

10, 1970

No. 3 of 1969

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO. 33 OF 1967  
(On appeal from Original Jurisdiction Action No. 1382 of 1965)

BETWEEN

CHANG LAN SHENG

Appellant

and -

THE ATTORNEY GENERAL

Respondent

RECORD OF PROCEEDINGS

Volume I

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
6 - DEC 1971  
25 RUSSELL SQUARE  
LONDON W.C.1

**WILLIAMS & JAMES,**  
3/4 South Square,  
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*Solicitors for the Appellant*

**CHARLES RUSSELL & CO.,**  
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*Solicitors for the Respondent*

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

6 DEC 1971

25 RUSSELL SQUARE  
LONDON W.C.1

(1)

IN THE PRIVY COUNCIL

No. 5 of 1969

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 33 OF 1967

(On appeal from Original Jurisdiction

Action No. 1382 of 1965)

B E T W E E N

CHANG LAN SHENG

Appellant

- and -

THE ATTORNEY GENERAL

Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL

No.

of 1969.

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

CIVIL APPEAL NO.33 OF 1967

(On appeal from Original Jurisdiction

Action No.1382 of 1965)

B E T W E E N:

CHANG LAN SHENG

Appellant

10

- and -

THE ATTORNEY GENERAL

Respondent

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

No.1

Writ of Summons in Original Jurisdiction  
Action No.1382 of 1965 (General Indorsed)-  
17th June, 1965.

No.1

Writ of Summons  
in Original  
Jurisdiction  
Action No.1382  
of 1965  
(General Indor-  
sed) - Dated  
17th June, 1965

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

Action No.1382 of 1965.

20

B E T W E E N:

CHANG LAN SHENG

Plaintiff

THE ATTORNEY GENERAL

Defendant

ELIZABETH II, BY THE GRACE OF GOD OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN  
IRELAND AND OF HER OTHER REALMS AND  
TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH,  
DEFENDER OF THE FAITH

TO: The Attorney General of Attorney  
General's Chambers, Victoria in the Colony  
30 of Hong Kong.

In the Supreme  
Court of Hong  
Kong

\_\_\_\_\_

No.1  
Writ of Summons  
in Original  
Jurisdiction  
Action No.1382  
of 1965  
(General Indor-  
sed) - Dated  
17th June, 1965  
(Contd.)

We command you that within eight days after the service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of Chang Lan Sheng of Flat "C", Second Floor, Nos.45-47 Carnarvon Road, Kowloon in the Colony of Hong Kong, Merchant, and take notice that, in default of your so doing, the Court may give leave to the Plaintiff to proceed exparte

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WITNESS The Honourable Sir Michael Hogan, Knight, C.M.G. Chief Justice of Our said Court, the 17th day of June, 1965.

C.M. STEVENS

Sealed by Registrar.

STATEMENT OF CLAIM

The Plaintiff is the registered owner of Kowloon Inland Lot No.3793 together with the buildings erected thereon and now known as Nos.45 and 47 Carnarvon Road, by virtue of Crown Lease dated the 14th July 1937 for the term of 75 years as from the 24th day of June 1888. The said Crown Lease contains a right of renewal for a further term of 75 years without payment of any fine or premium and at such rent as shall be fairly and impartially fixed by the Director of Public Works as the fair and reasonable rental value of the ground at the date of such renewal. The Plaintiff has duly exercised the aforesaid right of renewal, but the Governor in Council or alternatively the Director of Public Works the purported to assess the rental value by taking into account the purported sale value that the said land could fetch, if a new Crown Lease was offered to a third party.

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The Plaintiff brings this Action against The Attorney General as Her Majesty's Attorney General representing the Crown in its right of Government of the Colony of Hong Kong.

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THE PLAINTIFF CLAIMS FOR

In the Supreme  
Court of Hong  
Kong

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No.1  
Writ of Summons  
in Original  
Jurisdiction  
Action No.1382  
of 1965  
(General Indor-  
sed) - Dated  
17th June, 1965  
(Contd.)

- 10 (a) a declaration that the rental value fixed or purported to have been fixed by the Governor in Council or alternatively by the Director of Public Works for the renewal of the said Crown Lease has not been fixed in accordance with the terms of right of renewal and is therefore null, void and of no effect.
- (b) a declaration that the Governor in Council or alternatively the Director of Public Works in fixing or purportedly fixing the rental value has acted ultra vires or otherwise in breach of the contract contained in the afore-said lease.
- 20 (c) a declaration that the Plaintiff is entitled to a renewed lease for the term of 75 years as from the 24th day of June 1963 at a fair and reasonable rental value to be fixed, without any fine or premium being payable, fairly and impartially by the said Director and otherwise in accordance with the provisions of the said lease.
- 30 (d) Further or alternatively a declaration as to the rental value that the Plaintiff is liable to pay on the renewal of the lease.
- (e) Further or alternatively declarations as to the principles and considerations which should guide the Director of Public Works in his fixing of a fair and reasonable rental value of the ground.
- 40 (f) Costs and such and other relief as this Honourable Court shall think fit.

Sd. A. Sanguinetti  
Counsel for the Plaintiff.

In the Supreme  
Court of Hong  
Kong

This writ was issued by PETER MARK & CO.,  
Grand Building, 11th floor, 15/18 Connaught  
Road, Central, Victoria, Hong Kong, Solicitors  
for the Plaintiff.

No.1  
Writ of Summons  
in Original  
Jurisdiction  
Action No.1382  
of 1965  
(General Indor-  
sed) - Dated  
17th June, 1965  
(Contd.)

Sd. Peter Mark & Co.

No.2  
Statement of  
Claim in  
Original  
Jurisdiction  
Action  
No.1382 of  
1965 -  
20th October  
1965

No.2  
Statement of Claim in Original  
Jurisdiction Action No.1382 of 1965  
20th October, 1965.

IN THE SUPREME COURT OF HONG KONG  
ORIGINAL JURISDICTION  
ACTION NO.1382 OF 1965

10

B E T W E E N:

CHANG LAN SHENG Plaintiff

and

THE ATTORNEY GENERAL Defendant

STATEMENT OF CLAIM

1. The Plaintiff is a Merchant residing  
at No.2 Moray Road, Ground Floor, Kowloon  
in the Colony of Hong Kong.

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2. The Plaintiff brings this action  
against the Attorney General of Hong Kong  
under the provisions of the Crown  
Proceedings Ordinance 1957 representing  
The Crown in its right of Government of  
the said Colony.

3. By a Lease dated the 14th day of July  
1937 and made between His late Majesty

King George VI (through the then Governor of Hong Kong) of the one part and Maria Ch De Yau of the other part (hereinafter referred to as "the Crown Lease"), His said Majesty demised unto the said Maria Ch De Yau her executors administrators and assigns All That piece or parcel of ground situate lying and being at Kowloon in the Colony of Hong Kong and registered in the Land Office as Kowloon Inland Lot No.3793 (hereinafter referred to as "the said property") at a rent of \$76.00 per annum for the term of 75 years as from the 24th day of June 1888 with a right of renewal for a further term of 75 years as is therein provided.

In the Supreme  
Court of Hong  
Kong

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No.2

Statement of  
Claim in Original  
Jurisdiction  
Action No.1382  
of 1965 -  
20th October,  
1965

(Contd.)

4. By the terms of the Crown Lease it was provided that the Lessee shall on the expiration of the term thereby granted, namely the said term of 75 years, be entitled to a renewed Lease of the property thereby expressed to be demised for a further term of 75 years without payment of any Fine or Premium therefor and at the Rent thereafter mentioned And that His said Majesty will at the request and cost of the Lessee grant unto the Lessee on the expiration of the term thereby granted a new Lease of the said property for the term of 75 years at such Rent as shall be fairly and impartially fixed by the Director of Public Works (hereinafter referred to as "the Director") as the fair and reasonable rental value of the said property (that is to say of the ground without having regard to any building thereon) at the date of such renewal and in all other respects such new Lease shall be granted upon the same terms and under and subject to the same reservation covenants stipulations provisoes and declarations as are contained in the Crown Lease with the exception of the proviso for renewal which shall not be contained in the new Lease.

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In the Supreme  
Court of Hong  
Kong

-----  
No.2

Statement of  
Claim in Original  
Jurisdiction  
Action No.1382  
of 1965 -  
20th October,  
1965

(Contd.)

5. During the said term of 75 years by divers acts and assurances in law and in particular by an Assignment dated the 27th day of January, 1948 and registered in the Land Office by Memorial No.182,237 (inter alia) the said property was assigned to and became and was vested in the Plaintiff, as assignee of the said Maria Ch. De Yau, for the then residue of the said term of 75 years with such right of renewal as aforesaid created therein by the Crown Lease. 10

6. By a letter dated the 25th day of February 1963, the Plaintiff through his former solicitors applied to the Registrar General (Land Office) as being the appropriate representative of the Crown for a renewal of the Crown Lease under the terms for a renewal set out in paragraph 4 herein, and by letter dated the 11th March, 1963, the Registrar General informed the Plaintiff's former solicitors that the Plaintiff's application had been forwarded to the Director. 20

7. The term of 75 years demised under the Crown Lease expired on or about the 23rd day of June 1963.

8. By a letter dated the 11th day of December 1963 the Plaintiff through his former solicitors wrote to the Director to inquire about the application for renewal specified in paragraph 6 herein and forwarded by the Registrar General to the Director. 30

9. By a letter dated the 23rd December 1963 the Superintendent of Crown Lands and Survey (hereinafter referred to as "the Superintendent") informed the Plaintiff's former solicitors that the question of renewal of the Crown Lease was "still under consideration consequent upon Government's announcement concerning renewable Crown Leases" and that he would be in a position to communicate with the Plaintiff's solicitors on the matter in the near future. 40

10. On or about the 10th day of August 1964 the Plaintiff's former solicitors received a letter from the Superintendent acting on behalf of the Crown in its right of government of the Colony of Hong Kong and dated the same date, which enclosed a Memorandum entitled "Alternative Terms" to a Crown Lessee on Application for renewal of a Lease of Land in Hong Kong and Kowloon (hereinafter referred to as "the Alternative Terms").

11. The Alternative Terms (inter alia) read as follows: "At the time of expiry of the term granted by a 75 years renewable lease, the lessee, under the terms of his lease, has a right to renewal for a further term of 75 years at a reassessed Crown Rent which, as stated in such lease, "shall, in the opinion of the Director of Public Works, be a fair and reasonable rent for the ground". The Director of Public Works, in accordance with legal advice, has related such reassessment of Crown rent to the full market value of the land (excluding buildings), as restricted by the terms of the lease, at the date of renewal. The reassessed annual Crown Rent is therefore computed on the basis of such full market value decapitalised over the whole renewal period of 75 years, with interest at 5% per annum, to which an addition is made in respect of the zone Crown Rent applicable to the area of the land subject to the renewal.

12. By a letter dated the 2nd December, 1964 the Superintendent informed the Plaintiff's former solicitors that the rent had been assessed at \$60,764.00 per annum.

13. By a letter dated the 3rd December, 1964 the Plaintiff's former solicitors (inter alia) informed the Superintendent that the Plaintiff did not agree that under the terms of renewal under the Crown Lease the Director was entitled to assess a fair and reasonable rental value of the said

In the Supreme  
Court of Hong  
Kong

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No. 2  
Statement of  
Claim of Original  
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1965

(Contd.)

In the Supreme  
Court of Hong  
Kong

\_\_\_\_\_  
No.2

Statement of  
Claim in  
Original  
Jurisdiction  
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of 1965 -  
20th October,  
1965

(Contd.)

property on a basis of decapitalisation of the full market value of the said property as stated in the Alternative Terms specified in paragraphs 10 and 11 herein.

14. By a letter dated the 21st December 1964 the Superintendent (inter alia) informed the Plaintiff's former solicitors that in consequence of an opinion obtained by a third party he the Superintendent was unable to amend the method of assessment for the rental value of the said property. 10

15. In the premises the Plaintiff contends that the assessment of the rental value of the said property has not been made by the Director as required under the terms and provisions for renewal in the Crown Lease.

16. Further and in the alternative the Plaintiff contends that if the assessment of the rental value of the said property has been made by the Director (which is not admitted) the same has not been made fairly and impartially and in accordance with the provisions in the Crown Lease. 20

17. Further and in the alternative the Plaintiff contends that if the assessment of the rental value of the said property has been made by the Director (which is not admitted) the same is not the fair and reasonable rental value of the said property i.e. the ground in accordance with the provisions in the Crown Lease. 30

18. Further and in the alternative the Plaintiff contends that the assessment of the rental value of the said property was not made on the date of the expiration of the lease demised as required under the provisions in the Crown Lease.

19. Further and in the alternative the Plaintiff contends that if the assessment of the rental value of the said property has been made by the Director (which is not admitted) the basis of such assessment has been made under the terms and provisions of the Alternative Terms specified in 40

paragraphs 10 and 11 herein, and not in accordance with the provisions of the Crown Lease.

In the Supreme  
Court of Hong  
Kong

10 20. Further and in the alternative the Plaintiff contends that if the assessment of the rental value of the said property was made by the Director (which is not admitted) the same was based on the purported sale of a new Crown Lease for 75 years of the said property to a third party at the full market value at or after the date of the expiration of the Crown Lease namely, the 24th June, 1963, and not in accordance with the terms thereof.

-----  
No.2  
Statement of,  
Claim in  
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20th October,  
1965  
(Contd.).

20 21. Further and in the alternative the Plaintiff contends that if the assessment of the rental value of the said property was made by the Director (which is not admitted) the inclusion in the said assessment of "a zone Crown rent" is ultra vires the powers of the Director under the provisions of "the Crown Lease."

30 22. Further and generally and in the final alternative the Plaintiff contends that if the assessment of the rental value of the said property was made by the Director (which is not admitted) inclusion in the said assessment of a decapitalisation of the full market value of the said property over a period of 75 years together with interest at the rate of 5% per annum is contrary to the provisions of the Crown Lease.

AND the Plaintiff claims :-

- 40 (a) A declaration that the rental value of the said property has not been fixed by the Director himself.
- (aa) Further and in the alternative the rent has not been fixed as required under the terms and provisions of the Crown Lease.
- (b) Further and in the alternative a declaration that (if the rental value of the said property has

In the Supreme  
Court of Hong  
Kong

No.2

Statement of  
Claim in Original  
Jurisdiction  
Action No. 1382  
of 1965 -  
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been fixed by the Director) the same is not a "fair and reasonable" rent having regard to the terms and provisions of the Crown Lease.

- (c) Further and in the alternative a declaration that (if the rental value of the said property has been fixed by the Director) the same has not been fixed "fair and impartially" as required under the terms and provisions of the Crown Lease. 10
- (d) Further and in the alternative a declaration that (if the rental value of the said property has been fixed by the Director) the same is null and void or otherwise should not be enforced having regard to the terms and provisions of the Crown Lease. 20
- (e) Further and in the alternative a declaration that (if the rental value of the said property has been fixed by the Director) the same was not assessed at the date of the expiration of the Crown Lease, namely the 23rd day of June 1963.
- (f) Further and in the alternative a declaration that the Plaintiff is entitled to a renewed Lease of the said property for a further term of 75 years as from the 24th day of June 1963 at a fair and reasonable rental value to be fixed fairly and impartially by the Director and otherwise in accordance with the terms and provisions of the Crown Lease. 30
- (g) Further and in the alternative a declaration that (if the assessment of the rental value of the said property has been fixed by the Director) the same is "ultra vires" the terms and provisions 40

11.

of the Crown Lease or otherwise that the rental as fixed should not be enforced in as much as the same includes the following :

- (I) A decapitalisation of the full market value of the said property over a period of 75 years; and
- (II) Interest on the capital amount at the rate of 5% per annum compounded over the term of renewal.

In the Supreme  
Court of Hong  
Kong

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No.2  
Statement of  
Claim in Original  
Jurisdiction  
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of 1965 -  
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1965  
(Contd.)

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~~(h) Such further declarations or and other relief that this Honourable Court shall think just.~~

(i) Costs.

DELIVERED this 20th day of October 1965.

Signed A. Sanguinetti

Counsel for the Plaintiff.

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In the Supreme  
Court of Hong  
Kong

No.3  
Statement of Defence in Original  
Jurisdiction Action No.1382 of 1965  
10th November, 1965

No.3  
Statement of  
Defence in  
Original  
Jurisdiction  
Action No.1382  
of 1965 -  
10th November,  
1965

IN THE SUPREME COURT OF HONG KONG  
ORIGINAL JURISDICTION  
ACTION NO.1382 OF 1965

BETWEEN:     CHANG LAN SHENG             Plaintiff  
  
   and

   THE ATTORNEY GENERAL Defendant             10

STATEMENT OF DEFENCE

1.     The Defendant admits paragraphs 1 to 14 inclusive of the Statement of Claim but will refer at the hearing hereof to the several documents therein mentioned for the full terms and effect thereof.

2.     As to paragraphs 9, 10 and 11 of the Statement of Claim the Defendant states that prior to the month of April 1963 the Director had personally formulated a procedure for the purpose of determining fair and reasonable rental values of all properties the 75-year leases whereof were due for renewal in cases where such leases contained terms as to renewal similar to those contained in this Crown lease. In so doing the Director acted fairly and impartially. The procedure adopted by the Director involved the application of a mathematical formula for the decapitalization of the capital value to a theoretical purchaser in the open market of the assignment of the lease of the property in question without buildings for the period of renewal on the assumption that such theoretical purchaser would be liable to pay the zone Crown rent of \$5,000 per acre per annum. The said procedure was

mentioned in the Government announcement referred to in paragraph 9 of the Statement of Claim and was amplified as one of two alternatives open to persons entitled to renewal of such leases in the "alternative terms" referred to in paragraphs 10 and 11 of the Statement of Claim. The Defendant will refer to the said announcement and alternative terms at the trial hereof for the full terms and effect thereof.

10

3. On or about the 1st day of April, 1963, the Director personally fixed the sum of \$375 per square foot as the fair and reasonable capital value of the premises to a purchaser in the open market. Thereafter by the adoption of the method of procedure referred to in paragraph 2 hereof, the Director fixed as a fair and reasonable rental of the premises the full value of the land decapitalized at 5% over the period of 75 years plus the zone Crown rent at the rate of \$5,000 per acre per annum.

20

4. As to paragraph 12 of the Statement of Claim the Defendant states that the letter dated the 2nd December, 1964 therein referred to was written in reply to a letter of enquiry from the Plaintiff's former solicitors dated the 14th October, 1964 as to "what would be the amount of Crown rent payable in respect of the premises under -

30

(a) the legal option; or

(b) a regrant restricting the lot to its present development".

The said letter of the 2nd December, 1964, stated that the restricted and the full Crown rent would be the same, namely \$60,764 per annum.

40

5. The Defendant does not accept the contentions contained in paragraphs 15 to 21 inclusive of the Plaintiff's Statement

In the Supreme  
Court of Hong  
Kong

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No.3

Statement of  
Defence in  
Original  
Jurisdiction  
Action No.1382  
of 1965.-  
10th November,  
1965.

(Contd.)



In the Supreme  
Court of Hong  
Kong

No.3

Statement of  
Defence in  
Original  
Jurisdiction  
Action No.1382  
of 1965 -  
10th November,  
1965

(Contd.)

of Claim and insofar as the same may be said to consist of statement of fact denies the same. The Crown was at all times willing to grant to the Plaintiff a renewed lease of the premises. By reason of the facts hereinbefore pleaded, it is contended that the rent was fairly and impartially fixed by the said Director acting personally as the fair and reasonable rental value of the ground as at 23rd June, 1963.

10

6. The Defendant denies that the Plaintiff is entitled to the declarations claimed. As to the declaration referred to in paragraph 22 (f) of the Statement of Claim the Defendant has at all material times agreed that the Plaintiff is entitled to a renewed lease of the said property for a further term of 75 years as from the 24th June, 1963, at a fair and reasonable rental value to be fixed fairly and impartially by the Director and otherwise in accordance with the terms and provisions of the Crown lease and has at all times been willing to grant such a renewed lease. The fair and reasonable rental value of the premises has been fixed fairly and impartially by the Director.

20

7. The Defendant denies that the Plaintiff is entitled to the declarations claimed or to any other relief.

30

Dated this 10th day of November 1965.

Signed

Counsel for the Defendant.

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15.

No.4  
Reply - 16th December, 1965

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IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION  
ACTION NO.1382 OF 1965

In the Supreme  
Court of Hong  
Kong

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No.4  
Reply - 16th  
December, 1965

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B E T W E E N:

CHANG LAN SHENG                      Plaintiff

and

THE ATTORNEY GENERAL              Defendant

-----  
R E P L Y

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1.     The Plaintiff joins issue with the Defendant on his Defence save and except as the same consists of admissions.

20

2.     In further answer to paragraphs 2 and 3 thereof, if the Director personally formulated the procedure mentioned therein (which is denied), the Plaintiff contends that the said procedure was formulated and the assessment made by the Director in such a manner as to make the same ultra vires the provisions and the terms of the Crown Lease.

Dated this 16th day of December, 1965.

Signed   A. Sanguinetti

Counsel for the Plaintiff.

No. 5

THE JUDGE'S NOTES OF THE EVIDENCE

In the Supreme  
Court of Hong  
Kong

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No. 5  
The Judge's  
Notes of the  
evidence

Coram: Scholes, J.

25th February, 1967.

At 10.00 a.m.

Bernacchi Q.C. & Sanguinetti  
(Peter Mark & Co.) for Plaintiff.

O'Connor C. Sr. & Miss Collins C.C,  
for Defendant.

(1) P.W. Plaintiff - Chang Lan Sheng 10  
Affirmed in Shanghainese.

Court

Q. In 1960 you planned further  
development of property?

A. Yes

Q. To replace the existing 5  
storey building.

A. Correct.

Q. And for that purpose you  
prepared plans for a 10 storey building. 20

A. Yes.

Q. And you caused the 5 storey  
building to demolished?

A. Correct.

Q. The superstruction of 10 storey  
building started in July 1963?

A. The construction work began on  
the 16.7.1963.

I produce Building consent  
called Form 40 from the Building  
Authority (Marked Ex.E10).

30

27th February 1967.

10.05 a.m.

p.210 Court resumes; appearances as before  
(1) P.W. Plaintiff O.F.A.  
XX cont'd

In the Supreme  
Court of Hong  
Kong

-----  
No.5

The Judge's  
Notes of the  
evidence  
(Contd.)

Q. Is the property at present fully let?

A. It has never been fully let.

10 Q. What are you getting per month for part which is let?

A. The gross rent collected in 1967 amounted to a little over \$25,000 without deduction rates etc. for January 1967, the net profit would be around \$15,000.

At 15.05 p.m.

(2) P.W. John David Ip - sworn in English  
(x) by Sanguinetti

20 I am solicitor having the main conduct of this action. Formerly I was an assistant solicitor of firm of Messrs. Philip Remedios & Co., and I am now a partner in the firm of Peter Mark & Co.

Q. Period when you were with P. Remedios & Co. when you were first consulted by the plaintiff?

A. Yes.

30 Q. In connection with the subject matter of these proceedings?

A. Yes.

Q. In that respect you refer to letters in Exs. Bundle C ?

A. Yes, the correspondence.

In the Supreme  
Court of Hong  
Kong

No.5  
The Judge's  
Notes of the  
evidence  
(Contd.)

Q. You have done research in connection with this case?

A. Yes.

Q. And in the course of research you made extensive research in Land Register?

A. Yes

p.225 Q. Search involved making out of records ?

A. Yes

10

Q. Of various properties in Carnarvon Road, and Salisbury Avenue?

A. Yes.

Q. In the Tsimshatsui District, Kowloon ?

A. Yes

Q. Do you also produce certified copies of Land Register of properties in Carnarvon Road and Salisbury Road?

A. Yes, certified as true copies by the Land Register; there are altogether (Marked Exs. G1 to G35 respectively).

20

p.226 There is also an Index I have made on top of the certified copies (Marked Ex.G). They are tables I have made I prepared the table and the contents are correct, the information contained is extracted from the certified documents. May I qualify one thing, in one column there is a figure, the sixth column, a figure for each item showing the unit rate per sq. ft. showing the new Crown Rent where applicable, and this being my calculation it is not entirely extracted directly from the documents, but it is correct.

30

The first column is itemized for easy reference all the documents were certified in January, 1967.

In the Supreme Court of Hong Kong

Adjourned at 1.00 p.m. to 2.30 p.m.

(Sd.) A.D. Scholes.

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No.5  
The Judge's  
Notes of the  
evidence  
(Contd.)

At 2.30 p.m.  
Court resumes; appearances as before.

(2) P.W. Ip O.F.O.

(x) by Sanguinetti (continued)

10

Q. These documents G1 to G35 that you have produced are in respect of renewable and non-renewable Crown Lease?

A. Yes, 2 classes.

Q. How many renewable leases?

A. 15 cases of renewable leases, no 16 extracts, there are 9 cases of renewable leases.

20

4 columns of index shows if renewable or non-renewable.

Q. You have 35 copies of particulars of grants for new Crown Leases in Ex.G ?

A. Yes.

Q. Also 16 true certified copies of topics for this area?

p.227 A. Yes, and 19.

30

The 19 certified true copies are those relating to re-grant of crown Leases, they are all non-renewable lease in the first instance, and the Crown has since re-granted for a renewable period. This is all shown in the index. The remaining 16 are true copy extracts

In the Supreme  
Court of Hong  
Kong

-----  
No.5

The Judge's  
Notes of the  
evidence  
(Contd.)

relating to various properties in same district, if registers kept by Land Office, and of these 16 cases 9 properties have renewable Crown Leases while the other 7 do not.

In Ex.G the first column contains the number for case of reference.

(Court:

The court has added the Exs. Nos.)

The second column shows the premises in question. The third column is the area of the particular property in question. The 4th column shows the class of lease, whether renewable or not.

10

p.228 5th column shows the original crown rent reserved by the lease. I agree the terms used in column 4 should be renewable and non-renewable and not renewed and non-renewed. (By consent of the parties and the witness the terms are altered accordingly).

20

Column 5 is the original Crown Rent reserved by the lease (By consent of parties and the witnesses the heading of column 5 is amended accordingly). Column 6 shows the new Crown Rent where there has been a new agreement for new Crown Lease, the old lease being non-renewable. That is figure above, the figure below is the rate per sq. ft. per annum based on the new rent. I worked that out, it is a mathematical calculation. Column 7 shows a premium. The first figure is the premium payable under the new agreement, showing the amount of each instalment in paying the premium and the number of years for which instalment has to be paid.

30

40

p.229 Column 8 shows the new agreement with date of agreement. Regrant No. is an identification number.

(x) by Court

Item No.7 4th column renewed 75 years indicates "regranted for 75 years".  
 (By consent of parties and of the witnesses in column 4 where under non-renewable there appears "renewed" it is amended to "regranted for").  
 Item No.10 Column 4 renewable for 75 years means that it can be renewed for 75 years when it expires in 1963.  
 Item 16. Column 7 is a special case. The access shall be excess (Amended accordingly by consent of all).  
 The 30,975 should have a \$ sign before it, (Amended accordingly by consent of all).

Column 8 against item, because of extended area there was a regrant and exchange, the whole area was surrendered and in exchange he got the same area plus the extra area of 177 sq.ft. Item 22 column 8, there were two regrants. In items 9 and 10 column 8, the second 75 year term has begun to run.

(x) by Sanguinetti: (cont'd)

Ex. E1 is section A.  
 Search made in November, 1966 onwards. G1 is photostat reproduction. That represents the position as at the 20.1.1967 when it was certified.  
 G2 is same property, but being not only section A, but the whole lot of K.I. Lot No.3425. Section A of that lot was carried out and transferred to Register as in G.1. G.2 therefore shows the remaining portion of that lot. G.2 right-hand column shows the rent for the whole lot as being \$24 per annum. In 1951 when Section A was carried out there was an apportionment and the rent for R. P. was \$11.50.

Q. Have you worked out how original Crown Rent is worked out, how did you work it out?

Court: Nothing to work out.

In the Supreme  
 Court of Hong  
 Kong

No. 5  
 The Judge's  
 Notes of the  
 evidence  
 (Contd.)

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p.230

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In the Supreme  
Court of Hong  
Kong

No.5  
The Judge's  
Notes of the  
evidence  
(Contd.)

p.231 Sanguinetti: Yes.

Q. Item 2 refers G.3.  
Item 3 refers G.4.  
Area 1,965 sq.ft.

A. Yes.

Q. Column 5 showing original Crown  
Rent \$12?

A. Yes. There was originally a  
term for 75 years from 1898 and the  
old lease surrendered under conditions  
of regrant and new term of 150 years  
from 1898 was then granted. The  
effect of the regrant was to grant the  
lessee a second term of 75 years  
after the first single term of 75 years  
would have expired. That is explained  
in Ex.G.4. G.4 shows an old rent of  
\$12 payable up to 1973 and new rent  
thereafter of \$226. The \$12 is for  
the unexpired residue of the first  
lease.

10

20

Q. New rent of \$226?

A. Yes.

p.232 Q. This new rent of \$226 become due  
in 1973? See Ex.A.10 page 4, item  
4(b).

A. Yes.

Q. See formula?

A. yes.

43,560 is sq.ft. in an acre.  
If you substitute actual area of this  
property in question (G.4) and  
multiply it by 5,000 instead of 1,000,  
and divide it by square feet in acre  
you would get approximately \$226.  
I have used this formula for working  
out the total new Crown rent of the  
lot. I have also worked out the rate  
per sq. ft. per annum.

30

In getting the new rent for G.4 the same formula, i.e., that used in Ex.A.10 page 4 Item 4(b) was used. I used that formula to get the \$226 for G.4 in Ex.E item 3.

In Column 4 in each case I have put the new Crown rent according to the Land Register, but I have also used the formula to check if they agree.

10. p.233 The formula using the figure of 5,000 is shown in G.4 at page 3, bottom paragraph 5A.

28th February, 1967.

At 2.30 p.m.

Court resumes; appearance as before.

(P.W.2) IP O.F.O.

(x) by Sanguinetti (Cont'd)

Q. Small flats?

A. Yes.

20 (Re-X) by Bernacchi:

p.243 In Item one, relating to G1 the lease from 25.12.98 was granted on the 16.5.1935.

That also applies to G.2.

They are comparable to our second lease. G.16 was first a 75 year lease from 1888, and the regrant was for 150 years from the same date in 1888. The regrant was on the 12.1.1963.

30 In effect it was a regrant of a second term of 75 years.

O'Connor

At this stage I apply to interpose Mr. Lyons for reasons I have already given.

Bernacchi:

No objection.

Court:

Application granted.

40 (1) D.W. John Lyons sworn in English

I am a senior Estate Surveyor in the H.K. Government, and I hold a Degree

In the Supreme Court of Hong Kong

-----  
No.5

The Judge's Notes of the evidence  
(Contd.)

In the Supreme  
Court of Hong  
Kong

No. 5

The Judge's  
Notes of the  
evidence  
(Contd.)

p.244

of Bachelor of Science in Estate Management of London University. I am a Fellow of the Royal Institute of Chartered Surveyors, and I am a Fellow of the Chartered Surveyors and Estate Agent Institute, and I am a Fellow of the Institute of Arbitrators. I am in the P.W.D., in Crown Lands & Surveys Office. I have been in Hong Kong for  $9\frac{1}{2}$  years.

10

All  $9\frac{1}{2}$  years I have been an officer of Crown Lands & Surveys.

Before I came to Hong Kong I had experience in this work, in valuation, 4 years in England and 4 years in the Gold Coast, West Africa.

I am under the Public Works Department, and head of Public Works Department is the Director of Public Works Department. The Crown Lands & Surveys Department is a sub-division of the Public Works Department.

20

The head of Sub-Department of Crown Lands and Surveys is the Superintendent of Crown Lands & Surveys.

I have heard reference to Mr. Law in this action. Mr. Law is an Estate Surveyor in the Crown Lands & Surveys Sub-Department.

p.245

I sign letters for Superintendent of Crown Lands and Surveys, and to my knowledge Law does likewise. The ultimate head of our Department is the Director of Public Works Department.

30

I have knowledge of what is known as Zone Crown Rents.

I have made research into history of Zone Crown Rents in this Colony.

From Crown Lands and Surveys I obtained a statement from Mr. Clarke dated 7.8.1936, who was then the Assistant the Superintendent of Crown Lands and Surveys.

40

Mr. Clarke is now Superintendent of Crown Lands and Surveys.

I now produce the memorandum dated 7.8.1956 and signed by Mr. Clarke, I also caused a photostat copy to be made and it is a true copy.

In the Supreme  
Court of Hong  
Kong

No.5

The Judge's  
Notes of the  
evidence

(Contd.)

(Bernacchi: No objection).

(Bernacchi: Mr. O'Connor has made available number of files from which document came).

10 p.247 (Original Statement marked Ex.I1 and photostat copy I2.)  
(By consent ordered that I1 be returned to defence, it rather appearing it might fall into pieces). (Ex.I2 read).

Q. Have you previously seen the memorandum?

A. Yes.

20 Q. And from your 9½ years experience in Hong Kong can you compare for benefit of Court the Zone Crown Rent with the economic rents in the Colony?

A. Zone Crown Rent bears no relation either to economic rents or to values of land generally.

Q. What are Zone Crown Rents?

30 p.248 A. They are rents reserved under Crown Leases merely in order to preserve the leasehold system. You could have and there are many cases of Zone Crown Rent being \$1. The figures of Zone Crown rent are purely arbitrary. The cases where Zone Crown Rent is \$1 are normally charities where no premium is paid. The Zone Crown Rent is not relative to the premium.

Q. In practice is the Zone Crown Rent \$5,000 per acre?

40 A. In the Tsimshatsui area, that would include parts of Nathan Road, Carnarvon Road, and Cameron Road.

In the Supreme  
Court of Hong  
Kong

No.5  
The Judge's  
Notes of the  
evidence  
(Contd.)

Q. Would I be correct to say Zone Crown Rent has nothing to do with buildings?

A. Correct. The rates of Zone Crown Rent are fixed by the Governor in Council; that means that they fixed the \$5,000. The \$5,000 is not fixed by the Director of Public Works Department.

Q. So when it is said rent is to be fixed by Director of Public Works Department, would it mean Zone Crown Rent? 10

A. No.

p.249 Q. What happens if Director of Public Works Department thinks \$4,000 per acre is reasonable rent, what happens then?

A. He would be unable to change anything less than \$5,000 per acre, without reference back to the Governor in Council. 20

Q. Supposing there is an obligation on Director of Public Works Department to fix a rent and he does so, does such rent include Zone Crown Rent or exclude Zone Crown Rent?

To Court

Q. Do you know as a fact whether or not the Director of Public Works Department include Zone Crown Rent when fixing rents? 30

A. I do not.

Q. How do you know?

A. The actual calculations were carried out in my office, and I saw them carried out.

(x) cont'd

Q. When Director of Public Works Department fixes his Crown Rents does he include or exclude Zone Crown Rent?

A. He excludes it, but the Zone Crown Rent is then added to the calculation.

To Court

10

Q. Supposing somebody fixes rent at \$1,000 as reasonable and then somebody adds on another \$1,000?

A. It depends on the evidence on which the rent is fixed.

Q. Do you say Director may take into consideration that Zone Rent will be added when he fixes rent?

A. Yes.

20

If Director of Public Works Department fixed \$4,000 then the \$5,000 would be added making \$9,000.

Q. What if Director thought rent should be below \$5,000, would he refer to Governor in Council?

A. I know of **no** such case where the land is of such low value, so that there would be no need to refer back to Governor in Council.

p.251

Adjourned at 5.00 p.m. to 10.15 a.m. to-morrow.

30

(Sd.) A.D. Scholes.  
28.2.1967.

1st March 1967.

At 10.15 a.m.

Court resumes; appearances as before.

(1) D.W.J. Lyons O.F.O.

(x) by O'Connor cont'd.

Q. You said yesterday that then rent fixed it excluded the Zone Crown Rent?

In the Supreme Court of Hong Kong

\_\_\_\_\_  
No.5

The Judge's Notes of the evidence  
(Contd.)

In the Supreme  
Court of Hong  
Kong

No.5  
The Judge's  
Notes of the  
evidence  
(Contd.)

A. Yes, I said that allowance, in fixing rent, would be made for the zone Crown Rent to be added.

Q. Can you give us any help as to how the Zone Crown Rent is fixed?

A. It is fixed in a purely arbitrary manner, for different zones in the Colony. For instance the T.T.T. area south of Austin Road has a Zone Crown Rent for all land in that area at the rate of \$5,000 per acre per annum.

10

Q. Can you say when it was fixed at \$5,000?

A. In 1956 or 1957.

p.252 Q. Do you know how the Governor in Council fixes the Zone Crown Rent?

A. No.

Q. How many square feet are there in an acre?

A. 43,560.

20

Q. Can you as an experienced valuer, tell us what is the meaning of premium?

A. In this context: it means a lump sum payable in consideration of a decrease in the rent that would otherwise be chargeable.

To Court

Q. Legal Authority has been produced which says that a premium in the purchase money which the tenant pays for the benefit of the lease. Do you agree with that in this context?

30

A. Yes, up to a point.

Q. What is difference in two definitions?

In the Supreme Court of Hong Kong

A. In our case there is no practical difference, but there are many other reasons for payment of a premium in other property cases.

No.5  
The Judge's Notes of the evidence  
(Contd.)

In England in some areas where shops are being let, the lessee would pay a rent for the shop, and a premium for the fitting of the shop front.

10

p.253 Q. Construction payment?

A. It is described as a premium and has nothing to do as a purchase price.

(x) by O'Connor cont'd.

Q. Do you consider that there is any value in the right to renew?

A. Yes, indeed.

Q. Procedure adopted in respect of the 1937?

20

I will hand you file containing original of A.10.

A. Yes.

Q. See A.10 page 1.  
"I set out below."

A. Yes.

Q. Page 5, the premium fixed at \$1,238.38 and the raised Crown Rent \$76 per annum?

A. Correct.

30

Q. That was the premium for the lease of 1937 and the reserved rent was \$76?

A. Correct.

Q. Can you tell us how that rent and premium was assessed?  
First could we have the reason for the premium?



In the Supreme  
Court of Hong  
Kong

No.5  
The Judge's  
Notes of the  
evidence  
(Contd.)

p.254

Bernacchi

How can witness say reason for premium,  
this witness was not here in 1936.

O'Connor

I will rephrase question.

Q. Can you say the basis for cal-  
culating the premium?

A. The basis of this is that  
Government is granting an additional  
right to that granted to those  
section holders who only took up a  
75 years non-renewable lease.  
The premium was paid for the option  
to re-new for an additional 75 years,  
the premium could not be paid for the  
additional 75 years, until the lessee  
exercises his option.

10

Q. Was the method of calculation  
based on any previous authority?

A. Yes, the authority was laid  
down in the file mentioned on page 1  
of A.10.  
That is file No. C.S.O. 1413/25. That  
file is in the custody of my  
Department.

20

Q. Do you now produce it?

Bernacchi:

p.255

I said to my friend yesterday have  
you any other documents that you are  
going to bring out of the hat.  
Disclosure of this file again has  
not been disclosed in the Affidavit  
of Documents, but the other 2 C.S.O.  
Files are called for privilege has  
been claimed. Before deciding whether  
to object or not. Ex.A file was  
disclosed on further discovery, but  
not this one. If court takes mid-  
morning adjournment now and I can  
inspect file, perhaps I would not  
object.

30

40

Bernacchi:

The whole file having been shown to me I withdraw my objection to the admission of the file and express hope that any further papers to be produced will first be shown to me.

In the Supreme Court of Hong Kong

No.5

The Judge's Notes of the evidence (Contd.)

(1) D.W.J. Lyons O.F.O.

(x) by O'Connor cont'd.

Q. You now produce file No.1413/25.

10

A. Yes (Marked Ex.J).

Q. Is J1 a true copy out of J ?

A. Yes.

Q. See J1. Please explain document ?

A. This document refers to the previous document relating to the approved method. The document itself, J1, states.

(O'Connor reads Ex.J1).

20

Q. What does term Y.P. mean?

p.258

A. Y.P. stands for year's purchase, which is a multiplying factor used to arrive at a capital value from an annual value.

Q. Explain whole document?

30

A. Yes, para.2 is a means of arriving at the date the paragraph is written of sums of money receivable in the future. Thus in sub-paragraph 1 Government has the right to receive \$5 per annum for a period of 35 years. It is an example of a lease with 35 years still to run. The rent resumed under lease was \$5 per annum, which the Crown is entitled to receive for this 35 years.

In the Supreme  
Court of Hong  
Kong

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The Judge's  
Notes of the  
evidence  
(Contd.)

The capital value of the right to receive this sum for 35 years at the date on which it is valued is found by multiplying by the appropriate figure of year's purchase. This gives a capital value of \$81.80. In sub-paragraph 2 after the expiry of that 35 years the whole property would revert to Government who would then be in a position to let the property at its full rack rent. That would not apply where there was an option to renew. This reversion is valued in the same way as the Crown rent. Firstly in perpetuity, and secondly for a period of 35 years. Perpetuity is for ever and ever. It is incorrect that perpetuity means 100 years or over for the purposes of leases. As however the 35 years at a rack rent belongs to the lessee this is deducted from the value in perpetuity, to arrive at Government's interest into reversion. This is then added to the capital value of the Crown Rent to give Government's total interest in this property. We are calculating Government interest in the land, and Government in the freeholder, that is the reason for valuing in perpetuity, the 35 years is the lessee's interest in this example. J1 page 2 para.3. We have here the valuation of Government's interest on the assumption that the lessee is granted a right of renewal at an increased Crown Rent. The object of this paper is to show that in 1936, Government demanded payment for the right to exercise an option, and not a premium for the 2nd 75 Term. In this particular valuation, if Government granted the right or a further 75 years on top of the 35

p.259

p.260

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10 already existing, Government's interest in the property would be reduced to the right to receive the increased Crown Rent of \$50 per annum for 110 years, with the reversion thereafter to the full rack rent. In practice however the value of a reversion after 110 years is too remote to be appreciable and the value is therefore taken in perpetuity for the Crown rent. In this example the value of this Crown Rent is \$1,000, therefore by granting this right, Government's interest has been reduced by the sum of \$2,433.60 which is the amount of premium to be paid for the grant of the right to renewal.

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Court of Hong  
Kong

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Notes of the  
evidence  
(Contd.)

20 Q. Lease of 1937, can you say from figure shown if that principle was applied?

A. Yes, that principle was applied.

Q. And can you from that say the consideration for the premium of \$1,200. What did you get for payment of \$1,200 ?

30 A. Firstly: he got the right to renew; Secondly he was given the advantage of not having to purchase at a public auction; and Thirdly, he was not charged for the buildings which would otherwise have reverted to the Crown.

Q. You heard it suggested that the fine of \$1,200 paid in 1937 included an element of same future lease, what would you comment on that ?

40 p.262 A. Until the lessee exercises the option the second term does not exist, and if he decides not to exercise his option the amount paid is not refunded.

In the Supreme  
Court of Hong  
Kong

No. 5

The Judge's  
Notes of the  
evidence  
(Contd.)

Q. He is given a right to renew if he wishes ?

A. Yes, but he also has the right not to exercise that option.

(x) Cont'd.

Q. Do you produce a map from Crown Lands & Surveys showing this area of T.T.T. ?

A. Yes. (Bernacchi: No objection). (Marked Ex. K1).

10

It is a map showing the area. This is another true copy of the Map (put in for convenience by consent and marked K2).

I have marked on both K1 and K2 a pink portion which is K.I. Lot No. 3793. That is the Plaintiff's flat of ground, the subject of this action. That flat is a corner site and has a frontage on both Carnarvon Road and Salisbury Avenue, and in a corner site.

20

Q. Can you tell us whether that is a shopping area ?

A. It is a shopping area.

Q. Can you compare that area with other shopping areas, and other areas in Kowloon, in regard to land values?

A. The most valuable shopping frontages in this part of Kowloon are, in my opinion, those marked by a green line on the plan, that is marked by a green line on either side.

30

Q. What would you say is the second most valuable shopping area?

A. I would say that bounded by the blue lines, including Carnarvon Road, but not Salisbury Road, that is the streets marked with blue on both

p.264 sides and for the length of which they are so marked. These opinions I have given would be applicable to the middle of 1963.

In the Supreme Court of Hong Kong

No. 5

The Judge's Notes of the evidence (Contd.)

Q. Would they have been more valuable in 1963?

A. More valuable in 1963 than they are at present time, certainly.

Q. Re Ex. J1 ?

10

A. Para. (a) \$5,000, means lessee required to erect a building costing not less than \$5,000. That is not taken into consideration in assessing the value of the land. There is no need to mention the \$5,000 for the purposes of the document.

20

p.265

The \$3,000 is an estimate of the rents which would be produced from the building created on the land, that is building to be erected on the land.

Normally if there is a building on the land already, Government does not require such building to be demolished, and there would in that case be no building covenant.

Q. If there was a 2 storey building on the land at the time would the estimated rent be based on that 2 storey building?

30

A. Not necessarily, it might be that the 2 storey building did not represent the full development attention of the lot, in which case it would probably be to the lessee's advantage to demolish and rebuild, as happened twice in present case.

Q. How assess estimated rent in such a case?

40

A. Normally by comparison with other rents being paid in the neighbourhood.

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Kong

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The Judge's  
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evidence  
(Contd.)

Q. Para. 2(1)?

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A. \$5 receivable now is worth \$5, \$5 receivable in 35 years time is worth considerably less than \$5 now, because of the rate of interest which is normally required in both the financial and property market for deferred payments. Money receivable in the future has a present value, but not so high, depending on the rate of interest in force.  
In para. 2(1) the Crown Rent of \$5 per annum for 35 years comes to \$81.87.

10

Q. Why take figure of 16.37419?

A. That is taken from valuation tables.  
That is calculated from a complicated formula. This figure allows for interest at 5% for a period of 35 years plus a sinking fund at 5% compound interest to recoupe the capital sum at the end of the period, Year's Purchase is the multiplying factor to arrive at a capital value from an annual value, which depends on the rate of interest.

20

p.267

Para.2(2) : Reversion means the reversion to the Crown if the option for a further term is not exercised. But this sub-paragraph deals with the value where there is no option. The figure of \$2,505 is the net income to the lessee, which reverts to Government when lease expires, plus the Crown Rent of \$5 per annum. The interest rate chosen in valuing future income depends on the security of that income; I think it is self-evident that the Crown Rent of \$5 is far more secure as an investment than the rack rent of \$2,500, if for instance there is a drop in rental values the lessee is far more likely

30

40

to continue paying \$5 per annum than his tenants are to pay \$2,500 rent; as a consequence the greater the security of the income the lower will be the rate of interest, and that is why the rack rent in this case is valued on a 7% basis as against the 5% used in the case of the Crown Rent.

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The Judge's Note of the evidence  
(Contd.)

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The figures of Year's Purchase are in fact 100 divided by the rate per cent when one is considering incomes in perpetuity. Thus 100 divided by 7 is 14.28571.

20

The 14.28571 is not dollar merely a figure, a year's purchase. It is a figure to be used to multiply the annual income to arrive at its present capital value. The figure below it is the same for 35 years. There are certain cases where an income receivable for more than 100 years is treated as an income in perpetuity, because the figures of year's purchase are so close together, according to the tables. As an example, on the 10% table the figure of year's purchase for 100 years is 9.999 and the figure for perpetuity is 10.

30

p.269

In the case of this Document, Government is the freeholder and has the right to receive the rack rent after the 35 years which the correct lease has to run, have run. The perpetuity in Government's interest, assuming it does not grant a right of renewal. The position is that at the date of the document J1, in the example given, the Government has not the right to perpetuity, but the right to perpetuity having deducted from it 35 years still to run.

40

In the example, the value of the property to Government at the date of the paper, is \$3,433.66. The figure of 20 is the Year's Purchase at 5% in perpetuity, and that figure is taken from the tables.



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No.5.

The Judge's  
Notes of the  
evidence  
(Contd.)

Q. Why take perpetuity?

A. Government is freeholder not lessee for 75 years, and in the same of a freeholder the reversion may be ignored if it is too remote to be of any significant value. In the present document, the value in 110 years' time of the \$2,500 would be something less than \$2,500.

p.270 Q. If right of renewal for 10 years granted you would not take perpetuity? 10

A. No, that is correct.

Q. Then when going up the scale of years that may be given right to renew for. when do you first take perpetuity?

A. It depends on the rate of interest, for example at 2% the present value of reversion to perpetuity is 12.5, at 15% the corresponding figure is 0.00038, as these are multiplying factors, it is evident that in the case of an interest rate of 2% it would be unwise to treat any term less than 100 years as perpetuity. There are cases where it is dangerous to treat terms of 100 years and over as in perpetuity. 20

Q. Para. 4. Sub para. (3)?

A. That should be (2).

(x) by O'Connor (cont'd)

Q. Before lunch you were telling us of the shopping areas coloured green and blue in K1 and K2? 30

p.271 A. Yes.

Q. Can you give your reasons for that?

A. Yes, The frontages marked in green, are the main shopping frontages.

Now of these areas marked green, in the portion from Salisbury Road to Hoiphong Road, the shopper has two choices of secondary shopping areas, both to the left and to the right of Nathan Road, but on the part of Nathan Road North of Hoiphong Road there is only one choice, namely the area shown coloured blue. The vacant area is White Field Barracks.

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The Judge's Notes of the evidence  
(Contd.)

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Q. Plaintiff's flat?

A. Yes.

Carnarvon Road is a better shopping area than Salisbury Avenue, the latter is not coloured blue.

Q. See G10 in G?

A. I see there 45 and 47 Carnarvon Road. That is the flat of ground marked pink on the map.

20

p.272

Q. See G11 in G?

Is that shown on the map immediately across Salisbury Avenue, across Plaintiff's flat of Land?

A. It is held on such terms to Plaintiff's land.  
The 3,354 sq. ft. are probably before survey.  
The sq. ft. after survey is found to be 3,239 sq. ft.

30

Q. Did you prepare this schedule?

A. I helped to prepare it. The plot opposite Plaintiff's is 3,239.

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

(Sd.) A.D. Scholes.  
1.3.1967.

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2nd March 1967.

Court resumes; appearances as before.

(1) D.W. J. Lyons O.F.O.

(x) by O'Connor (cont'd)

Q. Is this a schedule prepared  
by you in conjunction with your  
colleagues of new rents in the  
neighbourhood of Cameron Road?

A. Yes, I produce it.  
(No objection: Marked Ex.K3)

10

Q. Is this a true copy of it?

p.273 A. Yes (put in for convenience and  
marked Ex. K4).

Q. See G11 on Ex.G ?

A. Yes. That is same as item 1 on K3.

Q. Was that flat held on exactly  
similar terms to Plaintiff's flat?

A. Yes.

Q. Lease expiring same day and  
renewable lease?

20

A. Yes.

Q. Has a new rent been fixed by the  
Director of Public Works Department in  
respect of that lot?

A. Yes.

Q. Was that rent \$59,767?

A. Yes. That is at value of \$375  
per sq. ft. Re. K3 headings under  
Ground Rent divided into 2;  
Option (Q) etc. means the lots concerned  
are unrestricted in their leases as to  
the form and size of development which  
may be carried out on them, as however

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many of the lots are not fully developed the lessees were given the option either to pay the rent which would be payable under the terms of the lease or to pay another rent if they agreed to restrict development on the lots to that existing at the time of renewal of the lease, which would be a lesser rent. Under option (b) the development on the lot would be restricted. Option (b) shall also state including zone Crown Rent, because it is also included. The Plaintiff's property is unrestricted and that would fall in option (a). I produce a letter from J3 and minutes agreeing the rent under item 1 and a photostat copy (Marked Exs. K5 and K6 respectively).

20

Q. In K5 the figure is \$61,880 and on K3 the rent is shown as \$59,767, can you account for that ?

A. Yes. That was due to the remeasurement of the lot, which was found to be smaller than thought, but both were valued on value of \$375 per sq. ft. I would say that the comparable value of 49 Carnarvon Road and Plaintiff's flat are the same, except for adjointment in respect of their respective sizes. It is across the road of Salisbury Avenue from the Plaintiff's flat.

p.275

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Q. Item 3 on K3?

A. Yes  
It is a flat on Salisbury Avenue.  
A rent was fixed by Director of Public Works Department for that, based on \$200 per sq. ft.  
The rent was agreed by the lessee at \$21,936.  
This flat is part of flat marked 5 on K3, next but one flat from Plaintiff's flat.

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Where it states on K3 "Ground Rent" that means Crown Rent. Re 3 Salisbury Avenue I produce a letter stating that the Director of Public Works Department assessed the rent at \$21,936, it is a true copy, it is the carbon copy (marked Ex.K7). I also produce a letter from the lessee accepting the rent (marked Ex.K8).

p.276 Q. Was that rent based on the basis as the other, but a different capital value per sq. ft.? 10

A. Yes.

Q. How account for difference between capital value in Item 3 and Item 1?

A. Because it is more valuable property.

Q. Last item on K3?  
Large flat? 20

A. Yes.

Q. Was rent of that fixed by Director of Public Works Department on the same basis?

A. Yes.

Q. Was the fixed rent fixed on basis of \$30.75 per sq. ft. at \$360,758?

A. Yes.

I produce a letter from solicitors of the lessee agreeing the rent (Marked Ex.K9).

