau year.

In Oct. Nov. 1937 I was in Sha Kau village.

Our village was ordered to form a committee for storing rice.

I was on the committee as treasurer.

I was also trustee and treasurer for ancestral funds of village.

Chan Tam Po and Chan Ngoh Lau were members of committee.

As treasurer I collected money for buying rice and gave receipts.

Counterfoil dated 14th Oct. bears my initials "Hing" for \$1,400 (E1).

Counterfoil dated 28th Oct. bears my initials "Hing" for \$1,350 (E2). 20

This is in my handwriting.

When I put down these dates I meant English dates.

On 15th Nov. 1937 I acknowledged receipt of \$1,510 (E3).

On 14th Oct. I acknowledged \$1,450 (F1).

On 4th Nov. I acknowledged \$1,568 (F2).

I kept cash book for rice conservation transactions (G).

It was period Oct. 1937 to 19th Dec. 1938 and is in my handwriting.

I made entries from day to day.

I first heard of mortgage of 2nd Nov. 1938 for \$5,000 to Deft. in May 1939 from my solicitors (H). 30

My name thereon is not in my handwriting.

I came to Hong Kong in March 1938 to get passports for my son.

I stayed only 4-5 days.

In 6th moon (July 1938) I came here again to collect rents.

When I came down I saw Chan Chung Wah who paid me \$400 on account of rent.

I next came here in Jan. 1939.

I did not come here between July 1938 and Jan. 1939.

That time I didn't see Chan Chung Wah.

His brother brought me \$250.

40

The document produced (I) is set of accounts rendered by Chan Chung Wah.

Japanese occupied our village on 3rd Nov. 1938.

I was still there when Japanese arrived.

Before they arrived we distributed the rice.

That occupied ten days before arrival of Japanese.

I took part in distribution.

I came here again in May, 1939, at request of second Pf.

This is the letter he wrote me (J).

I took my name off this letter in case of robbers and bandits.

50

I arrived here on 31st May or 1st June and went to second Pf.

After that I tried to see Chan Chung Wah but couldn't find him.

- I looked for him at 300 Des Voeux Road, his house.  
 I tried again next day but failed to see him.  
 Eventually on 10th June I saw Chan Chung Wah.  
 I asked him for money. He gave me Chinese \$100.  
 I did not mention to him the mortgage to the bank mentioned in  
 Chan Sik Tin's letter (J).  
 I didn't see Chan Chung Wah again so I went with knowledge and  
 consent of second Pf. with Chan Kwok Ching to see my solicitors.  
 I look at this document (K).
- 10 The words "Chan Kiu Hing" on it are not written by me.  
 I now sign my name three times on this sheet of paper (L).  
 This (M) is retainer I gave to L.D. & Co.  
 I signed it.
- Cross-examined.*
- xxd. Sheldon.*
- I am not related to either of the other Pfs.  
 Second and third Pfs. are not blood relations.  
 Chan Chung Wah is blood brother of third Pf.  
 I bought my share in property by assignment (B).
- 20 I paid \$37,000 for my share.  
 I paid the money in notes to clerk in Wilkinson & Grist's office.  
 He is Lei Sum Ting who was interpreter.  
 He is now dead.  
 He may have had alias Li Fuk Chan.  
 Third Pf. did not pay as much for his share.  
 He paid only a little over \$10,000.  
 Up to that time I had no interest in property at all but third Pf. had.  
 Since I bought a share in the property I have never dealt with it  
 in any way.
- 30 When assignment was executed title deeds were left with the  
 Kwong Sing firm.  
 That firm closed down in 1933.  
 Second Pf. had the custody of the title deeds.  
 I have heard letter (21) read.  
 It is correct.  
 Letter from second Pf. (J) is dated 24th May, 1939.  
 I received it on afternoon of 27th May.  
 Letter contained very serious information so I came here immediately.  
 It looked as if Chan Chung Wah had committed forgery.
- 40 Chan Chung Wah had had custody of title deeds for several years.  
 It was very late when I reached Hong Kong so I went to see Chan  
 Chung Wah next day.  
 I could not find him.  
 I made further efforts to find him.  
 Eventually I saw him on 10th June.  
 When I saw him I suspected he had mortgaged my property.  
 I knew he had mortgaged my property without my knowledge or  
 consent.
- 50 I said nothing to him about it, but got \$100 National currency on  
 account of rent.  
 I expected the balance of rent on Monday and then I would have  
 taken action.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdic-  
 tion  
 ---  
 Plaintiffs'  
 Evidence.  
 ---  
 No. 6.  
 Chan Fui  
 Hing,  
 11th  
 December  
 1939,  
 Examina-  
 tion,  
 continued.  
 Cross-  
 examina-  
 tion.*

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

Plaintiffs'  
Evidence.

No. 6.  
Chan Fui  
Hing,  
11th  
December  
1939,  
Cross-  
examina-  
tion.  
*continued.*

I did not go to police because my solicitors had advised me to say nothing if I wanted to get my rent from him.

I consulted my solicitors before 10th June.

I told my solicitors I suspected Chan Chung Wah had forged my signature.

That was 3 or 4 days before 10th June.

I saw third Pf. the day after I arrived here.

I saw him at 300 Des Voeux Road.

I did not speak to him about the mortgage.

He was living with Chan Chung Wah and I was afraid that if I spoke 10 to him Chan Chung Wah would not pay me my rent in full.

Adjourned to 10 a.m. tomorrow.

A. D. A. MACGREGOR.

C.J.

11.12.39.

Tuesday, 12th December, 1939.

O.J. 92 of 1939.

Continued from yesterday.

Appearances as before.

CHAN FUI HING recalled on former declaration : *further xzd. Sheldon.* 20

On 10th June I said nothing to Chan Chung Wah about this fraud.

I saw him at 300 Des Voeux Road.

I have never seen him since that day.

He promised to pay me the balance of rent due.

I tried to find him again by going to 300 Des Voeux Road to look for him.

I went to look for him on 12th June.

Third Pf. was there then.

I told him Chan Chung Wah had promised to pay the balance of rent that day and asked where he was. 30

Third Pf. said he hadn't come back.

He said that sometimes Chan Chung Wah didn't come back for several days.

I didn't tell third Pf. about Chan Chung Wah's fraud and forgery.

I deliberately kept third Pf. in the dark because he and Chan Chung Wah were brothers and they might have conspired to do this thing.

Next day I went again to look for Chan Chung Wah.

No sign of him.

I saw third Pf. again that day.

I paid many other visits to 300 Des Voeux Road looking for Chan 40 Chung Wah.

Then I consulted a solicitor.

That was the second occasion I had gone to my solicitors.

I say forgery was carried out by Chan Chung Wah.

The photographs shown me (N) are of Chan Chung Wah.

There must have been two other men involved in it.

I know that three men were identified in J. S. & M.'s office as the three Pfs.

I have examined this mortgage deed (D) with my solicitors. There are three forged signatures on it.  
 I don't know if one of the three men was Chan Chung Wah. I have made no enquiries as to who the other two men were. I don't know where Chan Chung Wah is now. I was not told he was in Hong Kong a few weeks ago. Since Issue of Writ on 17th June I have made no enquiries about Chan Chung Wah's whereabouts.  
 10 Chan Chung Wah occupied second floor and half top floor of 300 Des Voeux Road.  
 He paid only \$25 a month. I gave him rooms cheap because he collected rent for me. I do not agree that Chan Chung Wah and Chau Kwok Nim are one and the same person.  
*Potter, K.C.* No hint of fraud in pleadings yet we now are charged with impersonation and knowledge of impersonation.  
*Sheldon, K.C.* I shall have to apply for amendment of pleadings. We haven't had a chance till now to identify the Pfs.  
*xxn. continued.*  
 20 It is not true that I am not the Chan Fui Hing who signed the assignment (B).

*In the Supreme Court of Hong Kong Original Jurisdiction.*  
*Plaintiff's Evidence.*  
 No. 6.  
 Chan Fui Hing,  
 12th  
 December 1939,  
 Cross-examination.  
*continued.*

---

No. 7.  
 EVIDENCE of Chan Sik Tin.

CHAN SIK TIN : dd. *xd. D'Almada.*  
 Aged 48 ; native of Sha Kau. Last witness is Chan Fui Hing. I know third Pf. also. We are all clansmen. I have known them for 40 and 30 years respectively.  
 30 I was manager of Kwong Fuk Firm till 1933. I own third share in property in dispute. I bought my share in 1927. I went to a solicitor's office and had to sign two documents there. I signed this document (O). I also signed a memorial. I paid \$35,000 for my share. When I bought the other owners were the first and third Pfs. At first I had charge of the title deeds until 1932 Kwong Fuk Sing business then closed down.  
 40 With the consent of the other Pfs. I handed title deeds to Chan Chung Wah who collected rents for us. He is younger brother of third Pf. When Kwong Fuk Sing closed down I returned to Sha Kau.

No. 7.  
 Chan Sik Tin,  
 12th  
 December 1939.  
 Examination.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 7.  
Chan Sik  
Tin,  
12th  
December  
1939,  
Examina-  
tion,  
*continued.*

I lived in the country from that time until June 1938 when I came to Hong Kong because of bombing by Japanese.

I have rheumatic trouble in my legs.

I am better since I was treated in Shanghai in August/September this year.

Before that I couldn't go out but was confined to the house.

I own no other property in Hong Kong but have three houses in Sha Kau and three shop premises.

I bought 300 Des Voeux Road as an investment.

Chan Chung Wah paid the rents regularly until last year.

10

I look at this letter (J).

I wrote it.

It bears a date and my name.

It was written to first Pf. whose name is torn off.

I sent and asked why Chan Chung Wah hadn't paid rent for so long. I sent Chan Kwok Ching.

Reply was that Chan Chung Wah owed Chinese bank several tens of thousands of dollars.

As a result of that conversation I wrote J.

First Pf. then came to Hong Kong and saw me.

20

Before first Pf. came down and met me I sent Chan Kwok Ching to a solicitor to ascertain whether Chan Chung Wah had in fact mortgaged the property.

First Pf. and I discussed the matter.

Chan Chung Wah at that time owed me \$210 for rent and \$900 to first Pf.

We decided to collect the rent from Chan Chung Wah before instructing a solicitor about the forgeries and mortgage.

We also decided not to say anything to third Pf. as we didn't know whether there was anything between him and his brother.

30

I know that first Pf. saw Chan Chung Wah on 10th June.

First Pf. reported to me from time to time.

I look at Overseas Bank mortgage (C).

The " Chan Sik Tin " thereon is not my signature.

This is the first time I have ever seen this document.

Apart from O and the memorial I have never signed any document concerning this property.

I look at \$55,000 mortgage (D).

Chan Sik Tin thereon is not my signature.

I look at \$5,000 mortgage (H).

40

Chan Sik Tin thereon is not my signature.

I have never seen either of these documents till today.

I look at this letter (K).

My name thereon is not written by me.

I now sign my name three times on a sheet of paper (P).

This is retainer I signed to my solicitors (Q).

164 Des Voeux Road belongs to third Pf. and Chan Yam Po.

When I was manager of Chan Kwong Ching I collected rents of these premises and signed rent receipts.

These are they (R).

50

Photographs (N) are of Chan Chung Wah.

*Cross-examined.**ard. Sheldon.*

I came from Shanghai a few days ago.

I came in Dutch ship Ruys.

I travelled under my own name.

She arrived in Hong Kong on 30th Nov.

I wrote J. to first Pf. on 24th May.

I then suspected that Chan Chung Wah had mortgaged property.

10 Before first Pf. arrived I knew Chan Chung Wah had mortgaged the property.

First Pf. and I decided to do nothing about forgery and fraud till we had got the rents due to us.

I knew that some innocent person had advanced money on property because Chan Chung Wah had induced him to do so.

I didn't stop to think of that.

I don't suggest that Deft. did not advance money in all good faith.

For all I know Deft. may have conspired with Chan Chung Wah.

Deft. never heard anything about this until he received the writ.

20 Since 24th May I had known Deft. had advanced money on a forged deed.

I instructed solicitors that if they found anything was wrong they should sue Chan Chung Wah.

That was before I instructed issue of this writ.

No proceedings were taken against Chan Chung Wah.

I know that Chan Chung Wah was in Hong Kong on 10th June.

Before that date I had instructed solicitor to take proceedings against Chan Chung Wah.

It was first Pf. who instructed solicitor.

First Pf. told me he had seen Chan Chung Wah on 10th June.

30 I asked first Pf. what had happened about proceedings against Chan Chung Wah.

He said Chan Chung Wah had promised to pay the balance in two days.

I heard first Pf.'s account of what happened just after 10th June.

He said he did not go to solicitor until he had failed to find Chan Chung Wah.

Third Pf. is an honest man.

I said we didn't mention the forgery to him because we didn't know if there was anything between them as they are brothers.

40 I didn't know whether there was a conspiracy between them.

Chan Chung Wah formerly was an honest man.

I had a little doubt about third Pf.s' honesty.

The two brothers were living together so I thought he might be linked up in a conspiracy.

My suspicion of him was so strong that I didn't say anything to him about the forgery.

Photographs (N) are those of Chan Chung Wah.

He is not the same man as third Pf.

50 We told third Pf. about the forgery on the day we instructed solicitor to proceed against Chan Chung Wah.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

*No. 7.*

*Chan Sik*

*Tin,*

*12th*

*December*

*1939,*

*continued.*

*Cross-*

*examina-*

*tion.*

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

Plaintiffs'  
Evidence.

No. 7.  
Chan Sik  
Tin,  
12th  
December  
1939,  
*continued.*  
Re-  
examina-  
tion.  
Further  
examina-  
tion,  
3rd  
January  
1940.

*Re-examined.*

*re-xcd. D'Almada.*

When in May I heard of mortgages I knew nothing about Deft. the mortgagee.

I didn't know anything about him then and I don't know anything now.

The retainer (Q) was signed in my house because I was unable to walk.

*Further examined.*

CHAN SIK TIN : re-called by leave on former declaration : *further xcd.* 10  
*D'Almada.*

To Sheldon I said " I know that Chung Wah was in Hong Kong on 10th June. Before that date I had instructed solicitors to take proceedings against Chung Wah.

We told third Pf. about forgery on the day we instructed solicitors to proceed against Chung Wah."

I did not tell Kwok Nim on that date.

I consulted a solicitor, through Fui Hing, as to whether I should tell Kwok Nim.

I could not walk. 20

I first saw my solicitors about this case two or three days before signing of this retainer Ex. Q.

That is dated 15th June, 1939.

I wrote a letter (Ex. J) on 24th May to first Pf.

After that date I did not see third Pf. till after my return from Shanghai last month.

Before 24th May I had not seen third Pf. since end of 1938 or beginning of 1939.

I first sent Kwok Ching to see solicitors about this matter.

I never instructed him to see third Pf. about the matter. 30

No *xm.*

No. 8.  
Chan Kwok  
Nim,  
12th  
December  
1939.  
Examina-  
tion.

No. 8.

EVIDENCE of Chan Kwok Nim.

CHAN KWOK NIM dd. *xcd. D'Almada.*

37 years of age : native of Sha Kau village.

I have always lived there.

I came to Hong Kong on 3rd October 1938 to my brother's wedding.

His name is Chan Kwok Shan.

I am a pawnbroker in Sha Kau.

I own a share in 300 Des Voeux Road and also 164 Des Voeux Road 40 and 182 Queen's Road East.

182 Queen's Road East is now in hands of mortgagee.

I own one third of 300 Des Voeux Road with first and second Pfs., one third each.



- I bought my share in 1925.  
 Before that I owned a one fifth share of the property.  
 I got that from my late partner Chan Lai Shan.  
 I paid \$15,000 for my share in 1925.  
 I look at (B).  
 My signature appears on it in three places.  
 I have only a tenth share in 164 Des Voeux Road.  
 I have another brother called Chan Yam Po and another Chan  
 Chung Wah.
- 10 N is photograph of Chan Chung Wah.  
 Title deeds of our property were left with Kwong Fuk Shing firm  
 with Chan Yam Tong.  
 In 1927 Chan Sik Tin took charge of title deeds.  
 In 1933 deeds were handed to Chan Chung Wah who collected rents.  
 My fellow owners are first and second Pfs.  
 I have dealt with my share of the property twice.  
 I mortgaged my share twice, first to my wife and again to my  
 sister-in-law, Chan Chung Wah's wife.
- 20 I executed mortgage deeds.  
 This (S) is mortgage to my wife dated 1929.  
 The two signatures on the document are not mine.  
 I remember signing a document like this in connection with this  
 mortgage.  
 I also signed a memorial in the Land Office.  
 The signature on the memorial shown me is mine.  
 This (T) is mortgage to my sister-in-law.  
 It does not bear my signature.  
 The signature on this memorial is mine.  
 I mortgaged property to defeat my creditors.
- 30 The second mortgage was to defeat mortgagee of 182 Queen's Road  
 East.  
 The mortgage was reassigned a year later.  
 I had nothing to do with the reassignment.  
 I had no knowledge of it whatsoever.  
 From the date of my mortgage to my sister-in-law I never saw the  
 deed till these proceedings.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdiction.*

*Plaintiffs'  
 Evidence*

No. 8,  
 Chan Kwok  
 Nim,  
 12th  
 December  
 1939,  
 Examination,  
*continued.*

Adjourned to 2.30 p.m.

A. D. A. MACGREGOR,

C.J.

40

12.12.1939.

Court resumed at 2.30 p.m.

Appearances as before.

CHAN KWOK NIM—recalled on former declaration: *further ad.*  
*D'Almada.*

I look at Ex. C.

That is not my signature.

I did not sign either of the mortgages to Deft.

My alias is Chan Kiu Lap.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

Plaintiffs'  
Evidence.

No. 8.  
Chan Kwok  
Nim,  
12th  
December  
1939,  
Examina-  
tion,  
continued.  
Cross-  
examina-  
tion.

My marriage name is Chan Sing Tak.  
Chan Kwok Yin is Chan Chung Wah's alias.  
Chan Sing Kuen is his marriage name.

I first heard of these mortgages on 17th June, from first Pfs. and solicitor's interpreter.

First Pf. told me he and second Pf. had known it for some weeks.

I asked first Pf. why they had not told me.

He told me he had suspected me to be mixed up in it with my brother Chan Chung Wah.

I was surprised to hear that and said so. 10

Later I gave instructions to be added as a Pf.—next day.

I now sign my name three times on a sheet of paper (U).

This retainer also bears my signature (V).

*Cross-examined.*

*xxd. Sheldon.*

My mortgage to my wife (S) was fictitious.

No money passed.

It was in fraud of my creditors.

On the same date I mortgaged 182 Queen's Road East to my sister-in-law. 20

Also a fictitious mortgage to defeat my creditors.

Second mortgage (T) was made for same purpose.

I made no other fictitious mortgages.

Chan Chung Wah used my father's money to begin a business Wai Li.

My father left his money to his sons.

Five of us brothers were entitled to share in our father's money.

I am the only one who put through a fictitious mortgage.

Chan Chung Wah has family property in Hong Kong.

He owns 1/10th of 164 Des Voeux Road.

I know that Chan Kwok Yin, alias of Chan Chung Wah, put through 30 mortgage of 1/10th of 164 Des Voeux Road for \$10,000 in Aug. 1939.

I heard that from a woman who was former owner of 300 Des Voeux Road.

She was mortgagee of 164 Des Voeux Road under this transaction.

She did not tell me she had reassigned property to Chan Chung Wah eleven days ago.

She told me about the mortgage about a week ago.

I don't know where Chan Chung Wah is now.

I last saw him on 10th June, 1939.

He then was living with me. 40

Fui Hing had seen him that morning for first time.

When first Pf. used to come to the house he only asked me if Chung Wah was in.

I didn't know why he came down here until 17th June.

I know now that he came down because his title deeds had been forged.

He didn't mention it to me because he suspected me of roguery.

I knew nothing of forged deeds till 17th June.

It is not true that I was told before 10th June.

I look at T—mortgage to my sister-in-law. 50

That document was executed by me at Russ & Co.'s office.

My signature has been erased and another signature superimposed.  
 I was identified before executing that deed.  
 I was identified by Lo Kwok Min.  
 It is not true that that mortgage was executed by Chan Chung Wah.  
 When mortgage was assigned I don't remember whether I signed receipt for the deeds or not.  
 When the mortgage was executed no deeds were produced.  
 No deeds were produced when Ex. S was executed.  
 Chan Chung Wah was partner and manager in Wai Li under name of  
 10 Chan Kwok Yin.  
 That firm went bankrupt.  
 Chan Kwok Yin in bankruptcy claimed for \$21,000.  
 That was fraudulent.  
 Chan Chung Wah and third Pf. are not one and the same person.  
 I am not an imposter masquerading as third Pf.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdiction.*

*Plaintiffs'  
 Evidence.*

No. 8  
 Chan Kwok  
 Nim,  
 12th  
 December  
 1939,  
 Cross-  
 examina-  
 tion,  
*continued.*  
 Re-  
 examina-  
 tion.

*Re-examined.*

*re-axd. D'Almada.*

I said that I first heard of fraud on 17th June.  
 Sik Tin said he told me before 10th June.  
 20 I was told on 17th June at 300 Des Voeux Road.  
 About that time I didn't discuss it with second Pf. at all.  
 I never went to second Pf.'s house or he to mine about that time.  
 After I was told by first Pf. and . . . about frauds on 17th June.  
 I did not see second Pf. until he returned from Shanghai.  
 I hadn't seen him before that since March 1939 in the place where he  
 was living.  
 Chan Chung Wah owned a share in 164 Des Voeux Road.  
 He also owned 40 Stanley St.  
 He mortgaged it and was foreclosed on.  
 30 Chung Wah had deposits in Wai Li firm.  
 I don't know how much it was.  
 It may have been for deposits that he made his claim in bankruptcy.

*Further cross-examined.*

CHAN KWOK NIM : re-called on former declaration by leave : *further  
 axd. Sheldon.*

Further  
 cross-  
 examina-  
 tion,  
 3rd  
 January  
 1940.

