

~~PC~~  
~~SMH-62~~

Judgment  
1964  
No. 14 of 1963

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT

COMPANIES (WINDING-UP) No. 2 OF 1961

AND IN THE MATTER OF SEMANTAN ESTATE (1952) LIMITED

AND IN THE MATTER OF THE COMPANIES ORDINANCES 1940 to 1946

B E T W E E N

NG ENG HIAM

(Petitioner) APPELLANT

- and -

1. NG KEE WEI
2. NG CHIN SIU
3. NG BEH LEOW
4. NG SOOK CHIN (f)
5. NG SOOK HIN (f)
6. NG SOOK KENG (f)
7. NG BEH YEOW
8. NG BEH PUAN
9. NG BEH KIAN
10. LIM TUAN (f)
11. NG BEH TONG

UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED  
 LEGAL STUDIES**  
 23 JUN 1965  
 25 RUSSELL SQUARE  
 LONDON, W.C.1.

78707

(Opponents) RESPONDENTS

RECORD OF PROCEEDINGS

LOVELL WHITE & KING,  
1, Serjeants' Inn,  
London, E.C.4.

Solicitors for the Appellant.

PEACOCK & GODDARD,  
1 Raymond Buildings,  
Gray's Inn,  
London W.C.1.

Solicitors for the Respondents.

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT

COMPANIES (WINDING-UP) No. 2 of 1961

AND IN THE MATTER OF SEMANTAN ESTATE (1952) LIMITED

AND IN THE MATTER OF THE COMPANIES ORDINANCES 1940 to 1946

B E T W E E N

NG ENG HIAM (Petitioner) Appellant

- and -

1. NG KEE WEI
2. NG CHIN SIU
3. NG BEH LEOW
4. NG SOOK CHIN (f)
5. NG SOOK HIN (f)
6. NG SOOK KENG (f)
7. NG BEH YEOW
8. NG BEH PUAN
9. NG BEH KIAN
10. LIM TUAN (f)
11. NG BEH TONG (Opponents) Respondents

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RECORD OF PROCEEDINGS

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ON APPEAL  
FROM THE SUPREME COURT OF THE FEDERATION  
OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT  
COMPANIES (WINDING-UP) No. 2 of 1961

AND IN THE MATTER OF SEMANTAN ESTATE (1952) LIMITED

AND IN THE MATTER OF THE COMPANIES ORDINANCES 1940  
to 1946

10

B E T W E E N :

NG ENG HIAM (Petitioner) Appellant

- and -

- 1. NG KEE WEI
- 2. NG CHIN SIU
- 3. NG BEH LEOW
- 4. NG SOOK CHIN (f)
- 5. NG SOOK HIN (f)
- 6. NG SOOK KENG (f)
- 7. NG BEH YEOW
- 8. NG BEH PUAN
- 9. NG BEH KIAN
- 10. LIM TUAN (f)
- 11. NG BEH TONG

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(Opponents) Respondents

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RECORD OF PROCEEDINGS

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No. 1.

PETITION OF NG ENG HIAM

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

In the High  
Court at  
Kuala Lumpur

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IN THE HIGH COURT AT KUALA LUMPUR  
COMPANIES (WINDING-UP) NO: 2 OF 1961

No. 1.

Petition of  
Ng Eng Hiam

23rd October  
1961.

In the High  
Court at  
Kuala Lumpur

In the matter of Semantan Estate  
(1952) Limited

And

No. 1.  
Petition of  
Ng Eng Hiam

In the matter of the Companies  
Ordinances, 1940 to 1946

23rd October,  
1961.

(continued)

To,

The Supreme Court of the Federation of Malaya  
at Kuala Lumpur.

The humble petition of Ng Eng Hiam of  
No. 164, Bukit Bintang Road, Kuala Lumpur,  
sheweth as follows:-

10

1. Semantan Estate (1952) Limited (herein-  
after called 'the Company') was incorporated  
in the month of May 1952 as a private company  
limited by shares.

2. The registered office of the Company is  
situate at No. 19, Ampang Road, Kuala Lumpur.

3. The capital of the Company is \$1,000,000/-  
divided into 1,000 shares of \$1,000/- each, all  
of which were issued for cash in July 1952,  
shortly after the incorporation of the Company,  
and have since then stood credited as fully  
paid in the books of the Company, as to 50%  
thereof, in the names of your Petitioner, a  
Permanent Director, and members of his family,  
and as to the other 50% thereof, in the names  
of Ng Chin Siu, the other Permanent Director,  
and members of his family. Particulars of the  
shareholdings, which have not changed since  
the original issue, are set forth hereunder:

20

PARTICULARS

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(A) Shares held by the Petitioner  
and members of his family

(i)	Ng Eng Hiam (Petitioner)	50
(ii)	Chang Kwee Chee(f) (wife)	200
(iii)	Tan Geok Eng(f) (wife)	50
(iv)	Ng Tian Ming (son)	<u>200</u> 500

(B) Shares held by Ng Chin Siu and

members of his family

In the High  
Court at  
Kuala Lumpur

	(i) Ng Chin Siu		50	
	(ii) Lim Tuan(f) (wife)		50	
	(iii) Ng Kee Wei	}	135	
	(iv) Ng Beh Tong		45	
	(v) Ng Beh Leow		45	
	(vi) Ng Beh Kian		45	
	(vii) Ng Beh Puan		45	
	(viii) Ng Beh Yeow		45	
10	(ix) Ng Beh Yoke (died in 1958)	}	10	
	(x) Ng Sook Chin(f)		10	
	(xi) Ng Sook Hui(f)		10	
	(xii) Ng Sook Keng(f)	) daughters	10	
			<u>10</u>	<u>500</u>
	Total			<u>1,000</u>

No. 1.

Petition of  
Ng Eng Hiam

23rd October,  
1961.

(continued)

4. The objects for which the Company was established were to carry on business as rubber planters, estate owners and other objects set forth in the memorandum of association thereof.

5. Shortly after the incorporation of the Company it acquired a rubber estate known as the Semantan Estate in Mentakab, State of Pahang, (approximately 3,243 acres in area, of which about 1,218 acres was jungle land) and commenced business. Thereafter, another rubber estate known as Batu Estate within the district of Kuala Lumpur, approximately 700 acres in area, was acquired by the Company early in 1955 and a third rubber estate known as the Segambut Estate in the District of Kuala Lumpur approximately 566 acres, was acquired about the end of 1956. Save as to part of the Batu Estate since acquired by the Government the Company still owns all the 3 estates.

6. Until recently the Company has been successful and in a winding-up there would be a substantial surplus for the shareholders.

7. The Company was promoted by your Petitioners and the said Ng Chin Siu and their intention was to include such provisions in the constitution of the Company as would give them an equal share in the management of the business and preserve the equal voting strength of their 2 families, and the articles of association have therefore at all material times contained and still contain the provisions hereinafter in paragraphs 8, 9, 10 and 11 set forth.

In the High  
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Kuala Lumpur

No. 1.

Petition of  
Ng Eng Hiam

23rd October,  
1961.

(continued)

8. (i) Under Section 82 your Petitioner and the said Ng Chin Siu were appointed Permanent Directors for life or until resignation subject to their holding a special qualification, namely, ordinary shares of the nominal value of \$20,000/- at least, which qualification they have at all material times held and still hold. Power is conferred on each Permanent Director to appoint another Permanent Director in his place, such appointee to be a wife, son, brother, son-in-law, grandson or nephew of, and to have all the powers and authorities vested in, the original Permanent Director.

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(ii) Under Sections 83 and 84 the Permanent Directors for the time being have authority to appoint other persons as ordinary directors, to define limit and restrict their powers and fix their remuneration and duties, to remove them from office without any notice, and such ordinary directors may exercise only such powers as are delegated to them by, and subject to the control and directions of, the Permanent Directors.

20

(iii) Under Section 86 the power of the Company in a general meeting to appoint or remove directors is expressly excluded so long as any of the Permanent Directors holds office under Section 82.

9. The Management of the Company is vested in the Permanent Directors, or in the sole Permanent Director, as the case may be, who are or is authorised, to the exclusion of the ordinary directors (if any), to exercise all the powers of and do all such acts as may be exercised or done by the Company, except such as are not expressly by the articles or by law required to be done by the Company at a general meeting. (Sections 99 and 83). By section 107 the quorum for a directors' meeting is fixed at 2 (unless otherwise determined, which has not been done) and it is provided that the Chairman should not have a second or casting vote in case the directors shall be equally divided on any question.

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10. The articles (Sections 67, 69 and 77) further provide that at general meetings, on a show of hands, each shareholder personally



present should have one vote, and on a poll, each shareholder present either in person or by proxy should have one vote for each share held by him, and that the Chairman should not have a second or casting vote.

In the High  
Court at  
Kuala Lumpur

No. 1.

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Ng Eng Hiam

23rd October,  
1961.

(continued)

10 11. The right to transfer shares is restricted to the extent that, except in cases of transfer by a member to his son or grandson, or where the shares stand registered in the name of a  
deceased or bankrupt member, by his legal  
personal representative or assignee in bank-  
ruptcy to such deceased or bankrupt member's  
son, daughter, grandson, brother or widow, or  
where the shares stand registered in the names  
of trustees of the will of a deceased member,  
by such trustees to the successor trustees, no  
shares can be transferred (even as between  
members) without the unanimous approval of the  
Permanent Directors (Sections 36, 38).

20 12. Your Petitioner and the said Ng Chin Siu have since the incorporation of the Company been and still are the sole directors of the Company, being the Permanent Directors thereof under Section 82.

30 13. At the first Board meeting held on the 22nd July, 1952, Ng Chin Siu was appointed Chairman of the Board and Ng Kee Wei, his eldest son and a shareholder, General Manager of the Company, and they have at all material  
times held and still hold the said appoint-  
ments. The Board further resolved to open a  
banking account with the Oversea-Chinese  
Banking Corporation Ltd., Kuala Lumpur branch,  
which was done, and that all cheques etc. on  
such account must be signed by one of the  
Permanent Directors and countersigned by the  
General Manager or the Secretary. To the  
best of your Petitioner's knowledge, information  
and belief this is the only bank account in the  
40 name of the Company.

14. Since the incorporation of the Company and until about the latter part of 1957:

- (a) estimates of expenditure for the coming financial year prepared by the estate managers and monthly statements of accounts prepared by the estate managers giving particulars of crop harvested and of

In the High  
Court at  
Kuala Lumpur

No. 1.

Petition of  
Ng Eng Hiam

23rd October,  
1961.

(continued)

expenditure incurred in running the estates, with detailed analysis thereof, were supplied more or less regularly to each of the Permanent Directors for scrutiny:

- (b) all sales of rubber were effected by the said Ng Chin Siu with the knowledge of your Petitioner;
- (c) whenever necessary informal discussions regarding sales of rubber and other matters relating to the business of the Company took place between them; 10
- (d) formal Board meetings were held at regular intervals where the estimates and monthly estate accounts were discussed and passed, the Secretaries reported on the financial position of the Company, progress reports were given by the General Manager and all such matters as required the attention or consideration of the Board were brought up and discussed and decisions taken thereon. 20

15. During the year 1957 differences arose between your Petitioner and the said Ng Chin Siu as to the mode of conducting the business of the Company; in particular, at a Board meeting held on the 24th May 1957, at which Ng Kee Wei, the general manager, was in attendance, the latter claimed a special bonus in respect of work alleged to have been done by him in connection with the acquisition proceedings relating to part of Batu estate which was apposed by your Petitioner; thereafter, in or about September, 1957, the said Ng Chin Siu and Ng Kee Wei, without the knowledge or consent of your Petitioner, authorised a contractor to fell jungle trees on the Semantan estate subject to payment of royalty which was very much lower than the royalty agreed to be paid by another contractor who had been introduced to the Company by your Petitioner, as a result of which the Company has suffered considerable loss. Your Petitioner has not yet been able to ascertain the circumstances in which or the precise terms on which this contract for felling timber was given out. 30 40

16. By reason of differences and disputes, your Petitioner and the said Ng Chin Siu and their respective families have not been on speaking terms with one another since the beginning of 1958.

In the High  
Court at  
Kuala Lumpur

No. 1.

Petition of  
Ng Eng Hiam

23rd October,  
1961.

(continued)

10 17. After the said disputes and differences arose your Petitioner was for a time supplied with the monthly accounts but at longer and irregular intervals. In particular, to the best of your Petitioner's knowledge, information and belief, he was supplied with the Semantan estate annual estimate for 1958 in or about May 1958, the Semantan estate monthly estate accounts for the period January, 1958 to April, 1958 in or about December 1958 and the monthly accounts for May and June, 1958 in or about January 1959; and the Batu and Segambut estates monthly accounts for the period January 1958 to October, 1958 on different dates between January and March, 1959.

20 Since then he has not been supplied with any other subsequent annual estimates or monthly accounts, contrary to the established practice of the Company and in spite of repeated requests made by your Petitioner for such estimates and accounts.

30 18. The registered office of the Company is situate at No. 19, Ampang Road, Kuala Lumpur, which, together with the adjoining premises No. 21, Ampang Road, is the residence of the said Ng Chin Siu and his family. To the best of your Petitioner's knowledge, information and belief, the books of account and other records of the Company are kept in a room in premises No. 21, Ampang Road, which is also used as a private office of the said Ng Chin Siu. By reason of the strained relationship that has existed between your Petitioner and the said Ng Chin Siu since sometime in 1957 it has not been and is not possible for your Petitioner

40 to visit the said premises and inspect the books of account and other documents, and your Petitioner has in reality been deprived of his right of access thereto.

19. Save as to certain matters connected with the acquisition proceedings relating to part of the Batu estate in respect of which the concurrence of the 2 Permanent Directors was obtained through the Secretaries of the Company,

In the High  
Court at  
Kuala Lumpur

No. 1.

Petition of  
Ng Eng Hiam

23rd October,  
1961.

(continued)

and save as to two directors' meetings called for the 17th day of June, 1958 and 12th November, 1958, at which, by reason of differences, no business could be conducted, and a third meeting held on the 27th day of November, 1958 at which the strike situation on the Company's rubber estate was directed to be referred to the Company's legal advisers, there has not been any meeting of the directors, either formal or informal, to transact any of the Company's business since the beginning of 1958. And the business of the Company has been conducted, by the said Ng Chin Siu, and, in particular, all sales of rubber effected and all cheques on the Company's bank account drawn by the said Ng Chin Siu with (as far as your Petitioner is aware) the assistance of the General Manager and Secretaries of the Company, but without the concurrence of your Petitioner, contrary to law and the articles of association, since the said Ng Chin Siu had and has now power to act alone on behalf of the Board of Directors.

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20. No annual general meetings of the Company were held during the years 1958, 1959 and 1960. A general meeting convened by the Secretaries without the authority of your Petitioner was held on the 27th day of May, 1961 before which were laid what purported to be the directors' report and the balance sheets and profit and loss accounts for the years 1957, 1958 and 1959, none of which were signed by your Petitioner, the reason being that your Petitioner not having had the opportunity of scrutinising the accounts or taking any part in the conduct of the business during the relevant years declined to accept responsibility therefor. At the said meeting your Petitioner proposed that the consideration of the said purported directors' report and the accounts be adjourned to enable him to inspect the accounts; 2 amendments to the resolution having been moved, your Petitioner demanded a poll which the said Ng Chin Siu, as Chairman of the said meeting, wrongfully disallowed, whereupon your Petitioner and his supporters left the meeting, they being in a minority if a vote was to be taken on a show of hands only but in respect of which they could secure a majority if a poll was allowed.

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21. Your Petitioner respectfully submits that it has become impossible to conduct the

business of the Company according to law and the regulations of the Company.

22. Your Petitioner has been unable to obtain the concurrence of the said Ng Chin Siu to a voluntary winding-up of the Company.

23. In the circumstances it is just and equitable that the Company should be wound up.

Your Petitioner therefore humbly prays as follows:-

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(i) That Semantan Estate (1952) Limited may be wound up by the Court under the provisions of the Companies Ordinances, 1940 to 1946;

(ii) Or that such other order may be made in the premises as shall be just.

Dated this 23rd day of October, 1961.

Sd: Ng Eng Hiam,  
Petitioner.

20

Note:- It is intended to serve this Petition on Semantan Estate (1952) Limited.

Petition presented on the 23rd day of October, 1961 and appointed to be heard before the High Court at Kuala Lumpur on Monday the 27th day of November, 1961 at 10.00 o'clock in the forenoon.

Sd: A. W. Au.

Senior Assistant Registrar,  
High Court, Kuala Lumpur.

In the High  
Court at  
Kuala Lumpur

No. 1.

Petition of  
Ng Eng Hiam.

23rd October,  
1961.

(continued)

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10.

In the High  
Court at  
Kuala Lumpur

No. 2.

AFFIDAVIT OF NG ENG HIAM VERIFYING  
THE PETITION.

No. 2.

IN THE SUPREME COURT OF THE FEDERATION  
OF MALAYA

Affidavit of  
Ng Eng Hiam  
verifying the  
Petition.

IN THE HIGH COURT AT KUALA LUMPUR

COMPANIES (WINDING-UP) NO. 2 OF 1961

23rd October,  
1961.

In the matter of Semantan Estate  
(1952) Limited

10

And

In the matter of the Companies  
Ordinances, 1940 to 1946.

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A F F I D A V I T

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I, Ng Eng Hiam of full age, Chinese  
Nationality residing at No. 164, Bukit  
Bintang Road, Kuala Lumpur, do hereby  
solemnly affirm and say as follows:-

1. I am the Petitioner herein.

2. That such of the statements in the  
Petition now produced and shewn to me, and  
marked with the letter "A" as relate to my  
own acts and deeds are true, and such of the  
said statements as relate to the acts and  
deeds of any other person or persons I  
believe to be true.

20

3. The document now produced and shewn to  
me, and marked with the letter "B", is a  
printed copy of the Memorandum & Articles  
of Association of the abovenamed Company,  
and the document now produced and shewn to  
me, and marked with the letter "C" is a copy  
of the minutes of the annual General Meeting  
of the Company held on the 27th day of May,  
1961, referred to in paragraph 20 of the

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11.

Petition, as recorded by the Secretaries in the minute book of the Company and certified by them to be a true copy thereof.

In the High Court at Kuala Lumpur

Affirmed at Kuala Lumpur) this 23rd day of October, 1961, at 10.15 a.m. } Sd: Ng Eng Hiam.

No. 2.

Affidavit of Ng Eng Hiam verifying the Petition.

Before me,

23rd October, 1961.

Sd: Lee Kong Beng  
COMMISSIONER FOR OATHS.

(continued)

10 This Affidavit was filed by Messrs. Eugene Lye & Hoh, Solicitors for the Petitioner above-named.

No. 3.

AFFIDAVIT OF NG KEE WEI OPPOSING  
THE PETITION

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Companies (Winding-up) No. 2 of 1961

No. 3.

20 In the matter of Semantan Estate (1952) Limited

Affidavit of Ng Kee Wei opposing the Petition.

And

In the matter of the Companies Ordinances, 1940 to 1946.

24th November, 1961.

I, Ng Kee Wei, of No. 19 Ampang Road Kuala Lumpur make oath and say as follows:-

1. I am the General Manager of Semantan Estate (1952) Limited and all the matters deposed to herein are within my own knowledge true.
  2. I have read a copy of the petition of Ng Eng Hiam filed herein. A copy of the said
- 30

In the High  
Court at  
Kuala Lumpur

No. 3.

Affidavit of  
Ng Kee Wei  
opposing the  
Petition.

24th November,  
1961.

(continued)

petition was served on the company on the 4th November, 1961. The Company has not been served with any affidavit in support of the said petition.

3. I admit the correctness of the allegation contained in paragraphs 1 to 5 inclusive of the petition.
4. As to paragraph 6 of the petition I say that the Company has been and still is successful. It continues to make substantial profits and there is no reason whatsoever why it should be wound-up. 10
5. Subject to the deletion of the word "not" in the sixth line of paragraph 9 of the petition and to the word "May" being substituted for the word "July" in the first line of paragraph 13 of the petition. I admit the correctness of the allegations contained in paragraphs 7 to 13 inclusive of the petition. 20
6. I admit that until the latter part of 1957 the said Ng Eng Hiam co-operated in the management of the affairs of the company and made frequent visits to the registered office of the company where he inspected estimates, acquainted himself with details of sales of rubber, had numerous informal discussions, and attended formal Board meetings. There has been nothing to prevent the said Ng Eng Hiam from doing in the years 1958 onwards exactly what he had done previously. Because of ill-feeling which developed towards the end of 1957 between the petitioner and Ng Chin Siu (the father of this deponent) the petitioner has adopted an attitude which is obstructive and non-co-operative and his attendances at the registered office have been rare occurrences. The ill-feeling was due solely to the refusal of the said Ng Chin Siu to agree to a voluntarily liquidation. As a consequence it became necessary to hold directors meetings by means of circulars. Audited balance sheets have been sent to him. Circulars are sent to him which he either signs or returns. The accounts are and always have been available at the Company's office for his inspection and no 30 40



obstacle of any kind exists which would prevent the petitioner from making any investigation which he might see fit. No discourtesy had ever been shown to him.

In the High Court at Kuala Lumpur

No. 3.

Affidavit of Ng Kee Wei opposing the Petition.

24th November, 1961.

(continued)

10 7. With regard to paragraph 15 of the petition I say that it is quite true that the petitioner resented my claiming a special bonus in the year 1957 in connection with the acquisition of part of Batu estate. I had done a considerable amount of extra work in connection with the acquisition of the Batu Estate and I considered that I should have been paid some extra remuneration for my services. The petitioner opposed my claim. To remove any misunderstanding I say that I was not awarded such special bonus and I have not therefore received such special bonus.

20 8. With regard to the allegation contained in paragraph 15 of the petition which concerns the felling of jungle trees I say that the contractor engaged was the person nominated by the internal visiting agent. The difference in the price was due solely to three factors

- (a) a drop in the price of timber as the contract was made about eight months after the Contractor nominated by the petitioner came forward
- 30 (b) the Contractor undertook to construct a road for the estate use
- (c) the Contractor nominated by the petitioner failed to sign a contract and stopped payment of the cheque which he had given as a deposit.

Full information concerning this contract for felling trees is and always has been available to the petitioner at the company's office.

40 9. The statement in paragraph 16 of the petition is not altogether true. Some members of the two families are on friendly terms with each other.

10. As to paragraph 17 of the Petition I say

In the High  
Court at  
Kuala Lumpur

No. 3.

Affidavit of  
Ng Kee Wei  
opposing the  
Petition.

24th November,  
1961.

(continued)

that audited balance sheets have always been sent to the petitioner and full accounts and estimates have been continuously available for his inspection and examination at the company's office.

11. As to paragraph 18 I absolutely deny that it has not been possible for the petitioner to visit the company's office and inspect books of account and other documents. In fact this deponent has been anxious that he should do so. No discourtesy of any kind has been or would be shown to the petitioner if he would see fit to attend at the office. His failure to attend frequently at the company's office is solely due to the non-co-operative attitude which he has taken since 1957. In fact since the year 1957 the petitioner has paid several visits to the Company's office. 10
12. The failure to hold meetings as alleged in paragraph 19 of the petition, has on occasions been due to the fact that the petitioner will not attend them unless he is allowed to bring a lawyer with him. Meetings of directors are strictly private affairs and the said Ng Chin Siu has objected to the presence of a third party, not being a shareholder, at such meetings. In view of the obstructive attitude of the petitioner it has become necessary to conduct a lot of the company's business without his express concurrence. This deponent submits that on a true construction of the articles of association of the company the approval of the petitioner is not required for each and every operation of the business of the company however small such operation may be. 20 30
13. The failure to hold annual general meetings during the years 1958, 1959 and 1960 was due solely to the doubt held by the secretaries of the company as to whether they had power to convene an annual general meeting without the authority of the petitioner so to do. Eventually in the year 1961 the secretaries did decide to call an annual general meeting which the petitioner now complains was convened without his authority. If meetings had been 40

called in the years 1958, 1959 and 1960 it would have been open to him to make a similar complaint. His objections that he had not had an opportunity to scrutinizing the accounts or taking any part in the conduct of the business are manifestly untrue as he has only himself to blame if he neglects to visit the company's office and see what is going on. The demand for a poll which he made at the meeting of the 27th May 1961 was merely in respect of his resolution for an adjournment of the meeting. It was rejected by a show of hands.