The sq. ft. value is much less being a much less valuable area.

In addition it is a very much larger area and there is of necessity a certain amount of land that cannot be used for the erection of buildings. 30

p.277 I produce a map from our Department of Kowloon Peninsula showing the different areas of Kowloon Peninsula and indicating thereon the Zone Crown Rent, in respect of each area (Marked Ex.K10) (Extra copy put in and marked Ex. K11).

It is another true copy.

10 It shows the Carnarvon and Cameron Road in the \$5,000 Crown Rent Zone. It also shows other areas. What is set out in Ex. K3 and K4 is correct.

Q. The method of the 1963 assessment of Crown Rent. The Rent the subject of this action.

A. Yes.

20 I assessed the rent together with the Director of Public Works Department.

Q. Describe the method you adopted?

p.278 A. As my evidence is being interposed, before other evidence as to value is given, it will be necessary for me to make certain assumption, upon which evidence will be given at a later date. I shall assure for the time being that the capital value for a period of 75 years and subject to the payment of the Zone Crown Rent of the land comprised in the Plaintiff's property at the relevant date is \$1,234,875, based on a figure of \$375 per sq. ft.

30 That is the value to the Crown for the whole 75 years.

40 On this assumption the Crown has an asset worth this sum which it has agreed to let to the lessee at a fair and reasonable rent.

This expression fair and reasonable I take to mean: fair and reasonable to both parties. If Government were

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in a position to sell this land for a term of 75 years, that is to lease it for 75 years, to any other person, without the provision that it should be let at a rent without fine or premium, the sum it would receive at the relevant date is \$1,234,875 plus the applicable Zone Crown Rent during the term. The \$1M odd the Crown would receive at the date of the lease, and the Zone Crown Rent it would receive annually for the 75 years.

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As Government is precluded by the terms of the lease from changing this figure of capital value as a fine or premium, it is necessary to discount what figure of annual rental would be fair and reasonable for Government to collect, and then consider whether it would be fair and reasonable for the lease to pay this rent. To make the method clear, I should like first to take an example; the purchases of real estate is considering the purchase of property, as an investment which is worth \$10,000 per annum, the investor requires a return of 8% on any money he invests and can thus afford to pay \$125,000 for the property, that is  $12\frac{1}{2}$  times the annual value of \$10,000, 8% on \$125,000 is \$10,000. Conversely if the investor is in possession of property worth \$125,000 and requires a return of 8% on his investment, he will be prepared to let the property for \$10,000. The figure of  $12\frac{1}{2}$  mentioned previously is known as the Year's Purchase mentioned previously. There is thus a clear and distinct relationship between capital value and annual rental value depending on the rate of interest required, one is complimentary to the other. The figure of \$125,000 mentioned is applicable only when the income is receivable in perpetuity. If the income is for a lesser period the investor could not afford to pay

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\$125,000 because at the end of the lease he would have neither capital or income, even though he had received 8% on his capital during the currency of the term.

If the same figure of income of \$10,000 were receivable for a term of 75, the formula for calculating the figure of year's purchase becomes not 100

10 divided by the amount of interest, as in the case of rents receivable in perpetuity, but 100 divided by the rate of interest plus an element for sinking fund which if invested would permit the investor to recupe his capital by the end of the term. In

p.282

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the example given, the actual figure of year's purchase for a terminable income over 75 years becomes one divided by  $0.08 + 0.0013216$ . This sum amounts to 12.297, thus the capital value of an income of \$10,000 for 75 years, allowing interest on capital at 8% and a sinking fund at 5% is thus \$122,970.

8% of \$122,970 is \$9,837.60.

The sinking fund at 5% of 0.001326 multiplied by \$122,970 is \$162.42.

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\$9,837.60 which is interest on capital plus \$162.40 mentioned is the amount of the sinking fund equals \$10,000 which was the figure of annual income this year. The 162.40 if invested at compound interest at 5% would amount over 75 years, to \$122,970, and would give the investor his capital back when his income ceased. It is however unnecessary to make these complicated

p.283

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calculations as they are set out in valuation tables, normally used in the valuation profession.

Thus the figure of year's purchase to be used as a multiplier for an income for 75 years, allowing interest on capital and sinking fund at 5% is shown in the table as 19.485.

I have shown previously that a figure

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of year's purchase may also be used as a device to obtain annual value from capital value. In my profession it is normal to use calculating machines for working out these figures, and as multiplication on a machine is a simple process than division, it is normal practice to use, not the figure of year's purchase for division, but its reciprocal for multiplication. This is purely a mathematical process and gives the same result. The reciprocal of the year's purchase figure of 19.485, previously given, is .0513. I should point out at this stage that the valuation tables referred to are based on the assumption that payments are made at the end of each year, i.e. in arrear. Crown Rent however is payable half yearly, is thus treated as being paid in advance. For this reason it is necessary to reduce the multiplier .0513 which has the effect of reducing the rent to be paid and as the calculations are based on an interest rate of 5%, this is accomplished by dividing .0513 by 1.05 which has the effect of bring forward by one year the assumption on which the tables are based of payment in arrear. The final figure used as a multiplier is therefore .0489. Referring back to the original valuation made, it will be noted that this multiplier was used, that is in Ex.B3 page 1. The 5% there is not compound interest. You will note that the word against this multiplier is "decapitalized at 5% for 75 years." Decapitalized means the process of arriving at an annual value, from a capital value, and where the only evidence available is of capital value, then decapitalization is the most satisfactory method of arriving at an annual value. As interest rates in Hong Kong are in

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p.284

p.285

general considerably higher than 5% it is thus obvious that the rent proposed for the lot in question is fair and reasonable from Government's point of view. And I now propose to look at this figure from the lessee's point of view.

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Q. You had said how you considered the valuation fair to the Crown and you were about to say how you considered the valuation as regards the Plaintiff.

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p.287

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A. Yes.  
It has long been considered in the valuation profession, that income from land is derived from 3 main sources, 1 The income arising from the original powers of land to be used for man's purposes; 2 The income arising from the investment of capital in that land; and 3 The income arising from the general progress of society that is the gradual increase in standards of living - the value of money going down. It is apparent from this that where the ownership of land and to ownership of capital invested in the land are in different hands, the lessee derives his income from item 2 at the beginning of the lease and additionally from item 3 during the currency of the lease.  
This is no need for landlord to invest money in the land, the tenant can do that.

40

I should point out that the valuation itself is referred to the relevant date, that is during 1963 in our case, and takes account of the fact that the lease is intended to endure for a further 75 years. I should also point out that this particular method does suffer from certain disabilities but is no less valid on that account.

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I now come to the figures of assessing rent in this case which are complicated, namely from the lessee's point of view, being fair and reasonable to the lessee.

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The first part of the valuation is an assessment of the capital value of the land. The method used in this case is the value of the land plus the building and then to deduct the cost of erecting the building together with an element of profit for the risks involved in investing in this building. I have taken a net rental value of the building that could have been erected on this lot in June, 1963, as \$36,000 per month, this gives a yearly figure of \$432,000. From this figure I have deducted 10% for external repairs and 2% for insurance, giving a total deduction of \$50,000. This gives therefore a net annual return in the region of \$380,000, I have then used a figure of year's purchase of 9 which gives a capital value of \$3,420,000, that is for the 75 years. Now as it is highly unlikely that the building could be fully let immediately on completion. I have assumed that it would take the lessee 6 years to let this building fully and to build it and have deferred the capital value quoted for a period of 3 years which gives an assumption that the building will be gradually let over the 6 years period. Having deferred the previously quoted capital value, the final capital value of land plus houses is \$2,569,000 for the 75 year lease. Now from that figure I have deducted firstly the probable cost of construction, which I have taken as \$850,000, secondly architect fees and legal fees at \$85,000 (not including the case) the legal fees on the construction, and thirdly an element

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for the developers' risk and profit at  
 \$375,000. These 3 items total  
 p.290 \$1,310,000 which when deducted from  
 the capital value of \$2,569,000, gives  
 a land value of \$1,259,000 which as  
 can be seen compares favourably with  
 the figure of land value and assumed  
 at the beginning of this explanation  
 of the method, namely \$1,234,875. I  
 10 now come to the second part of the  
 valuation which is a valuation of the  
 lessee's interest, again at the  
 relevant date of June, 1963. Firstly  
 the net return per annum taken from  
 the previous valuation is \$380,000 per  
 year. From this I have deducted the  
 rent which it is proposed to charge  
 of \$60,763. This is an actual income  
 20 therefore of \$319,237. Out of this  
 sum, the lessee must provide for an  
 annual sinking fund on the capital  
 he has invested in the land and this  
 sinking fund taken at 5% compound  
 interest amounts to \$1,732 per annum,  
 which deducted from the actual income  
 quoted leaves the lessee \$317,505.  
 p.291 Thus on an investment of \$1,310,000  
 the lessee can expect a return of  
 30 \$317,500 per annum after allowing for  
 a sinking fund to recupe his capital  
 at the end of the term and for payment  
 of the proposed rent. This is a  
 return of 24.2% which cannot be  
 considered unreasonable by any means.  
 It must be stressed that the foregoing  
 calculations are used purely to arrive  
 at the correct rent to be charged.  
 There is no question whatsoever of  
 40 Government charging interest of any  
 kind as an element of the rent. The  
 rental value of the land is purely  
 and simply the annual value which  
 gives Government a 5% return on the  
 value of its asset. That is all I  
 have to say on the method of valuation.

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p.292 Q. The valuation endorsed on your file and on file in Ex. B3 page 3? "I have considered ....."

A. Yes, I see that, it bears the signature of Mr. Wright, Director of Public Works Department.

Q. Can you say if value changed between April and June 1963?

A. There was at that time a rising market, and the value would be slightly higher in June than in April. 10

Q. Would you compare the rents in June 1963 and now ?

A. There has been a considerable decline in value to-day compared with June, 1963.

(xx) by Bernacchi:

Q. See Ex.12?  
See L.S.O. File No.5289/57?

A. Yes, it is a photostat copy. 20

Q. Does L.S.O. mean Land Survey Department?

A. Yes, sub-department. I am senior officer of that sub-department.

p.293 It is a true photostat copy of one of the files of my sub-department. The file is headed Zone Crown Rent, and it deals with Zone Crown Rent. (Put in by consent and File marked Ex.L and pages inside are marked Ex. L1 - L56 respectively). 30

Q. About what date write L9?

A. About the beginning of this year.

Q. Your evidence about the calculations in this case being fair to

Plaintiff are set out in this memorandum any other things ?

In the Supreme Court of Hong Kong

A. No.

Q. For instance page 3, L11 ?  
"It is clear."  
That is the 3 things you gave in evidence?

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The Judge's Notes of the evidence  
(Contd.)

A. Yes.

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I agree that first 3 paragraphs of page 3 are the same, but not page 4. Notes I was referring to in this case were written after this memorandum.

Q. No question that in 1963 the Director of Public Works Department considered all that you have said to-day?

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A. I have no knowledge of everything the Director of Public Works Department considered. I worked out the valuation with the director. I gave an explanation of the method why I say also fair to Plaintiff. That did not arise when I was working out of this valuation with the Plaintiff.

p.294

Q. Do you agree that although file says Zone Crown Rent your memo is termed Crown Rent?

A. Yes.

30

Q. When did term Zone Crown Rent start in your office?

A. I don't know. This memo was written not for this court but for my sub-department.

Q. Page 4 of your memo L12 "If the figure ....." ?

A. Yes.

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No.5  
The Judge's Notes of the evidence (Contd.)

Q. Do you say these that if the figures of premium are decapitalized to give an annual equivalent, it is equivalent to your idea of Crown Rent?

A. No.

Q. What mean by comparable?

A. The object of this part of paper is to compare the premia paid at land sales with the Zone Crown Rents which are payable, but as one of these figures is a capital payment made once only and the other figure is a yearly payment it is not possible to compare them unless they are reduced to the same basis.

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p.295

Q. Is it not your argument in this paper that they should be reduced to the same basis?

A. No, the whole basis of this paper is a suggestion by me for a simplification of the procedure used in calculating Zone Crown Rent. In this context Crown Rent and Zone Crown Rent mean the same thing.

20

Q. Is it your argument in this paper that the Zone Crown Rent should be revised upwards ?

A. No, the only object in this paper which deals solely with Zone Crown Rents is shown on page 5 of the paper which states that one of the reasons is to issue that total revenue from rents does not vary appreciably.

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p.296

Q. L15 bottom page 5:  
"The average ....."  
Do you agree with the statement made in January this year?

A. Yes, bearing in mind that this paper deals purely with Zone Crown Rents.

Q. But you said that Zone Crown Rents and Crown Rents are synonyms?

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A. Yes, in that sense.

Q. If they are true to-day presumably it was true in 1963 or slightly less?

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(Contd.)

A. The Zone Crown Rents were the same in 1963.

Q. Zone Crown Rent is the Crown Rent charged on Crown Sales of Land? See a fresh Exhibit.

10

A. That is a partial statement and partially correct Zone Crown Rent is charged on other things. This is a Land Office form (put in and marked Ex. M).

Q. Is the \$486 in Column 6 on Ex.M the Zone Crown Rent worked out on the basis of the Zone Crown Rent for that particular area, for an area of 12,740 sq. ft. ?

20

A. Yes.

Q. Is it on K.10 ?

A. Yes.  
The Zone Crown Rent in this case is \$1,600 per acre per year, it is on the Eastern side.

Q. K.10 not speak of Zone Crown Rent but Crown Rent?

A. I agree.

30

Q. Upset price on right of Ex. M?

A. Yes.

Q. That means the lowest premium that Government will sell this particular lot for ?



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(Contd.)

A. Yes.

Q. But however the building goes,  
the Crown Rent will remain at \$468?

A. Yes.

Q. The Crown occasionally sells  
property by private treaty and not by  
public auction?

A. Yes.  
No upset price in private sale.

Q. A part from charities, a sale  
by private treaty to a person, the  
premium is usually high? 10

p.298 A. Not necessarily depends on the  
circumstances.

If we sell by private treaty the  
premium depends on the use to be put  
to land, in cases of churches it is  
2/3 rds of what is considered to be  
the full market value.

My district is the whole of Kowloon. 20

Adjourned at 4.45 p.m. to 10.00 a.m.  
tomorrow.

(Sd.) A.D. Scholes.  
2.3.1967.

3rd March, 1967.

Court resumes; appearances as before.

(1) D.W. J. Lyons O.F.O.

To Court: The return of 24.2% I  
mentioned yesterday is the 24.2%  
return on \$1,310,000, which the lessee  
has invested including an element for  
profit. 30

XX. by Bernacchi cont'd.

Q. The memo you note the year,  
Ex. L13 page 5?

A. Crown sold an average of 200  
sites in 1964, the average site being  
10,000 sq. ft.

Q. "The average size. That is for regrant?"

A. Yes. They were for a premium and Zone Crown Rent.

Q. "In all probability .....

A. Yes.

Q. You said yesterday in this memo you were dealing throughout with Zone Crown Rents?

10

A. Yes. Zone Crown Rents have been revised by Governor in Council. Zone Crown Rent is zone rent in district, subject of course to payment of premium.

Q. Your proposal is to have eventually one zone?

A. Yes one zone only.

p.2

Q. And Crown Rent standardized at \$400 per site?

A. Only in certain cases.

20

Q. You refer to L14 "In addition....

A. Yes.

To Court: Every time the terms "Crown Rent" are used in Ex. L9-L14, "Zone Crown is meant. Zone Crown rent is the Crown Rent payable on any property in that particular zone. Zone and district mean the same thing.

XX: by Bernacchi cont'd.

Q. See L6 M21. What is CD?

30

A. Chief Draftsman. A.S.C.L. is Assistant Superintendent of Crown lands.

Q. Your evidence is that Zone Crown Rent is fixed by Governor in Council from time to time?

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A. Yes.

Q. From plan K10 it varies from  
area to area?

A. Yes.

Q. And presumably increases upwards  
from time to time also?

A. Yes.

Q. For time in question, 1963, it  
was \$5,000 per acre for area in  
question?

10

A. Yes.

p.3

Q. It is the rent charged by the  
Crown subject to a prior premium being  
paid?

A. Yes.

Q. When valuing land as in this  
case, the D.P.W. valued land at \$375  
per sq. ft. ?

A. Yes.

Q. Is that an estimated value that  
would be obtained on a sale of the  
Crown Lease to a purchaser at full  
market value?

20

A. Yes.

Q. The \$375 per sq. ft. is the  
value of a Crown Lease which has a  
Crown Rental assumed for that  
particular district, in other words,  
Zone Crown Rent?

A. Yes.

30

p.4

Q. As he had charities generally  
are charged a lower Crown Rent than  
the Zone Crown Rent, in some cases a  
pepper-corn rent of \$1 per acre?

A. I would not say generally, some charities do. Some charities pay pepper-corn rent of say \$1 per acre.

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Q. In other words your reference to Zone Crown Rent being merely to preserve the leasehold interest, is not quite accurate because a peppercorn rent of \$1 per annum can preserve the leasehold interest?

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Notes of the  
evidence  
(Contd.)

10

A. It can yes; the answer to the first part of the question is that the number of such charitable places is so small as to make no practical difference to my previous statement. I agree the leasehold interest could be preserved by \$1 per acre Zone Crown Rent all over the Colony, but the Governor in Council has decided otherwise.

XX: contd.

20

Q. And as you have said the Governor in Council periodically increases the rent, either by District or for Colony as a whole?

A. Yes.

p.5

Q. I now refer you to top of file Ex.L itself?

A. Yes.

Q. See under connected papers L.S.O. 5296/53 etc.?

30

A. Yes.

Q. Colonial Secretary has claimed privilege for first 2 files?

A. Yes.

Q. Does it mean connected papers?

A. It could be or it could not be.

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Kong

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Q. For instance L41, "extract from 5294/53"?

A. Yes.

Q. And so this file as a file must it be read with the other files?

A. No. Connected papers mentioned on the front of the file are files dealing with related subjects.

Q. In other words this file Ex.L does not refer to Government Policy relating to 75 years renewable leases?

10

A. But.

Q. But to look for that policy one would have to look to L.S.O. File No. 5296/53?

p.6

A. Yes, insofar as Government has disclosed its policy to the Supt. of Crown Lands.

00

Q. The immediate superior of the Supt. of Crown Lands is the Director of P.W.D.?

20

A. He is.

Q. Your evidence is that you are the senior officer of the Crown Lands Sub-Department of P.W.D.?

A. Yes.

Q. Is the head of that sub-department the Supt. of Crown Lands?

A. Yes.

Q. And you assisted the Director of P.W.D. in revising the rent?

30

A. yes.

Q. L1 first minute "It would seem...

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A. Yes.

Q. That although recommended by  
D.P.W. has not been accepted even  
to-day?

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evidence  
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A. Difficult to answer, because  
not say to what D.P.W. is referring  
to.

10

Q. Crown Rent, which you have  
termed Zone Crown Rent?

A. I don't know.

p.7

Q. File headed Zone Crown Rent?

A. Yes, but this is extract from  
another file.

Q. The sentence suggests pushing  
up the Crown Rents and the premium  
comes down?

A. Yes.

20

Q. That proposal has not been  
accepted even to-day?

A. I would say it has not been  
accepted.

Q. "To adopt ..... The whole of  
that para. has not been accepted?

A. So far as I know it has not  
been accepted.

30

Q. As long ago as 1955, the D.P.W.  
was prepared for argument when 75  
renewable leases fell due for renewal,  
if present district Crown Rents  
maintained at this level?

A. Yes.

Adjourned at 11.30 for 15 minutes.

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(Contd.)

Court resumes; appearances as before,  
except O'Connor absent.

Bernacchi

I put in for convenience another copy  
of the Ex.L.

Miss Collins

No objection.

p.8

Court

Copy File marked Ex. N and contents  
marked Exs. N1 to N56 respectively.

10

(1) D.W. Lyons O.F.O.

XX. by Bernacchi contd.

Q. I now come to next minute on  
Ex.L1 on the back, by Lightbody?

A. Yes.

Q. A.S.L.

A. Yes it means Assistant Secretary  
Lands and is addressed to Deputy  
Financial Secretary.

Q. Part of L1 first para. last  
sentence "Mr. Hugelrijy .....

20

A. Yes.

Q. Presumably the period concerned  
in 1946?

A. Presumably yes.

Q. Do you know anything about pre-war  
H.K.?

A. No.

Q. You cannot say if it would  
apply in 1936?

30

A. I don't know.

Q. Do you know whether the war was on the horizon in 1936?

A. Yes.

Q. Back of L1 para. 3 "In 1954?

A. I was not here in 1954, but I have no reason to doubt that.

Q. "which led the D.F.S. .... Can you interpret what the words mean?

10 A. These words mean that the rent should be raised which will have the effect of reducing the amount of premium, the total value remaining the same.

Q. But as shown in Ex. M1 that recommendation was not accepted?

A. Correct.

Q. "such an arrangement ..... Within Government's contemplation that arguments might arise?

A. In his opinion.

20 Q. para. 4 "In short ..... (a)?

A. Yes.

Q. Your calculation given yesterday took the fall economic value?

A. Yes.

Q. Para. 4(b) Have you taken account of land values falling or not?

30 A. I have taken account of the fact that in the 75 years period values may fall at times but that over the full period the probability is that they would rise.

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p.10 Q. Is not the short answer that you have not taken into account falling land values because they would rise again?

A. No.

Q. Have you taken account of falling land values?

A. Yes in the assumed rental value.

Q. But the defence is that a mathematical formula was applied based on 1963 market value? 10

A. I am sorry, I understand you were referring to our valuation.

Q. I am referring to the actual calculation that you did with the D.P.W.

A. The figure of \$375 per sq. ft. takes into account the fact that rents might rise or fall as this is the figure paid by purchasers in the open market who must be assumed to have considered these points when making their purchases. 20

Q. In 1962/3 majority of purchasers were speculators, buying developing and selling?

p.11 A. I cannot assume that. Developed and sold in many cases.

Q. The lease of N.T. expires before the end of 75 years? 30

A. Yes.

Q. And N.T. is more than half of Hong Kong?

A. Yes.

Q. And N.T. contain most of our water supply?

A. Yes.

Q. Back of L1 para. 6 "For any part Do you agree with that or not?"

A. No.

Q. L2 M9 "An asset ... In other words getting as such premia as possible?"

10

A. I would assume so.

Q. Do you agree an asset is best realized for its full current value?

A. Not necessarily.

Q. It has been the policy for many years see Ex. 12, which is same as L51-L54?

A. Yes it has been the policy for a long time.

Q. And certainly before 1936/7?

20

A. Yes.

Q. L4 Minute by Johnson, Land Surveyor?

A. Yes.

Q. Headed Zone Crown Rent. "The existing ..... simply the Zones." Do you agree with that?

A. I agree with (1) and (3), there is an implication in (2) with which I do not agree.

30

Q. (2) Indicates that at times Zone Crown Rent was last fixed it

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did take into account the value of the  
land in the area?

A. I agree that that is the  
implication, but I do not agree that  
it did.

To Court

Q. In K10 and not the higher Zone  
Crown Rents in more valuable areas?

A. Not necessarily, this area in  
Kowloon Peninsula of \$4,000 above  
\$5,000 area, is more valuable than  
some back streets in the lower \$5,000  
area.

10

p.13

XX. by Bernacchi contd

Q. Is not that answers the point  
being made in the minute that in some  
Zones Crown Rent to low?

A. Yes, that is what is said.

Q. Put it that although the Zone  
Crown Rents are an arbitrary rent  
fixed by Governor in Council, that  
they did, at time of fixing, take into  
consideration the value of their area?

20

A. No.

Q. Then why in T.T.T. area \$5,000?

A. I cannot say what their reasons  
were.

Q. One possible explanation is  
that value of land in T.T.T. is more  
valuable than land in N.T.?

30

A. There is little doubt that much  
of the land in the T.T.T. area is more  
valuable than much of the land in the  
zone marked 800, but there is also no  
doubt that some of the land in the  
area marked 3000 is of greater value

than some of the land in the area marked 5000.

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p.14 Q. Hence the need for revising the Zone Crown Rents?

A. Precisely.

Q. F.M.V.?

A. Means full market value.

Q. He recommends .001?

A. Yes.

10

Q. Do you agree with that recommendation?

A. No.

Q. It would be less than \$2,000 on this valuation, and Johnson was fully qualified?

A. Yes.

Q. His opinion differs from yours?

A. Yes.

20

Q. On L6 page 11 Government is against economic Crown Rent. Government rejected it?

A. Yes.

Q. L39 M9 para. 3 "The proposal .... "However ..... That was rejection brought out by Governor in Council refusing to agree?

A. Yes.

Q. And that was 25%?

A. Yes.

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Q. You used 100 in example you gave yesterday?

A. The economic value.

p.15 Q. Zone Crown Rent was to be revised by 25% where say Zone Crown Rents?

A. Having Zone Crown Rent revised by 25%.

Q. Was proposal to have equal Zone Crown Rents for a zone?

A. Yes, I know that as a fact.

10

Q. Still would be Crown Rents in a Zone but they would be higher?

A. Yes.

Q. That was rejected?

A. Yes.

Adjourned

(Sd.) A.D. Scholes.  
3.3.1967.

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3rd March 1967 at 2.30 p.m.  
Court resumes. Appearances as before.  
D.W. 1 - John Lyons o.f.o.  
Cross-examination by Bernacchi continues.

10 B. Mr. Lyons, I come now to Exhibit I.2,  
which is also, I think, among the L exhibits,  
L. 51-54. Now presumably the best person to  
ask about the history is the maker, Mr. Clark,  
so I won't trouble you with any questions  
on the history. But would you see paragraph  
11. It mentions complaints about the high  
level of Crown rent, resulting in a policy  
that property should be offered for lease at  
a moderate rent and that the competition  
should be in the amount of the premium rather  
20 than the Crown rent, and that policy has  
continued up to the present day.

L. Yes.

B. Now, turning to the last page, page 4  
of the exhibit. No administrative difficulty  
prevents the upward revision of Crown rent  
for new lots as sold since it has been the  
practice to make such adjustments from time  
to time, the most recent being carried out  
by this Department in 1947. Now the writer  
was the Assistant Superintendent of Crown  
30 Lands, so presumably by "this Department"  
he meant either the Crown Lands Sub-Department  
or the Public Works Department itself?

L. Yes

B. And you have said that the Crown Rent  
is fixed by the Governor-in-Executive  
Council?

L. Yes

B. Presumably then from that it was

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fixed by the Governor-in-Council after a revision was carried out in 1947 by the Public Works Department or the Sub-Department of Crown Lands?

L. The Governor-in-Council, advised by the Public Works Department as to the level that the Public Works Department thinks it should be revised.

B. So the expression "arbitrary" which you have used in your evidence and which crops up from time to time in file exhibit L is not altogether right, because by that answer your Department considers the level of Crown Rents from time to time and advises Governor-in-Council of the level at which to fix them? 10

L. This refers to the levels of zone Crown Rent which are arbitrary.

B. But how can your Department advise on an arbitrary figure? 20  
For instance, the Tsimshatsui area before the war, and presumably up to 1947, was \$1,000 per acre per annum. After 1947 it was raised to \$5,000 per acre per annum, presumably on the advice of your Department, and your Department gave the advice in view of the changed circumstances and the drop in the value of money?

L. Yes.

B. So it is not really an arbitrary figure at all, but consideration has been given to that figure? 30

L. Consideration is given to the rate to be given, but it is arbitrary.

B. So it is not connected with the open market values, and that is the reason why you say in your evidence that it is an arbitrary figure, and presumably throughout the file L, exhibit L, when the expression

"arbitrary" is used, it has the same meaning?

L. Yes,

10 B. Now, in your long answer yesterday before lunch - I am dealing with before lunch now and then dealing with after lunch - in your long answer about the method of estimating Crown Rent so as to be reasonable from the Government's point of view, you assumed two things. One, you assumed at the beginning of your answer, one towards the end. I shall just check with you that I have your evidence correct. The first assumption was that the Government had a capital value in the Plaintiff's land in 1963?

L. I do not think that is quite correct. My first assumption was that Government would get \$375 per square foot for Crown lease of that land.

20 B. But what is the difference between your answer and my question?

L. Your question assumed that Government had not let this land in 1963, but in fact it had been previously agreed to let this piece of land.

B. Apart from that agreement, the Plaintiff would have had just as Government has, a capital value for any land they have not yet let to anyone else?

L. Yes.

30 B. But you assume, do you not, in your formulating, that the Government's capital value is the open market price which the Government would get for this land?

L. Yes

B. Now that is all one, and that deals with 1963.

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J. I am going to make a correction. It is not the price the Government gets from land, but what they would get from Crown lease of land.

B. Yes, but with two exceptions, all land in Hong Kong is leasehold.

J. Nearly all.

B. I think there are two exceptions - St. John's Cathedral is one. When the witness says "Government would get for the land" he obviously means "Government would get for Crown lease of the land".

10

J. That is what I said. One would have to read that into the answer - that would normally mean the price of the freehold.

B. Well it would, yes, because although Mr. Lyons was a little bit reluctant to confirm Your Lordship's point that anything over a hundred years is perpetuity, I think he finally agreed that in most cases anything over a hundred years is perpetuity, so at least anything for over a hundred years would be equivalent to the price of freehold.

20

J. But presumably when you said you assumed the price Government would get for the land, you meant for the Crown lease?

B. Yes.

B. So your first assumption was that, if uncommitted, Government would get \$375 per square foot for Crown Lease of that land?

30

L. Yes.

B. And I think you have already told me this morning that you meant a Crown lease at the Zone Crown Rent?

L. Yes.

B. Now the second assumption which you said you had made towards the end of your evidence yesterday morning, if I got you correctly again, is that the evidence of this capital value was the only evidence available to the Director of Public Works?

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L. I do not think I said that as an assumption.

10 B. No, you did not say it as an assumption, but you said "Where the only evidence available is that of capital values, then decapitalisation is the most satisfactory method."

L. Yes, I said that, but it is not an assumption.

B. Surely it implies an assumption. It implies that if other evidence is available, then perhaps decapitalisation would not be the most satisfactory method?

20 L. Yes, but that is my opinion rather than an assumption.

B. Perhaps again we are playing on words. If you do not like the word assumption, you said that "this decapitalisation of the capital value was the most satisfactory method if the only available evidence was of capital values."

L. Yes.

30 B. Now after lunch yesterday, you explained how this was in your opinion - you are giving evidence of your opinion - how this was also reasonable to the Plaintiff and again, you appeared to assume two things. I shall state the first as number three - this was that the leaseholder would build to the maximum development?

L. Yes.

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The transcript  
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B. And I think there is no dispute that in general in 1963 the site was a vacant site?

L. Yes.

B. And the fourth and last thing was that you said you assumed that the Plaintiff would obtain a net monthly income of \$36,000 from the rentals of the building?

L. Not that the leasee would get this, but that this is in my opinion the rental value of the building representing full development of the lot. 10

B. You agree indeed that the evidence from the Plaintiff is that he gets nothing like that ?

L. He gets nothing like that at the moment.

B. Now I shall deal with these four assumptions - or if you like it better, four points, one by one. First of all, and this applies to every one of the four, would you agree with me that these assumptions are all against the Plaintiff? I mean by this that if the Government had no capital or if there were other evidence available to the Director which produced a lower figure, or if the leaseholder did not build to the maximum development or if he could not reasonably obtain a net monthly income of \$36,000, then the figure of the estimated Crown Rent would not be fair and reasonable? 20 30

L. No, I cannot agree. In the first place, taking the question of full development of the site, if the Leasee prefers not to develop the site to its full potential, then that is his privilege, but it does not after the fact that the site is available to be developed to its full potential.

B. J.1 is the calculation done, I think in the 1920's, from which the calculation in

exhibit A.10 was taken, the calculation in 1936. A photostated copy of the whole file is I think in your Lordship's possession.

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J. I have some pencil marks, but I do not think it makes any difference.

\_\_\_\_\_  
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The transcript of the official shorthand notes of the evidence  
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10 B. J.1 is the calculation. Mr. Lyons for your own convenience perhaps I could lend you exhibit A. Now when I examine you on exhibit J.1, would you have before you A.10, the attachment to A.10, that is the Valuation Report, and page 4 and page 5 of the Valuation Report deals with the property now in question.

L. Yes.

20 B. Now, perhaps the cover to exhibit J. first. "Application for Extension of 75-year Crown Lease..." etc. - the Lot Number does not count. "Application for Extension", then in ink, also under "subject" is "Approved Method of Calculating Premium, etc. Upon Renewal of Leases". So that is the subject matter of the file.

L. Yes.

B. Then exhibit J.1 is found fairly far in the file - "It is assumed a difficult case." Now let us get clear what this difficult case is. It is a non-renewable lease?

L. Yes.

30 B. Which is being renewed on the basis of a grant for 75 years plus right of renewal for a further term of 75 years. This paper deals with a typical case where the existing lease is for 75 years, non-renewable. It is in fact being surrendered and a regrant is being made of a term of 75 years from 1886, with a right of renewal for a further term of 75 years.

L. Yes.

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B. In other words, the regrant term dates back to the time of the original lease, the date of the original lease?

L. Not quite. This is a surrender of a non-renewable lease from 1886, and a grant, not a regrant, of renewable lease from that date.

B. I do not quarrel with "regrant" or "grant", but that is what it is. It is a surrender of a non-renewable lease of 75 years, dating from 1886, in exchange for a grant of a renewable lease dating from the same date with a right of renewal for a further 75 years?

10

L. Yes.

B. Which is, of course, the same as happened in A.10.

L. Yes.

B. Now existing lease terms - that is existing non-renewable lease, Crown Rent of \$6 per annum.

20

L. \$5.

B. \$5. Now that would have been the Zone Crown Rent for this particular district in 1886?

L. That I should hate to answer. I was not here in 1886.

B. Alright. It says Building Covenant \$5,000?

L. Yes.

30

B. Now you said in your Evidence in Chief I think that Building Covenant of \$5,000 was immaterial to the calculation.

L. Yes.

B. It would not be immaterial if the new Covenant were to maintain a building similar or greater than the building previously erected?

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L. Yes, it would still be immaterial.

B. So you cannot explain why in this document this line appears at all, or can you, as a value?

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10 L. This is a standing provision in the drawing up of Covenants for Crown Leases. There is either a Building Covenant or a requirement to maintain a building of the amount of the Building Covenant on the land. But it has nothing whatsoever to do with the calculation.

20 B. Read the line below it. "The Crown annual rental value of the devised premises equals \$3,000. Surely that is estimated on the building erected with the \$5,000 Building Covenant?"

L. No. The Building Covenant is invariably a minimum amount.

B. But where in this calculation does the calculator get the figure of \$3,000?

L. That is an assumption.

B. But surely it was an assumption, taking into consideration the Building Covenant?

30 L. No. The Building Covenant is a figure of cost. The rental is a figure of value, and there is a very considerable difference between cost and value.

40 B. I agree with you entirely that there is a very considerable difference. But surely the valuer - and it was a valuer that did this - took into account that the building could be erected for \$5,000 in 1886 and then as you have estimated the rental obtained from a maximum development of this site in 1963, so here he estimated rentals that were obtained from a building of \$5,000 erected

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in 1886.

L. No. The difference is that I took in my valuation an assumed cost of the actual building that could have been put on it. Building Covenants are never framed with the actual building that could be put on the site but the minimum building that Government would permit, and again, there is a very considerable difference.

B. So that in your view, this figure of \$3,000 is just taken out of the blue. 10

L. As far as I know, it is an assumption as to rental value.

B. And the figure \$5,000 in the line above, the Building Covenant \$5,000, did not have to be put in at all?

L. It was not necessary.

B. Now, the next line across, gives net income \$2,500, \$3,000 less \$500 for Crown Rent, insurance and repairs? 20

L. Yes.

B. Now he goes on to proposed terms upon a grant of right of renewal. Now that in this case would be document B.1, "Crown Lease of 1937". B.1. is the lease of 1937, so applying it from the general to the particular, these proposed terms for the grant of right of renewal refer to document B.1?

L. Yes.

B. Now it goes on "Amended Crown Rent \$50 per annum at the rate of \$250 per acre. Now whether or not, while you say you are unable to say how the Crown Rent was assessed in 1886, presumably the amended Crown Rent would be at the Zone Crown Rent applicable from time to time? 30

L. Yes.

B. Then he says "To be charged, commencing from the present time." So in other words, one of the advantages the Government obtained from this grant of a new lease was that they had the amended Crown Rent?

L. Yes.

10 B. Then he says "New Building Covenant, \$20,000." In B.1., the page after the plan, that particular Covenant is and will, during the whole of the said term hereby granted, in proper costs and charges maintain to the value of \$7,000 and to the satisfaction of J.M. Director of Public Works, one or more substantial and safe brick or stone ..... etc. etc. So there was, in place of the Building Covenant of \$20,000 in this exhibit B.1 a Covenant to maintain a building at least valued at \$7,000.

L. Yes.

20 B. Now, paragraph 2, value of Government's present interest in the property. This consists of Crown rent of \$5 per annum, receivable for 35 years, value at 5 per cent times a figure. Now that figure I think is obtained from Valuation Tables. I think that the figure is obtained at page 28 of the 8th edition of Barrie's Valuation Tables.

L. The same figures.

30 B. My edition seems to be more recent. I shall be referring to these Valuation Tables not only from time to time in my cross-examination of Mr. Lyons, but also in my examination-in-chief of my own expert, so could these Valuation Tables come in as an exhibit?

J. Do you agree?

W. No objection.

J. You agree that this is a proper book of Valuation Tables?

40 L. Yes.

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J. With my consent it comes in and is marked "O".

B. I see that the Valuation Tables are headed "No allowance for income tax". Presumably that also means no allowance for property tax?

L. Yes, "without allowance for property tax".

10

B. Now, does page 28, and therefore value 16.37419 include interest on unpaid interest?

L. No.

B. The answer is no?

L. The answer is no.

B. Does it make allowance for a sinking fund?

L. Yes.

B. But you would say that a sinking fund and interest on unpaid interest are not the same thing?

20

L. They are not the same thing.

B. The result is similar?

L. No. There are two elements in this figure. One is simple interest on the capital investment, and the other element is the element for a sinking fund to be invested to provide at compound interest the amount of investment to be recouped at the end of the term.

30

B. The sinking fund is the amount to be invested to arrive at in this case, 35 years at compound interest?

L. At compound interest.

B. So far instance, this figure 16.3 etc. consists of simple interest together with an element for compound interest?

L. Yes.

B. Now, I am still dealing with page 2, - value of Government's present interest in the property. Now present interest in the property is in fact the reversion.

L. No, that is only part of their interest.

B. And the rent?

L. Yes.

10 B. So (1) deals with Crown rent of \$5 per annum, and (2) deals with the reversion?

L. Yes.

B. Now, you said that the valuer used 7 per cent here because it was more insecure?

L. Yes.

B. In other words, he did not know what would happen during the next 35 years?

L. Yes.

B. Now, presumably these figures 14.2 etc. and 12.9 etc. come from the Valuation Tables?

20 L. Yes.

J. No 14.28531 is 100 divided by 7.

L. Yes, but that is the basis of the Tables.

B. Yes, m.L., as the witness says, that is the basis of the Valuation Tables because it is easier to multiply than divide.

J. But it is in fact 100 over 7. I do not know whether the Tables agree with that.

B. Yes, in fact I was going to refer him to page 30 and 31.

30 J. That is simple arithmetic.

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B. Well the reason why it is 100 perhaps needs to be cleared up later. But the figure is not 100 over 7, it is taken from the Valuation Tables..

J. But it is in fact 100 over 7.

B. Yes. The Valuation Tables treat anything over 100 years as perpetuity.

J. I think these Valuation Tables are worked out in a rather complicated way.

B. Sometimes; certainly these figures are taken from the Valuation Tables. I am afraid your Lordship's arithmetic is considerably better than mine. I have not worked out what 100 over 7 is. 10

J. I cannot take credit for the arithmetic. That is what the witness told me in his evidence-in-chief.

B. But he now says, and in fact there is I think no difference to his answer, that they are taken from the Valuation Tables. The figure of 12.94767 in the Valuation Tables is 12.948. They only go to three places. 20

L. In this particular edition.

B. You mean that earlier editions took it further?

L. The very old editions took these much further, but it was subsequently found to be unnecessary.

B. So that in the 8th edition the figure 12.9 etc. is taken from page 30 and the figure 14.28 is taken from page 31, 30

L. Yes.

J. Do all the editions agree, or do they change sometimes?

L. The editions agree, but the later editions have more tables than the older editions. For instance the edition Mr.

Bernacchi is using does contain tables allowing for income tax. The tables I am using do not. Mine are the 6th edition of 1947. But in this particular table the figures are exactly the same.

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B. And do you confirm that these figures 14.2 etc. and 12.9 etc. are to be found on pages 30 and 31?

L. Yes.

10 B. And again, as they are the same table, it is partly simple interest, partly compound interest?

L. It is, if I may say so, not the correct way of putting it. Simple interest applies to one element and compound interest applies to another element.

20 B. So indeed, you have to use the Valuation Tables in your work. It may be possible for an expert mathematician to work out any particular sum unaided, but in practice you have to rely upon the Valuation Tables?

L. Yes.

B. Now you did say that perpetuity meant "for ever and ever" and not "over 100 years"?

L. Yes.

B. But in ordinary everyday valuation, is "over 100 years" counted as perpetuity?

30 L. In many cases it is. There are certain cases where it would be dangerous to treat the figure of over 100 years as perpetuity, and in these cases it is not done.

B. Well, in all cases that I have been dealing with so far in exhibit J.1, "over 100 years" is treated as perpetuity?

L. No, this is not quite correct. In order to keep the tables to reasonable proportions, they are calculated to 100 years,

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and then to perpetuity. If you turn to the back of this particular table there is a formula which shows you how to continue these tables over 100 years. The rules for extending the table from 100 to 200 years, but to keep them to reasonable proportions, the actual figures are not set out, but explanation of how to arrive at them is given.

B. Over the page, for instance, Crown Rent 50 per annum for 35 years plus 75 years = 110 years, taken as equivalent to perpetuity. 10

L. Yes, because in this case Government is the freeholder. In the case of a leasee having a lease for over 100 years, then the lease should be valued for a period at which he holds the lease.

B. I appreciate that you are a good and keen mathematician, and purely theoretically you can work out the amounts for three or four hundred years. But the valuer, in this case J.1; the valuer in A.10, worked out perpetuity as anything over 100 years. 20

L. Yes, he did take it in this case.

B. Well it is this case we are dealing with. And in fact the perpetuity figure that appears on para. 2 in J.1 is the figure 100 and then perpetuity and it is the figure under perpetuity?

L. Yes.

B. Then by a relatively easy mathematical calculation he goes on to give the Government's present interest in the property as 3433. 30

L. Yes.

B. Now, at page 2 of J.1 he gives the value of Government's interest in the property on the grant of right of renewal?

L. Yes.

B. Crown Rent of \$50 per annum for 35 plus 75 = 110 years.

L. Yes.

B. Taken as equivalent to perpetuity at 5% and he arrives at the figure of \$1000?

L. Yes.

B. Then he says under the reversion "is too remote to have any appreciable value" - too remote because he was taking "anything over 100 years" as perpetuity. Therefore to be consistent, he must make that note.

10 L. It is the other way round. It is because the reversion is too remote to have any appreciable value that he takes it as perpetuity.

B. Alright. I believe they are interrelated. Now, in the calculation, does he not say - well now, whenever the date of the new lease for renewal arises, he takes it as if the right of renewal has been exercised, because he says 35 plus 20 75 = 100, and then under "reversion", "is too remote to have any appreciable value"?

L. No, I think he is assuming that the leasee is going to accept the right to renew when the time comes, and that is all.

B. Alright. For the purpose of calculating the premium, he assumes the leasee is going to exercise the right of renewal?

L. Yes.

30 B. Therefore in our case A.10, the premium was paid for a lease totalling in all over 100 years?

L. No, the premium was paid for a right or option to renew, and that is all.

B. Are you not being too technical? You have already agreed with me that in assessing what the premium is to be, the valuer in J.1 has assumed that the right will be exercised.

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L. Yes.

B. Now, A.10 commences in the first page, 4th paragraph "I set out below valuation showing the amount of premium which should be paid upon a renewal being granted based on the approved method laid down in CSO 1413/25." That is in fact based upon calculations in J.1.

L. Based upon the method used in J.1.

J. A.10 page?

B. Page 1 of the attachment. The first page is the letter itself and then the attachment to the letter, which consists of the valuation report, paragraph 4, "I set out below.....". So, in calculating the premium in 1936 based upon J.1, the valuer charged a premium for a total term of over 100 years. 10

L. No. Because J.1 is headed "Method of determining premium to be paid upon grant of right and further in A.10, it says "Set out below, valuation showing amount of premium which shall be paid upon renewal being granted." He is arriving as stated in the attachment to J.1 upon the premium to be paid upon grant of right. 20

J. I do not quite follow that.

L. In other words, the valuer at that time had instructions as to the method he should use in arriving at the premium for the grant of right.

J. How do you know that? 30

L. Exhibit A.10 "I set out below valuations showing the amount of premium which shall be paid upon renewal being granted, based upon the approved method" (J.1) - and it is my opinion that this valuation is done in an entirely wrong manner.

B. If Government gained or lost in 1936, I do not think anyone is suggesting that that makes any difference today.

J. You think this is done in a wrong manner, but the point is not whether it was done in a right or wrong way, but what they did.

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10 L. What they did is what is set out in the first para. of J.1, which is the method of determining premium to be paid upon grant of a right. They did no more or less than that, even by a poor method. I do not know who this Mr. Kirk is who signed the approved method, or whether he was a valuer.

J. You say in A.10 page 1 that they assessed premium not for 110 years but only for the remaining years to run of the first lease, plus the right of renewal.

L. Yes.

J. So what is the difference between the right to renewal and actually taking it?

20 L. The right to renew also includes the right to refuse to renew and until the leasee does exercise his right one way or the other, the second 75-year term does not exist.

30 B. You may or may not be right in law, but I would put it another way. Taking your proposition as fact - I am not admitting it - although actual purchase was for the right of renewal, the premium was calculating on the basis that that right of renewal would be exercised.

L. Yes, and that the leasee would pay the revised rent under the lease.

B. Therefore perhaps this explains why the lease in this case provides for the revised Crown Lease containing no fine or premium. Because by this method, a premium has already been paid.

40 L. Premium has been paid for the right, yes, but the Crown lease does not say fine or premium for the right.



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B. You have already agreed that the premium was based on the assumption that the right to renew would be exercised. I am therefore putting it to you that this is one of the very possible reasons why this lease contains the words "Without fine or premium" because the premium has already been paid in the calculation.

L. I am not so sure that I am the person to answer the question as to why these words were put in the lease. 10

B. It is a very possible explanation, is it not?

L. It may be a possible explanation.

B. M.l., for instance - "Particulars and conditions of sale" of lot that is to be auctioned on the 17th of this month was with the option of renewal for a further term of 75 years at Crown Rent to be fixed by the Director of Public Works as a fair and reasonable rental value of the land at the date of such renewal. No words "without fine or premium". 20

L. This is not a lease.

B. No, it is an agreement for a lease. You do not find the words "without fine or premium".

L. But this particular case has no connection.

B. No. I am asking you, it is obvious from the fact of it that this particular case does not contain the words "without fine or premium". 30

L. Yes.

J. When you said "I agree, the premium was based on right to renew, that the right to renew will be exercised" you are referring to A.10.

L. Yes., A.10.

B. So I suggest to you that in this particular case all the Crown has as right in the property in 1963 is the right to revise the Crown Rent, the premium for the second term having already been paid in 1936.

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L. The rights of the Crown in the lease are the rights to raise the rent during the currency of the lease.

10 B. The premium for the second term - whether or not in existence in 1936 which is a matter of law - the premium for that second term having already been paid in 1936.

L. No, I say it is for the option, and that is all.

B. We are going round in circles, because you have agreed that premium in A.10 contains...

J. The premium in A.10 was based on right to renew the lease.

20 B. So in February 1963, directly that right was exercised, if it indeed was not exercised in 1936 or 7 by payment of premium, but if it was not exercised legally until February 1963, the only right that Government had in this property was the right to have an assessment of the new Crown rental and not any right ..... the right to the reversion would not have been of any value.

L. The right to the reversion would have been too remote to have had any significance.

30 B. Therefore I put it to you that the whole method of calculation, taking the 1963 market value of the land, was under the mistaken impression that Government had an immediate right to the reversion.

L. No, based on the fact that the Government has an immediate right to the rent.

40 B. You have already told me this morning that crown Rent is Crown Rent when a premium is paid.

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L. Yes.

B. I put it to you that the Crown included the premium for this second term in 1936.

L. No.

B. Although you have already agreed with me that A.10 assumes in working out the premium that this right to a second term would be exercised.

L. If we assume that this right would not be exercised, there no point in putting it in at all. 10

B. What does she gain? What does she gain unless she does exercise that right, because she has to pay a higher crown Rent and premium?

L. She gains the privilege of not having to go to Public Auction for a further 75 years. She gains the building which would have reverted to Government had she not had the right of renewal. Now this is an extremely valuable consideration. 20

B. I take you up on those two remarks. The building on the land at that time were two-storey buildings, and it has been said that pre-war buildings cannot last for more than twenty or thirty years.

L. But we are dealing now with 1936.

B. At the time she took this new lease if she had taken a non-renewable lease at the same Crown Rent and no premium, she would have had occupation of the building until 1963 which would have been the life of the building. 30

L. No, because she is required under the lease to maintain a good and substantial building in a good state of repair and for the whole term and she must deliver up that good and substantial building on the lot.

B. A good and substantial building on the lot can be obtained by extensive repairs to last only a year or two.

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L. No. I would never accept that.

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B. More significant is your first statement that she would have to have surrendered the lot to Government and to buy it back by auction.

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10 L. No, at the end of the lease, the lot would have reverted to Government.

B. And she would have to buy it again at public auction. Do any lots of 75 years go to public auction.

L. Yes.

B. When they are repurchased by the old owner?

J. No, they are repurchased.

20 L. There have been a number of cases where leases have expired with buildings on them that have been put to auction.

B. Because the old owners have not been interested in renewal.

L. They cannot.

B. Because the old owners are not interested in taking regrant. Yes, and Government policy for many years, as brought out even in I.2, has been to offer regrant to 75 year leases which are non-renewable.

L. Only since the war, not in 1936.

30 B. Were there any leases that expired in 1936?

L. I do not know.

B. The 75 year leases came after the 99-year lease, and it was only after the war they started to expire.

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L. Yes.

B. I put another thing to you, Mr. Lyons. If this lease here had been non-renewable, the Plaintiff could have taken a renewed lease at the Zone Crown Rent by paying a premium.

L. Yes.

B. That premium would have been calculated on the same basis, namely an estimated value of \$355 per sq. ft.

10

L. Not on the same basis, on the same figure.

B. And if he had wanted to pay it not in one lump sum but to pay it over a period of years, it would have been decapitalised over that period of years.

L. Yes.

B. But because he has a renewable Crown lease he has not got even the option to pay the premium but on your evidence must pay the very much higher Crown Rent which is the market value of the land decapitalised over 75 years at 5%.

20

L. No, he pays what it states in the lease, which is a fair and reasonable rent. The decapitalised figure is the only means of arriving at a fair rent. There is a very considerable difference between this and paying instalments on premium.

B. As he has a non-renewable lease, he is not given the option of paying the premium all in one go when the decapitalisation over 74 years at 5 per cent.

30

L. He is not paying a premium.

B. He is not given the option to pay a figure which is equivalent to premium. The figure - I am not discussing whether the figure is a premium or not, but the figure that is equivalent to a premium - all at one time,

instead of decapitalisation over 74 years?

L. He know that when he bought the lease. It is stated in the lease.

B. I am not discussing whether or not the figure is a premium. I am not asking your opinion. I am just stating as a matter of fact for your agreement or disagreement, he is not given the option of paying the figure that is equivalent to the figure that he would have been charged as premium in one lump, but the figure is being decapitalised at 5 per cent interest over 74 years?

10

L. He cannot be given that option.

B. He is not, because he cannot?

L. No, he cannot because there is a contract.

B. But the figure as a figure is the same?

L. It is the same figure.

20

B. Now, it is a small point in consideration with the large points in this case, but the reason why to the figure that has been arrived at you have added Zone Crown Rent you say is because Zone Crown Rent is approved by the Governor-in-Council?

L. Zone Crown Rent is added because it is part of the value which does not appear in the other figure.

30

B. Is part of the value which does not appear in the other figure, So you have two values; Zone Crown Rent is one, and the other figure is the other.

L. One value, composed of two parts, because of the evidence which we have on values.

B. I put it that in fact the value, Zone Crown Rent, is the value of the Crown's interest in this property as at 1963 and the other figure is a hidden premium.

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L. No.

