

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

COURT OF APPEAL

CIVIL APPEAL NO. 6 of 1976

(On Appeal from Divorce Jurisdiction Action No. 14  
of 1970)

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B E T W E E N :-

ERNEST FERDINAND PEREZ DE LASALA Appellant

- and -

HANNELORE DE LASALA Respondent

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RECORD OF PROCEEDINGS

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Theodore Goddard &  
Company,  
16, St. Martin's-le-  
Grand,  
London EC1A 4EJ

Solicitors for the  
Appellant

Pritchard Englefield &  
Tobin and Buckeridge &  
Braune,  
23 Great Castle Street,  
London, W1N 8NQ.

Solicitors for the  
Respondent

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 1976

(On appeal from Divorce Jurisdiction Action No.14  
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B E T W E E N :-

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- and -

HANNELORE DE LASALA Respondent

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RECORD OF PROCEEDINGS

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IN THE SUPREME COURT OF  
HONG KONG  
ORIGINAL JURISDICTION  
MISCELLANEOUS PROCEEDINGS  
No.207 OF 1969

IN THE MATTER of ERNEST  
LASALA (an Infant)  
AND IN THE MATTER of an  
Application under Order  
91 of the Rules of the  
Supreme Court 1969

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AND IN THE MATTER of the  
 INFANTS CUSTODY ORDINANCE  
 BETWEEN: HANNELORE DE  
 LASALA Plaintiff  
 and  
 ERNEST FERDINAND DE  
 LASALA Defendant

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IN THE SUPREME COURT OF HONG KONG

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DIVORCE JURISDICTION

NO. 187 OF 1969

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 DIVORCE JURISDICTION  
 MISCELLANEOUS PROCEEDINGS  
 No. 6 of 1970

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IN THE SUPREME COURT OF HONG KONG  
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Note:

- (A) Those items indicated by an asterisk "\*" in the margin are objected to their inclusion by the Appellant.
- (B) Those items marked "///" in the margin are documents which were not before the Court of Appeal, Hong Kong, and are included at the request and with the joint consent of the Appellant and Respondent.

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DOCUMENTS NOT DUPLICATED

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7.	Acknowledgment of Service of Respondent	26th March 1970
8.	Acknowledgment of Service of Woman-named	26th March 1970
9.	Application for Registrar's Certificate	8th April 1970

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No.	Description of Documents	Date	
10.	Registrar's Certificate	11th April 1970	
11.	Request to Set Down for hearing	23rd April 1970	
12.	Notice of Setting Down	23rd April 1970	
13.	Notice of Trial	24th April 1970	
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16.	Notice of Change of Solicitors	29th August 1975	
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25.	Notice of Hearing	19th November 1975	
26.	Order of the Hon. Chief Justice Sir Geoffrey Briggs	19th November 1975	

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27.	Notice of Change of Solicitors	24th July 1976

IN THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION  
CIVIL APPEAL NO. 6 OF 1976

(On appeal from Divorce Jurisdiction  
Action No. 14 of 1970)

10	28. Notice of Delivery of Judgment	15th December 1976
	29. Notice of Respondent's intended Application to the Court of Appeal	29th December 1976

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF HONG KONG

COURT OF APPEAL

BETWEEN

ERNEST FERDINAND PEREZ DE LASALA                      Appellant

- and -

HANNELORE DE LASALA                                      Respondent

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Record of Proceedings

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No. 1. Originating Summons

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IN THE MATTER of ERNEST EDWARD de LASALA (an infant)

AND IN THE MATTER of an Application under Order 91 of the Rules of the Supreme Court 1967

AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

B E T W E E N :

HANNELORE de LASALA                                      Plaintiff

and

ERNEST FERDINAND de LASALA                              Defendant

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969

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LET the Plaintiff attend before the Honourable Justice Morely-John in Chambers at 5.00 o'clock in the afternoon of the 31st October 1969 on the hearing of an Application by the Plaintiff for Orders that :-

No. 1 Originating Summons dated 31st October 1969

1. The above-named infant having been made to remain a Ward of this Honourable Court.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969

No. 1 Originating Summons dated 31st October 1969. (cont'd)

- 2. The said Infant be not removed without the jurisdiction of this Honourable Court without the leave of the Court.
- 3. The said Infant do reside with the Plaintiff at 41B Estoril Court aforesaid until further Order.
- 4. The Defendant do forthwith leave 41B Estoril Court aforesaid and do not return thereto or, call thereat without leave of the Court.
- 5. The Defendant be enjoined by himself his servants or agents from in anyway attacking molesting or otherwise interfering with the Plaintiff or the said Infant.

10

DATED the 31st day of October 1969

This Summons was taken out by Johnson, Stokes & Master, 403-413 Hong Kong Bank Building, Victoria Hong Kong. Solicitors for the Plaintiff.

No. 2 Order of Hon. Mr. Justice Morley-John dated 31st October 1969

No. 2

ORDER OF HON. MR. JUSTICE MORLEY-JOHN

NO. 207 of 1969

20

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDINGS

IN THE MATTER of ERNEST EDWARD de LASALA (an Infant)

AND IN THE MATTER of an Application under Order 91 of the Rules of the Supreme Court 1967

AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

BETWEEN :

30



HANNELORE de LASALA

Plaintiff

and

ERNEST FERDINAND de LASALA

Defendant

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No. 207 of 1969

BEFORE MR. JUSTICE MORLEY-JOHN IN CHAMBERS

No. 2  
Order of  
Hon. Mr.  
Justice  
Morley-John  
dated 31st  
October 1969  
(cont'd)

Upon hearing counsel for the Plaintiff upon the application of the Plaintiff upon summons ex parte

AND THE above-named Ernest Edward de Lasala having become a Ward of this Court by virtue of the Originating Summons filed on the 31st day of October 1969

10

IT IS ORDERED that the said Infant do remain a Ward of this Court until further Order.

AND IT IS ORDERED that the said Infant be not removed without the jurisdiction of the Court without the leave of the Court

AND IT IS ORDERED that until after the hearing of a summons herein returnable at 3.30 p.m. in the afternoon of Monday the 3rd day of November, 1969, the said Infant do reside with the Plaintiff at 41B Estoril Court Victoria in the Colony of Hong Kong and

20

IT IS ORDERED that until after the hearing of the said summons the Defendant be enjoined by himself his servants or agents from in anywise attacking molesting or otherwise interfering with the Plaintiff or the said Infant

AND IT IS FURTHER ORDERED that the Defendant be forthwith leave 41B Estoril Court and that he do not return thereto or call thereat without the leave of the Court until after the hearing of the said summons

30

AND IT IS ORDERED that the costs be reserved to the discretion of the Judge hearing the said Originating Summons

AND IT IS ORDERED that there be a certificate for Counsel

DATED this 31st day of October, 1969.

(Sgd) M. Morley-John

One of her Majesty's Justices  
of the Supreme Court of Hong Kong.

40

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No. 207 of 1969

No. 2  
Order of  
Hon. Mr.  
Justice  
Morley-John  
dated 31st  
October 1969  
(cont'd)

23rd May 1970 (10.15a.m. - 10.25a.m.)

Coram: Briggs J in Chambers

Jackson-Lipkin (JSM) for plf  
Mills-Owens (Deacons) for deft  
Child Ernest Edward Lasala  
to cease to be a ward of Court  
Deft to pay plf's costs  
Leave to withdraw affidavit  
of deft of 3rd November 1969  
filed herein granted

(G.G. BRIGGS)  
Puisne Judge

No. 207 of

IN THE SUPREME COURT OF HONG KONG  
ORIGINAL JURISDICTION  
MISCELLANEOUS PROCEEDINGS

IN THE MATTER OF ERNEST EDWARD  
de LASALA (an Infant)

AND IN THE MATTER of an  
Application under Order 91 of  
the Rules of the Supreme Court  
1967

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AND IN THE MATTER of the  
INFANTS CUSTODY ORDINANCE

B E T W E E N :

HANNELORE de  
LASALA Plaintiff

and

ERNEST FERDINAND  
de LASALA Defendant

O R D E R

Filed on 1.11.69 at 11.00 a.m.

20

JOHNSON, STOKES & MASTER  
SOLICITORS EC.th  
HONG KONG.

No. 3

AFFIDAVIT OF H. de LASALA

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDINGS

IN THE MATTER of ERNEST EDWARD de LASALA (an Infant)

AND IN THE MATTER of an Application under Order 91 of the Rules of the Supreme Court 1967

10 AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

B E T W E E N :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

No. 3 Affidavit of H. de Lasala dated 1st November 1969

I, HANNELORE de LASALA feme covert care of Johnson, Stokes & Master 403-413 Hongkong Bank Building, Victoria, Hong Kong, the above-named Plaintiff MAKE OATH AND SAY AS FOLLOWS that :-

20

- 1. (a) I am the above-named Plaintiff in these proceedings.
- (b) I am the mother of the above-named Infant Ernest Edward de Lasala.
- 2. (a) The Defendant Ernest Ferdinand de Lasala and I were married at the Hong Kong Marriage Registry, City Hall, Victoria, Hong Kong on 16th February, 1966.
- (b) The Certificate of our said marriage is now produced and shewn unto me marked "H. de L.1".
- 30 3. (a) (i) The above-named Infant Ernest Edward was born on 28th August 1966.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969 No. 3 Affidavit of H. de Lasala dated 1st November 1969 (cont'd)

(ii) The Certificate of his birth is now produced and shewn unto me marked "H. de L.2"

(b) There is no other child of my marriage with the Defendant.

(c) I have a stepson Robert Ernest de Lasala born on 5th January 1960 who is the child of the Defendant by his former wife but who is now residing with the Defendant's mother in the Commonwealth of Australia.

10

4. There is now produced and shewn unto me marked "H.de L.3" a Statement of Facts, the contents of which are true.

SWORN at the Courts of Justice )  
Victoria, Hong Kong this 1st ) H. de Lasala  
day of November, 1969 )

Before me,

A Commissioner for Oaths.

In the Supreme Court of Hong Kong Original Jurisdiction Miscellaneous Proceedings  
 Exhibit "H. de L. 1"

CERTIFIED TRUE OF CERTIFICATE OF 1

31 OCT 1969

P. Registrar of Marriages



This is the original copy of the Certificate of Marriage of Ernest Ferdinand Perez de Lasala before me this 1 day of Nov 1969

DUPLICATE

(To be retained by the Registrar of Marriages)

No 126851

CERTIFICATE OF MARRIAGE

結婚證書

HONG KONG MARRIAGE ORDINANCE, SECTION 22

依照香港婚姻條例第廿二款規定

REGISTRAR GENERAL'S DEPARTMENT  
 HONG KONG

香港註冊總署

in the Colony of Hong Kong.

Marriage solemnized in the Registrar's Office at Victoria

一九六九年十月三十一日 在維多利亞註冊總署舉行婚禮

When married 結婚日期	Name and Surname 姓名	Age 年歲	Condition 婚姻身份	Rank or profession 官階或職業	Residence at the time of marriage 結婚時住址	Father's name and surname 父親姓名	Rank or profession of father 父親官階或職業
Seventeenth 3 <sup>rd</sup> February 1966	Ernest Ferdinand Perez DE LASALA	33	Divorced	Company Director	41B, St. Paul Court, Garden Road, Hong Kong	Robert Perez DE LASALA	Company Director
	Hannelore JENDERNY	25	Spinster	Laboratory Technician	D. Shui Tai Terrace, Technich Hong Kong	Emil JENDERNY (Deceased)	—

Married in the Registrar's Office according to the provisions of the Hong Kong Marriage Ordinance by Registrar's Certificate before me,  
 上述男女雙方願在本人在維多利亞註冊總署之規定下為其主持婚禮

The marriage solemnized in the presence of us  
 此項婚姻在我們二人面前舉行

*J. S. TONG*  
 Deputy Registrar of Marriages

*A. N. S. Yung*  
 Deputy Registrar of Marriages

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969  
 No. 4 Exhibit  
 "H. de L. 1"

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969

No. 4 Exhibit "H.de L.2"

In the Supreme Court of Hong Kong Original Jurisdiction Miscellaneous Proceedings

Exhibit "H.de L.2"

REGISTRAR GENERAL'S DEPARTMENT, HONG KONG



884181

RECEIVED  
10  
HONG KONG  
10th May 1969  
A Certificate for Data

CERTIFIED COPY OF AN ENTRY IN A REGISTER OF BIRTHS KEPT IN TERMS OF THE BIRTHS AND DEATHS REGISTRATION ORDINANCE. (CAP. 174)

Name and surname of Father (or mother, if father is deceased)	Name and surname of Mother	Name and maiden surname of Mother	Rank or profession of Father (or mother, if father is deceased)	Signature, description and residence of informant	Name in accordance with Registrar's Office
Ernest Boy	Ernest Perey	Hannelore DE LASALA	Company Director	R. F. DE LAULA Father AIB Etobail Court, 10th Floor	1966 1st August, 1966
Ernest Edward	DE LASALA	JENNIFERY			
28th August 1966 Canton Hospital					

CERTIFIED to be a true copy of an entry in the Register of Births in the Colony of Hong Kong this 31st day of August 1966

Registrar

Any person who (1) falsifies any of the particulars on this certificate, or (2) uses a falsified certificate as true, knowing it to be false, is liable to prosecution.

任何人士如(一)更改本單上之任何項目或(二)明知其為偽造而用作真者均可有罪受檢弄之虞。

Registrar of Births & Deaths

No. 4

EXHIBIT "H. de L.3"

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings

No. 207 of 1969

No. 4  
Exhibit  
"H.de L.3"

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IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDINGS

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IN THE MATTER of ERNEST EDWARD de LASALA (an  
Infant)

AND IN THE MATTER of an Application under Order  
91 of the Rules of the Supreme Court 1967

10 AND IN THE MATTER of the INFANTS CUSTODY  
ORDINANCE

B E T W E E N :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

---

" H. de L.3 "

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STATEMENT OF FACTS

of the above-named Plaintiff  
Hannelore de Lasala

- 20 1. From the outset of our marriage the Defendant  
treated me with cruelty and has practised  
perversions upon me, full details of which  
will be put before this Honourable Court in  
these proceedings and in proceedings which I  
intend to bring within the divorce jurisdiction  
of this Honourable Court at the earliest  
opportunity.
- 30 2. The Defendant's violence, perversions,  
drunkenness and ill-treatment of me have  
resulted in my health being seriously injured.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969 No. 4 Exhibit "H. de L.3" (cont'd)

3. On 27th August 1969 at Singapore I told the Defendant that I could no longer stay with him as I was suffering intensely from his conduct and I left him to return to Hong Kong with my son.
4. The Defendant returned to me and our son about 3 weeks later, and, in an attempt to effect a reconciliation for the sake of our son I stayed on in the matrimonial home, although I moved into a separate bedroom with my son. 10
5. The Defendant's conduct did not improve and on 31st October, 1969 I was obliged to move out taking Ernest Edward with me.
6. Ernest and I have no where to go, and we are intending to stay in an hotel unless this Honourable Court provides us with protection from the Defendant.
7. It is clearly contrary to the interest of the above-named infant that he and I be forced to live in an hotel while the Defendant remains in the matrimonial home. 20
8. My Amah who is a great help to me and who is fond of the above-named infant has said, and I verily believe, that she will leave the matrimonial home if left there without me.
9. In the premises and as an Interim order until the matter can be dealt with by this Honourable Court inter partes and with full evidence, I humbly ask this Honourable Court to order that I and the said infant remain in the matrimonial home at 41B Estoril Court and that the Defendant be enjoined from remaining there or from calling there until this Honourable Court has fully determined what Interlocutory Relief should be granted to me in respect of the said Infant. 30
10. I humbly submit to this Honourable Court that the Interim Orders I seek are in the best interest and for the protection of the said Infant. 40

HANNELORE de LASALA

31st day of October, 1969.



No. 5

AFFIDAVIT OF H. de LASALA

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDINGS

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969  
No. 5 Affidavit of H. de Lasala dated 1st November 1969.

IN THE MATTER of ERNEST EDWARD de LASALA (an infant)

AND IN THE MATTER of an Application under Order 91 of the Rules of the Supreme Court 1967

10 AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

BETWEEN :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

I, Hannelore de Lasala feme covert of 41B Estoril Court Victoria in the Colony of Hong Kong the above-named Plaintiff MAKE OATH AND SAY AS FOLLOWS that :-

- 20 1. There is now produced and shewn unto me marked "H. de L. 4" a true copy of the Petition for dissolution of my marriage with the Defendant which I presented to this Honourable Court on 1st November 1969.
- 2. The contents of my said Petition are true.

SWORN at the Court of Justice )  
Victoria Hong Kong this 1st ) H. de Lasala  
day of November 1969 )

Before me

Commissioner for Oaths.

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No.207 of 1969

No. 6  
Exhibit of  
"H. de L.4"

No. 6

EXHIBIT "H. de L. 4"

IN THE SUPREME COURT OF HONG KONG

DIVORCE JURISDICTION

TO THE SUPREME COURT OF HONG KONG

Dated the 1st day of November, 1969

THE PETITION OF HANNELORE de LASALA sheweth that:

1. On the 17th day of February 1966 your  
Petitioner then Hannelore Jendarny spinster was  
lawfully married to Ernest Ferdinand de Lasala  
whose previous marriage had been dissolved  
(hereinafter called "the Respondent") at the  
Hong Kong Marriage Registry, Cith Hall Victoria  
Hong Kong. 10
2. Your Petitioner and the Respondent co-  
habited after their said marriage at :-  
  
41B Estoril Court, Victoria in the Colony  
of Hong Kong.
3. There are now living 2 children of the family  
that is to say :- 20
  - (a) 1 child of the Respondent's said former  
marriage whom your Petitioner accepted as a  
child of the family namely, Robert Ernest  
born on the 5th day of January, 1960
  - (b) 1 child of the marriage namely Ernest  
Edward born on the 28th day of August 1966.
4. Your Petitioner is now living at 41B Estoril  
Court aforesaid.
5. The Respondent who is a Company Director is  
now living at an address in Victoria aforesaid  
unknown to your Petitioner. 30
6. Both your Petitioner and the Respondent are  
domiciled in Hong Kong.

7. (a) (i) On the 31st day of October 1969 your Petitioner issued an Originating Summons out of the Registry of this Honourable Court asking inter alia that the said child Ernest Edward be made a Ward of this Honourable Court.  
(ii) The said Originating Summons has not up to date been heard.  
(iii) On the said 31st day of October 1969 the Hon. Mr Justice Morley-John made certain Interim Orders in respect of the said child.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969 No. 6 Exhibit of "H. de L.4" (cont'd)

(b) Save as aforesaid there had been no proceedings previous hereto in any Court with reference to the said marriage or after the celebration of the said marriage in relation to the said children.

8. The Respondent after the celebration of the marriage has committed sodomy upon your Petitioner.

9. On numerous occasions in the 3 months following the birth of the said child Ernest Edward the Respondent committed sodomy upon your Petitioner at 41B Estoril Court aforesaid.

10. Between about the months of November 1966 and January 1968 the Respondent committed sodomy upon your Petitioner on a number of occasions the dates of which your Petitioner is now unable to remember.

11. In about the month of January and February 1969 the Respondent committed sodomy upon your Petitioner on a number of occasions at 41B Estoril Court aforesaid.

12. If which is not admitted your Petitioner condoned the said sodomy the same was revived by the subsequent conduct of the Respondent as hereinafter appears.

13. The Respondent since the celebration of the marriage had treated your Petitioner with cruelty.

14. Your Petitioner repeats paragraph 8, 9, 10 and 11 hereof.

15. The Respondent throughout the marriage drank

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969

No. 6  
Exhibit of  
"H. de L.4"  
(cont'd)

to excess thereby distressing your Petitioner.

16. The Respondent is a man of perverted habits who throughout the marriage obliged your Petitioner to indulge in sexual practices which he well knew disgusted and revolted her.

17. Throughout the marriage the Respondent obliged your Petitioner to bite or to kiss him all over his body including his anus his armpits his penis his scrotum and his toes.

18. The Respondent throughout the marriage showed little or no consideration for your Petitioner and treated her with a lack of affection. 10

19. When your Petitioner protested against the aforesaid conduct of the Respondent he informed her that she was his wife and she had to do as he wished and that it was her duty to obey him.

20. On occasions throughout the marriage too numerous to particularise the Respondent when drunk slapped your Petitioner's face.

21. On an occasion in the year 1968 in the matrimonial home in Hong Kong, the Respondent pushed your Petitioner on to a bed struck her a number of blows with his hands and fists, cut her forehead, cut her right wrist and bruised her arms, body, face and legs. 20

22. In the month of October 1968 the Respondent with the intention and effect of distressing and terrifying your Petitioner frequently told her that the said child Ernest Edward would be kidnapped. 30

23. Your Petitioner has not condoned the said cruelty.

24. The Respondent possesses capital which your Petitioner believes to be in excess of \$ 50 million and is in receipt of income which your Petitioner believes to be in excess of \$250,000 per annum.

25. It is your Petitioner's present intention that the said child Robert Ernest should continue to live with the mother of the Respondent as heretofore and to be maintained by the Respondent and of the said child Ernest Edward should continue to live with your Petitioner to attend 40

his present school and to be maintained by the Respondent.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969

26. There is no agreement or arrangement made or proposed to be made between your Petitioner and the Respondent in contemplation of any connection with these proceedings.

No. 6 Exhibit of "H. de L.4" (cont'd)

27. This Petition is neither presented nor prosecuted in collusion with the Respondent.

WHEREFORE your Petitioner prays that :-

10

- 1. Her marriage may be dissolved
- 2. The Respondent may be ordered :-
  - (1) To pay to her for herself :-
    - (a) such sums as may be just by way of:-
      - (i) Alimony pendente lite
      - (ii) maintenance.
    - (b) such lump sum as may be just
  - (2) TO make such secured provisions for her as may be just.

20

3. She may be granted the custody of the said child Ernest Edward.

- 4. The Respondent may be ordered :-
  - (a) To pay to her for the said child :-
    - (i) such sums by way of maintenance as may be just
    - (ii) such lump sum as may be just.
  - (b) To make such secured provision for the said child as may be just.

5. The Respondent may be condemned in the costs of and incidental to this suit.

30

.....  
Mr. N. Jackson-Lipkins  
Counsel for the Petitioner

The name and address of the person who is to be served with this petition is Ernest Ferdinand de Lasala case of Messrs. Deacons, Union House, Hong Kong.

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No.207 of 1969  
No. 7  
Summons dated  
1st November  
1969.

No. 7  
SUMMONS

---

IN THE SUPREME COURT OF HONG KONG  
ORIGINAL JURISDICTION  
MISCELLANEOUS PROCEEDINGS

---

IN THE MATTER of ERNEST EDWARD de LASALA (an  
Infant)

AND IN THE MATTER of an Application under Order  
91 of the Rules of the Supreme Court 1967

AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

10

B E T W E E N :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

---

LET all parties attend before Mr. Justice Morley-  
John in Chambers at 3.30 o'clock in the afternoon  
of Monday the 3rd day of November, 1969 upon the  
hearing of an Application by the above-named  
Plaintiff for orders that pending the hearing of  
the Originating Summons herein that :

20

1. The above-named Infant do reside with the  
Plaintiff at 41B Estoril Court, Victoria Hong  
Kong.

2. The Defendant do not return to or call at  
41B Estoril Court aforesaid without leave of the  
Court.

3. The Defendant be enjoined by himself his  
servants or agents from in anywise attacking  
molesting or otherwise interfering with the  
Plaintiff or the said infant.

30

4. The costs of this Application be provided  
for.

5. Such Further or other order be made or direction given as to this Honourable Court may seem just or expedient.

DATED this 1st day of November, 1969.

E.S. HAYDON  
Registrar

THIS SUMMONS was taken out by Johnson, Stokes & Master of 403-413 Hong Kong Bank Building, des Voeux Road, Central Victoria aforesaid, Solicitors for the above-named Plaintiff.

TO the Defendant:

AND TO Messrs. Deacons of 601 Union House, Hong Kong, his Solicitors.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969  
No. 7  
Summons dated 1st November 1969  
(Cont'd)

10

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No.207 of 1969

No. 7  
Summons dated  
1st November  
1969  
(cont'd)

3.11.69 (3.35 p.m. - 6.23 p.m.)  
Coram: Morley-John J. in Chambers

Jackson-Lipkin (Johnson, Stokes &  
Master) for plaintiff

Mills-Owens (Deacons) for Defendant

Order: No order to be made on the  
Summons upon the undertaking given  
by the Deft to refrain from residing  
in the premises at No. 41B Estoril  
Court pending the provision by the  
Deft of alternative accomodation  
for the Plaintiff and the infant  
or until further order.  
Liberty to apply. Costs reserved.  
Certificate for Counsel

P.J

No. 207 of 1969

IN THE SUPREME COURT OF  
HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDING

IN THE MATTER of ERNEST  
EDWARD de LASALA (an infant)

AND IN THE MATTER of an  
Application under Order 91  
of the Rules of the Supreme  
Court 1967

10

AND IN THE MATTER of the  
INFANTS CUSTODY ORDINANCE

B E T W E E N :

HANNELORE de LASALA  
Plaintiff

and

ERNEST FERDINAND de LASALA  
Defendant

S U M M O N S

20

Filed on 1.11.69 at 11.00  
a.m.

JOHNSON, STOKES &  
MASTER  
SOLICITORS &C.  
HONG KONG.



AFFIDAVIT OF ARTHUR OVERTON NICHOLS

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No.207 of 1969

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDINGS

No. 8 Affidavit of Arthur Overton Nichols dated 1st November 1969.

IN THE MATTER of ERNEST EDWARD de LASALA (an Infant)

AND IN THE MATTER of an Application under Order 91 of the Rules of the Supreme Court 1967

10 AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

B E T W E E N :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

I, Arthur Overton Nichols of 235, Hongkong and Shanghai Bank Building Victoria Hong Kong make oath and say as follows :

20 1. I am a Partner in the firm of Dr. Vio and Partners and practise at the above address. My qualifications are Membership of the Royal College of Surgeons and Licenciate of the Royal College of Physicians.

2. There is now produced and shewn unto me marked " A. O. N. 1 " a Statement of Facts, the contents of which are true.

SWORN at the Court of Justice )  
Victoria, in the Colony of )  
Hong Kong on the 3rd day of ) A.O. Nichols  
November, 1969. )

30 Before me,

FOK Hin-Kwang  
A Commissioner of Oaths

This Affidavit is filed on behalf of the Plaintiff.

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No. 207 of 1969

No. 9  
Exhibit  
"A.O.N.1"

No. 9

EXHIBIT " AON 1"

---

IN THE SUPREME COURT OF HONG KONG  
ORIGINAL JURISDICTION  
MISCELLANEOUS PROCEEDINGS

---

IN THE MATTER of ERNEST EDWARD de LASALA (an  
Infant)

AND IN THE MATTER of an Application under Order  
91 of the Rules of the Supreme Court 1967

AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE 10

B E T W E E N :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

---

" A . O . N . 1 "

---

STATEMENT OF FACTS

(of Arthur Overton Nichols)

1. On the afternoon of Friday 31st October 1969  
I was consulted by Hannelore de Lasala who  
appeared to me to be suffering from a state of  
acute anxiety. I prescribed a tranquiliser for  
her and suggested she should return to her home. 20

2. At about 7.00 p.m. on the said 31st October  
1969 I received a telephone call asking me to go  
to Mrs. de Lasala's flat at 41B Estoril Court.  
When I went there I found Mrs. de Lasala to be in  
a very overwrought condition and I formed the  
opinion that this condition was attributable to  
Mrs. de Lasala's anxiety as to whether her  
husband would attempt to return to the flat or  
not. I accordingly gave her an injection in 30

order to calm her. I returned to the same flat at about 9.30 p.m. on the same evening and was surprised, in view of the injection I had already given her, that Mrs. de Lasala was not sleeping. She still seemed very anxious and worried as to what might happen if her husband should attempt to return to the flat and I did my best to reassure her. I also told the servant to put the chain on the door.

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969

No. 9  
Exhibit  
"A.O.N.1"  
(cont'd)

10 3. I formed the definite opinion on Friday 31st October, 1969 that Mrs. de Lasala's condition would have further deteriorated if her husband had returned to the flat that day.

20 4. I have from time to time treated the infant Ernest Edward de Lasala for minor ailments and have noticed the very close and affectionate relationship that obviously exists between him and his mother. I consider that any worsening in his mother's condition would undoubtedly have been detrimental to the welfare of the said infant.

5. I was further consulted by Mrs. de Lasala on Monday, 3rd November 1969 and found that her state of acute anxiety had deteriorated and that she was suffering from marked depressive tendencies. It is my opinion that it would be very definitely contrary to her welfare and the welfare of the infant Ernest Edward de Lasala if her husband was permitted to return to the flat at 41B Estoril Court whilst she and her son were still there.

30 6. I have, since first seeing Mrs. de Lasala on Friday 31st October 1969 discussed her case with my partner Dr. Eric Vio who informs me and I verily believe, that he has in the past treated Mrs. de Lasala for depression and nervous irritabilities which she attributed to her marital problems.

ARTHUR OVERTON NICHOLS

No. 10

ORDER OF MR. JUSTICE MORLEY-JOHN

40 IN THE SUPREME COURT OF HONG KONG

No. 10  
Order of Mr.  
Justice  
Morley-John  
dated 3rd  
November 1969

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No.207 of 1969

ORIGINAL JURISDICTION  
MISCELLANEOUS PROCEEDINGS

No. 10  
Order of Mr.  
Justice  
Morley-John  
dated 3rd  
November 1969  
(cont'd)

IN THE MATTER of ERNEST EDWARD de LASALA (an  
Infant)

AND IN THE MATTER of an Application under Order  
91 of the Rules of the Supreme Court 1967

AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

BETWEEN :

HANNELORE de LASALA Plaintiff

and

ERNEST FERDINAND de LASALA Defendant

10

BEFORE THE HONOURABLE MR. JUSTICE MORLEY-JOHN IN  
CHAMBERS.

O R D E R

UPON the Application of the Plaintiff by  
Originating Summons dated the 31st day of October  
1969 and upon hearing Counsel for the Plaintiff  
and Counsel for the Defendant and upon reading  
two affidavits of Hannelore de Lasala both filed  
herein on the 1st day of November 1969 and the  
affidavit of Ernest Ferdinand de Lasala filed  
herein on the 3rd day of November 1969 and the  
affidavit of Arthur Overton Nichols filed herein  
on the 3rd day of November 1969 IT IS ORDERED  
that no order to be made on the Summons Inter  
Parte filed herein on the 1st day of November 1969  
upon the undertaking given by the Defendant to  
refrain from residing in the premises at No. 41B,  
Estoril Court pending the provision by the  
Defendant of alternative accommodation for the  
Plaintiff and the infant or until further order  
and IT IS ALSO ORDERED that both parties shall  
have liberty to apply and that the costs of this  
application be reserved with Certificate for  
Counsel.

20

30

Dated the 3rd day of November, 1969.

S.H. Mayo  
Assistant Regis

No.207 of 1969

In the Supreme Court of Hong Kong. Original Jurisdiction Miscellaneous Proceedings No. 207 of 1969

IN THE SUPREME COURT OF HONG KONG

ORIGINAL JURISDICTION

MISCELLANEOUS PROCEEDINGS

No. 10  
Order of Mr. Justice Morley-John dated 3rd November 1969 (cont'd)

IN THE MATTER of ERNEST EDWARD de LASALA (an infant)

AND IN THE MATTER of an Application under order 91 of the Rules of the Supreme Court 1967

AND IN THE MATTER of the INFANTS CUSTODY ORDINANCE

BETWEEN:

HANNELORE de LASALA  
Plaintiff

and

ERNEST FERDINAND de LASALA  
Defendant

O R D E R

Filed on: 7/11/1969 at  
2.40 p.m.

10

20

In the Supreme  
Court of Hong  
Kong. Original  
Jurisdiction  
Miscellaneous  
Proceedings  
No. 207 of 1969

No. 11

MEMORANDUM OF APPEARANCE

---

1969, No. 207

No. 11  
Memorandum of  
Appearance  
dated 4th  
November  
1969.

MEMORANDUM OF APPEARANCE

Please enter an appearance for the Defendant,  
Ernest Ferdinand Perez de Lasala sued as Ernest  
Ferdinand de Lasala in this Action.

Dated the 4th day of November, 1969.

(sd.) Deacons

Solicitors for the Defendant.

10

Whose address for service is Messrs. Deacons  
of 601, Union House, Chater Road, Victoria, Hong  
Kong, Solicitors for the Defendant.

No. 12  
Order of Mr.  
Justice  
Briggs dated  
23rd May 1970

No. 12

ORDER OF MR. JUSTICE BRIGGS

---

BEFORE THE HONOURABLE MR. JUSTICE BRIGGS IN  
CHAMBERS

O R D E R

UPON HEARING Counsel for the Plaintiff and  
Counsel for the Defendant and by consent IT IS  
ORDERED that the affidavit of the Defendant dated  
3rd November 1969 and filed herein on the 3rd  
November 1969 be removed from the Court file and  
be returned to the Defendant's Solicitors and that  
the infant Ernest Edward de Lasala cease to be a  
ward of court and that the costs of these  
proceedings be paid by the Defendant.

20

Dated the 23rd day of May 1970.

(sd.) B.L. Jones  
Assistant Registrar.

30

No. 13

PETITION

P E T I T I O N

1969, No. 187

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969  
No. 13  
Petition  
1st November  
1969

TO THE SUPREME COURT OF HONG KONG

Dated the 1st day of November, 1969

THE PETITION OF HANNELORE de LASALA Sheweth that :

10 1. On the 17th day of February 1966 your  
Petitioner then Hannelore Jenderny spinster was  
lawfully married to Ernest Ferdinand de Lasala  
whose previous marriage had been dissolved  
(hereinafter called "the Respondent") at the Hong  
Kong Marriage Registry, City Hall Victoria Hong  
Kong.

2. Your Petitioner and the Respondent co-  
habited after their said marriage at :-

41B Estoril Court, in the Colony of  
Hong Kong.

20 3. There are now living 2 children of the  
family that is to say :-

(a) 1 child of the Respondent's said  
former marriage whom your Petitioner accepted  
as a child of the family namely, Robert  
Ernest born on the 5th day of January, 1960.

(b) 1 child of the marriage namely Ernest  
Edward born on the 28th day of August 1966.

4. Your Petitioner is now living at 41B Estoril  
Court aforesaid.

30 5. The Respondent who is a Company Director is  
now living at an address in Victoria aforesaid  
unknown to your Petitioner.

6. Both your Petitioner and the Respondent are  
domiciled in Hong Kong.

7. (a) (i) On the 31st day of October 1969 your

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No.187 of 1969  
No. 13  
Petition  
1st November  
1969  
(cont'd)

Petitioner issued an Originating  
Summons out of the Registry of this Honourable  
Court asking inter alia that the said  
child Ernest Edward be made a Ward of this  
Honourable Court.

(ii) The said Originating Summons has not  
up to date been heard.

(iii) On the said 31st day of October 1969  
the Hon. Mr. Justice Morley-John made  
certain Interim Orders in respect of the  
said child.

10

(b) Save as aforesaid there had been no  
proceedings previous hereto in any Court with  
reference to the said marriage or after the  
celebration of the said marriage in relation  
to the said children.

8. The Respondent after the celebration of the  
marriage has committed sodomy upon your Petitioner.

9. On numerous occasions in the 3 months following  
the birth of the said child Ernest Edward the  
Respondent committed sodomy upon your Petitioner at  
41B Estoril Court aforesaid.

20

10. Between about the months of November 1966 and  
January 1968 the Respondent committed sodomy upon  
your Petitioner on a number of occasions the dates  
of which your Petitioner is now unable to remember.

11. In about the month of January and February  
1969 the Respondent committed sodomy upon your  
Petitioner on a number of occasions at 41B Estoril  
Court aforesaid.

30

12. If which is not admitted your Petitioner  
condoned the said sodomy the same was revived by  
the subsequent conduct of the Respondent.

13. The Respondent since the celebration of the  
marriage had treated your Petitioner with cruelty.

14. Your Petitioner repeats paragraph 8, 9, 10  
and 11 hereof.

15. The Respondent throughout the marriage drank  
to excess thereby distressing your Petitioner.

16. The Respondent is a man of perverted habits

40



who throughout the marriage obliged your  
Petitioner to indulge in sexual practices which  
he well knew disgusted and revolted her.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969  
No. 13  
Petition  
1st November  
1969  
(cont'd)

17. Throughout the marriage the Respondent  
obliged your Petitioner to bite or to kiss him all  
over his body including his anus his armpits his  
penis, his scrotum and his toes.

10 18. The Respondent throughout the marriage  
showed little or no consideration for your  
Petitioner and treated her with a lack of  
affection.

19. When your Petitioner protested against the  
aforesaid conduct of the Respondent he informed  
her that she was his wife and she had to do as  
he wished and that it was her duty to obey him.

20. On occasions throughout the marriage too  
numerous to particularise the Respondent when  
drunk slapped your Petitioner's face.

20 21. On an occasion in the year 1968 in the  
matrimonial home in Hong Kong, the Respondent  
pushed your Petitioner on to a bed struck her a  
number of blows with his hands and fists, cut her  
forehead, cut her right wrist and bruised her  
arms, body, face and legs.

22. In the month of October 1969 the Respondent  
with the intention and affect of distressing and  
terrifying your Petitioner frequently told her  
that the said child Ernest Edward would be  
kidnapped.

30 23. Your Petitioner has not condoned the said  
cruelty.

24. The Respondent possesses capital which your  
Petitioner believes to be in excess of \$50,000,000  
Dollars and is in his receipt of income which your  
Petitioner believes to be in excess of \$250,000  
per annum.

40 25. It is your Petitioner's present intention  
that the said child Robert Ernest should continue  
to live with the mother of the Respondent as  
heretofore and to be maintained by the Respondent  
and of the said child Ernest Edward should continue  
to live with your Petitioner to attend his present  
school and to be maintained by the Respondent.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969 No. 13 Petition 1st November 1969 (cont'd)

26. There is no agreement or arrangement made or proposed to be made between your Petitioner and the Respondent in contemplation of any connection with these proceedings.

27. This Petition is neither presented nor presecuted in collusion with the Respondent.

THEREFORE your Petitioner prays that :-

- 1. Her marriage may be dissolved.
- 2. The Respondent may be ordered :-
  - (1) To pay to her for herself :- 10
    - (a) Such sums as may be just by way of:-
      - (i) Alimony pendente lite
      - (ii) maintenance.
    - (b) such lump sum as may be just
  - (2) To make such secured provisions for her as may be just.
- 3. She may be granted the custody of the said child Ernest Edward.
- 4. The Respondent may be ordered :- 20
  - (a) To pay to her for the said child :-
    - (i) such sums by way of maintenance as may be just
    - (ii) such lump sum as may be just.
  - (b) To make such secured provisions for the said child as may be just.
- 5. The Respondent may be condemned in the costs of and incidental to this suit.

(Sd.) M.H. Jackson-Lipkins  
.....

Mr. H. Jackson-Lipkins  
Counsel for the Petitioner 30

The name and address of the person who is to be served with this petition is Ernest Ferdinand de Lasala care of Messrs. Deacons, Union House, Hong Kong.

No. 14

ORIGINATING SUMMONS

1969, No. 187

ORIGINATING SUMMONS

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 14  
Originating  
Summons dated  
12th January  
1970

10 LET Ernest Ferdinand de Lasala of 41B  
Estoril Court, Victoria in the Colony of Hong  
Kong attend the Judge in Chambers at the Supreme  
Court in Victoria Hong Kong on Friday the 16th  
day of January 1970 at 9.30 o'clock in the  
forenoon on the hearing of an Application by the  
above-named Hannelore de Lasala that the Court do  
take into consideration for the purpose of Section  
15(2) of the Matrimonial Causes Ordinance the  
agreement and arrangement made between the said  
Hannelore de Lasala and the said Ernest Ferdinand  
de Lasala particulars whereof are set forth in  
the Affidavit to be used in support hereof a copy  
whereof is served herewith and that the Court do  
20 give such directions or orders hereon as to the Court  
shall seem just or expedient.

You are required to complete the accompanying  
Form of Acknowledgement of Service and sent it to  
the under-mentioned Solicitor.

If you wish to be heard on the Application you  
must attend at the time and place above-mentioned  
and if you do not attend the Court may give such  
directions as it thinks fit.

Dated the 12th day of January 1970.

(sd.) E.S. HAYDON

Registrar.

30 This summons was taken out by Messrs. Johnson  
Stokes & Master, 403-413 Hongkong & Shanghai Bank  
Building, Des Voeux Road Central, Victoria, Hong  
Kong, Solicitors for the above-named Hannelore de  
Lasala.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 15

AFFIDAVIT OF HANNELORE de LASALA

---

No. 15  
Affidavit of  
Hannelore de  
Lasala dated  
13th January  
1970

No. 187 of 1969

IN THE SUPREME COURT OF HONG KONG  
DIVORCE JURISDICTION

---

IN THE MATTER OF A PETITION BY HANNELORE DE  
LASALA FOR DISSOLUTION OF HER MARRIAGE WITH  
ERNEST FERDINAND DE LASALA

BETWEEN

HANNELORE DE LASALA	Applicant	10
and		
ERNEST FERDINAND DE LASALA	Respondent	

---

I Hannelore de Lasala of 41B Estoril Court,  
Victoria in the Colony of Hong Kong feme covert  
the above-named Applicant make oath and say as  
follows that :-

1. The above-named Respondent and I were  
married at the Hong Kong Marriage Resitry, City  
Hall, Victoria, Hong Kong on the 16th February,  
1966 and we have one child Ernest Edward born on  
the 28th August, 1966. The Respondent has a son  
Robert Ernest born on the 5th January, 1960 who is  
his child by his former wife. 20
2. On the 31st October, 1969 I commenced  
proceedings against the Respondent in this  
Honourable Court in its original Miscellaneous  
Jurisdiction being Action 207 of 1969 and on 1st  
November 1969 in its original Divorce Jurisdiction  
being Suit Number 187 of 1969 and I crave leave to  
refer to the pleadings therein.
3. After certain preliminary interlocutory  
applications in the Wardship Proceedings 30  
discussions took place between my Solicitors and

the Respondent's Solicitors concerning the future conduct of those proceedings and my said divorce proceedings.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969

4. On 11th December 1969 the Respondent's said Solicitors sent to my Solicitors a letter which is now produced and shewn unto me marked "H. de L.1".

No. 15 Affidavit of Hannelore de Lasala dated 13th January 1970.

(cont'd)

10 5. I have taken the advice of my Solicitors and Counsel on the contents of H.deL. 1" aforesaid and I have been advised and I verily believe that it would be contrary to the interests of the said children and myself if I were to insist on pursuing my remedy in the Divorce Jurisdiction of this Honourable Court on the grounds of cruelty and sodomy, which allegations would be defended. I humbly submit to this Honourable Court that it would benefit none of the parties and would be harmful to the said children if such matters were to be litigated publicly when there is an  
20 alternative ground upon which I could obtain a decree of dissolution of my marriage with the Respondent on the basis of an undefended suit.

6. I have also discussed with my said Solicitors and my Counsel the financial provisions that are being offered by the Respondent and I am advised and I verily believe that the offers being made by the Respondent are just and proper having regard to our respective means.

30 7. I have therefore instructed my said solicitors to agree with the Respondent's Solicitors that, subject to the leave of this Honourable Court I will seek the leave of this Honourable Court to amend my petition for dissolution of marriage to include an allegation of adultery by the Respondent and that I will pursue that amended petition to a hearing of the allegation of adultery only on the basis of the agreement and arrangements set forth in pages 2 and 3 of "H. de L.1" aforesaid.

40 8. I humbly submit to this Honourable Court that the said agreement and arrangements are just and proper and in accordance with the justice of the case and I humbly crave the leave of this Honourable Court to implement the same.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969  
SWORN at the Courts of Justice Victoria in the Colony of Hong Kong this 13th day of January 1970 )  
(sd) Hannelore de Lasala

No. 15  
Affidavit of Hannelore de Lasala dated 13th January 1970.  
(cont'd)

Before me,  
(sd) C.W. CHAN

A Commissioner of Oaths

This affidavit is filed herein on behalf of the Applicant.

No. 16  
Exhibit  
"H. de L.1"  
13th January  
1970

No. 16  
EXHIBIT "H. de L.-1"

10

D E A C O N S  
S O L I C I T O R S & N O T A R I E S

P.O. Box 277  
Union House 6th Fl.  
Hong Kong.

Your ref.

Our ref.  
REM:rmc-69/282

HONG KONG 11th December, 1969

Messrs. Johnson, Stokes & Master,  
Hong Kong Bank Building,  
HONG KONG.

20

Attn: Mr. Tisdall

Dear Sirs,

re: Lasala -v- Lasala  
O.J.M.P. 207 of 1969

We refer to the above proceedings and to the discussions which have taken place between us

since the appearance in Court on Monday, the 3rd November.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969 No. 16 Exhibit "H. de L.1" 13th January 1970 (cont'd)

As you know, the allegations of cruelty and sodomy contained in the draft Petition exhibited to your Client's Affidavit in the above proceedings are strenuously denied and if proceeded with will be vigorously defended. Our client would further cross petition on the basis of cruelty on the part of your client and in such event we are informed that the discretion of the Court would be applied for.

It is apparent that it would be a matter of the most serious prejudice to the future of the child of the marriage if these very serious allegations have to be litigated in contested proceedings and that it must be in the interest of all parties concerned for this to be avoided.

With these considerations in mind, we are instructed to inform you that if the custody and financial arrangements referred to below are acceptable to your client, our client would be prepared to make available in due course the information which would have been disclosed in the discretion statement and would not seek to defend or cross petition in a suit based solely on that information.

The proposed custody and financial arrangements are as follows :-

- (1) Your client to have the custody of the child of the marriage.
- (2) Our client to have access to the child of the marriage at all reasonable times.
- (3) Your client be permitted to take the child of the marriage out of the jurisdiction to live in Germany, England or elsewhere as she may decide and our client will meet the costs of exercising his rights or access either by visiting the child himself or by providing the passage money for the child to visit him when he is old enough to travel alone.
- (4) Our client will settle the sum of HK\$500,000 on trust for the child of the marriage contingently upon the child

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 16  
Exhibit  
"H. de L.1"  
13th January  
1970  
(cont'd)

attaining the age of 25 years with power for the trustees in the meantime to pay income and/or capital for the child's advancement, benefit or education as the trustees may think fit. The trustees are to be an independent trust company (The Hong Kong & Shanghai Bank, Hong Kong Trustee Limited has been suggested) jointly with our client. In the event that the child of the marriage does not attain the age of 25 years, the trust fund reverts to our client.

10

- (5) Our client will provide a suitable furnished residence for your client during her life, such residence to be purchased in the names of independent trustees in trust for your client for life and thereafter to the child of the marriage contingently upon his attaining the age of 25 years, failing which the property will revert to our client. It is agreed that the house will be purchased either in Germany or in England according to where your client decide to live and that the house may be changed from time to time at your client's reasonable request. Your client will be responsible for payment of repairs, outgoings and replacements of the furniture, fittings and fixtures out of her own funds.

20

30

- (6) The exact terms of the above two trusts will be settled between us after we have both had a full opportunity of looking into the relevant taxation position both in Germany and England and it is agreed that if it would be advantageous so to do, a company will be established in a suitable jurisdiction to own the house, the trustees owning the shares in the company.

40

- (7) Your client will be paid a lump sum of HK\$850,000 by way of settlement of all claims for maintenance on condition that she applies to the Court for her application for maintenance to be dismissed.

- (8) Pending the conclusion of the proceedings, your client will remain at



the apartment in Estoril Court and our client will continue to pay the expenses and your client's monthly allowance as hitherto.

- 10 (9) The existing wardship proceedings to be withdrawn and our client's Affidavit filed on the 3rd November 1969 to be removed from the Court records on the basis that it does not comply with the practice requirements for Affidavits in such proceedings.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969

No. 16  
Exhibit  
"H. de L.1"  
13th January  
1970.  
(cont'd)

We should be obliged if you would kindly confirm as soon as possible your client's agreement to the above proposals whereupon it will be necessary to issue an originating summons under Rule 2A of the Matrimonial Causes Rules to obtain the approval of the Court thereto and to the filing of the Divorce Petition on the grounds indicated above.

20

Yours faithfully,

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 17  
Affidavit of  
Hannelore de  
Lasala dated  
14th January  
1970

No. 187 of 1969

IN THE SUPREME COURT OF  
HONG KONG.

DIVORCE JURISDICTION

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IN THE MATTER OF A PETITION  
BY HANNELORE DE LASALA FOR  
DISSOLUTION OF HER MARRIAGE  
WITH ERNEST FERDINAND DE  
LASALA

BETWEEN

10

HANNELORE DE LASALA  
Applicant

and

ERNEST FERDINAND DE LASALA  
Respondent

---

A F F I D A V I T

---

Filed on 13.1.70 at 12.20pm

JOHNSON, STOKES & MASTER  
SOLICITORS &C.  
HONG KONG.

20

No. 17

AFFIDAVIT OF HANNELORE de LASALA

---

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 187 of 1969

No. 17  
Affidavit of  
Hannelore de  
Lasala dated  
14th January  
1970

IN THE SUPREME COURT OF HONG KONG

DIVORCE JURISDICTION

MISCELLANEOUS PROCEEDINGS

IN THE MATTER OF A PROPOSED PETITION  
OF HANNELORE DE LASALA FOR THE  
DISSOLUTION OF HER MARRIAGE WITH  
ERNEST FERDINAND DE LASALA

10

BETWEEN:

HANNELORE DE LASALA Applicant

and

ERNEST FERDINAND DE LASALA Respondent

---

I, HANNELORE de LASALA of 41B Estoril Court  
Victoria in the Colony of Hong Kong feme covert,  
the above-named applicant make oath and say as  
follows :-

20

1. The above-named Respondent and I were  
married at the Hong Kong Marriage Registry, City  
Hall, Victoria Hong Kong on the 16th February  
1966 and we have one child Ernest Edward born on  
28th August, 1966. The Respondent has a son  
Robert Ernest born on the 5th January, 1960 who  
is his child by his former wife.