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14. The truth of the matter is that since 1957 the petitioner has been desirous of having the company wound up. His wish has not been acceded to because the company is and always has been in a flourishing condition and it is against the interest of the shareholders as a whole that there should be a disposal of the assets. This deponent denies that any deadlock exists, or that it has become impossible to conduct the business of the company according to law and the regulations of the company. In fact despite the calculated obstruction of the petitioner over a long period of time the affairs of the company are being conducted smoothly and profitably and this state of affairs is likely to continue despite the attitude of the petitioner.

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15. This deponent submits that the petition herein is not brought bona-fide and no grounds exist either in law or equity on which an order of this Honourable Court for winding up should be made.

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Sworn at Kuala Lumpur )  
 this 24th day of ) Sd: Ng Kee Wei  
 November, 1961 at 3.05 )  
 p.m.

Before me  
 Sd: Sarathy.

Note:- This affidavit is filed on behalf  
 Ng Kee Wei an objector to the  
 Petition.

In the High  
 Court at  
Kuala Lumpur

No. 3.

Affidavit of  
 Ng Kee Wei  
 opposing the  
 Petition.

24th November,  
 1961.

(continued)

In the High  
Court at  
Kuala Lumpur

No. 4.  
Supplementary  
Affidavit of  
Ng Eng Hiam.  
25th November,  
1961.

16.

No. 4.

SUPPLEMENTARY AFFIDAVIT OF NG ENG  
HIAM.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
(Companies (Winding-Up) No. 2 of 1961)

---

In the matter of Semantan Estate  
(1952) Limited

And

10

In the matter of the Companies  
Ordinances, 1940 to 1946.

---

A F F I D A V I T

I, Ng Eng Hiam of full age, Chinese nationality residing at No. 164, Bukit Bintang Road, Kuala Lumpur, do hereby solemnly affirm and say as follows:-

1. I am the Petitioner in the abovenamed Petition.

2. I crave leave to refer to the abovenamed Petition presented before this Honourable Court on the 23rd day of October, 1961. 20

3. Further to the allegations contained in the Petition abovenamed I say that sometime during the years 1958 and 1959 I did make the following attempts to resolve the differences and dispute which rendered impossible for the company to carry on its business in the normal and lawful way :-

(1) I requested one Khoo Seong Chee of Messrs. Nam Cheong & Company, Klyne Street, Kuala Lumpur, a licensed rubber dealer, to mediate in the differences between your Petitioner and the said Ng Chin Siu by suggesting that the 30

assets of the Company be split into two equal shares, namely :-

In the High  
Court at  
Kuala Lumpur

- (a) One share to consist of Semantan Estate
- (b) One share to consist of Batu Estate and Segambut Estate.
- (c) The difference in value, if any, between the above said two shares be valued by a qualified independent valuer and, such difference be compensated by a cash payment.
- (d) That the said Ng Chin Siu and your Petitioner cast lots as to which share each of them shall be entitled;

No. 4.

Supplementary  
Affidavit of  
Ng Eng Hiam.

25th November,  
1961.

(continued)

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or in the alternative, your Petitioner suggested that the said Company be voluntarily wound-up.

I am informed by the said Khoo Seong Chee and I verily believe that he did discuss the above described suggestion with the said Ng Chin Siu but the said Ng Chin Siu refused and disagreed to accept the suggestion above described.

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(ii) After the unsuccessful attempt above stated to resolve the differences between your Petitioner and the said Ng Chin Siu, one Ng Kim Leng, the President of The Yung Chun Ching Yuan Ng's Teng Chin Clan Association of Malaya, of which your Petitioner and the said Ng Chin Siu are prominent members, and some of his officers, who were aware of the differences between your Petitioner and the said Ng Chin Siu, offered to and did mediate therein on the terms described in paragraph 3(i) hereof without any success.

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(iii) Subsequent to the above attempt, one Lee Yan Lian, The President of the Eng Choon Association, of which your Petitioner and the said Ng Chin Siu are also prominent members, also offered and did attempt to resolve the said differences on the terms described in paragraph 3 (i) hereof without success.

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In the High Court at Kuala Lumpur

No. 4.

(iv) Subsequent to and as a result of the failure of the abovesaid, the said Ng Kim Leng made one further attempt to resolve the said difference but it was also unsuccessful.

Supplementary Affidavit of Ng Eng Hiam.

25th November, 1961.

(continued)

4. In all the abovestated attempts to resolve the said differences, I was informed by the persons concerned that the said Ng Chin Siu not only disagreed to but also refused to discuss the matter at all and, neither did the said Ng Chin Siu offer any alternative terms.

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5. During my absence from the Federation of Malaya in April 1959 until July 1959, I granted a Power of Attorney to one Chan Chee Hong, a friend and the secretary of my other company to resolve the said difference on the terms set out in paragraph 3(i) hereof. The said Chan Chee Hong attempted to discuss the matter with the said Ng Chin Siu but was just successful.

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6. In the circumstances, your Petitioner prays that it is just and equitable that the Company should be wound-up.

Affirmed at Kuala Lumpur }  
this 25th day of November, } Sd: Ng Eng Hiam.  
1961 at 4.05 p.m. }

Before,

Sd: W.K. Ho  
COMMISSIONER FOR OATHS.

This Affidavit was filed by Messrs. Eugene Lye & Hoh, Solicitors for the Petitioner abovenamed.

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19.

No. 5.

AFFIDAVIT OF NG ENG HIAM IN  
REPLY

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
Companies (Winding-Up) No. 2 of 1961

In the matter of Semantan Estate  
(1952) Limited

In the High  
Court at  
Kuala Lumpur

No. 5.

Affidavit of  
Ng Eng Hiam  
in reply.

5th December,  
1961.

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And

In the matter of the Companies  
Ordinances, 1940 to 1946.

A F F I D A V I T

I, Ng Eng Hiam of full age, Chinese  
nationality residing at No. 164, Bukit Bintang  
Road, Kuala Lumpur, do hereby solemnly affirm  
and say as follows:-

In the High  
Court at  
Kuala Lumpur

No. 5.

Affidavit of  
Ne Eng Hiam  
in reply.

5th December,  
1961.

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1. I am the Petitioner in the abovenamed  
petition and I have read the copy of the  
affidavit deposed by the said Ng Kee Wei on  
the 24th November, 1961 opposing my said  
petition (hereinafter referred to as the said  
affidavit).

My said petition was presented to this  
Honourable Court on the 23rd October, 1961 and  
my affidavit verifying the said petition was  
also presented on the same day.

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2. As regards paragraph 5 of the said  
affidavit I agree that the word "not" in the  
sixth line of paragraph 9 of my said petition  
should be deleted and the word "July" in  
paragraph 13 of my said petition should read  
as "May" but say that the errors were typing  
mistakes.

3. As regards paragraph 6 of the said  
affidavit I repeat that the records of the

In the High  
Court at  
Kuala Lumpur

No. 5.

Affidavit of  
Ng Eng Hiam  
in reply.

5th December,  
1961.

(continued)

Company are not kept at the registered office of the Company, namely, No. 19, Ampang Road, but were sometime ago removed and kept in a room at No. 21, Ampang Road, which is the private office of the said Ng Chin Siu without my authority or consent. The premises No. 21, Ampang Road is also the residence of the said Ng Chin Siu and the main door thereof is invariably shut.

I deny that I have been obstructive or unco-operative at all in the affairs of the Company. I have not been supplied with the accounts and estimates of expenditure of the Company in accordance with the established practice of the Company and this was so even after I have made repeated demands therefor. As a result of this it became increasingly more difficult for me to take an active part in the affairs of the Company.

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I had requested, as a solution to the difference between myself and the said Ng Chin Siu, that the Company be wound up voluntarily or as the alternative that the assets of the Company be equally divided between our respective families.

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The rupture of friendly relations between the said Ng Chin Siu and your Petitioner is personal to the both of them and is the result of the absence of trust and congeniality between them.

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4. As regards paragraph 8 of the said affidavit your Petitioner had no knowledge of the facts alleged therein and neither was your Petitioner consulted at all regarding the granting of the contract to fell jungle trees on Semantan Estate to the subsequent Contractor, namely, Ng Choon Chiu. Although your Petitioner had made a written inquiry on the 12th April, 1958 (a copy of which is annexed hereto and marked 'NEH 1') into the authorisation and circumstances leading to the engagement of the said contractor to fell the jungle trees on Semantan Estate, no reply at all was received thereto from the said Ng Kee Wei but, on the other hand, the Secretaries of the Company replied stating that they believed that the General Manager (Ng Kee Wei) should be asked to give an explanation to the Board of Directors

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(a copy of the said letter is annexed hereto and marked 'NEH 2') as to why the contractor introduced by your Petitioner at more advantageous terms to the Company was not engaged and another contractor (Ng Choon Chiu) at terms much less advantageous to the Company was accepted.

In the High  
Court at  
Kuala Lumpur

No. 5.

Affidavit of  
Ng Eng Hiam  
in reply.

5th December,  
1961.

(continued)

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However, owing to the strained relations between your Petitioner and the said Ng Chin Siu, and, although this matter was on the Agenda of the meeting of the Directors of Company, on more than one occasion, these meetings terminated before there was any opportunity to discuss it.

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5. I admit that the audited balance sheets were sent to me but I deny that the full accounts and estimates were made available for my inspection and examination at the Company's registered office as on the several occasions I called at the Company's registered office to inspect the same, I found that the account books were not available at the Company's registered office but have been taken over to No. 21 Ampang Road, Kuala Lumpur.

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6. I deny that the failure to hold meetings of the Directors of the Company was due to the fact that your Petitioner had insisted that he should have his lawyer with him at such meetings. Save and except the meeting of the Directors of the Company held on the 27th day of June 1958 the remaining two subsequent meetings of the Board of Directors of the Company were attended by your Petitioner without his lawyer.

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It is manifestly untrue that your Petitioner was obstructive or unco-operative in the affairs of the Company. On the rare occasions when your Petitioner was consulted about the affairs of the Company, your Petitioner had always assisted and expressed his views thereon, and in particular your Petitioner on the 23rd and 30th December 1958 given his views on certain resolutions proposed to be adopted by the Directors of the Company. A copy of your Petitioner's letters are annexed hereto and marked 'NEH 3' and 'NEH 4'.

7. Since November 1958 no meeting of the Directors of the Company was ever convened and the business of the Company was conducted

In the High Court at Kuala Lumpur

No. 5.

Affidavit of Ng Eng Hiam in reply.

5th December, 1961.

(continued)

by the said Ng Chin Siu without any reference to your Petitioner at all. No Annual General Meeting of the Company for the years 1958, 1959 and 1960 was ever convened at all and, before the Annual General Meeting of the 27th day of May 1961 was convened your Petitioner was never given a copy of the purported Directors' report for his consideration.

At the Annual General Meeting held on the 27th day of May 1961 your Petitioner proposed that, as he had no prior opportunity of considering the purported Directors' report and had not been able to examine the account books relating to the years 1957, 1958 and 1959, the consideration of the purported Directors' report, balance sheets and profit and loss account be adjourned. On your Petitioner's demand for a poll to be taken on his resolution abovesaid being wrongfully refused by the said Ng Chin Siu, the Chairman of the said meeting, your Petitioner realised that it would be futile for him to carry on with the meeting and accordingly retired therefrom.

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8. The differences of opinion existing between your Petitioner and the said Ng Chin Siu, the other permanent Director make it impossible for the business of the Company to be conducted with their concurrence in consequence of which, the business of the Company is being conducted by the said Ng Chin Siu and his son, Ng Kee Wei, without any reference to your Petitioner contrary to the provisions of the Companies Ordinance and the Articles of Association of the Company.

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Affirmed at Kuala Lumpur this }  
5th day of December 1961 at } Sd: Ng Eng Hiam  
3.30 p.m.

Before me,

Sd: S. Sarathy  
COMMISSIONER FOR OATHS.

This affidavit was filed by Messrs. Eugene Lye & Hoh, Solicitors for the Petitioner abovenamed.

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23.  
No. 6.

LIST OF PARTIES ATTENDING HEARING

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
COMPANIES (WINDING-UP) NO. 2 OF 1961

In the matter of Semantan Estate (1952) Limited  
And

In the matter of the Companies Ordinances, 1940  
to 1946.

LIST OF PARTIES ATTENDING THE HEARING OF A PETITION

The following are the names of those who have given notice of their intention to attend the hearing of the Petition herein, on the 27th day of November 1961:-

<u>Name</u>	<u>Address</u>	<u>Name &amp; address of solicitors of the party who has given notice</u>	<u>Creditors amount of debt</u>	<u>Contribu- tories</u>	<u>Opposing</u>	<u>Supporting</u>
Madam Chang Kwei Chee.	164, Bukit Bintang Road, Kuala Lumpur.	Messrs. Chung & Huang, 35 Pudu Street, (1st Floor) K.L.	-	200		Supporting

In the  
High  
Courtat  
Kuala  
Lumpur  
No.6.  
List of  
Parties  
attend-  
ing  
Hearing  
Undated

<u>Name</u>	<u>Address</u>	<u>Name &amp; address of solicitors of the party who has given notice</u>	<u>Creditors amount of debt</u>	<u>Contributions Number of shares</u>	<u>Opposing</u>	<u>Supporting</u>	<u>In the High Court at Kuala Lumpur</u>
Madam Tan Geok Eng	261 Freeman Road, Kuala Lumpur	- do -	-	50	-	Supporting	No.6 List of parties attending Hearing Undated
Ng Tian Ming	- do -	- do -	-	200	-	Supporting	
Ng Kee Wei	19 Ampang Road, K.L.	R.R.Chelliah Brothers, 18 Ampang St., K.L.	-	135	Opposing		(continued)
Ng Chin Siu	- do -	- do -	-	50	Opposing	-	
Lim Tuan(f)	- do -	- do -	-	50	Opposing	-	
Ng Beh Leow	- do -	- do -	-	45	Opposing	-	
Ng Sook Chin(f)	- do -	- do -	-	10	Opposing	-	

<u>Name</u>	<u>Address</u>	<u>Name &amp; address of solicitors of the party who has given notice</u>	<u>Creditors amount of debt</u>	<u>Contribu- tories Number of shares</u>	<u>Opposing</u>	<u>Supporting</u>	<u>In the High Court at Kuala Lumpur</u>
Ng Sook Hui (f)	- do -	- do -	-	10	Opposing	-	No.6
Ng Beh Kian	- do -	- do -	-	45	Opposing	-	List of Parties attend- ing Hearing
Ng Beh Tong	19 Ampang Road, Kuala Lumpur	In person	-	45	Opposing	-	Undated
Ng Sook Keng (f)	10 Morris Street, North Coburg, Melbourne	R.R.Chelliah Brothers, 18, Ampang Street, K. Lumpur	-	10	Opposing	-	(contin- ued)
Ng Beh Yeow	- do -	- do -	-	45	Opposing	-	
Ng Beh Puan	- do -	- do -	-	45	Opposing	-	

Sd: Eugene Lye & Hoh

Solicitors for the Petitioner whose address  
for service is 2nd Floor, M.C.A. Building,  
67 Ampang Road, Kuala Lumpur.

In the High  
Court at  
Kuala Lumpur

No. 7.

NOTES OF EVIDENCE RECORDED BY  
ONG J.

No. 7.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Notes of  
Evidence  
recorded by  
Ong J.

IN THE HIGH COURT AT KUALA LUMPUR

Companies (Winding-Up) No. 2. of 1961

14th December, 1961, Robert Hoh for Petitioner.

S.T. Chung for 3 contributories holding total  
of 450 shares, i.e.

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- (i) Chang Kwei Chee - 200 shares
- (ii) Tan Geok Eng - 50 shares
- (iii) Ng Tian Meng - 200 shares

Smith with Chelliah for 10 contributories  
holding 445 shares (vide p.2 of Petition  
para (b) - all except (iv) & (ix)

Ng Beh Tong (iv) in person - opposing also

Ng Beh Yoke - unrepresented - no notice

HOH:

Petition presented on 23.10.

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The required Memorandum filed on 24.11.

Affidavit in opposition by Ng Kee Wei on  
24.11. - 135 shares held by him.

Affidavit in reply dated 5.12

Reads Petition:

" Affidavit of Ng Kee Wei

" Reply by petitioner

Submit - deadlock;

if such deadlock, can it be resolved?

Can business be properly carried on  
by one Director?

30

Is profit a bar to winding-up?

As to facts -

Registered office at 19 Ampang Road -  
equal shares - both families -  
permanent directors - two heads of  
families.

Assets considerable - company  
solvent.

Article 36 : intention to keep voting  
strength equal.

Re: Management - Article 99 - as yet no  
regulation made.  
lines 7 - 11.

Queen & Axtons Ltd. v. Salman  
(1909) A.C.442

Automatic Self-cleansing Filter Syndicate  
Co. Ltd. v. Cunningham. (1906) 2 Ch. 34, 41

Gramophone & Typewriter Co.Ltd. v. Stanley  
(1908) 2 K.B. 89 @ 105

Thomas Logal Ltd. v. Davis.  
(1911) 104 L.T. 914

John Shaw & Sons Ltd.(Salford) Ltd. v. P. Shaw  
& J. Shaw (1935) 2 K.B. 113, 132

Article 86:

" 82:--

" 83 - 86 do not give power to any one  
Director to act alone.

Penott v. P. Ltd v. Stephenson (1934) 1 Ch.171

(relevant re last sentence in para 12 of  
Ng Kee Wei's affidavit of 24.11.61)

Article 107: Quorum at Directors' meeting is  
2 and casting vote excluded.

Rayfield v. Hands (1958) 2 A.E.R. 194 @ 197:

Submit: articles constitute a contract.

Contra:

In the High  
Court at  
Kuala Lumpur

No. 7.

Notes of Evi-  
dence recorded  
by Ong J.

14th December,  
1961.

(continued)

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In the High  
Court at  
Kuala Lumpur

No. 7.

Notes of  
Evidence  
recorded by  
Ong J.

14th December,  
1961.

(continued)

Blair Open Hearth Furnace Co. Ltd v.  
Reigart (1913) 108 L.T. 665

Barron v. Potter (1914) 1 Ch. 895

Forster v. Forster (1916) 1 Ch 532

Worcester Coresty Ltd. v. Witting (1936) 1 Ch.  
640.

Above distinguishable.

Article 36: restriction on transfer.

Victorine Roberts v. Letter "T" Estates (1961) 10  
3 W.L.R. 176.

Greenhalgh v. Mallet (1943) 2 A.E.R. 234 @  
236-7

Re Conduct of business & Co:

para 13 of Petition

" 15 differences as to mode of  
conducting business etc.

(Smith in answer to me: the difference between  
\$4 & \$8 per ton would be about \$7 - 8000).

Para 8 of Ng Kee Wei's affidavit 20

Para 4 of Petitioner's affidavit in reply to  
above

Para 16 of Petition

" 17 of " : reply by para 10.

" 18 " " : Books kept in 21 Ampang  
Road.

" 19 " " : - reply - para 12: para  
6 encl: 8

Re Signing of cheques -

In re City Equitable Fire Bus Co. Ltd. 30  
(1925) Ch. 407 @ 408

Para 20: - reply para 13.



- A meeting to be convened by Directors of Board (vide Article 52)
- In re Haycraft Gold etc. (1900) 2 Ch.230
- In re State of Wyoming Syndicate (1901) 2 Ch. 431, 436
- Petitioner attended the meeting (in fact) under protest - cf. s.130(2) Companies' Ord.
- 10 Re Minutes of Meeting - (I say the minutes speak for themselves)
- Queen v. Wimbledon Local Board. (1882) 8 Q.B.D. 456
- Article 67 - polls
- Holmes vs. Keyes (1958) 2 A.E.R. 129 @ 135 - 6
- Just and equitable
- Loch v. J. Blackwood Ltd (1924) A.E.R. (Reprint) 200 or (1924) A.C.783
- 20 In re Yonidge Tobacco Co. Ltd (1916) 2 Ch. 428; 432
- In re Davis and Collatt Ltd (1935) 1 Ch 693 or (1935) A.E.R. Reprint 315
- In both above cases - there was a way out of the impasse - but none here.
- Re Kwong Onn, (1948-9) M.L.J. Supplement
- Anglo-Continental Produce Co. Ltd (1939) 1 A.E.R. 99 @ 102
- 30 Smith:
- Yenidge Case - the principle.
- Lindley on partnership, 11th Ed. 692 (2nd para)
- re poll - Article 70.

In the High Court at Kuala Lumpur

No. 7.

Notes of Evidence recorded by Ong J.

14th December, 1961.

(continued)

In the High  
Court at  
Kuala Lumpur

No. 7.

Notes of  
Evidence  
recorded by  
Ong J.

14th December,  
1961.

(continued)

C.L. 1947-51, para 1374 - "Deadlock"  
Re Bondi Better Bananas - (1951) 3  
D.L.R. 522

Anglo-Continental etc. (1939) 1. A.E.R.  
@ 102 (bottom)

Article 113 - resolution in writing.

Article 86. 106 - but nothing in article  
86 relates to disqualification of  
Directors - but only removal.

Disqualification in article 100 (a).

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Petitioner himself created the situation -  
cannot take advantage of his own wrong -  
no deadlock - by Art. 113 - no suggestion  
of dishonesty or discourtesy: nothing  
wrong with accounts.

The company has \$2,000,000 in hand, frozen  
now by reason of petitioner's attitude.

Hoh in reply :

What other course is open?

Petition dismissed with costs.

(sd) H.T. Ong.  
JUDGE.

Certified true copy,

Sd. B.E. Nettar

Ag. Secretary to Judge.

19.2.1962.

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31.

No. 8.

ORDER DISMISSING PETITION

In the High  
Court at  
Kuala Lumpur

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

No. 8.

IN THE HIGH COURT AT KUALA LUMPUR

Order dis-  
missing  
Petition

Companies (Winding-Up) No. 2 of 1961

In the matter of Semantan Estate  
(1952) Limited

14th December,  
1961.

And

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In the matter of the Companies  
Ordinances, 1940 to 1946.

Before The Honourable Mr. Justice Ong,  
Judge, Federation of Malaya

IN OPEN COURT

This 14th day of December, 1961

O R D E R

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UPON the Petition of Ng Eng Hiam of  
164 Bukit Bintang Road, Kuala Lumpur, a contri-  
butory of the abovenamed Company, on the 23rd  
day of October 1961 preferred unto the Court  
praying that the abovenamed Company, might be  
wound up by the Court under the provisions of  
The Companies Ordinances 1940 to 1946 or that  
such order might be made in the premises as  
should be just, coming on this 14th day of  
December 1961 to be heard before this Court

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AND UPON HEARING Mr. Robert Hoh of  
Counsel for the Petitioner, Mr. S.T. Chung of  
Counsel for Chang Kwee Chee (f), Tan Geok Eng  
(f) and Ng Tian Ming, contributories of the  
abovenamed Company and supporting the said  
Petition, Mr. C.H. Smith and Mr. R.R. Chelliah  
of Counsel for Ng Chin Siu, Lim Tuan (f), Ng  
Kee Wei, Ng Beh Leow, Ng Beh Kian, Ng Beh Puan,  
Ng Beh Yeow, Ng Sook Chin (f) Ng Sook Hin (f)  
contributories of the abovenamed Company and  
opposing the said Petition (hereinafter called





In the High  
Court at  
Kuala Lumpur

34.

No. 10.

No. 10.

FOUNDATIONS OF JUDGMENT OF ONG J.

Foundations of  
Judgment of  
Ong J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

14th February,  
1962.

IN THE HIGH COURT AT KUALA LUMPUR

Companies (Winding-Up) No. 2 of 1961

In the matter of Semantan Estate  
(1952) Limited

And

In the matter of the Companies  
Ordinances, 1940 to 1946.

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FOUNDATIONS OF JUDGMENT

The petition herein was presented by Ng Eng Hiam to wind up the abovenamed Company on the ground that it was "just and equitable" that such an order should be made. At the conclusion of the hearing I dismissed the petition with costs.

The company, which is a private company was incorporated in May 1952, with a fully paid-up capital of \$1,000,000/- divided into 1,000 shares of \$100/- each. The objects of the company were to carry on business as rubber planters and estate owners. The subscribers to the Memorandum of Association were Ng Eng Hiam, the petitioner, and Ng Chin Siu, both prominent landowners of Kuala Lumpur. Each of them, with members of their respective families, holds 50 per cent of the shares. It had been agreed that the petitioner and Ng Chin Siu should have equal rights of management and voting powers. The articles of association were accordingly so drawn up that they, the heads of each family, became permanent directors but the Chairman was disentitled to a further or casting vote, while restrictions placed on the transfer of shares further ensured parity of voting strength at all times, except in the event of a member or members of one family defecting to the other, which has not yet occurred in the history of the company.