B. Zone Crown Rent, you told us in your evidence-in-chief, had to be charged because it was laid down by Governor-in-Council. That charge is a non-statutory charge. There is no Ordinance that says "Governor-in-Council shall lay down...."

L. Yes.

10

B. But the Governor is the Queen's representative when it comes to disposition of land.

L. Yes.

B. He takes the advice of the Executive Council in laying down Crown Rent?

L. Zone Crown Rent.

B. Now of course the other error in this method of calculation, I suggest to you, is that you take as the basis of the calculation a value that is obtained from the sale of a Crown lease at the Zone Crown Rent.

20

L. There is nothing false about this assumption because all Crown leasees pay Zone Crown Rent, with certain exceptions such as the Churches.

B. Zone Crown Rent in this case, we have it on files before us, is \$378. So the estimate of \$375 per sq. ft. is the sale of Crown lease with Zone Crown rent of \$378?

30

L. No, the value of a piece of land, of Crown lease of a piece of land, assuming that Zone Crown Rent is payable in addition.

B. And in this case, coming from the general to the particular, the value of the Zone Crown Rent is, we have in evidence, \$378.

L. Yes.

B. Now surely you are not saying that the value of a Crown lease at Crown Rent of \$378 per annum would not be more than the value of Crown lease where Crown Rent was over \$60,000 per annum?

L. I am sorry, I do not get the import of the question.

10 B. I am suggesting to you that even on your own calculations you have taken the value of the land, the capital value of the land, on the assumption that it has only a Zone Crown Rent, and then you have imposed a rent of over \$60,000.

L. No, what I said was that there is a clear and distinct relationship between capital value and annual value.

20 B. I know you are a brilliant mathematician, but I do not want you to go into figures. I want you to go into facts. You have taken as the basis for your valuation a figure which represents the value of a supposed Crown lease at Zone Crown Rent.

L. Yes.

30 B. Whereas this particular Crown lease, according to the defendant, is not to be valued at Zone Crown Rent at all but at over \$60,000 per annum. So I put it to you that even on your valuation, your initial figure is entirely wrong.

L. No.

B. You have produced exhibit K.34 showing three cases in which there has been agreement for considerable greater Crown Rent than the Zone Crown Rent. But presumably in these three cases there has been no transmission brought to your notice?

L. These have been brought to my notice and I am well aware of them.

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B. But apart from the odd sale of a plot in one case that I shall be coming to later, there have been no transmissions in the lot as a whole that have been brought to your notice?

L. No.

B. So I put it to you again that you have no information on which you can base a capital value of this land at a Crown Rent well in excess of the Zone Crown Rent for a lease of this land.

10

L. But I do have information on comparable sites.

B. At Zone Crown Rents?

L. At zone Crown Rents plus premium.

B. Plus premium.

L. Both of which together make up value.

B. The estimation of the capital value is estimation obtained from market values from the sale of Crown leases.

20

L. Yes.

B. At the Zone Crown Rent.

L. Yes.

B. My Lord, I shall now be coming to point two of the four points that I have put to Mr. Lyons. This is your proposition - your corrected me when I said assumption - your proposition that the evidence of this capital value was the only evidence available to the Director of Public Works. That is the point I am now coming to. Now in saying this you have totally rejected the surrounding Crown rents. You, or the Director of Public Works, have totally disregarded surrounding Crown Rents.

30

L. No. I did say, having regarded them, we have decided they were not the evidence which was required.

B. Your evidence differs from my question only in that you regarded them and then disregarded them.

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L. Rejected them.

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B. And when you say you regarded the evidence of surrounding properties do you mean you regarded Zone Crown rental or regarded actual rental of surrounding properties?

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10 L. Zone Crown Rent, bearing in mind that we are dealing purely with rental of land and not building. There is no point in looking at rents of buildings.

B. So you regarded the Zone Crown Rents of the Tsimshatsui area - \$5,000 per acre per annum, and having considered this, you rejected it.

L. Yes.

20 B. You did not, for instance consider individual rentals that have now been accepted in exhibit G. The table and accompanying documents showing how the table is made up.

L. I did because these are in fact Zone Crown Rents.

30 B. That is, I think, equivalent to "you did not". You regarded the Zone Crown Rents, you did not regard individual rentals of surrounding properties and the explanation is that individual rentals are all based on Zone Crown Rents.

L. Yes.

B. Then you produced exhibit K.3 and K.4. Now I think you have already said that the first column is in Plan K.1 and K.2.

L. No, it is not.

B. So that can be struck out.

L. Yes.

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B. Now the second column, you say, these are unrestricted lots?

L. Yes.

B. Have you checked that?

L. By unrestricted you mean unrestricted as to type of development? Yes.

J. The column Crown Rent Paid is restricted or unrestricted?

L. That is an entirely different matter, m.L.

10

S. Restricted or unrestricted in height and user?

B. Yes, that is how I am using it.

L. I am using it in the same sense. Under the heading "Crown Rent" the words "restricted" and "unrestricted" have a different meaning.

B. Anyhow we are ad idem when we use the word "restricted" on the third column. I think you did say that the first case is the same property as is given in G.1?

20

L. Yes.

B. Now all other properties except the last one are in the same area?

L. Yes.

B. Now the last one is not in Plan K.1 and K.2.

L. Yes.

B. Is it in Plan K.10? - presumably it is in the general area of Hunghom?

30

L. It is very adjacent to the last figure "0" in the figure "2,000" on the eastern side.

B. Does it border the sea or not?

A. No.

B. Presumably not because it is an inland lot. Would I be right in saying it is to the end of the Hunghom Peninsula?

L. Towards the end.

10 B. Now before the war the Hunghom Peninsula was separated from Kowloon by what I might call a giant rock or rocks. After the war a road was cut through the rock and Hunghom became connected in fact with Tsimshatsui. Is that one of the areas, for instance, where you would say the figure of \$2,000 per acre per annum is now too low in view of this road going through?

L. No, I think it is fairly clear from the last suggestion I made that I consider these are not too low, but wrong. That is my opinion.

20 B. I was wrong to ask your opinion. I shall put it in another way. Taking \$5,000 to be correct - your opinion is that it is incorrect, but taking \$5,000 to be correct for the Tsimshatsui area - is \$2,000 now too low for the Hunghom area?

L. Certainly, for parts of it, it is too low, assuming that \$5,000 is correct.

B. Because of the road that is now going through connecting Tsimshatsui with Hunghom.

30 L. For better communications generally between Hunghom and the rest of the Colony.

B. Yes, because the Star Ferry runs to Hunghom from Central. What then, in the column under "capital value" per sq. ft." What is the reason why you write \$30.75?

L. That is the capital value of that particular lot on which the rent was based.

B. That is clear from document K.3 and K.4, but why \$30.75 - why not 200?

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L. It is worth \$30.75.

B. Why?

L. The lot is 4002 sq. ft.

B. So size of lot is one consideration  
for value at a very low figure?

L. It is relevant. Secondly, land values  
in Hunghom, although greater than they were  
before the road was built, are still  
considerably lower than in Tsimshatsui.

B. The road was built before 23 June 1963, 10  
the material date.

L. Yes.

B. I think the road was built in the  
middle fifties - about then. Anyhow a long  
time ago.

L. Of course communications generally are  
improving all the time.

B. This was an arbitrary value placed upon  
a very extraordinary lot by Crown Lands and  
Surveys and consented to by Director of 20  
Public Works.

L. It is not an arbitrary figure, because  
there was evidence of value. Leasees had sold  
parts of it.

B. When?

L. Just before 1963 if I remember rightly.  
At something rather above this figure.

B. If you work out the Crown Rent for  
this lot, it works out to 0.915 per square  
foot per annum, under one dollar? 30

L. Yes.

B. In fact it is obvious - \$360,000 for  
an area of 402,000. Now the Plaintiff's  
Crown Rent assessed, which is the subject  
matter of this Action, works out to \$18.3 sq.  
ft. per annum.

L. Yes.

B. And you really think that there is all that difference between Hunghom and Carnarvon Road?

L. Between this lot and your Client's lot I think there is no doubt about it.

B. Over \$17 per square foot per annum difference in Crown Rent.

L. Yes.

10 B. Well then, I shall go on to the option. Ground rent, you have already said, is Crown Rent.

L. Yes.

B. The option is whether they opted to take a restricted regrant to surrender the former Crown lease to take a restricted regrant, restricting development to the existing development?

L. Yes.

20 B. Now item two works out at 9.27\$ per sq. ft. per annum. Item 3 is \$9.80.

L. Item 3 is not a restricted one.

B. I shall deal with item 3 subsequently. Item 4 is 8.16. Item 5 is \$8.9. Item 6 \$6.06.

J. This is not clear.

B. Yes, this is dollars per square foot per annum. Item 6 would be six dollars and 6 cents per square foot per annum.

30 J. These are the actual rents, not the square feet?

B. It is done by simple division. The rent of item 6 is 6,426. Divide that by area and you come to unit rent. Item 7 is \$8.74. Item 8, 4,33\$. Item 9 \$4.61. Item 10 \$4.63. Item 11 is \$4.67. Item 12, \$4.59. Item 13, \$7.73. Item 14, \$3.74. Are you willing to accept these figures?

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J. \$10, what is that?

B. I am coming to rentals in option A tomorrow morning. Rentals in B, I am dealing with first.

Adjourned

4th March 1967 at 10. a.m.

Coram: Scholes J. in Court.

Court resumes. . . Appearances as before (O'Connor absent).

D.W.1 - John Lyons o.f.o.

Cross-examination by Bernacchi continues.

10

Bernacchi: Last I was examining you on your second point and I was referring to the Exhibit you have produced K3 and K4. We concluded on your agreeing with rents on Option B. The rents vary from \$9 to \$3 per sq. ft.

J. Scholes: We have done B but not A.

Bernacchi: Presumably the agreements were entered into after the 10th August, 1964 when the circular letter was sent out Exhibit C7. Now I come to Option A. I will deal with item 1 last because that item is the only item where the rate of Crown rent resembles the plaintiff's proposed rent. So dealing with item 3 first of all, the rate is 9.80.

20

Lyons: Yes.

J. Scholes: Item 1 comparable in its rate of rent to plaintiff's proposed rent. You have not got in A the \$ per sq. ft.

30

Bernacchi: No. The witness has agreed that item 3 is \$9.80.

J. Scholes: Is that correct? \$9.80?

Lyons: Yes.

Bernacchi: Salisbury Avenue crosses Carnarvon Rd. It comes into Carnarvon Road as a T-junction and the site in question

here is partly on Salisbury Avenue and Partly on Carnarvon Road. I will be referring to K3 and K4 again but I would refer you now to the map that you have produced in regard to item 3. I think it is K7 and K8.

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J. Scholes: Where is Salisbury Avenue?

Bernacchi: On plan K1 2 the site in question is marked pink. Salisbury Avenue is part of the site of the property in question.

10 Lyons: Adjoining the plaintiff's site there is a lot marked 4. Salisbury Avenue is the lot marked 5.

J. Scholes: But not on Carnarvon Road.

Lyons: Yes.

Bernacchi: K7 is the notification signed by Mr. Law, that is, the same Mr. Law who has his signature on documents in the plaintiff's case.

Lyons: Yes.

20 Bernacchi: K7 is dated 5th March, 1964. I would draw attention to C4. That is a letter dated 11th March, 1963 saying that the plaintiff's application for a renewal of Crown lease has been forwarded to the Hon. D.P.W. for consideration. I would refer to C5 a letter dated December 1963 from the solicitors for the plaintiff.

J. Scholes: Have you finished with Option A.

30 Bernacchi: No. I am dealing with item 3 on Option A and that in effect reminds Government that the plaintiff has still not heard from the D.P.W.

That was replied by a letter dated the 23rd December 1963 to the effect that the question of renewal of your client's lease is still under consideration consequent upon Government's announcement concerning renewal of Crown leases. It was the only information the plaintiff had until the 10th August, 1964



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when he was informed of two alternative options.

Can you explain why then in item 3 the Government or the D.P.W. through Mr. Law notified on the 5th of March, 1964 of his new Crown rent having notified the plaintiff in December that he must wait for the Government's announcement?

Lyons: I see nothing here which says he must wait for Government's announcement.

Bernacchi: Document C6. The answer to the solicitors for the plaintiff's letter reminding Government that they had heard nothing although the option had been exercised in February 1963 (C5) was by a letter dated 23rd December and signed by Mr. Musson for Superintendent of Crown Lands & Survey - the question of renewal of your client's lease of the above-mentioned lot is still under consideration consequent upon Government's announcement concerning renewable Crown leases. So on the face of it the Plaintiff had to wait for Government's announcement. 10 20

Lyons: Without having seen what other negotiations or correspondence carried on it is not possible for me to say the letter of 5th March, 1964 was written in those terms.

Bernacchi: You have produced this Exhibit K7 and yet you say you have not got the letter.

Lyons: This letter was produced together with other documents to show the lessee accepted the rent, that was all. 30

Bernacchi: So you cannot offer any explanation as to why item 3 positively notified of the new Crown rent in March 1964 but the plaintiff had to wait upon Government's announcement concerning renewal of Crown leases.

Lyons: I cannot.

Bernacchi: K.8. Again there is an interrupted correspondence. I acknowledge receipt of your letter of 7th August. That letter of course is not yet produced advising to the effect that you were unable to reduce the rent 40

contained in your letter of 5th March, 1964.

Presumably what happened was after K7 the Crown lessee in effect appealed against this fixed rent and requested that it be reduced.

Lyons: Not necessarily. He might have made an enquiry as to whether it could be reduced or not.

10 Bernacchi: I have to go on the Exhibit you produced and you say that you cannot produce any other Exhibits.

J. Scholes: Is it relevant?

20 Bernacchi: K3 is the only given Crown rent above those given in Exhibit G. One of the bases of my arguments is that Your Lordship should take into consideration Crown rents in the neighbourhood so that when this witness's Schedule shows Crown rents in excess of Exhibit G I want to cross-examine as to the reasons why in those particular cases Crown rent were in excess of Crown rents in Exhibit G.

30 My point is this. When Crown rent was fixed at \$9.80 there is no evidence to show that Government policy might have something to do with it. There is no evidence either way. But in our case the evidence from the correspondence shows that we asked for the Crown rent to be fixed and the answer was "No, until Government's policy announcement is made". That is the point that I am trying to bring out through this line of cross-examination to see whether or not item 3 was correct i.e. without regard to Government's policy.

40 On K8 presumably either he appealed for a reduction or he enquired whether a reduction could be granted. And only when somebody in Government, presumably Mr. Law, said no reduction could be granted then K8 was written. Accordingly I have no alternative but to indicate my acceptance of the terms contained in your letter. Because he already enquired or appealed for a reduction and it had been refused. Presumably also Lo To was the Crown lessee. It was not a solicitor's letter.

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It was from Cheung Lee Shipyard signed by  
Lo To.

Lyons: Yes.

Bernacchi: I come to last item, item 15.  
The Hongkong Whampoa Dock. Hung Hom Inland  
Lot No.916.

J. Scholes: What was the rate per sq. ft.?

Bernacchi: 0.915.

Bernacchi: A casual look at the area shows.  
the rate was under \$1.

10

Lyons: I agree.

Bernacchi: Letter dated 22nd February, 1962  
and you have produced the letter K9. That is  
from solicitors. Would you agree the body  
of the letter indicates that they had  
previously considered proceeding to contest  
this figure but are now not going to challenge  
it?

Lyons: Yes.

Bernacchi: That is a lot belonging to the  
Hongkong Whampoa Dock. Do you know from your  
position as Senior Officer of the Crown Lands  
& Survey Office what the Hongkong Whampoa  
Dock were doing with this land?

20

Lyons: To use it for ship-building and  
ship-repairing.

Bernacchi: So the Hongkong Whampoa Dock is  
presumably a going concern.

Lyons: Yes.

Bernacchi: It was essential for them not  
to have any contest over whether they had or  
had not renewed their lease. Perhaps you  
cannot say.

30

Lyons: I cannot say.

Bernacchi: From these 2 examples would you agree that the heading Crown Rent Option A is perhaps incorrect that at least in the Hongkong Whampoa Dock and item 3 the Crown rent was communicated to the Crown lessee either in person or by solicitors before the option ever arose.

Lyons: By option you mean option A?

10 Bernacchi: Option A you are referring and A and B to your Circular of August 1964. From correspondence item 3 and item 15 the Crown rent was fixed before options A and B arose.

Lyons: Yes.

Bernacchi: Item 1 letter dated 23rd July 1964 that presumably was also before Options A and B arose.

Lyons: Yes.

20 Bernacchi: I now come to deal with item 8 which you say is the same as G11 except G11 shows a blank space for new Crown rent because at the time the land register was inspected this year no rent was shown.

J. Scholes: What is the rate per sq. ft.?

Bernacchi: Item 1 is \$8.50.

J. Scholes: Mr. Lyons, do you accept that?

Lyons: Yes.

Bernacchi: That is the only item in which unit rent compares with the proposed unit rent of the plaintiff.

30 J. Scholes: Is item 1 the only item which compares with the rent of the plaintiff's lot?

Lyons: I agree with Mr. Bernacchi.

Bernacchi: I want to put several things to you. Some you may know and some you may not know.

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Item 1 was developed after 23rd June, 1963.  
Do you know that?

Lyons: No, I went on leave very shortly  
after that period.

Bernacchi: Do you know from your file.

Lyons: Yes.

Bernacchi: The owners. On K5 and K6 (2nd  
paragraph). When Messrs. Johnson, Stokes &  
Master refer to the owners it is the Fook  
Loong Investment Co. Ltd. It does not 10  
actually say the owners. It says our clients  
are the Fook Loong Investment Co. Ltd. Do  
you know that or not?

Lyons: I do not know who their clients  
are.

Bernacchi: Dates perhaps are not important.  
An agreement for sale to the Fook Loong  
Investment Co. Ltd. was executed in January  
1964. Do you know that or not? Now?

Lyons: Yes. 20

Bernacchi: The actual assignment was regis-  
tered in October 1964. So in July 1964 when  
Johnson, Stokes & Master was writing the Fook  
Loong Investment Co. Ltd. were already the  
purchasers under an agreement to purchase.

Lyons: Yes.

Bernacchi: Do you know what the development  
was? If I put it to you that it was a  
development of 92 flats, would you be willing  
to accept it? 30

Lyons: Yes.

Bernacchi: If I put it to you that many of  
these flats had already been sold before the  
building was erected, would you agree to it?

Lyons: Yes.

Bernacchi: I come to K5 and K6.

J. Scholes: You got the date of the agreement on option A but nothing about option B.

Bernacchi: That's why I said dates are not important and the witness agreed. Whatever the dates were they were all post-August 1964.

J. Scholes: All post-August 1964. Do you agree to that, Mr. Lyons?

Lyons: Yes.

10 J. Scholes: These rents were all fixed after August 1964.

Lyons: They were agreed on.

J. Scholes: Then it is not quite the same.

20 Bernacchi: I refer to letter from Messrs. Johnson, Stokes & Master. It says: Whilst our clients consider that the Crown rent as reassessed by you is extremely high we are instructed to accept and you will explain why the actual figure varies from the figure that you have inserted. It carries on. It would seem to us that no new Crown lease as such is necessary. That was Messrs. Johnson, Stokes & Master writing as solicitors to you or your sub-department. Did you department accept that or not?

Lyons: We referred this particular item to the R.G.

Bernacchi: Eventually did Government accept that or not?

30 Lyons: As far as I am aware, that point is either not yet decided or has just been decided.

Bernacchi: The 2nd paragraph. It had not been decided when plaintiff commenced this action.

Lyons: That is correct.

Bernacchi: The next paragraph. Our clients intend to develop the property into individual flats and we would ask you to confirm that

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upon the lot being split into separate flats demand notes for separate portions of Crown rent attributable to the various flats would be sent to the individual owners in accordance with their shares in the lot. Was that agreed to?

Lyons: No.

Bernacchi: The Crown lease that was recently executed. You in fact don't know anything about it.

10

Lyons: On any lot the rent is payable either by the lessee or the owner of the remaining portion. We send out demand notes for rent. If the old system is altered I am not aware of it.

Bernacchi: So really the old policy was to refuse. You are not aware if the policy has been changed either in this particular lot or generally.

Lyons: Yes.

20

Bernacchi: This new building- the plans had been submitted and approved on 23rd July 1964. Do you know that?

Lyons: No.

Bernacchi: Do you know whether Public Works Department Building Office held up the building permit until the Crown rent was agreed. The actual building permit which is required to commence the building?

Lyons: No, I did not know about that.

30

Bernacchi: Do you know whether the Building Authority also withheld the occupation permit until the matter was finalized?

Lyons: No, I don't know.

Bernacchi: I am not saying that the Building Authority was wrong. Probably the Building Authority's point of view was what was the good of erecting a building when there was a

dispute as to rent. Still what was the point in issuing an occupation permit until the matter had been finalized.

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10 Just assuming for the moment that those things happened on the 23rd July 1964. The position was that the Fook Loong Investment Co. Ltd. had sold several flats before the building was ever erected. They were under an obligation to give a good title and they were not permitted to start building until they had agreed with Government what the new Crown rent would be. Really is this a good example to take. They were under considerable pressure. I am not saying Government was doing anything wrong. But in fact they were under considerable pressure to agree this rent to permit the building to be erected. In those circumstances would you agree that this particular example is not a good  
20 example to take.

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Lyons: No. We are concerned here with the land and not with the building.

Bernacchi: The purchasers Fook Loong Investment Co. Ltd. were vitally concerned with the building because they had to make the title good to owners of flats.

30 Lyons: I don't see why it concerns the rent which is assessed for the land. The fact that they may be imprudent managers does not alter the value of the land or make the land less valuable.

Bernacchi: But it does make a difference to their agreement or disagreement with the Crown rental as estimated.

Lyons: I cannot say that.

Bernacchi: Do you know that there are several actions pending where Crown lessees are contesting the value of the Crown land on a renewal?

40 Lyons: No, I am not aware of it.



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J. Scholes: I am not aware of that myself.  
Are they due to come on hearing soon?

Bernacchi: Perhaps this action's plaintiff  
is unconsciously being used as a guinea pig.  
I do not think they have been set down for  
hearing. Of course as I was just so rightly  
reminded by my learned friend that there are  
circumstances in this case that may not affect  
the other actions. I refer to Bundle A - the  
pre-war documents.

10

At any rate Schedule K is in fact, the only  
schedule that you can produce of Crown rents  
higher than those in Exhibit G.

Lyons: It is the only Schedule that we  
have produced. I do not say it is the only  
Schedule that we can produce.

Bernacchi: You are the one who is giving  
evidence. I must accept the evidence you  
produce. K3 the schedule of agreed ground  
rents and presumably therefore in your own  
opinion that Schedule is the only schedule  
that affects this issue if indeed the learned  
Judge thinks he should consider ground rents  
in the neighbourhood.

20

One last question on this. I do not know  
whether you are aware of this pamphlet that  
mentioned the building being erected on 49  
Carnarvon Road.

Lyons: I have not seen this before.

Bernacchi: Do you recognize it as the  
building?

30

Lyons: I recognize it as an artist's  
impression of the building.

Bernacchi: You are prepared to accept that  
the Fook Loong Investment Co. Ltd. bought  
the property No. 49 Carnarvon Road in January  
1964. You are aware that the plaintiff bought  
the property in 1948. From your duties as  
Senior Officer of the Crown Lands & Survey  
Office you are aware that flats in 49 Carnarvon  
Road have been sold and that in plaintiff's

40

case there is no question of selling the flats.  
He is letting the flats?

Lyons: Yes.

Bernacchi: The difference is that 49  
Carnarvon Road was bought for speculation.  
Plaintiff was not.

Lyons: Yes, probably.

Bernacchi: I refer back to K3 and K4.

10 J. Scholes: How much is Plaintiff's rental  
value?

Bernacchi: \$6,764.

J. Scholes: And how much is that per sq. ft.?

Bernacchi: I have worked it out at \$18.50  
per sq. ft.

J. Scholes: Mr. Lyons, are you prepared to  
accept that?

Lyons: Yes.

20 Bernacchi: The last point in this series of  
questions on K3 and K4. You have said that  
item 1 was re-measured, when was it re-  
measured?

Lyons: I do not know the exact date.  
This was done by a different section of my  
sub-department. It was not done by me or  
by any of my staff.

30 Bernacchi: Plaintiff's case, the re-measure-  
ment was done before the plaintiff was ever  
notified of the proposed new Crown rent.  
In item 1 of K3 apparently the re-measurement  
was done after the leaseholder was notified  
of the new Crown rent and appropriate adjust-  
ment made to the re-measurements. Can you  
offer any explanation?

Lyons: It is merely a question of time.  
It takes a long time to survey a lot. We  
have a very large number of lots to survey

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and the surveyors do them as quickly as they can.

Bernacchi: To grant a reduced Crown rent, how should the new Crown rent be calculated?

Lyons: This is purely a desire for accuracy in making plans or making surveys of any lot in the Colony. We want to know what the areas are.

Bernacchi: Was the whole district surveyed or was 49 Carnarvon Road surveyed? 10

Lyons: 49 Carnarvon Road.

Bernacchi: Your contention is that surrounding Crown rents should not be taken into consideration. That is your opinion. And you if your opinion is held to be wrong in law, would you agree that Exhibit K3 to K9 do not support your contention that the plaintiff's unit rent of \$18.50 per sq. ft. per annum is a very reasonable one.

Lyons: I did not quite get all that. 20

Bernacchi: In other words, excluding 49 Carnarvon Road which obviously has special circumstances the whole of your Schedule K3 gives a much lower Crown rent than \$18.50 per sq. ft. per annum.

Lyons: Yes.

J. Scholes: Would you say that property in surrounding area should not be taken into consideration?

Lyons: That Zone Crown rent in the area should not be taken into consideration. 30

Bernacchi: Exhibit K3 to K9 do not in any way deal with Zone Crown rent.

Lyons: I mean Crown rent.

J. Scholes: The property in the surrounding area should not be taken into consideration. You do not mean property where premiums were not paid.

Lyons: I do not mean that.

Bernacchi: Would you agree Zone Crown rent plus an annual instalment of premium equals the annual value.

Lyons: No.

Bernacchi: You have already agreed that in many cases Crown lessees pay the premium by annual instalments.

J. Scholes: Why not.

10 Lyons: It depends on the number of years the instalments are paid. If instalments are paid in 2 years then the lessee will pay virtually half the premium in each of the 2 years. No instalments for the 73 years.

Bernacchi: I get your point. I will amend my question. Zone Crown rent plus annual instalment of premium equals annual value where the premium is being paid throughout the period of the lease.

20 On your calculations you get the rent of \$60,000 by adding the Zone Crown Rent and an annual payment to get the annual value.

Lyons: Yes.

Bernacchi: You were not in Hong Kong in 1936?

Lyons: No.

Bernacchi: Therefore you do not know what the premium was paid for in 1936. You just have the document for you.

30 Lyons: Yes.

Bernacchi: The figure in A.10, page 5, of \$11,885.95 was taken for the value of the proposed new lease which was finally entered into in 1937.

J. Scholes: Which figure was that?

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Bernacchi: The figure for the value of the proposed lease. Capital value \$11,885.95.

Lyons: That is what the document says.

J. Scholes: The figure of that was taken as the capital value of the proposed lease.

Bernacchi: You said yesterday that in taking this figure the valuer assumed that the option would be exercised.

Lyons: Yes.

Bernacchi: He worked out this figure also on a year's purchase at 7% for perpetuity which in this calculation meant over 100 years. Again you said yesterday perpetuity can mean over 1,000 years over anything but in this calculation meant over 100 years. 10

Lyons: Not quite since Government is a freeholder.

Bernacchi: I refer to the valuation tables. I think you said yesterday that in this calculation you took perpetuity as over 100 years. Whether you agree to make perpetuity as over 100 years or not, I am not questioning it. 20

Lyons: Government being a freeholder take perpetuity as perpetuity rather than the term for which the lease is held because there is then the reversion.

Bernacchi: This calculation was based on J2 and in J2 it says the reversion is so distant as not to have any value. It was your evidence yesterday that this calculation was worked on the basis of J2 for perpetuity meant for anything over 100 years. 30

Lyons: I have never accepted this and never will.

Bernacchi: You have never accepted it and never will as a mathematician. You regard perpetuity as perpetuity but you said yesterday as I understand you that J2 was an assumed

case, that perpetuity, rightly or wrongly, was taken as anything over 100 years because it says the reversion is so distant as not to have any value.

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Lyons:            Alright.

10           Bernacchi:    You also said yesterday that the figure of 7% was taken, not 5 because of the uncertainty of advance happening in the distant future. You were dealing with J2. But this Exhibit A10 is worked out according to J2.

Lyons:            Yes.

Bernacchi:    The actual amount of premium that was actually paid was this figure of \$11,885.95 minus the value of the old Crown lease. That is Exhibit A1, section Q. The value of the old Crown lease was valued at the old Crown rent and years of purchase. 27 years, that is from 1936 until 1963.

20           Again to assumption 3 or your point 3. We mean the same thing actually. Point 3 was that the leaseholder would build to a maximum development. There are certain regulations contained in the Buildings Ordinance. The lease is unrestricted but of course every building must conform to the Buildings Ordinance otherwise plans will not be approved. The buildings Ordinance, for instance, says for a street of X ft. wide  
30           you can erect a building of Y. ft. high.

J. Scholes:    The Buildings Ordinance lays down regulations for building heights.

Bernacchi:    The Buildings Ordinance lays down regulations for the Colony as a whole but they very much depend on the width of the street for instance.

J. Scholes:    In ratio to the street width and other factors.

40           Bernacchi:    The Buildings Ordinance prescribes the formula which you take.

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J. Scholes: And you work it out.

Bernacchi: Yes. To assume the leaseholder would build to a maximum development. That was one of the 4 points the witness based his calculation on. The leaseholder was only compelled to maintain a two-storey building.

Lyons: Yes.

Bernacchi: That the actual covenant was to maintain the building to the value of \$7,000 which at the time was a 2-storey building, perhaps nowadays could be a 1-storey building. Then the plaintiff has given evidence that he bought the land in 1948. He lived in the 2-storey building until 1954. Then he demolished the 2-storey building and erected a 5-storey building and he lived in a flat in the 5-storey building. At the time the premium was to be estimated he had already pulled down the 5-storey building but had not erected the 10-storey building that now stands. You will agree with me too that the plaintiff has no obligation to erect a maximum size building. On your assumption if he did not do so, he would be out of pocket.

10

20

Lyons: I would not quite put it that way. I do not know whether he would be out of pocket but he would be pulling his assets to a maximum minimum.

Bernacchi: If he confines himself to the covenant in the lease to maintain a 2-storey building even the rents in 1963 would not have fetched nearly as much as \$60,000 per annum.

30

Lyons: No. But while he is only compelled in the lease to maintain a 2-storey building he is not compelled only to maintain a 2-storey building.

Bernacchi: Speaking generally. Various people have various ideas about buildings. For instance, one person may think that a tall building is not to the ultimate benefit of Hong Kong, that it destroys the beauty of Hong Kong. But on your point he must develop

40

a tall building in order not to be out of pocket.

Lyons: No.

Bernacchi: Otherwise all your calculations surely fall to the ground.

Lyons: The value is there, whether he wants to make the best use of it or not is entirely his choice.

10 Bernacchi: He must develop to full extent in order not to be out of pocket.

Lyons: I cannot say whether he is out of pocket. Only he can say that.

Bernacchi: A 2-storey building would not make a profit of \$60,000 per annum so that he must develop by erecting a tall building not to be out of pocket.

20 Lyons: He must erect a building taller than 2 storeys not to be out of pocket but the height of the building would entirely be his choice.

Bernacchi: He would be out of pocket if the building is perhaps 8-storey, or perhaps out of pocket if it is 5-storey.

Lyons: He might or he might not but that is his privilege.

30 Bernacchi: I suggest to you that the only thing that you can assume in working out what would be fair to the lessee (that was the point you are making in point 3) would be that he must comply with the covenant to maintain a 2-storey building.

Lyons: The building covenant has nothing to do with the value of the land itself.

Bernacchi: Yet you said it has nothing to do with J2. In 1936 when J2 was written the valuer put the value of the building covenant into his assumed case.

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Lyons: Yes. I did not say the valuer.  
I said the man who had written it.

Bernacchi: The man was the valuer because  
ALO says he was.

Supposing he is to develop to a maximum then  
you would agree again he must take the risk  
of a fall in prices and the ability to let  
his premises. That again is his own look  
out, nothing to do with Government. Government  
merely judges a rental for the ground.

10

Lyons: Yes.

Bernacchi: Cl. Letter of 2nd December,  
1964 signed by Mr. Law for the Superintendent  
of Crown Lands & Survey. As your clients  
have only just completed the redevelopment of  
the lot, the restricted and full Crown rent  
will be the same and the figure is \$60,764  
per annum. In other words, I suggest to you  
that Government was considering the building  
that was to be or had been erected on the  
site in estimating the new Crown rent.

20

Lyons: No. They were not to take the  
building into account in deciding whether or  
not to offer him an option, a different  
form of lease.

Bernacchi: In other words, Government must  
realize that it would be grossly unfair to  
the lessee if he had not erected a building  
to a maximum development.

Lyons: No.

30

Bernacchi: I believe that the Crown grants  
licences for vacant sites at an annual  
licence fee. What is that annual licence fee?

Lyons: Summary Offences Ordinance.  
They vary. I cannot remember all of them.  
There are a large number of fees laid down  
in the Summary Offences Ordinance.

Bernacchi: The fees are laid down in  
regulations by the Governor in Council.  
There are regulations under the Summary Offences

40

Ordinance. Why under the Summary Offences Ordinance I do not know. I am asking a question of fact as to what is the maximum licence fee.

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J. Scholes: That is not laid down in the Ordinance.

10 Bernacchi: It is laid down in the regulations. They vary from time to time. I can get at the point in another way. The licence fee for vacant site on Crown land per annum is very much lower than \$18 per sq. ft.

Lyons: It is indeed.

Bernacchi: My submission in law is to consider the surrounding Crown rents but if you go beyond that there is the licence fee for vacant sites. Licence fee for vacant sites is a type of ground rent although of course Crown licence is not a lease contrary to my argument.

20 J. Scholes: Licence fee is equivalent to rent.

30 Bernacchi: That is a matter for an address to Your Lordship later on. I do rely on neighbouring fees rather than on rents. Just to give you another illustration. I suggest to you that when you assume that the Crown lessee must make the best use of a piece of land that he has a permit to occupy, that is an incorrect assumption when assessing the ground rent and not the rent for any building.

Lyons: I have given an explanation of the method. This was used in the calculation of the actual rent.

Bernacchi: 3 and 4 have already said are being used by you recently in fact to explain how the method is also clear to the Crown lessee but the method used was 1 and 2.

40 Lyons: Yes. The licence fee is not a rental. It is a fee for the licensee to occupy Crown land which confers no title

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whatsoever which is determinable at very short notice.

J. Scholes: You said it is not a rent but a fee.

Lyons: Yes, and the licence is determinable.

Bernacchi: And yet the licence fee is considerably less than the maximum rent of \$18 per sq. ft. per annum.

To sum up your evidence on this point 3. Assuming it was a 2-storey building on the site on 23rd June, 1963 the rent would still have been \$60,000 unless the Crown lessee electing to abandon his right to renewal would take a regrant limiting development. But that is Option B.

10

Lyons: Option B is to pay lesser rent provided the lessee restricts his development as stipulated but this is not a regrant.

Bernacchi: The option or right of renewal is on the same terms. Government is now imposing these terms on Option B.

20

Lyons: This is a valid contract entered into by both parties. There is no question of imposition.

Bernacchi: If I said I want my renewal. Even though there was a 2-storey building on the site in June 1963 the new Crown rent would still have been over \$60,000. That is what you have to say on that point.

30

Bernacchi: Assumption 4 or point 4. That was that the plaintiff would obtain a net monthly income of \$36,000. You heard the evidence given by the plaintiff. It amounts to this. He has never received more than \$20,000 per month and is now receiving \$15,000 per month so the assumed figure of maximum development is in fact considerably more than the actual figure that is received to date.

40

In other words, your figure is purely a

hypothetical one based on the ability to let all the flats in a property developed to a maximum advantage. At one stage in your evidence you admitted yourself that 6 years is to be allowed for this to happen even in theory. Yet I think your figure of 24% rate is based on the figure of \$36,000.

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10 The plaintiff said and I do not think anybody would challenge his words that the normal expectation in Hong Kong of a transaction dealing in land is to get a person's money back within 5 years.

Lyons: I hereby challenge it.

Bernacchi: 5 years is even one year under the time when you estimate the rent at \$36,000.

Lyons: That is not the reason I challenge it. I challenge it on other grounds.

20 Bernacchi: Looking at the development of sites today. Would you agree there is no prospect in the immediate future of the plaintiff getting anything like \$36,000 per month?

Lyons: No. I would say in the immediate near future he would have got a very good chance of getting it.

Bernacchi: It is publicly known that all tenants are asking for reduction in rents.

Lyons: Yes, at this present moment.

30 Bernacchi: Any future chance is entirely dependent upon future circumstances.

Lyons: Yes it is indeed.

Bernacchi: This figure of \$36,000 although you describe as net profit in your evidence. I do not think you have taken into account all the outgoings. You have not made reference to rates. You have not made reference to property tax. You have not

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made reference to water charges. You have not made reference to electricity charges. You have not made reference to watchmen charges. So really this hypothetical figure of \$36,000 only takes into account insurance and element for repairs.

Lyons: I have made an allowance for repairs and insurance for the \$36,000.

Bernacchi: You have also made reference to a sinking fund but also that must be taken into account in any leasehold interest because the value goes down as the nearer the reversion comes. 10

Bernacchi: In this case both the land and building will revert to the Crown in 75 years, from June 1963, although the building was not even erected in 1963.

You have denied the evidence that has been given by the plaintiff that in Hong Kong the return of capital in land is worked on a 5-year basis. What do you say, 20

Lyons: My own figure is between 10 to 12 years.

Bernacchi: I put it to you that in Hong Kong it is between 5 to 7 years. In England it is between 8 to 10 years.

Lyons: Never. I am afraid I disagree with you.

Bernacchi: You will agree that your assumption 4 has not been realized up to the present date. Whether it will be realized in future is for the future to see. 30

That concludes my cross-examination on the witness' 4 points in the calculation.

Adjourned.

6th March 1967 at 10 a.m.  
 Court resumes  
 Appearances as before, O'Connor absent.  
D.W. 1 - John Lyons o.f.o.

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XN. by MR. BERNACCHI Continues:

10 Q. Mr. Lyons, I think I was mistaken in saying that three other Actions are pending. The point is I think that three cases in exhibit G. have not been settled and no actual action has been taken yet. One of the cases, I think, is number 2, Peninsular Taxi Company Limited. Do you know the Peninsular Taxi Company Limited?

A. Yes.

Q. They are in Carnarvon Road, I think?

A. Yes.

Q. What numbers, do you know offhand or not?

A. I believe it is number 20.

20 Q. Is it 20 and 20A?

A. Yes, I believe it is.

Q. That is G.20. Taking that as an example, am I right in saying that you have assessed the rent on the basis that you have assessed the Plaintiff's new Crown rent. They have not agreed and it is still not settled?

A. This is not a question of assessing rent, but a question of assessing premium.  
 30 Theirs is a non-renewable lease.

Q. Yes, so I see. Is there an agreement or not?

A. There is an agreement on the figure, but they want that lease to be regranted to a body other than the registered owner and the other owner has to agree.

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Q. They have agreed the figure as a figure of premium, and is the premium in that case worked out on the basic value of the land?

A. On the basic value of the land.

Q. And then decapitalised?

A. No, this is a premium. Decapitalisation is only used to get at rent, and there is no question of rent being charged.

Q. Decapitalisation is only used to get at rent. You said the other day that the same figure would be arrived at on decapitalisation of premium over the term of the lease?

10

A. Yes.

Q. And in fact in several of the G. exhibits, that has been done. They are paying a Crown Rent at the Zone Crown Rent, and annual premium which is due over the term of the lease.

20

A. This is not rent. This is instalments of premium.

Q. But to arrive at the figure of instalments you have used the same formula in fact?

A. Yes, depending on the number of years over which they wish to pay.

Q. So if they wish to pay premium over the term of the lease, then the same formula is used.

30

A. Yes.

Q. G.10 and G.11 - renewal of Crown leases. G.11 - you have dealt with. G.10 - has that been agreed yet or not?

A. Yes, G.10 has been agreed.

COURT: \$16,764 which works out at 18.15.  
That is G.10.

MR. BERNACCHI: I am sorry - is it G.11 or G.10  
..... G.11 is in your schedule K.3. G10 is  
the Plaintiff's property..... So if there  
are three other renewable leases with the  
new Crown rent which have not been agreed to,  
they are not on exhibit G. at all?

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A. No, they are not,

Q. Now, I want to go to exhibit J. Now  
exhibit J was opened apparently in 1925;

10 COURT: J and J.2

Q. The file was opened in 1925?

A. Yes.

Q. And although the file is a file of  
1925/6, you have already given evidence that  
the method approved in this file was used in  
1936 for assessing the premium?

A. Yes.

Q. Is it still used or not?

COURT: Is that J.2?

20 MR. BERNACCHI: Actually it is J.1. "Method  
for Assessing premium for the Renewable Lease  
in 1936".

MR. LYONS: No, it is not now used.

Q. Can you say when it ceased to be used?

A. No, I cannot say exactly when - it was  
some years ago.

Q. After the war?

A. That I do not know.

30 Q. Well, you came here nine years ago.  
Was it still in use when you came here or not?

A. No.

Q. Now inside the first page you see a



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Minute signed by Philip Jacks to the Hon. Colonial Secretary. Now, fifth paragraph down, the question of the terms for renewal of leases: "Is not an easy one, and I believe it has been decided that each case will be dealt with on its merits". Then he goes on "three main points for consideration are (a) What premium or fine if any shall be charged; (b) what Crown Rent; (c) whether Building Covenant should be imposed." No mention was made of the term "zone Crown Rent" but presumably he was meaning the same thing as you mean when you say "Zone Crown Rent"?

10

A. Presumably.

Q. If the rent at the rate was imposed now its value decapitalised at 26 years' purchase.....

A. Capitalised, not decapitalised.

Q. What is the last word?

20

A. "Cap."

Q. I am sorry. This is capitalised at 26 years' purchase. This would amount to a fair sum which should be taken into consideration when considering (a). So in this paragraph he capitalises the Crown Rent over 26 years' purchase. Presumably again, it was a case of assumed Crown lease which had 26 years to run.

A. No, 26 has nothing to do with the number of years it has to run. It is not 26 years, it is 26 years' purchase. 30

Q. What does that mean?

A. What it means is that he is considering the rate of interest, which is 100 divided by 26, which gives a rate of interest at a little under 4 per cent.

Q. Then he says "would amount to a fair sum which should be taken into account when considering (a)" and (a) is whether fine or premium shall be charged.

40

A. Yes.

Q. Do you agree with that passage?

A. No, I think he is completely on the wrong lines, if I may say so.

10 Q. Alright. Then he adds "P.S. on page 2  
"I note that the enquiry in (5) is as to what Government will do 26 years hence. We cannot commit our successors, but we can state what the Government of the present day is prepared to do on the lines as stated above." In other words, although they cannot commit their successors, they can state what Government of the present day, i.e. before the war, is presumably you would admit that you are bound by what the Government of that day did in their day?

A. We are bound by what they did, but not necessarily by what they said.

20 Q. Then Mr. Hollingsworth for the Director of Public Works writes the next Minute:  
"This is a matter that might be adjusted now. (2) There does not seem to be much point in charging an additional premium in that area at present; sales are upset at 12 cents a foot." Presumably he was meaning the Peak. The previous Minute deals with Crown Rent for land at the Peak. So again, on the interpretation point, would you interpret that to mean "there is no point in charging  
30 additional premium over and above 12 cents per square foot."?

A. Yes, that apparently from this Minute was the full value.

Q. Yes. Just to give an idea of how land values have changed, what is the 1963 value of land on the Peak?

A. I should say between \$7 and \$10 per square foot.

40 Q. At that time it was 12 cents. Then comes an interesting paragraph, C.S.O., and he gives the file number of a file opened in 1902.

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Refers to C.O.D. and another file of 1898, and another Minute dated 16 June, 1902, by F.H.M., afterwards Sir Francis May (he was a Governor of Hong Kong). "It is stated that S. of S. intended that all 75 year leases should be renewable for one term of 75 years."

A. Yes.

Q. Did you know that, or is this the first time it has been drawn to your attention.

A. I was aware of the import of this.

10

Q. And is that why 75 year leases are regranted to the present Crown leasees and not put up for sale at auction?

A. No, this has nothing to do with the question of regrants. This was the granting of 75-year leases which shall be renewable for a further term of 75 years. Policy changes, of course, from time to time and this was obviously the policy in 1902, that they should be granted for one term of 75 years giving the option to renew for a further term of 75 years.

20

Q. Surely paragraph 3 is a reference to what was intended. Paragraph 4 deals with Crown leases that are actually made renewable. So what was intended was all leases.

A. All leases should be renewable.

Q. Paragraph 4 says leases renewable for a further term of 75 years carry the condition subject to reassessed Crown Rent, but they are not subject to premium in addition. So surely paragraph 3 deals with non-renewable 75-year terms, and paragraph 4 deals with renewable 75-year terms.

30

A. No, paragraph 3 is the intention by Secretary of State that all leases should be 75 years renewable for a further term of 75 years. I think it clearly states that.

Q. Do you see, I suggest to you that that is why the Crown does regrant 75-year non

40

renewable leases to the Crown leasee on payment of a premium but nevertheless to Crown Leasee and not put it up to public auction.

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A. Giving regrant policy was not decided until after the war.

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Q. That you have said last week and I have said it did not arise to be decided until after the war because 75 year leases were not coming to an end till after the war. But you do not read into this Minute in (3) that that was the intention of the Secretary of State for that time, that all 75 year leases, even non-renewable ones, should in fact be renewed.

A. No. What I read into it is that the Secretary of State intended all leases should be renewable leases and not non-renewable leases.

Q. Why does paragraph (4) deal with renewable leases?

20

A. Because Philip Jacks in his first Minute made some wrong assumptions, and this is the Director of Public Works, putting Mr. Jacks right. When he said in (a) of (5) "The three main points are...." the Director of Public Works is pointing out here that these renewable leases are not subject to payment of premium.

30

COURT: I cannot see any difference at all. "The Secretary of State intended that all 75-year leases should be renewable for a term of 75 years" means that every 75 year lease should be renewable for another term of 75 years.

Q. And then he distinguishes between whether it is specifically stated and not specifically stated. Then "but they are not subject to premium in addition". Now, do you agree with that?

A. Yes.

A. Yes.

40

Q. On your calculation of the Crown Rent, this lease would not have any value apart

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from Crown Rent, would it, theoretically at least?

A. Value to whom?

Q. Value to a third party.

A. I cannot see the import of the question.

Q. Your calculation is based upon the free market price, decapitalised over the term of the lease. So that in theory at least that land would have no value because its full value was being taken in Crown Rent.

10

A. No, I cannot agree. The rent refers only to the ground. There is value in developing that ground which is a very considerable value to any third party.

Q. Alright. Take a case of undeveloped ground, let at the new Crown Rent. In theory that plot of undeveloped ground would have no value.

This is completely incorrect. It does have value. It has value in use. If it had no value nobody would rent it.

20

Q. If the Crown contention is right, that the Crown Rent should be the full market value decapitalised, then in theory that vacant piece of land has no value.

A. No, that is entirely false. The full market value is based upon the price in the open market. They buy land because there is value, because they can make profits.

Q. But they buy land at a certain rate.

30

A. They buy land at what they consider they can afford to pay and still make a profit.

Q. So if you assess the Crown Rent by decapitalising that rent, then the land as a vacant site has in theory no value. It might have value to speculators.

A. No, this is an entirely wrong assumption.

The land has value and where land is rented it has the same value as where a man is paying a capital sum because he has his capital to invest without laying it out in the land.

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COURT: Your point is that land has no value after premium has been paid. But how can that be so; nobody would get land if they could not obtain profit?

10 MR. BERNACCHI: Your Lordship has a point. But it is then a speculating..... perhaps I would ask another question. In 1962 the market was mainly a speculators' market?

A. No.

Q. The market in Kowloon was mainly a speculators' market in 1962.

A. No, I cannot agree.

20 Q. You have already agreed that the majority of transactions on your records show that it was transactions in which a building was erected and sold, usually for flats. Is not that a speculator's transaction.

A. No, I have said many of them.

Q. And the free market value was therefore pushed up by the many speculators who were in the market at that time?

30 A. Not only by the many speculators, but by investors and purchasers. It cannot be said that any one section of the community can push up the market value.

Q. Say that part pushed up the market value.

A. Not necessarily. It depends what the remainder of the market is doing.

Q. What would you say was the value per square foot of this property today?

A. Capital value?

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Q. Yes.

A. I should say probably in the region of \$300 to \$325.

Q. You have said that most land sales nowadays come up at the upset price. That was your evidence.

A. Yes. Government is only selling land industrially at the moment.

Q. Nevertheless, most land transactions come at the upset price. There is no keen competition? 10

A. I agree.

Q. And in 1962 there was keen competition, and in 1963, and the bottom has fallen out of the land market because speculators are now not interested in buying land?

A. No.

Q. It is only real investors who are interested.

A. The bottom fell out of the market because of the financial crisis, the Bank crisis. 20

Q. Which affected speculators because it made money short.

A. It affected everybody dealing with the property market.

Q. Property, for instance in the early 1950's was much less valuable, was it not?

A. Yes.

Q. And I put it to you that this time, 1961, 1962, 1963, 1964 even, there was an inflammatory market value. 30

A. I am sorry, I do not understand.

Q. The market value had risen beyond all proportions.

A. No.

Q. You have agreed that the market value was very much less in the 1950's. You have agreed that it is very much less today than in 1962, 1963 prices.

A. Yes.

Q. And in those years the market was unduly ..... inflated?

10 A. No, I do not think it was unduly inflated.

Q. It was the highest it had ever been before and at present it has not reached nearly that height again.

A. Not yet.

20 Q. Now, in paragraph 5, the lot is fully developed and consequently should not be inflicted with a new Building Covenant. Presumably he meant that - again, I am asking you as a valuer - that the lot was fully developed according to the old Building Covenant?

A. No, I think possibly fully developed to the maximum permitted by regulations then in force.

Q. Well again, that is pure speculation.

COURT: I think one can only ask him what any particular thing means. I do not think one can ask him what a person meant.

30 MR. BEENACCHI: I framed my question with the intention of asking him what it meant. His answer was really that he did not know but he imagined etc., which of course is not admissible in evidence.

Q. Then comes another Minute from Mr. Philip Jacks, Land Officer, apparently, L.O., to the Hon. Colonial Secretary. "I suggest that the applicant be informed that Government cannot quote terms for 1952,

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but that it is prepared to accept a surrender of the existing lease and grant a new one on the following terms," and then, "term of years, 75, renewable from 10 December 1877; premium being the difference between what has been paid at present rates plus 50% etc., Crown Rent \$250 per acre per annum, \$50 from the date of acceptance of the terms. Maintenance of the existing building would be covered by the General Covenant etc. in the form of the Crown lease. Now the premium, that was in fact what was actually agreed upon.

10

A. That I do not know.

Q. J.1 is what was eventually agreed upon, being the difference between what has been paid at present rates plus 50% for grant by private treaty.

A. This is not, I think, what was finally agreed.

20

Q. It does bring out my point that I put to you early on in cross-examination, that therefore when Government grants by private treaty they add on 50%. You seemed doubtful. Here it says "plus 50%".

A. I am very certain that there is no addition made for grant by private treaty. This in 1926 was a suggestion by the Land Officer.

Q. I see. Then what is Crown Rent, \$250 per acre per annum, \$58 from the date of acceptance of terms? What does that mean?

30

A. It means they were charging Zone Crown Rent at the rate of \$58 per acre per annum, for this particular lot it was \$58 per acre per annum.

Q. It does not say Zone Crown Rent but the expression has come to be used now. Then, over the page, a Minute from the Director of Public Works, signed for D.P.W., to the Hon. Colonial Secretary: Paragraph 3. L.O. suggests that additional premium shall

40

be charged for sale by private treaty etc. for extension of 75 years, or so many cents per square foot more than the area could be purchased today, viz 12 cents per square foot for 150 years. Now in saying "for 150 years" in the context of this Minute and in the context of the file, does he mean 75 years from the date of the original lease giving an option for another 75 years?

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10 A. I would imagine that this is what he meant.

COURT: You suggest that this is what you think it means, but you cannot say what it meant?

MR. LYONS: That, I imagine, is what this paragraph means.

20 Q. So the whole of this file, which in fact contains J.1, deals with the renewal and deals with premiums based upon the fact that the right of renewal will be exercised.

A. This first part deals with the surrender of non-renewable 75 year lease and the grant on that surrender of a 75-year renewal.