30

2. On the 31st October, 1969 I commenced  
proceedings against the Respondent in this  
Honourable Court in its original Miscellaneous  
Jurisdiction being Action Number 207 of 1969 and  
on the 1st November 1969 in its original Divorce  
Jurisdiction being Suit Number 187 of 1969 and I  
crave leave to refer to the pleadings therein.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969 No. 17 Affidavit of Hannelore de Lasala dated 14th January 1970

3. After certain preliminary interlocutory applications in the Wardship Proceedings discussions took place between my Solicitors and the Respondent's Solicitors concerning the future conduct of those proceedings and my said divorce proceedings.

4. On the 11th December 1969 the Respondent's said Solicitors sent to my Solicitors a letter a xerox copy whereof is now produced and shewn unto me marked "H. de L.1".

10

5. I have taken the advice of my Solicitors and Counsel on the contents of "H. de L.1" aforesaid and I have been advised and I verily believe that it would be contrary to the interests of the said children and myself if I were to insist on pursuing my remedy in the Divorce Jurisdiction of this Honourable Court on the grounds of cruelty and sodomy, which allegations would be defended. I humbly submit to this Honourable Court that it would benefit none of the parties and would be harmful to the said children if such matters were to be litigated publicly when there is an alternative ground upon which I could obtain a decree of dissolution of my marriage with the Respondent on the basis of an undefended suit.

20

6. I have also discussed with my said Solicitors and my Counsel the financial provisions that are being offered by the Respondent and I am advised and I verily believe that the offers being made by the Respondent are just and proper having regard to our respective means.

30

7. (a) I crave leave to refer to my affidavit sworn in my said Divorce Proceedings on the 13th day of January 1970.

(b) I am informed by my said Solicitors and I verily believe that my petition in those proceedings has not yet been served on the Respondent.

8. In those circumstances my and the Respondent's said Solicitors and our respective Counsel held further discussions and as a result whereof the aforesaid agreement and arrangements have been modified as follows :-

40

(a) Instead of applying to this Honourable Court for leave to amend the said Petition

to include the allegation of adultery, I will seek its leave to file a second Petition on the sole ground of adultery.

(b) If such leave be granted, I will thereupon ask that the prayer of my said first Petition be stayed.

(c) In due course and at a convenient and proper time after it has been served on the Respondent I will apply for my said first Petition to be dismissed by consent.

(d) I will prosecute to a hearing my said Petition on the ground of adultery on the basis of the agreement and arrangements set forth on pages 2 and 3 of "H. de L.1" aforesaid.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969  
No. 17  
Affidavit of Hannelore de Lasala dated 14th January 1970

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9. I humbly submit to this Honourable Court that the said agreement and arrangements as modified are also just and proper, are in accordance with the justice of the case and are designed to avoid a waste of the time of this Honourable Court and of costs and I humbly crave leave of this Honourable Court to implement the same.

SWORN at the Courts of Justice Victoria in the Colony of Hong Kong this 14th day of January, 1970 } (sd) Hannelore de Lasala

Before me,

(FCK Min Kwong)  
A Commissioner of Oaths

30

This Affidavit is filed on behalf of the Applicant.

No. 18

EXHIBIT "H. de L. 1"

No. 18  
Exhibit  
"H. de.L.1"

11th December, 1969

Messrs. Johnson, Stokes & Master,  
Hong Kong Bank Building,  
HONG KONG.

Attn: Mr. Tisdall

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969

Dear Sirs,

re: Lasala -v- Lasala  
O.J.M.P. 207 of 1969

No. 18  
Exhibit  
"H. de.L.1"  
(cont'd)

We refer to the above proceedings and to the discussions which have taken place between us since the appearance in Court on Monday, the 3rd November.

As you know, the allegations of cruelty and sodomy contained in the draft Petition exhibited to your client's Affidavit in the above proceedings are strenuously denied and if proceeded with will be vigorously defended. Our Client would further cross petition on the basis of cruelty on the part of your client and in such event we are informed that the discretion of the Court would be applied for.

10

It is apparent that it would be a matter of the most serious prejudice to the future of the child of the marriage if these very serious allegations have to be litigated in contested proceedings and that it must be in the interest of all parties concerned for this to be avoided.

20

With these considerations in mind, we are instructed to inform you that if the custody and financial arrangements referred to below are acceptable to your client, our client would be prepared to make available in due course the information which would have been disclosed in the discretion statement and would not seek to defend or cross petition in a suit based solely on that information.

30

The proposed custody and financial arrangements are as follows :-

- (1) Your client to have the custody of the child of the marriage.
- (2) Our client to have access to the child of the marriage at all reasonable times.
- (3) Your client be permitted to take the child of the marriage out of the jurisdiction to live in Germany, England or elsewhere as she may decide and our client will meet the costs of exercising his rights or access either

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by visiting the child himself or by providing the passage money for the child to visit him when he is old enough to travel alone.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969

No. 18  
Exhibit  
"H. de L.1"  
(cont'd)

10

- (4) Our client will settle the sum of HK\$500,000 on trust for the child of the marriage contingently upon the child attaining the age of 25 years with power for the trustees in the meantime to pay income and/or capital for the child's advancement, benefit or education as the trustees may think fit. The trustees are to be an independent trust company (The Hong Kong & Shanghai Bank, Hong Kong Trustee Limited has been suggested) jointly with our client. In the event that the child of the marriage does not attain the age of 25 years, the trust fund reverts to our client.

20

- (5) Our client will provide a suitable furnished residence for your client during her life, such residence to be purchased in the names of independent trustees in trust for your client for life and thereafter to the child of the marriage contingently upon his attaining the age of 25 years, failing which the property will revert to our client. It is agreed that the house will be purchased either in Germany or in England according to where your client decide to live and that the house may be changed from time to time at your client's reasonable request. Your client will be responsible for payment of repairs, outgoings and replacements of the furniture, fittings and fixtures out of her own funds.

30

- (6) The exact terms of the above two trusts will be settled between us after we have both had a full opportunity of looking into the relevant taxation position both in Germany and England and it is agreed that if it would be advantageous so to do, a company will be established in a suitable jurisdiction to own the house, the trustees owning the shares in the company.

40

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969  
No. 18  
Exhibit  
"H. de L.1"  
(cont'd)

- (7) Your client will be paid a lump sum of HK\$850,000 by way of settlement of all claims for maintenance on condition that she applies to the Court for her application for maintenance to be dismissed.
- (8) Pending the conclusion of the proceedings, your client will remain at the apartment in Estoril Court and our client will continue to pay the expenses and your client's monthly allowance as hitherto. 10
- (9) The existing wardship proceedings to be withdrawn and our client's Affidavit filed on the 3rd November 1969 to be removed from the Court records on the basis that it does not comply with the practice requirements for Affidavits in such proceedings.

We should be obliged if you would kindly confirm as soon as possible your client's agreement to the above proposals whereupon it will be necessary to issue an originating summons under Rule 2A of the Matrimonial Causes Rules to obtain the approval of the Court thereto and to the filing of the Divorce Petition on the grounds indicated above. 20

Yours faithfully,

(sd.) Deacons

No. 19  
Summons  
ex parte  
dated 14th  
January  
1970

No. 19

SUMMONS EX PARTE

1969, No. 187

SUMMONS EX PARTE

LET the Petitioner or her solicitor attend the Honourable Mr. Justice Briggs at his Chambers in the Supreme Court in Victoria Hong Kong on Friday the 16th day of January 1970 at 9.30 o'clock in the forenoon on the application by the Petitioner for Orders that :-



1. She be at liberty to file a further petition notwithstanding that the petition filed herein on the 1st day of November 1969 has not been dismissed or otherwise disposed of by a final Order.
2. The prayer of the first petition be stayed.
3. Such consequential further or other directions or orders be made or given as may be just or necessary.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 19  
Summons  
ex parte  
dated 14th  
January  
1970

10

Dated the 14th day of January 1970.

E.S. HAYDON                      L.S.  
Registrar

This summons is issued by Messrs.  
Johnson, Stokes & Master of  
403-413 Hong Kong Bank Building,  
Victoria, Hong Kong.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

No. 19  
Summons  
ex parte  
dated 14th  
January  
1970.  
(cont'd)

16 Jan 1970 (9.00 - 9.30 a.m.)  
Coram: Briggs J. In Chambers  
Jackson - Lipkin (J.S. and M)  
for petitioner order in terms of  
Para 1 (see endorsement on MP6/70)

G.G. BRIGGS  
Puisne Judge.

No. 187 of 1969.

IN THE SUPREME COURT OF  
HONG KONG

DIVORCE JURISDICTION

BETWEEN :

HANNELORE DE LASALA  
Petitioner

and

ERNEST FERDINAND DE LASALA  
Respondent

10

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S U M M O N S

---

Filed on 14.1.70 at 4.30 pm.

Johnson, Stokes &  
Master.  
Solicitors &c.,

No. 20

JUDGMENT OF THE HON. MR. JUSTICE  
BRIGGS

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 187 of 1969

1969, No. 187

Coram: Briggs, J. in Chambers

No. 20  
Judgment of the  
Hon. Mr.  
Justice Briggs.  
16th January  
1970

J U D G M E N T

10 The parties were married in Hong Kong in  
February 1966 and there is a child of the marriage  
who is not yet four years of age. The respondent,  
the husband, was married previously and there is  
a child of that marriage aged ten.

The petitioner filed a petition for divorce  
on November 1st, 1969 and at about the same time  
took proceedings to make the child of the marriage  
a ward of court.

20 The grounds for bringing the petition are  
cruelty and sodomy. After the petition was filed  
but before it was served upon the respondent  
discussions took place between the solicitors  
instructed by both parties. From these discussions  
it was apparent that the petition would be  
strenuously contested and that a cross-petition  
would be filed on the grounds of cruelty. In that  
event the discretion of the court would be applied  
for by the respondent in respect of adultery then  
unknown to the petitioner.

30 The parties have reached an agreement covering  
the whole of the issues in this case including the  
custody of the child of the marriage and financial  
arrangements. Briefly the terms of the agreement  
are that the respondent shall disclose to the  
petitioner the information which would have been  
contained in his discretion statement and will not  
defend on cross-petition in a suit based solely on  
that information. The wife will base her petition  
solely on the ground of the adultery so disclosed  
and she will not proceed with the other  
allegations. The wife will have the custody of the  
child of the marriage with reasonable access to the  
40 respondent at all times. The wardship proceedings  
will be discontinued.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No.187 of 1969

No. 20  
Judgment of the Hon. Mr. Justice Briggs. 16th January 1970.  
(cont'd)

In addition the respondent is to establish two trusts, one for the petitioner and one for the child of the marriage. A generous sum is to be paid to the petitioner who agrees not to include a prayer for maintenance in her petition.

The parties have come before the court by originating summons under section 15(2) of the Matrimonial Causes Ordinance and in effect ask for the leave of the court to implement this agreement.

Since the enactment of this section, collusion has ceased to be an absolute bar to relief. In Nash v. Nash (1) Scarman J. said this :-

10

"Collusion which contains no genuine offence will no longer debar the court from proceeding to decree: but collusion which is a genuine offence remains objectionable and, so long as it taints a suit, will be treated by the court as an effective bar to relief."

In effect this means that the court has been given a power to decide what is objectionable and what is not objectable collusion. In the exercise of this power the court has a complete discretion but this must of course be exercised in accordance with the authorities.

20

The leading authority as to the exercise of the discretion of the court is Head v. Cox (2). The following is a passage from the judgment of Wrangham J. in that case, a passage which was quoted with approval by Willmer L.J. in Gosling v. Gosling (3) :-

30

"It is sufficient for me in this case to say that it seems to me that in considering whether or not discretion should be exercised in respect of an agreement of this character, the first matter to which I should direct my attention is the question whether or not the result of such an agreement is likely to be that a result is arrived at in the proceedings contrary to the justice of the case. In other words, I must be satisfied that the court will not, as a result of the agreement, be granting relief for a matrimonial offence which has not occurred, or to a party who would not receive relief if the whole of the facts were before the court. Secondly, I think I should direct my attention to the question whether any

40

(1) (1965) P. at 269.  
(3) (1968) P. at 12.

(2) (1964) P.228.

children of the family, in particular any infant children, might be prejudiced by what was being done. Thirdly, I think I should satisfy myself that the parties in the case have treated the court with complete and unreserved candour."

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969

No. 20  
Judgment of the Hon. Mr. Justice Briggs.  
16th January 1970.  
(cont'd)

10 In Gosling v. Gosling (3) Willmer L.J. pointed out that there is no question of divorce by consent. That is not the point. A divorce will not be granted unless a matrimonial offence is proved. And a bargain between the parties will not be a non-objectionable bargain simply because both the parties have agreed to its terms.

20 In the case before me counsel said that the pleas in the petition were in his opinion proper pleas. If the petitioner were to proceed and the respondent were to file an answer and cross-petition, he would have to file a discretion statement. At that stage it would be open to the wife to apply to amend her petition to include an allegation of the adultery disclosed in the discretion statement as a further ground in her petition. If this application was successful, which it very probably would be, there would almost certainly be no answer to the wife's petition so amended.

30 In my view the intended agreement between the parties in this case is not objectionably collusive. The parties have been completely candid. The application has been made promptly and in the proper form supported by very full affidavits. The marriage is of very short duration. There is the position of the child to be considered. It clearly emerges from the judgment of M. v. M. (No. 2) (4) that the court will not condone a bargain which contains any element of extortion by one of the parties. The wife is in a very strong position but I am satisfied that there is not the slightest  
40 evidence that her position has been used to extort any advantage from the husband. The husband is in a much less strong position and is perhaps not giving up so much as the wife. The agreement contains very proper and extensive arrangements for the support of the wife and child of the marriage. The result of the agreement will be that the petition will be an undefended petition. If the petition is tried in its present form as a defended

(3) (1968) P. at p.19

(4) (1967) 1 All E.R.  
p.876.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969 No. 20 Judgment of the Hon. Mr. Justice Briggs. 16th January 1970.  
(cont'd)

suit there will be considerable publicity of the evidence called to support the grounds for the petition. This would be objectionable to the parties and, since it would be a matter of record, to the child of the marriage as well, when he is old enough to understand. It is in the interests of all parties therefore that the agreement be implemented. And in my view the implementation of the agreement will not result in a decision "contrary to the justice of the case" in the words of Willmer L.J. which I have quoted above.

10

I therefore grant leave to implement the agreement proposed. This of course does not bind the trial judge. This is made clear in Gosling v. Gosling (3). In that case Willmer L.J. when dealing with an agreement similar to that now before me, said :-

"But I would venture to emphasise once again that our conclusion on this preliminary application does not in any way bind the trial judge. It will still be his duty to decide whether, upon the evidence given, the wife makes out her case. It will still be for him, in accordance with the duty imposed by the statute on the court, to inquire into all the circumstances of the case, and in particular whether any collusion exists between the parties, and to consider whether there are any circumstances which call for the exercise of discretion."

20

30

In an ex parte summons the petitioner further asks the court for leave to file a further petition and that the prayer of the present petition be stayed.

This seems to me to be a matter of common sense. The further petition will be a petition based on the ground of the husband's adultery and will be filed as soon as the necessary details disclosed to the petitioner by the respondent.

It would be possible to achieve the same result by an amendment to the present petition adding adultery as an additional ground. Then, when the petition came up for trial, the petitioner could elect to call no evidence of the grounds alleged in the present petition. However this would mean that a certain publicity would be given to those grounds which is undesirable, the

40

(3) (1968) P. at p.19.

more especially since the allegations are not to be proceeded with.

There will be leave to the petitioner therefore to file a further petition. The prayer in the present petition will be stayed. There will be leave to the parties to implement the agreement arrived at subject to the discretion of the trial judge. I order that the petition be set down in my list. And there will be an order for a speedy trial.

(G.G. Briggs)  
Puisne Judge  
16th January, 1970.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No.187 of 1969

No. 20  
Judgment of  
the Hon. Mr.  
Justice Briggs.  
16th January  
1970.  
(cont'd)

No. 21

ORDER OF HON. MR. JUSTICE  
BRIGGS

1969, No. 187

BEFORE THE HONOURABLE MR. JUSTICE BRIGGS IN  
CHAMBERS

No. 21  
Order of Hon.  
Mr. Justice  
Briggs.  
16th January  
1970.

O R D E R

Upon the application of the Petitioner and upon hearing Counsel for the Petitioner and Counsel for the Respondent and upon reading the affidavit of Hannelore de Lasala filed herein on the 13th day of January 1970 and by consent IT IS ORDERED that :-

1. The Petitioner be at liberty to file a further Petition notwithstanding that the Petition filed hereon on the 1st day of November 1969 has not been dismissed or otherwise disposed of by a final Order;
2. Upon the receipt of this Honourable Court of the Acknowledgment of Service of the Petition filed herein on the 1st day of November 1969 the prayer in such Petition be stayed;
3. The summons filed herein on the 12th day of January 1970 be withdrawn;

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 187 of 1969 No. 21  
Order of Hon. Mr. Justice Briggs.  
16th January 1970.  
(cont'd)

4. The said further Petition be reserved to the Honourable Mr. Justice Briggs; and

5. The costs of this application be reserved. Certificate for speedy trial. Certificate for Counsel.

Dated the 16th day of January, 1970.

S.H. Mayo  
Assistant Registrar.

No. 22  
Memorandum of Appearance  
10th February 1970.

No. 22

MEMORANDUM OF APPEARANCE

10

FORM 5

MEMORANDUM OF APPEARANCE

(RESPONDENT SPOUSE)

IN THE SUPREME COURT OF HONG KONG.  
DIVORCE JURISDICTION. CASE NO. 187 OF 1969

Between HANNELORE de LASALA Petitioner  
and ERNEST FERDINAND de LASALA Respondent

1. Have you received and read the Petition for divorce by your wife/husband and the Notice of Petition which are delivered with this Form? 20

2. On what date and at what address did you receive them?

3. Are you the person named as the Respondent in the Petition?

4. Do you intend to defend the case at the hearing? (Answer "Yes" or "No") YES

5. Even if you do not wish to defend the case :-



A  
Do you wish to be heard  
as to other claims made  
in the Petition,  
namely :-

- (1) Costs. YES  
(2) Custody of the  
children. YES.  
(3) Maintenance of  
the children. YES  
(4) Alimony. YES  
(5) Maintenance YES  
(6) A secured  
provision YES

B  
Do you wish to make  
any application on  
your own account,  
namely :-

- (1) Access to the  
children. YES  
(2) Custody of  
the children NO  
(3) Maintenance of  
the children NO  
(4) Alimony. NO  
(5) Maintenance NO

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No.187 of 1969  
No. 22  
Memorandum of  
Appearance  
10th February  
1970.  
(cont'd)

(Answer "Yes" or "No" against each item)

Note - (i) If you intend to file an answer  
claiming any relief on your own account, you must  
include in it any claim you may wish to make for  
the maintenance of the children, alimony, or  
maintenance.

(ii) If you wish to claim custody of any  
child, you must comply with the instructions in the  
accompanying Notice of Petition.

(iii) If you wish (either in opposing any of  
the claims under A or in supporting any claim  
you may make under B) to make against the  
petitioner any charge which may be a defence to the  
petition, you must, even if you do not wish to  
defend the petition, file an Answer and support it  
at the hearing.

6. What are your proposals for the care and  
upbringing of the children? (here set out full  
particulars of your proposals unless you intend to  
include them in your Answer or do not wish to claim  
custody).

7. What is your address to which communications  
should be sent? (It must be in Hong Kong).  
c/o Messrs. Deacons 601 Union House Hong Kong.

Dated the Tenth day of February 1970

(Signed)

In the Supreme Court of Hong Kong. Divorce Jurisdiction No.187 of 1969

No. 22  
Memorandum of Appearance  
10th February 1970.  
(cont'd)

Note - If you intend to instruct a solicitor to act for you in these proceedings, give this form to him. In any event, have the space below blank.

To be completed only by the Respondent's solicitor.

On the instructions of my/our client, enter an appearance in the terms of the above Memorandum for ERNEST FERDINAND de LASALA the Respondent in this case.

(Signed) DEACONS

10

(Address) 601 Union House,  
For Service Chater Road, Victoria,  
Hong Kong.

Note - If this Form is used, both copies must be completed and sent to the Registry.

Filed on 26.2.70 at 12.15 p.m.

No. 23  
Order of Hon. Mr. Justice Briggs  
25th March 1970

No. 23

ORDER OF HON. MR. JUSTICE  
BRIGGS

1969, No. 187

BEFORE THE HONOURABLE MR. JUSTICE BRIGGS IN CHAMBERS

20

O R D E R

Upon the Application of the Petitioner and upon hearing the Solicitors for the Petitioner and the Solicitors for the Respondent and by consent IT IS ORDERED that the Petitioner's Petition be dismissed with costs to the Petitioner.

Dated the 25th day of March, 1970.

(sd.) B.L. Jones  
Assistant Registrar.

30

No. 24

ORIGINATING SUMMONS

1970, No. 6

ORIGINATING SUMMONS

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings No. 6 of 1970

No. 24 Originating Summons dated 14th January 1970

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20

LET Ernest Ferdinand de Lasala of 41B Estoril Court, Victoria in the Colony of Hong Kong attend the Honourable Mr. Justice Briggs at his Chambers at the Supreme Court in Victoria Hong Kong on Friday the 18th day of January, 1970 at 9.30 o'clock in the forenoon on the hearing of an Application by the above-named Hannelore de Lasala that the Court do take into consideration for the purposes of Section 15(2) of the Matrimonial Causes Ordinance the agreement and arrangements made between the said Hannelore de Lasala and the said Ernest Ferdinand de Lasala particulars whereof are set forth in the Affidavit to be used in support hereof a copy whereof is served herewith and that the Court do give such directions or orders hereon as to the Court shall deem just or expedient.

You are required to complete the accompanying Form of Acknowledgement of Service and send it to the under-mentioned Solicitor.

If you wish to be heard on the Application you must attend at the time and place above-mentioned and if you do not attend the Court may give such directions as it thinks fit.

30

DATED this 14th day of January, 1970 E.S. HAYDON  
L.S.  
Registrar

THIS SUMMONS was taken out by Johnson, Stokes & Master, 403-413 Hong Kong Bank Building, des Voeux Road Central, Victoria, Hong Kong, Solicitors for the above-named Hannelore de Lasala.

(Sd.) Johnson, Stokes & Master.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
Miscellaneous  
Proceedings.  
No. 6 of 1970

No. 24  
Originating  
Summons dated  
14th January  
1970

16 Jan 1970 (9.00 - 9.30 a.m.)  
Coram: Briggs J. in Chambers

Jackson-Lipkin (J.S. & M) for  
Petitioner / Applicant

Mills-Owens (Deacons) for Res-  
pondent

Leave to present new Petition  
Leave to implement agreement  
subject to discretion of trial judge

Matter to be reserved to me

As soon as acknowledgement of  
service is received, prayer in  
D.J. 187/69 to be stayed.

Order for speedy trial  
Costs reserved  
Certificate for Counsel

(G.G. Briggs)  
Puisne Judge

No. 6 of 1970

IN THE SUPREME COURT OF  
HONG KONG

DIVORCE JURISDICTION

MISCELLANEOUS PROCEEDINGS

IN THE MATTER OF A PROPOSED  
PETITION BY HANNELORE DE  
LASALA FOR THE DISSOLUTION  
OF HER MARRIAGE WITH ERNEST  
FERDINAND DE LASALA

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ORIGINATING SUMMONS

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Filed the 14.1.70 at 3.50 p.m.

Johnson, Stokes &  
Master,  
Solicitors &c.,  
Hong Kong.

No. 25

AFFIDAVIT OF HANNELORE de LASALA

No. 6 of 1970

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
Miscellaneous  
Proceedings.  
No. 6 of 1970

IN THE SUPREME COURT OF HONG KONG

DIVORCE JURISDICTION

MISCELLANEOUS PROCEEDINGS

No. 25  
Affidavit of  
Hannelore de  
Lasala dated  
14th January  
1970

IN THE MATTER OF A PROPOSED PETITION

OF HANNELORE DE LASALA FOR THE

DISSOLUTION OF HER MARRIAGE WITH

10 ERNEST FERDINAND DE LASALA

BETWEEN:

HANNELORE DE LASALA Applicant

and

ERNEST FERDINAND DE LASALA Respondent

I, HANNELORE de LASALA of 41B Estoril Court  
Victoria in the Colony of Hong Kong feme covert,  
the abovenamed applicant make oath and say as  
follows :-

20 1. The abovenamed Respondent and I were married  
at the Hong Kong Marriage Registry, City Hall,  
Victoria Hong Kong on the 16th February 1966 and  
we have one child Ernest Edward born on 28th  
August, 1966. The Respondent has a son Robert  
Ernest born on the 5th January, 1960 who is his  
child by his former wife.

30 2. On the 31st October, 1969 I commenced  
proceedings against the Respondent in this  
Honourable Court in its original Miscellaneous  
Jurisdiction being Action Number 207 of 1969 and  
on the 1st November 1969 in its original Divorce  
Jurisdiction being Suit Number 187 of 1969 and I  
crave leave to refer to the pleadings therein.

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings. No. 6 of 1970

No. 25  
Affidavit of Hannelore de Lasala dated 14th January 1970  
(cont'd)

3. After certain preliminary interlocutory applications in the Wardship Proceedings discussions took place between my Solicitors and the Respondent's Solicitors concerning the future conduct of those proceedings and my said divorce proceedings.

4. On the 11th December 1969 the Respondent's said Solicitors sent to my Solicitors a letter a xerox copy whereof is now produced and shewn unto me marked "H. de L.1".

5. I have taken the advice of my Solicitors and Counsel on the contents of "H. de L.1" aforesaid and I have been advised and I verily believe that it would be contrary to the interests of the said children and myself if I were to insist on pursuing my remedy in the Divorce Jurisdiction of this Honourable Court on the grounds of cruelty and sodomy, which allegations would be defended. I humbly submit to this Honourable Court that it would benefit none of the parties and would be harmful to the said children if such matters were to be litigated publicly when there is an alternative ground upon which I could obtain a decree of dissolution of my marriage with the Respondent on the basis of an undefended suit.

10

20

6. I have also dicussed with my said Solicitors and my Counsel the financial provisions that are being offered by the Respondent and I am advised and I verily believe that the offers being made by the Respondent are just and proper having regard to our respective means.

30

7. (a) I crave leave to refer to my affidavit sworn in my said Divorce Proceedings on the 13th day of January 1970.

(b) I am informed by my said Solicitors and I verily believe that my petition in those proceedings has not yet been served on the Respondent.

8. In those circumstances my and the Respondent's said Solicitors and our respective Counsel held further discussions and as a result whereof the aforesaid agreement and arrangements have been modified as follows :-

40

(a) Instead of applying to this Honourable Court for leave to amend the said Petition

to include the allegation of adultery. I will seek its leave to file a second Petition on the sole ground of adultery.

(b) If such leave be granted, I will thereupon ask that the prayer of my said first Petition be stayed.

(c) In due course and at a convenient and proper time after it has been served on the Respondent I will apply for my said first Petition to be dismissed by consent.

(d) I will prosecute to a hearing my said Petition on the ground of adultery on the basis of the agreement and arrangements set forth on pages 2 and 3 of "H. de L. 1" aforesaid.

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings. No. 6 of 1970

No. 25 Affidavit of Hannelore de Lasala dated 14th January 1970 (cont'd)

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9. I humbly submit to this Honourable Court that the said agreement and arrangements as modified are also just and proper, are in accordance with the justice of the case and are designed to avoid a waste of the time of this Honourable Court and of costs and I humbly crave leave of this Honourable Court to implement the same.

SWORN at the Courts of Justice Victoria in the Colony of Hong Kong this 14th day of January, 1970 } (sd.) Hannelore de Lasala

30

Before me,

(sd.) Fok Hin Kwong

A Commissioner of Oaths

This Affidavit is filed on behalf of the Applicant.

No. 26

EXHIBIT "H.de L.1"

No. 26 Exhibit "H.de.L.1"

11th December, 1969.

Messrs. Johnson, Stokes & Master, Hong Kong Bank Building, HONG KONG.

Attn: Mr. Tisdall

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
Miscellaneous  
Proceedings.  
No. 6 of 1970  
No. 26  
Exhibit  
"H.de.L.1"  
(cont'd)

Dear Sirs,

re: Lasala -v- Lasala  
O.J.M.P. 207 of 1969

We refer to the above proceedings and to the discussions which have taken place between us since the appearance in Court on Monday, the 3rd November.

As you know, the allegations of cruelty and sodomy contained in the draft Petition exhibited to your client's Affidavit in the above proceedings are strenuously denied and if proceeded with will be vigorously defended. Our client would further cross petition on the basis of cruelty on the part of your client and in such event we are informed that the discretion of the Court would be applied for.

10

It is apparent that it would be a matter of the most serious prejudice to the future of the child of the marriage if these very serious allegations have to be litigated in contested proceedings and that it must be in the interest of all parties concerned for this to be avoided.

20

With these considerations in mind, we are instructed to inform you that if the custody and financial arrangements referred to below are acceptable to your client, our client would be prepared to make available in due course the information which would have been disclosed in the discretion statement and would not seek to defend or cross petition in a suit based solely on that information.

30

The proposed custody and financial arrangements are as follows :-

- (1) Your client to have the custody of the child of the marriage.
- (2) Our client to have access to the child of the marriage at all reasonable times.
- (3) Your client be permitted to take the child of the marriage out of the jurisdiction to live in Germany, England or elsewhere as she may decide and our client will meet the costs of

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exercising his rights or access either by visiting the child himself or by providing the passage money for the child to visit him when he is old enough to travel alone.

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings. No. 6 of 1970

No. 26  
Exhibit  
"H.de.L.1"  
(cont'd)

10 (4) Our client will settle the sum of HK\$500,000 on trust for the child of the marriage contingently upon the child attaining the age of 25 years with power for the trustees in the meantime to pay income and/or capital for the child's advancement, benefit or education as the trustees may think fit. The trustees are to be an independent trust company (The Hong Kong & Shanghai Bank, Hong Kong Trustee Limited has been suggested) jointly with our client. In the event that the child of the marriage does not attain the age of 25 years, the trust fund reverts to our client.

20 (5) Our client will provide a suitable furnished residence for your client during her life, such residence to be purchased in the names of independent trustees in trust for your client for life and thereafter to the child of the marriage contingently upon his attaining the age of 25 years, failing which the property will revert to our client. It is agreed that the house will be purchased either in Germany or in England according to where your client decide to live and that the house may be changed from time to time at your client's reasonable request. Your client will be responsible for payment of repairs, outgoings and replacements of the furniture, fittings and fixtures out of her own funds.

30 (6) The exact terms of the above two trusts will be settled between us after we have both had a full opportunity of looking into the relevant taxation position both in Germany and England and it is agreed that if it would be advantageous so to do, a company will be established in a suitable jurisdiction to own the house, the trustees owning the shares in the company.

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings. No. 6 of 1970

No. 26 Exhibit "H.de.L.1" (cont'd)

- (7) Your client will be paid a lump sum of HK\$850,000 by way of settlement of all claims for maintenance on condition that she applies to the Court for her application for maintenance to be dismissed.
- (8) Pending the conclusion of the proceedings, your client will remain at the apartment in Estoril Court and our client will continue to pay the expenses and your client's monthly allowance as hitherto.
- (9) The existing wardship proceedings to be withdrawn and our client's Affidavit filed on the 3rd November 1969 to be removed from the Court records on the basis that it does not comply with the practice requirements for Affidavits in such proceedings.

10

We should be obliged if you would kindly confirm as soon as possible your client's agreement to the above proposals whereupon it will be necessary to issue an originating summons under Rule 2A of the Matrimonial Causes Rules to obtain the approval of the Court thereto and to the filing of the Divorce Petition on the grounds indicated above.

20

Yours faithfully,

(sd.) Deacons

No. 27 Memorandum of Appearance dated 18th January 1970

No. 27

MEMORANDUM OF APPEARANCE

30

1970, No. 6

MEMORANDUM OF APPEARANCE

Please enter an appearance for the Respondent, ERNEST FERDINAND DE LASALA in this Action.

Dated the 15th day of January, 1970.

(Sd.) Deacons  
Solicitors for the Respondent

Whose address for service is Messrs. Deacons of 601, Union House, Chater Road, Victoria, Hong Kong, Solicitors for the Respondent.

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings. No. 6 of 1970

No. 27  
Memorandum of Appearance dated 18th January 1970 (cont'd)

No. 28

AFFIDAVIT OF RAYMOND EDWARD  
MOORE

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No. 28  
Affidavit of Raymond Edward Moore dated 18th January 1970

1970, No. 6

AFFIDAVIT OF RAYMOND EDWARD  
MOORE

---

10 I, RAYMOND EDWARD MOORE of 601, Union House, Victoria, Hong Kong, Solicitor and Notary Public, make oath and say as follows :-

1. I am a partner in the firm of Messrs. Deacons, Solicitors and Notaries and have the conduct of these proceedings on behalf of the Respondent.

20 2. The Respondent is at present in Australia on business and I have his express authority by long distance telephone to make and file this Affidavit in these proceedings.

3. I have read the Affidavit of the Applicant sworn and filed in these proceedings on the 14th January 1970, the Affidavit of the Applicant sworn and filed in Divorce Action No. 187 of 1969 on the 13th January 1970 referred to in Paragraph 7(a) of the first mentioned affidavit and also the affidavits of the Applicant and the Respondent filed in Original Jurisdiction Miscellaneous Proceedings Action No. 207 of 1969.

30 4. I have been given by the Respondent details of his assets and means and on the facts and circumstances of this case known to me, I verily believe that the amounts offered by the Respondent to the Applicant

In the Supreme Court of Hong Kong. Divorce Jurisdiction Miscellaneous Proceedings. No.6 of 1970  
No. 28  
Affidavit of Raymond Edward Moore dated 18th January 1970  
(cont'd)

and for the child of the marriage as set forth in the letter written by me to the Applicant's solicitors (Exhibit "H. de L. 1" in the Applicant's affidavit sworn and filed herein on the 14th January 1970) are no less than this Honourable Court would properly order if the Applicant were to succeed in contested proceedings against the Respondent for dissolution of marriage and maintenance.

5. As stated in the Respondent's affidavit sworn and filed on the 3rd November 1969 in Original Jurisdiction Action No. 207 of 1969 the allegations of cruelty and sodomy made against the Respondent are strongly denied. It is within my own knowledge because I have already received instructions to the effect that, if those allegations were persisted in as grounds for dissolution of marriage, the proceedings would be vigorously contested and Leading Council would be brought from London to represent the Respondent in such proceedings.

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6. I verily believe that such contested proceedings, whatever their outcome, would not be in the best interests of either party or of the children of the family. They would necessarily involve a protracted and unpleasant investigation into the most intimate details of the parties' marital relationship and would in all likelihood result in great bitterness of feeling and harmful publicity both of which would prejudice the children of the marriage whose future must be affected if the relationship between his parents, after a divorce, is one of hostility and ill-feeling.

30

7. The marriage has irretrievably broken down and it is apparent that there is no likelihood of reconciliation particularly having regard to the allegations which have been made. I verily believe that the arrangements referred to in the Application to this Honourable Court in these proceedings are wholly proper and in the best interests of the child of the marriage and of the parties themselves and on behalf of the Respondent I respectfully support the Application for leave to implement the said agreement and arrangements and to proceed in the manner set forth in the Applicant's said affidavit sworn and filed herein on the 14th January 1970.

40

SWORN at the Courts of Justice, )  
Victoria, Hong Kong, this 15th )  
day of January, 1970. )

(sd.) Raymond  
E. Moore

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
Miscellaneous  
Proceedings.  
No. 6 of 1970

Before me,

(sd.) C.W. Chan

No. 28  
Affidavit of  
Raymond Edward  
Moore dated  
18th January  
1970  
(cont'd)

A Commissioner for Oaths.

(This Affidavit is filed on behalf of the  
Respondent).

No. 29

No. 29  
Order of Hon.  
Mr. Justice  
Briggs dated  
16th January  
1970

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ORDER OF HON. MR. JUSTICE BRIGGS

BEFORE THE HONOURABLE MR. JUSTICE BRIGGS IN  
CHAMBERS

O R D E R

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Upon the application of Hannelore de  
Lasala by Summons dated the 14th day of January  
1970 and upon hearing Counsel for Hannelore de  
Lasala and Counsel for Ernest Ferdinand de Lasala  
and upon reading the Affidavit of Hannelore de  
Lasala filed herein on the 14th day of January  
1970 and the affidavit of Raymond Edward Moore  
filed herein on the 15th day of January 1970 and  
by consent IT IS ORDERED that the parties be at  
liberty to implement the agreement and  
arrangements made between them subject to the  
discretion of the trial judge and that the costs  
of this application be reserved to the trial  
judge. Certificate for Counsel.

Dated the 16th day of January 1970.

30

S.H. Mayo L.S.  
Assistant Registrar.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 30

PETITION WITH ENDORSEMENT

No. 30  
Petition dated  
23rd January  
1970 with  
endorsement  
dated 23rd  
May 1970

1970, No. 14

P E T I T I O N

TO the Supreme Court of Hong Kong

The 23rd day of January, 1970.

The Petition of Hannelore de Lasala sheweth  
that :-

1. On the 17th day of February 1966 your  
Petitioner then Hannelore Jonderny spinster was  
lawfully married to Ernest Ferdinand Perez de  
Lasala whose previous marriage had been dissolved  
(hereinafter called "the Respondent") at the Hong  
Kong Marriage Registry, City Hall, Victoria in the  
Colony of Hong Kong. 10

2. After their marriage your Petitioner and the  
Respondent cohabited at 41B Estoril Court, Victoria  
aforesaid.

3. There are now living 2 children of the family  
that is to say :- 20

(a) One child of the Respondent's said former  
marriage whom your Petitioner accepted as a  
child of the family, namely Robert Ernest born  
on the 5th day of January, 1960.

(b) One child of the marriage namely Ernest  
Edward born on the 28th day of August 1966.

4. Your Petitioner is now living at 41B Estoril  
Court aforesaid.

5. The Respondent who is a Company Director and  
whose permanent address in Hong Kong is 41B Estoril  
Court aforesaid is now living at an address in the  
Commonwealth of Australia unknown to your Petitioner. 30

6. Both your Petitioner and the Respondent are  
domiciled in Hong Kong.

7. (a) (i) On the 31st day of October 1969 your

Petitioner issued an Originating Summons out of the Registry of this Honourable Court whereby the said child Ernest Edward became a Ward of this Honourable Court.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

(ii) On the said 31st day of October and on the 3rd day of November 1969 the Honourable Mr. Justice Morley-John made certain Interim Orders in respect of the said child.

No. 30  
Petition dated 23rd January 1970 with endorsement dated 23rd May 1970  
(cont'd)

(iii) At the date hereof the said Originating Summons has not been heard.

(b) (i) On the said 1st day of November 1969 your Petitioner filed a Petition in this Honourable Court (hereinafter called "the first Petition") praying for the dissolution of her said marriage.

(ii) At the date of the presentation hereof the first Petition has not been heard.

(c) On the 16th day of January 1970 the Honourable Mr. Justice Briggs :-

(i) Granted your Petitioner leave to present this Petition notwithstanding that the first Petition had not been dismissed or otherwise disposed of by a final Order.

(ii) Granted leave to your Petitioner and the Respondent to implement an Agreement and certain arrangements concerning the prosecution of the first and the presentation of this Petition full details hereof were put before this Honourable Court on Affidavit.

(iii) Ordered that the prayer of the first Petition be stayed upon the receipt by this Honourable Court of an acknowledgement of service of the first Petition by the Respondent.

(iv) Made certain consequential and other Orders and Directions concerning the prosecution of the first and the presentation of this Petition.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 30  
Petition dated 23rd January 1970 with endorsement dated 23rd May 1970  
(cont'd)

(d) Save as aforesaid there have been no proceedings previous hereto in any Court with reference to the said marriage or since the celebration of the said marriage with reference to the said children.

8. The Respondent since the celebration of the marriage has committed adultery with Gael McQueen (hereinafter called "the woman named").

9. Between the months of March and April 1969 the Respondent and the woman named frequently committed adultery together as and when opportunity offered on dates and at times unknown to your Petitioner at 27 Waruda Street, Kirribilli, Sydney, New South Wales in the said Commonwealth of Australia.

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10. Your Petitioner has in no way been accessory to or connived at or condoned the said adultery.

11. The Respondent is in possession of capital and in receipt of income the exact details of which are unknown to your Petitioner.

12. It is your Petitioner's present intention that :-

20

(a) the said child Robert Ernest should continue to live with the mother of the Respondent and to be maintained by him as heretofore.

(b) the said child Ernest Edward should continue to live with your Petitioner and to be maintained by the Respondent.

13. (a) Your Petitioner and the Respondent have agreed and made arrangements concerning the future conduct of this suit and of the first Petition, the support of the Petitioner and the said child Ernest Edward by the Respondent and the care control and welfare of the said child Ernest Edward full details whereof as hereinbefore appears have been put before this Honourable Court on Affidavit.

30

(b) Save as aforesaid there is no agreement or arrangement made or proposed to be made between the parties hereto in contemplation of or in connection with these proceedings.

40



14. This Petition is neither presented nor prosecuted in collusion with the Respondent or the woman named.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

WHEREFORE YOUR PETITIONER PRAYS that :-

1. Her marriage may be dissolved.
2. The Respondent may be condemned in the costs of and incidental to this suit.
3. (A) Such Orders may be made as may be necessary to secure the observance by the Respondent of the aforesaid agreement and arrangements concerning the maintenance and support of your Petitioner and of the said child Ernest Edward and the custody of the said child Ernest Edward.

No. 30  
Petition dated 23rd January 1970 with endorsement dated 23rd May 1970  
(cont'd)

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Alternatively

(B) (I) The Respondent may be ordered :

(1) to pay to her for herself :

(a) Such sums as may be just by way of

(i) Alimony pendente lite

(ii) Maintenance

(b) Such lump sum as may be just.

(2) to make such secured provision for her as may be just.

(II) She may be granted the custody of the said child Ernest Edward.

(III) The Respondent may be ordered:-

(1) to pay to her for the said child:-

(a) Such sums by way of maintenance as may be just.

(b) Such lump sum as may be just.

(2) to make such secured provision for the said child as may be just.

30

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 30  
Petition dated  
23rd January  
1970 with  
endorsement  
dated 23rd  
May 1970  
(cont'd)

(sd.) M.H. Jackson-Lipkin  
M.H. JACKSON-LIPKIN  
Counsel for the Petitioner

The names and addresses of the person who are to be served with this petition are Ernest Ferdinand Perez de Lasala of 41B Estoril Court, Victoria, Hong Kong, and Gael McQueen of 27 Waruda Street, Kirribilli, Sydney, New South Wales in the Commonwealth of Australia.

Address for service of the Petitioner is care of Messrs. Johnson, Stokes & Master of Hong Kong and Shanghai Bank Building, Queen's Road, Central Hong Kong.

No. 14 of 1970

IN THE SUPREME COURT OF  
HONG KONG

DIVORCE JURISDICTION

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 30  
Petition dated  
23rd January  
1970 with  
endorsement  
dated 23rd  
May 1970  
(cont'd)

23rd May 1970

(10.15 a.m. - 10.25 a.m.)

Coram: Briggs J. in  
Chambers

BETWEEN :

HANNELORE DE LASALA  
Petitioner

and

ERNEST FERDINAND DE LASALA  
Respondent

Jackson-Lipkin (JSM) in for  
Petitioner

Mills-Owens (Deacons) for  
Respondent

Draft Order (consent order)  
approved. Arrangements for  
maintenance of wife and child  
Ernest Edward Lasala, are  
approved

Child, Ernest Edward, to  
cease to be a ward of Court;  
deft to pay plf's costs.

Leave to withdraw affidavit  
of deft of 3rd November 169  
in M.P. 207/69 granted.

Court satisfied with arrange-  
ments made for upbringing  
and education of Ernest  
Edward and Robert Ernest.

P E T I T I O N

JOHNSON, STOKES AND  
MASTER  
SOLICITORS &C.  
HONG KONG.

(G.G. Briggs)  
Puisne Judge

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 31 Marriage Certificate dated 17th February 1966

No. 31

MARRIAGE CERTIFICATE

MARRIAGE CERTIFICATE

1970, No. 14

DUPLICATE  
(To be retained by the Registrar of Marriages)

No. 126891

REGISTRAR GENERAL'S DEPARTMENT  
HONG KONG  
香港註冊總處

CERTIFICATE OF MARRIAGE  
結婚證書

HONG KONG MARRIAGE ORDINANCE, SECTION 22  
依照香港婚姻條例第廿二款規定

CERTIFIED TRUE COPY OF CERTIFICATE OF MARRIAGE

31 OCT 1969 P. REGISTRATION

17/2/66

MARRIAGE solemnized in the Registrar's Office at *Victoria*  
一九六六年十月三十一日 在註冊總處

No. 註冊號碼	When married 結婚日期	Name and Surname 姓名	Age 年	Condition 狀況	Rank or Profession 職銜或職業	Residence at the time of marriage 結婚時住所	Father's name and surname 父親姓名	Rank or profession of father 父親職銜或職業
553	February 1966	Ernest Ferdinand Perez DE LASALA	33	Divorced	Director General Company	418, School Court, Garden Road, Hong Kong.	Robert Perez DE LASALA	Company Director
		Haroldore JENDERNY	25	Spinster	Technical	D. Shui Tai Terrace, Technical, Hong Kong.	Emil JENDERNY	(Deceased)

MARRIED in the Registrar's Office according to the provisions of the Hong Kong Marriage Ordinance by Registrar's Certificate, before me,  
在香港註冊總處依照香港婚姻條例之規定，由註冊官發給結婚證書，在我面前，

*J. J. J. J.*  
Registrar of Marriages  
註冊官

*J. J. J. J.*  
Duty Registrar of Marriages  
註冊官

MEMORANDUM OF APPEARANCE

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

FORM 5

No. 32 Memorandum of Appearance dated 20th February 1970

MEMORANDUM OF APPEARANCE

(RESPONDENT SPOUSE)

IN THE SUPREME COURT OF HONG KONG. DIVORCE JURISDICTION. ACTION No. 14 OF 1970

Between HANNELORE DE LASALA Petitioner and ERNEST FERDINAND DE LASALA Respondent

10 1. Have you received and read the Petition for divorce by your wife/husband and the Notice of Petition which are delivered with this Form?

2. On what date and at what address did you receive them?

3. Are you the person named as Ernest Ferdinand De Lasala the Respondent in the Petition?

4. Do you intend to defend the case at the hearing? (Answer "Yes" or "No"). NO

20 5. Even if you do not wish to defend the case :-

A

B

Do you wish to be heard as to other claims made in the Petition, namely:-

Do you wish to make any application on your own account, namely :-

- (1) Costs YES
(2) Custody of the children. YES
(3) Maintenance of the children YES

- (1) Access to the children. YES
(2) Custody of the children NO
(3) Maintenance of the children NO

30

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 32 Memorandum of Appearance dated 20th February 1970 (cont'd)

(4) Alimony YES (4) Alimony NO.  
(5) Maintenance YES (5) Maintenance NO  
(6) A secured provision YES

(Answer "Yes" or "No" against each item)

Note -(i) If you intend to file an answer claiming any relief on your own account, you must include in it any claim you may wish to make for the maintenance of the children, alimony, or maintenance.

10

(ii) If you wish to claim custody of any child, you must comply with the instructions in the accompanying Notice of Petition.

(iii) If you wish (either in opposing any of the claims under A or in supporting any claim you may make under B to make against the petitioner any charge which may be a defence to the petition, you must, even if you do not wish to defend the petition, file an Answer and support it at the hearing.

20

6. What are your proposals for the care and upbringing of the children? (here set out full particulars of your proposals unless you intend to include them in your Answer or do not wish to claim custody).

7. What is your address to which communications should be sent? (It must be in Hong Kong)  
c/o Messrs. Deacons. 601 Union House, Hong Kong.

Dated the Tenth day of February 1970.

(Signed)

30

Note - If you intend to instruct a solicitor to act for you in these proceedings, give this form to him. In any event, have the space below blank.

To be completed only by the Respondent's solicitor.

On the instructions of our client, enter an appearance in the terms of the above Memorandum for ERNEST FERDINAND de LASALA the Respondent in this case.

(Signed) (DEACONS)

(Address for Service) 601 Union House,  
Chater Road,  
Victoria, Hong Kong.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 32  
Memorandum of Appearance dated 20th February 1970 (cont'd)

Note - If this Form is used, both copies must be completed and sent to the Registry.

No. 33

AFFIDAVIT OF BRIAN HENRY TISDALL  
AND RAYMOND EDWARD MOORE

No. 33  
Affidavit of Brian Henry Tisdall and Raymond Edward Moore dated 22nd May 1970

10

1970, No. 14

IN THE SUPREME COURT OF HONG KONG

DIVORCE JURISDICTION

BETWEEN

HANNELORE de LASALA Petitioner

and

ERNEST FERDINAND DE LASALA Respondent

We, BRIAN HENRY TISDALL of Hong Kong & Shanghai Bank Building, Hong Kong, Solicitor and RAYMOND EDWARD MOORE of 601 Union House, Hong Kong, Solicitor hereby make oath and say as follows :-

20

1. This Deponent, the said Brian Henry Tisdall is the Solicitor having the conduct of these proceedings for the Petitioner.

2. This Deponent, the said Raymond Edward Moore is the Solicitor having the conduct of these proceedings for the Respondent.