I look at documents shown me (marked NN).  
 It is executed by Chan Chung Wah and others and appoints one other  
 their attorneys (Marked NN).  
 That is dated 13th October, 1939.  
 40 In September I heard I was to be appointed attorney but I refused.  
 I heard of it from two of my brothers.  
 They spoke of it at 300 Des Voeux Road.  
 Four of us had this conversation.  
 Kwok Yin was not there.  
 Five brothers proposed to give P/A to four others, three brothers  
 and a wife.  
 We had a meeting about this in September.  
 At the meeting Lok Man, Kwok Hing and Yan Po alone were present.  
 Later that day I heard I was appointed attorney.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction*

*Plaintiffs'  
Evidence.*

No. 8.  
Chan Kwok  
Nim,  
3rd  
January  
1940,  
Further  
cross-  
examina-  
tion,  
*continued.*

I heard three men had proposed that it would be well to empower a few to sign on behalf of all of them.

At that time I refused appointment as attorney.

About end of September Yan Po, Lok Man and Kwok Hing said that I didn't have a share in business I must be appointed one of the four attorneys.

Appointors and attorneys knew all about the forging of deeds.

I mentioned that I would not become attorney for the man who forged the mortgage deeds.

Yet I was appointed attorney. 10

I know that this document was executed in Loseby's office.

In presence of Chan Lok Nim, Chan Kwok Hing, Kwok Leung and Chan Kwok Wing.

Chan Kwok Yin was not present.

Four persons signed and then Chan Kwok Yin came along and signed.

All signed except Chan Kwok Yin in the first place.

I would not act as attorney for Kwok Yin who had defrauded me.

Of the nine Chans concerned I was the only one who objected as attorney by Chan Kwok Yin.

Chan Kwok Yin signed deed after others had done so. 20

Four other signatories told me so.

This deed purports to have been signed by 13th Oct.

Chan Lok Man and Chan Kwok Hon told me that Chan Kwok Yin had been added to document ten days after execution by other Pfs.

I was told about it in Nov. 1939, and I was then told that Chan Chung Wah had executed P/A more than ten days after the others had.

I did not know till middle November that I had been appointed attorney.

I was horrified.

I said to Chan Lok Man : " This man forged a mortgage on my property do you think I shall be his attorney ? " 30

I did not want to act as attorney for him.

I told Lok Man and Yan Po that I would not act as attorney.

On 14th Dec. fourth day of this trial—there was a mortgage to the Wai Tak Co. which I executed as attorney.

I was forced to do this.

I did it only to please my sister-in-law Chan Yin Shi.

Chan Chung Wah's share went to Chan Yin Shi.

As one of the attorneys I agreed to that.

Adjourned to 2.30 p.m. to-morrow. 40

A. D. A. MACGREGOR,

C.J.

3.1.40

Thursday, 4th January, 1940

O.J. 92/1939.

From yesterday.

Appearances as before.

CHAN KWOK NIM: re-called on former declaration: *further xxxd.*  
*Sheldon.*

On 14th December I executed also this other document (Ex. JJ). 50

It is assignment of tenth share of one Chan to the other nine sharers.

- Chan Hing Lau sold to other nine Chans.  
 Under that deed I assisted in obtaining extra property for Kwok Tu.  
 Consideration was \$7,703.  
 Money was paid to Chan Hing Lau.  
 Chan Yim Shi paid on behalf of Chan Kwok Yin.  
 Chan Yim Shi asked me to sign two assignments.  
 Chan Yim Shi was already mortgagee of Chan Kwok Yin's share.  
 I am referring to mortgage of August 1939.  
 That mortgage had been reassigned on 6th Dec. 1939 because of  
 10 application former Crown Lease.  
 Property purported to be reassigned though in fact it was not.  
 Chan Yim Shi is now in Macao.  
 She went there 10-20 days ago.  
 Immediately after execution of deeds on 4th December.  
 I know her well : she is my sister-in-law.  
 She is permanently resident in Macao and seldom comes here.  
 She has an account with Overseas Bank and me with the H. K. & S. B.  
 She mortgaged property in September 1934 and opened account with  
 Overseas Bank.
- 20 I don't know if Chan Chung Wah introduced her to the Bank.  
 I don't know if she was introduced to Lee at W. & G. by a man calling  
 himself Chan Kwok Nim.  
 I don't know anything about it.  
 Mortgage for \$11,000 between Chan Yim Shi and Chan Chung Wah  
 was proposed by Lo and Lo.  
 Chan Chung Wah signed in Macao.
- Further re-examined.*
- re-exd. D'Almada.*
- 30 Chan Yim Shi had property 188 Queen's Road East.  
 It was that property that was mortgaged to Overseas Bank in 1934.  
 She mortgaged property to get money to hand to Chan Chung Wah.  
 The mortgage of Kwok Yim's third share was put through because he  
 was pressed for money she had lent him, and also because she had heard  
 that he had mortgaged 300 Des Voeux Road and absconded.  
 This P. A. (Ex. NN) is signed by Chan Lok Man and four others.  
 Chan Lok Man is now in Sha Kau village, so is second signatory.  
 Chan Kwok Lin is in Canton and Chan Kwok Wing in Macao.  
 Chan Kwok Yin has run away.
- 40 P.A. was executed to provide security for new Crown lease.  
 When P.A. was executed none of us intended to mortgage property.  
 Chan Ching Yau's was a small share—about \$7,000.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdiction,*

*Plaintiffs'  
 Evidence,*

*No. 8,  
 Chan Kwok  
 Nim,  
 4th  
 January  
 1940,  
 Further  
 cross-  
 examina-  
 tion,  
 continued.*

*Further  
 re-  
 examina-  
 tion.*

No. 9.

## EVIDENCE of Chan Ngok Lau.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

CHAN NGOK LAU. *dd. v. D'Almada.*

Native of Sha Kau, aged 56.

Many years in South Africa.

Retired in 1932 to Sha Kau where I have a farm.

I know the Pfs. by the names in which they have sued.

I know first Pf. best. We have travelled together.

We shared a cabin to Mauritius in 1912.

When I returned in 1932 first Pf. was in Sha Kau. 10

He has been there all the time since then.

Second Pf. spent most of his time in Hong Kong.

For last two years he has been in Sha Kau but I didn't see much of him as he is an invalid.

I have seen third Pf. once or twice a year in Sha Kau since 1932.

I identify first witness as Fui Hing, second witness as Sik Tin and third witness as Kwok Nim.

Shortly after war broke out a rice conservation committee was formed in village.

First Pf. had charge of the money. 20

I was on committee.

We collected about \$20,000.

First Pf. used to give receipts.

I was a collector and this (E) is my book.

It bears endorsements by him.

First Pf. was on committee until rice was distributed in Oct. 1938.

First Pf. was also trustee and treasurer of ancestral funds.

I didn't know Chan Chung Wah.

I don't recognize the photograph (N).

*Cross-examined.*

30

Cross-  
examina-  
tion.

*xxd. Sheldon.*

I have never heard of Chan Chung Wah alias of Chan Kwok Nim.

No. 10.  
EVIDENCE of Chan Yan Po.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

CHAN YAN PO. *dd. ad. D'Almada.*

Aged 62, third pf. is my younger brother.  
Chung Wah is tenth son—my younger brother.  
He has an alias Chan Kwok Yin, and a married name.  
Chan Kwok Nim has an alias Kin Lap.  
I have lived at Sha Kau all my life.  
10 I know first witness as Fui Hing.  
I have known him for 50 years.  
I know second witness as Sik Tin.  
I have known him for many years.  
At one time I was trustee of 300 Des Voeux Road.  
In 1925 I took part in sale of property and executed assignment (B).  
I see other signatures on that document.  
Signature Chan Kwok Nim there is that of second witness.  
Signature Chan Fui Hing is that of first witness.  
We were all three together and signed at same time.  
20 Third witness is true Kwok Nim.  
He and Chung Wah are not one and the same person.  
(N) is photographs of Chung Wah.

*Plaintiff's  
Evidence.*

No. 10.  
Chan Yan  
Po,  
12th  
December  
1939.  
Examina-  
tion.

*Cross-examined.*

*ad. Sheldon.*

I don't agree that third witness is not Kwok Nim.

Cross-  
examina-  
tion.

Adjourned to 10 a.m. to-morrow.

A. D. A. MACGREGOR,

C.J.

12.12.39.

No. 11.  
EVIDENCE of Cheung Wai Man.

No. 11.  
Cheung  
Wai Man,  
13th  
December  
1939.  
Examina-  
tion.

30 Wednesday, 13th December, 1939.  
O.J. 92 of 1939.

From yesterday.

Appearances as before.

CHEUNG WAI MAN: *dd. ad. D'Almada.*

Managing partner of Cheung Fat Co. of 164 Des Voeux Road and  
210/214 Hennessey Road.  
It is bakery and confectionery business.  
Also manager of Ko Ming Co. of 98 Bonham Street East.  
40 Also of Kwong Tai Co. of 94 Des Voeux Road.  
Also of Kwong Hung Co. of 331 Queen's Road.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 11.  
Cheung  
Wai Man,  
13th  
December  
1939,  
Examina-  
tion,  
*continued.*

Also of Hung Li Queen's Road West.  
I have been tenant of 164 Des Voeux Road over twenty years.  
Third Pf. I identify as one of my landlords.  
I have known him for more than ten years.  
His alias is Chan Kin Lap.  
All those ten years I have known him as Chan Kwok Nim or

Chan Kin Lap.

I know Chan Chung Wah, his brother, as one of my landlords.  
I have known him for more than ten years.

I used to pay rent to Kwong Fuk Sing firm and after their close down 10  
to Chan Chung Wah.

Rent receipts were chopped Chan Kwok Yin, the alias of Chan  
Chung Wah.

I produce rent receipt dated 8th November, 1938 (W).

I saw Chan Chung Wah write it out in my shop.

I produce rent receipt signed by Chan Chung Wah dated 30th July  
1938 (X).

I know Chan Yau Po, one of my landlords.

He is elder brother of Chan Kwok Nim.

I know Chan Sik Tin.

20

I identify second Pf. as Chan Sik Tin.

I have known him for twenty years.

He used to collect rent of 164 Des Voeux Road.

I don't know Chan Fui Hing.

I haven't seen Chan Chung Wah for a long time.

I don't remember seeing him at all this year.

Cross-  
examina-  
tion.

*Cross-examined.*

*xxd. Sheldon.*

I haven't heard of Chan Chung Wah being in Hong Kong this year.

I never heard of his using alias of Chan Kwok Nim.

30

I have never seen Chan Chung Wah and Chan Kwok Nim together.

Re-  
examina-  
tion.

*Re-examined.*

*re-xxd. D'Almada.*

The photographs (N) are Chan Chung Wah.

No. 12.  
Chan Kwok  
Wing,  
13th  
December  
1939,  
Examina-  
tion.

No. 12.

**EVIDENCE of Chan Kwok Wing.**

CHAN KWOK WING *dd. xd. D'Almada.*

Chan Kwok Nim is my elder brother. This is he (identified).

His alias is Chan Kin Lap.

Chan Chung Wah is another of my brothers.

40

His alias is Chan Kwok Yin.

I have not seen Chan Chung Wah for seven or eight months.

I never knew him use the alias Kwok Nim.

The photographs (N) are of Chan Chung Wah.



This photograph (Y) is Chan Kwok Shim's wedding group.  
 Chan Kwok Nim is in this photograph.  
 I was at the wedding ceremony but am not in this group.  
 This (Z) is Chan Kwok Shim's wedding certificate.  
 It is chopped Chan Kin Lap and above chop is written Chan Kwok Nim.  
 I saw that chop affixed by Chan Kwok Nim.  
 Chan Yan Po is my elder brother.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdic-  
 tion.*

*Plaintiffs'  
 Evidence.*

*Cross-examined.*

*vsd. Sheldon.*

- 10 I saw Chan Chung Wah seven months ago in Macao.  
 I met him by chance in the street.  
 I was going through on my way to the country.  
 I have never before gone that way to the country.  
 I did not know Chan Chung Wah was in Macao.  
 I was not surprised to meet him there.  
 I was surprised to see him in Macao.  
 I asked him where he was.  
 He was staying in a hotel there.  
 I know now about the allegations against Chan Chung Wah.  
 20 When I met him I knew nothing of the allegations.  
 Chan Chung Wah is 36 or 37 years old.

No. 12.  
 Chan Kwok  
 Wing,  
 13th  
 December  
 1939,  
 Examina-  
 tion,  
*continued.*  
 Cross-  
 examina-  
 tion.

No. 13.

EVIDENCE of Chan Kwok Shing.

CHAN KWOK SHING: *dd. vsd. d'Almada.*

- Aged 24. I have lived most of my life in Sha Kau or Canton.  
 Now a refugee in Hong Kong.  
 I have an elder sister Chan Tim.  
 I know all the Pfs.  
 They are Chan Fui Hing, Chan Sik Tin and Chan Kwok Nim.  
 30 They are all clansmen of mine.  
 I was in Sha Kau in Nov. 1938 when the Japanese arrived.  
 Chan Fui Hing was there at that time.  
 I met him in Sha Kau before I left for Hong Kong.  
 He asked me to see Chan Chung Wah and ask him to send to the  
 country the rent he had collected for him.  
 I know Chan Chung Wah, Kwok Nim's younger brother.  
 (N) is photographs of Chan Chung Wah.  
 When I came to Hong Kong I met Chan Chung Wah at 300 Des Voeux  
 Road.  
 40 This was in Jan. 1939.  
 I gave him Fui Hing's message.  
 While in Hong Kong I called on Sik Tin at his home.  
 He asked me to go and see Chan Chung Wah and ask him for the  
 rents due.

No. 13.  
 Chan Kwok  
 Shing,  
 13th  
 December  
 1939.  
 Examina-  
 tion.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 13.  
Chan Kwok  
Shing,  
13th  
December  
1939,  
Examina-  
tion,  
*continued.*

That was in March or April.  
At that time Sik Tin couldn't walk.  
I went to see Chung Wah and gave him Sik Tin's message.  
He said tenants had not paid in full and he would hand over the  
money when he had collected it all.  
I reported this to Sik Tin.  
I went to tenants of ground floor of 300 Des Voeux Road, Yuen Hing  
firm with my sister Chau Tin.  
They said they had paid in full and Chung Wah was no longer collecting  
the rent. 10  
He said one Fung was collecting rent for a Chinese Bank.  
My sister went and reported to Sik Tin.  
My sister did most of the talking.  
Sik Tin told us to make further enquiries and to see a solicitor.  
We went to L.D. & Co. and saw Mr. Mok.  
That was between 19th and 28th May.  
I saw Mr. Mok the day after I reported to Sik Tin.  
Mr. Mok said he would make enquiries.  
I saw him two or three days later and I reported again to Sik Tin.  
I last saw Chan Chung Wah about the middle of May. 20  
I have not seen him since then.

*Cross-  
examina-  
tion.*

*Cross-examined.*

*xxd. Sheldon.*

I saw Chan Chung Wah at 300 Des Voeux Road in January, 1939.  
Kwok Nim was there at the same time.  
I spoke to him about affairs in the country.  
The two of them were never together with me in the same room.

*Re-  
examina-  
tion.*

*Re-examined.*

*re-xxd. D'Almada.*

I have never anywhere seen Kwok Nim and Chung Wah together. 30

No. 14.  
Leung  
Kin Sau,  
13th  
December  
1939.  
Examina-  
tion.

No. 14.

EVIDENCE of Leung Kin Sau.

LEUNG KIN SAU: dd. *xxd. D'Almada.*

Partner in Christensen & Co., 8 Des Voeux Road, flour merchants.  
I have been partner for 15 years.  
I remember the Wai Li firm customers of ours.  
It went into bankruptcy ten years ago and no longer exists.  
I know third Pf. Chan Kwok Nim.  
He and his brother looked after the business of Wai Li.  
His brother was Chan Kwok Yin, alias Chan Chung Wah. 40

I saw Chan Chung Wah more frequently.  
 I last saw him in the street about two years ago.  
 The suggestion that Kwok Nim and Chung Wah are same person is untrue.  
 They are brothers.  
 N. is photograph of Chung Wah.  
 I dealt with both of them in connection with flour business.  
*xxd. Sheldon. None.*

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdiction.  
 Plaintiffs'  
 Evidence.*

---

No. 15.

10 APPLICATION for leave to amend Defence.

*Sheldon, K.C.*, for Deft. hands in copy of suggested amendment of S/D.  
 Really the amendments.  
 One is first two paras, and second begins "In the alternative."  
 Necessity for amendment is caused wholly by solicitors to Pfs. refusing to let us know who these men were.  
 Letter (33) of 9th Dec. reiterates our point on identity.  
 Only when we come into court to see the Pfs. do we see that they are not the men who signed the deeds.  
 No evidence of fraud available to us and nothing to show estoppel so  
 20 we have no defence at all.  
 I now apply for amendment.  
 Alternative plea of Laches estoppel is very interesting.  
 These will be (b) and (c) of S3 of S/D.

No. 14.  
 Leung  
 Kin San,  
 13th  
 December  
 1939,  
 Examination,  
*continued.*  
*Defendant's  
 Application.*

No. 15.  
 Application  
 for Leave  
 to amend  
 Defence,  
 13th  
 December  
 1939.

Adjourned to 10 a.m. tomorrow.

A. D. A. MACGREGOR,

C.J.

13.12.39

---

No. 16.

EVIDENCE of Hsu Ti Shan.

30 Thursday, 14th December, 1939.  
 O.J. 92 of 1939.

From yesterday.

*Appearances as before.*

HSU TI SHAN : dd. *xxd. D'Almada.*

Professor of Chinese, University of Hong Kong.  
 B. Litt. (Oxon) and M.A. (Columbia).  
 I also have Chinese qualifications at Peking University.  
 Calligraphy is important subject in Chinese studies.  
 I can give expert evidence on Chinese handwriting.  
 40 I have examined several of exhibits in this case.

*Plaintiffs'  
 Evidence.*  
 No. 16.  
 Hsu Ti  
 Shan,  
 14th  
 December  
 1939,  
 Examination.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 16.  
Hsu Ti  
Shan,  
14th  
December  
1939,  
Examina-  
tion,  
*continued.*

L is signatures made in Court by Fui Hing.  
M is retainer given by Fui Hing.  
In my opinion signatures on L and M are in same hand.  
B bears signature of Fui Hing.  
In my opinion that signature is same handwriting as L and M.  
E is counterfoil account book.  
I see counterfoils E1 and E2.  
In my opinion characters Fui Hing are in same handwriting as B, L,  
and M, though they are poorly written.  
F is another account book. 10  
Signature therein is written by same person.  
C is mortgage to Overseas Bank.  
In all the signatures I have dealt with stroke 1 in Chan is square and  
there is a space between stroke 1 and stroke 2.  
That is characteristic of all these signatures.  
The writer writes strokes 9 and 10 in one, with an upward curve at the  
end.  
In the character " Fui " the writer made strokes 4, 5 and 6 and 8, all  
in one stroke.  
Strokes 4 to 9 make the character " Yu ". 20  
6 and 8 are written in a horizontal line.  
In character " Hing " he wrote strokes 1 to 7 like the character Siu.  
Strokes 17 to 20 are missing.  
On C the Chan Fui Hing is not in my opinion in the same hand.  
In first character the strokes 9 and 10 show no curve.  
It has a downward tendency instead of an upward one.  
Strokes 1 and 2 are written in one stroke.  
Character " Fui " has strokes 5 and 7 written parallel.  
That is not so in the other signatures.  
Strokes 2, 4 and 5 are joined together. 30  
In character " Hing " strokes 12 to 16 are written together and show  
the same downward tendencies.  
Character is similarly abbreviated by omission of strokes 17 to 20.  
This signature is not a good imitation of signatures I have already  
dealt with.  
D is mortgage for \$55,000.  
Signature Chan Fui Hing therein differs from all the genuine signatures.  
Character " Chan " is written in quite different style.  
Strokes 9 and 10 are two separate dots.  
In " Fui " strokes 5 and 7 are parallel. 40  
In " Hing " strokes 15 and 16 are quite different from genuine ones.  
Here they are only two dots instead of having a tendency to curve.  
H is mortgage for \$5,000.  
Signature Chan Fui Hing thereon is not same as genuine signatures.  
Same differences appear here as in C and D.  
I look at C, D and H.  
I cannot tell if signatures Chan Fui Hing thereon are in the same  
hand.  
They are different in appearance and each has its own characteristics.  
K is letter extending time of mortgage. 50  
Signature Chan Fui Hing thereon is not the same as the genuine ones.  
Differences are roughly same as I find in C, D and H.