Q. 75 year renewable lease for premium.

A. This is the first 75 years for which premium is being charged.

Q. No, for 150 years, you said "Yes, I think that is what it means."

30 A. Yes, but if you will turn back to the previous page, it says that Government cannot quote terms for 1952, but it is prepared to accept surrender of existing lease and grant a new one, grant of lease, 75 years renewable and the premium is for the first 75 years.

40 Q. And the premium suggested by the Land Officer in that particular Minute is for a complete term of 150 years, namely the remainder of the 75 years plus another 75 years.

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Q. And the premium being suggested in that file, in that Minute, is premium based upon the assumption that the option would be exercised and therefore he says for 150 years.

A. All he is pointing out is that the price in 150 years would be too much even for 150 years. The figure suggested by the Land Officer is more than the market value for 150 years. There is no suggestion that in the previous figure he is referring to 150 years. 10

Q. He goes on, "If, however, it is not agreed to the argument that 75 years' extension and the residue of the present lease" again he is treating the right to renew as if it had been exercised. Is not the Director of Public Works at that time in 1926, treating the right of renewal as having been exercised? 20

A. He is arguing on these lines, but this is only part of the argument.

Q. In arguing it he is treating the right to renew as if it had been exercised.

A. Yes.

Q. Now, in the final paragraph: "Crown rental should be raised to the current rates - \$250 per acre per annum." You say in your evidence that the current rates should not be used in this case. The current rates are more now, they are \$5,000 per acre per annum. You say they should not be used but special valuation of crown rental made. 30

A. For the second 75-year term, yes.

Q. Now, I come to a Minute signed by Director of Public Works. "Hon. C.S. I forward a suggested method of determining premium to be paid upon grant of renewal of Peak leases for a further term of 75 years.

A. All he is doing is assuming that the leasees of these non-renewable leases would be prepared to accept renewable leases 40

containing an option. There is no suggestion here that they would exercise that option.

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Q. There is no suggestion here in this particular Minute of any option. He is assuming that they will exercise their option by saying "two alternative methods of determining premium to be paid upon grant", etc.

10 A. Yes, he is forwarding two suggestions determining premium to be paid upon grant, not upon renewal.

Q. Upon grant of renewal leases for further term of 75 years. He is assuming that the right to renew would be exercised. Otherwise why would anyone want to surrender their 75-year non-renewable and take a renewable lease at a higher Crown Rent and premium?

A. They are taking an option, that is all.

20 Q. That is perhaps a question of law. But in this particular paragraph he is assuming that they would exercise their right and he says "for a further term of 75 years".

A. No it does not assume that they are exercising the right. He is assuming they are accepting the option. Whether they would exercise that option or not nobody knows.

Q. Why should he use the term "for a further term of 75 years"?

30 A. Because that is the subject of the option.

Q. You have already agreed with me that J.1 is based upon the premise that the option would be exercised. J.1 was one of the two methods that this Minute deals with.

A. But this does not alter in any way the leasee's right either to exercise the option or not.

Q. That again is a matter of law.

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A. That may well be, but it is a matter that a valuer has to take into account when making a valuation.

Q. Then comes a Minute to the then Governor. "The principle seems to have been well settled: each case is to be decided on its merits as regards terms of settlement. Sanction negotiations, etc. on terms set out in (6) taking the Land Officer's suggestion as being more favourable to Government as a basis for negotiations" So it was the method of assessment set out in J.1 which was accepted by the Governor as the authorities representative of H.M. the King under the Letters Patent.

10

A. Presumably, because there is nothing here to say H.E. agreed, but we can only presume he did.

Q. As ten years later this formula was used, presumably he did.

20

COURT: My copy does not say anything about number of Minutes. Which is (6)? This Minute addressed to the Governor signed by W.T.F. in the third paragraph says "Sanction for negotiations subject to final approval by Governor on the terms set out in (6) etc. The Land Officer's suggestion is at (6). Is it (6) which was the Land Officer's suggestion? Bottom of page (5)?"

MR. BERNACCHI: Yes, my Lord.

30

MR. LYONS: I assume each item is numbered from the beginning. (6) is the Minute to Hon. C.S. by Philip Jacks on Page 3.

COURT: So it was suggested that (6) on page 3 should be accepted by Government, subject to negotiation.

A. Yes.

Q. (6) on page 3 does not exactly correspond to what was eventually agreed, which was J.1. Presumably this is the method which was eventually agreed by H.E.

40

A. The whole of this correspondence came to nought as the leasee did not want to go any further.

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Q. But this J.1 appears on the file, and presumably although this correspondence came to nothing, it had the useful effect of getting Government to approve a method of premium etc. for 75-year leases expiring within the next thirty or forty years.

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10 Q. Now, I come to some questions. Now Mr. Lyons, you defined premium at one stage of your evidence in chief as "in this context - I suppose in the Plaintiff's context-

A. In the context of valuation dealing with property.

20 Q. I see. "It means a lump sum payable in consideration of a decrease in rent which would otherwise be payable." Is an alternative definition - purchase money which the tenant has to pay in consideration of the benefit of the lease?

A. Yes.

30 Q. Now, in finishing your explanation of exhibit J.1., you said - in granting this right - by "this right" in your assumption it was a right to renew, an option to renew, - Government's interest has been reduced by the sum of \$2,433, which is the amount of premium to be paid for the grant of this right.

A. Yes.

Q. Now, there you have used again the word premium. Does it have the same meaning - a lump sum payable, etc. etc.

A. Yes.

40 Q. Now, you also said at one stage "there is thus a clear distinct relationship between capital value and annual rental dependent upon the rate of interest required." Now, is that clear relationship between capital value and annual rental also applied to the lot Takowah in M.1?

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A. I presume you are referring to annual rental and upset price? There is no relationship between these two because they represent two different things.

COURT: Upset price is not necessarily premium, is it?

MR. BERNACCHI: It is the minimum premium that the Government will accept: if no bidding comes up to upset price, then the lot is withdrawn.

10

COURT: That may be so, but it is not actually premium. It could be a premium.

MR. BERNACCHI: If the bidding goes up above the upset price, then the premium becomes more.

Q. So there is no relationship in M.1 between capital value and the annual rental?

A. Not in this case.

Q. Now I refer to bundle C.11. Do you see the end of the first paragraph "and the full Crown Rent will be the same, and the figure is \$60,764 per annum. Is it proposed to charge that rent once a year?

20

A. Yes.

Q. Now, you said in your evidence in chief, I think, that Zone Crown Rent is payable half-yearly in advance?

A. No, I said it is payable half-yearly, and we treat that as being paid in advance. In fact it is paid half-yearly in arrears.

30

Q. Premiums are payable yearly? If premium is payable by instalments?

A. Instalments are payable yearly.

Q. Now, again, exhibit J.1. You said that the Crown Rent would have an asset at the end of the first term and in J.1, of course, the first term was 35 years. And in the Plaintiff's case, of course, it was

27 years. So in J.1 and in the Plaintiff's case, which was based on J.1, the Crown's asset was valued after 35 years and 27 years respectively?

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A. Yes.

Q. But in both A.10 and J.1 the Crown's asset in the reversion is of no value at the end of the second term?

10 A. Its value is too remote to be of any significance.

Q. And the premium was based upon that presumption?

A. I am sorry, that is not quite correct. It was a fact that the reversion in 75 years' time was too remote at that time.

Q. You agree, except you say "at that time" which in the Plaintiff's case is in 1936.

A. Yes.

20 Q. Now, the term "decapitalisation" has been used not only in your evidence but in the file B.3. Now in the sense in which it is used, does it mean recouping an asset over a period of years?

A. No, it merely means arriving at an annual value from a capital value.

Q. Does it not mean arriving at the recouping annual value of a capital asset?

A. No.

30 Q. Has "amortization" any different meaning from "decapitalisation"?

A. It has indeed.

Q. And this is decapitalisation and not amortization. It put it to you that decapitalisation means, in layman's language, recouping an asset over a period of years by annual payments.



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COURT: Decapitalisation means?

MR. LYONS: The process of arriving at an annual rental value from a capital value.

Q. You are very keen to say "rental". You did not say in your first answer to me - you said, I think, "process of arriving at an annual value of a capital sum".

A. Yes, I would accept that.

Q. And premia are decapitalised in exactly the same way. The same formula is used. 10

COURT: You agree to use your formula without the word "rental"?

MR. LYONS: Yes.

Q. And in this case it means - your formula - Government is recouping a capital sum of \$1 million odd over 74 years.

A. No, I am afraid it doesn't. Government is not recouping anything. Government is charging a rent and that is all. 20

Q. Page 4, exhibit B.3. M.7. Now you see 3,293 sq. ft. That is the area of the Plaintiff's lot at \$375 per square foot. That is the value placed upon the Plaintiff's land by the Director of Public Works?

A. Yes.

Q. And then you have the figure 1,234,875. Now that is pure multiplying, and that is your capital figure? 30

A. Yes.

Q. And then you explained at length what the next figure was. That it was very much easier to multiply than to divide, and therefore you used the valuation tables. Instead of dividing by 75 years at 5 per cent.

you multiply by this figure you obtain from valuation tables and that gives you the annual sum. So that on your figures, the Government is recouping capital value of the land at 5 per cent over 75 years.

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A. No. It is charging a rent.

Q. Call it rent, call it anything you like, but in fact it is recouping the value of the land over the length of the lease.

10 A. No.

Q. You agree that this figure 1 million etc. is your capital value of the land.

A. Yes.

Q. And you agree that this figure \$60,386 is the annual sum which would give you \$1 million etc. over 75 years at 5 per cent.

A. Yes.

Q. Alright. The rest, I put to you, is playing on words.

20 A. No. Very definitely not. There are other methods. This is one method of arriving at rent. This happens to be the best method in this particular case.

30 Q. Now, I think Mr. Lyons that you said I am dealing with this question of interest now - you and I had slightly different opinions on this question of interest. I think you said your basic multiplier was 0.0513, and this was a calculation based on an interest rate of 5%.

A. Yes.

Q. And this was not compound interest.

A. Yes.

Q. Then you divided this multiplier of 0.0513 by 1.05 and arrived at a multiplier of 0.0489.

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A. Yes.

Q. This figure is in fact a round-off figure. The absolutely correct figure is I think 0.048857.

A. If you want to take it to more decimal places, that I would agree. I have not worked it out. This is the reciprocal of the year's purchase, because we used calculating machines.

Q. Now, when you use compound interest and when you use simple interest, what do you mean? What is the difference? 10

A. It is that when compound interest is used, there is interest paid on the interest that accrued in the previous year.

Q. In fact it means interest on interest.

A. Yes.

COURT: You decapitalise for 58 years instead of 75?

MR. LYONS: No, my Lord, that figure is 5% and not 58. This is 5% for 75 years. 20

Q. Now, you have said you are familiar with valuation tables. Now would you look at 0.1 please, page 69. That gives the valuation table of a sinking fund, an annual sinking fund, being the annual sum required to be invested in the amount of one pound in a number of years, i.e. the sum which, if invested at the end of each year will accumulate at compound interest to the pound. 30

A. Yes.

Now, would you look at page 83. The amount of one pound in a given number of years at rates of interest ranging from 1 to 25%, i.e. the amount to which one pound invested now would accumulate at compound interest. Page 103, the amount of one pound per annum in a given number of years at rates of interest ranging from 1-13 per cent, i.e.

the amount to which one pound per annum invested at the end of each year will accumulate at compound interest. Now, Mr. Lyons, using these three tables, can the multiplier be obtained of 0.0489?

A. Yes, it can.

Q. Then surely that is compound interest.

A. No, it can be obtained for many other things that are not compound interest.

10 Q. If using these tables this multiplier can be obtained and these tables are compound interest, the multiplier must be compound interest.

A. No. If you will look at the table actually used, it does not mention compound interest at all, whereas all the others do.

Q. That does not give you that particular multiplier. It gives you 0.0513.

A. Yes.

20 Q. And you have to divide that by 1.05 to get the multiplier that you used.

A. Yes. Merely because of the assumption that Zone Crown Rent or Crown Rent is paid in advance. It is giving the leasee the benefit of that doubt and that is all.

30 Q. 5 per cent simple interest. Forget about the tables. You have agreed with me that this figure could be obtained by using compound interest tables but you have said that this figure can also be obtained by using simple interest tables.

A. No, I have said it could be found by other methods.

Q. What would \$1 million odd at 74 years - 75 - 75....

A. The benefit of doubt does not reduce the number of years.

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Q. At 5 per cent simple interest produce ?  
It takes 20 years to double your capital. It  
takes another 20 years to treble your  
capital. What would that produce?

A. Using 5 per cent simple interest,  
this would produce a rental figure of \$61,743.

Q. Without interest at all, do you agree  
that in round figures it would be about  
\$16,000.

A. You cannot talk about rent without  
interest at all. 10

Q. Alright, talking about rent which  
you cannot talk about. Do you agree that  
it would amount to \$16,000?

A. I am unable to answer the question  
which does not make sense to me.

Q. Divide this capital sum by 75 years,  
the answer is about \$16,000.

A. You cannot divide money by years.  
It does not make sense. If you divide this  
sum of money by 75, this would give you a  
rate of interest of 100 over 75., thus 1.25  
or thereabouts. 20

Q. I am not going to be confused by  
your figures, Mr. Lyons. Divide the capital  
sum by 75. Not by 75 years, by 75. Do you  
agree that it would work out to approximately  
16,464?

A. I am perfectly prepared to accept  
that, or admit that, without accepting any  
further implication or meaning. 30

Q. Stop thinking about land values or  
anything else. 5 per cent simple interest  
on that figure would be what a year?

A. \$61,743, 5% of one million.. of that  
there is no possible shadow of doubt.

Q. You have now divided (on my question)  
1,234,875 by 75 and you have accepted that

the answer is 16,464.

A. Yes,

Q. Now, simple interest means that you double your capital in 20 years, doesn't it, and treble your capital in 40 years.

A. At 5 per cent, yes.

10 Q. So that five times or four times 80 would be four times - so that it is about three and three-quarter times. Simple interest on \$1 million odd would double your capital in 20 years at 5 per cent so it would make it \$2 million odd; in over 75 years it would make it about three and three-quarter times.

A. Yes.

Q. So now divide that figure, say \$4 million odd, by 75.

A. I am sorry, I cannot see what is the object of this.

20 Q. Now, I am not leaving this question of compound or simple interest. Now what sum of money will a unit of one become if invested at 5% compound interest for 74 years? Your answer is to be found in page 91 of exhibit O.1.

A. \$1 million would amount to \$36.984.

Q. Now, how much is annual sinking fund payment to provide unit of one in 75 years' time. The answer is on page 79.

30 A. .0013216.

Q. Now, how much is annual sinking fund payment to provide 36.984 in 75 years. - In other words, multiplying the first answer, 36.984, by the second answer, .0013216 and that comes out 0.488780544.

A. Yes.

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Q. Which is in fact the multiplier you have used.

A. It is the same set of digits, yes. It might have been the number of the horse I backed on Saturday which lost. It has as much relevance.

COURT: May I interrupt. B.3, page 4. Minute 7. The figure there of 1234875, that was the capital value? But is this capital value of the land?

10

MR. LYONS: The capital value of land for a 75-year term.

Q. Capital value of land for a 75-year term. You said in your evidence in chief that it was the capital value of the land sold in the free market.

A. For a term of 75 years.

COURT: You cannot sell land on the free market. It can only be for a term of years.

MR. BERNACCHI: But no term is sold for exactly 75 years - some are sold for 999, some for 34 or 35 years. They are all different.

20

A. We are even now selling leases for a term of 75 years.

Q. So you mean that the \$375 is not the price that the purchaser or the Plaintiff would obtain, but the price that you would sell the land to the Plaintiff for a term of 75 years?

30

A. It is also the price the Plaintiff could have obtained.

Q. It is the price that you would sell a term of 75 years to the Plaintiff?

A. To any purchaser.

Q. To any purchaser, including the Plaintiff.

COURT: \$375 sq. ft. That is the value of the land.

MR. LYONS: The value of a 75 year lease of the land.

COURT: It works out at \$60,386 per annum?

MR. LYONS: Yes.

COURT: \$5,000, is that per annum or per acre?

A. \$5,000 per acre per annum.

10 Q. Now, the figure that you have used, 0.0489 can also be obtained by this method. What sum of money will one unit become if invested at 5% compound interest for 74 years? Now, the answer is to be found at page 91. 36.984. How much will an annual unit of one invested each year at 5 per cent. compound interest amount to in 75 years' time? The answer is to be found at page 111. 20 756.654. How much is the annual payment providing 36.984 in 75 years? i.e. divide the first figures by the second figure, and again you will come to the figure that you have used as the multiplier.

A. Yes,

Q. That figure is not of itself to be found anywhere in these tables?

A. No

Q. So you have to use these tables to produce this figure.

A. It is not necessary to use these tables.

30 Q. But there are various methods to work out, of arriving at the same figure.

A. Yes.

Q. And would you go this far, that this figure, this multiplier, contains an element of compound interest?

A. No.

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Q. Now, I come back to J.1 again. After subtracting the value to the leasee of the existing lease from the value to the Crown of the new lease, that is renewable lease, you arrive at a figure of \$2,433 and 66 cents.

A. No, this is not the value to the leasee, but the value to Government in both cases.

Q. Alright.

A. The first part states the value of Government's present interest in the property. 10

Q. After subtracting one from the other, you arrive at this figure of 2.... etc.,

A. Yes.

Q. Now, what is the amount of the annual income from the property?

A. In the first part, this is \$5 per annum.

Q. To the leasee? \$2,500?

A. Yes this is assumed in the first part.

Q. So that the approximate ratio amount of annual income to the premium is 100 per cent. 20

A. This is a purely hypothetical case.

Q. And on the hypothetical case, the amount of annual income equals approximately the amount of the premium..

A. These are merely assumed figures. They probably bear no relationship to one another whatsoever. They are purely figures picked out of the air. 30

COURT: I think J.1 is to show the method and not to show the value.

Q. Would you agree that on the assumption case, the premium is approximately equal to the annual income the leasee obtains?

A. This is purely coincidental.

Q. But it is the same.

A. Yes.

Q. I refer you to A.10. Now A.10 page 5. There the actual net income was \$888.26

A. Yes.

10 Q. The actual premium paid was \$1,238.38, so the ratio in this case is about one and a half times. So, having regard to the value of money in those times, the actual premium was substantial. About one and a half times the net income of the property for a year.

A. Yes.

Q. Now, a few more question. The notes that you have been copiously using in your evidence-in-chief. Were they your own notes or were they shown to other senior officers?

A. These were my own notes. I showed them to nobody.

20 Q. So there was no question of your obtaining approval by Government before you put forward the theory that you have been putting forward today.

A. No question at all.

Q. Are you prepared to produce these notes?

A. I do not have them with me.

30 MR. BERNACCHI: Now, do you agree with the Plaintiff's estimation that the Nathan Road property in Tsimshatsui is the best district in Kowloon.

A. I should say it is the most valuable.

Q. He was answering a question on value put by Mr. O'Connor. Do you agree that the Mongkok area is the next valuable.

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A. No.

Q. What do you say is the next valuable?

A. My own opinion is that the Carnarvon Road, Cameron Road, Granville Road is probably the next most valuable.

Q. In your opinion, where do you put Mongkok?

A. I would put it at fourth or fifth.

Q. What is third?

A. The small area on the western side of Nathan Road, that is now Lock Road, Hankow Road, parts of Peking Road. 10

Q. Now, Nathan Road is I believe over 100 feet wide, is it?

A. It is, I believe, 120 feet.

Q. And it is the centre for hotels, business. Carnarvon Road is less than half that width?

A. Yes.

Q. I have before me the annual departmental reports for 1965/66. and on page 14 (it is the Registrar-General's Report), there is paragraph 42, which reads: "The renewal clause in the lease provides that on the expiration of the original term a new lease will be granted at such Rent as shall be fairly and impartially fixed by the Director of Public Works as the fair and reasonable rental value of the ground at the date of such renewal." The Director of Public Works, in accordance with legal advice, has calculated the new Crown Rent according to the full market value of the land (excluding buildings), subject to the user and development conditions imposed by the lease, at the date of renewal. The re-assessed Crown Rent is therefore computed on the basis of such full market value decapitalized over the new term of 75 years, at 5% per annum, 20 30

with an addition made in respect of the zone Crown Rent applicable to the district in which the lot is situated." Now, I am not asking you whether that had been done in this case or not. I am asking you whether you agree with this paragraph.

A. Yes.

10 COURT: Are you putting this in? The witness says he agrees with it. Otherwise we do not know what he agrees with.

MR. BERNACCHI: I can indeed put it in.

COURT: Is it not your case, to show the way the rent was fixed. We had better mark this K.11.

Do you say that the Plaintiff's rent was valued in accordance with that paragraph?

MR. LYONS. Yes. My Lord.

20 Q. Now, I shall take you up on that answer. The new Crown Rent according to the full market value of the land included a building, subject to the user and development conditions imposed by the lease. In the evidence you have been giving you have not referred to "subject to the user and development conditions imposed by the lease".

A. That is implicit in the lease itself.

Q. So you did not consider this?

30 A. Yes, we did consider it. We are assessing rent for the second 75 year term and we must have regard to what is in the lease in assessing that value, and we do have regard to it, to the restrictions put in in the lease.

Q. What restrictions were in the lease?

A. There were none.

Q. So you had regard to the fact that the lease had no restrictions and you had

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No.6

The transcript  
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regard to that in assessing the full market value.

A. Yes.

Q. That was what you had regard to in assessing the full market value?

A. That was one of the things.

Q. Now, in exhibit G. There were a considerable number of regrants, and again there were not any restrictions on the lease.

A. Yes, there were restrictions in these leases, but only restrictions on less valuable uses. In other words, the non-renewable are restricted to non-industrial uses. 10

Q. In Carnarvon Road that would not detract from the value at all?

Adjourned.

2.30 p.m. Court resumes

D.W. MR. LYONS o.f.o.

XN by Mr. BERNACCHI Continues 20

Q. Now, I was giving certain figures to you this morning. You were saying they are just figures.

A. Yes.

Q. One figure I gave to you was about \$16,000. This is the capital sum divided by the 75. Now that, of course is more than \$44,000 short of the new Crown Rental by your estimate. So now again I am speaking as a layman, in layman's terms, this \$44,000 is what the Plaintiff has to pay out each year for the element of interest. 30

A. No, I have already said that there is no element of interest in the rent. It is purely a figure of rent.

Q. Alright, without interest, without interest. Without calculation at 5 per cent,

say it was at 1 per cent. It would arrive at a far lower figure. Say it was at 1 per cent, that would approximate to \$16,000, perhaps \$20,000.

A. That I would need to calculate before answering.

Q. So the extra \$44,000 is brought about by you saying that that figure must be calculated at 5 per cent.

0110 A. That figure is calculated at 5 per cent.

Q. It is brought about by the fact that that figure is calculated at 5 per cent.

A. Yes.

Q. Now your evidence is that you did calculations with Director of Public Works. Now he fixes the value of the land in square feet. This is clear from document B.3, M.6. From this onwards the calculation was a matter of applying a formula to the figure of \$375 per square foot and presumably you applied that formula?

20

A. Yes.

Q. So really what the Director did was to fix the valuation of the land as disclosed in M.6.

A. Yes.

30

Q. And presumably again, by M.6 the Director did not - rightly or wrongly - did not take into account the particular terms of the lease such as that the Plaintiff was only required to maintain a building of \$7,000.

A. This is implicit in the lease. These are the things that must be taken into account.

Q. They are not written down. But you say that they are implicit in the

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lease and now. Who put this file up to the Director of Public Works? Mr. Hughes, was it not? So you did not put it up direct.

A. It went through my superior officer.

Q. The Director of Public Works wrote Minute 6 and signed it and sent it back to Mr. Hughes. So presumably it is only the Director of Public Works who can say what he did or did not take into account.

A. Yes.

10

Q. Now, from Minute 6 it is clear that this figure of \$375 per square foot was fixed on 1st April, 1963.

A. Yes.

Q. In this particular case you know the date for fixing was on or after 23 June 1963. And I think you justified the fixing in April in your evidence in chief by saying that there was no question of a lesser value obtaining in June?

20

A. Yes.

Q. How long did the land market take to fall after the financial crisis?

A. A fairly short period.

Q. Less than a month.

A. No, I would say probably less than four or thereabouts.

Q. You mean to say that a month after the financial crisis, you were still getting bidders at public auction equivalent to \$375 per square foot.

30

A. We had nothing in this area to put up to auction, and had not had for many years, in this area.

Q. So when you say that it took approximately four months, what area are you referring to?

A. To the market as a whole, which took a certain amount of time to try and assess the implications of the financial crisis, and I say this took rather more than four months.

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Q. The financial crisis came to the market as a whole - perhaps there were no dealings until they had assessed, and when there were dealings, they were at very much less value.

A. At lower figures, yes,

10 Q. I do not know whether you are acquainted with Building Authority files at all?

A. I have seen and do deal with them on various occasions.

20 Q. I am going back now to 49 Carnarvon Road which is the only figure shown in your schedule K.3 which in any way compares in unit rate with the Plaintiff's assessment. Could you identify these figures .... On behalf of the Leung Investment Company Ltd., 25 December 1965, a letter.

A. Yes.

Q. Do you recognize that or is it entirely new to you?

A. I have not seen it before but I am prepared to accept it.

Q. Has Miss Collins any objection?

MISS COLLINS: No objection.

30 MR. BERNACCHI: there are actually four documents.

COURT: Is this going by consent? Letter K.12.

MR. BERNACCHI: Another letter to the Building Authority. K.13, signed by agents, and a letter, K.14, signed by the owners. And finally an occupation permit. I shall be producing memorial in the course of my



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evidence as to when the Fuk Hing Investment Company agreed to purchase and when the assignment was included. They are both registered. The agreement was in January and the assignment was, I think, in August.

COURT: Occupation Permit is marked K.15 by consent.

MR. BERNACCHI: Now, your evidence amounts to this. That a hypothetical purchaser for a Crown Lease would pay \$375 per square foot, 10

A. Yes.

Q. This figure has been decapitalised at 5 per cent.

A. Yes.

Q. Then add ordinary Crown Rent and your evidence is that that is a fair and reasonable Crown Rent.

A. Yes...

Q. Now, exhibit G contains details of property in the neighbourhood. Some at least are of approximately equal value to the Plaintiff's lot. It shows regrants for a premium and the ordinary Crown Rent? 20

A. Yes.

Q. Now, in G.4, G.8, G.12, G.17, G.18, G.19 and G.21 decapitalisation of the premium is for the whole length of the new grant?

A. No, in some cases they are more, and in one case certainly less. 30

Q. What do you agree? Which do you agree is decapitalisation over the whole length of the new lease?

A. The last three, G.18, 19 and 21.

Q. Now why do you say G.4 is not decapitalised over the whole length of the new Crown Lease.

A. The G.4 leasee is paying instalments for 93 years. The new Crown lease was for 75 years.

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Q. Now the Crown lease is for 93 years. In fact there is a proviso that the Crown Rent should be at the old rate until the end of the old Crown lease and at the new Rent, i.e. \$5,000 per acre per annum thereafter. But the term of the grant is in fact for 93 years, because it was a surrender of the old Crown lease.

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A. Yes in fact the leasee was granted a term of 93 years consequent upon the surrender of the balance of his old lease.

Q. And the same goes for G.8

A. G.8 of 74

COURT: You agree that G.4 is the same as 18, 19 and 21?

20

MR. LYONS: No, I do not agree. It is the same effect, because the effect is in fact to grant a further term of 75 years. But as the leasee was willing to surrender his existing term rather than grant a 75 year lease commencing some time in the future, it was considered more satisfactory to take surrender of the old lease and grant a straight-through lease of 150 years from the original date.

30

COURT: Does that have the effect of decapitalising over the whole run of the lease?

MR. LYONS: With the proviso that allowance has been made for the portion of the lease already surrendered.

MR. BERNACCHI: Allowance has been made in the premium, presumably.

A. Yes.

Q. The only thing that is outstanding is G.8. Decapitalisation for 74 years?

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A. Yes.

Q. Which are the same figures. Your evidence is that they are not the same thing, but they are the same figures as in this case.

A. No in this case with a premium for a period of longer than 75 years, allowance has been made in the premium.

Q. I am talking about G.8. So you say that in this case an allowance was given of one year because rent is normally paid half-yearly and one of your figures was 74 years, not 75. 10

A. In this case the lease was granted after the original lease had expired and as a consequence premium is payable up until the date the second term would expire, but in this case only 74 years.

B. So here the leaseholder had left it too long and only 74 years was left. Therefore premium was decapitalised over 74 years not 75. 20

A. Either that, or the leasee chose to pay over 74 years.

Q. Perhaps you could answer more clearly if you would look at G.8.

A. This, I am afraid, does not appear in the document. When the leasee requested a regrant, certainly at this period he was permitted to pay by instalments over what would remain of the second 75 years, but he could, if he so chose, pay over a lesser period. 30

Q. So either he chose to deduct one year from his instalment payments or Government insisted on him deducting one year because he was late, and presumably in all these cases the decapitalisation was at 5 per cent.

A. Incorporating interest at 5%. All those cases where the period was more than 21 years.

Q. When the period is less the interest 40

is more. 20 years, the interest is normally 10 per cent.

A. In 1960 Government changed the rate of interest to 10 and reduced the period over which premiums could be paid to 21 years maximum.

B. Where the interest is payable over the whole term the interest is 5 per cent. Where the premium is paid for only 20 years, the interest is 10 per cent.

10

A. Provided this is after 1960.

COURT: 5 per cent interest was used, and decapitalisation at 5 per cent where regrants were made before October 1960 and 10 per cent interest decapitalisation after October 1960. The period does come into it, doesn't it?

MR. LYONS: After October 1960 the maximum period over which instalments could be paid on the premium was reduced to 21 years.

20 COURT: Did that affect percentage?

MR. LYONS: Percentage was raised to 10 from 5.

COURT: The period was reduced but it did not affect percentage.

MR. LYONS: The two things were done at the same time.

MR. BERNACCHI: Previously instalments could be paid over the whole duration of regrant of lease, i.e. G.4

30 A. There was a slight amendment to that. Government always insisted that the last payment be made one year before the lease expired, otherwise the chances of getting that last year's money were slight.

Q. 75 year, payable in advance.

COURT: Previous to October 1960, premium could be paid over the whole period of

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lease, except the last year.

MR. BERNACCHI: Payment was always in advance, even the first year was in advance. Or only the last year?

A. No, the first year was in advance.

B. So payment was made in advance, one year's premium was paid at the beginning of each year. It was not anything peculiar to the last year.

A. Instalment payments were payments yearly in advance so that the last instalment was paid at the beginning of the last year and not at the end. But there were peculiar cases involving.....

10

Q. Is that what you were meaning?

A. Generally speaking, yes.

COURT: You say previous to October 1960 the premium could be paid over the whole period of lease except for the last year, i.e. yearly in advance.

20

MR. LYONS: Yes.

MR. BERNACCHI: And you said in evidence last week that Crown Rent in this case was treated as if it had been made in advance.

A. Yes.

COURT: The rent in our case....

MR. BERNACCHI: Was treated as if it is paid yearly in advance. Now, combining your answers last week and your answers this afternoon, in cases where premiums are charged, premium is decapitalised and the decapitalised premium plus ordinary Crown Rent equals the amount that you say the Plaintiff has to pay by way of new Crown Rent. The figures are the same. Incidentally, is the figure X decapitalised over 21 years at 10 per cent greater or less than the figure X decapitalised over 75 years at 5 per cent?

30

A. I should have to work that out.

Q. The figure decapitalised at 5 per cent over 75 years is more.

A. The 21 year period at 10 per cent is more, is considerably more, than 75 years at 5 per cent, I think.

COURT: You said the Plaintiff has to pay the same figure of rent as the decapitalised premium plus Zone Crown Rent.

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10 MR. LYONS: Yes, page 35 and page 55 of the Valuation Tables.

MR. BERNACCHI: These are reciprocal tables?

MR. LYONS: No, this is an ordinary year's Purchase Table. To decapitalise this one must divide the figure of premium for 20 years by 8.619 and to decapitalise the premium for 75 years one would divide by 19.596. To divide by 8.619 is much higher than dividing by 19.596.

20 Q. What I want to know, putting it in layman's language, is what the figure \$X at 10 per cent will yield in 21 years, i.e. why. Is it, or is it not, greater than the figure \$X will yield in 75 years at 5 per cent.

A. I do not see what you are trying to get.

Q. We in Court are laymen. I am just wanting the figures.

30 \$X, a capital of \$X paid over 75 years at 5 per cent, the total figure is what? For instance this case, \$1 m. becomes what?

A. Again, I do not see the import of the question. Is the question what will \$1 million amount to in 75 years, assuming interest at 5 per cent?

Q. 1 million capital is roughly \$48 million in 75 years' time at 5 per cent. 1 million in 21 years' time at 10 per cent, would it be less or more than \$48 million?

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A. It would be less.

Q. So in 1960, the Government changed its policy by getting a quicker return on the capital, but of course the total amount of capital would be less because of the difference between 21 and 75 years.

A. No, with all due respect, this is a complete misuse of the tables.

Q. I appreciate that this is a layman's use of the figures. But 1 million becomes roughly 48 million in 75 years at 5 per cent, and in 21 years at 10 per cent it becomes less than 48, i.e. about 19 million.

10

A. This is a complete misuse of the tables. Then you made a further suggestion as to the Government method of dealing with this capital which is, I say, inaccurate and a complete misuse of the tables.

Q. I put it to you that the whole of your evidence has been one of mathematical contortions to try and get round the fact that Government has no right to charge premium in the Plaintiff's case.

20

A. The methods I have used are standing practice wherever the art of valuation is carried out.

Q. You said one of several methods.

A. One of several methods.

Q. If the Plaintiff had had a non-renewable lease, he would have got premium plus ordinary Crown Rent for the renewal and in that case he would have had the option either to pay by instalments or to pay \$1 million in one go and forget about it?

30

A. Yes.

COURT: Mr. Lyons, I should like to go back to 49 Carnarvon Road, item 1 on exhibit K.3 and K.4. Now it was suggested during the cross examination that the Crown Rent in this

lot was not strictly comparable to the Plaintiff's lot. Can you state why you consider that, the Crown Rent in that case is comparable and why you consider it should be taken into account when considering Crown Rent in the Plaintiff's property?

10 MR. BERNACCHI: I think the witness agreed that it was not strictly comparable. I admit he included it in his K.3 list so that the last part of the question is clearly admissible.

COURT: It is my recollection that he said....

MR. BERNACCHI: He agreed with me on most of my points of comparison.

20 COURT: 49 Carnarvon Road was comparable with the Plaintiff's property both border on Carnarvon Road and Salisbury Road, I thought I put it to him that on your K exhibit the owners were under pressure to agree and therefore it is not comparable. The witness did not agree,

MR. BERNACCHI: But he did agree that the owners, or purchasing owners were to build and sell.

30 COURT: He agreed that in one case, but whereas in the Plaintiff's case flats were to be let, in 49 he understood they were to be sold. But he did not as far as I am aware say that the properties were not comparable for purposes of comparing what Crown Rent should be obtained.

MR. BERNACCHI: I thought the witness agreed with my points of distinction and then said 'but still it was comparable.

COURT: He said, on your point of pressure, that did not interfere with the correct valuation of property which had been made.

40 MR. BERNACCHI: He admitted the points of difference which I put to him and then said that nevertheless it was comparable.

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Therefore I am not objecting to the last part of the question.

MISS COLLINS: I wish to ask Mr. Lyons if he could state why he considered Crown Rent in respect of No. 49 was comparable, and should have been taken into account when calculating rent for the Plaintiff's lot.

MR. BERNACCHI: Should this be taken into evidence? Mr. Lyons' evidence is that rent of neighbouring properties should not be taken into account. 10

COURT: I think with all due respect it could be put another way. What you want to say is not that the rent should be fixed, that the Plaintiff's rent should be fixed, taking into consideration number 49, but that if one is comparing no. 49 to see if the Plaintiff's property is a reasonable rent, one could take the rent of No. 49 as being a proper comparison to see if the rent fixed for the Plaintiff's property is a correct one. 20

MISS COLLINS: Yes, that is so.

MR. LYONS: The answer is that this is a property which can be compared in order to arrive at the correct figure of rent for the Plaintiff's property.

MISS COLLINS: So you say, Mr. Lyons, that 49 is a property which can be taken into account. Now again, during the Cross-Examination when a point was being considered as to whether or not rent was fair and reasonable as far as the Plaintiff was concerned, you were asked whether you had made any deduction in your valuation of \$366 for rates, water charges, electricity, profit tax, etc. Can you explain why you did not in fact make any deductions. 30

A. They have nothing to do with it. Electricity is not a question of valuation. It is purely for the leasee. The question of rates and similar charges I had assumed were paid by tenants. As far as tax is concerned, tax being a general imposition 40

by Government, is not ever considered as a correct deduction to arrive at valuation, even though as in this case that particular tax may be bad and discriminatory.

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Q. Again, during this morning's cross-examination the term "amortization" was put to you and it was suggested that this was identical with decapitalisation. Are you able to define "amortization".

10 A. My own view is that this is a means of paying off a capital sum over a period of years, or the writing down of a capital asset, whose value at the end of the period is nil or virtually nil. One way of amortizing is to use a sinking fund.

COURT: Is there any difference between that and decapitalization.

20 MR. LYONS: There is indeed. Decapitalisation is merely the process of arriving at an equivalent. There is no question of anything being written off. Amortization is the writing off.

COURT: Amortizing then is writing off....

MR. LYONS... an asset over a period of years.

COURT: And in decapitalisation there is nothing to write off.

30 MR. LYONS: Yes. Amortization is not a term normally used in the valuation of property but is used in valuation of chattels.

MISS COLLINS: Reference was made this afternoon to the financial crisis in Hong Kong. I believe no date was given. Could you say at what date the financial crisis commenced?

A. Some time I believe in 1964.

COURT: Now, just one or two questions. The first is that I think you said there is no figure of interest in rent.

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A. Yes.

COURT: Now in calculating the rent of the Plaintiff according to documents we have seen and what we have heard, one has to take a 5 per cent figure to pick your column to decide on yearly purchase.

A. Yes.

COURT: Does one say that is a figure of interest?

A. Purely because of the nature of the evidence. If there were evidence of rents being paid, of fully economic rents being paid, which I consider is what has to be paid in this case, then we would go into direct comparisons of rents and no interest would ever have been mentioned. But as there are no comparable rents, then we have to use evidence which is available and that is evidence of capital values. They are not directly comparable and in order to make them comparable, one has to decapitalise capital value in order to arrive at something which can be compared with what is required.

10

20

COURT: So you say there is no figure of interest in rent, but an interest figure is used in calculating what is correct rent.

A. Yes.

COURT: A correct rent from capital value, no comparable property being available on which to fix rent?

30

A. Yes.

COURT: Now, with regard to M.1, that indicates that there are two things payable, premium and Zone Crown Rent.

A. Yes.

COURT: Was the Plaintiff's rent fixed at such a rate that for the term it would be equal to the Zone Crown Rent during the term,

plus the premium if premium was to be paid?

A. I think the answer is no.

COURT: You said to Mr. Bernacchi, you say the Plaintiff has to pay the same figure of rent as the decapitalised premium plus zone Crown Rent.

A. I agree that the figures were the same, but I do not agree that the description of premium was the same. I agree the figures.

10 COURT: My question is was the Plaintiff's rent fixed at such a rate that over the term it would be equal to the Zone Crown Rent during the term, plus the premium if premium were paid. It is the rate I am talking about.

A. Yes.

20 COURT: Now, this is I think the same question, put in a slightly different form. Over the period of a term of 75 years, the Plaintiff, at the rate of rent for the Plaintiff fixed by Government, will be paying the same amount of money as is a person who would pay a premium by instalments and Zone Crown Rent for the same period for the same land.

A. There is one very important difference, and that is in the event of default, the rent ceases to be payable but the man who is paying a premium is there, liable for the balance of the premium.

COURT: The actual amount payable is the same?

30 A. Yes, provided the lease runs. There are in fact two differences. The first is in the case of surrender or default, the rent ceases, whereas the balance of the premium in the case where premium is being paid would become payable immediately. The second point is that exactly the same figures of capital, interest rate and number of years, i.e. 75, would be used, whatever period of renewal. In other  
40 words if the period of renewal was either 21 years or 999 years, the figure of rent

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would be the same. But the figure of premium instalments would not be.

COURT: I cannot understand that, I am afraid. You said exactly the same figure of capital interest rate and number of years, i.e. 75, whatever the period of renewal. But 75 years is the period.

A. Yes, but had it been 21 or 999, we should still have used the year's purchase figure for 75 because this applied to the evidence we have available, not to the Plaintiff's land. The evidence that we have is that capital value is \$375 per square foot for a term of 75 years. 10

COURT: The same formula would be used, dependent on the value of the land?

A. Yes. Irrespective of the number of years of renewal.

COURT: The same formula would be used. It is only the value of the land which changes how ever many years the lease is for. 20

A. Yes.

COURT: Now, you gave the definition of premium as follows :

"It means the lump sum payable in consideration of decrease in the rent that would otherwise be payable" And you also accepted one which was put to you which has been got out of a Law Report: that is the purchase money which the tenant pays for the benefit of the lease. Now, the two figures which would be paid for this property. (1) the rent arrived at by Government, and if that was not done, premium would be paid, and premium payable over instalments and Zone Crown Rent, the figures reached are the same. Now, applying these definitions, from a valuation point of view, is there any difference? 30

A. I do not think there is any difference in this case. There may well be cases where there is a slight difference. It is conceivable that where there is a lease, for 40

instance, the leasee may come to his landlord and say "I am prepared to pay a lump sum now if you will reduce my rent" This is not the purchase price of the lease but it is nevertheless premium paid in consideration of reduction of the amount of rent that he would otherwise be charged.

Adjourned.

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10 2.30 p.m. Court resumes.

COURT: In the circumstances I think that the Affidavit should be admitted in evidence and it is so ordered.

MR. SANGUINETTI: I am most grateful to you, my Lord. Would my Lord mark it as an exhibit ?

COURT: Yes, I am prepared to do that.

MR. SANGUINETTI: The exhibit, if your Lordship pleases, will be P..

20 COURT: I order it to be P.1.

P.W. 3 - DAVID ANTHONY BAILEY - Sworn in English.

XN. BY MR. SANGUINETTI:

Q. Your full name is David Anthony Bailey?

A. Yes.

Q. And you are a resident partner - What business do you have?

A. I am a Chartered Quantity Surveyor.

30 Q. Not qualifications. Your business. You are a partner or what are you?

A. I am a resident partner in a local practice of quantity surveyors.

Q. And the firm's name?

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A. P. C. Russell, Bailey, Levett & Partners.

Q. And they are Chartered Quantity Surveyors?

A. Quantity Surveyors.

Q. And their business?

A. 210/222 Caroline Mansion, 4 Yun Ping Road, Hong Kong.

Q. What qualifications have you got, Mr. Bailey, please?

A. I am an Associate of the Royal Institute of Chartered Surveyors and an Associate... 10

MR. O'CONNOR: Wait a minute.

MR. SANGUINETTI: Please. Associate of the Royal Institution of Chartered Surveyors?

A. Associate of the Institute of Arbitrators.

COURT: How do you say an Associate would differ from a Fellow?

A. A Fellow is generally a more senior member, my Lord. I think you need to be 35 years and have a certain - and hold a senior post or to be a partner, and then you may be elected to Fellowship after a certain age. 20

COURT: It probably means you have had so many more years' experience, is that right?

A. Yes, my Lord.

COURT: Dealing with qualifications. You have told us the nature of a Quantity Surveyor.

MR. SANGUINETTI: Yes, my Lord.

COURT: I do not know whether he has to deal with the value of land. 30

MR. SANGUINETTI: It is not that of land values. He is here as a person working on

those slide tables, mathematics and those figures, but certainly not a question of valuation.

COURT: Yes, I see.

MR. SANGUINETTI: Our case is, my Lord, as you will remember, that valuation is not in issue; it is a question of fixing rent.

COURT: You are going to fix the rent somehow?

10 MR. SANGUINETTI: Yes, my Lord. And that's the question of the construction of the documents, what the documents actually say. But Mr. Bailey will explain the figures mathematically. He has worked out certain matters now for the benefit of the Court.

Q. In the course of your work, Mr. Bailey, you have been referred to before to these valuation tables?

A. Yes.

20 Q. That have been proved as exhibits to the Court?

COURT: What exhibits are they?

MR. SANGUINETTI: The exhibits of these valuation tables were O.1.

COURT: O.1.

Q. Will you tell the Court whether you are familiar or whether you are trained to use those tables or not?

30 A. I am very familiar with these tables in the course of my work.

Q. In point of fact you use them quite often?

A. Quite often, yes.

Q. And in what connection do you use them - to relate anything?

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A. You use them to relate capital values..

Q. Yes?

A. ..annual values and future values.

Q. Present and future payments?

A. Yes.

Q. I would like you to come to page 5 of that Exhibit A.10. Are you familiar or not familiar now with what is contained in this part of this Exhibit A.10?

A. Yes, I am familiar.

10

Q. You will see there under the heading of Renewable Premium - Renewal Premium - you see that?

A. Yes.

Q. I would like you - I believe you have done certain research in this matter?

A. Calculations.

Q. And what do those calculations explain or deal with? You have got the calculations there with you?

20

A. I have got the calculations.

Q. What do these calculations that you have worked out deal with or explain or what?

A. These calculations are an explanation of these figures.

Q. Have you actually worked these things out?

A. Yes, I have worked them out by arithmetic.

30

Q. By arithmetic. Have you got it there, though?

18th April 1967.  
10.04 a.m. Court resumes.  
Appearances as before.

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P.W.3 David Anthony Bailey  
XN. BY MR. SANGUINETTI:

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10 Q. Mr. Bailey, you remember yesterday when the Court adjourned that you submitted a mathematical explanation in writing of certain figures appearing in Ex.A10, page 5 under the heading of Renewal Premium - Value of Lease?

A. Yes.

Q. Will you have before you A10, page 5, please?

A. Yes.

Q. And this paper which was marked Ex.Q1, you also have there Ex.Q1?

A. Yes.

20 Q. I want to invite your attention first of all to the nett income appearing on this exhibit of \$888.26. Where did you get this from?

A. This figure is taken from Ex.A10, page 5.

Q. Any specific part there? On the figure hand side?

A. Yes.

Q. And Y.P. which we already know to be "years purchase", 11.987; where did you get it from?

A. Immediately underneath the last figure.

30 Q. And Capital value - C. V. stands for Capital Value - \$10,647.57, you took it as well from this Ex.A10, page 5?

A. Yes

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Q. Now the mathematical explanation. Would you explain in your own words to my Lord exactly what these figures actually are? First of all will you take the 10.647.57, that is the capital value.

A. Yes.

Q. I see here that you add 7%.

A. Yes.

Q. 7% on what?

A. 7% on the initial capital amount, which is the interest which that capital earns in one year, assuming 7% is the figure. 10

COURT: 888.26, you got it from A10, page 5?

A. Yes.

COURT: And you said another figure.

A. Years purchase.

MR. SANGUINETTI: That is straight beneath, my Lord.

COURT: 11.987, is that the other figure?

A. Yes. This is at the very top of the page, my Lord. The calculation shown on A10, page 5, is reproduced at the top of this explanation. 20

Q. Now you add 7%?

A. Yes.

Q. On the capital value. What does 745.3299 mean?

A. This is 7% of the capital figure of 10,647.57.

Q. In other words, the interest on that capital figure? 30

A. Yes.

Q. And then I see here that you have added the interest and the figure representing the capital value.

A. Yes.

Q. Why have you done that?

A. The purpose of this is to show the amount of the capital invested for one year at 7%. If at the beginning of the year it is worth 10,647.57, at the beginning of the next year it will be worth 11,392.89, assuming it is invested with an interest rate of 7%.

Q. Now you have here 1st year's income 888.26.

A. Yes.

Q. That is the figure, indeed, of the sum which is the value of the old lease as stated here in the exhibit, the nett income of that property?

A. Yes.

Q. Throughout the whole period of 27 years, every year?

A. Yes.

Q. 1st year's income, and then you deduct that sum of money; in other words, from the 11,392.8999 you subtract the figure representing the 1st year's income of 888.26?

A. Yes.

Q. Will you tell the Court why you have done that?

A. Going back to the last assumption that the capital is invested at 7% interest, the person investing the capital by this calculation also requires to withdraw an annual amount; so after the capital amount has been allowed to accumulate at 7% interest over a period of a year, he then withdraws

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his 1st year's income, reducing the capital amount.

Q. It gives the 2nd year's capital of 10,504.6399?

A. Yes.

Q. The 2nd year's interest, I see the figure is the sum of 735.3248.

A. Yes.

Q. Which is less, of course, than the first line of your explanation at 7%. Why is it less?

10

A. Because the interest withdrawn is greater than the sum received; therefore, the capital sum is decreasing.

Q. And you only pay interest on the capital sum after deduction of the nett income for every year?

A. Yes.

Q. Is that correct?

A. Yes.

20

Q. And this goes right throughout, these mathematical calculations that you have worked out?

A. Yes.

Q. One can see, for example, in the second page of this Ex.Q1 that the interest becomes lesser and lesser.

A. Yes.

Q. Because the capital amount is being reduced?

30

A. Yes.

Q. Now at page 3 of this exhibit you see here that it is "28th year's interest at 7% 0.1113".

A. Yes.

Q. That's the interest. And the capital for the 28th year is only 1,5895?

A. Yes.

Q. And you subtract that and you are left with a figure of 1.7008?

A. Yes.

Q. Should that appear or not?

10 A. The reason this figure appears is that there is a rounding off in the tables which introduces a slight error into the calculation; so whereas the capital for the 28th year should have been nil, due to the small error through rounding off the figure a very small amount appears as capital for the 28th year.

Q. Which is negligible - a little over a dollar.

A. Yes.

20 Q. Before we depart from this exhibit, if you have worked through more points of decimal you could have obtained a net result?

A. I think the error is in the figure of 11.987. That is taken into three decimal places. If it is worked out exactly, then the figure would exactly balance.

Q. After a period of 27 years the whole value of this lease for 27 years is completely expended?

A. Yes.

30 Q. That is precisely the mathematical explanation of what has been done in Ex.A10, page 5, the first part?

A. Yes.

Q. I now want you, Mr. Bailey, to have a look at the second part of Ex.A10, page 5,

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under the heading of Value of Proposed Lease.  
Have you got it there?

A. Yes.

Q. Have you or have you not worked out a  
mathematical explanation of the leasehold value  
of a tenancy for perpetuity giving a nett  
income of \$832 each year?

A. Yes.

Q. You took the value of proposed lease  
from this exhibit?

10

A. Yes.

Q. You are working all the time on Ex.A10,  
page 5, the second part?

A. Yes.

Q. That I have already referred you to?

A. Yes.

Q. Now before I proceed, you have worked  
that out on paper?

A. Yes.

Q. Have you got that paper with you?

20

A. Yes.

COURT: Do you know anything about valuation  
tables?

MR. BAILEY: The tables are logarithms which  
anybody can use if they know how to use them.  
I do have to use them in my profession because  
questions of present values, continuing values  
and future values are often asked of a  
quantity surveyor. I could give an example.  
If you are constructing a building you may  
be faced with a problem of whether you  
provide good, permanent finishings or a finish  
which requires periodic maintenance, and in  
order to reduce this sort of problem to  
something which you can give an answer you

30

have to relate present capital costs with low capital costs in future maintenance costs. Another example might be: if you were wondering whether you want to provide an automatic lift which would cost more or a manual lift which would require an attendant, in this particular case you have two initial capital costs and a continuing cost over a period of years, and in order to relate these figures it is necessary - it is part of my work to use these figures, those valuation tables, which are only mathematical tables in the same way as logarithms are, which make calculations easier.

10

20

COURT: Mr. Sanguinetti, if he is not an expert on valuation he cannot, presumably, say anything about valuation. If he is an expert on the tables he can tell us about the tables and perpetuity when perpetuity arises in the tables, but leaving out valuation.

30

MR. SANGUINETTI: Precisely, my Lord. May I make the position clear. When I asked him to comment on Mr. Lyons' evidence, indeed I was limiting myself to an explanation by the witness from a mathematical point of view how perpetuity actually works, and Mr. Lyons' definition of perpetuity for ever and ever and ever".

Now, my Lord, I am not asking the witness whether the valuation adopted by Mr. Lyons was the correct valuation or not. Mr. Lyons actually went into the box indeed and gave evidence that he uses the tables and he makes calculations as a mathematician, familiar with these tables.

40

COURT: Mr. Sanguinetti, can you put the exact question to him?

MR. SANGUINETTI: Yes, my Lord. I will put it this way.

Q. Could you give a mathematical explanation of how perpetuity works, Mr. Bailey?

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A. I don't think my explanation is any different from Mr. Lyons. Perpetuity means something which continues, which is enjoyed without decreasing; but often the difference between large numbers of year end valuation and perpetuity is very small so that you take the perpetuity figure because the mathematical difference between perpetuity, which is for ever and ever, and the number of years is very small. It is like saying 99.999 equals 100. It does not. But the difference is so small it makes very little difference.