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10 Between 1952 and 1956 the company acquired three rubber estates totalling a little over 4,500 acres, which it still owns, save for a portion of one, the Batu Estate, in Kuala Lumpur, which had been acquired by the Government. The company has been highly successful in its operations, and in his petition the petitioner himself stated that there would be a substantial surplus for the shareholders in a wind-up, which surplus was said by the respondent's counsel to be in the region of \$2,000,000/- cash.

20 Differences arose between the petitioner and Ng Chin Siu in 1957 over two matters in particular. First, at a meeting of the Board of Directors on May 24, 1957, Ng Kee Wei, the General Manager of the company and eldest son of Ng Chin Siu, had claimed a special bonus for services alleged to have been rendered by him in connection with proceedings relating to the acquisition by Government of part of the Batu Estate, which claim the petitioner had felt constrained to oppose. Second, in or about September, 1957, a contract had been given by Ng Chin Siu and Ng Kee Wei without the petitioner's knowledge to one Ng Choon Chiau for felling jungle trees on Semantan Estate on terms said to be less favourable than those offered by another contractor, Goh Chew Yik, who had been introduced earlier to the company by the petitioner, and it was alleged that the petitioner had not been able to ascertain the circumstances or the precise terms on which the contract had been given out.

30

40 Over these two matters - which in truth were of a trivial nature, considering the magnitude of the company's business operations and its handsome profits - the two permanent directors ceased to be on speaking terms from the beginning of 1958. The strained relationship between these parties subsequently gave rise to further grounds of dissatisfaction which have been assigned as additional reasons in support of the petition for winding up of the Company.

These further grounds are contained in paragraphs 17, 18, 19, and 20 of the petition, and are as follows:-

"17. After the said dispute and differences

In the High Court at Kuala Lumpur

No. 10.

Grounds of Judgment of Ong J.

14th February 1962.

(continued)

In the High  
Court at  
Kuala Lumpur

No. 10.

Grounds of  
Judgment of  
Ong J.

14th February  
1962.

(continued)

arose your Petitioner was for a time supplied with the monthly accounts but at longer and irregular intervals. In particular, to the best of your Petitioner's knowledge, information and belief, he was supplied with the Semantan estate annual estimate for 1958 in or about May, 1958, the Semantan estate monthly estate accounts for the period January, 1958 to April, 1958 in or about December, 1958 and the monthly accounts for May and June, 1958 in or about January, 1959; and the Batu and Segambut estates monthly accounts for the period of January 1958 to October, 1958 on different dates between January and March, 1959. Since then he has not been supplied with any other subsequent annual estimates or monthly accounts, contrary to the established practice of the Company and in spite of repeated requests made by your Petitioner for such estimates and accounts.

10

20

"18. The registered office of the Company is situate at No. 19, Ampang Road, Kuala Lumpur, which together with the adjoining premises No. 21, Ampang Road, is the residence of the said Ng Chin Siu and his family. To the best of your Petitioner's knowledge, information and belief, the books of account and other records of the Company are kept in a room in premises No. 21, Ampang Road, which is also used as a private office of the said Ng Chin Siu. By reason of the strained relationship that has existed between your Petitioner and the said Ng Chin Siu since sometime in 1957 it has not been and is not possible for your Petitioner to visit the said premises and inspect the books of account and other documents, and your Petitioner has in reality been deprived of his right of access there-  
to.

30

40

"19. Save as to certain matters connected with the acquisition proceedings relating to part of the Batu estate in respect of which the concurrence of the 2 Permanent Directors was obtained through the Secretaries of the Company, and save as to two directors' meetings called for the



17th day of June, 1958 and 12th November, 1958 at which, by reason of differences, no business could be conducted, and third meeting held on the 27th day of November, 1958 at which the strike situation on the Company's rubber estate was directed to be referred to the Company's legal advisers, there has not been any meeting of the directors, either formal or informal, to transact any of the Company's business since the beginning of 1958. And the business of the Company has been conducted, by the said Ng Chin Siu, and, in particular, all sales of rubber effected and all cheques on the Company's bank account drawn by the said Ng Chin Siu with (as far as your Petitioner is aware) the assistance of the General Manager and Secretaries of the Company, but without the concurrence of your Petitioner, contrary to law and the articles of association, since the said Ng Chin Siu had and has no power to act alone on behalf of the Board of Directors.

In the High  
Court at  
Kuala Lumpur

No.10.

Grounds of  
Judgment of  
Ong J.

14th February  
1962

(continued)

"20. No annual general meetings of the Company were held during the years 1958, 1959 and 1960. A general meeting convened by the Secretaries without the authority of your Petitioner was held on the 27th day of May, 1961 before which were laid what purported to be the directors' report and the balance sheets and profit and loss accounts for the years 1957, 1958 and 1959, none of which were signed by your Petitioner, the reason being that your Petitioner not having had the opportunity of scrutinising the accounts or taking any part in the conduct of the business during the relevant years declined to accept responsibility therefor. At the said meeting your Petitioner proposed that the consideration of the said purported directors' report and the accounts be adjourned to enable him to inspect the accounts; 2 amendments to the resolution having been moved, your Petitioner demanded a poll which the said Ng Chin Siu, as Chairman of the said Meeting, wrongfully disallowed, whereupon your Petitioner and his supporters left the meeting, they being in a minority if

In the High  
Court at  
Kuala Lumpur

a vote was to be taken on a show of hands only but in respect of which they could secure a majority if a poll was allowed."

No. 10.

Grounds of  
Judgment of  
Ong J.

14th February  
1962

(continued)

For the reasons stated above the petitioner submitted that it had become impossible to conduct the business of the Company according to law and the regulations of the company and that in the circumstances it was just and equitable that the company should be wound up.

10

The statements in the petition were verified by an affidavit of the petitioner sworn on October 23, 1961, and, by a further affidavit of November 25, 1961, the petitioner stated that during 1958 and 1959 he had made several attempts to resolve these differences with Ng Chin Siu "which rendered it impossible for the company to carry on its business in the normal and lawful way". The proposition which was put up to Ng Chin Siu by the petitioner, briefly, was that the assets should be equally divided between them by drawing of lots, with such adjustments by cash payment as might be necessary, and, in the alternative, a voluntary winding up of the company. Ng Chin Siu, however, would neither agree, nor offer any alternative terms acceptable to himself. These circumstances were further argued as just and equitable grounds for the Court to make the order sought.

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30

The shareholders giving notice of their intention, and duly appearing at the hearing, to support or oppose this petition were for all practical purposes, equally divided, except as to 10 shares, which may be ignored. The members of each family aligned themselves according to their respective loyalties.

An affidavit on behalf of those opposing the petition was filed by Ng Kee Wei, to which the petitioner filed an affidavit in reply. It is unnecessary to set out their contents, except to state generally that, in Ng Kee Wei's affidavit, apart from traversing the various allegations contained in the petition and giving an explanation of the relevant circumstances, it was expressed that the petitioner's every reasonable wish would have been and would continue to be met with courtesy and in a co-

40

operative spirit by his associates.

In the High  
Court at  
Kuala Lumpur

No.10.

Grounds of  
Judgement of  
Ong J.

14th February,  
1962.

(continued)

10 In dismissing the petition at the con-  
clusion of the hearing, I had been, and still  
am, clearly of the opinion that the two matters  
which arose in 1957 were the root cause of all  
the ensuing friction. I felt no doubt that Ng  
Kee Wei's claim to a special bonus had been  
made with his father's blessing, and that, when  
the petitioner felt constrained to voice his  
opposition, the former congeniality which had  
subsisted between the two business magnates  
evaporated under the heat of nothing more  
calorific than injury to personal self-esteem.  
Had Ng Chin Siu, or his son, informally  
broached the subject earlier to the petitioner,  
over a friendly cup of tea, neither party  
would have had to take up a position from  
which any resilement involved an inevitable  
"loss of face". The proposal, unfortunately,  
20 had been made at a Board Meeting, and this  
difference of opinion had sufficed to cause  
a rift in the lute. Four months later, the  
rift was widened by the matter of the choice  
of a contractor. I shall pass over these two  
matters by only saying, very briefly, that  
Ng Chin Siu and Ng Kee Wei had both tacitly  
acknowledged their want of tact over the  
matter of the special bonus by dropping the  
claim, and that, in regard to the jungle-  
30 felling contract, had the petitioner condes-  
cended to make any genuine attempt to find out  
whether or not the fancied insult was intended,  
he could readily have satisfied himself that  
his allegations of "considerable loss" suffered  
by the company were exaggerated.

40 After careful consideration of the  
affidavits on both sides, I find that all the  
subsequent complaints by the petitioner flowed  
from nothing more substantial than pique which  
he felt over the events of 1957. There were no  
grounds which could justify what was tantamount  
to an ultimatum, vide the last paragraph in  
the letter of April 12, 1958, exhibited to  
the petitioner's affidavit of December 5, 1961  
and marked "NEH-1". The reply by the  
Secretaries, "NEH-2", clarifies the position  
as seen by a neutral party. Certainly, there  
were no grounds for "absence of trust".  
Absence of congeniality could have been, and  
still can be, overcome. The petitioner had  
been more unreasonable than co-operative, and

In the High  
Court at  
Kuala Lumpur

No.10.

Grounds of  
Judgment of  
Ong J.

14th February,  
1962.

(continued)

any deadlock so-called was one created entirely by himself. I could not, and still cannot believe, that businessmen of the calibre and standing of the petitioner and Ng Chin Siu cannot, if they have to, be large-hearted enough to treat a mutual misunderstanding as if there had never been one.

I had, before the hearing, perused In re Yenidge Tobacco Company Ltd., (1) with great care and I have since read it again together with other authorities cited to me by counsel, and I still am of the opinion that wounded pride on the part of the petitioner over fancied slights could not make it "just and equitable" that I should make the order which was sought. The interests of the shareholders must be considered, and I am not at all satisfied that it would be just and equitable to wind up the company in so far as they are concerned; rather the contrary. Even regarding this private company as a partnership, I had in mind as particularly appropriate what was said in Lindley on Partnership (11th Ed.) at p.692:

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20

"It must be borne in mind that the Court will never permit a partner by .... rendering it impossible for his partners to act in harmony with him, to obtain a dissolution on the ground of the impossibility so created by himself."

I felt, as I still do, that the company could carry on with advantage and profit to all its shareholders, and for that reason I had dismissed the petition with costs.

30

JUDGE,

Kuala Lumpur,  
14th February,  
1962.

SUPREME COURT,  
FEDERATION OF MALAYA.

(Sd) B.E. Nettar

Ag (1916) 2 Ch. 428, 432.

MEMORANDUM OF APPEAL

In the Court  
of Appeal at  
Kuala Lumpur

No. 11.

Memorandum of  
Appeal.

21st March,  
1962.

NG ENG HIAM, the Appellant abovenamed, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Ong given herein at Kuala Lumpur on the 14th day of December 1961 on the following grounds:-

- 10 1. That the learned Judge failed to give any or sufficient weight to the fact that the Articles of Association of Semantan Estate (1952) Limited (hereinafter called "the Company") were so framed as to permit the lawful management of the Company only when there was complete accord between the Appellant Ng Eng Hiam (hereinafter called "the Petitioner") and Ng Chin Siu (hereinafter called "the Respondent") and those members of their respective families who were also members of the Company.
- 20 2. That having rightly found (a) that since 1957 when a personal rift had occurred between them a state of friction had persisted between the Petitioner and the Respondent and (b) that the members of their respective families had aligned themselves according to their respective loyalties, the learned Judge misdirected himself in law by failing to conclude that a state of deadlock existed which prevented the due management of the Company in accordance  
30 with its Articles.
- 40 3. That the learned Judge failed to give any or sufficient weight to the fact that on the true interpretation of Articles 67, 68, 69 and 72 of the Articles of Association of the Company the Petitioner and the members of his family who had supported his petition herein were entitled to prevent the passing of any resolution put to any General Meeting of the Company by demanding a poll and that according-  
40 ly the demand for a poll made by the Petitioner had been wrongfully overruled by the Respondent at the Annual General Meeting of the Company held on the 27th day of May 1961.
4. That the learned Judge failed to give any or sufficient weight to the fact that on the true interpretation of Articles 82, 83, 86,

In the Court  
of Appeal at  
Kuala Lumpur

No. 11.

Memorandum  
of Appeal.

21st March,  
1962.

(continued)

99 and 107 of the Company's Articles of Association all business of the Company (other than such business as was by law or by the said Articles required to be conducted by the Company in General Meeting) was required to be conducted by both the Petitioner and the Respondent as Permanent Directors and that therefore all the business conducted without the Petitioner's approval by the Respondent and the General Manager Ng Kee Wei (hereinafter called Mr. Wei) between 1957 and the date of the petition had been conducted in breach of the Company's Articles of Association. 10

5. That in dismissing the Petitioner's petition the learned Judge misdirected himself in law by giving primary consideration to the relative merits and demerits of the conduct of the Petitioner and the Respondent and Mr. Wei which had occasioned the said rift and friction and consequent deadlock.

6. That in any case there was no evidence to support the learned Judge's finding that "any deadlock so called was one created entirely by himself" (the Petitioner) or alternatively such finding was contrary to the weight of the evidence. 20

7. That on the contrary, upon the evidence as a whole and in particular upon the learned Judge's finding that "the two matters which arose in 1957 were the root cause of all the ensuing friction" the learned Judge ought to have found that the deadlock was caused by the Respondent and his son Mr. Wei or one of them or alternatively that their conduct was the main cause or a substantial or contributory cause thereof. 30

8. That in any event, the learned Judge erred in law in holding that the conduct of the Petitioner was such as to disentitle him to a winding up order or alternatively that there was no evidence to support such finding or in the further alternative such finding was contrary to the weight of the evidence. 40

9. That if the learned Judge had given sufficient consideration to the rights of the Petitioner and of those members of the Company who supported his petition he could only have

found that, having regard to their voting power in the Company and to the feelings of the Permanent Directors towards one another, it had become impossible for the Company's business to be carried on in accordance with its Articles.

In the Court  
of Appeal at  
Kuala Lumpur

No. 11.

Memorandum of  
Appeal.

21st March,  
1962.

(continued)

10

10. That in deciding that it was in the interest of the shareholders for the petition to be dismissed the learned Judge overlooked the fact that, if the Petitioner and his supporters were not prevented by irregular acts on the part of the Respondent and his supporters from exercising their rights under the Articles, the due management of the Company would be impossible because of the deadlock which could only be resolved by winding up of the Company.

20

11. That in the premises the learned Judge ought to have found on the evidence before him that it was just and equitable for the Company to be compulsorily wound up by the Court.

Dated this 21st day of March, 1962.

Appellant's Solicitors.

To:

The Senior Assitant Registrar,  
Supreme Court,  
Kuala Lumpur.

and to:

30

1. Ng Kee Wei
2. Ng Chin Siu
3. Ng Beh Leow
4. Ng Sook Chin (f)
5. Ng Sook Hin (f)
6. Ng Sook Keng (f)
7. Ng Beh Yeow
8. Ng Beh Puan
9. Ng Beh Kian
10. Lim Tuan<sup>1</sup> (f) or their Solicitors  
Messrs. R.R.Chelliah Brothers,  
18, Ampang Street,  
Kuala Lumpur
11. Ng Beh Tong of  
No. 19 Ampang Road,  
Kuala Lumpur.

40

The address for service of the Appellant is  
c/o Messrs. Eugene Lye & Hoh,  
M.C.A. Building (2nd Floor),  
67, Ampang Road, Kuala Lumpur.

In the Court of  
Appeal at Kuala  
Lumpur

No. 12.

NOTES OF ARGUMENT RECORDED  
BY THOMSON C. J.

No. 12.

Notes of Argu-  
ment recorded by  
Thomson C.J.

IN THE SUPREME COURT OF THE FEDERATION OF  
MALAYA

15th October,  
1962.

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. Civil Appeal No.44 of 1961

(K.L. Companies (Winding Up) No.2 of 1961)

Ng Eng Hiam ... Appellant 10

v.

1. Ng Kee Wei
2. Ng Chin Siu
3. Ng Beh Leow
4. Ng Sook Chin (f)
5. Ng Sook Hin (f)
6. Ng Sook Keng (f)
7. Ng Beh Yeow
8. Ng Beh Puan
9. Ng Beh Kian 20
10. Lim Tuan (f)
11. Ng Beh Tong ... Respondents

Cor: Thomson, C.J.  
Hill, J.A.  
Syed Sheh Barakbah, J.A.

NOTES OF ARGUMENT RECORDED BY  
THOMSON, C.J.

15th October, 1962

For Appt : R. Ramani & Robert Hoh.  
For Respts 1-10: C. Smith & R.R.Chelliah 30  
Respt 11 : In person.

Ramani:

Evidence was entirely on affidavit by Appt.  
at pp. 1 - 9, 10 - 11, 16, 19 and by 1st Respt.

It is a private coy. & a family concern --  
a domestic company. Business is running 3 rubber  
estates.



The 2 families hold in equal shares.

2 directors -- appt & 2nd respt -- who are sole and permanent directors. It was intended they shd. have equal shares in management & conduct of the company.

Coy. commenced in 1952 & went on till 1957 when difficulties arose between the directors.

Appt claims there is now a deadlock.

Reads Petn & affidavits.

S

10 S 7-13 of Petn. are admitted (p. 12).

There is no provision in the Articles for resolving a deadlock.

There was no cross-examination on the affidavits.

At meeting of 27.5.61 ruling as to a poll was wrong vide Art. 67, 70. "Adjournment" means adjournment of a meeting.

A resolution passed after a poll had been wrongfully refused was void.

20 Where there is a deadlock, as here, the question of who caused it is not relevant. Real question is, there being no provision for a deadlock, it is impossible to continue the business of the company.

J. paid too much attention to the origin of the trouble and too little to the future of the Company.

30 It was the intention that the 2 directors shd. have equal control. Under the Articles they have to function together for there is no provision for a casting vote.

Root causes of the estrangement were the questions of bonus & of the timber contract.

Respts are clearly determined to go it on their own and there is no possibility of reconciliation.

In the Court  
of Appeal at  
Kuala Lumpur

No.12.

Notes of Argu-  
ment recorded  
by Thomson  
C.J.

15th October,  
1962.

(continued)

In the Court  
of Appeal at  
Kuala Lumpur

No. 12.

Notes of  
Argument  
recorded by  
Thomson C.J.

15th October,  
1962.

(continued)

Law.

Appln. is under s. 166(6) -- "just and equitable".

We have established a deadlock & that is a good ground to exercise jurisdiction under "just and equitable" clause.

re Bleriot Manufacturing Air-craft Co.Ltd  
32 T.L.R. 253, 255.

That says it is a question of fact in each case. 10

Davis & Co. Ltd v. Brunswick (Aust) Ltd  
(1936) 1 A.E.R. 299, 304, 309.

The power of the Ct. is discretionary, so no particular facts shd. be allowed to control.

Leading case on deadlock is:

re: Yenidge Tobacco Co. (1916) 2 Ch. 426

The "just and equitable" clause is in s.35 of the U.K. Partnership Act, 1890, but is not found in our Ordinance (see s.207).

Loch & Anor v. J. Blackwood Ltd (1924) A.C.783 20

re: American Pioneer Leather Co. Ltd (1918)  
1 Ch. 556.

re Anglo-Continental Produce Co. (1939)  
1 A.E.R. 99.

This is a clear case of deadlock and incapable of being resolved by reason of equality of voting power and no provision for casting vote.

The other aspect of the case relates to the law of partnership.

Even on the basis of partnership appt. is entitled to relief. 30

Law in this country is contained in the Contracts Ordinance. The relevant section is 207.

Pollock & Mulla (3rd Ed.)

p. 661 deals with it under s. 254 of old Indian

Act. The English section (1890 Act) is s. 35 (d) of s. 35 corresponds to our (e)

In the Court of Appeal at Kuala Lumpur

Indian Act 1932 s. 44 -- that brought in the "just and equitable" provision but on other ground? (query) effect in relation to ejusden generis (Pollock & Mulla p. 394).

No.12.

Notes of Argument recorded by Thomson C.J.

Pollock's Commentary (14th Ed).

10 p. 91 is to be compared with commentary on Indian Act.

15th October, 1962.

Compare Lindley when citing Atwood v. Maude (11th Ed. p. 690).

(continued)

Atwood v. Maude L.R. 3 Ch. 369, 372. cannot be relied on.

Premiums are dealt with by s. 40 of 1890 Act.

\*Baxter v. West 62 E.R. 344.

Harrison v. Tennant 52 E.R. 945

"Breach is irreparable".

20 Appt. is entitled to have a poll at the disputed meeting on 27.5.61.

Articles 67 & 70.

Holmes & anor v. Keves & ors. 1959 Ch.199  
212

Art. 70 can only refer to adjournment of a meeting -- not of an item on the Agenda.

Macdougall v. Gardiner 1 Ch. D.4. 13.

s. 137 of 1948 Act, creates a new rule (Palmer p. 889).

30 The rejection of the resolution passed after the poll was refused as a nullity, but I have no case on the point. Alternatively it shd. be regarded as passed.

Palmer p. 475

Halsbury (3rd Ed) VI p. 342.

-----  
\*Lindley (12th Ed) 593 - Case under U.K. s.35(d)

In the Court  
of Appeal at  
Kuala Lumpur

This incident of the meeting illustrates  
the impossibility of carrying on the business  
of the Company.

No. 12.

Adjd. to 16.10.62.

Notes of  
Argument  
recorded by  
Thomson C.J.

Ramani:

16th October, 1962.

3 irregularities are going on:-

15th  
October 1962.

- (1) Only the present directors can carry on  
the business and by reason of Art. 107  
there must be unanimity and one director  
can do nothing.

10

16th October,  
1962.

Perrott & Perrott Ltd. v. Stephenson (1934)  
1 Ch. 171.

- (2) There is the question of the registered  
office (Ordinance s.122) and Art. 128.
- (3) Cheques have to be drawn but there has been  
no meetings of directors.

City Equitable Fire Ins. Co. Ltd. (1925) Ch.  
407,459.

No allegation has been made that reflects  
on petitioner shd. be held against him. There  
is no wilful misconduct alleged against him.

20

This is a case where it is just and equit-  
able that Coy. shd. be wound up.

I say we did not require to do anything  
about the deceased contributory.

Case for Appt.

Smith:

There is only one deadlock - whether or not  
company shd. be wound up - that is what petition-  
er wants.

30

Petitioner wants it wound up. Does the  
refusal of his co-director amount to a deadlock?

Meetings are being held by means of  
circulars as provided by the Articles. Affairs

are being conducted by Manager appointed in 1952 by both directors. No allegations have been made against the Manager except the bonus and the timber contract.

In the Court  
of Appeal at  
Kuala Lumpur

No.12.

Main object of petitioner is a winding up (p.12, 15). His reply is at pp. 16, & 20.

Notes of  
Argument  
recorded by  
Thomson C.J.

Liquidation of the coy. is the sole bone of contention.

10 There is no reflection anywhere on the probity of Respts.

15th & 16th  
October 1962.

As regards the question of bonus petitioner had his own way.

(continued)

As regards the clearing it is not denied that appt's contractor would not sign the contract and stopped his cheque. That is not denied.

It is not true that both families as a whole are not on speaking terms. This is confirmed by the Minutes of the disputed meeting.

20 With regard to supplying of estimates ( 7 ) the Articles constitute the control. They contain nothing about estimates being taken to directors. Article 128 deals with accounts.

Audited balance sheets have always been sent to petitioner -- by Evatt & Co. (p. 14 ).

Nos. 19 and 21 Ampang Road are adjoining premises. No objection was taken to the books being at No. 21 until it was mentioned in the petition.

30 With regard to there having been no meetings of directors it is admitted there were some meetings (p. 8 ). But this sort of situation is provided for by Art. 113. Such resolutions are to be seen in the Record -- e.g. p.p. 137, 138.

It is said business is being conducted "contrary to law" (p.8 ).

Directors do not go round rubber estates managing them -- there is delegation -- and in 1952 a Manager was appointed and this involved delegation to him of the usual powers of a

In the Court  
of Appeal at  
Kuala Lumpur

Manager.

No.12.

With regard to general meetings not being held the answer is that when the Secretaries call a meeting he turns up and says he did not authorise it e.g. p.138. Our case here is at pp.14,15.

Notes of  
Argument  
recorded by  
Thomson C.J.

All that does not create a deadlock. S.113 (3) provides a remedy for a general meeting not being called. We have been reasonable -- we could have got an order of the Ct. and so there is no deadlock.

16th  
October 1962.

10

(continued)

With regard to the disputed meeting, I concede that there is reason for argument as to interpretation of Art. 70. But because the Chairman voted on a solicitor's advice he is not acting capriciously and there can be no question of misconduct. At the meeting we were prepared to meet him by giving him 3 months.