3. There is now produced and shown to us marked "TM-1" a true copy of the Deed of Arrangement

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 33  
Affidavit of Brian Henry Tisdall and Raymond Edward Moore dated 22nd May 1970 (cont'd)

intended to be executed by the Petitioner and the Respondent later to-day having annexed thereto the two forms of Trust Deed therein referred to.

4. The said Trust Deeds have been approved by Hong Kong & Shanghai Bank, Hong Kong (Trustee) Limited who have agreed to act as the Bank Trustee of Trust Deed A and as the Trustee of Trust Deed B.

SWORN at the Courts of Justice, ) sd. Brian Henry  
Victoria, Hong Kong, this 22nd ) Tisdall  
day of May, 1970 ) sd. Raymond E. Moore.

10

Before me,

Sd. C.W. Chan

A Commissioner for Oaths.

No. 34  
Exhibit "TM1"

No. 34

EXHIBIT "TM1"

For (i) Draft Deed of Settlement see pp. 100-104 (referred to in the Affidavit of Brian Henry Tisdall and Raymond Edward Moore as Exhibit "T.M.-1.")

20

(ii) Draft Trust Deed A see pp. 104-118

(iii) Draft Trust Deed B see pp. 119-131

No. 35  
Decree Nisi dated 23rd May 1970

No. 35

DECREE NISI

1970, No. 14

BEFORE THE HONOURABLE MR. JUSTICE BRIGGS IN COURT

DECREE NISI

DATED THE 23RD DAY OF MAY, 1970



10 The Judge having taken the oral evidence of the  
Petitioner in support of the Petition filed in  
this cause, and having heard Counsel thereon on  
behalf of the Petitioner, the Respondent not  
defending the suit at the hearing, pronounced  
that the Petitioner has sufficiently proved the  
contents of the said Petition, and decreed that  
the marriage had and solemnised on the 17th day  
of February 1966 at the Hong Kong Marriage  
Registry City Hall Victoria in the Colony of Hong  
Kong between Hannelore de Lasala, then Hannelore  
Jenderny, spinster, the Petitioner, and Ernest  
Ferdinand Perez de Lasala, the respondent, be  
dissolved by reason that since the celebration  
thereof the said respondent has been guilty of  
adultery unless sufficient cause be shown to the  
Court on or before the 30th day of May 1970 why  
such decree should not be made absolute and  
condemned the said Respondent in the costs  
20 incurred and to be incurred on behalf of the  
Petitioner in this cause.

And it is ordered that the matter of maintenance  
and welfare of Ernest Edward de Lasala the child  
of the family be adjourned into Chambers.

sd. B.L. Jones  
Assistant Registrar.

No. 36

CONSENT ORDER OF HON. MR. JUSTICE  
BRIGGS

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 35  
Decree Nisi  
dated 23rd  
May 1970  
(cont'd)

No. 36  
Consent order  
of Hon. Mr.  
Justice Briggs  
dated 23rd  
May 1970

1970, No. 14

30 BEFORE THE HONOURABLE MR. JUSTICE BRIGGS IN  
CHAMBERS.

CONSENT ORDER

40 UPON HEARING Counsel for the Petitioner and  
Counsel for the Respondent and upon reading the  
affidavit of Hannelore de Lasala sworn in  
Miscellaneous Proceedings (Divorce Jurisdiction)  
No. 6 of 1970 on the 14th day of January 1970 and  
upon reading the affidavit of Raymond Edward Moore  
sworn in the said proceedings on the 12th day of

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 36  
Consent Order of Hon. Mr. Justice Briggs dated 23rd May, 1970 (cont'd)

January 1970 and upon reading the joint affidavit of Brian Henry Tisdall and the said Raymond Edward Moore sworn herein on the 22nd day of May 1970 and by consent IT IS ORDERED that :-

1. The child of the family Ernest Edward de Lasala do remain in the custody of the Petitioner until further Order.

2. Upon the Petitioner undertaking to keep the Respondent informed at all reasonable times of the whereabouts of the said child the Petitioner be at liberty to take and to keep the said child without the jurisdiction of this Court.

10

3. The Respondent upon giving reasonable notice to the Petitioner do have access to the said child at all reasonable times.

4. The Respondent be at liberty at his own expense and on reasonable notice to the Petitioner to take the said child away, with him on holidays not exceeding 6 weeks in any calendar year commencing in 1971 during the said child's school holidays and that at the conclusion of each such holiday the Respondent do return the said child to the Petitioner.

20

5. Pursuant to the provisions of Section 15 of the Matrimonial Causes Ordinance and of Rule 2A of the Matrimonial Causes Rules 1968 the Deed of Arrangement dated the 22nd day of May 1970 made between the parties and submitted to this Court and exhibited to the said joint affidavit and marked "TM-1" be approved.

30

6. Upon the Respondent paying to the Petitioner the sum referred to in the said Deed of Arrangement and upon the Trust Deeds annexed thereto coming into force and upon the Respondent paying the amounts payable thereunder, the Petitioner's applications for maintenance a lump sum payment and secured provision for the said child and for herself be dismissed.

7. The Respondent do pay to the Petitioner's Solicitors the Petitioner's costs of and incidental to these proceedings and to the said Deed of Arrangement on a common fund basis to be taxed if not agreed.

40

8. There be liberty to either party to apply in respect of custody and control of and access to the said child and any matter relating to the implemented of the said Deed of Arrangement or of the said Trust Deed.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No.14 of 1970

Dated the 23rd day of May, 1970.

(sd.) B.L. Jones  
Assistant Registrar.

No. 36  
Consent Order of Hon. Mr. Justice Briggs dated 23rd May, 1970 (cont'd)

No. 37

DECREE ABSOLUTE

No. 37  
Decree Absolute dated 30th May 1970.

FORM 17

(Rule 40(4) )

Certificate of making Decree Nisi Absolute (Divorce)

IN THE SUPREME COURT OF HONG KONG

DIVORCE JURISDICTION

Action No. 14 of 1970

BETWEEN HANNELORE de LASALA Petitioner  
and ERNEST FERDINAND PEREZ de LASALA Respondent

Referring to the decree made in this Cause on the twenty-third day of May 1970 whereby it was decreed that the Marriage had and solemnized on the seventeenth day of February 1966 at the Hong Kong Marriage Registry City Hall Victoria in the Colony of Hong Kong between Hannelore de Lasala, then Hannelore Jenderny, spinster, the Petitioner and Ernest Ferdinand Perez de Lasala, the Respondent be dissolved by reason that since the celebration thereof the said respondent had been guilty of adultery unless sufficient cause be shewn to the Court on or before the thirtieth day of May 1970 from the making thereof why the said Decree should not be made absolute and no such cause having been shown,

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

it is hereby certified that the said Decree was on this thirtieth day of May 1970 made final and absolute and that the said Marriage was thereby dissolved.

No. 37  
Decree Absolute dated 30th May 1970.  
(cont'd)

DATED this 30th day of May 1970.

(B.L. Jones)  
Assistant Registrar.

No. 38  
Affidavit of Michael Frederick Winter dated 13th May 1975

No. 38

AFFIDAVIT OF MICHAEL FREDERICK WINTER

10

1970, No. 14

AFFIDAVIT OF MICHAEL FREDERICK WINTER

I, Michael Frederick Winter of 809 Takshing House, 20 Des Voeux Road, Central, Victoria in the Colony of Hong Kong make oath and say as follows :-

1. I am the solicitor having the conduct of this action on behalf of the Plaintiff and am authorised to make this affidavit on their behalf.

20

2. The Petitioner proposes making an application to this Honourable Court for:-

- (i) a transfer of property order; and/or
- (ii) a settlement of property order

3. In support of the said application the Petitioner wishes to file an affidavit which was sworn in the United Kingdom on the 7th February 1975 before Mr. Ian Sheratte, solicitor.

4. On the 4th December 1974 I forwarded to our agent in London Messrs. Ian Sheratte & Co. an affidavit together with exhibits now shown to me and marked 'MFW-A' for swearing by the Petitioner.

30

5. The Petitioner presently resides in Germany and for the purposes of swearing the Affidavit flew to London where after conferring with London Counsel and Mr. Ian Sheratte, solicitor the affidavit was finally sworn. I am informed by Mr. Sheratte and verily believe that the conference took place on a Friday and did not finish until later in the evening. As the Petitioner has a young child to care for she was unable to remain in London over the weekend and at that hour on Friday evening it was extremely difficult to locate a Commissioner for taking oaths before whom the affidavit could be sworn. As a result I am informed by Mr. Sheratte that the only alternative available was for the affidavit to be sworn in front of him. This was done on the 7th February 1975.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 38  
Affidavit of Michael Frederick Winter dated 13th May 1975  
(cont'd)

6. In all the circumstances I ask this Honourable Court to grant leave to file the affidavit in its present form on condition that it be re-sworn on the Petitioner's arrival in Hong Kong prior to the hearing of her intended application.

SWORN at the Courts of Justice, )  
Hong Kong on the 13th day of May ) sd. M.F. Winter  
1975. )

Before me,

(sd.) Ho Yuen-Piu

Commissioner for Oaths

This Affidavit is filed on behalf of the Petitioner.

No. 39

SUMMONS EX PARTE

No. 39  
Summons  
ex Parte  
dated 15th  
May 1975

1970, No. 14

SUMMONS EX PARTE

Let all parties concerned attend before the Registrar in Chambers at the Supreme Court, Hong Kong, on Wednesday the 21st day of May 1975, at 9.30 o'clock in the fore-noon on the hearing of an

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 39  
Summons  
ex Parte  
dated 15th  
May 1975  
(cont'd)

application on the part of the Petitioner be  
granted leave to file her affidavit sworn on the  
7th February 1975 in the United Kingdom.

J.R. OLIVER  
Registrar

Dated the 15th day of May, 1975.

This Summons was taken out by GORDON HAMPTON  
& WINTER of Room 809, Takshing House, 20 Des Voeux  
Road Central, Victoria in the Colony of Hong Kong,  
Solicitors for the Petitioner.

10

(sd.) Gordon Hampton & Winter

Estimated time not exceeding 3 minutes.

No. 40  
Order Mr.  
Registrar  
Cameron  
dated 21st  
May 1975

No. 40

ORDER OF MR. REGISTRAR CAMERON

1970, No. 14

BEFORE MR. REGISTRAR CAMERON OF SUPREME COURT IN  
CHAMBERS

O R D E R

UPON hearing Counsel for the Petitioner and  
upon reading the affidavit of Michael Frederick  
Winter sworn the 13th day of May, 1975 IT IS  
ORDERED that the Petitioner shall have leave to  
file her affidavit sworn the 7th day of February  
1975 in the United Kingdom.

20

Dated the 21st day of May, 1975.

(sd.) J.R. Oliver  
Registrar.

No. 41  
Summons  
Inter Partes  
dated 1st  
August 1975

No. 41

SUMMONS INTER PARTES

1970, No. 14

30

SUMMONS INTER PARTES

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 41  
Summons  
Inter Partes  
dated 1st  
August 1975  
(cont'd)

Let all parties concerned attend before the Judge in Chambers at the Supreme Court, Hong Kong on Monday the 3rd day of November, 1975, at ten o'clock in the fore-noon, on the hearing of an application by the Petitioner for the following :-

- 10 1. an order setting aside or varying the consent order made herein on the 23rd May 1970; and/or
2. an order that the Respondent do pay to the Petitioner such weekly or monthly sum in respect of periodical payments for her maintenance as the Court thinks reasonable; and/or
3. an order that the Respondent do secure to the Petitioner to the satisfaction of the Court such monthly or weekly sum in respect of periodical payments as the Court thinks reasonable; and/or
- 20 4. an order that the Respondent do pay to the Petitioner a further lump sum or such lump sum as the Court thinks reasonable; and/or
5. an order that the Respondent do pay to the Petitioner or to such person as the Court may specify a further lump sum or such lump sum as the Court thinks reasonable for the benefit of the child of the family, Ernest Edward; and/or
- 30 6. an order that the Respondent do secure to the satisfaction of the Court the payment of any lump sums and each of them as the Court may order under (6) and (7) above; and/or
7. an order that the Respondent do make such provision or further provision for the maintenance of the said child of the family as the Court thinks reasonable, and that the Respondent do secure the same to the satisfaction of the Court;
- 40 8. an order that the Respondent do transfer the property belonging to the Respondent and known as No. 3 Manly Road, Manly, New South Wales, Australia, to the Petitioner or to the said child of the family or to such person for the benefit of the said child, alternatively to settle the same for the benefit of the Petitioner and/or the said child on such terms as the Court may deem appropriate or satisfactory; and

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 41  
Summons  
Inter Partes  
dated 1st August 1975  
(cont'd)

9. an order that the Respondent do transfer or settle such other property as the Court may deem appropriate.

[4th-7th Nov. 1975 also reserved]

J.R. OLIVER  
Registrar

Dated the 1st day of August 1975.

This Summons was taken out by GORDON HAMPTON & WINTER of Room 809, Takshing House, 20 Des Voeux Road Central, Victoria in the Colony of Hong Kong, Solicitors for the Petitioner.

10

(sd.) Gordon Hampton & Winter

To: The Respondent,  
Ernest Ferdinand Perez De Lasala,  
41B Estoril Court,  
Hong Kong.

Estimated time not exceeding 5 days.

No. 42  
Affidavit of  
Hannelore de  
Lasala dated  
7th February  
1975.

No. 42  
AFFIDAVIT OF HANNELORE DE LASALA

1970, No. 14

20

AFFIDAVIT OF HANNELORE DE LASALA

I, HANNELORE DE LASALA for the time being resident in Hong Kong and now residing at the Hilton Hotel, make oath and say as follows :-

1. I was lawfully married to Ernest Ferdinand Perez de Lasala (hereinafter referred to as "the Respondent") at the Hong Kong Marriage Registry, City Hall, Victoria in the Colony of Hong Kong on the 17th February 1966. The Respondent is now resident in Hong Kong.

30

2. Thereafter I lived with the Respondent at 41B Estoril Court, Victoria, Hong Kong together with a child of the marriage, namely, Ernest Edward (hereinafter referred to as "Ernest") who



was born on the 28th August 1966. In 1967, the Respondent obtained custody of his child by a former marriage, namely, Robert Ernest who was born on the 5th January 1960 (hereinafter referred to as "Robert") and for the next two years Robert lived with us as a member of the family.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 42  
Affidavit of Hannelore de Lasala dated 7th February 1975.  
(cont'd)

10 3. In August 1969 I was obliged to leave the Respondent because of his conduct towards me. On the 31st October 1969 I began wardship proceedings in this Honourable Court in respect of Ernest, and I crave leave to refer to the Originating Summons issued in this Honourable Court on the 31st October 1969 and all other documents relating thereto, being Miscellaneous Proceedings No. 207 of 1969.

20 4. On the 1st November 1969 I presented a petition to this Honourable Court in which, inter alia, I sought the dissolution of my said marriage on the grounds of the Respondent's sodomy and cruelty. I crave leave to refer to my said petition and all other documents relating thereto, being Divorce Jurisdiction Action No. 187 of 1969. The allegations contained in my said Petition and other documents are true.

30 5. Throughout our marriage the Respondent and I, and Ernest, enjoyed a very high standard of living. We moved in social circles, and mixed with friends, associated with the principal shipping and banking interests in Hong Kong. The Respondent was a director of several companies in Hong Kong and Australia. Prior to the dissolution of our said marriage, the monthly expenses for our family exceeded HK\$20,000. In addition to the expenses set out in the letter dated the 12th April 1972, from my solicitors to the Hong Kong & Shanghai Bank H.K. (Trustee) Ltd. (hereinafter referred to as "the Trustees") exhibited hereto and marked "H.D.L.-9",  
40 the Respondent maintained a yacht in Hong Kong for our use, at a monthly cost of HK\$800, and provided for us to take frequent holidays outside of Hong Kong, during which we stayed at first-class hotels and invariably had the services of a hired or chauffeur-driven private car. By way of illustration of our style of living I wish to mention the following holidays enjoyed by us during the years 1966 to 1969;

50 1966 - Manila, Honolulu, America (including Alaska), Japan for a period of approximately 6 weeks.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 42 Affidavit of Hannelore de Lasala dated 7th February 1975. (cont'd)

- 1966 - Sydney, Australia, Noumea (New Caledonia), Fiji and Tonga for a total period of some 7½ months, the bulk of which was spent in the Respondent's apartment in Mosman, Sydney.
- 1968 - one week at a first-class hotel in Japan.
- 1969 - Japan, Bali, Djakarta and Singapore for a total period of approximately 2 months.

10

6. During our marriage, we had the use of 3 cars: a Mercedes 220 SE Cabriolet (valued approximately at HK\$75,000), a second-hand Mercedes 190 SL sports car, and a Mercedes 220 saloon. We had a chauffeur and employed two full-time servants. Furthermore, although I was never fully aware of the Respondent's true financial position, apart from the fact that he was a director of several companies, the Respondent informed me, and I verily believed, that his father died intestate, in 1967, leaving an estate valued in excess of 100 million Australian Dollars and that the Respondent received not less than one-fifth of this sum from his father.

20

During the period of our marriage, the Respondent never questioned the amount of, or the necessity for, the aforesaid family expenses. Nor did he ever indicate that he was unable to maintain such standard of living. He never told me that he was short of money or in any situation of financial embarrassment. Apart from reminding me that he was the son of an Australian millionaire, the Respondent continuously demonstrated to me and others the fact that he was a person in control, or possessed, of considerable wealth, by way of inheritance and his own efforts.

30

7. In or about August 1969, I consulted Mr. Brian Tisdall of Messrs. Johnson, Stokes & Master, Solicitors in Hong Kong. Apart from giving him instructions regarding my matrimonial life with the Respondent, I explained to him, on several occasions, that I did not wish to be treated by the Respondent in the same way as he had treated his former wife. In particular, I

40

emphasised that it was my belief, based on what the Respondent had told me during our marriage, that he, the Respondent, had managed to re-gain custody of Robert because his former wife was unable to maintain Robert according to the standards which he had enjoyed during such previous marriage and which the Respondent hoped would, and intended, should be maintained after their divorce. Accordingly, I instructed Mr. Tisdall to obtain for me and Ernest such financial provision from the Respondent as would enable me to maintain myself and Ernest in a manner and style which would be adequate to prevent the Respondent from ever complaining to this Honourable Court or any other court that I was not a fit and proper person to have the custody, care and control of Ernest. For this purpose I gave Mr. Tisdall a detailed list of our basic needs, which came to the net sum of HK\$6,000 per month.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 42  
Affidavit of Hannelore de Lasala dated 7th February 1975.  
(cont'd)

At this time I was convinced, by what the Respondent had told me and the subsequent variation of the arrangements governing the custody care and control of Robert, that the Respondent was able to regain custody of Robert largely as a result of the inadequate financial provisions which the Respondent agreed to make for his former wife. On several occasions, I emphasised to Mr. Tisdall that I did not wish to be placed in a similar position, especially as I understood, and was so advised, that I had sound reasons to expect this Honourable Court to grant me custody, care and control of Ernest as a result of the legal proceedings which I then contemplated and subsequently initiated, as deposed to in paragraphs 3, 4 and 14 hereof. Furthermore, I gave Mr. Tisdall such information regarding the Respondent's assets and financial resources as I was able to furnish at the time, including certain press clippings relating to the estate of the Respondent's father, and instructed him to ascertain what the "de Lasala family" owned. Frequently, during our marriage the Respondent told me that it would be difficult to find out what he was worth because his wealth was so tied up with various companies and other family interests. I gave Mr. Tisdall a list of assets which I believed were owned by the Respondent or in which the Respondent had an interest, and suggested that this could be the basis for further inquiries regarding the Respondent's

In the Supreme Court of Hong Kong. Divorce Jurisdiction No.14 of 1970

No. 42  
Affidavit of Hannelore de Lasala dated 7th February 1975.  
(cont'd)

means. At this point of time, I was advised by Mr. Tisdall, and by Mr. Jackson-Lipkin, of Counsel, that I had reasonable grounds for expecting from the Respondent a settlement of some HK\$1.5 million for myself and HK\$2 million for Ernest.

8. From in or about August 1969 until May 1970 I had approximately six conferences with Mr. Jackson-Lipkin. Mr. Tisdall saw me in his office or spoke to me by telephone on more frequent occasions. During the early part of this period I saw Mr. Tisdall about twice a week. Later, I saw him about twice a month. At no time did I receive any advice in writing from Mr. Tisdall or Mr. Jackson-Lipkin regarding my matrimonial differences with the Respondent or the questions of future financial provision for Ernest and myself.

10

9. During the months of November and December 1969 Mr. Tisdall informed me that, through his solicitors, the Respondent was willing to give me HK\$750,000 and HK\$500,000 to or for the benefit of Ernest, and to provide us both with a furnished house in the country where we intended to reside. When Mr. Tisdall communicated this "offer" to me by telephone, I rejected it immediately. At that time, the Respondent had not spoken to me about his alleged precarious financial position.

20

10. During the months of November and December 1969, when, I understand, various discussions and negotiations were taking place between Mr. Tisdall and the solicitors acting for the Respondent, the Respondent visited me on several occasions and represented to me that he was in circumstances of acute financial difficulties and embarrassment. Occasionally, he reinforced my belief in his alleged financial predicament by bouts of weeping. He represented to me that he had incurred certain contingent liabilities regarding a venture in Alaska, which had collapsed, and urged me to accept the capital sum which he had set aside for me and Ernest, and which he had communicated to his solicitors. He further stated that if I did not accept this offer I ran the risk of getting nothing. I believe him then but not now. The Respondent asked me not to tell anyone about this and I did not.

30

40

11. About the middle of December and about one week after the making of the offer referred to in

10 paragraph 9 hereof, Mr. Tisdall told me that the Respondent's solicitors were authorised to make a further offer by increasing the sum to be paid to me to HK\$850,000. At first, I deferred. But in view of what the Respondent had represented to me in the meantime regarding his general financial position, and Mr. Tisdall's statement that the Respondent was not as wealthy as had been supposed and his assurance that the amounts offered would still be sufficient to meet my needs and those of Ernest, I was disposed to accept the further offer as a basis for settlement of the financial arrangements to be made between me and the Respondent.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 42 Affidavit of Hannelore de Lasala dated 7th February 1975.

(cont'd)

20 When I asked Mr. Tisdall why I was being invited to accept sums substantially less than those mentioned in paragraph 7 hereof, he told me that Mr. Moore of Messrs. Deacons, Solicitors in Hong Kong, who had been the Respondent's legal adviser for many years, had told him that the Respondent was not as wealthy as we had thought. Mr. Tisdall further said that the amounts offered were "still a lot of money" and that I would get all I needed because we would have free accommodation and all of Ernest's expenses would be paid by the Trustees. Mr. Tisdall also advised me that the Respondent would not offer more, and if we did not accept we would be faced with difficult and lengthy proceedings, which might result in my losing custody of Ernest and receiving no more, and possibly less than the amount offered by the Respondent. He further told me that there was a risk that I would not obtain a divorce at all, unless the Respondent made available evidence of his adultery and that the Respondent was willing to do so only if I accepted the offers which had been made. Mr. Tisdall made no independent inquiries to the best of my knowledge into the Respondent's financial resources or means at this time. Earlier in the year, when I was advised to stick out for the sums referred to in paragraph 7 hereof, Mr. Tisdall told me that it would be both very expensive and time-consuming to pursue inquiries into the Respondent's financial interests in Australia, and to do so when we were going to arrive at a friendly settlement would be a sheer waste of money and time.

40 12. At about this time, I had meetings with Mr. Tisdall and my counsel, and also with the Respondent's solicitors and representatives of the

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(cont'd)

Trustees. From what was said at these meetings, I verily believed that I could look forward to a gross return in the region of 13% on the capital sums which the Respondent proposed to settle on me and Ernest. Throughout my meetings with Mr. Tisdall, I emphasised that I would need the equivalent of HK\$6,000 net per month in order to maintain myself and Ernest according to the standard of living to which we were accustomed, having regard to the Respondent's apparent means and our previous style of life. It was understood by all concerned, that I intended to live in Germany or England but although I was told that taxation was higher in such countries than in Hong Kong, I was never advised upon the particular liability to tax which I would have to face if I became a resident in these countries. During these meetings, Mr. Tisdall suggested that my liability for tax could, perhaps, be reduced by establishing a company in Hong Kong for receipt of the income of the funds which the Respondent proposed to settle on me and Ernest. Furthermore, I was assured by one Mr. Cotton, a representative of the Trustees, that the Trustees would reimburse all expenses incurred by me on behalf of Ernest, so long as I submitted details of such expenses. In Mr. Cotton's presence, Mr. Tisdall said I could claim for all expenses - "right down to the last aspirin". In short, I believed that the expected income from investment of the sums to be provided by the Respondent for me and Ernest, would not only produce a total income, after tax, in the region of HK\$6,000 per month, but also that I could utilise the whole of such income as I wished.

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13. During the negotiations hereinbefore deposed to, it was intimated to me that an amicable settlement of the differences between me and the Respondent was more likely to be reached if I sought a dissolution of my said marriage on the ground of the Respondent's adultery. Accordingly, and partly as a result of a letter dated the 11th December 1969 from the Respondent's solicitors to my solicitors, a copy of which is now produced and shown to me and marked "H.D.L.1", I applied to this Honourable Court for leave to implement certain arrangements agreed and/or to be agreed between me and the Respondent, through our respective legal advisers. By an Order dated the 16th January 1970 such leave was granted and I was further given leave to present a second

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petition for divorce. I crave leave to refer to the affidavits filed in connection with this application.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No.14 of 1970

10 14. In pursuance of the aforesaid Order, on the 23rd January 1970, I presented a second petition for the dissolution of my said marriage to this Honourable Court. This petition was heard on the 23rd May 1970, when I was granted a decree nisi of divorce. On the 30th May 1970 such decree was made absolute.

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(cont'd)

20 15. In due course, the Respondent's solicitors prepared and sent to my solicitors certain drafts of documents designed to carry into effect the terms of the arrangements and/or agreements in paragraph 13 hereinbefore referred to. Shortly before the hearing of my aforesaid second petition, Mr. Tisdall presented certain documents for me to sign, and left me alone in a room at his firm's premises for approximately 15 minutes to enable me to read the same. The said documents consisted of a Deed of Arrangement and two Trust Deeds, copies whereof are now produced and shown to me and marked "H.D.L.-2", "H.D.L.-3" and "H.D.L.-4". When I read these documents I was unclear as to some of their terms and quite shocked and surprised by some of their provisions. In particular, the distinction between freehold and leasehold property was not appreciated by, or ever explained, to me. Because of my fears, implicit from the matters in paragraph 7 hereinbefore deposed to, I expressed my strong disapproval of the provisions of the aforesaid Trust Deeds which gave the Respondent, in my view, effective power to determine, control or influence where and how I and Ernest should live, and subjected me to potentially onerous terms to which I had not assented during the negotiations hereinbefore deposed to, or at any time. When Mr. Tisdall returned to the room I indicated to him that my inclination was to throw all the documents into the waste paper basket. I specifically asked Mr. Tisdall about the provisions which appeared to make me responsible for any deficiency in the event of the sale of the home, which the Respondent had agreed to provide for me and Ernest, and the extent of my obligation to maintain the same, which in my view, exceeded those which I was expected to assume as a result of the arrangements proposed and agreed upon during the aforesaid negotiations.

40 16. In response to my general and specific

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 42 Affidavit of Hannelore de Lasala dated 7th February 1975.  
(cont'd)

objections reservations and questions he completely discouraged me and said to me "It is up to you, but if you don't sign, we'll have to start all over again from the beginning," or used words to the same effect. He also reminded me that it would be very difficult to prove sodomy and cruelty, and that I might lose the case, and Ernest, and have to pay costs. With regard to my questions concerning the acquisition and use of the house, he assured me that I need not worry about my liability to make good any deficiency on a sale and purchase of another house because "they are always going up", by which I understood him to mean that house prices in Europe would always rise or maintain a level which would allow a favourable margin, if and when I might decide to live in some other house or in a different country. My anxieties regarding my expected obligations regarding maintenance of the home for me and Ernest were dealt with by Mr. Tisdall's assurance that I would be able to manage with the income from the funds to be provided by the Respondent for Ernest and me. At this time, I was thinking from what Mr. Tisdall told me of a net return of about HK\$6,000.00 per month. During the negotiations which preceded the hearing of my aforesaid petition, I suggested to Mr. Tisdall that I should visit Europe, to view houses, before agreeing to the financial provisions offered by the Respondent, but Mr. Tisdall dismissed this suggestion by telling me that I should not leave Hong Kong until the divorce proceedings and related matters were concluded.

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I believe that Mr. Tisdall did make some inquiries about the availability of suitable houses, but I cannot remember clearly whether he showed me any circulars from Estate Agents. In any event, I knew practically nothing about houses in London or Germany and relied on Mr. Tisdall's assurance that I would easily find a good house in a good area for the money to be provided by the Respondent, especially as Mr. Tisdall appeared to know a lot about houses in England.

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17. In the aforesaid circumstances relying upon what the Respondent had said and on Mr. Tisdall's assurances, I signed the aforesaid Deed of Arrangement on the 22nd May 1970, and executed the Trust Deeds annexed thereto on the 30th May 1970.

18. On or about June 1970, I left Hong Kong



with Ernest, and embarked upon looking for a house in England or Germany which would serve as a suitable home and comply with the requirements of the Trust Deed, being exhibit "H.D.L.-3". Although I was born in Germany, I had not lived there since about 1963 and I had no idea of the prices of housing accommodation prevailing in 1970. I was also ignorant of the cost of acquiring houses in England, where I had never resided for any considerable period. I immediately discovered that it was impossible to purchase a suitable house, as required by the said Trust Deed, for the sum made available thereunder.

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19. In or about August 1970 when I was in London, I was advised by officers of the Hong Kong and Shanghai Banking Corporation, on my liability to tax in the United Kingdom if I should become resident therein. I was so advised, and verily believed, that I would be liable to pay tax at a rate of approximately 50% of the total income to be derived from investment of the capital sums provided by the Respondent for me and Ernest, under the Trust Deeds hereinbefore referred to. During the aforesaid negotiations and at all material times I was never told or advised that I would, or could be faced with a liability on such a scale. During the meetings with my own legal advisers and those of the Respondent and representatives of the Trustee, no mention was made of sur-tax or capital gains tax in England, or the fact that the income of myself and Ernest would be aggregated and, being "unearned", attract tax at a higher rate. The feasibility of using the device of a Hong Kong company was never pursued. Prior to the 30th May 1970 I was never given or shown any written advice on my precise liability to pay tax in England. I vaguely recall a brief meeting in Mr. Tisdall's office when a gentleman, whose name or identity I cannot presently recall, was introduced to me, in Mr. Tisdall's presence, as "a tax expert" and who indicated that my tax liability would not exceed 25% or 30% of the gross income to be expected from investment of the capital sums to be provided for me and Ernest. But, at no time was I advised of the precise effect of the proposed settlement of a fund to acquire free accommodation for Ernest and myself, or the fact that our income would be derived solely from investment of the amounts to be provided by the Respondent. I verily believe that the idea of establishing a

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corporate body in Hong Kong, which would invest the sums to be provided for me and Ernest and pay local tax at the rate of 15%, was conceived with a view to ensuring that I should receive not less than the HK\$6,000 per month which I considered necessary to maintain myself and Ernest in the manner expected by the Respondent.

As a result of the advice I received in London, and having regard to the expenses of acquiring and maintaining a house in England, I estimated that I would be left with approximately £60 per month to maintain myself and Ernest in such matters as food and clothing, general household expenses, medical expenses and holidays and recreational activities commensurate with our previous standard of living. This estimate was based on the assumption that I would receive from the Trustees approximately HK\$500 per month in respect of Ernest, and that the gross income from investment of the aforesaid capital sums would be in the region of 10 to 13 per cent.

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20. I then went to Germany where I immediately discovered that it was impossible to buy a suitable house with the funds made available by the Respondent by the time specified in the Trust Deed exhibit "H.D.L.-3", or at all. On the 11th July 1970 I wrote to Mr. Cotton, of the Trustees setting out details of my difficulties and expenses. There is now produced and shown to me and marked "H.D.L.-5" a bundle of correspondence passing between me and my solicitors and the Bank Trustee, on the question of maintenance of myself and Ernest. As a result of this correspondence, in September 1970 the Trustees offered to pay HK\$250 per month for the maintenance of Ernest. This amount was so inadequate and derisory that I decided not to accept it.

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21. In the meantime, I wrote to Mr. Tisdall a letter dated the 20th August 1970, a copy of which is now produced and shown to me and marked "H.D.L.-6", in which I explained my difficulties and expressed my dissatisfaction with the terms of the settlement contained in the said Deed of Arrangement and Trust Deeds. Mr. Tisdall did not reply. When I telephoned him from Germany, on two occasions, he told me that it was all finished and that it was too late to re-open the case.

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22. In or about October 1971 I returned to Hong Kong with Ernest and stayed until April 1972. I had previously consulted leading counsel in London and during my stay in Hong Kong I consulted various solicitors regarding my legal position and that of Ernest.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

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Affidavit of Hannelore de Lasala dated 7th February 1975  
(cont'd)

10 At the end of November 1971 the Respondent was in Hong Kong and asked to see Ernest, whom he had not seen for about 2 years. Ernest was reluctant to be with the Respondent without my also being present because he spoke very little English and did not know the Respondent, who had not written to Ernest or sent him any gifts or replied to my letters telling him about Ernest for almost 2 years. Nevertheless, I agreed to the Respondent's request on condition that Ernest was returned to me immediately, if and when Ernest asked to be returned. On the 5th December 1971, Ernest was collected by the Respondent's  
20 chauffeur at the Hilton Hotel, where we were then living. When Ernest returned to the hotel later that day he was extremely upset and told me that he did not wish to see the Respondent again unless I was also present. There is now produced and shown to me and marked "H.D.L.-7", three memoranda sent to me by the Respondent at this time and an original letter dated the 5th December 1971 and a copy of a letter dated the 11th December 1971, both of which I had addressed to the  
30 Respondent and left at the reception desk of the hotel. The letter of the 5th December 1971 was never collected by the Respondent.

40 Shortly afterwards I received the letter dated the 18th December 1971 from the Respondent's solicitors, which is now produced and shown to me and marked "H.D.L.-8". The allegation that I had failed to provide a permanent and settled home for Ernest was, as the Respondent well knew, unjustified. I verily believe that this allegation was a step in the Respondent's plan to gain custody of Ernest.

23. There is now produced and shown to me and marked "H.D.L.-9" a bundle of correspondence passing between Messrs. Gordon Hampton and Winter, my present solicitors, and the Trustees. The figures given in the letter dated the 12th April 1972 from my solicitors constitute a true and accurate account of the living expenses of myself and Ernest in Hong Kong and Germany.

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24. As a result of extensive and protracted inquiries made by my present solicitors, I now dispute the veracity of the representations made to me by the Respondent in 1969 and 1970, and to my then legal advisers through his solicitors, concerning his financial position at that time. At no time prior to the 30th May 1970 was the Respondent ever required to swear an affidavit of means setting out his assets, income and liabilities. Nor was he or his legal advisers ever asked to supply a detailed statement thereof. There is now produced and shown to me and marked "H.D.L.-10" two reports from Messrs. C.A. Sinclair & Associates giving some details of the Respondent's assets and financial resources in Australia.

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25. If, in 1969 and 1970, I had known all the facts hereinbefore deposed to, and the consequences or effects of the agreement arrived at in the course of the aforesaid negotiations had been properly explained to me, I would never have assented to the terms agreed between me and the Respondent, through our respective legal advisers, nor would I have signed any documents to give effect thereto. In addition to the matters hereinbefore deposed to, such as, the extent of my liability to tax in England or Germany, interest rates obtainable in Europe, and the cost of purchasing a house in England or Germany and maintaining the same, I aver that the extent and effect of inflation in Europe was never explained to me, or even mentioned, in the course of the negotiations between my legal advisers and those acting for the Respondent or the meetings with the Trustees. Yet, within a few weeks of the conclusion of the proceedings in this case I discovered that this factor alone made it difficult, if not impossible, for me to provide adequately for me and Ernest in a manner and style which we might reasonably expect to enjoy, and which the Respondent tacitly or otherwise considered we were entitled to enjoy. I verily believe that, by reason of the facts and circumstances hereinbefore deposed to, the Respondent's knowledge and experience, as a man of business with world-wide interests, his previous matrimonial problems, and his knowledge of me and the history of our marriage, he must have realised that my decision to assent to the terms eventually agreed was not made freely or after full and proper advice or, furthermore, in the proper interests of myself or Ernest.

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26. There is now produced and shown to me and marked "H.D.L.-11" a document, prepared by me, setting out a typical monthly budget of the current living expenses of myself and Ernest, and a list of the more substantial capital expenses I have incurred in order to cater for the essential and reasonable requirements of Ernest and myself. In order to maintain a reasonable standard of living for myself and Ernest since the aforesaid divorce proceedings I have had to resort to my capital resources in order to supplement the actual income received for myself and for Ernest from the resources provided by the Respondent and the Trustees.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
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(cont'd)

There is now produced and shown to me and marked "H.D.L.-12" a statement, prepared by me, showing my present assets and sources of income and liabilities.

Having decided that I should endeavour to make a home for Ernest and myself in Germany I have consulted various experts on the cost of so doing. There is now produced and shown to me and marked "H.D.L.-13" a report by Herrn Erlemann, Ordemann and Benedikt, together with a translation into English of the same, which I verily believe to be true and accurate, which indicates the capital sums required to produce an income sufficient to maintain myself and Ernest in Germany according to the standard expected by the Respondent.

27. I have not applied to this Honourable Court earlier for several reasons. In 1970 I was involved in a motor accident and later was admitted to hospital because of hepatitis. In 1971 Ernest suffered from asthma and bronchitis. During my stay in Hong Kong I consulted several firms of solicitors but they were unwilling to act for me. Further delay has occurred due to my concern to care for Ernest and attend to his educational and other needs, the difficulties of instructing my legal advisers from a different jurisdiction and the problems of making inquiries in Australia and elsewhere concerning matters relevant to my application.

28. By reason of the matters hereinbefore deposed to I respectfully ask this Honourable Court to :-

- (a) set aside or vary the Consent Order made herein on the 23rd May 1970, dismissing

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Hannelore de  
Lasala dated  
7th February  
1975.

(cont'd)

the prayers for maintenance, a lump sum payment and secured provision for myself and Ernest, contained in my aforesaid Petition dated the 23rd January 1970 and, after giving credit for all sums paid by the Respondent or received by virtue of the trusts declared in the aforesaid Trust Deeds "H.D.L.-3" and "H.D.L.-4", to grant me the relief sought in my aforesaid petition or petitions or such further or other relief in the nature of financial relief or property adjustment orders as this Honourable Court may deem fit; and/or

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(b) alter the said Deed of Arrangement made between the Respondent and me to take account of the changes in circumstances which have occurred, or to set aside the same having regard to the circumstances in which the same was made; and/or

(c) order the delivery up and cancellation or variations of each of the aforesaid Trust Deeds;

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(d) order that the Respondent do transfer to me, or to Ernest or to a person for the benefit of Ernest, the property belonging to the Respondent and known as No. 3, Manly Road, Manly, New South Wales, Australia or to settle the same for the benefit of myself and/or Ernest on such terms as this Honourable Court may deem appropriate; and/or

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(e) order the Respondent to pay to me a further lump sum or sums for myself and/or for Ernest; and/or

(f) make such further provision for the maintenance of Ernest as this Honourable Court may deem reasonable

(g) insofar as it may be necessary, to grant me leave to apply for any such orders.

29. I put the Respondent to proof of all his resources both as to capital and income.

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Re-sworn at the Courts )  
of Justice, Hong Kong, ) (sd)  
this 19th day of January ) Hannelore de Lasala  
1976. )

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

Before me,

(sd.) S.M. HUSSAIN  
Commissioner for Oaths

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Affidavit of  
Hannelore de  
Lasala dated  
7th February  
1975.  
(cont'd)

10 SWORN at 54 Flat Street )  
London E.C.4. this 7th ) (sd)  
day of February 1975. ) Hannelore de Lasala

Before me,

(sd.) Ian V. Sheratte  
(I.V. SHERATTE)  
A Solicitor of the  
Supreme Court of  
Judicative

No. 43

EXHIBIT "H.D.L.-1"

No. 43  
Exhibit  
"H.D.L.-1"

EXHIBIT "H.D.L.-1"

11th December, 1969.

Messrs. Johnson, Stokes & Master,  
Hong Kong Bank Building,  
HONG KONG.

Attn: Mr. Tisdall

Dear Sirs,

re: Lasala -v- Lasala  
O.J.M.P. 207 of 1969

30 We refer to the above proceedings and to the  
discussions which have taken place between us  
since the appearance in Court on Monday, the 3rd  
November.

As you know, the allegations of cruelty and  
sodomy contained in the draft Petition exhibited  
to your client's Affidavit in the above proceedings

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Court of Hong  
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No. 43

Exhibit

"H.D.L.-1"  
(cont'd)

are strenuously denied and if proceeded with will be vigorously defended. Our client would further cross petition on the basis of cruelty on the part of your client and in such event we are informed that the discretion of the Court would be applied for.

It is apparent that it would be a matter of the most serious prejudice to the future of the child of the marriage if these very serious allegations have to be litigated in contested proceedings and that it must be in the interest of all parties concerned for this to be avoided.

With these considerations in mind, we are instructed to inform you that if the custody and financial arrangements referred to below are acceptable to your client our client would be prepared to make available in due course the information which would have been disclosed in the discretion statement and would not seek to defend or cross petition in a suit based solely on that information.

The proposed custody and financial arrangements are as follows :-

- (1) Your client to have the custody of the child of the marriage.
- (2) Our client to have access to the child of the marriage at all reasonable times.
- (3) Your client be permitted to take the child of the marriage out of the jurisdiction to live in Germany, England or elsewhere as she may decide and our client will meet the costs of exercising his rights or access either by visiting the child himself or by providing the passage money for the child to visit him when he is old enough to travel alone.
- (4) Our client will settle the sum of HK\$500,000 on trust for the child of the marriage contingently upon the child attaining the age of 25 years with power for the trustees in the meantime to pay income and/or capital for the child's advancement, benefit or



education as the trustees may think fit. The trustees are to be an independent trust company (The Hong Kong & Shanghai Bank, Hong Kong Trustee Limited has been suggested) jointly with our client. In the event that the child of the marriage does not attain the age of 25 years, the trust fund reverts to our client.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
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Exhibit  
"H.D.L.-1"  
(cont'd)

- 10 (5) Our client will provide a suitable furnished residence for your client during her life, such residence to be purchased in the names of independent trustees in trust for your client for life and thereafter to the child of the marriage contingently upon his attaining the age of 25 years, failing which the property will revert to our client. It is agreed that the house will be purchased either in Germany or in England according to where your client decide to live and that the house may be changed from time to time at your client's reasonable request. Your client will be responsible for payment of repairs, outgoings and replacements of the furniture, fittings and fixtures out of her own funds.
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- 30 (6) The exact terms of the above two trusts will be settled between us after we have both had a full opportunity of looking into the relevant taxation position both in Germany and England and it is agreed that if it would be advantageous so to do, a company will be established in a suitable jurisdiction to own the house, the trustees owning the shares in the company.
- 40 (7) Your client will be paid a lump sum of HK\$850,000 by way of settlement of all claims for maintenance on condition that she applies to the Court for her application for maintenance to be dismissed.
- (8) Pending the conclusion of the proceedings, your client will remain at the apartment in Estoril Court and our

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Kong. Divorce  
Jurisdiction  
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Exhibit  
"H.D.L-1"  
(cont'd)

client will continue to pay the expenses  
and your client's monthly allowance as  
hitherto.

- (9) The existing wardship proceedings to be  
withdrawn and our client's Affidavit  
filed on the 3rd November 1969 to be  
removed from the Court records on the  
basis that it does not comply with the  
practice requirements for Affidavits in  
such proceedings.

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We should be obliged if you would kindly  
confirm as soon as possible your client's  
agreement to the above proposals whereupon it will  
be necessary to issue an originating summons under  
Rule 2A of the Matrimonial Causes Rules to obtain  
the approval of the Court thereto and to the filing  
of the Divorce Petition on the grounds indicated  
above.

Yours faithfully,

(sd.) Deacons

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Exhibit  
"H.D.L.-2"

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EXHIBIT "H.D.L-2"

EXHIBIT "H.D.L-2"

Hong Kong  
Stamp Office  
4 JN 70

I certify that the sum of  
\$1,700 has been paid in  
respect of Stamp Duty  
(C/R NO. 2791) (sd.) Ng Wai Kin  
Asst. Collector

THIS DEED is made this Twenty-second day of May  
One thousand nine hundred and seventy  
BETWEEN HANNELORE DE LASALA of 41B Estoril  
Court, Garden Road, Victoria, Hong Kong (hereinafter  
called "the Wife") of the one part and ERNEST  
FERDINAND PEREZ DE LASALA of Union House, 17th  
Floor, Victoria, aforesaid (hereinafter called  
"the Husband") of the other part.

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WHEREAS :-

- (1) By Order dated 16th January 1970 made by the

Supreme Court of Hong Kong in its Divorce Jurisdiction on the Application of the Wife in Miscellaneous Proceedings No. 6 of 1970, the parties thereto (being the Wife as Applicant and the Husband as Respondent) were given leave to implement the agreement and arrangements made between them as set forth in the Affidavits filed in support of the said Application in respect of a proposed Divorce Petition by the Wife against the Husband and in respect of the custody of and maintenance, a lump sum payment and a secured provision for the child of the marriage ERNEST EDWARD DE LASALA (hereinafter called "the Child") and for maintenance, a lump sum payment and secured provision for the Wife.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-2" (cont'd)

(2) Pursuant to the said Order dated 16th January 1970 the Wife filed a Petition in the Supreme Court of Hong Kong in its Divorce Jurisdiction No. 14 of 1970 on the 23rd January 1970 praying (inter alia) for dissolution of her marriage with the Husband and for ancillary relief for herself and the Child as is therein more particularly set forth.

(3) The parties have agreed to enter into this Deed, subject to the sanction of the Supreme Court of Hong Kong in its Divorce Jurisdiction pursuant to Section 15 of the Matrimonial Causes Ordinance and Rule 2A of the Matrimonial Causes Rules, to implement the arrangements set forth in the Application to the Supreme Court of Hong Kong in the said Divorce Jurisdiction Miscellaneous Proceedings No. 6 of 1970.

(4) The said Petition for dissolution of marriage will be heard by the Supreme Court of Hong Kong on the 23rd May 1970 and this Deed is conditional upon a Decree Nisi of dissolution of marriage being granted on the hearing of the said Petition and upon the Court approving the terms hereof on or after the granting of the said Decree Nisi.

NOW THIS DEED WITNESSETH as follows :-

1. Within seven days of the date upon which the Decree Nisi of dissolution of marriage is granted to the Wife in the said proceedings, the Husband shall secure for the benefit of the Child the sum of HK\$500,000 upon the trusts, terms and conditions of the Trust Deed annexed hereto and marked "Trust Deed A", such Trust Deed to be deposited with the

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
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Exhibit  
"H.D.L.-2"  
(cont'd)

Bank Trustee named therein by way of escrow and to be delivered and to come into effect upon the said Decree Nisi being made absolute. The Husband shall within the said period of seven days deposit with the Bank Trustee the said sum of HK\$500,000 in a separate deposit account on seven days' call deposit, such sum and any interest accrued thereon (less interest tax) to be transferred to the account of the Trustees of the said Trust Deed A on the said Decree Nisi being made absolute. If for any reason, the said Decree Nisi is not made absolute, such sum together with any accrued interest thereon (less interest tax and any charges of the Bank Trustee) shall be returned to the Husband.

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2. Within seven days of the date upon which the Decree Nisi of dissolution of marriage is granted to the Wife, the Husband shall execute a Trust Deed in the form annexed hereto as "Trust Deed B" and shall deposit the same with the Bank Trustee by way of escrow, such Trust Deed to be delivered and to come into effect on the said Decree Nisi being made absolute. The Husband shall within the same period of seven days deposit with the Bank Trustee the sum of HK\$400,000 to be settled on the terms of the said Trust Deed B in a separate deposit account on seven days' call deposit, such sum and any interest accrued thereon (less interest tax) to be transferred to the account of the Trustees of the said Trust Deed B on the said Decree Nisi being made absolute. If for any reason, the said Decree Nisi is not made absolute, such sum together with any accrued interest thereon (less interest tax and any charges of the Bank Trustee) shall be returned to the Husband.

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3. Upon the said Decree Nisi being made absolute, the Husband will pay to the Wife the sum of HK\$850,000 in full and final satisfaction of all claims of the Wife to maintenance, secured provision or other support whatsoever.

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4. The Wife will apply to the Court for an Order that on the said Decree Nisi being made absolute and upon payment of the sum of HK\$850,000 under Clause 4 hereof, her applications for maintenance, a secured provision and lump sum payment for herself and the Child shall be dismissed.

5. The Wife hereby covenants and agrees with the Husband that provided the Husband pays :-

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No. 43  
Exhibit  
"H.D.L.-2"  
(cont'd)

- (1) The said sum of HK\$500,000 to the Trustees of the said Trust Deed A in accordance with Clause 1 hereof, and
- (2) The said sum of HK\$400,000 to the Trustee of the said Trust Deed B in accordance with Clause 2 hereof together with the further sum of HK\$50,000 for furniture therein referred to, and
- (3) The said sum of HK\$850,000 payable to the Wife on the Decree Nisi being made absolute as provided in Clause 3 hereof,

10

she will thenceforth support and maintain herself and the Child and will make no further financial claim or demand against the Husband either on her own account or on behalf of the Child and will indemnify the Husband against any such claim or demand howsoever arising.

20

6. The Wife further covenants and agrees with the Husband as follows :-

- (a) That she will bring up the Child in the Roman Catholic faith.
- (b) That she will consult with the Husband regarding the school or other educational establishment which the Child is to attend and any changes therein, it being agreed by both parties that the Child shall be educated at a School at which he is taught to speak English and that the decision as to the school which the Child is to attend shall be taken having regard to the place in which the Wife resides or wishes to reside, the Wife recognising that frequent changes of residence and school may be harmful for the Child's education and progress.