10

Q. The difference is so small it does not make any difference?

A. It makes some difference but very little.

Q. So in other words could you actually say, in practically, in most cases the tables are used, what figure would be considered by a person using those tables, what figure would entitled a person using those tables to treat it as perpetuity?

20

A. I think he would use his discretion. I think he would try to find the most accurate figure. If the difference between perpetuity and the number of years is very small he may say perpetuity; but in some cases the difference might be considerable, in which case he would use the more accurate figure than the perpetuity figure.

30

Q. Have you got any specific figure below or above a certain figure to treat it as perpetuity?

A. I think it depends on the discretion of the person.

Q. For example, could 50 years be taken as perpetuity?

A. No. We have never taken 50 years.

Q. 80 years be taken as perpetuity?

A. No.

40

Q. Have you got any other figure which could be taken as perpetuity?

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A. Well, in the tables it goes up to 100 years and then the last figure is perpetuity. If you compare 100 years with the perpetuity figure the difference is very small. For anything over 100 years you may take perpetuity.

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10 Q. You may take it. It does not necessarily follow you must take it.

A. No.

Q. You have worked out then from a mathematical point of view what is meant by yearly purchase at 7% for, say, perpetuity appearing in Ex.A10?

A. Yes.

Q. Have you got the original with you?

A. Yes.

COURT : Very well, marked Ex.Q3 and Q4.

20 Q. Now, Mr. Bailey, you see, mathematical explanation. It is understood, is it?

A. Yes.

Q. Mathematical explanation of the leasehold value of a tenancy for perpetuity giving a nett income of \$832 each year. Where did you get the 832?

A. From the amount of the nett income on page 5 of A10.

30 Q. Appearing on page 5 of A10 you have got that figure?

A. Yes.

Q. And the word "perpetuity", where did you get that from?

A. The same calculation.

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Q. Now you see there against capital value you have the figure of 11,885.95. Where did you obtain that from?

A. From page 5 of A10.

Q. And there you have 7% - x .07.

A. Which is 7% expressed.

Q. And you worked this out - 832.0165, correct?

A. Yes.

Q. Now you have there - you say "The small error is due to the inaccuracy of the last figure in the tables", what is meant by that?

10

A. This means that the figure of years purchase of 14.286 is again calculated to three decimal places and it introduces a small error in calculations.

Q. The original appear in A10, page 5?

A. Yes.

Q. If it had been calculated to four decimal places there would not have been this difference?

20

A. There would be a smaller difference, probably.

Q. But in fact the 832 actually comes from the calculation, apart from the three places of decimal?

A. Yes.

COURT: If you had £100 and you invested it at 7% you get £7 a year, don't you?

30

A. Yes.

COURT: Now what difference does it make when you get your £7 per year whether it is invested 3 years, 100 years, perpetuity?

You still get your £7.

10 A. Yes. It means that you can obtain an income of £7 a year from the £100 if it is invested. In perpetuity the capital sum is not reduced in any way - £100 remains; and if you allow £7 interest to accumulate and then take £7 income from the accumulated interest, the capital is not reduced in any way. This is what perpetuity means. It means that you are not reducing your capital sum and you are still enjoying the income which it gives from interest invested.

COURT: So that anything less than perpetuity, at the same time you get your income you have to lose your capital?

A. Yes, you reduce your capital.

Q. Anything less than 100 years would reduce the capital?

A. Anything less than perpetuity.

20 Q. If you take perpetuity as 100?

A. Yes. As this shows, if you take perpetuity as being the figure then the income can be received without reducing the capital amount.

COURT: You have done that in Q1 and Q2?

A. Yes.

COURT: Over how many years?

A. First exhibit over 27 years. The capital is exhausted after the 27th year.

30 COURT: So your income really is capitalised?

A. Excess of interest that you receive from your capital.

court; Partly capital and partly income?

A. Yes.

COURT: So it is not true interest at all.

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A. Well, the income is to exhaust after 27 years and the figure in the tables gives a multiplier which will give you a capital sum. If the amount withdrawn is greater than the amount of interest being received on the capital sum over a period of years, the capital sum will be exhausted.

Q. Mr. Bailey, Ex.Q3, the last one, says: "This illustrates that a sum of \$11,885.95 will give an annual income of \$832 if invested at 7% for ever."

10

A. Yes.

Q. That is what you have explained mathematically to my Lord?

A. Yes.

Q. It means then that you can withdraw the income for always provided it continues at 7%?

A. Yes.

Q. Without affecting capital?

20

A. Yes.

COURT: In that case you should not deduct anything from capital each year.

A. That is correct.

COURT: If it is perpetuity you do not deduct anything from that.

A. Yes, in the same way as you can enjoy £7 from £100. It is just that the figures are more. The figure is 832, so it is in proportion to £7 per £100.

30

Q. Mr. Bailey, you have before you Ex. A10, page 5?

A. Yes.

Q. From a mathematical point of view and basing it on the information before

you that you see here, yearly purchase for 27 years and yearly purchase at 7% for, say, perpetuity, worked from the tables can you give a mathematical explanation of what the valuer has done in these calculations here on this page?

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10 A. Yes. The person who did these calculations in the first case reduced the nett income receivable for 27 years to the present capital value.

In the second case he reduced the nett income receivable for perpetuity to the present capital value.

Q. The second calculation?

20 A. The second calculation shows that the capital value of \$832 for perpetuity is greater than the capital value of \$888.26 for 27 years, and then by simple deduction he produces what the difference between the two calculations is.

Q. And the difference is?

A. \$1,238.38.

Q. Mr. Bailey, I want you to refer to Ex.B3, first page. Have you got it there?

A. Yes.

MR. SANGUINETTI: Has my Lord a copy of that?

A. Yes.

30 Q. Ex.B3, first page - you will be using the first page and the fourth page. You see here in the first page "Regrant Conference Decision: Basic Premium", you see that?

A. Yes.

Q. And you see at page 4 of this exhibit "Unrestricted Crown Rent" following a memo from the Commissioner of Rating and

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Valuation?

A. Yes.

Q. And you have those two?

A. Yes.

Q. Do you see, Mr. Bailey, that in this Ex.B3, the first page and page No.4, the heading first starts, apart from the memo, "Regrant Conference Decision: Basic Premium"?

MR. SANGUINETTI: Has my Lord got that?

COURT: Unfortunately the pages are not numbered. I put my own page numbers on. Page 4 has got "Letter of the 22nd September 1964".

10

MR. SANGUINETTI: MY Lord, Page 4.

COURT: And "Memo of the 18th November 1964".

MR. SANGUINETTI: 18th November 1964 is the other part under the heading of "Unrestricted Crown Rent". Has my Lord got that - "Unrestricted Crown Rent"?

COURT: Yes.

20

MR. SANGUINETTI: That is one of the parts of the exhibit that I shall be referring the witness to and the other one is before that.

COURT: Page 4.

MR. SANGUINETTI: That is page 4 the one now, and the other one, if your Lordship goes earlier on, "Regrant Conference Decision: Basic Premium \$350", the first page of this exhibit, my Lord.

30

COURT: Yes.

Q. Now, Mr. Bailey, you will see here in the first page of Ex.B3 the figure of .0489.

A. Yes.

Q. Where it says "decapitalised at 5% for 75 years"?

A. Yes.

Q. And if you turn to page 4 of the same exhibit you find the figure .0489 again?

A. Yes.

Q. The same figure?

A. The same figure.

Q. "Decapitalised at 5% for 75 years"?

10 A. Yes.

Q. Now will you keep those exhibits there?

COURT: .0489 is the sinking fund from the year of purchase.

MR. SANGUINETTI: Yes, my Lord. .0489 and .0489, my Lord, appearing in both.

Q. These are multipliers are they not?

A. Yes.

20 Q. A multiplier, and that is obtained from where?

A. It cannot be obtained from tables but it can be obtained from using figures in tables.

Q. Now how many methods have you used to explain this figure of .0489?

A. I have used two methods of how the figure can be obtained from tables.

30 Q. Two methods how the figure can be obtained from the tables. And anything else, any other method or no?

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A. Not really any other method, but I have shown how the money transactions between the two parties would operate in this case over a period of 75 years.

COURT: "I produce two copies of my calculations showing how the figure of .0489 appearing on pages 1 to 4 of Exhibit B3" - Is that right?

A. Yes.

COURT: They will be marked Exhibits Q5 and Q6 respectively. 10

MR. SANGUINETTI: I am most grateful to my Lord.

Q. Now, Mr. Bailey, you have that exhibit there and you say an explanation of the figure of .0489.

A. Yes.

Q. That means a mathematical explanation, of course, of that figure.

A. Yes. 20

Q. And you state here this can be calculated in two different ways from the tables. Is that correct?

A. Yes.

Q. And in fact you have calculated these from the tables?

A. Yes.

XN. BY MR. SANGUINETTI Continues:

Q. Mr. Bailey, when the Court actually adjourned this morning you were in the process of considering Exhibit Q5. 30

A. Yes.

Q. You have it before you?

A. Yes.

Q. And you have also before you Exhibit B3, the first page and the fourth page thereof?

A. Yes.

Q. The relevant minutes in those pages. You add this page as explanation of the figure which has been agreed is the multiplier used of .0489.

A. Yes.

10 Q. And you say this explanation is a mathematical explanation, is it not?

A. Yes.

Q. And you say this figure can be calculated in two different ways from the tables, the tables you are already familiar with. Correct?

A. Yes,

20 Q. Now the first method, the first Method 1, I will read from clause (a):-  
"What sum of money will a unit of 1".  
Pausing there, a unit of 1 what?

A. One unit of what you are using. It can be £1 or \$1.

Q. £1, \$1, 1 cent?

A. Yes.

Q. "Will a unit of 1 become if invested at 5% compound interest" you say.

A. Yes.

Q. For 74 years. And the figure you derive is 36.984.

30 A. Yes.

Q. Now will you explain - And you got that from Parry's Table, page 91. Is that correct?

A. Yes.

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COURT: I have a cross against 38.833.

MR. SANGUINETTI: Is that the same table,  
my Lord.

COURT: It is 74 years, not 75.

A. Yes, 74 years. The reason I have  
stated - I have stated the reason why 74  
years is taken is because the payments are  
made in advance, so you are dealing with a  
period of 74 years and not 75.

Q. In other words, payments are made in  
advance, so the last year you don't count it. 10

A. Yes.

Q. It is actually 74 years.

A. Yes.

Q. In other words if you have \$1 -  
Could you explain that yourself in your  
own words, this first part?

A. If you have \$1 and you put it in the  
bank at a rate of interest of 5% compound,  
after 74 years you will have 36.984. This 20  
is just a mathematical process.

Q. By 5% compound interest. What do you  
mean by compound interest so as to --

A. The interest is calculated on the  
interest which has previously accumulated.

COURT: Well I think we all know what  
compound interest is.

MR. SANGUINETTI: Yes, my Lord, but I wanted.

Q. So in other words to sum up your  
evidence, what you have said, if you have 30  
\$1, you put it in the bank at 5% compound  
interest, and after 74 years you get 36.984  
thousand dollars.

A. 36.984. Not thousand, 36.984.

Q. Then you come to (b) and you say: "How much is the annual sinking fund payment to provide a unit of 1 in 75 years time?" Could you actually explain what it means by an annual sinking fund payment to provide a unit of 1, and I notice here in 75 years time?

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10 A. Well this is explained in (b) underneath the calculation. The figure of .0013216 is the amount which you would need to invest each year in order to accumulate a unit of 1 after 75 years. This is rather theoretical, but if you put in the bank a figure of .0013216 every year and each deposit accumulated at compound interest, then after 75 years you would accumulate a unit of 1.

COURT: But you don't say compound interest, do you?

A. Under (b) below, my Lord.

COURT: You have under (a) but not under (b).

20 A. The table on page 79 explains that the annual sinking fund payment is the amount which if invested at the end of each year will accumulate at compound interest to £1. It is on page 69 of the tables.

COURT: I have got that figure in mine at page 79.

A. The actual figure, yes, occurs on page 79, but the actual explanation of the table occurs on page 69.

30 COURT: So (b) is compound interest of how much? 5%?

A. 5%, yes.

COURT: The sinking fund to get 5% compound interest.

A. Yes.

Q. In other words is it correct indeed, to sum up what you have said, that you must have this part of a unit of 1 so as to have

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l at the end of 75 years at 5% compound interest?

A. Yes.

Q. Whether it be a dollar, a pound, a cent, or whatever the unit is, because the tables work in units.

A. Yes.

Q. And (c) you state: "How much is the annual sinking fund payment to provide 36.984 in 75 years?", and the answer that you give is (a) multiplied by (b).

10

A. Yes.

Q. And you arrive here at the figure of .0488780544.

A. Yes.

Q. So you have worked it to how many places of decimals then? To 10 places of decimals?

A. Yes.

Q. Whilst the figure, the multiplier used by the defence in this case has been rounded off to the 4th place of decimals, you have worked it out to the 10th place of decimals.

20

A. Yes. I think the first six figures are reliable, but I think the last four figures are not reliable.

Q. The last four figures are not reliable but up to the sixth figures are reliable.

A. Yes.

Q. And you gave this multiplier then which has been used here.

30

A. Yes.

Q. Would you explain in your own words how much is the annual sinking fund to

provide 36.984 in 75 years? In your own words to my Lord.

10 A. The purpose of this calculation is to show in the first part of the calculation, we show that the present unit of 1 will accumulate to 36.984 in 74 years, and the second part of the calculation is to find out what unit would be required to equal the 36.984 which has accumulated over 74 years. Now a unit of 1 requires .0013216, so a unit of 36.984 will require  $36.984 \times .0013216$ , and mathematically this equals .0488780544, which means that if you invest .0488780544 every year for 75 years you will accumulate 36.984 at 5% compound interest.

20 Q. And further down, Mr. Bailey, you go on and give the reason why 74 years is taken in (a) is that the annual sinking fund payments are to be made in advance so the principal will be redeemed at the beginning of the 75th year (i.e. at the expiration of 74 years).

A. Yes

Q. You have already given an explanation in fact of what you state here in writing as your reason.

A. Yes.

30 Q. And further on you go on under (a) to explain what Method 1 means "is the amount to which £1" - you have taken a unit of £1.

A. That is the tables, yes.

Q. "(a) is the amount to which £1 invested now will accumulate at compound interest."

A. Yes

Q. And under (b) "is the sum which, if invested at the end of each year, will

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accumulate at compound interest to £1".

A. Yes.

Q. That is one method that you have adopted.

A. Yes.

Q. From the tables.

A. Yes.

Q. Now you have adopted another method to explain mathematically this multiplier, have you not?

10

A. Yes.

Q. And that is contained under the head of Method 2 is it?

A. Yes.

Q. Here under (a) you say: "What sum of money will a unit of 1 become if invested at 5% compound interest for 74 years." You have said that?

A. Yes.

Q. That is similar in effect to (a), Method 1?

20

A. Yes.

Q. You have already explained from where you get the answer, from Parry's Valuation Tables, page 91.

A. Yes.

Q. Now here in (b) it is different from (b) in Method 1. It says: "How much will an annual unit of 1 invested each year at 5% compound interest amount to in 75 years." And the answer you give is 756.654 from Parry's Valuation Tables, page 111.

30

A. Yes.

Q. Will you explain in your own words this (b)?

A. I think this is an easier way of explaining, Method 2 is probably simpler to understand. From the tables you find out how much will accumulate over a period of 75 years if you deposit one each year. In other words, for every year for 75 years you deposit one unit. After 75 years it will have accumulated at 5% compound interest to 755.654.

10

Q. It is much simpler?

A. I think it is more easy to understand.

Q. And under (c) you say here: "How much is the annual payment to provide 36.984 in 75 years?"

A. Yes.

20

Q. And you give the answer as .048878, which corresponds to the first six figures, and then it goes on 351267. Correct?

A. Yes.

Q. The answer is by dividing (a) by (b).

A. Yes.

Q. you explain that in your own words to my Lord?

30

A. As before, the first part of the calculation is the amount which a unit of one will accumulate to over 74 years. The second part of the calculation is the amount which a unit of 1 invested each year will accumulate over a period of 75 years, and in this case part (b) of the calculation exceeds part (a). In other

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words, a unit of 1 is too much. A unit of 1 would accumulate to 756.654 but you only want 36.984, so you divide (a) by (b) and the answer is .048878351267. In other words, this unit invested each year and allowed to accumulate at 5% compound interest would amount after 74 years to 36.984.

Q. In fact it is the explanation of the multiplier worked to places of decimals?

A. Yes.

10

Q. You go on to say: "In other words 756.654 is the reciprocal of 0.0013216 but is perhaps easier to understand."

A. Yes, the two calculations are basically the same percentage.

Q. And then you go on to say that: "The reason why 74 years is taken in (a) is that the annual payments are made in advance so the principal will be redeemed at the beginning of the 75th year (i.e. at the expiration of 74 years)."

20

A. Yes.

Q. That is precisely the same as what you have explained when dealing with Method 1, is it?

A. Yes.

Q. Now under (a) here the explanation "(a) is the amount £1 invested now will accumulate at compound interest". Can you follow?

30

A. Yes.

Q. Compound interest at any specific rate?

A. 5%.

Q. Now "(b) is the amount which £1 per annum invested at the end of each year will accumulate at compound interest." Will you

explain this, Mr. Bailey?

A. Well as I said before, this is a unit of 1 invested annually and compounded at 5% interest over a period of 75 years.

Q. Every year you put into the fund, whether in the bank or elsewhere, £1 or \$1?

A. Yes.

Q. Every year?

A. Yes.

10 Q. Further on you go on to say that: "This figure of 0.0489 is not to be found in any tables but may be obtained from tables. It is referred to hereinafter as 'P.W.D. multiplier'." Why do you say that this figure is not obtained from any of the tables but may be obtained from the tables?

20 A. What I mean is the figure cannot be found in these tables but by doing a calculation of this sort you can obtain this multiplier by using these tables.

Q. By using these tables you can obtain that multiplier. Could you actually - my learned friend has asked me what do you mean by using the tables you can arrive at this figure. Can you see any figures you want to?

30 A. What I mean is the figure which appears here, which is .0489, cannot be found anywhere in these tables as such. You can calculate that multiplier by using other figures contained in these tables.

Q. Other figures?

A. Yes.

Q. So this multiplier cannot be obtained from the tables?

A. Cannot be found in the tables.

Q. And when you say figures found in

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the tables you mean to say certain figures or any figures?

A. The figures here are obtained from the tables.

Q. The figures, these figures?

A. Yes.

Q. By working on these figures you get this multiplier?

A. Yes.

Q. Could you have worked other figures from the tables than those? 10

A. Yes, you can. Mr. Lyons in fact calculated it by a different method.

Q. Now turn to the second page, which is numbered No.6 here. I want you to refer to Exhibit B3.

A. Yes.

Q. Page 4 thereof. You see there under, immediately after the memo 18th November 1964 from the C.R., the Commissioner of Rating & Valuation, you see there a figure of 1,234,875. 20

A. Yes.

Q. Now on this second page of yours, from a mathematical point of view could you say what you have on this page?

A. Yes. These tables, as I said before, relate to present payments, future payments and continuing payments, annual payments, and these are related - the equivalent of a present payment or a future payment or a continuing payment can be obtained from these tables. Now in this particular case this capital figure of 1,234,875 will have a future equivalent and will have an annual equivalent, and these calculations are made to show what the equivalent is in 30

future after 74 years and what the equivalent annual payment is at present, dealing all the time with equivalents.

Q. And you have based it on 5% compound interest?

A. Compound interest, yes.

Q. So here you have taken the capital sum straight from where of 1,234,875?

A. From Exhibit B3, page 4.

10 Q. You have taken that from that?

A. Yes.

Q. And mathematically you have arrived at a figure of 45,670,617?

A. Yes.

Q. To the nearest dollar.

A. Yes.

Q. Could you actually in your own words, are you able to say what it represents, Mr. Bailey?

20 A. Yes. On the previous page, on the previous calculations from the tables you saw that a unit of 1 would accumulate to 36.984. Now in this particular case we have the present capital value which is to be repaid by an annual instalment. Now the two places at which these meet is after 74 years. A person is paying back a capital sum of 1,234,875 over a period of 75 years, so the place at which these two payments  
30 balance is 75 years, so that in effect the Plaintiff in this particular case is required to pay back after 75 years the present capital sum. In other words, you need to know what is the future value of the present capital sum of \$1,234,875. Now we have already found that a unit of 1 will accumulate to 36.984 --

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Q. Sorry, will you go slower.

A. A unit of 1 will accumulate to 36.984, therefore a unit of 1,234,875 will accumulate after 74 years to 45,670,617. Now in order to balance this --

COURT But why do you want that figure at all?

A. Because that is the point in the future where this amount is redeemed. The plaintiff in this case is required to pay an annual sum in lieu of a capital sum. 10

MR. SANGUINETTI: Maybe, my Lord, you will see that further down page 6 he has used this figure of 45 million odd to calculate the figure of 60,358, which is the payment, more or less the payment alleged as rent in this case. So it is pertinent indeed, if I may submit, my Lord, to say that it is in connection with the figure of 60,358.

COURT: One can use many methods of calculating that. One could multiply that figure by 1, one could multiply it by a half - 20

MR. SANGUINETTI: Maybe the witness can actually explain it better than myself.

Q. Will you explain it, Mr. Bailey?

A. I think it is in effect, this figure of 1,234,875 is something which has to be repaid over a period of 75 years. Now the reasoning is that this figure, if you can imagine, if this figure was put into a bank now in 74 years time it would accumulate at 5% compound interest to 45 million. 30

COURT: I can't understand the figure of 1 million odd at all.

Q. Could you be of some help, Mr. Bailey?

A. As I said, tables 1 give equivalents at varying rates of compound interest. In this particular case we have three sums of money which are equivalent: a sum of

\$1,234,875 present is equivalent to a sum of \$45,670,617 in 74 years time. And an annual sum of \$60,358 is equivalent to the other two. So we are trying to relate equivalents - a present capital, a future capital and an annual sum. This is not the only way. This is a way of reducing the various amounts to equivalents, the two figures being dealt with in this case.

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10 COURT: You don't show on paper how you arrived at 1 million odd? You don't show how you arrived at it?

A. From the tables a unit of 1 invested for 74 years at compound interest amounts to 36.984; therefore a unit of 1 amounts to that much. Therefore 1,234,875 will amount to 45,670,617.

20 COURT: Is it correct that you say 1,234,875 invested at 5% compound interest for 75 years amounts to 45 million dollars?

A. 74 years, yes. And, similarly, an annual amount of \$60,358 will accumulate at compound interest --

COURT: One million odd invested at compound interest for 74 years?

A. 74 years.

COURT: Equals 45 millions, six hundred and seventy thousand, six hundred and seventeen.

30 Q. The tables here deal with equivalents; is that correct?

A. Yes.

Q. And they relate to present figures?

A. Yes.

Q. Future figures in 74 years at a time?

A. Yes.

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Q. Because the term here is 74 years -  
75 years?

A. Yes.

Q. And annual payments representing that  
present figure?

A. Yes.

Q. You have worked these calculations  
as regards the future?

A. Yes.

Q. The annual from the present figure,  
is that correct? 10

A. Yes.

Q. And the present figure you have taken  
is the capital figure which appears on  
exhibit B3 that you have referred to?

A. Yes.

Q. That is why you are working out the  
tables in practice here for future annual  
payments from the present figure - the  
capital figure arrived at? 20

A. Yes.

Q. And the tables, as you point out, are  
the equivalents?

A. Yes.

Q. Will you explain now No.2 that you  
have said, that the table dealt with is the  
equivalents. You have had 5% compound  
interest. That has been disclosed in  
evidence. You have had this 1 million odd  
taken as a present figure? 30

A. Yes.

Q. Will you explain the second line,  
the amount, etc., appearing at this page?

A. I have explained a sum of \$1,234,875,

if invested now, will accumulate after 74 years at 5% compound interest to 45,670,617. This is the point in the future. Now, the second part of the calculation is to find what sum of money paid annually will provide this amount of money in 75 years' time.

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Q. 75?

A. 75, yes.

Q. You have here 74, Mr. Bailey.

10 A. Well, the annual payments are made in advance; so there are 75 annual payments, but the last annual payment is made at the end of the 74th year. So that during the last year the annual payment is made for the last year of the lease and when the lease expires, there is nothing to pay. In other words, the two calculations balance after 74 years, but 75 payments have to be made. Now, the annual payment in advance to provide  
20 for this sum after 74 years is 60,358. These are all equivalents. In other words, a present value of 1,234,875 is equivalent to a value of 45,670,617 after 74 years and is equivalent to a annual payment of 60,358 for 75 years in advance. They are all equated at 5% compound interest.

30 Q. I see that the figure here, Mr. Bailey, 60,358 varies from the figure in exhibit D5 at page 4 which gives a figure of 60,386 by a few tens - less than \$20 - \$90.

A. There is \$28 difference.

Q. Can you explain that?

A. The figure of 60,358 is calculated without rounding off. I think we have shown the figure 0.0489 is rounded off to 4 places - and this introduced an error.

Q. Which is more exact - your own calculations mathematically or the one appearing here?

40 A. The figure of 60,358 is more exact.



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Q. It is worked to more places of decimals?

A. Yes.

Q. Now, you proceed on here in your calculations with Check (1). Will you explain that?

A. In order to check the last figure which is the annual sum --

Q. 60,386?

A. Yes.

-- I have multiplied the capital sum by the P.W.D. multiplier which gives the figure of 60,385 to the nearest dollar. And by Check (2) I have used method 2 on the previous page which is to take the capital sum multiplied by 36.984 which will amount to in 74 years - and dividing by the amount which the unit 1 will accumulate over 75 years, and this produces a figure of 60,359 to the nearest dollar.

10

Q. Apart from these two methods that you have worked from the tables themselves, can you explain, mathematically of course, in any other manner?

20

A. By long arithmetic you can take the present capital sum, accumulate annual interest and apply the annual payment in payment of interest and to reduce the capital in the same way that the first calculation was made. The first calculation appearing on pages 1, 2 and 3 - this can also be explained in this way with a capital sum, that there is an initial capital sum which is to accumulate at 5% interest on unpaid capital each year, but at the same time there is an annual payment made in payment of interest, accumulated interest, and to reduce the capital borrowed.

30

Q. In less technical language could you give an example, say, what you have done - these long arithmetical calculations here.

40

A. Yes. I would say it is similar to a

mortgage transaction where somebody borrows a capital sum of money and he has to pay back this -- the interest on a principal borrowed-- and at the same time pay something over and above this to reduce the amount of the principal borrowed over a given number of years. I think this calculation is very similar in this case. It is considered that somebody is paying back \$1,234,875 over a period of 75 years and each annual amount of interest on the unpaid capital can be calculated and then a payment made to reduce - to pay the present interest and then an extra payment to reduce the principal over the period of the term in which the money is borrowed.

10

20

Q. Mr. Bailey, before I come to deal in detail about your long mathematical calculations to illustrate this, could you give an example, say, about someone borrowing from another, say, £20 - take the figure 20.

30

A. To give a very simple calculation you might lend somebody £20 and require 5% interest on the amount lent, compound interest, and you would ask then for £1 a year as interest. But if you wish to receive your loan back over 20 years, then you may require him to pay £2 a year - £1 in payment of interest and £1 in repayment of the loan. This is a similar calculation here where it is considered that the sum borrowed and has to be repaid - initially the interest has to be repaid and then an additional amount to redeem the amount borrowed.

Q. So the example you have given, after 20 years taking the example of £20...

A. Yes.

Q. ... 20 years in fact the borrower has paid £40?

40

A. Yes.

Q. Have you got any comments to make about the rate of interest in the example you have given for 5% at the end of 20 years?

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A. Yes. If you are calculating the rate of interest on simple basis then the rate of interest increases, because taking it at the last payment, in effect, the capital sum of £1 is outstanding and £1 interest is paid. Therefore, on the last payment - £2 - the last payment representing £1 capital, £1 interest, then the interest rate is 100% on the capital amount.

Q. On the last payment?

10

A. Yes.

Q. "On the last payment."

A. So initially the interest rate stops at 5% where £20 is borrowed and £1 is paid as interest, £1 is paid to redeem the capital. So the amount of interest is 5%. But on the last payment where £1 is outstanding on the capital and £1 interest is required then the interest rate would be 100%.

Q. So you start off with 5% interest, but in fact towards the last payment it was 100%?

20

A. Yes.

Q. It contains, does it not, a principle of simple interest and compound interest?

A. If you think of the simple interest the rate of simple interest is increasing. It in fact remains constant on the sum borrowed; but on the unredeemed amount it is increasing.

Q. Would you classify that in that example of £25? If I present simple interest and at the end --

30

A. The easier way of thinking at it is that the interest is compound, that the interest is always accumulating on the amount of principal - annually on the unredeemed principal.

Q. It depends on which way you look at it?

A. Yes. It is, I think, compound interest or simple interest at a flat rate or an increased rate.

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Q. Will you take exhibit Q5 and refer to page 7?

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A. Yes.

10

Q. You have it there. The first paragraph is - well, you have explained, given an example of the £20 borrowed - that was a hypothetical case as a mortgage transaction you have said?

A. Yes.

Q. And the second paragraph here, you state, it would seem after 75 years the principal is repaid; the overpayment possibly is an error caused by the rounding off of the tables?

A. Yes.

Q. That is the last page, page 13 - equivalent to a figure 21,333?

20

A. 34.

Q. 34 - sorry. You say possibly - why do you say possible it is an error? £7 now.

A. You would expect the calculation to balance.

Q. Yes.

30

A. But as there the last instalment is greater than the principal outstanding for the year - 2,037 - the amount of the annual payment must have been too much. I have used the annual payment 60,386 which is the one calculated in B3, but this figure is high. As I have already said, the correct

figure is 60,358, and as this figure is high it results on the last payment being \$21,000 too much.

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Q. Actual error?

A. Actual error, yes.

Q. You don't actually make this figure to disappear - this overpayment of 21,334?

A. I think if you substitute the figure 60,358, then the calculation would balance after the 75 years.

Q. Mr. Bailey, you remember that before the luncheon adjournment you were explaining this - page 7 of exhibit Q5?

10

A. Yes.

Q. And you have before you as well exhibit B3....

A. Yes.

Q. ... the relevant portion of that exhibit. Mr. Bailey, in these exhibits you have broken up, as it were, you have mathematically explained here the alleged payment, the payment of \$60,386; is that correct?

20

A. Yes.

Q. Over a period of 75 years?

A. Yes.

Q. And in your mathematical explanation you said that you applied the same way as the mortgage transaction?

A. Yes.

Q. That is, part towards redemption of the capital sum and part towards the payment of interest?

30

A. Yes.

Q. Is that correct?

A. That is correct.

Q. The second paragraph tell us, it would seem, that after 75 years the principal is repaid; the overpayment possibly caused by rounding off of the tables. I believe you have already explained it before the court adjourned this morning.

A. Yes.

10 Q. The other part with the total amount of actual cash will be 75 multiplied by the payment of 60,386, simple mathematics; is that the case?

A. Yes.

Q. In actual fact 60,386 is what the defence say is rent; you just give the figure whether it is rent or premium?

A. Yes.

Q. It includes the amount of premium. And the amount of the principal is \$1,234,875?

A. Yes.

20 Q. And the amount of interest is \$3,294,075?

A. Yes.

Q. The figure of interest - \$3,294,075 - where did you obtain that figure?

A. That is obtained by deducting \$1,234,875 from \$4,528,950.

Q. Now, the defendant's case is there is no interest, but they have interest. And that is why you have calculated it?

30 A. This suggests in simple mathematics the application of principal and interest.

Q. So you will see in paragraph 3 it is a matter of simple mathematics in the multiplication of payments of 60386 by 75 giving you at the end of 75 years nearly \$4½ million ?

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A. Yes.

Q. And you have deducted the capital value?

A. Yes.

Q. From that. And you say that it is expressed in simple mathematics of capital and interest?

A. Yes.

Q. I won't take you to all the items in these pages. They go up to the year 2,037 unless my Lord wants me to. And my learned friend can cross-examine you on any point that is not clear. But I think I can take one or two instances and ask you for an explanation.

10

To start off with a sum due \$1,234,875 which is the capital figure arrived in the valuation taken from exhibit B3?

A. Yes.

Q. Page 4 thereof. And the instalment is paid in advance?

20

A. Yes.

Q. And so therefore you deduct the first instalment which is \$60,386?

A. Yes.

Q. Using, of course, the figures of 60,386 from exhibit B3 (10) - same page?

A. Yes.

Q. And not your own figures worked out to the 6th place of decimal?

A. No.

30

Q. And you deduct that from the capital figure and then you say interest due in 1963 at 5% - you see that there?

A. Yes.

Q. What does this figure of 58,724 represent and how do you actually explain this interest due in 1963?

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10 A. The explanation of this figure is that the instalment is paid at the beginning of 1963 and this reduces the amount of the principal outstanding. The principal outstanding is then \$1,174,489, and this accumulates 5% interest over a year, and 5% of this figure is 58,724. This interest is then added to the previous principal to give a new principal in 1964 of 1,233,213 which is slightly lower than the initial principal, and then a further instalment is paid in 1964.

Q. Will you please take your time, don't rush?

20 A. A further instalment is paid in 1964 and the instalment is greater than the interest earned. Therefore the amount of the principal is gradually reduced as the calculation proceeds.

A. And you said this is the way - you gave an example about the £20 earlier on in your evidence - does it apply to this?

A. It could be worked out in this way.

30 Q. In other words, the payments, the annual payments made are applied to the redemption of the capital figure and the interest?

A. Yes.

Q. And that proceeds throughout your calculations here?

A. Yes.

COURT: What is the interest for?

A. Well, the interest is on the balance of the principal outstanding, my Lord, because the annual sum to be paid is higher than the interest on the unpaid principal.



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Therefore this sum gradually reduces the amount of the principal over the period of 75 years.

COURT: At 5% compound interest?

A. The interest is calculated annually on the principal outstanding.

COURT: Straight 5%?

A. Yes.

Q. I believe you said straight 5% to my Lord.

10

A. It is a straight annual 5%.

Q. "Straight annual 5%" - in these calculations?

A. Yes.

Q. Can it yield in this manner - this 5% simple interest - towards the end of this calculation at the end?

A. If you consider it to be simple interest then the rate of interest - this is the effect of compound interest because any principal which is unpaid is charged interest again. So any part of the principal which is not paid has a recurring 5% interest on it. This is, in my opinion, compound interest.

20

Q. It seems in your opinion although it is straight forward 5% simple interest, the effect of it - correct me if I am wrong - compound interest?

A. It is an annual calculation of interest which is charged every year on the sum outstanding which is, in effect, compound interest.

30

Q. So you work it out throughout the whole of the pages?

A. Yes.

Q. And you arrive at the last page at the year 2,037, at page 13 of this exhibit?

A. Yes.

Q. I am not taking P.12.

MR. SANGUINETTI: My Lord, you will see here the capital is being reduced, but the instalments to be paid are the same, whatever the capital being reduced.

10 Q. So you are left in the year 2.037 - you are left with a capital and principal of \$39,052?

A. Yes.

Q. But the annual instalment paid for the year in advance, of course, 2.038...

MR. SANGUINETTI: My Lord, it is written here and it is an exhibit.

Q. .... you arrive there, you get a figure of \$39,052. What is that then?

20 A. That, in the calculation, is the amount of principal 2 037, which is one year before the lease is due to expire. In other words, the calculation has continued for 75 years and when the last payment becomes due the amount owing is 39,052.

Q. So an instalment paid for the year 2038 is just double the principal due - 60,386?

A. It is exactly 21,334 higher.

30 Q. But I am referring to the last - you see here, interest due 2036 5% so much, then the principal here is 39,052?

A. Yes.

Q. And then you say the instalment paid for last year 60,385. It is clear from this calculation that the instalment paid is higher than the principal.

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A. Yes.

Q. And then you come to an overpayment of \$21,334 over a period of years. It is an error calculating according to your evidence you have given for not working to six places of decimal?

A. Yes.

COURT: Is there any difference between your calculation here and Mr. Laws? They are the same, except you calculated by not taking enough decimal places - in other words, you don't calculate by taking enough decimal places. Apart from it, the calculations are the same?

10

A. They are basically the same, my Lord. It shows that an annual sum of \$60,358 or \$86 is the equivalent of an immediate capital sum of \$1,234,875 over a period of 75 years.

Q. It is the immediate equivalent, according to the tables, of that capital figure?

20

A. Well, in one case you have a lump sum...  
Q. Yes.

A. ... considered as being due, and if this is not paid immediately, then if it is considered as invested at 5% interest over the period of the lease in this case, then this calculation shows that the sum \$60,358 would be needed in order to pay the interest and redeem the capital over the period of the lease.

30

Q. You would agree, Mr. Bailey, that you based your calculations on the capital figure of this 1 million two hundred odd thousand dollars?

A. Yes.

Q. Everything springs from the capital figure?

A. Yes.

Q. Now, Mr. Bailey, you have been working on these tables as well as on this exhibit, Q5, pages 7 - 13. Could you say how you have worked this out? Are you familiar with the word to capitalize?

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A. Yes.

Q. Would you tell my Lord what capitalize - "to capitalize" means?

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10 A. Capitalize - to capitalize is to set aside the sum annually to accumulate a capital.

COURT: You are not saying, "To capitalize means to covert into capital"? That is what the Oxford Dictionary says.

20 A. Yes, you can sell goods to convert it into money in this respect, but I think a good example of capitalization is the form of a life insurance where you make an annual payment and you receive a lump sum payment after a period of years. You are giving so much each year to accunulate a lump sum at a certain time.

Q. You give that emample?

A. Yes.

Q. Could you give an example from, say, a limited company?

A. Well, a limited company, if it knows its capital commitments in future, will set aside part of its annual profits to provide capital.

30 MR. O'CONNOR: Is this an opinion this witness can give about what a limited company can do? Surely he is out of the scope.

COURT: That is what he knows, isn't it?

MR. O'CONNOR: But he is giving an opinion of what a limited company would do.

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MR. SANGUINETTI: My Lord, you don't have to be an expert to know what is in a limited company. He is giving an example. Mr. Bailey is giving lots and lots of examples.

COURT: I don't know whether this witness is an expert on capitalization and decapitalization.

Q. Are you familiar with the word capitalization as a quantity surveyor - chartered surveyor?

10

A. Well, I think it would be, as has already been said, everybody knows this. But we might be required to advise on capital repayments or something that arises in future to give what the present value of this sum in the future will be or how much has to be set aside to provide for this lump sum which is going to arise in the future. This is, again, just a use of the valuation tables.

20

Q. So you have in fact to advise at times, according to your evidence, possible future liability and how much money has to be put aside to meet that future liability?

A. Yes.

Q. And how would you describe that?

A. And that is to capitalize.

Q. "That is to capitalize."

COURT: I don't have difficulty with "capitalize", but the word "decapitalize". What is difficult is that there is no such a word in the dictionary.

30

Q. Mr. Bailey, could you answer that?

A. I think it is a mathematical explanation of what decapitalization is. I think the term can be explained by mathematics.

BY COURT:

Q. Do you have to use decapitalization for that valuation?

10 A. If you advise your client on how he could recoup capital cost he expends in buildings, then it is in effect, in my experience decapitalised - a man needs to spend the capital sum of money in order to produce the building and he enjoys the income from that building - he must build this income to pay himself back the capital which he has spent, if you can think of it - if he wishes to erect a building he has to acquire the capital - he has to capitalise in order to have sufficient money to pay for the building, and then he has to decapitalise in order to pay himself back for the money he has spent.

20 Q. Do you yourself use the word ...

A. I have never come across the word before, my Lord - I would use amortization which I think means the same thing.

Q. My Lyons said it was not quite the same thing.

MR. SANGUINETTI? Would you agree with Mr. Lyons?

A. I think it is the same thing.

BY COURT:

30 Q. He said it was not - he said amortization - he said that was in effect the same, I think I am right in saying, that it is the same as mortgage, but decapitalization was not ...

A. I think the word amortization comes from the - the root is the verb to kill.

Q. And that is a mortgage ..

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A. Yes.

Q. A mortgage is a debt ..

A. Killing a debt over a period, and this, in my opinion, by this calculation, is the equivalent to decapitalization - it is killing a debt over a period of years.

XN. BY MR. SANGUINETTI (Continues):

Q. As shown where?

A. in this long calculation. 10

Q. You say you don't agree with Mr. Lyons as regards the question of amortization and decapitalization, that there is no difference?

A. I cannot see - I would say I cannot see any difference between amortization and decapitalization, as it works in this particular example.

Q. In this particular example - just on this particular case? 20

A. Yes.

Q. And your reason for differing with Mr. Lyons?

A. I don't differ - I can see no difference.

Q. After working out this ..

A. Yes - I would say that I understand the word decapitalization to mean the opposite of capitalization, which is reducing the capital over a period of years instead of producing capital over a period of years. 30

Q. In other words, as shown - based on this example, it would be the opposite of capitalization?

A. Yes.

Q. Mr. Bailey, I think if you have now finished with those figures in Exhibit B and your explanation of the figure 0.0489, I would like to take you now to exhibit - if you have before yourself Exhibit G - this is the comparative Table of Properties - G - you remember the Table that Mr. Yip the solicitor produced - Mr. Bailey, you have actually considered, I think, Exhibit G?

10

A. Yes.

Q. The comparative Table prepared by Mr. Yip who gave evidence?

A. Yes.

Q. Together with the list of files that were produced from the Land Registry, remember G.1 to G.35 inclusive?

A. No, I did not consider this - I just considered the Table.

20 Q. You only considered the Table?

A. Yes.

Q. Prepared by Mr. Yip?

A. Yes.

Q. He, in turn, based this Table on the exhibits that he produced - G.1 to G.35?

A. Yes.

Q. And working on this Table did you prepare some other Table yourself?

A. Yes.

30 Q. From a mathematical point of view?

A. Just simple arithmetic.

Q. Simple arithmetic - what did you actually - did you actually put it down in writing?

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A. Yes.

Q. Prepare certain tables yourself?

A. Yes.

Q. In which Table?

A. In Mr. Yip's table, Exhibit G.

Q. Yes?

A. And I have just by simple mathematics  
calculated how much it is per acre.

Q. Have you prepared this thing yourself?

A. Yes.

10

Q. You see the heading there - heading  
of this document?

A. Yes.

A. I gave all the figures and the  
plaintiff's solicitor retyped this in the  
form which they thought was more easily  
understood.

Q. You have seen it?

A. Yes, I have checked ..

Q. In other words, the figures are  
yours?

20

A. I have checked that all the figures  
are right.

Q. Mr. Bailey, the figures here - this  
Table, this document that I have given to  
you, was it - you see certain figures here -  
certain figures in certain columns..

A. Yes.

Q. Who compiled those figures?

A. I compiled them from the information 30

on this Comparative Table.

Q. From information on this Comparative Table?

COURT: From the information on G.

A. On G, yes.

Q. In other words, you compiled these figures indeed and you gave these figures, and it was done by the solicitor? Is that correct?

10 A. I gave the figures typed in a different form, and it was retyped in this form.

Q. Have you checked this after?

A. Yes, I have checked them.

COURT: Do you agree to this form?

A. Yes, yes - it is just set out in a different way using the same information - figures which I supplied to the Plaintiff's solicitor.

20 Q. It is only a mathematical explanation of breaking up certain of the figures here?

A. Yes.

Q. And now it is slightly - most of the information in this document that I am going to ask my Lord to admit in evidence, the figures are yours?

A. Yes.

Q. Most of the figures in Exhibit G - that appear on this Exhibit G?

30 A. The facts appear in G - the arithmetic appear in ...

Q. the arithmetic actually is yours?

A. Yes.

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MR. SANGUINETTI: My Lord, I would like the witness - I think I have already laid the foundation, more than enough to produce this document as an exhibit.

COURT: Yes, this document, you are suggesting to be put in evidence, is your explanation mathematically of Exhibit G. is that right?

A. If I can just briefly tell you, my Lord - on Exhibit G, under the column originally Crown Rent, there are figures of so many dollars for the whole lot, in the second place, \$12.00 for the whole lot, \$12.00, \$18.00 well, these are not easily - these are on common basis - the purpose of this Table is to show what the original Crown Rent was per acre - it is just simple arithmetic to reduce the whole column to a common basis, and the same with the new Crown Rent, and in the case of the column headed Premium - it is an arithmetical method of showing the rate of interest which is charged on the premium in this non-renewable cases - it is an effort really to reduce this Comparative Table to each figure to a common basis so that it can be read more easily.

10

20

Q. In other words, you take for example the first non-renewable ..

COURT: But is it a mathematical criticism of Exhibit G?

30

A. Not a criticism so much as trying to reduce them to a common basis, so that the Table can be more quickly understood. For instance, each one of these Crown Rents represents so much per acre, and in this particular column, I have reduced the cost of \$24.00 for 3,719 sq. ft. to so much per acre - \$12.00 for 1,966 sq. ft. to so much per acre, so that you can quickly compare the original Crown Rent for 25 and 27 with the Original Crown Rent for 29, and also in this case where there is a new Crown Rent charged, that the Crown Rent is reduced to

40

so much per acre, so that every one of that is on common basis, which is for comparisons.

COURT: That will be Q.8.

10 MR. SANGUINETTI: Q.7 and 8. - I think that on these documents my learned friend can cross-examine -- you say there is any possible mis-interpretation about your qualifications or anything at all you have  
- in your work throughout the whole of your profession and work - does it require any particular knowledge of certain branches of science or anything like that?

A. No, just simple mathematics.

20 Q. Mathematics, I see - you will see from these exhibits Q.7 and 8 here, that you are dealing with Exhibit G, and I shall only take you through one, for example Item 3 - that is Exhibit 7 - that is the old Crown rent at \$12.00, and you have there in brackets 266 per acre, Mr. Bailey?

A. Yes.

Q. What does that mean?

A. This represents the cost per acre of \$12.00 for 1,965 sq.ft.

30 Q. That is the area of the property in question - and then in the last column, New Crown Rent, you see there 266.00 and something else - I refer to 31 Carnarvon road ...

COURT: 266 dollars is the cost per acre, right?

A. Yes.

Q. Now under the column of the New Crown Rent, Mr. Bailey ...

A. Yes.

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Q. .. you have a figure of 226 per lot and underneath you have 5,010 per acre?

A. Yes.

Q. What does that mean?

A. That again is the cost per acre of 226 dollars for 1,965 sq.ft.

COURT: I don't quite understand this 5,010 dollars per acre.

A. Per annum.

10

COURT: What does 226 dollars represent?

A. That is actually the amount for the lot, my Lord - it is obtained from Mr. Yip's Table under Column 6 - you see 31 Carnarvon Road, new Crown Rent is 226 dollars, and that is transferred to this explanation and the equivalent amount per acre is calculated to be 5,010 dollars per acre or 226 dollars ..

COURT: The amount 226 dollars for the property in question?

20

A. For 1,965 sq.ft.

Q. I won't take you through each and every one of those items - finally what is the purpose of this Exhibit 7 - Q.7 - what is the purpose of this exhibit indeed, having regard to the acreage here that you have?

A. As I said, it is reducing the amount for a site to an amount per acre, in order to try to show if they are similar or not.

30

Q. Similar - you can see here - I am only quoting from this Table, - that under the heading of New Crown Rent, the sum varies from anything - something in the region of 5,000 dollars therein - is that right?

A. Yes.

Q. For example, based on new Crown Rent ..

A. Yes.

Q. ... based on the sum of approximately - sometimes lower, sometimes a little bit higher - around the region of 5,000?

A. Yes.

10

Q. Mr. Bailey, you have given evidence that you have been in Hong Kong some time?

A. Since 1961.

Q. Exercising your profession - do you know in Hong Kong whether there is any valuer of land at all in private practice?

A. As far as I know, there is no valuer of land in independent private practice.

Q. There is no valuer in independent private practice in Hong Kong?

A. Yes.

20

Q. The valuers that you know - the valuers of land ...

A. Yes.

Q. ;;;... you have valuers of buildings, valuers of chattels, but there is no one in private practice in Hong Kong ..

A. In independent private practice.

Q. I mean independent private practice?

A. Yes.

30

Q. Independent private practice, and how if you know - if there is no one in private practice, in your experience have you come across valuation of land to have been made in Hong Kong?

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A. Well of course there are valuers in practice - there are valuers in Government practice. I believe some of the big land investment companies have valuers, and as far as I am aware there is no valuer in independent private practice.

Q. None - do you know whether it is difficult or easy or you don't know whether these valuers of land can be obtained, whether they can be - in other words is it easy if they are not independent ..

10

A. I couldn't answer that really.

Q. You couldn't answer.

A. But of course people doing the duties which professional valuers would do in, say in England - for instance any developer will have to make, in fact, his own valuation to see whether the project of development is feasible financially - as far as I know there is no valuer in independent private practice who can be consulted on this.

20

Q. No one in Hong Kong, but in fact do you know of any other people who undertake to do this in Hong Kong, although they are not qualified - you know of instance or instances where there are certain people undertaking those duties?

A. Well as F said, I believe that the profession does not exist independently - there are other people who do the work which a valuer would normally do.

30

Q. For example - who are these people for example?

A. I think architects undertake valuation here - sometimes quantity surveyors, but quite often the developer himself, from his private knowledge of the development and his experience, makes his own decisions in matters of valuation where it is the practice in England to consult a professional valuer.

40

Q. I see - sometimes architects do,

sometimes quantity surveyors, although there is no qualification, and sometimes investor himself does it from his own knowledge.

A. Yes.

Q. From your own experience indeed do they actually consult any Investment Company or something like that?

10 A. Valuers are employed by Investment Companies generally for the interests of the company itself.

Q. For the interests of the company?

A. Not as an independent professional adviser - people in general.

20 Q. One last question, Mr. Bailey - I don't know if I have asked you this question - I don't remember whether I have asked you this already, but how does the annual payment of 60,000 odd dollars, the exact figure is here - odd dollars operate practically in the plaintiff's case over a period of 75 years?

A. I think I have already explained ..

Q. You have already explained ..

A. ... that you are dealing with the equivalent annual payment of ...

Q. Equivalent annual payment ..

30 A. .. 60,000 odd dollars. If it accumulates at 5% compound interest will redeem the initial capital of 1,234,875 dollars in 75 years' time - it will accumulate to over 45 million dollars.

Q. Thank you very much.

XXI. BY MR. O'CONNOR:

Q. Now, the first thing, Mr. Bailey,

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I want to take you to first Exhibit Q.5.

A. Yes.

Q. Now would you just look at page 7 there.

A. Yes, 7.

Q. Now, I think you said, correct me if I am wrong, that the figures were mostly hypothetical - they were not actual figures - figures mentioned explicitly in this case?

A. Is this in connection with the capital for .. 10

Q. I am talking generally - you gave various illustrations in your evidence.

A. I think I gave one illustration which was on the question of somebody lending somebody else twenty pounds.

Q. But most of your figures, would you agree with me, were hypothetical figures, which have no direct relevance to the figures in this case? 20

A. I think most of the figures were explanations of the figures in this case.

Q. I want to take you to a few of these and see if you agree with that yourself. Now I asked you to look at page 7 - do you say that is your figure - your long list of figures which goes over, I think to page 13?

A. Yes.

Q. I think you said in reply to your counsel that these figures could be worked out this way .. 30

A. Yes.

Q. Now you see your figure there at the top of the long list of figures on page 7, beginning with 1,234.875.

A. Yes.

Q. And under that with the instalment paid 1963, 60,386?

A. Yes.

Q. Now that 60,386, of course, is not a figure in dispute in this case, you agree?

A. I don't know if it is in dispute or not - I understood that it is in dispute.

10 Q. Do you know that the rent fixed under this lease is not 60,386?

A. This is the part - this is the rent excluding ..

Q. Excluding Crown Rent - below that you have a total of 1,174,489.

A. Yes.

Q. So that, therefore, would I be right in saying when 60,386 is paid off 1,234,875, you would have a balance of 1,174,489?

A. Yes.

20 Q. Now the next figure - you add in to that the figure of 58,000 ..

A. Yes.

Q. You know, don't you, from listening to this case, that the total rent to be paid, rather to be paid from the lessee was only 60,000 dollars?

A. Yes.

Q. So that that 58,000 has no relevance at all, do you agree with that ?

30 A. It does have relevance, because the lessee in this case is required to pay 75 times 60,386 dollars and 75 times 60,000 dollars is something over  $4\frac{1}{2}$  million dollars.

Q. Why do you get 58,000 - he is not

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required to pay that?

A. I think if this money transaction were proper I think he would be required.

Q. That is what I am getting at - if this money transaction were carried out - these are not realistic figures, don't you agree with me that these are hypothetical figures?

A. If in fact rent had been paid for 63 - if in fact ..

Q. We are dealing with ..

10

MR. SANGUINETTI: I would like the witness to be given a chance by my friend indeed to answer the question.

MR. O'CONNOR: I am not asking if - I am asking you the actual facts. You know the rent charged was to be 60,000 dollars?

