

Judgment 9, 1968

9

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 18 of 1966.

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

IN THE MATTER of CIVIL SUIT NO. C/70/63 of 1963 in the
High Court in Borneo at Kuching

AND IN THE MATTER of THE LAND CODE (CHAPTER 81 of the
Laws of Sarawak) Part IV

AND IN THE MATTER of THE ACQUISITION OF K.O.T. 16178 and
K.O.T. 16179 of Kuching

B E T W E E N: AIK HOE & COMPANY LIMITED
(Objector) Appellant

- and -

SUPERINTENDENT OF LANDS AND
SURVEYS, FIRST DIVISION (Respondent) Respondent

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

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

16 JAN 1969

25 RUSSELL SQUARE
LONDON, W.C.1.

COWARD, CHANCE & CO.,
St. Swithin's House,
Walbrook,
London, E.C.4

STEPHENSON, HARWOOD & TATHAM,
Saddler's Hall,
Gutter Lane, Cheapside,
London, E.C.2

Solicitors for the Appellant.

Solicitors for the Respondent

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DOCUMENTS NOT TRANSMITTED TO PRIVY COUNCIL

Description of Document	Date
Following appendices to Statutory Statement under Section 57 of the Land Code: <u>Appendix C.</u> Notice under Section 47 of the Land Code (without copy of the Miscellaneous Plan No. 87/24(A).)	

Description of Document	Date
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ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

IN THE MATTER of CIVIL SUIT No. C/70/63 of 1963 in the
High Court in Borneo at Kuching
AND IN THE MATTER of THE LAND CODE (CHAPTER 81 of the
Laws of Sarawak) Part IV
AND IN THE MATTER of THE ACQUISITION OF K.O.T. 16178 and
K.O.T. 16179 of Kuching

10 B E T W E E N: AIK HOE & COMPANY LIMITED
- and - (Objector) Appellant
SUPERINTENDENT OF LANDS AND
SURVEYS, FIRST DIVISION (Respondent) Respondent

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

No. 1
STATUTORY STATEMENT UNDER SECTION 57 OF
THE LAND CODE

In the High
Court of Borneo

No. 1

M A L A Y S I A

IN THE HIGH COURT IN BORNEO
HOLDEN AT KUCHING

Statutory State-
ment under
Section 57 of
the Land Code.

CIVIL SUIT NO. C/70/63

25th January,
1965

AIK HOE & CO., LTD. ... Objector
SUPERINTENDENT OF LANDS AND SURVEYS,
FIRST DIVISION ... Respondent

A STATUTORY STATEMENT REQUIRED UNDER SECTION
57 OF THE LAND CODE IN RESPECT OF AWARDS OF
COMPENSATION MADE UNDER PART IV OF THE LAND
CODE.

(Sgd.) A. F. PORTER.

U SUPERINTENDENT OF
LANDS AND SURVEYS,
FIRST DIVISION.

Kuching, 25th January, 1965.

In the High
Court of Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code.

25th January,
1965

(Contd.)

Append below are statements required by
section 57 of the Land Code for the information
of the Court.

(a) The situation and extent of the land
with particulars of any trees, buildings or
standing crops:

These are two of the 19 parcels of land
acquired in the New Port area at Pending
Road, Kuching, under a Declaration made
under Section 48 of the Land Code and
published as Gazette Notification No. 569
on 28th April, 1961. An illustrative plan
showing, inter alia, the 19 parcels acquired
and the two parcels of land whose proprietor
objects to the amount of the award made by
the Superintendent of Lands and Surveys,
First Division, are shewn attached as
Appendix B1. These parcels are also shewn
separately on Appendix A(i) using the identi-
fication numbers appearing in column (a) of
Appendix A. Details of crops and improve-
ments existing upon the land acquired are
shewn in Appendices II and 12.

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(b) The names of interested persons and
addresses:-

These are shown in Column (c) of
Appendix A.

(c) The amount awarded for damages and
paid or tendered under sections 47 and 53,
or either of them, and the amount of compen-
sation awarded under section 51:

30

The notification under the provisions
of section 47 of the Land Code that land was
likely to be required by Government was made
in respect of the land acquired, but no
damage was caused was the result of any entry
under its powers and consequently no compen-
sation was paid prior to the issue of the
Superintendent's Award. The provisions of
urgency in respect of occupation of the land
by Government under section 53(2) of the
Land Code were not used.

40

The enquiries and Awards followed the Gazette of the Declaration under section 48 of the Land Code.

Copies of the Awards made by the Superintendent are attached as Appendices G1 and G2 and the breakdown of the amount awarded is detailed in Columns (e - i) of Appendix A. Notes of the Superintendent's enquiries are attached as Appendix F1. The letter of objection received are attached as Appendices H2 and H3.

In the High
Court of Borneo

Statutory State-
ment under
Section 57 of
the Land Code

25th January,
1965
(Contd.)

(d) The grounds on which the amount of compensation was determined:-

The Valuer, Mr. J. R. Dickson, inspected the Land and improvements in 1960 and submitted valuations for consideration by the Superintendent. A subsequent detailed confirmation was made in 1961 by the then Valuer, Mr. G. H. Lumb, in respect of this land a variation was made by him in 1962 in respect of O.T.16179 (Appendix 12). The final valuations are attached hereto as Appendices 11 and 12.

The value of the land as assessed by the Valuer was based primarily on the evidence of then recent sales of comparable land in the vicinity of the land acquired. A plan and Schedules shewing these sales are attached hereto as Appendix J.

The Superintendent examined the Valuer's recommendations and after inspection of the area decided to substantially adopt those valuations as the basis of his Awards. Detailed comment on each parcel of land in respect of which an appeal has been lodged is given below.

1. O.T. 16178

(a) The total estimated value of this land without improvements is as follows:-

In the High
Court of Borneo

Statutory State-
ment under
Section 57 of
the Land Code

25th January,
1965

(Contd.)

Land

9.72 acres at	₹5,500.-	
	per acre =	₹ 53,460.-
8.00 acres at	₹4,500.-	
	per acre =	₹ 36,000.-
8.00 acres at	₹4,000.-	
	per acre =	<u>₹ 32,000.-</u>
	Total:	<u>₹121,460.-</u>

(b) The land is situated at about 4 miles from Kuching and fronts Pending Road for approximately 32 chains with an average depth of about 5 to 10 chains. Except for about 1 acre the total area is below 10 feet contour. It is subject to flood and is affected by tidal water. Ground cover is a mixture of jerami and nipah. No electricity or main water supply was available. Soil is a thin sour topsoil overlying a soft blue clay.

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(c) Title was without conditions and was for a term of 900 years from 17.7.1911 and carried the general description "agricultural".

(d) Title was within a Mixed Zone Area and was classified as Town Land.

(e) Title was transferred to Messrs. Aik Hoe & Co. for ₹19,000.- vide Instrument No. L. 523/49 of 11.5.49.

2. O.T. 16179

30

(a) The total estimated value of this land together with improvements is as follows:-

Land

6.00 acres at	₹7,000.-	
	per acre =	₹ 42,000
11.82 acres at	₹6,000.-	
	per acre =	<u>₹ 70,920</u>
<u>17.82</u>		<u>₹112,920.-</u>

Improvements.

A house with a total area of 996 sq.ft. at \$2.- per sq.ft. = \$1,992 say=\$ 1,900.-	
2 wells at \$25.- each =	50.-
1 latrine =	50.-
2 chicken houses =	50.-
Cultivations =	130.-
Removal expenses =	200.-
Site clearance and road =	<u>1,000.-</u>
Total:	<u>\$116,300.-</u>

In the High Court of Borneo

Statutory Statement under Section 57 of the Land Code

25th January, 1965

(Contd.)

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(b) This property is situated at about 4 miles from Kuching fronting Pending Road, south side, with a road frontage of approximately 18 chains. It is roughly triangular in shape with a depth of 16 chains. O.Ts. 16180 and 16181 for burial purposes were at the date of S.47 Notification contained within its boundaries, having formed part of parent Grant 828 of 1911. About half an acre is below the 10 feet contour and is subject to flood and affected by tidal water. The balance is high land up to the 50 feet contour near graves in O.T.16181. Graves are also on high land within O.T.16180 and 16181 were detrimental to development, especially because of their effect on earthenworks. Ground cover is a mixture of jerami and nipah and, on high land, grass. No main electricity or water supply was available. Soil is thin layer of brown topsoil overlaying a yellow clay on high land and sour topsoil overlying soft blue clay on lowlying areas.

(c) Title was without conditions and was for a term of 900 years from 17.7.1911.

(d) The general description was

In the High
Court of Borneo

Statutory State-
ment under
Section 57 of
the Land Code

25th January,
1965

(Contd.)

agricultural but there were no special conditions. It was within a Mixed Zone area and was classified as Town Land.

(e) Title was transferred to Messrs. Aik Hoe & Co. for \$21,000.-- vide Deed No. L. 522/49 of 11.5.49

A P P E N D I X A
Cases referred to the High Court
for decision under Section 56
of the Land Code

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code.

Appendix A.

Cases referred
to the High
Court for deci-
sion under
Section 56 of
the Land Code.

(a) Item	(b) Registered Title No.	(c) Registered Proprietor and address	(d) Area (Acres)	(e) Cultiva- tions	(f) Improve- ments	(g) Severance etc.	(h) Land	(i) Total Award	(j) Represented by
10 1.	O.T.16178	Aik Hoe & Co. Ltd. Singapore. c/o Messrs. Yong & Co., No. 34, India Street, Kuching	25.72	-	-	-	£121,460	£121,460	Messrs.Yong & Co.
20 2.	O.T.16179	- do -	17.82	£130.- (Crops only)	£3,050.-	£200.-	£112,920	£116,300	-do-

In the
High Court in
Borneo.

A P P E N D I X A(i)

No. 1

Statutory
Statement
under Section
57 of the
Land Code.

Plan showing land acquired and listed
in Appendix A.

Appendix A(i)

(IN SEPARATE FOLDER)

Plan showing
land acquired
and listed
in Appendix A

Appendix B1

A P P E N D I X B1

General Plan
showing
location of
all land
acquired in
the New Port
Area (South
Block)

General Plan showing location of all
land acquired in the New Port Area
(South Block)

(IN SEPARATE FOLDER)

Appendix B2

A P P E N D I X B2

General Plan
showing
location of
all land
acquired in
the New Port
Area (North
Block)

General Plan showing location of all
land acquired in the New Port Area
North Block)

(IN SEPARATE FOLDER)

A P P E N D I X D

NOTIFICATION No. 569

THE LAND CODEDeclaration under Section 48

TAKE notice that, pursuant to the powers conferred on the Governor in Council by section 48 of the Land Code (Cap.81), it has been declared that the land described in the Schedule, which is situate in the Pending Peninsular, Kuching, is needed for the purposes of residential and industrial development and other public facilities in connection with the new port of Kuching.

SCHEDULE

No.	Description of land	Approximate area	Registered Proprietor	Existing Encumbrances
-----	---------------------	------------------	-----------------------	-----------------------

20 The land described in the following documents of title.

1.	Lease 4097	1.60 acres	Wee Kheng Chiang & Co.Ltd.	-
2.	Lease 4098	2.37 "	- do -	-
3.	Lease 4415	2.50 "	Goh Tiaw Sze	-
4.	K.O.T.6868	3.37 "	Jong Thad Fuk Jong Thad Chi Jong That Thin Jong Thad Khak & Jong Thad Ah (1/5th share each)	-
5.	K.O.T.16688	1.00 "	Chin Syn Yu	-
6.	Lease 11239	0.87 "	Liew Nyung (1/2 share),	Caveat L.3524/56

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix D

Declaration under Section 48 of the Land Code.

20th April 1961

In the High Court in Borneo

	13.	K.O.T. 2.44 12287 acres	Chua Lian Choo (f)	-	<u>No. 1</u>
	14.	Lot 0.44 181 acres Section 64 K.T.L.D.	Lim Eng Hin	Charge No.L. 3800/59 of 29.10.1959 in favour of Chia Chi Jang.	Statutory State- ment under Section 57 of the Land Code <u>Appendix D</u>
10	15.	Lot 0.52 182 acres Section 64 K.T.L.D.	Fuh Jun Tung ($\frac{1}{2}$ share) Lim Kien Guan & Wee Teck Sang ($\frac{1}{4}$ share each)	-	Declaration under Section 48 of the Land Code.
	16.	Lot 0.50 183 acres Section 64 K.T.L.D.	Voon Ah Huat & Ngun Lan Hiang (f) ($\frac{1}{2}$ share) each)	-	<u>20th April 1961</u> (Contd.)
2P	17.	Lot 0.50 104 acres Section 64 K.T.L.D.	Sim Liau Chin	Charge L.2756/ 59 of 10.3. 1959 in favour of Ong Chiang Hua	
	18.	Lot 0.51 185 acres Section 64 K.T.L.D.	Kho Seng Boon & Sim Aik Poh ($\frac{1}{2}$ share each)	Charge L.1446/60 of 3.4.1960 in favour of Lim Ah Thiam	
30	19.	K.O.T. 18.93 4729 acres	Tsai, Paul Muk Hin	Charge No. L. 3100/1954 of 15.11.1954 in favour of Bian Chiang Bank Ltd.	

(A plan (Miscellaneous Plan No.876/29) on which the said land is delineated may be inspected at the office of the Superintendent of Lands and Surveys, First Division, Kuching and the District Office, Kuching.)

Made this 20th day of April, 1961
PETER CHONG

Deputy Clerk of Councils.

40 Council Chamber,
Kuching.
(CSO/5582)

CERTIFIED TRUE COPY
Supt. of Lands and Surveys,
First Division.
25.1.1965

A P P E N D I X E I

In the High Court in Borneo

No. 1

Reference: 388/41073

Statutory Statement under Section 57 of the Land Code

NOTICE issued pursuant to Section 49 of the Land Code.

Appendix E1

To:

Messrs. Aik Hoe & Co. Ltd. of Singapore of 5-7 Beach Road, Singapore.

Notice issued pursuant to Section 49 of the Land Code.

Lessees (and all persons known or believed to be interested in the land) described in the Schedule hereto.

10

27th April 1961

Pursuant to section 49 of the Land Code, (Cap. 81) notice is hereby given that Government intends to take possession of the land described in the Schedule hereto for the purposes of residential and industrial development and other public facilities in connection with the new port of Kuching.

2. All persons possessing or claiming compensation for any interest in the said land or any part thereof are required to appear personally or by agent before me in the Land Office, Kuching, at 11 o'clock a.m. on the 24th day of May, 1961, and to state the nature of their respective interests in the said land and the amount and particulars of their claims to compensation for such interests and their objections, if any, to the measurements of the said land as surveyed.

20

Dated this 27th day of April, 1961.

The Schedule above referred to

<u>No.</u>	<u>Description of land</u>	<u>Area</u>	<u>Registered Proprietor</u>	<u>Existing Encumbrances</u>
	The land described in the following documents of title.			
1.	Lease 4097	1.60 acres	Wee Kheng Chiang & Co. Ltd.	-

31

<u>No.</u>	<u>Description of land</u>	<u>Area</u>	<u>Registered Proprietor</u>	<u>Existing Encum- brances</u>	<u>In the High Court in Borneo</u>
					No. 1
	2. Lease 4098	2.37 acres	Wee Kheng Chiang & Co. Ltd.	-	Statutory State- ment under Section 57 of the Land Code
	3. Lease 4415	2.50 acres	Goh Tiaw Sze	-	<u>Appendix E1</u>
10	4. K.O.T.6368	3.37 acres	Jong Thad Fuk Jong Thad Chi, Jong That Thin, Jong Thad Khak & Jong Thad Ah (1/5th share each)	-	Notice issued pursuant to Section 49 of the Land Code <u>27th April 1961</u> (Contd.)
	5. K.O.T.16688	1.00 acres	Chin Syn Yu	-	
20	6. Lease 11239	0.87 acres	Liew Yyung $\frac{1}{2}$ share Kueh Boon Beng (1/10th share) Kueh Boon Tiong (1/10th share) Kueh Boon Teck (1/10th share) Kueh Boon Lai (1/10th share) & Kueh Boon Siong (1/10th share)	Caveat L. 3524/56 of 9.10.56 against Kueh Boon Tiong's Kueh Boon Teck's Kueh Boon Lai's & Kueh Boon Siong's shares.	
30	7. Lease 11240	0.93 acre	- do -	- do -	
	8. K.O.T.16178	25.72 acres	Aik Hoe & Co. Ltd.Singapore	- do -	
	9. K.O.T.16179	17.82 acres	Aik Hoe & Co. Ltd.Singapore	Right of way L.1029/47 of 21.7.47	
40	10. K.O.T.16180	1.26 acres	Ho Hiang Lan (f) Tho Geok Sze (f) Chan Choon Jin & Chan Choon Ghee ($\frac{1}{4}$ share each)	-	

<u>In the High Court of Borneo</u>	<u>No.</u>	<u>Description of land</u>	<u>Area</u>	<u>Registered Proprietor</u>	<u>Existing Encumbrances</u>	
<u>No. 1</u>						
Statutory Statement under Section 57 of the Land Code	11.	K.O.T.16181	0.05 acre	Chan Choon Jin & Chan Choon Ghee ($\frac{1}{2}$ share each)	-	
<u>Appendix E1</u>	12.	K.O.T.5736	5.43	Lee Chi Min & Lee Jaw Sen ($\frac{1}{2}$ share each)	Charge L. 3678/1958 of 30.12.1958 in favour of Bian Chiang Bank Ltd. in respect of Lee Chi Min's $\frac{1}{2}$ share.	10
Notice issued pursuant to Section 49 of the Land Code					Charge L. 2702/60 of 2.8.1960 in respect of Bian Chiang Bank Ltd., in respect of Lee Jaw Sen's $\frac{1}{2}$ share.	20
<u>27th April 1961</u>					Caveat L. 2702/60 of 2.8.1960.	30
(Contd.)						
	13.	K.O.T.19287	2.44 acres	Chua Lian Choo (F)	-	
	14.	Lot 181 Section 64 K.T.L.D.	0.44 acre	Lim Eng Hin	Charge No. 3808/59 of 29.10.1959 in favour of Chia Chi Jang.	40
	15.	Lot 182 Section 64 K.T.L.D.	0.52 acre	Fuh Jun Tung ($\frac{1}{2}$ share) Lim Kien Guan & Wee Teck Sang ($\frac{1}{4}$ share each)	-	

<u>No.</u>	<u>Description</u>	<u>Area</u>	<u>Registered Proprietor</u>	<u>Existing Encum- brances</u>	<u>In the High Court of Borneo</u> <u>No. 1</u>
16.	Lot 183 Section 64 K.T.L.D.	0.50 acres	Voon Ah Huat & Ngun Lan Hiang (f) ($\frac{1}{2}$ share each)	-	Statutory State- ment under Section 57 of the Land Code
10	17. Lot 184 Section 64 K.T.L.D.	0.50 acre	Sim Liau Chin	Charge L. 2756/59 10.8.1959 in favour of Ong Chiang Hua	<u>Appendix E1</u> Notice issued pursuant to Section 49 of the Land Code
18.	Lot 185 Section 64 K.T.L.D.	0.51 acre	Kho Seng Boon & Sim Aik Poh ($\frac{1}{2}$ share each)	Charge L. 1446/60 of 8.4.1960 in favour of Lim Ah Thiam	<u>27th April 1961</u> (Contd.)
20	19. K.O.T.4729	13.93 acres	Tsai, Paul Muk Hin	Charge No. L.3100/ 1954 of 15.11.1954 in favour of Bian Chiang Bank Ltd.	

(Sgd.) J. Jackson.

Superintendent of Lands and
Surveys, First Division.

CERTIFIED TRUE COPY

Supt. of Lands and Surveys,
First Division.

25.1.1965

In the High Court in Borneo

A P P E N D I X F1

No. 1
Statutory Statement under Section 57 of the Land Code

Notes made by the Superintendent of Lands and Surveys, First Division, during the course of enquiries, and their adjourned sittings, held under section 51 of the Land Code.

Appendix F1

Messrs. Aik Hoe & Co.Ltd. - O.T. 16178 and O.T.16179

Notes made by the Superintendent of Lands and Surveys, First Division, during the course of enquiries, and their adjourned sittings, held under section 51 of the Land Code

Enquiry set for 4.9.61 at 2 p.m.

Mr. Yong in office on 4/9/61. To discuss claim for improvements only as case not prepared for land.

10

House erected by Mr. Song Thian Cho on O.T. 16179 with following claims:-

1.	Clearing site and formation	£1,000	
2.	Wooden building (assessment)	6,000	
3.	Road construction	1,000	
4.	W.C. & bathrooms	1,000	
5.	Wells (two)	1,000	
6.	Poultry sheds (two)	500	
7.	Fruit trees - bananas, papayas & coconut	200	20
		<u>£10,700</u>	

Adjourned to 19.9.61. Mr. Yong in office. Claims £30,000 acre. No evidence in support. Presents letter 431/41073 dated 19,9.61 in support.

YONG & CO. 34 India Street
ADVOCATES (Ground Floor)
Kuching
Sarawak

30

Our Ref: SY/65/61. 19th September, 1961

The Superintendent of Lands,
First Division.

Sir,

O.T.16178/16179

We have been instructed by the registered proprietors of the above two parcels of land to state their estimate for the said land is \$30,000 per acre.

10 To support this claim we submit for your consideration the following points:-

- (a) Both properties are held under long term leases (800 years).
- (b) They are both on the main road with wide road frontage and are physically superior to other land adjacent to them.
- (c) The proprietors have intended developing these properties and plans have been made for building factories and shopping facilities thereon.
- 20 (d) If they were put up for sale by public auction just before the notification of acquisition was published the price of \$40,000 per acre could easily be obtained.

We have the honour to be,

Sir,
Your obedient servants,
(Sgd.) Yong & Co.

No other grounds presented.

30	O.T.16178	9.72 acres @ \$5,500	=	\$ 53,460
		8.00 " @ 4,500	=	36,000
		8.00 " @ 4,000	=	<u>32,000</u>
				<u>\$121,460</u>

In the High Court of Borneo

No. 1
Statutory Statement under Section 57 of the Land Code

Appendix F1

Notes made by the Superintendent of Lands and Surveys, First Division, during the course of enquiries, and their adjourned sittings, held under section 51 of the Land Code.

(Contd.)

In the High
Court of Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

No improvements

O.T.16179	6 acres @ \$7,000	=	42,000
	11.82 " @ 6,000	=	<u>70,920</u>
			<u>\$112,920</u>

Appendix F1

Notes made by
the Superinten-
dent of Lands
and Surveys,
First Division,
during the
course of
enquiries, and
their adjourned
sittings, held
under section
51 of the
Land Code.

(Contd.)

Improvements on O.T.16179

House 996 sq.ft. @ \$2 = 1892 say =	\$1,990
2 wells @ \$25	50
1 latrine	50
2 chicken houses	50
Cultivations (as per schedule)	130
Removal	200
Site clearance & Road	<u>1,000</u>
	<u>\$3,380</u>

10

Mr. Yong in office on 26/7/62. Above information detailed to him but he has no further case to substantiate his previous claims. He states he will again contact Aik Hoe in Singapore and convey above details to them.

Adjourned to 6.8.62,

(Sgd.) J.J.

26/7

20

Rang Mr. Yong. He has advised Aik Hoe in Singapore subsequent to our discussions but they have not replied. Will give him to end of month to advise further.

(Sgd.) J.J.

6/8

Award to be made on grounds detailed.

A P P E N D I X G1

AWARD made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T. No. 75178

Reference No. 548/41073

In the matter of the Land Code

AND

In the matter of certain

Claims to compensation in respect of land to be resumed by the Government under section 46 of the Land Code.

10

(i) Registered Proprietors:

Aik Hoe & Co. Ltd.

(ii) Description of land to be resumed:

Kuching Occupation Ticket No. 16178
(hereinafter referred to as "the said land")

AWARD

This AWARD is made pursuant to section 51 of the Land Code.

20

Having inquired into the objections which the above named Claimants/Proprietors have stated, Pursuant to notices given by me under section 49, to the measurements of the said land as surveyed and into the value of the said land and into the respective interests of the Claimants/Proprietors claiming the compensation and having heard, examined, and considered the allegations and evidence of the persons concerned and having done and performed all things necessary to enable me to make this award, I DO HEREBY FIX, AWARD AND DETERMINE

30

(a) the true area of the said land to be 25.72 acres.

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix G1

Award made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T.No. 16178.

16th March 1963

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix G1

Award made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T. No. 16178.

16th March 1963 (Contd.)

(b) the amount of compensation for the said land to be the sum of dollars one hundred and twenty-one thousand four hundred and sixty only (\$121,460).

Compensation for this land has been assessed as follows:-

9.72 acres @ \$5,500/acre	=	\$ 53,460
8.00 " " \$4,500/acre	=	\$ 36,000
8.00 " " \$4,000/acres	=	<u>\$ 32,000</u>
		<u>\$131,460</u>

10

Above assessment was based on consideration of sections 60 and 61 of the Land Code.

The market value of the land at the date of publication of the declaration under section 47, being 1st April, 1960, was determined by the comparative sales method after consideration of comparable land in the Kuching area.

This was supported by a contour survey plan of the area which indicates topography and floor levels. Areas below the 10' contour line on this plan are subject to flood and tidal flow. The soils are poor, on the low lying parts soured and the cover is nipah palm scattered trees and jerami.

20

This land fronts on to a metalled road but lacks services of water and light.

The value of the land was assessed on an acreage basis depending on above factors together with aspect and access. Thus the value per acre varied from \$4,000 to \$4,500 to \$5,500 as shown above.

30

The whole of this title except for approximately 1 acre is below the 10' contour line and therefore subject to flood. Any development would be costly in fill and for this reason not in any great demand or at least until the surrounding area is more fully developed. The area varies in depth from 4 to 16 chains from the road.

Improvements

Nil.

I DO HEREBY DIRECT the said compensation on the sum of dollars one hundred and twenty one thousand four hundred and sixty only (\$121,460) shall be apportioned among the following persons in manner following, that is to say:-

10

To: Messrs. Aik Hoe & Co. Ltd., Singapore, (the lessee of the said land) the sum of dollars one hundred and twenty-one thousand four hundred and sixty only (\$121,460).

As witness my hand this sixteenth day of March, 1963.

(Signed) J.G.B.Jackson
Superintendent of Lands and Surveys
First Division.

Copy to:- Valuer.

CERTIFIED TRUE COPY.

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix G1

Award made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T. No. 16178.

16th March 1963
(Contd.)

A P P E N D I X G2

20

AWARD made by Superintendent of Lands and Surveys, First Division, in respect of K.O.T. No. 16179

Reference No. 547/41073

In the matter of the Land Code

AND

In the matter of certain Claims to Compensation in respect of land to be resumed by the Government under Section 46 of the Land Code

30

(i) Registered Proprietors

Aik Hoe & Co. Ltd.

(ii) Description of land to be resumed;

Kuching Occupation Ticket No. 16179

Appendix G2

Award made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T.No. 16179

16th March 1963

In the High Court in Borneo

(hereinafter referred to as "the said land")

No. 1

AWARD

Statutory Statement under Section 57 of the Land Code

The AWARD is made pursuant to section 51 of the Land Code.

Appendix G2

Award made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T. No. 16179

Having inquired into the objections which the above named Claimants/Proprietors have stated, pursuant to notices given by me under section 49, to the measurements of the said land as surveyed and into the value of the said land and into the respective interests of the Claimants/Proprietors claiming the compensation and having heard, examined and considered the allegations and evidence of the persons concerned and having done and performed all things necessary to enable me to make this award I DO HEREBY FIX, AWARD AND DETERMINE

10

16th March 1963
(Contd.)

- (a) The true area of the said land to be 17.82 acres.
- (b) the amount of compensation for the said land to be the sum of dollars one hundred and sixteen thousand three hundred only (\$116,300).

20

Compensation for this land has been assessed as follows:-

Land

6.00 acres @ \$7,000/acres	=	\$ 42,000
11.82 " @ \$6,000/acre	=	<u>\$ 70,920</u>
		<u>\$112,920</u>

Above assessment was based on consideration of sections 60 and 61 of the Land Code.

30

The market value of the land at the date of publication of the declaration under section 47, being 1st April, 1960, was determined by the comparative sales method after consideration of comparable land in the Kuching Area.

This was supported by a contour survey plan

of the area which indicates topography and flood levels. Areas below the 10' contour line on this plan are subject to flood tidal flow. The soils are poor, on the low lying parts soured and the cover is nipah palm scattered trees and jerami.

The land fronts on-to a metalled road but lacks services of water and light.

10 The value of the land was assessed on an acreage basis depending on above factors together with aspect and access. Thus the value per acre varied from \$6,000 to \$7,000 as shown above.

20 The lot is roughly triangular in shape with a road frontage of approximately 18 chains and a maximum depth of approximately 16 chains. Approximately half the lot is below the 10' contour and therefore subject to flood. Balance is high dry land but the two prominent hills are occupied by other island titles O.T.16180 and O.T.16181 which are used for burial purposes. The presence of these graves is detrimental to development especially with regard to earthworks and this factor was taken into account.

Assessment of compensation for buildings was based on size, materials used, site preparation and present state of repair. Removal expenses were granted.

30 Compensation for cultivations was assessed in accordance with normal rates as set down by this Department.

Improvements

House, wooden, 3 bedrooms, 1 hall, 1 kitchen/dining room, 1 store, 1 passage, 1 foot way. Attap leaf roof, belian tiangs, plank walls, part floor concrete part wooden 996 sq. ft.	\$1,900
2 wells @ \$25 each	50
1 latrine	50
40 2 Chicken houses	50
Cultivations (as under)	130

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

Appendix G2

Award made by
Superintendent
of Lands &
Surveys, First
Division, in
respect of
K.O.T. No.
16179

16th March 1963
(Contd.)

In the High Court in Borneo <u>No.1</u>	<u>TREES</u>	<u>BEARING</u>	<u>NOT BEARING</u>	
Statutory State- ment under Section 57 of the Legal Code	Bananas	12 @ 3/00 = \$36	61 @ 1/00 = \$61	
	Jambu	2 @ 2/50 = \$10	9 @ 0/50 = \$ 5	
	Pineapple	-	6 = 1	
	Papaya	1 @ 2/00 = \$ 2		
	Coconut	-	2 @ 1/00 = 2	
	Oranges (limo kasturi)	3 @ 3/00 = \$ 9	\$69	
<u>Appendix G2</u>	Total:	\$57 \$69	\$69	10
Award made by Superintendent of Lands & Surveys, First Division, in respect of K.O.T. No. 16179		\$126	say \$130	
	Removal for house etc.		200	
	Site clearance and road		1,000	
			<u>\$3,000</u>	

16th March 1963
(Contd.)

I DO HEREBY DIRECT the said compensation of the sum of dollars One hundred and sixteen thousand three hundred only (\$116,300) shall be apportioned among the following persons in manner following, that is to say:-

To: Messrs. Aik Hoe & Co. Ltd., Singapore
(Lease of the said land) the sum of \$116300 only (One hundred and sixteen thousand three hundred dollars).

AS WITNESS my hand this 16th day of March 1963

Signed: J. C. B. JACKSON
Superintendent of Lands and Surveys First Division.

CERTIFIED TRUE COPY

Supt. of Lands and Surveys First Division 25/1/65

Appendix H1
Letter Yong & Co. to the Clerk of Councils, Sarawak
6th June 1961

A P P E N D I X H1
LETTER YONG & CO. TO THE CLERK OF COUNCILS, SARAWAK, and PETITION of AIK HOE & CO. LTD. TO THE GOVERNOR-IN-COUNCIL

YONG & CO.
Advocates
34, India Street,
Kuching, Sarawak
6th, June, 1961

The Clerk of Councils,
Sarawak

Sir,
Petition by Aik Hoe & Co. Ltd.
Re: O.T. 16178 and 16179

We have the honour to forward in this cover a petition by Aik Hoe & Co. Ltd. of Singapore, in duplicate, for whom we act.

The said company is well known and well established concern having very long business association with Sarawak.

10 The schemes as proposed had been in the contemplation of the company's directors at the time when the purchase of the said pieces of land were made. The purchase was not made for purpose of speculation. The schemes were not proceeded with because of the lack of water and electricity supply to the area and not until recently were there any plans for extension of these utilities to that area.

The schemes as proposed will cost approximately \$770,000.- which is well within our client's means. The following figures as submitted by our client's architect:-

"The approx cost of the projects is as follows:-

Factories for Messrs. Aik Hoe & Co. Ltd.

20	1.	Four (4) smoke houses - area 9240 s.f. @ \$40,000/- each	\$160,000.00
	2.	Store - area 16,000 s.f.	65,000.00
	3.	Block of 8 workmen's qrs - area 400 s.f. @ \$2,000/- each	16,000.00
	4.	Four blocks of two storey shops - area 1680 s.f. @ \$6,700/- (37 nos)	245,000.00
	5.	Septic Tank for 100 persons	7,000.00
	6.	Lavatory Block	2,000.00
30	7.	Drainage, water and lighting as services	15,000.00
	8.	Roads and Roadside drains	18,000.00
	9.	Clearing and site formation	8,000.00
			<u>\$536,000.00</u>

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix H1

Letter Yong & Co. to the Clerk of Councils, Sarawak.

6th June 1961
(Contd.)

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

Appendix H1

Letter Yong &
Co. to the Clerk
of Councils,
Sarawak.

6th June 1961
(Contd.)

Factories for Singapore Paper Products Ltd.

1.	Factory "A" for the production of cartoons etc. area 20,000 s.f.	\$ 70,000.00	
2.	Factory "B" for the production of toilet paper etc., area 18,000 s.f.	63,000.00	
3.	Office Block	8,000.00	
4.	Three staff quarters - area 975 s.f. @ \$7,500/-	22,500.00	10
5.	Car sheds	2,000.00	
6.	Block of 10 workmen's Qrs - area 400 s.f. @ \$2,000/- each	20,000.00	
7.	Septic Tank	6,000.00	
8.	Drainage, water and lighting services	18,000.00	
9.	Roads and Roadside drains	16,000.00	
10.	Clearing and site formation	<u>8,000.00</u>	
		<u>\$233,500.00</u>	20

In our humble opinion, if the Aik Hoe & Co.
Ltd. is to develop its land in keeping with the
Government ought to encourage such scheme.

We have the honour to be,

Sir,

Your obedient servants,

Sgd. Yong & Co.

Petition of
Aik Hoe & Co.
Ltd. to the
Governor-in-
Council.

5th June 1961

To: His Excellency the Governor-in-Council, Sarawak
Kuching Occupation Tickets Nos. 16178 and 16179
at Pending Bond, Kuching - Registered
Proprietor Aik Hoe & Co. Ltd., Singapore.

30

The Petition of Aik Hoe & Co. Ltd., of
Singapore showeth as follows:-

1. The petitioner is proprietor of two parcels
of land comprised in the Occupation Tickets
Nos. 16178 and 16179 containing an area of

25.72 acres and 17.82 acres respectively both situating at Pending Road.

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix H1

Petition of Aik Hoe & Co. Ltd. to the Governor-in-Council.

5th June 1961
(Contd.)

2. A Declaration was made on 20th April 1961 by your Excellency in Council under Section 48 of the Land Code (Ca.81) to the effect that the said parcels of land were needed for the purposes of residential and industrial development and other public facilities in connection with the new port of Kuching.
3. The petitioner has in fact contemplated development of the said parcels of land when purchase was made but due to uncertainty in the installation of water and lighting facilities by the public authorities concerned, the schemes were shelved.
4. The petitioner now intends to develop the same by erecting smoke houses, stores, living quarters and shophouses on part of land comprised in O.T. 16179 and in O.T. 16178. AND the petitioner's Associate Company viz. Singapore Paper Products Ltd. in which the petitioner has controlling interests intends to develop part of the land comprised in the said O.T.16179 by erecting thereon factories manufacturing cartoons and toilet papers, offices and living quarters. The detailed plans for the said projects or schemes are forwarded for information.
5. The petitioner's said parcels of land being a distance away from the actual Port area, the proposed development scheme of the Government would not be directly for the purpose of serving the Port Authorities or providing port facilities.
6. The petitioner's said schemes are in line with the proposed development scheme of the Government and if required your petitioner will cause alteration to layouts or amendment to the schemes as to fit in with the Government scheme.
7. The petitioner will undertake to develop

10

20

30

40

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix H1

Petition of Aik Hoe & Co. Ltd. to the Governor-in-Council.

5th June 1961 (Contd.)

the said land not later than the date when the Government's proposed scheme has extended to the area adjoining the said land.

- 8. The petitioner begs that your Excellency may sympathetically consider the petitioner's request that in view of the petitioner's proposed schemes aforesaid, the petitioner's said land be exempted from the said Declaration or alternatively allow the petitioner to retain such parts thereof as will enable the petitioner to put up its said schemes aforesaid

10

The Petitioner will ever pray

Dated this 5th day of June, 1961.

(Sgd.)

Director of Aik Hoe & Co.Ltd.
Petitioner.

Appendix H2

A P P E N D I X H2

Application under Section 56 of the Land Code for compensation award in respect of K.O.T.No. 16178 to be referred to High Court

APPLICATION UNDER SECTION 56 OF THE LAND CODE FOR COMPENSATION AWARD IN RESPECT OF K.O.T. NO. 16178 to be referred to High Court.

20

COPY(566/41073)

In the matter of section 56 of the Land Code AND in the matter of acquisition of land held under Kuching Occupation Ticket No. 16178 at Pending Road, Kuching.

26th April 1963

TO: The Superintendent of Lands & Surveys, First Division.