30

7. All legal costs and stamp duty payable in respect of this Deed and all legal costs payable in respect of the two Trust Deed shall be paid by the Husband. The stamp duties payable in respect of the two Trust Deeds shall be paid out of the

40

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

Trust Funds thereby settled.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

No. 43 Exhibit "H.D.L.-2" (cont'd)

SIGNED SEALED and DELIVERED )  
by the Husband in the presence of :- ) (sd.) Lasala L.S.

(sd.) Raymond E. Moore  
Solicitor,  
Hong Kong.

10

SIGNED SEALED and DELIVERED )  
by the Wife in the presence of :- ) (sd.) Hannelore de Lasala L.S.

(sd.) Brian Tisdall  
Solicitor, Hong Kong.

No. 43 Exhibit "H.D.L.-3"

No. 43 EXHIBIT "H.D.L.-3"

Hong Kong Stamp Duty Office Stamp duty paid \$100.00

I certify that the sum of \$1,200 has been paid in respect of Stamp Duty (C.R.No.2790) sd. Ng Wai King Asst. Collector

20

4 JUN 1970

4 JUNE 1970

THIS TRUST DEED is made this THIRTIETH day of MAY One thousand nine hundred and seventy BETWEEN ERNEST FERDINAND PEREZ DE LASALA of Union House, 17th Floor, Victoria, Hong Kong, Company Direct (hereinafter called "the Husband") of the first part HANNELORE DE LASALA of 41B, Estoril Court, Victoria aforesaid (hereinafter called "the Wife") of the second part and HONG KONG & SHANGHAI BANK, HONG KONG (TRUSTEE) LIMITED of 1, Queen's Road Central, Victoria aforesaid (hereinafter called "the Trustee") of the third part.

30

WHEREAS :-

(1) On the 23rd January 1970, the Wife filed a Petition in the Supreme Court of Hong Kong in its

Divorce Jurisdiction No. 14 of 1970 praying (inter alia) for dissolution of her marriage with the Husband and maintenance and/or a lump sum and/or a secured provision for herself.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

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(2) On the 23rd day of May, 1970, the Wife was granted a decree nisi of dissolution of marriage on the said Petition and it was further ordered that the Deed of Arrangement dated the 22nd day of May, 1970 entered into between the Husband and the Wife to which a specimen of this Trust Deed was exhibited as Trust Deed is be approved.

(3) This Trust Deed is now executed pursuant to the said Order and Deed of Arrangement.

(4) The Husband has paid to the Trustee the sum of HK\$400,000 to be held upon the trusts hereinafter declared.

(5) The Husband is at the date of this Deed domiciled and resident in Hong Kong.

NOW THIS DEED WITNESSETH as follows :-

20

1. The Settlor hereby appoints the Trustees and the Trustees hereby agree to act as Trustees of the said sum of HK\$400,000 and the investments and property from time to time representing the same upon the trusts hereby declared and with the benefit of and subject to the powers, provisions, terms and conditions hereinafter contained.

30

2. The appointment of the Trustee and any other trust company or corporation appointed as Trustee hereof shall be upon the Terms and Conditions of such Trustee last published before the date of its appointment and every such Trustee shall be entitled to charge and be paid remuneration calculated in accordance with such Terms and Conditions and shall further have power from time to time to charge remuneration in accordance with any later published terms and conditions of such Trustee for the time being in force.

40

3. In this Deed unless the context otherwise requires, the following terms shall have the following meanings :-

- (a) "the Trustee" means Hong Kong & Shanghai Bank Hong Kong (Trustee) Limited or other the Trustee for the time being of

In the Supreme  
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No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

- (b) "the Child" shall mean Ernest Edward de Lasala, the child of the marriage between the Husband and the Wife who was born on the 28th day of August 1966
  - (c) "the Husband" means the said Ernest Ferdinand Perez de Lasala.
  - (d) "the Wife" means the said Hannelore de Lasala
  - (e) "the Trust Fund" means :- 10
    - (a) the said sum of HK\$400,000.00.
    - (b) all income therefrom accumulated and invested as hereinafter provided.
    - (c) the investments and property from time to time representing such sum and accumulations and any additions thereto.
4. The Trustees shall hold the Trust Fund upon the following trusts :- 20
- (a) Upon trust to pay therefrom the acceptance fee payable to the Bank Trustee upon the execution hereof and the stamp duty payable on this Deed.
  - (b) Upon trust to invest the residue thereof in or upon any investments hereby authorised.
  - (c) Upon trust until the purchase of a residence as provided in paragraph (d) of this Clause, but in any event not later than the 30th September 1970, to pay from the income thereof 30 such sum as the Trustee may think fit for or towards the expenses incurred by the Wife in providing accommodation for herself and the child up to the 30th September 1970, it being agreed by the Wife that if for any reason a residence has not been purchased by that date, she will pay all further costs of providing such accommodation from her own moneys.
  - (d) Upon trust to apply the capital thereof 40



either directly or through any limited company or nominee in the purchase for the Wife and Child in such location and of such description as is mentioned in Clause 5(a) hereof to be held on the trusts declared in Clause 6 hereof and all costs and expenses of and incidental to such purchase including the cost of forming any such limited company or the fees payable to any such nominee.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

- 10 (e) Subject thereto upon trust to apply the income of any part of the capital of the Trust Fund from time to time not invested in the purchase of a residence :-
- (i) for or towards any expenses incurred by the Trustees in carrying out the trusts of this Deed, and
- (ii) subject thereto in accumulating the same for a period of 21 years from the date hereof or for such longer period (if any) as the law may from time to time allow and to hold such accumulations as accretions to capital, and
- 20 (iii) subject thereto in paying the same to or for the benefit of the Child.
- (f) Subject as aforesaid, and in particular to the provisions of Clause 6 hereof, upon trust for the Child contingently upon his attaining the age of twenty five (25) years absolutely
- 30 PROVIDED ALWAYS that if the Child shall die before attaining the age of twenty five (25) years leaving children living at his death, then upon trust for such children if and when they attain the age of twenty one (21) years and if more than one in equal shares absolutely AND PROVIDED FURTHER that if the Child shall die before attaining the age of
- 40 twenty five (25) years leaving no children living at his death who attain the age of twenty one (21) years, then upon trust for the Husband his executors and administrators absolutely.

5.(a) The location and description of the residence to be purchased by the Trustee pursuant to Clause 4(d) hereof shall be as set out hereunder or as near thereto as circumstances permit :-

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No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

(1) Location - United Kingdom or Federal Republic of Germany in a good class residential area and good educational and recreational facilities, such area to be selected by the Wife but to be subject to the approval of the Husband (which approval shall not be unreasonably withheld.)

10

(2) Description - Freehold or leasehold house with not less than 150 years unexpired; 3-4 bedroom, one or more reception rooms with usual offices, modern sanitation, garage and garden.

(b) As soon as reasonably possible after the coming into force of this Deed, the Wife shall notify the Trustee of one or more houses meeting the above description which she wishes to have purchased as her residence as herein provided and the proposed purchase price therefor. The Trustee shall consult with the Husband regarding the proposed purchase of the house and if so required by the Husband shall at the expense of the Trust Fund, obtain an independent valuation and survey of the house.

20

(c) The Trustees shall, subject to being satisfied as to the price and condition of the house proposed by the Wife and subject to any reasonable objection by the Husband as to its location or description, purchase such house either directly or through a limited company or nominee as aforesaid.

30

(d) If such house or any house subsequently acquired by the Trustee in exchange or substitution therefor (all of which are where not inapplicable hereinafter included under the designation "the residence") is purchased directly by the Trustee the same shall be held upon trust for sale with power to postpone such sale for so long, as the Trustee shall at its discretion think fit.

40

(e) Whether the residence be held directly by the Trustee or through a limited company or nominee no sale of the house shall be made during the lifetime of the Wife and while she shall fulfill her obligations hereunder regarding the maintenance and repair thereof and the payment of outgoings therefor without her previous consent in writing.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit "H.D.L.-3" (cont'd)

10 6. The Trustee shall hold the residence and the proceeds of sale thereof UPON TRUST :-

(a) To permit the Wife to reside therein rent free during her lifetime, subject to payment by the Wife of all rates, taxes, repairs, maintenance, fire insurance and other outgoings payable in respect thereof.

20 (b) Subject as aforesaid upon trust for the Child contingently upon his attaining the age of twenty five (25) years absolutely PROVIDED ALWAYS that if the Child shall die before attaining the age of twenty five (25) years leaving children living at his death, the Trustees shall hold the residence upon trust for such children if and when they attain the age of twenty one (21) years and if more than one in equal shares absolutely AND PROVIDED further that if the Child shall die before attaining the age of 30 twenty five (25) years leaving no children living at his death who attain the age of twenty one (21) years the Trustees shall hold the residence upon trust for the Husband his executors and administrators absolutely.

40 7. The Husband hereby covenants with the Wife and by way of separate covenant with the Trustee that he will pay to the Trustee such sum not exceeding HK\$50,000 for the provision of furniture for the residence upon being requested so to do and upon production of the appropriate invoices therefor. Such furniture shall be the absolute property of the Wife and the Trustee shall have no responsibility for the same after it has been purchased.

8. The Wife hereby covenants with the Husband that she will at all times until the Child attains full age and as long thereafter as he wishes to

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(cont'd)

reside with the Wife provide a home for the Child in the residence purchased in accordance with the provisions of this Deed.

9. The Wife hereby covenants with the Trustee:-

(a) That she will keep the residence in good repair and condition and pay the premium for the insurance thereof against loss or damage by fire to the full insurable value thereof. Such insurance shall be taken out by and maintained in the name of the Trustee.

10

(b) That she will pay and discharge all rates, taxes maintenance and repair charges and other outgoings of every kind and description payable in respect thereof.

(c) That she will permit the Trustee or its representative to inspect the residence at all reasonable times on reasonable notice being given.

20

10. (a) The Wife shall be entitled from time to time during her life to change her place of residence and accordingly to request the Trustee to sell the residence and purchase another in its place or to exchange the residence for another Provided however that :-

(1) any deficiency in price and all expenses of and incidental to such charge including all legal and other costs and expenses shall be born by the Wife, and

30

(2) the Trustee shall be satisfied that the new residence is a suitable residence for the Wife and Child having regard to the provision of Clause 5(a) hereof and the price to be paid therefor represents its fair market value,

(b) Subject as aforesaid, the Trustee shall act in accordance with the Wife's wishes and any new residence purchased or acquired by way of exchange for the existing residence shall be held by the Trustee on the trusts hereof.

40

(c) If there shall be a surplus on the purchase or exchange of a residence, such surplus shall be held by the Trustee as capital money upon trust to invest the same and apply the income thereof towards any payments and expenses incurred by the Trustee in administering the trusts hereof and, subject thereto, the Trustee shall hold such capital and any accumulated income on the trusts declared in Clause 4 hereof.

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No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

10 11. If the Wife shall fail to pay any sum payable by her hereunder, the Trustee may, without prejudice to any remedy against the Wife hereunder, mortgage, charge or lease the residence or any part thereof for the purpose of raising the same.

20 12. Any moneys requiring investment under the trusts of this Deed may be invested in any investment which the Trustee may in its absolute discretion without being liable to account thereof consider suitable as though the Trustee were the absolute owners thereof and notwithstanding that such investment is not authorised by law for the investment of trust funds and at the like discretion the Trustee may place or continue such moneys or any part thereof for any period or periods however long to the credit of any account whether current or deposit in the name or under the control of the Trustee with any bank finance house or similar organisation and to withdraw the same from time to time and for the purposes aforesaid to enter into sign and execute contracts cheques transfer deeds or other writings. The Trustee may further invest in its own names or under its control in such manner as it may think fit or in the name or names of any person or persons or limited liability company or corporation as nominee or nominees of the Trustee and the Trustee shall not in any circumstances be liable for allowing any part of the Trust Property to remain however long in the name or names of any such company, corporation, nominee or nominees.

30

40

13. Subject as herein otherwise specifically provided, the Trustee shall at its absolute discretion have the following additional powers :-

- (1) Power to change or vary any investments for the time being forming part of the Trust Fund for others hereby authorised.
- (2) Power to sell lease demise let mortgage

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No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

- charge licence and generally manage and deal with any land of any tenure which or the proceeds of sale of which may at any time form part of the Trust Fund as if the Trustee were beneficial owner absolutely entitled therefor.
- (3) Power to appropriate any investment or property from time to time forming part of the Trust Fund in its actual state of investment in or towards the satisfaction of the beneficial interest of any person in the Trust Fund upon making such valuation as the Trustees may think fit and without the necessity of obtaining the consent of any person. 10
- (4) Power to subscribe for, purchase, acquire or retain all or part of the Trust Fund invested in any class or classes of securities of one or more so-called "investment companies" or "investment trusts", unit trusts or mutual funds wherever organized and whether "open end" or "closed end" even though such securities are not listed on any securities exchange or otherwise publicly dealt in (including specifically any private investment or holding company even though such securities represent all or a majority of such corporation's outstanding securities) and to transfer property thereto in exchange for its securities or as paid-in-surplus or in addition to capital without issuance of additional securities. 20 30
- (5) Power to consent to, oppose, or otherwise participate in any corporate action or change affecting any securities or other property and in connection therewith to delegate discretionary powers, deposit securities and pay any assessments or other charges as an expense of administration. 40
- (6) Power to exercise, abstain from exercising, or otherwise dispose of or deal with any options or rights of subscription, conversion or exchange,

available in connection with any securities or other property and to make any payments required therefor.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

- (7) Power to compromise or otherwise adjust or settle in any manner whatever any claims which may at any time arise or exist in favour of or against the Trust Fund or any property comprised therein.

No. 43  
Exhibit  
"H.D.L.-3"  
(cont'd)

10

- (8) Power to employ custodians or depositaries and any agents, accountants, investment advisors and attorneys, within or outside Hong Kong and to delegate to them discretionary powers and to compensate them for their services and reimburse them for their expenses as an expense of administration of the trust.

20

- (9) Power to hold all or any part of the Trust Fund uninvested and in any currency whatsoever for any period or periods and without any liability for loss due to devaluation foreign exchange or governmental restrictions or otherwise.

30

- (10) Power from time to time to deposit all or any part of the Trust Fund in any jurisdiction in any savings or other account, interest bearing or non-interest bearing, in any currency whatever with any bank or trust company including the Trustee and without any liability for loss due to devaluation, foreign exchange or governmental restrictions or otherwise.

40

- (11) Power to extend the time of payment of any bond, note or mortgage or of any instalment of principal thereof or of any interest due thereon or to hold such bond, note or mortgage after maturity as a past due obligation; to modify, alter or amend any such bond, note or mortgage in any way and to waive any defaults thereunder; to foreclose any such mortgage or to compromise or settle any claim thereunder; to take title to, take over, manage, operate and lease the

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"H.D.L.-3"  
(cont'd)

- property covered by any such mortgage or any part thereof, temporarily or permanently in partial or complete satisfaction of any claim thereunder.
- (12) Power for the Trustee to deal with itself in its corporate capacity or with its parent corporation or any subsidiary or affiliate of its parent corporation with the same freedom as with any third person. 10
- (13) Power to receive and administer hereunder any property, if acceptable to the Trustee, that may at any time or times be added to the trust or any trust by any one.
- (14) Power to determine from time to time what receipts shall be treated as income and what payments, charges or expenses shall be charged in whole or part to income except that any increase realized from the sale of any property shall be capital. 20
- (15) Power for the Trustee to deduct and pay its remuneration and commissions without prior judicial authorization.
- (16) Power to deal with any income applicable for the maintenance education or benefit of the Child or any issue of the Child as aforesaid under any of the provisions of this Deed by paying or contributing towards the payment of the premium or costs of any policy of insurance by the terms of which any sum or sums of money may in any contingency be payable to or applicable for the maintenance education or benefit of the Child or such issue. 30
- (17) Power to incorporate any company or companies in any place in the world at the expense of the trust with limited or unlimited liability for the purpose (inter alia) of acquiring and/or holding the residence and/or all or any other part or parts of the Trust Fund. The consideration on the sale or transfer of the Trust Fund or any part thereof to a 40



company incorporated pursuant to this sub-clause may consist wholly or partly of fully paid shares, debentures or debenture stocks or other securities or obligations secured or unsecured of the company and may be credited as fully paid and may be allotted to or otherwise vested in the Trustee and be capital money in the Trustee's hands.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-3" (cont'd)

- 10 (18) Power to exercise all voting rights in any shares, stocks, debentures or other securities from time to time forming part of the Trust Fund.

20 14. In paying or applying income to or for the use of the Child or any children of the Child as aforesaid, the Trustee, with absolute discretion, may pay the same to either parent of the Child or children, or to the guardian of his or her person or property (in whatever jurisdiction appointed) or to the person or persons who under the law of the domicile or then place of residence of such Child or children are entitled to the custody or possession of his or her personal property (whether or not judicially appointed) or to any adult person with whom such Child or children resides or the principal, treasurer or other proper officer of any school or place of education or training which he or she may be attending any may also pay all or any part thereof to any bank, banker or other custodian in any jurisdiction for the account of the Child or such children. Any payment or application of income or capital so made by the Trustee shall be and constitute a full and complete discharge to the Trustee in respect thereof and the Trustee shall not be required to see to the application thereof nor to obtain any further receipt or accounting therefor.

(sic)

40 15. To facilitate the administration of the trusts created hereunder, the Trustee, without regard to any legal restrictions otherwise applicable to trustees:

- (a) May rely upon any letter, notice, certificate, report, statement, instrument, document or other paper and upon any telephone, telegraph, telex, cable, wireless or radio message if believed by it to be genuine and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the

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H.D.L.-3"  
(cont'd)

proper person, firm or corporation,  
without incurring liability for any  
action or inaction based thereon.

- (b) Shall continue to have or exercise,  
after the termination of the trusts  
hereby created in whole or in part and  
until the final distribution thereof,  
all the title, powers, discretions,  
rights and duties conferred or imposed  
upon it by law or by this Deed during  
the existence of such trusts.

10

16. In the professed execution of the trusts and  
powers hereof no Trustee shall be liable for any  
loss to the Trust Fund arising by reason of any  
improper investment made in good faith or for the  
negligence or fraud of any agent or employee  
employed by him or by any other Trustee hereof  
although the employment of such agent or employee  
was not strictly necessary or expedient or by  
reason of any mistake or omission made in good  
faith by any Trustee hereof (or by reason of any  
other matter or thing except wilful and individual  
fraud or wrong-doing on the part of the Trustee who  
is sought to be made so liable).

20

17. This Trust Deed is established under the  
laws of Hong Kong and the rights of all parties and  
the construction and effect of each and every  
provision hereof shall be subject to the jurisdiction  
of and regulated by the laws of Hong Kong which  
shall be the forum for the administration thereof  
PROVIDED that :-

30

- (i) If at any future date, in the opinion of  
Hong Kong & Shanghai Bank, (Trustee)  
Limited of 9, Gracechurch Street in the  
City of London (hereinafter called "the  
London Company") of which it shall be  
the sole judge, it is desirable for the  
protection of the Trust Fund and/or for  
the proper administration of the trusts  
of this Deed to appoint new Trustees  
outside Hong Kong and to remove the  
forum of the administration of the  
trusts from Hong Kong by reason directly  
or indirectly of :-

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- (a) a declaration of existence of a  
state of war in consequence whereof  
the citizens or nationals or

residents of the Colony of Hong Kong are declared to be or deemed to be enemies of any foreign government or

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

- (b) the occupation or de facto rule of the said Colony of Hong Kong by any enemy or other foreign power whether by invasion by military forces or otherwise or

No. 43  
Exhibit  
H.D.L.-3"  
(cont'd)

- 10 (c) the enactment or the proposed enactment of any law or any action or proposed action by or on the part of any de jure or de facto governmental authority agency or officer which may bring about the acquisition, expropriation, freezing or confiscation of any of the assets
- 20 comprised in the Trust Property or interfere with the terms, trusts or rules thereof or require the Trustees to do or omit some act or thing, the doing or omission of which would be contrary to the terms of this Deed.
- (d) the existence of any other emergency in or affecting Hong Kong or any part of the Trust Property whether similar to or dissimilar from the foregoing.

30 the London Company may at any time or times thereafter by deed remove the Trustee for the time being hereof from the office of trustee and may appoint any person or persons or corporation to be a new trustee or new trustees in place of the trustee or trustees so removed. In exercising the power hereby conferred, the London Company shall be entitled to

40 appoint itself as sole trustee or as one of two or more trustees of the trusts hereof.

- (ii) In addition to the power conferred by sub-paragraph (i) hereof, the London Company shall have power simultaneously with or at any time after exercising the power under sub-paragraph (i) by deed to declare that the forum for the

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit H.D.L.-3" (cont'd)

administration of the trusts hereby constituted shall thenceforth be some place outside Hong Kong and that the trusts hereof shall be administered in accordance with the law of that place or of any other place specified in such deed and the trusts hereby constituted shall thenceforth be administered from the place and in accordance with the law so specified, and/or

10

(iii) So often as any such declaration as aforesaid shall be made, the London Company may at any time thereafter by deed make such consequential alterations in the trusts, powers and provisions of this Deed as it in its absolute discretion considers necessary or desirable to secure that in so far as may be possible such trusts powers and provisions shall be as valid and effective under the laws of the country named in such declaration as they are under the laws of Hong Kong.

20

IN WITNESS whereof the Husband and the Wife have hereunto set their hands and seals and the Trustee has caused its Common Seal to be hereunto affixed the day and year first above written.

SIGNED SEALED and DELIVERED )  
by the said Ernest Ferdinand ) (sd.) E.F. Perez de  
Perez de Lasala in the ) Lasala L.S.  
presence of :- )

30

sd. Raymond E. Moore  
Solicitor  
Hong Kong.

SIGNED SEALED and DELIVERED )  
by the said Hannelore de ) (sd.) H. De Lasala  
Lasala in the presence of:- ) L.S.

SEALED with the Common Seal ) THE COMMON SEAL of  
of the Bank Trustee and ) Hong Kong & Shanghai  
SIGNED by A.D.A.G. Mosley, ) Bank, Hong Kong  
Director and J.N. Cotton, ) Trustee Ltd. was  
Secretary in the presence of: ) hereunto affixed in  
the presence of :

40

sd. A.D.A.G. Mosley  
Director (C.S.)

sd. J.N. Cotton  
Secretary

No. 43

EXHIBIT "H.D.L.-4"

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-4"

I certify that the  
sum of \$1,500 has been  
paid in respect of  
Stamp Duty (C.R. No.  
2789)

sd. Ng Wai King  
Asst. Collector

10

4 JUNE 1970

20

THIS TRUST DEED is made this Thirtieth day of May  
One thousand nine hundred and  
seventy BETWEEN ERNEST FERDINAND PEREZ DE LASALA  
of Union House, 17th Floor, Victoria, Hong Kong,  
Company Director (hereinafter called "the Settlor")  
of the one part and HONG KONG & SHANGHAI BANK,  
HONG KONG (TRUSTEE) LIMITED of 1, Queen's Road  
Central, Victoria aforesaid (hereinafter called  
"the Bank Trustee") and the said ERNEST FERDINAND  
PEREZ DE LASALA (hereinafter together called "the  
Trustees") of the other part

WHEREAS :-

30

(1) On the 23rd January 1970 Hannelore de Lasala,  
the wife of the Settlor (hereinafter called "the  
Wife") filed a Petition in the Supreme Court of  
Hong Kong in its Divorce Jurisdiction No. 14 of  
1970 praying (inter alia) for dissolution of her  
marriage with the Settlor and custody of and  
maintenance or a lump sum for the child of the  
marriage Ernest Edward de Lasala born on the 28th  
day of August 1966 (hereinafter referred to as "the  
Child").

40

(2) On the 23rd day of May, 1970, the Wife was  
granted a decree nisi of dissolution of marriage on  
the said Petition and it was further ordered that  
the application for maintenance, lump sum payment  
and secured provision for the Child be dismissed on  
the Settlor settling the sum of HONG KONG DOLLARS  
FIVE HUNDRED THOUSAND (HK\$500,000.00) on Trustees  
for the Child and executing a Trust Deed in the  
form hereof.

(3) The Settlor has paid to the Bank Trustee for  
the account of the Trustees the said sum of  
HK\$500,000.00 to be held upon the trusts hereinafter  
declared.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit "H.D.L.-4" (cont'd)

(4) The Settlor is at the date of this Deed domiciled and resident in Hong Kong.

NOW THIS DEED WITNESSETH as follows :-

1. The Settlor hereby appoints the Trustees and the Trustees' hereby agree to act as Trustees of the said sum of HK\$500,000.00 and the investments and property from time to time representing the same upon the trusts hereby declared and with the benefit of and subject to the powers, provisions, terms and conditions hereinafter contained.

10

2. The appointment of the Bank Trustee or any other trust company or corporation appointed as Trustee hereof shall be upon the Terms and Conditions of such company or corporation last published before the date of its appointment and every such Trustee shall be entitled to charge and be paid remuneration calculated in accordance with such terms and conditions and shall further have power from time to time to charge remuneration in accordance with any later published terms and conditions of such Trustee for the time being in force.

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3. In this Deed unless the context otherwise requires, the following terms shall have the following meanings :-

(a) "the Bank Trustee" means Hong Kong & Shanghai Bank Hong Kong (Trustee) Limited.

(b) "the Child" shall mean the said Ernest Edward de Lasala.

30

(c) "the Settlor" means the said Ernest Ferdinand Perez de Lasala.

(d) "the Trustees" means the Trustees for the time being of this Deed.

(e) "the Trust Fund" means :-

(a) the said sum of HK\$500,000.00.

(b) all income therefrom accumulated and invested as hereinafter provided.

40

(c) the investments and property from time to time representing such sum and accumulations and any additions thereto.

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4. The Trustees shall hold the Trust Fund upon the following trust :

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Exhibit  
"H.D.L.-4"  
(cont'd)

10 (a) Upon trust to pay therefrom the acceptance fee payable to the Bank Trustee upon the execution hereof and the stamp duty payable on this Deed.

(b) Upon trust to invest the residue thereof in or upon any investments hereby authorised.

20 (c) Upon trust to pay or apply the whole or (for the period of twenty one (21) years from the date hereof) such part as the Trustees shall at their discretion think fit of the income of the Trust Fund to or for the maintenance, advancement or benefit of the Child.

Without limiting the generality of the foregoing it is hereby declared that the Trustees shall have power to make payments from the income to the Bank Trustee as Trustee of a Trust Deed bearing even date herewith and made between the Settlor of the first part, the Wife of the Settlor of the second part and the Bank Trustee of the third part whereby (inter alia) the sum of HK\$400,000 was settled upon trust for the provision of a house for the use by the Wife of the Settlor during her life and subject thereto for the Child on attaining the age of 25 years, to enable the Bank Trustee to pay or discharge any amounts which may be or become payable under the terms and conditions of such Trust Deed or which, in the opinion of the Trustee are properly payable for the protection of the property and interest of the Child thereunder.

40 (d) Subject to paragraph (c) above upon trust for the period of twenty one (21) years from the date hereof to accumulate the income of the Trust Fund and to hold such accumulations as accretions to the capital thereof.

(e) Subject as aforesaid upon trust as to both capital and income for the Child contingently upon his attaining the age of twenty five (25)

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years absolutely PROVIDED ALWAYS that if the Child shall die before attaining the age of twenty five (25) years leaving children living at his death, the Trustees shall hold the capital and income of the Trust Fund upon trust for such children if and when they attain the age of twenty one (21) years and if more than one in equal shares absolutely AND PROVIDED further that if the Child shall die before attaining the age of twenty five (25) years leaving no children who attain the age of twenty one (21) years, the Trustees shall hold the capital and income of the Trust Fund upon trust for the Settlor his executors and administrators absolutely.

10

5. It is hereby declared that in the event of the death of the Child before attaining the age of twenty five (25) years, the powers and authorities hereby conferred on the Trustees shall apply and be exercisable by the Trustees during the minority of any child of the Child living at his death save that the power of accumulation shall not be exercisable beyond such period as may be allowed by law.

20

6. Any moneys requiring investment under the trusts of this Deed may be invested in any investment which the Trustees may in their absolute discretion without being liable to account therefor consider suitable as though the Trustees were the absolute owners thereof and notwithstanding that such investment is not authorised by law for the investment of trust funds and at the like discretion the Trustees may place or continue such moneys or any part thereof for any period or periods however long to the credit of any account whether current or deposit in the name or under the control of the Trustees with any bank finance house or similar organisation and may withdraw the same from time to time and for the purposes aforesaid may enter into sign and execute contracts cheques transfer deeds or other writings. The Trustees may further invest in their own names or under their control in such manner as they think fit or in the name or names of any person or persons or limited liability company or corporation as nominee or nominees of the Trustees and the Trustees shall not in any circumstances be liable for allowing any part of the Trust Fund to remain however long in the name or names of any such company, corporation, nominee or nominees.

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7. The Trustees shall at their absolute discretion have the following additional powers:-

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- (1) Power to change or vary any investments for the time being forming part of the Trust Fund for others hereby authorised.
- (2) Power to apply any money for the time being forming part of the Trust Fund in improving or developing any land which or the proceeds of sale of which may for the time being be subject to the trusts hereof or erecting enlarging improving or rebuilding any buildings upon such land.
- (3) Power to permit any beneficiary to reside in any dwelling-house occupy any land or have the custody and use of any chattels which or the proceeds of sale of which may for the time being be subject to the trusts hereof upon such conditions as to payment of rents rates and other expenses and outgoings and as to insurance repair and decoration and for such period and generally upon such terms as the Trustees in their discretion shall think fit.
- (4) Power to sell lease demise let mortgage charge licence and generally manage and deal with any land of any tenure which or the proceeds of sale of which may at any time form part of the Trust Fund as if the Trustees were beneficial owners absolutely entitled.
- (5) Power to appropriate any investment or property from time to time forming part of the Trust Fund in its actual state of investment in or towards the satisfaction of the beneficial interest of any person in the Trust Fund upon making such valuation as the Trustees may think fit and without the necessity of obtaining the consent of any person.
- (6) Power to subscribe for, purchase, acquire or retain all or part of the Trust Fund invested in any class or classes of securities of one or more so-

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- called "investment companies" or "investment trusts", unit trusts or mutual funds wherever organized and whether "open end" or "closed end" even though such securities are not listed on any securities exchange or otherwise publicly dealt in (including specifically any private investment or holding company even though such securities represent all or a majority of such corporation's outstanding securities and to transfer property thereto in exchange for its securities or as paid-in-surplus or an addition to capital without issuance of additional securities. 10
- (7) Power to consent to, oppose, or otherwise participate in any corporate action or change affecting any securities or other property and in connection therewith to delegate discretionary powers, deposit securities and pay any assessments or other charges as an expense of administration. 20
- (8) Power to exercise, abstain from exercising, or otherwise dispose of or deal with any options or rights of subscription, conversion or exchange, available in connection with any securities or other property and to make any payments required therefor. 30
- (9) Power to compromise or otherwise adjust or settle in any manner whatever any claims which may at any time arise or exist in favour of or against the Trust Fund or any property comprised therein.
- (10) Power to employ custodians or depositaries and any agents, accountants, investment advisers and attorneys, within or outside Hong Kong and to delegate to them discretionary powers and to compensate them for their services and reimburse them for their expenses as an expense of administration of the trust. 40
- (11) Power to hold all or any part of the Trust Fund uninvested and in any

currency whatsoever for any period or periods and without any liability for loss due to devaluation foreign exchange or governmental restrictions or otherwise.

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10 (12) Power from time to time to deposit all or any part of the Trust Fund in any jurisdiction in any savings or other account, interest bearing or non-interest bearing, in any currency whatever with any bank or trust company including the Bank Trustee and without any liability for loss due to devaluation, foreign exchange or governmental restrictions or otherwise.

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(cont'd)

20 (13) Power to extend the time of payment of any bond, note or mortgage or of any instalment of principal thereof or of any interest due thereon or to hold such bond, note or mortgage after maturity as a past due obligation; to modify alter or amend any such bond, note or mortgage in any way and to waive any defaults thereunder; to foreclose any such mortgage or to compromise or settle any claim thereunder; to take title to, take over, manage, operate and lease the property covered by any such mortgage or any part thereof, temporarily or permanently in partial or complete satisfaction of any claim thereunder.

30 (14) Power for the Bank Trustee to deal with itself in its corporate capacity or with its parent corporation or any subsidiary or affiliate of its parent corporation with the same freedom as with any third person.

40 (15) Power to receive and administer hereunder any property, if acceptable to the Trustees that may at any time or times be added to the trust or any trust by any one.

(16) Power to determine from time to time what receipts shall be treated as income and what payments, charges or expenses shall

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be charged in whole or part to income  
except that any increase realized  
from the sale of any property shall be  
capital.

- (17) Power for the Bank Trustees to deduct  
and pay its remuneration and  
commissions without prior judicial  
authorization.
- (18) Power to deal with any income  
applicable for the maintenance  
education or benefit of the Child or any  
children of the Child as aforesaid under  
any of the provisions of this Deed by  
paying or contributing towards the  
payment of the premiums or costs of any  
policy of insurance by the terms of which  
any sum or sums of money may in any  
contingency be payable to or applicable  
for the maintenance education or benefit  
of the Child or such Children. 10  
20
- (19) Power to incorporate any company or  
companies in any place in the world at  
the expense of the trust with limited or  
unlimited liability for the purpose  
(inter alia) of acquiring and/or holding  
the whole or any part of the Trust Fund.  
The consideration of the sale or  
transfer of the Trust Fund or any part  
thereof to a company incorporated  
pursuant to this sub-clause may consist  
wholly or partly of fully paid shares,  
debentures or debenture stocks or other  
securities or obligations secured or  
unsecured of the company and may be  
credited as fully paid and may be  
allotted to or otherwise vested in the  
Trustees and be capital money in the  
Trustees' hands. 30
- (20) Power to exercise all voting rights in  
any shares, stocks, debentures or other  
securities from time to time forming  
part of the Trust Fund. 40

8. The Bank Trustee shall whenever practicable  
consult with the Settlor in the exercise of any power  
or discretion hereunder but in all cases in which  
it shall be impossible or impracticable for the  
Bank Trustee to consult with the Settlor, whether

due to the absence of the Settlor or otherwise, the Bank Trustee may act alone and, in the event of disagreement between the Bank Trustee and the Settlor as to the manner of exercise of any such power or discretion or any other act, deed matter or thing done or omitted or to be done or omitted in or about the trusts of this Deed, the decision of the Bank Trustee shall be binding.

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(cont'd)

10 9. In paying or applying income to or for the  
use of the Child or any Children of the Child as  
aforesaid, the Trustees, with absolute discretion,  
may pay the same to either parent of the Child or  
Children, or to the guardian of his or her person  
or property (in whatever jurisdiction appointed)  
or to the person or persons who under the law of the  
domicile or then place of residence of such Child  
or Children are entitled to the custody or  
possession of his or her personal property  
20 (whether or not judicially appointed) or to any  
adult person with whom such Child or Children  
resides or the principal, treasurer or other proper  
officer of any school or place of education or  
training which he or she may be attending and may  
also pay all or any part thereof to any bank,  
banker, or other custodian in any jurisdiction for  
the account of the Child or such Children. Any  
payment or application of income or capital so  
made by the Trustees shall be and constitute a full  
and complete discharge to the Trustees in respect  
30 thereof and the Trustees shall not be required to  
see to the application thereof nor to obtain any  
further receipt or accounting therefor.

10. To facilitate the administration of the  
trusts created hereunder, the Trustees, without  
regard to any legal restrictions otherwise  
applicable to trustees :-

40 (a) May rely upon any letter, notice,  
certificate, report, statement,  
instrument, document or other paper  
and upon any telephone, telegraph, telex,  
cable, wireless or radio message if  
believed by it to be genuine and to be  
signed, sealed, acknowledged,  
presented, sent, delivered or given by  
or on behalf of the proper person, firm  
or corporation, without incurring  
liability for any action or inaction  
based thereon.

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- (b) Shall continue to have or exercise, after the termination of the trusts hereby created in whole or in part and until the final distribution thereof, all the title, powers, discretions, rights and duties conferred or imposed upon it by law or by this Deed during the existence of such trusts.

11. In the professed execution of the trusts and powers hereof no Trustee shall be liable for any loss to the Trust Fund arising by reason of any improper investment made in good faith or for the negligence or fraud of any agent or employee employed by him or by any other Trustee hereof although the employment of such agent or employee was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by any Trustee hereof (or by reason of any other matter or thing except wilful and individual fraud or wrong-doing on the part of the Trustee who is sought to be made so liable).

10

(sic)

20

12. Subject as mentioned in the next following Clause, the power of appointing new Trustees shall be vested in the Settlor during his lifetime.

13. This Settlement is established under the laws of Hong Kong and the rights of all parties and the construction and effect of each and every provision hereof shall be subject to the jurisdiction of and regulated by the laws of Hong Kong which shall be the forum for the administration thereof PROVIDED that :-

30

- (i) If at any future date, in the opinion of Hong Kong & Shanghai Bank, (Trustee) Limited of 9, Gracechurch Street in the City of London (hereinafter called "the London Company") of which it shall be the sole judge, it is desirable for the protection of the Trust Fund and/or for the proper administration of the trusts of this Deed to appoint new Trustees outside Hong Kong and to remove the forum of the administration of the trusts from Hong Kong by reason directly or indirectly of :-

40

- (a) a declaration or existence of a state of war in consequence whereof

the citizens or nationals or residents of the Colony of Hong Kong are declared to be or deemed to be enemies of any foreign government or

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10 (b) the occupation or de facto rule of the said Colony of Hong Kong by any enemy or other foreign power whether by invasion by military forces or otherwise or

No. 43 Exhibit "H.D.L.-4" (cont'd)

20 (c) the enactment or the proposed enactment of any law or any action or proposed action by or on the part of any de jure or de facto governmental authority agency or officer which may bring about the acquisition, expropriation, freezing or confiscation of any of the assets comprised in the Trust Fund or interfere with the terms, trusts or rules thereof or require the Trustees to do or omit some act or thing, the doing or omission of which would be contrary to the terms of this Deed.

30 (d) the existence of any other emergency in or affecting Hong Kong or any part of the Trust Fund whether similar to or dissimilar from the foregoing.

40 the London Company may at any time or times thereafter by deed remove the Trustees for the time being hereof from the office of trustee and may appoint any person or persons or corporation to be new trustee or trustees in place of the trustee or trustees so removed. In exercising the power hereby conferred, the London Company shall be entitled to appoint itself as sole trustee or as one of two or more trustees of the trusts hereof. PROVIDED however that the London Company shall not exercise the power hereby conferred so as to remove the Settlor from the office of Trustee unless he is at the time in Hong Kong and unable, in the opinion of the London Company, to continue to act effectively as a Trustee hereof.

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(ii) In addition to the power conferred by sub-paragraph (i) hereof, the London Company shall have power simultaneously with or at any time after exercising the power under sub-paragraph (i) by deed to declare that the forum for the administration of the trusts hereby constituted shall thenceforth be some place outside Hong Kong and that the trusts hereof shall be administered in accordance with the law of that place or of any other place specified in such deed and the trusts hereby constituted shall thenceforth be administered from the place and in accordance with the law so specified, and/or

10

(iii) So often as any such declaration as aforesaid shall be made, the London Company may at any time thereafter by deed make such consequential alterations in the trusts, powers and provisions of this Deed as it in its absolute discretion considers necessary or desirable to secure that in so far as may be possible such trusts powers and provisions shall be as valid and effective under the laws of the country named in such declaration as they are under the laws of Hong Kong.

20

IN WITNESS whereof the above named Settlor has hereunto set his hand and seal and the Bank Trustee has caused its Common Seal to be hereunto affixed the day and year first above written.

30

SIGNED SEALED and DELIVERED by the said Ernest Ferdinand Perez de Lasala in the presence of :- ) sd. E.F. Perez de Lasala L.S.

Sd. Raymond E. Moore Solicitor Hong Kong.

40

SEALED with the Common Seal of the Bank Trustee and SIGNED by A.D.A.G. Mosley, Director & J.N. Cotton, Secretary in the presence of: ) THE COMMON SEAL of Hong Kong & Shanghai Bank Hong Kong (Trustee) Ltd. was hereunto affixed in the presence of sd. A.D.A.G. Mosley Director sd. J.N. Cotton - Secretary (C.S.)



SIGNED SEALED and DELIVERED )  
by the said Ernest Ferdinand )  
Perez de Lasala in his )  
capacity as Trustee in the )  
presence of :-

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sd. Raymond E. Moore

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EXHIBIT "H.D.L.-5"

No. 43  
Exhibit  
"H.D.L.-5"

11th July, 1970

10 John Cotton Esq.  
c/o Hong Kong and Shanghai Banking Corp.  
Queens Rd. Central  
Hong Kong.

Dear Mr. Cotton,

20 I enclose a list of items I bought for Ernest  
during the last few weeks since leaving Hong Kong.  
I have started to write down every item I buy for  
the boy and if for any reason whatsoever you need a  
bill for any particular item, I will send you one.  
To send all the receipts will be inconvenient for  
you, as there are in German and some of them have  
only numbers of an adding machine on them and don't  
state what the item is. Because we travelled by  
air I did not take many toys and the bill may seem  
a little high, it should go down once we are  
settled. At the moment little Ernest and I are  
living in a small village in the country with my  
great aunt. The house has a large garden in front  
and in the back and Ernest is having a great time.  
30 He has already caught a fish, loves his go-cart and  
goes outside to play with my cousins son from early  
morning. He has not had so much freedom before.  
He seems happy, but misses his father of course.  
I once mentioned that we would not return to Hong  
Kong, but he cried and told me that Estoril Court  
was his home. Now I am waiting for him to settle  
and like it here until I try again. I do not pay  
anything definite for food or accommodation at the  
moment, but invite my family out in return, buy  
40 food occasionally and household goods to make up.  
It probably works out the same as food and  
accommodation bills but I cannot tell you anything

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definite what I pay exactly for Ernest's keep. Small items I buy for him I do not write down, as it would take pages of paper and would be wasting your time. I suggest we somehow come to an agreement and work out a certain sum for food and small items. The rest like clothing and larger toys I will write down in detail until I have any idea what the monthly sum would be.

A couple of weeks ago I bought a Mercedes as there is no regular bus service here to drive to the shops about 10 miles away, pick up my cousins son to play with Ernest in the mornings or go fishing or on small trips and of course for my own use, visiting friends etc. I would have liked a two seater myself, but followed my husband's advice to buy a solid car in case something happened on the road I have done the best I could to protect the boy. The car is expensive to run and the initial cost was high, but then I would have had some sort of car anyhow and I don't even know if I should have mentioned it to you. I leave it to you, if you think part of the cost of the running should go on Ernest's expenses or not. It does not really matter, but if we have a little more money to live on I can give my boy a better life all around. After Hong Kong Europe seems to be very expensive especially eating out which we do frequently and clothing.

I returned from Hamburg yesterday where I saw a Real Estate Agent regarding the purchase of a house. This firm was recommended by a ship-owner Ernest and I have known for some time and is reliable I was told. It is possible to find a house quickly the agent told me, but as he was sent by someone he has done a lot of business with he told me that it would take from 6 to 8 months to find something good at a reasonable price and what I had in mind. Prices are much higher than we anticipated and range from 250,000 to 600,000 Deutsche Mark in a good residential area. That of course is without fees or repairs. Old houses are cheaper, but the cost of upkeep is too high. Houses in a good area are hard to get and a lot higher than I can afford. At the moment is holiday time and all agents operate with a skeleton staff as few houses change hands. Also the market is unsteady and prices are too high for what is offered at the moment, as people seem to buy this as an investment, or hang

10 on to what they have got. I had a look at a few  
houses, but all of them were over 350,000  
Deutschmark and most not worth the money as they  
were too old. Even to buy a good size flat not  
too far from the International School will cost  
around 200,000 to 300,000 Deutschmark. Of course  
there is something cheaper around, but one needs  
time and that is something I do not have unless  
the stipulation in the deed or document I signed  
is changed. There is hardly anything I can do  
during holidaytime which means I cannot start  
till September. Also I would like to take my son  
to the seaside during the summer season, as he  
will have a long winter ahead, but cannot do so if  
I have to take him around to look at houses instead.  
Could you please arrange that we can have a holiday  
like all the kids here until September and then  
start looking for a house. At the moment I feel  
very uncertain and sort of hanging in the air  
20 after the divorce and cannot decide where to live  
in this frame of mind. Right now I feel like hiding  
in this small village forever, but this would not  
be a permanent solution. I need more time to find  
myself and just to think that I have to make a  
decision soon makes me feel panicky. I would like  
to have one year to buy something as permanent as a  
house, as it will take about 6 to 8 months to find  
a house the agent told me. It can be less, but this  
seems to be the average time he has experienced if  
30 someone does not want to overpay and find exactly  
what he was looking for.

The children at the International School in  
Hamburg start school at the age of 6 and Kindergarten  
does not start until the child has reached the age  
of 5 I was told. Therefore the boy would go to a  
German Kindergarten or playgroup if I wanted him to  
go, but would speak German only and no English.  
This means that for over one year he would not speak  
any English and forget whatever he knows now. So  
40 I don't really know if I should not go to England  
for that period or at least part of it, also look  
around for a house there and as planned decide if we  
want to live there or in Germany.

I definitely need more time. I want to take  
my son to the seaside for 4 to 6 weeks, rent a small  
house right on the beach or flat, give him a lot of  
fresh sea air so he has enough sun to last him  
through a European Winter. Then I would like to  
live in London 6 months to have the boy at Kindergarten

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(cont'd)

there to speak English, look around at houses and see what life is like, then live in Hamburg for 6 months and then decide where we want to settle permanently. This will take us up to September 1971 when the boy is 5 years old and starts in Kindergarten in Hamburg or school in England. Please could you think about this Mr. Cotton and then let me know. It should not be too difficult to work out that it is impossible for us to find a house and move in until September. We don't even know which country yet, never mind which part of town. The agent recommended a flat rather than a house as he thought without a man in the house it would be too big a project to run and look after.

10

This I would have to see after I have lived in the town in a furnished flat for a while. It is nothing I can decide from a few miles away.

If you should have any advice for me of course I would be grateful. Right now I have nobody to turn to and when the agent told me that it was impossible for me to find exactly what I had in mind at the price I can pay unless I have months to look and search I felt terribly depressed. To find a furnished flat for less than 3 months in Hamburg is also impossible I was told and to live in a Hotel with the boy for this period is too expensive and not good for him either. There is no Kindergarten or playgroup until the holidays are over either, so he would have to stay in one or may be 2 rooms, no kitchen. It just is not possible like my ex-husbands wants it to be just to be awkward.

20

30

I hope I don't make a lot of trouble for you, but I do need help and time.

Could you please tell me if this is alright with the trustees and if I can use part of the interest of the money for the house to pay for our rent for the next year, as we do have to live somewhere and to find a house until the end of September is impossible unless it doesn't matter if we loose money or have more to pay what is asked for.

40

I miss Hong Kong and my friends and so does little Ernest although it is nice to be with family again.

I am sorry if I make a lot of extra work for

you, but I just cannot see how I can manage until September.

Thank you,  
(sd.) H. de Lasala

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Little Ernest Expenses since leaving  
Hong Kong

	Airfare Hong Kong Bremen	1,905.--
	1/4 of Hotel and Foodbills two weeks travelling	610.--
10	Leopard with head as carpet for Ernest (India)	600.--
	Blue - white knitted suit (Italy)	75.--
	Red leather boots (Italy)	85.--
	3 pairs of sandals (2 canvas, 1 leather)	70.--
	2 swimming trunks	31.--
	1 red bathrobe	65.--
	4 knitted shirts	100.--
	4 pairs of socks to match shirts	35.--
20	2 towelling suits	120.--
	4 Dinky toys on journey	85.--
	1 case full of small Husky cars about	90.--
	2 prs. pyjamas long pants (Germany) blue	68.--
	2 prs. pyjamas short pants	57.50
	1 Go cart	258.--
	1 Rain coat	69.--
	1 Rain boots	24.--
70	Wheelbarrow	45.--
30	70 Short red pants	30.--
	Childrens batterie operated record- player story records	168.50
	5 Records	48.--
	Indian tent	52.50
60	Football leather shoes	39.--
	Leather football	46.--
	Long grey pants	35.--
	Flight Stuttgart to pick up a new car	160.--
70	3 blue white underpants	23.--
40	3 blue white singlets	18.--
	3 white underpants	15.--
	3 white singlets	11.--
	2 Woollen socks for football shoes	12.--
		<hr/>
		5,050.50

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	B.F.	5,050.50	
3.7.70	1 leather pants and jacket to match	132.--	
	1 cap to match suit	18.--	
	1 blue jacket	42.--	
	1 pair warm pyjamas	38.50	
	1 dark blue leather pants	64.--	
	1 woollen cardigan grey red/green piping	32.50	
	2 white skivies	35.--	
7.7.70	Bar-B-Q	98.50	10
	1 Swimming pool to blow up 2 Meters	148.50	
	1 Sailing boat wood with sails	32.--	
	1 sports suit	52.--	
	12 Old Silvercoins of Germany, 2 new coins	216.50	
	New leather Coin Album (first one full)	62.--	
		<u>6,022.--</u>	
	HK Dollars	<u>6,022.--</u>	
8.9.70	Toy Shop, Scales	38.--	20
"	Photographs birthday party	75.--	
9.9.	Blue bicycle 2 side wheels	<u>130.--</u>	
	Up to 12. Sept. 1970	<u>3,528.--</u>	
	2 months rent	<u>2,400.--</u>	
		<u>5,928.--</u>	
12.7.1970	Push bike	70.--	
13.7. "	Automatic small car	42.--	
13.7. "	Record	16.--	
17.7. "	Gun	24.--	
17.7. "	Plastic animals to make (kid)	74.--	30
20.7. "	Frottee Pullover white/blue	18.--	
20.7. "	Kite - airoplane	28.--	
21.7. "	Red corderoy shoes for beach	24.--	
	" 2 prs. pale blue knitted pyjamas a 21,90 DM	68.--	
	" Photographs (Album and father)	37.--	
24.7. "	Bucket, Shovel - Island Sylt	19.--	
	" Resort hat towelling navy	25.--	
	" 2 books	10.--	
30.7. "	Hotel bill food only Pension		40
	Price a 25 DM P.d. per person	480.--	

	1970	Riding, Golf, Surf-inside Pool ticket (weekly)	50.--	In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970
	31.7.70	Puzzle	10.--	No. 43
	1.8. "	Book	18.--	Exhibit "H.D.L.-5" (cont'd)
	2.8. "	Portrait Photographs (for father 2) Album	75.--	
	"	Sweets, Lego.	30.--	
	4.8. "	Ticket Ostend (Cabin)	30.--	
10	6.8. "	4 Richard Scarry books (English), Cpt Nemo	120.--	
		Lunch, Dinner out 2 weeks London a 30 p.d.	257.--	
	13.8."	Corderoy trousers brown	40.--	
	"	Holster & belt	20.--	
	"	Drawing book	10.--	
	15.8."	2 pictures paintings of the guards	135.--	
	19.8."	Examination Klinik Gent after accident	90.--	
20	24.8."	2 Gold Coins (English)	136.--	
		10 Coins R Mark	120.--	
	"	2 Winter woollen suits a DM 85.--	260.--	
	"	2 matching pullovers	64.--	
	"	1 jumpsuit navy red	68.--	
	28.8."	Girlands, Balloons, Lampions, Cups Plates Table Decor. Napkins, Tablecloth Paper, Prizes	280.--	
30	Ernest's	Sweets, toys-Prizes, Games Pony hire	250.--	
	4th birthday party	Cakes, Sausages, Roast Chicken, f. 16 kids	300.--	
		Movies, Films, Photographs, Records	250.--	
	9.9. "	Blue white frottee pyjamas	38.--	
	6.9. "	Jump ball	24.--	

12th Sept. 1970

40 John Cotton Esq.  
c/o Hong Kong and Shanghai-Bank Trustees  
Hong Kong  
B.C.C.

Your ref: SWM/W/1825/1826

Dear Mr. Cotton,

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-5"  
(cont'd)

Thank you for your letter of the 12th Aug 1970.  
Would you please credit my account at the Bank of  
America with any further payments.