A. Yes.

Q. So, therefore, don't you agree premium of interest was never asked for - never taken into calculation?

20

A. On the annual sum of 60,000 dollars does not mean anything unless you - it is to pay off the interest which ...

Q. My point is you appear to be charging 60,000 plus instalment item, in the first place, 58,000 for interest ...

A. No, the amount of interest is added to the principal outstanding, and then the amount of each payment is deducted.

COURT: If I may interrupt - you said that your figures, I must just clear up what you have just said - you said your figure of 60,386 being instalment payable ..

30

A. Yes.

COURT: I think you said you knew that wasn't

the actual rent in this case, isn't that right?

A. The actual rent is more ..

COURT: I am speaking of the actual rent which is in fact - which has been charged is 60,764 dollars.

A. Yes.

10 COURT: I have just checked that - I don't understand why you have the figure 60,386 when the actual rent is 60,764 - what is the difference?

A. The difference is the amount of the Zone Crown Rent, which after the mathematical calculation has been done, using this multiplier of 0.0489, the additional amount has been added in respect of Zone Crown Rent.

COURT: That makes up the difference?

20 A. That makes up the difference - the difference.

Q. But you agree that you have added to that interest of each year?

A. Yes.

Q. Now you also agreed with me that there never had been any question in this case of charge with interest plus the 60,000?

A. The figure of 60,000 includes repayment of interest.

30 A. That is what I am getting at, you agree?

A. Yes, yes.

COURT: Zone Crown Rent 375, is that right?

A. Yes.

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Q. In other words, 60,000 odd includes what you attribute to the interest ..

A. Yes.

Q. That is right.

MR. O'CONNOR: I think you also said, Mr. Bailey, that you saw no difference between amortization and decapitalization?

A. As applied to this particular type of calculation, yes.

Q. Can you tell us - I think your words were that decapitalization was used in as you put it, valuation jargon. 10

A. I think it is a jargon - yes jargon.

Q. When Mr. Lyons was asked, was there any difference between amortization and decapitalization, he said there was - would you disagree with Mr. Lyons?

A. As far as this calculation was concerned, I would disagree with him. I would say that this calculation is what I understand by amortization. 20

Q. I am reading out this statement - this question - this specific one - I am asking you in general terms - would you agree with Mr. Lyons there is a great difference between these two words or would you disagree with him?

A. I would disagree with him.

Q. You would disagree with him.

Q. Would you agree with this definition of decapitalization - 'a specialised term used in the valuation profession to find the annual equivalent of the capital figure or rental equivalent to capital sum'? 30

A. I would say I agree with it.

Q. You would agree- you would adopt that definition?

A. But - yes, but I cannot see how it is a specialised term.

Q. Do you agree with it or do you not agree with it?

A. I agree with this.

Q. You agree - first let's take it slowly - it is a specialised term used in valuation?

A. No, I think it is a valuation jargon - I think I have said that.

10 Q. I am not splitting hairs with you whether it is a jargon or a specialised term - you agree with me that it is a specialised term used in the valuation profession?

A. Perhaps I can give an explanation to this.

Q. Perhaps you could answer yes or no and then explain.

20 MR. SANGUINETTI: The witness should be allowed to give an explanation.

A. If I could illustrate this point by the use of the word dewater - now the word dewater, I am sure, does not appear in any dictionary, but this is a term used by architects and engineers to mean the drying out of foundations to a building, so in engineering practice you may find the word 'dewater', and I would say that it means something to an engineer but it is a  
30 jargon, because it is nothing.

Q. Mr. Bailey, I put the question for the third time, I won't ask you again if you don't want to answer it - do you agree this is a specialised term used in valuation?

A. I disagree.

COURT: What is the term?

MR. O'CONNOR: Decapitalization. you

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disagree?

A. Yes.

Q. And you are not a valuer?

A. I am not a valuer of land.

Q. Do you agree that the purpose is to find the annual equivalent of the capital value or the rental equivalent of capital sum?

A. I would disagree.

Q. Would you give us your definition of 'amortisation'? 10

A. My definition of 'amortisation'. 'Amortisation', if we could stay with the word 'annual', is an annual repayment to be applied for reduction -- for payment of interest and to reduce capital.

Q. Is that word in your opinion applicable to valuation of property?

A. I have no experience of valuation of property. 20

Q. Would you disagree with Mr. Lyon's account when he gave us his definition of 'amortisation': "writing off of an asset over a period of years"?

A. No. I would agree with that.

Q. You would agree with that. Would you agree with him when he said it is a term used in the valuation of chattels?

A. I would agree that it is a term used in the valuation of chattels and I would add that it is also a term which is used in the valuation of buildings. "to amortise the building cost". 30

Q. but you have told us that you are not a valuer of buildings. Are you telling us that you are competent to advise and give opinions on the value of buildings?

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A. On the value of the cost of construction of buildings, certainly.

Q. Cost of construction of buildings?

A. Yes.

10 Q. Would that be what is called 'costing of buildings'?

A. Estimation of the cost of buildings.

Q. Isn't that generally used: 'costing of buildings? Isn't that the prime duty of a Quantity Surveyor?

A. Costing of building works, yes.

20 Q. Supposing you were asked to give an opinion as to the value of an existing building between, say, a purchaser...

A. Yes.

Q. .. and a vendor - a possible vendor - would you consider yourself competent to do that?

A. No.

Q. Mr. Lyons, you say, would be?

A. Oh yes, definitely.

REKN. BY MR. SANGUINETTI.

30 Q. Mr. Bailey, you remember yesterday that my learned friend asked you whether you thought Mr. Lyons was more experienced than yourself, do you remember that?



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A. Yes.

Q. Do you have in mind what exactly was the phrase 'more experienced' -- What do you mean 'more experienced', in what degree Mr. Lyons was?

A. I think the question meant more experienced in methods of valuation and in the work which a valuer does.

Q. Yes, more experienced in the methods of valuation and the work that a valuer does? 10

A. Yes.

Q. A valuer in what?

A. Well, a valuer in property, in land.

Q. In property and land. Would you say that he was more experienced in mathematics or anything like that?

A. I think it is very difficult to answer that question. I think mathematics is something which can be understood by anybody. It is very difficult to say if one person is more experienced in mathematics than others. 20

Q. Now, you mentioned something - I think that you were asked as well as regards - that you are not a valuer of land.

A. No.

Q. You do not hold yourself as a valuer of land or completed buildings? 30

A. Not completed buildings.

Q. Not completed buildings. But what would you say if there was a completed building - if there was a building which has recently been completed, could you hold yourself yourself as competent to

value that building?

A. I could value the cost of construction of that building.

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Q. So that in that respect you could be classified as a valuer in the cost of construction?

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10 A. Well, I am valuing the items of labour, of material which have gone into the construction of the building; Mr. Lyons valuing the amount of building-worth from the point of view of income that can be received.

Q. But in that limited sense I suppose that you could say that you are a valuer - limited to that extent?

A. Also as a valuer of something, yes.

20 Q. And how would you actually -- Would that apply to a partly finished building, at a certain stage of that building..

A. Yes.

Q. And how could you value it?

A. You would value it by measuring the amount of work completed and estimating the cost of construction work to that stage of completion.

30 Q. Yes, indeed. You remember yesterday that you were cross-examined by my learned friend on this long figure and he asked you -- I am referring to Exhibit Q.5. Have you got it there before you? Page 7. You see there: 'Interest due 1963 - 5% - \$58,724'? I think that was the figure that you were cross-examined on?

A. Yes.

Q. And he said that this was a hypothetical figure, if I remember correctly. A hypothetical figure, as if it were coming out from the blue.

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That is the impression that I got when he questioned you on this figure. Would you agree with that?

COURT: Which figure is that?

MR. SANGUINETTI: \$58,724. My learned friend, my Lord, said: "It is interest and interest is not due." And I think that I recollect telling my Lord that in the pleadings, in the Defence, it says 5% and in the correspondence it says interest and in the calculations on which this is based, he says 5% - decapitalised - 5% over a period -- B.2. if I remember correctly, my Lord. I think I mentioned that to the Court yesterday.

10

COURT: Yes. I want to know which figure.

MR. SANGUINETTI: The figure is \$58,724.

COURT: Yes, I have found it now.

Q. Does this figure come out of the blue?

20

A. I think Mr. O'Connor implied that the only money which the Plaintiff in this case was required to pay was the \$60,386..

Q. Yes.

A. .. but the reason why the amount is \$60,386 is because of the element of interest.

Q. And where did you get this element of interest in your calculations, Mr. Bailey?

A. Well, this from B.3, I think - Exhibit B.3.

30

Q. You got this from B.3?

A. Is it page 4? - B.3, page 4.

Q. Page 4, yes. You got this from 'de-capitalised at 5%'?

A. Yes.

Q. You got it from there?

A. Yes.

Q. B.3, page 4. You will say my learned friend will obviously realise in view of the answer that you have given that the figure does not come out of the blue as it were?

10 A. Well, this figure is a part of the calculation to show that over a period of 75 years this capital sum is repaid.

Q. I see. If you didn't have this figure then it would be paid in -- If there was no element of interest it would be paid in, say, 20 years. But you took it at 5% from the calculations here?

20 A. This is, in my opinion, what 'de-capitalised at 5%' means. Any amount which is unpaid is credited with 5% interest.

Q. Yes, and that is taken from the calculations in this case?

A. Yes.

Q. From Exhibit B.3, page 4?

A. Yes.

Q. And if you look at page 1 of Exhibit B.3..

A. Yes.

30 Q. ..it appears there, does it?

A. Yes.

Q. Would you apply or would you not apply the term 'amortisation' to this calculation that you have made?

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A. Well, if you amortise -- in my experience, if you amortise a building or land cost, you do it in a way similar to this: In other words, you require that money give a practical, a safe amount of interest. So that if you invest money, you are trying to obtain a profit which is higher than the safe profit you can get from safe investment. So, if a person spends a capital sum of money, his profit shouldn't be calculated at the interest he could acquire from gilt-edge investment. So that this system is used in amortisation because profit has to be regained as something over and above what the safe interest can -- the safe interest you can get from investment.

10

MR. SANGUINETTI: I see. Thank you very much.

D.W.2 Alex Michael Wright - sworn in  
English

20

KN. BY MR. O'CONNOR:

Q. Now, Mr. Wright, are you the  
Director of Public Works Hong Kong?

A. Yes.

Q. And were you in fact the Director  
of Public Works in April 1963?

A. Yes.

Q. Now could we have your professional  
qualifications, Mr. Wright?

30

A. I am an Associate of the Royal  
Institute of British Architects and a  
Fellow of the Royal Institution of  
Chartered Surveyors in their Building  
Division.

Q. Now, Mr. Wright, there is a lease,  
B1, which is dated the 14th April 1937,  
and that is a lease of the Inland Lot

3793 Kowloon and that lease contains a proviso that the lessee shall be entitled to renewal of the lease on request for a term of 75 years at such rent as shall be fairly and impartially fixed by the Director of Public Works.

COURT: Perhaps the witness would like to have a copy of the lease before him.

10 MR. O'CONNOR: Perhaps you take that copy, Mr. Wright.

COURT: I have the actual Ex.B1, but...

MR. O'CONNOR: I have underlined it but I don't think it makes any difference.

Q. You see the words "provided also" there, Mr. Wright?

A. Yes.

20 Q. Now to refresh your memory I want you to take your file number - I don't know what is the number but take that file.

COURT: Has that an exhibit number?

MR. O'CONNOR: It is in the bundle B, my Lord. The whole file, you see, has not been put in; it is merely the memo.

COURT: B3, it starts with a memo of the 16th July 1962.

MR. O'CONNOR: Yes, my Lord.

Q. Mr. Wright, it begins with memo dated 16/7/62, R.G. (L.O.).

30 A. Yes.

Q. Perhaps you would turn over the page and see No. 6 on that memo.

A. Yes.

Q.

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Q. Is that your signature on M.6, dated 1st April 1963?

A. Yes.

Q. Could you tell his Lordship how and in what circumstances you came to write that memo?

A. Because I received the memo before, M.5, signed by Mr. Hughes, the Superintendent of Crown Lands and Survey. He submitted the file to me and having read the memo I asked Mr. Hughes to come up to my office to discuss it. He brought with him, I think, two other members of the Crown Lands Office staff, (I think Mr. Musson, I recollect, was one of them) and we discussed this valuation with a plan in front of us of the area in Kowloon involved, and it had the prices of various land marked on it, and we discussed this matter for some considerable time. Having discussed it with these experts, I came to the conclusion which I minuted at M.6.

10

20

Q. Now can you remember, Mr. Wright - do you know Mr. John Lyons, one of your valuers in your department?

A. Yes.

Q. Can you remember whether he was present?

A. I cannot remember specifically whether he was present.

Q. He may well have been?

30

A. He may well have been but I cannot remember specifically that he was present.

Q. Now when you wrote this minute: "I have considered your valuation of \$350 per sq.ft. for this lot and have discussed it with Messrs. Hughes, Stanton and Musson. I am of the opinion that if No.20C Carnarvon Road is correctly valued at \$400 per sq.ft. then this lot is under-valued at \$350 per sq. ft. I consider that 20C Carnarvon Road is

40

over-valued at \$400 and I further consider that \$375 per sq.ft. is a more reasonable valuation for K.I.L. 3793"; was that your decision?

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A. That was my decision and an attempt to recall the reasoning based on the plan.

Q. Now on the information before you and on the advice of your experts, did you consider whether that was a reasonable valuation?  
10.

A. Yes, I considered it reasonable.

Q. Just one matter I want to refer you to, Mr. Wright. The lease, I think, expired in June 1963 and I see your memo there is dated 1st of April, Can you tell us anything about that?

A. Only that I cannot remember now that the date of June was specifically mentioned, but I do recollect that the lease expired some time later that year and in discussing it at the time the market was rising and we felt that any valuation done at current rates would in fact be fair later in the year unless there was a catastrophic drop.  
20

Q. Have your yourself knowledge whether the market was rising or falling or static in April?

A. I was advised at that time it was rising and I got no opinion myself as to what happened after that.  
30

Q. Now just one further matter I want to refer you to. I think you are, of course, a Director of the Public Works?

A. Yes.

Q. Can you tell us what relationship the Crown Lands and Survey Department has in regard to your Department?

A. It is one of the sub-departments of



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the Public Works Department, and the Superintendent of Crown Lands and Survey and his staff are the experts in that particular field.

Q. And are they or are they not answerable to you as head of the Department?

A. Yes, they are answerable to me as head of the Department.

Q. And you know Mr. Law, who is one of the valuation people in Crown Lands and Survey?

10

A. Yes.

Q. Is he also indirectly a member of your Department?

A. He is member of my Department.

Q. Does he come directly under Crown Lands and Survey?

A. He comes directly - he is on that side, in the sub-department, and he comes directly under the Superintendent.

20

Q. And I think you say Mr. Law is one of the experts in that Department?

MR. SANGUINETTI: I don't think he said Mr. Law is an expert

COURT: Valuer.

B O'CONNOR: Can we clear this up.

Q. Mr. Wright, what was Mr. Law's position, as far as you know?

A. Mr. Law is a qualified Chartered Surveyor and as far as I am aware his position just before he went on leave was in valuation, resumptions Section of the Crown Land and Survey.

30

Q. Would you describe him as an expert or not?

A. If he were not an expert he would not have been given that particular job.

Q. Do you happen to know if one of those valuers signs a letter, whom does he sign on behalf of?

A. It is normal for him to sign on behalf of Crown Lands and Survey.

Q. Who is in turn answerable to you?

A. Yes.

10 Q. Thank, Mr. Wright.

D.W.2 Alec Michael Wright - on former oath

XXN. BY MR. SANGUINETTI:

Q. Mr. Wright, could you kindly take a copy before you of Ex.B1, which is the lease in question. Have you got it before you?

A. Yes.

20 Q. Now, Mr. Wright, would you agree with me, or would you not, that under this exhibit you had certain duties and obligations to perform?

A. Yes.

Q. And one of those obligations, was it not, to fix a rent for the ground of the premises, excluding buildings?

A. Yes.

Q. I see from matters disclosed in this case, Mr. Wright, that you took legal advice on this lease?

30 A. I did not take legal advice.

Q. You did not take legal advice. Were you advised? I don't want to know the nature of the advice given to you.

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MR. O'CONNOR: He said he did not take legal advice.

MR. SANGUINETTI: He may not have taken legal advice, but advice may have been given to him.

COURT: I think he did not take any legal advice in fixing the rent.

MR. SANGUINETTI: No. He did not take legal advice himself about his duties and obligations of the lease.

10

A. Correct.

Q. Is that correct?

A. That is correct.

Q. So in fact you yourself had these duties and obligations under the lease and you did not take or receive, I should add, any legal advice?

A. The only advice I was given was that the Government's legal advisers say I must personally undertake this duty of fixing the rent.

20

Q. The Government legal advisers. That I take it, Mr. Wright, was before you made this calculation that Mr. O'Connor has referred to this morning?

A. The advice was before I became Director of Public Works. It was advice to the Director of Public Works that this particular duty in the lease could not be delegated; he must personally do it.

Q. Did you receive, Mr. Wright, any legal advice as regards what you were able to do and what you were not able to do, apart from that advice?

30

A. No.

Q. I would like you to turn over to the last page of this Ex.B.

A. Yes.

Q. You will see the second line of this page that it starts with, "provided also and it is hereby further agreed and declared that the said Lessee shall on the expiration of the term hereby granted be entitled to a renewed Lease of the premises hereby expressed to be demised for a further term of SEVENTY FIVE YEARS without payment of any Fine or Premium, "there was no legal advice given to you on those words?

10

A. None to me personally.

Q. None to you personally.

COURT: That would not, of course, presumably, include any legal advice in correspondence.

MR. SANGUINETTI: Exactly. No legal advice, he says, by way of writing.

20

COURT: He said given to him personally. If it is registered in the files it would be impersonal.

MR. SANGUINETTI: I see my Lord's point.

Q. Mr. Wright, did you seek any legal advice soon before calculating this matter on any file as regards these obligations not to charge a fine or premium?

30

A. Over the years I have seen a great deal of advice and correspondence on these and associated subjects and these have, I suppose, stuck in my mind; but I cannot say I got any specific advice on this particular matter.

Q. And it goes on to say: "therefor and at the rent hereinafter mentioned AND that His said Majesty will at the request and cost of the said Lessee grant unto him or them on the expiration of the term hereby granted a new Lease of the said premises for the term of Seventy five years,

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"stopping there, you did not get any legal advice on the right of renewal, the consequences of exercising the right of renewal?"

A. No legal advice.

Q. No legal advice. The consequences, you never got any legal advice as regards what the legal consequences of the exercise of the right of renewal, and you did not obtain, personally or otherwise, any legal advice as regards the words, the following - could you kindly look up the lease - "at such Rent as shall be fairly and impartially fixed by the said Director" - you did not have any personal or otherwise legal advice as to what the words here "to be fairly and impartially" meant?

10

A. I got no legal advice.

Q. And it goes on, "by the said Director as the fair and reasonable rental value of the ground at the date of such renewal," did you receive legal advice as regards this particular case?

20

A. No.

Q. Personally or otherwise?

A. Not on this particular case.

Q. Not on this particular case as to what was fair and reasonable. Moreover, if you just go one page before, say, towards the end, Mr. Wright, you will see in the last two sentences that you have as well certain obligations in case the Crown wants to re-enter the premises for some public purpose. Do you see that?

30

A. My copy is so faint I cannot see.

COURT: What are you referring to now?

MR. SANGUINETTI: The last page but one of B1.

(to Clerk: Would you pass this to Mr. Wright.)

This copy is marked but I don't mind at

all. It is underlined.

Q. Is that clear?

A. This is clear.

10 Q. Now you will see there "PROVIDED ALSO AND IT IS HEREBY FURTHER AGREED AND DECLARED that His said Majesty shall have full power to resume enter into and re-take possession of all or any part of the premises hereby expressed to be demised if required for the improvement of the said Colony or for any other public purpose whatsoever"; you see these words?

A. Yes.

Q. "Three Calendar Months' notice being given to the said Lessee of its being so required and a full and fair compensation," you see the words there "full and fair compensation"?

A. Yes.

20 Q. So that was an additional duty, indeed, that could have been exercised by you if the circumstances so required, do you agree?

A. I am not sure that this would be exercised by me.

3 Q. Well, if you go on - sorry, possibly my fault for not taking you further - "for the said Land and the Buildings thereon being paid to the said Lessee at a Valuation to be fairly and impartially made by the said Director" - So there were other duties and obligations that you might have been called upon to exercise in certain circumstances?

40 A. Again I would only say that I have never been called upon to exercise this duty; though there have been cases where resumptions have occurred, I don't think that the Director of Public Works has ever been personally called upon to

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value for resumption.

Q. But here you agree that if the circumstances so required that this land was required for a public purpose that it was yourself, under the terms of this lease, who had to award a full and fair compensation?

A. The Director, yes; but it could be delegated responsibility, it may be a responsibility which the Director may delegate.

10

Q. Mr. Wright, it could be. But there is nothing here in this lease, as opposed to statute where powers, you agree with me - please have a look at B1 - there is no provision here as regards delegation to any one :

A. That is correct.

Q. What you're referring to - and I stand subject to be corrected by your goodself - is the case where a statute gives you power and you can delegate that power to some one underneath you?

20

A. No.

COURT: Just a minute. I don't think, subject to anything which may be said, you can ask the witness questions on law.

MR. SANGUINETTI: As your Lordship pleases. I stand corrected. I withdraw the question.

Q. I keep my question to this point that under this lease there is no power at all to delegate; you agree with me?

30

A. I agree with you, yes.

Q. Now I would like you to leave open for a second Ex.B1 which is before you. I would now come to B3. Have you got those exhibits there?

MR. SANGUINETTI : B3 is an exhibit in Court.

COURT: I have the original B3.

MR. SANGUINETTI: Yes, my Lord.

COURT: We have no copies of the exhibits, I am afraid.

MR. O'CONNOR: Copy of B3 was not made an exhibit. I think we adopted this procedure later. The whole of that file, agreed bundle B, was made an exhibit and then they were marked.

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10 COURT: Yes.

Q. Have you got it?

A. I am not sure if this is the one.

Q. Yes. I think the persons in your Department, sub-divisions of your Department - your Department is sub-divided?

A. Yes.

Q. They are really experts in question. For example, Mr. Musson is an expert in valuation.

20 A. Yes.

Q. Is he a Chartered Surveyor?

A. He is a Chartered Auctioneer, I believe. I think a Fellow of the Chartered Auctioneers Institute.

Q. Qualified him to make valuation of land?

A. Yes.

Q. It does qualify him?

A. Yes.

30 Q. You will see there in Memo I of this "Grant Conference Decision"; do you see it there?



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A. Yes.

Q. Would you agree with me that if certain words are used by persons who are dealing in these matters, we could presume what they actually say? In other words, if Mr. Musson uses a certain word, you could not actually say he is like a layman outside his field using that word?

A. I do not think I can agree with a generalisation of that sort.

10

Q. But you would agree, as you would see here, that basic premium means exactly what it says - a basic premium? You see the words there?

A. I see the words "basic premium".

Q. And against the figure of \$350, is that correct?

A. Yes.

Q. This is the way in which premium in a non-renewable leases is calculated in 1962, is that correct? Premium is allowed in a non-renewable lease?

20

A. I am afraid I cannot answer that. I am not an expert in valuation.

Q. You are not an expert in valuation?

A. I am not an expert in valuation.

Q. But is this how the basic premium is calculated in the sense of - I am not questioning the figure, Mr. Wright, but if you have a non-renewable lease - you are well familiar with renewable and non-renewable leases?

30

A. Familiar as a layman but not familiar in the professional capacity.

Q. But you know that in non-renewable leases a premium is taken by the Crown in

case of non-renewable leases, apart from charities?

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A. I believe that is so.

Q. And are you familiar, Mr. Wright, with the purpose of regrant conferences?

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10 A. No, I am not. I assume this was one of my conferences which I held in the Crown Lands and Survey office to ensure, not continuity - I am sorry I cannot think of the word.

Q. Uniformity?

A. Uniformity; thank you.

Q. But the question of regrant means in connection with non-renewable leases, would you agree?

20 A. I think that within the terms of a conference held weekly or monthly within the Crown Lands and Survey office of Public Works Department, the name of the conference is of very little importance. It might start with a particular purpose and then expanded to cover other items.

Q. Quite. But the word "regrant" implies a non-renewable lease that you make a new grant?

A. This is the kind of matter I would not like to express an opinion upon.

Q. Now this calculation was made - are you familiar with the handwriting, say, in N.2?

30 A. No.

Q. You are not familiar with that handwriting at all?

A. No.

Q. You have another page before B3. Have you got it there? It is Memo 5.

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A. Yes.

Q. And that is signed by Mr. Hughes?

A. Yes. May I use this file; it is  
easier to read.

Q. This memo, written to you by Mr.  
Hughes, actually dealt with certain matters  
and was submitted to you on the 28th of  
March 1963, was it not?

A. Yes.

Q. Mr. Hughes says, "I consider that  
the new Crown Rents as calculated are fair  
and reasonable," and of course any advice  
that you took on policy or from your own  
staff, on that particular point only, you  
had come across general legal advice. They  
all came, did they not, from employees of  
the Government?

10

A. Yes.

Q. From one side?

A. From the Government.

20

Q. From the Government side.  
In other words the defendant in this case,  
the Attorney General?

A. Yes.

Q. From one side, And then turning to  
H.6 on the next page. We come to the memo  
that my learned friend has already asked you  
several questions. Would you agree with me  
that what you did here - you may or you may  
not agree with me - what you did here was a  
valuation of the ground of the premises?  
In other words, you had the figure - you  
were asked by the previous memo to agree  
as regards the calculation whether it was  
fair and reasonable and they expressed the  
opinion - whoever did this - they thought  
it was fair and reasonable, and you actually  
did a valuation of the land without any  
building after discussing the matter,

30

according to your memo. In other words, how much is this land worth to the Government on this particular date after discussion, would you agree with me?

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10 A. I would not agree entirely that I did the valuation. It is rather that the valuation, the calculation of the rent was based on the capital value of the land at that date. And when we had this discussion, when I was asked to agree to this valuation, it was pointed out to me that I was required, as you have also just pointed out, to give a fair and impartial valuation, whatever the word was in here, and I decided to apply my mind to it and not simply to sign on the dotted line without giving attention to it. We had in front of us a plan showing - marked on it the square foot values of several sites in the vicinity, and I discussed this with  
20 Mr. Hughes, Mr. Musson, and now I see from the file Mr. Stanton as well - I forgot that this morning - and after a fairly long discussion this was the decision that I came to after discussion with these experts. Perhaps I persuaded them their figure was not logical in view of the other values in the vicinity and I took full responsibility for this.

Q. For re-assessing?

30 A. For this re-assessment.

Q. \$375?

A. Yes.

Q. For re-assessing from \$350 to \$375?

A. Yes.

Q. But in fact you would agree with me that is a valuation?

A. I would agree that is a valuation.

Q. Mr. Wright, I know it is very difficult after so many years for you or

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for any one to recollect what papers you had before you when you persuaded, in your own words, the others about this valuation. You had, I suppose, the papers in Ex.B3, M.5, the one that I have already referred you to?

A. Yes.

Q. Did you have anything else that you can recollect?

A. The map, which was the most important as far as I was concerned. I do not recollect that I had L.S.O. File 5296/53 in front of me, but I was certainly made aware of the legal advice that this must be done by the D.P.W. personally, and I think I even facetiously remarked that I would do it personally. But this advice I was given and I accepted it. I also took the advice of the officers present. I do not recollect any papers other than the bundle of files dealing with other sites and the map. 10 20

Q. You do not recollect any?

Q. Mr. Wright, did you ever think or did it occur to you that there is a difference between making a valuation and fixing a rent?

A. When I was asked to deal with this case the experts in the Crown Lands and Survey office informed me that what was necessary was for me to agree with them the price value per square foot of the land. Apart from that, the method of valuation was a matter for the experts in the Crown Lands and Survey office - an accepted Government practice. 30

Q. Did it ever occur to you as such that there was a difference apart from the expert opinion that was tendered by your own staff, did it ever occur to you that there might have been a difference between fixing of rent and making a valuation?

A. It did not occur to me.

40

Q. It did not occur to you. And we have it, Mr. Wright, that when you actually - correct me if I am wrong - when you made this valuation here in this memo 6 you only had, so far as you can recollect - correct me if I am wrong - you must have had this file submitted to you in the previous memo and the big map?

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A. Yes.

10 Q. And you did not have anything else so far as you can remember?

A. So far as I can recollect, yes.

Q. You did not have, for example, Ex.A4?

A. Is it the schedule?

Q. No. It is the terms and conditions. It is Ex.A4 to A10 inclusive.

A. No.

20 Q. They are exhibits in Court. Here there are certain documents which have been produced by Crown on discovery, Mr. Wright, dealing with this lease in 1936.

A. I think this might be it. That is what I have got - the correspondence.

Q. Yes.

A. Letter to Mr. Lockhart.

Q. Yes, that's the correspondence.

30 Q. You did not have exhibits, for example, the letter beginning from this letter A --

COURT: A4 is not a letter at all. I think you must have got the wrong file.

MR. SARGUINETTI: Letter addressed to Mr. Lockhart.

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MR. WRIGHT: A8 in this file.

MR. SANGUINETTI: A8, I am sorry. I stand  
to be corrected. A8 to A10.

A. I have no recollection of seeing  
these.

Q. And when you made this valuation you  
did not know at all that a premium for the  
right of renewal had been paid in 1936?

A. No, I did not.

Q. For for that matter that in 1936 the  
rent had been increased as regards this  
particular property? 10

A. I did not know that.

COURT: -- the matter you referred to ,  
would it have been similar to case 10?

A. No, sir. It was a very much larger  
scale than that.

COURT: It is not exhibit 10.

MR. O'CONNOR: There are two maps. That is  
the zone Crown rent and there is also ano- 20  
ther one.

MR. SANGUINETTI: I think it was 10, my lord.

COURT Also A1.

(Exhibit A1 handed to witness.)

A. It certainly wasn't this one, my  
Lord. it certainly wasn't this plan. I  
think it was a bigger scale calculating east  
of Nathan Road and it had half a dozen lots  
with figures like 320 or 275 which was the  
value per square foot. 30

Q. It wasn't that - that is not the one  
you were shown?

A. No.

Q. Or the other one?

A. No.

Q. Do you recollect --

MR. SANGUINETTI: I don't know what document it would be, my Lord, but I think my learned friend would not object if I asked him this.

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10 Q. Do you recollect that the map you had been shown had something at all like in those marked 'Premium'? You said you were shown a map which was neither one of these here with figures?

A. Yes.

Q. Could you ascertain what those figures were indicative of what?

20 A. They were indicative of the square foot price which had been either paid in private transaction or which had been accepted by Crown lessees for either renewal or regrant of an old lease, and this was the basis of the Crown Lands and Survey Office's valuation of \$350 per square foot - my valuation - and the other figures I quoted in N6 refer to the figures marked on the plan. It must have been \$400 against 200, Carnarvon Road. And there were several other figures.

Q. I am taking you - I am referring you to exhibit B1.

30 MR. SANGUINETTI: Has your Lordship asked the question?

COURT: Yes, I've finished asking him. I just wanted to ascertain whether the witness has spoken about the map.

MR. SANGUINETTI: It seems another map had not been introduced.



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Q. Mr. Wright, before I come to B1, may I take you to B3 - that valuation, your evidence of the valuation that you made - 375.

COURT: B3, page 3?

MR. SANGUINETTI: B3, N6.

Court; Page 3?

MR. SANGUINETTI: Page 3, my Lord.

Q. I think, Mr. Wright, you were considering a property which is 200, Carnarvon Road? 10

A. 20C.

Q. 20C. And did you know that that was a property which involved a normal renewable lease at the time?

a. I was aware that of the several property shown on this map some were renewable and some were not renewable.

Q. In other words, when you made this valuation you did not deal with this property particularly, but you had quite a number of property, renewable and non-renewable? 20

A. Correct.

Q. And in the case of the non-renewable leases as well you made a valuation of 375 in respect of that property per square foot?

A. Yes.

Q. The same as the plaintiff's? 30

A. Yes.

Q. Turning to the last page but one of exhibit B1 of the lease, you have already agreed with me that you have certain

duties and obligations and, according to the terms here of the lease, there is no provision for delegation?

A. There is no provision in the lease for delegation.

10 Q. If this piece of ground, for example, the property in question, Mr. Wright, had been required for a public purpose, how would you yourself assess a full and fair compensation of the ground excluding the building?

A. As I say, I don't think I know. This has never come to me - this particular problem. So it is a hypothetical question.

20 Q. It is a hypothetical question. I am asking you because you were under a duty in accordance with the lease to perform this function if circumstances so arose. They did not arise, but if they had arisen how would you have exercised your obligations and duties?

30 A. I believe I would have done exactly in the case of trying to get the figures with which to assess the rent. I would have taken into account and I would have been informed of the values of the other property in the vicinity; I would have compared them; I would have made an allowance for, say, a corner site being worth more than a terrace site and a corner site with three verandahs being worth more than two verandahs because they could get more rent under the ordinance, and I would come to the same conclusion.

Q. You would not take the example - you don't know the particulars of this property, the state that it was in, say, in March, 1963 - you never visited the place?

A. I did not visit it at that time when I was doing this - I did not visit it.

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Q. But if I tell you that there were no buildings there in March, 1963 would you accept that?

A. I would.

Q. So there was no question of calculation of buildings. So you would have done precisely what you did in this case of valuation?

A. If we had to visit the site and if the site had also been empty and under the same condition, it would be treated in the same way. 10

Q. Would you have actually compensated - you can take it on the assumption that the plaintiff in this case exercised his right of renewal in February, 1963 - what compensation would you have awarded him in March if you had been called upon?

COURT: I don't know whether you are treating Mr. Wright as an expert or as a witness of facts. If he is treated as a witness as to what has happened, as I have seen, subject to anything may be said, one may not ask a witness of facts a hypothetical question. If he has been treated as an expert witness if any particular subject, then he may be asked hypothetical questions, subject to anything may be said. 20

MR. SANGUINETTI: Quite, my Lord. My learned friend said this morning Mr. Wright was partly a witness of facts and partly an expert I think he said that. 30

COURT: I think he has said he is not an expert on valuation.

MR. SANGUINETTI: I am not asking him as regards valuation. That is another matter. But I am asking him about this: if called upon, would he have acted in the same way as regards the property?

A. Yes, on the assumption that the experts at the Crown Lands and Survey Office had presented me with the same figures for me to give my attention to.

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Q. Turning to B1, the valuation is to be fairly and impartially made by the said director. You have never called the plaintiff in this case to make a representation to you?

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10 A. No.

Q. You have never thought of taking legal advice as regards the procedure that you would be required in law to take to act fairly and impartially?

A. I did not take legal advice.

Q. You would never have taken it in awarding compensation?

20 A. I would not say I would never take it. Advice had been given many years ago that the Director of Public Works must deal with this himself personally, but there was never any legal advice given at that time or subsequently that I know of. It says he must be the arbitrator.

30 Q. I am not concerned with the terms of the proviso in exhibit B1, but I am concerned at this stage with only matters coming before the proviso, nor as an expert. But the land is required for public purposes; you have a duty yourself to perform. You would never have taken specific legal advice as regards the procedure you have to adopt for the award of compensation?

A. I think I have already said this question of valuation personally by the Director of Public Works for a resumption has never, in my experience, come to the Director of Public Works. It has always been dealt with by the officers in the Crown Lands and Survey Office at that

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level. So I can't answer the question.

Q. I can say probably there has not been a lease proviso because - otherwise it would have come to you; would you agree?

A. I am afraid I couldn't agree with that because, for instance, there are so many leases and there is a clause to the effect "subject to the approval of the Director of Public Works" - but I did not see about them, if I did see about them there would be no work done; they are matters which don't come to the Director of Public Works personally.

10

Q. You would agree with me if there has been a question of compensation in the re-entry of the premises for public purposes, you would have to give full and fair compensation and that compensation had to be fairly and impartially made by the Director - you would not have been dealing with it yourself, correct me if I am wrong?

20

A. I simply don't know. You have raised a new question whether this is a special lease condition. I can only say I have not been, for many years as Director of Public Works, called upon to undertake this duty. And I can say for the previous five years when I worked in the Headquarters as a Deputy Director the Director had never been called upon to do that.

30

MR. SANGUINETTI: The procedure adopted, Mr. Wright says, is that the situation has never cropped up - never had this situation arising - the question of re-entry of the premises for public purposes by someone else in this department. That is what he has said.

A. Yes.

MR. SANGUINETTI: But if the situation came up with rent and a specific lease

and he had a specific duty to do what he had, would he ask the parties to make representations? In other words, I am trying to get Mr. Wright - I don't mind saying in Mr. Wright's presence - say how he would construe the work fairly and impartially. The words appear here "fairly and impartially" against the words "fair and reasonable" - it's a question of legal advice. I don't mind saying it in the presence of Mr. Wright.

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COURT: You have the same words "fairly and impartially" laid down?

MR. SANGUINETTI: Yes, I am trying to say if words are used in a document in a certain manner they must be construed in that same manner, the context otherwise admits.

COURT: I am merely pointing out what the position is.

MR. SANGUINETTI: The words here "fairly and impartially" - you have exceptions but you could not have two different legal interpretations, and I am asking him if a case of compensation arose what would he do. Would he obtain legal advice to construe the words "fairly and impartially" and what is meant by "full and fair"? I am limiting myself to "fairly and impartially". It is a hypothetical question, but it constitutes legal consequences. Is he acting - I don't mind saying in his presence - is his position one of an arbitrator or a valuer?

MR. O'CONNOR That is a matter for the Court.

MR. SANGUINETTI: But the Court will go on the evidence.

A. If I could try to answer your question. If this should happen that I were called upon to deal with such a matter personally, I would again expect the experts in the Crown Lands and Survey

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Office to arrive at a figure and to put it to me for my agreement and endorsement. I believe I would then discuss with the officers concerned and they would present to me what evidence they had to arrive at their decision. And if I agreed with them or if after discussion we agreed on a new figure, I do not think that I would call upon the lessee to put his case. I do not think that is my responsibility as Director.

10

Q. You do not think you would actually call upon the plaintiff or lessee to make representations in writing or otherwise?

A. He would do that afterwards if not satisfied with my valuation.

Q. But you would make your decision without calling him even on the question of compensation?

A. Yes.

20

Q. And one last question as regards this, Mr. Wright. I know it may be rather difficult, but you would agree in the ordinary circumstances if you had had to exercise your right in compensation in 1963 - there was no building there - would you have awarded the plaintiff, indeed, 307 (no, it was not at the time because you did your valuation in April) - 375? Would you have awarded the plaintiff the amount of \$350 per square feet in March as compensation if the Crown had re-entry for public purposes?

30

A. I again believe that acting impartially it was my opinion at that time, based on this map, that the value of the land was \$375. And so far as I, as Director of Public Works, am concerned, that is the price, whether it is Government's or the lessee's.

40

Q. So in other words, you would have agreed with me - you would have awarded in

March 1963 the sum of \$375 per square foot to the plaintiff in March if the Crown had exercised --

A. I believe so; it is a hypothetical question.

Q. You believe so- that you would have awarded that sum to the plaintiff in March.

10 COURT: You said this: "Acting fairly and impartially I consider \$375 per square foot was --"?

A. ... was the current market value of that property, but Mr. Sanguinetti said March. It was April 1, in fact.

MR. SANGUINETTI: That is right.

COURT: "... was the market value at that time"?

A. At that time.

20 Q. Mr. Wright, I don't know exactly whether you knew at the time that you made this valuation that --

MR. SANGUINETTI: Let me put it this way.

30 Q. This valuation was made in 1963. It was made, was it not, on the basis that the land on the 23rd day of June, 1963 was an unencumbered land; in other words, there was no encumbrances on the land. It was free - it was property which the Crown would sell - unencumbered?

A. Not necessarily, no. The value of the land - whether it had buildings on it, the land would worth a certain value, as I understand it.

Q. By unencumbrances I mean no buildings. Encumbrances may mean a mortgage on the land or it may mean the

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exercise of an option creating a term of years.

According to your calculation, you would agree with me if in law the plaintiff had created a term of years encumbering the land, your valuation would not have been the same?

A. This is an expert question which would have been dealt with by the valuers of the Crown Lands and Survey Office and would be brought to my attention. I am not sufficiently expert to be able to bring this up with them. 10

Q. Do you remember whether it was brought up with you?

A. I don't recollect it.

Q. You don't recollect it. You just dealt with it on the advice of others - of experts-when you made this calculation? 20

A. Yes.

Q. Without any specific particularity to this property, except as regards locality and the map you had?

A. And the value of land in the surroundings.

Q. You didn't deal with other characteristics or any other matters?

A. That is correct, not characteristics, such as encumbrances, but characteristics, such as corner site or non-corner site. 30

Q. But no question of encumbrances - no question of premium having been paid?

A. I was not informed of that.

Q. Mr. Wright, that is all you did - all you did well in advance of the date - the renewal date was the 23rd of June, 1963. And you made this valuation well in advance

of that date?

A. Three months.

Q. Three months, roughly, before. And that is all you had to do with the property. It was taken away from your hand and the rent, as such, was calculated by other people?

A. Yes.

10 Q. In other words, this figures of \$375 per square foot was the full market value - the best possible value that could be obtained - the full Crown rent?

A. Yes, the full Crown rent. That is the highest possible; it is one one would expect to get in a public sale.

20 Q. Without any consideration of anyone coming up, it is the value that you would expect him to fetch in the open market (the property was not encumbered)?

A. Yes.

Q. Before coming to exhibit C, there are several correspondence with some of your subordinates you may be able to explain, but before that I would like to refer you to an exhibit here, which is an exhibit J, page 1-2.

MR. SANGUINETTI: It is a file from the Secretariate. Has your Lordship got an extra copy of this?

30 COURT: Exhibit C?

MR. SANGUINETTI: Ex.J.

COURT: I think J and J2 are the same.

MR. SANGUINETTI: There are so many exhibits here. I think it is a memorandum to the Colonial Secretariate here in 1926. Page 4, I think.

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Q. It reads: "Hon. Colonial Secretary -  
I will discuss this with the Hon. D.P.W.  
at any time convenient to him."

A. Yes.

Q. You see "premium" there?

A. Yes.

Q. "75 renewable from 10th December,  
1877"?

A. Yes.

MR. SANGUINETTI: Has your Lordship got  
a copy? 10

COURT: I am not sure of what page.

A. Page 3.

MR. SANGUINETTI: Yes, page 3.

COURT: Which one?

MR. SANGUINETTI: The memorandum to the  
Hon. Colonial Secretary.

COURT: "I will discuss this..."

MR. SANGUINETTI: Yes. Has my Lord got  
that? And it says, "Premium - 8 9/10c.  
per square foot." 20

Q. Have you got that?

A. Yes.

Q. You would agree with me, according  
to this document - I am only asking you  
that figures in the valuation that you  
have made - in your valuation of the 1st  
of April, 1963 you adopted the same method  
of so much - figure, that is - per square  
foot? 30

A. Adopted the square foot method.

Q. Which in this file was the calculation of premium?

A. Yes.

Q. The method used was premium; you agree, Mr. Wright?

A. It says "premium" here.

Q. It says "premium". So apparently the same method was used for the calculation in 1963, as an inference.

10 A. Yes.

Q. thank you, Mr. Wright.

Q. Before I come to exhibit C, this letter. I was wondering whether you would assist the Court in answering this question. Since you have been here in Hong Kong for a number of years in Hong Kong, is it the first time in your experience that full market rents, best rents or economic rents had been charged-  
20 there may be exceptions - is it the first time?

A. It is a general practice to assess this on the basis of full market value.

Q. You create difference between renewable leases and non-renewable leases?

30 A. this I can't answer as an expert, but my advice at the time when I was doing this (when I had the map I kept on talking about), there was value for renewable and non-renewable - I believe they were treated the same way.

Q. As renewal and non-renewable?

A. A renewable lease being renewed, yes.

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Q. A renewable lease and a full economic rent being paid?

A. Yes.

Q. And a non-renewable lease, a premium is paid at a lower rent?

MR. O'CONNOR: Can he answer that?

Q. From your knowledge in dealing with leases here in this Colony I think you have certain duties indeed as regards leases as Director and in your other offices in the past can you actually say indeed in normal renewable leases here a premium is paid? 10

A. If I were asked this question at a meeting outside this Court I would say I would want to make a search on the file. It is a confusing subject. I wouldn't like to answer it off the cuff, to use a colloquialism.

Q. I would show you an exhibit to refresh your memory. You have a correspondence that has transpired in C. You will see in C1 there is a letter in February, 1963. By this letter the plaintiff asked for - it was the first time in February, well in advance from the expiry date - the plaintiff actually asked - he exercised his right of renewal by this letter. I take it you were not aware of, in accordance with your evidence you have given earlier on, anything about this letter? 20 30

A. Yes.

Q. You were not, when you made that calculation?

A. No.

COURT: What is that letter?

MR. SANGUINETTI: The letter exercising the right of renewal on 25th of February

1963.

COURT: C what?

MR. SANGUINETTI: Cl.

COURT: Yes.

10 Q. Now, we pass on to some letters. I haven't any questions to ask you, except these were sent to the Registrar General and the Registrar General apparently looked through these letters and sent them to your department, Mr. Wright, and nothing came out except a letter in March, 1963:-

"With reference to your letter dated 7th of instant"

MR. SANGUINETTI: That is exhibit C4 I am referring to.

A. Yes.

20 Q. ".I have to inform you that your application for renewal of the Crown Lease of the above property has been forwarded to the "Hon. Director of Public Works for consideration and you will no doubt hear from him in due course."  
I am just taking these letters generally. I presume you are not in a position to reply for the Registrar General.

A. No.

30 Q. I just went to ask you one thing on this letter. You will see on the 11th of March, 1963 we had an acknowledgement. We had to send a reminder, say, what's happening here; you agree?

A. Yes.

Q. And I was going to ask you that we didn't hear from your department until 23rd day of December when Mr. Musson wrote saying:

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"The question of renewal of your client's lease of the above-mentioned lot is still under consideration consequent upon Government's announcement concerning renewable Crown Leases."

Could you explain, Mr. Wright, if you can't say so, why was there such a big delay between this letter --

MR. SANGUINETTI: I think C 6, my Lord.

Q. -- and the letter of 25th of February? 10  
The letter took such a long time from 25th Feb. to Dec., 1963. It was sent by the R.G. in March and the letter of 11th Mar. was sent by C4. It was sent to the Honourable, The Director of Public Works and we never heard at all about this until Dec. 23. Can you explain the delay in replying?

A. I can't explain why there was no interim reply, but I thought that the reason is given in Mr. Musson's letter when he 20  
says:

"It is still under consideration consequent upon Government's announcement concerning renewable Crown Leases." I presume it is connected with that. I can't understand why an interim reply was not sent.

Q. I am not asking for an interim reply, Mr. Wright. I was wondering why you thought Mr. Musson said about the legal consideration being still under consideration by the 30  
Government.

A. The announcement showed that at that time in 1963 a lessee of a renewable lot, if it was undeveloped or happened to be redeveloped, could have it re-assessed at a lower rental based on the property then standing with an option to erect a modification in due course in payment --

Q. Of a premium?

A. I don't know. This, I think, was 40  
announced in 1963 - quite possibly this is what Mr. Musson was referring.

Q. You can't say the legal implication because you did not receive any advice and you never seek any advice?

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A. I was not dealing with it. It was dealt with in the Crown Lands and Survey Office. I haven't seen any of these correspondence.

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Q. You haven't seen any?

A. No.

10 Q. Not surprising.

A. I have got several hundred letters to Public Works Department every day.

COURT: Mr. Sanguinetti, I must ask you to wait until the witness has finished. If you talk at the same time as the witness is giving a reply I have great difficulty in taking the witness down. If you could wait until he finished, Mr. Sanguinetti.

MR. SANGUINETTI: I will certainly do that.

20 Q. I come to exhibit C7, a letter dated 10th of Aug., 1964 enclosing what had been termed "Alternative Terms". Have you got that before you?

A. Yes.

Q. By this date indeed you were offering here in enclosure to C7 the second paragraph thereto - have you got that?

A. Yes.

30 Q. You were offering the plaintiff, were you not, alternative terms?

A. Yes.

Q. But if I put it to you these alternative terms were not applicable on account of the commencement of paragraph 2, if you read it, were not applicable to the plaintiff, would you agree with that?



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A. (Reads) "In relation to any application for renewal made on or after the 6th Aug., 1963, or the negotiations in relation to which had not been completed..."

Q. The application was already made and never withdrawn.  
On the 25th - that is exhibit C1.

A. Yes.

Q. So negotiations were pending?

A. Not completed.

10

Q. "Not completed," indeed. Even if negotiations were not completed because an application was made before the 6th day of August, 1963, and there were no negotiations at all pending, would you agree that the alternative terms would not apply?

A. I would not agree. Negotiations had not been completed.

Q. With due respect, Mr. Wright, indeed. It will be seen by a further letter that you had actually been aware of -

20

MR. SANGUINETTI: Exhibit --

A. It might be 11; I am not sure.

MR. SANGUINETTI: C11.

COURT: Is C14 what you want, paragraph 4?  
I don't know.

MR. SANGUINETTI: It was a letter which our client never withdrew. C16, my Lord.  
It starts: "Letter dated 1st day of January, 1965."

30

COURT: That is not your letter.

MR. SANGUINETTI: No. it is a letter from Mr. Wright's department, signed by Mr. Law.  
It says:

"With reference to your letter of 3rd December, 1964, I agree with the comments

in the 2nd paragraph in that your client did not withdraw the letter sent in Feb.63."

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Q. I am saying this on the assumption that you would agree that the option contained in C7 was not applicable to the plaintiff.

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A. I have just only seen these correspondence. I have not read all of them. I don't think I can answer.

10 Q. That's all right. I was wondering if you turn to exhibit C7, for example, the enclosure at the beginning here, it says:  
"At the time of expiry of the term granted by a 75-year renewable lease the lessee, under the terms of his lease, has a right to renewable (sic) for a further term of 75 years at a reassessed Crown Rent which, as stated in such lease 'shall, in the opinion  
20 of the Director of Public Works, be a fair and reasonable rent for the ground.'"

I don't know who signed the memorandum. Would you explain who was responsible for this memorandum?

A. No.

Q. Is this the first time you have seen it?

A. The first time I have seen it, yes.

30 Q. You have had the opportunity today of looking up the exhibit C1, the lease in question, and it quotes: "... shall, in the opinion of the Director of Public Works, be a fair and reasonable rent for the ground." And then it goes on to say: "The D.P.W., in accordance with legal advice, has related such reassessment of Crown Rent to the full market value of the land (excluding buildings),"  
If I tell you nowhere in the lease do the  
40 words "shall, in the opinion of the Director of Public Works, be a fair and reasonable rent for the ground" appear, would you agree with me that you couldn't

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explain where that has been obtained from?

A. I can't comment on this because I don't know whether it was explained by my department or in the Registrar General's department.

Q. You couldn't throw any light at all where these words were taken from?

A. No. The only light I can attempt to throw is that this, I would say, is a general circular - a general statement of policy on this, not referring to this particular case - and that it is probable those words were taken from other leases, but not from this particular lease.

10

Q. You have come across other leases as well where can you remember whether these words "shall, in the opinion..."

A. I have no recollection of it. I don't study leases and it is not surprising I haven't seen these words.

20

Q. It may have been taken from other kind of leases.

Q. And could you actually in paragraph 3 of this exhibit here, Exhibit C.7, the enclosure thereto, could you throw any light at all on these conditions here?

A. A, B and C?

Q. The question of the lease under 3, for example under B - there would have been a reduced Crown Rent or rent is there any, Mr. Wright, if there had been ..

30

A. If the land is not developed to the full potential by the Urban regulations, I would say the rent would be lower than the full market value - based on the full market value - rent based on the full market value.

Q. Not based on the full market value..

A. No, it would be rent based on the

market value with the building on it, which would not be fully developed until later, so it would not be full market value obtainable for the site without buildings.

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10 Q. I see, but if there had been a fully developed building there - before the date here stated, the 6th of August, 1963 in the application, it had been fully developed there, and he adopted the conditions under Option B, what would have been the rent - in other words, it is fully developed indeed and the company developed but he wants to restrict it to existing conditions ..

A. I think I must ask what you mean by fully developed.

20 Q. Fully developed the land to its maximum potential - it is fully developed at the date that he hopes for Condition B - would he need to pay premium later because he can develop it more?

A. That is correct.

Q. That is correct - still he would be entitled under Option B to a lower rent?

A. No, it would be based - I would assume that the rent would be based on the full market value of the land, which would be the rent which we assess on April 1st, 1963.

Q. The full market value.

30 A. Based on the full market value of the land - full market value of the land.

Q. I see, but then there wouldn't have been much point at all in having Option B, under this Option B, under these terms, would there be?

A. Not, if the lessee to which the terms are being offered had already developed his site to its full potential.

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Q. He had and in that case you would have made a valuation, would you not, of the full market value of so many dollars per sq.ft.?