Application is hereby made under section 56 of the Land Code for the compensation awarded on 16th day of March, 1963 (Reference No. 548/41073) to be referred to the High Court for determination.

30

The ground on which the objection to the award is based, is as follows,

The compensation was inadequate and the award cannot be supported having regard to the potentiality and market value of the land and sales of land in the vicinity.

Dated 26th April, 1963.

(Sgd.) Yong & Co.
Advocates for Aik Hoe & Co.Ltd.

CERTIFIED TRUE COPY

Supt. of Lands and Surveys,
First Division.

25.1.1965

A P P E N D I X H3

APPLICATION UNDER SECTION 56 OF THE LAND CODE FOR COMPENSATION AWARD IN RESPECT OF K.O.T.NO. 16179 to be referred to High Court.

COPY (567/41073)

In the matter of section 56 of the Land Code AND in the matter of acquisition of land held under Kuching Occupation Ticket No.16179 at Pending Road, Kuching.

To: The Superintendent of Lands & Surveys,
First Division.

Application is hereby made under section 56 of the Land Code for the compensation awarded on 16th day of March 1963 (Reference 547/41073) to be referred to High Court for determination.

The ground on which the objection to the award is based, is as follows:-

The compensation was inadequate and the award cannot be supported having regard to the potentiality and market value of the land and sales of land in the vicinity.

Dated 26th April, 1963.

(Sgd.) Yong & Co.
Advocates for Aik Hoe & Co.Ltd.

CERTIFIED TRUE COPY

Supt. of Lands and Surveys,
First Division. 25.1.1965

In the High Court in Borneo

No. 1

Statutory Statement under Section 57 of the Land Code

Appendix H2

Application under Section 56 of the Land Code for compensation award in respect of K.O.T. No.16178 to be referred to High Court

26th April 1963
(Contd.)

Appendix H3

Application under Section 56 of the Land Code for compensation award in respect of No. 16179 to be referred to High Court

26th April 1963

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A P P E N D I X II

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

Detailed Valuation of LandK.O.T. No. 16178Appendix II

Detailed
Valuation
of land

Owner: Aik Hoe and Company Limited, Singapore

Area to be acquired: 25.72 acres.

Details of land to be acquired:

Building : Nil.

Crops : Nil

ValuationLand

9.72 acres @ \$5,500.- per acre = \$ 53,460.-

8.00 " @ \$4,500.- per acre = 36,000.-

8.00 " @ \$4,000.- per acre = 32,000.-

\$121,460.-

10

Note: Extracted from folio 21/1 in File
11-3/2/9 page 2.

A P P E N D I X 12Detailed valuation of land No. K.O.T.
16179 cultivation and improvementsK.O.T. 16179

Owner: Aik Hoe Company Limited, Singapore

Area to be acquired: 17.82 acres

Details of land to be acquired:

Building and other improvements:

(i) a house of 996 sq.ft. with part concrete and wooden floor. Belian Posts and attap leaf roof. 3 bedrooms, 1 hall, 1 kitchen/dining room, 1 store, 1 passage and 1 footway

(ii) 2 wells

1 latrine

site clearance and road.

Crops:

12 bananas bearing fruit. 61 bananas not bearing fruit

4 Jambu " " 9 jambu " " "

1 papaya " " 6 pineapples " "

3 oranges " " 2 coconut " " "

VALUATION

12 bananas bearing at \$3 each = \$36

61 bananas not " at \$1 each = \$61

4 Jambu bearing at \$ 2.50 each = 10

9 Jambu not bearing at .50 each = 5

6 pineapples not bearing = 1

In the High
Court in BorneoNo. 1Statutory State-
ment under
Section 57 of
the Land CodeAppendix 12Detailed valua-
tion of land
K.O.T.No.16179
cultivation
and improve-
ments

10

20

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

Appendix 12

Detailed valua-
tion of land
K.O.T.No.16179
cultivation
and improve-
ments

1 papaya bearing at \$2	=	2	
2 coconut not bearing at \$1 each	=	2	
3 oranges bearing at \$3 each	=	9	
			<u>\$126 say \$130</u>

Land

6.00 acres at \$7,000 per acre	=	\$42,000	
11.82 " " 6,000 " "	=	<u>70,920</u>	112,920

Other Improvements

One house (996 sq.ft.)		1,900	
2 wells at \$25 each		50	10
1 latrine		50	
2 Chicken houses at \$25 each		50	
Site clearance and road		1,000	
Removal expenses		<u>200</u>	<u>3,250</u>
			<u>\$116,300</u>

Total valuation for land, crops and other
improvements is \$116,300.

Note: Extracted from folio 23 and 23/1 in
File 11/3/2/9.

APPENDIX J.SALES DATAIn the High
Court in BorneoNo. 1Statutory State-
ment under
Section 57 of
the Land Code.Appendix J.Sales Data

Sale No.	Section	Lot No.	Area	Year of expiry	Condition in Title	Date of sale	Sale Price	Price per acre	Remarks
1.	64	509	0.69	2021	Timber	14.12.59	₹1,450	₹ 2,100	Sold by auction
					Storage	29.11.60	₹2,500	3,600	Empty Land
2.	64	508	0.35	2021	"	14.12.59	530	1,515	Sold by auction
						23. 3.60	3,500	8,150	One wooden house with attap roofing.
							($\frac{1}{2}$ sh.)		Transferred with $\frac{1}{2}$ sh. of L.8856
						15.10.60	1,000	2,860	Empty Land
3.	64	507	0.35	2021	"	14.12.59	530	1,520	Sold by auction
						25. 7.60	1,100	3,140	Empty Land
						4.12.62	80,000	165,620	Empty Land

Sale No.	Section	Lot No.	Area	Year of expiry	Condition in Title	Date of sale	Sale Price	Price per acre	Remarks
									Transferred with Lots 151 & 152 Sec. 50 K.T.L.D. In Padungan Industrial area. Total area: 0.483 ac. $\frac{1}{2}$
4.	64	133	1.09	2018	Industrial	7. 6.58	₪ 4,300	₪ 3,940	Sold by auction
						4.12.62	40,000	36,700	
4(a)	64	134	1.11		"	25. 4.59	3,010	2,710	Sold by auction. But eventually cancelled as uncompleted.
5.	K.O.T.	16002	2.94	2040	Agric.	27. 1.59	5,000 ($\frac{1}{2}$ share)	3,400	Empty Land
6.	"	1014	1.71	2024	"	27. 1.59	8,000 ($\frac{1}{2}$ share)	9,350	One attap house

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code.

Appendix J.

Sales Data

(Contd.)

Sale No.	Section	Lot No.	Area	Year of expiry	Condition in Title	Date of sale	Sale Price	Price per acre	Remarks
7.	K.O.T.	5736	5.43	2027	Agric.	9. 5.58	£17,600 ($\frac{1}{2}$ sh.)	£ 6,480	With old rubber trees.
8.	64	185	0.51	2030	"	8. 4.60	5,100	10,000	<u>NB.</u> Taken by Govt. vide L. 1520/62
9.	64	184	0.50	2030	"	20.10.58	5,000	10,000	- do -
10.	64	183	0.50	2030	"	20.10.58	5,000	10,000	- do -
11.	64	182	0.52	2030	"	7. 4.59 30.11.60	5,200 3,000 ($\frac{1}{2}$ sh.)	10,000 11,550	One attap house with few rubber trees.
12.	64	405	0.93	2027	"	18. 1.60	16,150	17,400	One attap house.
13.	K.O.T.	1120	3.26	2024	"	2. 7.60	30,000	9,200	One timber house & one garage.

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code.

Appendix J.

Sales Data.

(Contd.)

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

Appendix J.

Sales Data.

(Contd.)

Sale No.	Section	Lot No.	Area	Year of expiry	Condition in Title	Date of sale	Sale Price	Price per acre	Remarks
14.	Lease	9736	0.25	1980	Agric.	8. 6.61	₪ 5,000	₪ 20,000	Empty Land
15.	Lease	8856	0.51	2037	"	19.11.59	7,000	13,700	Five attap huts.
						23. 3.60	3,500 (½ sh.)	8,150	One wooden house
									<u>NB.</u> Transferred with ½ sh. Lot. 508 Sec. 64 KTLD. Total area: 0.86 ac.
16.	Lease	8841	0.33	2025	"	2. 6.61	3,250 (½ sh.)	19,700	Empty Land.
						6.10.61	12,000	36,400	Empty Land
17.	64	516	0.13	2021	Resid.	17. 4.61	2,600	20,000	One Timber house.
18.	64	116	0.28	2018	"	28. 8.59	3,300 (½ sh.)	23,600	One house
						4. 3.60	2,200 (½ sh.)	15,700	One attap-leaf roof house and one belian attap roof house.

10

Sale No.	Section	Lot No.	Area	Year of expiry	Condition in Title	Date of sale	Sale Price	Price per acre	Remarks
19.	64	115	0.13	2018	Resid.	4. 1.60	§ 1,500	§ 11,550	One house, attap roof, plank welling.
20.	Lease	2062	0.12	2009	Pottery Factory	31. 1.59	18,000	16,100	Pottery factory
21.	Lease	2332	1.53	2024	Open	9. 3.60	16,000 ($\frac{1}{2}$ sh.)	20,900	Empty Land Now Lot 860 Sec. 64 K.T.L.D.
22.	K.O.T.	5936	0.47	2027	"	9. 7.60	6,750	14,400	One wooden house. Now Lot 643 Sec. 64 K.T.L.D.
23.	"	8032	0.87	2027	"	9. 7.60	12,000	13,800	One Factory: Rice Mill, Oil Mill, Rubber Mill and two rubber stores. Now Lot 642 Sec. 64 K.T.L.D.
24.	64	244	0.23	2025	Agric.	21. 3.61 22. 6.61	7,500 9.80	32,600 42,600	Empty Land Empty Land

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code

Appendix J.

Sales Data.

(Contd.)

Sale No.	Section	Lot No.	Area	Year of expiry	Condition in Title	Date of sale	Sale Price	Price per acre	Remarks
25.	64	187	0.10	2798	Open	15. 5.61	₪ 4,500	₪ 45,000	Empty Land.
						19. 6.61	5,000	50,000	Empty Land.
26.	Lease	7925	1.50	2013	Industrial	26. 5.60	37,700	25,100	Empty Land. Now Lot 752 and part of Lot 751.
27.	64	15	4.25	2027	Agric.	15. 3.62	8,000 ($\frac{1}{2}$ sh.)	3,760	One old wooden house. 339 Sec. 64 K.T.L.D. Area amended to 411 acs. vide L. 1295/62.
28.	64	308	1.97	2777	Open	13. 4.61	68,950	35,000	Empty Land.
29.	64	310	1.97	2777	"	22.10.60	67,900	35,000	
30.	64	584	0.637	2021	Industrial	26. 8.61	17,350	27,200	Sold by Auction.
31.	64	583	2.69	2021	"	26. 8.61	41,000	15,200	Sold by Auction.

In the High Court in Borneo

Statutory Statement under Section 57 of the Land Code

Appendix J.

Sales Data.

(Contd.)

A P P E N D I X J.

(Continued)

Two Plans.

In the High
Court in Borneo

No. 1

Statutory State-
ment under
Section 57 of
the Land Code.

Appendix J.
(continued)

Two Plans

(IN SEPARATE FOLDER)

In the High Court in Borneo

NO. 2
NOTES OF HEARING AND EVIDENCE RECORDED BY HARLEY J.

No. 2

Notes of hearing and evidence recorded by Harley, J.

IN THE HIGH COURT IN BORNEO

HOLDEN AT KUCHING

8th March 1965

9th, 10th, 11th, 12th and 15th March, 1965

High Court Civil Suit No. C/70/65

Aik Hoe & Co.Ltd., ... Objector

Superintendent of Lands & Surveys,
First Division ... Respondent

10

Objection to awards etc., - section 57 of the Land Code.

For Objector: Mr.G.S.Hill and Mr.Yong.

For Respondent: Dato D.C.Jackson. Wan Alwi

Assessors:

Hill: 2 of the 3 Assessors are Government pensioners.

No Assessor should have an interest at all.

Jackson agrees.

Consequently one short.

20

Court adjourned till 11.0.

11.0

Assessors sworn

1. Song Thian Chiok.

2. Yeo Cheng Hoe

Hill: Part Iv Land Code

Big map Ex. 1 by consent

Air photo Ex. 2 by consent

Relevant Date 1-4-60

Agreed that all formalities are in order.

Land 12 and 13 in Appendix C

Areas not in dispute

Inquiry held section 51 between 4.9.61 and 6.8.62

(Notes in Appendix F.1)

Objector then claimed \$30.000 per acre.

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th 12th and 15th March, 1965

(Contd.)

10 TO-DAY CLAIMS:

178 \$384,000
(\$14,930 per acre)

179 \$314,000
(\$17,620 per acre)

Improvements etc. AGREED AT
(on 179) - \$4000

NOTHING FOR 178

20 In issue whether improvements should be included in 179

Total figure for claim is \$698,000 to include the \$4000 agreed for improvement.

Government award	178	\$121,460	(\$4730)	per acre
	179	<u>\$116,300</u>	(\$6530)	
		<u>\$237,760</u>		

Government increased figure in December 1964				
to 178	\$176,418	(\$6860)		
179	<u>\$131,360</u>	(\$7370)		
	<u>\$307,778</u>			

30 Ex. 3 Breakdown of those figures

Agreed by counsel that amended figure for Award is \$307,778

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th, 12th and 15th March, 1965

(Contd.)

Ex. 4 Contour Map.

Appendix 11 and 12 are old valuation figures which will, I submit, not be in evidence.

Appendix J is other side's list of sales. "Date of Sale" is "date of completion".

I tender a list of 63 sales.

AGREED

Ex. 5 All sales since 1948

Ex. 6 Government list of resumed land prices. (figures not as yet agreed.

10

Section 60 Land Code

Market value at 1.4.60

Section 61

Sibu Judgment of Harley J.

FACTORS:

Trend of prices

Type of Land.

Present use no guide - potential value

This area became part of Municipal area - it was land for development.

20

As for flooding, material for filling is on the land. Prior to 1.4.60 highest flood level was as shown in

Ex. 7 (accepted by Jackson)

6.8 feet was highest.

Roads and Access

Internal land requires road building.

Do not accept that small plot is worth

more than large plot.

Main services affected all plots.

UNRESTRICTED USE

In the High
Court in Borneo

No. 2

Notes of hearing
and evidence
recorded by
Harley, J.

9th, 10th, 11th,
12th and 15th
March, 1965

(Contd.)

JOHN MURRAY CARTER D/S Witness 1

ARICS FAI FRVA MREVA(S)

Objector's
evidence.

John Murray
Carter.

Examination

10 Practise in Singapore. Qualified since 1955 -
resident in Singapore since 1947. 1949-57
employed by Singapore Improvement Trust. Also
have been Collector of Land Revenue, and Lands
Manager to Improvements Trust. Have given
evidence about a dozen times in valuation cases
in Malaysia. Principles of valuation are
universal. My practise has not covered Sarawak
generally, but have followed events. Instructed
in April 1963. Visited Kuching. I have taken
into account factual data applicable to April
1960; and so applied comparative sales method.
Have only considered sales after 1960 in order
to establish trend. I was not given full figures
20 of Awards until to-day. I had made written
application in March '64 but details were not
supplied. In Appendix J, I see lots 183 and 184.
These were sold in October '58 for \$10,000 per
acre. Award as at April '60 was same figure
\$10,000. In Appendix B.1 I see 4097 and 4098 -
plots resumed. They were sold July '57 at
\$7050 per acre. Award in 1960 was \$7250 for
land alone, plus something for improvements. As
for 5736 it was sold May '58 \$6480 per acre.
30 Award '60 \$6500. Price of land was not in
fact frozen 1957 to 1960. I see 4415 on B.1.
It is marked on Ex, 6. I would not make a
division of lands and improvements - if holdings
were agricultural. Such buildings would be

In the High
Court in Borneo

No. 2

Notes of hearing
and evidence
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Harley, J.

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March, 1965

Objector's
evidence

John Murray
Carter

Examination
(Contd.)

encumbrances. One should compare vacant possession values. I see 16180 and 16181. Government paid \$10400 per acre and \$11300 per acre - Superintendent still divided into land and "grave pits", for removal and re-interments. Lot 1617a is available with vacant possession except for one house. One must consider trends when valuing. My Report as a whole is still substantially accurate. I tender the Report Ex.8 (by consent). 10

P.2. Annexure A. Annexure A. 1 lists the RELEVANT sales - 10 sales. Ann.B. Contour Plan. If graveyards were reduced to height 9' there would have to be supporting embankments. Some land would be sterilized. These graveyard hius would have to be cut away to provide fillings for the flat part of 178 and 179. Consequently effective area of 178 and 179 would be reduced, but I have taken that into consideration when making my valuation. Level of Pending Road at this point is 9' at the lowest during the line of frontage. I did investigate possibility of Pending Road flooding. No evidence that 9' mark had ever been flooded. I see "Timber Yard" on Ex.1. Access in 1963 was by a dirt road. About same level as Pending Road. Fresh development - saw mill etc. - is now going on there. Distillery and warehouse are marked on Ex. 1. Annexure B shows the approach track. That is also similar level to Pending Road. Never flooded 20 30 as far as I could discover.

Sales in Annexure C. include all sales in Pending Area. All shown in Annexure A. I extracted to Annexure A1 those particularly appropriate. Other parts can help to establish trends. Sale 28, for instance, is included simply to show trend - it is really outside Pending locality. Annexure D. is TREND graph. From '58 to '62 there was an upward trend in land prices. Annexure E is another illustration of rising trend. I then considered valuation of internal plots. I amalgamated trend in Annexure F. Lease 4415 (Appendix B.1.) was awarded \$12,100 per acre. For Lease 4098 award was \$19,500 per acre, and for 4097 \$18,250. There are no buildings of substantial value on these lands - they are attap jobs to be treated as encumbrances. 40

To Court. If identical plots were requisitioned and one had fruit trees and the other nothing I would still put same value on both plots, if sold for development purposes.

10 On page 7 I say higher prices - not highest. Registration is frequently delayed long after bargains are made - for instance, to await subdivision. If 2 sales are registered with different prices on same day, I accept the higher figure. I do assume that the lower figure represents an earlier sale. I am referring to the odd sale which looks out of line with the general trend. I feel that owner is entitled to highest price in requisitions.

On page 9 earthworks figures are not purely guess work. I could have contracted on those figures in 1963.

20 Developing large plot is preferable to small. Overheads are spread over a larger area. Provision of sewerage disposal for instance is less for a big area.

Re title, "comparison" lands are often short leases.

Re Filling, 9' could be prudent figure in 1960. There is filling available for that on the plots. 1963 was such exceptional flooding that a developer would not be justified to increase fill in proportion.

Re Annexure A.1.

30 Sales 1, 2 and 3 relate to 4097 and 4098 within Pending locality - internal - part high, part low, comparable to 179 to this case. Short leases - 64 years. Sale 4 is also internal. Sales 11 and 12 are internal lands - some levelling needed but above flood level. 11 and 12 are small lots, and 9 is a larger lot of 5.43 acres. Sale 22 is included in my graph. River frontage can be compared with road frontage. Sales 25 and 27 help to indicate trend of prices, but I do not rely specifically on them.

40

Re Ex. 6. Lot 181 equals \$10,000 per acre.

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by
Harley, J.

9th, 10th, 11th, 12th and 15th March, 1965

Objector's evidence

John Murray Carter

Examination
(Contd.)

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

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Objector's evidence

John Murray Carter

Examination (Contd.)

It is all off the road.

Price for lot 182 ~~£~~6360 is equivalent to ~~£~~12,200. At ~~£~~5200 it would be ~~£~~10,000 per acre.

Lot 184 is .50 acre.

185 is .50 acre ~~£~~10,200 per acre.

O.T. 4729 works out at ~~£~~5100 per acre for the worst piece of land in the area - low and swampy internal land. I produce reconciliation statement Ex. 9.

Re lease 4415, improvements or encumbrances were agricultural. ~~£~~29,065 equal ~~£~~12,100 per acre.

10

O.T. 5736 is internal land 10' to 80' - so entailing considerable levelling - equals ~~£~~7400 per acre.

11239 is steeply sloping, but high land 15' to 40' - award equals ~~£~~7250 per acre. I think that is comparatively low - out of line.

6868 ~~£~~5940 per acre figure is low

4097 OVERALL ~~£~~18,250

20

11240 ~~£~~7260 per acre

Why same price as 11239?

16180 - burial plot

In my view land surrounding 16180 and 16181 cannot be of lower overall value.

12287 equals ~~£~~7000 per acre.

I would value 5736 at 25% loss on account of road frontage.

I still stand by my figures of p.14 Ex.8.

In Appendix J. I disregard 17 to 31 because they are West of Sungei Apong Road or North West of Kwang Lee Bank Road. These 2 roads are the

30

boundaries of the Pending area.

178 is not directly affected by tidal water. There is nothing of rain water with very slow run off. In Ex.3 figures of \$6150 for 178 and \$6500 for 179 are inconsistent.

8/3 4.30 p.m. Court adjourned.

9/3 Court resumed as before.

P.1. (continued) "I have agreed costs of moving earth within the site with Superintendent.

10 List of agreed figures for said costs put in as Ex.10.

P.14 Final figure 16178 instead of \$384,000 is now \$306,000 equivalent to \$11,900 per acre overall.

P.15 Instead of \$314,00 read \$301,000 and instead of \$17,620 read \$16,900.

Final figure instead of \$698000 is \$607,000 overall \$13,900.

I will amend Ex. 8 accordingly.

20 BY CONSENT.

CLAIM FIGURE ALTERED TO \$607,000

If I accepted Superintendent's method of subtracting figures for improvements from price paid for land, that would still not affect my final opinion as to value of land in issue. In certain cases if Superintendent's method of calculation is used, some of my figures would be higher rather than lower.

Xx

30 This is my first valuation of land in Sarawak. I was first instructed in April 1963. I consider potentiality of land as housing or industrial. My instructions were to value the land. I do have regard to potentialities. I know Objectors petitioned Governor to cancel resumption. They had a plan for industrial - residential development. I see Appendix H.1. Plan looks like a mixed development.

40 I did take into consideration figures after 1.4.60 in order to establish trend. I do

In the High Court in Borneo

No. 2

Notes of hearing and evidence received by Harley, J.

9th, 10th, 11th, 12th and 15th March, 1965

Objector's evidence

John Murray Carter

Examination (Contd.)

Cross-examination

In the High
Court of Borneo

No. 2

Notes of hearing
and evidence
recorded by
Harley, J.

9th, 10th, 11th,
12th and 15th
March, 1965

Objector's
evidence

John Murray
Carter

Cross-
Examination
(Contd.)

not concede that the Government scheme would raise prices in the neighbourhood. I cannot detect any acceleration in the price rise due to publication of Government scheme. I see Annexure D Lot 188 was subject of an Award in '59. The lot 190 does appear until AFTER acquisition date. I do show rises to 91,000 and 150,000. I took an area which was outside the area of the plots subject of this suit. Annexure E is close enough to the area to be relevant.

10

To Court. My evidence as to trend does depend to a considerable extent on those two graphs.

I see Sale 22 in Annexure A.1. That is same sale as in Ann. E. It was restricted to industrial Annexure F shows general rise Sale (4) indicates no drop between '50/'60.

Plot 4729 is not in A.1 nor 4415 nor 16688, 11239 11240. If there had been data about them I would have taken them into consideration. Those lands are included in the Notification. I collected information on Sales. Messrs. Yong & Co. did ask for the Superintendent's prices of those plots, but it was refused.

20

£19000 purchased 16178. That is about \$700 per acre. For 179 price was \$21,000 nearly \$1200 per acre. - p. 2 of Ex. 8. Estimate of \$11,000 for electricity would hold good for 1960 as well as for 1963.

"Areas and Heights" p.2. 5'.8 is lowest point on 178. On 179 I did say no level below 8'5. I do agree that there is an isolated low spot 7'.4 which I could not read from the Survey Plan. Also 8'.4 is another spot close by.

30

I see p.7 "indicated value of internal land. is \$15,500." I drew that conclusion from Annexure F. That is the only way I arrived at the figure.

p.8(b) "treat with doubt" would have been better than "ignore."

40

(c) There was a continuous rise in price since the war.

p.9. I have agreed different prices now for "Cost of Earthworks." I have dealt with quantities. On 178 I fill 21,600 cu yards. That is based on the 9' foot contour. I cannot agree that fill should be not less than 11½'. Obviously such fill would cost more. My figure is \$148,600 for 16179 would be similar.

10 The graveyards affect the area surveyed. Some land is frozen in order to support the hills. It is occupied by supporting slopes.

P.12 "Sales Evidence". I got 63 Sales. I first selected sales which appear in Annexure C. Some of those are not comparable. I worked out valuation in Annexure A-1.

Sale 3 in Ann. A-1 has remarks about "rising market". Sale 4 concerns Lot 405. It does not appear in Appendix B.1. It appears in Appendix J. .93acre.

20 Sale 9 is Lot 5736 shown in Appendix B.1. Settlement figure was \$40,000 5.43 acres - nearly \$7400 per acre. That was not a sale.

Sale 11 Lot 183. 5 acre. Price 20/10/58 was £5000 (\$10,000 per acre). Superintendent paid \$24820 per acre by my calculation. Sales 12 and 13 are on the same footing.

Sales 25 and 27 are dated 1961 - used to check the trend.

4.15. 9/3 Court adjourned

10/3 Court resumed

30 Ex.10 put in by consent

Accepted cost figures

ROBERT HARDIE D/S

"Live in Padungan Gardens, Kuching. Dip. of Architecture. ARIBA. Architect for 14 years - in Sarawak since 1958. I see Map Ex.1. I know Pending area. Filling should be up to normal

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th, 12th and 15th March, 1975

Objector's evidence

John Murray Carter

Cross-examination

(Contd.)

Objector's evidence (contd.)

Robert Hardie Examination

In the High
Court in Borneo

No. 2

Notes of hearing
and evidence
recorded by
Harley, J.

9th, 10th, 11th
12th and 15th
March, 1965

Objector's
evidence

Robert Hardie

Examination

(Contd.)

flood level. I see Ex.7. If I had had that information in 1960 I would put fill level a little over 8'8. I was here in 1963. Floods were exceptional - never experienced to that extent in my experience. The 10'.6 figure 1963 is not purely tidal but combination of rain catchment and spring tide. That level probably lasted 2 or 2½ hours. The Hong Kong Bank floor is raised 12", so as to provide against flooding even at 10'.6" level. I did that job - advised. Building was raised, not the land. Since 1963 I would still advise filling at 9' level, and if necessary would raise building floors. If Pending Eoad was never flooded, I would certainly stick to NORMAL fill level - 9'. I have not done work in the Pending peninsular. Between '58 and '62 land values rose.

10

XX

Cross-
examination

I have not done construction work in Pending area. Normally I would put fill level at 6" above flood level. It depends on land. I do not know Nipah palm land. One probably would go up to 12" above flood level if land was not retained. One must always allow for settlement, particularly in a swamp. My fill level refers to the final level after settlement. My evidence does apply if a factory is constructed. The Hong Kong Bank floor was raised 12" to allow for unusual flooding. I have no knowledge of these high floods occurring every 10 years.

20

30

Re-examination

Re X

I would never advise filling up all this land up to 11½'. I would advise 9'.

(Sgd.) E.R.Harley

John Murray
Carter

XX continued

Cross-
examination
(Contd.)

P.1. P.14 of my Report. I start with figure \$15,500 from trend and sales. If I started with \$7,750 as commencing value instead of \$456,676 figure would be \$237,413. Then instead of \$17,755 per acre, figure would be \$9280 per acre. Instead of \$306,000 figure would be

40

£77,000. Equivalent to about £3000 per acre.

For O.T. 16179 if I do same sum starting with £7750 per acre, overall figure would be £8690 (instead of £16,900).

Instead of £607,000 figure would be £232,000 equals overall value £5330. Government suggested total of £307,778 represents about £7070 per acre.

10 I do not know about further correspondence between advocates about sums awarded.

Re x

In graphs D and E, if there are only two plots, one can only join by straight line. I see Ordinance 2/59 which brought the Pending inside Municipal boundary. The implication of development would be a bull influence, Sale 4, lot 405, indicates resulting value. Actual acquisition in 1960 did not seem to cause increase.

20 Reference heights on my contour map the slight omission has little practical effort.

Land Acquisition legislation does not print awards for property other than land - fixtures being part of the land. Improvement is something which increases value of land for its best purpose. Sometimes a party making compensation is not the owner of land. Standard test book is Aggawalla's "Compulsory Acquisition of Land".

(Sgd.) E.R. Harley

30 CLOSE OF OBJECTOR'S CASE

Jackson: Section 60 (1) (a) is really what applies.

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th 12 h and 15th March, 1965

Objector's evidence

John Murray Carter

Cross-examination

(Contd.)

Re-examination

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th 12th and 15th March, 1965

Respondent's Evidence

Ambrose Foo Examination

AMBROSE FOO. D/S

D.I. - I live in Kuching. I am a Valuer in Land & Survey Department. I hold Diploma in Urban Valuation from University of Auckland, New Zealand, also Associate Member of New Zealand Institute of Valuers, and am registered Public Valuer in New Zealand. I have connection with valuation since March 1956. Then started as Assistant Municipal Valuer, Kuching. 1958 - 1961 I was in New Zealand. Dixon did first valuation of 10 lands in issue in 1960. Lumb did a confirmatory valuation. I did not make a valuation until Objector rejected the final Award, and negotiations broke down. My figure was \$307,778. It is in Ex.3. I took figures of previous valuations for "Improvements." I considered market value as at 1.4.60. Sales are in Appendix J. Only Sales 1 to 13 are relevant to land value of these 2 plots. They are the only proper comparable Sales (1-13). I would also exclude as irrelevant the 20 two sales shown on 4.12.62. 14 to 31 should be excluded for various reasons - for instance sales subsequent to 1.4.60. or sales of land fully or partly developed, or sales in which physical conditions were vastly superior to land in question. I have considered accepted on negotiated Awards.

To Court: In Lot 184 I took value awarded as \$10,000 per acre.

I did visit and inspect the lands. Some 30 lands in Appendix B.1 are bare land.

181 - .44 acre - distant from main road - fairly high ground with road of access. Do not think it would require fill for building.

185 - .51 acre similar to 181.

Awards of those two at \$10,000 per acre are because useful size as residential plots.

5736 5.3 acres - subject to tidal flood in places, but some fairly high ground. Except for being internal, better than 178 or 179. 40

Hill: None of this evidence was put to Carter.

11239 - .87 acres - land drops into a valley.

6868 3.37 acre, access footpath not very good. Two thirds of it is below the 10' contour.

11240 - no direct access - land falls into a valley.

12287 - no direct access high land 70' to 80' contour mostly.

I see Map Ex. 1. Electricity extended only to this point (point on Map) on Annexure A it ends at junction near (27).

Improvements should be separately valued from land value. I take a land value then and add extra for additions and improvements. That is the practice here.

Ex.8.

P.1's figure of \$5,500 is a purely hypothetical figure. He gets trends from figures after 1.4.60. I compared sales up to 1.4.60 to get my figures - that figure averaged \$7000 per acre, that is basic for bare land. I agree a saving should be given for access road or frontage. I agree his "Add for saving of access road." I also agree "10% to reflect value of main road frontage." Deductions look reasonable - 2.36 acres. 15% extra for long title is reasonable.

As for 179, I again disagree with commencing value of \$15,500 other comments as for 178. I do not agree with the method of arriving at the valuation. I did not follow that method. I used comparable sales method.

Xx

I do accept P.1 as a qualified person. This is my first appearance in Court. My valuation is submitted to Superintendent of Lands and Surveys. I was away 1958 to 1961. I made my valuation in December 1964. That was the first time I applied my mind to the facts of this case.

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th, 12th and 15th March, 1965

Respondent's Evidence

Ambrose Foo Examination (Contd.)

Cross-examination

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30

In the High Court of Borneo

To Court. I had Dixon's and Lumb's figures, but I was not influenced by them.

No.2
Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th, 12th and 15th, March, 1965

Respondent's Evidence

Ambrose Foo

Cross-Examination (Contd.)

I have taken accepted Awards as guides to my valuation. I did consider some Awards low. I have relied on some of those Awards to guide me. Superintendent fixed higher figures when awards were raised for settlement. Superintendent has not put Awards in the statutory statement - but some of them could have been put in. I do prefer actual Sales as a guide to Awards. In Appendix J. I have discarded Sales 14 onwards. Mr. Lumb prepared Appendix J. I presume he thought all 31 relevant. I do not know why Lumb listed them. I did not consider at all trend of prices. Before I made my valuation, I did give thought to filling costs. There is not much filling required for Plot 179, but a lot is required for 178. I made a mental allowance for the cost. P.W.D. gave me some figures. I got those figures in August 1964.

10

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By Consent Ex. 11 P.W.D. Figures.

\$164,000 costs for 178 may be the P.W.D. figure. Since this case began figures have been agreed on cost of filling. When I had the P.W.D. figures, cost per acre was \$29,700; on agreed figures cost comes out at \$13,650. I did not apply the P.W.D. figures. I did look at them. P.W.D. figure is totally out of my valuation. I am not interested at all in the fill. Argument about 9' or 11' level as far as I am concerned is academic. Although there is an adjustment now in the cost of fill it does not affect my figure. Market value is what I aimed at - i.e. what land put in open market would get. If 2 identical plots - except that one has a house - were to be valued for acquisition I would add value for the house. Sometimes value of an old house is absorbed when there is to be a change of user. Sometimes a demolition value only will be payable in actual sale in open market just before date of requisition would be best evidence. Sales in the vicinity at about the same time are good evidence. One does have to analyse figures and characteristics. I have analysed the figures in Appendix J. About 6 months before effective

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date is a good time because prices move. 1958 is the earliest date I took. I have made an allowance for the figure being 2 years old. I do think there was an upward trend from 1958 to 1960. I did not work out the rate of increase. I have not yet adjusted figures for the lapse of time or rise in prices. I do accept Mr. Carter's interpretation of the trend as a guide in rise of values. I do not know Aggawalla's Text Book. I revised some of the Awards in 1961. I know Lot 4729. Original Award. I did increase from \$60,000 to \$96,000. That is a 60% increase. On 16178 increase was 45% on original Award. On 16179 increase was 13%. Industrial user would be best use of this land. It is the practice here to value land and improvements and add the two figures together. Sometimes owner gets both sums - sometimes owner will agree some payment to another party. I see 4415 on Appendix B.1. Owner was GOH TIAW TZE. I was not at the Inquiry. Amount of the Award was paid to TOH TIAW TZE although he disclaimed interest in the improvements. I hear the Judgment of Simpson J. read to me in Civil Case 68/62. In that case the value of the land was amount awarded for bare land plus amount for improvements. A market garden valued as a market garden is more valuable with fruit trees on than without. If aim was to value as building site, trees could be disregarded.

(p.254 Aggawalla) p.258 "What is awarded is an inclusive price."

On none of the land here is there anything which has an industrial value. I do not think that all the land is valued as potential industrial land. For the 2 plots in this case I have valued as potential industrial. On Map Appendix B1 none of the plots except 178 and 179 were valued as potential industrial plots. Most of the smaller land was potential residential. The bigger ones might be valued as agricultural land. 181 to 185 are valued as potential residential, also 16688 and 239240, also 11239 and 11240. I consider 12287 as agricultural. 5736 is also valued as agricultural land. I think some industrial potential might have been allowed for the five plots west of the road.

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

9th, 10th, 11th 12th and 15th March, 1965

Respondent's Evidence

Ambrose Foo

Cross-Examination

(Contd.)

In the High Court in Borneo

No. 2

Notes of hearing and evidence recorded by Harley, J.

Respondent's Evidence

Ambrose Foo

Cross-Examination

(Contd.)

Might be partly residential and agricultural. 4729 was valued as agricultural land. That is the basis of my valuation. Industrial value is the highest. Adjustment must be made for potential user.

I see Plots 16180 and 16181. If they had no graves, they would be similar to 179 except on a higher level. If the 3 plots were owned by one owner, I would treat it as one plot. If value of 16179 were ~~8X~~ I would pay less for 16180 and 16181 because I would have to pay costs of removing graves. I do not agree that land cost 13,060 or 9600. After paying out Government got vacant possession and bare land. If Objector's method of calculation were correct, I might raise value of 179 to 8500, if the graves were not there. If value of Awards goes up I allow higher value for 179 and 180. I might value 179 and 180 at 10,000 if 4415 price were calculated at 30315. 4415 would need a road. 179 may be better to develop than 4415. If 12000 were properly described as price of 4415 I would allow 15,000 for 179. Cost of Road to 4415 might be 17,000.

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9th March Court Adjourned

10th March Court resumed.

Xx (continued)

D.1. No land used for industrial purposes is in the immediate vicinity of 180 and 181. I see L.901 on Appendix B.1. There is a factory there. The lease may be restricted to industrial user. Sale 16 on Ann C. I did not take that site into consideration. I might have taken it into consideration if I had known of it. That lease could be used as a guide. Later sales were with improvements. I was using Appendix J. I did not search for further sales in the locality. I think that the 1957 sale could influence me. The distinguishing factor is physical features. The main difference is the interference of the graves. Physical features are not much different. Say, known off 20% if graves are present. 901 has no access to main road.

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At least it has no frontage. We are not sure when the access road was built. 179 would be worth \$16,000 on a comparable basis. I would take this sale 16 as a guide.

D.3 (interposed)

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Court in Borneo

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Respondent's
Evidence

Ambrose Foo

Cross-
Examination

(Contd.)