I now enclose a list of expenses for the  
months of July, Aug and part of Sept.

All further points in question I have  
contacted Messrs. Johnson Stokes and Masters who will  
be getting in touch with you.

Thank you for your concern. We are fine,  
although we have had a bad accident on our way back  
from London. We did not get hurt, but my aunt is  
in hospital and the driver who crossed the Autobahn  
wrongly may not live. The expensive Mercedes has  
done his bit, as otherwise we would not have been  
alive today.

10

Little Ernest had a lovely party with 16  
children, 2 ponies and waggon I hired and bar-b-qu  
as well as fire-works. Only his father did not even  
send a card I am afraid.

The bill does not include any food in Aschen,  
nor his milk etc. I do not pay for these here as  
we are guests. Later I am afraid they would have  
to be added.

20

Kind regards,

(sd.) H. de Lasala

No. 43  
Exhibit  
"H.D.L.-6"

No. 43  
EXHIBIT "H.D.L.-6"

Dear Mr. Tisdall,

While in London, I went to see a Mr. Broom  
from the Hong Kong and Shanghai Bank Trustees, so  
if I should find a house in London they, or he  
knew about it and could arrange payment speedily.

30

I returned to Germany late last night, after  
one night in Belgium where we had a bad car  
accident. The boy fortunately sat in the back and  
was not hurt at all. My great-aunt was thrown



through the window and is in hospital. Fortunately, I had bought the heaviest and safest of the Mercedes cars there is, second hand, but the driver of the other car who crossed the Autobahn making a U-turn is badly hurt. It was quite a shock and I do appreciate life more now that I did before and of course my son is more precious to me than ever before.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

10 When I got back to Germany I found a letter from Mr. Cotton of the Hong Kong and Shanghai Bank waiting for me, but into this I will go later.

There seem to be more difficulties ahead than I expected and I am very disappointed that I did not find out all I did now in Europe, before signing the trusts. I should have gone to Europe before and I would not have been in the situation I am in now.

20 The idea of living in Germany I had to give up, as the English School in Hamburg does not take pupils until they have reached the age of 6. As the boy is not quite 4 yrs old there would be two years where he would speak German only in Kindergarten, with his friends or at home. Even now after 8 weeks or so in Germany he answers in German only. He would find it rather difficult starting in an English school without speaking the language, even more so later on starting in boarding school, if he spoke with a heavy German accent. As far as houses are concerned in Hamburg there are hardly any on the market in good condition in a good area at the price we can pay. They are either too old or too big or too costly to repair. Time to wait I haven't got.

30 I saw a few dozen houses in London and also flats. Anything close to the park or with a garden in Kensington Bayswater area or Wimbledon with a large garden, are expensive to buy. Houses in perfect condition cost more than we have to spend, others where the price is right are too old and need extensive repairs, which I cannot afford.

40 Good houses with long leases near the park fetch a ground rent of 400 to 500 Pounds per annum and there will be another 300 Pounds in rates to pay per annum, on top of this repairs.

Freehold houses in a good area around the park in good condition cost more than we can afford, those that are older I cannot afford to have repaired or keep on repairing them.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

There are a lot of good flats with a private park for tenants only, for the money we have, but there is a ground rent of 500 pounds p.a., Rates and Service charge of another 500 Pounds p.a. or more.

This means whether we buy a house or flat for the money provided, there will be about another 100 Pounds each months to pay for our accommodation. I did not know about this in Hong Kong, otherwise I would not have accepted the settlement in view that we do not really have free quarters or only little to pay for it.

10

Mr. Broom took me to see the tax expert of the Bank, as my former landlady's brother who has a solicitors firm in Holborn advised me to get my tax worked out before I even thought of buying a house in England. After telling the tax man exactly what I own in shares and why my expected income would be, also of Ernest's expected allowance of about 100 Pounds per month, he worked out, that my tax "unearned income tax" and "surtax" (income over 2,000 Pounds per year) would amount to exactly 50%. Ernest's income will be added to mine according to the new law and on that there will be also 50% tax. It is quite a difference between 25 to 30% the tax man in your office told me. I am sorry that I did not get better advice, before agreeing to the settlement.

20

To live in the country would of course be cheaper, but I do not know England at all, nor do I have any friends outside of London and this is a time where the boy and I need someone we know. I also do not have time to look anywhere as there is a time limit, which the lawyer here said would not have gone through London courts, as it is not in the boys interest nor in his financial interest to rush into buying a house. Anyhow I mentioned Kensington and Wimbledon, where my friends left a short while ago. This leaves the area around the park, as there are some families I know.

30

40

As it looks now I will have to either move back to Hong Kong to avoid paying a lot of tax and the trustees will have to pay the rent for a suitable flat for the boy and myself besides his keep, clothing schooling etc., or they will have to pay ground rent, Rates and repairs for the house and double the amount for Ernest's keep as half goes to the tax department in U.K. Even if

I had found a house immediately in London I could not have moved in by September, as the paper and repairwork would take more than 3 months to complete I was told by a few firms.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

10 If nothing can be done from your end, would you please let me know and I will engage a solicitor here in London who would bring it to court here. In fact he cannot believe that I signed the agreement in the form it is right now. Could you please send me a copy of the two signed agreements forthwith.

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

20 When I was with you in Mr. Jackson-Lipkins office we discussed the money situation and I was told that the settlement I received was solely for my own use, after having a house to live in and all other Ernest's expenses would be paid for. Now it works out the house will be nearly as much as renting an unfurnished flat; Mr. Cotton suggested a sum of 400 to 500 HK Dollars a month for the boys keep, only schooling and Doctor bills paid. This seems very little, as the trust was put up for bringing him up and not as his inheritance as it seems now. He used to get 500 Dollars a month before from his father like the other boy and for that I could buy any clothes or toys, books, films records or treats for the child. Food and any housekeeping was not included. Just because we are divorced his needs do not go down. When Mr. Cotton mentioned 500 Dollars in your office I thought that this was like before without food or part of housekeeping. I already had my doubts if there would be a proper settlement, as I asked you many times to get a definite figure before my departure.

30  
40 I wrote 2 letters each month to the boys father, enclosing photographs (4 or 5) of the boy, but up to now he never acknowledged them or has even sent a postcard to the boy, after my asking him to send one every 2 weeks at least. I have given up talking about the father, as there is no sign of him and the boy only starts asking why he gets no cards or calls. Should he turn up without 2 weeks notice I will not let him see the boy.

About 2 weeks ago my ex-husbands first wife turned up in Hong Kong and contacted three of my friends, also wrote to me asking me many questions about her son Robert and his life with his father, as she is trying to regain custody of her son.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

She will fight for him and has retained a solicitor, she may also come to see me in Germany. There were a few lies she wants confirmed I suppose (Ernest told them) and needs a witness. I do not believe the boy is in good hands with his grandmother or his unpredictable and unstable father, but I do not know what I will do about it when Jennifer will approach me again, as there are many points I agree with her, on the other hand do not want to make life more difficult for Ernest than it is now, unless of course he makes hell of mine.

10

If the trustees, or Ernest, as the trustees have little say, do not give in some way or another I will take the case either to you or if you believe there is little you can do, to a lawyer here in London to fight it out. The one I know has had more than 30 years experience and just cannot believe that you advised me to sign the trust as it is.

20

Would you kindly talk this over with Mr. Jackson-Lipkin and send me a reply as soon as possible as time is getting short with September coming up. I am terribly disappointed that the advise I was given was not in my interest and hope that something can be worked out. As you will remember I had my doubts when you asked me to sign the trusts and I felt like throwing it into the waste-paper basket. It would have saved me a lot of unnecessary trouble.

30

As far as the furniture is concerned I only settled for the amount of 50,000 to have a free hand to buy and furnish what and the way I like it. I have been buying linen, cutlery, crockery etc. in Hong Kong already and more here, everything a household needs. I would like to buy some nice antique furniture but do not know how to go about getting the money, as I live on a budget and will have to sell shares to buy it, which is not really what I should do. Can you please arrange for an account to be opened from which I can take money for furniture only, as soon as the question is settled where we are going to live. I will then send the receipts when the place is furnished to the trustees, or they can have a look at the furniture or house if they like. As it will be mine and they are not concerned with it later on, it should not matter anyhow. I have already antiques worth 150,000 Dollars or more which I regard

40

as an investment and also to make a nice home for my boy and myself. Here is what I found out will be left of my and Ernest's income if we live in the U.K.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

My average monthly income will be	Pounds 400
Ernest's allowance	<u>Pounds 40</u>
Combined income	<u><u>Pounds 440</u></u>

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

	Tax "unearned income"		
	Surtax	Pounds 220	
10	Ground rent, Rates, Repairs	100	
	Insurance-House-Furniture-Antiques-Health,-Death,-Jewellery	20	
	Electricity, Heating, Gas, Telephone, TV, Radio License	20	
	Car Insurance, Road Tax, Repairs, Petrol	20	
20		<u>380</u>	Pounds 380
	That leaves us each month		<u><u>Pounds 60</u></u>

60 Pounds a month means 20 shillings for each of us per day for three meals. But how do I pay for everything else unless I live from the capital?

How do I pay for:- Food, Household goods, Clothes Toys Ernest Clothes, Hairdressers myself. Holidays or weekends away. Books, Films, Photographs, Records Club Bills, Meals out, Theatre Dog-Insurance and food, Trimmings Doctor Dentist bills myself. Replacements in the house or add. things.

if we only have 60 Pounds left?

You must agree that it is impossible to live on this amount and some solution will have to be found. I cannot suddenly live on 60 Pounds and give the boy a life he has been used to. If I was on my own I'd rather stay in a one bedroom

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

unfurnished flat which would cost me a lot less than the free house I was supposed to have. I could also work and would not need to settle in the UK, as there would be no need for me to have a permanent residence, which would mean I would not have to pay UK tax. But as the boy will have to have proper schooling there is little I can do to avoid tax, only go to a lower tax region like Hong Kong. I do not intend to cut down on food, as we have done nothing wrong and should not be punished for my ex-husbands peculiarities. This by the way was confirmed by his ex-wife and if he is not careful he hasn't heard the last of it. Not from my side!!

10

Would you kindly look into this as soon as possible with Mr. Jackson-Lipkin and let me know what you can do about it. If you cannot do anything, please let me have the documents and necessary papers, as there seems to be some hope of a change in London. Time is getting short and I am tired of moving around looking for a way to have enough money to live and settle down. I hate changes anyhow and until the money situation is settled I will not and cannot tie myself to a house anywhere. If necessary I will return to Hong Kong immediately, so I am on the spot, or if nothing can be done from your end I will go to London and approach the courts to get a new hearing.

20

I do hope you had a nice holiday. If you are away I am sure your assistant will be able to cope with Mr. Jackson Lipkin, as he knows about the case and I trust him to act in my interest. Your little girl should be walking soon and must give you a lot of pleasure.

30

With kind regards,

(sd. H. de Lasala)

22nd July, 1970.

Mrs. Hannelore de Lasala,  
Aschen,  
Diephoiz - West Germany.

40

Dear Mrs. de Lasala,

I am just writing to thank you for your letter of 11th July and to confirm that we are

going into the various matters you have raised.  
I shall therefore be replying to you in detail  
shortly but in the meantime I wanted you to know  
that your letter is having our attention.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

Yours sincerely,

(sd.) J.N. Cotton  
J.N. Cotton  
Manager

No. 43  
Exhibit  
"H.D.L.-6"  
(cont'd)

Our ref: SWM/W/1826

Hong Kong 21st September  
1970.

10

Mrs. Hannelore de Lasala,  
Aschen,  
Diepholz,  
WEST GERMANY.

Dear Mrs. de Lasala,

In connection with our letter of 18th  
September, we have pleasure in advising that we  
have arranged for your account with Bank of America,  
Hong Kong, to be credited with HK\$2400 in respect  
of accommodation expenses for August and September  
(i.e. HK\$1,200 per month) under the terms of "Trust  
Deed 'B' ". You should shortly receive an advice  
from your Bank confirming that your account has been  
credited with this money.

20

Yours sincerely,

Trust Officer.

No. 43

EXHIBIT "H.D.L.-7"

No. 43  
Exhibit  
"H.D.L.-7"

---

MEMORANDUM

30

From: Ernest F. De Lasala  
JOHN MANNERS & CO. LTD.,  
P.O. Box 235

To: Hannelore De Lasala  
nee Jenderny  
Suits 557 Hilton  
Hotel  
Hong Kong.

Sic

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit "H.D.L.-7" (cont'd)

Hong Kong 30/11/71

I understand you have returned to Hongkong with our son Ernest.

I desire to have Ernest spend this coming Sunday & Monday with me and shall arrange for the driver, Ah Tam, to pick him up at 10 a.m. on Sunday the 5th and Monday the 6th (Public Holiday).

Ah Tam will call at 5 p.m. today for your reply which should advise at what time in the evening you desire Ernest to return.

10

(sd.) Lasala

MEMORANDUM

From: Ernest F. De Lasala To: Hannelore De Lasala  
nee Jenderny  
Suite 557 Hilton  
Hotel  
Hong Kong.  
JOHN MANNERS & CO. LTD.  
P.O. Box 235

Hongkong, 5/12/71

20

I again express to you my desire to have Ernest with me tomorrow, Monday 6th (a Public Holiday) and shall arrange for the driver Ah Tam to pick him up at 10.00 a.m.

You are aware that the adjudged generous settlements I made were motivated by my paramount desire to preserve my rights and relationship as Ernest's father and it would be intolerable if this is disturbed.

I ask you to respect and reciprocate the consideration and restraint I have manifested and not to do anything untoward that will compel me to now fully exercise my specified rights.

30

(sd.) Lasala

MEMORANDUM

From : Ernest F. de Lasala To: Hannelore De  
Lasala nee  
Jenderny  
Suit 557 Hilton  
Hotel,  
Hong Kong.  
JOHN MANNERS & CO. LTD.  
P.O. Box 235

Hongkong, 9/12/71

Sic

40



I was disappointed that Ernest was not available when Ah Tam called to pick him up at 10.00 a.m. on Monday the 6th, as arranged.

I had a wonderful time with Ernest and am convinced he thoroughly enjoyed being with his father.

10 To ensure that Ernest has a balanced upbringing, despite the unfortunate division between us, I desire to have him for the six weeks I am entitled to, commencing 19th December, over the coming Christmas holidays which will coincide with his brother Robert's Australian School Holidays. Since Ernest has, unfortunately, not been settled to any permanent schooling, I feel that being with his father and brother will be most beneficial (sic) for him. I ask you therefore to concur with my request for his sake.

20 If for any valid reason you do not accede to my request, I shall accordingly expect to have him for two three weeks during the Easter Holidays in 1972.

In the meantime, I desire to have Ernest with me on Saturday the 11th and shall unless I hear from you arrange for Ah Tam to pick him up at 2.00 p.m.

(sd.) Lasala

Ernest de Lasala,  
John Manners & Co.

5th Dec. 1971.

30 Monday the 6th Dec. is St. Nikolas, a German holiday for children. A couple of weeks ago Ernest was invited to his two little friends home to celebrate this day. He still has homework to do in the morning and also did refuse to go again today. He said I promised him that he could always come back if and when he wanted to. At the airport he apparently asked you many times but you did not bring him back. It would be better to wait a while until he got used to idea of having his father pay attention to him. He was quite upset when he returned.

(sd.) H.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-7"  
(cont'd)

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit "H.D.L.-7" (cont'd)

Ernest de Lasala, John Manners & Co.

11th Dec. 71

I had left a letter for you at the reception but it was not picked upon the 6th Dec. 1971.

Ernest returned on the 6th and refused to see you again. Apparently he had asked you to return him to me many times but you either did not understand him or did not want to return him. Even now Ernest does not wish to see you unless I come along. Ernest will not be coming today, nor will he stay away over night until he is much older and it is his own wish to do so. Too much harm can be done at this young age and ruin his life.

10

Any further requests please send to my solicitors Lo & Lo, Mr. Lo Jardine House, as I will not accept any letters from you after this day.

(sd.) H

No. 43 Exhibit "H.D.L.-8"

No. 43

EXHIBIT "H.D.L.-8"

18th December, 1971

20

Mrs. H. de Lasala, Suite 557, Hilton Hotel, HONG KONG.

Dear Madam,

We have been consulted by Mr. Ernest de Lasala regarding your refusal, contrary to the terms of the Consent Order dated 23rd May 1970 in Divorce Action No. 14 of 1970 to give him reasonable access to his son on Monday the 6th December in accordance with his previous written request. We have been handed a copy of your letter of the 11th December and must advise you that it is not open either to you or to your son to go against the express Order of the Court allegedly on the grounds of your son's personal wishes in refusing to give access except in your personal presence. Unless our client is permitted to see

30

his son for reasonable periods away from your presence, a further application will be made to Court to enjoin compliance with the Order.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43  
Exhibit  
"H.D.L.-8"  
(cont'd)

10 We are further instructed that in accordance with the Order our Client wishes to have his son with him on holiday away from Hong Kong for a period of six weeks during the 1972 school holidays having decided on further consideration that a visit of only two weeks in Easter as previously suggested would be too short to be meaningful. We must ask for your immediate assurance that you will not attempt to place any obstruction in the way of this proposal.

20 Finally, we are instructed to place on record our client's very grave concern at your failure to provide a permanent and settled home for the child since May of last year notwithstanding the fact that ample funds were made available to you expressly for this purpose under the terms of the two Settlements. Your conduct in constantly moving the child from one place to another and, apparently, putting your own desires to travel and enjoy a life of luxury and leisure, before the child's need for an orderly life and regular education throws grave doubt on your fitness to remain as his custodian. Your acts are in direct contravention of the terms of the Deed dated 22nd May 1970 which contained an express recognition on your part that frequent changes of residence and school might be harmful for the child's education and progress. We therefore ask that you advise us of your intentions regarding the child's future education and residence and the reasons why you have not found and furnished a suitable permanent home. Unless you do fulfil your obligations under the Court Order and Deed of Settlement, our client will have to give consideration to the making of a further application to Court regarding the care and custody of his son.

Yours faithfully,

40 (sd.) Deacons

No. 41  
EXHIBIT "H.D.L.-9"

No. 41  
Exhibit  
"H.D.L.-9"

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 41  
Exhibit  
"H.D.L.-9"  
(cont'd)

12th April, 1972.

The Manager,  
The Hongkong & Shanghai Bank H.K. (Trustee) Ltd.  
No. 1, Queen's Road Central,  
Hong Kong.

Dear Sir,

We have been instructed by Mrs. H. de Lasala to make an application for an increase in the allowance of her son Ernest at present paid to her by your Company under a Trust set up in May 1970 and of which your Company is Trustee. As we understand the position for some months after the Trust was established the procedure was that she simply submitted all accounts and receipts relating to expenditure on behalf of Ernest which were then paid without question from the income of the fund. Then in September 1970 she was offered an allowance of \$250.00 per month to cover all his expenses. This amount was so inadequate that she preferred not to accept it.

10

20

We feel that it is important when considering a proper allowance to be paid out of the Trust fund to bear in mind the standard of living and the way of life Ernest was accustomed to prior to the Trust being set up. Our client instructs us that she received from her husband prior to their divorce the sum of \$500.00 per month which was spent solely on expensive clothes and toys for Ernest. This did not include the cost of providing food for him, school expenses, transport, club memberships and other miscellaneous expenses. Prior to the divorce the family's monthly expenses were as follows :-

30

Flat in Estoril Court	HK\$4,000.00
Electricity Gas Heating or Airc.	500.00
Repairs electr. or otherwise	250.00
New furnishings or replacements	1,000.00
Insurance flat	350.00
Doorman	100.00
Car write off	600.00
Petrol	350.00
Car insurance	350.00
Repairs, inspection	250.00
Car wash daily	80.00
Car park Hilton monthly	120.00
Food account monthly	2,500.00
Drinks from office	300.00

40

	Hotel Credit Accounts	HK\$ 750.00	In the Supreme
	Clubs VRC, LRC, Country Club	800.00	Court of Hong
	Doctors' bills	500.00	Kong. Divorce
	Dentist bills	300.00	Jurisdiction
	School bills with books	100.00	No. 14 of 1970
	Yatch 47 ft. launch (3 boat boys & upkeep)	1,500.00	No. 41
	Holiday, airtickets, hotels		Exhibit
	2 p. 8 weeks HK\$30,000	2,500.00	"H.D.L.-9"
10	Insurance Jewellery	150.00	(cont'd)
	Christmas allowance HK\$5,000	400.00	
	Monthly allowance self, \$2,500 Ernest, \$ 500	<u>3,000.00</u>	
	Monthly Expenses	<u><u>HK\$20,750.00</u></u>	

Telephone bills were paid by the Office.

20 It is clear from this list that Ernest was accustomed to a very high standard of living. The allowance of \$500.00 for Ernest can be substantiated by reference to the Affidavit of the husband filed in the Divorce Proceedings, a copy of which we enclose. On page 8A the husband refers to the reduction of the wife's allowance from \$3,500 to \$3,000, "as Robert was no longer living with us all the expenses were therefore reduced." Robert of course, was the husband's son from his previous marriage and was living with the husband and our client for a period in Hong Kong.

30 In May 1970 our client and Ernest went to live in Germany. She returned to Hong Kong in October 1971. While in Germany they lived with her Aunt in a large old house in Aschen rent free. The following is a list of the expenses in Germany relating to Ernest per month.

	Electricity, Gas Heating	HK\$ 425.00
	Car Mercedes 280 SE	1,700.00
	Food & household expenses	1,360.00
	Dog to keep	136.00
	Holidays 6 weeks per year (2 trips) and week-ends away	925.00
40	TV, Radio licence, Telephone	51.00
	Dry cleaning, Laundry	85.00
	Chemist	170.00
	Clothing (at least -	500.00
	Toys, books	60.00
	Coins, Stamps, Records	60.00
	Movies, Photographs	60.00

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970	Doctor bills, Medicine	HK\$ 100.00	
	Extra Lessons (Swimming)	30.00	
	School bills	90.00	
	Presents parties 19 per year	20.00	
No. 41 Exhibit "H.D.L.-9" (cont'd)	Birthday Party Ernest		
	Food Drinks 19 children, 19 parents per person		
	10 DM	570.--	
	Decorations	120.--	
	Games Prizes	110.--	10
	Fire works	150.--	
	4 Films, 3 Movies, 2 Polaroid F	390.--	
	1 Cowboy suit for party	95.--	
		<u>1,435.--</u>	
			120.00
			<u>HK\$5,892.00</u>

On arriving in Hong Kong they stayed at the Caravello Hotel from October 1971 to November 1971. Through a friend in the Hong Kong Hilton they were then offered accommodation at a considerable discount. From November 1971 up until the 8th April 1972 when they left Hong Kong they lived there. They had a suite consisting of sitting-room, bedroom, dressing room, 2 bathrooms and paid \$169.50 per day. Half of this amount, of course, related to the child. After arriving back in Hong Kong the expenses relating to Ernest were as follows :-

School fees, stationary charges	HK\$ 180.00	30
Billy Tingle Cricket Club	35.00	
Judo Classes	30.00	
Clothing, Toys, Books	500.00	
Films, Photographs	50.00	
Dry Cleaning	20.00	
Food @ \$40.00 day	1,200.00	
Fruit, Sweets, 7 Up, etc. \$5.00 per day	150.00	
Car for school, judo, beach - 1970 Mercedes 200 - purchased 2nd hand for \$21,000.00		40
Repairs 5 months	- \$3,000	
Petrol "	- 1,000	
Car Park "	- 600	
Car Wash "	- 180	
Insurance "	- 850	
Offer now after 5 months less	<u>\$2,000</u>	
	\$7,630	
		1,526.00
		<u>HK\$3,691.00</u>

In regard to the car our client maintains that the reason for its purchase was to transport Ernest to and from school and in the summer to and from the beach. It may be of assistance to calculate the approximate expense if they had used a taxi :-

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 41  
Exhibit  
"H.D.L.-9"  
(cont'd)

10	Hotel to German-Swiss International School, Barker Road, 2 trips per day at \$8.- per trip i.e. \$16.00 per day	HK\$352.00 p.a.
	Judo Class twice a week, \$5.00 per trip, i.e. \$10.00 per week	40.00 "
	Repulse Bay Beach twice a week, \$18.00 per trip i.e. \$36.00 per week	144.00 "
	Visit to St. Paul's Convent every Saturday, \$6.00 per trip	24.00 "
	Trips to LRC and Country Club	70.00 "
	Shopping	<u>50.00 "</u>
20		<u><u>HK\$680.00 "</u></u>

Our client left Hong Kong on the 8th of April to return to Germany where they will live in a flat and they anticipate the expenses will be slightly higher due to an increase in the cost of living.

To get the matter in perspective we refer to the Trust Deed providing for purchase of house for Ernest and his mother to live in. You will note that the Trust Deed requires that any house to be purchased in England should have a minimum lease of 150 years. After the signing of this document our client went to England and was unable to find a house in London with a lease of this number of years. Prior to signing the Trust Deed information was obtained from a number of estate agents. It is significant that on the lists forwarded by them there are no houses available with leases for more than 100 years let alone 150 years. There was one house with such a lease in Stanhope Row and because of its position was unsuitable. A further difficulty which our client had not anticipated was the cost of maintaining such a house. She has been informed by various people that on the average this would be 10% per annum of the purchase price if she wishes to keep the house in good repair. At the time of signing the Trust Deed she was under the impression that she would be provided with

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 41 Exhibit "H.D.L.-9" (cont'd)

free accommodation. Subsequently, she realised that the maintenance would have to be paid by her out of her own income. For these reasons, she had not yet purchased the house and consequently is paying for Ernest's accommodation out of her own income. This, of course, is no responsibility of your Company but in exercising your discretion on the amount to be paid out for maintaining Ernest, you may feel it is a fact to be borne in mind.

We are instructed that before signing the Trust Deed our client did have a conversation with Mr. Tisdall, Mr. Jackson-Lipkin and Mr. Cotton. In the presence of Mr. Cotton, Mr. Tisdall informed her that she could "claim even for the last aspirin for the child". Mr. Cotton assured her that all she had to do was to send in all bills and receipts relating to Ernest and they would be paid. It was understood by all that the income from the fund would be approximately \$3,000.00 per month. All persons appreciated the high standard of living that Ernest had been accustomed to and our client maintains that it was understood by all that this standard of living was to be maintained. Our client has in her possession an Opinion from Mr. Joseph Jackson, Q.C. in London who makes the following comment about the allowance offered by your Company :-

"This was half the sum they had originally thought of, as stated in their letter of 21st October 1970, and by European standards is far from generous, to say the least, and quite incredible if one is really dealing with a son of a (Sterling) millionaire. It is to be noted that under Trust Deed A, the one dealing with the child, the Bank Trustee must whenever practicable consult with the husband in the exercise of any power or discretion in relation to the Trust (Clause 8), so that it would appear that the father of the child may well have participated in the decision to send so niggardly a sum in respect of his own son. One cannot but help wonder what independent evidence the Trustee Bank has as to the cost of maintaining a child in Europe."

In addition she has an Opinion from Mr. Jackson-Lipkin who makes this comment :-

"(g) I am nothing less than horrified to



learn that the Bank Trustee is allowing the wife but £17.00 a month for the child. There can be no justification for such a low rate of maintenance."

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 41  
Exhibit  
"H.D.L.-9"  
(cont'd)

10 In the circumstances, we ask on behalf of our client that the amount of allowance be increased substantially and that she be suitably recompensed for money expended by her on Ernest since the time of the offer and her rejection of the allowance of £17.00 per month.

Yours faithfully,

(sd.) Gordon Hampton & Winter

Encl.

No. 43

EXHIBIT "H.D.L.-9"

No. 43  
Exhibit  
"H.D.L.-9"

HONG KONG & SHANGHAI BANK, HONG KONG (TRUSTEE)  
LIMITED

20th April 1972

20 Messrs. Gordon Hampton & Winter,  
Solicitors & Notaries,  
809 Tak Shing House,  
20 Des Voeux Road, Central,  
HONG KONG.

Dear Sirs,

We refer to your letter of 12th April 1972 with enclosure.

We will deal with the various points raised by you seriatim.

30 (1) We received the first list of expenses from your client by way of her letter dated 11th July 1970. You mentioned that the established procedure was for your client to submit accounts to us relating to expenditure committed by her on behalf of Ernest and that we paid these without question. In our letter of 12th August 1970, we questioned the initial expenditure incurred by your client and agreed to allow only a part of the items. However, in that

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43  
Exhibit  
"H.D.L. -9"  
(cont'd)

letter we stressed that, with the removal from Hong Kong, her expenditure had possibly been temporarily increased and we had taken that fact into account.

The next list of expenditure was contained in the letter of your client dated 12th September 1970 addressed to us which we answered on 18th September 1970. The second paragraph of that letter commenced as follows :-

"Now turning to the list of expenditure enclosed in your letter, I am rather afraid that this is too high for us to be able to meet." 10

We subsequently wrote to your client on 21st October 1970 when we suggested that an adequate allowance should be in the region of HK\$250 per month bearing in mind the age of the child at that time and acknowledging that expenses such as medical and school fees would be paid in addition.

The next list of expenses came with a note which we replied to on 1st June 1971. The detailed expenses totalled HK\$4,360 and we agreed to pay the medical expenditures totalling HK\$370 but we questioned the whole of the remaining expenses. We had no reply to this letter from your client and, in fact, your letter is the first on the subject since June 1971. We have, therefore, assumed that your client had adequate means to support the beneficiary of our Settlement. 20

(2) The tenor of your letter seems to suggest that a child who was only three when the Settlement was created in 1970 and who will only be six later this year has during that period warranted expenditure which seems to us to be enormous. We think the main point is that the boy was the son of a Sterling millionaire (your assessment of the Settlor's financial position). Our feeling is that he is now the son of your client and must be treated as such. His station in life is completely different to what it would have been had the divorce not taken place, and it is our view that at the age of three when, in fact, the divorce took place, the boy could not have gained any impression of the possible wealth of his father (it is our view that children of that age if given expensive toys and an old tin box usually prefer to play with the old tin box) and therefore at that time no precedent had 30 40

been created for lavish expenditure to be incurred on behalf of the child.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

It is our view that for the child's benefit, he should be treated as an average child and thus any payments made by us from out of the trust fund in accordance with the terms of the Trust Deed would only be made on that basis.

No. 43  
Exhibit  
"H.D.L.-9"  
(cont'd)

10 (3) As you are aware, under the terms of the Trust Deed dated 30th May 1970, we act in conjunction with our Co-Trustee, the boy's father, and it will be necessary for us to refer to him. You have pointed out to us that the Bank Trustee has the final say in the event of any disagreement between our Co-Trustee and ourselves, but at the moment there is no disagreement and in fact we both agreed upon the suggested monthly allowance of HK\$250. If 20 the basis of your argument is that we should increase this from HK\$250 to HK\$500 per month, then we will seriously consider your request in this light but anything over and above this, we regret, would probably be rejected by us without the necessity of our approaching our Co-Trustee on the subject as we think we are alive to his general feelings in this matter.

30 (4) With regard to the second Trust Deed also dated 30th May 1970 to which your client is a party, under Clause 4(c) thereof, your client was meant to obtain a residence coming within the description of that contained in the Deed not later than the 30th September 1970. She did not do so. You say that the reason for this was because your client could not find a property which had a lease for more than 150 years but as you will see from Clause 5 (a) of the Trust Deed, the property permitted to be 40 purchased could either be freehold or leasehold with not less than 150 years unexpired. At the time, there were many properties of the type described in the Trust Deed which could have easily been purchased in or about London or the Home Counties at a price which would have not exceeded the amount settled under the terms of the Trust Deed. Since that time, costs of housing in England have increased and we think your client has prejudiced the position of herself and the child by not acting soon enough in acquiring a suitable property. We think the same reasoning obtains for Germany as enquiries we conducted at the time the Settlement was set up certainly pointed to property being adequately available of the type described in the Trust Deed at a price at or below

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Exhibit  
"H.D.L.-9"  
(cont'd)

the amount settled upon the terms of the relevant trust. We therefore feel that your client did not meet her obligations under the terms of the Trust Deed and there is, therefore, no obligation upon the Trustees to advance monies for expenses which have been incurred unnecessarily in our view as a result of your client not purchasing an adequate property.

(5) With regard to your reference to an anticipated income of HK\$3,000 per month, that figure was mentioned at the time when high Euro-Dollar rates of interest were obtainable and reference was made by us to the fact that it was unlikely that such a high return would be obtained for a period of more than a year or so. Our views have been confirmed by events which have taken place since that time.

10

Before we take any independent advice, and this we feel we must do if there is a conflict between our views and that of our Co-Trustee, to whom we have not yet sent a copy of your letter under reply, please let us know exactly what you mean in the last paragraph of your letter when you asked that "the amount of allowance be increased substantially and that she be suitably recompensed for money expended by her on Ernest since the time of the offer and her rejection of the allowance of £17 (sic) per month".

20

In explaining that paragraph, please bear in mind the various comments we have made in reply to the sundry points raised by you on behalf of your client.

30

We would add, as it may have some bearing on your submissions, that we are not endeavouring to be difficult in this matter. What we have in mind is that in the years to come the necessary expenditure for the child will be that meeting the cost of his secondary and tertiary education and for setting him up in some suitable career. We feel, therefore, that the extravagant expenses incurred by your client on behalf of the child at so young an age would escalate to enormous proportions in years to come and we desire to curb this tendency right at the beginning so that the interests of the child are fully protected throughout the whole period of this Trust.

40

For the same reason, we do not wish to go to unnecessary expense and take independent advice of solicitors whom we will have to select who have not been previously used by either Mr. or Mrs. de Lasala as we feel that this may well be unnecessary in the light of what we have said above.

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No. 43  
Exhibit  
"H.D.L.-9"  
(cont'd)

We shall look forward with interest to your reply which we appreciate might well be delayed if you have to refer to your client for further instructions.

Yours faithfully,

D.B. Minns  
Trust Officer

3rd May 1972

Messrs. Gordon Hampton & Winter,  
Solicitors,  
809 Tak Shing House,  
20 Des Voeux Road Central,  
HONG KONG.

Dear Sirs,

Further to our letter of 20th April, 1972 and, in particular, (3) on page 2, we would mention that having regard to what appears to us to be the reasons for the creation of the property and maintenance settlements, viz. a fixed home normal schooling and general home comforts, we would wish to be satisfied that the beneficiary is in such a position before agreeing to make payments for maintenance up to our suggested figure of HK\$500.00 per month.

At the moment, and from the information given in your letter of 12th April, 1972, it appears that the beneficiary is not staying in one permanent place for very long and certainly your client has not yet met or satisfied her obligations under the property settlement.

In addition, we would add that our Mr. J.N. Cotton who has now returned to the office denies ever having met Mr. Jackson-Lipkin and cannot recall the conversation mentioned at paragraph 2 on page 4 of your said letter.

Yours faithfully,

D.B. Minns  
Trust Officer

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Court of Hong  
Kong. Divorce  
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No. 43

EXHIBIT "H.D.L.-10"

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No. 43  
Exhibit  
"H.D.L.-10"

28th September, 1973.

Mr. J. Carr,  
Dare Reed Martin & Grant,  
Solicitors,  
187 Macquarie Street,  
SYDNEY, N.S.W. 2000

Dear Sir,

We refer to your instructions to establish  
the extent of the assets owned by Ernest Ferdinand  
de Lasala. 10

Our inquiries to date indicate that he has a  
significant shareholding in a company named Jeric  
Consolidated Pty. Ltd. which has the controlling  
interest in De Lasala Pty. Limited.

De Lasala Pty. Limited has substantial city  
real estate holdings and is engaged in general  
financing and merchandising having a turnover of  
several million dollars per annum. The Company  
has an office in Hong Kong. 20

In turn, De Lasala Pty. Limited has a major  
shareholding in Cosopolitan Development Corporation  
Limited which also owns two extremely valuable  
buildings in Clarence Street, Sydney.

The history of these companies indicate that  
they have met their financial commitments in a  
prompt manner although detailed financial  
information is not available at this time. De  
Lasala Pty. Limited banks with the Australia & New  
Zealand Banking Group Limited, Martin Place and  
George Street, Sydney, branch. 30

We attach search details of De Lasala Pty.  
Limited, Jeric Consolidated Pty. Ltd., Trent  
Investments Pty. Limited, Granada Finance Pty. Ltd.,  
and Cosmopolitan Development Corporation Limited.

JERIC CONSOLIDATED PTY. LTD.

Ernest De Lasala is a director of this company and  
holds 4 of the 71 Ordinary shares issued. A total

of 240 Redeemable Preference Shares are on issue and held by 24 shareholders.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-10" (Cont'd)

DE LASALA PTY. LTD.

There are 1,822 5% non-cumulative shares issued in this company. Jeric Consolidated Pty. Limited holds 1,750 of these and Ernest De Lasala has 4 of the remaining 72 shares.

10 One of the initial shareholders in this company was Dudley Westgarth, a well known Sydney solicitor and principal of Dudley Westgarth & Company. The Sydney management of the company is under the control of Robert De Lasala.

We have established that the company owns the following properties in the City of Sydney commercial area :-

4 Bridge Street: This is a twelve storey office building known as De Lasala House and the present office of the company.

20 6 Bridge Street: A five storey office building.

3 Dalley Street: An old three storey shop and warehouse building.

These properties all adjoin and the site offers enormous potential for development.

We understand the company is also associated with Granada Finance Pty. Limited and Trent Investments Pty. Limited.

COSMOPOLITAN DEVELOPMENT CORPORATION LIMITED

30 Of the 400,000 issued shares, De Lasala Pty. Ltd. holds a major interest with 133,000 shares. Other shareholders are John Manners & Company Limited of Hong Kong and Jeric Pty. Ltd. Various members of the De Lasala family are among the smaller shareholders.

The company owns the following adjoining city properties :-

26-30 Clarence Street: This is a six storey office block largely occupied by the Department of Labour & Industry.

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"H.D.L.-10"  
(cont'd)

32-34 Clarence Street: This is a four storey  
office building tenanted by the Department of  
Labour & Industry.

Both buildings are in an area which has seen  
considerable development in recent years.

From what we have established so far,  
indications are that a comprehensive survey of De  
Lasala's assets and their estimated value would be  
a time consuming exercise.

Should you require us to pursue inquiries,  
the probable cost may well approximate \$1,000.00.

10

Your further instructions in this matter  
would be appreciated.

Yours faithfully,  
C.A. SINCLAIR & ASSOCIATES

C.A. Sinclair.

COSMOPOLITAN DEVELOPMENT CORPORATION LIMITED

REGISTERED NAME: Cosmopolitan Development  
Corporation Limited.

REGISTERED OFFICE: 4 Bridge Street,  
SYDNEY, N.S.W. 20

DATE OF INCORPORATION: 30th June, 1960. (Reg. No.  
64463)

DIRECTORS:

DE LASALA, Jerome A.  
11 Ponsonby Parade,  
SEAFORTH. N.S.W.

DE LASALA, Robert F.  
27 Carrington Avenue,  
MOSMAN. N.S.W.

SMITH, Charles G. 30  
"Westward Ho",  
ROUND CORNER.

MURRAY, Douglas R.A.  
Harrington Avenue,  
WARRAWEE.

MANAGERS: DE LASALA, Jerome A.  
11 Ponsonby Parade,  
SEAFORTH. N.S.W.



MANAGERS:

SMITH, Charles G.  
"Westward Ho"  
ROUND CORNER.

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AUDITORS:

Parsons Anderson &  
Company,  
175 Clarence Street,  
SYDNEY. N.S.W.

No. 43  
Exhibit  
"H.D.L.-10"  
(cont'd)

AUTHORISED CAPITAL:

£2,000,000. 00 in £1.00  
Shares.

10

PAID UP CAPITAL:

£400,000.00 (Cash)

SHAREHOLDERS:

ADAMSON, Francis James  
C/- Manners Navigation Co.  
Ltd.  
Union House,  
HONG KONG. 2,000

20

ANDERTON, Roy Bancroft  
(Deceased)  
"Trefula"  
156 Winchmore Hill Road,  
WINCHMORE HILL.  
LONDON. 1,000

A.N.Z. NOMINEES LIMITED  
C/- A.N.Z. Bank Ltd.  
Pitt & Hunter Streets,  
SYDNEY. N.S.W. 2,500

BANK OF NEW SOUTH WALES  
NOMINEES PTY. LIMITED,  
66 Pitt Street,  
SYDNEY. N.S.W. 10,000

30

CRILLY, Mrs. Benita  
7/492 Military Road,  
MOSMAN. N.S.W. 2,000

DE LASALA PTY. LTD.  
10th Floor,  
4 Bridge Street,  
SYDNEY. N.S.W. 133,000

40

DE LASALA, Ernest  
Ferdinand  
c/- John Manners & Co.Ltd.  
17th Floor,  
Union House,  
HONG KONG. 5,000

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Court of Hong  
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Exhibit  
"H.D.L.-10"  
(cont'd)

SHAREHOLDERS:

DE LASALA, Jerome Anthony, 11 Ponsonby Parade, SEAFORTH, N.S.W.	4,000	
DE LASALA, Camila Vasquez, 27 Carrington Avenue, MOSMAN. N.S.W.	1,500	
DE LASALA, Robert Perez (Jr.) 27 Carrington Avenue, MOSMAN, N.S.W.	4,000	10
JOHN MANNERS & CO. LTD., 17th Floor, Union House HONG KONG.	84,000	
KOUTSOYIANNIS, Isabel Brenda, "The Moorings", 26/11 Addison Road, MANLY. NS.W..	2,000	20
MURRAY, Douglas Robert Arthur, 2 Widgicwa Road, NORTH BRIDGE.	2,000	
SITO VELASQUEZ, Enrique G.P.O., Box 99, TOKYO. JAPAN.	6,000	
SMITH, Charles Gow, "Westward Ho" ROUND CORNER DURAL.	20,000	30
TOUT, William George Campbell 56 Kuringai Avenue, TURRAMURRA. N.S.W.	1,000	
JERIC PTY. LTD. 4 Bridge Street, SYDNEY. N.S.W.	20,000	
SAN MIGUEL NAVIGATION COMPANY S.A. P.O. Box 2042 ANCHORAGE. ALASKA 99510 U.S.A.	<u>100,000</u> <u>400,000</u>	40

	<u>ANNUAL RETURN:</u>	29th December, 1972.	In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970
	<u>DATE OF LODGEMENT:</u>	16th February, 1973.	No. 43 Exhibit "H.D.L.-10" (cont'd)
	<u>REGISTERED CHARGE:</u>	No. 455375 dated 26.6.64; Debenture - De Lasala Pty. Ltd. - \$300,000.00	
	<u>SHAREHOLDERS:</u>		
10		DE LASALA, Robert Perez (Jr.) 27 Carrington Avenue, MOSMAN. N.S.W. 4,000	
		JOHN MANNERS & CO. LTD., 17th Floor, Union House, HONG KONG. 84,000	
		KOUTSOYIANNIS, Isabel Brenda 'The Moorings', 26/11 Addison Road, MANLY, N.S.W. 2,000	
20		MURRAY, Douglas Robert Arthur 2 Widgiewa Road, NORTH BRIDGE. 2,000	
		SITO VELASQUEZ, Enrique G.P.O., Box 959 TOKYO, JAPAN 6,000	
30		SMITH, Charles Gow, "Westward Ho" ROUND CORNER" DURAL 20,000	
		TOUT, William George Campbell 56 Kuringai Avenue, TURRAMURRA. N.S.W. 1,000	
		JERIC PTY. LTD. 4 Bridge Street, SYDNEY. N.S.W. 20,000	

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit "H.D.L.-10" (cont'd)

SHAREHOLDERS:

SAN MIGUEL NAVIGATION COMPANY S.A.  
P.O. Box 2042  
ANCHORAGE. ALASKA  
99510, U.S.A. 100,000  
400,000

ANNUAL RETURN:

29th December, 1972.

DATE OF LODGEMENT:

16th February, 1973.

REGISTERED CHARGE:

No. 455375 dated 26.6.64  
Debenture - De Lasala Pty. Ltd. 10  
- \$300,000.00

JERIC CONSOLIDATED PTY. LTD.

REGISTERED NAME:

Jeric Consolidated Pty.Ltd.

REGISTERED ADDRESS:

c/- Bell & Starkey,  
Suite 110,  
1st Floor,  
Ethos House,  
28 Ainsley Avenue,  
CANBERRA. A.C.T. 20

DATE OF INCORPORATION:

24th March, 1964.

AUTHORISED CAPITAL:

\$100,000.00 divided into  
49,000 Redeemable Preference  
Shares of \$2.00 and 1,000  
Ordinary Shares of \$2.00.

PAID UP CAPITAL:

\$622.00 divided into 240  
Redeemable Preference Shares  
of \$2.00 and 71 Ordinary  
Shares of \$2.00.

DIRECTORS:

DE LASALA, Jerome A. 30  
11 Ponsonby Parade,  
SEAFORTH. N.S.W..

Also director of  
Cosmopolitan Development  
Corporation Limited.

DIRECTORS:

DE LASALA, Ernest F.  
41 Estoril Court,  
HONG KONG.

In the Supreme  
Court of Hong  
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No other directorships

DE LASALA, Robert,  
27 Carrington Avenue,  
MOSMAN, N.S.W..

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Exhibit  
"H.D.L.-10"  
(cont'd)

Also director of  
Cosmopolitan Development  
Corporation Limited

KOUTSOS, Isabel (Also known  
as KOUTSOYIANNIS)  
11 Addison Road  
MANLY. N.S.W.

MANAGER:

None appointed

SECRETARY:

DE LASALA, Jerome A.  
11 Ponsonby Parade,  
SEAFORTH. N.S.W.

RESIDENT SECRETARY  
IN A.C.T.:

EAST, Stewart Jeffrey S.  
Suite 501,  
M.L.C. Building,  
London Circuit,  
CANBERRA. A.C.T.

AND

Parsons Anderson & Company,  
175 Clarence Street,  
SYDNEY. N.S.W.