A. If the site was fully developed, yes.

COURT: The rent is based on the full market value, is that right?

A. Yes.

Q. Now you will see Exhibit C.10, Mr. Wright there before you.

10

COURT: That would apply to the present case also?

A. My Lord, yes, this full market value when empty site - on the assumption that it will be fully developed, that if the applicant wishes to opt for these new rules that are published in 1963 - August 1963, say he only had a three-storey building on the site then his rent would be assessed on the value of the site with that building on it, if later on he wished to demolish that building and put a much bigger building on it he would have to pay a modification premium - do I make it quite clear your Lordship?

20

Q. Mr. Wright, will you turn to C.10.

A. Yes.

Q. This is 23rd October, 1964. You have already made a valuation of this property in April 1963?

A. Yes.

30

Q. It will be seen from this letter that you agreed with me this, here Mr. Lo is asking the plaintiff for the rent and premium - the last paragraph of C.10, my Lord, which has been received in respect of the ground floor - when he has asked - you were asking for the rent indeed - he has asked us to give him the rents and premium which have been received in respect of the ground floor -

have you got any idea for what purpose this was written?

A. You said he will be able to value the present building.

Q. The present - from the building there - from the rent received from the building and the premium.

A. I assume so - I have not seen this.

10 Q. That is the interpretation that you would give as Head of the Department, although you have already made a valuation in April, 1963. Is that correct?

A. For empty site, for the full market value of the notional empty site.

Q. Quite, and this matter never came subsequently to you, this particular property never came to you again?

A. No.

Court adjourns.

20 20th April, 1967.

10.00 a.m. Court resumes

Appearances as before.

D.W. 2 - Alec Michael Wright

XXN. BY MR. SANGUINETTI (Continuing):

Q. Now you will remember Mr. Wright, that yesterday when the court adjourned we were dealing with those letters which have been produced in the court as Exhibit C.

A. Yes.

30 Q. Different letters you will recollect that ..

A. Yes.

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Q. Before I come to some of the documents, Mr. Wright, I wonder whether you can be of some assistance to the court, if you could answer or you could not, some questions - Mr. Wright you said that the prices for the sale of land in January, from January 1963 towards the end of 1963, were highest that you ever experienced here in the Colony?

10

A. On that I have not got - no real knowledge at all.

Q. The price of land?

A. The price of land is not a concern of mine as Director of Public Works in my normal duties.

Q. Won't you agree with me that you don't - you could not answer as to whether it was the highest - you mentioned in your evidence yesterday that the prices were going up.

20

A. I think I used - the market was still rising.

Q. Still rising. You have been here in the Colony for some time?

A. Yes.

Q. You don't have any evidence at all - you haven't got any idea whether the price of land per square foot was the highest ever reached in 1963 - in other words there was an inflation - the market going up then?

30

A. I realise and accept that the price of land today is not as high as it was in 1963, but when the peak occurred, I don't know.

Q. You don't know the exact date, but the price of land is not as high today as it was in 1963?

A. That I would agree.

Q. Would you be in a position to say when it started to fall down - in what year?

A. I am not in a position to say that with any certainty.

Q. 64. 65?

MR. O'CONNOR: He said he couldn't.

10 MR. SANGUINETTI: You couldn't - what about - did you ever - are you in a position to say whether at any time during your experience here in Hong Kong, the price of land was as high, during your time of experience, as it was in 1963?

A. From my experience in Hong Kong I would say that the land reached the peak somewhere in between 1963 and 1965 and then dropped.

20 Q. And then dropped - do you know the area in Carnarvon Road now, where this property is situated?

A. You mean the - not the mathematical area, the general vicinity, yes I know.

Q. You know?

A. Yes, I know.

Q. Would you agree with me that there has been a scarcity of value in this area - shops and premises are in demand there?

30 A. I mean, what I have read in the newspapers - I have no professional or official knowledge of this.

Q. You haven't got any official knowledge about that - to clear one point, Mr. Wright, you told my Lord yesterday that you altered this calculation of 350 dollars per square foot to 375 dollars ..

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COURT: Do I understand that - did you say you don't know where the property is - the property in question?

A. I know - not the particular premises - I know the vicinity of Carnarvon Road, Granville Road, Nathan Road.

COURT: But if you have a map presumably you can show it on the map?

A. Yes, my Lord.

Q. Mr. Wright, you told the court yesterday that you altered the figure of 350 dollars per square foot to that of 375 dollars per square foot? 10

A. Yes.

Q. In April 1963.

A. Yes.

Q. I take it that that was to save any dispute in the price that this piece of land could fetch in the open market at the time? 20

A. On the evidence put before me this is what I thought.

Q. The same value for the 75 years at so much per square foot?

A. Yes.

Q. The same value - when you made this valuation in April 1963, or confirmed the valuation, question to be determined later on, Mr. Wright, did you know on what terms the property 20C Carnarvon Road was held - did you know at the time whether it was on renewable or non-renewable lease? 30

A. 20C is the one that was at 400 dollars?

Q. Yes.

A. I knew that was non-renewable.

Q. At that time?

A. At that time, it was.

Q. Would you agree with me, Mr. Wright, that you did not consider any other method to fix the rent, except on the evidence of a couple of figures submitted to you?

10 A. Not a couple of figures = six to eight or ten figures - as explained yesterday, the map had several figures on it referring to several sites, I don't remember the exact number - I would say it was not less than six, not more than ten.

20 Q. Quite, what I meant to say is that you did not, in fact you fixed the rent assuming you did - that is a legal question - you did not consider any other method of calculating or fixing the rent at all except that sole method that appears ..

A. I considered our method, the method that I was advised by my professional advisers, was the method by which it should be fixed.

Q. No other method?

A. No other method.

30 Q. You are a Fellow of the Royal Society of Chartered Surveyors?

A. Yes.

Q. The standard qualification - are you familiar - is there a word 'decapitalization' by any chance?

A. No, only within the context of this case.

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Q. ... Only within the context of this case - can you agree with me that decapitalization would be defined in the context of this case as paying back a lump-sum over a period of years?

A. Paying back a lump-sum.

Q. Over a period of years.

A. .. I would not entirely agree with that, no.

Q. With what qualifications? Not entirely ..

10

A. I think it is paying back a lumpsum - I think it is a lumpsum converted into an annual payment allowing for interest and period of time..

Q. ... Interest and period of time - with that qualification you would agree to my definition - with your qualification?

A. With my qualifications.

Q. With your qualifications. You said yesterday, Mr. Wright, about your qualifications, that now he is in charge - he is away on leave?

20

A. He is away on leave.

Q. Before he went on leave, he was put in charge of the valuation?

A. Yes.

Q. In charge - did you know his qualifications at all at the relevant time, more or less about the relevant time, 1963 to 1966?

30

A. I don't know whether he was a Member of any Institute or Auctioneer's Institute he should have, I should say, one or other, as these are the qualifications expected by the Government for this post.

Q. You don't know exactly whether he had other qualifications or such examination after 1964?

A. I don't know.

MR. SANGUINETTI: I am not asking you - putting the substance or the contents indeed the nature of this Registrar General's reconsideration - indeed I don't want details of that - you see there, 'In respect of the Registrar General's suggested reconsideration of the policy' - you see there it is there, which is not Executive Council's minutes - second paragraph ..

A. Yes, yes.

Q. It is not an Executive Council's Minute, so I don't know whether it was done verbally or not, but however, can you tell the court indeed whether that the Registrar General's reconsideration was contra-against the policy?

COURT: Now wait a minute - is the policy referred to in the file for which privilege has been claimed or not?

MR. SANGUINETTI. It is.

COURT: It is.

MR. SANGUINETTI: I don't know what the policy is, my Lord - whatever it may be.

COURT: I presume the witness has a right to answer that question, yes or no - it is a complicated question, I wonder, Mr. Wright, if you would like the question repeated - you have to say whether you are in a position to say something or not - would you like the question repeated?

A. I cannot answer - I am not in a position - I don't recollect what was in that minute.

MR. O'CONNOR: It solves our problem.

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MR. SANGUINETTI: You don't remember - at this stage?

A. That is correct.

Q. At this stage. Now Mr. Wright, could you kindly - I think there are spare copies, my Lord of Exhibit - I am referring now to Exhibit G - that is the Comparative Table prepared by - you haven't Exhibit G?

Q. Now as you will - this is the first time you have seen this I take it - may I explain it - is that correct? 10

A. That is correct.

Q. You see Column 1 gives Number, and then under you have G.1, G.2, G.3, which is relevant to the documents which have been produced as exhibits. Second column for the property in question, Third column is the area comprised in the specific property..

A. Yes.

Q. The Fourth column says here whether the property in question in the second column is under renewable or non-renewable lease. The fifth column is the original Crown Rent, in other words the rent that this property, whether renewable or non-renewable, had to pay. The Sixth column is New Crown Rent or I should add, discussed here as New Crown Rent or Rent or Annual Rental under the Sixth Column, then Column 7 says whether premium has already been paid- 20 30  
can you follow Mr. Wright?

A. Yes.

Q. And Column 8 actually states whether the property has been regranted or renewed.

A. Yes.

Q. And so forth. Now Mr. Wright, I would like you to have a look through the first page of this exhibit and you see

under Column 5 there certain figures -  
 \$24.-. \$12.- the second one, \$12.- \$18.--  
 would you agree with me that in none of  
 these properties shown here on this  
 exhibit the current market rent, the best  
 rent or economic rent is shown?

A. In Column 5 ..

Q. Any economic ..

A. In Column 5 ..

10 Q. At any time - if you turn to page  
 2 of this exhibit ..

COURT: What did you say?

A. I agreed with Mr. Sanguinetti, my  
 Lord, that the figures shown in Column 5  
 do not represent the full economic rent.

Q. Full economic rent, would you  
 agree?

A. Yes, I would agree.

20 Q. Apart from full you would agree -  
 if you turn to page 2 of this exhibit and  
 under Column 5 as well, you don't - you  
 would agree with me would you not that there  
 is no economic or full economic rent shown  
 there?

A. Yes.

Q. And that applies to page 3, Column  
 5 as well?

A. Yes.

30 Q. At present there are two properties,  
 and the same would apply to that New Zone  
 Rent?

A. Yes.

Q. Page 5, there is only one here ...

A. Yes.

Q. Page 6.

A. Yes.

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Q. So in this area, so far as it appears from the property at all - we have only got a certain amount here - that no economic or full economic rents as appear in this exhibit have been charged ..

COURT: In that column.

MR. SANGUINETTI: In that column, or for that matter, if you have a look through the whole of the exhibit, in any other column - I stand subject to be corrected here, my Lord - Columns 10 5 or 6 - in that Column or in Column 6 of any of that exhibit, will you have a look, no economic rent has been charged.

A. Yes, I would agree, Column 6 too.

Q. Excuse me, my Lord - and in this, before you leave exhibit G, in Column 7 you see under Column 7 of Exhibit G, Premium?

A. Yes.

Q. You said that you were familiar with the word decapitalization in this particular case, am I correct, earlier on this morning? 20

A. I have heard of this in this particular case, but my idea of what it means.

Q. You have your idea - take an example here - Item 7, in the first column of Exhibit G, underneath there is G.8 - that is the exact document produced - "75,338.00 by 74 years of \$3,684 per annum".

A. Yes, I see that.

Q. It doesn't include here the 5% interest or whatever it is, but would you agree with me that this conforms to your idea of what decapitalization would mean? 30

A. If it does not include the interest it would not conform with my idea.

Q. I assume that if it included interest

it would certainly conform to what your idea, on the assumption that it included interest?

A. That the change of a capital sum to an annual payment is my idea of decapitalization, with provision for interest.

10 Q. For interest, but would you agree that in the terms here, assuming the interest were to appear here, you would agree that this would be your idea of decapitalization?

A. I would agree it appears to be - you will get capital sum translated into the annual sum, but how it is worked out here I don't know.

Q. You don't know, but it appears ..

A. It appears.

20 Q. It appears to be decapitalization. There is, you see in Exhibit G.8, that you haven't got before you, the exhibit referred in this Exhibit G - have you got G.8? I just want it to be handed to the witness - G.8, you have it there before you Mr. Wright - you will see there that it is 39 Carnarvon Road, and the second paragraph of the first page of G.8 -

A. Yes.

Q. Second paragraph:-

30 "The lessee shall pay into the Government of Hong Kong the sum of \$75,338.00 as premium for the grant of the new Crown Lease by instalments (incorporating interest at 5% per annum) in accordance with Special Condition (a) hereinafter contained."

A. Yes.

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Q. You would agree that that would accord with your idea of decapitalization?

A. By instalments - I have to look at Special Condition (a) to find out.

Q. Yes. Is there any Special Conditions here?

COURT: Which exhibit is this?

MR. SANGUINETTI: Exhibit G.8.

A. The end of the paragraph it refers to 'in accordance with Special condition (a)' - and looking at Special Condition (a) I would agree that this accords with my idea of decapitalization.

10

Q. Your idea of decapitalization. There are others, I believe, in this Exhibit G - I wouldn't take you through - take for example page 3 of Exhibit G, Mr. Wright - G, page 3, Item 20, the last one.

A. Yes.

Q. There you will see under Column 7, "\$49,545.00 by 75 years of \$2,422 per year", and on the same assumption - I don't want to refer you to the other exhibits - that would accord with your idea as well?

20

A. If it is similar.

Q. It is similar - your idea of decapitalization. Now Mr. Wright, I don't think I will trouble you more with these exhibits indeed. Now could you kindly have here Exhibit M.1 please - M.1 is Particulars and Conditions of Sale of certain property. Have you got M.1 there?

30

A. Yes.

Q. That is said, Particulars and Conditions of Sale of certain pieces of land.

COURT: What is M.1 is actually M.

MR. SANGUINETTI: M1.

COURT: M.

MR. SANGUINETTI: M. I am very sorry - you have it before you?

A. I have.

10 Q. Now, I am just trying, Mr. Wright, to shake the evidence, indeed as I am perfectly entitled to do so, of Mr. Lyons in this case in certain matters. Now you will see if, on the assumption - it is an assumption because you weren't here when Mr. Lyons gave evidence, I take it, and if Mr. Lyons has said that the Director of Public Works never fixed the Crown Rent, and you see here the Particulars and Conditions of Sale, and it says here, third line from the bottom - at the top, third line under the words 'Particulars and Conditions of  
20 Sale' - further on ..

A. Yes.

Q. Third line from the bottom, it will be seen here it says:-

"..at a Crown Rent to be fixed by the Director of Public Works as the fair and reasonable rental value"  
see that?

A. Yes.

30 Q. Now Mr. Lyons actually told the court that the Director, that is yourself, never fixed the Crown Rents - would you agree with me that either Mr. Lyons is wrong or this statement here is incorrect?

A. Again I did not hear what Mr. Lyons said - I don't know in what context he said it - I don't think I am in a position to express any opinion on it.

Q. Mr. Lyons said that the Crown rent

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is fixed by the Governor-in-Executive Council - the Crown rent. He said that. And then in this Exhibit M it says that the Crown rent to be fixed by your goodself here Crown rent to be fixed by the Director of Public Works.

A. Yes.

Q. Now he refers to Crown rent in his evidence, Crown rent, and here he says that it is going to be fixed up. You would not agree to that statement by Mr. Lyons or you would agree to the statement contained in this Exhibit M?

10

A. I could not answer yes or no to that. I can only say we are talking about two different Crown rents. Mr. Lyons is obviously talking about zone Crown rent. These Particulars and Conditions of Sale are Crown rent for a 75 years term, this particular one.

Q. Would you agree with me indeed that the Crown rent or annual rental, if you want to call it, or rent as such, not economic rent, but of all the properties indeed, as in this particular case, when you see annual rental here 468 are based on what is called the zone Crown rent?

20

A. In the Conditions of Sale, yes, with an upset price in the next column.

Q. When a premium is made or an upset price for the sale is given, in all cases the annual rental, as in this case, or the rent payable is based on the zone Crown rent?

30

A. Correct, as I understand it.

Q. Correct, as you understand it. At no time is it based in those cases on an economic basis?

A. Not to my knowledge when land is put up to public auction.

Q. Not to your knowledge or for that matter

would you agree with me when land is granted on a premium assessment?

A. I am not in a position to answer yes or no.

Q. But you agree with me so far as the evidence is shown in Exhibit G that is the case?

A. There is a capital assessment.

10 Q. The annual rental, the Crown rent or the rent is based on the zone Crown rent?

A. Not on what we saw here, no. I would not agree. There is a column, column 5 is the zone Crown rent.

Q. Column 5 is the proportion. Zone Crown rent, as I understand it, is difference, it is calculated as so many dollars for different districts. Is that correct, Mr. Wright?

20 A. So I understand.

Q. And it has varied, say in one area it may be \$5,000, in another \$1,000, in another \$2,000, and when it comes to cases where premium are paid or land is put up for sale, then in those cases the Crown rent or the annual rental or the rent payable, as opposed to premium, is based on the zone, calculated as if it were on the figure applicable to the particular zone in which the property is found, is situated.

30 A. You mean that the zone rent then varies from area to area and is proportionate to the area of the land.

Q. And the Crown rent, annual rental or rent payable is based on that.

A. The zone Crown rent?

Q. On the zone Crown rent.

40 A. The zone Crown rent, to my understanding the zone Crown rent and Crown rent in the context of this document are two different things.

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Q. Two different things. So you would interpret this Crown rent indeed - would you be justified, assuming you were and I wish you were in a position in 75 years when this agreement in M1, if it has materialised, to fix up the rent here seeing that here there is an upset price, would you actually, if you were in a position as it says as Director of Public Works, fix up from the zone Crown rent on an economic basis or how? 10

A. I would base it on the full market value of the property in 75 years time when the lease expires or has to be renewed, and from that full market value would be assessed a rent on the formula for decapitalisation.

Q. Full market value?

A. Yes.

Q. Do you notice here, Mr. Wright, in M, in Exhibit M, that the word "impartially" has been left out? It doesn't appear, "fairly and impartially". Do you notice that? 20

A. I do notice that, yes.

Q. Any particular reason so far as you are in a position to say, any particular reason?

A. I did not know it had been left out until this minute, but I notice it says "fair and reasonable" afterwards. 30

Q. Fair and reasonable, to be fair and reasonable, but the words "fairly and impartially" have been left out and you do not know why it has been left out?

A. I don't draft these and it has not been brought to my notice that this had been left out.

Q. I see.

COURT: You say that if you were assessing the rent for the property in Exhibit M you would assess the full market value?

A. Full market value, my Lord, at the time of renewal in 75 years' time.

COURT: Oh, at the time of renewal.

A. At the time of renewal.

COURT: That is when the term shown in Exhibit M comes to an end?

10 A. Yes, my Lord, and if the lessee takes up the option at the end of 75 years to renew.

Q. Now Mr. Lyons actually said, Mr. Wright, that it is one of his - in giving evidence - that it is necessary to discover the figure of annual rental, of the annual rental which would be fair and reasonable for the Government to collect.

A. Yes.

20 Q. He said that. It would be fair and reasonable for the Government to collect. The annual rental, he used the words annual rental. Could you actually say then, having a look at M here, that the figure under the column Annual Rental is a fair and reasonable figure for the Government to collect, namely \$468?

A. Again I must ask in what context Mr. Lyons used this expression.

30 Q. Yes, well he said it is necessary to discover, dealing with the plaintiff's property it is necessary to discover what the figure of annual rental --

A. He was talking, I assume, about the renewal rental, of the Crown rent on renewal, which is quite different from the annual rental quoted here, which also includes a very high upset price.

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Q. Yes, but you would agree with me, wouldn't you, that I think the value of money has gone down tremendously since 1936? Would you agree with me?

A. It has gone up tremendously since 1936.

Q. The purchase price of the pound or the dollar has come down tremendously. What was \$1,000 or \$2,000 in 1936 would amount to a more substantial figure nowadays. 10

A. There has certainly been depreciation in the pound and the dollar.

Q. Would you actually say in this context that the figure of 468 would be the reasonable and fair figure that the Government would be entitled to collect as rent, as the annual rent?

A. As zone Crown rent in association with a capital payment which is shown as a minimum in the last column. 20

Q. In other words, you decrease the rent and do not charge the economic rent in consideration of receiving a capital sum, a lump sum?

A. It is the practice, yes, with all land that is put up for public auction in Hong Kong.

Q. In other words, if you give a lump sum or you give other consideration, the rent is decreased, not the market value or economic value. 30

A. The two must be taken together, the Crown rent and the premium which is put up at public auction. One cannot be taken separately from the other.

COURT: Would one be right in saying that the upset price is the premium?

A. A premium, my Lord.

COURT: Would one be right in saying that the upset price was a premium or in the nature of a premium?

10 A. A premium or a capital payment for the 75 year lease. It is, I would say, my Lord, the value of a 75 year lease for this property, and whether it is called the capital cost or the premium is a matter of words. The legal meaning of premium I don't pretend to know.

COURT: It has been defined as the purchase money which the tenant pays for the benefit of the lease. The purchase money, the amount paid for the benefit of the lease. I suppose if he is purchasing a Crown lease it might be said to be a premium.

20 A. I agree, my Lord, with that definition. The upset price is the minimum premium, and of course the auction, they bid above that upset price.

Q. You would agree with me that it could be termed as well the sale value for 75 years, the minimum sale value?

A. Yes, the minimum the Government would accept for the sale of that 75 year lease.

30 Q. Anything above that would be, as if it were, a profit because this is calculated on the market value?

A. No, the upset price is not calculated on the market value. The upset price in broad terms we consider to be about two thirds of the market value. The auctioneers wish to encourage 4 or 5 people to bid and if the upset price is set too high nobody is going to bid for it, so the upset price is usually set at about two thirds of what is assessed as the market value.

Q. The market value, in other words,

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is higher?

A. Is higher.

Q. Is higher. Thank you very much.  
The market value is more than the upset  
price.

A. Yes.

Q. Now Mr. Lyons actually said in his  
evidence, Mr. Wright - Incidentally, before  
I leave this exhibit, you don't know exactly  
whether the lease has materialised or not,  
this particular one? 10

A. I don't know.

Q. You haven't got any idea. Mr. Wright,  
Mr. Lyons to use his own, quoting his own  
words, said "three is thus a clear distinct  
relationship between capital value and annual  
rental, depending on the rate of interest  
required". Can you follow that?

A. Yes.

Q. Now would you agree with me that so 20  
far as this M1 is concerned there is no clear  
distinction, in the sense that Mr. Lyons said  
to the court, between the capital value and  
annual rental in this particular case?

A. That is correct, but I suspect that  
Mr. Lyons was again referring to the annual  
rental and the 75 years renewable lease at the  
time of renewal.

Q. But you cannot find anything in this 30  
statement which would apply in this case?

A. It would not apply to the annual  
rental, which here is zone Crown rent.

Q. You agreed with me earlier on that in  
the cases of - I stand subject to be corrected  
in the cases of renewable leases like the  
present one, the valuation was made of the  
full market value for the period of 75 years.

A. Yes.

Q. I don't want to repeat myself, and on the basis as well, I think you said earlier on, that this land was unencumbered, it wasn't encumbered by mortgage or anything.

COURT: The plaintiff's land?

MR. SANGUINETTI: The plaintiff's land, on that basis.

10 A. I think I said I didn't know but I accepted your word for it.

Q. You didn't know precisely but it was on that basis. I am coming to the end of the questioning this morning, Mr. Wright. Could you get Exhibit P3 before you? You have P3 before you?

A. Not yet.

20 COURT: I haven't got a copy, I think of P3. I have the original exhibit but there is no copy.

MR. SANGUINETTI: I think P3, this is a question which was referred to in Mr. Moore's affidavit.

COURT: Have you got a spare copy of it? It should have in the top right hand corner "Tuesday, October, 18th, 1960: Amended up to February, 1967."

Q. You see this Exhibit P3?

A. Yes.

30 COURT: Is this the same as the Exhibit C7?

MR. SANGUINETTI: The option, my Lord.

COURT: No. Is this the same as C7, the enclosure?

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MR. SANGUINETTI: C7 is the alternative terms that were sent to the client. This is an entirely different thing, my Lord, as far as I can see.

COURT: Well it is a different document anyway.

Q. There is one question, Mr. Wright, before I get to this that I would like to clear up. You said yesterday that the valuation that you made in April 1963, at that time the market was going up. Is that correct? 10

A. Yes, the market was still rising.

Q. And you don't have any specific knowledge at all - I stand subject to be corrected by yourself if it is not the case - I believe that you said that after that date you did not consider anything at all, after 1st April 1963 you did not pay much attention at all to what happened subsequent to that. 20

A. I don't think I quite said that, but I am not - as a part of my normal duties as Director of Public Works I am not directly concerned with the market in land. When I was discussing this valuation with Mr. Hughes and Mr. Musson and Mr. Stanton on April 1st they drew my attention to the fact that the market was still rising and the fact that the lease was not due to be renewed until June 23rd, towards the end of June. In the intervening 8 weeks if anything there would be a rise, not a drop. Sometime subsequently the market reached a peak and dropped, and I accept that today the value of land is lower than it was in 1963, but when exactly it reached that peak and began to drop I am not competent to say. 30

Q. but you could actually be competent to say between 1963 and 1964 it reached its highest? 40

A. The advice I got was that in April 1963 it was still rising, and I accepted that advice and I believed it was correct.

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Q. Now you have P3 here. You have here Exhibit P3 and you will see that the first paragraph - well not the first paragraph, the introduction, it says:-

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"It was announced by Government at 1.00 p.m. today (Tuesday) that the following terms and conditions will apply immediately to all new formal written applications for grants of new Crown Leases for lots at present held on 75-year non-renewable leases."

A. Yes.

15  
20

Q. And then it goes on to say in paragraph 4 there:- "Crown rent" - under the heading of "Crown Rent" -

30

"Crown rent will continue at the rate applicable under the existing lease for the period of the unexpired residue of the original term. Upon the expiration of that period the Crown rent for the subsequent term will be at reassessed rate determined by Government, and according to the rate or scale of Crown rent being charged by Government for new leases of land in the same district at that time."

Do you see that?

A. Yes.

Q. Would you agree with me that that Crown rent is based on the zone Crown rent?

40

A. Yes, I would need time to answer. I haven't seen this paper before and I don't think I am competent to answer it. Yes, I would say that paragraph applies to zone Crown rent.

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Q. Yes, Crown rent. So if this Crown rent is fixed by the Government, which is based on the zone Crown rent, and having regard to the Exhibit M that you had earlier on, Exhibit M, there where it says that you are the one to fix it, would you like to alter your previous answer to my question after having regard to Exhibit P3, what it says?

A. No, because this refers to assessing, the Director of Public Works assessing the rent for a further term in 75 years' time and P3 refers to a rent to be fixed now or on regrant of a non-renewable lease and refers clearly in the context to zone Crown rent. They are referring to different things. 10

Q. So Crown rent, in other words when announcements are made about Crown rent the people dealing with - and I say this without any reflection at all - when you refer to Crown rent the ordinary public are not in a position to know exactly whether the Crown rent is to be fixed by your goodself or based on the zone Crown rent. People having a regrant as in P3 or buying the land at a sale - actually in P3 we have agreed it is the value of the land for 75 years, exactly the same as a sale, that we have agreed, Mr. Wright - they don't know exactly what is being meant, by the outside point of view what is meant exactly by Crown rent. 20 30

A. It seems clear to me. I have only just seen this document, I haven't seen it before, and it seems clear to me what is meant and I assume that any purchaser would go to his legal advisers anyway and get proper advice.

Q. You agree what it requires when you speak about Crown rent on the whole or rent that they would consult legal advisers? 40

A. I would never dream myself of purchasing any property without consulting

legal advisers.

Q. You would consult them. But do you agree with me if you don't that it is certainly misleading, at least from the public point of view, referring to Crown rent here and then Crown rent in Exhibit P3 and in Exhibit M?

A. I agree it is confussing and difficult to understand.

10

Q. Thank you, Mr. Wright.

Q. Mr. Wright, I would like you to have Exhibit M before we proceed any further, that is the - Would you agree with me that the annual rental in that column is one you consider to be the Crown rent?

A. The zone Crown rent.

20

Q. And would you agree with me that the Crown rent, forgetting about this fair and reasonable, that the Crown rent is based on the zone Crown rent? We can work it out mathematically.

A. Not the zone Crown rent, not the Crown rent associated with the renewal of a lease. This has nothing to do with the zone Crown rent.

Q. But if we know --

COURT : You cannot work out the zone Crown rent mathematically.

30

MR. SANGUINETTI: No, my Lord, the zone Crown rent, to get the matter straight is the figure applicable to zone, it is property in a certain zone, land in a certain zone.

A. Yes, and it is a low rent.

Q. And when you speak of annual rental or in the cases I have referred to you in G earlier on this morning, in

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Exhibit G, you can go into the papers if you want to, but you can take it from me it is certainly based on the figure of zone Crown rent.

A. The original Crown rent in G in column 5 is the zone Crown rent.

Q. And the original figures in the other column following them is 6, new Crown rent, wherever those figures appear is also based on the zone Crown rent.

10

A. In column 6 of this paper.

Q. On this paper as well. In other words, based on the zone Crown rent.

A. Yes.

Q. In other words that so far as you have given, or is labelled in your department the zone Crown rent accordingly, and you worked out the annual rental, and in those cases in G the rent was Crown rent.

A. Yes. These were not worked out by the Director of Public Works personally. There is no obligation for the Director of Public Works to work out these zone Crown rents or do the arithmetical sum to make the zone Crown rent applicable to a certain land.

20

COURT: It is worked out by your Department?

A. The sum is worked out.

Q. But you advise the Governor-in-Council, don't you -- that we have in evidence and privilege has not been claimed, that you yourself or the holder of your office on your advice supplies the Governor-in-Council from time to time as regards the figure of the zone Crown rent.

30

A. This I don't know. Certainly I personally have never done this.

Q. I thought that Mr. Lyons actually personally - or are you aware that your predecessor did that, because I believe that Mr. Lyons did say Friday, March 3rd, he said the Governor-in-Council advised by the Public Works Dept. as to the level, speaking about the zone Crown rent, that the Public Works Dept. thinks it should be revised.

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10 A. Yes.

Q. And that is based on depreciation of the value of money and the different areas that may become uneconomic factors as well.

A. I have no idea how the zone Crown rent is assessed. It will be done by the Superintendent of Crown Lands & Survey.

20 Q. So it is not your goodself, it is the Superintendent of Crown Lands & Survey who does that?

A. Yes, on my behalf but I am not consulted.

COURT: That is in Exhibit M?

MR. SANGUINETTI: No, my Lord, it is Mr. Lyons' evidence on the 3rd March.

COURT: In respect of what?

30 MR. SANGUINETTI: He was referring there to the Crown rent, zone Crown rent and said that the Public Works Dept. advised the Governor-in-Council as regards revisions of zone Crown rent.

Q. Now before I take you to this question, you agreed with me that it was somewhat confusing, this question of Crown rent and so forth.

A. Yes.

Q. Now if you look at paragraph 5 here.



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COURT: P3.

MR. SANGUINETTI: P3, my Lord.

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Q. Here referring to Crown Leases for 75 years, non-renewable leases, paragraph 5 speaks about the premium.

"The payment of a premium for each new lease will be based on the full market value" ...

you see that there?

A. Yes.

10

Q. And we already have it from you that the upset price is not the full market value.

A. Yes.

Q. Of the land. "Exclusive of the buildings thereon". In other words, that if someone has built up a valuable property there that you don't take that into consideration when you assess, in non-renewable cases you don't take the value of the buildings.

A. Correct.

20

Q. "... according to the rates prevailing in the locality at the time of the application and will be payable over and above the Crown rent."

We already know what the Crown rent is from 4.

"The premium will be payable in one lump sum or, at the option of the lessee, by instalments over an agreed period not exceeding 21 years, but subject to the following points:-

30

And then they go on to the points. Now it is the policy, is it not, Mr. Wright, that once you have a non-renewable lease coming to an end, there is no duty to renew it for a further period of time?

A. Correct.

Q. It is regranted back to the lessee, the old lessee, subject to these conditions here. In other words, you won't have to go to auction.

A. Correct.

Q. You won't have to go to an auction, except you go to auction when he is no longer interested, he says "You can keep it, I am not interested to take a regrant".

10

A. He has no right to take a regrant. If Government wish to acquire the land, as they might do and have done on some occasions, they give notice that the non-renewable lease will not be regranted.

Q. But on the other hand, Mr. Wright, those are the incidental matters following.

You agree with me that the policy is to give it back to the lessee, the previous leaseholder, if he wants to, subject to the conditions here, and that has been since 1960 up to the present date.

20

A. Yes.

Q. And you don't in any case take into consideration in assessing the things, indeed the premium or the payments as a whole, the value of the buildings on the land?

A. Correct.

30

Q. Now I would - this is really a very long question indeed but I have been trying - but if you don't understand it please do not hesitate.

COURT: May I interrupt at this stage before you leave that point. When you say that the buildings on the land are not taken into consideration in making a valuation of the land, does that or does it not include taking into

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consideration buildings which may be built upon the land?

A. It would, in my opinion, my Lord, take into account the buildings that could be built on the land. It does not take into account the actual cost, capital cost of erecting the buildings. The valuation assumes that it is an empty site ready for development to the full as permitted under the Building Regulations.

10

COURT: I just wanted to clarify that.

MR. SANGUINETTI: Thank you very much.

Q. Mr. Wright, this is rather a longish question. Now would you agree with me that the method of calculating the premium by instalments - are you with me so far? - the method of calculating the premium by the instalments in non-renewable cases is the same method as calculating Crown rent or rent, excluding the zone Crown rent, the figure of the zone Crown rent, but the more recent policy is to pay a premium over 21 years at 10% per annum. Are you with me so far?

20

A. I think I am. I am not asking you to repeat the question.

Q. At 10% per annum for 21 years, whereas the old policy was to pay the premium over the whole term of the lease at 5% per annum. In other words, before 1960 the policy was you calculated it in a non-renewable lease, a premium would be spread all over the 75 years at 5% per annum.

30

A. This I don't know. I don't know what the policy was before 1960.

Q. You don't know?

A. I don't know.

Q. You know the present policy then now of 21?

A. As set out in this paper.

Q. Before 1960 you could not actually say?

A. No.

Q. But would you agree with me that if you have exhibited G, for example, that table there, and assuming the facts there are correct in Exhibit G --

10 MR. O'CONNOR: He has said he cannot answer the question.

MR. SANGUINETTI: My Lord, I think I am perfectly entitled to put the question to the witness.

Q. You don't know but in Exhibit G, take an example, this item 7 on the first page, it will be seen that it was a non-renewable lease, a premium was paid and it was spread over 74 years at so much per year and you already said at 5%.

20 A. Yes.

Q. And then to give you another example, in 1956 in G9, the last item there, you have the premium spread over a period of 75 years at 5%, so it appears that that would have been the policy. Would you agree?

A. Certainly 75 years. I can see nothing about 5%, but I accept your statement on that.

30 Q. I could actually produce Exhibit G21, but presuming you agree with me, that seems to have been the policy, and then the policy was changed since 1960.

A. So you tell me. I don't know when the policy was changed.

MR. O'CONNOR: He said he doesn't know.

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Q. But it appears from Exhibit G that it is the same method. would you agree, as in the present case indeed, repayment is spread over in the present case, calculations over a period, you know how the payment in the present case is to be made?

A. In the present renewal?

Q. In this present case before the court it is spread over - forget whether it is rent or whether it is premium, that is a question for the Court - but the figures, a premium has been calculated, a capital figure has been calculated and it is spread over a period of 75 years at 5%. The method is just the same as these non-renewable cases that I have referred to in G. 10

A. It would appear to be the same.  
COURT: Where does it say in P3 - it says the premium may be paid in instalments. where does it say about the interest? 20

MR. SANGUINETTI: My Lord, that would be worked out from the Exhibit G in the non-renewable cases.

COURT: I am talking about P3. P3 says the premium may be paid by instalments but I cannot see where it says about the interest.

A. In 5(b), my Lord. On the first page, paragraph 5 under "Premium", and sub-paragraph (b) under "Premium":-

"where a lessee has the option and chooses to pay his premium by instalments, interest in respect of the deferred payments shall be at the rate of ten per cent per annum;" 30

COURT: It has been increased from 5% to 10% apparently?

A. Apparently.

Q. But the payment is much lesser, from the whole period of the lease as before down to 21 years.

COURT: I think Mr. Lyons told us it had been increased from 5 to 10.

10 Q. Apparently in these two cases it appears from this Exhibit G the method was the same in those two cases where a premium was paid spread over practically the whole of the term except one year, page 1 of G and page 3, the method appears to be the same. The period in other words, the period has been shortened and the interest is higher now. The interest is 10%.

A. This is the period for repaying the premium?

Q. Yes.

A. The lease has not been reduced, the regranted lease is still 75 years. It is the period over which the premium can be paid by instalments.

20 Q. In other words, the premium has been shortened to 21 years and the interest has been raised from 5 to 10%. Would you agree - I don't know whether you are in a position here - that on the whole the total income is the same or roughly the same as before.

A. I cannot.

30 Q. You are not in a position. Now I want you, Mr. Wright, there has been - to sum up for the plaintiff's case - the method used is the same as in the two cases at least, there may be others but the two cases that I have referred you to the method is just identical. You agree to that?

A. On the papers that you have put before me it appears so.

Q. Would you agree with me or you wouldn't agree with me that the rental value would be synonymous with the annual rental? In other words, rental value would be equal to annual rental.

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A. I am now getting out of my depth when you get to a 21 year repayment, I don't know whether you would call this rental or not. This would be a matter for an expert valuer and not me to answer.

Q. whether rental value would be equal to annual rental you could not say?

A. I would agree that annual rent would be the same as annual rental but it is a question of whether the annual rental is the same as repayment by instalments. 10

Q. I am just finishing, Mr. Wright. Could you get hold of Pl indeed. That is an affidavit of Mr. John Victor Moore. I am sure you are well acquainted in one way or another with Mr. John Victor Moore.

A. Yes.

Q. He is a person of high qualifications you would agree with me?

A. He has the same qualification as I, F.R.I.C.S., but I am not aware that he is qualified in the valuers division any more than I. 20

Q. I won't trouble you with the introductory part, paragraph 1 and paragraph 2; but, for example, would you agree with him on the evidence that you have been referred to in your cross-examination about what he has to say in paragraph 4(c):

"The basis for assessing the Crown Rent in the Plaintiff's case is similar to that of assessing the premium for the regrant cases. There is therefore similarity between the two methods, except that once the capital figure is ascertained the following differences in respect of the ascertained sum are made"? 30

Mr. Lyons has said - I may put it to you, I don't think it is in dispute - the figures in 40

this particular case are the same. With that in mind, would you agree with what Mr. Moore says in paragraph 4(c) of his affidavit?

10 A. I don't think I can express an opinion. If I were asked in my normal job to comment on this I would take several hours to study it. Now, to give a considered and very carefully reply I really do not think I can when I have never seen this until now, and I do not think I can reasonably be expected to express an opinion on paragraph 4.

20 Q. How long would you need, Mr. Wright, approximately? You see, the only difficulty that I have here is that Mr. Moore was going to give evidence as stated in his affidavit, but unfortunately he had to go away and the affidavit has been admitted, and the question of weight is a question for the court; in fact for all evidence, indeed, to be adduced. You think it would take approximately how long for you to study it?

30 A. If I were asked to do this under normal circumstances I would send it to one of the expert valuers in the Crown Lands and Survey office and ask him to let me have his written comments on it. Then I would go through his notes and make sure I understood. I am not an expert valuer and I am not competent to hold another surveyor's opinion or express any opinion on his opinion.

40 Q. Would you agree, indeed, that on a consideration of the lease itself, Bl, Mr. Wright, or how you interpret the lease - because I think I am correct in saying you had legal advice that you had to fix the rent - you saw it in the file before, is that correct?

A. The Director had the advice years ago.

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Q. Years ago?

A. Some years ago.

Q. You yourself, personally?

A. The Director of Public Works.

Q. That is the only legal advice that  
you are aware that you had to do this thing?

A. Yes.

Q. So in the absence of any legal  
advice to anything else, Mr. Wright, would  
you construe your duties, would you have  
construed your duties that you did not have  
to be an expert at all to fix the rent, the  
lease?

10

COURT: ..... he has got to do it.

MR. SANGUINETTI: Yes, my Lord. Thank you  
very much, Mr. Wright.

REX. BY MR. O'CONNOR:

Q. I just want to ask you a few  
questions to clear up. The first thing  
is, yesterday you gave evidence and you  
said when considering this lease - and you  
remember it was pointed out to you you  
might have to exercise your functions if  
the Crown resumed - you would also have  
the duty of fixing compensating value. I  
think you said you had never used that  
method.

20

A. Yes.

COURT: That is in regard to Ex.M?

MR. O'CONNOR: No. in regard to B1, the  
lease itself.

30

Q. You remember the bottom of the  
second last page. You said you had never  
in fact been called upon to exercise that?

A. Yes.

Q. Why?

A. Because the Crown Lands Resumption Ordinance, I understand, takes precedence; if that is the right word to use...

MR. SANGUINETTI: Isn't that a question of law for the Court to decide?

10 COURT: Wait a minute. He cannot answer questions on law, that is quite right. There is no doubt about that. But if he is asked why he did or did not do something, then he is entitled to explain.

Q. So in fact I am asking you a question purely of fact.

A. Yes.

Q. They are definitely under the Resumption Ordinance?

A. They are done by the Superintendent of Crown Lands and Survey.

20 Q. Now the other matter I want to clear up is, yesterday you said you had valued this land at \$375 per sq. ft.

A. Yes.

Q. Mr. Wright, you saw the papers this morning, the newspapers. Did you see a report there that you valued the land at \$375 per sq. ft. per year?

A. I did.

Q. Was that your evidence?

30 A. No, sir. My evidence was that the full market value of the land at that date was assessed at \$375 per sq. ft., which was the capital value.

Q. Thank you, Mr. Wright.

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Q. Does that mean not for any period but a sale figure?

A. Sale figure for the 75-year lease.

Q. I just want to ask you on one point. It may be a rather long question, if you can bear with me. I don't want you to answer me until I have said all I wish to say in respect of this one point.

In respect of B1, the lease in question, the proviso, we all know that. We all agree that a fair and reasonable rental value had to be fixed without the payment of any fine or premium. Everybody is agreed on that. There is no doubt about that. Well now, Mr. Lyons, in his evidence, agreed that - if I am wrong in saying this, somebody will correct me - Mr. Lyons agreed that the plaintiff, on the rent that has been assessed, has to pay the same figures as rent as the decapitalised premium for the property plus his own Crown Rent for the land. That, as I see it, means that he has to pay the same amount in cash as a person who pays his own Crown Rent and the premium by installments, which would include interest.

Well now, the plaintiff say, that being so, that he is in fact being asked to pay a hidden premium because he is being asked to pay exactly the same as a person who has to pay a premium in fact, so that it makes no difference whether one pays a premium or not because the two are the same. Therefore, he complains that he is in fact being charged a hidden premium, which is not supposed to happen under this proviso to this lease.

It does seem to me that is a point to be considered, and as you fixed this with the aid of your advisers I want to know what you thought about that.

A. My answer might be rather long too. That is why we have to start by explaining the basis of land sales in Hong Kong, which I did discuss with Mr. Sanguinetti in cross-examination. When land is put up for auction in Hong Kong there is a small Zone

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10 Crown Rent which has been fixed, and an  
 upset price is advertised, and bidding  
 starts for a premium, which is in effect  
 the market value of the land, because the  
 Zone Crown Rent is so low that it could be  
 ignored for all practical purposes. So  
 when land is sold in Hong Kong it is sold  
 at a 75-year lease as auctioned. When one  
 comes to the renewal, if I could expand on  
 that a little bit, one could, I believe,  
 when the land is auctioned, one could  
 auction the annual rental instead of the  
 premium because any premium can be converted  
 into a rental, and one could equally well -  
 it would be very much less convenient -  
 to put, translate the upset price which is  
 advertised at the time of the sale and  
 translate that into, I might say, upset  
 rental, and then the rental is auctioned.  
 20 It is in fact one way or the other. One  
 is getting the full market value of the  
 land either in the form of a premium or  
 in the form of a rental. When we come to  
 renew a lease where the owner, the Crown  
 lessee, has a right to renewal then, as I  
 understand it, he does not - we do not go  
 out to auction to get the maximum possible  
 rental or the maximum, but we assess the  
 full market value of the land at that date  
 and then translate that full market value  
 into a rental for the land.  
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Q. In short, your answer then is that  
 Government or the Crown should get the  
 full market value, whether or not a  
 premium is paid - it may be termed rental  
 or it may be termed premium?

40 A. Yes, my Lord, just as it was 75  
 years ago the lessee paid to the Crown  
 the full market value in the form of a  
 premium at that time and thus a small  
 Zone Crown Rent was achieved for 75 years.  
 In the intervening 75 years the full  
 market value, the capital value of the  
 land has appreciated very much. That

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is now being offered for renewal which he need not take it if he does not want it. He has a right to renew, if he wishes to. at again, as I understand it, the full market value at the date of renewal.

That is relevant for the ensuing years, assuming that the land will continue to appreciate, with occasional down turns, but the Government, the community, at the time of renewal, get the full market value at that time if the lessee wishes to exercise his option of renewal. 10

Q. Well, now, the application under the proviso says that a fair and reasonable rent is to be fixed without premium. Well, now, it is a very short question - it is on the same matter. The proviso says - I am putting this question - as far as I am concerned, it is most important and I want to see what you say about it. If a fair and reasonable rental without premium as the rent is the same - as the rent fixed is the same as would be zone Crown rent, then the premium fixed over - the premium paid over, did you consider in fixing the rent if it had that premium in the rent? 20

A. I am sorry, my Lord, may I have that one again?

Q. The proviso says in fact a fair and reasonable rental value shall be fixed without premium. Now, when fixing the rent as the rent is fixed is apparently the same as if zone Crown rent and the premium over a period, did you consider that the rent fixed contain that premium? 30

A. The rent was paid on the - I think what you referred to as the premium in calculating the rental to be paid. We took the full market value of the 75-year lease - the rental 75 year lease - and this was translated into an annual payment, i.e. the rent and then to this was added certain Crown rents to produce the figure which was finally offered to the lessee. 40

COURT: Yes, thank you, Mr. Wright.

MR. O'CONNOR: And we reserve your lordship's ruling ...

MR. SANGUINETTI: ... until Monday.

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in this history is that of the 3rd day of October, 1888, Exhibit A1A, which is a Crown lease of 75 years from the 24th June, 1988, of K.I.L. No. 537 (a large area of which the present property was a part) to a Mr. J.D. Humphreys. A premium of \$528 was paid and the rent reserved under the lease was \$438 per annum, that is at the rate of \$260 per acre.

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10 This property held under the 1888  
Crown lease was split up into various portions  
called sections, different people becoming  
the Crown lessees or Crown sub-lessees of  
the various sections. Information appears  
to be vague as to how that occurred, however,  
one Wong Yung became the Crown lessee or  
Crown sub-lessee of section Q of K.I.L. No.  
537 (the property in question) and on the  
15th January, 1924, in consideration of the  
20 sum of \$35,000 she assigned this section Q  
to Madam Maria Ch De Yau to hold for the  
residue of the term of 75 years held under  
the 1888 lease, at the annual payment of  
\$19.74 being a proportion of the Crown rent  
under the 1988 lease; (see Exhibit A1B).  
Madam Yau is still alive but too old and  
infirm to come to court and give evidence,  
but she has signed the statement, Exhibit F1.

30 It later transpired, apparently,  
that some of the property holders of the  
land contained in the 1888 lease did not pay,  
or paid late, their portions of the Crown  
rent under the 1888 lease, with the result  
that all the holders were in danger of the  
Crown re-entering for non-payment of rent  
and of their losing their portions of land,  
and so it appears (see the exhibits in the  
file A Exhibit) that there was an amicable  
arrangement between these holders and  
40 Government, whereby the Crown re-entered and  
offered new separate Crown leases to each  
of the holders. The Crown re-entered on  
K.I.L. No. 539 on the 21st March, 1936, the  
sections thereof, including section Q,  
being held, prior, to the re-entry, for 75  
years from the 24th June, 1888, and having  
a period of 27 years unexpired at the date



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of re-entry; (see Exhibit A4 page 2 and Exhibit A10 page 1).

The 1888 lease was a non-renewable lease, that is, there was in the lease no option to renew it.

The Crown offered Madam Yau a new Crown lease of section Q of K.I.L. No.539 for the residue of the term of 75 years commencing from 1888 with a right of renewal for a further term of 75 years after expiry of the first term of 75 years, on condition that a premium and a revised higher Crown rent were paid; this offer Madam Yau accepted and she paid the premium and the higher Crown rent; (see Exhibit F1). Section Q of K.I.L. No.539 was then renumbered K.I.L. No.3793, and the new Crown lease granted to Madam Yau, or rather a photostat copy of it, is Exhibit B1. It is in regard to this Crown lease, and more specifically in regard to the last proviso at the end of this lease, that this litigation has been instituted. It will be seen that the lease is dated the 14th July, 1937, and is for a term of 75 years from the 24th June, 1888, at the annual Crown rent of \$76, and is renewable for a further term of 75 years which is provided for in the last proviso to the lease. It will also be seen from the plan attached to the lease that K.I.L. No.3793 is a corner property on the corner of Carnarvon Road and Salisbury Avenue. It is strange that this lease, Exhibit B1, does not state anywhere, in contrast to the 1888 lease, the amount of any premium, or that any premium was paid, or exactly what the premium was for if paid. However it is not in dispute that Madam Yau did pay a premium for the lease, and the calculations for producing both the premium and the revised and increased Crown rent, which she paid in respect of the new Crown lease Exhibit B1, are to be found in Exhibit A10, and it will there be seen at page 5 of that exhibit that the premium was \$1,238.38 and the rent \$76 per annum, the rent of course also being stated

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in the lease.

On the 27th January, 1948, Madam Yau assigned her Crown lease of K.I.L. No.3793 (Exhibit B1) to Chang Lan Sheng, the plaintiff, in consideration of the sum of \$80,000, and the plaintiff then became the Crown lessee of the property. Exhibit B2 is a photostat copy of this assignment, and there is a legible photostat copy of it attached to it.

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The material part of the last proviso to the Crown lease of 1937, Exhibit B1, and the proviso from which this action stems is as follows :-

"Provided also and it is hereby further agreed and declared that the said Lessee shall on the expiration of the term hereby granted be entitled to a renewed Lease of the premises hereby expressed to be demised for a further term of SEVENTY FIVE YEARS without payment of any Fine or Premium therefor and at the Rent hereinafter mentioned and that His said Majesty will at the request and cost of the said Lessee grant unto him or them on the expiration of the term hereby granted a new Lease of the said premises for the term of Seventy five years at such Rent as shall be fairly and impartially fixed by the said Director as the fair and reasonable rental value of the ground at the date of such renewal."

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Another part of the lease states that the "Director" means the Director of Public Works.

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The plaintiff duly exercised his right of renewal, and this he did by the letter of the 25th February, 1963, written

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by his solicitors on his behalf to the Registrar General, which is Exhibit C1. In that letter he draws attention to the fact that the then current term of 75 years will expire on the 23rd June, 1963, and he applies for the renewal of the lease of the property for a further term of 75 years. The plaintiff then had some difficulty in having his request contained in his letter of the 25th February, 1963, complied with, and it was not until the letter of the 2nd December, 1964, (Exhibit C11) that the plaintiff was informed that the Crown rent for the renewed lease would be \$60,764 per annum; that is very slightly under 800 times the previous Crown rent of \$76 per annum. The plaintiff did not accept that figure. Correspondence as to this may be seen in the Exhibit C file of correspondence.

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The calculations showing how this figure of \$60,764 is arrived at are to be found in Exhibit B3.

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The plaintiff's solicitors wrote to the Superintendent of Crown Lands and Survey on the 3rd December, 1964, (see Exhibit C12) complaining that the rent had not been properly fixed, namely that under the Crown lease (Exhibit B1) the Director of Public Works could not assess a fair and reasonable rental value of the ground on the basis of a decapitalisation of the full market value of the land, and that he had in fact charged a fine or premium by instalments which was contrary to the terms of the lease. There was further correspondence and a meeting (see correspondence in Exhibit C file) but no agreement was reached, and as a result the writ in this action issued.

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This may be termed a short history of the case, and in respect of these facts I think that there is no dispute, except of course that the defendant says that the Director of the Public Works Department did fix a fair and reasonable rent, and denies that the rent fixed contained any premium or fine.

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The defendant says that the rent fixed in accordance with, and complied with, the terms of the proviso to the lease (Exhibit B1), which proviso I have already set out.