- P is signature made by second Pf. in Court.  
 Q is his retainer.  
 These few signatures are in same hand.  
 O is assignment to second Pf. in 1927.  
 That signature is in same hand.  
 J is letter from second to first Pf.  
 Characters Sik Tin thereon are in same hand.  
 R is bundle of receipts signed by second Pf.  
 Signatures thereon are in same hand.
- 10 In character "Chan" strokes 1 and 2 are loosely written and widely spaced.  
 Strokes 3 and 5 are widely spaced and 9 and 10 are too close to 7.  
 In character "Sik" strokes 23 and 4 are made like "Z".  
 Character Tin is broader when written vertically than when written horizontally.  
 In C the name Chan Sik Tin is not in the same hand.  
 In D it is not the same as genuine signatures.  
 Nor in H.  
 The writing in C, D, and H, looks very similar to me.  
 Same characteristics in all three of them.
- 20 They differ from genuine signatures in that in "Chan" spacing is quite different and strokes 9 and 10 are quite different.  
 Genuine signatures are in free hand.  
 On documents C, D and H signature is more correctly written.  
 In "Sik" the characteristic of elongated "Z" does not appear.  
 In "Tin" the character is broader.  
 Stroke 8 is very different: in the genuine only a dot, in the others a line pointing from right to left.
- 30 U is signature of third Pf. in court.  
 V is his retainer.  
 B is 1925 assignment to him.  
 These seven signatures are in the same hand.  
 In "Chan" strokes 1 and 2 are very abbreviated with very wide space between them.  
 Except in V the character "Chan" is very heavily written.  
 In U it is more heavily written than "Kwok" and "Nim."  
 In "Kwok" stroke 2 is light at top and heavy at the end.  
 In "Nim" stroke 1 is very long and thin.  
 Stroke 2 is written with a curve.
- 40 In C, D and H name Chan Kwok Nim is not in same hand as genuine signatures.  
 In my opinion C, D and H are written by the same hand.  
 S is first of "convenience" mortgages.  
 Signatures thereon are not in same hand as genuine ones.  
 They are in same hand as C, D and H.  
 T is second "convenience" mortgage.  
 Signatures thereon are not genuine.  
 I think they are same hand as C, D, H and S.  
 In K the signature Sik Tim is not genuine nor is Kwok Nim.
- 50 I think the Kwok Nim therein is in same hand as in C, D, H, S and T.  
 Signature in memorials for two "convenience" mortgages are genuine.  
 In forgeries in "Chan" strokes 1 and 2 are more correctly formed.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdiction.*

*Plaintiffs'  
 Evidence.*

No. 16,  
 Hsu Ti  
 Shan,  
 14th  
 December  
 1939,  
 Examination,  
*continued.*

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

Strokes 3 to 7 are very confused.

In genuine signatures these strokes have proper abbreviated form.

In "Kwok" stroke 2 has not characteristics of genuine.

The central part, strokes 3 and 10 look like character "Yuen."

In "Nim" strokes 1 and 2 have not characteristics of genuine.

W is receipt bearing name Kwok Nim handed over by Chung Wah.

Signature thereon is like signature in S and in T.

It is similar to signature written on C, D and H.

*Cross-examined.*

No. 16.  
Hsu Ti  
Shan,  
14th  
December  
1939,  
Examina-  
tion,  
*continued.*  
Cross-  
examina-  
tion.

*xxd. Sheldon.*

10

I look at B.

These are three signatures of Chan Kwok Nim.

I look at cheque H.K. 043413 (AA).

It bears the name Chan Kwok Nim as drawer.

It is endorsed Chan Kwok Nim twice.

The signature on the back has the characteristics of the signatures on B.

The signature on the face is quite different and bears no resemblance to signatures on B.

I look at cheque 043412 (BB).

20

It is drawn by Chan Kwok Nim.

That signature is not same as that on B nor is the endorsement.

The signature of drawer is not, I think, the same as the signature of the endorser.

The endorsement on AA is not written by the same hand as the signature on B.

Nor is the endorsement on BB.

In my opinion endorsements on AA and on BB are in same hand.

I cannot say whether the endorsements on AA are written by same hand or not.

30

I am inclined to think they are different.

I look at cheque 043408 (CC).

It is drawn by Chan Kwok Nim.

Signature is different from that on B.

Endorsement is in different hand from signature of the drawer.

The two endorsements are not similar.

I think they are in the same hand.

I look at cheque 043406 (DD).

It is drawn by Chan Kwok Nim and has two endorsements.

In my opinion the endorsements are made by same hand.

40

The signature of drawer is not in the same hand.

I look at cheque 043407 (EE).

It bears two endorsements in the same hand.

Comparing them with signature on B they are different.

There is no similarity between them.

Signature of drawer is quite different from endorsement.

I look at cheque 043404 (FF).

They are two endorsements.

The "red" endorsement differs from the signature on B.

I don't think they were written by same hand.

50

The two endorsements were I think made by same hand.

Drawer's signature has some similarity with endorsements, but I don't think they were written by same hand.  
 I doubt, I am not quite sure.  
 I look at cheque 043403 (GG).  
 Two endorsements in same hand.  
 Drawer's signature in different hand.  
 I look at cheque 043405 (HH).  
 Two endorsements on back.  
 Comparing the "red" endorsement with signatures on B they are  
 10 different.  
 So are the second endorsement and signatures on B.  
 Endorsements are in same hand.  
 Drawer's signature is in different hand.  
 I look at cheque 043402 (II).  
 Two endorsements, neither like B.  
 Endorsements are not in the same hand.  
 There is a similarity in character "Chan" but other characters are  
 different

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdic-  
 tion.*  
 —  
*Plaintiffs'  
 Evidence.*  
 —  
 No. 16.  
 Hsu Ti  
 Shan,  
 14th  
 December  
 1939,  
 Cross-  
 examina-  
 tion,  
*continued.*

Adjourned to 2.30 p.m.

20

A. D. A. MACGREGOR,  
 C.J.  
 14.12.39.

Court resumed 2.30 p.m.

Appearances as before.

*Re-examined.*

HSU TI SHAN—re-called on former declaration *re-xxd. D'Almada.*

Re-  
 examina-  
 tion.

I look again at cheques AA to II.  
 I look at all signatures on both sides of them.  
 All the "Chan Kwok Nims" on both sides of these cheques.  
 30 This morning I was erroneously comparing these signatures with  
 those on B.  
 All these signatures I have now compared very carefully.  
 All of them are in the same hand—drawers and endorsers.  
 All of them are in a different hand from signatures on B.



## ARGUMENT and RULING on Application for amendment of Defence.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

Defendant's  
Application.

No 17  
Argument  
and ruling  
on  
Application  
for amend-  
ment of  
Defence,  
14th  
December  
1939.

Potter K.C. for Pfs.

Application for leave to amend raises grave questions of practice and goes far beyond practice.

Plea includes five pleas.

Annual Practice 1939, p. 466, "At the Hearing."

469, Fraud, Adding Allegations of.

*Riding v. Hawkins*, 14 P.D. 56.

As to I.

Sheldon says necessity for pleading 1, 2, 3 and 4 arise during trial because Pfs. refused to tell Deft. who these pfs. were.

But see our letters to J.S.M.

As to II.

Most ordinary plea of execution by an agent.

*Merchants of Staple v. Bank of England*, 2 Q.B.D. 160.

This point does not arise out of evidence already given or out of xxn.

No such suggestion has been made to any of the witnesses.

No evidence that mortgages were signed by Chung Wah on the authority of Kwok Nim.

As to III.

Gross charge of fraud.

No evidence, and no suggestion ever made to 1st and 2nd Pfs.

Assuming it is true it is no defence.

If Pfs. are owners of property how can it be a defence to say someone else fraudulently dealt with property.

As to IV.

No justification for any such plea.

Suggestion never put to them.

Whole case is they are never there.

As to V.

Point should have been in mind of Deft.'s legal advisers before trial.

Writ of 17 June states that mortgages are forgeries.

You could apply for and get particulars.

I submit leave to amend should not be granted.

Sheldon, K.C. for Deft..

Letters (5) and (7), (8) and (9).

Amendment allowed, subject to deletion of II and IV of Potter's five heads.

Adjourned to 3rd January.

A. D. A. MACGREGOR,

C.J.

14.12.39.



## EVIDENCE of Yeung Pak Tik.

Wednesday, 3rd January, 1940.

O.J. 92 of 1939.

Continued from p. 282.

Appearances as before.

YEUNG PAK TIK *dd. ad. D'Almada.*

Accountant of Yai Ki Bank, Wing Lok Street.

Native of Kai Chau village, Shum Tak.

Exchange broker also.

10 I know third Pf.

I have known him more than 20 years.

I met him in Tai Leung, Shau Tak where we were school mates.

His name is Chan Kwok Nim alias Chan Kin Lap.

I know a younger brother of his Chan Kwok Iu alias Chan Chung Wah.

He was also at school with me in Tai Leung.

I have never heard him pass by the name of Chan Kwok Nim.

*Cross-examined.**xxd. Sheldon.*

I last saw Chan Chung Wah in June or July, 1939, in Macau.

20 He has lived in Hong Kong for a long time.

I don't know where he lived.

I met him casually in the street and we nodded.

I never went to his house or he to mine.

Before this trial I last saw Chan Kwok Nim in Tai Tung teahouse.

We were both having tea there but I didn't speak to him.

He came to my shop to see me now and again but I have never been to his home.

He used to come to enquire about the rate of exchange.

I think he came to me only once.

30 That was about a month ago I think.

I have not recently seen Chan Chung Wah and Chan Kwok Nim together.

I have never seen them together in Hong Kong.

Chung Wah and Kwok Nim are not one and the same persons.

*Re-examined.**re-xxd. D'Almada.*

When I was in school with him I often saw them together.

Ex. N is photograph of Chan Chung Wah.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.**Plaintiffs'  
Evidence.**No. 18.  
Yeung  
Pak Tik,  
3rd  
January  
1940.  
Examina-  
tion.**Cross-  
examina-  
tion.**Re-  
examina-  
tion.*

## EVIDENCE of Lee King.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

LEE KING *dd. xd. D'Almada.*

Alias King Lee.

Manager of Lik Sang Co., 34 Connaught Road Central.

We are agents for Sai Tai Mining Co. of Shanghai.

In business in Hong Kong since 1928.

I know Chan Kwok Nim, 3rd Pf.

His alias is Chan Kin Lap.

I met him first in 1933 when I sold sugar cane to him. 10

I sold him 30,000 pieces of cane.

I have been to his house at 300 Des Voeux Road.

There I saw him and his younger brother Chan Chung Wah.

I have seen them together there.

It was Chan Chung Wah who first approached me about cane.

He introduced me to 3rd Pf.

Chung Wah's alias is Kwok Yin.

I never knew him call himself Kwok Nim.

I have seen the two brothers together more than once.

Both at 300 Des Voeux Road and in Canton. 20

Third Pf. had a plantation and grew sugar on it.

*Cross-examined.*

*xxd. Sheldon.*

I last saw Chan Chung Wah about end of 1938.

That was at 300 Des Voeux Road.

He never came to my house.

I went there looking for Kwok Nim on a friendly visit.

Kwok Nim and Chung Wah were both there then.

The three of us sat down and had a chat.

I don't know where Chung Wah is now. 30

I have tried to find him more than once.

The last occasion was about two months ago.

I then saw third Pf. but Chung Wah wasn't there.

Kwok Nim told me he didn't know where Chung Wah was.

He didn't tell me Chung Wah had forged his mortgage deeds.

I first heard of the forgeries on 30 Dec.

Kwok Nim and Chung Wah are not one and the same person.

Chung Wah introduced Kwok Nim to me in 1933.

I had not met Chung Wah before that date.

*Re-examined.*

40

*re-xxd. D'Almada.*

Ex. N. is photograph of Chan Chung Wah.

Plaintiffs'  
Evidence.

No. 19.  
Lee King,  
3rd  
January  
1940.  
Examina-  
tion.

Cross-  
examina-  
tion.

Re-  
examina-  
tion.

No. 20.

## EVIDENCE of Wong Ping Han.

WONG PING HAN: *dd. vd. D'Almada.*

I know 3rd Pf. Chan Kwok Nim.

I know 1st and 2nd Pfs. also.

I am 3rd Pfs. brother-in-law.

I have been married to sister 35 years ago.

She is now dead.

I am managing partner of Ah Chak, painting contractors.

10 I know other brothers of 3rd Pf. Yan Po, Kwok Sham, Kwok Wing, Kwok Yin, Kwok Nim (3rd Pf.) and Kwok Leung.

Kwok Yin's alias is Chung Wah.

This is he (Ex. N).

Third Pf.'s alias is Kin Lap.

I never heard Chung Wah use Kwok Nim as his alias.

Third Pf. has property at 300 Des Voeux Road and 164 Des Voeux Road.

Formerly he was owner of 182 Queen's Road East.

20 164 Des Voeux Road. Chung Wah formerly owned 14 Stanley Street and had a share in

They inherited these properties.

I have seen Chung Wah and Kwok Nim together, both here and in the country.

I last saw Chung Wah in May, 1939.

I first heard of this case in August-September, 1939.

I didn't hear Chung Wah's name mentioned in connection with it.

I heard that he had forged deeds in July August or September, 1939.

*Cross-examined.**vd. Sheldon.*30 Chung Wah is not an alias of Kwok Nim.  
They are two different persons.In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.Plaintiffs'  
Evidence.No. 20.  
Wong  
Ping Han,  
3rd  
January  
1940.  
Examina-  
tion.Cross-  
examina-  
tion.

No. 21.

## EVIDENCE of Ngau Tai Yuen.

NGAU TAI YUEN *dd. vd. D'Almada.*

6 Ying Wah Terrace.

Teacher of reading and writing at Sai Nam College.

I hold degree of Han Lim (Doctor of Literature).

Between 1915 and 1918 I was chancellor of the Kwang Fung Law Institute.

40 I then came to Hong Kong and became Headmaster of Vernacular Normal and Middle School.

I retired five years ago.

To be a Han Lim one has to study calligraphy.

No. 21.  
Ngau Tai  
Yuen,  
3rd  
January  
1940.  
Examina-  
tion.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 21.  
Ngau Tai  
Yuen,  
3rd  
January  
1940,  
Examina-  
tion,  
*continued.*

That has been my special study for many years.  
I am still employed to write special works.  
I look at Ex. L signatures of first Pf. written in Court.  
I look at Ex. M his signature on retainer.  
I look at Ex. B 1925 assignment.  
Signature Fui Hing thereon is same handwriting—L and M.  
I look at E and signatures in rice receipt books.  
Signatures therein are same hand as L, M and B.  
I look at F another rice receipt book.  
Signatures therein are same hand as L, M, B and E. 10  
I look at C mortgage to Overseas Bank.  
Signature of Chan Fui Hing thereon is in a different hand.  
I look at D first mortgage to Deft.  
Signature of Chan Fui Hing thereon is different hand from L and M.  
I look at H second mortgage to Deft.  
Signature of Chan Fui Hing thereon is different hand from L and M.  
I look at K, letter asking for extension of time.  
Signature thereon is different hand from L and M.  
Comparing H with L in character " Chan " strokes 1 and 2 are more  
correctly written in L than in H. 20  
Strokes 9 and 10 in L have sweeping curve to right, not present in H.  
Character " Fui " is more correctly written in H than in L.  
" Fui " in L is more fluid and cursive.  
Lines 4, 5, 6 and 8 are written in one stroke in L but not so in H.  
Character " Hing " is more correctly written in H than in L.  
In L character is abbreviated.  
Same characteristics run through L, M, B and E.  
Looking at C, D and H the signature Chan Fui Hing thereon bears  
the same characteristics in each case.  
P is signature of Chan Sik Tim written in court. 30  
Q is his retainer.  
O is assignment to Sik Tin.  
P and Q are in same hand and so is O.  
J is letter to first Pf.  
Signature Sik Tin is in same hand as P, Q and O.  
R is rent receipts made out by Sik Tin.  
Signature is same handwriting.  
Signature in C is in different hand.  
So are signatures in D and in H and in K.  
Comparing P with H differences in character " Chan " are that in 40  
" P " strokes 1 and 2 are more widely spaced.  
These strokes are more properly formed in H.  
Strokes 3 and 5 are more widely spaced in P than in H.  
In character " Sik " there is difference in strokes 2, 3 and 4.  
Strokes are better formed in H than in P.  
In P they are one stroke, in H three strokes.  
Character " Tin " is taller in P than in H.  
In P, Q, O, J and R signature of Chan Sik Tin in each case bears same  
characteristics.  
In C, D, H and K signatures in each case bear the same characteristics. 50  
U is signature of Kwok Nim written in Court.  
V is his retainer.  
These signatures are in same hand.

- B is 1925 assignment.  
 The signatures of Kwok Nim thereon are in same hand as U and V.  
 Signature in C is in different hand.  
 Signature in D is in different hand but same hand as C.  
 Signature in H is in different hand, but same hand as C and D.  
 Signatures on S (first convenience mortgage) are in different hand.  
 Signatures on T (second convenience mortgage) are in different hand.  
 S and T are in the same hand.  
 Signature on letter K is in different hand.
- 10 In W is name Chau Kwok Nim.  
 That name is written by same hand as K, S, T, C, D and H.  
 Comparing U and H in character "Chan" strokes 1 and 2 in U are  
 a dot and a stroke, and they are more widely spaced than in H.  
 The form in H is better than in U.  
 In character "Kwok" stroke 2 is heavier at the corner in H than in U.  
 At end of stroke more pressure is used in U than in H.  
 In T "Kwok" looks like "Yuen."  
 "Kwok" in U, V and B does not look like "Yuen."  
 "Nim" stroke 1 is straight in U and curved in H.
- 20 Stroke 2 is knife shaped in H but not in U.  
 Stroke is curved in U but straight in H.  
 Characteristics are the same in U, V and B.  
 I find the same characteristics in C, D, H, S, T and K but different  
 from those in U, V and B.  
 I now look at cheques AA to II.  
 They bear signature Chan Kwok Nim on face of each and in each case  
 on back, sometimes twice.  
 None of these signatures is the same as that on U.  
 Signatures on AA to II are all in the same hand.
- 30 Looking at L, P and U and at memorials, signatures in memorial  
 books are in all cases the same as those in L, P or U as the case may be  
 save that  
 Signatures on memorials for C, D and H are different from signatures  
 on L, P and U.

*Cross-examined.*

- xxd. Sheldon.*
- I look at Ex. B.  
 On document shown me I see signature "Chan Kwok Nim."  
 That signature in my opinion is not in same hand as signature in B.
- 40 Character "Nim" bears close resemblance in Nim in B and on careful  
 examination I think signatures are in same hand.  
 Document marked JJ assignment.  
 I look at Ex. T and signature Chan Kwok Nim.  
 I look at signature now shown me.  
 In my opinion that signature is in same hand as signature on T.  
 Document marked KK (Signature card Overseas Bank).  
 Comparing B with document now shown me in my opinion the  
 signature "Chan Kwok Nim" is in same hand.
- 50 Document, mortgage marked LL.  
 I do not agree that B, C, D, H, S and T are all in same hand.  
 Signature in B is different from all the others.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdiction.*

*Plaintiff's  
 Evidence.*

No. 21,  
 Ngau Tai  
 Yuen,  
 3rd  
 January  
 1940,  
 Examination,  
*continued.*

Cross-  
 examina-  
 tion.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 21.  
Ngau Tai  
Yuen,  
3rd  
January  
1940,  
Cross-  
examina-  
tion,  
*continued.*

I look at signature Chan Kwok Nim in book shown me.  
Comparing it with B I cannot express an opinion as one is written  
with a Chinese brush and the other with an English pen nib.  
Book marked MM (Schedule Book 405).

Adjourned to 2.30 p.m.

A. D. A. MacGREGOR.

C. J.

3.1.40.

Court resumed at 2.30 p.m.

Appearances as before.

10

NGAU TAI YUEN : re-called on former declaration : *further xxd. Sheldon.*

I look at AA to II.

I cannot agree that all the signatures thereon are the same as the  
signatures of Chan Kwok Nim in Ex. B.

I look at Ex. KK.

In my opinion the signature thereon is same as that on AA to II but  
not the same as that on B.

No. 22.  
Ho Hoi,  
3rd  
January  
1940.  
Examina-  
tion.

No. 22.

EVIDENCE of Ho Hoi.

HO HOI : dd. *xd. D'Almada.*

20

Manager of Hong Lok orchard, Taipo for six years.

Native of Tai Leung.

I know Chan Kwok Nim alias Chan Lin Lap.

I have known him now ten years.

I met him in Tai Leung in the country.

I know his brother Chan Chung Wah.

I have known him more than ten years.

We were schoolmates more than ten years ago.

He is five years older than I am.

His school name was Chan Kwok Yin.

I have seen the two brothers together in a pawnshop in the country  
and recently at 300 Des Voeux Road.

That was in February 1939.

I last saw Chung Wah in February 1939.

30

Cross-  
examina-  
tion.

*Cross-examined.*

Chan Chung Wah's not an alias of Chan Kwok Nim.

## EVIDENCE of Lin Chan Ping.

LIN CHAN PING: dd. *xd. D'Almada.*

Retired Government official.

I know all the Pfs. Pui Ning, Sik Tin and Kwok Hing.

I have known all of them for more than twenty-five years.

I know elder brother Chan Yam Po and the tenth Chan Kwok Yin.

I knew Chan Kwok Yin also as Chan Chung Wah.

I have seen Kwok Nim and Chung Wah together.

10

*Cross-examined.**xxd. Sheldon.*

I know Lo Kwok Nim, interpreter to C. A. S. Russ.

I have known him a long time.

I look at Ex. N.

That is a photograph of Chan Chung Wah.

I introduced him to Lo Kwok Nim on a bankruptcy matter about ten years ago.

I know Chan Chung Wah fairly well.

I last saw him in summer 1938.

20

I heard he was interested in fish business.

Shing Hing, 15 Jubilee Street means nothing to me.

I introduced him as Chan Chung Wah.

Not an alias Chan Kwok Nim.

*Re-examined.**re-xxd. D'Almada.*

I already know Chan Kwok Nim as different person from Chung Wah. Potter puts in L.O. Book regarding 164 Des Voeux Road Central.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 23.  
Lin Chan  
Ping,  
3rd  
January  
1940.  
Examina-  
tion.  
Cross-  
examina-  
tion.

Re-  
examina-  
tion.

## EVIDENCE of Lo Man Wai.

30 LO MAN WAI: dd. *xd. D'Almada.*

Solicitor and partner in Lo and Lo.

In December I put through this mortgage Ex. LL.

It is witnessed by me.

In connection with property I found new Crown lease had been prepared and was ready for issue.

Early in Dec. reassignment of mortgage from Kwok In to Yim Shi was put through.

Reason was that all outstanding encumbrances have to be cleared before new Crown lease is issued.

40

There was a mortgage to Wai Tak Bank of whole house.

No. 24.  
Lo Man  
Wai,  
4th  
January  
1940.  
Examina-  
tion.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Plaintiffs'  
Evidence.*

No. 24.  
Lo Man  
Wai,  
4th  
January  
1940,  
Examina-  
tion,  
*continued.*  
Cross-  
examina-  
tion.