ROBERT BELL BEATTY D/S

Robert Bell
Beatty.

Examination

10 Executive Engineer of Roads P.W.D. Bachelor
of Science, Glasgow University, B. Engineer
Science Architecture Associate Member of ICE,
and of Highway Engineers Member of American
Society of Civil Engineers. Came to Sarawak in
1954. 1960 - 63 away. I see Annexure B -
contour map. I know the area. I see Ex. 7.
Land lying below 8.8 if industrially developed
should be raised 3' or 4'. 4' above flood level
is proper. Wet soil under pavement if subjected
to pressure damages the pavement. 4' above
flood level is specified practice. I am not an
expert on factory floors. Factory floor level
20 should be 4' above flood level. I have
calculated cost of bringing ground up to 4' over
flood level. I have computed a figure 3' above
flood level for land in this case. Cost would
be \$876,315, or on the basis accepted in this
Cost. \$350,300 for 178 also \$42,300 for 179.
That is raising to 11.5.

Xx

30 I produce details Ex.11. The cost figures
are not my own. Tenders were not obtained.
There may be tenders in the file. The tender
figures are in Ex. 10. My figures in Ex. 11
could thus be halved. I produce letter. Ex.12.

Cross-
Examination

In the High Court in Borneo

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Respondent's Evidence

Robert Bell Beatty.

Examination (Contd.)

I know the purpose of these cost figures.

Ex.11 - most of it - was extracted from my report. I am concerned with surveys and testing materials. I am not a structural engineer. I have not done again construction in this country. I have built and designed roads. An architect would be familiar with building problems. The Pending Road does not come up to my standards. That is true of many of the buildings in Kuching. I do not know of any large buildings built privately which come up to my standards. It is true that Hong Kong and Shanghai Bank is not up to standard. Buildings can be built on stilts. Stilts might not be suitable for industrial purposes. A factory requires a pavement area. I do not know whether the Pending Road was over flooded. Some of it may be at 9' level. I accept that this section of Pending Road was not flooded. I produce a map of the 1963 flood effects.

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Ex.13. If Mr. Hardie advised 9', I would not say he was wrong. But I would not agree with him.

No re X.

(Signed) E. R. Harley

Ambrose Foo

Cross-Examination

(Contd.)

D.1. (recalled)

Xx continued.

Ex.14 two tenders (by consent). On Annexure C I see sales 11 and 12. 183 was sold in 1958 at \$10,000 per acre. We awarded same figure. Same applies to 184. Sale 3 shows award per acre on sale price, also Sale 9. I think the awards were taken from the 1958 - 60 figures. I have not analysed the increase between 1958 - 60 but there must be an increase. I have just glanced briefly at Mr. CARTER'S Report. I have no criticism of his final graph except that he considered Sales after 1.4.60.

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I see Appendix J. When I considered Sales

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5, 6 and 7, I regarded them as sales of agricultural land.

Development of the new port has been proceeding since 1958. Commercial men would know that development follows. The question is when. Business men were interested in this area. The Gazette Notification may not have been a surprise to business men. Public may have known of development policy long before 1960. The 1959 Municipal Ordinance may have had an effect on the prices.

I see Sale 2 in Appendix J and Sale 3. Figure \$8150 is due to special reasons. I see Sale 3. I never did work out rate of increase in prices. I could have done but I did not.

In present case I do not regard 1949 prices as relevant. I do not know why purchase prices were put in the Statutory Statement. On 178 there is not so much nipah. I prepared Ex.3. I divided 16178 into two areas - front and back. I do think road frontage land has a higher value. Ribbon development may be the origin of this system of valuation. If ribbon development goes, I would still use the belting system. I do not say all the factories will be in the front belt. Some people might not approve of the belting system. I have Ex.3. If on 16179 I use different figures to start with I get result as shown in Ex. 3A.

(Cp grave figures 16181 \$11,300)

I do not approve of Mr. Carter's method in his Report. I agree with starting with internal land level 10'. The principle of the method is all right. His starting figure is too high. Otherwise the method is all right. Using his method and filling up to 11' would make lands costs \$35000 per acre. In order to apply comparative sales method one has got to go into details. I have not gone into details. There is no vehicle access road to 181 - only a footpath. A road might cost \$26,000. I have never made written details of the physical nature of the plots. 181 is not level. If used for residential purposes it would have to be levelled.

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Evidence

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(Contd.)

In the High Court in Borneo

I have not mentioned or worked out any costs of filling.

No. 2

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Plot 11239 drops but is similar to 181. I cannot explain the different Award figures. 11239 appears to have been undervalued. 6868 is two-thirds below 8'. It might cost \$16000 per acre to fill. My starting figures are not based on any detailed calculation.

Respondent's Evidence

(p. 200 Aggawalla)

Some 1962 sales do appear in Appendix J.

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Ambrose Foo

Cross-Examination

(Contd.)

Re x

Re-examination

I see Annexure C sale No. 16. There was a drop in price from 1952 to 1957. The LEASES in Ex. 6 were for Agricultural use only. Awards were on that basis. If a restriction is removed in favour of industrial I should think land value would increase \$1000 per acre. I did consider the possibility of restrictions being removed. With Ex. 3 if I start with 7560 (land price of grave plot) overall figure is 8900 per acre - \$387506. If I had valued the grave plots I would not have included removal costs as part of the Award. I would treat it as an ex gratia payment. I am afraid there is no lawful authority for that.

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(Sgd.) E. R. Harley

10/3 3.0 p.m. Court adjourned.

(Sgd.) E. R. Harley

11/3 Court resumed.

Jackson:

Notification section 47

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Compensation for resumption

Appendix G1 16178

\$121,460 Land in 3 categories

Date of valuation - 1.4.60

Consideration of comparable land.

"Areas below 10' contour subject to flood."

Appendix G.2. 16179

Two categories

Consideration of comparable land

Half below 10' contour

178 plus 179 Total \$238,390 (5200 per acre)

10 Ambrose Foo D.1 made RE-Valuation

\$307,780 offered (\$7000 per acre)

Offer rejected

Only issue market value 1.4.60

Meaning of Market Value. Section 60(1)(a) Rest of Section does not apply. Land is defined in the Code but Market Value is not.

Sarawak Civil Appeal 3/59

Superintendent v. Chin

Sibu High Court Civil 66-90/62

20 Price paid for land - p.2 of Appeal 3/59 - may be by private purchase or by acquisition. Both prices paid may be equally considered provided paid bona fide.

Sibu Case Superintendent v. L.C.T.

to a degree potential must be taken into consideration - also certain improvements, but need not consider section 62 here.

p.4 of Sibu judgment para 2 "Sales of land only".

Carter's Report Ex.3.

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Respondent's Evidence

Ambrose Foo

Re-examination (Contd.)

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Respondent's Evidence.

Ambrose Foo

Re-examination (Contd.)

p.6 "Trend of Values."

NOT confined to sales up to 1.4.60 but considered sales in 1962. GRAPHS produce a purely hypothetical value so far as relevant date is concerned. Lands considered also outside the area - not comparable. Fallacious method. Once declaration of resumption is published, naturally land prices rise. Free land values were enhanced after date of notification. Carter's comments p.7(2) "Internal lands etc.... indicated value of internal land on 1st April 1960 is \$15,500." That figure is not justified. It is hypothetical. No basis for it.

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Mr. Foo D.l. is a qualified valuer. He knows Kuching area - Carter paid a visit. Foo did not use date built up for original Award. He did restrict himself to adjacent land. Carter went outside the relevant area. Foo concentrated on Ex. 6 AWARDS, AND Settlements. Tantamount to free dealing. Owners may be treated on the basis of willing vendors.

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Carter's Report p.14 Total figure of \$698,000 reduced by consent to \$607,000. Commencing value 15,500 is insupportable. Foo did say METHOD was acceptable but process of reading original NORM was not correct. He did not use that method himself.

\$7000 per acre is proper figure.

Concede that payment for graves had no legal authority.

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HILL:

Issues of Law.

Cap.81. Superintendent is empowered to take back land. Land is what he takes and pays for, and nothing else.

Civil Appeal 3/59. Personal opinions not to be substituted for evidence. Agree issue is in section 60(1)(a). Section 1(f) is relevant to this extent - improvements are part of the land. Accept what was said about Market Value in Sibu judgment.

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Aggawalla p.162.

p.164

EVE J. said:

p.177 "Compensation under Indian Law."

P.180 Market Value

Both sides agree comparable sales method.

pp 188, 189 "Going by averages....."
distillery plot was too far above general prices
to be considered by Mr. Carter.

"Bona fide transactions of purchases" means
purchases and sales and not Awards.

10 p.190 Principles of comparative sales pp.
191, 192 p.192 - agricultural land in vicinity
of town. p.195 there must be a critical analysis
of sales. Abnormally high or low prices (p.197)
should be left out, so Carter left out
distillery plot. p.199 post-acquisition sales.
p.202 "Dissimilarities" "Collector's Awards."
p.235 judgment of EVE J. Entitled to highest
potential i.e. industrial value. p.237 Defini-
20 tion for market value. P.253 onwards p.258. A
separate item may be quoted for improvements
where there are different people to be compensa-
ted. Bare land may be more valuable than land
plus buildings (p.267) p.274 "land and buildings
not to be valued separately" p.276.

BELTING METHOD p. 277

30 Evidence in this case. HARDIE confirmed rise in
price from 1958 onwards. Undisputed evidence.
Foo accepted that he had taken 1957/58 figures
for making awards in 1960. Foo in the witness
box did agree that there was a trend upwards. He
disagrees with Carter's TREND FIGURES because he
says Carter was not entitled to use 1962 figures.
But AGGAWALA does consider that such figures may
be considered, although with caution. GRAPH F is a
reliable calculated figure. Carter considered
both general rise and particular rise. No evi-
dence to support Jackson's argument that prices
jumped on 1.4.60. Carter did not rely on Awards
because he was never given the figures - and in
any event genuine sales should be the guide.
40 Foo said he just "skimmed through" Carter's
Report. Why no written report from Government
valuer. Final figure reached by Foo was in
fact a starting figure based purely on opinion.
Beatty's figures for fill were regardless of
cost. No need to consider extravagant fill up
to 11½' just to keep feet dry once in 10 years.

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and evidence
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(Contd.)

Foo failed to relate the plots to each other or to the subject lands. He concentrated the whole time on the Awards which are inconsistent amongst themselves and with relevant dates. Sometimes Superintendent has considered only half what he paid as relevant. Also Foo valued land as "Agricultural land". Descriptions of title do not necessarily imply restrictions. Annexure C Sale 6. There is in fact no restriction on that title. Reject utterly any valuation based on agricultural use. Carter has properly considered the urban potential. If Court rejects Carter's evidence there is nothing to put in its plan. Foo never even considered the question of fill.

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Summing-up.

(Shorthand writers in Court).

12.10 p.m. Court adjourned.

2.00 p.m. Court continues

Summing-Up

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3.30 p.m. Assessors asked to give Opinions tomorrow.

Court adjourned.

13/3/65

Court resumes

Assessors

No. 1 (TYPED) Claim figure
\$607,000

No. 2 (AGREED)

Court adjourned

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No.3
AGREED NOTE OF JUDGE'S SUMMING-UP

In the High
Court in
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No.3
Agreed Note
of Judge's
Summing-up

12th March
1965

10 The first thing the law requires me to do is to refer to the Land Code and I shall read you certain sections. Some of the sections I shall omit as not being relevant. If Learned Counsel on either side request me to include any section omitted, I shall do so. Both sides are agreed that the first and most important section or sub-section is section 60(1)(a) and that reads:

"In determining the amount of compensation to be awarded for land resumed under this Part the Court shall take into consideration:-

(a) The market value at the date of notification under section 47" - (at 1st April, 1960).

20 Now there is nothing in the rest of section 60 which I shall read unless the Learned Counsel request me to do because I think even a reference to sub-section 2(a) might be merely confusing and is not directly relevant but if Dato Jackson wants me to read it, I will.

Now we come to section 61 and that reads:

"In determining the amount of compensation to be awarded for land resumed under this Part the Court shall not take into consideration:-

30 (b) Any disinclination of the person interested to part with the land resumed."

There is no evidence of any disinclination here but you must remember that even if there were you must not take that into consideration and another thing which you must not take into consideration is 61(e):

"Any increase in the value of the land resumed likely to accrue from the use to which it will be put when resumed."

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I do not propose to read any more of that section unless requested.

Section 62 (1) is vitally important, it says:

"(1) Where the applicant has made a claim to compensation the amount awarded to him shall not exceed the amount so claimed or be less than the amount awarded by the Superintendent."

and possibly I ought to read section 61, sub-section (4) which says:

"(4) The provisions of this section and sections 60 and 61 shall be read and explained to the assessors by the Court before they give their opinions as to the amount of compensation to be awarded."

That is why I started off by reading those sections to you. Now it has been stressed to you by Counsel that you must not use your private or personal opinion, nor must you even rely at all on any private or personal knowledge which you may have. You must consider this case merely from the point of view of the evidence given here in this Court.

Now when the Superintendent resumed this land he made a statutory statement. As I have already explained, you cannot award less than was awarded by the Superintendent. He awarded \$307,780 which comes to \$7070 per acre and the claim is for \$507,000. You cannot award more than that figure and that claim figure represents an overall average of \$13,900 per acre so you can see that, roughly speaking, the claim is double the award.

Now throughout this case I am sure that Learned Counsel will not resent it if I say that slips in figures have been made from time to time and during this summing-up the Court may be prone to make errors in figures or statements of fact and if you Gentlemen Assessors or Learned Counsel interrupt me to point out any such mistakes, I shall be grateful.

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Now in the statutory statement the Superintendent states that the value of the land as assessed by the Valuer was based primarily on the evidence of the then recent sales of comparable land in the vicinity of the land acquired. Now both sides are fully in agreement that that is the basis of all the figures which we have to consider. You and I when finding comparable land and comparable figures might have gone around and said this piece of land is almost exactly like 16178 or 16179, and this other piece of land is almost the same, and so on, and the value of those pieces judged by recent sales is so much and therefore we think that the value of this land is a similar figure. The expert Valuers in both cases have got a slightly more complicated method of valuation. In the one case, Mr. Carter says that a good deal of this land is below flood level; it requires filling. He says to himself I will look for a piece or section of inland acreage which is above flood level and I will take that as a starting point and then I will make adjustments for the fact that this land, on the one hand, has the advantage of good road front and, on the other hand, has the disadvantage of a proportion below average flood level which required expenditure on it by way of fill in order to bring it up to average. As I say he starts by comparison with other inland plots and sales values above flood levels and then he adjusts those figures as particular plots which are not either inland except partly nor all above flood level. Nor Mr. Foo on the other hand, instead of taking any one figure by relating it to the other land of the same type, he uses what is called the belting method. He says a belt of land on each side of a road has a higher value than land behind it. He takes 3 belts and in the other case 2 belts. Well, we will consider the two methods in greater detail later on, but the principle still remains, you have to try and find a comparison of similar land that is land with no frontage and land which is partly below average flood level and then you have to relate the value of those plots. Of course the difficulty is that you will have to find

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a plot exactly similar to these two. You might think, I might have thought, that a good common sense method of relating these two plots to other plots and other values is to take other plots in the vicinity and say for instance this plot here is inland, it has not got the advantage of a road frontage, not got a road access, but on the other hand it is all above average flood level and therefore taking that into consideration the value as far as I can judge it on the 1st April 1960 would compare favourably or unfavourably with the plots in these cases. Let us say you cannot have that, that commonsense makes a list of all the plots which are comparable, and then set out the differences and see by reference to particular plots which should be valued at a higher or lower figure than other plots to which you compare these two. However, as I have said before, there is no doubt that the guiding light throughout this case is to try and find evidence of recent sales of comparable land in the vicinity of these two plots. Now take the statutory statement again in paragraph 1(b) page 2. The Superintendent refers to Plot 16178 and he says that except for about 1 acre, the total area is below 10 foot contour. Now, you have had evidence about flood levels and you have got the figures. You can consider a figure of 9 ft., 10 ft. or 11½ ft. if you like, but what we want to consider is land with a flood level about the same as these two. I will come again to this question of fill and to what figure you start with, what level to start with. Go back to the statutory statement. It is important to know that the title of 16178 is without condition although it has a general description, "agricultural". It is within a Mixed Zone Area, is or was, and was classified as Town Land. The Superintendent included in his statutory statement the fact that 16178 originally cost the objector \$19,000 and 16179 originally cost the objector \$21,000 and so the original cost was \$40,000. Well, as Mr. Hill said, those figures must be dismissed from your mind. You and others and Government may feel that there is now a very handsome profit, but this should be dismissed from your minds. It has got nothing to do with the case. That the land is worth so much less in 1949

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has got nothing to do with what it is worth today. Of course you have to consider what is the right figure for compensation on April 1st, 1960. Now, the statutory statement goes on to consider the other plot 16179 and in considering that there is a comparatively small figure for improvements. Now, I think you can disregard that figure. This has nothing to do with drawing any conclusions about whether separate figures should be given for improvements or whether improvements should be considered as part of the acreage value. I am not laying down any principles regarding this at the moment on land improvements. I am merely saying, and I do not think Counsel will wish to say otherwise, that the figure is so small that you can dismiss that from your mind. You must consider Plot 16179 as though it is a piece of bare land.

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Now the statutory statement referring to this plot 16179, assessed at about half an acre, is below the 10 ft. contour and is subject to flood and affected by tidal water. The balance is high land up to the 50 ft. contour near the graves. Those two graves were detrimental to development, especially because of their effect on earth works. Well, the amount of land occupied by earth work will be very small; I think it was put at .16 of an acre. The graves are capable of removal. The Government paid money for them to be removed and we will come to a closer inspection and comparison of those grave-yard plots later on. The title of 16179 was without conditions and was for 900 years from 1911. That, I think as Learned Counsel on one side pointed out, is the nearest to freehold you can get in this country. The general description was agricultural but there were no special conditions. It was in a Mixed Zone Area and classified as Town Land.

Now we come to the evidence and it may be a bit tedious but I am afraid that we cannot avoid a rather detailed analysis or summary of the evidence. In exhibit 3 you have the Government Valuer's breakdown of the

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figures. I think I am right in saying that you have also been given Exhibit 3(a). Whether you take the Government's figures and the calculation, or whether you take Mr. Carter's, or whether you take from your own comparison a sales figure of comparable land in the vicinity at these costs quite naturally it is the starting figure which is the most important. Now one cannot avoid a comparison of the points of view of the two sides with its implications of law. In fact, we come to the very simple question at every turn "What is the price of this or that piece of land". Well, the definition of land, as Mr. Hill pointed out, should be taken from the Land Code which definition has already been read out and it is as follows:

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"Land includes things attached to the earth or permanently fastened to anything attached to the earth."

When we come to the price or the value of the land we come to this vexed question as to whether you should consider the price with improvements or distil a separate price for bare land. I think you can start with this thought that the price paid for land with additions or improvements may or may not be related to the value of bare land. Now, to take an example, you have two 1-acre plots exactly similar. One has a good house on it, the other is a building plot but it is empty. Whether you are a private purchaser or a Government purchaser, you want both plots for building a house. Well, in that case, I think it is commonsense to say that the price paid for the one acre with the house on it is not the proper price to be paid for the other empty lot which somebody is wanting to build a similar house on. Now I will take one other example, which is on the other side. You have two exactly similar plots of land; both market gardens. One owner has some very healthy fruit-trees on his plot and the plot is beautifully cultivated. The other owner has let his fruit, vegetables, or what have you, go to seed. In other words, they are exactly the same except that one is well cultivated as a market garden and the other is not cultivated. If a purchaser comes along, whether he be a private purchaser or Government purchaser, and assuming

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there are no restrictions on the title but that the land is wanted for industrial development, then the price paid for the plot with the beautiful fruit-trees on it is not likely to differ from the plot covered in weeds because the purchaser - as I say whether he is a commercial or Government purchaser - is looking on those plots as potential industrial development or from that angle and if you are entitled to look at the plots from that angle you can see that the price they pay for the one plot is a good guide for the price to be paid for the other plot. Now you may very well have said to yourself in this case it is neither one case nor the other, and I do not intend to lay down general principles except to this extent. Whether a Superintendent should or should not pay one figure for land and a second figure for compensation is something which I leave to him to consider. The figures given in his awards in most cases (not, in all cases) were or should be the price of the land as defined in the Ordinance plus in some cases removal expenses. Those figures may or may not be a guide to the value of similar plots of bare land. I think we all understand what I mean by bare land; I mean land without anything which could properly be considered as additions or improvements.

In a case in which the Superintendent has to separate his figures into so much for bare land and so much for compensation, the total sum must be the price paid. In such a case you may think that the price was inflated because the Superintendent felt bound to award special compensation so that the equivalent bare land might not be worth as much.

In the case of the two plots with graves on, 16170 and 16181, the Superintendent paid prices of \$13,060 and \$9,600 respectively. In that particular case I think that you can - and I am saying that you can, not that you must - regard those prices as prices paid for the equivalent of

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bare land. I think you are entitled to - but it is a matter for you - to conclude that the Superintendent did pay the equivalent of \$10,360 per acre in the one case, and \$11,300 per acre in the other case. Even so, you may, you are justified to say to yourselves there were special considerations in those two particular cases and it does not necessarily follow that adjoining land, other things being equal, has equal value. I must apologise to the gentlemen Assessors if I cannot be more explicit than that. What I have given you is a direction in law. If I am wrong I need correction by a higher court. But you Gentlemen Assessors must follow that direction. Now, I want to say something about awards as comparisons. There is no doubt in my mind that awards are certainly not as good a guide to market value as actual sales in the open market. Now, let us go back to the valuer's break-down of figures, Exhibit 3. You must remember that his starting figures were based very largely on awards and also they were based on what you have referred to as bare land figures. You see what effect it has on the concluding figures if you start with a different figure. In Exhibit 3(a) if you start with one of the graves at a figure of \$11,300 per acre and then relate the other figures proportionately to that figure you would see that the proper award in this case would be \$529,000 dollars. Now, you may or you may not consider that a reasonable figure. I draw attention to these figures. It is up to you to give such weight you think proper to the sets of figures. All those cases are matters of fact. On fact, you certainly do not have to take any directions from me. Now you have a contoured map. Low lying land, that is land below the flood level, is less valuable than land above the flood level. You can argue it out what you mean by flood level. You can consider the normal level or you can consider the abnormal flood level, what effect that will have. I will return to this again later on. Now, Exhibit 5 contains all the sales since 1948. I do not think you have to study that in great detail. You do not have to because it has been very little referred to. Now Exhibit 6 has been referred to much more and it has been relied on a lot by the Government Valuer. So you should look at those figures and see first of all how

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much weight should we give to award figures and secondly how has the Government Valuer viewed those award figures. Well, he has of course viewed them from the angle of bare land and improvements are something separate. If the Government Valuer had taken the overall figure as the value of the land of course he would have reached a different conclusion.

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10 All my direction in law amounted to was that you cannot always rely on the top overall figure and you cannot always rely on the bare land figure. There is a figure allowed for the removal expenses. It is very small; unless the transfer of graves is included in removal expenses it does not affect the values in this. Nobody has argued or could argue that the transfer of graves is included in removal expenses. It is very difficult to consider under what head those transfer expenses can

20 come under legally or otherwise. The Superintendent through his witness suggested to the Court that these transfer expenses may be considered as a payment ex gratia. Mr. Hill argues that a Superintendent cannot award compensation except for land, and therefore what he has awarded as compensation is the price of the land, of the bare land, or land in a way worse than bare land.

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30 Now from the various factors that have already been mentioned to you, apart from the flood level and the question of road access none of the plots have main services but then, on the other hand, on a point like that the lands compared round about have not got services either so that doesn't complicate matters very much. The unrestricted user is an important point in favour of these two plots. Some of the leases were restricted to agricultural user but of course a restriction

40 can be removed. It involves trouble and expense but it can be removed.

And so we come to the evidence of the first witness, Mr. Carter, and this might be a suitable moment to adjourn. Perhaps, before we adjourn I might say to the assessors that you are entitled to express your opinions

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freely and at any length you wish. You also, in my view, have the right to give your opinion or report in one line, namely, you might wish to say to the Court:

"In my view, the figures for compensation should be so much."

Now I make no suggestion that you should adopt one course in preference to the other one. I mention this now because during the luncheon interval you may be able to think over which course you prefer to adopt so that when I have concluded my summing-up you can decide how much time you would like to be given before delivering your opinions. I stress once again what I said at the outset and that is that you must not discuss any of these matters with persons outside the Court but you may discuss them with each other. You are at liberty to give a joint opinion, or to give separate opinions. If Learned Counsel on either side has reason to think that what I have just said about the assessors' opinions is contrary to law practice, I invite them to say so but, so far as I know, you are not restricted to a particular form in which you give your opinions. I am restricted naturally to delaying my judgment until I have heard your opinions.

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We accept that Mr. Carter is highly qualified and experienced as a Valuer. He has not covered Sarawak generally. He was instructed in April 1963 and he told us that he applied factual data relating to the relevant date, 1st April 1960. Taking that as the proper date he applied the comparative sales method as he should. He says, "I have only considered sales after 1960 in order to establish the trend", and he told us he did not when he compiled his report have the figures of the awards to consider or refer to. He referred to Appendix J first of all, lots 183 and 184, which were sold in October 1958 at \$10,000 per acre and this sale is in Mr. Carter's Annexure A(1) Sale Nos. 11 and 12 and also you will find these lots referred to in Appendix J. Mr. Carter's comment is that the award in April 1960 seems to be based on the October 1958 figure. He referred to lots 4097 and 4098 and they are Sales 1, 2 and 3 in Annexure A(1) and show the award is the same.

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They do not appear in Appendix J but they are in Exhibit 6 which now discloses all the award prices. There was a sale in July 1957 at \$7,050 per acre and the award in 1960 was about \$7,200 for the land alone, plus something for improvements. 5736, Sale 9 in Annexure A(1) was sold in May 1958 at \$6,480 per acre and the award in 1960 was almost exactly the same, \$6,500. This plot (10t) appears as No.7 in Appendix J. One immediately begins to wonder if 1958 prices are being used as a basis for awards. Mr. Carter said it is all wrong to treat prices as frozen between 1957 and 1960 as they were on the up and up. Lot 4415 is in Appendix B(1) and also Exhibit 6. 16180 and 16181 are the grave plots and I have already referred to them.

The whole report, Exhibit 8, merits close attention. You have had several days in which to read it and it has been referred to frequently. You must weigh the value of that report in the same way as you must weigh land values. You will remember that in Annexure A(1) was a list of what Mr. Carter thought were the ten most relevant sales. I think, if I remember rightly, that the last two Sales, 25 and 27, were not particularly relied on by Mr. Carter except to show trend. There is one remark which occurs quite often in Annexure A(1), that is such a remark as Sale, 1½ to 2½ years before date of acquisition on a rising market. It is important to consider whether the market was rising, or whether it was static, or whether it was falling.

In Annexure C Mr. Carter set out all sales in the Pending area. Even if plots were not extracted from Annexure A(1), nevertheless, they may help in establishing trend. And so we get Mr. Carter's method of establishing trend by way of graph. Now it is up to you to consider firstly whether those graphs are based on sufficient or on insufficient data and it is also up to you to consider how much importance, or how little importance, we should attach to dates of sales after April 1960. Possibly an unbiased person looking at those graphs would say, "I am not altogether

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convinced". Mr. Carter quite rightly said if you have only two points on a graph you have to join them by a straight line; but Dato Jackson quite properly points out sales may have run level, that the market may have been static up to April 1960 and that a jump may well have come immediately after that date. There is no specific evidence to indicate that, it is a question of wondering whether the proposition put forward that prices naturally jumped is sufficiently based on commonsense. Mr. Hill was quite prepared to suggest that the Kuching Municipal Ordinance of 1959 which enclosed the Pending area into the town would indicate industrial development and would have made prices rise but, whatever made prices rise, in a sense it need not influence us; what we do want to establish as best we can was whether there was, in fact, a rise and what was the rate of rise. You may think that some of the evidence given could be a basis for the view that between, say, 1957 and 1960 prices were rising. Mr. Carter quite properly pointed out that some dates which appear to be too late in time for proper consideration may be more relevant than appears at first sight because very often the date of registration is delayed until long after the bargain has been struck. Now there was some discussion about whether a large plot or a small plot is the better to develop. Mr. Carter prefers the larger plot. You may come to the conclusion that there is not much in it. In any event Government will be merging plots and for development purposes, the value of the land as a whole can be considered. On the question of title Mr. Carter commented that some of the plots were held on comparatively short title. This first area cannot be compared with the much more valuable freehold titles of the two case plots. He considered flood level, he considered it as in 1960. Everything up to a point must be related back to 1960 but in any case Mr. Carter considered and still considers normal flood level not the abnormal floods of 1963. Now, he considers sales of internal land which is part high and part low as are the plots for our consideration. For instance he says that sales numbers 11 and 12 which referred to plots 183 and 184 are internal land. Some levelling would be needed but they are above normal flood level. I can confirm, now that I look at the evidence,

the remark that I made just now that sales 25 and 27 and its plots 1738 and 8841 were brought in to indicate trend of prices but Mr. Carter does not rely specifically on them. He commented on the land set out in Exhibit 6. He drew attention to the fact that plot 181 worked out at \$10,000 per acre although it is well off the road. On the other hand Lot 182, he says is \$12,200 per acre.

10 Under Mr. Carter's method of valuation it is compensated at the rate of \$12,200 per acre although the Government Valuer valued the land at \$10,000 per acre. You can look at all these lists but always remember to consider how far the land is comparable and always try and work out what was the price per acre paid. 4729 works out at \$5,000 per acre but Mr. Carter said that that is the worst piece of land in the area, low and

20 swampy, internal land. Lot 4415 if you take the overall figure works out at \$12,100 per acre, but I have already said that overall figures may be considered as inflated on account of a large sum being allowed for improvements. 5736 was a piece of bare land, internal much higher land 10 ft. to 80 ft., but it required considerable levelling if you were to build for industrial purposes - that works out at something over \$7,000 per acre.

30 11239 according to Mr. Carter is steep sloping high land about 15 ft. to 40 ft. at \$7,250 per acre and Mr. Carter commented "I think that is a comparatively low price and out of line with the rest." You may remember Mr. Carter said that if the price is singularly high or singularly low he would prefer to disregard it. Lot 6868, Mr. Carter observes, was given a low value, \$5,940 per acre. On the other hand,

40 if you take lot 4097 which is a 60 year lease and you take the overall compensation it worked out at \$18,250. 11240 is a piece of bare land, internal, \$7,250 per acre. Mr. Carter wondered why the prices for 11239 and 11240 should be the same. And then he gave his own personal opinion and in his view the land surrounding the grave plots could not be of lower overall value than the land surrounding. Of course all the time you must remember that some of these good plots are on low lying

50 land and certainly Mr. Carter doesn't seem to

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have forgotten that.

Now we come to page 14 of his report. He considers the value of 16178 and he starts off with a figure which represents the value of internal land at or above flood level and he does the same with 16179. He starts off with this figure, \$15,500, which represents, in his view, the commencing value of internal land at or above flood level and then he goes into the figure for the cost of filling it. Now with all respect to the very highly qualified gentleman, Mr. Beattie, who came here to give evidence, it makes not the slightest difference whether the land requires building up to 8, 9, or 10½ feet because Mr. Carter started off with a value of land at ordinary flood level, 9 ft. If there were the necessity to build this land up to 11 ft. then Mr. Carter would have taken as his starting figure commencing value of internal land at or above 11 ft. and of course, the starting figure would have been much higher. A lot of this land roundabout is at or about flood level, some above, some below ordinary flood level. Before 1960, it was sold and considered as land of a certain level. Land of 9 ft. fetched a certain price; no doubt of course land below that fetched a lower price and land perhaps 2 ft. above it - a nice level - would fetch a higher price; but all that question of cost of fill up to a higher level is completely and utterly irrelevant. Perhaps I have put it a bit too strongly but I would qualify it by saying the sums about the quantity of fill, like all other sums, depend basically on what figure you start with.

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Mr. Carter said "The average land which I want to consider to start with is internal land at or above 9 ft." That was what he was considering; land at 9 ft. And he said, "That land was worth so much and I am going to compare that land with land at 9 ft. I put these two plots a little bit lower, somewhat lower, than other plots at 9 ft. because it would cost something to bring them up to 6 ft.; but if we are going to take 9 ft. as the norm, and that is what I have taken, let's see what it cost us to bring it up to that norm. But, of course, if you are going to start with a different norm, say at 11 ft. above sea level,

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then of course you start with a different price.'

Now in Appendix J that I come to next Mr. Carter said he disregarded Sales 17 to 31 because they were outside the boundaries of the Pending area. I don't think there is any particular complaint about that. Mr. Carter agreed that this was his first valuation of land in Sarawak. His view, and it is after all the view of an expert, about the effect of the Government Notification is expressed in these words: "I do not concede that the Government Scheme would raise prices in the neighbourhood. I cannot detect any acceleration in the price rise due to publication of the Government Scheme." That is why he is entitled to rely on his graph for this one reason. It may or may not be a criticism that Mr. Carter in preparing his graph considered an area which was outside the strictly relevant area of the plots. He rejects the possibility of a drop in prices between 1959 and 1960. He considers areas and heights in his report, particularly under the heading of page 2 of his report. He defends his starting figure of \$15,000 and he does admit that this graph (Annexure F) is the basis of that starting figure. Again I say that it is up to you to consider whether that graph is of great value, or of little value, or of something in between. His evidence was that there was a continuous rise in prices since the war.

You will remember in his report that he claimed the overall value of plot 178 to be \$11,900 per acre and the overall value of plot 179 to be \$16,900 per acre and then if you take the eventual figure for the claims, \$607,000, you get an overall average value per acre of somewhere between the two of the plots taken separately and it apparently comes to \$13,900 per acre. Now if you think that Mr. Carter's starting figure was too high, clearly his concluding figure was too high. You do not have to base your calculations on intricate technical figures. You will be influenced by them but I suggest

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that you do not devise some intricate system of value which is a sort of amalgam of the two but try and take a commonsense fair view of the figures as a whole.

You will remember that if we started the Government Valuer's figure at \$11,300 per acre instead of \$6,500 we reached the figure of \$529,000. If you adopt a different starting figure it is not essential for you to use exactly the same ratios. You can, if you like, fix your starting figure on the evidence above and not, I repeat, not, on your own ideas and then work out sums in the way either or both of these experts have. Or you may say I want to look for comparisons of land, part good, part not so good, part bad as in these two plots and then fix an overall figure. Mr. Carter said in evidence and it is worth repeating that his starting figure was based on the 9 ft. contour.

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The fact that Mr. Carter eliminated Sale 16 in 'C' shows that even if it goes against his client's interest he will not try and use figures which are not properly relevant or not strictly relevant. With regard to Sale 16 and others he said those sales are not comparable. When he was cross-examined on figures given for awards he made a simple comment that those were not sales. I think that I have already indicated to you that awards have not got such weight for valuation purposes as sales in the open market. You can give them some weight, considerable weight if you think fit so to do but nevertheless I think you may be of the opinion that sales in the open market are a more reliable guide.

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Now before Mr. Carter had finished his evidence Mr. Hardie the architect gave evidence in the box. He is an architect with 14 years experience, and in fact he has been in Sarawak since 1958. He knows the Pending Area. As regards the filling he can confirm that filling should be up to normal flood level, but as I have said, the matter about what flood level it should be if you start with valuations of lots at 9 ft. you will continue to value on that normal basis. One piece of evidence which Mr. Hardie gave, one does not, of course,

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doubt it, was that between 1958 and 1962 land values rose but as he is constantly in touch with property deals you might think he should know. You may give some weight if you think fit to that remark.

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10 Mr. Carter came back to the witness box and again he said that he started with his \$15,500 figure because it is based on sales - actual sales and the trends of sales. He said that the Ordinance No.2 of 1959 had brought the Pending Area inside the municipal boundary and would, to use his own words, "be a bull influence on the development". He maintained that sale A lot 405 - it appears in annexure C - indicates the resulting rise in value. That will be beginning January 1960. You can hardly get a more appropriate date. Mr. Carter the actual acquisition itself did not cause an increase. Now we come to the
20 other side. Mr. Ambrose Foo - I invite you to treat all the witnesses in this case as experts who know what they are talking about. You have Mr. Foo's breakdown of figures in Exhibit C. The sales were set out in Appendix J but he relied on sales 1 - 13 as being the only comparable sales. He has excluded two sales shown on 4th December, 1962, that is sale No.3 Lot 507 and sale No.4 Lot 133. He excludes Sales 14 - 32 for various reasons and
30 he said "I have considered accepted and negotiated awards."

Now lot 184 is one of these small internal plots. The award was divided up into land and improvements. Now when Mr. Foo was making a comparison for the purpose of arriving at a proper figure for the two plots in this case he took the value awarded as \$10,000 an acre. Well, that is his way of looking at the figures. However, even if we get to bare land such as
40 181 or 185 the figure awarded was at the rate of \$10,000 per acre. Mr. Foo said 'well, they are a useful size as residential plots'; but, as Mr. Hill has pointed out, we must have something to go on for industrial potential particularly when land looks like being developed as an industrial area. He says that Mr. Carter's figure of \$15,500 is a purely hypothetical one.