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At the trial of the action the plaintiff called three witnesses, namely firstly the plaintiff himself, who gave evidence of acquiring the property, of the development and re-development of the property, and of matters of expenses and profits in respect of the property et cetera, secondly, the plaintiff's solicitor Mr. Ip, who put in evidence certain documents, and thirdly Mr. Bailey, a Quantity Surveyor, who was described as a mathematical expert and who put in evidence charts of calculations. Unfortunately, owing to Mr. O'Connor, who appeared for the defendant, having to go to London for the hearing of a case before the Privy Council, the present case had to be adjourned from the original hearing dates, and it was then found, shortly before the resumed hearing, that the plaintiff's expert land valuation witness, Mr. Moore, a Chartered Surveyor, who was to have given evidence for the plaintiff, had to proceed on overseas leave before the case could be resumed, with the result that he was unable to give verbal evidence for the plaintiff; however, shortly before his departure from the Colony he made an affidavit of what his evidence was to be, and which was received in evidence and is Exhibit P1, Exhibit P2 being a photostat copy of it. Mr. Moore's evidence however has unfortunately not been tested by cross-examination.

The defendant called two witnesses, namely an expert land valuer, Mr. Lyons, who is a Chartered Surveyor and Senior Estate Surveyor in the Crown Lands and Survey Department of the Public Works Department in Hong Kong, and Mr. Wright, the Director of the Public Works Department.

It was a pleasure to hear a case in which all the witnesses were clearly quite creditable and truthful, but of course, and not unnaturally, opinions were apt to vary.

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The declarations which the plaintiff  
claims, and which disclose points he raises,  
are as follows :-

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"(a) A declaration that the  
rental value of the said property  
has not been fixed by the Director  
himself.  
(aa) Further and in the alternative  
the rent has not been fixed as  
required under the terms and  
provisions of the Crown Lease. 10

(b) Further and in the alternative  
a declaration that (if the rental  
value of the said property has  
been fixed by the Director) the  
same is not a 'fair and reason-  
able' rent having regard to the  
terms and provisions of the  
Crown Lease.

(c) Further and in the alterna- 20  
tive a declaration that (if the  
rental value of the said property  
has been fixed by the Director)  
the same has not been fixed  
'fair and impartially' as required  
under the terms and provisions  
of the Crown Lease.

(d) Further and in the alterna- 30  
tive a declaration that (if the  
rental value of the said property  
has been fixed by the Director)  
the same is null and void or  
otherwise should not be enforced  
having regard to the terms and  
provisions of the Crown Lease.

(e) Further and in the alterna- 40  
tive a declaration that (if the  
rental value of the said property  
has been fixed by the Director)  
the same was not assessed at  
the date of the expiration of  
the Crown Lease, namely the 23rd  
day of June 1963.

(f) Further and in the alternative  
a declaration that the Plaintiff

is entitled to a renewed Lease of the said property for a further term of 75 years as from the 24th day of June 1963 at a fair and reasonable rental value to be fixed fairly and impartially by the Director and otherwise in accordance with the terms and provisions of the Crown Lease.

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(g) Further and in the alternative a declaration that (if the assessment of the rental value of the said property has been fixed by the Director) the same is 'ultra vires' the terms and provisions of the Crown Lease or otherwise that the rental as fixed should not be enforced in as much as the same includes the following :

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- (I) A decapitalisation of the full market value of the said property over a period of 75 years; and
- (II) Interest on the capital amount at the rate of 5% per annum compounded over the term of the renewal.

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(h) Such further declarations or and other relief that this Honourable Court shall think just."

The word "fair" in paragraph (c) is obviously a typographical error and should be the word "fairly".

I now come to what has been referred to as Zone Crown Rent, (although counsel for the plaintiff prefers the term Ordinary Crown Rent,) and also to premia.

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An interesting short history of the disposal of Crown land, of premia, and of Crown rents is to be found in Exhibit I2, dated the 7th August, 1956, which is a similar photostat copy to Exhibits L51 to L54,

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which is part of Exhibit L, which is the photostat copy of a Government file entitled Zone Crown Rent, which file was opened in 1956; and in the same file there is a memo on Crown Rent by Mr. Lyons which is Exhibits L9 to L14. The Government file Exhibit J (which was opened in 1952), and of which Exhibit J2 is a photostat copy, and of which Exhibit J1 is a photostat copy of the most material part, discloses the method approved by the Government for calculating premia, and it is stated therein (in Exhibit J2) as being the method to determine the premium to be paid upon the grant of a right of renewal for a further term of 75 years to lessees who hold leases for 75 years (non-renewable) expiring within the next 30 or 40 years and it appears that the calculations on Exhibit A10 page 5, which were the calculations for the premium Madam Yau had to pay on the grant of her Crown lease Exhibit B1, were based on the calculations in Exhibit J2.

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Mr. Lyons said, and I accept what he here said as being correct, (pages 247-8 of my note book, before court reporters were available), that Zone Crown Rents bear no relation either to economic rents or to values of land generally, but that they are rents reserved under Crown leases merely in order to preserve the leasehold system, and that the figures of Zone Crown Rent are purely arbitrary and are not relative to the premium paid. Mr. Lyons also stated, which I accept as correct, that the Governor-in-Council fixes the Zone Crown Rents after receiving the advice of the Crown Lands and Survey Department of the Public Works Department. What may be the reasons for the policy of obtaining premia for Crown leases at a very low rental, instead of leasing Crown lands at an economic rent without premia, may be seen in the file Exhibit L, and in particular in Exhibit I2 which is similar to Exhibits L51 to L54 in the Exhibit L file. Zone Crown Rents, as the term indicates, are rents laid down for areas called Zones, and some of these Zones and

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the Zone Crown Rent for each such Zone may be seen in the map Exhibit K10, which shows the Zone Crown Rents applicable to-day and which were the same in 1963. It will be seen from this map that the Zone Crown Rent for the Zone in which the plaintiff's property lies is \$5000, that is at the rate of \$5000 per acre per annum, and that was the rate prevailing in 1963, so that the Zone Crown Rent for the plaintiff's property would be \$378 per annum, which figure is shown on page 4 of Exhibit B3, and incidentally that is the figure which the plaintiff says should be fixed as the rent he should pay under the relevant proviso in the lease Exhibit B1, but I will deal with that and the reasons why he so says later. Sometime between 1937 and 1963 the Zone Crown Rents were increased, and in the case of the Zone in which the plaintiff's property lies it was increased from \$1000 per acre per annum to \$5000 per acre per annum. It will be seen in Exhibit A10 page 4 paragraph 4(b) that the figure was \$1000 when Madam Yau's rent was calculated for the lease Exhibit B1. It is sometimes a little confusing because frequently the term "Crown rent" is used when it is in fact this Zone Crown rent, or as counsel for the plaintiff prefers to call it "ordinary Crown rent", and of course Zone Crown Rent is in fact a Crown Rent.

Prior to November, 1960, a Crown lessee of a 75 year lease could pay premium by instalments over a period of 74 years and at interest of 5% per annum on the premium unpaid, but after October, 1960, this policy was changed, and in the case of a grant of a 75 year lease after that date the Crown changed the rate of interest to 10% per annum and reduced the period over which the premium could be paid to a maximum of 21 years.

The position appears to be that when a premium is paid, only Zone Crown rent is paid, but if no premium is paid then the rent is fixed by the Director of Public Works. When the Crown sells a Crown lease the

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purchase price is the premium and the annual rent is the Zone Crown Rent, and Exhibit M is an example of this, and it is to be seen in Exhibit M that if the lease is renewed for a further term of 75 years the Director of Public Works is to fix the rent. Similarly, in the case of grants of new Crown leases of lots held on 75 year non-renewable Crown leases, premia are paid and as a result only Zone Crown rent is charged, and an example of these terms may be seen in Exhibit P3.

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I will next deal with the way in which the rent or alleged rent for the plaintiff's second 75 years term was fixed. The mathematics for this are shown in Exhibit B3, which are minutes or rather photostat copies of minutes in a Government file. It may be expedient first, to state that the defendant concedes that a way to fix a reasonable rent is to assess the rent having regard to the rent of comparable properties in the neighbourhood, but the defendant says that that method is not properly applicable in Hong Kong where so many properties are at Zone Crown Rent on account of premia having been paid for the grant or re-grant of the Crown lease, or that what has been termed as "option (b)" has been exercised by the lessee resulting in restriction of development on the property and a lower Crown rent being reserved, and in fact, the defendant says, the only appropriate comparable property in the neighbourhood, a rent having been fixed without payment of premium and option (b) not applying, is that of No.49 Carnarvon Road (K.I.L. 3785), and the defendant says that in fact that one property is exactly comparable because it is on the opposite corner to that of the plaintiff's property, being also on the corner of Carnarvon Road and Salisbury Avenue as is the plaintiff's property, and because both properties are on a corner which is more valuable than otherwise. These two properties, the plaintiff's and No.49 Carnarvon Road, may be seen on the plan Exhibit K1, the Plaintiff's property being coloured pink and 49, Carnarvon Road is on the corner opposite under the

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number 3785. The rent of 49, Carnarvon Road was fixed at and agreed to at the figure of \$59,767 which is based on a capital value per square foot of \$375 and works out at a rent of \$18.50 per square foot. In the case of the plaintiff's property the calculation was also based on a capital value of \$375 per square foot and worked out at a rent or alleged rent of \$60,764 which also gives a rental or alleged rental of \$18.50 per square foot. However the plaintiff says that No.49, Carnarvon Road, is not a fair example of comparable property to take because in that case a speculator had built a block of flats on the property some of which he had sold and others he was selling, and he was under pressure to agree the rent, because until he did so he could not get the occupation permit and none of the flats could be occupied and money was being lost, and the plaintiff says that this is shown by the letters Exhibits K12 to K14 and the occupation permit Exhibit K15 and by concessions in this regard made by Mr. Lyons in cross-examination, and I think that it may well be that the Crown lessee was under this pressure to agree the rent. The agreement of the rent is shown in Exhibits K5 and K6. The defendant then says that, even if the Crown lessee in that case had been under pressure to agree the rent, that did not affect the proper fixing of the rent. The plaintiff put in evidence a table of properties in the neighbourhood showing the Crown rent payable in respect of each which is Exhibit G and the defendant also put in evidence such a table which is Exhibit K3, Exhibit K4 being a copy of it, but apart from the Hong Kong and Whampoa Dock property, which is property of an entirely different nature and I do not therefore think it is applicable for comparison, and apart from No.3, Salisbury Avenue, which is a less valuable site being on Salisbury Avenue and not on the more valuable area of Carnarvon Road and not on a corner site (and which site may be seen under the figure '5", two plots from

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plaintiff's plot on the plan Exhibit K1) and I therefore think not an appropriate comparable property, all the properties in the tables of properties Exhibits G and K3, except No. 49, Carnarvon Road, appear to be ones for which a premium has been paid and for which therefore the low uneconomic Zone Crown Rent is charged, or ones in respect of which option (b) has been exercised resulting in a lower Crown Rent. Options (a) and (b) are set out and described in the enclosure attached to Exhibit C7 and the actual options (a) and (b) are set out in paragraph 2 of the enclosure.

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However, as already stated and for the reasons stated, the defendant says that the method of fixing rent by having regard to comparable properties in the neighbourhood is not normally appropriate in Hong Kong, and in fact that was not the method used in this case. The method used in the plaintiff's case was this. The full market capital value of the land without regard to any buildings thereon, but on the basis that the property would be fully developed, is first assessed and is the basis of the fixing of the rent. This is clear from Mr. Lyons' and Mr. Wright's evidence, and is supported by the enclosure to Exhibit C7 and by Exhibit K11; the former Exhibit has already been referred to and the latter exhibit is paragraph 42 of the Registrar General's Annual Department Report for 1965-66. This may be an appropriate time to mention that although these two exhibits both state in effect that the Director of Public Works calculates the new Crown Rent in accordance with legal advice, Mr. Wright informed the court that he personally had received no legal advice before making his valuation in regard to the plaintiff's property except that he had been told that he could not delegate his responsibility under the proviso in question in the lease, but of course he would have had access to Government files which may have

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contained legal advice. As already stated the full market capital value of the land is first assessed, (the calculations for the rent or alleged rent being shown in Exhibit B3,) and the Crown Lands and Survey Office assessed this at \$350 per square foot, and, using a formula which I will later describe, assessed a rent or alleged rent of \$56,738 per annum (see M1 and M2 of Exhibit B3). This was then referred to Mr. Lyons (M4 of Exhibit B3) and was then referred by Mr. Hughes the then Superintendent of Crown Lands and Survey to Mr. Wright, the Director of Public Works, in minute 5 of Exhibit B3. Mr. Wright discussed the matter with officers of the Crown Lands and Survey Department and consulted a plan, which is not before the court, and which stated land values, and he then decided that the valuation of \$350 per square foot was an under-valuation, and he decided that \$375 per square foot was a more reasonable valuation for K.I.L. 3793 and he then wrote Minute 6 on Exhibit B3 which is as follows :-

M. 6

"S.C.L. & S.

I have considered your valuation of \$350 per sq. ft. for this lot and have discussed it with Messrs. Hughes, Stanton and Musson. I am of the opinion that if No.20C Carnarvon Road is correctly valued at \$400 per sq. ft. then this lot is under-valued at \$350 per sq. ft. I consider that 20C Carnarvon Road is over-valued at \$400 and I further consider that \$375 per sq. ft. is a more reasonable valuation for K.I.L. 3793.

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Sd. A.M.J. Wright  
D.P.W.  
1.4.63."

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It is strange that Mr. Wright does not mention Mr. Lyons in that minute. Mr. Wright in evidence said that he could not remember whether or not Mr. Lyons was present but said that he might well have been present, and Mr. Lyons said that he was present and that he and Mr. Wright fixed the rent together, and so I accept that Mr. Lyons was present.

The basic figure of \$375 per square foot having been fixed as the full market capital value of the land, the same formula used in Minute 2 of Exhibit B3 was then applied to this new figure in Minute 6 of Exhibit B3 resulting in a rent or alleged rent of \$60,764 per annum which the defendant asks the plaintiff to pay.

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At this stage it may be remarked that the valuation of the land is not disputed and is not in issue, but it is the method of calculating the rent which is in issue; (see the bottom of page 83 of the court reporters notes).

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I now come to the formula used for fixing the plaintiff's rent or alleged rent, and it is set out in Minute 7 of Exhibit B3. It there will be seen that this basic figure of \$375 per square foot, which Mr. Lyons says is the capital value of the land for a 75 year term, is first taken and multiplied by the number of square feet in the plaintiff's property, which is 3,293, resulting in the capital value of the whole plot being \$1,234,875. This figure is then "decapitalized" at 5% for 75 years, which is done by using the yearly purchase figure which is obtained from Exhibit O1, the valuation tables, but instead of dividing the capital value of \$1,234,875 by the year's purchase figure which is what is to occur, the figure of \$1,234,875 is multiplied by the reciprocal of the year's purchase figure, which it is easier to do and which gives the same result. The reciprocal of the year's purchase

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referred to, taken to the nearest fourth decimal place is .0489 and having multiplied the \$1,234,875 by that figure one gets the resulting figure of \$60,386 per annum. The Zone Crown Rent is then added, and the Zone Crown Rent being at the rate of \$5000 per acre per annum, for the plaintiff's property of 3293 square feet that works out at \$378 per annum, and added to the \$60,386 it comes to \$60,764 per annum, which is the figure for rent the defendant says that the plaintiff should pay; but the plaintiff does not agree, and the plaintiff says that the figure he should pay is the \$378 per annum, namely the Zone Crown Rent; I will explain his reason for so stating later. At this stage I may mention that the plaintiff says that "decapitalization" is not the right word and that the correct word is "amortization", and his expert Mr. Bailey said he considered amortization was the correct word. Mr. Lyons on the other hand said that amortization was not the correct word in the circumstances but that decapitalization was the right one. I do not think it much matters which word one uses, but Mr. Lyons is an expert land valuer which Mr. Bailey is not, and so I prefer to accept Mr. Lyons evidence that "decapitalization" is the correct word in the circumstances. The word "decapitalize" is not to be found in the Oxford Dictionary (Shorter Oxford English Dictionary). It may be stated at this stage that the mathematical calculations which Mr. Bailey put in evidence are Exhibits Q1-Q6; the defence did not point out any error in these calculations beyond alleging that figures can prove anything, and for myself I cannot see anything wrong with them. Mr. Bailey also put in evidence Exhibits Q7 and Q8 one being a copy of the other, and they are comparable tables in respect of the properties in Exhibit G.

Mr. Wright, although he was to perform the duty envisaged in the proviso

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to the lease, said he was not an expert on land valuation, and no doubt he is normally engaged on many other important matters of a different nature and is also not doubt a very busy person, and if I may say so, with respect, it seems strange in the circumstances that he should have to perform such duties, and it is thought that the Superintendent of Crown Lands and Survey would be a much more qualified and appropriate person to perform such duties than is a normal Director of Public Works.

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The next matter I would deal with is that of the premium paid by Madam Yau when she received the Crown lease Exhibit B1. There is a dispute as to for what this premium was paid. Unfortunately the lease itself Exhibit B1 does not mention the premium, in contrast to the 1888 lease Exhibit A1A which does so, nor has the receipt or a photostat copy of a receipt for the premium been put in evidence, so that one is unable to see what the receipt said. However, as I have already stated, it is not in dispute that Madam Yau paid the premium, and that the calculations calculating the premium are shown at page 5 of Exhibit A10, and the premium is there calculated to be \$1,238.38.

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The plaintiff says that the premium was paid not only for the remaining 27 years to run on the lease Exhibit B1 but also in respect of the 75 years for which the plaintiff had (and at that time Madam Yau Had) the right to renew the lease, that is for the whole 102 years. The plaintiff says that this is so because the figure used in calculating the premium at 7% is the Years' Purchase for perpetuity, and the expert evidence agrees that any years' purchase beyond 100 years is negligible and for all practical purposes valueless, and indeed the valuation tables (Exhibit O1) only go up to 100 years' purchase after which perpetuity is taken, and that therefore,

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perpetuity having been taken for the years' purchase, the premium was calculated for a number of years exceeding 100 years, because anything over 100 years is taken at perpetuity, and as perpetuity was used for the calculation, it was obviously for a period exceeding 100 years which clearly would be for the 102 years. He also says that Exhibit J1, to which reference has already been made, supports this view. The plaintiff therefore says that the premium was calculated for a period of 102 years, and that a premium has been paid for a period of 102 years. The plaintiff next says that as the premium for the renewed term of 75 years has been paid, and which is also born out by the wording of the proviso to the lease that no fine or premium shall be paid for the renewed term of 75 years, and that as the position is that the Crown only charges Zone Crown Rent for leases in respect of which premium has been paid, it is only fair and reasonable and proper that the plaintiff should pay the appropriate Zone Crown Rent for his property which is \$378 per annum. There is no dispute that that would be the appropriate Zone Crown Rent for the plaintiff's property if only Zone Crown Rent were payable.

Mr. Lyons conceded in cross-examination that the premium was calculated on the basis that the option for renewal would be exercised, but he insisted that the premium was not paid for the second term of 75 years, and he said that that could not be done because nobody would know at that time whether or not the renewable term of 75 years would ever come into existence, which would depend on whether or not the Crown lessee exercised the option to renew. It is clear that the renewed term of 75 years would not come into existence until the option was exercised, and it would then exist in equity: (see Weg Motors Ltd. v. Hales & Others(1)). It is said that the calculations in Exhibit A10 calculating the

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premium were based on Exhibit J1. The exact heading of Exhibit J1 is as follows :

"Method of determining [sic] the premium to be paid upon the grant of a right of renewal for a further term of 75 years to lessees who hold leases for 75 years (non-renewable) expiring within the next 30 or 40 years."

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Mr. Lyons said that the object of this paper (Exhibit J1) was to show that in 1936, Government demanded payment for the right to exercise an option, and not a premium for the second term of 75 years. Mr. Lyons further said that the premium was paid for three things, namely :-

1. For the right to renew for a further term of 75 years;
2. The advantage of not having to purchase at a public auction; and
3. The advantage of not being charged for the buildings on the land which otherwise would have reverted to the Crown.

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It seems to me in all the circumstances that it is unlikely that the premium would have been paid for something which not only did not then exist, but for something which might never exist, namely for a further term of 75 years, and it is further to be noted that the heading to Exhibit J1, which states the method for calculating the premium, does not say that the premium is for the further term of 75 years, but states the premium to be paid upon the grant of "a right of renewal" for a further term of 75 years. Of course it is open to the Crown to calculate a premium in any way the Crown wishes, and it is then for the prospective Crown lessee to decide whether to pay it or to refuse the grant of the lease. I am not satisfied that the premium of \$1,238.38

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paid by Madam Yau was paid for the further term of 75 years and I so find. I also consider that Zone Crown Rent by itself would not be a fair or a reasonable rent, being far too low and bearing no reality or relation to economic rents. It also seems to me, for reasons already stated, that the method of determining rent by making comparison with rents of comparable properties in the neighbourhood, is not really appropriate on account of the lack of similar valuable properties in the neighbourhood held on similar terms to that on which the plaintiff's property is held.

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The next point to be considered is that the plaintiff says that the alleged rent fixed allegedly by the Director of Public Works is not in fact rent at all but is merely labelled as rent, and that it contains a hidden premium, and that it is in fact composed of a premium and Zone Crown Rent (or as the plaintiff prefers to call it: ordinary Crown Rent). The defendant says that it is rent which has been fixed by the Director of Public Works and that it does not contain any premium.

The plaintiff's reasons for saying that the figure fixed as rent contains a premium is set out in his expert's affidavit, Exhibit P1, namely the affidavit of Mr. Moore, and may shortly be said to be as follows :-

There are two methods of assessing Crown rent namely one for renewed Crown leases, arising from renewable leases, that is with an option to renew (and the plaintiff's lease falls into this class), and the other for regrant cases relating to non-renewable leases, that is where there is no option to renew. In the former case only rent is supposed to be payable and not premium, but in the latter regrant cases both premium and rent are payable, and Zone Crown Rent is paid in both cases being the sole rent in the regrant cases and being a small portion

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of the rent in the renewed lease cases, and that the remaining and large portion of the alleged rent in the renewed lease cases is calculated in a similar way to that in which a premium is calculated, and comes to the same figure as a premium paid by instalments, and therefore the plaintiff says that he has to pay the same sum as rent as the owner of a regrant lease has to pay in combined rent and premium paid by instalments. As far as I can see the defence were unable to contest this, and I am satisfied that it is correct, and indeed Mr. Lyons eventually admitted in cross-examination that the plaintiff was asked to pay the same figure as rent, as Zone Crown Rent plus premium paid by instalments. He said eventually in cross-examination and in answer to the court (pages 27-29 of my note book), as follows:-

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Cross-examination: "Q. Combining your answer last week and this afternoon, in cases where premiums are charged, the premiums are decapitalized and the decapitalized premium plus ordinary Crown rent equal the amount that you say the plaintiff has to pay by way of new Crown rent?

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A. The figures are the same.

Q. You say the plaintiff has to pay the same figure of rent as the decapitalized premium and Zone Crown Rent?

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A. Yes.

XXX XXX XXX

To Court:

Q. Was the plaintiff's rent fixed at such a rate, that over the term it would be equal to the Zone Crown Rent

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during the term plus the premium, if a premium were paid?

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A. Yes.

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Q. Over the period of the term of 75 years, the plaintiff, at the rate of rent fixed by Government, will be paying the same amount of money as a person who would pay a premium by instalments and Zone Crown Rent for the same period for the same land?

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A. Yes."

The plaintiff therefore says that what has been labelled as rent is in fact Zone Crown Rent plus a premium payable by instalments, and that he is asked to pay the same sum of money as rent as a person would have to pay who paid both rent and premium by instalments for the same or a similar property, inspite of the plaintiff's lease saying that he may have the additional 75 year term without payment of any fine or premium, and that, as a figure representing rent and premium has been fixed, although labelled as rent, that is not in accordance with the terms of his Crown lease and is therefore wrong; (he also says of course that the rent should be simply the Zone Crown Rent, but I have already dealt with that aspect of the matter). The plaintiff further states that it is also to be noted that in the minutes in Exhibit B3, the minutes calculating his alleged rent, the very first minute, which states the original basic figure of \$350 for calculating the rent to be used in the formula, refers to the figure as "Basic Premium".

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The plaintiff also relied on the case of Miramar Hotel & Investment Co. Ltd. & Lane Crawford Ltd. and The Collector of

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Stamp Revenue, and Antibiotics Ltd. & Merck Sharp & Dohme (Asia) Ltd. and The Collector of Stamp Revenue(2), being two appeals heard together, and also referred to the cases of Re War Damage Act, 1943, Samuel v. Salmon & Gluckstein Ltd.(3), and Duke of Westminster v. Store Properties, Ltd.(4), as authorities for the proposition that although a payment is labelled as rent it may not in fact be rent. In the former case the question arose as to whether a large initial payment made in each case in respect of a lease and labelled as rent payable in advance was in fact rent payable in advance or a premium and therefore subject to stamp duty; and the Full Court held firstly, that irrespective of the label attached by the parties to the lease to the payments agreed to be made thereunder, it is for the court to decide whether the payments are rent or premium; and secondly, that on the facts, bearing in mind the capital nature and the relative size of the initial payments, they were premia.

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It seems to me that, no matter how the figure is calculated, the figure of \$60,764 is rent, being for the purpose of an annual payment to be paid by the tenant to the Landlord for the use of the land to be demised in the lease, and I so find. However, although \$60,764 has been fixed as rent, and I hold that it is rent, it does not necessarily follow that it is a fair and reasonable rent or that it was fairly fixed at that figure, and it appears to me to be strange that, the parties having agreed that the plaintiff may have the additional term without having to pay any fine or premium, yet he is asked to pay the same sum of money as if he were paying a premium, and I will refer to this matter again later.

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Another point taken by the plaintiff was that Mr. Wright, the Director of Public Works, did not himself fix the rent, which he is required to do under the provisions contained in the relevant proviso to the

(2) 1961 H.K.L.R.673; (3) 1945 2 A.E.R.520;  
(4) 1944 1 A.E.R.118.

lease. The defendant says that Mr. Wright did fix the rent. Mr Lyons said that Mr. Wright did fix the rent and that he, Mr. Lyons fixed the rent with Mr. Wright, that they did it together. Mr. Wright does not appear to have been asked specifically in evidence whether or not he fixed the rent. I think that it is clear from the minute in Ex. B3, and from Mr. Wright's evidence, that he knew of and agreed to the method suggested for calculating the rent, and that he was to assess a land value figure for the purpose of insertion in the formula which resulted in the fixation of the rent, and that, by doing that, he did in effect fix the rent. For these reasons I am satisfied and find that the Director of Public Works did in fact fix the rent.

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Another point raised by the plaintiff was that if Mr. Wright had fixed the rent, he had done so at the wrong time. It is clear that he in effect fixed the rent on the 1st April, 1963, by his minute of that date, minute 6 in Ex. B3, yet the relevant proviso to the lease states that the rent is to be fixed by the Director at the date of the renewal of the lease, which would presumably be the 24th June, 1963, that being the date on which the renewed lease was to start. This point is conceded by the defence, but the defendant says that the prior fixing of the rent was to the benefit of the plaintiff and that he has suffered nothing as a result, because at the time land values were rising and were certainly rising all the time until the end of 1963, and that as land values were higher in June 1963 than April 1963, the valuation of rent in April 1963 would be lower than it would have been in June 1963. There is no doubt that the rent was fixed at the wrong time namely on the 1st April, 1963, instead of on the 24th June, 1963, but I am quite satisfied on the evidence that land values and rentals were going up during the relevant period, and that thus had the valuation been made on the 24th June, 1963, instead

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of on the 1st April, 1963, the only effect it might have had would be to increase the rent, but as I think that the plaintiff does not desire an increase in rent, and as the defendant has put in no counter-claim that the rent should be increased on this account, it seems to me to be unnecessary for me to make a Declaration in regard to this matter.

It was further argued on behalf of the plaintiff that the function of the Director of Public Works under the provisions of the relevant proviso to the lease was that of an arbitrator or quasi-arbitrator, and that as such he should have heard both parties before fixing the rent, which he did not do. The defendant says that the Director was not an arbitrator or quasi-arbitrator, but a valuer, and that therefore there was no need to hear the parties. In the case of Collins v. Collins (5) the Master of the Rolls is reported as saying :-

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"It become [Sic] necessary, therefore, to consider what an arbitration is. Now I fully concur in the observation, that fixing the price of a property may be 'arbitration'. But I do not think, that in this particular case, the fixing of the price of the property is an arbitration, in the proper sense of the term. An arbitration is a reference to the decision of one or more persons, either with or without an umpire, of some matter or matters in difference between the parties. It is very true that in one sense it must be implied that although there is no existing difference, still that a difference may arise between the parties; yet I think the distinction between an existing difference and one which may arise is a material one, and one which has

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been properly relied upon in the case. If nothing has been said respecting the price by the vendor and purchaser between themselves, it can hardly be said that there is any difference between them. It might be, that if the purchaser knew the price required by the seller, there would be no difference, and that he would be willing to give it. It may well be, that if the vendor knew the price which the purchaser would give, there would be no difference, and that he would accept it. It may well be, that the decision of a particular valuer appointed might fix the price and might be equally satisfactory to both; so that it can hardly be said that there is a difference between them. Undoubtedly, as a general rule, the seller wants to get the highest price for his property, and the purchaser wishes to give the lowest, and in that sense it may be said that an expected difference between the parties is to be implied in every case, but unless a difference has actually arisen, it does not appear to me to be an 'arbitration'."

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and in the case of In re Carus-Wilson and Greene (6) Lord Esher, M.R. said :-

"I think that this case was clearly not one of arbitration, and that it falls within the class of cases where a person is appointed to determine a certain matter, such as the price of goods, not for the purpose of settling a dispute which has arisen, but of preventing any dispute."

(6) 18, Q.B.D. 7 at 9.



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I think that it is clear in the circumstances that Mr. Wright's function under the provisions of the relevant proviso of the lease was that of a valuer, and not that of an arbitrator or quasi-arbitrator, and that he was called upon to determine a certain matter, namely the amount of the rent, not for the purpose of settling a dispute which had arisen, but of preventing a dispute, although in fact he was not successful in preventing a dispute; his fixing of the rent was not for the purpose of resolving a dispute which had arisen, but the dispute arose as a result of it. I therefore am of the opinion and find that his function was that of a valuer and not that of an arbitrator or a quasi-arbitrator.

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Another argument advanced on behalf of the plaintiff was that, in calculating the rent on the basis of the value of the land in question, namely the land demised in the lease, the defendant had wrongly valued the land on the basis that the Crown had an asset of 75 years, and as though it were unencumbered land, when in fact, as far as the Crown was concerned, it was encumbered land, the land having become encumbered for a period of 75 years in February, 1963, when the plaintiff exercised his option under the relevant proviso of the lease; (see Weg Motors, Ltd. v. Hales & Others(1), already cited, as authority for the proposition that the 75 year term would exist in equity on the exercise of the option). This argument appears to me to be fallacious for the purpose of fixing rent. If one uses the value of land as a basis for fixing rent for a term of 75 years, the lease being from A to B, it seems to me to be incorrect to say that the land has no value, except for its reversion, on account of it being encumbered for 75 years, and it is similar to saying that when A sells an apple to B, the price of the apple having to be fixed according to its value, that the apple has no value to A or anyone else because it has been sold to B, and that therefore A should get no price for the

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apple. On the other hand if one says that the only value of the land (apart from its remote reversion) is the rent reserved under the lease, that is the very thing that one is trying to assess from the value of the land, and if it is said that the land (except for the remote reversion) has no value apart from the rent, the land being encumbered, no logical progress is made. If A leases land to B, and the rent is to be assessed based on the value of the land system, in my opinion one has to take the value of the land as though it were not encumbered by the lease to B in order to work out the rent under the lease.

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Another point taken on behalf of the plaintiff relates to calculations, and is that, having regard to the formula used by the defendant for calculating the plaintiff's rent, an error of \$21,334 is shown as a result of the calculations over the period of the lease. This is correct, and it is shown to be so in Ex.Q5. The reason for the error is that in Ex.B3 Minute 7, which shows the calculation for calculating the plaintiff's rent, the reciprocal of the year's purchase is only taken to 4 decimal places, while Mr. Bailey, in Ex.Q5, has worked to 10 decimal places, which shows the error of \$21,334. Of course there can be no end to this type of argument; it depends on how many decimal places one works to, and if one worked to 20 decimal places Mr. Bailey's calculations would be shown to be wrong. I notice that in Ex.O1 the Tables, the year's purchase figure is usually given at three decimal places, although in one case, namely Year's Purchase of a Reversion to a Perpetuity, the tables show five decimal figures. I am unable to say that working to four decimal places is unreasonable, although working to six decimal places would be more accurate, and in my opinion any error shown by working beyond six decimal places would be too small or remote to be worth while.

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The plaintiff relies on the case of Dean v. Prince and Others(7) to show when the court would interfere with the decision of a valuer. In that case Denning, L.J. (as he then was) said :-

"It can be, impeached, not only for fraud, but also for mistake or miscarriage. That was made clear by Sir John Romilly, M.R., in Collier v. Mason. For instance, if the expert added up his figures wrongly, or took something into account which he ought not to have taken into account, or conversely, or interpreted the agreement wrongly, or proceeded on some erroneous principle - in all these cases, the court will interfere. Even if the court cannot point to the actual error, nevertheless, if the figure itself is so extravagantly large or so inadequately small that the only conclusion is that he must have gone wrong somewhere, then the court will interfere in much the same way as the Court of Appeal will interfere with an award of damages if it is a wholly erroneous estimate. These cases about valuers bear some analogy with the cases on domestic tribunals, except, of course, that there need not be a hearing. On matters of opinion, the courts will not interfere, but for mistake of jurisdiction or of principle, and for mistake of law, including interpretation of documents, and for miscarriage of justice, the courts will interfere: see Lee v. Snowmen's Guild of Great Britain."

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(7) 1954, 1 A.E.R. 749 at 758-9

The mathematical error of \$21,334, which I have already commented on, could be a matter to be considered on the main question of whether or not the rent fixed was fair and reasonable.

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10 On behalf of the plaintiff it is  
said that in fixing the rent Mr. Wright took  
into consideration things he should not have  
done, two being Government Policy and the  
advice of civil servants of the Crown, which  
was shown to be so by Ex.B3 and verbal evidence.  
In regard to this, I do not think that it  
matters if he did do so, and presumably the  
more knowledge he had the better would be  
his position to assess the rent, the material  
point being whether or not a fair and  
reasonable rent was fixed, for had he fixed  
a very low rent after considering Government  
Policy and taking advice, no doubt the  
20 plaintiff would not object.

30 It was further stated that the  
Director of Public Works had taken into  
consideration, which he should not have done,  
premia and payments to be paid to the  
plaintiff in respect of the new building to  
be erected on the land, and that this was  
shown by Exs. C10 and B12. There is no doubt  
that the rent was in effect fixed on the 1st  
April, 1963, (see Ex.B3, M.6), and B12 and  
C10 were both written on the 23rd October,  
1964, and so I do not see that they support  
this contention. In any event the point is  
whether or not a fair and reasonable rent was  
fixed. It is further alleged on behalf of  
the plaintiff that, in fixing the rent, the  
re-development value of the property had  
been taken into account when it should not  
have been, and that Exs. C11 and B3 showed  
that this had been done. I think also that  
40 the evidence of Mr. Lyons and Mr. Wright  
also support the view that it was taken into  
account, and in order to assess a fair and  
reasonable rent I do not see why it should  
not be taken into account. Another point  
taken on behalf of the plaintiff was that in

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calculating the rent compound interest had been charged, when no interest should have been charged at all. Mr. Lyons admitted that there was an element of compound interest in the yearly purchase figure, but that otherwise the interest at 5% (see Ex.B3 page 4) was simple interest. Mr. Bailey on the other hand said that although for any particular year the 5% interest was not compound interest, over a period of years it worked out at 5% compound interest, and he showed this by his Ex.Q6, and I think that that is the case. However, the rent has to be calculated in some way, if the rent of comparable properties system is not used, and the important point, as I see it, is whether or not the figure, arrived at as a result of the calculations, is a fair and reasonable rent, if not, other calculations will have to be used.

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More contentions on behalf of the plaintiff with which I have not yet dealt are that the Director of Public Works had not taken into consideration that the rent had been increased in 1936 or 1937. It appears from his evidence that he did not do so (page 163 of the record), but in any event it does not seem to me to matter much whether he did or did not, the point being whether or not the assessment resulted in a fair and reasonable rent being fixed. The next contention was that the Director of Public Works, when fixing the rent, did not make allowances for fluctuations in prices over the period of the 75 years of the renewed lease, including the effect of the New Territories Lease coming to an end. I think that this is too problematical and speculative to be deserving of any great weight, but the same principle applies, namely whether or not the rent fixed was fair and reasonable.

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It is also contended on behalf of the plaintiff that Mr. Wright, although he admitted that he was not an expert valuer, yet he erroneously over-ruled the advice

of his experts, which was shown by Ex.B3. In regard to this, the plaintiff through his legal advisers not only complains that Mr. Wright took into consideration their advice (see above) but also complains that he did not take into consideration their advice. I have no doubt that the position was, that having considered the advice of his experts, Mr. Wright in effect fixed what he himself considered was a fair and reasonable rent, which was what he had to do under the terms of the proviso to the lease, but of course it does not follow that what he fixed was in fact a fair and reasonable rent, and Mr. Wright himself admitted that he was not an expert valuer.

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I will next deal with the matter of the interpretation or construing of the provisions of the relevant proviso of the lease in question, Ex.B1, by the court. On behalf of the defendant it was at first contended that the court was not entitled to look at surrounding circumstances for this purpose, but, after being confronted with the Full Court case of Ma Ip Hung v. Lai Chuen trading as Kin Hing Factory (8) and cases there cited, the defendant conceded that the court could do so. On behalf of the plaintiff it was submitted that, for this purpose, the court could consider extrinsic evidence of intention; on behalf of the defendant it was submitted that the court should not do so. In my opinion extrinsic evidence is not necessary in construing the proviso, and the words of the proviso are plain, clear, and unambiguous, but in spite of this, judicial interpretation may be of assistance in defining the meaning of a word used in certain circumstances; however all the evidence may be considered to ascertain what in fact occurred. In construing the proviso the lease may of course be considered as a whole.

At this stage I may mention that on behalf of the plaintiff it is alleged (without attributing any wrongful motive to

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Mr. Wright) that Mr. Wright did not impartially fix the rent, which he was required to do under the terms of the proviso to the lease, because he was biased by Government Policy contained in Government files, which was shown by Ex.B3 M.5. No doubt Mr. Wright did take Government Policy into consideration, and there seems to me to be no reason why he should not do so provided that, in accordance with the terms of the proviso, he fairly and impartially fixes what he considers to be a fair and reasonable rent. Leading counsel for the plaintiff conceded that Mr. Wright was a most honourable gentleman, and with that, with respect, I do not disagree, and I have no doubt at all that he acted quite impartially in fixing what he considered to be a fair and reasonable rent, and I so find.

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I now come to what appears to me to be the crux of the matter in this case. The proviso to the lease contains three restrictive phrases, which no doubt were inserted for the protection of the tenant. The first is the words: "without payment of any Fine or Premium" therefor; the second is the words: such Rent as shall be "fairly and impartially" fixed by the Director; and the third is the words: as the "fair and reasonable" rental value of the land. It is to be noted that the proviso does not state that the full market rental value is to be fixed, which could easily have been stated if that were the intention, but the rent is restricted to being a fair and reasonable rental, and it thus seems to me that the Director is thereby restricted from fixing the best rent which the defendant could obtain in the open market, that is the full market rental value, and is restricted to fixing a fair and reasonable rent. In contrast, the proviso in the lease which immediately precedes the relevant proviso, and which deals with resumption and payment of compensation therefor, states:-

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'Provided also and it is hereby further agreed and declared that His said Majesty shall have full power to resume enter into and re-take possession of all or any part of the premises hereby expressed to be demised if required for the improvement of the said Colony or for any other public purpose whatsoever Three Calendar Months' notice being given to the said Lessee of its being so required and a full and fair compensation for the said Land and the Buildings thereon being paid to the said Lessee at a Valuation to be fairly and impartially made by the said Director and upon the exercise of such power the term and estate hereby created shall respectively cease determine and be void."

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It is to be noted that it does not state that "fair and reasonable" compensation is to be paid, but that "full and fair" compensation is to be paid to the lessee; thus it is clear that in that case full compensation is to be paid. Fortunately there is an English case which, in my opinion, is of assistance, and that is the case of John Kay, Ltd. v. Kay and Another. (9) That case dealt with the Leasehold Property (Temporary Provisions) Act, 1951, which inter alia was for the purpose of preventing landlords of renewed leases of shops, to which the Act applied, from obtaining the full market rent that could be obtained on the open market for the premises, and restricting the rent to reasonable rent.

In this judgment in the case, Sir Raymond Evershed, M.R. said :-

"The landlords are trustees.  
They do not themselves carry on  
a trade, nor do they desire

(9) 1952, 1 A.E.R. 813 at 814-15, 816-17,  
820-21.

(Also reported in 1952, 1 T.L.R. 766)



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themselves to occupy either of the shop premises, but, in execution of their duties as trustees, they desire, for the benefit of their cestuis que trustent, to obtain from these premises the best return they can. On the other hand, the tenants have been occupation of both the premises in question under leases of twenty-one years' duration, both of which had, about the time of the application, expired by effluxion of time. They carry on in these two shops and in some sixty-nine other premises throughout the country the business of grocers and provision merchants, and may be described as 'multiple shopkeepers'." 10

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He then goes on to describe provisions of the Act in these terms :-

" The long title of the Leasehold Property (Temporary Provisions) Act, 1951, says:

' An Act to make temporary provision for the protection of occupiers of residential property against the coming to an end of long leases, and for the renewal of tenancies of shops; and for purposes connected with the matters aforesaid.' 30

In Part I of the Act are found provisions dealing with the first matter mentioned, namely, protection of occupiers of residential property against the coming to an end of long leases, There are powers to prolong the occupation of such 40

property, and in those cases it is also provided that during the temporary provision in question the rents which formerly were being paid under the leases should be 'frozen', i.e., any extension should be at the same rent as that which previously prevailed. Shops are dealt with in Part II, and there is at once to be noticed the distinction that if the tenancies are renewed the rent is not maintained at the figure previously payable, but has to be fixed according to the provisions of s.12. Power to apply for the renewal of a tenancy is contained in s.10(1) which provides:

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' The provisions of this Part of this Act shall have effect for enabling the occupier of a shop ... to apply to the court for, and subject to the provisions of this Act to obtain, the grant of a new tenancy where apart from the next following section the expiring tenancy would come to an end ...'

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By s.12(1):

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' Subject to the provisions of this section, on an application under this Part of this Act duly made the court may, if in all the circumstances of the case it appears reasonable so to do, order that there shall be granted to the tenant a tenancy for such period, at such rent and on such terms and conditions as the court in all the circumstances

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thinks reasonable, and  
thereafter the parties shall  
be deemed to have entered  
into a lease of the shop  
...'

on those terms. There is a  
proviso

' that in fixing the rent,  
terms and conditions the  
court shall disregard any  
considerations arising from  
the personal circumstances  
of any of the parties.'

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Thus under the Act, instead of the  
Director of Public Works having to fix a  
reasonable rent as is the case under the  
terms of the lease, the court has to fix a  
reasonable rent when it orders a new tenancy  
to be granted.

The Master of the Rolls later in  
his judgment said :-

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" I have referred to the  
conception of reasonableness,  
and he would, indeed, be a bold  
judge who tried to formulate  
with precision the significance  
that the wording implies. One  
is inevitably, sooner or later,  
thrown back on generalities of  
the kind I have already quoted  
from Lord Greene, M.R. I think  
this much must be clear, that  
there is involved in it the  
conception of a standard of that  
which is regarded as reasonable  
by the judge who tries the case,  
and which is, or may be, distinct  
from standards which may be  
found to be appropriate by  
applying other tests. Let me  
take the second question, that  
of rent, and try to illustrate  
the point in regard to that.

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The landlords here could obtain in respect of 15, St. Stephens Street a tenant willing to pay for a term of twenty-one years a rent of £750 and a premium of £1,500, and that might be said, at any rate with some show of justice, to be the present market value of the premises. The phrase 'economic rent' has been used during the argument, but I prefer to avoid it since the phrase has, in some contexts and to economists, as I believe, a particular and technical significance. The market value of certain premises is one thing, and, as I read this Act, it seems to me that the reasonable rent may be something different. The reasonable rent seems to be a rent arrived at by applying the subjective test of what the judge thinks is right and fair, as distinct, for example, from the objective test of what the evidence shows is the market value.

In this case the facts as regards rent were these, that before the lease expired (and I will confine myself for the moment to St. Stephens Street) the tenants had been paying a rent of £160. That figure had been fixed twenty years before, and the tenants, as the evidence showed, had suggested that they should be granted a renewal or a fresh tenancy for a short period at that rent, or something very like it. On the other hand, the landlords were saying that, since the market value now was £750 plus, the standard of reasonableness

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would only be satisfied by  
reference to that fact. The  
judge arrived at the figure of  
£550. Obviously, the judge must  
decide the question in the light  
of the evidence before him. I  
am so far confining myself to  
saying that, as I construe the  
Act, if the evidence justifies it,  
a judge may conclude that a  
reasonable rent is a figure  
which is neither the rent, on  
the one hand, which the tenant  
has previously paid, nor the  
market value rent which the  
landlord has shown that he is  
able to obtain, but is some  
other figure in between those  
two rents, being the rent which  
he thinks is reasonable in all  
the circumstances of the case." 10

The Master of the Rolls upheld the findings  
of the judge in the court below that the  
figure of £550 was a reasonable rent, and  
thought that the appeals should be dismissed.

In the same case Jenkins, L.J. also  
upheld the finding that £550 was a reasonable  
rent and agreed that the appeals should be  
dismissed, and said :-

" With regard to what terms,  
as to rent and otherwise, would,  
in all the circumstances of  
the case, be reasonable for the  
purposes of the new tenancy, in  
s.12(1) the court is expressly  
made the judge of what is reason-  
able. The contest was centred  
entirely on the question of rent,  
and the issue between the parties  
is this. Counsel for the  
Landlords forcibly argues that a  
reasonable rent is such rent as  
the premises will command in the  
open market, and no more and no  
less. He says the evidence 30

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before the judge established that a rent of £750 a year was the rent which this property would fetch in the open market, and, therefore, there can be no justification for arriving at any lower figure as representing the reasonable rent, with the result that the judge erred in fixing the figure of £550. I cannot agree that 'such rent as the court in all the circumstances thinks reasonable' means the rent which the property would fetch if put up in the open market as property to let. If that had been intended by the legislature, I cannot doubt but that the section would have been framed in very different language. The judge referred to the significant contrast presented by the proviso to s.5(2) of the Landlord and Tenant Act, 1927. That is a section under which a tenant in certain circumstances may obtain a new lease in lieu of compensation for goodwill. The section deals with the terms on which a new lease is to be granted in a proper case, and as to the rent there is this proviso:

' Provided that the rent fixed by the tribunal as the rent payable under the new tenancy shall be such rent as the tribunal may determine to be the rent which a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept for the premises, having regard to the terms of the tenancy, but irrespective of any

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goodwill which may have become attached to the premises by reason of the tenant or his predecessors in title having carried on thereat a particular trade or business.'

That sets out a careful formula for arriving at a figure representing the rental value of the premises in the open market. Inevitably, if a similar calculation had been contemplated under the present Act, a similar provision would have been put in. Instead of that the only guide given is 'such rent as the court in all the circumstances thinks reasonable'. In my view, that form of words plainly was used with the intention of giving the court the greatest latitude in the matter and not tying it down to the figure found to represent the actual contemporary letting value in the open market. That conclusion, as a matter of construction, seems to me to be borne out by the proviso to s.12(1), itself which says :

' Provided that in fixing the rent, terms and conditions the court shall disregard any considerations arising from the personal circumstances of any of the parties.'

If in the body of the section 'such rent as the court thinks reasonable' had been used as meaning simply the open market rent, I cannot see what room this proviso would have in the

section, for how could the personal circumstances of any of the parties have any bearing on the question of open market rental? Further support, I think, is to be found in the reference I have already noted in s.12(3)(b), to the 'terms and conditions which in the opinion of the court are reasonable' in relation to alternative accommodation. I think it impossible to hold that the court would be obliged to find terms and conditions on which alternative accommodation was offered to be reasonable simply because it could be demonstrated that the alternative accommodation in the open market would command the rent which the landlord was asking the tenant to pay. Accordingly, I think that all the indications in the section, considering the question as one of construction, are against the view that the words 'at such rent as the court in all the circumstances thinks reasonable' mean simply the open market rent 'ascertained by evidence as regards offers for the particular property in question or for comparable property, and by other evidence of that type.

There is a more general reason supporting this view. It is manifest that the object of this enactment was to protect sitting tenants, as they are called, at the end of their leases from being faced with the choice between the disturbances caused by removing their business to some other premises, if they could find any, and being

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compelled to pay an inflated rent for their existing premises. That clearly was the state of affairs which the legislature set out to deal with, and, in my view, to meet that state of affairs it was necessary that the court should be given the greatest latitude in determining what would be a reasonable rent. If the only power the court had was to ascertain and fix the open market rent as the reasonable rent to be paid under a new tenancy, plainly this legislation, so far as it is concerned with shop tenants, would be in a great measure defeated, because the whole difficulty which has to be met is that, in conditions of scarcity, the open market value may be forced up to a point which exceeds all reason, and it is essential, to make legislation of this kind effective, that the tribunal which is to fix the rent should be able to discount contemporary open market values to the extent necessary in its opinion to arrive at a fair result. The judge came to his conclusion on the principle, with which I entirely agree, that the court is not asked to ascertain the open market rent in the face of scarcity and inflation, but is required to form an opinion as to the reasonable rent, and, in my view, it would be wholly wrong for this court to disturb his decision." 10  
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Hodson L.J. also concurred.

I think that if it had been intended that the open market rent was to be fixed that the lease would plainly have said so,

and I think that, in all the circumstances, as was thought in Kay's case, that a reasonable rent, would be some rent below the open market rent. It is admitted that in fact the full market rental value was fixed, and in the circumstances, for the reasons I have given, I do not consider that that is in accordance with the terms of the relevant proviso to the lease.

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10            Again, in regard to what I have  
earlier said on the matter, it having been  
agreed that the lessee was to pay no fine  
or premium, it seems to me to be hardly fair  
(or for that matter reasonable) to so fix  
the rent that the plaintiff should be made  
to pay the same figure of money as if had  
to pay a fine or premium.

20            If the rent under the renewed lease  
is to be refixed, there would be no harm in  
correcting the error of \$21,334 to which  
reference has already been made.

30            Leading counsel for the plaintiff  
asked me, although I was under no obligation  
to do so, to fix what I considered was a  
fair and reasonable rent, in the event of  
my finding that a fair and reasonable rent  
had not been fixed, in order to avoid future  
litigation. On behalf of the defendant, it  
was contended that I should not do so. As  
the court is under no obligation to do so,  
and as it is in dispute as to whether or not  
I should do so, and taking into consideration  
that I am not an expert valuer and am not  
sitting with expert assessors, I think that  
the better course is not to do so.

             The final matter I have to consider  
(apart from the question of costs) is what  
declaration, in the circumstances, should  
be made.

40            The declarations claimed are in the  
alternative. In my opinion there is no  
need to make declaration (f), because it is

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agreed by the parties to be correct and there is no dispute between the parties as to the facts stated therein, and it is obviously correct. I have already held that no useful purpose would be served by making declaration (e).

It seems to me that, in view of what I have said, the most appropriate declaration, and the one which should be made, is contained in sub-paragraph (aa), namely that the rent has not been fixed as required under the terms and provisions of the Crown Lease, and that Declaration I hereby make.

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A.D. Scholes  
Puisne Judge.

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- - - -

B E T W E E N:

CHANG LAN SHENG                      Plaintiff

and

THE ATTORNEY GENERAL              Defendant

- - - -

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BEFORE THE HONOURABLE MR. JUSTICE  
ALWYN DENTON SCHOLES IN COURT

J U D G M E N T

DATED AND ENTERED THE 24TH DAY OF JUNE 1967

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This action having been tried before the Honourable Mr. Justice Alwyn Denton Scholes without a jury, at the Supreme Court of Justice, Hong Kong, and the said Mr. Justice Alwyn Denton Scholes having on the 24th day of June, 1967 ordered that judgment as hereinafter provided be entered for the plaintiff.

IT IS ADJUDGED that the declaration in terms of sub-paragraph (aa) of the prayer as contained in the Statement of Claim herein, namely that the rent has not been fixed as required under the terms and provisions of the Crown Lease, be made and that the Defendant do pay the Plaintiff 3/4 of his costs of action to be taxed.

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Sd. B.L. Jones  
Assistant Registrar.

No. **3** of 1969

In the Privy Council.

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ON APPEAL

*FROM THE SUPREME COURT OF HONG KONG*

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 33 OF 1967

(On appeal from Original Jurisdiction Action No. 1382 of 1965)

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*BETWEEN*

CHANG LAN SHENG

**Appellant**

- and -

THE ATTORNEY GENERAL

**Respondent**

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**RECORD OF PROCEEDINGS**

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Volume I

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