Anyhow petitioner had already agreed to the 1957 accounts -- in December 1958 (p.138).

Power of the Court to order or refuse a petitioner for winding up is purely discretionary. This is made clear by section 169. Where a discretion is given generally the C/A will not interfere except on very strong grounds;

20

Maxwell v. Kuen & Ors (1928) 1 K.B. 645, 649, 650

White Book O.58 r.1.

As to "just and equitable"---

Anglo-Continental Produce Co. Ltd. (1939)  
1 A.E.R. 99, 102, 103.

30

Davis v. Collett Ltd. (1935) 1 Ch.693, 701.

There are other shareholders to be considered and a forced liquidation is not in their interest.

As regards signing cheques there has been no irregularity.

Case for Nos. 1 - 10.

Respt. 11.

Adopt Smith's argument.

In the Court  
of Appeal at  
Kuala Lumpur

Ramani:

No. 12.

Auditor's report has nothing to do with  
suitability of expenditure.

Notes of  
Argument  
recorded by  
Thomson C.J.

Concede this is a matter of discretion but  
Ong, J., applied the wrong principles.

16th October,  
1962.

This C/A has a free hand by reason of the  
evidence being all on affidavit.

(continued)

10

I overlooked the case of:

Re Bondi Better Bananas (1951) 3 D.L.R. 522.

" " " " (1952) 1 D.L.R. 277.

That was a case where the C/A over-ruled  
the Court below.

I also overlooked ---

Charlesworth Coy. Law (7th Ed.) p.276.

C.A.V.

20

Intld. J.B.T.  
16.10.62.

3rd December, 1962.

For Appt: Ramani (Hoh with him).

For Respts 1 - 10: Smith & Chelliah

Respt 11 : In person.

Appeal dismissed with costs.

Deposit to Respts against taxed costs.

Intld. J.B.T.  
31.12.62.

30

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TRUE COPY  
sd: TNEH LIAN PENG  
Private Secretary to Chief Justice.  
17/12/62.

In the Court  
of Appeal at  
Kuala Lumpur

No. 13..

NOTES OF ARGUMENT RECORDED BY  
HILL J.A.

No.13.

Notes of  
Argument  
recorded by  
Hill J.A.

Ramani for Appellant.

Smith for Nos. 1 to 10.

Respondent 11 in person

15th October,  
1962.

15th October, 1962.

Ramani: Affidavit evidence.

p. 1 - 9 - petition 10

pp.10 - 11 affidavit

p. 16

one affidavit by Respondents.

A private family Company - a  
domestic Company - 3 rubber  
estates - two families.

Appellant and No. 2 Respondent  
hold equal shares - they are sole  
directors. Articles provide for equal  
share in management.

Company started in 1952. 20

Difficulties arose in 1957. Company  
now functioning against articles.

Respondent 9 dead - Appellant 10  
shares more for voting purposes. P. .

P. 4, <sup>S</sup> 9 & 10 - Chairman no  
casting vote.

P. 11- 12- petition admitted as  
correct - ~~§§~~ 7 - 13.

No provision for dealing with a  
deadlock in the Articles. 30

p.5-6 <sup>S</sup> 14 - answer p.12 <sup>S</sup> 6

p.16 answer by Petitioner.

p.6 <sup>S</sup> 15 - answered p.13 <sup>S</sup> 7.



Letter p. 133 - reply p.136.  
 p. 7 § 16 - reply p. 13 § 9.  
 p. 7 § 17 - reply pp.13-14 §.10  
 p. 7 § 18 - reply p.14 §.11 -  
 removal of books not denied, -  
 p. 19 § 3 - p.21 § 5 - p.7-8 § 19 -  
 reply p. 14 §§ 12 & 13.  
 See letters p. 137- 138.

In the Court  
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Kuala Lumpur

No.13.

Notes of  
 Argument  
 recorded by  
 Hill J.A.

15th October,  
 1962.

10

p. 8 § 20 - Minutes of Meeting p. 125

(continued)

If poll Petitioner would have had  
 majority.

Resolutions passed, therefore null  
 and void.

Reply p.15 §§ 14 - 15 - no facts and  
 particulars given by Respondent.

Law - deadlock - cause, etc. not of  
 any relevance - can business be con-  
 tinued as contemplated by the Articles?

20

Not trivial cause of trouble - look to  
 the future - is the proper approach.

1. 2 Directors to have equal control.
2. 2 Directors have to function together,  
 no casting vote.
3. Bonus and tree felling root of  
 cause of dispute - led to other  
 things.
4. Any obstruction (denied) arose after  
 quarrel.

30

5. Respondent ready to carry on alone.

6. No possibility of reconciliation.

Sec. 166 of Companies Ordinance - Winding  
 Up.

True condition of deadlock established.

In the Court  
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Kuala Lumpur

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Argument  
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Hill J.A.

15th October,  
1962.

(continued)

In re Bleriot Manufacturing Air-  
craft Company Ltd. 32 T.L.R. 253-5  
"just and equitable".

Davis & Co. Ltd v. Brunswick  
(Australia) Ltd. Brunswicke-Balke-  
Collendor Co. and Brunswick Radio  
Corporation (1936) (1) A.E.R. 299 (304)  
(309).

In re Yenidge Tobacco Co. (1916) 2  
Chan 426.

10

1890 English Partnership Act Section  
35 "just and equitable" not in local  
law.

Loch and Another v. John Blackwood Ltd.  
(1924) A.C. 783. (793) incompatibility)  
ejusdem generis not the rule.

In re American Pioneer Leather Co.Ltd  
(1918) 1 Chan. 556.

In re Anglo Continental Produce Co.  
(1939) 1 A.E.R.; p.99. Not for Court  
to consider in cases of deadlock "who  
was responsible".

20

Deadlock existing here. Sufficient  
to dispose of this appeal in itself.

Partnership Law: Judgment p. 39 -  
no ultimatum p. 135 letter to  
Secretaries.

Other findings not justified from  
the affidavits.

Petitioner entitled to relief even  
if it is regarded as a partnership -  
domestic Company.

30

Ordinance 14/50 sec. 207.

Pollocks Commentary 14th Ed. 91.

Lindley 11th Ed. 690.

Atwood v. Maude Ch. A.C. Vol 3 373.

Just and equitable not limited to

*ejusdem generis.*

Submits no reference to partnership law necessary here.

(Quorum one partner)

Baxter & West 62 E.R. 344.

Harrison & Tennant 52 E.R. 945.

Poll - might have avoided these proceedings - pp.130 - 132 Article 67 - 72

In the Court of Appeal at Kuala Lumpur

No. 13.

Notes of Argument recorded by Hill J.A.

15th October, 1962.

(continued)

10

(1959) Ch. D. 199 - Holmes & Another v. Keves and Others (212 poll)

Adjournment - refers to meeting not an item on agenda.

MacDougall and Gardiner 1 Ch D.13.

Sec. 137 (p.889 Palmer) 1948 Act.

Effect of resolutions passed on p132 - as if poll had been demanded.

Palmer 475.

Halsham Vol. VI 3rd Ed. 342 - poll.

20

Question of attitudes by parties shown at meeting p.130 et seq.

10 a.m. tomorrow 16th October. Sd R.D.R.Hill.

16th October, 1962.

Civil Appeal 44/61 continued

Ramani: 3 irregularities in functioning of Company - Article 86 p. p.114 Article 99.

Article 107 p.117- must be unanimity between directors.

16th October, 1962.

30

Perrott & Perrott Ltd v. Stephenson (1934) 1 Ch. D. 171.

Registered Office - sec 122 of Ordinance - Books at registered

In the Court  
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No.13.

Notes of  
Argument  
recorded by  
Hill J.A.

16th October,  
1962.

(continued)

office.

Article 128 p.121 p.2 § 2 admitted.

Cheques - no meetings.

In re City Equitable Fire Insurance  
Company (1925) Ch.D. p.407 - (908) (459).

No allegation that it is not just and  
equitable that petitioner should not  
have this relief.

Smith: Only one deadlock - shall Company 10  
be wound up. Petitioner has wanted  
this for years. Meetings are being  
held by means of circulars - Manager,  
appointed by both directors in 1952,  
conducts business. No allegation  
against him except bonus and timber  
contract.

All Petitioner wants is a winding up.

Large reserve fund built up.

P. 12 - P. 15 - in reply. 20

P. 18 § 3 - P.20 - division of  
assets same as Winding Up.

p. 128 - again Winding Up raised -  
again at p. 135.

No allegation against Respondents.

Bonus was not obtained.

Timber - first man stopped his cheque -  
not denied; contract not signed either.

Accounts - Article 128 p. 121 -  
right of inspection; not to be sent  
p. 13 § 10.

Registered Office 19 and 21 - p. 7  
§ 18.

Petitioner first raises objection  
in his petition. Too trivial.

P. 7 § 19 - Meetings - Article 113.

p. 118; referred to Circular p. 137 -

p. 138.

pp. 7-8 §19-§ 20 - 2 directors must act together - they do not do actual work which is delegated - in 1952 Manager was appointed - Petitioner has never objected - except timber.

Petitioner is make difficulties only.

10

Petitioner blocked annual meeting.

P.138 P. 14 § 13.

Sec. 113(3) Companies Ordinance - Court can order meeting.

Article 70 open to argument - Chairman acted on advice re poll -

P. 128 - but see P.138 and P.7  
P. 21 § 5.

Court's power purely discretionary -

20

Companies Ordinance 169 - Court of Appeal should not interfere -

Maxwell v. Kuen & others (1928)  
1 K.B. 645.

Order 58 rule 1.

Anglo Contintal Produce Co. Ltd  
(1939) 1 A.E.R. 99 (103).

know no case when order of judge in winding up has been reversed.

30

Davis & Collett Ltd (1935) Ch. D.  
693 (101)

Other shareholders to be considered - not to be deprived of valuable assets. Cheques - Manager appointed - new point thrown in.

Ng Beh Tong: Opposes.

Ramani:

Winding up only wanted in the circumstances.

Auditors' report refers to vouchers, receipts etc.

In the Court  
of Appeal at  
Kuala Lumpur

No. 13.

Notes of  
Argument  
recorded by  
Hill J.A.

16th October,  
1962.

(continued)

In the Court  
of Appeal at  
Kuala Lumpur

No.13.

Notes of  
Argument  
recorded by  
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16th October,  
1962.

(continued)

Ong J's views of "just and equitable"  
erroneous.

Say there are faults on both sides,  
what still is the position -

Judge approached legal problem wrongly -  
not trivialities.

re: Bondi Better Bananas Ltd. Vallario  
et al v. Bondi et al (1951) 1 D.L.R.522  
On appeal (1952) 1 D.L.R. 277.

Charlesworth Company Laws 7th Ed. 276.

10

Ground 6 - just and equitable.

C.A.V.

sd: R.D.R. HILL

Certified True Copy  
sd/- G.E.TAN.  
Secretary to Judges of  
Appeal,  
Federation of Malaya,  
7th December, 1962.

Messrs. Eugene Lye & Hoh  
for Appellant  
Messrs. R.R. Chelliah  
Brothers for Respondents  
1 to 10.

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No. 14.

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NOTES OF ARGUMENT RECORDED BY  
BARAKBAH J.A.

No. 14. 15th October, 1962.

Notes of  
Argument  
recorded by  
Barakbah J.A.

Ramani with Robert Hoh for Appellant.

Smith with Chelliah for Respondents 1 to 10

Ng Beh Tong in person.

15th October,  
1962.

Ramani: Evidence by affidavits

Petition - p. 1

Statutory Affidavit - p.10

Supplementary Affidavit - p. 16

30

Affidavit in reply - p. 11.  
Petitioner's Affidavit in reply - p. 19  
Private Company - family concern.  
They hold equal shares.  
Ng Eng Hiam and Ng Chin Siu -  
permanent directors.  
Company not functioning as originally  
intended.

In the Court  
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Kuala Lumpur

No. 14.

Notes of  
Argument  
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Barakbah J.A.

15th October,  
1962.

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(Petition read out - p. 1).

(IX) Ng Beh Yoke died.

Para. 7 to 13 Petition admitted.

Para. 14 - Petition.

Para. 6 - Affidavit in reply (p. 12)

Petitioner's reply - para. 3 p. 16

Petition filed on 23.9.61.

Para. 15 - Petition - (1) Bonus.  
(2) Contract  
given with-  
out consent  
of Petitioner.

20

Paras. 7, 8 - reply (p. 13 ).

Letter p. 133 dated 12.4.58.

Reply p. 136.

Article 67 p. 106

Article 70 refers to adjournment of a  
meeting.

Judgment:

30

When there is a question of a dead-  
lock who is responsible is not of any  
relevance.

Question is has it arrived at a stage

In the Court  
of Appeal at  
Kuala Lumpur

No.14.

Notes of  
Argument  
recorded by  
Barakbah J.A.

15th October,  
1962.

(continued)

where it is impossible to carry on with  
the business.

Facts:

1. Intention to have equal control in  
the management.
2. These 2 Directors to function to-  
gether with no casting vote.
3. Root cause of trouble - bonus and  
contract.

Petitioner kept in background.

10

4. Obstructiveness arose after the  
quarrel not because of the quarrel.

5. Attitude of Respondents - we can  
carry on. It is not necessary to  
consult Appellant.

6. Five years had gone by - no  
possibility of reconciliation.

Law:

Application under Sec. 166(6)  
Companies Ordinance.

20

On facts true condition of deadlock.

"Just and equitable".

Bleriot Manufacturing Aircraft Company  
Limited 32 T.L.R. 253, 255.

Davis Co. Ltd v. Brunswick (Australia)  
Ltd. Brunswicke-Balke-Collender Co. and  
Brunswick Radio Corporation (1936) 1  
A.E.R. 299, 304, 309.  
Sec. 168, 1929 English Act.

Right to exercise jurisdiction -  
discretionary power.

30

In re Yenidje Tobacco Co. Ltd (1916) 2 Ch.  
426, 430.

Sec. 35 Partnership Act 1890.

Lock & Another v. John Blackwood Ltd  
(1924) A.C. 783.



12.30 p.m. Adjourned.

2.30 p.m. Resumed.

In the Court  
of Appeal at  
Kuala Lumpur

No.14.

In re American Pioneer Leather  
Co. Ltd. (1918) 1 Ch. 556, 560, 561.

The Anglo Continental Produce Co.  
Ltd. (1939) 1 A.E.R. 99, 102.

Notes of  
Argument  
recorded by  
Barakbah J.A.

Clear case of deadlock.

15th October,  
1962.

Judgment - p. 39.

10

Partnership.

(continued)

Sec. 207 Contract Ordinance.

Sec. 254 Indian Act - p.660 at 661.  
- Pollock & Mulla - Same as Sec.207.

Law of Partnership Act 1890 - Sec.  
35 (d) - corresponds to 207(e).

Indian Partnership Act 1932 - Sec.  
44.

Pollock & Mulla 14th Ed. commentary  
p. 91 - same as Indian Act.

20

Lindley - 12th Ed. p. 591, 593 -  
sub-section (d).

Atwood v. Maude Ch. A.C. Vol 3 369,  
372, 373.

Baxter v. West 62 E.R. 344.

Harrison v. Tennant 52 E.R. 945,  
947, 948.

Demand of a poll and refused.

Para. 20 of Petition; p. 8.

Minutes of Meeting - pp.130-132.

30

Article 67 - p.106.

Holmes & another v. Keves & others  
(1959) Ch. Div. 199, 212.

Adjournment refers to adjournment of

In the Court  
of Appeal at  
Kuala Lumpur

No. 14.

Notes of  
Argument  
recorded by  
Barakbah J.A.

15th October,  
1962.

(continued)

a meeting.

Macdougall v. Gardiner (1875) 76, 1 Ch.  
Div. 13.

Company Act 1948 - Sec. 137 p. 889.

Effect of resolution after poll refused.

Palmer's Company Law p. 475.

Halsbury Laws of England Vol. 6 p.342,534.

4.40 p.m. Adjourned till 10.00 a.m. to-morrow.

16th October, 1962

16th October,  
1962.

Ramani:

10

3 matters of irregularity.

1. Article 83 - p. 110

" 86

" 99

" 107 - should be unanimity  
between the 2 directors - 2 Directors  
should act together.

Perrott & Perrott Ltd v. Stephenson  
(1934) 1 Ch. 171.

2. Sec. 122 Companies Ordinance -  
Registered Office.  
Article 128 p. 121.

20

3. No meeting.

City Equitable Fire Insurance Co. Ltd.  
(1925) 1 Ch. 407, 408, 459.

Smith: Only one deadlock.

Whether Company should be wound up.

Petitioner for years past wanted  
Company to be wound up.

Meetings held by means of circular.

30

Affairs conducted by Manager appointed

by both Directors.

No allegation of dishonesty, inefficiency.

No allegation that accounts have not been properly kept.

Sole object in winding up.

pp. 12 & 15.

Reply p. para. 3, p. 20 para p. 128 -

P. 135

General Manager asked for bonus - he didn't get it.

Contract:

Contractor stopped his cheque.

Families not on speaking terms - denied.

Articles of Association constitute the Contract.

Article 128 p. 121 - complains that accounts were not sent.

Para 10 p. 13

Registered office - 19 and 21

Para. 18 p. 7

Para. 19 p. 7 - provided for by Article 113 p. 118 pp. 137 to 138

The Meeting - Respondent received his Solicitor's advice. Respondent tried to meet the wishes of Appellant - adjournment for 3 months.

P. 128 see p. 139 , P. 7 ..  
p. 21 para. 5

Law: Power of Court purely discretionary.

In the Court of Appeal at Kuala Lumpur

No. 14.

Notes of Argument recorded by Barakbah J.A.

16th October, 1962.

(continued)

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In the Court  
of Appeal at  
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Notes of  
Argument  
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16th October,  
1962.

(continued)

Sec. 169 Companies Ordinance.

Court of Appeal will not interfere  
unless not exercised judicially.

Maxwell v. Kuen & Others (1928) I K.B.  
645, 650.

O. 58 r. 1. Annual Practice.

Re: Anglo Continental Produce Co.Ltd.  
(1939) 1 A.E.R. 99, 102, 103.

Davis & Collett Ltd. (1935) 1 Ch. 193,701. 10

Principle is - what justice requires.

There are other shareholders.

Wrong to deprive them of their shares  
by winding up.

No irregularity regarding signing of  
cheques - Manager has been appointed.

Ng Beh  
Tong:

Agree with Mr. Smith's submission.

Ramani:

Auditors' Report - Directors should be  
consulted. 20

Law:

The manner in which the trial Judge  
approached the phrase "just and equit-  
able" is erroneous.

Wrong in treating it as trivial.

Matter went on for 5 years.

re Bondi Better Bananas Ltd & Vallario  
et al v. Bondi et al (1951) 3 D.L.R.522

Court of Appeal 1952, 1 D.L.R. 278 -  
overruling discretion of Court below. 30

Charlesworth Company Law 7th Ed. 276.

Equitable winding up.

C.A.V.

Sd: S.S. Barakbah  
16th October, 1962.

Certified True Copy

sd/- G.E. TAN.

Secretary to Judges  
of Appeal,  
Federation of Malaya,  
7th December, 1962.

Messrs. Eugene Lye & Hoh for Appellant.

Messrs. R.R. Chelliah Brothers for  
Respondents 1 to 10.

In the Court  
of Appeal at  
Kuala Lumpur

No. 14.

Notes of  
Argument  
recorded by  
Barakbah J.A.

16th October,  
1962.  
(continued)

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No. 15.

JUDGMENT OF THOMSON, C.J.

No. 15.

The facts of this case are sufficiently set out in the judgment of Ong, J., in the Court below and in the judgment of Hill, J.A., which I have had the advantage of reading.

Judgment of  
Thomson C.J.

3rd December,  
1962.

The application for winding up was made under section 166(6) of the Companies Ordinance, 1940, which provides that a company may be wound up by the Court if "the Court is of opinion that it is just and equitable that the company should be wound up".

In the case of In re Yenidge Tobacco Company Limited \*(1)\* it was held that where, as here there is an association which is in substance a partnership, though in the guise of a private company, the corresponding provision contained in section 129 of the Companies (Consolidation) Act, 1908, should be applied on the same principles as in a case of dissolution of partnership.

Again, it is to be observed there is no general rule to be applied as to when it is just and equitable that there should be a compulsory winding up.

\*(1)\* (1916) 2 Ch. 426.

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In the Court  
of Appeal at  
Kuala Lumpur

No. 15.

Judgment of  
Thomson C.J.

3rd December,  
1962.

(continued)

In the case of *Loch v. John Blackwood Limited* \*(2)\* Lord Shaw of Dunfermline referred to what should be the point of view of the Court in a consideration of the justice and equity of pronouncing an order for winding up and said:-

"Such a consideration, in their Lordships' view, ought to proceed upon a sound induction of all the facts of the case."

10

In the case of any company one must look at the Articles of Association to ascertain the understanding between the Members on the basis of which they have entered into their relationship as such. When one peruses these in the case of this Company the most striking point that emerges is that not only has control of the Company been equally divided between the two families, so to speak, but the detailed provisions as regards the management of the Company are such as to make the resolution of any difference between the two Permanent Directors a matter of virtual impossibility. There is no provision for the appointment of a third Permanent Director. There is no arbitration clause. Distribution of the shares provides for complete equality. In other words, there is no provision for a domestic forum in which differences can be determined without the necessity for an application to the Court.

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One corollary to this is clearly that both Permanent Directors undertook to display a more than usual forbearance and tolerance of each other's point of view in relation to the affairs of the Company. Complete and constant unanimity between any two human minds, at least as regards the management of a business, is a virtual impossibility. Differences of opinion there must be and always will be, the two protagonists in the present dispute are but human and the inference that each of them undertook to place some restraint on the old Adam is inescapable. It is in the light of these considerations that I think we must approach the facts.

40

Turning to the facts, these have been sufficiently discussed in detail. On the

\*(2)\* (1924) A.C. 783, 788.

affidavits, upon which there was no cross-examination, it must be accepted that the only causes for the differences between the two Permanent Directors were the incident of the second respondent's son asking for extra remuneration, which he did not get, and the incident of the timber contract, the respondent's explanation of which has not been denied. It may be, as argued by Mr. Smith, that the appellant has some other reason for wanting the Company wound up. It may be a good reason but it has not been disclosed and so we are bound to take it that it does not exist. And if the appellant allowed the two incidents of which we have heard so much to lead him to a state of mind when he thought, no doubt in perfect good faith, that co-operation between himself and his fellow Permanent Director was impossible then he was failing in the obligation to exercise tolerance and forbearance which he had undertaken.

It is not necessary to consider whether there have been minor technical breaches of the Company Law. What is remarkable is that there is no suggestion that the Company is not making money; there is no suggestion that it would make more money if the Permanent Directors were on speaking terms; there is no question of what has been called its sub-stratum being gone; there is no suggestion that its business cannot be or is not being carried on and indeed efficiently carried on; there is no suggestion of the slightest lack of probity or of either side seeking to obtain an unfair advantage over the other or make an unfair profit or anything of the sort. (See Anglo-Continental Produce Co. Ltd. \*(3)\* ).

In the circumstances I fail to see any reason why it should be regarded as "just and equitable" that the appellant should have his way and have the Company wound up. Still less do I see any reason for interfering with the discretion of Ong, J., which seems to be based, to quote the phrase of Lord Shaw, "upon a sound induction of all the facts of the case".

I would accordingly dismiss the appeal with

\*(3)\* (1939) I. A.E.R. 99.

In the Court  
of Appeal at  
Kuala Lumpur

No. 15.

Judgment of  
Thomson C.J.

3rd December,  
1962.

(continued)

In the Court  
of Appeal at  
Kuala Lumpur

No. 15.

Judgment of  
Thomson C.J.

3rd December,  
1962.

(continued)

costs.

Kuala Lumpur,

3rd December,  
1962.

Sd/- J.B. Thomson.  
CHIEF JUSTICE  
FEDERATION OF MALAYA.

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Messrs. R. Ramini and Robert Hoh for Appellant.  
Messrs. C. Smith and R.R. Chelliah for 1st -10th  
Respondents.

11th Respondent in person.

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TRUE COPY.

Sd/ TNEH LIAN PENG.  
Private Secretary  
to Chief Justice.  
17/12/62.

No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

NO. 16.

JUDGMENT OF HILL J. A.

This is an appeal against the decision  
of Ong J. dismissing the appellant's  
petition to wind up a private company known  
as The Semantan Estate (1952) Limited.