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He gives trends from figures from 1st April 1960. He says 'I must compare sales up to 1st April 1960 to get my figures. That figure averaged \$7,000 per acre and that is the basic figure of bare land'. I think by now you will all know what we mean by bare land even if it is not a legal or scientific term. Mr. Foo made his valuation in December 1964 but he also did his best, of course, to calculate 1960 values. He made a concession; that is what he said in evidence, 'I did consider some awards lot; I have relied on some of those awards to guide me; I do not consider at all trend of prices before I made my valuation; I did give thought to filling costs. There is not much filling required for plot 179 but a lot is required for 178. I made a mental allowance for the cost. P.W.D. gave me some figures. When I had the P.W.D. figures, cost per acre was \$29,000. Of figures agreed now in Court cost comes out at \$13,650. I am not interested at all in the fill. Although there is an adjustment now in the cost of fill it does not affect my figure; market value is what I aim at, that is, what land put in the open market would get.' Well, I think this short definition of market values on a willing vendor, willing purchaser basis. Now another concession that Mr. Foo made was this, and he said, 'I do think there was an upward trend from 1958 to 1960. I did not work out the rate of increase. I do accept Mr. Carter's interpretation of the trend as a guide in rise of values.' Mr. Foo did not accept at any stage Mr. Carter's essential figures but to a large extent he said that the figures and the method could be respected except the data used, particularly starting prices, or individual prices should not be given the significance which Mr. Carter gave them and that he was not accurate in his starting figure or in his interpretation of the trend. Now Mr. Foo gave evidence about lot 4729. Apparently the award in that case was increased from \$60,000 to \$96,000. There is evidence that some of the first awards were too low, otherwise they would not have been interested. May be Mr. Hill was not far wrong when he said that the man who persisted longest for the highest price and, of course, that is what he hopes for in this Court.

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He says even on one of the plots 16178 the increase on the original award or original figure offered is 45%; on 179 it is 13%. You may however feel - you are entitled to come to the conclusion - that Government has been conscientious or even generous in assessing this eventual figure; it is a matter for you. Consider the witnesses; consider the basis of their figures and consider what comparisons they made. Mr. Foo says, 'I did value the two plots in this case as having potential industrial value. Some of the similar land planned was potential residential and some of the bigger plots might be valued as agricultural land.' He says 4729 was valued as agricultural land. This is what he said, 'That is the basis of my valuation. Industrial value is the highest. Adjustment must be made for potential user. Plots 16180 and 16181, those are the grave plots. If they had no graves they would be similar to 179 except on a higher level. I would pay less for 16180 and 16181 because I would have to pay the cost of removing graves. I do not agree that land costs \$13,060 or \$9,600. After paying out, Government did get vacant possession and bare land.' He says no land used for industrial purposes is in the immediate vicinity of these two plots and then he was referred to the factory sale, Sale 16 of Annexure C and rather strangely he said 'I would take this Sale 16 as a guide.' I think I am right in saying - Mr. Hill will correct me if I am wrong - that that Sale 16 was not in Appendix J. Mr. Carter excluded it anyway. I am not quite sure why but perhaps because it got away to a good start by being early marked out for industrial development. However, if Mr. Carter preferred to exclude it and Mr. Foo only reluctantly thought it might have an influence, I think that you should give it very little attention, if any.

I have commented already on Mr. Beattie's highly technical evidence and on the reason why I think that it does not have a direct bearing on the figures; that does not mean that you should ever discard the principle that land at a safe level obviously is worth much more than swampy land or land which needs filling. Now after Mr. Beattie gave evidence, Mr. Foo came back into the box.

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He referred to Sales 11 and 12 of Annexure C. He said lot 183 was sold in 1958 at \$10,000 per acre. He awarded the same figure and he followed that example in 184 and he did agree that awards were taken from the 1958 figures and again he said, 'I have not analysed the increase between 1958 and 1960 but there must be an increase.' He did agree that the development of the new Port has been seen since 1958 and he did agree that the 1959 Municipal Ordinance may have had an effect on prices. And then he referred to his ribbon belting method. Of course road frontage land has a higher value. The belting method may or may not be the most up to date method. I suspect that the Land and Survey Department may have in mind some remarks made by the Court in the Sibul Case when the Department was criticised for using the same value for internal plots or for frontage plots in that particular Sibul Case. Plots with road frontage if I remember rightly were valued higher than those with river frontage and plots with neither one nor the other were valued at the lowest figure. I said that because that may have an effect on Mr. Foo's belting method. You may think that the belting method is just as good, may be better, may be worse, than Mr. Carter's method. Mr. Foo conceded this first "In order to apply the comparative sales method one has to go into detail. I have not gone into detail." Well, I am sure that you Gentlemen Assessors and I still have to apply to the comparative sales method and award a consideration of all these details. It may be tedious but it is one which the experts have attempted and which we are attempting, as far as we can, to consider each sale of comparable land in the vicinity, to consider its price its value, to consider the geographical and all other conditions. I would prefer not to indicate any figure to you. I will give you perhaps one warning. Do not on any account relax and say to yourselves well let us split the difference. I am afraid that is one way of arriving at a figure which is barred to us. It may or may not result after detailed consideration that that figure you arrive at is something near the middle. It may

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on the other hand seem to you that Mr. Carter's figure is reasonable or that Government has offered quite enough. As I have already said, even if you think Government have offered more than enough, you must not award less than the Government figure and even if you think the owner has not got enough you cannot award more than he has claimed. You may want a day or a week for consideration. You may say to yourselves we have been here for five days, we have heard the evidence, it has been sifted and considered. It has been represented in the concluding addresses and you have heard my attempt to give you some guidance. It may be now that you are prepared to fix your figure or on the other hand you may want time. If you want time I will fix a date for you and myself as a probable date of the judgment and naturally I cannot give my judgment until I have your figures. If you tell me now we want a day, we want a week, or we want an hour then I will accept that. You may say well we would like at least a short time to consult together and then we will let the court know whether we can give a figure named or about how long it would take. As I said before the luncheon adjournment you may give a full opinion, a long opinion, a detailed opinion or you may say we are satisfied that we have studied the evidence in detail and we are now prepared to give a figure and so Gentlemen Assessors I ask you whether you have both thought as to how long you would like to be released for consideration.

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The Assessors are prepared to give their opinion at 9 a.m. tomorrow. It may or may not be the case that I shall feel in a position to give my own judgment.

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No.4
JOINT OPINION OF ASSESSORS

No.4
Joint Opinion
of Assessors

JOINT OPINION

- of -

13th March
1965

Assessors: Messrs. Song Thian Cheok and
Yeo Cheng Hoe

From the evidence, we the undersigned assessors are of the opinion that the amended claim figure of \$607,000.- in page 15 of the Report of Mr. J.M. Carter is a fair one, particularly so when the overall price per acre is \$13,900.-.

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(Sgd.) SONG THIAN CHEOK

(Sgd.) YEO CHENG HOE

KUCHING, 13.iii.65.

Read out in Court by Assessor
No.1 Assessor No.2 expresses
oral agreement.

(Sgd.) E. R. HARLEY J.

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13.3.65.

No.5
JUDGMENT of HARLEY J.

BEFORE THE HONOURABLE MR. JUSTICE E. R. HARLEY

IN OPEN COURT

J U D G M E N T

In the High
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No.5
Judgment
of Harley J.

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10 This case involves a comparison of market
 prices based on analysis of the evidence. I
 do not think I can usefully add any general
 remarks to what I said in my Summing-Up, of
 which there is at least one shorthand record.
 The figure reached by the Assessors is close
 to what I had in mind - it is in fact within
 10% of the figure which I should have awarded
 if I had to give a judgment completely
 independent of the Assessors. On a commercial
 matter of fact such as this, I think it is
 proper to give full weight to the views of the
 two clearly intelligent Assessors who sit
 with me. I therefore accept their figure of
 20 the full amount claimed and give Judgment
 accordingly.

(Sgd.) E. R. HARLEY J.

Hill:

(1) Section 69 As for interest

Jackson does not oppose

Awarded accordingly.

(2) Costs section 67(b)

Awarded also in accordance with section
 67.

30 (3) Also by consent Court certifies That case
 was proper for two counsel.

(Sgd.) E. R. Harley

Order to pay Assessor \$25 per day.

(Sgd.) E. R. Harley

In the High
Court in
Borneo

No.6
O R D E R

BEFORE THE HONOURABLE MR. JUSTICE E.R.HARLEY
IN OPEN COURT

No.6
Order -
13th March
1965

O R D E R

Entered this 13th day of March, 1965.

THIS COURT DOTH DETERMINE that compensation be awarded to the above-named applicant under section 60(1) (a) of the Land Code, Cap.81, in respect of Kuching Occupation Ticket 16178 in the sum of Dollars Three Hundred and Six thousand (\$306,000) and in respect of Kuching Occupation Ticket 16179 in the sum of Dollars Three Hundred and One thousand (\$301,000) AND THIS COURT DOTH DIRECT that the Superintendent of Lands & Surveys, First Division shall pay to the above-named applicant interest on the sum of \$299,220 (being the excess of these sums so determined over the sums awarded by the said Superintendent) at the rate of four per cent per year from the 21st March, 1963, to the date of payment AND THIS COURT DOTH ORDER that the above-named applicant do recover against the said Superintendent the costs of these proceedings to be taxed as between party and party on the higher scale AND THIS COURT DOTH CERTIFY that fees for two advocates shall be allowed to the above-named applicant by the Registrar on taxation AND THIS COURT DOTH FURTHER ORDER that the assessors shall be paid the sum of Twenty-five dollars each per day.

10

20

30

GIVEN under my hand and the seal of the Court
this 13th day of March, 1965

J. RANDI
Senior Assistant Registrar,
High Court, Kuching.

No.7
NOTICE OF APPEAL

NOTICE OF APPEAL

In the
Federal
Court of
Malaysia

No.7
Notice of
Appeal

16th March
1965

10 Take notice that the Superintendent of
Lands & Surveys, First Division, being
dissatisfied with the decision of the
Honourable Mr. Justice E. R. Harley, given
at Kuching on the 13th day of March, 1965
appeals to the Federal Court against the
whole of the said decision.

DATED this 16th day of March, 1965

Counsel for the Appellant

To: The Registrar,
Federal Court,
Kuala Lumpur.

The Registrar,
High Court in Borneo,
Kuching.

20 Messrs. Yong & Co.
Advocates for Aik Hoe & Co., Ltd.
Kuching.

The address for service on the Appellant
is the State Attorney-General's Chambers,
Kuching, Sarawak.

In the Federal
Court of
Malaysia

No.8
MEMORANDUM OF APPEAL.

No.8
Memorandum
of Appeal
5th June 1965

MEMORANDUM OF APPEAL

The Superintendent of Lands and Surveys, First Division, Sarawak, the appellant above-named appeals to the Federal Court against the whole of the decision of the Honourable Mr. Justice E. R. Harley, given at Kuching on the 13th day of March, 1965 on the following grounds:

1. The award of \$607,000 was excessive and unwarranted by the evidence. 10
2. The learned Judge ought to have held that the valuation of the Respondent's valuer despite his statement that his valuation was based upon comparable sales, which was the appropriate method, was based not upon comparable sales, which were not helpful to the Respondent's claim, but upon "a trend" established by unscientific and misleading graphs made from sales selected not for their comparability but for their high price and some of which were quite irrelevant. 20
3. The evidence of comparable sales did not sustain the figures put forward by the Respondent's valuer which were largely unchecked and unsupported and were, in any event, inaccurate and misleading and ought not have been relied upon.
4. The learned Judge ought to have held that the references of the Respondent's valuer to "checking the trend" were misleading and that the figures used by him for this purpose were intended to establish "the trend" and were in no sense a check upon it. 30
5. The learned Judge ought to have held that the valuation of the Respondent's valuer was substantially derived from prices paid in sales after the 1st April 1960 and that such sales should be disregarded or, alternatively, given very little weight. 40

6. The learned Judge erred in failing to direct himself and the Assessors that the statement of the Respondent's valuer that certain sales were not relied upon except to show "Trend" was unacceptable and that sales are either reliable or not reliable and if they were not reliable they could not establish a trend.

In the
Federal
Court of
Malaysia

No.8
Memorandum
of Appeal

5th June 1965
(Contd.)

10 7. The learned Judge ought to have directed himself and the Assessors that it was unsound to rely on higher prices as was done by the Respondent's valuer and equally unsound to rely on lower prices and that the middle range should be the guide.

20 8. The learned Judge failed to direct himself and the Assessors that there was no evidence whatsoever to support the statement of the Respondent's valuer that "very often" the date of registration of a transfer is delayed "long after" the bargain is struck and failed to observe, firstly, that this statement was made by a valuer who had no experience of Sarawak and who practised in a State where circumstances are vastly different from Sarawak, and secondly, that this statement runs counter to the need for immediacy of registration required by the Torrens System which is embodied in the Land Code of Sarawak.

30 9. The learned Judge in referring to the Respondent's submission that the extension of the Municipal Ordinance made prices rise failed to consider that there was no evidence whatever of any extension of municipal services or of the supply of water or electricity to the affected area and no evidence whatever that such rise had occurred.

40 10. The learned Judge failed to observe that Lot 4729 which was described by the Respondent's valuer as "the worst piece of land in the area, low and swampy, internal "Land" was very similar to Lot 16178.

11. The learned Judge misdirected himself and the Assessors in saying that "it makes not the slightest difference whether the land requires

In the
Federal
Court of
Malaysia

No.8
Memorandum
of Appeal

5th June 1965
(Contd.)

building up to 8, 9 or 10½ feet". Neither the evidence given for the Appellant nor the evidence given for the Respondent supports this statement which is based upon the erroneous beliefs that the value of land varies with its footage above flood level and that the cost of filling would necessarily be the equivalent of any enhanced value.

12. The learned Judge misdirected himself and the Assessors that the evidence on "the cost of fill to a higher level is completely and utterly irrelevant."

10

13. The learned Judge failed to direct himself and the Assessors that the height to which the land required to be raised was an essential question to be considered and hence failed to give any or any adequate direction upon the evidence led upon this question by the Appellant and the Respondent.

14. The learned Judge erred in failing to direct the Assessors and himself that the Respondent's valuation was based upon the assumption that Lots 16178 and 16179 were to be sold on the 1st April 1960 as industrial land or for development as residential lots, that before a valuation on this basis could be accepted there must be positive evidence of future development or positive evidence that there was in existence purchasers for the said lots as industrial land or residential lots on the said date, that there was no evidence that the Respondent or anyone else had plans to develop the land on the 1st April 1960 and that the only statement to that effect was the statement of a valuer from another State with little or no local knowledge.

20

30

15. The learned Judge erred in holding, and so directing the Assessors, that the starting figures of the Appellant's valuer was based very largely on awards.

40

16. In suggesting that the Appellant was using 1958 prices as a basis for awards, the learned Judge failed to appreciate the evidence as a whole

and failed to direct himself and the Assessors that the evidence showed that there had been no great change in value between 1958 and the date of notification and certainly no such change as was contended for by the Respondent.

In the
Federal
Court of
Malaysia

No.8
Memorandum
of Appeal

5th June 1965
(Contd.)

10 17. The learned Judge failed to direct himself and the Assessors that the statement of the Respondent's valuer that he could not detect any acceleration in the price rise due to publication of the Government scheme was not an expert opinion, that it was impossible to state whether and to what extent a rise in prices in the area was due to the publication and that common sense indicated that the publication must have had an effect on land prices in the area or, at any rate, that the possibility of this made it dangerous to look at any post-publication prices.

20 18. The learned Judge erred in conceiving that if the starting figure of the Respondent's valuer was correct, his concluding figure was correct and failed to appreciate that the starting figure had no sound foundation.

30 19. The learned Judge misdirected himself and the Assessors in stating that it was unnecessary to base their consideration on "intricate technical figures" or devise an amalgam of the two views being propounded. An award could not be arrived at by the Court without an analysis of the figures and an analysis of the methods by which the figures had been produced.

20. The learned Judge misdirected himself and the Assessors that the starting figure of the Respondent's valuer was based upon the 9' contour and thus disregarded the evidence on filling.

40 21. The learned Judge misdirected himself and the Assessors that the second witness for the Respondent (P2) was constantly in touch with property deals. P2 was a professional architect and not a valuer or property agent and there was no evidence whatever that he was in touch with property deals or had any

In the Federal
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5th June 1965
(Contd.)

special knowledge of land prices in the area or at all.

22. The learned Judge misdirected himself and the Assessors that the starting figure of the Respondent's valuer was based upon actual sales and trends of sales and failed to appreciate that the sole origin of the starting figures was the "graph" at Annexure F of Exhibit 8.

23. The learned Judge erred in directing himself and the Assessors that the land "looks like being developed as an industrial area". There was no evidence apart from Government's acquisition, that the land or land in its vicinity looked like being developed as an industrial area or that there were potential purchasers of the land for this purpose.

10

24. The learned Judge placed excessive and unjustified emphasis upon the evidence given for the Respondent and, in particular, the Respondent's valuer and, by comparison, disparaged and failed to give sufficient weight to the evidence given for the Appellant and, in particular, the Appellant's valuer whose local valuation experience was considerably greater and whose awards or the awards of whose department had been accepted as fair by many landowners in the area.

20

25. The evidence given showed the desirability of the Court and Assessors inspecting the land and the learned Judge erred in refusing the request (which was not opposed by the Respondent) of the Appellant's Counsel for such inspection.

30

26. The learned Judge failed to observe that the valuation of the Respondent's valuer wrongly made no allowance for developer's profit and deferment of capital value.

27. The learned Judge ought to have ruled that the sale of the land must be contemplated as a whole in the absence of evidence of legal approval of a sub-divisional plan.

28. The learned Judge ought to have directed himself and the Assessors that the cases of Ittimathu

40

Pavu vs. The State 1951 K.L.T. and Adinarayan Sethy vs. Special Land Acquisition Officer 1954 A..I.R. mys. 71 do not say that the evidence of higher prices is to be taken as the basis of valuation and that the citation of these cases by the Respondent's valuer in support of this proposition was misleading displayed a serious misconception on his part.

In the
Federal
Court of
Malaysia

No.8
Memorandum
of Appeal

5th June 1965
(Contd.)

10 29. The learned Judge failed to direct himself and the Assessors that, contrary to the statement of the Respondent's valuer, a large plot of land does not command the same price as a small plot and that there was no evidence that a purchaser could be obtained for the 43 acres comprised in the Lots 16178 and 16179 at a price higher than was offered by the Appellant.

DATED this 5th day of June, 1965.

Sgd. x x x x

20 Counsel for the Appellant

To: The Registrar,
Federal Court,
The Law Courts,
Kuala Lumpur.

And to:

The Registrar,
High Court in Borneo,
Kuching

And to:

30 Messrs. Yong & Co.,
Advocates for Aik Hoe & Co. Ltd.,
34 India Street,
Kuching.

The address for service of the Appellant is the State Attorney-General's Chambers, Kuching, Sarawak.

In the Federal
Court of
Malaysia

No.9
NOTES OF ARGUMENTS RECORDED BY
LORD PRESIDENT

No.9
Notes of
Arguments
Recorded by
Lord President

15th November, 1965

For Appt: Mooney
For Respts: Hill & Young

15th, 16th and
17th November
1965

Mooney: Motion for extension of time.

Moves. Other side originally asked for extension.

Other side have now filed an affidavit. 10

There has been no time to file an affidavit in reply.

Hill:

No objection to filing of record out of time.

Most of the amendments we ask to the record are not of importance.

Exhibit 9 was not re-worded at the time.

Order:

Extension of time as prayed. 20

Mooney: On Appeal.

Notice is dated 1.4.60.

19 parcels of land acquired under this notice.

We are concerned with:

O.T. 16178 -	25.72 acres
O.T. 16179 -	<u>17.82 acres</u>
	<u>43.54 acres</u>

shown in green at p.8.

14 of the parcels accepted the award and made no objection. This is some evidence valuation was correct. 30

Mooney (Contd.):

Respondents' claim was originally
\$34,000 an acre.

Superintendent's valuation at p. 20 was
at figures from \$4,000 to \$5,500 - a total
of \$131,450.

10 Sarawak Land Code S.60 - main test is
market value at date of notice. Here it is
purely a matter of market value. (Hill:
I accept that.).

We used "comparable sales" method to
arrive at our valuation. Other side did not
do so. Judge's award overlooked the
consideration that there was more attractive
land in the same area.

20 Valuation was arrived at by two valuers
acting independently and later a third valuer
came in and an adjustment was made. (Hill:
These earlier valuations were not in
evidence).

No evidence that owners had any intention
to develop the land at the date of the
notification.

30 A year later a petition was submitted
setting out details of development scheme -
6.6.61. There is no evidence of any
difficulty in getting water or light and
no evidence of any application by them for
supplies. Ostensible object of letter of
5.6.61 was to get land released. At this
time as a result of Government acquiring
land values were going up.

Original award figures were revised
before hearing to \$300,000.

Respondents came down to \$700,000.

Comparable sales showed a figure of
\$7,000.

Respondents did not use comparable
sales method.

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No. 9

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(Contd.)

Mooney (Contd.):

This method produced \$15,000.

Assessprs' opinion was \$607,000.

Burden of proof was on respondents to show Superintendent's valuation was wrong.

Carter's Report is all leading up to what he calls a "trend" in values.

Lot 188 not comparable. Neither is Lot 190.

All the sales mentioned are after date of notification.

10

A fundamental error by Carter is basing his areas and trends on prices for very small areas.

\$15,500 is the whole basis of Carter's valuation that come only from his graphs - he admits that. But it was put forward as a calculated figure. Carter's experience is in Singapore - not in Sarawak where they have Torrens conveyancing.

No allowance for developer's profit and deferment of capital value.

20

Maori Trustee v. Ministry of Works [1959] A.C. 1, 13.

No evidence local Government would have given permission for development.

Court must consider value of land as a whole and not in small parcels.

In planning permission see -

Hull & Humber v. Hill Corpn. [1965] 1 A.E.R. 429, 430, 432.

30

All Carter's evidence as to development profits depends on whether there is a demand for land for development which was a matter for speculation.

Mooney (Contd.):

9 feet for filling is 3 inches above a flood level recorded immediately previously.

Lot 5736 is a contiguous lot. Owner settled for \$40,000 i.e. \$7,300 per acre.

Lot 133 was sold 1 $\frac{3}{4}$ years later. Had river and road frontage. It is sale No.22. But the low price was before Government moved into area.

10 Judge did not visit the area.

Carter amended his figures relating to filling alone by \$72,000.

Lot 4729 is much the same as the acquired land except for road frontage.

Price accepted for Lot 4729 would produce \$131,000 for Lot 16178. Government offered \$176,000.

As to evidence of acceptance -

20 Collector of Nagpur v. Atmaran Bhagwant
A.I.R. 1925 Nag. 292, held acceptance by other owners was best evidence of value.

Lot 5736 worked out at \$7,400 per acre which was accepted. It had no disadvantage and said to be better than Lot 16179 except for lack of frontage.

Carter considered the land as being potential for housing or industrial area. But there was no evidence that any industrial development was going to occur.

30 No demand for 43 acres of swamp land.

Respondents said they wanted to reserve the land but there was no evidence of any preparation to use it e.g. application for water and electricity.

The summing-up is open to criticism.

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In the Federal Court of Malaysia
No.9
Notes of Arguments Recorded by Lord President
15th, 16th and 17th November 1965
(Contd.)

Mooney (Contd.):

Carter regarded the land as if it were for immediate development. There was no evidence of any prospective purchaser.

Judge was wrong in saying awards are not as good as sales in the open market. And he was wrong in saying that Government valuer (Foo) started from awards - he said he started from comparative sales.

16th November, 1965

10

Mooney (Contd.):

Judge overlooked the fact that the grave plots belonged to a different owner.

He did not attempt to analyse Carter's basic figure of \$15,000. Many of the curves on his Annexure F are incomplete. Eg. 182, 131 et al. 182 and 183 are adjacent but they are not connected.

It was a misdirection to say the cost of filling was irrelevant. Both sides agree same level should be taken. Carter said 9 feet was the right level.

20

It was wrong to say that price of land depends on its level.

The amount of fill is vital to Carter's method but his estimate is arbitrary - it makes no allowance for subsidence. That is a contingency which should have been allowed for.

Apart from the starting figure the concluding figure cannot be right because no allowance is made for contingencies.

30

Judge was clearly over-influenced by Carter's evidence.

There was no evidence of any relevant industrial development.

Judge was wrong in suggesting "belting"

Mooney (Contd):

method of valuation as not up to date.

Summing-up as a whole was inadequate. It did not analyse Carter's methods which had very little foundation in fact.

One must consider the possibilities of the land and not its realised possibilities.

10 Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam [1939] A.C. 302, 313.

Existence of development scheme of Government should not be allowed to enhance the price - Land Code Sec.61.

Carter's view that development of large lots is more profitable than development of small lots is irrelevant to the question of value.

U.P. Government v. Gupta A.I.R. 1957 S.C. 202, 206.

20 Sales a substantial time after the notification should be ignored or heavily discounted.

Asst. Development Officer, Bombay v. Tavaballi Allibhoy Bohori A.I.R. 1933 Bom.361.

Awards are relevant in ascertaining value -

Collector of Nagpur v. Atmaram Bhagwant A.I.R. 1925 Nag. 292.

30 In considering "potential" one must have regard to evidence of demand and here there was no evidence of demand. This land may never be required for alleged potential purpose or may not be required for a considerable time.

Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam [1939] A.C. 313.

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(Contd.)

In the Federal Court of Malaysia

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15th, 16th and 17th November 1965 (Contd.)

Mooney (Contd.):

No building plans or development plans were ever submitted to appropriate authorities.

Hull & Humber v. Hull Corporation [1965] 1 A.E.R. 429.

(1) Land cannot be valued by an abstract formula.

(2) If you have to consider fill, allowance must be made for contingencies.

(3) There must be an allowance for interest factor on cost of filling etc. over an uncertain period.

10

Authority for these submissions is -

Nowroji Rustomji v. The Government of Bombay I.L.R. (1929) 49 Bom. 700, 704.

On expert witnesses -

Taylor on Evidence (12th Ed.) p. 59 S.58.

Phipson (10th Ed.) S. 1286.

Halsbury XV p.278.

Cross (1st Ed.) p.333.

20

3 courses open to this Court:

(1) Government valuation should be upheld - respondents failed to show it was wrong and evidence shows \$7,000 to be about the right figure.

(2) Substitute an increased figure but cannot suggest any other figure because it is not possible to establish contingencies exactly. There is no reasoned judgment to show how Judge arrived at his figures.

30

(3) Order new trial under Judicature Act. S. 71.

Case for appt.

Hill:

Will deal first with general principles.

What we are concerned with is land and nothing else. But value of improvements cannot be regarded separately.

This case turns on questions of market value as at 1.4.60 [Sec. 61(a)].

10 190 - Aggarawala (3rd Ed.) pp. 162, 180, 187, 203.

It is not disputed that potential value is to be considered.

Aggarawala pp. 235, 253, 258.

These passages cover relevant general principles.

I now deal with application of "comparative sales" method by witnesses on both sides.

20 Carter's report should be considered as a whole, including the graphs.

He started from sales figures which are Annexure C. All these appear on agreed list - Exhibit 5. He extended them first to Annexure C and then to Annexure A-1. He said A-1 comprised comparable sales. Then he showed them on the Plan A.

30 I compare Carter's data with those of Foo which are in Appendix J. These were the sales produced by a previous Government valuer. Foo made no independent search. He discarded all except the first 13.

This is to be compared with Carter's A-1.

Put in table showing how much is common ground.

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Hill (Contd.):

COMPARISON OF SALES IN ANNEXURES A-1
OF MR. CARTER'S REPORT AND
APPENDIX J

<u>Lot No.</u>	<u>(Carter) Annex. A-1</u>	<u>App. J.</u>
4097	1	-
4098	2	-
4097/8	3	-
405	4	12
5736	9	7
183	11	10
184	12	9
133	22	4
9736	25	14
8841	27	16

10

Carter says these sales are all similar to each other but that with adjustments described by him they form basis of comparison with lots under reference.

20

Neither valuer has considered here land with frontage to Pending Road because these are only two very small plots.

But there are other reasonably comparable sales in the small acreage bracket. We allowed 10% for size.

All this led Carter to basic figure of \$15,500.

Nearest actual sale is Lot 405 for \$17,365.

On all this he drew up his Annexure F.

30

This shows price of different categories of land.

He then makes necessary adjustments.

Foo made no independent search. He omitted

a sale which is relevant - sale of distillery land Lot 901. March 1957 price was \$18,800. Lot 405 was \$17,365 in January 1960.

In the Federal Court of Malaysia

Foo took no account of trend in prices.

10 Foo said he was not interested in the cost of filling. He made no adjustment when figures were agreed in the course of the proceedings - agreed figure was lower but he did not raise his valuation though Carter lowered his.

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This may be due to inclusion of area in Municipal area.

Foo made no adjustments. He could not explain different award figures in Exhibit 6. Put in my analysis rendering them to \$ per acre.

As to G/A.

- 20 (1) Only coherent evidence is that of Carter which supports the award. And in the event Foo accepted Carter's method.
- (2) Carter's valuation was based on comparable sales and his sales were accepted as such by Foo. He went through every recorded sale in the area.
- (3) Evidence of comparable sales fully bore out Carter's figures and the sale figures he worked on were agreed.
- 30 (4) Is not this a play of words? I say the trend is prima facie evidence of a steady rise in prices.
- (5) There is no reason why post-notification sales should be disregarded when there is a lack of contemporary sales.
- (6) Have dealt with this. There was a rise in land values in the Pending area.
- (7) In fact Carter disregarded highest and lowest figures and concentrated on the middle range of figures.

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(8) Sales do get delayed prior to registration.

(9) It was Government who said rise in prices was connected with extension of Municipal Ordinance.

That was at the end of 1959.

(10) Lot 4729 was the subject of an award, not of a sale. The difference is 4729 is more liable to flooding and has no present means of access. There is also a difference in title. Foo valued it as agricultural land. Lease for agricultural use only. 10

(11), (12) and (13) Judge dealt adequately with question of filling. Carter's figure of 9' is supported by Hardie and not contradicted by Beatty. The plan of the 1963 floods showed there was no flooding on the Pending Road.

17th November, 1965

Hill (Contd.):

4729 was a swamp whereas 16178 was firm ground. (11), (12) and (13) Judge misunderstood what Carter was saying. But error is immaterial. Carter assumed that filling would have to be to the 9 ft. level. That was supported by evidence of Hardie and Beatty did not disagree. Foo said he was not interested in fill. 20

Judge qualified what he said. In any event the point is academic for there has been no evidence of flooding above 9' level.

(14) Market value includes all future potentialities on which a prudent purchaser would consider. 30

Aggarawala pp. 233, 225.

There was no question of agricultural use.

Development has been going on since 1958. Government valuer said none of the plots except 178, 179 were valued as industrial sites.

- (15) Carter's starting figures were in fact based on awards. All the land was restricted as to user.

Foo said differential would be \$1,000 per acre. Award prices were based on 1958 figures without addition for rise between 1958 and 1960.

- (16) Evidence showed there was a change of values between 1958 and 1960.

- 10 Foo agreed there was an upward trend 1958 - 60.

Nearest sale in time to notification was 405 - January 1960 - area 0.93 - \$17,365 per acre. Foo said it was a comparable sale.

- (17) Have dealt with this under (9). Effect is effect of knowledge and public knew before notification that the area was a development area.

- 20 (18) We say Carter's starting figure was correct. Foo agreed that Carter's methods were right, all he did not accept as the starting figure.

- (19) Summing-up must be looked at as a whole. Foo conceded he had not gone into detail.

- (20) The contours were very close together so it makes little difference that Carter worked on them.

- 30 (21) An architect is very likely to be in touch with property deals and land prices.

- (22) Again we relied on sales as the basis of our graphs.

- (23) Valuers on both sides treated this land as industrial land.

- (24) Judge did not unduly emphasise Carter's evidence. As regards the owners, very

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15th, 16th and 17th November 1965

(Contd.)

few of them were worth appealing about. Foo was very open to criticism. He was inexperienced and did not consider all the available material and relied largely on the evidence of the other Government valuers.

(25) (Mooney: abandon this).

(26) Question of developer's profit and deferment of capital value was not raised.

(27) Both valuers did value land as a whole. 10

(28) The first case is not available - but see Aggarawala Supplement p.9.

Setty v. Special Land Acquisition Officer, Bangalore, A.I.R. 1954 Mysore 71.

was a case where the highest available figure on a rising market was taken by the Court.

(29) Carter was not cross-examined on question of effect of size. But Carter did make an allowance of 10% for road. Anyhow there were 2 separate plots - each of 20 acres and different prices were awarded. 20

- - - - -

Both sides have regarded possibilities only.

Difference in acre prices depends on position etc.

As to sales after event -

Asst. Development Officer, Bombay v. Tayaballi Allibhoy Bohori A.I.R. 1933 Bom. 361.

Agree that awards can be accepted as evidence but they should be regarded with care. 30

The judgment of the Privy Council in [1939] A.C. 313 is quoted in:

Hill (Contd.):

Sibu High Court Civil Case 66/90/62.

With regard to:

Harbour Investment Coy.

Here no building plans were submitted at the time of acquisition.

10 With regard to case at I.L.R. (1929) Bom. 700 we do not know what the evidence was and the judgment depends on the evidence.

Assessors are not comparable to a jury.

Borneo Civil Appeal 2/63.

Land Code S.59(1), 63 and 64.

Borneo Civil Appeal 3/59.

Onus is on appellant to show finding of the Judge and assessors in wrong. Here there is no question of manifest error except possibility on the question of fill which was irrelevant..

20 Superintendent's statement under S.57 is not evidence - at least not when it is contradicted.

Judge's figure should be accepted. But if not this Court can substitute its own findings.

There was a large source of agreement as to what were comparable sales.

The two lots were and should be valued separately.

30 Court should look at sales record in time and area. But this Court should be slow to interfere.

Case for the Respondent.

In the Federal Court of Malaysia

No.9
Notes of Arguments Recorded by Lord President

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(Contd.)

In the Federal
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Notes of
Arguments
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President

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(Contd.)

Mooney in reply -

There is no question of comparison with changes.

Here the assessors have accepted Carter's figures.

Expert evidence must always be regarded with caution.

Aggarawala p.192.

Foo treated the land not as industrial land but as potential industrial value.

10

Kuching is a small town. What industrial potential can there be?

As to failure to cross-examine expert -
Monir on Evidence (4th Ed.) 360.

Carter did not make any adjustments for size.

Regarding fill the whole thing was left unsettled.

The map showing the 1963 flood is not to be relied on in detail. In any event it should be read with the contour map.

20

Submit \$7,000 is about the right figure but agree this might be slightly increased.

C.A.V.

Intld. J.B.T.
17.11.65.

TRUE COPY

(Tneh Liang Peng)
Secretary to the Lord President
Federal Court of Malaysia.
30/3/66.

30

NO. 10

NOTES OF ARGUMENTS RECORDED
BY ONG.J

In the Federal
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No.10

Notes of
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P. Mooney for appellant.

G.S. Hill with S.I. Yong for
respondent.

Mooney: Motion for extension of time.

Amendments desired by respondents not
agreed.

10 Hill: No objection to filing record out of
time.

As to amendments - most of them are of
no consequence - as to alleged new
matter - certain data as to cost of
fill had been assumed and agreed.
Ex. 9 was merely overlooked - second
schedules were merely re calculations.

Court: Allow record to be filed out of time -

20 As to amendments, we will cross the
bridges when we come to them.

Mooney: Kuching land resumed by Government.
- notice - G.N.422 of 1.4.1960
Price freeze on that date - 1st April
1960. 12 parcels of land acquired
including OT.16178 & 9 total over 43
acres (i.e. 43.84 acres) Re 14 awards
no objection. Submit these awards
relevant.

30 P.17 line 5 - estimate \$30,000 per acre
Superintendent's valuation p.19-21
belting method used.
S.60 Sarawak Land Code (p.235 Vol. 4)
Issue is purely one of Market Value.

Hill agrees.

Comparable sales method in fact used
by Superintendent of Lands and Surveys
but this method in fact not used by

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respondent.
Other lands preferable in fact to
those two.

P3-L10 - Now Superintendent of Lands
& Surveys arrived at figures?

(Hill) objects)

Mooney continues reading p. 3 to p.6.

No evidence of owner's intention to
develop this land on 1.4.1960, was
ever produced.

10

Over a year later a petition was
sent to Governor - see p.24 (dated
6.6.1961) and p. 26
(5.6.61) - first time scheme of
development raised. Object of
petition was to get land released
as price was going up.

Superintendent of Lands & Surveys
revised figures - see p.49 L26.

Lot 178 to \$176,418
Lot 179 to \$131,360

20

- p.41 L12 - Lot 178 - reduced claim
was \$14,930 per acre

 - Lot 179 - " "
" \$17,620 per acre

Assessors opinion - p.86

Judgment - p.87

See maps - see separate folder - contour
map Lot 16178 - swamp forest over major
portion.

30

Burden of proof on claimant to show
Superintendent of Lands and Surveys
was wrong.

Claimant failed to discharge this burden
at any rate they failed to establish
that \$607,000 was proper valuation.