I paid money lent by mortgagee to Chan Yim Shi \$4,800 and Chan Yim Shi \$3,200.

That was done at request of Chan Kwok Yin.

I assumed that was in payment of previous mortgage.

I next day got instructions to prepare a mortgage of Kwok Kin's share—a second mortgage—for \$5,000.

That has not yet been executed.

*Cross-examined.*

*xxd. Sheldon.*

I have a draft of the mortgage here.

Mortgage will be executed by attorneys for Kwok Iu.

Kwok Nim is one of attorneys.

Draft Mortgage marked OO.

10

*Close of case for Plaintiffs.*

*Defendant's  
Evidence.*

No. 25.  
Lo Kwok  
Ming,  
5th  
January  
1940.  
Examina-  
tion.

No. 25.

**EVIDENCE of Lo Kwok Ming.**

LO KWOK MING: *dd. xd. Macnamara.*

Interpreter to C. A. S. Russ, Solicitor.

I know Chan Kwok Nim.

He is not in Court.

Ex. N is the man I know as Chan Kwok Nim.

I have known him 10 or 11 years.

He was introduced to me by interpreter at Magistracy.

I was then with firm of Russ & Co.

I acted for Kwok Nim in a bankruptcy matter.

About five years later I met Kwok Nim again.

I am interested in a wholesale fish business in Old Central market and 19 Jubilee Street.

Kwok Nim approached me and took an interest in the fish business.

He retained his interest for a year or two but he lost money.

In May 1934 I saw Kwok Nim again in connection with a mortgage of his property to his wife Chu Hoi Chan.

He handed me his deeds on two occasions.

The property was 300 Des Voeux Road Central. I L 1828.

Entries in this book were made by me and mortgagee signed in the margin when he took away the deeds (Marked PP).

I witnessed the signature p. 112.

Property was subsequently re-assigned.

Shown on p. 184 of PP in my notes.

Chan Kwok Nim signed a receipt for deeds.

Same thing appears in Russ & Co.'s Register of Deeds (QQ).

Entries there are made by another clerk.

Ex. T is the mortgage I put through for Kwok Nim.

20

30

40



On 16th May 1935 I went to Wilkinson & Grist's office.  
 I identified the mortgagors.  
 Kwok Nim introduced two men to me as his clansmen.  
 I signed the deed (Ex. C) as having identified mortgagors.  
 I took the word of my old friend Kwok Nim about other two.  
 None of the three signatories is in Court here.

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdic-  
 tion.*

*Cross-examined.*

*Defendant's  
 Evidence.*

*and. Potter.*

- I have been solicitor's interpreter for 24 years.  
 10 First with J. H. Gardiner, then with Longinotto, then Li Hon Shi,  
 then Thomas Rowen, then Russ & Co. then C. A. S. Russ.  
 I was educated at Diocesan Boys School and Queen's College.  
 I speak English well but not perfectly.  
 P 112 of PP is in my handwriting.  
 Kwok Nim is not in Court.  
 I have never seen any of the Pfs. before.  
 I know Kwok Nim also as Chung Wah.  
 I never knew him by any other name.  
 20 When he was introduced to me he was introduced as Chung Wah.  
 He was not introduced to me as Kwok Nim.  
 I asked him if he had an alias and he said his alias was Kwok Nim.  
 Mr. Lin heard all this.  
 I don't know if he heard it all.  
 It is my custom when I meet a man for the first time to ask him  
 his name, his honourable names and his aliases.  
 The bankruptcy matter was in connection with a flour business.  
 I can't remember its name.  
 I didn't act for Kwok Nim in the matter.  
 I only had a conversation with him and then he left.  
 30 Bankruptcy file does not mention either Kwok Nim or Chung Wah.  
 Kwok Nim told me he had a friend interested in flour firm who wanted  
 to avoid his liabilities.  
 I refused to do anything to help him.  
 We also couldn't agree the costs.  
 I accept from you that only relevant name in the file is Kwok Yin.  
 I accept that Kwok Yin is member of the Chan family.  
 I never heard the name Chan Kwok Yin until I came to Court.  
 I did not know all the brothers.  
 I first heard the name Chan Kwok Yin from you in Court to-day.  
 40 That is not untrue.  
 When mortgage is put through mortgage deed is prepared and also  
 memorial.  
 Mortgagor signs deed and also memorial.  
 When Ex. T was prepared Kwok Yin signed it and memorial.  
 I was one of the witnesses to signature.  
 I look at the two signatures on Ex. T.  
 I see there have been erasures.  
 In receipt clause signature there is trace of character visible.  
 I can't suggest how or why erasures took place.  
 50 I look at the memorial relating to T.  
 Signature thereon is different from signature on T.

*No. 25.  
 Lo Kwok  
 Ming,  
 5th  
 January  
 1940,  
 Examina-  
 tion,  
 continued.  
 Cross-  
 examina-  
 tion.*

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Defendant's  
Evidence.*

No. 25.  
Lo Kwok  
Ming,  
5th  
January  
1940,  
Cross-  
examina-  
tion.  
*continued.*

They are not written by the same hand.

Even the nib is different.

Memorial was signed in our office at same time as mortgage deed.

Then it is filed in the land office.

I saw both signatures written by Kwok Nim.

The signature on T is not the signature affixed before my eyes.

Signature on memorial for T is same as signature on p. 188 of PP.

Signature which I saw put on T was signed by same hand as signature on memorial.

If it has been proved that memorial and signature is in handwriting 10 of third Pf. I say no.

Third Pf. is not the man who signed mortgage T.

After Overseas Bank mortgage was executed T and other documents passed to Bank.

After Bank mortgage was paid off T and other documents passed to Deft.

Alteration of signature on T must have occurred before Overseas Bank mortgage was executed.

I identified the three mortgagors of the Overseas Bank mortgage.

It was to secure banking facilities for unlimited amount.

20

Identification of mortgagors is unimportant.

If mortgagor is not identified mortgage writ go through.

The identification clause in a mortgage deed is only a matter of form.

I did not know either first or second mortgagor but I was introduced by Kwok Nim at the office at that time.

I took Kwok Nim's word for their identity.

One does incautious things for the sake of friendship.

I agree that it is not a proper way to perform my duty as identifier.

My statement is wholly untrue because I did not know the two mortgagors.

30

By my statement in the deed I was vouching for the mortgagors.

I did not tell Mr. Lee that I didn't know two of the mortgagors.

I yielded to friendship.

It was late in the day and I was obliging W. & G.

I now write in Court my own signature in Chinese, and the names Chan Chung Wah and Chan Kwok Nim (marked RR).

*Further cross-examined.*

Further  
cross-  
examina-  
tion,  
8th  
January  
1940.

LO KWOK MING: re-called by leave on former declaration: *further*  
*xxd. Potter.*

I look at deed of surrender dated 5th February, 1934 (marked TT). 40

It is executed by Kwok Nim by his attorney Kwok Iu.

It was interpreted to surrenderers by me.

I took all the parties to the Land Office.

I interpreted document to Chan Kwok Iu but I don't remember him at all.

It was Chan Kwok Nim who instructed me to have document prepared.

I remember that Chan Kwok Nim was there and not Chan Kwok Iu.

Kwok Nim signed by his attorney Kwok Iu.

I signed the interpretation clause only as a matter of form.

I can't explain why Kwok Nim who was there should have signed by 50 his attorney.

- I don't remember anything about a power of attorney.  
 There must have been a P/A produced.  
 This envelope (marked UU) is in my handwriting.  
 It contains the P/A from Kwok Nim to Kwok Iu.  
 I was returning it to Kwok Iu after using it for execution of deed.  
 I still say that on Friday I had no recollection of Kwok Iu's name.  
 It is obvious that Kwok Nim and Kwok Iu are different persons.  
 I knew that when this deed was signed (TT).  
 I knew they were brothers.
- 10 This is the P/A which I enclosed in the envelope (UU) (marked VV).  
 I did not produce this P/A to the Land Office.  
 Envelope (UU) shows that I knew that Kwok Nim and Kwok Iu  
 were two living and different persons.  
 I had no other dealings with Kwok Iu.  
 When I came into the witness box I did not know what the Plf.'s  
 case was.  
 I did not tell a deliberate lie on Friday.

*Re-examined.**re-exd. Macnamara.*

- 20 I am solicitor's clerk.  
 I do a good deal of business.  
 I can't remember names of all clients I work for.  
 This deed is dated February, 1934.

*No re-exen.*

No. 26.

**EVIDENCE of Tam Chak Lam.**TAM CHAK LAM: *dd. exd. Macnamara.*

- Articled clerk to P. H. Sin & Co.  
 I know Chan Kwok Nim alias Chan Chung Wah.
- 30 This is the man (Ex. N).  
 I met him first at end of 1933 when he came to consult Mr. Sin about  
 Bitzer & Co.'s compradore's agreement.  
 In agreement he was described as Chan Chung Wah.  
 As result of instructions we issued writ against Bitzer.  
 We got judgment in original jurisdiction in 1934.  
 Writ is 16th August and number was 292/1934.  
 Bitzer was later arrested and subsequently released.  
 Chan Chung Wah came to office frequently.  
 He was also known as Kwok Nim and as Lo Sap (No. 10).
- 40 Later we acted for him in 1936 against Bonham & Co.  
 Writ issued on 15th Jan. 1936 in S.J.  
 This is letter written on 30th Nov. 1938 on Chan Chung Wah's  
 instructions giving notice to a tenant of 92 Wing Lok St. (marked SS).

*In the  
 Supreme  
 Court of  
 Hong Kong  
 Original  
 Jurisdic-  
 tion.*

*Defendant's  
 Evidence.*

No. 25,  
 Lo Kwok  
 Ming,  
 8th  
 January  
 1940,  
 Further  
 cross-  
 examina-  
 tion,  
*continued.*

Re-  
 examina-  
 tion.

No. 26.  
 Tam Chak  
 Lam,  
 5th  
 January  
 1940.  
 Examina-  
 tion.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Defendant's  
Evidence.*

No. 26.  
Tam Chak  
Lam,  
5th  
January  
1940,  
Examina-  
tion,  
*continued.*

Person instructing gave name of Kwok Nim.  
Overseas Bank were pressing him in connection with mortgage.  
He asked me to speak to manager of Bank for him.  
I also met Chan Kwok Nim socially at 300 Des Voeux Road Central,  
at my father's home twice, and at restaurants.  
I have met his wife Cho Choi Chan.  
I have met Chan Fui Hing and Chan Sik Tin.  
I cannot see them here now.  
I met them at 300 Des Voeux Road.  
I met them first in Canton on 10th October, 1935. 10  
I took this photograph (Ex. N) on that occasion.  
I met Chung Wah there and he introduced me to Pui Hing and  
Sik Tin as his elder brothers.  
I gathered they lived in Canton.  
Subsequently I met them in Hong Kong at the To Yuen restaurant,  
West Point.  
At first I did not recognise them but Chan Chung Wah reminded me  
I had met them before.  
I then gave a small party at China Emporium which all three attended.  
I was asked to go to J. S. & M.'s office on 29th Oct. 1937 to identify 20  
the three brothers.  
I identified the three mortgagors.

Adjourned to Monday at 10 a.m.

A. D. A. MACGREGOR,

C.J.

5.1.40.

O.J. 92/1939.

Monday, 8th January, 1940.

Appearance as before.

*Cross-examined.*

30

*Cross-  
examina-  
tion,  
8th  
January  
1940.*

TAM CHAK LAM : re-called on former declaration : *xxd. Potter.*

I have seen third Plf. before, in my office in 1938.  
He did not come to ask Mr. Sin to appear for his brother.  
He came with a lot of people when Kwok Nim was in trouble with  
police.  
I did not know he was Kwok Nim's brother.  
I didn't know he was charged under name of Chan Chung Wah.  
He was charged as Chan Ming alias Chan Chung Wah.  
I met Chung Wah in 1933 under that name.  
I heard name of Kwok Nim when I took instructions in 1934 to one 40  
Bitzer & Co.

*No re-xxn.*

No. 27.

## EVIDENCE of Hong Ken Po.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Defendant's  
Evidence.*

No. 27.  
Hong  
Ken Po,  
8th  
January  
1940.  
Examina-  
tion.

HONG KEN PO : declared : *ad. Macnamara.*

Managing Director of Channel Trading Co.

Formerly in Overseas Bank.

I knew Chan Kwok Nim.

This is he (Ex. N).

He was also known as Chan Shap and Chan Chung Wah.

I first met him in 1934.

10 He was then Compradore of Bitzer & Co.

He left that company and was succeeded by Wan Tim Chiu.

I have a brother-in-law Lau Chang.

He became guarantor for Wan Tim Chiu.

I saw Chan Kwok Nim occasionally when he came to see me.

In 1934 he introduced Chan Tim Shi, Chan Hin Fan and Chan Kwok

Hon to me about a mortgage of property in Queen's Road east.

I saw a bundle of papers supposed to be deeds but I left it to my solicitors.

My solicitor was H. C. Lee of Wilkinson & Grist.

20 Mortgage was eventually put through.

At that time I didn't know which was his principal name.

He operated bank account under name of Chan Kwok Nim.

Account wasn't satisfactory and I had to write to him.

I sent letters to 300 Des Voeux Road.

I last saw Chan Kwok Nim on 19th November, 1939.

I saw him having tea in Kowloon Confectionery in Nathan Road.

I asked him if he was having trouble with the Overseas Bank mortgage.

He said it was an affair of the brothers and it would all be settled.

I knew mortgage had then been paid off by Defendant.

30 When I sent letters to him I addressed him as Chan Kwok Nim.

*Cross-examined.*

*ad. Potter.*

I first knew him as Chan Chung Wah.

It was not until 1935 at time of mortgage that I heard the name Kwok Nim.

Cross-  
examina-  
tion.

No. 28.

## EVIDENCE of Lee Hon Chi.

No. 28.  
Lee Hon  
Chi,  
8th  
January  
1940.  
Examina-  
tion.

LEE HON CHI : declared : *ad. Macnamara.*

Solicitor with Wilkinson & Grist.

40 I know Chan Kwok Nim.

I met him in September 1934 in connection with mortgage to Overseas Bank of property in Queen's Road.

Mortgage was to secure current account and overdraft of Chan Tim Shi.

Last witness sent these people over to my office.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

Defendant's  
Evidence.

No. 28.  
Lee Hon  
Chi,  
8th  
January  
1940,  
Examina-  
tion,  
continued.

Lo Kwok Nim identified them.  
In May 1935 I prepared another mortgage.  
In connection with first mortgage three people came to me, Kwok Nim,  
Kwok Hong and Tim Shi.

I saw Kwok Nim again in connection with mortgage of May, 1935.  
Mortgage was executed by him and two other men. Chan Fui Hing  
and Chan Sik Tin.

Ex. "C" is the mortgage.

It covers banking facilities up to \$35,000.

Deeds were handed to me by Chan Kwok Nim himself. 10

Lo Kwok Min identified mortgagors.

Later I was instructed to write and call in mortgage.

That was towards end of 1937.

Mortgage was paid off and re-assigned.

It was paid off by J. S. & M.

After that I saw Kwok Nim in connection with new Crown lease to  
Chan Tim Shi.

I knew Kwok Nim also as Chung Wah.

He gave address as 300, Des Voeux Road West.

No *xn.*

20

No. 29.  
Ho Tiu  
Man,  
8th  
January  
1940.  
Examina-  
tion.

No. 29.

EVIDENCE of Ho Tiu Man.

HO TIU MAN: declared: *ad. Macnamara.*

I am employed by Hongkong & Shanghai Bank to examine Chinese  
signatures.

I have ten years' experience.

I examine about one hundred a day.

I look at these cheques AA to II.

I have examined them before.

I have examined signatures on these cheques. 30

I now look at Ex. "B".

(Potter objects that witness is not an expert.)

In my opinion signature thereon bears same characteristics in  
characters Kwok Nim but character Chan is different.

My opinion 80% is that signatures are written by same hand.

I look at Ex. "S".

In my opinion 80% signature on "S" is same hand as that on "B"  
and cheques.

I look at Ex. "T".

I think signature therein is in same hand as "B". 40

I look at Ex. "C".

I think signature therein is in same hand as "B".

Comparing " B " with " D " I think signatures are in same hand.  
Comparing " B " with " H " I think signatures are in same hand.

*Cross-examined.*

*ard. D'Almada.*

I think signature on " JJ " is in same hand as on " LL ".  
They are the same in characters Chan & Nim as " U ".  
In character Kwok they are a little different.  
They are in the same hand.  
I am 100 % certain.

10 Signature on " N " is in same hand as " U ", " JJ " and " LL ".  
In " U ", " V ", " JJ " and " LL " all characters show the same characteristics.

Signatures are in a running hand and not well formed.  
I look at signature Chan Kwok Nim in " B ".  
It is written by same hand as " U ", " V ", " JJ " and " LL ".  
In each character I find same characteristics.  
I now look at " T " and memorial for " T ".  
Signature Chan Kwok Nim on these two documents is in the same hand.  
Comparing " S " and " T " signatures are the same.

20 Ex. " W " is all in one hand.  
It contains the characters Chan Kwok Nim and Chan Chung Wah.  
Chan Kwok Nim in " W " is in the same hand as " U ".  
I am 100 % certain.  
I say " W " and " T " are in the same hand.  
Majority of Chinese cheques bear Chinese chops.  
I pay great attention to chop in each case.  
It is just as important as the signature.  
I have never detected any forgery yet.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Defendant's  
Evidence.*

No. 29.  
Ho Tiu  
Man,  
8th  
January  
1940,  
*continued.*  
Cross-  
examina-  
tion.

---

No. 30.

30 **EVIDENCE of Francis Henry Loseby.**

FRANCIS HENRY LOSEBY : sworn : *sd. Macnamara.*

Solicitor of Court.  
In 1934 I prepared mortgage " T " for Chan Kwok Nim.  
" T " was prepared and signed by me.  
Title deeds were produced.  
I made schedule of deeds prepared on 30th April, 1934.  
I have search card here.  
In QQ I have record of deeds received produced to me.  
I have draft of mortgage.

40 Re-assignment was prepared in our office.

No *xvn.*

No. 30.  
Francis  
Henry  
Loseby,  
8th  
January  
1940.  
Examina-  
tion.

Adjourned to 2.30 p.m.

In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.

No. 31.

## EVIDENCE of Wong Chak Nam.

At 2.30 p.m. Court resumed.

Appearance as before.

Defendant's  
Evidence.

No. 31.  
Wong Chak  
Nam,  
8th  
January  
1940.  
Examina-  
tion.

WONG CHAK NAM: declared: *ad. Sheldon.*

Senior interpreter Johnson, Stokes &amp; Master.

I see Ex. " N ".

That is photograph of a man I last saw about end of May, 1939.

He came to me professionally about a second mortgage of the property  
now in question. 10

He wanted to pay off Defendant.

On 24th May we received letter from Ts'o & Hodgson asking for  
deeds for preparation of second mortgage.

We sent deeds on 26th May and got them back on 23rd June.

No *xzn.*

No. 32.  
Lei Lai On,  
8th  
January  
1940.  
Examina-  
tion.

No. 32.

## EVIDENCE of Lei Lai On.

LEI LAI ON: declared: *ad. Sheldon.*

Clerk Johnson, Stokes &amp; Master.

On 30th October, 1937, I got instructions about identification of 20  
Chan Kwok Nim, Chan Fui Hing and Chan Sik Tin.

That was Saturday about 11 a.m.

I went to Lo Kwok Min with three men.

I asked men who else would know them.

They said Mr. Woo of Woo &amp; Woo would know them.

Chan Kwok Nim told me that.

Ex. " N " is Chan Kwok Nim.

I took them to Mr. Woo.

He knew only one of them.

He refused to identify them. 30

I then tried Wong Fung Sek of Hall Brutton &amp; Co.

He said he had only see Chan Sik Tin once and refused to identify.

I made a search of dealings in 164, Des Voeux Road Central  
(marked WW).

That shows mortgage of 14th August, 1939.

Chan family got property in 1912.

Between then and 1939 there were no dealings in the property.

No *xzn.*



No. 33.

## EVIDENCE of Chan Chu Ching.

CHAN CHU CHING: sworn: *ad. Sheldon.*

Clerk to Johnson, Stokes &amp; Master.

This document is in my handwriting (marked XX).

The English endorsement is in my handwriting.

Ex. "N" is photograph of Chan Kwok Nim.

I saw that man in connection with mortgage to Defendant (Ex. "D").

I had conversation with him.

10 He asked if I could identify him for mortgage as we had met seven years before.

I looked up and found deed of partition Ex. WW.

I never saw third Plaintiff until he came to inspect deeds.

*Cross-examined.**ad. Potter.*

I knew man was a client but I couldn't recollect in what connection I had met him.

Sheldon closes case for Defendant.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

*Defendant's  
Evidence.*

No. 33.  
Chan Chu  
Ching,  
8th  
January  
1940.  
Examina-  
tion.  
Cross-  
examina-  
tion.

No. 34.

## The JUDGMENT of the Chief Justice on the Trial of the Action.

20

In this action the Plaintiffs who are three clansmen of Sha Kau Village in the Shun Tak District of the Republic of China, as owners in equal shares of the property known as 300 Des Voeux Road Central, claim against the Defendant a declaration that two memorials of mortgage Nos. 155813 and 159533, which purport to have been executed by the Plaintiffs are forgeries and null and void. Consequentially they claim a declaration that the Defendant has no right in or title to the property, that he account for all rents and profits from the property which he has received since he entered into possession of it, that he cease forthwith from collecting or receiving rents or otherwise acting as mortgagee of the property, and that the Land Office Register be rectified so far as it contains entries relating to these memorials of mortgage.

30

The statement of defence was amended by leave after several days had been occupied in the hearing of the Plaintiffs' case and the defence thereafter took the following form:—

(1) The first and second Plaintiffs are put to the proof of their allegations that they are Chan Fui Hing and Chan Sik Tin, respectively, owners of shares in the property in question, and that they were not signatories of the disputed mortgage deeds.