20

The Company was incorporated in May 1952,  
with a fully paid-up capital of \$1,000,000/-  
divided into 1,000 shares of \$1000/- each.  
The objects of the company were to carry on  
business as rubber planters and estate owners.  
The subscribers to the Memorandum of Associa-  
tion were Ng Eng Hiam, the petitioner, and  
Ng Chin Siu, both prominent land-owners of  
Kuala Lumpur. Each of them, with members  
of their respective families, holds 50 per  
cent of the shares. It had been agreed that  
the Petitioner and Ng Chin Siu should have  
equal rights of management and voting powers.  
The articles of association were accordingly  
drawn up that they, the heads of each family

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became permanent directors but the Chairman was disentitled to a further or casting vote, while restrictions placed on the transfer of share further ensured parity of voting strength at all times, except in the event of a member or members of one family defecting to the other, which has not yet occurred in the history of the Company.

In the Court  
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No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

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Between 1952 and 1956 the company acquired three rubber estates totalling a little over 4,500 acres, which it still owns, save for a portion of one, the Batu Estate, in Kuala Lumpur, which had been acquired by the Government. The Company has been highly successful in its operations. The appellant and the 2nd Respondent Ng Chin Siu are the sole directors and the Articles of Association provide for their equal share in the management of the Company.

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From 1952 to 1957 there appears to have been no trouble but in 1957 differences arose between the appellant and Ng Chin Siu which finally resulted in these proceedings.

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No oral evidence was taken at the hearing of the petition, both parties relying on affidavits and these affidavits give me the impression that they conceal more than they reveal and I cannot avoid the impression that the petitioner's purpose or objects in seeking a dissolution are likely to be more cogent, and perhaps graver and more realistic, than the ones put forward.

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Be that as it may, two matters, as pointed out by Ong J. brought things to a head. First, at a meeting of the Board of Directors on May 24, 1957, Ng Kee Wei, the general manager of the company and eldest son of Ng Chin Siu, claimed a special bonus for services alleged to have been rendered by him in connection with proceedings relating to the acquisition by Government of part of the Batu Estate, which claim the petitioner had felt constrained to oppose. Second, in or about September, 1957, a contract had been given by Ng Chin Siu and Ng Kee Wei without the petitioner's knowledge to one Ng Choon Chiau for felling jungle trees on Semantan Estate on terms said to be less favourable than those offered by another contractor, Goh Chew Yik, who had been introduced earlier to the company by the

In the Court  
of Appeal at  
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No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

petitioner, and it was alleged that the petitioner had not been able to ascertain the circumstances or the precise terms on which the contract had been given out. These two differences which Ong J., regarded as of a trivial nature, led to strained relationship between the two directors and to further dissension which gave rise to additional reasons in support of the petition. They are to be found in paragraphs 17, 18, 19 and 20 of the petition. These statements were verified by an affidavit of the petitioner and I do not think it is necessary to set them out nor to refer in any great detail to the contra-affidavit by the 1st Respondent Ng Kee Wei which traversed the petitioner's and explained certain circumstances, but it will be necessary to refer later in this judgment to certain specific instances of differences.

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In his judgment Ong J. wrote inter alia "In dismissing the petition at the conclusion of the hearing, I had been and still am, clearly of the opinion that the two matters which arose in 1957 were the root cause of all the ensuing friction," and again "I shall pass over these two matters by only saying very briefly, that Ng Chin Siu and Ng Kee Wei had both tacitly acknowledged their want of tact over the matter of the special bonus by dropping the claim, and that, in regard to the jungle-felling contract, had the petitioner condescended to make any genuine attempt to find out whether or not the fancied insult was intended, he could readily have satisfied himself that his allegations of "considerable loss" suffered by the company were exaggerated.

30

After careful consideration of the affidavits on both sides, I find that all the subsequent complaints by the petitioner flowed from nothing more substantial than pique which he felt over the events of 1957. There were no grounds which could justify what was tantamount to an ultimatum, vide the last paragraph in the letter of April 12, 1958, exhibited to the petitioner's affidavit of December 5, 1961 and marked "NEH - 1."

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The learned judge considered "with great care" in re Yenidje Tobacco Company Ltd. (1916) 2 Ch. D.426 and the statement at page 692 of

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In the Court  
of Appeal at  
Kuala Lumpur

No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

- (3) Yenidje Tobacco Co. Ltd.  
 (4) Loch & Another v. John Blackwood Ltd.  
 (5) American Pioneer Leather Co. Ltd.  
 (6) Anglo-Continental Produce Co.

Mr. Ramani further submitted that though no reference to partnership law was necessary the petitioner was entitled to relief even if the Company, as a domestic Company, was regarded as a partnership and he referred to:

- (i) Ordinance No. 14/50 sec. 207.  
 (ii) Pollock's Commentary 14th Ed. 91.  
 (iii) Lindley 11th Ed. 690.  
 (iv) Atwood v. Maude 3 Ch. A.C. 373.

For the Respondents Mr. Smith dealt with various details in the affidavits and the correspondence and his main argument was that there was really only one deadlock and that was shall the Company be wound up, which he claimed was what the petitioner had wanted for years. Mr. Smith pointed out that meetings had been held by way of circulars, that the Manager, appointed by both directors in 1952, conducted the business and that while the two directors must act together they do not do the actual work of management which was delegated to the manager in 1952. He pointed out that there are no allegations against the Respondents, except perhaps in respect of the timber contract which he claimed had been satisfactorily explained. Mr. Smith submitted that in accordance with section 169 of the Company's Ordinance the Court's power was purely discretionary and that this Court should not interfere with the discretion exercised by Ong J. Mr. Smith cited:

Maxwell v. Kuen & Ors. (7)

Anglo-Continental Produce Co. Ltd (8)

- (3) 1916 2 Chan. 426      (6) 1939 1 A.E.R. p.99  
 (4) 1924 A.C. 783        (7) 1928 1 K.B. 645.  
 (5) 1918 1 Chan 556      (8) 1939 1 K.E.R. 99(103)

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Finally Mr. Smith referred to the interests of the other shareholders and cited Davis and Collett Ltd. (9)

In the Court of Appeal at Kuala Lumpur

I will now endeavour to deal with the petitioner's complaints which formed the grounds for his petition and the replies thereto.

No. 16.

Judgment of Hill J.A.

3rd December, 1962.

(continued)

I can attach little importance to the 1st Respondent's application for a bonus in connexion with the acquisition proceedings. The Petitioner objected, the application was dropped and no bonus has ever been drawn. No cause for dissension remains.

The Respondent next complained and I quote his own words from paragraph 15 of his petition:

" ... in or about September, 1957, the said Ng Chin Siu and Ng Kee Wei, without the knowledge or consent of your Petitioner, authorised a contractor to fell jungle trees on the Semantan estate subject to payment of royalty which was very much lower than the royalty agreed to be paid by another contractor who had been introduced to the Company by your Petitioner, as a result of which the Company has suffered considerable loss. Your Petitioner has not yet been able to ascertain the circumstances in which or the precise terms on which this contract for felling timber was given out."

To this complaint Ng Kee Wei replied as follows in paragraph 8 of his affidavit.

"With regard to the allegation contained in paragraph 15 of the petition which concerns the felling of jungle trees I say that the contractor engaged was the person nominated by the internal visiting agent. The difference in the price was due solely to three factors.

(a) a drop in the price of timber as the contract was made about eight months after the Contractor nominated by the petitioner came forward.

(b) the Contractor undertook to construct a road for the estate use.

(9) 1935 1 Ch. 693.

In the Court  
of Appeal at  
Kuala Lumpur

No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

(c) the Contractor nominated by the Petitioner failed to sign a contract and stopped payment of the cheque which he had given as a deposit.

Full information concerning this contract for felling trees is and always has been available to the petitioner at the company's office."

Perhaps the only comment I can make on this explanation is that it appears reasonable and should have, on the face of it, satisfied the Petitioner.

10

On 12th April 1958 the Petitioner wrote to the Secretaries and ended his letter as follows:

"It is obvious from the above that there is not the trust and congeniality between the Directors that is so essential in the running of a business of a Company as this one. It is quite clear that the events are leading towards a deadlock between the directors and no business in the full sense of that word can be carried on by the Company.

20

In the circumstances therefore unless the Company be voluntarily wound up, I regret that I may have to take whatever action that I may deem necessary."

There is perhaps one further letter by the Petitioner to which I should refer. It was dated 30th December, 1958, and a copy appears at page 138 of the record. The Secretaries were obviously anxious to have a meeting before the end of the year and had written the Petitioner to that effect. He was hardly cooperative when he replied "How is there sufficient time to give the required notice to call a General Meeting before the end of the year?"

30

A few phone calls could have gathered a quorum together at short notice.

The events which the Petitioner claimed then to be leading to a deadlock would appear to have been certainly due in part to a lack of congeniality, but I can find no justification for a lack of trust. Congeniality is probably essential between partners who, say, are solicitous, but as between directors of a

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rubber estate it seems no more than desirable. However, the Petitioner's dissatisfaction arose, in addition to the two main causes stated above, from matters which, when regarded singly, appear to me to be inconsequential and which when considered in toto appear to have been reasonably explained by the first Respondent.

In the Court  
of Appeal at  
Kuala Lumpur

No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

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In the main the Petitioner's further grounds were that meetings had not been held, that he had not been furnished with accounts and estimates, that the respective families have not been on speaking terms since early 1958, that sales of rubber had been effected by the Manager without his knowledge and that the books of the Company had been moved from No. 19 Ampang Road, which is the registered office of the Company, to No. 21 Ampang Road where he could not inspect them because of the ill-feeling and the fact that the front door of No. 21 was kept closed. It appears that Nos. 19 and 21 are adjoining premises and comprise the residence of Ng Chin Siu and his family. It is not unusual for front doors to be kept closed in Kuala Lumpur and the Petitioner does not claim that he was ever refused admission.

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To these grounds the first Respondent has replied that meetings were held by way of circular, that the Petitioner was in fact furnished with all accounts and estimates, that some members of the two families are on speaking terms, that as manager it is his duty to conduct the affairs of the Company and though it is not denied that the books are kept in No. 21 it is claimed that they have always been available to the Petitioner for inspection and that no discourtesy has ever been offered him.

40

From these "differences" Mr. Ramani contended that three irregularities resulted in the functioning of the Company contrary to Articles 85, 86 and 107 of the Articles of Association and, with regard to the removal of the books, to section 122 of the Companies Ordinance.

When I compare the differences between Ng Eng Hiam and Ng Chin Sui with those that led the Courts in the cases I have referred to to hold that there was such a deadlock that made a winding up order just and equitable, the inadequacy of the grounds on which the Petitioner

In the Court  
of Appeal at  
Kuala Lumpur

No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

seeks the dissolution of this prosperous family concern, becomes very apparent. A dissolution, moreover, that is against the wish of the surviving Respondents and there is, further, no evidence that it receives the whole-hearted support of all members of the Petitioner's family.

In my view the irregularity in regard to section 122 of the Ordinance is so very technical in the circumstances that it should be ignored.

In my view too the question of irregularities against the Articles do not fall for consideration by this Court at this stage as they appear to me to be outside the scope of the real issue "is there a deadlock" due to the differences between the two directors.

10

I refer specially to the proceedings of the Annual Meeting held on 27th May 1961, a copy of the minutes of which appear at page 125 et seq of the record and in particular to the entry of the Chairman with regard to Petitioner's request for a poll.

20

Much was made of the Yenidje Tobacco Company case, but when one compared the differences that have arisen between Mr. Ng Eng Hiam and Mr. Ng Chin Siu with those that arose between Mr. Weinberg and Mr. Rothman the former pale into insignificance.

In re Bondi Better Bananas Ltd. Valario et al v. Bondi et al \*(10)\* the Ontario Court of Appeal held (see the head note) that "the principles governing the dissolution of partnerships apply to equally controlled private companies whereby they are to be wound up where there is such continued quarrelling and animosity as precludes all reasonable hope of reconciliation and friendly co-operation". In applying these principles, with which I respectfully agree, to the present case I do not consider that a stage of such continued quarrelling and animosity has yet been reached between the Petitioner and the 2nd Respondent and there seems to be reasonable hope of reconciliation and co-operation if ordinary good sense is employed.

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-- I have come to the conclusion therefore that



this is not an instance where a winding up order would be just and equitable and that Ong J. properly exercised his discretion in refusing to make such an order.

I would therefore dismiss this appeal with costs here and in the court below.

Kuala Lumpur.  
3 Dec. 1962.

Sd/ (R.D.R. HILL)

JUDGE OF APPEAL  
FEDERATION OF MALAYA.

In the Court  
of Appeal at  
Kuala Lumpur

No. 16.

Judgment of  
Hill J.A.

3rd December,  
1962.

(continued)

10

Ramani for Appellant.

Smith for Respondents 1 to 10.

Messrs. Eugene Lye & Hoh for Appellant.

Messrs. R.R. Chelliah Brothers for  
Respondents 1 - 10.

Respondent No. 11 in person.

Certified True Copy

Sd/- G.E. Tan

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Secretary to Judges  
of Appeal,  
Federation of Malaya.  
7th December, 1962.

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NO. 17.

JUDGMENT OF S.S. BARAKBAH J.A.

I have had the advantage of reading the draft judgment of Hill J.A. and I agree entirely with the reasons he gives for dismissing the appeal. I will only add very shortly my reasons for arriving at the same conclusion.

30

I need not recapitulate the facts. They have been fully stated by Ong J. in the Court below and by Hill J.A.

The petition was presented by the Appellant under section 166(6) of the Companies Ordinance 1940 for an order that it was "just

No. 17.

Judgment of  
Barakbah J.A.

3rd December,  
1962.

In the Court  
of Appeal at  
Kuala Lumpur

and equitable" that the Company be wound up,  
and the evidence adduced at the hearing was  
by way of affidavits only.

No. 17.

Judgment of  
Barakbah J.A.  
3rd December,  
1962.

After perusing the affidavits of both  
parties there is no doubt that there were  
some quarrelling and dissatisfaction between  
the Appellant and Ng Chin Sui but in my  
opinion they were not as serious as the Appel-  
land had made them out to be.

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(continued)

In his judgment Hill J.A. had considered  
the various authorities referred to by Mr.  
Ramani, counsel for the Appellant and I am of  
the opinion, after careful study of these  
cases, that the general principle underlying  
these authorities was that the parties had  
reached such a state of complete deadlock  
that it would be impossible to carry on the  
business any longer. In the present case  
there was no allegation of dishonesty, inef-  
ficiency, misconduct or failure to keep proper  
accounts. It is true there were some differ-  
ences between the two directors but to my mind  
they were not such as would cause complete  
deadlock that it would be impossible to carry  
on the business any longer. This is a family  
concern and I feel that it would not be im-  
possible for them to resolve their differences  
and carry on with the spirit of co-operation  
that had existed from 1952 to 1957. The  
Company is in a flourishing condition and in  
all the circumstances of the case, it appears  
that it will not be in the interest of the  
several shareholders to have the business  
wound up. I therefore agree with Hill J.A.  
that the appeal should be dismissed with costs here  
and in the Court below.

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Kuala Lumpur,  
3rd December, 1962.

Sd. S.S. BARAKBAH  
JUDGE OF APPEAL  
FEDERATION OF MALAYA.

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Ramani for Appellant.  
Smith for Respondents 1 to 10.

Certified True Copy  
Sd. (G.E. Tan)  
Secretary to Judges  
of Appeal,  
Federation of Malaya.  
7th December, 1962.

No. 18.

ORDER DISMISSING APPEALIn the Court  
of Appeal at  
Kuala Lumpur

Before:

The Honourable Dato Sir James Thomson, P.M.N.,  
Chief Justice, Federation of P.J.K.  
Malaya.

No. 18.

Order  
dismissing  
Appeal.The Honourable Mr. Justice Hill, B.D.L.,  
Judge of Appeal, Federation of Malaya.3rd December,  
1962.10 The Honourable Mr. Justice Syed Sheh Barakbah,  
Judge of Appeal, Federation D.E.M., P.J.K.  
of Malaya.IN OPEN COURTThis 3rd day of December, 1962O R D E R

This Appeal coming on for hearing on the 15th and 16th days of October 1962 in the presence of Mr. R. Ramani (Mr. Robert Hoh with him) of Counsel for the above named Appellant, Mr. C.H. Smith (Mr. R.R. Chelliah with him) of Counsel for the above named Respondents Nos. 1 to 10 and Ng Beh Tong the Respondent No. 11 being present in person AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that this Appeal do stand adjourned to this day for judgment AND the same coming on for judgment this day in the presence of Mr. Robert Hoh of Counsel for the Appellant, Mr. C.H. Smith and Mr. R.R. Chelliah of Counsel for the Respondents

20  
30 Nos. 1 to 10 and Ng Beh Tong the Respondent No. 11 in person IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS FURTHER ORDERED that the Appellant do pay to the Respondents the costs of this Appeal as taxed by the proper officer of this Court AND IT IS LASTLY ORDERED that the sum of \$500/- (Dollars Five hundred) deposited in Court by the Appellant as security for the costs of this Appeal be paid out to the Respondents towards their taxed costs of this Appeal.

40 GIVEN under my hand and the seal of the Court  
this 3rd day of December 1962.s/d. Raja Aghan Shah.  
Registrar,  
Court of Appeal,  
Federation of Malaya.

In the Court  
of Appeal at  
Kuala Lumpur

No. 19.

ORDER GRANTING FINAL LEAVE

No. 19.

CORAM: THE HONOURABLE DATO SIR JAMES THOMSON,  
P.M.N., P.J.K., CHIEF JUSTICE,  
FEDERATION OF MALAYA:

Order granting  
Final Leave to  
Appeal to His  
Majesty the  
Yang di-Pertuan  
Agong.

THE HONOURABLE MR. JUSTICE HILL, B.D.L.,  
JUDGE OF APPEAL, FEDERATION OF MALAYA:

AND

15th April,  
1963.

THE HONOURABLE MR. JUSTICE SYED SHEH  
BARAKBAH, B.D.L., JUDGE OF APPEAL,  
FEDERATION OF MALAYA.

10

IN OPEN COURT

This 15th day of April, 1963.

O R D E R

UPON MOTION made unto this Court this day  
by Mr. Robert K.C. Hoh of Counsel for the  
Appellant in the presence of Mr. R.R. Chelliah  
of Counsel for the above-named Respondents No.  
1 to 10 and Ng Beh Tong the above-named Res-  
pondent No.11 in person AND UPON READING the  
Notice of Motion dated the 21st day of March  
1963 and the Affidavit of Ng Eng Hiam affirmed  
on the 21st day of March 1963 and filed herein  
in support of the said Motion AND UPON HEARING  
Counsel as aforesaid IT IS ORDERED that final  
leave be and is hereby granted to the Appell-  
ant to appeal to His Majesty the Yang di-  
Pertuan Agong AND IT IS ORDERED that the costs  
of this Motion be costs in the said Appeal.

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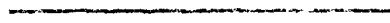
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GIVEN under my hand and the seal of the  
Court this 15th day of April 1963.

Sd: RAJA AZLAN SHAH

REGISTRAR,  
COURT OF APPEAL,  
FEDERATION OF MALAYA.

(L.S.)



E X H I B I T S

EXHIBIT "B" - MEMORANDUM OF ASSOCIATION

THE COMPANIES ORDINANCES, 1940 TO 1946.  
-----

COMPANY LIMITED BY SHARES  
-----

MEMORANDUM OF ASSOCIATION

of

Semantan Estate (1952) Limited  
-----

Exhibits  
"B"  
Memorandum  
of Associa-  
tion.

30th April,  
1952.

10 1. The name of the Company is "SEMANTAN ESTATE  
(1952) LIMITED."

2. The Registered Office of the Company will  
be situate in the Federation of Malaya.

3. The objects for which the Company is es-  
tablished are:-

20 (1) To carry on at any place or places in the  
Federation of Malaya or in the Colony of  
Singapore or elsewhere in Great Britain or  
in any British Colony or Dependency which  
to the Company may seem suitable the business  
of planters, cultivators, growers, importers  
and exporters, refiners, manufacturers, pro-  
ducers, wholesale and retail dealers and  
merchants of and in rubber, coconuts, fibre,  
copra and all other products of the coconut,  
palm oil, tea, coffee, gutta percha and  
gums of every description, latex bearing  
trees, tobacco, sugar, cocoa, spices, carda-  
mons, rice, fruit, pepper, cinchona, silk,  
30 cotton, flax, guano and bone and other  
artificial manure and agricultural and  
natural products of any kind and to manu-  
facture, dispose of, buy, sell and deal in  
produce of the same.

(2) To plant, grow, produce, cultivate, cure,  
treat, submit to any process, manufacture,  
prepare for market (whether on account of  
the company or not), buy sell, and deal in



capitalists, financiers, brokers, underwriters, and commission agents which may seem conducive to any of the objects of the company.

Exhibits  
"B"  
Memorandum of  
Association.

30th April,  
1952.

(continued)

10

- (c) To undertake the office of trustee, receiver and liquidator whether official or otherwise, executor, administrator, committee, manager, attorney, delegate, substitute, treasurer, and any other offices or situations of trust or confidence and to perform and discharge the duties and functions incident thereto and generally transact all kinds of trust business either gratuitously or otherwise.

20

- (5) To apply for purchase or otherwise acquire, sell, let or grant letters patent, brevets d'invention, concessions, inventions, rights and privileges subject to royalty, or otherwise and whether exclusive or non-exclusive or limited or any part or interest in such letters patent, brevets d'invention, concessions, licences, inventions, rights and privileges, whether in the Malay Peninsular or in any part of the world.

30

- (6) To promote or assist in the promotion of or establish companies and associations for the prosecution or execution of undertakings, works, projects, or enterprises of any description, whether of a private or public character in Malaya or elsewhere, and to acquire and dispose of shares and interest in such companies or associations, or in any other companies or associations or in the undertakings thereof.

40

- (7) (a) To receive on deposit title deeds and other securities.
- (b) To negotiate loans of every description and to lend money, securities and other property.
- (c) To invest on the security of and make advances on all descriptions of free-

Exhibits  
"B"  
Memorandum  
of  
Association.

30th April,  
1952.

hold, leasehold, or other properties, and all descriptions of produce or merchandise, and stocks, shares, bonds, mortgages, debentures or obligations and generally to lend and advance money to such persons and upon such terms and subject to such conditions as may seem expedient.

(continued)

- (d) To purchase or otherwise acquire, issue, re-issue, sell, place and deal in shares, stocks, bonds, debentures and securities of all kinds, and to give any guarantee or security for the payment of dividends or interest thereon or otherwise in relation thereto. 10
- (e) To procure the capital for any company in any country formed for the purpose of carrying into effect and having objects connected with land, such as companies formed for the purposes of agriculture, land credit, and other interests in real estate, and to procure the issue of the capital of such companies, and to guarantee the issue thereof and to subscribe for, purchase, dispose of, and otherwise deal in the shares, bonds and securities of such companies or any other securities on real estate. 20 30
- (8) To purchase or acquire all or any part of the business, property and liabilities of any company, society, partnership or person, formed for or carrying on all or any of the purposes within the objects of this company, and to conduct and carry on or liquidate and wind up any such business.
- (9) To enter into working arrangements of all kinds with other companies, corporations, firms, or persons, and also to make and carry into effect arrangements with respect to sharing of profits, union of interests, amalgamation, or otherwise either in whole or in part, or any other arrangements with any other companies, corporations, firms or persons. 40
- (10) To enter into any arrangements or contracts with any Governments or authorities supreme,



municipal, local or otherwise that may seem conducive to the company's objects or any of them, and to obtain from any such Government or authority any rights privileges and concessions which the company may think it desirable to obtain and to work, develop, carry out, exercise, comply with and turn to account any such arrangements, rights, privileges and concessions.

Exhibits  
"B"  
Memorandum  
of  
Association.

30th April,  
1952.

(continued)

10

(11) To carry on and transact any other business and operations, manufacturing, trading, mercantile, commercial or otherwise, which the Company may think directly or indirectly conducive to any of its objects or capable of being conveniently carried on in connection therewith.

20

(12) To appoint from time to time either with full or restricted powers of sub-delegation and either with or without remuneration agents, attorneys, local or managing directors or other persons or corporations under power of attorney or otherwise within or outside the Federation of Malaya for the purpose of carrying out and completing all or any of the objects of the Company as mentioned in this Memorandum of Association and of arranging, conducting or managing the business or businesses of the company or any matter or concern whatsoever in which the company is now or may from time to time be or become or be about to become interested or concerned with the same or more limited powers than the Directors of the company have, and to delegate such powers of appointment to any person or persons, company or corporation, and from time to time to revoke and cancel all or any such appointments or delegations and to remove any person or corporation appointed thereunder.