	P.42 L17 - Hill's argument	In the Federal
	P.205 - Carter's report	Court of
	P.206 L27 - Electricity supply 1,100	Malaysia
	yards off	<hr/>
	P.206 L38 - Kuching Municipality	No.10
	P.209 L1 - Population increase	Notes of
	P.209 L18 - Port development?	Arguments
	L29 - Approval of building plans -	Recorded by
	none in instant case.	Ong. J.
	P.210 L18 - Extension of Municipal	15th, 16th &
10	area.	17th November
	P.211 L34 - Trend of values.	1965
	P.211 L42 - Illustration of trend.	(Continued)
	Lots 188 & 190 unrelated to	
	present Lots 16178 & 16179.	
	May 1960 - December 1960 -	
	January 1962.	
	P.213 L1 - other instances	
	Lot 133	
20	Sale 22 (See Annex.A)	
	L12 - Internal lands.	
	P.38 L35 Carter's evidence as to how	
	he arrived at \$15,500 per	
	acre - Annexure F.	
	Sales before 1.4.60 compared	
	with sales after 1.4.60.	
	Lot 182 not connected with	
	other sales in Annexure F -	
30	slight raise.	
	See also Lots 182 & 131	
	Lot 133 joined with Lot 182.	
	P.213 L31 - see (a) & (b)	
	P.214 - Cases (e) & (f).	
	P.218 L30 - Size of plot.	
	Potential buyers fewer for such	
	large areas.	
	P.220 L18-23 future potential	
	P.221 L21 - metalled carriage way - cost.	
40	Development project.	
	(1) Deferment of capital value	

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(2) Developer's profits
Not taken into account.

Maori Trustee vs. M/Works. (1959)
A.C. 1 @ 18. No evidence here that
local government approval would be
given for such development project.

P.14 of Lord Keith's judgment.

P.15 "secondly" and "thirdly"

Hull & Humber Harvesting Co. Ltd. vs.
Hull Corpn. (1965) 1 A.E.R. 429 @
430 F - G, 432 B.

10

Carter's evidence - p.43 et seq.

P.45 - earthworks.

Sale No. 9 - Lot 5736 - \$40,000 -
see p.204.

Sale 22 - Lot 133 - OT.4729 - worst land
\$5,100 O.T. 4729 has same swamp as
Lot 16178.

Reconciliation Statement (p.225) re OT.
4729 OT.16178 not superior to OT.4729
except for road frontage.

20

Accepted price for 4729, then 16178 is
worth \$131,000.

Government in fact offered \$176,418 - or
\$6,860 per acre for Lot 16178.

Collector of Nagpur v. Atmaran Bhagwant
A.I.R. (1925) Nag. 242

O.T.5736 contiguous to Lot 16179 (vide
separate folder) \$7,400 per acre.
1/3 size of 16179

30

Better and more saleable than 16179
except for lack of road frontage - \$7,400
per acre.

Government offers \$6,500 for Lot 16179 -
but offers \$10,000 for road frontage part
of 179.

Lot 4097 see p.204.

In fact land works out at \$7,250 per acre.
Lot 16178 is 80 yards from river and 4-5
feet below level of road.

40

P.47 - Potentiallity - housing or
industrial - no evidence whatsoever on
either - total urban & rural population
150,000.

No application to Building Authority -
nor to Land Department for sub-
division - nor to Water Board for
Water supply nor to Electricity
Supply Co.

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Award for 16178 & 16179 was in line
with contiguous lots.

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(Continued)

P.49 L3 - How much "fill" for swamp?
Why 21,600 c.yds only?

10 Hardie: in Sarawak since 1918.

Ambrose Foo - (p.52)

Appendix J - p.33 et seq.
Improvements separately valued from the
land.
See, e.g. s.51, s.60(2).

Beatty (p.37)

Summing-up (p.65)

P.67 L16

P.71 - L18 - P.72 - L19

20 P.72 L20 a misdirection - also P.72 L44

But Foo said (p.52 L9) he began by
considering sales, and on some of the
awards (P.54 L3 - P.54 L11): he preferred sales
to awards as a guide.
cf. p.74 re Carter & re Foo.

Adjourned to 10 a.m. on 16.11.65

(Sgd) H.T. Ong

Tuesday, 16th November 1965 (Continued):

Summing-up:

30 P.77 L41 - Carter re land round grave.

P.78 L6 - Judge never subjected figure of
\$15,500 to an analysis - graph never
analysed.

L10-26, cost of fill irrelevant, says
the JUDGE.

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Submit - if Carter's method is accepted,
question of fill of course, is most
important.
cf. p.215

16178 - out of 20,000 c. yards -
for cost see p.222.

Difference of opinion as to amount
of fill required -
But see P.78 - L35

P.79 L29 - graph -

10

P.80 L20 - partisan view re Carter -
Sale 16

L35 - re Hardie

P.81 L6 - 'actual sales' a misdirection
Carter based his \$15,500 on his
graph.

P.81 & P.82 L8 - A. Foo.

P.83 - comments on belting method.

P.84 L29 - re Foo again.

Judge's Summing up -

20

1. inadequate.
2. failing to point out that Carter's
statements were ipse dixit
3. that \$15,500 based on no comparable
sale
4. cuts out question of fill
5. Judge might have misunderstood the
law.

Law:

Possibilities of the land -

Raja Vyricheria Narayana Gajapatiraju
vs. The Revenue Divisional Officer,
Vizagapatam, (1939) A.C. 302 @ 313
line 15 Existence of Government's
development scheme should not enhance
the price.

30

S.61 of Sarawak Land Code.

Development of large lots preferable (?)

Uttar Pradesh v. H.S. Gupta, A.I.R.
(1957) S.C.202 @ 206

Sales after 1.4.60 should have been
ignored or treated with reserve.

40

Asst. Development Officer v.
Tyaballi, A.I.R. (1933) Bom.361
Awards can be accepted

In the Federal
Court of
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Collector of Nagpur v. Atma Ram,
A.I.R. (1925) Nag. 292

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In considering potential - one must
have regard to evidence of
demand.

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10

If no such evidence, one must
remember that the land may never
be required for the alleged
potential purpose or at least
not for a considerable time.

Raja etc. vs. Revenue Officer,
Vizagapatam, (1939) A.C. @ 313

No building plans or development
plans were ever submitted to
the authorities - and the question
arose whether permission would be
given.

20

Hull v. Humber Investments (1965)
1 A.E.R. 422

1. Land cannot be valued by an
abstract formula, as Carter did.
2. If question of fill is consider-
ed, contingencies must be
allowed for.
3. There must be allowance for
interest factor in respect of
filling and development over
an uncertain period.

30

Nowroji Rustomji Wadia v. Governor
of Bombay

I.L.R. (1925) Bom. 700 (P.C.)
at 704.

Re: Expert witnesses:

Taylor on Evidence (12th Ed.) p.59
para 58 (as zealous partisans)

Phipson (10th Ed.) para 1286

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Halsbury, Vol.15, p.278

Cross on Evidence, (1st Evid) 333

If Court agrees - 3 courses open

(1) Government valuation be upheld on basis that respondent failed to demonstrate that the Superintendent of Lands & Surveys' valuation is wrong.

(2) To substitute an increased figure - but cannot suggest what - as to amount of fill etc. and other contingencies - no evidence thereon.

10

Chow Yoong Hong v. Tai Chet Siang (1960) M.L.J. 130

(3) Under s.71 of Courts of Judicature Act, 1964 order a new trial.

G.S. Hill:

(1) 1. General principles in valuation 20

2. Demonstrate application thereof by Carter in his report.

3. Methods adopted by Foo.

4. Grounds of Appeal.

5. Deal with the courses open to this Federal Court. S.47 Land Code of Sarawak.

Common ground - assessment of market value on 1.4.60.

Aggarawala:

30

p.162 - English principles of assessment of Compensation

p.180 - market value

- | | | |
|----|---|--|
| | p.177 - compensation under Indian law | In the Federal Court of Malaysia |
| | p.187 - determination of market value - not an exact science.
3rd method adopted by both - actual sales of land in vicinity - making due allowances etc. | <u>No.10</u>
Notes of Arguments Recorded by Ong. J.
15th, 16th & 17th November 1965
(Continued) |
| 10 | p.190 - method - no precise parallel.
p.192 - only sales of similar land within reasonable proximity of time are helpful. | |
| | p.195 - (bottom) - instances must be critically analysed - not averaged. | |
| | p.197 - abnormally high or low prices not to be considered. | |
| | <u>Potential</u> value - agreed by both sides, to be taken into account (at p.235) | |
| 20 | p.253 - treatment of agricultural land ripe for development - (p.258) building sites. | |
| | (2) Application of comparative sales method i.e. ocean terminal project - Carter was not XXD. | |
| | Annexure F must be considered only in context of whole of Carter's report. | |
| | Carter started with a number of sales figures (Annexure C). | |
| 30 | All those sales appear in agreed list (p.121)
Carter extracts some of them to annex C and whittled down to Annexure A1.
Subject sales are 2 large areas - The 10 sales in A1 compared - "A1" sales marked out in "A". | |
| | Hill: hands up plan, which explains the parole evidence of Carter. | |
| 40 | Compare data taken by Foo (Appendix J. | |

Lot 405 was \$17,365 in 1960

Foo - (p.54 L45) admits upward trend.

Re Fill - (p.54 L23-280) "I am not interested in fill".

Foo - p.59 L38 P.60 L1

Award figures - p.201 - (see Statement handed up by Hill)

Government figures show such wide range that they were irreconcilable.

In the Federal Court of Malaysia

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Notes of Arguments Recorded by Ong. J. 15th, 16th & 17th November 1965 (Continued)

10 (4)

Grounds of Appeal:

1. Carter's report - coherent - Carter as competent as Foo.

No written report ever prepared by Foo, nor any reasons given.

Foo finally accepted Carter's method - only criticism was as to starting figure: (p.59).

Basically - this Court must decide on evidence on the record.

20

2. See statement submitted re 10 sales.
3. Carter used only agreed sales figures as date (p.41 of record).
4. "Trend" Foo himself agrees an upward trend 1958 - 1960.
5. Sales after 1.4.60 considered?

Lot 405 at higher price abandoned in favour of post-April 1960 sales.

6. Argument only. (pp.214 L17)

30

7. Carter did exactly that (pp.144-145) - p.197 of Aggarawala.

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8. Delay in registration?

Carter not cross-examined on this point.

9. Extension of municipal area -
Government case was that price was static till 1960.

Carter (p.48 L1)
 p.51 L12

Foo - p.58 L37

- development of new port - 10
- general awareness of developments long before 1960.

Electricity in municipal area a natural assumption.

10. Lot 4729 -

This was subject of an award, not a free negotiation.

See Carter - p.48 (Middle)

Reconciliation (p.229)

Lot 4729 inaccessible - 20
no present means of access.

(Hill: Carter advised acceptance of award in re lot 4729).

p.60 L12 -agricultural restriction.

p.49 - charge over Lot 4729

11,12,13 - Carter assumed necessity of filling up to 9' contour.

Carter supported by Hardie.

Carter not disputed by Beattie.

Plan (separate folder:58) - produced by 30
Beattie - re flooding in 1963.

Adjourned to 17.11.'65.

Wednesday, 17th November '65 (continued)

In the Federal
Court of
Malaysia

Hill continues:

No.10

Lot 4729 was a swamp -

Whereas Lot 178 though low-lying was
firm ground. (p.46 L8, P.47 L2)

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No evidence that 178 is a swamp.
Concede that Judge went wrong in
respect of the fill (grounds 11-13)
but in any event the error was
innaterial.

10

Hardie (p.50 - L111-15) supports Carter
as to 9' level - not disputed.

Foo - P.54 L30 - not interested in fill.

In any event, the Assessors took the
view that fill was of some importance,
because they accepted Carter's report
and that 9' contour was the proper
one.

Ground 14:

20

No evidence as to prospect of
development.

See Aggarawala p. 233, 235.

The fact that land in question was
taken into Municipal area is a fact to
be taken into account.

Foo - p.58 L37 - P59 L1

p.59 L37

Ground 15: 10 awards -

- restricted user.

30

- premium - Foo p.60

Awards taken from 1958 figures (p.58 L29)

Ground 16: No change in value between
1958 & 1960?

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Carter confirmed by nearest sale -
Lot 405 in January 1960 - @ \$17,365
(0.93 acre)

Ground 17: Dangerous to look at post-
publication prices?
But public already must have known since
1958 of potential development of this
area.

Ground 18: Has starting figure any sound
foundation?

10

" 19: As to this see p.p.84 L.36

" 20: ?

" 21: Architect - what knowledge of
value?
But not cross-examined.

" 22: Graph - was it sole basis for
starting figure - see Carter's report.

" 23: Did the land look like being
developed as industrial area - both sides
treated it as a potential industrial area.20

" 24: Any bias pro Carter contra Foo?
Awards not worth appealing against.
See statement of awards and settlements.
How would one landowner know what another
had been offered.

Foo - p.52 L.9
p.54 L.3 p.55 L.6
p.56 L.31
p.58 L.29
p.59 L.10-38, p.60 L.1
p.60 L.6

30

Ground 25: view of land?

" 26: Developer's profit and deferment of
capital value.
But see p.217

" 27: Nobody valued the land as sub-
divided plots.

Ground 28: cases misleading?

A.I.R. (1954) Mysore 71.

" 29: (last ground) - large plot vs. small.

- but Carter was not cross-examined.

- he made allowance for size by deduction of nearly 10%.

- the plots are 2 separate ones.

10

Subject of 2 acquisitions.

£11,900 for bad and £16,000 odd for the good lot.

No evidence of road access costs?

Planning approval? Question in issue now is potentiality.

Grave plots.

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(Continued)Legal points:

20

A.D.O. v. Tyabally, A.I.R. (1933)

Bon.361 @ 364 Court taking a broad view etc.

Sibu High Court C.S.60 to 90/62 - see p.9-10

In Nowroji Rustonji, I.L.R.(1925)

Bon.700 Argument was mainly on the evidence - hence no guide.

No cross-examination of witness on this point.

Functions of Judge and assessors:

30

Assessors not comparable to Jury.

Brunei C.A. 2/63 (handed up)

Brunei C.A. 3/59 (handed up)

Submit:

Superintendent of Lands & Surveys figures cannot stand - should not be upheld.

2 assessors - is Court satisfied that they were wrong.

Except as to question of fill - which is irrelevant and a red herring - the Judge's summing up was right.

40

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Statutory Statement - nothing therein
stated is admitted which requires to
be proved.

See p.151 Aggarawala.

Submit there was evidence on which the
assessors could reach the decision they
did.

Failing that, this Court can substitute
its own verdict.

Comparable sales -

Remember - the 2 lots were valued
separately.

They were the only substantial pieces of
land with road frontage, available,
without change of conditions of title.

Lot 179 required no fill

" 178 " fill substantially.

No evidence of flooding.

Consider overall figures government
prepared to pay for the other various
pieces of land.

Look at sales nearest in point of time
and area, especially Lot 405 & Lot 901.

Ask figure to be affirmed.

If not such figure as the Court may
arrive at.

10

20

Mooney:

No analogy between view of assessors
and award of damages by a jury.

Assessors merely accepted Carter's
evidence in full.

Graphs (p.192 of Aggarawala) - no two
pieces of land ever precisely the same.

Why join 2 different pieces of land in
graphs.

30

P.195 - instances of sales must
be critically analysed, not averaged.

Carter treated the land as industrial
land.

Foo treated the land as potential
industrial.

40

Kuching is a small provincial country
town - 150,000 inhabitants - what
industrial potential is there?

(Monier on Evidence, 4th Ed. p.360)

Re the coloured plan put in -
 price therein stated was per acre;
 and price was overall price,
 including improvements.
 Had Carter made adjustment for size?
 No - (see p.218 L.27)
 Annexure F - see Lot 182 -
 unconnected and Lot 131, small rise
 only in each case.
 Where were comparable sales in
 Annexure F.

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(Continued)

Hill: referred to Lot 901 - which
 Carter never considered - also
 Lot 405, but this was only a single
 sale of one Lot.
 That lot is 0.93 acre, no flooding,
 near Kwong Lee Bank road.
 Foo, not giving detailed reasons -
 but this was what Aggarawala said
 was proper.
 Foo's local knowledge cannot be
 lightly passed over.

Re Grounds of Appeal:

Subnit - awards were fair and accepted
 as fair.
 As to fill, any variations affect price.
 Map of 1963 floods - flood waters went
 to edge of 16178 - and if so must go
 over whole land.
 Carter could not have allowed for fill
 for nothing.

Carter's onissions

- no deferment of capital value
- 2 years even to develop land
 physically
- interest during these 2 years?
- developer's profits ? at 20% would
 be \$100,000.
- Carter's \$607,000 is unsound.
- subnit \$7,000 approximately right

10

20

30

40

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Court of
Malaysia

- Lot 4729 - \$1,000.

C.A.V.

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(Sd) H.T. Ong
17.11.65

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(Continued)

Certified true copy,
sd. B.E. Nettar
(B.E. Nettar)
Ag: Secretary to Judge,
Federal Court,
Kuala Lumpur.
18.4.1966.

10

No.11

NO. 11

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NOTES OF ARGUMENTS RECORDED
BY SUFFIAN J.

15th November 1965 in
Kuala Lumpur

Mooney for appellant
Hill (S. Yong with him) for respondents.

Mooney addresses. Record of appeal filed on 8.9.65

Motion for order to enlarge time for filing 20
record of appeal out of time, beyond 7.6.65.

No judgment here. So summing up very useful.

Refers to S.A.G.'s affidavit.

Refers to Carter's affidavit filed last
week on respondents' behalf.

Why affidavit by Carter who has no standing?
An instructed that attempted amendments not agreed.

Summing up - errors and omissions originally -
final version agreed between counsel.

Hill addresses.

No objection to filing late, though I did tell A.G. he must apply for leave.

I don't think amendments of much consequence - but I don't know how much appellant is going to rely on details in the evidence.

Leave granted to file record out of time.

10 No order as yet regarding amendments.

Mooney addresses on the appeal.

Refers to record - G.N. 422/1.4.60

Lands resumed under section 47 Sarawak Land Code.

Purposes announced in G.N. 422/1.4.60

19 parcels acquired altogether - in separate folder.

We are only concerned with O.T. 16178 and O.T.16179 shown green on (18?) - in separate folder - total 43.84 acres.

20 14 accepted the awards.

Acceptance of awards - that should be taken into account - I have Indian authority to this effect.

Originally respondents asked for \$30,000 per acre in letter from their lawyers page 16 But no evidence of plan to develop by owners and that anybody wanted to buy.

30 Appellant's award re lot 8 (=16178) is at page 19 - refers to details on that page - value split up because valuer uses belting method.

Refers to section 60, 61 Land Code, volume 4.

(Both counsel agree issue simply market value on 1.4.60)

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Continues to refer to page 20.

Award for lot 8 ~~8~~4000-5000 per acre.

Appellant used comparable sale method. But not respondents, though they said they did.

Developers would prefer other lands to these 2 unattractive lots.

Government valuation done very carefully - page 3 - first done by Dickson who inspected the lands in 1960 (Carter did not).

Page 3 Dickson's valuation checked by Lumb. 10

Value based on then recent sales.

Superintendent then decided value.

Refers to page 3.

Lands 4 miles from Kuching, a small town.

No water and electricity available even today.

Refers to page 5.

Mixed Zone lands can be held by anybody - nothing to do with town planning. 20

No evidence owners wanted to develop on 1.4.60.

Over a year later petitions page 24 were sent to Governor in Council mentioning contemplation of development.

Refers to actuate petition page 26..

Emphasises paragraph 5 of page 27 - that conflicts, with respondents' valuer.

That was first time development mentioned.

Object of petition was to get the lands released - because by then value of land had gone up. 30

Appellant in December 1964 revised award figure before the hearing - refers to page 41 L.25- to total of \$307,778 (about \$7000 per acre).

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Respondents came down before hearing - from \$30,000 to lot 178 - \$384,000 (14,930 per acre) lot 179 - \$314,000 (\$17,620 per acre).

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10 Submit comparable lands worth then only about \$7000 per acre.

Later respondents reduced their claims to \$607,000.

Assessors' opinion page 86 accepted by Judge page 87. No other judgment. No reasons given by Judge - but clear Judge attaches importance to assessors' view - so important to examine summing up.

Refers to separate folder.

20 New port is opposite Warren Point

Two lots on fringe of Kuching

Refers to separate folder

Distillery next door

Lot 8 mostly swamp.

Both lands in or near swamp.

Separate folder - contour map.

Lot 8 has larger area below flood level

Here burden of proof on respondents to show Superintendent's valuation was wrong. Submit they failed to do so.

30 Secondly, they failed to establish \$607,000 was the proper valuation.

Refers to page 42 L.18 respondents' submission.

Refers to page 204.

Tanah Puteh new port is not where lands were situated. Carter accepts flood levels for Tanah Puteh - ignores flood level for Pending (10.96 ft.).

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But at page 42 - 8.8 ft. was agreed.

Respondents don't agree large lot cheaper than small. Submit this wrong.

Refers to Carter's report page 205, page 206. Admits no electricity. Page 206 - first paragraph is a supposition - but no evidence. Page 209 L.4 population increase - entire population in 1960 only 50,600. In rural area less than 100,000. So no scope for industrialisation. Page 209 fourth paragraph - but Government has no financial capacity to development. 10

No approval for development plan for these lands.

Page 210 L.17 to L.30 - is a large statement - but that was Carter's first visit to Kuching. Whereas the Kuching architect said nothing about development.

Page 211 L.34 - Carter assumes there was a trend.

Page 212 L1 "typical illustration" Carter says re lot 188. 20

Civil Appeal 3/1959 - but there no evidence of valuation except by Superintendent who said \$15,000 per acre - lot no 188 is one involved, close to 187 on page 39 (sale No.25) - near junction of Kwong Lee Bank Road and Pending Road (separate folder) about $\frac{1}{2}$ mile from new wharf.

Lot 188 has no relation to 2 lands in question - it was at junction, has water and electricity, only $\frac{1}{2}$ acre size, no flooding.

Lot 190 only .22 acre close to lot 188 - 30

Carter picks out lot 190 which has highest value - but it is different from these two lands - it is an island lot with road on 2 sides. Size very small, 1/5 acre and its value per acre is not 5 times its price.

Lots 188, 190 nearer new wharf than our 2 lands.

All sales after 1.4.60.

Annexure D after page 204 - Carter's graph unscientific.

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10 Page 213L1 - another graph Annexure E - lot 133 - but sold long after 1.4.60 in December 1962 when everybody knew of Government's intention - annexure E put in to show land worth \$16,000 per acre - this lot is marked 22 in annexure A - but it has river frontage, already subdivided, has provision for road frontage.

"Indicated value of internal land on 1.4.60 is \$15,500" Carter says page 213 Carter's valuation of these 2 lands stems from this - he gets it only from his graph annexure F. Refers to his evidence page 48 L13 C4 where he says this.

Refers to annexure F - submit graph unscientific.

Lands here small and in better situation.

20 Lot 5736 sale (9) - he connects it to lot 1014 (sale 14).

Lot 182 sale (10) no connection with 2 lands in question.

Sales of lands before 1.4.60 connected to sales of other lands after 1.4.60.

Junction about 2/3 miles from western boundary of lands in question.

Annexure F

30 - lot 182 } sales after 1.4.60 not shown
- lot 131 }

Lot 183, 184

Carter's valuation - depends on port 1.4.60 sales.

Lot 9736 on page 39 (sale 14) no relation to lands in question.

Lot 133 is joined to lot 182 in Carter's graph.

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Carter's starting figure (\$15,500) based on false premise. It was accepted by assessors.

Page 213 paragraph (b) - but no evidence that transfers take place some considerable period after transaction.

Page 214 L.21 paragraph (e)

No evidence of demand for these lands on 1.4.60 p.218 L30 paragraph (2) size of plot - but Carter does not say anything about the demand - he only assumes it.

10

I submit smaller lots are more expensive than large lots.

Page 220 future potential - "future ocean port".

Page 221 L.21 - but no evidence that any road made up.

Page 222 L.10 commencing value \$15,500 per acre obtained from graph annexure F, page 223-4.

Carter has made no allowance for developer's profit and capital deferment. Dicta on this in Maori Trustee's v. Ministry of Works 1959 A.C.1. at page 18.

20

Carter assumes that local government approval would be given for development.

Carter allows no margin for unforeseen costs, contingencies and developer's profit.

Refers to Maori case pages 14, 15.

Town Planning Enactment does not apply but permission necessary for subdivision and building from Municipality and no such permission had been given.

30

1965 1 A.E.R. 429 Hull's case at page 430F to G.

Refers to Carter's oral evidence beginning page 43.

Graveyards in lot 16179 hindrance to development - private buyers cannot move dead bodies or have to pay ransom - Carter did not take these into account nor did Judge

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Page 44-45 (Lunch adjournment)

Page 45-46, submit large plots fetch less per acre than small.

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10 Flooding at Pending nearer this land in 1963 was 10.96' - but Carter says 9' fill enough.

Lot 5736 owner accepted settlement of \$40,000 (= \$7300 per acre) contiguous to lot 8.

Sale 22 for lot 133 took place $1\frac{3}{4}$ years later - small - road and rivers frontage - graph annexure E is wrong.

Lot 181 small, no flooding.

20 O.T. 4729 - Carter says it is worst land. Exhibit 9 - visible in photo (separate folder) close to lot 8. - owner accepted \$96,000 (\$5100 per acre).

Judge did not take Court to see the lands concerned.

Page 225 Reconciliation - adds same thing twice - forgets cost of access road is normally shared between neighbours.

\$24 per foot run for road - but no evidence of road there up to PWD standard.

30 Figures unchecked - exhibit 9 produced at very short notice.

Two lots in question have no advantage over O.T.4729 except for road frontage.

Collector of Nagpur A.I.R. 1929 Nagpur 292. Acceptance of Collector's award is best evidence of value of land, but I don't go so far.

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Owner of O.T.4729 accepted \$96,000, not a small sum.

O.T.5736 - \$7400 per acre accepted. Next door to lot 9, better and more saleable than lot 9 - except for lack of road frontage. Government offers \$6500 per acre for part of lot 9 next to it and \$10000 for road frontage part of lot 9.

Lot 8, 4 to 5 ft. below road level - nearer the river than lot 9 - subject to tidal flood - 80 yards from the river. Lot 8 poorer lot, so Government offers less for it. 10

Exhibit 8 page 224 is as amended by Carter during the trial.

Page 47-48.

Housing or industrial potential is basis of Carter's valuation, but no evidence of demand and Kuching's population is 50,000 and rural area population is less than 100,000. Where's demand for industrial land?

No evidence of application to local authority for building, to Land Department for subdivision, to Water Board for water supply, to Electrical Department for electricity - only evidence is owners' petition to Governor and Carter's word. 20

Carter says no price rise because of Government scheme - but all high prices were after 1.4.60.

Lot 16688 settled for \$10,000. Our 2 lots are not worth more.

Fill has to settle especially in a swamp. 30

Hardie's evidence page 50. In Sarawak since 1958.

Hongkong Bank built up to 10½ ft. level - yet Hardie said these 2 lands need levelling up to 8.3 ft. only.

No evidence Hardie familiar with property deeds.

Hardie says one must allow for settlement.

Back to Carter's evidence page 50.

Page 51

Refers to Foo's evidence page 52

Carter lumps improvement with land price

Superintendent must value improvements separately from land; see e.g. sections 51 and 62 Land Code.

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10 Foo used comparable sales method

- Page 52
- Page 53
- Page 54
- Page 55
- Page 56

Factory (distillers) on lot 901 is only factory there

Page 57

20 Refers to Beatty page 81 - 4' fill above flood level is specified practice. Submit 9' level is not enough.

His estimate of fill is about \$250,000 more than Carter's. Ignored by Judge.

Foo recalled - page 58.

I now come to summing up.

Page 57 L.20 Carter values the land as if there was immediate development on 1.4.60 - but no evidence of that - and Judge fails to bring this to notice of assessors.

30 Page 67 - but Foo uses comparable sales method.

- Page 71 L.14
- Page 71 - grave plots.

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- awards not as good a guide to
market value

- as actual sales, Judge says - submit he
was wrong.

Judge leans heavily on exhibit 6 list of
awards page 72 - but Government depends more on
comparable sales method - Government does not
depend entirely on award.

Judge desparaged Foo's evidence.

[-16.11.65]

10

Page 78.

Grave plots - Judge failed to bring out Foo's
evidence on valuation of these. Not true
surrounding lands are worth same as grave plots.

Judge mentions Carter's starting value of
\$15,500 of these lands - but did not subject it to
analysis.

Annexure F - sale 27 for lot 8841

Lot 182 on left not connected to same lot 182.
Likewise for lot 131. If connected it will be seen 20
rise very gradual.

Sales 11 and 12 for lots 183 and 184 not
connected to lot 182 on either side of datum line.

Fill. last 2 lines on page 78 clear
misdirection. Carter adamant 9 ft. was right level
- likewise Hardie -

Carter reduced fill cost by \$78,000. His
calculation based on 9 ft. level - see page 215-216.

Page 222-3 also based on level up to 9 ft.

Cost up to 9 ft. agreed. But level not agreed -30
and this was not taken into account by Judge.

Page 78 L.34 to p.79 L.2 is a fallacy.

Carter marks no allowance for settlement of
fill into marsh. There is Privy Council case

for this.

Carter's figures hypothetical.

Page 79 L2. Judge's reference to Carter as an expert is wrong - Carter has only been to Sarawak once.

Judge says Carter entitled to rely on his graph. But graph I submit is unscientific.

10 Page p.79 L35 insufficient direction on graph.

Page p.79 L.42 if starting figure too high Carter's concluding figure is too high - submit this is insufficient direction because it is implied if starting figure right then concluding figure right - I submit even if starting figure right it does not follow concluding figure is right - because of filling.

20 Page p.80 L.14 last line - Carter never said this.

Page 80 L.20.- Sale (16) for distillery lot - Judge's reference to this is wrong.

Hardie says fill should be up to above flood level.

Judge assumes 9 ft. level was the norm.

Hardie an architect never said he was in touch with land deals.

30 Question here is not, was there was a rise between 1958 and 1962, but between 1958 and 1960.

Judge says Carter's starting price based on sales and trends - but Carter himself says based on graphs E. & F.

Page 81.

Page 81 L.39 - submit no evidence of industrial demand.

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Page 82 L.12 but Foo (77E) never said this.

Judge gave assessors impression Foo to large extent agreed with Carter's figure - but contra Foo's evidence page 53 L.15 to 30, page 59 L.31.

Page 84 L.12

85

General remarks. Summing up inadequate.

Starting figure not based on comparative sale - fill not taken into account - Court did not inspect the lands (but I don't press this last point).

10

Legal submissions.

One must take into account possibilities but not unrealised possibilities of the land.

Raja Verichala etc. 1939 A.C. 302. Refers to page 313 line 15 to first line page 314. Here no deduction.

The existence of Government's scheme must not be allowed to enhance the price of the land - Sarawak Land Code Section 61.

20

Large development may be preferable say respondents - but the developer may not pay for big piece of land such a lot per acre as for a small piece. Uttar Pradesh etc. A.I.R. 1957 S.C. 202. Reads from page 206 top left hand column.

Sales long after the event should be ignored or treated with caution: A.I.R. 1933. Bombay 361. Page 363 sidelined. N.B. Carter's graphs considered sales 2 years after the G.N.

Awards can be accepted as evidence of value A.I.R. 1925 Nagpur 292. But I don't say they are the best evidence. If owner does not object to a large award, sure sign he is satisfied with value put on land by Government.

30

In considering potential one must have regard to evidence of demand. If no evidence of demand, one must remember that the land may never be

required for the alleged potential purpose or for a considerable time. 1939 A.C. 302, 313 (foot of page).

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No building plans submitted.

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Court should consider whether permission would have been given: Hull etc. 1965: A.E.R. 429, 434. Risk of refusal of permission depresses price.

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10 Land cannot be valued by abstract formula as done by Carter.

If you have to consider fill, allowances must be made for contingencies. Not done here.

There must be allowance for interest on the cost of filling and development over uncertain period. P.C. case 19 I.L.R. 1925 Bombay 700. Sumnar at page 704.

Expert witness, observations on: Taylor on Evidence 12th edition paragraph 57.

20 Phipson on Evidence 10th edition paragraph 1286.

Halsbury 3rd edition volume 15 page 278 - bias or prejudice - expert witness partisan, should be treated with caution.

Gross on Evidence 1st edition page 333. Three alternatives before this court:-

(1) Government valuation should be upheld - because respondents failed to prove Superintendent's award wrong; or

30 (2) Court may substitute an increased figure - I regret I cannot suggest the figure - because of amount of fill necessary. Submit \$7000 per acre appears to be right.

No reasoned judgment unfortunately by the Court.

Chow Yoong Hong v. Tai Chet Siang 1960 M.L.J. 130 P.C. comments on absence of

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judgment - refers to page 204.

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(3) Order new trial under section 71
Judicature Act

Hill addresses

A General principles

B Application thereof by Carter

C Method adopted by Government valuer

D Grounds of Appeal

E Closing submission.

10

A General Principles

Section 47 Land Code is basis of resumption

Look at whole price paid for land -
how the Superintendent divides it, is immaterial.

Section 61(a) provides for payment of
market value.

Refers to Aggrawala page 162 on principles
of assessment under English law - page 180
meaning of fair market value in India. Essence -
willing seller and willing buyer. Page 187 on
recognised method of determining market value.

20

Page 188 recognised methods of determining
market value. Note 3 methods there - we both
use method 3.

Page 190 paragraph "principle"

Page 192 2nd paragraph

Page 195 "instances of sales etc."

Page 197 abnormally high and abnormally
low prices."

Page 199 "date of sale etc." "sales before
notification".

30

Page 200 "sales after notification"

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Page 202 "dissimilarity in size and
shape".

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Page 203 "Collector's awards"

Not disputed by Government that
potential of land must be taken into account.

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Page 235 last paragraph.

Page 253 treatment of agricultural land
ripe for development.

10 Page 258 potential value as building
sites.

B & C

Application of principles by Government
and owners.

Many things mentioned here not put to
Mr. Carter, though Government then represented
by experienced counsel from Malaya.

20 Carter's report based on government
reports - he was prepared to answer
questions but he was not questioned. (Carter
now consultant valuer to Sarawak Government
though you wouldn't think so from Mooney's
criticism). Wrong to impute lack of integrity
to Carter or Foo. At most they made mistakes.

Submit Court should refer to Carter's
report and graphs in annexure together.
Latter are only illustrations of what is in
report.

30 Carter starts off with sales figures -
annexure C (28 sales) after page 224. All
these sales appear in page 195 exhibit 5. He
whittles then down to the 10 sales in annexure
A-1 after page 224 - all of which he says
are as between each other comparable sales.
These sales be put in annexure A, to show
where they are. He takes into account
differences - distils a price for 2 lands in
question.

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Data taken by Foo - in Appendix J. page 33
- but this prepared by his predecessor - Foo
made no independent investigation - he discarded
all sales here except first 13.

COMPARISON OF SALES IN ANNEXURE
A. 1 OF MR. CARTER'S REPORT AND
APPENDIX J.

<u>Lot No.</u>	<u>Sales numbered in Annexure A.1</u>	<u>Sales numbered in Appendix J</u>	
4097	1	-	
4098	2	-	
4097/8	3	-	
405 sold in Jan.'60 at \$17365 per acre	4	12	10
5736 sold in May '58 at \$6480 per acre	9	7	
183 sold in Oct.'58 at \$10,000 per acre	11	10	20
184 sold in Oct.'58 at \$10,000 per acre	12	9	
133 sold in June '58 at \$3940 and in Dec. '62 at \$36700 acre	22	4	
9736 sold in June'61 at \$20000 per acre	25	14	
8841 sold in June'61 at \$19700 per acre	27	16	

Sale of lot 405 for \$17,365 per acre in
January 1960 was nearest in point of time to
acquisition. (Note by Court - but only 0.93
acre in area, see Annexure A1). 30

All sales in above list considered by both
parties as comparable sales.

Carter says these sales similar to each
other. They, with adjustments referred to in
his report, form basis of comparison with 2 lots

in question. None of these lands has road frontage. All at or above flat level. All internal. As between themselves comparable in area - from $\frac{1}{2}$ acre to 5 acres. Carter has adjusted for size.

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He arrives at starting price of \$15,500 per acre for internal land.

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All sales on different dates.

10 So pictorially Carter did graph annexure F. No objection to it was put to Carter in Court.

Why sales were joined in the graph? as evidence of a category of land, internal, no road frontage, above flat level - after discounting high or low sale. Not suggested this is infallible, but an honest attempt at pictorial illustration of Carter's thinking.

20 Validity of graph stands without reference to lot numbers.

From starting price determined from comparable sales Carter makes adjustments which were accepted by Foo.

30 Foo never made independent survey, ignored some sales in appellants' judgment which his predecessors thought relevant. Ignored sale of distillery land next door to lot 9. He said (page 56) no land used for industrial purposes in the area. He said sale of lot 901 in March 57 for \$18,825 per acre was comparable - and on that basis lot 9 should be worth \$16,000 (page 57). Every witness admitted there was rise in prices.

Page 54 L.34.

Fill. Foo said he was not interested in fill (54). To avoid long argument, Carter agreed to reduce cost of fill - Carter agreed to reduce - but Foo did not agree to increase. Carter more reasonable than Foo.

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Page 58 Foo did not analyse increase of
land values between 1958 and 1960.

Submit line on graph should be straight.

Nothing in G.N. itself which was not
already known to public about development in this
area.

Foo applied the 13 sales - but made no
adjustment.

Page 59 L.38

Foo cannot explain different awards in
exhibit 6 page 201.

10

Lot 4729 is cheapest - that is why appellant
relied on it. (But that is biggest lot and total
award high viz. \$96,495.

Both valuers say lands valued as industrial
lands. (Mooney says Foo used "industrial
potential).

Foo page 55 says re lot 4415 - see line L.20.

Submit value of improvements should be included
in total value of land.

20

Comments on Grounds of Appeal as follows:-

(1) Only coherent evidence re value was by
Carter. Time of valuation immaterial.

(Foo did not produce written report giving
detailed reason.

Finally p.59 L.31 he accepted Carter's valuation.
His only criticism was re Carter's starting salary.
He could not reconcile discrepancies in his
evidence.