40

(2) The third Plaintiff is not the real Chan Kwok Nim, but is an impostor masquerading as Chan Kwok Nim, and doing so to the knowledge and with the approval of the first and second Plaintiffs.

No. 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940,  
*continued.*

(3) Alternatively, if the third Plaintiff is the real Chan Kwok Nim he procured the execution of the mortgage deeds in his name by his brother Chan Chung Wah, and the first and second Plaintiffs were aware of that impersonation and fraudulently assented thereto.

(4) If the mortgage deeds were executed by persons other than the Plaintiffs then the Plaintiffs by standing by with full knowledge that the signatures on the deeds were forgeries are now estopped as against the Defendant.

(5) Assuming that the deeds were executed by persons other than the Plaintiffs the Plaintiffs by their conduct in allowing these other persons or any one of them to have custody and control of the title deeds of the property are estopped from saying that the mortgage deeds were not executed with their authority, knowledge and consent.

(6) The defence in addition pleads that before execution of the disputed mortgage deeds the property had been mortgaged by the three Plaintiffs to the Overseas Chinese Banking Corporation, Limited, that the Defendant in order to get a reassignment of that mortgage paid to the Banking Corporation \$37,729.11 for principal, interest and costs then due and if the disputed mortgage deeds were found to be forgeries, is entitled in equity to have that mortgage kept alive for his benefit.

As regards this plea I need only say that its validity depends on the genuineness of the mortgage to the Overseas Banking Corporation and as I find without hesitation that that mortgage deed like the disputed mortgage deeds is a forgery this equitable plea cannot avail the Defendant.

The unusual course of putting the Plaintiffs to the proof of their identity was adopted in this case for the reason that the Defendant had never seen anyone except the three persons who executed the disputed mortgage deeds and had no knowledge who might appear in the rôle of Plaintiff against him. Suffice it to say that by an abundance of the most cogent and convincing evidence the first and second Plaintiffs have established their identities, their ownership of shares in the property and the fact that the signatures on the disputed deeds which purport to be theirs are in fact not theirs. At a late stage in the hearing the defence conceded that first and second Plaintiffs were suing in their own true names, that they were owners of the property, and that they never signed the disputed deeds, but they persisted in the other allegations against these two gentlemen.

As regards the third Plaintiff I am satisfied on the evidence before me that he is in fact Chan Kwok Nim, the owner of a share in the property and that he did not sign the disputed mortgage deed.

The third Plaintiff is one of a large family which had long been connected with 300 Des Voeux Road Central. In May, 1925, he and the first Plaintiff each bought a third share in the property. In 1933 the firm which until then had held the title deeds and collected the rents closed down and Chan Chung Wah, a younger brother of the third Plaintiff, was allowed to live in the top rooms of the property, entrusted with the title deeds and empowered to collect rents on their behalf. The Plaintiffs, at least of recent years, have spent most of their time in the country paying only occasional visits to Hong Kong. Chan Chung Wah paid rents to them regularly and no one of them had any reason to suspect that all was not well until early in 1939.

Incidentally the third Plaintiff had twice mortgaged his share in the property—in 1929 and again in 1934. On neither occasion did money pass and the mortgages were admittedly executed in fraud of third Plaintiff's creditors. Nothing turns on these mortgages except that when they are examined it is seen that the original signatures of third Plaintiff have been erased and forged signatures have been inserted. 2

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

The second Plaintiff bought his share of 300 Des Voeux Road in 1927. He has of recent years been very little in Hong Kong and he is and for some years has been crippled with rheumatism and unable to get about. In May, 1939, he came to Hong Kong and as he had received no rents since the previous year, he sent to Chan Chung Wah for the money due to him. He then for the first time learned that 300 Des Voeux Road had been mortgaged. The second Plaintiff at once wrote to the first Plaintiff who came to Hong Kong where the two of them discussed what they should do. They were then aware that the property had been mortgaged without their knowledge or consent and they must have known that it was Chan Chung Wah who was responsible.

No. 31,  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940,  
*continued.*

Chan Chung Wah at that time owed \$900 to the first Plaintiff and \$200 to the second Plaintiff in respect of rents and they decided to endeavour to get these sums from Chan Chung Wah before putting the more important issue of the forged mortgage deeds in the hands of their solicitors. They said nothing of what they had learnt to their co-tenant in common—the third Plaintiff—for the reason that they were not sure that he might not have had a part in the fraud. Chan Chung Wah after all was his brother and third Plaintiff and he might have been acting together. It would be wiser, they decided, to say nothing to the third Plaintiff until they had recovered from Chan Chung Wah what he owed them in respect of rents collected. Chan Chung Wah all this time was living at 300 Des Voeux Road and there the first Plaintiff saw him on the 10th June, 1939. Nothing was said about the mortgaging of the premises. Chan Chung Wah was asked for what was due to the two Plaintiffs; he paid \$100 on account and was lavish in his promises, but when he was next sought at his old address he had disappeared and he has not been seen in Hong Kong since then.

The two Plaintiffs thereupon consulted their solicitors and a writ was issued on 17th June. So great was the suspicion with which first and second Plaintiffs still regarded their co-owner that they alone appeared as Plaintiffs on the face of the writ and the third Plaintiff had later to apply to be added as a Plaintiff. It is on this at first sight rather strange conduct on the part of the first and second Plaintiffs that the fourth ground of defence is founded. With that ground of defence I shall deal at a later stage.

What do we know of the circumstances in which the forged mortgage deeds came to be executed? Chan Chung Wah ever since 1933 had been in Hong Kong, residing on the premises and with the comforting knowledge that he had the title deeds and the three co-owners were unlikely, so long as he accounted for the rents punctually every year, either to visit Hong Kong or to be unduly inquisitive about his dealings with and management of the property. He appears for some years past to have used the name of his elder brother Chan Kwok Nim, and to have conveyed the impression that it was an alias of his. Local firms of solicitors have for some time wisely insisted on having intended vendors or mortgagors

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940,  
*continued.*

identified by some reliable person before the conveyance or mortgage deed is executed, and the consideration money paid over, and even embody in the deed a clause vouching the fact of such identification. In the present case unfortunately that safeguard proved valueless owing to the most reprehensible laxity and negligence of the identifiers. Chan Chung Wah was known to these persons as Chung Wah alias Kwok Nim and had been so known for some time.

Later at the time with which we are concerned, these persons were introduced by Chan Chung Wah to two other persons as his clansmen Fui Hing and Sik Ting. Without making any further inquiries they 10  
accepted the truth of Chung Wah's statement and in the offices of the solicitors who prepared the forged mortgage deeds they vouched for the identity of the men who forged the signatures of the two first Plaintiffs. I find it difficult to speak with proper restraint of such conduct, especially on the part of solicitors' clerks. If they had been even reasonably honest these frauds could not have been perpetrated and my only regret is that I am unable to make them personally liable for the great loss they have contributed to bring about.

From what I have already said it must I think be obvious that my answers to the three first contentions of the defence are as follows:— 20

(1) The first two Plaintiffs have satisfied me that they are Chan Fui Hing and Chan Sik Ting, owners of shares in the property in question and that they did not sign the disputed mortgage deeds.

(2) The third Plaintiff, I am satisfied, is Chan Kwok Nim and not an impostor. Such imposture as there was was practised by his brother Chan Chung Wah and there is no evidence that any of the Plaintiffs knew of it.

(3) Is answered by the terms in which I have answered the second question.

There remain for consideration therefore only the two points of law 30  
raised on behalf of the Defendant.

Does the strange conduct of the first and second Plaintiffs in taking no action against Chan Chung Wah after they were aware that he had fraudulently mortgaged their property give rise to an estoppel?

At the time when knowledge of the forged mortgage deed came to the Plaintiffs Chan Chung Wah was in Hong Kong. At that time too he still had real property in the Colony which was unencumbered and which, if timely action had been taken by the Plaintiffs, would have been available to the Defendant by way of restitution. By their delay in setting the law in motion the Plaintiffs made it possible for Chan Chung Wah 40  
to leave Hong Kong and the third Plaintiff, though he knew of Chung Wah's fraud by the 17th June, subsequently acted as his attorney for the purpose of raising money by mortgage on Chung Wah's unencumbered property—all to the detriment of the Defendant, who in fact was never told that the villain of the piece was third Plaintiff's brother Chan Chung Wah until the case came into court. In support of this contention Counsel for the defence cited a number of authorities of which the case of *Greenwood v. Martin's Bank Ltd.* [1932] 1 K.B. 371, and later in the House of Lords in [1933] A.C. 51, is typical and representative. The facts of that case are shortly that husband and wife had a joint account in the 50

Bank who undertook to honour cheques signed by both customers. Afterwards that account was closed and an account was opened in the sole name of the husband, the wife having no authority to draw on it. During the currency of both the accounts the wife repeatedly forged her husband's signature to cheques. During the currency of the sole account the husband became aware of the forgeries, but, being persuaded by his wife to say nothing about them, he kept silence for eight months. When he finally determined to disclose the forgeries to the Bank, the wife committed suicide. In an action by the husband against the bankers to recover the sums paid out on the sole account on cheques to which his signature had been forged it was held that the plaintiff owed a duty to defendants to disclose the forgeries when he became aware of them, and so enable the defendants to take steps towards recovering the money wrongfully paid on the forged cheques, that through his failure to fulfil this duty they were prevented from bringing an action against the plaintiff and his wife for the tort committed by the wife until after her death, when any action against the husband for the wife's tort abated; and therefore that the plaintiff was estopped from asserting that the signatures to the cheques were forgeries and was not entitled to recover. At first sight this case might appear to be on all fours with the present one but there is between them a radical and all important difference. The relationship between banker and customer connotes a mutual duty but as between the Plaintiffs here and the Defendant there is no contractual relationship whatsoever, they do not even know one another. The decision in *Greenwood's* case both in the Court of Appeal and in the House of Lords was based entirely on the existence of a duty in the customer at once to inform his banker. In the Court of Appeal Scrutton, L.J., said: "The classic exposition of the principle of estoppel is that given by Parke, B., in delivering the judgment of the Court in *Freeman v. Cooke* ((1848), 2 Ex. 654, 663). He cites the rule in *Pickard v. Sears* ((1837), 6 A. & E. 469, 474): "That, where one, by his words or conduct, wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, or to alter his own previous position, the former is concluded from averring against—the later a different state of things as existing at the same time" and continues, "The principle is stated more broadly by Lord Denman, in the case of *Gregg v. Wells* ((1839), 10 A. & E. 96, 97), where his Lordship says, that a party who negligently or culpably stands by and allows another to contract on the faith of a fact which he can contradict, cannot afterwards dispute that fact in an action against the person whom he has himself assisted in deceiving. Whether that rule has been correctly acted upon by the jury in all the reported cases in which it has been applied, is not now the question; but the proposition contained in the rule itself, as above laid down in the case of *Pickard v. Sears* (6 A. & E. 469), must be considered as established. By the term "wilfully," however, in that rule, we must understand, if not that the party represents that to be true which he knows to be untrue, at least, that he means his representation to be acted upon, and that it is acted upon accordingly; and if, whatever a man's real intention may be, he so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it, and did act upon it as true, the party making the representation would be equally precluded from contesting

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

—  
No. 31.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1910,  
*continued.*

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940,  
*continued.*

its truth ;”—now comes the relevant passage—“ and conduct, by negligence or omission, where there is a duty cast upon a person, by usage of trade or otherwise, to disclose the truth, may often have the same effect.” I doubt whether the silence here amounts to a statement by conduct especially when made to a person who is ignorant of the facts, i.e., the forgeries, to which the statement might have relevance. But the passage concludes with a reference to conduct by negligence or omission where there is a duty to disclose the truth. This passage is cited with approval by Lord Haldane in *London Joint Stock Bank v. Macmillan* [1918] A.C. 777, 817, 818.

Now *Macmillan's* case has laid stress on the relations of banker and customer as giver and executor of a mandate, and the duties, which are I think mutual, to use reasonable care in the execution of the mandate. The customer is held bound to use reasonable care in drawing the cheque so that the banker may not be misled. But the relation does not merely refer to one cheque ; it is a continuing relation in which the customer may draw cheques from time to time, and the banker is under a continuing duty to honour mandates. This, in my view, involves a continuing duty on either side to act with reasonable care to ensure the proper working of the account. It seems to me that the banker, if a cheque was presented to him, which he rejected as forged, would be under duty to report this to the customer to enable him to inquire into and protect himself against the circumstances of the forgery. This, I think, would involve a corresponding duty on the customer, if he became aware that forged cheques were being presented to his banker, to inform his banker in order that the banker might avoid loss in the future. If this is correct there was in the present case silence, a breach of a duty to disclose, which may give rise to an estoppel.” In his speech in the House of Lords Lord Tomlin states the law very clearly : “ The sole question is whether in the circumstances of this case the respondents are entitled to set up an estoppel. The essential factors giving rise to an estoppel are I think :—

(1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.

(2) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.

(3) Detriment to such person as a consequence of the act or omission.

Mere silence cannot amount to a representation, but when there is a duty to disclose deliberate silence may become significant and amount to a representation.

The existence of a duty on the part of the customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question in this case was rightly admitted.”—And again—“ The course of conduct relied upon as founding the estoppel was adopted in order to leave the respondents in the condition of ignorance in which the appellant knew they were. It was the duty of the appellant to remove that condition however caused. It is the existence of this duty, coupled with the appellant's deliberate intention to maintain the respondents in their condition of ignorance, that gives its significance to the appellant's silence.”

The dependence of the defence of estoppel on the existence of a duty to disclose is emphasised by Baillache, J., in *Jones Bros. (Holloway) Ltd. v. Woodhouse* [1923] 2 K.B. 117 at 134. "It is well settled that in order to create an estoppel there must be a duty owing by the person estopped towards another person to speak or to act, which he has failed to perform, and damage must thereby have resulted to that other person. No one can rely upon the estoppel except the person to whom the duty was owing and who has suffered the damage."

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

In a recent Privy Council case *Mercantile Bank of India, Ltd. v. Central Bank of India, Ltd.* [1938] A.C. 287—the head note reads :

No. 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1910.  
*continued.*

"A firm of merchants, who purchased ground-nuts from up-country growers and were entitled to obtain delivery of them under railway receipts, obtained a loan from the respondents, bankers, on the security of the goods covered by the railway—receipts, and delivered the relevant receipts to the bank by way of pledge, giving to the bank at the same time a promissory note for the amount advanced and a letter of lien. The bank then passed the receipts on to their own godown keeper to enable him to obtain possession of the goods, and he, in accordance with the usual practice adopted by the bank, and in order to avail himself of the merchants' services, handed the railway receipts back to the merchants for the specific purpose of clearing the goods and storing them in the bank's godown. The merchants, however, then fraudulently used the same receipts to obtain a second advance from the appellants, bankers, from whom they had been in the habit of securing loans under arrangements similar to those negotiated with the respondent bank, and who were unaware of the loan by the respondent bank. On a claim by the respondents against the appellants for damages for conversion :—

Held, that the respondents owed no duty to the appellants in the matter—there was no relationship of contract or agency, and they had no reason to think that the receipts would ever be handed to the appellants—and they were not therefore estopped by their conduct in returning the receipts to the merchants for the specific purpose of clearing the goods from denying as against the appellants that the merchants had the right of pledging the goods as owners, or from setting up their title as against the appellants to the goods."—The Judgment of their Lordships was delivered by Lord Wright and in the course of it he said "It has, however, been strenuously contended on behalf of the appellants that the circumstances here raise what is called an estoppel, and that the respondents are precluded by their conduct from denying as against the appellants that the merchants had the right, which they pretended to have, of pledging the goods as owner the bona fides of the appellants not being in question. The estoppel is relied on as giving to the appellants the substantive right of claiming a valid pledge of the goods, taking priority over the pledge to the respondents, since though estoppel has been described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. Of the many forms which estoppel may take, it is here only necessary to refer to that type of estoppel which enables a party as against another party to claim a right of property which in fact he does not possess. Such estoppel is described as estoppel by negligence, or by conduct, or by representation, or by a holding out of ostensible authority. The argument has been variously put on behalf of the appellants. They have claimed to

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940,  
*continued.*

succeed upon the broad rule stated by Ashurst J. in *Lickbarrow v. Mason* ((1787), 2 J.R. 63, 70) that "wherever one of two innocent persons must" suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." The decision of the Board in *Commonwealth Trust v. Akotey* [1926] A.C. 727 was cited as one in which it was said that the case was a plain one for the application of that principle. The facts were that a grower of cocoa in the Gold Coast Colony had consigned cocoa by railway to a merchant at the port in the expectation of his buying the cocoa. The merchant, instead of concluding the purchase, purported to sell the cocoa as for himself to a third party, the appellants, who purchased in good faith and paid the full price to the merchant as seller. In an action for conversion brought by the grower, the full Court of the Gold Coast held that no property had passed because the merchant had no title. That judgment was reversed by this Board, who said that: "To permit goods to go into the possession of another, with all the insignia of possession thereof and of apparent title, and to leave it open to go behind that possession so given and accompanied, and upset a purchase of the goods made for full value and in good faith, would bring confusion into mercantile transactions, and would be inconsistent with law and with the principles so frequently affirmed, following *Lickbarrow v. Mason*." 10

What is there stated, it may be, would cover this case if it is applied without qualification. But, in their Lordships' judgment, it is impossible to accept without qualification as a true statement of law the principles there broadly laid down. It may well be that there were facts in that case not fully elucidated in the report which would justify the decision; but on the face of it their Lordships do not think that the case is one which it would be safe to follow. This was, it seems, the opinion of Lord Sumner, who, in a striking instance of a case where estoppel by conduct or representation was negatived, the case of *R. E. Jones, Ltd. v. Waring & Gillow, Ltd.* ([1926] A.C. 670), said: "There was no duty between Jones, Ltd., and Waring and Gillow, Ltd., and without that, the wide proposition of Ashhurst, J., in *Lickbarrow v. Mason* (2 T.R. 63) would not apply (see observations of Lord Macnaghten and Lord Lindley in *Farquharson Bros. & Co. v. King & Co.* and of Lord Parmoor in *London Joint Stock Bank v. Macmillan* which were apparently overlooked in *Commonwealth Trust v. Akotey* [1926] A.C. 72)." Lord Sumner thus puts the principle of estoppel as depending upon a duty. The passage to which he refers in Lord Parmoor's speech in the *London Joint Stock Bank v. Macmillan and Arthur* [1918] A.C. 777, 836, pointed out that the rule expressed by Ashhurst, J., was too wide, and said that the accurate rule was stated by Blackburn, J., in *Swan v. North British Australasian Co.* (1863), 2 H. & C. 175. There Blackburn, J., referring to the judgment of Wilde, B., in the Court below, said: "He omits to qualify it (the rule he has stated) by saying that the neglect must be in the transaction itself, and be the proximate cause of the leading the party into that mistake; and also, as I think, that it must be the neglect of some duty that is owing to the person led into that belief, or, what comes to the same thing, to the general public of whom the person is one, and not merely neglect of what would be prudent in respect to the party himself, or even of some duty owing to third persons, with whom those seeking to set up the estoppel are not privy." 20 30 40 50



In the present case it is manifest that as between the Plaintiffs and the Defendant there was no duty to disclose—none in fact has been alleged on behalf of the Defendant—and therefore the defence of estoppel is not open to the Defendant.

There remains the last submission of the Defendant, that which I have numbered (5) earlier in this judgment. It was pleaded by the Defendant mentioned by counsel as a line of defence but not seriously argued at the hearing.

10 There is nothing to prevent owners of property entrusting their title deeds to anyone they choose, and the Plaintiffs' entrusting deeds to Chan Chung Wah could not be relied on as a defence unless they so entrusted them both negligently and fraudulently, and neither negligence nor fraud in this respect has been pleaded. It follows therefore that the legal defences pleaded by the Defendant fail and there must be judgment for the Plaintiffs.

The Plaintiffs are entitled to the declarations and orders set out in the writ and in the Statement of Claim, and I make each of them accordingly and further order that the Defendant pay the costs of the Plaintiffs.

20

(Sgd.) D. A. MACGREGOR,

Chief Justice.

19th December 1940.

*In the  
Supreme  
Court of  
Hong Kong  
Original  
Jurisdiction.*

No. 34.  
Judgment  
of the Chief  
Justice on  
Trial of  
Action,  
19th  
December  
1940,  
*continued.*

---

No. 35.

**NOTICE OF APPEAL.**

**MOTION TO THE FULL COURT TO SET ASIDE THE JUDGMENT OF THE CHIEF JUSTICE ON THE TRIAL OF THE ACTION IN THE FIRST INSTANCE.**

30 TAKE NOTICE that the Full Court will be moved on Tuesday the 21st day of January 1941 at 10 a.m. or so soon thereafter as Counsel can be heard, by Counsel for the abovenamed Defendant for an Order that the Judgment herein of His Honour the Chief Justice given on the trial of this action on the 19th day of December 1940 whereby, and insofar as, it was adjudged that the Plaintiffs were entitled to the declarations and orders set out in the Writ of Summons and in the Statement of Claim herein and directing that the Defendant do pay the costs of the Plaintiffs of these proceedings may be reversed and that Judgment may be entered for the Defendant with costs and that it may be ordered that the costs of this Appeal be paid by the Plaintiffs to the Defendant.

Dated the 7th day of January 1941.

40

(Sgd.) JOHNSON STOKES & MASTER,

Solicitors for the Defendant (Appellant).

To the Registrar of the Supreme Court and  
To Messrs. LEO D'ALMADA AND COMPANY  
Solicitors for Messrs. Chan Fui Hing,  
Chan Sik Tin and Chan Kwok Nim.

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 35.  
Notice of  
Appeal,  
7th  
January  
1941.

## JUDGMENT OF THE CHIEF JUSTICE.

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949.