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(13) To borrow or raise or secure the payment of money in such manner as the company shall think fit, and in particular by the mortgage or charge of all or any part of the property of the

Exhibits  
"B"  
Memorandum  
of  
Association.

30th April,  
1952.

(continued)

Company or by the issue of debentures or debenture stock, perpetual or otherwise, charged upon all or any of the Company's property (both present and future) including its uncalled capital, and to pay off, purchase, or redeem any such mortgage, charge or securities.

- (14) To do all or any of the matters hereby authorised either alone or in connection with, or as factors, trustees or agents for any other companies, or persons or by or through any factors, trustees or agents. 10
- (15) To accept stocks or shares in, or the debentures, mortgage debentures or other securities of any other Company in payment for any services rendered or for any sale made to or debts owing from any such Company and to pay for any property acquired by the Company in shares of the Company. 20
- (16) Upon any issue of shares, debentures or other securities of the Company to employ brokers, commission agents and underwriters, and to provide for the remuneration of such persons for their services by payment in cash or by the issue of shares, debentures or other securities of the Company, or by the granting of options to take the same, or in any other manner allowed by law. 30
- (17) To distribute in specie or otherwise as may be resolved any assets of the Company among the members and particularly the shares, debentures or other securities of any other company formed to take over the whole or any part of the assets or liabilities of this Company.
- (18) To let on lease or on hire the whole or any part of the immovable or movable property of the Company on such terms as the Company shall determine. 40
- (19) To sell, dispose of or transfer the business, property and undertaking of the Company or any part thereof for any consideration which the Company may see

fit to accept and in particular for shares, debentures or securities of any other Company having objects altogether or in part similar to those of this Company.

Exhibits  
"B"  
Memorandum  
of  
Association.

- (20) To pay the cost, charges and expenses, preliminary and incidental to the formation, establishment and registration of the Company, and to remunerate by commission, brokerage, granting of options of taking up shares of the Company or otherwise any person or Company for services rendered or to be rendered in relation to the formation and establishment of the Company or the conduct of its business or placing or assisting to place or guaranteeing the placing of any shares in or debentures or other securities of the Company.

30th April,  
1952.

(continued)

- (21) To obtain all powers and authorities necessary to carry out or extend any of the above objects.

- (22) Generally to do all such other things as are incidental to or connected with any of the above objects or conducive to the attainment thereof or otherwise likely in any respect to be advantageous to the Company.

- (23) And it is hereby declared that the intention is that the objects in each paragraph of this clause shall except where otherwise expressed in such paragraph be independent main objects and shall in no wise be limited or restricted by reference to or inference from the terms of any other paragraph or the name of the Company.

- (24) And it is hereby declared that the word "Company" in this clause when not applied to this Company shall be deemed to include any partnership or other body of persons political, mercantile or otherwise, whether incorporated or not incorporated, and whether domiciled in the Federation of Malaya or elsewhere and whether existing or hereafter to be formed.

Exhibits "B" 4. The liability of the members of the Company is limited.

Memorandum of Association. 5. The capital of the Company is \$1,000,000/- divided into 1000 shares of \$1,000/- each.

30th April, 1952.

(continued)

The Company shall have power to increase or reduce the capital, to consolidate or subdivide the shares into shares of larger or smaller amounts, and to divide the shares forming the capital (original, increased or reduced) of the Company into several classes, and to attach thereto respectively preferential, deferred or special rights, privileges or conditions as may be determined by or in accordance with the regulations for the time being of the Company and to issue additional capital with any such rights, privileges or conditions as aforesaid.

10

We, the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite to our respective names.

20

Name, Address and Description of subscribers.

Number of Shares taken by each Subscriber

NG CHIN SIU,  
No. 19, Ampang Road,  
Kuala Lumpur.  
Planter & Miner

TWENTY

30

NG ENG HIAM,  
No. 9, Church Street,  
Kuala Lumpur.  
Planter.

TWENTY

Dated this 30th day of April 1952.

Witness to the signature of all subscribers.

Sd: J.T. TOSSWILL,  
Advocate & Solicitor.  
Kuala Lumpur.

40

EXHIBIT "B" - ARTICLES OF ASSOCIATION

Exhibits  
"B"  
Articles of  
Association.  
30th April,  
1952.

CERTIFIED TRUE COPY

Sd: Illegible  
Secretaries.

THE COMPANIES ORDINANCES 1940 to 1946

-----  
Company Limited by Shares  
-----

ARTICLES OF ASSOCIATION

OF

10

Semantan Estate (1952) Limited.

-----  
PRELIMINARY

1. The Company is registered as a private company and accordingly :-

Private  
Company

- (a) the right to transfer shares is restricted in manner hereinafter provided.
- (b) the number of the members of the Company (exclusive of persons in the employment of the Company and of persons who, having been formerly in the employment of the Company, were, while in such employment, and have continued after the determination of such employment to be members of the Company) shall be limited to fifty, provided that, for the purpose of this provision where two or more persons hold one or more shares in the Company jointly they shall be treated as a single member.
- (c) any invitation to the public to subscribe for any shares or debentures or debenture stock of the Company is prohibited.

20

30

Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

2. The regulations in Table A in the First Schedule to the Companies Ordinance 1940 shall not apply to the Company except so far as the same are repeated or contained in these presents.

3. In the construction of these Articles of Association the following expressions shall where the context admits have the following meanings:-

10

The expression "the Company" shall mean the above mentioned Company.

The expressions "the Directors" and "the Board" shall mean respectively the directors and the Board of directors of the Company.

Definition

The expression "these presents" shall mean these Articles of Association.

The expression "the office" shall mean the Registered Office for the time being of the Company.

20

"Month" shall mean calendar month.

The expression "the Ordinance" and "The Companies Ordinance 1940" shall mean respectively the Companies Ordinance 1946 and the Companies Ordinance 1940 of the Straits Settlements as modified and applied by the Ordinance to the Federation of Malaya.

Where any provision of the Ordinance or the Companies Ordinance 1940 is referred to the reference is to that provision as modified by any law for the time being in force.

30

Writing shall include printing and lithography and any other mode or modes of representing or reproducing words in a visible form.

Words importing the singular only include the plural and vice-versa.

40

Words importing the masculine gender only include the feminine gender.

Words importing persons include corporations and companies.

Subject as aforesaid and unless the context otherwise requires expressions defined in the Ordinance or the Companies Ordinance 1940 or any statutory modification thereof in force at the date at which these presents become binding on the Company shall have the meanings so defined.

Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

10

### B U S I N E S S

4. The business of the Company may be commenced as soon as the Directors in their absolute discretion shall think fit.

Commencement

### S H A R E S

5. The shares taken by the subscribers to the Memorandum of Association shall be duly issued by the Directors. Subject as aforesaid the shares shall be under the control of the Directors who may allot and issue the same (subject always to Articles 1, 36 and 43 hereof) to such persons on such terms and conditions and at such times as the Directors think fit and with full power to give to any person the call of any shares either at par or at a premium, and for such time and for such consideration as the Directors think fit.

Allotment  
of shares

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6. If two or more persons are registered as joint holders of any share any one of such persons may give effectual receipts for any dividends or other moneys payable in respect of such share.

Joint holders  
of shares

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7. No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or required to recognise any equitable, contingent, future or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder, except as by these presents otherwise expressly provided or as by law required or pursuant to any order of the Court.

No trust  
recognised

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8. The Company may exercise the powers of

Payment of  
interest out  
of capital

Exhibits  
"B"  
Articles of  
Association.

Section 57 of the Companies Ordinance 1940 and may pay interest under that section at any rate not exceeding six per cent per annum.

30th April,  
1952.

C E R T I F I C A T E S

(continued)

Issue of  
share -  
Certifi-  
cate

9. Each member shall be entitled on one certificate under the Company Seal of the Company for the Shares registered in his name, or if the Directors so approve (upon payment of such fee as the Directors may from time to time determine) to several certificates, each for one or more of such shares provided that in the case of joint holders the Company shall not be bound to issue more than one certificate to all the joint holders, and delivery of such certificate to any one of them shall be sufficient delivery to all. Every such certificate shall specify the denoting numbers of the shares in respect of which it is issued and the amount paid up thereon and shall be signed by at least one Director and countersigned by the Secretary or some other person nominated by the Directors for the purpose. Except where the conditions of issue of any shares otherwise provide every certificate shall be complete and ready for delivery within two (2) months after allotment or registration of transfer.

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Replacement  
of damaged  
or lost  
Certifi-  
cate

10. If any certificate be worn out or damaged then the Directors shall issue a fresh certificate on the certificate so worn out or damaged being delivered to be cancelled, and if any such certificate be lost or destroyed then the Directors shall issue a fresh certificate on such loss or destruction being proved to their satisfaction and upon a sufficient indemnity being given against any loss or damage which the Company may suffer by reason of the issue of such fresh certificate. On the issue of any certificate under this Article the Directors may demand a fee not exceeding two dollars.

40

Calls

C A L L S

11. The Directors may, subject to the provisions of these presents, from time to



Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

10 time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that fourteen days' notice at least be given of each call, and that no call on any share shall be for a greater amount than a quarter of the nominal value of such share and that no call shall be made within one month after the last preceding call was made. This Article shall be without prejudice to the rights of any member in respect of any share which has been issued to him on special conditions as to payment by instalments or otherwise. A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

20 12. Subject to any special conditions on which any shares have been issued each member shall be liable to pay any call made on him and any instalment presently payable by him at the time and place appointed by the Directors.

13. The joint holders of a share shall be jointly and severally liable to pay all calls and instalments in respect thereof.

Liability of  
joint holders.

30 14. If before or on the day appointed for payment of any call or instalment any member does not make such payment then he shall be liable to pay such call or instalment together with interest on the same at such rate not exceeding ten per cent per annum as the Directors shall fix from the day appointed for payment thereof to the time of actual payment, but the Directors shall be at liberty to waive payment of such interest wholly or in part.

Interest on  
unpaid calls.

40 15. Any sum which by the terms of allotment of a share is made payable upon allotment or at any fixed date, whether on account of the amount of the share or by way of premium, shall, for all purposes of these presents, be deemed to be a call duly made and payable on the date fixed for payment, and in case of non-payment the provisions of these presents as to payment of interest and expenses, forfeiture and the like, and all other relevant provisions of these presents shall apply as if such sum were a call duly made and notified as hereby

Sums payable  
on allotment  
deemed a call

Exhibits "B"	provided.	
Articles of Association.	16. The Directors may accept from any member the whole or a part of the amount remaining unpaid on any share held by him although no call has been made and no instalment has become payable. Upon any moneys so paid in advance and until the same would but for such advance become presently payable the Directors may pay or allow such interest as may be agreed between them and such members in addition to the dividend payable upon such part of the share in respect of which such advance has been made as is actually called up.	10
30th April, 1952.		
(continued)		
Interest on calls paid in advance.		
Difference- in arrange- ments as to calls	17. The Directors may from time to time make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls or instalments to be paid and in the time of payment of such calls or instalments.	20
Calls to be fully paid before receiving dividend and exercise of privileges	18. No members shall be entitled to receive any dividend or to exercise any privilege as a member until he shall have paid all calls for the time being due and payable on every share held by him whether alone or jointly with any other persons together with interest and expenses (if any).	
	L I E N	
Enforcement of lien	19. The Company shall have a first and paramount lien upon all shares (whether fully paid or not) registered in the name of any member either alone or jointly with any other person for his debts, liabilities and engagements, whether solely or jointly with any other person, to or with the Company whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not and such lien shall extend to all dividends from time to time declared in respect of such shares. But the Directors may at any time declare any share to be exempt, wholly or partially from the provisions of this Article.	30  40
	20. Subject to Article 1 hereof the Directors may sell the shares subject to any	

Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

10 such lien at such time or times and in such manner as they think fit, but no sale shall be made until such time as the moneys in respect of which such lien exists or some part thereof, are or is presently payable or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharged, and until a demand and notice in writing stating the amount due or specifying the engagement and demanding payment or fulfilment or discharge thereof, and giving notice of intention to sell in default shall have been served on such member or on the persons (if any) entitled by reason of his death or bankruptcy to the shares and default in payment, fulfilment or discharge shall have been made by him or them for fourteen days after such notice.

20 21. The purchaser of any shares so sold on a proper transfer being delivered to the Company shall be registered as the holder of such shares and the Directors may authorise some person to transfer such shares to the purchaser.

Transfer on  
sale

30 22. No purchaser shall be bound or concerned to inquire into the application of the purchase money or the regularity of the sale but the remedy of any one injured by a sale wrongfully made in purported exercise of such power of sale shall be in damages against the Company only.

40 23. All moneys received on any such sale shall after payment of any prior incumbrance be applied firstly in payment of all costs of such sale and of any attempted sale and secondly in payment of all moneys charged on the shares by virtue of such lien and presently payable and subject to such payments the balance shall (subject to a like lien for sums not presently payable as existed on the shares prior to the sale) be paid to the person who was entitled to such shares immediately prior to the date of such sale.

#### FORFEITURE OF SHARES

24. If any member fails to pay the whole or any part of any call or instalment of a call on or before the day appointed for

Notice to be  
given of in-  
tended  
forfeiture

<p>Exhibits "B" Articles of Association. 30th April, 1952. (continued)</p>	<p>the payment thereof the Directors may at any time thereafter, during such time as the call or instalment or any part thereof remains unpaid, serve a notice on him or on the person entitled to his shares by reason of his death or bankruptcy requiring him to pay such call or instalment, or such part thereof as shall then be unpaid together with interest thereof at such rate not exceeding ten per cent per annum as the Directors shall determine and any expenses that may have accrued by reason of such non-payment.</p>	<p>10</p>
<p>Particulars to be set out in notice</p>	<p>25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which such call or instalments, or such part as aforesaid, and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payments is to be made and shall state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.</p>	<p>20</p>
<p>Forfeiture to be by resolution of Direct- ors on non- compliance</p>	<p>26. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter before the payment required by the notice has been made be forfeited by a resolution of the Directors to that effect. A forfeiture of shares shall include all dividends in respect of the shares not actually paid before the forfeiture notwithstanding that they shall have been declared.</p>	<p>30</p>
<p>Notice of forfeiture to be given and entered in Register of members.</p>	<p>27. When any share has been forfeited in accordance with these presents notice of the forfeiture shall forthwith be given to the holder of the share or to the person entitled to the share by reason of his death or bankruptcy as the case may be, and an entry of such notice having been given, and of the forfeiture with the date thereof shall forthwith be made in the register of members opposite to the share; but the provisions of this Article are directory only and no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as</p>	

aforesaid.

10 28. Any share which shall be forfeited shall thereupon become the property of the Company, and may subject to Article 1 hereof be either cancelled or sold or re-allotted or otherwise disposed of, either to the person who was before forfeiture the holder thereof or entitled thereto or to any other person, upon such terms and in such manner as the Directors shall think fit.

Exhibits "B"  
Articles of  
Association.  
30th April,  
1952.  
(continued)  
Shares forfei-  
ted belong to  
the Company.

29. Notwithstanding any such forfeiture as aforesaid the Directors may at any time before the forfeited share has been otherwise disposed of, annul the forfeiture upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share and upon such further terms (if any) as they shall see fit.

Annulment of  
forfeiture

20 30. A shareholder whose shares have been forfeited shall, notwithstanding such forfeiture be liable to pay the Company all calls made and not paid on such shares at the time of forfeiture and interest thereon to the date of payment in the same manner in all respects as if the shares had not been forfeited and to satisfy all (if any) the claims and demands which the Company might have enforced in respect of the share at the time of forfeiture without any deduction or allowance for the value of the shares at the time of forfeiture.

30

Calls and  
expenses  
recoverable  
after for-  
feiture

40 31. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the shareholder whose share is forfeited and the Company except only such of those rights and liabilities as are by these presents expressly saved or as are by law given or imposed in the case of past members.

Consequences  
of forfeiture

32. A Statutory declaration in writing that the declarant is a Director of the Company and that a share in the Company has been duly forfeited on a date stated in the declaration shall against all persons claiming to be entitled to the share be conclusive evidence of

Statutory  
declaration  
in writing to  
be conclusive  
evidence of  
facts of for-  
feiture and  
consequences

Exhibits "B"	the facts therein stated, and such declaration,	
Articles of Association.	together with the receipt of the Company for the consideration (if any) given for the share on the sale or disposition thereof shall con- stitute a good title to such share on a proper transfer being delivered to the Company; and a certificate of proprietorship shall be deli- vered to a purchaser and his name shall be	
30th April, 1952.	entered in the register of members and there- upon he shall be deemed the holder of such share discharged from all calls or instalments or other sums due prior to such purchase and he shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any act, omission or irregularity relating to or con- nected with the proceedings in reference to the forfeiture sale re-allotment or disposal of the share. The Directors may authorise any person	10
(continued)	to execute a transfer of any shares so sold to the purchaser.	20

#### SURRENDER OF SHARES

Surrender of Shares	33. The Directors may accept a surrender of shares when they are in a position to for- feit such shares and in any other case when a surrender of shares is allowed by law and the provisions of the four last preceding Articles shall apply to any surrendered shares.	30
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#### TRANSFER OF SHARES

Transferee not deemed holder un- til regis- tered.	34. The instrument of transfer of a share shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferred is entered in the register of members in respect thereof.	
Transfer to be in writing	35. Subject to the restrictions of these pre- sents shares shall be transferable but every transfer must be in writing in the usual common form, or in such other form as the Directors shall from time to time approve, and must be left at the Office, accompanied by the certificate of the shares to be trans- ferred and such other evidence (if any) as the Directors may require to prove the title of the intending transferor. On every trans-	40

fer the Directors may demand a fee not exceeding two dollars.

Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

Restriction  
on Transfer

10 36. Any share in the Company may be transferred by a member to any son or grandson of such member and any share of a deceased member may be transferred by his personal representatives to any son daughter grandson grand-daughter brother or widow of such deceased member and shares standing in the name of Trustees of the Will of any deceased member may be transferred upon any change of trustees to the trustees for the time being of such Will but save as aforesaid no share in the Company shall be transferred other than to a person approved by all the Directors of the Company for the time being.

20 37. The Company shall provide a book called the "Register of Transfers" which shall be kept by the Secretary under the control of the Directors, and in which shall be entered the particulars of every transfer or transmission of every share. The Directors may suspend the registration of transfers during the fourteen days immediately preceding the Ordinary General Meeting in each year.

Register of  
Transfer

#### TRANSMISSION OF SHARES

30 38. In the case of the death of a member, the survivors or survivor where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole or only surviving holder, shall be the only persons recognised by the Company as having any title to or interest in his shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

Transmission  
on death of  
member.

40 39. Subject to Article 1 hereof, any person becoming entitled to a share in consequence of the death or bankruptcy of any member shall upon producing such evidence of title as having regard to section 72 of the Companies Ordinance 1940 the Directors may from time to time properly require, have the right either to be registered himself as a member in respect of the share, or

Production  
of Evidence  
of title  
before  
registration.

Exhibits  
"B"  
Articles of  
Association.  
30th April,  
1952.  
(continued)

subject always to the provisions as to transfer herein contained, to make such transfer of the shares as the deceased or bankrupt person could have made: but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of transfer of the same by the deceased or bankrupt person before the death or bankruptcy.

10

Person entitled by transmission may receive dividend before registration but not vote

40. A person entitled to shares by reason of the death or bankruptcy of the holder shall until he transfers or is registered as a member in respect of such shares be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of such shares except that he shall not without being registered as a member in respect of such shares be entitled in respect of them to exercise any right of membership in relation to meetings of the Company.

20

#### MODIFICATION OF CLASS RIGHTS

Modification of rights.

41. Whenever the capital by reason of the issue of preference shares or otherwise is divided into different classes of shares none of the rights privileges or conditions for the time being attached or belonging to each class of shares for the time being forming part of the capital of the Company shall be modified, affected, varied, extended or surrendered in any manner without the consent in writing of the holders of three-fourths in value of the issued shares of that class or the sanction of an Extraordinary Resolution passed at a separate General Meeting of the members of that class, and every modification so consented to or sanctioned shall be subject to the provisions of Section 64 of the Companies Ordinance 1940 bind all the shareholders of that class. To any such Meeting all the provisions of these presents as to General Meetings shall mutatis mutandis apply, but so that the necessary quorum shall be members of the class holding or representing by proxy one-third of the capital paid or credited as paid on the issued shares of the class.

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## INCREASE OF CAPITAL

- |    |   |  |
|----|---|--|
| 10 | <p>42. The Company may from time to time by special resolution passed at a General Meeting of the Company whether all the shares for the time being authorised shall have been issued or all the shares for the time being issued shall have been fully called up or not, increase its capital by the creation and issue of new shares, such aggregate increase to be of such amount and to be divided into shares of such respective amounts as the Company in such General Meeting directs and the Company may in such General Meeting direct that such new shares or any of them may have such preference or priority over the then existing shares of the Company and such rights and privileges different to those of such existing shares as they may think expedient.</p>  | <p>Exhibits<br/>"B"<br/>Articles of Association.<br/>30th April, 1952.<br/><br/>(continued)<br/><br/>Company may increase its capital.</p> |
| 20 | <p>43. Unless otherwise determined by the Directors or by the resolution authorising an increase of capital any original shares for the time being unissued and any new shares from time to time to be created, shall before they are issued, be offered to the members in proportion as nearly as may be to the number of shares held by them. Such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer if not accepted will be deemed to be declined and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered the Directors may, subject to the provisions of these presents dispose of the same in any manner which they think beneficial to the Company. The directors may in like manner dispose of any such new or original shares as aforesaid which, by reason of the ratio borne by them to the number of persons entitled to such offer as aforesaid or by reason of any other difficulty in apportioning the same, cannot in the opinion of the Directors be conveniently offered in manner hereinbefore provided.</p> | <p>Unissued original and new shares to be offered to members in proportion to their holdings</p>   |
| 30 |   |  |
| 40 |   |  |
| 50 | <p>44. Except so far as otherwise provided by the conditions of issue any capital raised by creation of new shares shall be considered as part of the original capital of the Company and shall be subject to the same pro-</p>   | <p>New shares subject to same provisions as original shares.</p>   |

Exhibit "B" Articles of Association.	visions with reference to the payment of calls, lien, transfer, transmission, for- feiture and otherwise as if it had been part of such capital.	
30th April, 1952.	45. The Company may by ordinary resolution:-	
(continued)	(a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;	10
Consolidate Sub-divide and cancel- lation of shares	(b) Sub-divide its existing shares, or any of them, into shares of smaller amount that is fixed by the Memo- randum of Association subject, nevertheless, to the provisions of section 53 (i) (d) of the Companies Ordinance 1940.	
	(c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.	20
Reduction of Share Capital etc.	46. The Company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with and subject to any incident and con- sent required by law.	
BORROWING POWERS		
Power to borrow	47. The Directors may from time to time at their discretion raise or borrow for the purposes of the Company such sums of money as they think proper.	30
Conditions on which money may be borrowed.	48. The Directors may subject to Article 1 (c) hereof raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respect as they think fit, and, in particular, by the issue of bonds, perpetual or redeemable debenture or debenture stock, or any mortgage, charge, or other security on the undertaking or the whole or any part of the property of the Company (both present and future), includ- ing its uncalled capital for the time being.	40
Securities may be assignable free from equities.	49. Debentures, Debenture Stock or other Securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.	

50. Any Debentures, Debenture Stock, Bonds or other Securities may be issued at a discount, premium or otherwise, and with any special privileges as to redemption, surrender drawings, allotment of Shares, attending and voting at General Meetings of the Company, appointment of Directors and otherwise.

Exhibit "B"  
Articles of Association.  
30th April, 1952.

(continued)  
Issue at discount &c. or with special privileges.

10 51. The Directors shall cause a proper Register to be kept, in accordance with Section 89 (1) of the Companies Ordinance 1940, of all mortgages and charges specifically affecting the property of the Company.

Register of mortgage to be kept.

GENERAL MEETING

20 52. A General Meeting of members of the Company shall be held once at least in each calendar year at such time and place as may be determined by the Directors but so that no such meeting shall be held at an interval of more than fifteen months from the last preceding General Meeting. Such meetings shall be called Ordinary Meetings.

Ordinary General Meetings

53. Every General Meeting of the Company other than an ordinary Meeting shall be called an Extraordinary Meeting.

Extraordinary Meetings

30 54. The Directors may whenever they think fit and shall on the requisition of members holding at the date of the deposit of the requisition not less than one tenth of such of the paid-up capital of the Company as at the date of the deposit carries the right of voting at meetings of the Company forthwith proceed to duly convene an Extraordinary Meeting.