(Criticism made here of Carter was not made in
lower Court.

30

(2) Every single sale used by Carter was
agreed by Foo as comparable sale. Carter's report
accepted by Foo.

Agrawala pages 190-1.

Carter went through every recorded sale in the area - only time he did, he put down result of his research in form of graph.

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Carter did not pray in aid high price sales e.g. distillery.

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(3) Only data Carter used was agreed sale figures - exhibit 5.

(4) This only a play on words.

10 No evidence that land prices were static until 1.4.60 and then shot up.

Agreed that Tanah Puteh wharf started building in 1958.

Foo himself agreed price rise between 1958 and 1960.

(5) Agrawala page 200 I have already read out to Court.

(6) I have already dealt with this.

20 (7) In fact Carter dismissed altogether abnormally high prices - based his report on middle range prices. Agrawala page 197. Evidence pages 213-4.

(8) But Carter never cross examined - and Foo never said anything about it. Registration does in fact get delayed occasionally. But this is not important.

(9) Misapprehension.

(Carter says rise in value regular, constant.

30 Extension of Municipal Ordinance to Kuching at end 1959.

Page 47-48
Page 51 L.13

No restriction on title of 2 lands in question.

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Also 999-year lease, best title one can get in Sarawak.

Foo page 58 L.37 says - G.N. no surprise to businessmen - public may have known of development policy long before 1960.

Electricity supply - irrelevant - but justifiable to expect it in a Municipal area.

(10) Lot 4729 not similar to 2 lots in question. But (1) its "price" is an award not obtained in free sale. Carter's evidence page 71 and (2) no access and (3) title is different - Government refused to give owners price of this land until trial. So later Carter did a reconciliation exhibit 9 page 225 - see amended version in Carter's affidavit. Title of lot 4729 is not long lease. 10

Of course you can allow cost of access road and allowance for road frontage. Foo accepted this.

Carter advised owner of lot 4729 to accept settlement - about 2 months before trial of this case. 20

Carter was not asked to advise the other owners.

Carter in exhibit 6 says -

Lot 4729 - restricted to agriculture - so was valued as agricultural land, Foo page 56 line 2.

Whereas there was evidence that no restrictions on title to our 2 lands. 30

Leases in exhibit 6 all agricultural - page 60 L.11.

((Lot 4729 has a charge omitted)
(11), (12), (13)).

Carter assumes lands require filling.

Hardie says 9 ft. level is enough.
Government witness did not agree. 1963 flood

was exceptional - but not so exceptional as to flood lands in question. Exhibit 13 Beattie's plan shows this. Beattie's evidence page 58.

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17.11.65 (Hill continues)

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10 Refers to evidence of nature of plots. Lot 4729 is a swamp. Lot 16178 is low lying but no flooding - Carter page 47- L.2. No evidence this lot a swamp, low lying yes.

Government says levelling up to 11 ft. because of flood - in fact no flooding at all even in 1963 and Government knew this all the time.

Judge misunderstood Carter on flooding but error immaterial.

20 Carter assumed fill only up to 9 ft. Hardie supported him, pages 49-50 - who says he would never advise fill up to 11½ ft. line 33 page 50. This never disputed by Beattie for Government.

Foo's evidence page 54 L.22 in similar language to Judge's summing up. So how can Mooney complain.

Fill is material, I agree.

Judge at page 79 qualifies his comment on fill.

I agree no evidence land 11 ft. costs more than land 9 ft.

30 Error by Judge on fill is academic because no evidence of flooding above 9 ft level.

In any event assessors thought fill important because assessors accepted Carter's figures in his report - based on 9 ft. fill.

(14)

Market value should include potentialities -

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Agrawala page 233, 235. Land in municipal area.

Foo p.58 L.36 and P.59 L.4 says development had been going on in that area since 1958 - businessmen interested in area.

Air photo shows no concerted agricultural use of area.

Page 55 L.36 - Government Valuer himself says these 2 lands valued for their industrial potential.

These were the only 43 acres of land available 10 in Kuching for industrial development.

(15)

Page 54 L.3 - 10 - but Foo himself took 13 sales and 10 awards as basis.

Other lands involved are subject to restrictions.

Foo page 60 L.12 says if restriction is removed to permit industrial use, land would increase in value by \$1000 per acre.

Awards, Foo says, were based on 1958 sales. 20

(16)

(Submit there was evidence of upward trend in price. Foo admits this. Carter's evidence confirmed by sale of lot 405 in January, 1960 nearest in time to 1.4.60. Area of lot 405, 0.93 acre - see Appendix J page 35.

(17)

Have already dealt with this under ground 9.

Public knew before G.N. this area potential development area. 30

(18) Foo p.59 L.31 agreed Carter's method and principles, though did not agree starting figure. But if method and principles alright, starting price alright.

Submit method and principles alright.

(19) Submit sunning up must be looked at as a whole - p.84 L29 is a clear direction.

In the Federal Court of Malaysia

No.11

(20) Difficult to understand this ground. Carter did not disregard fill. Even if misdirection, had no effect on figure.

Notes of Arguments Recorded by Suffian J. 15th, 16th & 17th November, 1965 (Continued)

10

Carter amended his figure during trial - but this is commendable. Government refused to amend.

(21) Hardie a professional architect - said land prices were going up - and he was not questioned about it.

(22) Dealt with this yesterday.

(23) But both sides valued lands for industrial potential.

(24) Judge did not emphasise Carter's evidence and disparage Foo.

20

No objection taken by either side to qualifications of valuers Carter and Foo.

Many owners did not appeal awards because of small amounts involved - refers to list supplementing exhibit 6 handed to Court yesterday.

Foo's evidence criticised.

Carter gave care and reasoning to his valuation.

(25) I understand Mooney does not press this.

30

(26) This point not raised in lower Court and not put to Carter.

Not contemplated by either side in lower Court.

Carter at p.217 L.12 made allowances for size (smaller price per acre for larger lot than for smaller lot).

In the Federal
Court of
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(Continued)

(27) We all agree lands should be valued as a whole.

(28) Pavu's case is only in Agrawala's book in supplement page 9 (bottom). Carter never asked about this case.

Other case 1954 A.I.R. Mysore 71 - highest price must be taken into consideration on a rising market. Prices of various sales must not be averaged.

(29) Carter was never questioned. He made allowances for size - 10% off for roads. 10

Also the lands are 2 separate ones - not true to say it is all one land 43 acres.

Carter values them differently - \$11,900 per acre for bad lot, \$16,000 odd for the good lot. Not \$13,000 odd for the 2 lots.

Comments on Mooney's address.

No evidence of road access cost? Not taken in lower Court.

No evidence of planning permission. But irrelevant - potential of land should be taken into account. 20

Grave plots - Carter took them into account fully.

Lot 16178 not subject to flooding.

Increase in prices should be worked out in comprable sales method.

Mooney says one must take into account possibilities. That is exactly what both sides have done - we have ignored realised possibilities.30

Sales made after the event. Cite A.I.R. 1933 Bombay 361 - such sales are admissible. Also says when Court of Appeal should do in land acquisition appeals.

No dispute awards may be used - but they must

be treated with caution. Undisputed Awards here too small in amount, not worth fighting then.

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1939 A.C. 313 cited by Mooney. In fact this case was before the lower Court - cited by Harley J. in Sibu High Court Civil cases 66/62 to 90/62. I now make available certified copy of that judgment.

10 Hull's case cited by Mooney. Submit no need to submit building plans - but industrial potential must be taken into account.

19 I.L.R. Bombay 700 - "argument was mainly on the evidence" but we don't know the evidence. Anyhow Carter not questioned about this.

Expert witnesses - Carter and Foo professional men - no evidence that Carter abandoned his integrity.

20 Functions of judge and assessors. Submit assessors here not comparable to jury - cite Civil Appeal Borneo civil appeal. Court of Appeal 2/63 - refers to page 3 - assessors not to make an award but to aid the Court in determining the award - judge not bound by assessors, Land Code sections 63, 64.

Borneo Civil Appeal 3/59 - page 5. Judge must sum up to assessors. But no statutory authority for this. Page 6.

30 Submit no new trial.

Submit we have proved enhanced value of land.

No manifest error in trial (except re fill but that is not material). Assessors' opinion entitled to great respect. This Court should be slow to upset the award.

40 Statutory Statement page 8 here - parts redundant - only the things set out in section 57 Land Code should be included, the rest is not evidence.

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Agrawala page 151.

If Court upsets award, remember large area of agreement between the parties re comparable sales. Two lots in question were valued separately. Not to be averaged. These 2 lots were only substantial lands with road frontage available for development. 16179 required title fill - 11178 a good deal of fill. No evidence of substantial flooding on either part. Consider overall figures Government prepared to pay for other acquired lands - in some cases up to \$24000 per acre. Bear in mind lot 405 sold in January 1960 \$17,365 - lot 901 sold bare.

10

Mooney replies

Award here not like damages in injury cases. Assessors got figure from Carter's report - and Carter's report was wrong.

Agrawala page 192 -- no 2 pieces of land are ever the same. If so why did Carter join 2 different lands on the graph.

20

Agrawala page 195 - instances of sale must be analysed not averaged - that is exactly what Carter did.

Carter treated land as industrial - Foo did not, he took into account industrial potential.

Points made here not made below - but Carter gave opinion evidence - it can be criticised here - See Monier on Evidence 4th edition page 360 in margin.

Plan coloured - price quoted is price per acre - secondly price included improvements.

30

Submit Carter has not made allowances for size - see his evidence page 218.

Lot 182, two sales of this - best evidence of trend - but Carter did not connect them.

Also lot 131 - two sales not connected.

He relied on 2 lots 183 and 184 - 2 transactions re 2 different lots.

Carter said his starting price came solely from his annexure.

In the Federal Court of Malaysia

Lot 901 was omitted by Carter - so how can respondents rely on it.

No.11

Lot 405 - only one scale of it - it is very small, no flooding, very close to the Kwong Lee Bank road, to Tanah Puteh wharf.

Notes of Arguments Recorded by Suffian J. 15th, 16th & 17th November, 1965 (Continued)

10 You cannot give reasons in comparable sale method, Agrawala says - that is why Foo gave no reason.

Fill. Flooded corner of lot 16178 higher than rest - see contour map.

Developer's profit at least 20%

Deferment of capital

Submit \$7000 per acre reasonable.

G.A.V.
17th Jan. '66 in K.L.

20 Coran: Thomson L.P.
Ong. J.
Suffian J.

Civil Appeal 25/65.

I deliver first judgment.
L.P. follows briefly.
Ong. J. ditto.

Harley J.'s award reduced.
No costs in High Court.

Appeal to have the costs of the appeal.

Certified True Copy

30
(Mrs. Wee Kin Swee
Secretary to Suffian J.

In the Federal
Court of
Malaysia

NO. 12

JUDGMENT OF LORD PRESIDENT

No.12
Judgment of
Lord President
17th January
1966

Before this morning I have had the advantage of reading the judgment which has just been delivered by my Lord. It expresses my own views so closely that to add anything would merely be to repeat in somewhat less felicitous terms what has just been said.

In my view the award in the High Court should be reduced from the figure of \$607,000 to one, based on what my Lord has said, of \$370,140. I arrive at that figure on the basis of 25.72 acres (Lot 16178) at \$18,000 an acre and 17.82 acres (Lot 16179) at \$19,000 an acre. The first of these amounts to \$205,760 and the second comes to \$160,380 and to these I would add the agreed figure of \$4,000 in respect of improvements, making a total of \$370,140. 10

I express no opinion regarding costs at this stage. 20

After hearing counsel, Court made no order as to costs in the High Court and the appellant to have his costs of the appeal.

Taken down by me and seen by the Hon'ble
the Lord President,

Kuala Lumpur, 17th January, 1966

P.J. Mooney Esq. for appt. G.S. Hill Esq. for
respts.

NO. 13
JUDGMENT OF ONG. J.

In the Federal
Court of
Malaysia

No.13

Judgment of
Ong. J.
17th January
1966

10 I have read the judgment of Suffian
J., with which I am in entire agreement.
I had made my own independent assessment
of the market value of the two lots from
the point of view of the potential
property-developer and I do not think that
any realistic appraisal will justify
any higher price than \$8,000/- per acre
for the first lot and \$9,000/- per acre
for the second, which is the award of
Suffian J.

20 As to costs, the respondents having
succeeded at Kuching in obtaining an
appreciable enhancement of the compensation
originally awarded by the Superintendent,
my view is that there should be no costs
for either party in the court below, but
that the appellants do have their costs of
this appeal.

(Sgd) H.T. ONG
JUDGE
FEDERAL COURT
MALAYSIA.

Kuala Lumpur,

17th January 1966.

Certified true copy

Sd. B.E. Nettar

30
Ag: Secretary to Judge
Federal Court
Malaysia

In the Federal
Court of
Malaysia

NO. 14

JUDGMENT OF SUFFIAN J.

No.14

Judgment of
Suffian, J.
17th January
1966

The Sarawak Government resumed under Part IV of the Sarawak Land Code (Cap. 81) 19 parcels of lands "for the purposes of residential and industrial development and other public facilities in connection with the new port of Kuching". In due course enquiries were held by the Superintendent of Lands and Surveys, First Division, Sarawak (the present appellant) to determine the compensation payable to the owners. We are not concerned with 17 parcels whose owners accepted the Superintendent's award; we are only concerned with two parcels, lot No: 16178 (which I call the first lot) and lot 16179 (the second lot) whose owners, Messrs. Aik Hoe & Co. Ltd. (the present respondents) objected to the Superintendent's award. 10

The owners are entitled by way of compensation to the market value of the lands on the agreed material date 1st April, 1960, section 60(1)(a); so the issue in this matter is simply this, what was their market value on that date. The Superintendent decided it was \$237,760 or about \$5,460 per acre. On appeal by the owners, Harley, J., in the Kuching High Court increased it to \$607,000 or \$13,900 per acre. The Superintendent now appeals to this Court. 20

The first lot was transferred to the owners on 11th May, 1949, at a price of \$19,000, that is about \$700 per acre, and the second lot on the same date at a price of \$21,000, that is about \$1,200 per acre. The Superintendent makes nothing of these prices and rightly so, because these transactions took place long before the material date. 30

The following facts are not in dispute. Both lots are situate about 4 miles from the State capital Kuching a town of about 50,000 souls at the material time (the Kuching rural area had about 100,000 souls). Both lots front the Pending Road, the first lot to the north and the second to the south of that road. The first lot 25.72 acres in area is except for about an acre below the 10-foot contour line, and the second lot 17.82 acres in area is as 40

to about half an acre below the 10-foot contour line and surrounds two lots known as O.T. 16180 and 16181 used as graveyards. Fill for the low-lying parts of the lands could be obtained from the lands themselves, so as to reduce development costs.

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No.14

Judgment of
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10 Both lots were at the material date within the Kuching Municipality, within a Mixed Zone area which means that they could be held by non-indigenous proprietors and were classified as Town Land. Title for both lots was without conditions and for a term of 900 years from 17th July, 1911, and carried the general description "agriculture".

20 Both lots were undeveloped except for minor improvements on the second, and no permission to subdivide (which was necessary for development) had been applied for either lot.

There was no electricity or main water supply to any of them. The main supply and electricity stopped at the junction of the Kwong Lee Bank and Pending roads about half a mile away to the east.

30 The material date was 1st April, 1960 the lands acquired were wanted by Government in connection with the new port of Kuching, but it was agreed that the public knew even in 1958 of Government's intended development of the new port because that year Government built the new wharf at Tanah Puteh and this public knowledge affected land prices in the locality.

On 19th September, 1961, at an enquiry before the Superintendent the owners claimed \$30,000 per acre.

40 In the event on 16th March, 1963, the Superintendent awarded the owners \$237,760 or about \$5,460 per acre. Taking into account sales of other lands in the vicinity, he valued the first lot at \$121,460 as follows:-

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(a) 9.72 acres at \$5,500 per acre =	\$53,460	
(b) 8.00 acres at \$4,500 per acre =	\$36,000	
(c) 8.00 acres at \$4,000 per acre =	\$32,000	
	<u>Total</u>	<u>\$121,460</u>
		(average \$4,730 per acre)

and the second lot at \$116,300 as follows:-

(a) 6.00 acres at \$7,000 per acre =	\$42,000	10
(b) 11.82 acres at \$6,000 per acre =	\$70,920	
	<u>Total</u>	<u>\$112,920</u>

To this he added \$3,380 for improvements and trees on the second lot, making a total of \$116,300 (average \$6,530 per acre).

Dissatisfied with the Superintendent's award, the owners on 26th April, 1963, applied under section 56 for the compensation to be determined by the High Court, claiming that "the compensation was inadequate and the award cannot be supported having regard to the potentiality and market value of the land and sales of land in the vicinity". 20

In December, 1964, the Government offered to increase the award as follows:-

(i) first lot \$176,418 (namely \$6,860 per acre)		
(ii) second lot \$131,360 (namely \$7,380 per acre)		30
	<u>Total</u> <u>\$307,778</u>	(average about \$7,000 per acre).

This the owners refused.

The reference was heard by Harley, J., with the aid of two assessors in Kuching in March, 1965. At the hearing the value of the improvements on the second lot was agreed at \$4,000.

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10 The owners called two witnesses including Mr. John Murray Carter, a qualified valuer practising in Singapore. He had been instructed in April, 1963, to inspect and estimate the value of the lands. At first he estimated the lands to be worth \$698,000 on the basis among other things that it was necessary to fill some portions of the lands up to 9 feet level. During the course of his evidence he agreed the Superintendent's higher cost to fill to this level and consequently he reduced the estimated market value of the lands as follows:-

Judgment of
Suffian, J.
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1966
(Continued)

- 20 (i) first lot \$306,000 (\$11,900 per acre)
- (ii) second lot \$301,000 (\$16,900 per acre)
- Total \$607,000 (average \$13,900 per acre).

30 For the Superintendent, two witnesses were called, first, Mr. Ambrose Foo, a Valuer in the land and Survey Department, and secondly, Mr. Robert Bell Beatty, a P.W.D. Engineer. The hearing lasted four or five days. Immediately after counsel's closing addresses, the Judge explained the law and summed up the evidence to the assessors in open Court. When he concluded his summing up at about 3.30 p.m. the assessors told him that they would give their opinion at 9. o'clock the following morning.

40 The following morning the assessors gave the following joint opinion:-

"From the evidence, we the undersigned assessors are of the opinion that the

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amended claim figure of \$607,000 - in page 15 of the Report of Mr. J.M. Carter is a fair one, particularly so when the overall price per acre is \$13,900."

In a brief judgment following immediately, the Judge agreed and gave judgment as follows:-

"This case involves a comparison of market prices based on an analysis of the evidence. I do not think I can usefully add any general remarks to what I said in my Summing-up, of which there is at least one shorthand record. The figure reached by the Assessors is close to what I had in mind - it is in fact within 10% of the figure which I should have awarded if I had to give a judgment completely independent of the Assessors. On a commercial matter of fact such as this, I think it is proper to give full weight to the views of the two clearly intelligent Assessors who sit with me. I therefore accept their figure of the full amount claimed and give Judgment accordingly."

10

20

He also ordered the Superintendent to pay interest under section 69 and costs under section 67(b).

Counsel for the appellant Superintendent was quick to point out that this case was probably unique in the history of compulsory acquisition in that the assessors agreed in toto with the market value placed on the land by a valuer called for the owners.

30

It is unfortunate that the Judge's award was very brief and gave no reasons as required by section 66.

In his criticism of the judgment, counsel for the Superintendent submitted that in the lower Court it was for the objecting owners to satisfy the Judge that their valuation was correct and the Superintendent's wrong and the owners had failed to discharge that burden of proof. His criticism may be summarised in these words -

40

the method of Mr. Carter's valuation was unscientific and misleading, it misled the Judge and the assessors as can be seen from the summing up and the judgment, it did not take into account certain factors, and therefore the award should be set aside, Counsel hesitated to suggest the correct figure, but he thought that the offer of \$7,000 per acre by the Government was the appropriate compensation.

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The Court's attention was directed by the owners' counsel to the judgment of the Court of Appeal of Sarawak, North Borneo and Brunei in Civil Appeal No. 3 of 1959, in which it was stated that the correct procedure in Sarawak land references should be as follows:-

"The Judge should sum up to the assessors The assessors then retire and consider their opinion. They should not consult with the Judge or any other persons. They then return to Court and state their opinion orally and the Judge records it (section 63). The Judge (unless he decides to adjourn) writes his award which may, or may not, agree with the opinion of the assessors (section 64). The award must comply strictly with section 66. It is the Judge who makes the award; the assessors merely express their opinion."

The owners' counsel thought that this procedure was different from that followed in the High Courts of Malaya and invited this Court to give a ruling so that the procedure would be uniform throughout Malaysia.

In the High Court of Malaya, after closing submissions the Judge does not usually sum up to the assessors in open Court, but adjourns the case to enable him to look up the law, to discuss leisurely with the assessors the evidence and the appropriate award to be made. After

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discussion he puts up a draft written award for the consideration of the assessors. When it and the appropriate award and reasons have been discussed or agreed, he and the assessors return to open Court (this may be weeks later), the assessors announce their opinion in open Court, the Judge records it and reads out his award, agreeing or disagreeing with the assessors' opinion. If the assessors agree with the Judge's written award, they sign it.

10

I have scrutinised the Sarawak Land Code and I find nothing in it making it obligatory for the Judge to sum up in every case. I think he has a discretion to sum up or not. In a short and straightforward case he might find it convenient to do so. But in a complex case lasting several days he might regard it as unfair to the assessors to sum up in open Court and the three of them might prefer to have the opportunity of a leisurely examination of the land, the evidence and the law and an unhurried consultation as to the proper award to be made.

20

It is convenient at this stage to state what in my judgment is the law applicable to the determination of the issue in this matter.

The issue, as already stated, is a simple one, what was the market value of these two lots on the agreed material date 1st April, 1960. In determining this amount the Court must not take into consideration any disinclination on the part of the owners to part with the lots resumed nor any increase in the value of the lots likely to accrue from the use to which they will be put when resumed, section 61.

30

It is common ground that the principles applicable are the same as under the Indian Land Acquisition Act, 1894. Speaking on the Indian principles, Lord Romer expressing the advice of the Privy Council in Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam (I) said at page 312:-

40

(1) /1939/ A.C. 302

"The compensation must be determined..... by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser it may also be observed in passing that it is often said that it is the value of the land to the vendor that has to be estimated. This, however, is not in strictness accurate. The land, for instance, may have for the vendor a sentimental value far in excess of its 'market value'. But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at 'the market price' It is perhaps desirable in this connection to say something about this expression 'the market price'. There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by 'the market value'"

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At page 313 he went on to say that when determining the market value of vacant land its potentialities must be taken into account -

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"..... it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at a time at which its value has to be determined; but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that, in ascertaining its value the possibility of its being used for building purposes would have to be taken into account."

10

20

He then continued:-

"It is equally plain, however, that the land must not be valued as though it had already been built upon, a proposition that is embodied in section 24, sub-section 5, of the Act [corresponding to para. (c) of section 61 of the Sarawak Land Code] and is sometimes expressed by saying that it is the possibilities of the land and not its realised possibilities that must be taken into consideration."

30

Both the Superintendent and the owners in arriving at their respective estimated market value of these two lands, took into consideration their industrial potentialities.

Here in this Court counsel for the Superintendent further submitted, and I agree with him, that a valuer must also take into account the possibility that the lands might never be so required or might not be so required for a considerable time. In the passage from the judgment of Lord Romer already quoted, he went on as follows:-

40

"But how is the increase accruing to the value of the land by reason of its potentialities or possibilities to be measured? In the case instanced above of land possessing the possibility of being used for building purposes, any person who has to determine the value would probably have before him evidence of the prices paid, in the neighbourhood, for land immediately required for such purposes. He would then have to deduct from the value so ascertained such a sum as he would think proper by reason of the degree of possibility that the land might never be so required or might not be so required for a considerable time."

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10

20

Some 20 years later Lord Keith in giving the judgment of the Privy Council in an appeal from New Zealand, Maori Trustee v. Ministry of Works (2) concerning the market value of a parcel of land 91 acres in area suitable for subdivision and sale in subdivided lots but on the material date not yet subdivided, quoted with approval at page 16 the following passage in the judgment of Gresson, J.:-

30

"In my opinion in this case the land must be valued for what it in fact was on the specified date - a tract of land capable as to some, perhaps all of it, of subdivision into building allotments, and of being sold at some time and over some period in that form. That circumstance would influence a purchaser in his determination of price.

40

In estimating what price a purchaser would be willing to pay recourse may be had to an examination of the estimated gross yield from a subdivision as yet notional only, and the estimated deductions that a purchaser would have to take into account; but that

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is the extent to which a notional subdivision can be regarded. There must be excluded from the Court's contemplation retention by the claimant and an assessment of what in his hands it would yield if subdivided; because that course is not open to him. At the time value has to be determined the land was in fact not ... subdivided so as to permit of sale piecemeal. A good deal requires to be done before there can be disposal in that manner, and as well as expenses there will be risk and delay." 10

The headnote of that decision says that in the case of a large parcel of land suitable for subdivision but as yet not subdivided, in determining the market value thereof the Court must contemplate the sale of the land as a whole. If the land had to be valued as a whole, the Court, in assessing the potentialities, might take into account the suitability of the land for subdivision, the prospective yield from a subdivision, the cost of effecting such a subdivision, and the likelihood that the purchaser acquiring the land with that object will allow some margin for unforeseen costs, contingencies and profit for himself. 20

Counsel for the Superintendent submitted and I agree that the owners' valuer Mr. Carter had allowed for costs but not for unforeseen costs, contingencies and profit for prospective purchaser buying to develop. 30

Mr. Carter was of the opinion that these two lots being 43.54 acres in area were more viable than small lots and the proposition that small lots are worth more per unit of area than large lots was a fallacy in the development market. Mr. Carter may be right as regards large parcels situate in a densely populated area where there is a large capital surplus, but in my judgment he could not be right as regards these two lots situate as they are in the town of Kuching with a population of only 50,000 people. Common experience has shown that in areas where there is a small population the price per unit of area for a large parcel is less than the price 40

per unit of area for a small parcel. In U.P. Government v. H.S. Gupta (3) the Supreme Court of India referred to the principle -

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(Continued)

10 ".....if land has to be sold in one block consisting of a large area, the rate per square foot likely to be fetched would be smaller than if an equal extent of land is parcelled out into smaller bits and sold to different purchasers"

In Duke of Buccleuch v. Inland Revenue Commissioners (4) a case concerning 532 pieces of property belonging to the estate of the tenth Duke of Devonshire which had to be valued for the purpose of estate duty, Lord Denning, M.R. said at page 991:-

20 "It may be, of course, that if you did put those 532 units on the market all at the date of death, the material date it might amount to something in the nature of 'flooding the market'; just as would happen if you had a big block of shares and put them all on the market at the same time."

30 The prospective buyer of these lands for which subdivision permission had not been applied for or granted would also have to take into account that such permission might be refused or delayed and would accordingly adjust his price to cover this risk. In Hull & Humber v. Hull Corporation (5) Pearson, L.J., said at page 434:-

"a prospective purchaser, in reckoning what he could offer, would have to take into account the probable expense of obtaining planning permission and the risk that he might not obtain it."

40 If a prospective purchaser had to consider the question of fill, as was admitted

(3) A.I.R. 1957 S.C.202

(4) 1965 3 W.L.R. 977

(5) 1965 1 A.E.R. 429.

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by Mr. Carter, then allowances must be made not only for the cost of fill, as was done, but also for interest on such cost and on cost of development over an uncertain period. (In Nowroji Rus-tonji v. The Government of Bombay (6) Lord Sumner said at page 704:-

"Development [of the kind envisaged for the land in question] required the dedication of a considerable part of the surface, in order to provide an access road, and also the raising of the whole surface to one level, free from risk of flooding, by permanently filling in the cavities with suitable loose material. Estimates of the area of land required for the road and of the cost of filling in per yard were accordingly prepared, and were agreed on both sides. It does not appear, however, that any allowance was made for the time required to enable the main ground to settle or for the risk that unexpected settlements might take place, and probably these factors were beyond any exact estimation." 10 20

At page 705 he went on:-

"[The learned Judge] took no account of the factor of interest on the cost of the filling in and the other development work during the uncertain interval before the time of realisation might arrive. 30

..... Factors such as he omitted to notice may be of great importance or of little, or even may be truly negligible, according to the circumstances of the particular case, but it cannot be right to ignore them 40

altogether, as having no place at all in a rigid system of calculation."

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10 Mr. Foo, the Government Valuer, in arriving at his estimate took into account only sales up to 1960, Mr. Carter went on to sales in 1962. I agree that the proper thing to do is as stated by Broomfield, J., in Assistant Development Officer, Bombay v. Tayaballi Allihoy Bohori (7) at page 363:-

20 "..... I doubt if anything can be found in these authorities which would justify the conclusion that post-notification transactions must necessarily be ignored altogether. All transactions must be relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. If any considerable interval has elapsed the Court will naturally attach little or no value to subsequent sales, just as transactions long prior to the notification will usually be discarded."

The headnote to Collector of Nagpur v. Atnaran Bhagwant (8) reads:-

30 "Acceptance of Collector's award as correct valuation by neighbouring land owners is the best evidence of the correctness of the award by the Collector."

I agree with counsel for the Superintendent that this goes too far and it is only the acceptance of a large award that could be interpreted as correctness of an award by the Superintendent. Recipients of awards in small

(7) A.I.R. 1933 Bom. 361
(8) A.I.R. 1925 Nagpur 292

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amounts may be dissatisfied but sometimes do not think it worth while appealing because of the expense and delay involved.

I agree also with the submission that it is for the owners to prove that the award was inadequate. Broomfield, J., in Assistant Development Officer, Bombay v. Tayaballi Allibhoy Bohori (Supra) said at page 364:-

"The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing prima facie that the award is inadequate, then Government must support the award by producing evidence."

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In this case the assessors agreed in toto with the value put on the lands in question by the expert valuer called by the owners but with respect I agree with Buhagiar, J., who said in Nanyang Manufacturing Co. v. Collector of Land Revenue, Johore (9) (at page 71):-

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"'estimates [of value by experts] are undoubtedly some evidence but their value is not great, as expert opinion is liable to err, unless it is supported by, or coincides with, other evidence'"

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I consider that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances."

(9) (1954) M.L.J. 69.

In determining this appeal, I am of the opinion that the Judge's award is a question of fact, as was said by Lord Sumner in the Privy Council in Nowroji Rustonji v. The Government of Bombay (Supra) (at page 702):-

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10 "The value to be placed at a given moment on a plot of land, which is not in the market or the subject of bargain and sale, but owes a large part of any value it possesses to the prospective results of development work, to be undertaken thereafter at an uncertain time and at an estimated cost, is not only in its essence a question of fact but is one upon which, almost above any other, opinions will differ....."

20 But the market value put on the lands by the assessors and agreed to by the Judge was not a hard fact, but:-

"a finding of fact which is really an inference from facts specifically found" (per Viscount Simons in Benmax v. Austin Motor Co. Ltd.)

30 the facts specifically found being the agreed prices of lands sold in the neighbourhood and the amounts awarded to other resumed lands; and while an appellate Court should not lightly differ from the finding of a trial Judge which turned solely on the credibility of a witness, the same consideration does not apply with regard to a finding of specific fact which is really an inference from facts specifically found.

40 In determining whether or not the Judge had reached the right inference this Court would have been greatly assisted if he had complied with section 66 by stating the grounds for his award and in the absence of such grounds this Court is entitled to evaluate the evidence de novo, as was done in Chow Yoong Hong v. Tai Chet Siang (11)

(10) [1966] A.C. 370, 373.
(11) (1960) M.L.J. 130.

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How did Mr. Carter arrive at his estimated market value for the two lots? It is necessary to examine his method for, as already stated, the assessors agreed in toto with his conclusion. He explained his method in great detail in a written report submitted to his clients and made available to the Court below as Exhibit 8.

Mr. Carter's method was this.

Taking into account sales of certain lands in the vicinity, he gave a commencing value, after making allowances for differences and similarities, of \$15,500 per acre for each of the lots in question, assuming they were internal lands above flood level. Then as each land was on the Pending Road and there would therefore be a saving on access roads he added to these values a saving of \$16,500. To this again he added 10% of the total to reflect the value of main road frontage. As can be seen from Exhibit 8, he concluded that the value of the first lot was \$17,755 per acre and the value of the second lot \$18,070 per acre. But a developer buying this land for residential or industrial purposes could not use all of it. In respect of the first land he had to deduct 2.2 acres for internal roads and 0.16 acre for earthwork slopes leaving him a net area of 23.36 acres. This net area at \$17,755 per acre came to \$414,760. A prospective developer before paying this price must deduct the cost of earthworks up to 9' level which was agreed at \$148,600, so that he would only pay for this land \$266,160. As this land has a long title, the prospective purchaser would also be prepared to pay 15% on top of this bringing the price up to \$306,080, or in round figure \$306,000 that is \$11,900 per acre.

As to the second lot, again Mr. Carter took into account the same considerations as for the first lot and after making similar additions and subtractions he estimated that the usable net area came to 15.12 acres and the market value in round figure \$301,000 that is \$16,900 per acre. Both

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sides agreed that this lot was superior to the first.

The total estimated value of the two lots was \$607,000, equivalent to an overall value of \$13,900 per acre.

10 Mr. Carter arrived at the commencing value of \$15,500 per acre on 1st April, 1960, in this way. First he examined the sales of lands in the vicinity listed in Annexure C; of these sales he selected ten as most relevant and these sales he listed in Annexure A-1. He said that prices between 1958 and 1962 were rising and he took into account sales after the material date to establish the trend of the rise. He illustrated this trend by means of graphs. For instance, he said lot 188 half an acre in area resumed by the Government
20 was valued as on 13th August, 1958, by the Court of Appeal at \$15,000 per acre. Lot 190, 0.22 acre in area, located on the Pending Road 150 yards from lot 188 was sold in May 1960 at \$68,000 per acre, sold again in December 1960 at \$91,000 per acre and sold a third time in January 1962 at \$159,000 per acre. Therefore, according to his graph Annexure D, the estimated value of these two lands on 1st April, 1960, was \$64,000 per acre. But I agree with counsel for the
30 Superintendent that the sale price of these two lots has no relevance to the market value of the two lands in question. Reference to the Superintendent's map Appendix J shows that lot No. 188, which must be close to lot No. 187 the subject of sale No. 25 indicated in that map, is nearer the town, is near the junction of the Kwong Lee Bank Road and the Pending Road, it has water and electricity and is only half an acre in
40 size. Lot 190, like lot 188, is also nearer to the wharf at Tanah Puteh than the two lands in question. In any event it is very small in area, it is one-fifth of an acre and its price per acre is not necessarily five times its purchase price.

Also it is fallacious to assume that because lot 188's market value on 13th August,

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1958, was \$15,000 per acre and lot 190's market price in May, 1960, was \$68,000 per acre, in December, 1960, \$91,000 per acre and in January, 1962, at \$159,000 per acre, therefore the market value of similar land on 1st April, 1960, was \$64,000 per acre, as indicated in the graph Annexure D. That graph is accurate only if there was evidence of a steady rise in the market value of similar lands. On the contrary, sale No. 26 in Annexure C of lot 8856, 0.51 acre in area, indicated a drop in price per acre from \$13,700 on 19th November, 1959 to \$8,140 on 23rd March, 1960.

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Lot 133 having an area of 1.09 acres was sold by auction on 7th June, 1958, at \$3,945 per acre, reference sale 22 in Annexure C and 4 in Appendix J; this was industrial vacant land, lease expiring in the year 2018. On 4th December, 1962, it was sold at \$36,700 per acre. By means of the graph on Annexure E, Mr. Carter estimated its market value on 1st April, 1960, at \$16,000 per acre. This again in my judgment is fallacious because any rise in the value of land is dependent on demand and is not necessarily a straight rise. Its value on 1st April, 1960, might equally just as well have been not much more than its value in June, 1958. This is vividly illustrated by the sale history of lot 131, two lots away. It too is small (1.14 acre), industrial and its lease expires in the year 2018. Yet (reference sale No. 20 in Annexure C) its price per acre on 7th June, 1958, was only \$5,526, on 15th August, 1962 (over 2 years after the material date) \$7,368 and 2 months later on 31st October, 1962, \$70,175. Both lots 133 and 131 are close to the two lots in question.

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Taking into account the 10 sales listed in Annexure A-1, Mr. Carter by means of the graph at Annexure F sought to prove that the commencing market value of the two lands in question on 1st April, 1960, was \$15,500 per acre.

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What were these sales?

First, sale No. 1 of lot 4097 having an area of 1.6 acre on 17th September, 1951, for \$6,000 and sale No. 2 of lot 4098 having an area

of 2.37 acre for \$10,000. The price of the two sales averaged \$4,030 per acre. Both lands are agricultural. Then the two lands, total area 3.97 acres, were sold together on 27th July, 1957, for \$28,000, at an average price of \$7,053 per acre. Then on 20th October, 1958, occurred sale No. 11 of lot 183, half an acre in area, for \$5,000 namely \$10,000 per acre and sale No. 12 of lot 184 also half an acre in area at the same price. The titles of both lands specified residential and agricultural purposes; lot 183 was sold vacant and lot 184 next door with one attap house. These five transactions were joined by Mr. Carter by one line in Annexure by numbered circles. These five transactions occurred before the material date 1st April, 1960. Then on 8th June, 1961, occurred sale No. 25 of agricultural lot 9736 having an area of 0.25 acre, at a price of \$5,000 namely \$20,000 per acre and sale No. 27 of agricultural lot 8841 having an area of 0.33 acre on 2nd June, 1961, as to a half share at a price of \$3,250 equivalent to \$19,700 per acre and on 6th October, 1961, of the whole lot at a price of \$12,000 equivalent to \$36,364 per acre. The line in Annexure F joining the first five transactions namely sales number 1,2,3,11 and 12 was then joined by Mr. Carter to these three transactions (sales number 25 and 27) on the graph Annexure F and indicated, according to Mr. Carter, a commencing market value of the two lands in question on 1st April, 1960, at \$15,500 per acre.