This is an appeal against a judgment of the late Sir Atholl MacGregor, Chief Justice of Hong Kong. The judgment was given on 19th December, 1940, and notice of motion for an appeal to this Court was filed on 7th January, 1941. It was apparently not possible to arrange for the hearing of the appeal before the fall of Hong Kong in December, 1941. During the Occupation, the Court records of the case were lost and since the Re-occupation there has been difficulty and delay, for this and other 10 reasons, in preparing the record for this Court. The record as prepared is an agreed record and I mention these matters simply by way of explanation of the long period which has elapsed between the appeal and the hearing of it.

It is now common ground that the Plaintiffs in the action, Chan Fui Hing, Chan Sik Tin and Chan Kwok Nim were at all material times tenants in common of certain property known as No. 300 Des Voeux Road and No. 92 Wing Lok Street, Hong Kong. Two documents purporting to be mortgages of the property by the Plaintiffs to the Defendant Fung Kai Sun were registered in the Land Office in November, 1937, and November, 1938, 20 respectively. The Plaintiffs' signatures on these documents were forgeries and the villain of the piece (or one of them) was Chan Chung Wah, a younger brother of the third Plaintiff. The Plaintiffs claimed declarations that the mortgages were forgeries and various other relief and the judgment of Sir Atholl MacGregor was in their favour.

One of the defences pleaded by the Defendant was that the Plaintiffs were estopped from denying the genuineness of their signatures, and the only part of Sir Atholl MacGregor's judgment which has been challenged in argument before this Court is the part dealing with this question. The relevant paragraph of the Statement of Defence reads as follows:— 30

“ In the alternative the defendant says that . . . (plaintiffs) . . . are, by reason of their conduct in standing by with full knowledge that the deeds referred to in paragraphs 9 and 11 of the Statement of Claim (i.e. the two mortgages in question) were forged, now estopped as against the defendant from saying that the said deeds were not executed by them or with their authority, knowledge or consent.

## PARTICULARS.

On or about the 24th day of May, 1939, the plaintiffs were aware that one Chan Chung Wah, a brother of the Plaintiff Chan 40 Kwok Nim, had forged the said deeds, or had entered into a conspiracy with two other persons to defraud the Defendant, nevertheless, they did not inform the Defendant until the 23rd day of June, 1939 (presumably the day the Writ was served), that the said deeds had been forged and did not disclose to the Defendant that the said Chan Chung Wah was the forger or a party to the said conspiracy, until the 11th day of December, 1939 (the date the hearing before the Chief Justice began), but kept silent and deliberately refrained from doing any act whatsoever which might

have resulted in the apprehension of the said Chan Chung Wah or the seizure of his property. The said keeping silent and refraining deprived the Defendant of any opportunity of obtaining restitution from the said Chan Chung Wah of the monies or any part thereof advanced by the Defendant on the said mortgages."

In brief, Sir Atholl MacGregor held that the Plaintiffs' silence did not amount to a representation because they were under no duty to disclose the forgeries when they learned of them, and consequently there was no estoppel.

- 10 The findings as to the facts alleged to bear on the question of estoppel are set out in rather general terms in the judgment but from an examination of the record and from the arguments of counsel I am satisfied that the following general facts are common ground Chan Chung Wah was entrusted with the title deeds in 1932 or 1933 and allowed to collect the rents and manage the property. The Plaintiffs had no suspicion that anything was wrong prior to May, 1939. The second Plaintiff wrote a letter (Exhibit J) to the first Plaintiff on 24th May, 1939, and it was received by the first Plaintiff about 27th May, 1939. In it, the second Plaintiff said he suspected that Chan Chung Wah had in some way charged
- 20 the property to a bank which had "attached" the rents. This apparently related in fact to another mortgage (Exhibit C) which was also a forgery. The second Plaintiff found out about the two mortgages to the Defendant at the end of May, 1939. The first Plaintiff arrived in Hong Kong on 31st May, 1939, and then he also was told about them. The first and second Plaintiffs suspected Chan Chung Wah of complicity in the frauds—this suspicion must have been virtually a certainty because he had the title deeds—but postponed any immediate action against him because they wanted first to get from him the arrears of rent. They did not immediately tell the third Plaintiff because he was Chan Chung Wah's brother and they
- 30 lived together, and the third Plaintiff might well have been in complicity in the fraud. The first and second Plaintiffs issued the writ in this action on 17th June, 1939, and that was the first intimation the third Plaintiff had about the matter. He took steps to get joined as a Plaintiff in the action. The first Plaintiff saw Chan Chung Wah on 10th June, 1939, but thereafter looked for him in vain. Chan Chung Wah was living with the third Plaintiff until 10th June, 1939, but thereafter the third Plaintiff never saw him. A witness Chan Kwok Ming saw Chan Chung Wah in Macao about seven months before the date he gave evidence (12th December, 1939). Chan Chung Wah was then staying in a hotel
- 40 in Macao. A witness Yeung Pak Tik saw Chan Chung Wah in Macao in June or July, 1939. A witness Hong Ken Po saw him having tea in a tea-shop in Kowloon on 19th November 1939. Nothing else is known about Chan Chung Wah's movements. In August, 1939, Chan Chung Wah executed a mortgage of certain of his property. The third Plaintiff was appointed an attorney of Chan Chung Wah in October, 1939, and on 14th December, 1939, he signed a mortgage of certain other property of Chan Chung Wah as attorney. The Appellant was never able to identify the Plaintiffs until he saw them in Court when the hearing of the action started on 11th December, 1939, and it was not till then that he knew
- 50 Chan Chung Wah was involved in the fraud. Between 14th August, 1939, and 24th August, 1939, there was correspondence between the solicitors

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

for the parties with a view to enabling the persons concerned to test the identity of the persons who were suing as Plaintiffs but it led to nothing. On 20th November, 1939, the Plaintiffs' solicitors wrote a letter to the Defendant's solicitors saying that the Plaintiffs "had reason to believe" that the title deeds of the property had been handed over to Chan Chung Wah in 1933. Actually, they knew very well this was so, as appears from their evidence.

At the hearing before us Mr. Sheldon, K.C., and Mr. Wright appeared for the Appellant (the Defendant in the Court below) and Mr. Potter, K.C., and Mr. D'Almada, K.C., for the Respondents (the Plaintiffs in the Court 10 below).

Mr. Sheldon conceded that there could be no representation by silence unless there was a duty to speak. This principle is so well established as hardly to need authority. I shall content myself by referring to the judgment of Lord Tomlin in *Greenwood v. Martin's Bank Ltd.* [1933] A.C. 51 at p. 57 where the following passage occurs:—

"Mere silence cannot amount to a representation, but, when there is a duty to disclose, deliberate silence may become significant and amount to a representation."

Mr. Sheldon put in the forefront of his argument that there was a duty in 20 this case on the principle set out in 13 *Hailsham* at p. 496:—

"A duty to speak arises whenever a person knows that another is acting on an erroneous assumption of some authority given or liability undertaken by the former, or is dealing with or acquiring an interest in property in ignorance of his title to it. It is the duty of a man who knows that another is relying on a document bearing a counterfeit of his signature to give notice of the forgery without delay."

In support of his argument he relied mainly on the cases cited for the principle in *Hailsham*, namely *M'Kenzie v. British Linen Co.* (1881), 30 6 A.C. 82, *Ogilvie v. West Australian Mortgage and Agency Corporation* [1896] A.C. 257, *Ewing and Co. v. Dominion Bank* [1904] A.C. 806 and *Greenwood v. Martin's Bank Ltd.* [1932] 1 K.B. 371, and, on appeal to the House of Lords [1933] A.C. 51 as above quoted. I shall refer to these cases as "the bank cases." He conceded, as I understood him, that in *Ogilvie's* case and in *Greenwood's* case the duty to speak arose from the relation of banker and customer but argued that the other cases were not cases of banker and customer and that the principle illustrated by the bank cases was not limited by that relationship. In support of this contention he referred to Paget's *Law of Banking*, 5th Edition at pages 286, 287 and 360. 40

Given that there was a duty to speak, Mr. Sheldon argued that there had been a deliberate breach of it by the Respondents designed to shield Chan Chung Wah and his property from the Appellant, that the breach continued after the writ was issued to the extent that the Respondents never disclosed their knowledge that Chan Chung Wah was the culprit until the proceedings opened in the Court below on 11th December, 1939, and that the Appellant had suffered detriment to the extent that, during the period of the Respondents' silence, Chan Chung Wah had absconded and some of his property had ceased to be available to satisfy any judgment the Appellant might have obtained. 50

In his final address, Mr. Wright (supported by Mr. Sheldon) suggested that the letter of 20th November, 1939, to which I have referred, amounted to a positive and fraudulent representation that the Respondents did not know Chan Chung Wah was the culprit. Mr. D'Almada objected that this went outside the pleadings which narrowed down Appellant's case to one of representation by silence. We upheld this objection, taking the view that, if the letter had any value, its value was to support the case of representation by silence. In any event, I should be quite unable to read into the letter any positive representation.

10 Mr. Potter's first contention (more fully developed by Mr. D'Almada) was that we were precluded from accepting Mr. Sheldon's submissions by reason of the decision of the Full Court in Appeal No. 10 of 1947 and I deal now with this point.

In that case the respondent was the Crown Lessee of certain property in Hong Kong. In February, 1945, a person acting under a forged power of attorney purported to assign the property to the appellant. The respondent first learned of the fraud in December, 1945, but for various reasons he did not disclose it to the appellant until April, 1946. The parties were strangers. Between December, 1945, and April, 1946, the  
20 appellant had spent substantial sums on the property but the respondent at no time knew of this expenditure. The Full Court (composed of Williams, J., and Gould, J.) held that these facts did not give rise to an estoppel (the only ground of appeal argued) and dismissed the appeal. Williams, J., in his judgment refers first to a submission made on behalf of the appellant that a duty to speak arose on the principle of the passage in 13 Hailsham p. 496 quoted by Mr. Sheldon before us and on the bank cases. He then analyses various cases and, on the question of whether there was a duty to disclose, he says :—

30 "As to the cases, therefore, on which appellant relies the duty to disclose as between a customer and the Bank is clearly admitted. Nothing is contained in the cases which would justify a Court in extending the duty to such cases, as the present where no relationship has previously existed. In the *M'Kenzie* case, though the judgment proceeded on a different basis, yet Lord Blackburn was not prepared to accept the wider proposition of Lord Deas that a duty not to keep silence exists in cases where the facts were similar to that case. Lord Blackburn agrees with Baron Parke that the duty must be one existing by usage of trade or otherwise. By the  
40 words 'or otherwise' it is clear that some limitation must exist. I have, therefore, come to the conclusion that these bank cases are not an authority for the appellant's contention that there was here any legal duty on the respondent to disclose the forgery."

The finding that there was no duty to disclose was sufficient to dispose of the appeal but Williams, J., goes on to consider what would have been the position if there had been a duty to disclose. He holds that another requirement for estoppel is that "the person omitting to speak must do so with the intention of inducing a course of conduct on the part of the other person or with the knowledge that the other person was pursuing a certain course of action" and that this requirement was not present in this case  
50 because the respondent did not know that appellant was expending money on the property.

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 11th  
July 1949,  
*continued.*

In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
continued.

Lastly he refers to the principle of *Ramsden v. Dyson* (1866) 1 English and Irish Reports 129, set out by Lord Cranworth at p. 140 as follows:—

“If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him to persevere in his error, a Court of Equity will not allow me afterwards to assert my title to the land on which he has expended money on the supposition that the land was his own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title: and that it would be dishonest in me to remain wilfully passive on such an occasion, in order to profit by the mistake which I might have prevented.” 10

Williams, J., differentiates that case in the following terms:—

“The difference between that case and the present is however quite clear. In that case the landlord is aware of the expenditure and yet refrains from action in order that he may later profit by the mistake. In the present case, there was no knowledge on respondent's part that appellant was expending any money on the property in dispute.”

Gould, J., in his judgment, says that he has arrived at the same “conclusion.” He nowhere in his judgment dissents from the decisions on legal principles which are the basis of that conclusion, but equally he nowhere states positively that he is in general agreement with them. 20

He begins by referring to the bank cases in the following terms:—

“Although great stress in argument has been placed upon what have been called the ‘bank’ cases, I do not think it follows that the proposition in broad terms at the top of page 496 of volume 13 of Hailsham which is based upon them can necessarily be applied without reservation in the case of all forged instruments.”

After that he has no more to say on the question of forgery but on the contrary he says:— 30

“I am unable to see why, where a person is labouring under a mistake as to title to land, it should make any difference whether that mistake arises through a forgery or from some other cause.”

He prefers to consider the case as one involving the doctrine of acquiescence and refers in particular to the principle (for which *Ramsden v. Dyson* is an authority) set out in Spencer Bower on Estoppel by Representation at p. 61 as follows:—

“Where a person having a title, right, or claim to property of any kind, perceives that another person is innocently, and in ignorance, conducting himself with reference to the property in a manner inconsistent with such title, right, or claim it is the duty of the former to undeceive the other party forthwith; if he omits to do so, and if all the other conditions of a valid estoppel are satisfied, he is precluded from exercising or asserting his right or title or claim . . .” 40

His conclusions are set out in the following passages from the judgment:—

“It has been held that respondent had no knowledge that money was being expended on repairs. Can it be said that a duty 50

to disclose arose under the circumstances? I think not. In the cases where a person has been held estopped by acquiescence, he has usually looked on while the money was being spent and then stepped in to take the benefit—an element of something approaching fraud or dishonesty has invariably been present. A case of bad faith and bad conscience must be made out on highly probable grounds.”

10 “The view that no duty of disclosure arises unless the person deceived as to his rights suffers or is about to suffer loss to the knowledge of the person sought to be estopped does not appear to be inconsistent with the decisions in the bank cases.”

What then are the clear legal principles which are common to both judgments and which were the *ratio decidendi* of the decision of the Full Court? These, and only these, can bind us, but they will bind us notwithstanding that they were alternative principles—see *Cheater v. Cater* [1918] 1 K.B. 247 at p. 252 and *London Jewellers Ltd. v. Attenborough* [1934] 2 K.B. 206 at p. 222.

20 I am not prepared to assume that Gould, J., agreed with the judgment of Williams, J., to any greater extent than he expressed himself as in agreement, and he only expressed himself as in agreement with the conclusion (he uses the word in the singular). While not dissenting from any part of the judgment of Williams, J., he apparently preferred to leave certain questions open and to make a rather different general approach to the problem.

30 While both learned judges were in agreement that the rule in 13 Hailsham, p. 496, was not a rule of general application, there was no common ground between them as to the limitations of the rule, and I am therefore unable to see that any binding principle of law was laid down as to the duty to speak. Both judges used words to the effect that there could be no estoppel unless the representation by silence was intended to induce a course of conduct which led to detriment but, as a condensed statement of the law, that proposition could scarcely be controverted. The detriment alleged was, of course, quite different from the detriment alleged in our case. There was no question as to the detriment being omission to take action against the forger.

40 Mr. Potter submitted that there was no duty to speak in this case and he put in the forefront of his argument the distinction between two different sets of circumstances which he called case 1 and case 2. Case 1 was where the person against whom estoppel was raised knowingly stood by while the invasion of his rights was in progress and case 2 was where the invasion of the person's rights was completed without his knowledge or assent and he subsequently took no action. The same distinction is made in 13 Hailsham, at page 208, para. 199, and emphasised in the leading case of *De Bussche and Alt*, 8 Ch. D. 286. Mr. Potter submitted that this appeal came within case 2 and, that being so, there could, on the authority of *De Bussche and Alt*, be no estoppel by mere silence. I am unable to accept this view. I agree we are dealing with case 2. The two mortgages had been forged and registered without the respondents' knowledge and there could be no further invasion of their rights unless the appellant attempted to go into possession or foreclose. But I do not agree that 50 *De Bussche and Alt* is an authority for the proposition that there can be

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

no estoppel by silence in case 2. Giving the judgment of the Court of Appeal, Thesiger, L.J., sets out at page 314 the distinction to which Mr. Potter referred. He says:—

“The term ‘acquiescence,’ which has been applied to his conduct, is one which was said by Lord Cottenham in *Duke of Leeds v. Earl Amherst* ought not to be used; in other words, it does not accurately express any known legal defence, but if used at all it must have attached to it a very different signification, according to whether the acquiescence alleged occurs while the act acquiesced in is in progress or only after it has been completed. If a person 10 having a right, and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed he cannot afterwards be heard to complain of the act. This, as Lord Cottenham said in the case already cited, is the proper sense of the term ‘acquiescence,’ and in that sense may be defined as quiescence under such 20 circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct. But when once the act is completed without any knowledge or assent upon the part of the person whose right is infringed, the matter is to be determined on very different legal considerations. A right of action has then vested in him which, at all events as a general rule, cannot be divested without accord and satisfaction, or release under seal. Mere submission to the injury for any time short of the period limited by statute for the enforcement of the right of action cannot take away such right, although under the name of laches it may afford a ground for refusing relief under some particular circumstances; and it is clear that 30 even an express promise by the person injured that he would not take any legal proceedings to redress the injury done to him could not by itself constitute a bar to such proceedings, for the promise would be without consideration, and therefore not binding.”

It is to be noted that he says that a right of action once vested cannot “as a general rule” be divested without accord and satisfaction or release under seal. He goes on to mention that laches, while not divesting the right of action, may afford a ground for refusing relief. The doctrine of laches, be it noted, does not depend on the duty to speak. But then at page 315 occur the following two passages:— 40

“He said nothing, did nothing, there was nothing which he abstained from saying or doing, by which he induced the Defendant to do, or abstain from doing, anything, or to alter his position.”

“Assuming that under certain circumstances a person might, by his conduct, whether constituting laches or amounting to an estoppel, entirely preclude himself from enforcing a vested right of action, yet, in the present case, no conduct having that effect can properly be imputed to the Plaintiff.”

It is quite clear that, in these two passages, Thesiger, L.J., was considering the possibility of there being an estoppel either by active representation or 50 by silence. The position seems to me to be quite clear. In case 1 there is



automatically a duty to speak. In case 2 there is no automatic duty to speak but there may be special circumstances which give rise to one.

Let us now examine the bank cases and first *M'Kenzie v. British Linn Company*. This was a Scotch case which came before the House of Lords in 1881. A bill purported to be drawn by M'Kenzie (the Appellant) and a man called Macdonald on 14th April, 1879, payable at three months' date and endorsed by the drawers to the Respondent Bank. The acceptor was one John Fraser. The signatures of the drawers were forgeries, having been forged by Fraser. On 14th July the Bank gave Appellant notice that the bill would mature on 17th July, i.e., at the expiration of the three days' grace, and on 17th July they gave Appellant further notice that the bill was under protest for non-payment. It was found that the Appellant did not know of the forgery of his name to this bill until he received the notice of 14th July. It was not till 29th July that the Appellant denied his signature, but it was common ground that the position of the Bank had not altered between 14th July and 29th July.

The bill was actually a renewal of a previous bill purporting to be between the same parties dated 7th February, 1879. The drawers' signatures on this bill were also forgeries. On 12th April the Appellant learned that his signature on this bill was a forgery, but was given to understand by Fraser "that he had cleared the bill with cash." I mention these latter facts for the sake of completeness although there is no parallel to them in the facts of the case before us.

The House of Lords held that the Appellant was not liable on the bill and it is clear that, in so far as the House of Lords was called upon to consider the submission of Counsel for the Bank that the Appellant's silence, after he learned of the forgery of the second bill on 14th July, rendered him liable on that bill, the decision was based on the fact that the Bank's position had not been prejudiced by that silence.

In his judgment, at page 92, Lord Selborne said :—

"There is no principle on which the Appellant's mere silence for a fortnight, during which the position of the Respondents was in no way altered or prejudiced, can be held to be an admission or adoption of liability, or to estop him from now denying it."

Lord Blackburn, at p. 100, went further. Commenting on the judgment of Lord Deas (a member of the First Division of the Court of Session to which an appeal had been preferred from the decision of the Lord Ordinary) he drew a distinction between the result of doing or saying anything to mislead the Bank and the result of not saying or doing something which might put the Bank on its guard. He said :—

"But when Lord Deas says : 'In cases of this kind where he has peculiar means of knowledge whether his signature is forged or not, he is not entitled by saying or doing something, or not saying or doing something, to lead his neighbour to think that his signature is genuine to his neighbour's loss,' he goes further than I am inclined to follow in the words 'by not saying or doing something'."

Then again at page 101 Lord Blackburn said :—

"It would be quite a different thing if it were proved that M'Kenzie knew that the bank had put the second bill with his

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36,  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

name on it to Fraser's credit, and knew that at a time when he had reason to believe that he would be permitted to draw against it. His silence then would certainly prejudice the bank, and would afford very strong evidence indeed that M'Kenzie for Fraser's sake thus ratified Fraser's act for a time; and a ratification for a time would, I think, in point of law operate as a ratification altogether."

He here uses the word "ratification," but as Scrutton, L.J., pointed out in the *Greenwood* case a forgery cannot in fact be ratified.

Lord Watson at page 109 said :—

"The only reasonable rule which I can conceive to be 10 applicable in such circumstances is that which is expressed in carefully chosen language by Lord Wensleydale in the case of *Freeman v. Cooke*. It would be a most unreasonable thing to permit a man who knew the bank were relying upon his forged signature to a bill, to lie by and not to divulge the fact until he saw that the position of the bank was altered for the worse. But it appears to me that it would be equally contrary to justice to hold him responsible for the bill because he did not tell the bank of the forgery at once, if he did actually give the information, and if when he did so, the bank was in no worse position than it 20 was at the time when it was first within his power to give the information."

Spencer Bower at page 76 note (N) comments on this case as follows :—

"The House, reversing the Court of Session in Scotland, held that the appellant was in no way estopped. It is true that the main ground of the decision was that the respondents had not altered their position to their prejudice by reason of any omission of duty on the part of the appellant; but both Lord Selborne, L.C., at p. 91 ('nothing from which the respondents, or a court of justice, could reasonably infer that he'—the appellant—'adopted 30 or admitted his liability upon this bill'), and Lord Blackburn, at pp. 100, 101, intimated not obscurely their view that there was no such duty, and no such representation, therefore, by the omission of it, as was alleged."