When Extraordinary meeting may be called Requisition

40 55. The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the office and may consist of several documents in like form each signed by one or more requisitionists.

Requirements of requisition.

56. If the Directors do not within 21 days from the date of the deposit of the requisition proceed duly to convene a meeting the requisitionists or any of them representing

Exhibit "B" Articles of Association  30th April, 1952.	more than one-half of the total voting rights of all of them may themselves convene the meeting but any meeting so convened shall not be held after three months from the said date.	
(continued)	57. For the purpose of Article 54, 56 and 59 of these presents a meeting at which a resolution is to be proposed as a special resolution shall not be deemed to have been duly convened by the Directors if they do not give such notice thereof as is required by the Companies Ordinance 1940 in the case of special resolutions.	10
	58. Any meeting convened by requisitionists as aforesaid shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by Directors.	
Expenses of requisi- tionists.	59. Any reasonable expenses incurred by the requisitionists by reason of the failure of the Directors duly to convene a meeting shall be repaid to the requisitionists by the Company and any sum so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the Directors as were in default.	20
Notice of Meetings	60. Subject to the provisions as to special resolutions contained in section 118 of the Companies Ordinance 1940 seven days' notice at the least specifying the place the day and the hour of the meeting and in the case of special business the general nature of such business shall be given in manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company in general meeting to such persons as are under these presents entitled to receive such notices from the Company; but the accidental omission to give or the non-receipt of any such notice to or by any member shall not invalidate the proceedings at any meeting.	30
Special business	61. All business shall be deemed special that is transacted at an Extraordinary Meeting and all that is transacted at an Ordinary Meeting with the exception of sanctioning a dividend and the consideration of the accounts balance sheets and ordinary reports of Directors.	40

## PROCEEDINGS AT GENERAL MEETINGS

Exhibit "B"  
Articles of  
Association.  
30th April,  
1952.

(continued)  
Business of  
Ordinary  
Meeting.

62. Except as hereinafter provided no business shall be transacted at any General meeting except the declaration of a dividend unless a quorum of members is present at the time when the meeting proceeds to business.

Quorum.

10 63. At any General Meeting a quorum shall consist of two members of the Company present in person or by proxy.

64. If within half an hour the time appointed for the meeting a quorum is not present the meeting if convened on the requisition of members shall be dissolved, in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present and entitled to vote shall be a quorum.

Proceedings  
if quorum  
not present

20 65. The Chairman (if any) of the Board of Directors shall preside as Chairman at every meeting of the Company, but if there be no such Chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the same or shall be unwilling to act as Chairman the members present shall choose some Director, or if no Director be present, or if the Directors present decline to take the chair, they shall choose some member present to be Chairman of the Meeting.

Chairman of  
General  
Meeting.

40 66. The Chairman may, with the consent of any meeting at which a quorum is present and shall if so directed by the meeting adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no business shall be transacted at an adjourned meeting. No business shall be transacted at any adjourned meeting other than the business which might have been transacted

Chairman may  
adjourn meeting  
and notice of  
adjournment to  
be given

Exhibit "B"  
Articles of  
Association.

30th April,  
1952.

(continued)

How  
resolution  
decided

at the meeting from which the adjournment took place.

67. At any General Meeting a resolution put to the vote of the meeting shall be decided by a show of hands of persons present and entitled to vote unless before or upon the declaration of the result of the show of hands a poll is demanded by members present in person or by proxy holding at least one-twentieth part of the issued share capital of the Company, and unless a poll be so demanded a declaration by the Chairman of the meeting that such resolution has been carried, or has been carried unanimously or by a particular majority, or lost, or not carried by a particular majority, shall be conclusive and an entry to that effect in the Minute Book of the Company shall be conclusive thereof without proof of the number or proportion of the votes recorded in favour of or against such resolution.

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20

Poll

68. If a poll be demanded in manner aforesaid it shall be taken at such time and place and in such manner as the Chairman shall direct, and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Chairman  
has  
casting  
vote

69. In the case of an equality of votes whether on a show of hands or at a poll at any General Meeting of the Company the Chairman of the meeting shall not be entitled to a further or casting vote.

30

No poll on  
election of  
Chairman or  
adjournment

70. No poll shall be demanded on the election of a Chairman of a meeting or on any question of adjournment.

Business to be  
continued if  
poll demanded

71. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded.

40

#### VOTES OF MEMBERS

Voting on  
show of  
hands and  
on a poll

72. On a show of hands every member shall have one vote. In case of a poll every member shall have one vote for every share of which he is the holder.

73. If any member be an infant or a lunatic or of unsound mind he may vote by his guardian, committee, receiver, curator, bonis or other legal curator, and such last mentioned persons may give their votes either personally or by proxy.

Exhibit "B"  
Articles of  
Association.

30th April,  
1952.  
(continued)

Votes of  
Corporation

10

74. If a Corporation is a member it may vote by any person authorised by resolution of its Directors or other governing body to act as its representative at any meeting of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the Corporation which he represents as that Corporation could exercise if it were an individual member of the Company.

Votes of  
joint holders

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75. If two, or more persons are jointly entitled to any share, then in voting upon any question the vote of the senior who tenders a vote, whether in person or by proxy shall be accepted to the exclusion of the votes of the other registered holders of the shares and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

Members only  
entitled to  
vote

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76. Save as herein expressly provided, no person other than a member duly registered and who shall have paid everything for the time being due from him and payable to the Company in respect of his shares shall be entitled to be present or to vote on any question either personally or by proxy or to be reckoned in a quorum at any General Meeting.

How votes  
may be given

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77. Votes may be given either personally or by proxy. On a show of hands a member present only by proxy shall have no vote, but a proxy for or representative of a corporation may vote on a show of hands.

78. A person may act as a proxy notwithstanding he is not a member of the Company or apart from any proxy which he holds entitled to be present or vote at the meeting at which he acts as proxy.

79. Every proxy shall be in writing under the hand of the appointer or of his attorney

Exhibit "B"  
Articles of  
Association  
30th April,  
1952.

(continued)  
Instrument  
appointing  
proxy to be  
in writing.

Instrument  
appointing  
proxy to be  
left at com-  
pany's office  
before meet-  
ing.

Form of proxy

duly authorized in writing or in the case of  
a Corporation under its common seal or under  
the hand of an officer or attorney of the  
Corporation duly authorized and shall be  
deposited with the power of attorney or  
other authority (if any) at the Office not  
less than two (2) clear days before the day  
appointed for holding the meeting or ad-  
journed meeting at which the person named in  
such proxy proposes to vote and in default  
the proxy shall not be treated as valid. An  
instrument appointing a proxy to vote at a  
meeting shall be deemed to include the power  
to demand a poll on behalf of the appointer.

10

80. Any instrument appointing a proxy shall  
be in the following form or as near thereto  
as circumstances will admit.

SEMANTAN ESTATE (1952) LIMITED.

"I, (or attorney of) of  
being a member of the above  
mentioned Company and entitled to  
votes hereby appoint , of  
or failing him of  
as my proxy to vote for me  
and on my behalf at the Ordinary, Extra-  
ordinary or Adjourned, (as the case may be)  
General Meeting of the Company to be held  
on the day of 19 and  
at any adjournment thereof.  
As Witness my hand this day of 19  
Signed.

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30

Members when  
abroad may  
be represen-  
ted by duly  
appointed  
attorneys

81. Every power, right or privilege herein  
given in Articles 55 to 80 hereof both  
numbers inclusive, to any member of the Com-  
pany to convene, attend, vote and in anywise  
take part in, any meeting of the Company,  
may be exercised in the event of such member  
being out of the Federation of Malaya and the  
Colony of Singapore by any attorney or attor-  
neys duly appointed by such member for the  
purpose, by a Power of Attorney produced at  
the registered office of the Company during  
business hours not less than two (2) clear  
days before the same is acted on. And any  
vote given or things done by such attorney or  
attorneys shall be valid notwithstanding the  
previous death of the member giving such

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Power of Attorney or the revocation of such Power of Attorney by other means provided no intimation in writing of such death or revocation shall have been received at the Office of the Company before such vote is given or thing done.

Exhibit "B"  
Articles of  
Association.

30th April,  
1952.

DIRECTORS

(continued)

10 82. NG CHIN SIU of No. 19 Ampang Road, Kuala Lumpur and NG ENG HIAM of No. 9 Church Street, Kuala Lumpur shall be the first Directors of the Company and the following shall have effect :-

- (1) Each of them the said NG CHIN SIU and NG ENG HIAM shall be entitled to hold office as a Director so long as he holds a special qualification.
- 20 (2) Each of them the said NG CHIN SIU and NG ENG HIAM in case he resign his directorship whilst holding a special qualification may appoint a Director.
- 30 (3) Each of them the said NG CHIN SIU and NG ENG HIAM who dies whilst holding a special qualification, may by his Will or Codicil appoint a person to be a Director, and in default of any such appointment, or so far as the same does not take effect, the legal personal representatives of the deceased shall be entitled to exercise the power.
- 40 (4) Notice of every such appointment as aforesaid must be served on the Company within the period of three (3) months after the resignation or death of the Director and the notice must be accompanied by the consent in writing of the appointee to act, and the appointment shall only take effect from the service of such notice, and in the event of the same being served within such period.
- (5) The apointee must be a wife, son, brother, son-in-law, grandson or nephew of the resigning or deceased Director.
- (6) The appointment shall have effect not-

Exhibits "B"  
Articles of  
Association.

withstanding that it shall raise the number of Directors beyond the maximum mentioned in Clause 87.

30th April,  
1952.

(continued)

- (7) Any such appointment as aforesaid shall take effect without prejudice to Clause 88 hereof save that a Director appointed by the Will of a deceased Director, or by the legal personal representatives of a deceased Director, shall be deemed to hold the requisite qualification for office so long as a special qualification stands in the name of the deceased, or in the names of the trustees for the time being of his Will. 10
- (8) For the purpose of this clause a special qualification means ordinary shares of the nominal value of \$20,000.00 at the least. 20
- (9) Each of them the said NG CHIN SIU and NG ENG HIAM and any appointee aforesaid who ceases to hold a special qualification specified in paragraph (8) of this clause, shall be deemed thereupon to be elected to office as an ordinary Director.
- (10) An appointee as aforesaid shall, so long as he holds a special qualification hold office as a Permanent Director and have the same powers of appointing a person to be a Director as are granted by this Article to the said NG CHIN SIU and NG ENG HIAM. 30
- (11) Each of them the said NG CHIN SIU and NG ENG HIAM and any appointee aforesaid shall, whilst holding office with a special qualification as aforesaid, be termed a Permanent Director.
- (12) The remuneration of a Permanent Director shall be such sum (if any) as shall be voted to him by the Company in General Meeting. 40

83. So long as any Permanent Directors or Director shall continue to hold office as such all powers authorities and discretions

vested in the Directors by the Ordinance or these presents shall be vested in them or him alone, and all other Directors (if any) for the time being of the Company shall exercise such powers only as the Permanent Directors or Director may delegate to them and they shall be under their or his control and shall be bound to conform to their or his directions in regard to the Company's business.

Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

84. So long as Permanent Directors or a Permanent Director continue to hold office they or he may from time to time or at any time appoint other persons to be Directors of the Company and define limit and restrict their powers and fix their remuneration and duties and may at any time without any notice remove any Director from office.

85. The Permanent Directors for the time being may at any time appoint one of their body to the Managing Director to conduct the business of the Company and may make such appointment on such terms, and may from time to time vest in or assign to any Managing Director such powers, discretions and duties, and may impose on him such regulations as may seem expedient, and may remove or dismiss from office any Managing Director so appointed, and appoint another in his place.

86. So long as Permanent Directors or a Permanent Director continue to hold office the provisions of these articles hereinafter contained as to the appointment, remuneration, qualification, rotation and removal of Directors other than Permanent Directors shall be in abeyance. So soon as all the Permanent Directors cease to hold office as such the Company in general meeting shall appoint Directors to whom the provisions as to the matters aforesaid of these articles hereinafter contained shall apply.

87. Subject to articles 82 to 86 and unless otherwise determined by a General Meeting the number of Directors shall not be less than two or more than six but in the event of any casual vacancy occurring and reducing the number of directors to below the aforesaid minimum the continuing Director or Directors may act for the purpose of filling

Number of  
Directors.

Exhibits "B" Articles of Association. 30th April, 1952. (continued) Qualification of Director	up such vacancy or vacancies or of summoning a general meeting of the Company.	
Remuneration of Directors	88. The qualification of a Director shall be the holding in his own right alone, and not jointly with any other person, of shares to the nominal value of \$10,000/- in the capital of the Company.	
	89. No person shall be eligible as a Director who is either an undischarged bankrupt or prohibited from being a Director by reason of any order made under Section 213 or Section 265 of the Companies Ordinance 1940.	10
	90. The remuneration of each of the Directors (other than the Managing Director, if any) shall be such sum (if any) as shall be voted to them or any of them by the Company in General Meeting.	
Alternates	91. The Directors shall have power at any time to appoint any person a Director either to fill a casual vacancy or as an addition to the Board but so that the total number of Directors shall not be increased beyond the maximum number hereinbefore prescribed. Any Director so appointed shall hold office only until the next ordinary meeting and shall then be eligible for re-election.	20
	92. Any Director may from time to time appoint any person who is approved by the majority of the Directors or alternate or substituted Directors to be an alternate or substituted Director. The appointee while he holds office as an alternate Director shall be entitled to notice of meetings of the Directors and to attend and vote thereat as a Director but shall not require any qualification and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him. Any appointment so made may be revoked at any time by the appointer or by a majority of the other Directors and any appointment or revocation under this clause shall be effected by notice in writing to be delivered to the Secretary of the Company.	30
Increase or reduction of number of Directors	93. The Company may from time to time in general meeting increase or reduce the	40

number of Directors, but so that such number shall not be increased beyond the maximum number or reduced below the minimum number hereinbefore prescribed, and they may determine the order of rotation in which such increased or reduced number shall go out of office.

Exhibits "B"  
Articles of  
Association.  
30th April,  
1952.  
(continued)

10 94. If any Director being willing be called upon to perform extra services or to make any special exertions in going or residing abroad, or otherwise, for any of the purposes of the Company, the Company may remunerate such Director either by a fixed sum or by a percentage on profits or otherwise, as may be determined by the Company, and such remuneration may be either in addition to, or in substitution for, his share in the remuneration above provided.

Special  
Services

20 95. No Director shall be disqualified by his office from holding any office or place of profit under the Company or under any Company in which the Company shall be a shareholder or otherwise interested or from contracting with the Company either as vendor, purchaser, or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be  
30 in any way interested, be avoided, nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realized by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established, but it is declared that the nature of his interest must be disclosed by him at the meeting of the Directors at which the contract  
40 or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the Directors after the acquisition of his interest.

Directors may  
contract with  
Company.

Safeguards

50 96. No Director shall vote on any contract or proposed contract or arrangement in which he is directly or indirectly interested or on any matter arising thereout and if he does so vote his vote shall not be counted. Provided always that a Director may vote on any loan of money he may make to the Company and on any security or further

Voting by  
Directors  
interested  
in contract.

Exhibits  
"B"  
Articles of  
Association.  
30th April,  
1952.

security to be given by the Company to him for any such loan and on any contract for indemnifying himself against any loss he may suffer by reason of becoming or being surety for the Company and on any contract in which he is only interested by reason of being a member of any Corporation which is a party to or interested in such contract.

(continued)

Directors  
may appoint  
Managing  
Director

97. The Directors may from time to time appoint any one or more of their body to be Managing Director or Managing Directors of the Company for such period and upon such terms as they think fit, and may vest in such Managing Director or Managing Directors such of the powers hereby vested in the Directors generally as they may think fit. The Directors may from time to time remove or dismiss from office any Managing Director or Managing Directors appointed as aforesaid and appoint another or others in his or their place or places.

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Remuneration  
of Managing  
Director

98. Subject and without prejudice to the provisions contained in Article 95 any such Managing Director shall receive for his services such remuneration whether by way of salary or commission or participation in profits or partly in one way and partly on another as the Directors may think fit. A Managing Director shall not be liable to retire by rotation or taken into account in determining the numbers of Directors to retire by rotation while he continues to be a Managing Director but save as aforesaid and subject to the provisions of any contract between him and the Company and to these presents shall be subject to the same provisions as to resignation and removal as the other Directors of the Company, and if he cease to hold the office of Director from any cause he shall ipso facto and immediately cease to be a Managing Director.

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#### POWERS AND DUTIES OF DIRECTORS

Business of  
Company to  
be managed  
by Directors

99. The business of the Company shall be managed by the Directors who may pay all such expenses of and preliminary and incidental to the promotion, formation, establishment and registration of the Company as they think fit, and may exercise all such powers of the Company and do on behalf

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of the Company all such acts as may be exercised and done by the Company, and as are not by law or by these presents required to be exercised or done by the Company in General Meeting; but the exercise of all such powers shall be subject to and in accordance with the provisions of any law in that behalf and of these presents and shall also be subject to and in accordance with any regulations or provisions made by the Company in General Meeting but no regulation made by the Company in General Meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

Exhibits  
"B"  
Articles of  
Association.

30th April,  
1952.

(continued)

#### DISQUALIFICATION OF DIRECTORS

100. Subject as herein otherwise provided and to the terms of any subsisting agreement, the office of a Director shall be vacated:-

Office of  
Directors  
how vacated.

- (a) If a receiving order is made against him or he makes any arrangement or composition with his creditors;
- (b) If he becomes prohibited from being a Director by reason of any order made under Section 213 or Section 265 of the Companies Ordinance 1940;
- (c) If he be found lunatic or become of unsound mind;
- (d) If he ceases to hold his qualification shares (or if he does not acquire his qualification shares within two months from the date of his appointment);
- (e) If he is in any way whether directly or indirectly interested in a contract or proposed contract with the Company and fails to declare the nature of his interest in manner required by these presents and by Section 151 of the Companies Ordinance 1940;
- (f) If he absent himself from the meetings of the Board during a continuous period of six months without special leave of absence from the

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Exhibits "B" Articles of Association. 30th April, 1952. (continued)	Directors and they pass a resolution that he has by reason of such absence vacated his office.  (g) If he be convicted of any seizable offence;  (h) If by notice in writing given to the Company he resigns his office.
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## ROTATION OF DIRECTORS

Rotation and retirement of Directors	101. At the first ordinary meeting the whole of the Directors shall retire from office, and at the ordinary meeting in every sub- sequent year one-third of the Directors or if their number is not a multiple of three then the number nearest to one-third shall retire from office.	10
Which Directors to retire	102. The Directors to retire in every year shall subject nevertheless as hereinafter provided be those Directors who have been longest in office since their last election but as between persons who became Directors on the same day those to retire shall unless they otherwise agree among themselves be determined by lot.	20
	103. A retiring Director shall be eligible for re-election.	
Meeting to fill up vacancies	104. The Company at the ordinary meeting at which any Directors retire in manner afore- said shall fill up the vacated offices by electing a like number of persons.	30
Retiring Directors to remain in office until successors appointed	105. If at any meeting at which an election of Directors ought to take place the places of the retiring Directors are not filled up the retiring Directors or such of them as have not had their places filled up shall continue in office until the ordinary meeting in the next year and so on from time to time until their places are filled up.	
Removal of Directors	106. The Company may by extraordinary re- solution remove any Director before the expiration of his term of office and may by ordinary resolution appoint another person in his stead. The person so appointed shall	40



hold office during such time as the Director in whose place he is appointed would have held the same if he had not been removed.

Exhibits "B"  
Articles of  
Association

PROCEEDINGS OF DIRECTORS

30th April,  
1952.

(continued)

Directors  
Meetings and  
quorum.

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107. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Unless and until otherwise determined two shall be a quorum. Questions arising at any meeting shall be decided by a majority of votes. The Chairman of any such meeting shall not have a second or casting vote. A Director may, and on the request of a Director the Secretary shall, at any time summon a meeting of Directors.

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108. The Directors may from time to time elect a Chairman of their meetings and determine the period for which he is to hold office but if no such Chairman is elected, or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the Directors present shall choose some one of their number to be Chairman of such meeting.

Chairman of  
Meeting of  
Directors.

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109. The Directors may delegate any of their powers to Committees consisting of such member or members of their body as they think fit; any Committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Directors.

Directors may  
delegate  
powers to  
Committee

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110. A Committee may elect a Chairman of its meetings. If no such Chairman is elected or if at any meeting the Chairman is not present within five minutes after the time appointed for holding the same the members present may choose one of their number to be Chairman of the meeting.

Chairman of  
Committee

111. A Committee may meet and adjourn its meetings as its members think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present. The Chairman shall not

Chairman of  
Committee has  
casting vote

Exhibits "B"	have a second or casting vote.	
Articles of Association	112. All acts bona fide done by any meeting of Directors or of a Committee of Directors or by any person acting as a Director or as a Managing Director shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified shall be as valid as if every such person had been duly appointed and was qualified to be a Director or a Managing Director.	10
30th April, 1952.		
(continued)		
Validity of acts of Direc- tors and Committee		
Resolution in writing sig- ned by all Directors to be effective	113. A resolution in writing signed by all the Directors shall be as effective for all purposes as a resolution passed at a meeting of the Directors duly convened held and constituted.	

## C H A R G E S

Amount not to exceed issued capital	114. The amount for the time being remaining undischarged of moneys borrowed or raised by the Directors for the purposes of the Company shall not exceed the amount for the time being of the issued capital of the Company without the sanction of the Company in General Meeting.	20
Delivery of Debentures or Deben- ture Stock.	115. Except where the conditions of issue of any debentures or debenture stock otherwise provided all debentures and debenture stock shall be complete and ready for delivery within such time as is specified in Section 70 of the Companies Ordinance 1940.	30
Closing of Register	116. Every register of holders of debentures of the Company may be closed for any periods not exceeding in the whole of maximum period allowed by law in any year.	

## Minutes

## M I N U T E S

	117. The Directors shall cause minutes of all resolutions and proceedings of meetings of the Company and of the Directors and of every committee of the Directors to be duly entered in books to be from time to time provided for the purpose and such minutes shall be signed by the Chairman of the meeting at which such resolution was passed	40
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or proceeding had or by the Chairman of the next succeeding meeting. The minutes of every meeting of the Directors or of a committee of the Directors shall in addition state what Directors were present at such meeting and at every such meeting each Director present shall sign his name in a book to be kept for the purpose.

Exhibits  
"B"  
Articles of  
Association

30th April,  
1952.

(continued)

10

#### THE SEAL

118. The powers conferred by Section 34 of the Companies Ordinance 1940 shall apply to this Company.

119. The Seal shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and in the presence of at least one Director and of the Secretary and such Director and the Secretary shall sign every instrument to which the seal is so affixed in their presence; in favour of any purchaser or person bona fide dealing with the Company such signatures shall be conclusive evidence of the fact that the seal has been properly affixed.

Seal of  
Company and  
its use

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120. The Directors may from time to time by resolution appoint a temporary substitute for the Secretary, who shall be deemed to be the Secretary during the term of his appointment.

Secretary and  
temporary  
substitute

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#### DIVIDENDS AND RESERVE FUND

121. The Directors may with the sanction of the Company in General Meeting from time to time declare dividends, but no such dividend shall be payable except out of profits arising from the business of the Company, provided that the Directors may, if they think fit, from time to time pay such interim dividends as appear to them to be justified by the profits of the Company. No higher dividend shall be paid than is recommended by the Directors and the declaration of the Directors as to the amount of the net profits shall be conclusive.

Rate of Divi-  
dends and  
interim  
Dividends

40

122. Subject to the provisions hereinafter contained and to the rights of members whose shares have been issued on special terms

Application of  
profits to pay  
dividends



amongst the members in proportion to and not exceeding the value of the amount of dividend to which they would be entitled any assets of the Company in specie and in particular any unissued shares or any securities of the Company or any shares or securities held by the Company.

Exhibits "B"  
Articles of  
Association

30th April,  
1952.  
(continued)

#### A C C O U N T S

10 127. The Directors shall comply with the requirements of the Companies Ordinance 1940 as to keeping accounts and shall in particular cause to be kept proper books of account with respect to :-

Directors to  
keep proper  
accounts

(a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place.

20 (b) all sales and purchases of goods by the Company;

and (c) the assets and liabilities of the Company.

30 128. The books of account shall be kept at the Office or at such other place within the Federation of Malaya as the Directors shall think fit, and shall at all times be open to inspection by any Director but except with the sanction of the Directors no other person shall be entitled to inspect any book or document or account of the Company unless he is authorised so to do by law or by these presents or by a resolution of the Company in general meeting.