He did the same with sale No. 9 of agricultural lot 5736 having an area of 5.43 acres on 8th October, 1957, at \$3,100 per acre and on 9th May, 1958, at \$6,482 per acre, approximately two years before the material date. He joined these two transactions by a straight line and extended it to cross the datum to indicate the same commencing market value for the two lands in question. This lot 5736 had old rubber trees, but Mr. Carter's method of

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valuation was to ignore any increased value put on land for improvements on it so that in his view to obtain the price per acre it is enough to divide the sum total of the price paid for the land and the improvements by the total acreage. In my judgment this is not right; the value of land per unit of area must be separated from the value of improvements on it.

Lot 133 having an area of 1.09 acre was sold (sale No. 22 in Annexure C) on 7th June, 1958, at \$3,945 per acre and lot 182 on 7th April, 1959 (sale No. 10) at \$10,000 per acre. Mr. Carter's graph again seems to indicate a commencing market value of \$15,500 per acre for the two lands in question 1st April, 1960, by joining these two sales by a straight line on his graph and then extending it to cross the datun line. I am of the opinion that this is misleading, because as already stated lot 131, very similar to lot 133, on 15th August, 1962, fetched only \$7,368 per acre.

All the sales regarded as relevant by Mr. Carter and included by him in Annexure A-1 related to small parcels of lands, varying in size from one-quarter of an acre to 5.43 acres, and I am of the opinion that the sale price per unit of area of a small parcel is higher than the sale price per unit of area of a large parcel.

Examination of the sales particularised both in Appendix J prepared by the Superintendent and in Annexure C prepared by Mr. Carter shows that it is fallacious to assume that in every case there was during the material period a steady rise in the market value of lands in the vicinity, though generally speaking it is true that lands had been changing hands at a higher price in many cases.

For instance lot 508 (reference sale No. 2 in Appendix J and sale No. 17 in Annexure C) was sold on 14th December, 1959, for \$1,515 per acre and on 23rd March, 1960, for \$8,150 per acre. But when it was sold a third time seven months later the price dropped steeply to \$2,860 per acre. This third sale is shown in

the Superintendent's Appendix J. but not in Mr. Carter's Annexure C.

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10 It is equally fallacious to assume as Mr. Carter sought to prove by his graph Annexure F that where there was a sale before the material date, 1st April, 1960, and one afterwards in 1962, an extension of a straight line joining the two sales to cross the datum line on the graph would indicate the estimated price on the material date. For instance, lot 507 (reference sale No.3 on Appendix J and sale No. 19 in Annexure C) was sold on 14th December, 1959, at \$1,520 per acre and on 4th December, 1962, at \$165,620 per acre, but the fact that there had been a rise but not a steep rise in the value of this land on 1st April, 1960, is shown by the fact that about 4 months later on 25th July, 20 1960, as indicated in Appendix J, it changed hands at only \$3,140 per acre. This lot 507 is very close to the two lots in question.

30 Appendix J shows two other lands which dropped in price before the material date. Lot 8856 (reference sale No. 15) was sold on 19th November, 1959, at \$13,700 and on 23rd March, 1960, at \$8,150 per acre and lot 116 (reference sale No. 18) was sold on 28th August, 1959, at \$23,600 and on 4th March, 1960, at \$15,700 per acre. It is true that these two prices for lot 116 are more than Mr. Carter's estimated commencing market value for the two lands in question but it is to be noted that the price included, according to Appendix J, a house on the occasion of the first sale and two houses on the occasion of the second sale and also the land is only 0.28 acre in area and is 40 situated according to the map in Appendix J not very far from the junction of the Kwong Lee Bank Road and the Pending Road and therefore closer to the heart of Kuching town.

It will be recalled that Mr. Carter's estimated market value of the first lot in question was \$11,900 per acre and of the second lot \$16,900 per acre and that the average price

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for the two lots was \$13,900 per acre.

Examination of the sales made available shows three sales before 1st April, 1960, at a price exceeding \$11,900 per acre, Mr. Carter's lower estimated value.

- (a) Lot 116 (reference sale No. 18 in Appendix J) as already noted above changed hands on 28th August, 1959, at \$23,600 per acre and on 4th March, 1960, at \$15,700 per acre, but the land is only 0.28 acre in area and is closer to the town centre and the price included, as already said, one house on the occasion of the first sale and two houses on the occasion of the second sale. 10
- (b) Lot 405 (reference sale No. 12 in Appendix J and sale No. 4 in Annexures C and A-1) was sold on 18th January, 1960, at \$17,400 per acre. Counsel for the owners made much of this sale before this Court, emphasising that it took place only three months before the material date, but this price included one attap house and the land itself was nearer the centre of the town and is only 0.93 acre in size and experience has shown that a small parcel fetches more per unit of area than a large parcel. 20 30
- (c) Lot 2332 (reference sale No. 21 in Appendix J) was sold on 9th March, 1960 at \$20,900 per acre, but again this land is closer to the town centre and is small in size.

In contrast to the above three sales, there were two sales in March, 1960, that is one month before the material date, at prices well below \$11,900 per acre.

- (a) Lot 508 (reference sale No. 2 in Appendix J and sale No. 17 in Annexure C) was sold on 23rd March, 40

1960, at \$8,150 per acre and yet this land is small in size (0.35 acre), included one wooden house and is very close to the two lots in question.

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- 10 (b) Lot 8856 (reference sale No. 15 Appendix J and sale No. 26 in Annexure C) was sold on 23rd March, 1960, at \$8,140 per acre and yet this land is small in size (0.51 acre), included one wooden house and is closer to the centre of the town.

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There were five sales after the material date at prices below \$11,900 per acre.

- 20 (a) Lot 1120 (reference sale No. 13 in Appendix J and sale No. 24 in Annexure C) was sold on 2nd July 1960, at \$9,200 per acre including one timber house and one garage, its size being 3.26 acres.
- 30 (b) Lot 507 next door to lot 508 (reference sale No. 3 in Appendix J and sale No. 19 in Annexure C) was sold on 25th July, 1960, at \$3,140 per acre, though small in size being 0.35 acre. This lot is close to the two lots in question though further away from the town centre.
- (c) Lot 508 next door to lots 507 and 509 (reference sale No. 2 in Appendix J and sale No. 17 in Annexure C) was sold on 15th October, 1960, at \$2,860 per acre. This lot is small in size being only 0.35 acre.
- 40 (d) Lot 509 next door to lot 508 (reference sale No. 1 in Appendix J and sale No. 18 in Annexure C) was sold on 29th November, 1960, at \$3,600 per acre and yet it is small, being 0.69 acre in size.

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- (e) Lot 182 (reference sale No. 11 in Appendix J and sale No. 10 in Annexure C) was sold on 30th November, 1960, at \$11,550 per acre including one attap house and a few rubber trees. Again this lot is small in size being 0.52 acre.

There were several sales after the material date at prices exceeding \$11,900 per acre, but in every case the land involved was small in area and all of the lands are nearer to the town centre than the two lands in question and some of them had houses. 10

- (a) Lot 5936 (reference sale No. 22 in Appendix J) was sold on 9th July, 1960, at \$14,400 per acre, but this land is small (0.47 acre) is nearer the town centre and included one wooden house.
- (b) Lot 8032 (reference sale No. 23 in Appendix J) was sold on the same date as the above lot at \$13,800 per acre, but here again the land is small (0.87 acre), is nearer the town centre and included a factory and other buildings. 20
- (c) Lot 244 (reference sale No. 24 in Appendix J) was sold on 21st March, 1961, at \$32,600 and on 22nd June, 1961, at \$42,600 per acre, but this land again is small (0.23 acre), fronts a road close to the Kwong Lee Bank Road-Pending Road junction and is closer to the town centre. 30
- (d) Lot 516 (reference sale No. 17 in Appendix J) was sold on 17th April 1961, at \$20,000 per acre, but it is small in size (0.13 acre) and is nearer to the town centre and included a timber house.
- (e) Lot 8841 (reference No. 16 in Appendix J. and sale No. 27 in Annexure C) was sold on 2nd June, 1961, at \$19,700 and 6th October, 1961, at \$36,400 per acre, but here again the land is small in size (0.33 acre) and closer to the town centre. 40

- (f) Lot 9736 (reference sale No. 14 in Appendix J and sale No. 25 in Annexure C) was sold vacant on 8th June, 1961, at \$20,000 per acre, but again this lot is small in size (0.25 acre) and closer to the town centre.
- 10 (g) Lot 507 (reference sale No. 3 in Appendix J and sale No. 19 in Annexure C) was sold on 4th December, 1962, at \$165,620 per acre. This land is close to and to the east of the two lands in question, but it is small in size (0.35 acre), and as already indicated when sold on 25th July, 1960, three months after the material date it only fetched \$3,140 per acre.
- 20 (h) Lot 133 (reference sale No. 4 in Appendix J and sale No. 22 in Annexure C) was sold on the same date, 4th December, 1962, at \$36,700 per acre. This lot is further away from the town centre than the two lands in question, but it is small in size (1.09 acre). It fronts the river, is bounded
- 30 on one side by a road and as already explained above a similar land not far away, lot 131, fetched only \$7,368 per acre when sold on 15th August, 1962.

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Examination of the above sales does not appear to support Mr. Carter's estimated market value for the 2 large lots in question.

40 As already stated, together with the lands in question, the Government also resumed 17 other parcels. The situation of these lands in relation to the two lands in question is shown in Appendix B-1. None of the owners of the other lands resumed was awarded more than \$10,000 an acre.

The owners of 12 parcels accepted the Superintendent's awards without question as

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follows:

Lot 16180, 1.26 acre,	₹ 6,000 per acre plus something for improvements.	
Lot 16181, 0.85 acre,	₹ 6,000 per acre plus something for improvements.	
Lot 12287, 2.44 acres	₹ 7,000 per acre.	
Lot 11240, 0.93 acre,	₹ 7,250 per acre.	
Lot 4097, 1.6 acre,	₹ 7,250 per acre plus something for improvements.	10
Lot 11239, 0.87 acre,	₹ 7,340 per acre.	
Lot 4098, 2.37 acres,	₹ 7,250 per acre plus something for improvements.	
Lot 181, 0.44 acre,	₹10,000 per acre plus something for improvements.	
Lot 182, 0.52 acre,	₹10,000 per acre plus something for improvements.	20
Lot 183, 0.5 acre,	₹10,000 per acre plus something for improvements.	
Lot 184, 0.5 acre,	₹10,000 per acre plus something for improvements.	
Lot 185, 0.5 acre,	₹10,000 per acre.	

The owners of five other parcels protested their awards whereupon the Superintendent increased them to the following amounts:- 30

Lot 4729, 18.93 acres ₹ 5,000 per acre plus something for improvements.

	Lot 6868, 3.37 acres, \$ 5,935 per acre.	In the Federal Court of Malaysia
	Lot 5736, 5.43 acres, \$ 7,365 per acre.	
	Lot 4415, 2.50 acres, \$ 7,750 per acre plus some-thing for improvements.	No.14 Judgment of Suffian J. 17th January 1966
10	Lot 16688, 1 acre, \$10,000 per acre plus some-thing for improvements.	(Continued)

The awards and settlements varied from \$5,000 to \$10,000 per acre.

20 The owner of lot 4729 received in all \$96,495, the owner of lot 4415 \$30,315, the owner of lot 5736 \$40,000 and the owner of lot 4098 \$46,362. In my view these are sufficient in amount to make it worth the owners' while appealing to Court if they had been dissatisfied with the market value put on the lands by the Government. The fact that they did not do so shows that in their view the value was fair.

30 Considering sales of other lands in the vicinity and the acceptance of large awards by the owners of four of the 19 parcels resumed, it would seem that in agreeing in toto with Mr. Carter's valuation the assessors and Judge gave misleading importance to sales of small lots some of which close to the town, as was done by the Zanzibar Court in The Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co. & anor., (12) and to some sales long after the event, they omitted (they were not asked) to consider the effect on the market price a willing purchaser would be prepared to pay, of the risk of refusal or delay of sub-division permission, of the risk that the lands might never be required or might not be required for industrial and building purposes for a considerable time, nor did they consider the necessity of the prospective purchaser making allowances for interest on purchase price and development costs

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both foreseen and unforeseen over an uncertain period. As regards development costs, the agreed cost for fill up to 9' level alone was \$159,900 though the Superintendent contended that it was necessary to fill to a higher level, but be that as it may it is obvious that a lot of money has to be spent on fill.

What is the fair market value to be placed on the two lands in question? As already stated, the Superintendent awarded about \$5,460 per acre, offered \$7,000 per acre and the High Court increased the award to \$13,900 per acre. Taking into account all factors which should be taken into account it would appear that the proper value to be put on the two lands on the material date should be \$8,000 per acre for the first lot and \$9,000 per acre for the second lot and I would vary the award accordingly, except that the order for \$4,000 agreed valuation for improvements on the second lot remains undisturbed. The Superintendent to pay interest as under section 69.

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[After hearing counsel, Court makes no order as to costs in the High Court, and orders the respondents to pay appellant taxed costs of the appeal.]

Kuala Lumpur,
17th January, 1966.

Sgd. M Suffian
JUDGE

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P.J. Mooney Esq. for appellant.
G.S. Hill Esq. (S. Yong with him) for respondents.

TRUE COPY

(TNEH LIANG PENG)

Secretary to the Lord President
Federal Court of Malaysia

30.3.66

187.

NO. 15

ORDER

IN OPEN COURT

In the Federal
Court of
Malaysia

No.15

THIS 17TH DAY OF JANUARY, 1966

Order
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1966

O R D E R

THIS APPEAL coming on for hearing on the 15th, 16th and 17th days of November, 1965 in the presence of Mr. Peter Mooney of Counsel for the Appellant and Mr. G. Starforth Hill (Mr. S.K.T. Yong with him) of Counsel for the Respondent AND UPON READING the Notice of Motion dated 25th day of October, 1965 and the Affidavits of Tan Chiaw Thong and John Murray Carter affirmed on the 27th day of September 1965 and the 8th day of November 1965 respectively, all filed herein AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel as aforesaid IT WAS ORDERED that the Appeal do stand for judgment and the same coming on for judgment this day in the presence of Mr. Peter Mooney of Counsel for the Appellant and Mr. G. Starforth Hill of Counsel for the Respondent IT IS ORDERED that the Appeal be and is hereby allowed to the extent that the Award of the Court below of the sum of \$607,000 made up as to O.T. 16178 of the sum of \$306,000, and O.T. 16179 of the sum of \$301,000 be varied to the aggregate sum of \$370,140 made up as to O.T. 16178 of the sum of \$205,760 and as to O.T. 16179 of the sum of \$160,380 plus the agreed value of the improvements to O.T. 16179 namely the sum of \$4,000 AND IT IS ORDERED that there be no costs paid by either party in respect of the proceedings in the Court below AND IT IS LASTLY ORDERED that the Respondent do pay to the Appellant the costs of this Appeal.

Given under my hand and the seal of the Court this 17th day of January, 1966.

Sgd: xxx
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

(SEAL)

In the Federal
Court of
Malaysia

NO. 16

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

No.16

Order giving
conditional
leave to Appeal
to His Majesty
the Yang di-
Pertuan Agong
14th March
1966

CORAM:
THOMSON, LORD PRESIDENT FEDERAL COURT,
MALAYSIA; SYED SHEH BARAKBAH, CHIEF
JUSTICE HIGH COURT IN MALAYA; AND TAN
AH TAH, JUDGE, FEDERAL COURT, MALAYSIA.

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IN OPEN COURT

This 14th day of March, 1966

O R D E R

UPON MOTION preferred unto Court this day by
Mr. P.K. Nair of Counsel for the above named
Respondent in the presence of Mr. Peter Mooney
of Counsel for the above named Appellant AND UPON
READING the Notice of Motion dated the 7th day
of February 1966 and the Affidavit of Tan Eng Han
affirmed on the 3rd day of February 1966 and filed 20
herein on the 7th day of February, 1966 AND UPON
HEARING Counsel as aforesaid IT IS ORDERED that
leave be and is hereby granted to the above named
Respondent to appeal to His Majesty the Yang di-
Pertuan Agong from the Judgment of this Court
given on the 17th day of January 1966 upon the
following conditions:-

- (a) that the Respondent above named do
within 3 months from the date hereof
enter into good and sufficient security 30
to the satisfaction of the Chief
Registrar, Federal Court, Malaysia in
the sum of \$5,000.00 (Dollars Five
thousand only) for the due prosecution
of the Appeal, and the payment of all
such costs as may become payable to
the Appellant above named in the event
of the Respondent above named not
obtaining an Order granting then final
leave to Appeal or if the Appeal being 40
dismissed for non prosecution or of
His Majesty the Yang di-Pertuan Agong

ordering the Respondent above named to pay the Appellant's costs of the Appeal as the case may be; and

In the Federal Court of Malaysia

No.16

(b) that the Respondent above named do within three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England.

Order giving conditional leave to Appeal to His Majesty the Yang di-Pertuan Agong
14th March
1966
(Continued)

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AND IT IS LASTLY ORDERED that the costs of this application be costs in the cause.

Given under my hand and the Seal of the Court this 14th day of March 1966.

Sd. Pawan Ahmad

(L.S.)

CHIEF REGISTRAR,
FEDERAL COURT
MALAYSIA

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In the Federal
Court of
Malaysia

No. 17

Order giving
final leave
to appeal to
His Majesty
the Yang de-
Pertuan Agong
4th July 1966

NO. 17

ORDER GIVING FINAL LEAVE TO
APPEAL TO HIS MAJESTY THE YANG
DI-PERTUAN AGONG

CORAM:

SYED SHEH BARAKBAH, LORD PRESIDENT, FEDERAL
COURT, MALAYSIA; AZMI, CHIEF JUSTICE, HIGH
COURT IN MALAYA; MACINTYRE, JUDGE, HIGH
COURT IN MALAYA.

IN OPEN COURT

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This 4th day of July 1966

O R D E R

UPON MOTION made unto this Court this
day by Mr. Harry Elias of Counsel for the
above named Respondent in the presence of Mr.
Peter Mooney of Counsel for the above named
Appellant AND UPON READING the Notice of
Motion dated the 15th day of June 1966 and
the Affidavit of Tan Eng Han affirmed on the
2nd day of June 1966 and filed herein in
support of the said Motion AND UPON HEARING
Counsel as aforesaid for the parties IT IS
ORDERED that final leave be and is hereby
granted to the above named Respondent to
appeal to His Majesty the Yang di-Pertuan
Agong AND IT IS FURTHER ORDERED that the
costs of this Motion be costs in the said
Appeal.

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Given under my hand and the Seal of the
Court this 4th day of July, 1966.

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Sd. Pawan Ahmad.

(L.S.)

CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA

EXHIBITS

E X H I B I T "1"

MAP (KUCHING EAST)

(IN SEPARATE FOLDER)

E X H I B I T "2"

AERIAL PHOTOGRAPH

(IN SEPARATE FOLDER)

Exhibits

"1"

Map (Kuching
East)
Separate
Folder.

"2"

Aerial
Photograph
Separate
Folder.

Exhibits

"3"

Breakdown of
Figures

E X H I B I T "3"

BREAKDOWN OF FIGURES

Land:

K.O.T. 16178 - Area 25.72 acres

6.40 acres @ \$9,000 per acre = \$ 57,600

19.32 " " \$6,150 " " = 118,818

\$176,410

K.O.T. 16179 - Area 17.82 acres

3.40 @ \$10,000 per acre = \$ 34,000

14.42 @ \$ 6,500 " " = 93,730

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\$127,730

Improvements:

House, wooden, 3 bedrooms, 1 hall,
1 kitchen/dining room, 1 store,
1 passage, 1 footway. Attap leaf
roof, belian tiangs, plank walls,
part floor concrete part wooden,

996 sq. ft. = \$ 1,900

2 wells @ \$25/each 50

1 latrine 50

2 chicken houses 50

Cultivations (as under) 130

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Trees	Bearing	Not Bearing
Bananas	12 @ \$3 = \$36	61 @ \$1 = \$61
Jambu	4 @ 2/50 \$10	10/50 = \$ 5
Pineapples	-	6 = 1
Papaya	102/-	-
Coconut	-	2 @ 1/- = 2
Oranges (limo Kasturi)	3 @ \$3 = 9	
Total:	\$57	\$69
	69	
	\$126 say \$130	

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193.

Disturbance allowance = \$ 450

Site clearing and road = 1,000

\$3,630

\$131,360

\$307,778

Say \$307,780

Exhibits

"3"

Breakdown of Figures
(Continued)

Land:

K.O.T. 16178 - Area 25.72 acres

10 6.40 acres @ \$9,000 per acre = \$ 57,600

19.32 acres @ \$6,150 per acre = 118,818

\$176,418

K.O.T. 16179 - Area 17.82 acres

3.40 @ \$10,000 per acre = \$ 34,000

14.42 @ \$ 6,500 " " = 93,730

\$127,730

Improvements:

20 House, wooden, 3 bedrooms 1 hall,
1 kitchen/dining room, 1 store,
1 passage, 1 footway, Attap leaf
roof, belian tiangs, plank walls,
part floor concrete part wooden,
996 sq. ft. = \$ 1,900
2 walls @ \$25/each 50
1 latrine 50
2 chicken houses 50
Cultivations (as under) 130

Exhibits

"3"

Breakdown of
figures
(Continued)

Trees	Bearing	Not Bearing
Bananas	12 @ \$3 = \$35	61 @ \$1 = \$61
Jambu	4 @ 2/50 = \$10	10-/50 = 5
Pineapples	- 6	= 1
Papaya	1 @ 2/-- = 2	-
Coconut	- 2 @ 1/--	= 2
Oranges (limo Kasturi)	3 @ \$3 = 9	

Total:	\$57	\$69
	<u>69</u>	
	\$126	say \$130

Disturbance allowance = \$ 450

Site Clearing and road = 1,000\$3,630131,360

\$307,778

Say \$307,780

"4"

Map (Contour)
Separate
FolderEXHIBIT "4"MAP (CONTOUR)

(IN SEPARATE FOLDER)

EXHIBIT "5"

AGREED LIST OF PRICES

Exhibits

"5"

Agreed list
of prices

<u>SALE NO.</u>	<u>SECTION</u>	<u>LOT NO.</u>	<u>AREA-ACRES</u>	<u>YEAR OF EXPIRY</u>	<u>CONDITION OF TITLE</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>PRICE PER ACRE</u>	<u>REMARKS</u>
1.	Lease	6422	5.04	2033	NIL	1955	₹6,000 14/50th Share.	₹4,250	
2.	Lease	6421	2.09	2033	NIL	20/11/59	₹14,000	₹6,700	
3.	Lease	4098	2.37	2024	Agric. purposes	17/9/51	₹10,000	₹4,220	
4.	Lease	4097) 4098)	3.97	2024	Agric. purposes	27/7/57	₹28,000	₹7,053	
5.	Lease	6868	5.37	2028	Agric. purposes	1/12/50	₹ 6,200	₹1,155	
6.	KOT	16178	25.72	2811	Agric. purposes - Rubber	11/5/49	₹19,000	₹ 740	
7.	KOT	16178) 16179)	43.54	2811	Agric. purposes - Rubber	1946	₹ 1,500 2/3 rds. share	₹ 52	
8.	KOT	16179	17.82	2811	Agric. purposes - Rubber	11/5/49	₹21,000	₹1,178	
9.	KOT	5736	5.43	2027	Agric. purposes	8/10/57 9/5/58	₹16,833 ₹17,600 ½ share	₹3,100 ₹6,482	
10.	64	182	0.52	2030	Resid. Agric.	7/4/59 30/9/60	₹5,200 ₹3,000 ½ share	₹10,000 ₹11,538	
11.	64	183	0.50	2030	Resid. Agric. purposes	20/10/58	₹5,000	₹10,000	

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Exhibits

"5"
Agreed list
of prices
(Continued)

<u>SALE NO.</u>	<u>SECTION</u>	<u>LOT NO.</u>	<u>AREA-ACRES</u>	<u>YEAR OF EXPIRY</u>	<u>CONDITION OF TITLE</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>PRICE PER ACRE</u>	<u>REMARKS</u>
12.	64	184	0.50	2030	Resid. Agric. purposes.	20/10/58	₹ 5,000	₹10,000	
13.	64	185	0.51	2030	Resid. Agric. purposes.	8/4/60	₹ 5,100	₹10,000	
14.	KOT	1014	1.71	2024	Agric.	1947 27/1/59	₹ 324 ₹ 8,000 ½ share	₹ 190 ₹ 9,357	Steep Hillside
14A.	KOT	16002	2.94	2040	Agric.	27/1/59	₹ 5,000 ½ share	₹ 3,400	Salt water swamp
15.	Lease Lease	901 903	5.46 7.29	2046) 2040)	Factory purposes	20/6/52 2/9/52	₹267,000 ₹ 46,000 100/600 share.	₹20,941 ₹21,647	Vacant Land " "
						1/3/57	₹40,000 100/600 share.	₹18,824	
						11/12/58	₹ 8,100 9/600 share	₹42,353	Land & Buildings
						10/7/59	₹ 8,300 10/600 share	₹39,060	Land & Buildings
						31/7/59	₹ 8,000 10/600 share	₹37,647	Land & Buildings
						28/5/60	₹16,000 16/600 share	₹47,060	Land & Buildings
16.	KOT	9910	2.00	2024	Rubber	11/12/58	₹ 9,000	₹ 4,500	
17.	KOT	414	1.22	2024	Rubber	11/12/58 4/4/62	₹ 5,490 ₹ 4,000	₹ 4,500 ₹ 3,280	
18.	KOT	13272	3.07	2037	Agric. purposes - Rubber	11/2/59	₹ 8,289	₹ 2,700	

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<u>SALE NO.</u>	<u>SECTION</u>	<u>LOT NO.</u>	<u>AREA-ACRES</u>	<u>YEAR OF EXPIRY</u>	<u>CONDITION OF TITLE</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>PRICE PER ACRE</u>	<u>REMARKS</u>	<u>Exhibits "5"</u>
19.	KOT	10890	3.30	2018	Agric. purposes.	1/3/62	₱18,150	₱ 5,500	*Same purchaser	Agreed List of prices (Continued)
	KOT	384	2.17	2024	Rubber	1/3/62	₱11,935	₱ 5,500	Same purchaser	
20.	Lease	5551	1.94	2012	Agric. purposes. No pepper	19/2/62	₱ 4,000 4/5th share	₱ 2,577		
						21/2/62	₱10,670	₱ 5,500	*Same purchaser	
10 21.	KOT	11379	1.32	2027	Rubber	13/1/59	₱ 3,200	₱ 2,424		
22.	KOT	9322 9321	4.28 4.53	2024 2024	Rubber) Rubber)	1948 1949	₱1,500 ₱1,600	₱ 170 ₱ 180		
23.	KOT		8.81 4.53	2024	Rubber	15/11/62	₱36,000	₱ 7,947		
24.	KOT	4499	2.72	2026	Agric.	19/11/58	₱13,750	₱ 5,055		
25.	Lease	9429	3.08	2054	Rubber	1/4/60	₱ 8,008	₱ 2,600		
26.	KOT	9149	7.00	2024	Rubber	10/5/60	₱23,100	₱ 3,300		
27.	KOT	14104	1.07	2038	Agric. purposes - Rubber	8/4/59	₱ 4,000	₱ 3,738		
20 28.	KOT	412	2.97	2024	Rubber	7/7/53 10/2/54 13/8/56 5/2/57	₱ 3,000 ₱ 1,000 1/2 share. ₱ 2,000 2/3 share. ₱ 4,000 2/9 share.	₱ 1,010 ₱ 673 ₱ 1,010 ₱ 6,060		
29.	KOT	1303	3.00	1985	Rubber	21/7/62	₱16,000	₱ 5,333		
30 30.	KOT	13283	5.43	2024	Rubber	13/4/59 1/6/62	₱21,720 ₱33,666	₱ 4,000 ₱ 6,200		
31.	64	396	1.18	2037	Resid. Agric.	15/8/61	₱22,000	₱18,644		

<u>SALE NO.</u>	<u>SECTION</u>	<u>LOT NO.</u>	<u>AREA-ACRES</u>	<u>YEAR OF EXPIRY</u>	<u>CONDITION OF TITLE</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>PRICE PER ACRE</u>	<u>REMARKS</u>	<u>Exhibits "5"</u>
32.	64	397	1.15	2037	Resid. Agric.	17/7/61	₹21,150	₹18,391		Agreed List of prices (Continued)
33.	64	398	1.22	2037	Resid. Agric.	6/10/61	₹23,000	₹18,852		
34.	64	508	0.35	2020	Timber storage & buildings	14/12/59 23/3/60	₹ 530 ₹ 3,500 ½ share.	₹ 1,515 ₹ 8,140	Auction With ½ share of L.8856. Total area 0.86 acres Serian No.47.	
35.	64	509	0.69	2020	Timber storage & buildings	14/12/59 29/11/60	₹ 1,450 ₹ 2,500	₹ 2,100 ₹ 3,623	Auction	
36.	64	507	0.35	2020	Timber storage & buildings	14/12/59 25/7/60 4/12/62	₹ 530 ₹ 1,100 ₹20,000	₹ 1,514 ₹ 3,143 ₹57,143	Auction With Lots 151 & 152 Sec. 50 Padungan	
									Lot 152 (say) ₹20,000 Lot 151 (say) ₹40,000 Lot 507 (say) ₹20,000	
									Total Price	₹80,000
37.	64	131	1.14	2018	Industrial	15/8/62 31/10/62	₹ 8,400 ₹80,000	₹ 7,368 ₹70,175	With buildings. " "	
38.	64	132	1.08	2018	Industrial	30/9/58	₹ 4,100	₹ 3,796	Auction	
39.	64	133	1.09	2018	Industrial	7/6/58 4/12/62	₹ 4,300 ₹40,000	₹ 3,945 ₹36,700	Auction	
40.	64	134	1.11	2018	Industrial	25/4/59	₹ 3,010	₹ 2,712	Auction. Sale Not completed.	
41.	64	405	0.93	2027	Agric. purposes	18/1/60	₹16,150	₹17,366		
42.	64	190	0.22	2024	Agric. purposes	13/5/60 31/12/60 16/1/62	₹15,000 ₹20,000 ₹35,000	₹68,182 ₹90,909 ₹159,091		

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199.

<u>SALE NO.</u>	<u>SECTION</u>	<u>LOT NO.</u>	<u>AREA-ACRES</u>	<u>YEAR OF EXPIRY</u>	<u>CONDITION OF TITLE</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>PRICE PER ACRE</u>	<u>REMARKS</u>
43.	64	187	0.10	2798	Open	15/5/61 19/6/62	₹ 4,500 ₹ 5,000	₹45,000 ₹50,000	
44.	64	628	0.75	2035	Agric. purposes	10/12/60	₹14,250	₹19,000	This Lot & Lot 629 sold for ₹6,073 per acre in Dec. 1954
10 45.	KOT	1120	3.26	2024	Agric.	2/7/60	₹30,000	₹ 9,200	Timber house and garage.
46.	Lease	9736	0.25	1980	Agric.	8/6/61	₹ 5,000	₹20,000	
47.	Lease	8856	0.51	2037	"	19/11/59 23/3/60	₹ 7,000 ₹ 3,500 ½ share	₹13,700 ₹ 8,150	With ½ share of Lot 508 Serial No.34
48.	Lease	8841	0.33	2025	Agric.	2/6/61 6/10/61	₹ 3,250 ½ share. ₹12,000	₹19,700 ₹36,400	
49.	64	516	0.13	2021	Resid.	17/4/61	₹ 2,600	₹20,000	
20 50.	64	116	0.28	2018	"	20/8/59 4/3/60	₹ 3,300 ½ share. ₹ 2,200 ½ share	₹23,600 ₹15,700	
51.	64	115	0.13	2018	Resid.	4/1/60	₹1,500	₹11,550	One house, attap roof, plant walling.
52.	Lease	2062	1.12	2009	Pottery factory	31/1/59	₹18,000	₹16,100	Pottery factory
53.	Lease	2332	1.53	2024	Open	9/3/60	₹16,000 ½ share.	₹20,900	Empty land. Now Lot 060 Sec. 64 K.T.L.D.
30 54.	KOT	5936	0.47	2027	Open	9/7/60	₹ 6,750	₹14,400	One wooden house. Now Lot 643 Sec. 64 K.T.L.D.

Exhibits
"5"

Agreed List of prices (Continued)

200.

<u>SALE NO.</u>	<u>SECTION</u>	<u>LOT NO.</u>	<u>AREA-ACRES</u>	<u>YEAR OF EXPIRY</u>	<u>CONDITION OF TITLES</u>	<u>DATE OF SALE</u>	<u>SALE PRICE</u>	<u>PRICE PER ACRE</u>	<u>REMARKS</u>	<u>Exhibits "5"</u>
55.	KOT	8032	0.87	2027	Open	9/7/60	₹12,000	₹13,800	One factory, Rice Mill, oil mill, rubber mill & two rubber stores. Now lot 642 Sec. 64 K.T.L.D.	Agreed List of Prices (Continued)
10	64	244	0.23	2025	Agric.	21/3/61 22/6/61	₹ 7,500 ₹ 9,800	₹32,600 ₹42,600	Empty Land. " "	
57.	64	187	0.10	2798	Open	15/5/61 19/6/61	₹ 4,500 ₹ 5,000	₹45,000 ₹50,000	" " " "	
58.	Lease	7925	1.50	2013	Industrial	26/5/60	₹37,700	₹25,100	Empty Land. Now Lot 752 & part of Lot 751.	
59.	64	15	4.25*	2027	Agric.	15/3/62	₹ 8,800 ½ share	₹3,760	One old wooden house. Now Lot 339 Sec. 64 K.T.L.D. *Area amended to 4.11 acres vide L.1295/62.	
20	64	308	1.97	2777	Open	13/4/61	₹68,950	₹35,000	Empty Land.	
61.	64	310	1.94	2777	Open	22/10/60	₹67,900	₹35,000		
62.	64	584	0.637	2021	Industrial	26/8/61	₹17,350	₹27,200	Sold by Auction.	
63.	64	583	2.69	2021	"	26/8/61	₹41,000	₹15,200	Sold by Auction.	

EXHIBIT "6"LIST OF RESUMED PRICESExhibits
"6"List of
Resumed PricesLot 181 - Land Total \$ 4,400 accepted.

Lot 182 - Land = \$5200
 Attap Hut = 560
 Forge = 400
 Removal
 Expenses = 200
\$6360 accepted award.

10 Lot 183 - Land = \$5000
 House = 3600
 Dapor = 810
 Small
 building = 1570
 Jamban = 25
 Wells = 150
 Pigsty = 200
 Fish Pond = 855
 Removal
 Expenses = 200
\$12,410 accepted award.

20 Lot 184 - Land = \$5000
 Dwelling
 House = 1500
 Chicken house
 = 10
 Open shed = 150
 2 wells = 50
 Bath shed = 50
 30 Pigsty = 175
 Fish Pond = 50
 Fish Pond = 1080
 Removal
 Expenses = 200
\$8265 accepted award.

Lot 185 - Land = \$5100 accepted award.

No improvements.

<u>Exhibits</u>	Accepted Settlement	Award	
"6" List of Resumed Prices (Continued)	O.T.4729 - Land = \$94650	58,540	
	House = 1300	1,300	
	Pigsty = 175	175	
	Fish and pig Pond = 270	270	
	Removal Expenses = <u>100</u>	<u>100</u>	
		<u>\$60,385</u>	
		<u>\$96,495</u>	10
	Accepted Settlement	Award	
Lease 4415 - Land = \$19375		\$18,125	
Improvements including outbuildings etc. = 10540		10,540	
Removal expenses = <u>400</u>		<u>400</u>	
		<u>\$29,065</u>	
		<u>\$30315</u>	20
	Accepted Settlement	Award	
O.T.16688 - Land = \$10000		7250	
Improve- ments = 3725		2815	
Removal		200	
Expenses = 525			
Crops = <u>250</u>		<u>250</u>	
		<u>\$10515</u>	
		<u>\$14,500</u>	

	Accepted Settlement	Award	<u>Exhibits</u>
	O.T. 5736 - Land = <u>\$40,000</u>	\$35,295	"6"
	No improvements.		List of Resumed Prices (Continued)
	Lease 11239-Land = <u>\$ 6,387</u>	accepted award	
	No improvements.		
	Accepted Settlement	Award	
	O.T. 6868 - Land = <u>\$20,000</u>	\$11,795	
	No improvements.		
10	Lease 4097 - Land = \$11,600		
	Improvements = 17,200		
	Removal expenses = <u>400</u>		
		<u>\$29,200</u>	accepted award.
	Lease 4098 - Land = \$17,182		
	Improvements = 27,680		
	Removal expenses = 500		
20	Crops & Garden = <u>1,000</u>		
		<u>\$46,362</u>	accepted award.
	Lease 11240 - Land =	<u>\$ 6,742</u>	accepted award.
	No improvements.		
	O.T.16180 - Land = \$7560		
	3 pit graves = 3000		
	Removal and reinterment = <u>2500</u>		
30		<u>\$13,060</u>	accepted award.
	O.T.16181 - Land = \$5100		
	2 pit graves = 2000		
	Removal and reinterment = <u>2500</u>		
		<u>\$9600</u>	accepted award
	O.T.12287 - Land =	<u>\$17080</u>	accepted award
	No improvements.		