Certainly the case is no clear authority for the proposition that there was a duty to speak.

The next case is *Ogilvie's* case which came before the Privy Council in 1896. The facts of the case are not really material. Unlike *M'Kenzie's* case the parties were in the relationship of banker and customer. The judgment was given by Lord Watson (one of the judges in *M'Kenzie's* 40 case) and the points of importance are that at page 263 Lord Watson refers to estoppel "according to the law recognised by the House of Lords in *M'Kenzie v. British Linen Co.*" and at page 268 he says :—

"It is obvious that the question of estoppel arising in these circumstances differs widely from the question which was discussed in *M'Kenzie v. British Linen Co.* and similar cases. The ground upon which the plea of estoppel rested in these cases was the fact that the customer, being in the exclusive knowledge of the forgery, withheld that knowledge from the bank until its chance of recovering from the forger had been materially prejudiced." 50

With the very greatest respect I find it hard to see how *M'Kenzie's* case can be regarded as an authoritative decision on any point other than that there can be no estoppel unless there is some detriment. And again, the relationship of banker and customer did not exist in *M'Kenzie's* case as is pointed out in Paget's *Law of Banking*, page 287.

I turn next to the case of *Ewing and Company* which was before the Privy Council in 1904. One Wallace forged Ewing and Company's signature on a promissory note on 14th August. On 15th August he handed it to the Dominion Bank. On 16th August the Bank gave notice  
10 to Ewing and Company that they had received the note and that it fell due on 17th December. Ewing and Company kept silent to screen Wallace and meanwhile the Bank paid out to Wallace practically all that was due on the note.

The Privy Council said they would not give special leave unless a very important question of law was involved and that the question of whether there was an estoppel was a pure question of fact.

The Court of first instance had said there was an estoppel. The Court of Appeal of Ontario and later the Supreme Court of Canada dismissed successive appeals and the Privy Council remarked that they could not see  
20 that there was not evidence to justify the initial finding of fact.

It does not appear that the relationship of banker and customer existed between Ewing and Company and the Bank. There is a passage referring to *M'Kenzie's* case as follows:—

“Whether the circumstances were such as would raise either an estoppel against the petitioners, or would amount to what Lord Blackburn in *M'Kenzie v. British Linen Co.* calls a ‘ratification for a time’ by the supposed makers of the note of their signature, is, in the opinion of their Lordships, absolutely a question of fact. They cannot see that any important question of law is really at  
30 stake.”

If the case was decided in Canada on the basis that Ewing and Company were under a duty to speak quite apart from the fact that they must have known the Bank would pay out against the note unless warned that it was forged and quite apart from any relationship of banker and customer, one would have thought a question of law as to the duty to speak did arise. It is difficult to appreciate the position without access to the judgments given in Canada. It may be that the facts set out in the judgment of the Privy Council are only a précis of the facts found in the  
40 *M'Kenzie's* case is interesting because it is clearly a reference to the passage I have quoted from p. 101 in which Lord Blackburn said there might have been an estoppel if *M'Kenzie* had had reason to believe Fraser would be permitted to draw against the bill.

Lastly I come to *Greenwood's* case. There is no doubt that that case was decided on the basis that the duty to disclose sprang from the contractual relationship of banker and customer. Scrutton, L.J., in the Court of Appeal is at pains to explain this relationship. Greer, L.J., is less specific but Romer, L.J., at the top of p. 390, agrees with Scrutton, L.J. In the House of Lords, Lord Tomlin said:—

“The existence of a duty on the part of the customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question in this case was rightly admitted.”  
50

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

No. 36.  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 14th  
July 1949,  
*continued.*

It seems to me to be very pertinent, as Mr. Potter pointed out, that, if the Court of Appeal or the House of Lords had thought there was a duty to disclose quite apart from the relationship of banker and customer, there was no point in basing the decision on that relationship. And I notice that although there are references in the judgments given in the Court of Appeal to *M'Kenzie's* case—some of them approving the passage I have quoted from Lord Watson—yet there is no reference to *M'Kenzie's* case in Lord Tomlin's judgment.

Mr. Potter suggested that possibly the fact that in *M'Kenzie's* case and *Ewing and Company's* case notice was given to the parties whose signatures had been forged may have affected the position. The notices certainly made it clear to those parties that the Banks were acting in the belief that the signatures were genuine but I do not think they affected the duty to disclose. In *M'Kenzie's* case the notice was in any event the first intimation to *M'Kenzie* of the forgery. Lord Watson in that case, referring to certain Scotch authorities he had cited, said at page 111 :—

“None of these decisions appear to me to give the least support to the doctrine that mere silence, after intimation, or even after demand for payment of a forged bill, necessarily implies adoption of a bill by one whose subscription to the bill is a forgery.”

Spencer Bower takes the same view at page 79 of his book.

What then is the conclusion as to whether there was a duty to speak on the facts of this case? I am of opinion that there was no such duty. The doctrine of estoppel has grown from very restricted beginnings. It is a doctrine which is attended with some danger because a person successfully pleading estoppel may in reality have suffered very little damage or even no damage at all, yet the person estopped may, by reason of the doctrine, suffer great loss. I think that any attempt to extend the doctrine should be treated with great caution, and this is particularly so where the alleged representation is a representation by silence. The Bank cases are not an authority for the broad proposition stated in the second sentence of Mr. Sheldon's quotation from 13 Hailsham, p. 496—at least if that quotation is to be read as Mr. Sheldon reads it. I see no reason why the case where the person pleading estoppel has been deceived by a forgery should be treated as different from cases where he has been deceived by impersonation or in other ways, and I think that this case ought to be decided on the general principles of the law of estoppel and not on any special principle supposed to be applicable to cases of forgery. The only authority quoted for the more general proposition set out in the first sentence of Mr. Sheldon's quotation from 13 Hailsham, p. 496, is the case of *Stroud v. Stroud*, 7 Manning and Granger's Reports, 417, but that case does not seem to me to be an authority for that general proposition. If one examines the various cases in which it has been held that there is a duty to speak, I do not think any can be found where the parties were complete strangers to each other, the fraudulent transaction had been completed without the knowledge of the person alleged to be estopped and the only detriment to the person setting up the estoppel which could arise if there was no disclosure was that the person setting up the estoppel might delay taking action against some third person or persons to recover his losses and so suffer prejudice.

There is another broad reason why I think this appeal must fail. I cannot accept Mr. Sheldon's contention (challenged by Mr. Potter) that a duty to speak, where one exists, is a duty not only to disclose the fact of the fraud, but also (if they are known) the identities of the persons responsible. The importance of the point is that, even if a duty existed, it was discharged, if I am right, when the writ was served on the Appellant. There is no clear authority for Mr. Sheldon's proposition and there seems to me to be all the difference in the world between failure to disclose the fact of the fraud, and so put the person defrauded on his guard, and failure to give information as to the persons who might, if the person defrauded thought fit, be sued by him. It would be a very unusual rule of law, whatever the morality of the matter may be, which required a person who had no interest in the result of his accusation, to accuse another person for the benefit of a party who had such an interest, and certainly this would be so where there was no special relationship involving frankness.

10

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

—  
No. 36,  
Judgments  
of Sir Leslie  
Gibson,  
C.J., and  
other  
members of  
the Full  
Court, 11th  
July 1949,  
*continued.*

What detriment was caused by the Respondents' silence up to the service of the writ? There is no evidence that, up to that time, Chan Chung Wah had disposed of any property. He had probably run away or was in hiding, but it was still open to the Appellant to take proceedings under chapter XVII of the Code of Civil Procedure. It is clear from the case of *Sing Tak Bank v. Chan Tung Shan*, 1 H.K.L.R. 27, at p. 28, that it would not have been necessary to serve a writ of summons before applying for the writ of attachment. There is no indication that proceedings taken under that chapter, if the Appellant had been in a position to take them, would have been any less effective than proceedings taken when Respondents first heard of the forgery.

20

For these reasons I think the appeal must be dismissed. Question of costs reserved. Liberty to apply.

30

(Sgd.) L. B. GIBSON,  
President.  
14.7.49.

THE JUDGMENT OF THE PUISNE JUDGE ON THE APPEAL TO  
THE FULL COURT.

I concur and have nothing to add.

(Sgd.) E. H. WILLIAMS,  
Appeal Judge.  
14.7.49.

THE JUDGMENT OF THE ACTING SECOND PUISNE JUDGE ON  
THE APPEAL TO THE FULL COURT.

40

I concur and have nothing to add.

(Sgd.) A. D. SCHOLLES,  
Appeal Judge.  
14.7.79.

No. 37.

## PETITION for Leave to Appeal to the Privy Council.

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

To Their Honours the Judges of The Supreme Court of Hong Kong.

THE HUMBLE PETITION of the above-named Appellant

RESPECTFULLY SHOWETH :—

No. 37.  
Petition for  
Leave to  
Appeal to  
the Privy  
Council,  
26th  
August  
1949.

1. That this action was brought by the above-named Respondents against the above-named Appellant and the claims of the Respondents appear from their Statement of Claim filed the 2nd day of August 1939 herein and the defence of the Defendant to such Statement of Claim appears from the Statement of Defence and Counter-claim filed herein the 19th day of October, 1939, as amended by Orders of Court dated the 11th and 14th days of December, 1939, and the Respondents' reply and defence thereto appear from their Reply and Defence to Counter-claim filed herein the 7th day of December, 1939. 10

2. That the trial of this Action came on for hearing before His Honour the Chief Justice on various dates between the 11th day of December 1939 and the 11th day of January 1940 both days inclusive.

3. That on the 19th day of December 1940 His Honour the Chief Justice delivered Judgment in favour of the above-named Respondents for the amount of the claim and costs. 20

4. That on the 7th day of January 1941 the Appellant filed a Notice of Motion that this Honourable Court would be moved at 10 o'clock on Tuesday the 21st day of January 1941 or so soon thereafter as Counsel could be heard by Counsel for the Appellant that the Judgment of His Honour the Chief Justice that the Respondents were entitled to the declarations and orders set out in the Writ of Summons and in the Statement of Claim herein and directing that the Appellant do pay the costs of the Respondents be reversed and that Judgment be entered for the Appellant with costs.

5. That the said Motion was heard before this Honourable Court 30 consisting of their Honours the Chief Justice, the Puisne Judge and the Acting Second Puisne Judge sitting together on the 30th June, 5th, 6th and 7th July 1949.

6. That on the 14th day of July 1949 His Honour the Chief Justice, His Honour the Puisne Judge and His Honour the Acting Second Puisne Judge dismissed the Appeal with the question of costs reserved and with liberty to apply. That on the 13th day of August 1949 the said Judges heard the argument on the question of costs and the said Judges unanimously gave judgment for the Respondents for their costs of the Appeal and directed that the Appeal of the Appellant be dismissed with costs accordingly. The result in law of the aforesaid Judgments is that the Judgment of His Honour the Chief Justice dated the 19th day of December 1940 stands and Judgment has been entered for the above-named Respondents accordingly with costs of and incidental to the aforesaid appeal and of the hearing in the Court of First Instance. 40

7. Your Petitioner the above-named Appellant feels aggrieved by the said Judgment of this Honourable Court affirming the said Judgment of His Honour the Chief Justice dated the 19th day of December 1940 and desires to appeal therefrom.

8. The said Judgment affects a matter in dispute amounting to \$5,000 and upwards and further involves directly a claim or question to or respecting property amounting to or of the value of \$5,000 or upwards.

9. YOUR PETITIONER THEREFORE PRAYS :—

(1) That this Honourable Court will be pleased to grant to your Petitioner the above-named Appellant leave to appeal from the said Judgment of this Honourable Court to His Majesty the King in his Council.

10 (2) That this Honourable Court may make such further or other Order in the said premises as may seem just.

And your Petitioner the above-named Appellant will ever pray, etc.

Dated Hong Kong the 26th day of August, 1949.

(Sgd.) JOHNSON, STOKES & MASTER,  
Solicitors for the above-named Petitioner.

(Sgd.) H. G. SHELDON,  
Counsel for the above-named Petitioner.

This Petition is filed by Messrs. JOHNSON, STOKES & MASTER of Hong Kong Bank Building, Victoria in the Colony of Hong Kong, Solicitors for the above-named Appellant.

20 It is intended to serve this Petition on Messrs. BRUTTON & Co., Solicitors for the above-named Respondents.

---

No. 38.

**ORDER granting Final Leave to Appeal to the Privy Council.**

30 UPON READING the Petition of the Appellant filed herein on the 26th day of August 1949, for leave to appeal to His Majesty in His Privy Council from the judgment of this Honourable Court dated the 13th day of August 1949 affirming the judgment of His Honour the Chief Justice dated the 19th day of December 1940 and UPON READING the Order herein dated the 2nd day of September 1949 made on the said Petition and the Certificate of the Registrar of this Court dated the 29th day of November 1949 of due compliance with the said Order and UPON HEARING the Solicitors for the Appellant and the Respondents THIS COURT DOTH ORDER that the final leave to appeal prayed for be granted.

Dated the 1st day of December, 1949.

(Sgd.) C. D'ALMADA E CASTRO,  
Registrar.

(L.S.)

---

*In the  
Supreme  
Court of  
Hong Kong  
Appellate  
Jurisdiction.*

---  
No. 37.  
Petition for  
Leave to  
Appeal to  
the Privy  
Council,  
26th  
August  
1949,  
*continual.*

No. 38.  
Order  
granting  
Leave to  
Appeal to  
Privy  
Council,  
1st  
December  
1949.

*Exhibits.***EXHIBITS.**

"D."

Copy  
Mortgage of  
Inland  
Lot 1828,  
29th  
October  
1937.

**Exhibit D.**

**COPY MORTGAGE** of Inland Lot No. 1828 to secure \$55,000.00 and interest. Registered at the Land Office by Memorial No. 155,813 on Monday the first day of November 1937 at 3 p.m.

Chan Fui Hing, Chan Kwok Nim and Chan Sik Tin

to

Fung Pok Om and Fung Kai Sun.

Hongkong  
Stamp Duty  
\$110./

10

1.11.37.

THIS INDENTURE made the Twenty ninth day of October One thousand nine hundred and thirty seven BETWEEN CHAN FUI HING (陳煥馨) CHAN KWOK NIM (陳國念) and CHAN SIK TIN (陳式典) all of No. 300 Des Voeux Road Central Victoria in the Colony of Hong Kong Merchants (who and each of whom and whose and each of whose executors administrators and assigns are where not inapplicable hereinafter included under the designation "the Mortgagors") of the one part and FUNG POK OM (馮博菴) and FUNG KAI SUN (馮啟藥) both of No. 141 Caine Road Victoria aforesaid Gentlemen (who and the survivor of whom and the executors and administrators of such survivor their or his assigns are where not inapplicable hereinafter included under the designation "the Mortgagees") of the other part WITNESSETH that in consideration of the sum of FIFTY FIVE THOUSAND DOLLARS Hong Kong Currency this day lent and advanced by the Mortgagees to the Mortgagors (the receipt whereof is hereby acknowledged) THEY the Mortgagors do hereby covenant with the Mortgagees that they the Mortgagors will on the Nineteenth day of October One thousand nine hundred and thirty eight pay unto the Mortgagees the sum of Fifty five thousand Dollars Hong Kong Currency and will pay interest for the same in the meantime at the rate of Six Dollars per mil per Chinese lunar month from the date hereof payable monthly in equal monthly payments on the Twenty sixth day of each Chinese lunar month without any deduction AND FURTHER that if the said sum of Fifty five thousand Dollars or any part thereof shall remain unpaid after the said Nineteenth day of October One thousand nine hundred and thirty eight the Mortgagors will so long as the said sum or any part thereof shall remain unpaid pay to the Mortgagees interest on the said sum or such part thereof as shall remain unpaid at the rate aforesaid by equal monthly payments on the Twenty sixth day of each Chinese lunar month without deduction PROVIDED ALWAYS and it is hereby



declared that the said sum of Fifty five thousand Dollars belongs to the Mortgagees on joint account at law as well as in equity and accordingly that the Mortgagees and the survivor of them and the executors and administrators of such survivor their or his assigns shall be considered as entitled to the said sum of Fifty five thousand Dollars and interest thereby secured and their or his receipt shall be an effectual discharge for the same and every part thereof respectively and that all powers and remedies available under these presents for recovering payment of the monies hereby secured including all powers and remedies conferred on the

10 Mortgagees by these presents and the power of reassigning and releasing the said mortgaged premises and executing a deed of reassignment shall be exercisable and enforceable by them or him accordingly without the concurrence of any other person or persons AND IT IS HEREBY AGREED AND DECLARED that if the said sum of Fifty five thousand Dollars or any part thereof shall remain unpaid after the said Nineteenth day of October One thousand nine hundred and thirty eight it shall not be competent for the Mortgagors at any time hereafter to pay off or for the Mortgagees to call in the said sum of Fifty five thousand Dollars until the party so paying off or calling in the said sum shall have given to the party

20 respectively receiving or paying the said sum (or as regards notice by the Mortgagees only shall have left on some part of the premises hereinafter assigned) at least one Chinese lunar month's previous notice in writing of such intention to pay off or call in the said sum such notice in the case of notice by the Mortgagors only to expire on the twenty sixth day of any Chinese lunar month AND THIS INDENTURE FURTHER WITNESSETH that for the consideration aforesaid they the Mortgagors do hereby assign unto the Mortgagees All That piece or parcel of ground situate lying and being at Victoria aforesaid and known and registered in the Land Office as INLAND LOT No. 1828 Together with all messuages

30 erections and buildings thereon now known as No. 300 Des Voeux Road Central and No. 92 Wing Lok Street Victoria aforesaid and all other erections and buildings now or hereafter to be erected thereon And all rights of way (if any) rights privileges easements and appurtenances thereto belonging or appertaining and all the estate right title interest property claim and demand whatsoever of the Mortgagors therein and thereto TO HOLD the said piece or parcel of ground messuages buildings and premises hereinbefore assigned or expressed or intended so to be with their and every of their appurtenances unto the Mortgagees for all the residue now to come and unexpired of a certain term of Nine hundred and

40 ninety nine years from the Twenty sixth day of December One thousand eight hundred and sixty six created therein by an Indenture of Crown Lease of the said Lot dated the Fourth day of May One thousand nine hundred and ten and made between His late Majesty King Edward the Seventh of the one part and Chan Lai Shan of the other part and for all other the estate term and interest of them the Mortgagors therein But subject nevertheless to the proviso for redemption hereinafter contained PROVIDED ALWAYS that if the Mortgagors shall on the said Nineteenth day of October One thousand nine hundred and thirty eight pay to the Mortgagees the sum of Fifty five thousand Dollars Hong Kong Currency and

50 shall pay interest for the same at the rate of Six Dollars per mil per Chinese lunar month from the date hereof until repayment by equal monthly payments on the Twenty sixth day of each Chinese lunar

*Exhibits.*  
 "D."  
 Copy  
 Mortgage  
 of Inland  
 Lot 1828,  
 29th  
 October  
 1937,  
*continued.*

*Exhibits.*

"D."