129. The Directors shall from time to time in accordance with Section 124 of the Companies Ordinance 1940 cause to be prepared and laid before the Company in general meeting such profit and loss accounts balance sheets and reports as are referred to in that Section.

#### 40 A U D I T O R S

130. Auditors shall be appointed and their duties regulated in accordance with Section 132, 133, 134 and 135 of the Companies Ordinance 1940.

## N O T I C E S

Exhibits "B"  
Articles of  
Association  
30th April,  
1952.  
(continued)  
Mode of ser-  
vice of notice  
to members

131. A notice or any other documents may be served by the Company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address as appearing in the register of members.

Service of  
notice to  
joint  
holders

132. All notices shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members and any notice so given shall be sufficient notice to all the holders of such share.

10

Members out-  
side Malaya  
not entitled  
to notice  
unless  
Malayan  
address  
given

133. No member shall be entitled to have notice served on him at any address not within the Federation of Malaya or the Colony of Singapore; and any Member whose registered address is not within the limits above described may by notice in writing, require the Company to register an address within such limits, which, for the purpose of the service of notices, shall be deemed to be his registered address. No member not having a registered address within such limits, and not having given notice as aforesaid, shall be entitled to receive any notice from the Company.

20

Notice may  
be posted  
to persons  
entitled in  
consequence  
of death or  
bankruptcy.

134. A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of the representatives of the deceased or trustees of the bankruptcy or by any like description at the address (if any) in the Federation of Malaya or the Colony of Singapore supplied for the purpose by the persons claiming to be so entitled or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

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Service by  
post shall  
be deemed  
good  
service

135. Where any notice or other document is sent by post, service of such notice or document shall be deemed to have been effected by properly addressing, prepaying and posting a letter containing the notice

or other document and to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Exhibits  
"B"  
Articles of  
Association.

136. Where a given number of days notice or notice extending over any other period is required to be given the day of service shall unless it is otherwise provided be counted in such number of days or other period.

30th April,  
1952.

(continued)  
How time of  
service  
reckoned.

10

#### WINDING UP

137. If the Company shall be wound up, and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding-up on the shares held by them respectively. And if in a winding-up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding-up, the excess shall be distributed amongst the members in proportion to the capital at the commencement of the winding-up paid up or which ought to have been paid up on the shares held by them respectively. But this clause is to be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

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138. If the Company shall be wound up whether voluntarily or otherwise, the liquidators may, with the sanction of an Extraordinary Resolution, divide among the contributors in specie any part of the assets of the Company, and may with the like sanction, vest any part of the assets of the Company in trustees, upon such trusts for the benefit of the contributors as the liquidators with the like sanction shall think fit.

Distribution  
of Assets in  
specie

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I N D E M N I T Y

139. The Directors, Auditors, Secretary and other officers for the time being of the Company, and any trustees for the time being

Company to  
indemnify  
Directors  
and others

Exhibits  
 "B"  
 Articles of  
 Association  
 30th April,  
 1952.  
 (continued)

acting in relation to any of the affairs of the Company and their heirs, executors and administrators respectively shall be indemnified out of the assets of the Company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own wilful neglect or default respectively and no such officer or trustee shall be answerable for the acts, receipts, neglects, or defaults of any other officer or trustee or for joining in any receipt for the sake of conformity, or for the solvency or honesty of any bankers or other persons with whom any moneys or effects belonging to the Company may be lodged or deposited for safe custody or for any insufficiency or deficiency of any security upon which any moneys of the Company shall be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust, unless the same shall happen through the wilful neglect or default of such officer or trustee.

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Names, Address and Description of  
 Subscribers.

NG CHIN SIU,  
 No. 19, Ampang Road,      Planter & Miner  
 Kuala Lumpur.

NG ENG HIAM,  
 No. 9, Church Street,      Planter  
 Kuala Lumpur.

Dated this 30th day of April, 1952.

Witness to the above signatures. 40

J.T. TOSSWILL,

Advocate & Solicitor,  
 Kuala Lumpur.



EXHIBITS "C" - MINUTES OF ANNUAL GENERAL  
MEETING HELD ON THE 27TH  
MAY, 1961.

C O P Y

SEMANTAN ESTATE (1952) LIMITED

Exhibits  
"C"  
Minutes of  
Annual General  
Meeting held  
on the 27th  
May, 1961.

30th May,  
1961.

10 Minutes of the Annual Meeting of the  
Members of Semantan Estate (1952) Ltd. held  
at the Secretaries' Office, No. 81, Ampang  
Road (2nd Floor) Kuala Lumpur on Saturday  
27th May 1961 at 10 a.m.

PRESENT: Mr. Ng Chin Siu (Chairman)  
Mr. Ng Eng Hiam  
Mr. Ng Tian Ming (per proxy Mr.  
Ng Eng Hiam)  
Madam Chang Kwei (per proxy Mr.  
Chee Robert K.C.Hoh)  
Madam Tan Geok Eng (per proxy Mr.  
Chan Chee Hong)  
20 Madam Lim Tuan (per proxy Mr.  
D.G. Rawson)  
Mr. Ng Kee Wei  
Mr. Ng Beh Tong  
Mr. Ng Beh Kian  
Mr. Ng Beh Kian  
Mr. Ng Beh Leow  
Miss Ng Sook Chin (per Attorney  
Ng Kee Wei)  
Miss Ng Sook Keng (per Attorney  
Ng Kee Wei)  
30 Miss Ng Sook Hui (per Attorney  
Ng Beh Tong)  
Mr. Ng Beh Puan (per Attorney  
Ng Kee Wei)  
Mr. Ng Beh Yeow (per Attorney  
Ng Kee Wei)

40 IN ATTENDANCE: Mr. Hew Kiang Main and  
Mr. Yap Kim Lian  
representing the Secretaries  
Messrs. Sow Khong & Chong.

CHAIRMAN Mr. Ng Chin Siu was in the Chair.

PROXIES The Secretaries reported that  
proxies had been received from  
the following:-

Exhibits "C"	<u>Proxies Received</u>	<u>Shares</u>	
Minutes of Annual General Meeting held on the 27th May, 1961.  30th May, 1961  (continued)	1. Madam Chang Kwei Chee to Mr. Robert K.C.Hoh	200	
	2. Madam Tan Geok Eng to Mr. Chan Chee Hong	50	
	3. Mr. Ng Tian Ming to Mr. Ng Eng Hiam	200	
	4. Madam Lim Tuan to Mr. D.G. Rawson	50	10

POWER OF  
ATTORNEYS            The Secretaries also  
reported that the following  
Powers of Attorney had been  
registered for the meeting:-

Power of Attorney  
Registered

1. Ng Sook Chin (f) to Ng Kee Wei	10	
2. Ng Sook Keng (f) to Ng Kee Wei	10	20
3. Ng Beh Puan to Ng Kee Wei	45	
4. Ng Beh Yeow to Ng Kee Wei	45	
5. Ng Sook Hui (f) to Ng Beh Tong	10	

The Proxies and Powers of Attorney  
were then tabled for inspection by  
members. 30

Mr. Rawson pointed out that the  
Proxy given by Mr. Ng Tian Ming  
to Mr. Ng Eng Hiam was not in the  
proper form. The Secretaries  
referred to Article 80 of the Company's  
Articles of Association which pro-  
vided that the proxies shall be in the  
form shown therein or as near thereto  
as circumstances may permit and asked  
whether Mr. Rawson still objected to 40

the Proxy. Mr. Rawson replied that he wished it to be recorded that in his opinion the proxy was irregular.

10 Mr. Ng Eng Hiam objected to the Proxy given by Madam Lim Tuan to Mr. D.G.Rawson on grounds that it was not stamped at the Stamp Office and the date shown therein could have been back-dated. The Secretaries reported that they received the Proxy on the day stated in the Proxy.

20 Mr. Robert Hoh supported the objection on the ground that the stamp should be \$1 and not 10 cents.

30 Mr. Rawson replied by reference to the Stamp Ordinance wherein it was stated that the stamp on a Proxy for voting at a Company meeting was 10 cents and under the Second Schedule the person required to cancel the stamp was the person giving the proxy.

The Proxies having been settled the meeting proceeded to business.

CONFIRMATION  
OF MINUTES

The Chairman called upon the Secretaries to read the Minutes of the last Annual General Meeting held on 27th December, 1957.

40 On the proposal of Mr. Ng Beh Tong seconded by Mr. D.G. Rawson the Minutes were passed as a correct record of the proceedings and duly signed by the Chairman.

DIRECTORS'  
REPORT AND  
ACCOUNTS

The Secretaries explained that the Directors' Report had been distributed to the

Exhibits  
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(continued)

Exhibits  
"C"

Minutes of  
Annual General  
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30th May, 1961

(continued)

shareholder but it was regretted that the audited accounts for 1957, 1958 and 1959 could not be issued, circulated or published as only one of the two Directors had signed the Balance Sheet. The accounts could not be circulated in accordance with the provisions of Section 130 of the Companies Ordinance but the accounts were tabled for adoption in accordance with Section 124 of the Companies Ordinance.

10

Mr. Ng Eng Hiam pointed out that Monthly Statements had not been sent to him and he was unable to pass the accounts. Mr. Rawson inquired whether Mr. Ng Eng Hiam had ever asked for these Monthly Statements prior to the meeting.

20

The Chairman explained that the practice prior to the rupture of relationship between the Directors was that accounts were tabled at the monthly meetings of Directors but since Directors Meetings were not held subsequent to the disagreement no accounts were tabled.

30

The Secretaries added that they would take note of Mr. Ng Eng Hiam's request for monthly statements for future action but pointed out that under Article 128 of the Company's Articles of Association a Director was entitled to inspect the accounts or seek further particulars at any time.

40

Mr. Ng Eng Hiam replied that because of the differences of opinion between the Directors and the lack of cordiality

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he had repeatedly asked for liquidation of the company. Mr. Ng Beh Kian replied that he saw no necessity for liquidating a Company which was making profit.

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10

Mr. Rawson advised all Directors to comply with the requirements of the Companies Ordinance in their own interests and in the interest of the Company.

30th May,  
1961.

(continued)

20

The Secretaries explained that since this point was raised they wished to take the opportunity to say for the record, although the facts are well-known to all parties concerned, that two related families comprised the shareholders of the Company and the heads of both families from the Board of Directors. Since the difference of opinion arose between the two Directors it has not been possible to convene any Directors Meeting to pass the audited accounts or to convene the Annual General Meeting. But the Secretaries had dutifully filed Annual Returns to the Registrar of Companies for the past 3 years. But recently the Registrar of Companies had advised that the provisions of Section 113 of the Companies Ordinance as to the holding of an Annual General Meeting was mandatory and if default was made every director or manager was liable to a heavy fine. For the reason stated the Secretaries thought it their duty to convene the present Annual General Meeting to pass the accounts, irrespective of the differences of opinion subsisting between the Directors.

30

40

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Exhibits  
"C"

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Annual General  
Meeting held  
on the 27th  
May 1961.

30th May, 1961

(continued)

Mr. Ng Eng Hiam proposed and Mr. Robert Hoh seconded the proposal "that consideration of the Directors Report and audited accounts for 1957 1958 and 1959 be adjourned to enable Mr. Ng Eng Hiam to inspect the accounts."

Mr. Rawson proposed seconded by Mr. Ng Beh Tong, an amendment to the resolution "for a period of three months" 10

Mr. Ng Eng Hiam proposed, and Mr. Robert Hoh seconded a further amendment that his inspection of the account be carried out "with the assistance of Messrs. Chan Chee Hong & Co." 20

Mr. Ng Eng Hiam demanded a poll on the resolution by virtue of Article 67 of the Company's Articles of Association.

Mr. Rawson replied that Article 70 of the Company's Articles of Association precluded a poll in the election of a Chairman and adjournment. 30

Mr. Robert Hoh disagreed that this Article was applicable as in the present instance the resolution was for an adjournment of the consideration of the accounts and not an adjournment of the meeting.

The point in dispute was explained to the Chairman who ruled that no poll may be demanded in this question of adjournment. 40

Mr. Ng Eng Hiam protested against the decision and said

that if a poll was not granted it was useless for him to continue with the meeting.

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May 1961.

Mr. Rawson requested that the resolution be put to the vote by a show of hands in view of the Chairman's ruling.

30th May, 1961

10

At this juncture Mr. Ng Eng Hiam retired at 11.45 a.m. followed by Mr. Robert Hoh and Mr. Chan Chee Hong. Mr. Ng Eng Hiam asked to be recorded that he would not recognise any resolution passed subsequent to his retirement from the meeting.

(continued)

20

The substantive motion together with the two amendments were put to the vote, namely

"Resolved that consideration of the Directors Report and audited accounts for 1957, 1958 and 1959 be adjourned for a period of 3 months to enable Mr. Ng Eng Hiam to inspect the accounts with the assistance of Messrs. Chan Chee Hong & Co."

30

The voting was 0 For 4 against and the motion was lost.

The substantive motion with the first amendment was then put to the vote, namely

"Resolved that consideration of the Directors Report and audited accounts for 1957, 1958 and 1959 be adjourned for a period of 3 months to enable Mr. Ng Eng Hiam to inspect the accounts."

40

The voting was 0 for 4 against and the motion was lost.

The substantive motion was then put to the vote namely

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Exhibits  
"C"  
Minutes of  
Annual General  
Meeting held  
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30th May, 1961  
  
(continued)

"Resolved that consideration of the Directors Report and audited accounts for 1957, 1958 and 1959 be adjourned to enable Mr. Ng Eng Hiam to inspect the accounts."

The voting was 0 For 4 Against and the motion was lost.

Mr. Rawson then proposed, seconded by Mr. Ng Beh Tong: 10

"That the Directors Report and audited accounts for 1957, 1958 and 1959 be and hereby adopted."

The voting was 4 For and 0 Against and the motion was carried.

AUDITORS

Mr. Rawson proposed and Mr. Ng Beh Tong seconded the proposal.

That Messrs. Evatt & Co., Chartered Accountants be and they are hereby re-appointed Auditors of the Company on the same terms. 20

The voting was 4 For and 0 Against and the motion was carried.

OTHER  
BUSINESS

The Secretaries reported that they had received a letter dated 24th May 1961 from Mr. Ng Eng Hiam that he intended to raise the following matters at the meeting:-

(1) The Directors' report, if any. 30

(2) The Statement of Accounts for 1957, 1958 and 1959 to inquire into and to consider.

(3) Timber Concession.

Mr. Rawson pointed out that items (1) and (2) had already been dealt with and as the member moving item (3) was not present no discussion could take place. 40



Mr. Rawson then proposed that the meeting be closed with a vote of thanks to the Chair.

Exhibits "C" Minutes of Annual General Meeting held on the 27th May 1961.

Confirmed by CHAIRMAN

Kuala Lumpur, 30th May, 1961.

30th May, 1961 (continued)

CERTIFIED TRUE COPY

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Sd: Sow Khong & Chong. Secretaries.

EXHIBIT "NEH 1" - LETTER, APPELLANT TO SEMANTAN ESTATE (1952) LIMITED

A.R. REGISTERED.

" NEH 1 "

12th April, 1958.

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Semantan Estates (1952) Ltd., c/o Sow Khong & Chong, 79 Ampang Road, Kuala Lumpur.

Dear Sirs,

Timber Concession Semantan Estates (1952) Limited

Further to your letter of the 22nd January 1958 regarding the above matter I wish to place on record some of my views regarding the affairs of the Company and in particular as regards the above mentioned timber concession.

"NEH 1" Letter, Appellant to Semantan Estate (1952) Limited

30

It may be that these matters will have to be decided upon at the next meeting of the Board of Directors, if and when it is held.

12th April, 1958.

From the very beginning when the Company was formed, although it is a limited Company, it was and still is in fact a partnership between Mr. Ng Chin Siu and myself; each of us with the members of our respective families

Exhibits  
"NEH 1"

Letter,  
Appellant  
to Seman-  
ton Estate  
(1952) Limited.

12th April,  
1958.

(continued)

hold 50% of the total of shares of the Company, that is to say, my family and I hold 50% interest in the Company and similarly in the case of Mr. Ng Chin Siu.

The Articles of Association of the Company were framed in such a manner as to allow only Mr. Ng Chin Siu and myself jointly to run the business of the Company just as in a partnership business.

10

After I had introduced Mr. Goh Chew Yik to the Company for the purposes of the timber concession an oral agreement was entered into and concluded between Mr. Goh Chew Yik and the Company whereby the timber concession was to be granted to Mr. Goh Chew Yik on the following terms:

(1) That Mr. Goh Chew Yik pays a tribute of \$8.00 per ton of timber.

20

(2) That he deposits a sum of \$4,000.00 with the Company.

The deposit was paid by Mr. Goh Chew Yik but, owing to various reasons no written agreement was signed between the Company and Mr. Goh Chew Yik.

Subsequently I was informed that the timber concession was awarded to Mr. Ng Choon Chiau on the following terms:-

(1) Mr. Ng Choon Chiau to pay a tribute of \$4.00 per ton of timber.

30

(2) That he gives a guarantee to the Company in the sum of \$2,000.00

Although no written agreement was ever entered into between the Company and Mr. Ng Choon Chiau, (if any, also without my knowledge) he had in fact commenced operations on the Company's lands since August, 1957.

I am a permanent director of the Company and neither I nor the Board of Directors of the Company was aware or had ever approved of granting the timber concession to Mr. Ng Choon Chiau. The agreement with Mr. Ng Choon Chiau (if any) therefore cannot stand.

40

As compared to the oral agreement entered into with Mr. Goh Chew Yik abovesaid, the terms offered to Mr. Ng Choo Chiau are detrimental to the interest of the Company.

Exhibits  
"NEH 1"

Letter,  
Appellant  
to Semantan  
Estate (1952)  
Limited.

12th April,  
1958.

(continued)

10 There are several other matters. As regards the accounts for 1957 I shall be pleased if you will prepare them as soon as possible. I would also like to place on record that no monthly account had been submitted to me since August 1957 for Semantan Estate and since May 1957 as for Batu and Segambut Estates, no estimates have yet been passed for the year 1958 or for any part thereof.

20 It is obvious from the above that there is not the trust and congeniality between the Directors that is so essential in the running of a business of a Company as this one. It is quite clear that the events are leading towards a dead-lock between the directors and no business in the full sense of that word can be carried on by the Company.

In the circumstances therefore unless the Company be voluntarily wound up, I regret that I may have to take whatever action that I may deem necessary.

Yours faithfully,

Sd: Ng Eng Hiam.

30 This is the copy of the Exhibit marked "NEH 1" referred to in the Affidavit of Ng Eng Hiam sworn before me this 5th day of December, 1961.

Sd: P. Sarathy.

COMMISSIONER FOR OATHS.

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Exhibits  
"NEH 2"  
Letter, Sow  
Khong and  
Chong to  
Appellant.

EXHIBIT. "NEH 2" - LETTER, SOW KHONG AND  
CHONG TO APPELLANT.

SOW KHONG & CHONG P.O. Box 742,  
79, Ampang Road,  
KUALA LUMPUR,  
MALAYA.

29th April,  
1958.

29th April, 1958.

Mr. Ng Eng Hiam,  
9, Church Street,  
Kuala Lumpur.

10

Dear Sir,

SEMANTAN ESTATE (1952) LTD.

We acknowledge receipt of your letter of 12th instant and advise that in view of the important issues raised, we took the liberty of forwarding a copy of your letter to your Co-director Mr. Ng Chin Siu for his information.

It seems to us that a Directors Meeting of Semantan Estate (1952) Ltd. should be called in the near future and that the Agenda should include the points raised in your letter, namely:-

20

- (a) Timber Concession
- (b) Accounts
- (c) Voluntary Liquidation

With regard to (a) we believe the general manager should be asked to give an explanation to the Board of Directors.

30

With regard to (b) delay in producing the accounts has been due to several factors. The audit for the accounts ended 31st December 1956 were completed late, there was a change in the organisation, the accounting system was revised with delays due to printing of new forms etc. and finally there were additional work and problems allied with the acquisition of additional properties.

We have detailed more staff to work on the accounts and will forward you a copy of

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the draft accounts as soon as available. Please accept our apologies for the delay. The teething troubles are almost over and we expect to catch up shortly.

As for (c) our opinion is that this has first to be discussed by the Directors at a Board Meeting is necessary would you please give us one or two suitable dates and we will arrange a meeting.

10

Would you please advise whether you agree with the draft minutes of the last Directors' Meeting forwarded to you for approval some time ago.

Yours faithfully,

SOW KHONG & CHONG

Sd: SOW KHONG & CHONG,  
Accountants.

This is the copy of the Exhibit marked "NEH 2" referred to in the Affidavit of Ng Eng Hiam sworn before me this 5th day of December, 1961.

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Sd: P. Sarathy  
Commissioner for Oaths.

EXHIBIT "NEH 3" - LETTER, APPELLANT TO SEMANTAN ESTATE (1952) LIMITED.

23rd December, 1958.

Semantan Estates (1952) Ltd.  
c/o M/S. Sow Khong & Chong,  
No. 79, Ampang Road,  
Kuala Lumpur.

30

Dear Sirs,

Reference your circular resolution dated the 22nd December, 1958, which was handed to me by your Mr. Yap yesterday afternoon, I return the resolution herewith with the following comments :

(1) I observe that there appears to have

Exhibits  
"NEH 2"  
Letter, Sow  
Khong and  
Chong to  
Appellant.

29th April,  
1958.

(continued)

"NEH 3"  
Letter, Appell-  
ant to Semantan  
Estate (1952)  
Limited.

23rd December,  
1958.

Exhibits  
"NEH 3"  
Letter,  
Appellant to  
Semantan  
Estate (1952)  
Limited.

23rd December,  
1958.

(continued)

no resolution to pass the 1957  
accounts.

- (2) As regards the staff bonus I agree in principle in giving such bonus, but I would like to see bonus awarded to General Manager and Estate Manager reduced.
- (3) As regards the provision for Malaya Income Tax, this is agreed to in principle subject to the accounts for 1957 being passed.
- (4) The date of the Annual General Meeting should be adjourned to some other date to allow the requisite notice to be sent to shareholders. Save those mentioned above, I agree to the other items in your resolution.

10

Yours faithfully,

20

Sd: NG ENG HIAM.

This is the copy of the Exhibit marked "NEH 3" referred to in the Affidavit of Ng Eng Hiam sworn before me this 5th day of December, 1961.

Sd: P. Sarathy  
COMMISSIONER FOR OATHS.

EXHIBIT "NEH 4" - LETTER, APPELLANT TO SEMANTAN ESTATE (1952) LIMITED

30

30th December, 1958

"NEH 4"  
Letter,  
Appellant to  
Semantan  
Estate (1952)  
Limited.

Semantan Estate (1952) Limited,  
c/o Messrs. Sow Khong & Chong,  
No. 79 Ampang Road,  
Kuala Lumpur.

Dear Sirs,

30th December,  
1958.

Circular Resolution.

- (a) Resolution to pass 1957 accounts.

I agree to pass the 1957 accounts subject to the item under bonus to General Manager and Estate Manager be reduced to \$2,500/- each.

(b) Annual General Meeting.

How is there sufficient time to give the required notice to call a General Meeting before the end of the year?

Yours faithfully,

Sd: Ng Eng Hiam.

This is the copy of the Exhibit marked "NEH 4" referred to in the Affidavit of Ng Eng Hiam sworn before me this 5th day of December, 1961.

sd: P. Sarathy.  
COMMISSIONER FOR OATHS.

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Exhibits  
"NEH 4"  
Letter,  
Appellant to  
Semantan  
Estate (1952)  
Limited.

30th December,  
1958.

(continued)

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT

COMPANIES (WINDING-UP) No. 2 OF 1961

AND IN THE MATTER OF SEMANTAN ESTATE (1952) LIMITED

AND IN THE MATTER OF THE COMPANIES ORDINANCES 1940 to 1946

B E T W E E N

NG ENG HIAM

(Petitioner) APPELLANT

- and -

1. NG KEE WEI
2. NG CHIN SIU
3. NG BEH LEOW
4. NG SOOK CHIN (f)
5. NG SOOK HIN (f)
6. NG SOOK KENG (f)
7. NG BEH YEOW
8. NG BEH PUAN
9. NG BEH KIAN
10. LIM TUAN (f)
11. NG BEH TONG

(Opponents) RESPONDENTS

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RECORD OF PROCEEDINGS

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LOVELL WHITE & KING,  
1, Serjeants' Inn,  
London, E.C.4.

Solicitors for the Appellant.

PEACOCK & GODDARD,  
1, Raymond Buildings,  
Gray's Inn,  
London W.C.1.

Solicitors for the Respondents.