Exhibits
"7"
Record of
Floods

E X H I B I T "7"
RECORD OF FLOODS

Reference PWD/12/008(961)
PWD/D5/012/01(3)

PUBLIC WORKS DEPARTMENT,
KUCHING,
SARAWAK.

21st August, 1964.

Messrs. Yong & Co. Advocates,
P.O. Box 214,
KUCHING.

Dear Sirs,

10

With reference to your letter SY/65/61A, I append below the following available information on flood levels:-

Observe at Tanah Puteh Wharf

<u>Year</u>	<u>Highest flood levels</u>
1957	8.2
1958	8.5
1959	8.8

Observed at Pending Checking Station

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1963	10.96
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Observed at Biawak Wharf

1963	9.66
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Observed at Kuching Tide Recorder Station
Thompson Road

1963	10.6
1964	8.7

NOTE: All levels quoted are based on Lands & Surveys Precise Datum.

Yours faithfully,

30

(Sgd) Wang Teh Tsing.
For J.K. Wardzala,
LCS/TR. Director of Public Works.

E X H I B I T "8"

Exhibits

REPORT BY JOHN MURRAY CARTER

"8"

John M. Carter

Report by
John Murray
Carter
17th May, 1963

ARICS; FAB; FRVA; MREVA(S)

Chartered Surveyor.

Chartered Auctioneer and Estate Agent.

Member of the Real Estate Valuers Association
(Singapore) - Report and
Valuation

10

Messrs. Aik Hoe & Co. Ltd.

vs.

Superintendent of Lands and Surveys

First Division

SARAWAK

Land at Pending Road, Kuching.

O.T.16178 and O.T.16179

Terms of Reference

20

This Report has been prepared on the instructions of Messrs. Aik Hoe & Co. Ltd. consequent upon proceedings for resumption of the above land under the provisions of Part IV of the Land Code (Cap.81).

Introduction

The lands held under O.T. 16178 and O.T. 16179 were included in Gazette Notification No. 422 under Section 47 of the Land Code, published on 1st April 1960.

30

The lands were subsequently included in Gazette Notification No.569 under Section 48 of the Land Code, published on 28th April 1961.

Under the provisions of Section 60 of the

Exhibits
 "8"
 Report by
 John Murray
 Carter
 17th May, 1963
 (Continued)

Land Code, the market value of the lands is to be assessed as at 1st April 1960 being the date of publication of the Gazette Notification under Section 47 of the Land Code.

General Description

The location of the land is shown at Annexure A. Both lots possess extensive frontage to the Pending Road which leads to the Pending land stage, customs station and on to the oil wharf at Biawak. The Pending Road at this location is a branch extension of the main road leading to the Kuching New Port at Tanah Puteh.

10

O.T. 16179 has, within its boundaries, two small plots which contain graves. These lots (O.T. 16180 and 16181) constitute some hindrance to the development of the land but not a serious obstacle.

Both O.T. 16178 and O.T. 16179 are within a Mixed Zone and classified as Town Land.

20

Services

Both lots are within the water supply area of the Kuching Water Board and it is a reasonable assumption that mains water would be available for any development of an urban character, either housing or industry.

Electricity supply is not at present available. The nearest H.T. main is at the junction of Pending Road and Kwong Lee Bank Road on the route to Tanah Puteh Wharf. The distance from the junction to the subject land is approximately 1,100 yards or 0.6 of a mile. An overhead main cable for this distance would be an economic proposition if the whole of the two lots were developed for housing or industry. The all-in cost should not exceed \$11,000/-.

30

The whole of the Pending Peninsula is inside the Kuching Municipal Boundary and can expect to receive the benefit of municipal services to any urban development within the boundary.

40

TitlesExhibits

The title to O.T. 16178 is leasehold for 900 years from 17th July 1911 and there are no encumbrances.

"8"

Report by
John Murray
Carter
17th May, 1963
(Continued)

Title to O.T. 16179 is leasehold for 900 years from 17th July 1911. The land is subject to a right of way (L.1029/47 of 21st July 1947).

10 There are no freehold titles in Sarawak but these leases, by virtue of their length, are for all practical purposes equivalent to a freehold.

Areas and Heights

The contour heights and spot levels for both lots are shown on the plan at Annexure B.

20 The lowest recorded spot level on O.T.16178 is 5.8 feet but this appears to be an isolated low spot as there is no other spot level below 6.7 feet. An independent check of the level of the flat portion of this lot showed a general height of 7 feet.

The lowest recorded spot level on O.T. 16179 is 8.0 feet in two pieces and there is no other level below 8.5 feet. An independent check of the lowest portion on this lot gave a general height of 7.8 feet.

30 The level of highest high tide off Pending Point and Biawak Wharf is 7.44 feet. The highest recorded flood level, at Tanah Puteh, prior to 1st April 1960 was 8.8 feet in 1959.

These figures show that on 1st April 1960 the flat portion of O.T. 16178 was 5 to 9 inches below highest tide level and approximately 2 feet below highest known flood level.

The lowest portion of O.T. 16179 was approximately 6 inches above highest tide level and approximately 1 foot below highest known flood level.

Exhibits

"8"

Report by
John Murray
Carter
17th May, 1963
(Continued)

O.T. 16178 has an area of 25.72 acres. An area of 1.25 acres is above highest known flood level. The balance of 24.47 acres will require 2 feet of fill. The amount of fill is 79,000 cubic yards. The high ground within this lot will provide 20,000 cubic yards if cut to the 9-foot contour.

O.T. 16179 has an area of 17.82 acres. An area of 16.92 acres is above highest known flood level. 0.9 acres will require 1 foot of fill. The amount of fill is 1,500 cubic yards. The high ground within this lot will provide 142,000 cubic yards if cut to the 9-foot contour.

10

General Background on 1st April 1960

Kuching, the capital of Sarawak, is situated on the Sarawak River about 18 miles from the sea in flat country with ranges of hills to the south and west. The main town lies on the south bank of the river. The population of about 50,000 consists mainly of Chinese.

20

An increasing number of new residential areas have developed, mostly in the suburbs on south side of the river. Main electricity and water are both available, the former being supplied from a new power station opened in 1959.

Kuching is an important port which can be reached by vessels of up to 2,500 tons and is a regular port of call for ships from Singapore, Hong Kong, and other countries in South-East Asia. The new port area at Tanah Puteh, two miles down river, is under construction and is due to be completed in 1961.

30

There are daily air services between Kuching, Singapore, North Borneo and Brunei with a weekly service to Hong Kong.

The urban area contains an expanding network of metalled roads and there are metalled roads connecting Kuching with Bau and Serian. The Serian road is under extension to Simanggang.

40

The population of the Kuching municipal area has increased from 38,000 in 1947 to 50,600 in 1960. An increase of 33.3%.

Exhibits

"8"

The population of the Kuching rural area has increased from 58,600 in 1947 to 98,900 in 1960. An increase of 68.8%.

Report by
John Murray
Carter,
17th May, 1963
(Continued)

Port Facilities

10 The new port at Tanah Puteh has a wharf length of 800 feet and a least depth alongside 17 feet. Ships up to 350 feet in length and 17 feet draft will be able to use this wharf. The old wharves are accessible to vessels only up to 300 feet length and 15 feet draft or 280 feet length drawing 16½ feet.

Vessels above 350 feet length and 16 feet draft will continue to anchor at Pending which is 7½ miles down river.

20 There is an absolute physical limitation on the size of vessels which it is possible to bring up-river from Pending unless considerable river conservancy is undertaken. The extent of conservancy in the form of dredging and river bank containment would be very costly. It is obvious that the answer to the problem of providing additional and adequate port facilities in Kuching will involve the siting of an additional wharf or wharves at Pending Point.

Development in Kuching

30 Applications for approval of building plans in the Municipal area have averaged 415 per annum for the years 1957 to 1959 inclusive. During the same period the number of properties under assessment has increased by an average of 697 units per annum equivalent to an 18% increase in the number of rateable units each year. The rateable value of the Municipal area has increased from \$3.011 million at the end of 1956 to \$3.968 million at the end of 1959.

40 This is an average annual increase of approximately \$320,000/-; or 10% per annum as compared with a population increase averaging just over 2½% per annum.

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

An increase in property values running at four times the rate of population increase is an indicator of real prosperity and exceptional demand for land and property in general.

Property Market

During 1958 there was a general trade recession but the price of property was still on the upward trend. There was a brisk market for unimproved land. Available land within easy reach of the centre of town was dwindling. 10

During 1959 the property market was as brisk as in 1958 although there were no drastic fluctuations in values. There was increased building activity in the vicinity of the new port area at Tanah Puteh.

On 1st January 1960 the Municipal area was extended to include the new port area at Tanah Puteh and the whole of the Pending Peninsula. The price of property showed no signs of declining the land values in the suburbs, within easy reach of newly established bazaars and shophouse lots were on the upward trend. Newly erected shophouses were in great demand. 20

It was confidently expected that there would be intensive development of both commercial and residential buildings around the new port area at Pending. 30

The general impression over the three-year period from 1958 to 1960 is of a continuing healthy demand for property and a steady increase in values which were soundly based.

Land Titles in Sarawak

Land in Sarawak is classified as Mixed Zone Land over which any person may hold title, Native Area Land which may be occupied only by the indigenous peoples of Sarawak and Interior Area Land where no title may be issued but Native Customary Rights may be recognised. 40

Land may also be declared Town Land, Suburban Land or Country Land but such declarations do not affect the classification of the Land.

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

10 All land is vested in the Crown but may be alienated to individuals under lease. Under the Land Code leases are limited to a period of sixty years but under previous land laws some former leases and grants were issued for longer periods of up to 999 years. Many of the old titles take the form of occupation tickets and certificates.

20 Although Mixed Zone Land is apparently available to all non-indigenous people, in fact less than a quarter of all Mixed Zone Land in Sarawak is so available. The demand for Mixed Zone Land is correspondingly great; arising particularly from the Chinese community which makes up a third of the total population. The Chinese by tradition are strongly inclined towards land held on freehold or long leasehold title.

30 Individuals and companies entering Sarawak for the purpose of investing in land for urban development will be limited in their activities to the town and suburban Mixed Zone Lands. In most cases these individuals and companies will be attuned to a system of freehold and long leasehold titles. For this reason any land which is held under a long lease will be preferable to land held under short leases and can be expected to command a premium on this account.

Trend of Values

40 The first step in establishing the market value of land in April 1960 is to ascertain the trend in values. This is done by comparing sales of similar lands over a period of years. A schedule of all recorded sales in the Pending area between 1946 and 1962 is at Annexure C to this report.

Before dealing with these sales in detail, the following evidence should be considered

Exhibits
"g"

as a typical illustration of the movement in values in the area.

Report by
John Murray
Carter,
17th May, 1963
(Continued)

(1) Civil Appeal No. 3 of 1959
Superintendent of Lands
and Surveys, 1st Division
vs. Chin Fah Siong

When the Pending Road was widened and extended to provide access to the new wharf at Tanah Puteh one of the lands acquired was Lot 188 which had an area of 0.50 acres. The date for assessment of market value was 13th August 1958. 10

The owner claimed compensation at \$30,000/- per acre. The Superintendent awarded compensation at \$15,000/- per acre. The case was referred to the High Court which awarded compensation at \$25,000/- per acre. On appeal by the Superintendent the Court of Appeal restored the Superintendent's award at \$15,000/- per acre. 20

In view of the sequence of events in this case, it can be assumed that the final award of the Court of Appeal represented, as far as is humanly possible, a fully considered opinion of the market value of land at the location of Lot 188 on 13th August 1958, i.e. \$15,000/- per acre.

Lot 190 with an area of 0.22 acres is located on the Pending Road only 150 yards from the location of Lot 188. This lot was sold in May 1960 at \$68,000/- per acre; sold again in December 1960 at \$91,000/- per acre and sold a third time in January 1962 at \$159,000/- per acre. 30

The value history of Lots 188 and 190 has been shown on the graph at Annexure D. There can be no better illustration of the movement of values in the Pending area between 1958 and 1962.

Undoubtedly this increase was due to the construction of the new wharf at Tanah Puteh and the consequent improvement to the Pending Road but these influences would be general to all land in the Pending area. 40

Other instances of rises in values are as follows:-

Exhibits

"8"

(1) Lot 133 having an area of 1.09 acres and situated off Pending Road near the Pending Point Customs Station and Landing Jetty, was sold by auction in June 1958 at approximately \$3,950/- per acre.

Report by
John Murray
Carter,
17th May, 1963
(Continued)

10 This lot was resold in December 1962 at \$36,700/- per acre. The indicated value as at April 1960 is \$16,000/- per acre.
(Annexure E)

20 (2) Internal lands in general display the same trend, as shown at Annexure F. The lots which appear on this graph are situated away from the Pending Road and on either side of the road. The general rise in value is obvious and a marked increase occurs from 1958 onwards. From a level of approximately \$8,000/- per acre at the beginning of 1958 values had risen to \$20,000/- per acre by mid-1961. The indicated value of internal land on 1st April 1960 is \$15,500/- per acre.

Observation on Method

30 In analysing the trend of values and determining the general levels in April 1960, I have used evidence of the higher prices of which land was sold in preference to the average or any other level of values. The reasons for this are both practical and legal.

(a) In practice the higher sale figure declared in transfers or conveyances are more likely to be correct, provided they do not exceed other sales figures to an excessive degree.

40 (b) Where apparent dates of sales are in fact the dates on which the transfers or conveyances were executed there is no method to determine, from the public records, the dates on which the bargains were struck. It often happens that a considerable period elapses between the date of the bargain and

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

the date of transfer. In the result it can appear from the record that sales have taken place at prices below those of previous sales and in contradiction to the general trend of the market. Under these circumstances the only safe method is to ignore evidence which is obviously contradictory to the proved market trend. This in practice means that higher sales prices should be accepted in preference to lower prices when the market is rising.

10

(c) In an area where values are tending to rise continually, a purchaser cannot expect to obtain land at a figure below the price at which similar land has previously been sold. Nor will a seller be prepared to part with his land except at a higher price.

(d) On a rising market a valuation related to averages or any basis other than the higher sale prices would not be a correct estimate of market value.

20

(e) In the case of Ittimathu Favu vs. The State, 1951 K.L.T. 500, it was noted that in Land Acquisition cases, it is a well-recognised principle that it is not the lowest value that is to be awarded as compensation but the highest value that land will fetch having regard to its potentialities.

(f) In Adinarayana Sethy vs. Special Land Acquisition Officer, A.I.R. 1954 Mys.71, it was observed that where in a case the evidence shows that the price has had an abnormal rise in the locality due to war conditions, this fact must be taken into consideration in fixing the rate. The market value of land means the price which at a given time and place the land would fetch on sale according to the then existing state of the market.

30

Allowance for Cost of Earthworks

The sales which have been used for the purpose of establishing the general levels of values in April 1960 are all in respect of land which is above known flood level at the

40

date of sale, although some of the lands are only just above flood level. It is therefore necessary to allow for the estimated cost of filling the lands under consideration where the levels are below the known flood level.

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

Quotations obtained for earthworks are as follows:-

- 10 (a) Cutting and filling on site by D6 Bulldozers, each moving 200 cubic yards per day - \$150/- per day for each machine. (80 cents per cubic yard)
- (b) Cutting and filling on site involving transportation by lorry - \$2.40 per load of 3 cubic yards. (80 cents per cubic yard)
- 20 (c) Cutting from contractor's land and filling on site involving transportation by lorry - \$7.00 per load of 5 cubic yards. (\$3.- per cubic yard).

These quotations are for moving up to 2,000 cubic yards per day.

The quantities for cut and fill are as follows:-

O.T. 16178

30	Cut in the solid	20,000	cu.yds.
	Plus 20% for bulking	4,000	" "
		<hr/>	
	Move	24,000	" "
	Deposit on site	24,000	cu. yds.
	Less consolidation 10%	2,400	" "
		<hr/>	
	Consolidated fill on site		21,600 cu.yds.

<u>Exhibits</u>	<u>O.T. 16179</u>	
"8"		
Report by	Cut in the solid	55,000 cu.yds.
John Murray	Plus 20% for	
Carter,	bulking	11,000 " "
17th May, 1963		<hr/>
(Continued)	Move	66,000 " "
	Deposit on site	2,000 cu.yds.
	Less Consolidation 10%	200 " "
		<hr/>
	Consolidated fill on site	1,800 cu.yds.
	Deposit on O.T.16178	64,000 cu.yds.
	Less consolidation 10%	6,400 " "
		<hr/>
	Consolidated fill on O.T.16178	57,600 cu.yds.
	Balance of earth available for cutting on O.T. 16179 is 87,000 cubic yards.	
	Cost of earthworks will be:-	
	<u>O.T.16178</u>	
	(1) Cut, move and fill by lorry in O.T.16178, Bulk 24,000 cu.yds. 80 cts. per cu. yd.	£19,200/-
	(2) Cut in O.T. 16179, move and fill in O.T.16178 by lorry. Bulk 64,000 cu.yds. \$1.75 per cu.yd.	£112,000/-
	Clearing land 25.72 acres @ \$150/- per acre	3,800/-
		<hr/>
	Total cost of cutting and filling	£135,000/-
	Drainage work Plus supervision 5%	6,500/-
		<hr/>
		£148,600/-
	Approx. \$5,800 per acre over total area of 25.72 acres.	30

O.T.16179Exhibits

"8"

(1) Cut, move and fill by bulldozer in O.T.16179	
2,000 cu.yds. 80 cts. per cu. yd.	₹ 1,600/-
Land clearance	2,700/-
Drainage work	
Supervision	500/-
	<hr/>
	11,300/-

Report by
John Murray
Carter,
17th May, 1963
(Continued)

10 Overall Cost ₹650/- per acre

Allowances for other Factors(1) Roads

The extent of road frontage in relation to area of each lot is more than sufficient for development purposes.

20 O.T. 16178 has a frontage of 2,100 feet for an average depth of 580 feet and an area of 25.72 acres. This is 81 feet of main road frontage to every acre and $3\frac{1}{2}$ feet of frontage for every foot of depth.

30 Detached residential lots are required to have 66 feet of road frontage for each lot of a quarter acre which includes the road reserve. For this type of development the road frontage required would be 6,800 feet run. After deducting the main road frontage the length of internal road frontage would be 4,700 feet run. Assuming a half width not exceeding 20 feet the area required for roads would be 2.2 acres or 8.6% of the lot area. This form of development demands the maximum area for roads. Industrial development or higher density housing would not increase the requirement and in the case of industrial development the amount of land required for roads would probably be less.

O.T.16179 has a road frontage of approximately 1,200 feet for an average depth of 1,000 feet and an area of 17.82 acres. This

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

is 67 feet of main road frontage to every acre and 1.2 feet of frontage for every foot of depth.

Using the same example as for O.T. 16178 the total road frontage required for detached house development would be 4,700 feet. After deducting the main road frontage the length of internal road frontage would be 3,500 feet. The area of internal roads would be 1.6 acres equivalent to 9% of the lot area.

A useful yardstick of comparison is the proportion of frontage, depth and road area for a single quarter acre detached house lot.

10

The quarter acre is taken to include the land required for half the width of a 40 feet road fronting the lot. An area of 1,320 sq. feet is required for the road leaving 9,570 sq. feet of building land. The frontage is 66 feet giving a plot depth of 145 feet. The area required for the road is 12% of the quarter acre and there is less than 6 inches of road frontage to every foot of depth.

20

This basic illustration underlines the advantages possessed by the lands which are described in this Report. They possess exceptional road frontages in relation to both depth and area. In consequence the amount of land required for roads is only three quarters of the area which would be needed if there was no existing road frontage.

(2) Size of Plot

30

No allowance is required for the sizes of O.T. 16178 and O.T. 16179. The fact that they have areas of approximately 25 and 18 acres respectively renders the lands more viable than small plots. Because they are capable of development on a relatively large scale, it is possible to provide mains electricity and water at an economic cost per unit of development.

Development of 43.54 acres for housing at not less than four houses per acre would permit 217 houses. This in turn would generate a demand for shops and other community facilities.

40

The proposition that small lots are worth more per unit of area than large lots is a fallacy in the development market. The unit value of land is dependent upon more than its size. The factors mentioned above are far more important in the case of undeveloped land in the Pending Road area.

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

(3) Availability of Mains Services

10 Mains services are not currently installed along the Pending Road fronting O.T.16178 & 16179. The absence of services does not require an allowance in the context of this Report as the sales evidence directly used in assessing value refers to lands which also lack services.

20 Many of the sales refer to lands which are too small in area to be capable of bearing the cost of extending mains services to them. To this extent both the lots under discussion are more attractive to any developer and would therefore sell more readily at the values which have been adopted.

(4) Form of Title

Both the lots under consideration are held on long leases with over 800 years unexpired. All the other lands in the Pending area which have been used as sales comparisons are held on leases for 99 years or less.

30 In my experience vendors and purchasers who are accustomed to freehold titles will value a lease for 99 years or less at 10% to 25% less than a free hold or long leasehold depending on the unexpired term of the short lease. A lease for less than forty years would be of no interest to most overseas buyers.

(5) Grave Plots

40 O.T. 16179 is affected by two grave plots within its boundaries. These are O.T. 16180 and O.T. 16181. The effect of these lots is to sterilise areas required for supporting slopes when the land is levelled. The area of

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

O.T.16179 which is affected in this way is
47,500 sq. feet or 1.1 acres.

O.T. 16178 is affected to an extent of
7,000 sq. feet or 0.16 acres.

(6) Right of Way

The right of way over Lot 16179 is of
no real consequence. This can be incorporated
in any layout as a developmental road.

(7) Availability of Earth for Filling

The fact that O.T. 16178 and O.T.16179 10
are in the same ownership increases the value
of O.T.16178 because earth filling is available
from O.T. 16179. The quotations for earthworks
show that the cost of filling in this case
is less than half the cost if earth has to
be obtained from elsewhere.

(8) Future Potential

These lands are situated on the road
which leads to the site of the future ocean port
at Pending Point. The potential value of land 20
at this location is, on this account, higher
than for other land in the Pending peninsula.

Sales Evidence

A schedule of all recorded sales in the
locality between 1946 and 1962 is at Annexure C
to this Report. The sales which are considered
to be particularly relevant to the valuation
of O.T. 16178 and 16179 are marked on the plan
at Annexure A and have been extracted into a 30
separate schedule at Annexure A-1. These
sales are also entered on the Graph at
Annexure F where the relationship between the
sales is more readily apparent.

The evidence is all in respect of
internal lands in the sense that there is no
frontage to a metalled road. Some of the
lands have access via an unmade reserve for
road.

In assessing the value of O.T.16178

and 16179 it will be necessary to adjust the evidence of internal land values to reflect the additional value of main road frontage. This adjustment has been done in two parts.

(a) Adding the cost of constructing an access road to an internal lot.

(b) Adding an overall percentage to the value of internal lands to reflect the added value of land with main road frontage.

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

10 The sales which have been taken as the main indication of internal land values are:-

<u>Lot No.</u>	<u>Distance from main road</u>	<u>Cost of access road @ \$24/- per ft. run.</u>
4097 & 4098	600 feet	\$14,400/-
184 & 183	950 "	22,800/-
9736	300 "	7,200/-
133	900 "	21,600/-
		<hr/>
20 Average		<u>\$16,500/-</u>

The cost of a metalled carriageway to local authority requirements would not be less than \$24/- per foot run, and at this figure the average cost of road access to these lots would be \$16,500/-.

30 The added value due to location on a main road is in all cases a matter of judgment. In the present case, assuming that development will be either residential at four houses per acre or industrial, the added value will not be less than 10% and this is considered to be the minimum increment overall. This increment could be expressed as a larger percentage increase over a smaller portion of the total lot area immediately adjoining the road frontage.

40 It is not unusual to price the first 100 feet of depth from a main road at double the value of the remaining land. The formula, applied to O.T. 16178, would amount to an overall added value of approximately 17% as the total depth is approximately six times the depth of

Exhibits

"8"

Report by
John Murray
Carter,
17th May, 1963
(Continued)

100 feet which would be given double value.

For O.T. 16179 the overall added value would be 10% as the average depth is ten times the depth of 100 feet which would be given double value.

Adjustments are also required for the other factors discussed earlier in this Report. These must be applied separately to each of the lands under reference.

Value of O.T. 16178

10

Commencing value of internal land
at or above flood level \$15,500/-
per acre.

Value of 25.72 acre of
internal land @ \$15,500/-
per acre \$398,660/-

Add for saving on access
road 16,500/-
\$415,160/-

Add overall 10% to reflect
value of main road
frontage 41,516/-

20

Comparable value of land
with main road frontage \$456,676/-

Equivalent to 25.72 acres @ \$17,755.-per acre.

Gross area of land 25.72 acres

Deduct area estimated
for internal roads
2.2 acres

Deduct area
estimated for
slopes after
earthworks 0.16 acres
2.36 acres
Net area 25.36 acres

30

Net area 23.36 acres @ \$17,755/- per acre

\$414,760/-

Exhibits

"8"

Deduct cost of earthworks

148,600/-

Report by
John Murray

\$266,160/-

Carter

17th May, 1963

(Continued)

Plus 15% to reflect added value
of long leasehold title

39,920/-

\$306,080/-

Market value (Say)

\$306,000/-

Equivalent to \$11,900 per acre overall.

10 Value of O.T. 16179

Commencing value of internal land
at or above flood level \$15,500/-
per acre.

Value of 17.82 acre of
internal land @ \$15,500/-
per acre

\$276,210/-

Add for saving on access road

16,500/-

\$292,710/-

20 Add overall 10% to reflect
value of main road frontage

29,271/-

\$321,981/-

Equivalent to 17.82 acres @ \$18,070/- per acre

Gross area of land 17.82 acres

Deduct area estimated
for internal roads 1.6 acres

Deduct area estimated for
slopes after
earthworks 1.1 acres

2.70 acres

30

Net area 15.12 acres

<u>Exhibits</u>	Net area 15.12 acres @ \$18,070/- per acre	
"8"		\$273,217/-
Report by		
John Murray	Deduct cost of earthworks	11,300/-
Carter		<u>261,917/-</u>
17th May, 1963		
(Continued)		
	Plus 15% to reflect added value of long leasehold title	39,288/-
		<u>\$301,205/-</u>

Market Value (Say \$301,000/-)

Equivalent to \$16,900/- per acre overall.

Conclusion

10

For the reasons stated in this Report,
I value the lands under reference as
follows:-

O.T. 16178	\$306,000/-
O.T. 16179	<u>\$301,000/-</u>
Total	<u>\$607,000/-</u>

Equivalent to an overall value of \$13,900/-
per acre.

(Signed) John M. Carter

A.R.I.C.S.

Chartered Surveyor

20

17th May, 1963

E X H I B I T "8"

Annexures referred to in Carter's Report are in a separate Folder.

Exhibits

"8"

Annexures to John Murray Carter's Report In Separate Folder.

E X H I B I T "9"

RECONCILIATION BETWEEN SETTLEMENT ON OT.4729 AND VALUES OF OT. 16178 and OT. 16179

"9"

Reconciliation between settlement on OT.4729 and Values of OT. 16178 and OT.16179

Area 18.93 acres

Settlement	₹5,000/-	per	
		acre	
10 Add cost of access road 680 ft. @ ₹24/- per ft. run ₹16,300/-	860/-	" "	
	<u>₹5,860/-</u>	" "	
Add 10% for main road frontage	586/-	" "	
	<u>₹6,446/-</u>	" "	
Add cost of earthworks	9,540/-	" "	
	<u>₹15,986/-</u>		
Add 15% for long leasehold title	1,599/-	" "	
	<u>₹17,585/-</u>		
20 Comparable Value of OT.16179 (Say)	₹17,600/-	" "	

<u>Exhibits</u> "9" Reconciliation between settlement on OT.4729 and Values of OT. 16178 and OT.16179 (Continued)	Settlement	₹ 5,000/- per acre	
	Add cost of access road	860/-	" "
		₹ 5,860/-	" "
	Add 10% for main road frontage	586/-	" "
		₹ 6,446/-	" "
	Add additional cost of earthworks	6,400/-	" "
		₹12,846/-	" "
	Add 15% for long lease- hold title	1,285/-	
		₹14,131/-	
	Comparable Value of OT. 16178 (Say)	₹14,100/-	" "

Estimated Cost of Filling
OT.4729

Area 18.93 acres	824,590 sq.ft.	
Depth of fill 3 ft.	2,473,770 cu.ft.	
=	91,600 cu. yds.	20

Earth Quantities

Cut in solid	84,800 cu.yds.
Bulking + 20%	16,960 " "
Move and fill	101,760 " "
Consolidation - 10%	10,180 " "
Consolidated Fill	91,580 " "

Move 101,760 cu. yds. @ ₹1.70 per cu. yd.
₹172,990/-

Hire of Bulldozer 51 days
@ ₹150/- per day 7,650/- 30

₹1,9,640/-

Equivalent to 18.93 acres @ ₹9,540/
per acre.

E X H I B I T "10"

LIST OF AGREED FIGURES OF COST OF
EARTH WORKS

Exhibits

"10"

List of
Agreed figures
of Cost of
Earth Works.

80 cts. cut and fill within site)
 \$1.75 site to site
 \$3.-- importing
 \$150.-- p.a. site clearance
 \$13,000.-- drainage on both titles

E X H I B I T 11

"11"

Letter -
Director of
Public Works
to Director of
Lands and
Surveys
18th August
1964

10

LETTER DIRECTOR OF PUBLIC WORKS
TO DIRECTOR OF LANDS AND SURVEYS

Director of Lands & Surveys
2 copies - (1 copy for Supt. of
Lands & Surveys, 1st Division.
(with enclosure)

Director of Public Works.
Acquisition of Land at
New Port Development Area.

PWD/12/008/954 18th August, 1964

20

V/5211-3/2/9 17.3.64

With reference to para 2 of the above-
mentioned memo from Supt. of Lands & Surveys,
First Division, the informations requested are
as follows:-

(1) Highest flood levels

<u>Exhibits</u> "11" Letter - Director of Public Works to Director of Lands and Surveys 18th August 1964 (Continued)	(a) recorded at Tanah Puteh Wharf on 30.12.1959 by the Resident Engineer, Tanah Puteh wharf is	+ <u>8.8'</u>	
	(b) recorded at Pending Checking Station, Sg. Kuap on 29.2.63 by the Store Holder is	+ <u>10.96'</u>	
	(c) recorded at Tan Tien Petrol Kiosk Jetty, Thomson Road, Kuching on 28.2.64 by a tide recorder is	+ <u>8.7'</u>	10

(Note: All the above quoted flood levels are to L. & S. precise datum)

(2) The minimum height of land a.m.s.l. considered necessary for industrial development of the two sites should be +11.5'

(3) & (4) Treating the earthwork quantities separately, the estimated costs are as follows:-

Lot 16179

20

(A) Based on non-disturbance of the two cemetery areas and surrounding land:-

(a) Cut and fill in ordinary ground, haul not exceeding 100 yards:

29,040 cu.yds. @ \$3.--/cu.yd. \$ 87,120.--

(b) Level off site and grade surface to drainage channels:

77,840 sq. yds. @ \$0.50/-
sq. yd.

\$ 38,920.--

30

Total: \$126,040.--

(Quantity of soil above 11.50' level available as fill for Lot 16178 = 111,310 cu. yds.)

(B) Based on considering the cemeteries ordinary land which is part of the total developable area:-

Exhibits

"11"

Letter -
Director of
Public Works
to Director
of Lands and
Surveys
18th August
1964
(Continued)

10

(i) Cut and fill, etc. not exceeding
100 yds.:
30,540 cu.yds. @ \$3.-/cu.
yd. = \$ 91,620.-

(ii) Level off site and grade surface
to drainage channels:

92,030 sq. yds @ \$0.50/-
sq.yd. = \$ 46,015.-

Total: \$137,635.-

Quantity of soil above 11.50' level
available as fill for Lot 16178 = 142,810
cu.yds.).

Lot 16178

(C) On the basis of condition (A) above
pertains:

(i) Cut and fill, etc. between

20

hauling distances 0-200 yds.:

16,890 cu. yds @ \$3.-/cu.
yd. = \$ 50,670.-

(b) Cut and fill, etc. between

hauling distances 200-400 yds.:

67,000 cu.yds. @ \$3.20/cu.yd.
= \$214,400.-

(c) Cut and fill, etc. between

hauling distances 400-600 yds.:

30

43,350 cu.yds. @ \$3,40/-cu.yd.
= \$147,390.-

(ii) Import fill and dump where
required

42,990 cu. yds. @ \$6.50/cu.yd.
= \$279,435.-

230.

Exhibits

"11"

Letter -
Director of
Public Works
to Director
of Lands and
Surveys
18th August
1964
(Continued)

(iii) Level off site and
grade surface to
drainage channels:

116,760 sq.yds. @
\$0.50/sq.yd. = \$58,380.-

Total: \$750,275.-

(D) On the basis that condition (B) prevails,
and that the fill thus available from
the cemeteries average out at a haul
of between 400-600 yds.:

10

(i) Cut and fill etc. between
hauling distances 0.200 yds:

16,890 cu.yds. @ \$3.-/cu.yd.
= \$ 50,670.-

(b) Cut and fill etc. between
hauling distances 200-
400 yds.:

67,000 cu.yds. @ \$3.20/cu.
yd. = \$214,400.-

(c) Cut and fill etc. between
hauling distances 400-
600 yds.:

20

74,850 cu.yds. @ \$3.40/
cu.yd. = \$254,490.-

(ii) Import fill and dump
where required

11,490 cu.yds. @ \$6.50.-/
cu.yd. = \$ 74,685.-

(iii) Level off site and grade
surface to drainage channels:

30

116,760 sq.yds. @ \$0.50.-/
sq.yd. = \$ 58,380.-

\$652,625.-

Summary of Costs:

Section A and Section C	=	<u>₹876,315.-</u>
Section B and Section D	=	<u>₹790,260.-</u>

Exhibits

"11"

Letter -
Director of
Public Works
to Director
of Lands and
Surveys
18th August
1964

(Continued)

(Note: The unit cost for cut and fill used is based on P.W.D. estimation).

- 10 (5) A copy of drawing No.64/12 showing the proposed scheme for drainage of the two sites, including necessary drains to prevent additional flooding to surrounding land is enclosed for your retention and information. The following explanatory notes however are considered necessary:

(a) Rainfall:

A rainfall intensity of 4" per hour is used which is the maximum rainfall intensity which occurred once in 5 years as recorded in Kuching.

(b) Drainage Channels:

- 20 The drainage channels are designed to allow the efficient discharge of surface run off resulting from a rainfall of 4" per hour over the catchment area and on the assumption that the high water level of Sq. Sarawak is + 7.45'. Earth channels are adopted.

(6) Estimated Cost of Drainage Scheme(I) Lot 16179

- 30 (a) Excavating channels and disposal of spoil 1,320 cu.yds. @ ₹6.- per cu.yd. ₹7,920.-
- (b) Trimming, compacting filled sides of channels 1,670' @ ₹1,00 1,670.-
- (c) Reconstruction of culvert (Pending Road) (on pro-rata basis) 1,500.-
- (d) Contingencies (allow approx. 10%) 1,109.-
- Total ₹12,199.-
Say ₹12,000.-

<u>Exhibits</u> "11" Letter - Director of Public Works to Director of Lands and Surveys 18th August 1964 (Continued)	(II) <u>Lot 16178</u> (a) Excavating channels and disposal of fill 1,440 cu.yds @ \$6.- per cu. yard : \$ 8,640.- (b) Trimming, compacting filled sides 670' @ \$1.00 670.- (c) Reconstruction of culvert (Pending Road) (on pro-rata basis) \$ 1,500.- (d) Clearing of channel ES (Assuming no fill) 1,500 feet @ \$1.50 2,250.- 10 (e) Contingencies (allow approx. 10%) 1,306.-	
	Total \$14,366.- Say \$14,000.-	

Summary of Costs:

(I) For Lot 16179 = \$12,000
 (ii) " " 16178 = 14,000

Estimated cost of drainage scheme = \$26,000 20

(Note: The unit cost for excavation used is based on P.W.D. estimation)

2. Any explanation if required will be provided on request.

3. The delay in replying is regretted.

(Sgd) J.K. Wardzala,
 Director of Public Works.

NSK/TR.

233.

E X H I B I T "13"

MAP OF FLOOD AREAS, KUCHING AREA

(IN SEPARATE FOLDER)

Exhibits

"13"

Map of Flood
Areas Kuching
Area -
Separate
Folder.

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

IN THE MATTER of Civil Suit No. C/70/63 of 1963 in the High
Court in Borneo at Kuching

AND IN THE MATTER of the Land Code (Chapter 31 of the Laws of
Sarawak) Part IV

AND IN THE MATTER of the acquisition of K.O.T. 16178 and
16179 of Kuching

B E T W E E N:

AIR HOE & COMPANY LIMITED
(Objector) APPELLANT

- and -

SUPERINTENDENT OF LANDS
and
SURVEYS FIRST DIVISION
(Respondent) RESPONDENT

RECORD OF PROCEEDINGS

COWARD CHANCE & CO.,
St. Swithin's House,
Walbrook,
London, E.C.4.

STEPHENSON HARWOOD & TATHAM,
Saddlers Hall,
Gutter Lane,
Cheapside,
London, E.C.2.

Solicitors for the Appellants Solicitors for the Respondents