SHAREHOLDERS:

DE LASALA, Ernest F.  
41 Estoril Court,  
HONG KONG. 4 Ordinary

KOUTSOS, Isabel B.  
11 Addison Road,  
MANLY. N.S.W. 17 Ordinary

DE LASALA, Robert  
Perez,  
27 Carrington Ave.,  
MOSMAN. N.S.W. 16 Ordinary

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Court of Hong  
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No. 43  
Exhibit  
"H.D.L.-10"  
(Cont'd)

SHAREHOLDERS:

DE LASALA, Robert Perez (Estate of the Late) 27 Carrington Avenue, MOSMAN. N.S.W.	1 Ordinary	
DE LASALA, Camila Vasquez P. 27 Carrington Avenue, MOSMAN. N.S.W.	16 Ordinary	
DE LASALA, Jerome A. 11 Ponsonby Parade, SEAFORTH. N.S.W.	17 Ordinary	10
	<u>71 Ordinary</u>	
DE SAXE, Sheilha Veronica Flat 1, 96 Frenchmans Road, RANDWICK. N.S.W.	10	
JONES, John Ellis 1 Arthur Street, HOMEBUSH. N.S.W.	10	
BOLTON, Howard Thomas 90 Harbord Road, HARBORD. N.S.W.	10	20
ROW, John Oxley 81 Chesterfield Road, EPPING. N.S.W.	10	
GILCHRIST, Allan William 16 Lindhurst Crescent, HUNTERS HILL. N.S.W.	10	
SCHOFIELD, Phillip Alfred 66A Ponsonby Road, SEAFORTH. NSW	10	30
WARD, Donald Robert 24 Burgoyne Street, GORDON. N.S.W.	10	
HARRIMAN, Paul Gilbert 10 Epping Road, DOUBLE BAY. N.S.W.	10	

<u>SHAREHOLDERS:</u>			
	TREMAIN, Gordon Max 10/1 Liverpool Street, ROSE BAY. N.S.W.	10	In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970
	KIRBY, James Stewart 116 King Road, WAHROONGA. N.S.W.	10	No. 43 Exhibit "H.D.L.-10" (cont'd)
10	MILLS, Ruth Beynon 2 Cuba Court, 12 Railway Parade, KOGARAH. N.S.W.	10	
	FITZGERALD, Betty Margaret 17 Brandon Street, CLOVELLY. N.S.W.	10	
	McKENZIE, Patricia Dawn 7/28 Albyn Street, BEXLEY, N.S.W.	10	
	SHIELDS, Helen Fahy 7/44 Oberon Street, RANDWICK. N.S.W.	10	
20	MURRAY, Douglas Robert Harrington Avenue, TURRAMURRA. N.S.W.	10	
	CARTOUT, WILLIAM GEORGE, 56 Curingh Avenue, TURRAMURRA, N.S.W.	10	
	RADFORD, Steven Donald 116 Louisa Road, BIRCHGROVE, N.S.W.	10	
	ROGERS, Norman Ronald 66 Richard Avenue, COOGEE, N.S.W.	10	
30	AUSTIN, John Henry 124 Brush Road, WEST RYDE, N.S.W.	10	
	PROWSE, Kenneth 1 Shand Crescent, TURRAMURRA. N.S.W.	10	
	SWINBOURNE, John Neil 247 George Street, SYDNEY, N.S.W.	10	
40	DOYLE, Keith 24 Hopetown Avenue, VAUCLUSE, N.S.W.	10	

In the Supreme  
 Court of Hong  
 Kong. Divorce  
 Jurisdiction  
 No. 14 of 1970  
 No. 43  
 Exhibit  
 "H.D.L.-10"  
 (cont'd)

<u>SHAREHOLDERS:</u>	DE ROZARIO, Horacio Henrique 44 Dolphin Street, RANDWICK. N.S.W.	10
	LEVY, Victor 137 Frenchs Forest Road, SEAFORTH. N.S.W.	10
		<u>240</u>

DELASALA PTY. LTD.

<u>REGISTERED NAME:</u>	De Lasala Pty. Ltd.	10
<u>REGISTERED ADDRESS:</u>	4 Bridge Street, SYDNEY, N.S.W.	
<u>DATE OF INCORPORATION:</u>	22nd January, 1952. (Reg. No. 32832)	
<u>SHAREHOLDERS:</u>	DE LASALA, Ernest F. 41 Estoril Court, HONG KONG.	4
	KOUTSOYIANNIS, Isabel B. 11 Addison Road, MANLY. N.S.W.	17
	DE LASALA, Robert Perez (Jr.) 27 Carrington Avenue, MOSMAN. N.S.W.	16
	DE LASALA, Camila V.P., 27 Carrington Avenue, MOSMAN. N.S.W.	17
	DE LASALA, Jermome A. 11 Ponsonby Parade, SEAFORTH. N.S.W.	17
	DE LASALA, Robert Perez (Estate of the Late) 27 Carrington Avenue, MOSMAN. N.S.W.	1
	JERIC CONSOLIDATED PTY. LTD. CANBERRA. A.C.T.	1,750
		<u>1,822</u>





In the Supreme  
Court of Hong  
Kong. Divorce  
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No. 14 of 1970  
  
No. 43  
Exhibit  
"H.D.L.-10"  
(cont'd)

<u>REGISTERED OFFICE:</u>	4 Bridge Street, SYDNEY. N.S.W. 2000	
<u>DATE OF INCORPORATION:</u>	25th June, 1959. (Reg. No. 57554)	
<u>DIRECTORS:</u>	DE LASALA, Camila A. 27 Carrington Avenue, MOSMAN. N.S.W.	
	DE LASALA, Jerome A. 11 Ponsonby Parade, SEAFORTH. N.S.W.	10
	DE LASALA, Ernest F. 41 Estoril Court, HONG KONG.	
	DE LASALA, Robert P. (Jr.) 27 Carrington Avenue, MOSMAN. N.S.W.	
	KOUTSOYIANNIS, Isabel Brenda 20/11 Addison Road, MANLY. N.S.W.	20
<u>MANAGER:</u>	DE LASALA, Jerome A. 11 Ponsonby Parade, SEAFORTH, N.S.W.	
<u>SECRETARY:</u>	DE LASALA, Jerome A. 11 Ponsonby Parade, SEAFORTH, N.S.W.	
<u>AUDITORS:</u>	Parsons, Anderson & Company 175 Clarence Street, SYDNEY. N.S.W.	
<u>AUTHORISED CAPITAL:</u>	£200,000.00 in £2.00 Shares	30
<u>PAID UP CAPITAL:</u>	£100,000.00 (Cash)	
<u>SHAREHOLDERS:</u>	JERIC CONSOLIDATED PTY. LTD. 4 Bridge Street, SYDNEY. N.S.W.	49,900
	DE LASALA PTY. LTD. 4 Bridge Street, SYDNEY. N.S.W.	98

SHAREHOLDERS: DE LASALA, Robert P. In the Supreme  
(The Estate of the Late) Court of Hong  
27 Carrington Avenue, Kong. Divorce  
MOSMAN. N.S.W. 1 Jurisdiction  
No. 14 of 1970  
DE LASALA, Jerome A. No. 43  
27 Carrington Avenue, Exhibit  
MOSMAN. N.S.W. 1 "H.D.L.-10"  
(cont'd)

ANNUAL RETURN: 29th December, 1972.

DATE OF LODGEMENT: 22nd February, 1973.

10 REGISTERED CHARGES: Nil.

TRENT INVESTMENTS PTY. LIMITED

REGISTERED NAME: Trent Investments Pty. Ltd.

REGISTERED OFFICE: 4 Bridge Street,  
SYDNEY, N.S.W.

DATE OF INCORPORATION: 26th August, 1954. (Reg. No.  
38412)

DIRECTORS:

20 DE LASALA, Jerome A.  
11 Ponsonby Parade,  
SEAFORTH. N.S.W.

DE LASALA, Robert P. (Jr.)  
27 Carrington Avenue,  
MOSMAN. N.S.W.

DE LASALA, Camila V.  
27 Carrington Avenue,  
MOSMAN. N.S.W.

DE LASALA, Ernest F.  
41 Estoril Court,  
HONG KONG.

30 KOUTSOS, Isabel B.  
26/11 Addison Road,  
MANLY. N.S.W.

MANAGER: DE LASALA, Jerome A.  
11 Ponsonby Parade,  
SEAFORTH. N.S.W.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-10"  
(Cont'd)

SECRETARY: DE LASALA, Jerome A.  
11 Ponsonby Parade,  
SEAFORTH. N.S.W.

AUDITORS: Parsons, Anderson & Company,  
175 Clarence Street,  
SYDNEY. N.S.W.

AUTHORISED CAPITAL: \$200,000.00 in \$2.00 Shares.

PAID UP CAPITAL: \$100,000.00 (Cash)

SHAREHOLDERS:

JERIC CONSOLIDATED PTY. LTD., 4 Bridge Street, SYDNEY. N.S.W.	49,900	10
DE LASALA PTY. LTD. 4 Bridge Street, SYDNEY. N.S.W.	97	
DE LASALA, Jerome A. 11 Ponsonby Parade, SEAFORTH. N.S.W.	1	
DE LASALA, Robert P. (Jr.) 27 Carrington Avenue, MOSMAN. N.S.W.	1	20
DE LASALA, Robert P. (The Estate of the Late) 27 Carrington Avenue, MOSMAN. N.S.W.	1	

ANNUAL RETURN: 29th December, 1972.

DATE OF LODGEMENT: 16th February, 1973.

REGISTERED CHARGES: Nil.

27th March 1974.

Mr. M.F. Winter,  
c/o Gordon Hampton and Winter,  
Solicitors,  
809 Takshing House,  
20 Desveaux Road,  
HONG KONG. 30

Dear Sir,

MRS. HANNELORE DE LASALA

We refer to our recent telephone conversation regarding the above mentioned matter and advise that we have been able to establish ownership by Ernest De Lasala of one only building block in the State of New South Wales.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

10 Although De Lasala Pty. Limited has been active since 1952 in the acquisition and development of properties in and around the Sydney city area, the only property purchased since 1950 by Ernest De Lasala was a homesite situated near the Spit Bridge in the harbourside area of Manly. The property is described as number 3 Manly Road, and is the whole of the land in Volume 4962 Folio 210. He purchased it on the 18th December, 1968 for \$16,500.00 and it was valued by civil authorities in 1970 as having an unimproved capital value of \$21,000.00. No building has been erected on the block, but having regard to land values in the area it would now be valued in the vicinity of \$35,000.00. We attach a copy of the document of transfer, and you will note that the property is not encumbered by any registered mortgage.

No. 43  
Exhibit  
"H.D.L.-10"  
(Cont'd)

20 We noted your client's advice that she believed that her husband owned a shopping centre in Sydney, a sandpit, a racehorse stable and holdings in other companies.

30 The shopping centre she refers to we believe to be the Totem Shopping Centre at Balgowlah near Manly, which is owned by De Lasala Pty. Limited. That company also owns various properties in the Manly area, including blocks of land and blocks of flat dwellings. The sandpit referred to is probably a property of 104 acres situated on the Nepean River at Castlereagh about fifty miles west of Sydney. That property was purchased by De Lasala Pty. Limited in 1962 and sold in 1968 to Farley & Lewers Limited, a ready mixed concrete manufacturer. The company also owns a residential waterfront property at Quakers Hat Bay, an exclusive harbourside suburb of Sydney. In regard to the racehorse stable, Mr. De Lasala has not been involved in racing here for some years and he is not the owner of any racehorse in Australia at the present time.

40 In addition to his holdings in the companies we mentioned in our report of the 28th September, 1973, Mr. De Lasala has interests in the following companies registered in New South Wales:

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 43 Exhibit "H.D.L.-10" (cont'd)

Urban Developments Pty. Limited. Mr. De Lasala is a Director of this company, which was incorporated in 1956, and holds one of the two dollar shares issued.

H. Skott & Co. (Aust.) Pty. Limited. He is a Director of this company, but as no annual return has been filed since 1969 it is not possible to estimate its worth.

Trent Investments Pty. Limited. He is a Director of this company, which has an issued capital of \$100,000.00. There are no shares issued in his name. 10

John Manners & Co. (Aust.) Pty. Limited. He is a Director and holds 625 shares in his name in the company. Although the company recorded a loss of \$28,198.00 last financial year, it paid a dividend of \$20,000.00 to shareholders. The company is a subsidiary of John Manners Pty. Limited of Hong Kong.

We trust that the foregoing information will be of some assistance to you. 20

We shall await your further instructions before proceedings further with this inquiry.

Yours faithfully,  
C.A. SINCLAIR & ASSOCIATES.

C.A. Sinclair.

No. 43 Exhibit "H.D.L.-11"

No. 43 EXHIBIT "H.D.L.-11"

Monthly expenses self

I.	Car	DM	641.50
II.	Insurance Doctor, Hospital	DM	187.35
III.	Dentist	DM	40.--
IV.	Insurance Holiday	DM	25.--
V.	Insurance Accident	DM	15.--
VI.	Clothing	DM	576.70
VII.	Chemist	DM	92.75
VIII.	Books, records, tapes	DM	102.40
IX.	Schooling lessons	DM	320.--

30

Monthly expenses self

X. Sports	DM	65.60	In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-11" (cont'd)
XI. Holidays	DM	210.60	
XII. Hairdresser, Cosmetics	DM	243.50	
XIII. Theatre	DM	12.--	
XIV. House	DM	694.--	
XV. Household	DM	843.--	
	<u>DM</u>	<u>4.069.40</u>	

I. Car

10	Insurance	200 p.m.	DM	100.--
	Tax	950 p.a.	DM	39.50
	Repairs replacements (tyres etc)			
		1,200 p.a.	DM	100.--
	Write off 10% p.a.	3,200 D.M.	DM	266.--
	Inspection p.a.	180-- DM	DM	15.--
	Petrol, Oil		DM	100.--
	ADAC, AC Club fees	48.-- Road		
		Service 25, Club fee	DM	6.--
	Legal Insurance		DM	15.--
20			<u>DM</u>	<u>641.50</u>

II. Insurance Doctor Dentist, Hospital

Insurance Doctor	Nova Insurance Co.			
	GA 100		DM	83.10
Insurance Hospital	Nova Insurance Co.			
	GS 1 (bed)		DM	53.20
Insurance Hospital	Nova Insurance Co.			
	GS 3 (Doctor)		DM	7.55
			<u>DM</u>	<u>187.35</u>

III. Dentist

30	No Insurance	last year 480.-- DM		
		dental fees	DM	40.--
			<u>DM</u>	<u>40.--</u>

IV. Insurance Holiday

	Insurance for personal belongings for			
	Ernest and myself any time of the year			
	any trip p.a.	300.--DM	DM	25.--
			<u>DM</u>	<u>25.--</u>

In the Supreme  
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No. 43  
Exhibit  
"H.D.L.-11"  
(cont'd)

V. Insurance accident

Insurance with Gothar Insurance against  
injury to others 180.-- p.a. DM 15.--

VI. Clothing

4 prs shoes	a	180.--	DM	DM 720.--			
				(2 yrs)	DM	30.--	
4 prs. sandals		80.--	DM	DM 320.--			
				(2 yrs)	DM	13.50	
4 handbags	a	150.--	DM	DM 600.--			
				(3 yrs)	DM	16.50	10
4 prs. gloves	a	35.--	DM	DM 140.--			
				(2 yrs)	DM	5.80	
4 belts	a	50.--	DM	DM 200.--			
				(5 yrs)	DM	3.30	
6 winter dresses		300.--	DM	DM 1,800.--			
				(2 yrs)	DM	75.--	
6 blouses	a	120.--	DM	DM 720.--			
				(2 yrs)	DM	30.--	
3 skirts	a	180.--	DM	DM 540.--			
				(2 yrs)	DM	45.--	20
4. slacks winter		160.--	DM	DM 640.--			
				(3 yrs)	DM	26.50	
4 slacks summer		120.--	DM	DM 480.--			
				(2 yrs)	DM	18.--	
4 pullovers wi		145.--	DM	DM 580.--			
				(3 yrs)	DM	16.--	
4 pullovers su		60.--	DM	DM 240.--			
				(2 yrs)	DM	10.--	
4 winter suits		360.--	DM	DM 1,440.--			
				(2 yrs)	DM	60.--	30
4 suits summer		260.--	DM	DM 1,040.--			
				(2 yrs)	DM	43.--	
6 su dresses		190.--	DM	DM 1,140.--			
				(2 yrs)	DM	47.50	
1 Sheepskin Jack.		1,800.--	DM	DM 1,800.--			
				(5 yrs)	DM	30.--	
1 Fox Jacket, Hat.		1,600.--	DM	DM 1,600.--			
				(5 yrs)	DM	25.--	
1 Leather Jacket		360.--	DM	DM 360.--			
				(3 yrs)	DM	10.--	40



VI. Clothing

In the Supreme  
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"H.D.L.-11"  
(cont'd)

	1 Rain coat	a	180.--	DM	DM 180.-- (2 yrs)	DM	7.50
	2 Jeans	a	60.--	DM	DM 120.--	DM	10.--
	1 Rain Jacket	a	36.--	DM	DM 36.--	DM	3.--
	2 Leather boots	a	210.--	DM	DM 420.-- (2 yrs)	DM	17.50
	1 rubber boots	a	36.--	DM	DM 36.-- (3 yrs)	DM	1.--
10	2 evening dresses	a	900.--	DM	DM 1,800.-- (6 yrs)	DM	25.--
	2 evening shoes	a	60.--	DM	DM 120.-- (2 yrs)	DM	5.--
	2 evening bags	a	80.--	DM	DM 160.-- (3 yrs)	DM	4.30
	1 evening coat	a	300.--	DM	DM 300.-- (6 yrs)	DM	4.--
	1 Tennis dress	a	160.--	DM	DM 160.-- (3 yrs)	DM	4.30
20	Riding outfit	a	300.--	DM	DM 300.-- (3 yrs)	DM	8.60
	Shooting Hunting	a	360.--	DM	DM 360.-- (5 yrs)	DM	6.--
	Dressing gown etc.	a	120.--	DM	DM 360.-- (2 yrs)	DM	15.--
	Underwear					DM	20.--
	Ski suit	a	360.--	DM	DM 360.-- (3 yrs)	DM	7.10
30	Winter coat	a	1,200.--	DM	DM 1,200.-- (3 yrs)	DM	33.30
						<u>DM</u>	<u>576,70</u>

VII. Chemist

	Valium					DM	13.55
	Vitamin pills					DM	8.60
	Alcos Anal suppositories and cream					DM	32.--
	Pain killer					DM	6.50
	Heart drops					DM	18.10

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 (cont'd)

VII. Chemist

Toothbrush	3 monthly a	3.60 DM	DM	1.20
Toothpaste	a	2.60 DM	DM	2.60
Toothpaste besides normal one		5.80		
		(3 months)	DM	1.60
Cotton Wool	2 x a	1.80 DM	DM	3.60
				<u>DM 92.75</u>

VIII. Books, records, tapes, magazines, films

1 book per month or school books		DM	25.--	
1 record or tape per month		DM	22.--	10
1 magazine for hunters		DM	2.80	
4 womens magazines per week a	2.-- DM	DM	32.--	
1 film		DM	8.60	
1 Developing average 10 pictures per month		DM	12.--	
				<u>DM 102.40</u>

IX. Schooling, lessons

Piano lessons	1/2 hr. per week a 18.-- DM	DM	72.--	
French, Spanish lessons	a 90.-- p.m.	DM	180.--	
Shotgun, Rifle shooting bullets only	once p.m.	DM	20.--	20
Riding lessons	a 12.-- p.hr. 4 hrs. p.m.	DM	48.--	
				<u>DM 320.--</u>

X Sports

Swimming once weekly	a 2.50	DM	10.--	
Ski-ing lift 8 days	a 4.00 p. day rent skis boots 12.--	DM	10.60	
Riding rent horse	a 5.00 hr. X 4	DM	20.--	
Tennis club fees		DM.	25.--	
				<u>DM. 65.60</u>

XI. Holidays

Xmas 8 days ski-ing a 80.-- DM	DM 40.--
Summer holidays 14 days sun a 80- DM Flight 500.--	DM 144.--
4 days autumn or easter a 80.-- DM	DM 26.60
	<u>DM 210.60</u>

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XII. Hairdresser, Cosmetics

1 x per week wash and set a 20.-- DM	DM 80.--
1 x per 3 months perm a 80.-- DM	DM 26.--
10 1 x per month cut (2 months) a 20.-- DM	DM 10.--
Cream, lotion, cleanser, mask, etc. nailvarnish etc.	DM 90.--
Facial 1 x per month	DM 20.--
Bathoil fenjala	DM 17.50
	<u>DM 243.50</u>

XIII. Theatre

Winter every month x 25.-- DM x 6	DM 12.--
-----------------------------------	----------

XIV. House

20 Upkeep, repairs of house DM 400.000 at 5% of initial cost 16.650.-- DM half	DM 694.--
---	-----------

Ernest monthly expenses

I. Clothing	DM 449.55
II. Club bills, lessons	DM 85.40
III. School books and art material	DM 52.--
IV. Chemist	DM 37.40
V. Books, magazines	DM 27.20
VI. Records, tapes, batteries	DM 25.60
VII. Hairdressers	DM 4.--
30 VIII. Insurances Doctor Hospital, Dentist	DM 81.75
IX. Birthday Party, friends birthdays	DM 43.15
X. Toys	DM 48.--
XI. Ponies, dog	DM 135.95

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-11" (cont'd)

Ernest monthly expenses

XII. Holidays	DM	160.---
XIII. Car	DM	319.02
XIV. House	DM	694.---
XV. Household	DM	843.---
		<u>DM 3,006.02</u>

I. Clothing one year

12 underpants	a 25.---	p.a. 300.---	DM	25.---	
12 undervests	a 25.---	p.a. 300.---	DM	25.---	
2 long sleeve vests	a 20.---	p.a. 40.---	DM	3.30	10
2 long under-pants	a 20.---	p.a. 40.---	DM	3.30	
6 prs. socks long.	a 12.---	p.a. 72.---	DM	6.---	
6 prs. socks short	a 6.---	p.a. 36.---	DM	3.---	
2 Jackets summer	a 140.---	p.a. 280.---	DM	23.30	
1 Sheepskin jacket	a 360.---	p.a. 360.---	DM	30.---	20
1 Parker (play)	a 160.---	p.a. 160.---	DM	13.30	
1 raincoat	a 28.---	p.a. 28.---	DM	2.30	
2 suits winter	a 180.---	p.a. 360.---	DM	30.---	
2 suits summer	a 150.---	p.a. 300.---	DM	25.---	
2 prs. leather pants long	a 120.---	p.a. 240.---	DM	20.---	
1 vest to match	a 160.---	p.a. 80.---	DM	26.60	
		(2 years)			
2 prs. leather pants short	a 60.---	p.a. 120.---	DM	5.---	30
		(2 years)			
4 short pants cloth	a 40.---	p.a. 160.---	DM	13.30	
4 Pullovers	a 75.---	p.a. 300.---	DM	12.50	
		(2 years)			
2 Cardigans	a 85.---	p.a. 170.---	DM	14.15	
		(2 years)			
4 shirts short sleeve	a 30.---	p.a. 120.---	DM	10.---	

I. Clothing one year

	4 wool. shirts	a 58.--	p.a. 232.-- (2 yrs)	DM 9.65
	2 prs. sandals	a 45.--	p.a. 90.--	DM 7.50
	2 prs. boots	a 115.--	p.a. 230.--	DM 19.--
	2 prs. shoes	a 40.--	p.a. 80.--	DM 6.50
	1 pr. rainboots	a 26.--	p.a. 26.--	DM 2.15
	2 prs. slippers	a 18.--	p.a. 36.-- (2 yrs)	DM 1.50
10	4 prs. inlays	a 45.--	p.a. 180.--	DM 15.--
	1 sheepskin hat	a 68.--	p.a. 68.-- (3 yrs)	DM 1.85
	1 suede hat	a 52.--	p.a. 52.-- (2 yrs)	DM 2.15
	2 dressing gowns	a 60.--	p.a. 120.-- (2 yrs)	DM 5.--
	4 winter pyjamas	a 60.--	p.a. 240.-- (2 yrs)	DM 10.--
20	4 summer pyjamas	a 38.--	p.a. 152.-- (2 yrs)	DM 6.30
	6 prs. long pants	a 60.--	p.a. 360.-- (2 yrs)	DM 15.--
	2 prs gloves	a 18.--	p.a. 36.--	DM 3.--
	2 Judo suits	a 75.--	p.a. 150.-- (2 yrs)	DM 6.25
	2 Judo belts	a 8.--	p.a. 16.--	DM 1.30
	1 Judo club jacket	a 78.--	p.a. 78.--	DM 6.50
30	4 swimming trunks	a 24.--	p.a. 96.-- (2 yrs)	DM 4.--
	1 swimming jacket	a 48.--	p.a. 48.--	DM 4.--
	1 football outfit	a 90.--	p.a. 90.-- (2 yrs)	DM 3.75
	1 training suit football	a 60.--	p.a. 60.--	DM 5.--
	1 training suit school	a 60.--	p.a. 114.-- (114,)	DM 9.--
	1 ski suit	a 185.--	p.a. 185.--	DM 15.35
40	1 ski underwear	a 60.--	p.a. 60.--	DM 5.--

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-11" (cont'd)

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
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<u>I. Clothing one year</u>			
1 ski boots	a 54.--	p.a. 54.--	DM 4.50
1 boots football	a 48.--	p.a. 48.--	DM 4.--
1 fancy dress suit	a 63.--	p.a. 63.--	DM 5.25
		per month	<u>DM449.55</u>

<u>II. Club bills, lessons</u>			
Riding lessons per hour	DM 4.--		
8 lessons p.m.			DM 32.--
Swimming lessons per hour	DM.5.--		
4 lessons p.m.			DM 20.--
Judo club fees twice weekly	2 1/2 hurs		
	132.--	p.a.	DM 12.10
Ski-ing per hour	DM 20.--		
	240.--	p.a.	DM 20.--
Ski lift	2.--	DM per day	8 days
			DM 1.30
			<u>DM 85.40</u>

10

<u>III. School books and art materials</u>			
School bag every two years	a 96.--	DM	DM 2.--
Books	180.--	DM pa	DM 15.--
3 Fountain pens p.a.	a 24.--	72.--	DM 6.--
Art Classes once weekly	6.--	DM pw	DM 24.--
School activities	60.--	DM pa	DM 5.--
			<u>DM 52.--</u>

20

<u>IV. Chemist</u>			
Vitamin Sweets	1 box	per month	DM 7.60
Bathoil Fenjala	1 bottle	per month	DM 17.50
Soap	1 piece	per month special against all. skin	DM 3.60
Powder	half tin	per month (3.60)	DM 1.80
Toothpaste	1 Tube		DM 2.65
Toothbrush for electric t.b.	1	per 3 months (3.60)	DM 1.20

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IV. Chemist

Cream face Tube 3.20 half per month	DM 1.60
Cotton wool ears	DM -.30
Brush, comb, glass DM 36.--- every 3 yrs	DM 1.---
	<u>DM37.40</u>

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-11" (cont'd)

V. Books, Magazines

1 book per month between 16 - 23.--- DM	DM18.---
2 cartoons a 1.40	DM 2.80
1 Sesame street	DM 2.---
1 Asterix	DM 2.80
1 Judo Club news	DM 1.---
1 Ski-magazine twice yearly DM 3.--- p.a.	DM -.60
	<u>DM27.20</u>

VI. Records, Tapes, Batteries

1 Set batteries (5 pc. a 1.80 for cars or player)	DM 9.---
4 records per year a 22.---	DM 7.30
4 tapes or coins per year a 28.---	DM 9.30
	<u>DM25.60</u>

VII. Hairdressers

Cutting every 6 weeks a DM 6.---	DM 4.---
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VIII. Insurance Doctor, Hospital, Dentist

Insurance Doctor Nova Insurance GA 100	DM 31.10
Insurance Hospital " " GS 1 Bed	DM 16.30
Insurance Hospital " " GS 3 Doctor	DM 15.30
Insurance Dentist GS 1 Dentist	DM 14.40
Insurance Accident (Ernest against other party) 55.70	DM 4.65
	<u>DM 81.75</u>

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 (cont'd)

IX. Birthday-Party 16 Birthdays friends

16 presents for birthdays of friends			
a 10.--			DM 13.15
Own Party	32 Sausages a 1.20	DM 38.40	
	16 Ice Creams 1.--	DM 16.--	
	64 Cola, Juice -.50	DM 32.--	
	1 Birthdaycake	DM 36.--	
	Cakes, Biscuits	DM 30.--	
	Prizes for games	DM 48.--	
	Decorations, candles	DM 80.--	10
	Cups, plates, napkins	DM 60.--	
	Chocolates	DM 16.--	
	Potato Salad	DM 12.--	
		<u>DM 368.40</u>	
			<u>DM 30.--</u>
			<u>DM 43.15</u>

X. Toys

1 dinky toys, soldier, animal etc.	DM 8.--	
1 sledge, bike, tent, skis, etc.	DM 30.--	
Models, lego.	DM 10.--	20
	<u>DM 48.--</u>	

XI. Ponies, dog

Ponies Hay 30 bundles p.a. a 5.--		
150.-- p.a.	DM 12.50	
Turnips 220 pounds a -.50		
110.-- p.a.	DM 9.15	
Oats 100 pounds a -.28 p.m.	DM 28.--	
Extras, vet, hoofs etc.	DM 10.--	
Taxes a 48.-- DM p.a. per pony 96.--DM	DM 8.--	
Dog food 2.-- DM per day	DM 60.--	30
Dog tax 40.-- p.a.	DM 3.30	
Extras vet, washing, etc.	DM 5.--	
	<u>DM 135.95</u>	



XII. Holidays

Xmas	8 days ski-ing a	60.-- DM Hotel		
		and Food	DM	35.--
Summer holidays	14 days in the sun a	60.-- DM Flight 300	DM	95.--
Judo camping holidays	7 days Bus &	cost 120.-- DM	DM	10.--
4 days autumn or easter.	a 60.-- DM by	car	DM	20.--
				<hr/>
				<hr/>
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XIII. Car

Insurance	200.-- p.m.	half	DM	100.--
Tax	950.-- p.a.	half	DM	39.50
Petrol	Judo classes 416 km	pm x 0.17	DM	70.72
	Swimming 320 km	pm x 0.17	DM	54.40
	Riding 160 km	pm x 0.17	DM	27.20
	Cinema or			
	friends 160 km	x 0.17	DM	27.20
				<hr/>
Repairs, write off, new tyres etc. not			DM	319.02
included				<hr/>

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XIV. House

Upkeep of house	DM 400,000.-- at 5% of			
	initial cost 16.660.-- DM	half	DM	694.--
				<hr/>
				<hr/>

Housekeeping

Meat and sausage, fish	DM 10.-- per day	DM	300.--
(1 pound steak 18.50 DM, 6 slices			
sausage 1.85 DM)			
Milk, Joghurt	DM 3.-- per day	DM	90.--
(1 litre Milk -.95 DM, 1 Joghurt			
-.55 DM)			
Fresh fruit	DM 2.-- per day	DM	60.--
(1 banana -.45 DM, grapes 1.80 D.M.,			
apple 1 pd 1,65 DM)			
Vegetables	DM 2.70 per day	DM	81.--
(Tomatoes 2.10 DM, green peppers 1 piece			
1.-- DM)			

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Housekeeping

Butter, cheese, jam, spieces	DM 2.--		
	per day	DM	60.--
(1/2 Butter 2,10 DM, Phil cream cheese 2,85 Pkt.)			
Bread, rolls, biscuits	DM 2.--	per day	DM 60.--
(bread 6 slices 1,65 DM, rolls -.25 DM, Butter cookies 1 pd. 8.25 DM)			
Sweets children	DM 1.--	per day	DM 30.--
Oranges for fresh juice	DM 1.20	per day	DM 18.--
(6 oranges a -.20 DM which can be used only for juice)			
Potatoes, noodles, rice	DM -.50	per day	DM 15.--
(rice pkt 2 meals 1,65 DM, noodles pkt 1.45 DM)			
Chinese goods, spices, tins sauces		DM	40.--
(chin. mushrooms 50 gramms 7.25 DM, bamboo tin 3.40 DM)			
Drinks	DM 1.--	per day	DM 30.--
(1 bottle campari 28.50 DM, 1 soda water 1.80 DM)			
Fresh flowers, pot plants, garden plants, seeds		DM	80.--
(bunch spring flowers 12.-- DM)			
Laundry sheets, table cloth		DM	32.--
(4 table cloth a -.80 DM p.w. 2 sets sheets a 2.40)			
Dry Cleaning (Curtains, blankets, covers every 6 months)	(DM 120.--)	DM	20.--
Electricity (13 rooms plus outdoor light, deep freeze, fridge, electrical equipment, part oil heating etc.)		DM	140.--
Water surage		DM	30.--
Dustmen, window cleaner		DM	30.--
Cleaning, washing materials, paints		DM	50.--
Heating, Oil	DM 2.400 p.a.	DM	200.--
Telephone (35.-- DM monthly cost of telephone post off)		DM	90.--
Repairs, replacements, new items, decorations, painter		DM	120.--

Housekeeping

TV License, Radio	DM	10.--
Payments Community, funerals, charity, school collections	DM	40.--
Insurance furniture fire, burglary, storm, water	DM	60.--
	<u>DM</u>	<u>1,686.--</u>

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No. 43  
EXHIBIT "H.D.L.-12"

No. 43  
Exhibit  
"H.D.L.-12"

10 Present Assets & liabilities

1000 Northgate Exploration	US\$	12,836.30
100 " " }		13,189.75
900 " " }		
300 Crowell, Collier MacMillan	US\$	3,861.39
Funds building Society	US\$	12,711.00
	<u>US\$</u>	<u>42,598.44</u>

US Dollar 1970 to present date

June 1970	-	DM 3.65
June 1971	-	DM 3.54
20 June 1972	-	DM 3.20
June 1973	-	DM 2.60
June 1974	-	DM 2.62
June 1975	-	DM 2.36

Middle of June 1970 to  
middle of December 1974  
increase of cost of living  
ref. Minister of Economics  
of the Federal Republic of  
Germany Ref. "HDL 15"

30%

In the Supreme Court of Hong Kong. Divorce Jurisdiction No.14 of 1970

No. 43 Exhibit "H.D.L.-12" (cont'd)

Mrs. Hannelore De Lasala, c/o The Hilton Hotel, HONG KONG.

March 30th, 1972.

Dear Hannelore,

Further to your recent enquiries, I detail here the breakdown in your account since you opened it in June 1970.

The initial stocks you bought, if you recall, were in three categories: income, growth and with a very small percentage in something a little more speculative. With this objective in mind we recommended the following portfolio to you:-

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For income we purchased \$10,000 worth of Pepsi Cola bonds which were yielding approximately 9½%; 2,000 shares of Free State Teduld, a South African gold share yielding at purchase time some 11%.

On the growth side we selected Continental Oil and Cities Service in the oil sector of the economy; Union Carbide, American Brands and U.S. Shoe in the retail outlet; Union Carbide in the chemical field and Northgate Exploration in the mining field.

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On the speculative side we purchased 300 shares of a new issue with Mego International which again is in the retail business.

At the time of purchase, all these shares were in attractive positions for their investment objectives.

Various shares were sold over the period when you wished to realise cash. The first shares sold were U.S. Shoe which were sold in October, 1970 for a loss of some \$900. The other share we sold at this time was 100 shares of American Brands at 37 3/4, for which you made a profit of \$175. Subsequent sales have taken place over the period, a breakdown of which I am attaching to this letter. As you can see, they are all profitable including the Free State Geduld, if you take into account accumulated dividends which have been quite substantial over the years. Disappointment has been Northgate Exploration which has dropped considerably from our original purchase price for various reasons. The main ones being the lower

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price of silver and the decrease in demand for lead, which is Northgate's prime income earner. The outlook does not appear that attractive over the near term, but with an increase in the price of silver we would hope to see some improvement in this share. You are currently showing a paper loss of some \$14,000 on this share.

If you require any further breakdowns, please let me know.

Yours sincerely,

Jenkin W. Hiles.

Encl.

In the Supreme Court of Hong Kong. Divorce Jurisdiction' No. 14 of 1970

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Exhibit  
"H.D.L.-12"  
(cont'd)

DESCRIPTION	BOUGHT			SOLD			Approx. Profit or (Loss)
	Date	Quantity	Price	Date	Quantity	Price	
Free State Geduld	6.1.70	1,000	13 7/8	1.14.72	1,000	13 3/8	2,000
Continental Oil	6.1.70	200	23 3/8	11.18.70	200	27 3/4	800
Cities Services	6.1.70	200	40 3/8	6.4.70	200	44	800
Union Carbide	6.4.70	300	33 3/4	11.18.70	300	36 3/8	900
Free State Geduld	6.4.70	500	14	1.14.72	1,000	13 3/8	1,000
U.S. Shoe	6.4.70	300	26 7/8	10.5.70	300	24	(900)
American Brands	6.4.70	200	36	10.5.70 11.18.70	100 100	37 3/4 41 7/8	175 600
Free State Geduld	6.5.70	500	14	1.14.72	500	13 3/8	1,000
North American Rockwell	6.14.71	200	29 5/8	3.20.72	200	33 3/4	750
Mego Inter- national		300	6	1.20.72	300	9 3/4	1,125
Pepsi Cola	6.12.70	100	100	10.22.71 11.4.71	3M 7M	97 1/4 88	( 90) ( 140)
Northgate Exploration	6.1.70	1,000	12 5/8				
Northgate Exploration	6.4.70	100 900	12 3/4 13.00				
Northgate Exploration	7.15.70	500	9.90				
Crowell- Collier & Macmillan	6.14.71	300	12 5/8				
Vaal Reefs	1.29.72	1,500	11 3/4	19.4.72	500		

Profit \$ 8,020

EXPENSES FURNITURE AND EXTRAS

	I. Kitchen	DM 13,121.48
	II. Sitting Room	DM 22,991.--
	III. Dining Room	DM 29,461.20
	IV. Bathroom	DM 6,430.01
	V. Ernest Bedsitting room	DM 8,675.64
	VI. Ernest Playroom	DM 1,730.--
	VII. Bedroom	DM 9,096.--
	VIII. Store Room Food	DM 1,400.--
10	IX. Store Room	DM 350.--
	X. Room Clothing	DM 1,185.15
	XI. Hall	DM 5,400.--
	XII. Stable	DM 800.--
	XIII. Ponies Barn Garden	DM 1,400.--
	XIV. Expenses Ernest over DM 500.--	DM 8,072.--
	XIII. Expenses after divorce	DM 76,300.--
	XIV. Accommodation Hilton	DM 18,000.--
	XV. Living Expenses Ernest from 1970	DM 93,913.44
20	XVI. Living Expenses self from 1970	DM 180,000.--
		<u>DM 473,396.92</u>

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(cont'd)

I. Kitchen

	Carpet	DM 558.24
	Curtains window	DM 825.89
	Curtains work plate	DM 141.40
	Built in kitchen 1 wall with stove fridge	DM 5,229.15
	Built in kitchen 2nd wall work bench 2 cupboards	DM 1,759.90
30	Ceiling lamp 4 bulbs	DM 306.90
	China (Hong Kong)	DM 1,200.--
	Electrical equipment, mixer, tin opener etc.	DM 800.--
	Pots, pans, cookers, kettle	DM 800.--
	Glasses, jugs, tumblers, decorations	<u>DM 1,500.--</u>
		<u>DM 23,121.48</u>

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II. Sitting-Room

Leather sofa armchairs	DM	2,866.--	
Sold and changed to black leather seats plus	DM	3,000.--	
Marble Table Italy	DM	1,000.--	
Chinese cupboards laquer painted on stand	DM	1,650.--	
Chin. cupboard inlay work	DM	1,800.--	
Set chin. tables	DM	800.--	
Set laquer lamps	DM	1,800.--	10
Decorations, carvings (sword not counted)	DM	2,500.--	
Television colour	DM	2,500.--	
Stereo set	DM	3,000.--	
Elephant	DM	250.--	
Brass flower pot on rosewood stand	DM	150.--	
Ashtray lighter, cigarette box	DM	800.--	
Chinese jade fruit in bowl decorations	DM	500.--	
Newspaperstand brass	DM	375.--	
		<u>DM 22,991.--</u>	
		<u><u>DM 22,991.--</u></u>	20



III. Dining-Room

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	Curtains	DM	1,223.--
	Carpet	DM	607.20
	Cupboard 4,90 x 2,20	DM	4,221.--
	Trolley	DM	780.--
	Piano 2nd hand and restoration	DM	5,000.--
	Piano bench leather top	DM	380.--
	Desk	DM	696.--
	Chair	DM	291.--
10	Ceiling lamp	DM	590.--
	Brass flower pots large 1 pc.	DM	250.--
	Table 4 chairs	DM	1,600.--
	Clock	DM	800.--
	Desk set	DM	400.--
	Decorations pictures, paintings	DM	1,500.--
	Table linnen	DM	2,500.--
	Silver ware	DM	2,500.--
	Silver cutlery 12 pers.	DM	3,653.--
	German china Heissen	<u>DM</u>	<u>2,500.--</u>
20		DM	29,491.20

IV. Bathroom

	Carpet	DM	426.60
	Curtains sewing only	DM	188.09
	Curtains material	DM	183.52
	Curtains material (add.)	DM	62.--
	Bath tub rack	DM	265.--
	Towel Holder	DM	230.--
	Bathroom fittings (mirror, side- lamps, etc.)	DM	2,289.--
30	Ceiling lamp	DM	930.--
	Towels	DM	584.80
	Hamper & floor set (Lane Crawford with sending)	DM	750.--
	Bathroom trolley or cupboard	<u>DM</u>	<u>571.--</u>
		<u>DM</u>	<u>6,430.01</u>

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V. Ernest Bedsitting-Room

Cupboard built in bed		DM 1,483.--	
Desk Taiwan	US 210.--	DM 630.--	
Dragon chair Taiwan	US 80.--	DM 240.--	
Coffee table 4 chairs	US 170.--	DM 510.--	
Chest	US 120.--	DM 360.--	
3 rosewood masks, 3 Taiwan masks		DM 500.--	
Half of shipping		DM 600.--	
1 Leppard Dehli		DM 600.--	
Curtains		DM 611.14	10
Carpet wall to wall		DM 600.--	
Bedclothes		DM 800.--	
2 Bookshelves		DM 72.--	
Desk set carved book ends lions		DM 182.50	
Lamp ceiling		DM 92.--	
Lamp desk movable desk		DM 215.--	
Lamp cupboard with fitting		DM 110.--	
Waste basket brass hooks		DM 70.--	
Decorations pictures guards, batik, carving		DM 200.--	20
Sanyo radio-record player with tape-recorder		DM 300.--	
TV black white small		DM 500.--	
		<u>DM 8,675.64</u>	

VI. Play-Room Ernest

Steel shelves		DM 800.--	
Carpet 2nd hand		DM 250.--	
Curtains		DM 200.--	
Table chairs (3 chairs)		DM 480.--	
		<u>DM 1,730.--</u>	30

VII. Bedroom

Bed and side-tables, cupboard	DM 3,800.--
Brass chair	DM 316.--
Lamps on side tables	DM 800.--
Carpet	DM 600.--
Curtains, bed spread	DM 1,200.--
Screen decoration	DM 1,200.--
Table, with 2 small arm-chairs	DM 980.--
Ceiling lamp	DM 200.--
	<hr/>
	DM 9,096.--
	<hr/> <hr/>

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VIII. Store-Room Food

Shelving	DM 600.--
Deep Freeze	DM 800.--
	<hr/>
	DM 1,400.--
	<hr/> <hr/>

IX. Store Room (not yet furnished)

Fitting lights & lamp	DM 350.--
	<hr/> <hr/>

X. Room clothing

Wooden boards	DM 450.--
Bookshelves	DM 72.--
Curtains one wall 4,92 m, carpet straw	DM 580.--
Mirror	DM 84.15
	<hr/>
	DM 1,186.15
	<hr/> <hr/>

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XI. Hall

Carpet 8 meters x 4,50 m	DM 1,224.--
Cupboard	DM 361.--
Table chairs bamboo	DM 1,140.--
2 brass pots large on stand with dried flowers	DM 600.--
Brass coat stand	DM 575.--
Umbrella stand brass	DM 175.--
Waste basket to match	DM 125.--
Decorations wall (old rifles picture eagle on silk)	DM 1,200.--
	<u>DM 5,400.--</u>

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XII. Stable Ponies

Boxes fixed and wood (work relatives)	DM 800.--
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XIII. Ponies Garden shed

100 meters wooden fence	DM 800.--
Barn with metal roof material only	DM 600.--
	<u>DM 1,400.--</u>

XIV. Expenses Ernest over DM 500.--

2 ponies	DM 2,400.--
2 Harnesses for waggon	DM 1,600.--
1 saddle	DM 572.--
Waggon	DM 800.--
Motor bike 2nd (old one trade in for 240.- DM)	DM 980.--
Blockhouse	DM 520.--
Dogs (first was run over by a car)	DM 1,200.--
	<u>DM 8,072.--</u>

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XIII. Expenses after divorce

Househunting London 3 weeks	DM 3,000.--
Accident Belgium when returning from London	DM 10,000.--
Ticket self Hong Kong Germany 1970 (Ernest was paid)	DM 1,800.--
Ticket Self Ernest 1972. Bremen Hong Kong return	DM 6,000.--
4 trips London to see Mr. Jackson or other lawyers	DM 3,000.--
Lawyer fees Kramer Jackson Ives Winter	DM 15,000.--
Shipping Charges 1970 - 1972	DM 3,000.--
Unaccompanied baggage charge 1970	DM 1,500.--
Cash Amah besides Mr. Lasalas pay	DM 1,000.--
Mercedes 280 SE 1970 2nd hand	DM 29,000.--
Return trip 1970 Bangkok Dehli Florence	DM 3,000.--
	<u>DM 76,300.--</u>

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-12" (cont'd)

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XIV. Accommodation

Hilton Hotel 6 months a 150.- HK p. day + extras	DM 18,000.--
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XV. Living Expenses Ernest from 1970 June

Ernest June 1970 to June 1971 a 1,200 DM	DM 14,400.--
June 1971 to June 1972 a 1,320 DM	DM 15,840.--
June 1972 to June 1973 a 1,452 DM	DM 18,424.--
June 1973 to June 1974 a 1,597.20 DM	DM 19,166.40
June 1974 to June 1975 a 1,756.92 DM	DM 21,083.04
	<u>DM 89,913.44</u>

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XVI. Living Expenses self

From June 1970 to June 1975 a 3,000 DM	DM 100,000.--
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November 5, 1974

Mrs. Hannelore de Lasala  
 Aschen  
 Kreis Diepholz  
 West Germany.

Dear Mrs. de Lasala,

Set out below are further details of the transactions which took place in your account number 137-17837 with Merrill Lynch, Pierce, Fenner & Smith Inc. from June 1, 1970 up to date:-

Purchases

<u>Date</u>	<u>No. of shares</u>	<u>Company</u>	<u>Price</u>	<u>Brokerage</u> \$	<u>*Other Charges</u> \$	<u>Total Cost</u> \$
6/1/70	1000x	Free St Geduld	13 7/8	208.80	15.00	14098.80-
6/1/70	200x	Continental Oil	23 3/8	60.76	15.00	4750.76-
6/1/70	1000-	Northgate Exploration	12 5/8	196.30	15.00	12836.80X
6/1/70	200x	Cities Service	40 5/8	78.62	15.00	8218.62-
6/4/70	300x	Union Carbide	33 3/4	107.64	15.00	10247.84-
6/4/70	500x	Free St. Geduld	14	105.00	15.00	7120.00-
6/4/70	300x	USM Corp.	26 7/8	97.32	15.00	8174.82-
6/4/70	200x	American Brands	36	74.00	15.00	7289.00
6/4/70	100-	Northgate Exploration	12 3/4	19.75	) 15.00	13189.75X
6/4/70	900-	Northgate Exploration	13	180.00		
6/5/70	500x	Free St Geduld	14	105.00	15.00	7120.00-
11/25/70	300x	Mego Int'l	6 1/4	-	-	1875.00-
6/14/71	300x	Crowell Collier	12 5/8	58.89	15.00	3861.39X
6/14/71	200x	No. Amer. Rockwell	29 5/8	67.62	15.00	6007.62-
1/19/72	1500x	Vaal Reefs	11 3/4	236.90	-	17861.90-
6/4/70	200x	Cities Service	44	82.00	25.18	8692.82-
10/5/70	100x	American Brands	37 3/4	37.88	19.68	3717.54-
10/5/70	300x	USM Corp.	24	93.00	28.65	7078.00-
11/18/70	300x	Union Carbide	36 3/8	111.57	28.72	10772.21-

<u>Date</u>	<u>No. of shares</u>	<u>Company</u>	<u>Price</u>	<u>Brokerage</u> \$	<u>*Other Charges</u> \$	<u>Total Cost</u> \$
11/18/70	200x	Continental Oil	27 3/4	65.76	24.12	5460.12 -
11/18/70	100x	American Brands	41 7/8	39.94	19.69	4127.97 -
1/14/72	2500x	Free St. Geduld	13 3/8	364.15	100.67	32972.68 -
1/20/72	300x	Mego Int'l	9 3/4	50.25	21.06	2853.69 -
3/20/72	200x	No. Amer. Rockwell	29 5/8	71.76	23.24	6655.10 -
4/19/72	1500X	Vaal Reefs	13 1/8	279.19	-	19408.31 -

If you require any further information please let me know.

Yours truly,

MERRILL LYNCH, PIERCE, FENNER & SMITH  
Hong Kong Ltd.

Ian Siddons  
Account Executive

\*This includes N.Y. State Transfer Tax and SEC Fees.

IS:cf  
c.c. to Mr. M. Winger

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No. 43

EXHIBIT "H.D.L.-13"

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11, April 1972.

Sehr geehrte Frau De Lasalal

Wir nehmen Bezug auf das gestern mit Ihnen geführte Gespräch und bestätigen Ihnen hiermit schriftlich unsere mündlich gegebenen Auskünfte.

Bei den nachfolgenden Berechnungen ist unterstellt, daß Sie als alleinstehende geschiedene Steuerbürgerin unter Berücksichtigung eines Kinderfreibetrags die sogenannte Splittingtabelle anwenden können. Vorausgesetzt ist weiter, daß Sie Ihren Wohnsitz und gewöhnlichen Aufenthalt im Gebiet der Bundesrepublik nehmen und damit als unbeschränkt, steuerpflichtig unter die deutschen Steuergesetze fallen.