Copy  
Mortgage  
of Inland  
Lot 1828,  
29th  
October  
1937,  
*continued.*

month without any deduction as aforesaid AND also all such sums of money as the Mortgagees may expend in respect of the non-payment of the yearly Crown rent reserved by or non-performance of the covenants and conditions contained in the said Indenture of Crown Lease or in payment of the police lighting water and other rates if any assessed or to be assessed on the said premises or in insuring any part of the said premises from damage by fire together with interest for the same at the rate aforesaid from the time at which such expenditures were respectively made then the Mortgagees shall at any time after such payment shall have been so made upon the request and at the cost of the Mortgagors reassign the said premises hereby assigned unto the Mortgagors or as they shall direct PROVIDED ALWAYS and it is hereby declared that if default shall be made in payment as aforesaid of the sum of Fifty five thousand Dollars or the interest for the same or any part thereof respectively at the times hereinbefore appointed for payment thereof respectively or in payment of any moneys for the time being due on the security of these presents or there shall be any breach of any of the covenants herein contained it shall be lawful for the Mortgagees at any time or times thereafter without any consent on the part of the Mortgagors or of any other person to enter into and upon and take possession of the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present security and the same thenceforth to hold possess and enjoy and to receive the rents and profits thereof without any lawful interruption or disturbance by the Mortgagors or any other person and/or to let the same for any term and upon such conditions as they shall think fit and to appoint any person or persons at such remuneration as they shall think proper to collect the rents and profits of the said premises on their behalf AND the Mortgagors do hereby further covenant with the Mortgagees that they the Mortgagors will at all times during the continuance of this security keep the said premises hereby assigned or expressed or intended so to be and every part thereof in a good state of repair and in good and proper sanitary condition as required by the Hong Kong Government AND also insure all buildings now or hereafter to be erected on the said premises against loss or damage by fire in their full insurable values in some local office or offices as the Mortgagees shall first approve of in writing and will punctually pay all premia or sums of money necessary for such purpose and will at any time on demand made for the purpose on them or left on the said premises endorse over to produce to or leave with the Mortgagees the Policy or Policies of such insurance and the receipts for every such payment and the Mortgagees shall at all times have a lien on the same and the monies thereby assured AND ALSO that if default shall be made in keeping the said premises so insured it shall be lawful for the Mortgagees to insure and keep insured all or any of the said premises in any sum not exceeding their full insurable values AND THAT the Mortgagors will on demand repay to the Mortgagees all monies expended by them for that purpose with interest thereon at the rate aforesaid from the time of the same respectively having been advanced or paid and that until such repayment the same shall be a charge upon the said premises AND it is hereby declared that the Mortgagees may at any time or times hereafter without any further consent on the part of the Mortgagors or of any other person and whether in possession or not sell the said premises hereinbefore expressed to be hereby assigned or for the time being

subject to the present security or any part or parts thereof either together or in parcels and either by public auction or private contract or partly by public auction and partly by private contract with power upon any such sale to make any stipulation as to title or evidence or commencement of title or otherwise which the Mortgagees shall deem proper AND ALSO with power to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby AND for the purposes aforesaid to enter into such contracts stipulations and agreements and to execute and do all such assurances and things as may be deemed

10 expedient or necessary PROVIDED ALWAYS and it is hereby agreed and declared that the Mortgagees shall not exercise the power of sale hereinbefore contained until they shall have previously given at least one Chinese lunar month's notice in writing to the Mortgagors to pay off the moneys for the time being owing on the security of these presents or left a notice in writing to that effect at or upon some part of the premises hereinbefore expressed to be hereby assigned and default shall have been made in payment of such moneys or some part thereof at the expiration of such notice (but so that such notice shall in no case expire before the

20 said Nineteenth day of October One thousand nine hundred and thirty-eight) or unless or until the whole or any part of some monthly payment of interest whether before or after the said Nineteenth day of October One thousand nine hundred and thirty-eight shall be in arrear for one Chinese lunar month or until default shall be made in payment of Crown rent or in performance of any of the lessees covenants or conditions reserved by and contained in the said Indenture of Crown Lease or in performance of any of the covenants herein contained or until default shall be made by the Mortgagors in payment of the moneys for the time being owing on the security of these presents after notice given by the Mortgagors to the Mortgagees of their intention to pay off such moneys PROVIDED ALSO

30 and it is hereby agreed and declared that upon any letting or sale purporting to be made in pursuance of the aforesaid powers in that behalf the tenant or purchaser shall not be bound to see or enquire whether any default has been made in payment of any principal money or interest intended to be hereby secured at the times hereinbefore appointed for payment thereof or whether any money remains owing on the security of these presents or as to the propriety or regularity of such letting or sale nor in the case of any sale whether any notice has been given in writing to the Mortgagors in accordance with the provision lastly hereinbefore contained AND notwithstanding

40 any impropriety or irregularity whatsoever in such letting or sale the same shall as far as regards the safety and protection of the tenant or purchaser be deemed to be within the aforesaid powers in that behalf and be valid and effectual accordingly AND the remedy of the Mortgagors in respect of any breach of the clauses or provisions hereinbefore contained with respect to the letting or sale of the premises shall be in damages only AND IT IS HEREBY DECLARED that the receipt of the Mortgagees for the rents of the premises let or for the purchase money of the premises sold or of any part thereof shall effectually discharge the Tenant or Purchaser therefrom and from being concerned to see to

50 the application or being answerable for any loss nonapplication or misapplication thereof AND IT IS HEREBY AGREED AND DECLARED that the moneys which shall arise from any such letting or sale shall be

*Exhibits.*  
 "D."  
 Copy  
 Mortgage  
 of Inland  
 Lot 1828,  
 29th  
 October  
 1937,  
*continued.*

*Exhibits.*  
 "D."  
 Copy  
 Mortgage  
 of Inland  
 Lot 1828,  
 29th  
 October  
 1937,  
*continued.*

held upon trust in the first place to defray all expenses incurred by the Mortgagees in or about such letting or sale or otherwise in relation thereto and in paying any rates assessed on the said premises and preserving the said premises from forfeiture by paying the Crown rent and performing the Lessees covenants reserved and contained in the said Indenture of Crown Lease and in effecting or keeping up any policy or policies of insurance on the said premises against any damage by fire together with interest for the same payments after the rate of Six Dollars per mil per Chinese lunar month from the respective dates thereof Secondly to apply such moneys in or towards satisfaction of the principal moneys and interest for the time being owing on the security of these presents And thirdly to pay over the surplus (if any) unto the Mortgagor or other person entitled thereto AND IT IS HEREBY ALSO AGREED AND DECLARED that the aforesaid power of letting and sale may be exercised by any person or persons who for the time being shall be entitled to receive and give a discharge for the monies owing on the security of these presents AND FURTHER that the Mortgagees shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers and trusts or any of them AND the Mortgagors do hereby covenant with the Mortgagees that the said Indenture of Crown Lease is now a good valid and subsisting Lease of the premises hereinbefore assigned and in nowise void or voidable and that the rent and Lessees' covenants reserved and contained in the said Crown Lease have been duly paid and performed up to the date hereof AND FURTHER that they the Mortgagors shall and will from time to time during the continuance of this mortgage security pay the Crown rent and perform the Lessees' covenants and conditions by and in the said Indenture of Crown Lease reserved and contained and will pay the rates assessed on the said premises and will at all times keep the Mortgagees indemnified against all actions suits expenses and claims which may be incurred or sustained on account of the non-payment of the said Crown rent or rates or the breach of the said covenants and conditions or any of them AND ALSO that they the Mortgagors have good right to assign the premises hereinbefore expressed to be hereby assigned unto the Mortgagees for the residue of the said term and in manner aforesaid AND FURTHER that they the Mortgagors and every person having or lawfully or equitably claiming any estate right title and interest in or to the said premises or any of them will at all times at the cost until foreclosure or sale of the Mortgagors and afterwards of the person or persons requiring the same execute and do all such lawful assurances and things for the further and more perfectly assuring all or any of the said premises unto the Mortgagees as by them shall be reasonably required IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED and DELIVERED  
 by the above-named Chan Fui Hing,  
 Chan Kwok Nim and Chan Sik Tin  
 (they having been previously identified  
 by Tam Chak Lam) in the presence of

(Sd.) H. N. CHAU,  
 Solicitor,  
 Hong Kong.

(Sd.) 陳 煥 馨 (L.S.)  
 (Sd.) 陳 國 念 (L.S.)  
 (Sd.) 陳 式 典 (L.S.)

10

20

30

40

50

Interpreted by : (Sd.) WONG CHAK NAM.

Interpreter to Messrs. JOHNSON, STOKES and MASTER,  
Solicitors, &c., Hong Kong.

*Exhibits.*

" D."

Copy  
Mortgage  
of Inland  
Lot 1828,  
29th  
October  
1937,  
*continued.*

RECEIVED on the day and year first above written of  
and from the Mortgagees the sum of fifty-five } \$55,000.00  
thousand Dollars being the consideration money above }  
mentioned to be paid by them to us. }

Witness :—

(Sd.) H. N. CHAU.

(Sgd.) 陳 煥 馨

(Sgd.) 陳 國 念

(Sgd.) 陳 式 典

10

**Exhibit H.**

**COPY SECOND MORTGAGE of Inland Lot No. 1828 to secure \$5,000.00 and interest. Registered at the Land Office by Memorial No. 159,533 on Thursday the Third day of November 1938, at 3 p.m.**

" H."

Copy  
Second  
Mortgage  
of Inland  
Lot 1828,  
2nd  
November  
1938.

Chan Fui Hing, Chan Kwok

Nim and Chan Sik Tin

to

Fung Kai Sun

20

Hongkong

Stamp Duty

\$10.00.

3.11.38.

THIS INDENTURE made the Second day of November One thousand nine hundred and thirty eight BETWEEN CHAN FUI HING

( 陳 煥 馨 ), CHAN KWOK NIM ( 陳 國 念 )

and CHAN SIK TIN ( 陳 式 典 ) all of No. 300 Des Voeux

Road Central Victoria in the Colony of Hong Kong Merchants (who and each of whom and whose and each of whose executors administrators

and assigns are where not inapplicable hereinafter included under the

30

Exhibits.  
 "H."  
 Copy  
 Second  
 Mortgage  
 of Inland  
 Lot 1828,  
 2nd  
 November  
 1938,  
 continued.

designation "the Mortgagors") of the one part and FUNG KAI SUN  
 (馮啟榮) of No. 141 Caine Road Victoria aforesaid Gentleman  
 (who and whose executors administrators and assigns are where not  
 inapplicable hereinafter included under the designation "the Mortgagee")  
 of the other part WITNESSETH that in consideration of the sum of  
 FIVE THOUSAND DOLLARS Hong Kong Currency this day lent and  
 advanced by the Mortgagee to the Mortgagors (the receipt whereof is  
 hereby acknowledged) THEY the Mortgagors do hereby covenant with the  
 Mortgagee that they the Mortgagors will on the Sixth day of November  
 One thousand nine hundred and thirty nine pay unto the Mortgagee the sum 10  
 of Five thousand Dollars Hong Kong Currency and will pay interest for  
 the same in the meantime at the rate of Six and a half Dollars per mil per  
 Chinese lunar month from the Seventeenth day of November One thousand  
 nine hundred and thirty eight payable monthly in equal monthly payments  
 on the Twenty fifth day of each Chinese lunar month without any deduction  
 AND FURTHER that if the said sum of Five thousand Dollars or any part  
 thereof shall remain unpaid after the said Sixth day of November One  
 thousand nine hundred and thirty nine the Mortgagors will so long as the  
 said sum or any part thereof shall remain unpaid pay to the Mortgagee  
 interest on the said sum or such part thereof as shall remain unpaid at 20  
 the rate aforesaid by equal monthly payments on the Twenty fifth day of  
 each Chinese lunar month without deduction AND IT IS HEREBY  
 AGREED AND DECLARED that if the said sum of Five thousand Dollars  
 or any part thereof shall remain unpaid after the said Sixth day of  
 November One thousand nine hundred and thirty nine it shall not be  
 competent for the Mortgagors at any time hereafter to pay off or for the  
 Mortgagee to call in the said sum of Five thousand Dollars until the party  
 so paying off or calling in the said sum shall have given to the party  
 respectively receiving or paying the said sum (or as regards notice by the  
 Mortgagee only shall have left on some part of the premises hereinafter 30  
 assigned) at least one Chinese lunar month's previous notice in writing  
 of such intention to pay off or call in the said sum such notice in the case of  
 notice by the Mortgagors only to expire on the Twenty fifth day of any  
 Chinese lunar month AND THIS INDENTURE FURTHER  
 WITNESSETH that for the consideration aforesaid they the Mortgagors  
 do hereby assign unto the Mortgagee All That piece or parcel of ground  
 situate lying and being at Victoria aforesaid and known and registered in  
 the Land Office as INLAND LOT No. 1828 Together with all messuages  
 erections and buildings thereon now known as No. 300 Des Voeux Road 40  
 Central and No. 92 Wing Lok Street Victoria aforesaid and all other  
 erections and buildings now or hereafter to be erected thereon And all  
 rights of way (if any) rights privileges easements and appurtenances  
 thereto belonging or appertaining and all the estate right title interest  
 property claim and demand whatsoever of the Mortgagors therein and  
 thereto TO HOLD the said piece or parcel of ground messuages buildings  
 and premises hereinbefore assigned or expressed or intended so to be with  
 their and every of their appurtenances unto the Mortgagee for all the  
 residue now to come and unexpired of a certain term of Nine hundred and  
 ninety nine years from the Twenty sixth day of December One thousand  
 eight hundred and sixty six created therein by an Indenture of Crown Lease 50  
 of the said Lot dated the Fourth day of May One thousand nine hundred

and ten and made between His late Majesty King Edward Seventh of the one part and Chan Lai Shan of the other part and for all other the estate term and interest of them the Mortgagors therein subject to an Indenture of Mortgage dated the Twenty ninth day of October One thousand nine hundred and thirty seven made between the Mortgagors of the one part and Fung Pok On and the Mortgagee of the other part and registered in the Land Office by Memorial No. 155813 and to the payment of the principal sum of Fifty five thousand Dollars and the interest thereon as therein mentioned But subject nevertheless to the proviso for redemption hereinafter contained PROVIDED ALWAYS that if the Mortgagors shall on the said Sixth day of November One thousand nine hundred and thirty nine pay to the Mortgagee the sum of Five thousand Dollars Hong Kong Currency and shall pay interest for the same at the rate of Six and a half Dollars per mil per Chinese lunar month from the Seventeenth day of November One thousand nine hundred and thirty eight until repayment by equal monthly payments on the Twenty fifth day of each Chinese lunar month without any deduction as aforesaid AND also all such sums of money as the Mortgagee may expend in respect of the non-payment of the yearly Crown rent reserved by or non-performance of the covenants and conditions contained in the said Indenture of Crown Lease or in payment of the police lighting water and other rates if any assessed or to be assessed on the said premises or in insuring any part of the said premises from damage by fire together with interest for the same at the rate aforesaid from the time at which such expenditures were respectively made then the Mortgagee shall at any time after such payment shall have been so made upon the request and at the cost of the Mortgagors reassign the said premises hereby assigned unto the Mortgagors or as they shall direct PROVIDED ALWAYS and it is hereby declared that if default shall be made in payment as aforesaid of the sum of Five thousand Dollars or the interest for the same or any part thereof respectively at the times hereinbefore appointed for payment thereof respectively or in payment of any moneys for the time being due on the security of these presents or there shall be any breach of any of the covenants herein contained it shall be lawful for the Mortgagee at any time or times thereafter without any consent on the part of the Mortgagors or of any other person to enter into and upon and take possession of the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present security and the same thenceforth to hold possess and enjoy and to receive the rents and profits thereof without any lawful interruption or disturbance by the Mortgagors or any other person and/or to let the same for any term and upon such conditions as he shall think fit and to appoint any person or persons at such remuneration as he shall think proper to collect the rents and profits of the said premises on his behalf AND the Mortgagors do hereby further covenant with the Mortgagee that they the Mortgagors will at all times during the continuance of this security keep the said premises hereby assigned or expressed or intended so to be and every part thereof in a good state of repair and in good and proper sanitary condition as required by the Hong Kong Government AND also insure all buildings now or hereafter to be erected on the said premises against loss or damage by fire in their full insurable values in some local office or offices as the Mortgagee shall first approve of in writing and will punctually pay all premia or sums of money necessary for such purpose and will at any time

*Exhibits.*

"H."

Copy  
Second  
Mortgage  
of Inland  
Lot 1828,  
2nd  
November  
1938,  
*continued.*

*Exhibits.*"H."

Copy  
 Second  
 Mortgage  
 of Inland  
 Lot 1828,  
 2nd  
 November  
 1938,  
*continued.*

on demand made for the purpose on them or left on the said premises endorse over to produce to or leave with the Mortgagee the Policy or Policies of such insurance and the receipts for every such payment and the Mortgagee shall at all times have a lien on the same and the monies thereby assured AND ALSO that if default shall be made in keeping the said premises so insured it shall be lawful for the Mortgagee to insure and keep insured all or any of the said premises in any sum not exceeding their full insurable values AND THAT the Mortgagors will on demand repay to the Mortgagees all monies expended by them for that purpose with interest thereon at the rate aforesaid from the time of the same 10 respectively having been advanced or paid and that until such repayment the same shall be a charge upon the said premises AND it is hereby declared that the Mortgagee may at any time or times hereafter without any further consent on the part of the Mortgagors or of any other person and whether in possession or not sell the said premises hereinbefore expressed to be hereby assigned or for the time being subject to the present security or any part or parts thereof either subject to the said Indenture of Mortgage or freed and absolutely discharged therefrom and either together or in parcels and either by public auction or private contract or partly by public auction and partly by private contract with power upon any such 20 sale to make any stipulation as to title or evidence or commencement of title or otherwise which the Mortgagee shall deem proper AND ALSO with power to buy in or rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby AND for the purposes aforesaid to enter into such contracts stipulations and agreements and to execute and do all such assurances and things as may be deemed expedient or necessary PROVIDED ALWAYS and it is hereby agreed and declared that the Mortgagee shall not exercise the power of sale hereinbefore contained until he shall have previously given at least one Chinese lunar month's notice in writing to the Mortgagors to pay off the 30 moneys for the time being owing on the security of these presents or left a notice in writing to that effect at or upon some part of the premises hereinbefore expressed to be hereby assigned and default shall have been made in payment of such moneys or some part thereof at the expiration of such notice (but so that such notice shall in no case expire before the said Sixth day of November One thousand nine hundred and thirty nine) or unless or until the whole or any part of some monthly payment of interest whether before or after the said Sixth day of November One thousand nine hundred and thirty nine shall be in arrear for one Chinese lunar month or until default shall be made in payment of Crown rent or in performance 40 of any of the lessees covenants or conditions reserved by and contained in the said Indenture of Crown Lease or in performance of any of the covenants herein contained or until default shall be made by the Mortgagors in payment of the moneys for the time being owing on the security of these presents after notice given by the Mortgagors to the Mortgagee of his intention to pay off such moneys PROVIDED ALSO and it is hereby agreed and declared that upon any letting or sale purporting to be made in pursuance of the aforesaid powers in that behalf the tenant or purchaser shall not be bound to see or enquire whether any default has been made in payment of any principal money or interest 50 intended to be hereby secured at the time hereinbefore appointed for payment thereof or whether any money remains owing on the security of



these presents or as to the propriety or regularity of such letting or sale nor in the case of any sale whether any notice has been given in writing to the Mortgagors in accordance with the provision lastly hereinbefore contained AND notwithstanding any impropriety or irregularity whatsoever in such letting or sale the same shall as far as regards the safety and protection of the tenant or purchaser be deemed to be within the aforesaid powers in that behalf and be valid and effectual accordingly AND the remedy of the Mortgagors in respect of any breach of the clauses or provisions hereinbefore contained with respect to the letting or sale of the premises shall be in damages only AND it is hereby declared that the receipt of the Mortgagee for the rents of the premises let or for the purchase money of the premises sold or of any part thereof shall effectually discharge the Tenant or Purchaser therefrom and from being concerned to see to the application or being answerable for any loss nonapplication or misapplication thereof AND it is hereby agreed and declared that the moneys which shall arise from any such letting or sale shall be held upon trust in the first place to defray all expenses incurred by the Mortgagee in or about such letting or sale or otherwise in relation thereto and in paying any rates assessed on the said premises and preserving the said premises from forfeiture by paying the Crown rent and performing the Lessees' covenants reserved and contained in the said Indenture of Crown Lease and in effecting or keeping up any policy or policies of insurance on the said premises against any damage by fire together with interest for the same payments after the rate of Six and a half Dollars per mil per Chinese lunar month from the respective dates thereof Secondly to apply such moneys in or towards satisfaction of the principal moneys and interest for the time being owing on the security of these presents And thirdly to pay over the surplus (if any) unto the Mortgagors or other person entitled thereto AND it is hereby also agreed and declared that the aforesaid power of letting and sale may be exercised by any person or persons who for the time being shall be entitled to receive and give a discharge for the monies owing on the security of these presents AND further that the Mortgagee shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid powers and trusts or any of them AND the Mortgagors do hereby covenant with the Mortgagee that the said Indenture of Crown Lease is now a good valid and subsisting Lease of the premises hereinbefore assigned and in nowise void or voidable and that the rent and Lessees covenants reserved and contained in the said Crown Lease have been duly paid and performed up to the date hereof AND further that they the Mortgagors shall and will from time to time during the continuance of this mortgage security pay the Crown rent and perform the Lessees' covenants and conditions by and in the said Indenture of Crown Lease reserved and contained and will pay the rates assessed on the said premises and will at all times keep the Mortgagee indemnified against all actions suits expenses and claims which may be incurred or sustained on account of the non-payment of the said Crown rent or rates or the breach of the said covenants and conditions or any of them AND ALSO that they the Mortgagors have good right to assign the premises hereinbefore expressed to be hereby assigned unto the Mortgagee for the residue of the said term and in manner aforesaid save and subject as aforesaid AND further that they the Mortgagors and every person having or lawfully or equitably claiming any estate right title and interest in or

*Exhibits.*

" II."

Copy  
Second  
Mortgage  
of Inland  
Lot 1828,  
2nd  
November  
1938,  
*continued.*

Exhibits.  
"H."  
Copy  
Second  
Mortgage  
of Inland  
Lot 1828,  
2nd  
November  
1938,  
continued.

to the said premises or any of them will save and subject as aforesaid at all times at the cost until foreclosure or sale of the Mortgagors and afterwards of the person or persons requiring the same execute and do all such lawful assurances and things for the further and more perfectly assuring all or any of the said premises unto the Mortgagee as by him shall be reasonably required IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

SIGNED SEALED and DELIVERED  
by the above-named Chan Fui Hing,  
Chan Kwok Nim and Chan Sik Tin  
(they having been previously  
identified by Wong Chak Nam) in  
the presence of

(Sd.) 陳 國 念 (L.S.)  
10  
(Sd.) 陳 式 典 (L.S.)  
(Sd.) 陳 煥 馨 (L.S.)

Sd. F. H. KWOK,  
Solicitor,  
Hong Kong.

Interpreted by : (Sd.) WONG CHAK NAM.  
Interpreter to Messrs. JOHNSON, STOKES & MASTER,  
Solicitors, &c., Hong Kong. 20

RECEIVED on the day and year first above written of and  
from the Mortgagee the sum of Five thousand Dollars  
being the consideration money above-mentioned to be  
paid by him to us. } \$5,000.00

Witness :—

(Sd.) F. H. KWOK

(Sd.) 陳 國 念

(Sd.) 陳 式 典

(Sd.) 陳 煥 馨

## Exhibit J.

LETTER, Chan Sik Tin to Chan Fui Hing.

*Exhibits.*

This is to inform you that I have recently heard that the rent of House No. 300, Des Voeux Road Central, had been attached by somebody.

According to the information given by the daughter of Yam Tong who came here, she discovered that Chung Wah had indebted to the bank several ten thousand dollars and that the rent had been attached by the bank which made deductions from the rent of the said house for repayment of the sum of money and interest.

10 I think he must have put up the said house as security, hence this matter crops up.

I hereby specially send this letter to inform you with the request that you will come to Hong Kong immediately on receipt of my letter and negotiate with him at your early convenience without any delay, as it is feared that delay would cause other changes. It will be fortunate if you will pay attention to (this).

Other matters shall be talked over later. This is specially written to enquire after your welfare.

Your younger brother,

20

Words submitted by

SIK TIN.

6th day 4th moon.

24th May.

I hereby certify the foregoing to be a true translation of the Chinese letter marked "A."

(Sd.) LUK HOK KING,

Court Translator.

1.12.39.