10

Fall 1:

Unterstellt wird ein vorhandenes Vermögen von DM 500,000.--, das einen Ertrag von 8% = DM 40,000.-- jährlich bringt. Danach entstehen folgende Steuerbelastungen:

20

Vermögensteuer (1% von DM 500,000.--)	DM 5,000.--
Einkommensteuer	DM 8,886.--
Kirchensteuer	DM 888.60
Ergänzungsabgabe (3% von DM 8,886.--)	<u>DM 266.--</u>
Gesamtsteuerabzug	DM 15,040.60
dagegen Erträge wie oben	<u>DM 40,000.--</u>
Zur Verfügung stehender Nettobetrag	<u>DM 24,960.--</u>

Fall 2:

Bei eigenen Einkünften des Sohnes von ca. monatlich DM 2,000.-- = jährlich DM 24,000.-- und einem Vermögen unterstellt in einer Höhe von DM 280,000.-- entstehen folgende jährliche Steuerverpflichtungen:

30



Vermögensteuer (1% von DM280,000.--)	DM 2,800.--
Einkommensteuer nach Grundtabelle	DM 5,876.--
Kirchensteuer	DM 587.60
Ergänzungsabgabe (3% von DM5,876.--)	<u>DM 177.--</u>
Gesamtsteuerverpflichtungen	DM 9,440.60
dagegen Erträge wie oben	<u>DM24,000.--</u>
Zur Verfügung stehender Nettobetrag	<u><u>DM14,560.--</u></u>

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-13"  
(cont'd)

Fall 3:

10 Es wird unterstellt, daß ein Nettoeinkommen nach Abzug von Steuern von monatlich DM 10,000.-- = jährlich DM 120,000.-- erzielt werden soll. Nach unseren Ausrechnungen müßte bei Zugrundelegung eines Zinsertrages von 8% ein Vermögen von rd. 4 Mill. DM. vorhanden sein, um dieses Ziel zu erreichen. Die Steuerverpflichtungen betragen dann:

Vermögensteuer (1% von DM4,000,000.--)	DM 40,000.--
Einkommensteuernach Splittingtabelle bei einem Einkommen von 8% von DM 4,000,000.-- = 320,000.--	DM147,038.--
Kirchensteuer	DM 12,800.--
Ergänzungsabgabe (3% von DM 147,038.--) =	<u>DM 4,411.--</u>
Gesamtsteuerverpflichtungen	DM204,249.--
dagegen Erträge wie oben	<u>DM320,000.--</u>
Zur Verfügung stehender Nettobetrag	<u><u>DM115,751.--</u></u>

30 Sollten Sie im Inland ein Einfamilienhaus besitzen und dieses selbst bewohnen, entsteht aus diesem geldwerten Vorteil eine Besteuerungspflicht, die jedoch im Pauschalverfahren nach der Einfamilienhausverordnung durchzuführen ist. Unterstellt, daß es sich um ein Haus im Werte von DM 250,000.-- handelt, so kann man als steuerlichen Einheitswert ca. DM 30,000.-- unterstellen. Als Nettotonutzungswert, der sowohl Mietwert des Hauses wie auch die Kosten abgilt, ist ein Betrag von 3.5% dieses Einheitswerts als steuerpflichtige Einkunft zu versteuern. Das ist jährlich ein Betrag von DM 1,050.--. Bei der Unterstellung eines Steuersatzes von rd. 40% würde das einer Mehrsteuer

40

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
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Exhibit  
"H.D.L.-13"  
(cont'd)

von rd. DM 400.-- jährlich entsprechen.

Mit freundlichen Grüßen

(H. Ordemann)  
Steuerberater

Dear Mrs. de Lasala,

We refer to our conversation yesterday and would like to confirm our conversation and information in writing.

The following statement refers to a single divorced taxpayer having taken into account the allowance for one child the so called Splitting accounting. Also that you will take up residence and live in the German Federal Republic and will therefor be liable to pay tax and come under the German tax law.

10

Case 1

We take it that there is a Capital of DM 500,000.--. That income will or may earn an income of 8% = DM 40,000 per year. There will be the following tax payments:

20

Capital tax (1% of DM 500,000)	DM 5,000.--	
Income tax	DM 8,886.--	
Churchtax	DM 886.--	(sic)
Additional tax (3% of DM 8,886.--)	<u>DM 266.--</u>	
Tax payments	DM 15,040.60	
Income as above	<u>DM 40,000.--</u>	
Net income	<u><u>DM 24,960.--</u></u>	

Case 2

From separate income of the son of about DM 2,000 monthly, DM 24,000.-- per a. and a capital of about DM 280,000.-- there will be the following tax payments p.a.

30

Capital tax (1% of DM 280,000)	DM 2,800.--	In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 43 Exhibit "H.D.L.-13" (cont'd)
Income tax according to basic tax law	DM 5,876.--	
Church tax	DM 587.60	
Additional tax payment (3% of DM 5,876.--)	<u>DM 177.--</u>	
Tax payments	DM 9,440.60	
Income as above	<u>DM 24,000.--</u>	
Net income	<u>DM 14,560.--</u>	

Case 3

10 It is understood that a Net income after having paid tax of monthly DM 10,000 per a. DM 120,000.-- is necessary. According to our accounting on the basis of an 8% income a capital of about 4 Million DM would be necessary to reach this goal. Tax payments will then be :

Capital tax 1% of DM 4,000,000.--	DM 40,000.--
Income tax according to the Splitting system taking into account an income of 8% of 4,000,000.--	
DM 320,000	DM 147,038.--
Church tax	DM 12,800.--
Additional tax (3% of DM 147,038)	<u>DM 4,411.--</u>
Tax payments	DM 204,249.--
Income as above	<u>DM 320,000.--</u>
Net income	<u>DM 115,751.--</u>

30 Should you own a one family house in the republic and live in it yourself, you will have to pay tax on the cost of the house according to the one-family-house tax plan law. We take it that the house is worth DM 250,000.-- which is according to the house tax worth DM 30,000.--. The net amount for usage and cost of having to rent a house but own one is taxed 3.5%. This is a sum of DM 1,050.-- per year. Another amount of 40% tax this would be an additional tax of DM 400.-- p.a.

With kind regards,  
signed Ordemann,  
(H. Ordemann)  
Tax Expert

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-13"  
(cont'd)

11th April 1972

M. Winter Esq.  
809 Takshing House  
Des Vouex Rd.  
Hong Kong.

Dear Mr. Winter,

I now enclose a statement of Mr. Ordemann,  
a Tax Expert. As you will see I gave him the  
sums of the settlement and he worked out the tax  
payments. At no stage in the past has either Mr.  
Tisdall or Mr. Jackson Lipkin or their tax expert  
given me such clear information or anything on  
paper. In London I got a very clear picture like  
here now. Surely they would have told me I never  
had enough money if they had known and I would have  
known I did not have enough if I had been given a  
statement like this one.

10

Case 1 According to the letter there will  
be about DM 2,000 after tax payment left for me  
out of an invested DM 500,000.-- (about 850,000 HK)  
This would never cover any expenses as the house  
would cost about that amount to keep.

20

Case 2 Leaves even if the bank is  
prepared to pay DM 2,000 each month for the child  
only DM 1,200 each month.

Case 3 To be able to keep the same  
standard of living Ernest and I enjoyed with the  
father we would need an amount of DM 10. to  
12.000,— each month and keep a house. This would  
mean a Capital of 4 Million would have to be  
invested.

30

Ernest is so happy here as he has so much  
room to play. Our new flat in an old house is  
very nice and larger than Estoril Court. I had to  
pay a very large amount to renovate the place and  
furnish it though and wonder if for the time being  
we could not claim the 50,000 to cover at least  
part of our furniture. I have spent about 4 times  
this amount but this would be of some help.

With kind regards,

40

(sd.) H. de Lasala

23. Juli 1973

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-13"  
(cont'd)

Sehr geehrte Frau de Lasalal

In der Anlage überreichen wir Ihnen das uns von der Mathematiker-Firma Herbert E.G. Hüfer zur Verfügung gestellte versicherungsmathematische Gutachten über den Kapitalwert von zwei Renten für Sie und Ihren Sohn.

Bei den Berechnungen wurde unterstellt:

- 10 1. Ihre Monatsrente wird bis zu Ihrem Lebensende gezahlt.
2. Die Unterhaltsrente Ihres Sohnes wird bis zur Vollendung des 25. Lebensjahres gezahlt.
3. Es wird unterstellt, daß die Rente um jährlich 8% steigen muß, um dem Wertverfall entgegenzutreten, Dies ist u.E. ein durchaus realer Durchschnittssatz.
- 20 4. Wenn die Renten kapitalisiert werden, haben wir eine Verzinsung des Kapitalbetrags von 6% unterstellt, Auch dies halten wir für real; wenn im gegenwärtigen Zeitpunkt auch wohl höhere Erträge erzielbar sind, so muß man doch von einem durchschnittlicherzielbaren Ertrag für die nächsten Jahre ausgehen, und den kann man nicht mit mehr als 6% ansetzen.

30 Außerdem haben wir die Berechnungen auf eine monatliche Rente von DM 300.-- für Sie und auf eine monatliche Unterstützungszahlung für Ihren Herrn Sohn von DM 175.-- durchführen lassen um die Wertgebühr für den Berechnungsauftrag nicht zu hoch zu schrauben.

Nach den Berechnungen ergibt sich ein Kapitalwert Ihrer Rente von DM 254,351.-- den man, da es sich um 3,000.-- DM monatlich handeln soll, mit 10 multiplizieren muß. Das ergibt dann einen Kapitalwert von DM2,543,510.--

40 Wenn man unterstellt, daß die Erträge aus diesem Kapitalwert noch versteuert werden müssen und der Steuersatz 50% beträgt, mußte dieser Kapitalwert, wenn die Rente netto zufließen soll, mindestens verdoppelt werden, damit Sie in die Lage versetzt

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 43  
Exhibit  
"H. D.L.-13"  
(cont'd)

sind, aus den Erträgen sowohl die Ertragsteuern  
als auch die Vermögensteuern zu bestreiten, Ihr  
Anspruch müßte also sich auf 5 Mill. DM belaufen.

Bei Ihrem Herrn Sohn ist die Rechnung  
ebenso anzustellen, nämlich  
45,140.-- X 10 = DM 451,400.--

Verdoppelung, damit die Steuern aus  
dem Ertrag gezahlt werden und die  
Unterstützung netto zufließt.  
Das ergibt dann einen Anspruch für  
Ihren Sohn von rd. DM 900,000.--

10

Sollten Ihre Anwälte noch weitere Erläuterungen  
benötigen, stehen wir ihnen jederzeit zur  
Verfügung.

Mit freundlichen Grüßen

(H. Ordemann)  
Steuerberater

Anlage

Translation

23rd July 1973.

20

Dear Mrs. de Lasala,

Enclosed we are sending you the Mathematical  
Insurance Expertise for the lump sum of two  
pensions for your son and yourself given to us by  
the Mathematics Company Herbert G. Höfer.

Into consideration was taken :-

1. Monthly income payable for life time.
2. Monthly payment for your son to the age of  
25 years.
3. It is considered that the payment has to rise 30  
at the rate of 8% per annum to meet the  
decrease in value. This is an absolutely  
average rule.
4. When the payments are capitalized we have  
considered an income of the capital sum of  
6%. This we feel is fair, even though at  
present higher income can be reached, one

still has to proceed from an average possible income for the next years and this one cannot estimate with more than 6%.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-13"  
(cont'd)

We have given the order to make calculations for a monthly income of DM 300.-- for you and for a monthly income of DM 175.-- for your son to keep the value of the order of the estimate low to keep the calculation fee at a minimum.

10 According to our calculations your pension amounts to a capital sum of DM 254,351.-- which has to be multiplied by ten as the sum is 3.000 DM per months. This gives a capital sum of DM 2,543,510.00.

When one takes into consideration that the income from this capital sum has to be taxed and the tax payments work out at 50%, the capital sum should at least be doubled if the pension should be net to put you in a position to pay from the income tax on the income and tax on the capital. Your claim would therefore come to

20 DM 5,000,000.00 - (5 Million Deutschmark)

In case of your son the calculation is the same  
45,140.00 X 10

DM 451,000.00

Double that tax can be paid from the income and payment is received net. This gives a claim of

DM 900,000.00 for your son

Should your lawyers need further explanations we are at your service at any time.

With kind regards,

30 Sgnd H. Ordemann  
(Tax Expert)

Enclosures

Versicherungsmathematisches Gutachten  
für Frau de Lasala, Aschen Krs. Diepholz

I. Auftrag

Frau de Lasala erteilte uns den Auftrag für zwei Renten den Kapitalwert zum 1.8.1973 zu ermitteln.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
 No. 43  
 Exhibit  
 "H.D.L.-13"  
 (cont'd)

II. Anspruch

- a) Frau de Lasala, geb. am 15.3.1940 hat Anspruch auf eine lebenslängliche, verschüssig zahlbare Rente von monatlich DM 300,--.
- b) Der Sohn, Ernest de Lasala, geb. am 28.8.1966 hat Anspruch auf eine vorschüssig zahlbare Rente von monatlich DM 175,--. Diese Rente soll bis zur Beendigung der Berufsausbildung, mindestens aber bis zur Vollendung des 25. Lebensjahres, gezahlt werden. Bewertungsmaßstab wird eine Zeitrente mit einer Laufzeit von 18 Jahren angesetzt. 10

Beide Renten sollen jährlich um den Wertverfall aufzufangen.

III. Rechnungsgrundlagen und Formeln

Als Rechnungsgrundlage diente die "Allgemeine Sterbetafel für die Bundesrepublik Deutschland 1960/62". Der Kapitalertrag wurde mit 6% angesetzt. 20

Unter Verwendung der üblichen versicherungsmathematischen Symbole ergibt sich für den Kapitalwert folgender Ausdruck:

$$a) \quad K = l_2 \cdot R \cdot \frac{l_y + l_{y+1} \cdot r \cdot v + l_{y+2} \cdot r^2 \cdot v^2 \dots}{l_y}$$

$$- \frac{m-1}{2m} + \frac{m^2 - 1}{6m^2} \left(1 - \frac{i}{2}\right) \cdot i_{\overline{7}}$$

$$b) \quad K = l_2 \cdot R \cdot \frac{1 - (v \cdot r)^n}{1 - v \cdot r} \cdot f$$

Hierbei bedeutet:

30

K = Kapital  
 R = Monatsrente  
 f = Kürzungsfaktor für unterjährig  
 Zahlungsweise

IV. Ergebnis

Die Berechnungen liefern folgendes Ergebnis



Kapitalwert der Rente

- a) DM 254,351.--.
- b) DM 45,140.--.

Mülheim (Ruhr), den 19.7.1973

HERBERT E.G. HOFER  
Abteilung  
Betriebliche Altersversorgung

VERS. MATH. BULKA    VERS. MATH. DAMSKI

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970  
No. 43  
Exhibit  
"H.D.L.-13"  
(cont'd)

TRANSLATION

10

DIENSTLEISTUNGEN ZUR BETRIEBLICHEN UND PRIVATEN  
ALTERSVERSORGUNG

HERBERT E. G. HOFER

Mathematical calculated Insurance Expertise  
for Mrs. H. de Lasala Aschen Kreis Diepholz

I. Order

Mrs. de Lasala gave us the order to calculate the  
capital sum for two pensions to the 1.8.1973.

II. Claim

20

- a) Mrs. de Lasala, born 15.3.1940 has a claim to  
a life long pension of monthly DM 300.--  
payable in advance.
- b) The son, Ernest de Lasala, born 28.8.1966  
has a claim to a pension of monthly DM 175.--  
payable in advance. This pension shall be  
paid until his education has been completed,  
but at least up to the end of his 25th year  
of life. A time-pension is estimated for a  
period of 18 years.

30

Both pensions should increase 8% p.a. to intercept  
the decreasement value.

III. Basis of calculation and formula

As basis of the calculation we use the "Public  
Morality Table" of the Federal Republic of Germany  
1960/1962". The capital income was estimated at  
6%.

In the Supreme Court of Hong Kong. Divorce Jurisdiction. No. 14 of 1970

No. 43 Exhibit "H.D.L.-13" (cont'd)

With the use of the General Insurance Mathematic Symbols the calculation results in the following capital sum:-

$$\begin{aligned}
 \text{a) } K &= 12 \cdot R \cdot ly + ly+1 \cdot r \cdot y ly+2 \cdot r^2 \cdot v^2 \dots \\
 &\quad - \frac{m-1}{2m} + \frac{m^2 - 1}{6m^2} \quad 1 - \frac{i}{2} \cdot i \quad (\text{sic}) \\
 \text{b) } K &= 12 \cdot R \cdot \frac{1 - (v \cdot r)^n}{1 - v \cdot r} \cdot f
 \end{aligned}$$

This means:-

K - Capital 10  
 R - Monthly Pension  
 f - Minus factor for under yearly payments

IV. Result

The calculations come to the following result

Capital value of pension

- a) DM 254,351.--
- b) DM 45,140.--

Mülheim (Ruhr), the 19.7.1973

HERBERT E.G. HOFER Department Company Pensions	" 20 Pensions
(Signature)	(Signature)
Insurance Mathematician	
Bulka	Ins. Math. Damski

No. 44 Summons for Directions dated 10th December 1975.

No. 44  
SUMMONS FOR DIRECTIONS

1970, No. 14

Let all parties concerned attend the Registrar in Chambers, at the Supreme Court, Hong Kong, on Tuesday the 30th day of December, 1975, at 9.30 o'clock in the forenoon on the

30

hearing of an application for directions in this action, that :

1. The Respondent file an Affidavit of Means within 14 days.
2. That the Petitioner have liberty to reply thereto within 14 days thereafter.
3. The Respondent within 7 days serve on the Petitioner his list of documents and file an Affidavit verifying such list relating to the period from 31st May, 1969 to 30th November, 1975 to include all bank statements and tax returns.
4. That there be inspection of documents within 5 days of the service of the lists.
5. Leave to the Petitioner to serve letters under the Matrimonial Causes Rules Rule 77(4) the answers to which to be confirmed by Affidavit.
6. Costs of this Application to be costs in the cause.

Dated the 10th day of December 1975.

(sd.) J.R. OLIVER                      L.S.  
Registrar

To: Messrs. Alexander Tsang & Co. Solicitors for the Respondent, Hong Kong.

This Summons was taken out by Messrs. GORDON HAMPTON & WINTER of Room 809 Tak Shing House, 20 Des Voeux Road, Central, Hong Kong, Solicitors for the Petitioner.

(sd.) GORDON HAMPTON & WINTER

Estimated time not exceeding 15 minutes.

No. 45

AMENDED SUMMONS INTER PARTES

Amended pursuant to leave granted by Mr. Justice Huggins on the 19th day of January 1976

1970 No. 14

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 44  
Summons for Directions dated 10th December 1975.  
(cont'd)

No. 45  
Amended  
Summons Inter partes dated 21st January 1976.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

IN THE SUPREME COURT OF HONG KONG

DIVORCE JURISDICTION

BETWEEN :-

No.45  
Amended  
Summons Inter  
Partes dated  
21st January  
1976.  
(Contd)

	HENNELORE DE LASALA	<u>Petitioner</u>
Amended as in		
<u>Red this 21st day</u>	- and -	
<u>of January 1976</u>		
<u>pursuant to</u>	ERNEST FERDINAND PEREZ	
<u>Order granted</u>	DE LASALA	<u>Respondent</u>
<u>by the Hon. Mr.</u>		
<u>Justice Huggins on</u>		
<u>the 19th day of</u>		
<u>January 1976.</u>		

~~See 4, 5, 6.~~  
~~Cap. 196.~~  
~~Laws of Hong~~  
~~Kong.~~

Let all parties concerned attend before the Judge in Chambers at the Supreme Court Hong Kong on Monday the 3rd day of November 1975 at ten o'clock in the forenoon on the hearing of an application by the Petitioner for the following:-

10

1. An order setting aside or varying the consent order made herein on the 23rd May 1970 whereby (inter alia) the Petitioner's applications for maintenance a lump sum payment and secured provision for the child of the family Ernest Edward De Lasala and for herself were dismissed; and/or

2. An order that the Respondent do pay to the Petitioner such weekly or monthly sum in respect of periodical payments for her maintenance as the Court thinks reasonable; and/or

20

3. an order that the Respondent do secure to the Petitioner to the satisfaction of the Court such monthly or weekly sum in respect of periodical payments as the Court thinks reasonable; and/or

4. an order that the Respondent do pay to the Petitioner such lump sum or sums as the Court thinks reasonable; and/or

30

5. an order that the Respondent do pay to the Petitioner or to such person as the Court may specify a such lump sum or sums as the Court thinks reasonable for the benefit of the child of the family Ernest Edward; and/or

6. an order that the Respondent do secure to the satisfaction of the Court the payment of any lump sums and each of them as the Court may order under (4) and (5) above; and/or

40

7. an order that the Respondent do make such provision or further provision for the maintenance of the said child of the family as the Court thinks reasonable and that the Respondent do secure the same to the satisfaction of the Court; and/or

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 45  
Amended  
Summons Inter Partes dated 21st January 1976.  
(cont'd)

10 8. an order that the Respondent do transfer the property belonging to the Respondent and known as No. 3 Manly Road Manly New South Wales Australia to the Petitioner or to the said child of the family or to such person for the benefit of the said child alternatively to settle the same for the benefit of the Petitioner and/or the said child on such terms as the Court may deem appropriate or satisfactory; and

9. an order that the Respondent to transfer or settle such other property as the Court may deem appropriate and/or

20 10. such order varying or revoking the financial arrangements contained in the Deed of Arrangement made between the parties on the 22nd day of May 1970 and the two trust deeds annexed thereto and marked "Trust Deed A" and "Trust deed B" being a subsisting maintenance agreement as may appear to the Court to be just alternatively an order inserting into the said deeds such financial arrangements for the benefit of the Petitioner and/or the said child of the family Ernest Edward as may appear to the Court to be just and

30 11. leave as may be necessary to apply for all or any of the foregoing reliefs.

J.R. OLIVER  
Registrar.

Dated the 1st day of August 1975.  
Re-dated the 21st day of January 1976.

This Summons was taken out by Gordon Hampton & Winter of Room 809 Takshing House, 20 Des Voeux Road Central Victoria in the Colony of Hong Kong Solicitors for the Petitioner.

40 To the Respondent, Ernest Ferdinand Perez De Lasala 41B Estoril Court Hong Kong and to his solicitors.

In the Supreme  
Court of Hong  
Kong. Divorce  
Jurisdiction  
No. 14 of 1970

No. 46  
Order of Hon.  
Mr. Justice  
Huggins dated  
23rd January  
1976.

No. 46

ORDER OF HON. MR. JUSTICE HUGGINS

---

1970, No. 14

BEFORE THE HONOURABLE MR. JUSTICE HUGGINS IN  
CHAMBERS

O R D E R

UPON hearing Counsel for the Petitioner  
and Counsel for the Respondent IT IS ORDERED  
that the Application of the Petitioner filed  
herein on the 1st day of August 1975 and re-dated  
the 21st day of January 1976 be dismissed with  
costs. Certificate for 2 Counsel.

10

IT IS FURTHER ORDERED that leave be  
granted to the Petitioner to appeal to the Full  
Court.

Dated the 23rd day of January, 1976.

J.R. OLIVER  
Registrar

No. 47  
Ruling of  
Hon. Mr.  
Justice  
Huggins dated  
14th February  
1976.

No. 47

RULING OF THE HON. MR. JUSTICE  
HUGGINS

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20

IN THE SUPREME COURT OF HONG KONG  
DIVORCE JURISDICTION  
ACTION NO. 14 of 1970

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BETWEEN:

HANNELORE de LASALA

Petitioner

and

ERNEST FERDINAND PEREZ de  
LASALA

---

Respondent

Coram: Huggins, J.

R U L I N G

I gave an immediate ruling on the issues in this case as it seemed to be in the interests of the parties that I should not reserve judgment, as I would have liked to do. I gave an outline of my reasons but said that I would deliver full reasons in due course.

10 By a summons dated 1st August 1975, a wife, to whom a decree absolute of divorce was granted on 30th May 1970, applied to set aside or vary a consent order dismissing her prayers for financial provision for herself and a child of the marriage and also applied for orders for such financial provision. On 19th January 1976 the summons was, by leave, amended to include an application for variation of the financial arrangements contained in three deeds. This  
20 ruling is concerned with objections to my jurisdiction to hear any of these applications.

30 For the present purposes it is necessary to record only part of the history of what has transpired between the parties. The wife lodged a petition for divorce in which she made allegations which the husband indicated he would contest. In a letter dated 11th December 1969 his solicitors further indicated that, if the custody and financial arrangements which they set out were acceptable to the wife and if she would  
40 petition for a divorce solely on the ground of adultery, the husband would not defend that petition or cross petition. The wife was agreeable and on 16th January 1970, by consent, Briggs J. (as he then was) gave leave to file a further petition and to implement the financial arrangements, which were then contained in a Deed of Arrangement exhibiting two draft Trust Deeds. Pursuant to the leave granted a second petition was presented on 23rd January 1970, the prayers, including those for financial provision, being identical to those in the first petition. On 25th March 1970 the first petition was dismissed by consent and on 23rd May 1970 Briggs, J. granted a decree nisi of divorce on the second petition and adjourned into chambers the matter of the maintenance and welfare of the child. On the same day the judge, by consent, made orders for

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custody and access, approved the Deed of Arrangement and ordered that upon the payment of the moneys agreed to be paid by the Deed of Arrangement and upon the two Trust Deeds' coming into force the prayers for financial provision should stand dismissed. The moneys were paid, and the Trust Deeds came into force on 30th May 1970, the date on which the decree of divorce was made absolute.

Mr. Jackson seeks to avoid the express terms of the agreements in various ways: 10

- (1) He submits that the arrangement between the parties was contrary to public policy and to statute in so far as it purported to deprive the wife and child of the right to make any further application to the court.
- (2) He attacks the order as having been made without the necessary evidential foundation.
- (3) He asks for an additional order under s.6 of the Matrimonial Proceedings and Property Ordinance. 20
- (4) He further attacks the order as having been made without the child's having been separately represented.
- (5) He asks that the order, if valid, should be set aside on the ground of mistake, or varied under s.15.

The substance of the first argument is that an agreement by a wife not to make a further application for maintenance was void and that Briggs, J. had no jurisdiction to make a consent order dismissing the prayers for maintenance as part of such a compromise. As I understand this argument it invited me to treat the order of dismissal as a nullity, but I think it was also suggested that even if the order was not a nullity it was not a bar to a further application. This is a distinction which may have some importance. The basic rule was laid down in Hyman v. Hyman 1929 P.1 that a separation agreement which provided that the wife would not compel the husband to allow her any alimony or maintenance further than a specified weekly sum did not bar a claim for permanent maintenance after a decree 30 40



nisi of divorce had been pronounced. Lord Hanworth, M.R. said at p.28:

"The Court cannot forego its duties, and it cannot be bound by an estoppel between the parties: 'for the jurisdiction in matters of divorce is not affected by consent .....'"

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10 What is now s.14 of the Matrimonial Proceedings and Property Ordinance was enacted to save any financial terms in a compromise agreement, while confirming that a term which purported to oust the jurisdiction of the court should be void. The equivalent English provision is not mentioned in the report of L v. L 1962 P.101 and that is one factor upon which Mr. Jackson relies for submitting that that case, which he admits is directly in point, was wrongly decided. In addition he cites Australian cases which point to an apparent  
20 weakness in the reasoning of the Court of Appeal in L v. L. and invites me to follow them. We are, of course, enjoined to follow the decisions of the Court of Appeal in England in the interpretation of colonial statutes which are identical to Acts of the Imperial Parliament: Trimble v. Hill (1879) 5 App. Cas. 342. Whilst I have said before that we should not follow that court's decisions blindly (CHAN Wai-keung v. Reg. 1965 H.K.L.R. 815), where the interpretation of a statute depends, as it does here, upon the context of that statute in  
30 a pattern of relevant legislation and practice which is similar in Hong Kong and in England the decisions of the English courts are of special value, whilst the interpretation of an identical statute in another jurisdiction may be positively misleading. It must be remembered that by virtue of s.6 of the Supreme Court Ordinance the English practice is followed in Hong Kong in the absence of local provision which conflicts with it. However, assuming for the moment that there is  
40 substance in the Australian judges' criticism of the reasoning in the English case, I think Mr. French is right when he submits that that does not destroy the basic principle on which the decision was founded but only an alternative ratio decidendi. The first line of reasoning has clearly been established as good law in England.

In L. v. L the facts were that a prayer for maintenance under the Matrimonial Causes Act 1950 was by consent dismissed. Subsequently the wife

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sought an order for maintenance and it was held by the Court of Appeal that there was no jurisdiction to entertain a fresh application. The substantial ground was that only one application was contemplated by the Legislature. Willmer, L.J. said at p.117:

"In my judgment, once an application for maintenance has been dismissed by the court, jurisdiction does not exist to entertain a fresh application".

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At that time the application had to be made "on making a decree", which was interpreted as meaning at the same time as the granting of the decree or within a reasonable time thereafter: Mills v. Mills 1940 P.124, 129. It follows that if an application were dismissed that put an end to any right to claim maintenance, whilst if an order for maintenance was made it could always be varied. That led to the practice in England of making orders for a nominal sum instead of orders for dismissal, so that the right to claim should be preserved. In the State of Victoria the legislation allowed more than one application to be made and a dismissal was therefore not final. Subsequently the words "or at any time thereafter" were added to the English provision, but it was held that that did not permit a second application but merely extended the time within which a single application could be made. That was so even where a first order was made under the equivalent of our s.4(1)(c) for the payment of a lump sum despite the fact that that paragraph expressly referred to "a lump sum or sums": Coleman v. Coleman 1973 Fam.10. Barnard v. Barnard (1961) 105 Sol. J. 441 was also relied upon by Mr. Jackson, but I do not think it assists the wife here. It was held that, although, since the addition of the words "or at any time thereafter", it is no longer necessary to make an order in a nominal sum to preserve a wife's right to apply for maintenance, it was not wrong to make such an order and where one was made it would not be set aside. In my view it does not follow that where an application has actually been dismissed a further application may be made. The alternative to making an order in a nominal sum is to indicate "No order". That is what Karminski, J. would have preferred to do in R. v. R. (No.2) (1967) 111 Sol. J.926. In that case the wife was herself a successful and highly paid member of the

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10 theatrical profession and the proposed consent order made no provision for the wife's support. In the event the judge made the consent order sought, by which a claim for maintenance was dismissed, but added "that there was nothing in the wife's conduct which should preclude her from applying for maintenance hereafter and no evidence before the court that the husband had provided for her support in some other way". It does not appear from the brief report what effect he thought that addition might have: he may, as has been suggested, have doubted whether L v. L had been rightly decided, or he may have thought that it could be distinguished on the ground that there had been no provision for support at all and that the addition therefore made the order of dismissal equivalent to the making of no order. I do not think that I should assume that he thought the case had been wrongly decided: it was a decision binding upon him. Even if that case be distinguishable from L v. L, the present case is not.

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30 The second argument which found favour with the Court of Appeal in L v. L was that, where a spouse has agreed as part of a compromise that a lump sum will be accepted in full and final satisfaction of any claim to maintenance which has been made or might be made in the future, then, provided that the agreement is sanctioned by the court, it is enforceable and the court has no jurisdiction to entertain a claim: the effect of the court's sanction is to get out of the way the rule in Hyman v. Hyman (supra). In L v. L the judges adopted a dictum of Denning, L.J. in Bennett v. Bennett 1952 1 K.B. 249,262:

40 "If the parties do not oust the jurisdiction of the Divorce Court but preserve it by making that agreement subject to the sanction of the court, then, once it is sanctioned, it is valid".

and the observation of Jenkins, L.J. in Russell v. Russell 1956 P. 238, 295:

"The principle in Hyman v. Hyman, be it remembered, is satisfied by any bargain which is brought before the court for approval and approved by the court".

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It is this view, that although the parties cannot by themselves oust the jurisdiction of the court the court can, in effect, enable them to achieve that object by sanctioning the agreement, which is questioned by the majority in Kitchin v. Kitchin 1952 V.L.R. (143). In that case the court was asked to make an order by consent dismissing a wife's claim to "alimony" upon the payment to her of £1,500 and the proposed order not only recited that that sum would be accepted in full satisfaction of all claims to alimony but also recited (i) an agreement by the wife to make no further claim or demand for alimony, with an undertaking to that effect, and (ii) an undertaking by the husband not to apply for a reduction of the agreed sum. There were alternative applications for an order for permanent maintenance and such further orders as to the court might seem fit. It was decided that there was no objection to the making of an order which recited payment of an agreement to pay a lump sum and the acceptance of that sum in full satisfaction of all maintenance present or future and which then dismissed the claim, but that it was wrong to accept an undertaking from a wife that she would make no further application for maintenance or for any increase of maintenance. It was entirely logical that, if, as the judges held, the relevant statute permitted a succession of claims, the dismissal of one should not bar the others, but it was in the light of that that the court said that the superimposition of the sanction of the court on what was a void agreement (Hyman v. Hyman) did not get rid of the illegality. Although at first sight I was attracted by the argument that this was applicable here and, in effect, that nought plus nought was still nought, I now think that the matter is not as simple as that. What was agreed in Hyman v. Hyman was that the wife would not go to the court. What was agreed in the present case was that the parties would go to the court - and they did go and they obtained an order of dismissal. If, as in the State of Victoria, there could be repeated applications for maintenance then any agreement providing that a party should at any time be prevented from applying to the court would be void, but in Hong Kong an agreement that once a claim had been dismissed no further application would be made would not be void but merely unnecessary: it would be the dismissal and not the agreement which restricted the right to make a further application. However,

10 Willmer, L.J. said in L v. L that even if he were wrong about the power to make successive orders the sanctioned agreement itself would none the less be binding. When Jenkins, L.J. said in Russell v. Russell that Hyman v. Hyman was satisfied by the approval of court he did so not only in the context of an undertaking by the husband not to apply to reduce an order made by justices in favour of a wife but also in the context of legislation which allowed of only one application in the High Court, and, with respect to Willmer, L.J. it seems to me that Hyman v. Hyman could only be satisfied by the approval of the court in the latter context. I do not see how the court in, say, 1970, could, by dismissing a claim then before the court, in effect dismiss a future claim which had not yet been made. I agree with O'Bryan, J. (1952 V.L.R. 149) that:

20 "On such an application the fact of the previous compromise would be a relevant matter for the Court's consideration in determining whether the case was one fit for an order to be made and, of course, the wife's financial position is always to be considered both as to whether the court should think fit to make an order and as to reasonableness of amount".

30 I would go further and say that in my view the fact of the previous compromise would be a very strong factor indeed, but it would not be conclusive. I appreciate the desirability in general of permitting parties to divorce proceedings to settle their differences on terms, provided always that the court is able to satisfy itself that any compromise is a proper one, but I think the Australian judges were on strong ground when they held that, the Legislature having provided for the possibility of new circumstances which would justify further applications, it was not open to  
40 the courts to refuse to hear a further application or to the parties to agree not to make such an application. Whether the argument of convenience is sufficient answer I will consider when I come to deal with the claim under s.5 in respect of the child.

The next submission with which I shall deal is that the consent order was a nullity because Briggs J. did not have before him the fundamental information which was necessary before he could be

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satisfied that it was proper to dismiss the prayers. In my view it is neither necessary nor appropriate for me to inquire whether the order should have been made. I am satisfied that there was jurisdiction to make the order and any attack upon it - and, indeed, upon the consent order of 16th January 1970 - should have been either by way of appeal or, possibly, of a separate proceeding. Mr. French concedes that the information laid before the judge might have been more full, but that is nihil ad rem.

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Next I will deal with the third of Mr. Jackson's main contentions as set out at the beginning of this judgment, namely that there is jurisdiction to make an order under s.6 of the Matrimonial Proceedings and Property Ordinance even if there is no jurisdiction to make any order under s.4. The substance of the argument is that s.6, which did not come into force until 1972, created a new jurisdiction and that as it was not a jurisdiction which existed at the time of the consent order that order could not bar the present claim. Mr. French was content to assume that in this Court, although I was not absolutely bound by a decision of the English Court of Appeal, I would think it proper to follow the decision in Chaterjee v. Chaterjee 1975 The Times, December 3 to the effect that the equivalent of our s.6 was retroactive in the sense that an order could be made under it although the marriage was dissolved at a time when no such order could have been made. However, he invited me to record the fact that he desired to keep the point open for consideration should this case go further. I express no view as to the effect this may have. Mr. French's answer to the main argument is that "the jurisdiction" which the Court exercises is a jurisdiction to order maintenance, or, in the modern terminology, financial provision, and that s.6 merely provides new "machinery" available to the court in the exercise of that general jurisdiction. He relies upon Doherty v. Doherty 1975 2 All E.R. 635. What happened there was that the wife gave notice of four different claims: (i) for a declaration that she had an interest in a named property (a claim which should in the circumstances have been made under the Married Women's Property Act 1882); (ii) for a transfer to her of that property; (iii) for such further order which the court might see fit to make; and (iv) for "maintenance". Nowhere was a

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10 lump sum mentioned. The husband having sold the property, the wife wished to claim a lump sum, but as she had by then remarried she was not entitled to make a new application for financial provision in her favour or for a property adjustment order: s.28(3) of the Matrimonial Causes Act 1973. The issues were, therefore, whether the claims before the court were sufficient, without amendment, to enable the court to order payment of a lump sum and, if not, whether the applications could and should be amended. On all these issues the Court of Appeal held in favour of the wife. Mr. French relies particularly upon the words of Ormrod, L.J. at p.640e:

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20 "Whether it is right, or not, to accept counsel for the husband's submission that a clear distinction should be drawn between notices of application for financial provision under s.23 and notices of application for property adjustment orders under s.24, may be doubted. These two sections are, in effect, a statement by Parliament of the code to be adopted by the court in dealing with ancillary relief after divorce generally. The fact that they are two separate sections seems to me to be much more a matter of convenience and drafting than anything else. There is no reason that I can see why any distinction should be drawn between those two classes of relief which the court is now empowered to grant. In my view, these two sections should be, as far as possible, regarded as part and parcel of a single code. It may be very important in many cases when the matter comes to be investigated by the court that the court should be free to make either a property adjustment order or a lump sum order, whichever turns out to be the more convenient in the circumstances. It would be unfortunate, I think, if that degree of elasticity were lost for some technical reason. It is quite plain that the same principles apply in the assessment of claims under each of these two sections. That appears from s.25, and it is equally plain from the judgments in Trippas v. Trippas (1973) (2) All E.R.1, (1973) Fam. 134 of Lord Denning, M.R. and Scarman L.J. Lump sum orders are alternatives to property

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adjustment orders, and in many cases one order may prove more convenient than another. I do not think there is any greater difference than that. So, in my judgment, the court should keep technical points of the kind with which we are dealing in this case to an absolute minimum."

(The English s.23 is in substance a combination of our ss.4 and 5, while s.24 is substantially the same as our s.6). Buckley, L.J. gave a judgment to the same effect and I cite only a brief extract from p.642g:

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"It may well be that where an application is made for a transfer of property the court, on considering all the matters which it is enjoined to take into consideration under s.25(1), will come to the conclusion that the juster and the more convenient course is to make an order of a financial nature, an order for payment of either periodical payments or of a lump sum. But the court should not, in my judgment, be debarred from making that choice merely because the applicant has framed his or her application in a particular way."

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In my view these passages strongly support the husband's contention in the present case. Moreover it is significant that if an order had been made under s.4(1)(a) or (b) or under s.5(2)(a) or (b) previously it could not be varied so as to include an order under s.6: see s.11(5). On the other hand, Wachtel v. Wachtel 1973 Fam. 72, which is relied upon by the wife, is not inconsistent with the view that the "jurisdiction" is that to make financial provision. The actual decision in that case is irrelevant for our purposes, but there are dicta to the effect that the equivalent of our legislation was "not in any sense a codifying statute" but was "a reforming statute". With respect I do not think that is the same thing as saying (to use Mr. Jackson's words) "the new legislation is a completely new code. It includes new machinery". The legislation was designed "to facilitate the granting of ancillary relief", part of which relief has always been the making of financial provisions. Although one now has to approach the making of financial provision in a new way it is still the same "jurisdiction". It could be, and in the absence of a change of

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circumstances would be, unjust that an order for financial provision which was made under the old law on the basis that there was no power to order the transfer of property should have superimposed such an order upon it. If the order of dismissal in the present case had been made on or after 1st July 1972 it would have barred a new claim under s.6 and in my view the fact that it was made before that does not make the order any the less of a bar.

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I turn now to the contention that the jurisdiction relating to the child is subject to special considerations. Here I think there are two separate and distinct issues, (a) whether the consent order of 23rd May 1970 was a nullity because the child was not separately represented and (b) whether the rule in L v. L applies equally to a claim under s.5 on behalf of the child as it does to a claim under s.4 on behalf of the wife.

I can dispose of the first of these points very shortly. It was contended that even if a judge does have jurisdiction to dismiss a child's claim once and for all he should not, and could not, do so unless the child is separately represented. I am not persuaded that separate representation is necessary and it is, therefore, unnecessary for me to decide whether the absence of separate representation would (had it been required) have gone to the jurisdiction of Briggs, J. to make the order of 23rd May 1970. No doubt there may be cases where the interests of a wife and a child conflict and, if in such a case (i) the judge does not appreciate the existence of the conflict and in consequence does not direct separate representation and (ii) an order is made which is prejudicial to the child, it is possible that the order could be set aside on the ground of mistake, but so long as it subsisted the order would be valid and binding. The requisite power to direct separate representation is given by r.108 of the Matrimonial Causes Rules but no obligation is expressly placed upon the judge. Rule 72, on the other hand, as a general rule requires separate representation upon an application for a variation of settlement order, i.e. an application under s.6(b) of the Matrimonial Proceedings and Property Ordinance. Whether a failure to comply with that rule would affect the jurisdiction of the court, as distinct from providing of itself a ground for

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setting aside an order, is doubtful.

The second point is more difficult. Mr. Jackson sought to persuade me that on the face of it Trust Deed A failed to make adequate provision for the child. Indeed, he went so far as to suggest that the judge could not have read that deed (or, presumably, the draft deed) or he would never have made the orders he did. Mr. Jackson complains in particular of Clauses 4(c), 7(11) and 9, but I do not think it is necessary to set these out. The substance of the complaint is that the trustees are empowered, but not bound, to pay from the trust fund for the maintenance of the child, that they are empowered to hold the fund uninvested and that in paying or applying income to or for the use of the child the trustees may pay to either parent. As I indicated at the time of my ruling I have been disturbed by the fact that the trustees offered the wife for the maintenance of the child no more than \$250 a month under and above medical expenses and school fees - an offer which in my view was justly described as "derisory" - and by the fact that in a letter dated 20th April 1972 the trustees asserted what is conceded by the husband's advisors to have been a wrong basis for assessing the payments which ought to be made. I shall revert to these matters hereafter but for the purposes of the present argument I am prepared to assume that the provision made was inadequate so that, if jurisdiction existed, the court might see fit to make a different order.

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The material parts of s.5 of the Matrimonial Proceedings and Property Ordinance are as follows:-

- (1) Subject to the provisions of s.10, in proceedings for divorce ..... the court may make any one or more of the orders mentioned in subsection (2) -  
.....
- (2) The orders referred to in subsection (1) are -
- (a) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments and for such term as may be so specified;

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(b) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments and for such term as may be so specified;

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(c) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified.

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(5) While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time; and where the court makes an order by virtue of subsection (1)(b) in relation to a child it may from time to time make a further order under this section in relation to him."

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Section 10 inter alia limits by reference to the age of a child the orders which may be made in his favour. In particular sub-s.(2) provides that the term for which by virtue of an order under s.5 any payments are to be made shall not normally in the first instance extend beyond the date when the child attains the age of sixteen. Mr. French argued that ss.4 and 5 were so alike that the principles of L v. L must apply equally to both. At first sight they are alike and I confess that the extent of the difference between them was not apparent to me when I gave my ruling. Although Mr. Jackson had pointed out that under s.5 a claim could be made "from time to time", I had in mind that s.4 allowed a claim "on the granting of a decree or at any time thereafter" and that that had been held not to allow a plurality of claims. It was suggested that the word "while" in sub-s. (5) of s.5 presents difficulty in interpretation because of the words "subject to the provisions of s.10" in sub-s.(1). If "while" means, as it usually does, "for as long as" then it introduces a tautology and the first part of sub-s.(5) would have been better expressed: "The court may exercise the power conferred upon it by sub-s.(1) (a) from time to time". I accept that that is so,

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but I do not think anything turns upon it. The reason for dividing sub-s.(5) into two parts was this difference between the times for making application under paras.(a) and (b) of sub-s.(1). A first order under para.(a) may be made at any time but one under para.(b) must be "either forthwith or within a reasonable time after the dismissal" of the proceedings. If sub-s.(1) stood alone it would, on the authorities, have permitted only one order under the sub-section, as does s.4. The object of sub-s.(5) was to override those authorities and to allow a succession of applications. It follows, I think, that the court can now make a number of orders under sub-s.(1)(a) for periodical payments, covering different periods, so long as a child is within the age limits prescribed by s.10. It may make further orders under the section where proceedings for divorce, nullity or judicial separation have been dismissed after the beginning of the trial, provided that the first order has been made forthwith or within a reasonable time after the dismissal. That being the position I now think there is great force in the argument that the dismissal of a claim brought under s.5(1)(a) on or after 1st July 1972 (or, before that date, under the predecessor of that provision) could no more bar a further claim in 1975 than could an order made on or after 1st July 1972 that instalments be paid until 1975. I appreciate that, if dismissal be no bar, then an unsuccessful applicant could repeatedly vex the other spouse with new applications, but the courts have adequate powers to protect the respondent in such circumstances. As against all this it would not appear that Willmer, L.J. in L v. L thought there was in this connection any distinction between a claim on behalf of a wife or a claim on behalf of a child, for he remarked arguendo at 1962 P.111:

"The Acts provide that orders about children shall be reviewable, but not that an application which has been dismissed should be reviewable".

It must be remembered that the section which then governed the maintenance of children was s.26 of the Matrimonial Causes Act 1950 which enacted in sub-s.(1) that

"..... the court may from time to time,

either before by or after the final decree, make such provision as appears just with respect to the ... maintenance and education of the children of the marriage .....

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and in sub-s.(3) that

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"On any decree of divorce .... the court shall have power to order the husband .... to secure for the benefit of the children such gross sum of money or annual sum of money as the court may deem reasonable.....".

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The power of review to which Willmer, L.J. alluded was presumably the power granted by sub-s.(1) to make provision "from time to time". Did he mean to suggest that the dismissal of any claim under that sub-section was a bar to all future claims or merely that it was a bar to future claims based on the same facts, i.e. unless there had been a change of circumstances? In the context it would seem to be the former and when giving my ruling I certainly so understood it. It may be that there is a more fundamental distinction between an order for dismissal of a claim under s.5(1)(a) and a limited order for periodical payments under the same paragraph than appears on the surface. By making a limited order the court impliedly reserves its power to reconsider the situation when the time limit has expired: an order of dismissal contains no comparable implication. If I understand the situation right, Sir Jocelyn Simon, P. (as he then was) in M v. M (No. 21 1967 P.313, 323 was of opinion that the wife could effectively agree

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"That out of the foregoing provisions she would support and maintain herself and the children and make no further financial claims against the husband on her own or her daughters' behalf and would indemnify the husband against any such claims or debts however arising.",

Although at the end of the report he is recorded as saying

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"... it seemed to me to be one of those exceptional cases where it would be wrong to demur to the wife, in consideration of the other ample provision made for her, covenanting to abandon any future claim to maintenance". (The emphasis is mine in each instance).

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I assume that the wife had made claims to maintenance for herself and the children and that the intention was that these were eventually to be dismissed. (In R v. R, to which I have already referred, there is no mention in the report of any claim for the maintenance of the children of the marriage and the claim in respect of the wife herself was under s.16 of the Matrimonial Causes Act 1965, which allowed only one claim). I was referred to Raydon on Divorce (12th Ed.) 790 (111) which still asserts that, "if a covenant (not to apply to the court) is based on a suitable settlement, approved by the court and recited in an order, it is binding" but the authority cited is Bennett v. Bennett and I have already dealt with the matter on the basis of the covenant: I am here concerned directly with the order of dismissal. It seems to me that formerly an order of dismissal was properly held in England not to be objectionable because there was in fact no ouster of the jurisdiction of the court, the jurisdiction being to make only one claim, but there is strong ground for holding that now that the jurisdiction includes power to make a succession of orders a dismissal which purports to bar all future claims does constitute an ouster and to that extent is contrary to the intention of the Legislature and could be held to be void. However, this does not appear to be the view adopted by the English courts, where, as I understand it, the argument of convenience has in practice continued to be given the greater weight: if the party proposing to make financial provision cannot be assured of finality he will be less willing to reach a settlement at all, which is not in the public interest: the court will be very slow to make an order which bars a further claim whatever may subsequently transpire, but when it does that order will be enforced. If the matter were res integra I would have been disposed to take the contrary view because, as I have already indicated, the court could always achieve substantial justice by treating the existence of a compromise as a generally overwhelming factor, although accepting that a case might conceivably arise which would justify a new order. However, as I understand the continuing English practice to be that the court will in a proper case dismiss a claim on behalf of a child where provision has been agreed, I think the Hong Kong courts should follow that

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practice unless and until the Privy Council directs otherwise or the English practice is altered. It may be that it would be open to a judge to adopt the device used by Karminski J. in R.v. R and to direct that the dismissal should not bar a future claim if exceptional new circumstances should arise.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 47  
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(cont'd)

10 An alternative argument in the event of the consent order's being held to be valid was that it could be set aside on the basis that the wife was induced to consent by a mistake or mistakes. There now seems to me to be two matters to be considered here, although it was not plain to me when I gave my ruling that they were separate and distinct and I confused them: (1) whether there is power to vary a consent order under s.11 of the Matrimonial Proceedings and Property Ordinance and (2) where there is an inherent jurisdiction to set aside the order. On 20 the second of these issues it will again be necessary to consider separately those parts of the consent order which concern the child and those parts which concern the wife.

30 It is true that the summons did ask for "an order ... varying the consent order", but, although it was argued that I did not have jurisdiction to vary under s.11, I have no note that Mr. Jackson suggested that I had. Whether he did or not, I agree that an order of dismissal is not an order within the terms of sub-s.(2) of s.11, for it was not made "by virtue of" any of the provisions specified. The other contention is founded upon the power of the court to control interlocutory orders and it is necessary to enquire whether the order of dismissal was an interlocutory or a final order. It was decided in Salter Rex & Co. v. Ghosh 1971, 3 W.L.R. 31 that the answer depends upon the nature of the application and not upon the finality of the order actually made: it is a matter of practice and practitioners were advised in each case to consult the practice books. The result in the present case must be that the order dismissing the prayers for financial provision was an interlocutory order because Guerrera v. Guerrera 1974 1 W.L.R. 1542 makes it clear that according to the English practice, which is applicable to Hong Kong, appeals against property adjustments or financial arrangements in divorce proceedings are interlocutory appeals. It is therefore necessary 50 to ask whether the power of the court to control

In the Supreme  
Court of Hong  
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Jurisdiction  
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1976.  
(cont'd)

interlocutory orders is as wide as is contended  
on behalf of the wife.

Mr. Jackson relied upon Brister v. Brister  
1970 1 W.L.R. 664 where a consent order based on  
calculations containing errors which were apparent  
was varied on appeal. I noted Mr. French as  
having said that the consent order in that case  
provided that it was "until further order" but I  
think I must have misunderstood him for on  
reading the whole report I find nothing to  
indicate that that was so. However, at p.669  
Ormrod, J. said:

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"... it is of the essence of a maintenance  
order, whether by consent or otherwise, that  
it was effective only 'until further order'".

I do not read that as suggesting that a consent  
order can be varied as readily as any other order  
for maintenance: the judge went on to cite a  
dictum of Lord Jessel, M.R. in Mullins v. Howell  
(1879) 11 Ch. D. 763, 766:

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"I have no doubt that the court has  
jurisdiction to discharge an order made on  
motion by consent which it is proved to  
have been made under a mistake, though  
that mistake is on one side only, the court  
having a sort of general control over orders  
made on interlocutory applications".

That dictum was cited in the Hong Kong case of IP  
Cheung-tong v. LIU Yiu 1972 H.K.L.R. 46 - which binds  
me in this court - where, upon a summons for judgment  
under O.14 of the Rules of the Supreme Court, the  
defendant had by consent been given leave to defend  
conditionally upon his paying money into court  
within a specified period. He defaulted. He then  
applied for leave to pay the money into court out  
of time and the plaintiff renewed his application  
for judgment. The judge in chambers ruled in favour  
of the defendant. On appeal the Full Court reversed  
the decision of the judge on the ground that the  
court does not have a control over interlocutory  
orders which extends to altering the terms of any  
compromise agreed between the parties to litigation  
where it was not proved to have been made under a  
mistake. It has been argued here that a consent  
order dismissing a prayer for maintenance is  
somehow more inviolate than a consent order  
granting maintenance, but in my view, where what is

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in question is the inherent jurisdiction of the court to prevent injustice, that cannot be right. In Brister v. Brister, as I have said, the mistake was apparent. Before me there was some discussion of the adequacy of the provision made for the child and it was, I think, suggested that this was indicative of mistake. I have also indicated that in spite of all that Mr. French said about the propriety of the trustee's actions I am disturbed by the inadequacy of the provision actually made for the child. However, even assuming inadequacy of the provision made I do not think that that could by itself be evidence of mistake, though it might make one suspect the possibility of a mistake and I would hesitate, in the light of what has transpired, before saying that there was no prima facie evidence, doubtful as I might be that her application would eventually succeed. Nevertheless, so far as the child is concerned it is conceded that the sum provided was reasonable and should not be varied on the ground of mistake, even though it was at one time suggested that the wife was mistaken about the return which could be obtained on the moneys settled on the child: what is complained of is that the wife thought (and she now says mistakenly thought) the trustees could be compelled to reimburse all the expenses incurred by her on behalf of the child subject to submission of accounts. To that the substance of the reply, as I understand it, is that the trustees have ample powers, without variation of the order, to release funds for all reasonable requirements of the child and that the court has ample power to compel such release. I think there has been a danger here of confusing jurisdiction and a sufficiency of proof, but perhaps the dividing line is not altogether clear cut. I suppose Mr. French would say that as a matter of law the allegation of relevant mistake can be shown to be misconceived and that the wife cannot therefore establish the jurisdiction: the mistake alleged must be of such a kind that if proved by evidence it might arguably justify that variation. I am satisfied that there are ample powers in the trustees and in the court to ensure the proper maintenance of the child and that there is no mistake alleged which could be proved and which could justify varying the order in so far as it affects the child. In the event, therefore, despite my anxiety about the administration of the trust so far (part of which may stem from the wife's own lack of co-operation with the trustees) I think the

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

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(cont'd)

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 47 Ruling of Hon. Mr. Justice Huggins dated 14th February 1976.  
(cont'd)

objection taken is valid. So far as the wife is concerned, in her affidavit she makes a number of complaints against her former advisers, e.g. that she received no advice in writing and that she was not advised about her tax situation. The latter complaint is to some extent contradicted by her own statement that she was advised by someone who was introduced to her as a tax expert. Again, she says that had she known all the facts to which she deposes and had the consequences and effects been properly explained to her she would not have consented. However, the question is not whether she was properly advised but whether she consented to the order of 23rd May 1970 under a mistake. Although they are not as clearly stated as they might have been, the mistakes alleged seem to be: (1) that in 1970 a house of the kind described in Trust Deed B could be purchased in England or in Germany for approximately £27,500 or its equivalent: (2) that a gross return of something in the region of 13% could be obtained on the capital sums settled on the wife: (3) that the wife's liability to pay tax would be less than approximately 50% of the total income arrived from the investment and the capital sum of \$850,000 and (4) that in November and December 1969 the husband was "in circumstances of acute financial difficulties and embarrassment" and "he incurred certain contingent liabilities regarding a venture in Alaska, which had collapsed." The wife also says she believed she ran the risk of getting nothing if the husband's previous offer of \$75,000 for herself and \$5,000 for the child, with provision of a furnished house, was not accepted, but that seems to me to be irrelevant. At the same time, however doubtful I may be about the prospect of the wife's eventually succeeding upon her application to set aside the order on the basis of mistake, I think the jurisdiction does exist. I ruled against her because I confused the application to set aside with the application to vary and failed to distinguish between that part of the consent order which dismissed the claim of the child from that part which dismissed the claim of the wife. In the result my reasoning was wholly fallacious and I must confess that as now advised I should have held in favour of the wife on that one point.

It was originally in relation to the application to vary the agreements under s.15 of the Matrimonial Proceedings and Property Ordinance

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that I had the greatest doubts, for that section presents several difficulties of interpretation. In the event I felt constrained to uphold the preliminary objection on technical grounds, but it may be desirable that I give some indication of my views on the other matters argued.

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 47  
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(cont'd)

10 I understood it to be common ground that r.100 of the Matrimonial Causes Rules requires that a claim under s.15 shall be made by  
15 originating summons and that as the present claim is made by a judge's summons it is defective. Mr. Jackson not unnaturally invites me to have regard  
20 to r.3 of the Matrimonial Causes Rules, O.2 r.1 of the Rules of the Supreme Court and S.9(g) of the Supreme Court Ordinance and to treat this defect as a readily curable irregularity. I would certainly have done so if this had been the only defect. There were two much  
25 more serious matters. First, the application was not in the form prescribed - Form 16. That again could readily be treated as a mere irregularity  
30 were all the information which that form requires to be given contained in the papers served on the husband, even if it were not so conveniently set out as it would have been in the form. Mr. Jackson submits that all the information is in the papers, but in fact there is one important omission - the applicant has not stated the variations which she seeks to have made in the deeds but has merely said  
35 that she wants the court to make such variation as it shall think fit. At first sight that might appear to be an omission of little consequence, but it is related to another objection - Mr. French submits that the application should have been made to the District Court. As I see it he is right as things now stand, although it might transpire hereafter that the application was properly brought in the Supreme Court. Section 10B(b) of the Matrimonial Causes Ordinance provides :-

40 "Subject to section 10E, the District Court shall have jurisdiction -

(a) to exercise any power exercisable under Part VI (other than sections 38 and 39) or Part VII or under the Matrimonial Proceedings and Property Ordinance (other than section 16 thereof) in connexion with any petition, decree or order pending in or made by the District Court; and

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

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(cont'd)

(b) to exercise any power exercisable under section 8 or 15 of that Ordinance."

Then s.10E reads:

"(1) Any proceedings for the exercise of any power which the District Court has jurisdiction to exercise by virtue of section 10B shall be commenced in the District Court, but rules

(a) shall provide for the transfer to the Supreme Court of any such proceedings pending in the District Court by virtue of this section in any case if the transfer appears to the District Court to be desirable; and

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(b) may provide for the transfer to the Supreme Court of such proceedings in such other cases as may be specified in the rules.

(2) Nothing in subsection (1) shall affect the jurisdiction of a magistrates' court under section 15 of the Matrimonial Proceedings and Property Ordinance."

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However, the powers of the District Court under s.15 of the Matrimonial Proceedings and Property Ordinance are limited by sub.s.(3) of that section:

"Where a court decides to alter, by order under this section, an agreement by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of a child of the family or by increasing the rate of the periodical payments which the agreement provides shall be made or secured by one of the parties for the maintenance of such a child, then, in deciding the terms for which under the agreement as altered by the order the payments or, as the case may be, so much of the payments as is attributable to the increase are or is to be made or secured for the benefit of the child, the court shall apply the provisions of section 10(1), (2) and (3) as if the order to which this subsection relates were an order under section 5."

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It has been pointed out that the word "resident" is not there limited, as it is in sub-s. (1), by the words "for the time being". Sub-section (1) says:

"Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in Hong Kong, then, subject to subsection (3), either party may apply to the court for an order under this section."

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970

No. 47  
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(cont'd)

I must return to that sub-section in a moment. The purpose of leaving with the District Court jurisdiction to make orders for periodical payments seems to me to be that a spouse shall be able with a minimum of formality to obtain financial support during a period of residence in the Colony. It is unlikely that the Legislature had in mind a person who might come here for a stay of a few days or even weeks. There is now evidence that the wife reswore an affidavit in Hong Kong on 19th January 1976 but none to show how long she had then been in the Colony and how long she intended to remain. However, she now deposed to what is in part a matter of fact and in part a matter of law, namely that she is "for the time being resident in Hong Kong and now residing in the Hilton Hotel". Certainly the wife cannot be heard to say in the face of that that she is not resident to an extent which would give the District Court jurisdiction. When it comes to the other limitation on the powers of the District Court to entertain applications under s.15 we are in this difficulty, that unless an applicant states what variations are sought, as Form 16 requires, the court cannot tell whether the application is or is not one which the District Court can entertain. Of course this is another difficulty which could be cured but I have come to the conclusion that it would be more convenient, if this remedy is available at all, that there should be a new claim in proper form.

Yet another technical objection has been taken: Mr. French has suggested that even the words "resident for the time being" in sub-s.(1) import something more than actual presence in the Colony in residential accommodation. Again I have had second thoughts since giving my ruling and have been more impressed by the fact that the limitation 'for the time being' applies to "domiciled" as well

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970  
No. 47  
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(cont'd)

as to "resident". There is inevitably some degree of permanence involved in domicile and when residence and domicile are being considered as alternative qualifications it is not unreasonable to regard the same element of permanence as involved in both. I said when I gave my ruling that clearly a passenger in transit was not within sub-s.(1) but (and this was with some hesitation) that the period of presence might be something less than was required by sub-s.(5). I based that view mainly upon the purely verbal distinction between the sub-sections, and I preferred to give the benefit of any doubt I had to the wife and the validity of her process. I now incline to think that that distinction is of less importance. Although the wife was not alleged to have been resident in the Colony on 1st August 1975, when this summons was taken out, she was alleged to be so resident on 21st January 1976 when the summons was amended and the application under s.15 was added. Yet we still do not know the length of her intended stay and the objection to the jurisdiction should probably have been upheld on that ground also.

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As to the more fundamental objections, the first raises the questions whether there is a "maintenance agreement" within the meaning of s.15 and, if so, whether it is subsisting. Maintenance agreement is defined for the purposes of s.15 by s.14(2) which reads:

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"In this section and in section 15 -

'maintenance agreement' means any agreement in writing made, whether before or after the commencement of this Ordinance, between the parties to a marriage, being -

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

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'financial arrangements' means provisions governing the rights and liabilities towards

one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family."

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 47 Ruling of Hon. Mr. Justice Huggins dated 14th February 1976.  
(cont'd)

10 Mr. French makes two points here: (i) that there was never an agreement "between the parties to a marriage" and (ii) that the section is concerned with "extra-judicial" agreements and not those which have been approved by the court. First, however, one must enquire what is the "agreement in writing"? There have been three agreements in writing - the Deed of Arrangement, Trust Deed A and Trust Deed B. The summons treats them as a composite agreement. Originally I thought that it  
20 might be said that the two Trust Deeds were a composite agreement but I accepted Mr. French's argument that the Deed of Arrangement was no longer subsisting and therefore could no longer be part of such a composite agreement. It is true that parts of the Deed of Arrangement were spent once the Trust Deeds were executed but it is that agreement which contains the covenant by the wife to make no further claims, and that is still subsisting if it be right to say that it was enforceable. Be that  
30 as it may, the Trust Deeds were both the product of "financial arrangements" between the husband and the wife and were related through the Deed of Arrangement. Accordingly I think it matters not that the wife was not a party to Trust Deed A. Mr. French, however, relies on the fact that the Hong Kong & Shanghai Bank Hong Kong (Trustee) Ltd. are party to both Trust Deeds and he says that prevents there being an agreement "between the parties to the marriage". In Young v. Young (1973) 117 Sol.J.  
40 204 there was a deed of separation to which the husband's brother was made party. The reason for that was that the deed gave the wife the use of a house which was the joint property of the husband and the brother. The wife covenanted with both of them to keep the house in repair whilst the husband agreed to make periodical payments for the wife's maintenance. The husband sought to vary that part of the agreement relating to the periodical payments but it was held that, as the  
50 agreement was not solely between the parties to the marriage it did not come within the

In the Supreme Court of Hong Kong. Divorce Jurisdiction No. 14 of 1970 No. 47 Ruling of Hon. Mr. Justice Huggins dated 14th February 1976. (cont'd)

contemplation of the equivalent English statute. Mr. Jackson reasonably contends that that case could be distinguished on the ground that there the brother was the beneficial owner of a share in the house, whereas here "the bank trustee" has no beneficial interest. What then was the ratio decidendi? So far as appears from the short report it was that the brother could enforce the covenant to repair against the wife: the deed was indivisible and therefore he might be affected by any variation. Hollings, J. said that the Matrimonial Proceedings and Property Act 1970 did not contemplate agreements "between husband, wife and a third party". The bank trustee is a third party in the present case - and, indeed, the second party to Trust Deed A. No doubt it could not be so seriously prejudiced by a variation as could the brother in Young v. Young, but it would have forced upon it a term to which it had not agreed and (remote a possibility as this may be) to which it might not have agreed. However, that is, I think, enough to take our case outside the ambit of s.15.

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The second argument also has great attraction and it would not have surprised me if s.15 had been expressly restricted to extra-judicial agreements. However, the definition of "maintenance agreement" seems to me sufficiently wide to include an agreement which has been approved by the court and I would hold accordingly.

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Whether the two Trust Deeds are properly to be regarded as "an agreement" or whether they ought to be treated as entirely separate and distinct, they are clearly "subsisting".

Finally, Mr. French submitted that a claim under s.15 would in any event be barred by the alternative ratio decidendi in L. v. L., the wife having agreed by the Deed of Arrangement that she would "make no further financial claim or demand against the Husband either on her own account or on behalf of the Child". For the reasons I have given I would have been disposed to overrule that objection.

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No. 48

NOTICE OF APPEAL

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In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
Civil Appeal  
No. 6 of 1976

BETWEEN:

HANNELORE DE LASALA

Appellant  
(Petitioner)

- and -

ERNEST FERDINAND PEREZ DE LASALA Respondent  
(Respondent)

No. 48  
Notice of Appeal  
dated 30th  
January 1976.

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NOTICE OF APPEAL

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10 TAKE notice that pursuant to the leave of  
the Honourable Mr. Justice Huggins granted on the  
23rd day of January 1976 the FULL COURT will be  
moved so soon as counsel can be heard on behalf  
of the above-named Petitioner on appeal from the  
order herein of the Honourable Mr. Justice  
Huggins, made on the 23rd day of January 1976,  
dismissing the Petitioner's application for  
ancillary relief and other reliefs, as set out in  
the summons herein dated the 1st day of August 1975  
20 and re-dated the 22nd day of January 1976, FOR AN  
ORDER THAT the said order may be reversed or  
varied and THAT the Honourable Mr. Justice  
Huggins do hear the Petitioner's aforesaid  
application and THAT such directions as may be  
necessary for the further conduct of these  
proceedings be given by this Honourable Court and  
THAT the costs of this appeal and of the aforesaid  
application to the Honourable Mr. Justice Huggins  
be paid by the Respondent to the Petitioner.

30 AND further take notice that the grounds of  
this appeal are:

1. That the learned judge was wrong in law in holding that he had no jurisdiction to entertain any further application for a financial provision order (whether by way of periodical payments, secured provision, lump sum or lump sums) for the Petitioner or Ernest Edward De Lasala, a child of the family, by reason of the dismissal of the prayers therefor contained in the petitions herein.

In the Supreme Court of Hong Kong. Appellate Jurisdiction Civil Appeal No. 6 of 1976

No. 48  
Notice of Appeal dated 30th January 1976.  
(cont'd)

The Appellant will contend that the learned judge was wrong to hold:

- (1) that he was enjoined to follow the English decision in L v. L [1962] P.101;
- (2) that L v. L [1962] P.101 was correctly decided.

2. (1) That the learned judge was wrong in law in holding that he had no jurisdiction to order the transfer and/or settlement of any property to or for the benefit of the Petitioner for herself or to her or to any other person for the benefit of the said child of the family by reason of the dismissal of the prayers contained in the petitions herein.

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In particular the learned judge was wrong to hold that the jurisdiction to make property adjustment orders (namely orders for the transfer and/or settlement of any property to which the Respondent is entitled) under Section 6 of the Matrimonial Proceedings and Property Ordinance (Cap.192) was not a new jurisdiction but constituted part of the former code whereby only financial provision (as provided in Sections 4 and 5 of Cap.192) could be awarded.

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(2) The learned judge was further wrong in law in holding that he had no power to award a further lump sum despite the new wording of Section 4 of Cap.192 providing for "such lump sum or lump sums".

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3. The learned judge was wrong in law in holding that he had no jurisdiction to set aside alternatively to vary Clauses 5 and 6 of the order herein dated the 23rd day of May 1970 notwithstanding that the same were consented to as a result of the mistake or mistakes of the Petitioner and/or the mistake or mistakes of the Petitioner and the Respondent and/or the misrepresentation or misrepresentations of material facts by the Respondent and/or the Respondent's failure or refusal to disclose to the Petitioner such facts and matters relating to his capital and income as he was obliged by law to disclose to the Petitioner and this Honourable Court and/or the failure of the Court to exercise, as directed by statutory rules and practice, its jurisdiction in this

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regard. The Appellant will, if necessary, contend that the learned judge was wrong in law in holding that the said order of dismissal dated the 23rd day of May 1970 was not an order within the ambit of Section 11(2) of the Matrimonial Proceedings and Property Ordinance (Cap.192).

In the Supreme Court of Hong Kong. Appellate Jurisdiction Civil Appeal No. 6 of 1976

No. 48  
Notice of Appeal dated 30th January 1976.  
(cont'd)

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4. That the learned judge was wrong in law in holding that there was no subsisting maintenance agreement made between the Petitioner and the Respondent and that he had no jurisdiction to vary the same.

5. That the Appellant will submit such supplemental grounds as may be necessary after receipt of a copy of the written Judgment herein.

Dated the 30th day of January, 1976.

(SD) GORDON HAMPTON & WINTER  
Solicitors for the Appellant.

No. 49

NOTICE OF HEARING

No. 49  
Notice of Hearing dated 4th June 1976

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IN THE COURT OF APPEAL

Civil Appeal No. 6 of 1976

BETWEEN

De Lasala Appellant

and

De Lasala Respondent

NOTICE OF HEARING

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TAKE NOTICE that the appeal above-mentioned will be heard before the Court of Appeal on Monday the 4th day of October 1976, at 10.00 o'clock in the fore-noon.

(5th-8th & 11th-13th October, 1976 also reserved)

Dated this 4th day of June 1976.

(C. Young)  
p. Registrar.

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
Civil Appeal  
No. 6 of 1976

No. 50

RESPONDENT'S NOTICE

1976, No. 6

No. 50  
Respondent's  
Notice dated  
7th October  
1976.

RESPONDENT'S NOTICE

TAKE NOTICE that the Respondent while seeking to uphold the Order herein to the Honourable Mr. Justice Huggins made on the 23rd January 1976 entered for the Respondent against the Appellant upon the hearing of the Appellant's application for ancillary relief and other reliefs as set out in the Summons herein dated the 1st day of August 1975 and re-dated the 22nd January 1976 desires to contend on the Appeal that the said Order should be affirmed on the following additional and/or alternative grounds, namely :-

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1. The learned Judge erred :-

(a) In holding, as he did on page 20 of his written Judgment, that he should have found in favour of the Appellant on her allegation of mistake and/or mis-representation and/or insufficient or improper legal advice;

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(b) If and in so far as he did so (had he so found) in holding that the proceedings before him were appropriate proceedings in which to vary, reconsider or re-try the Order of Briggs J. as he then was.

(c) In not holding that the Appellant was precluded from making a fresh application for financial provision by reason of her agreement to that effect, an agreement which had been sanctioned by the Court.

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AND FURTHER TAKE NOTICE that the Respondent will apply to the Court of Appeal for an Order that the Appellant pay to the Respondent the cost occasioned by this Notice to be taxed.

Dated the 7th day of October, 1976.

(sd.) Denish Chang

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Counsel for the Respondent

To the Appellant and her solicitors  
Messrs. Hampton, Winter & Glynn.

No. 51

JUDGMENT OF PICKERING J.A.,  
McMULLIN AND LEONARD, J.J.

Coram: Pickering, J.A., McMullin and Leonard, JJ.

Date: 17th December, 1976.

J U D G M E N T

Pickering, J.A.

10 This appeal runs to jurisdiction. For the  
sake of convenience I will refer to the petitioner  
as "the Wife" and to the respondent as "the  
Husband" although that once mutual status has been  
terminated. The parties were married in Hong Kong  
on 17th February, 1966, and there is one child of  
the marriage now aged 10 years old. On the 31st  
October, 1969 the Wife commenced wardship  
proceedings and on the following day petitioned for  
divorce making allegations which the Husband  
indicated he would contest. In December, 1969, the  
20 Husband's solicitors intimated that, if certain  
arrangements as to custody and finance, which they  
set out in a letter to the Wife's solicitors, were  
acceptable to the Wife and if she would agree to  
petition for divorce solely on the ground of  
adultery, the Husband would neither defend that  
petition nor cross petition. The Wife agreed and  
on 16th January 1970, by consent, Briggs, J. (as he  
then was) gave leave to file a further petition and  
to implement the proposed financial arrangements  
30 which were then contained in a Deed of Arrangement  
exhibiting two draft trust deeds. Pursuant to the  
leave granted, a second petition was presented on  
the 31st January, 1970 and on the 25th March of  
that year the first petition was dismissed by  
consent. On the 21st May, 1970, Briggs, J. granted  
a decree nisi of divorce on the second petition and  
adjourned into chambers the matter of the  
maintenance and welfare of the child. On the same  
day the judge, by consent, made orders for custody  
and access, approved the Deed of Arrangement and  
40 ordered that upon the payment of the monies agreed  
to be paid under the Deed of Arrangement and upon  
the coming into force of the two trust deeds, the  
prayers for financial provision should stand

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dismissed. The monies were paid and the trust deeds came into force on the 30th May, 1970 upon which date the decree of divorce was made absolute.

By a summons dated 1st August, 1975, the Wife applied to set aside or vary the consent order dismissing her prayers for financial provision for herself and the child of the marriage and also applied for orders for such financial provision. On the 19th January, 1976, the summons was, by leave, amended to include an application for variation of the financial arrangements contained in the three deeds. The summons was heard by Huggins, J. (as he then was) in January of this year who, upon an immediate ruling, disclaimed jurisdiction. This appeal lies against that disclaimer from which, in one respect only, the learned judge resiled in his subsequent written ruling.

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At the heart of the learned judge's ruling lay his acceptance of the proposition put forward on behalf of the Husband to the effect that, it having been agreed in the Deed of Arrangement sanctioned by Briggs, J., in 1970 that the Wife would make no further financial claim or demand against the Husband, she is now prohibited from making any financial application to the Court. It was common ground that the parties could not, by simple agreement, debar future financial claims either of a type which could have been made at the time of the decree absolute or of a nature which did not then exist but which came into being only by virtue of subsequent legislative provisions. The argument on behalf of the Husband in the court below however was that the court had powers which the parties did not possess and could do what the parties could not, so that once the court had sanctioned an agreement not to make any further financial claim or demand against the Husband, the effect of the sanctioned agreement was to debar any further claims. That the parties cannot by their unvarnished agreement bar such further claims is clear from Hyman v. Hyman (1) a common law rule now clothed by statute both in England and Hong Kong, the English provision being originally section 1(2) of the Maintenance Agreements Act, 1957, but now section 34(1) of the Matrimonial Causes Act, 1973, and the Hong Kong provision section 14(1) of the Matrimonial Proceedings

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(1) (1929) A.C. 601

and Property Ordinance, Cap.192.

10 The nub of the Wife's argument on this part  
of the case is that the Court cannot by Order  
circumvent the statutory provision thereby  
converting the illegal and void into the valid.  
Mr. Jackson, for the Wife, submitted that what  
had led the learned judge at first instance into  
error was the case of L. v. L.(2) where it was  
held that the Court had no jurisdiction to  
entertain a fresh application for maintenance  
by a wife who had, in pursuance of an agreement  
sanctioned by the Court, received an agreed  
capital sum at the same time having her  
application for maintenance dismissed. It was  
held in that case that the court had no  
jurisdiction to entertain a fresh application for  
maintenance by a wife who had, in pursuance of an  
agreement sanctioned by the Court, received an  
agreed capital sum and had her application for  
20 maintenance dismissed and that section 1 of the  
Matrimonial Causes (Property and Maintenance) Act,  
1958, which empowered the Court to make  
maintenance orders, not only, as formerly, "on" a  
decree but also "at any time thereafter", did no  
more than enlarge the time within which an  
existing jurisdiction in relation to maintenance  
awards might be exercised, by enabling the Court  
to award maintenance either "on" a decree or "at  
any time thereafter" and that there was no  
30 jurisdiction, once an application for maintenance  
has been dismissed, to entertain a fresh  
application or a plurality of applications.

40 It was Mr. Jackson's contention that the  
result in L. v. L.(2) was arrived at per incuriam.  
Counsel referred to the fact that when L. v. L.  
was decided there was already in existence  
powerful Australian authority holding that the  
correct view was the quantitative and not the  
temporal view; that is to say that the words "at  
any time thereafter" sanctioned a plurality of  
applications and not merely one application which  
could be made either "on" the decree or "at any  
time thereafter". Counsel referred further to the  
statutory prohibition upon the denial of further  
applications contained in section 34(1) of the  
Matrimonial Causes Act, 1973 to which I have already  
referred and cited also the case of Barnard v.  
Barnard (3) where a husband, having been ordered to  
50 pay to the wife maintenance at the rate of one  
shilling a year, moved for leave to appeal against

(2) (1962) P.101

(3) (1961) 105 Sol.J. 441

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that order. Ormrod, L.J., refusing leave to appeal, said that when applications for maintenance were governed by section 19(3) of the Matrimonial Causes Act, 1950, as that subsection was formerly worded, the court was empowered to order a husband to make payments for the wife's maintenance "on any decree for divorce or nullity of marriage," and it was not uncommon for nominal orders to be made, in order to keep alive the wife's rights. That subsection, however, had now to be read in the light of the amendment made to it by section 1 of the Matrimonial Causes (Property and Maintenance) Act, 1958. For the words "on any decree for divorce or nullity of marriage" there had to be read the words "on pronouncing a decree nisi for divorce or nullity of marriage or at any time thereafter, whether before or after the decree has been made absolute." The practical effect of that amendment, Ormrod L.J. said, was that a nominal order for maintenance no longer served any useful purpose. The effect of Barnard v. Barnard, counsel urged, was that a party could apply to the court for financial provision even though his or her earlier such application had been dismissed.

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A similar result to that in Barnard v. Barnard had been arrived at in the cases of Burton v. Burton (4), R. v. R. (No. 2) (5) and M. v. M. (6). Whilst the last-mentioned three cases were subsequent to L. v. L. and did not follow that case, Barnard v. Barnard (3) had proceeded L. v. L. (2) but neither Barnard v. Barnard, the Australian cases nor the statutory prohibition contained in section 1(2) of the Maintenance Agreements Act, 1957, had been quoted to the court in argument in L. v. L. which case, Mr. Jackson asserted, had been decided per incuriam.

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In any event, the argument continued, Barnard v. Barnard was binding upon the Court of Appeal in England whereas L. v. L. was not, the reason being that Barnard v. Barnard was a decision of a court of three judges whereas L. v. L. was an interlocutory appeal decided by only two judges. The authority for this proposition was the case of Boys v. Chaplin (7) where the Court of Appeal held that the case of Machado v. Fontes (8) was not binding upon it being an

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- (2) (1962) P. 101 (5) (1967) Sol.J.926  
(3) (1961) 105 Sol.J.441 (6) (1967) P.313 at 317  
(4) (1964) 108 Sol.J.584 (7) 1968) 2 Q.B.1.  
(8) 1897) 2 Q.B. 231

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interlocutory appeal heard by two Lords Justices only. In Boys v. Chaplin (supra) Lord Denning, M.R., said:

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10 "I cannot regard such a decision as a binding precedent. There is no case in the books where a decision of two lords justices has been held to be binding when it is afterwards discovered to be wrong. On the contrary, there are three cases in which such a decision has been overruled by a court of three or more. Thus the decision of the two lords justices in the old Court of Chancery in Tassell v. Smith (1858) 2 De G. & J. 713, C.A. was overruled by three lords justices in the Court of Appeal in Mills v. Jennings (1880) 13 Ch. D. 639, 648, C.A. The decision of two lords justices in an interlocutory matter in Daglish v. Barton (1900) 1 Q.B. 284, C.A. was overruled by the Master of the Rolls and five lords justices in the Court of Appeal in Wynne-Finch v. Chaytor (1903) 2 Ch.477, C.A. The decision of two lords justices in an interlocutory matter in Gerard v. Worth of Paris Ltd. (1936) 2 All E.R. 905, CA. was overruled by Sir Wilfrid Green M.R. and two lords justices in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 K.B. 675; 57 T.L.R. 418; (1941) 2 All E.R. 11, C.A.

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30 I do not think that Young v. Bristol Aeroplane Co. Ltd. (1944) KB. 718; 60 T.L.R. 536; (1944) 2 All E.R. 293, C.A. is any authority to the contrary. The court there did not discuss interlocutory appeals heard by two lords justices: whereas I think it plain, to anyone who knows how this court works, that they ought not to be regarded as binding when they are afterwards shown to be wrong. It is unnecessary to consider today the position of final decisions of this court; though I foresee the time may come when we may have to reconsider the self-imposed limitations stated in Young's case (supra), especially in view of the recent change in practice in the House of Lords."

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50 The first Australian case to which Mr. Jackson referred was that of Kitchin v. Kitchin (9) where it was held that an application for permanent maintenance under section 5(1) of the Victorian Marriage (Divorce) Act, 1933 may be made from time to time and notwithstanding the dismissal of a (9) (1952) V.L.R. 143

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previous application or the discharge of a previous order. Section 5(1) empowered the Court to make certain financial orders against a husband "on or after making any decree for judicial separation or any decree nisi for dissolution of marriage." The case of Kitchin v. Kitchin (9) was very fully argued the petitioner, the respondent and the Attorney General of Victoria all being represented. In the course of a wide-ranging judgment, O'Bryan J. said:

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"Why can she not, having applied for maintenance, agree to accept from her husband a lump sum of money in consideration of her agreeing to her application being dismissed?"

I can see no reason why she cannot do so, but if my view of the section is correct then the order dismissing her application, even if made by consent, would not deprive the Court of its jurisdiction to entertain a fresh application and, if it thought fit, to make an order on the husband for payment of a monthly or weekly sum for his wife's maintenance or support. On such an application the fact of the previous compromise would be a relevant matter for the Court's consideration in determining whether the case was one fit for an order to be made and, of course, the wife's financial position is always to be considered both as to whether the Court should think fit to make an order and as to reasonableness of amount."

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In arriving at this conclusion the learned judge, having referred to the fact that in England the jurisdiction was at that time limited to the making of an order "'on' any decree for divorce or nullity," went on:-

"Hence in England if the Court cannot, in the circumstances prevailing at the time of the application, make an order for maintenance, but is of opinion that, in the event of a change in the circumstances such an order might properly be made at some time thereafter, the course followed is to make an order on a husband for payment of a nominal monthly or weekly sum so as to keep alive the jurisdiction to increase the amount if occasion for such increase arise.

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(9) (1952) V.L.R. 143

As sec.5(1) of the 1933 Act is not so restricted as to time of application, this type of artificial order is in my opinion unnecessary. It is contended that the words in the Victorian statute 'on or after making any decree nisi for dissolution of marriage' merely extend the time within which the Court may make an order; and that once an order has been made dismissing an application for maintenance the whole jurisdiction under sec.5(1) is expended. The extension of the period to 'on or after decree' has been in our statute since 1915, and it was apparently a change deliberately made at that consolidation, though no mention is made of it in the Explanatory Paper.

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The words of the section are, in my opinion equally capable of the meaning that the application must be made and finally determined once and for all, subject to the power of variation contained in sec.5(2), as of the meaning that the Court throughout the joint lives of the parties may, on or after decree made, entertain any number of applications though previous applications have been dismissed.

Which of these meanings is to be given to the section is a matter of construction. The mere change in language, in my opinion, gives no guide to the intention of the Legislature. But I do think that one does get some guide from the subject-matter of the orders which may be made thereunder and from the general purpose of the power itself. As to the latter matter I would refer to what was said by Lord Hailsham in Hyman v. Hyman, (1929) A.C. 601, at p.608, and by Lord Atkin, *ibid.*, at p.628.

Marriage carries with it an obligation on the husband to support his wife which was enforced and given effect to in various ways in England. That obligation continued throughout their joint lives. When in 1857 the Legislature decided to allow the marriage bond to be dissolved by judicial process it was faced with the problem - what was to be done about the support of the wife when the basis of the husband's obligation had been destroyed? The

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first legislation on this matter gave to the Court a power which was incidental to its exercise of the power to dissolve the marriage, viz.: a power to compel the husband to make adequate provision for the support of the wife. The tendency of legislation since 1857, both here and in England, has been to enlarge that power and to place in the discretion of the Court a large measure of control over the provision by a husband for the wife's support throughout their joint lives. If then the purpose of this section is to continue, in a proper sense, the matrimonial obligation of the husband whose marriage has been dissolved, to support his wife, that construction should be given to the section which will effect that purpose if it is equally open rather than a construction which will defeat the purpose. To deny the Court's jurisdiction to deal with a wife's application because it had been once dismissed would, in my opinion, be contrary to the general purpose of the power. As to the subject-matter of this jurisdiction, while generally speaking where jurisdiction is given to the Court to make an order and it is apparent that once the jurisdiction is invoked the whole of the facts will be known or available upon which the Court will be called upon to exercise its discretion, there is good reason to suppose that it was intended that the Court should act once and for all on the application before it and, having so acted, its jurisdiction is expended (as, e.g., in Part V applications under the Administration and Probate Act 1928 - see *In re Porteous*, (1949) V.L.R. 383). But where, as in this case, the subject-matter of the application, viz.: the support of the wife by the husband, is one which may call for different considerations at different times during their joint lives (which the Legislature plainly recognised in sec. 5(2)), so that the Court may think fit at one time to make an order in favour of the wife and at another time to make a large, and at another time a small order, there is good reason to suppose that the jurisdiction was intended to be ambulatory. The language of the section is capable of that meaning and should,

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in my opinion, be given it. Suppose the Court on a first application by a wife under sec.5(1) were to say: "No order at present - application adjourned sine die." I suppose it could not be denied that the applicant could come again on her original application for an order and produce fresh material in support of it. Would not the like result follow from an order in the form: 'No order at present for the payment of any monthly or weekly sum by the husband for the support of his wife'? Does an order dismissing an application under sec.5(1) mean any more than that? If it does, and if the sub-section, contrary to my view, does not enable the Court to entertain a second application after a first application has been dismissed, then, in my opinion, the Court should seldom (I would not say never) in its discretion dismiss an application, but should keep its jurisdiction alive to enable it to act if circumstances change. But in the view I take of the section that is an unnecessary precaution.

That brings me to a consideration of the order which is asked for in this application. The agreement is, in substance, that, in consideration of a lump sum payment of £1,500, the applicant will accept that sum in full satisfaction of all claims present or future that she has or may have for maintenance against the respondent and that she will undertake to this Court not to make any further application to the Court for maintenance. Such an agreement is, in my opinion, plainly within the decision of the House of Lords in Hyman v. Hyman (supra), and is void as contrary to public policy.

The power of the Court conferred by sec. 5 of the Marriage (Divorce) Act 1933, though enacted for the benefit of wives who have been judicially separated from their husbands or whose marriages have been dissolved, cannot be restricted by the private agreement of the parties. The power is conferred on the Court, in the first instance, for the benefit of the wife, but there is a wider and a deeper basis for the legislation, i.e. the public interest that the wife even after judicial separation or

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dissolution of marriage should, if the Court thinks fit, be supported by the husband. Social interest demands that a right so conferred shall not be renounced by the party concerned. Hyman v. Hyman is clearly in point on this matter. See also Coombe v. Coombe, (1951) 2 K.B. 215; Bennett v. Bennett, (1951) 2 K.B. 572; Ross v. Ross, (1950) P. 160; Gaisberg v. Storr, (1950) 1 K.B. 107. See also Davies v. Davies, (1919) 26 C.L.R. 348, where a like view was taken of the maintenance provisions (then sec.83 of Marriage Act 1915) for a wife whose marriage is subsisting. But, it may be objected, the statute does not cast any obligation on the wife to apply for maintenance. She can apply for maintenance if she likes and, if she applies, she may consent to having her application for maintenance dismissed."

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I make no apology for so lengthy a citation for I find its reasoning highly persuasive and indeed the whole judgment repays study in the light of the problem before us.

Similarly certain passages from the judgment of Sholl J. in the same case will bear repetition:-

"If sec.5(1) admits of more than one meaning, according to one of which (1) only one application can be made, whether it succeeds or fails, according to another of which (2) an application, or a number of applications can be made, but only within a reasonable time after a decree nisi for divorce, and according to another of which (3) a further application can be made from time to time notwithstanding the dismissal of a previous application or applications, or the discharge of a previous order or orders, there are reasons of convenience and justice why the last should be preferred. Suppose a wife applies on or shortly after decree nisi for an order under sec.5(1), but fails because she is shown to have greater means than her husband. If later she loses her source of income through no fault of her own, why should she not then obtain an order? Or suppose she consents to the dismissal of her first application, relying

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on the husband's promise to continue a previous allowance, and he later discontinues it" Or suppose her first application is dismissed because she has a prosperous business, and the husband's means are small and his health poor, but later she becomes insane and his means and health improve. I can certainly see nothing in favour of adopting the first of the three views suggested. The words 'on or after ... any decree nisi' can at most, I should have thought, impose a time limit, and not a limit on the number of applications possible. If any words have that effect, it must be the words "The Court may ... order', or 'The Court may ... make an order', read in the limited sense, 'The Court may (once and for all) consider the making of an order, and grant or refuse it.' I do not think they should be so read. Even if the sub-section has the second meaning, there might be reasons why in that case the present applicant might re-apply within 'a reasonable time' of decree nisi notwithstanding the dismissal of this application. But on the whole, notwithstanding the difficulties occasioned by the history of the legislation and the differing expressions used in successive enactments, I think we ought to hold that sec.5(1) enables at all events the making of an application thereunder by or on behalf of a divorced wife at any time during the joint lives of the parties in cases (1) where no previous order has been made thereunder, (2) where an application for an order thereunder has previously failed, and (3) where an order or orders has or have previously been made under sec.5(1) or sec. 5(1) and (2) but has or have been discharged."

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and later:-

"I do not see how it (the Court) can have jurisdiction to restrain in advance the making of future applications in proper circumstances. The parties for their part cannot legally agree, whether in consideration of a lump sum or otherwise, that an application or applications will not in proper circumstances be made. With all deference, therefore, to those who hold a different view,

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I am unable, for myself, to understand how the parties and the Court can in combination produce a result which neither they nor it can separately produce, whereby on payment of a lump sum all future applications, whether proper or not, are forever barred."

Having quoted Lord Atkin's dictum in Hyman v. Hyman (1) that "the wife's right to future maintenance is a matter of public concern, which she cannot barter away", Sholl J. continued:-

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"There is, of course, no rule of public policy which prevents a Court from considering any application and making thereon an order within its jurisdiction. But clearly this Court should not, and I think could not, make an order directly forbidding the making of future applications for the making of which a statute in the public interest provides. It may decide a particular application. It may discourage applications which have insufficient merits by imposing a liability for costs. Further I do not think it can go. The most a respondent can do in such a case as the present, in my opinion, is to pay a lump sum, and leave it to the Court thereafter, if the application is persisted in, or if any further application is made, to consider that payment as one of the relevant circumstances in relation to the exercise of discretionary power which it is then asked to make. I do not think he can now get by direct order an injunction against, or some other form of judicial declaration of security from, a possible successful future application if the amount should be held to have been insufficient, or should be then exhausted, and the petitioner in need of maintenance. And if that view is correct, I am clearly of opinion that the Court should not permit the respondent to attempt to obtain a similar kind of security by our now accepting petitioner's undertaking not to make such an application. I think that would be so, even if the Court were prepared to hold, on evidence (assuming it to be possible that evidence could cover the matter), that the proposed lump sum was the proper present actuarial value, having regard

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(1) (1929) A.C. 601



to the age and health of the parties, their joint expectation of life, and the possibilities of future changes in their economic circumstances, of an appropriate weekly allowance for their joint lives."

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And finally from the same learned judge:-

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10 "It is for the Legislature, if it thinks the step socially desirable, to enable divorced wives to abandon their rights to future alimony in return for a lump sum payment. The assumed justification of the present rule of public policy, as laid down by the Courts in England, appears to me to be this, that the respective financial positions of the parties at the time of divorce are not of such a character as to be bound to remain unchanged during the joint lives of the parties; and that it is better that some divorced wives, who may be fortunate, enough to have good business sense, hard-headed advisers, or a really advantageous offer from a former husband, should be unable legally to make a satisfactory arrangement to take a lump sum in return for the abandonment of future rights, than that the many more divorced wives who are likely to lack that sense, or those advisers, or that advantageous offer, should be permitted to bargain away, often no doubt under emotional or economic stress, or both, and for an inadequate sum, the rights with which the law safeguards for them. I should be disposed myself to anticipate that the Legislature might view with misgiving an alteration of the law which might render it easier for husbands to buy their way at once, in the event of divorce, out of future obligations to their wives, the contemplation of which may at present not infrequently provide some deterrent against breaches of the marriage tie."

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As I have said, these judgments were not cited to the Court in L. v. L. (2)

Mr. Jackson further relied upon the Australian case of Whittle v. Whittle (10) in which, following Shaw v. Shaw (11) it was held that a deed providing for the payment of maintenance by the husband to the wife during their joint lives and containing an

(2) (1962) P.101

(10) (1965) 66 N.S.W. 141

(11) 82 W.N. (Pt.2) (N.S.W.)1

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acknowledgment by the wife that her acceptance of the benefits specified in the deed debarred her from making any further claim for maintenance against her husband, was not within the classification of deeds which the Court might approve and did not debar the wife from making any further claim for maintenance.

Mr. French, for the Wife, sought to counter these authorities with his own sequence of cases decided since L. v. L. (2) He referred to Nash v. Nash (12) where at p.271, Scarman J. said:

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"the court will seldom, if ever, approve an agreement under which the wife abandons for all time her claim to maintenance unless, as in Mills v. Mills (13), some effective provision be made for her by agreement."

thereby implying that where effective provision had been made for a wife by agreement, her consent to abandon future claims would be approved by the Court.

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In M. v. M. (No. 1)(6) Sir Jocelyn Simon P. had said:-

"I do not, in other than quite exceptional circumstances, sanction a term providing for the dismissal for all time of a wife's claim for maintenance."

In Wilkins v. Wilkins (14), L. v. L. had been cited without disapproval. That case was also authority for the proposition that once a judge had approved and made a consent order it would be wrong in principle for the court to upset the order, in the absence of fraud, other than on appeal. In Smith v. Smith (15) Lord Denning M.R. had made an order to the like effect as that in L. v. L. thus concurring in the result achieved by L. v. L. The case of Wright v. Wright (16), properly understood, supported the decision in L. v. L. In Coleman v. Coleman (17) it had been held that the court had no power to make an order for a second lump sum payment to the wife. Again in Powys v. Powys (18), L. v. L. had been cited without disapproval.

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| (2) (1962) P.101          | (15) (1970) 1 All E.R.244 |
| (6) (1967) P.313 at 317   | (16) (1970) 1. W.L.R.1219 |
| (12) (1965) P.266         | (17) (1973) Fam.10        |
| (13) (1940) P.124         | (18) (1971) P.340         |
| (14) (1969) 2 All E.R.463 |                           |

It followed, in Mr. French's contention, that L. v. L. was well rooted, well followed and well approved whilst the cases of Barnard v. Barnard (3), Burton v. Burton (4), R. v. R. (5), M. v. M. and the Australian cases offered only a very slight counterpoise.

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10 Mr. Jackson's response to these cases was to say that none of them dealt directly with the point at issue and to assert that since the case of L. v. L. (2) there had never been an application similar to that made in that case. Wilkins v. Wilkins (14) involved not an application to make a second order but to set aside an order and L. v. L. was there cited for a very limited purpose but had no relevance to the point at issue. Smith v. Smith (15) was entirely consistent with the formula in L. v. L. and the court was not there professing to have  
20 jurisdiction to dismiss claims: what the court was saying was that the wife could have the whole of the matrimonial home but could not make any further application. It is difficult to say that Mr. French was not right in saying that in so acting Lord Denning, M.R. was making an order in similar terms to that in L. v. L. and, in the light of the court's order it is difficult to understand Mr. Jackson's contention that if the husband had become rich the wife could have come back to the court with a further application for maintenance.  
30 Mr. Jackson was on firmer ground in protesting that the case of Wright v. Wright (16) was in his favour. In that case it was there held that no agreement or arrangement between the parties could deprive the court of jurisdiction to review the question of maintenance for a wife even where such agreement or arrangement had been sanctioned by the court under section 5(2) of the Matrimonial Causes Act 1965. The wife's application failed only because she was unable to show the unforeseen circumstances which were a prerequisite of success  
40 under the agreement with the husband.

As it seems to me, consideration of the case law discloses only disarray. L. v. L. itself was a departure from Barnard v. Barnard and the Australian case of Kitchin v. Kitchin (9). It has itself been departed from on at least three occasions whilst being apparently approbated in

- 50 (2) (1962) P.101 (9) (1952) V.L.R.143  
(3) (1961) 105 Sol.J.441 (14) (1969) 2 All E.R.463  
(4) (1964) 108 Sol.J.584 (15) (1970) 1 All E.R.244  
(5) (1967) Sol.J.926 (16) (1970) 1 W.L.R. 1219

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other subsequent cases. Yet the learned judge in the court below, though saying that were the matter *res integra* he would be disposed to take the contrary view, felt himself enjoined upon the authority of Trimble v. Hill (19) to follow L. v.L.(2). But what was laid down in Trimble v. Hill was that where a colonial legislature had passed an Act (or Ordinance) in the same terms as an Imperial statute, and the latter has been authoritatively construed by a court of appeal in England, such construction should be adopted by the courts of the Colony. I trust that I have said sufficient to emphasise that L. v.L. can by no means be regarded as an authoritative decision. In my view the principle laid down in Trimble v. Hill (19) could have no application to such a disputed cases as L. v. L. In this connection the learned judge said that where the interpretation of a statute depended, as it does here, upon the context of that statute in a pattern of relevant legislation and practice which is similar in Hong Kong and in England the decisions of the English courts are of special value, whilst the interpretation of an identical statute in another jurisdiction may be positively misleading. With respect, that may be entirely true where the decisions of the English courts can fairly be regarded as authoritative but where they cannot, it may be them and not the decisions from another jurisdiction which may be misleading.

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It is significant that in none of the cases cited as approbating the decision in L. v. L. is there any reference to the statutory avoidance of any agreement which includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements. Nor is there any explanation of the Court's implied blessing of that which the legislature has declared to be void. Mr. French urges that experienced judges of the Family Division would be unlikely to have been either unaware of or to have overlooked the statutory prohibition. Whilst that is hard to a gainsay, it remains the fact that the learned judges gave the provision no acknowledgment as they by-passed it and offered no indication as to why they considered it of no importance.

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(2) (1962) P.101  
(19) (1879) 5 App. Cas.342

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Returning to the case of L. v. L. (2) which appears to have been the fount of the disarray, I conclude that had the statutory prohibition been firmly before their Lordships in that case and had the case of Barnard v. Barnard (3) and the exhaustive reasoning in Kitchin v. Kitchin (9) been examined before them, jurisdiction would not have been denied. In my respectful view the case of L. v. L. - which in any event does not bind this Court (Robins v. National Trust Company Limited (20) and Chan Wai-Keung v. Regins (21) - was wrongly decided and on the authority of Boys. v. Chaplin (7), the case which should bind the Court of Appeal in England and which this Court should follow is that of Barnard v. Barnard, the produce of a court of three Lords Justices. In other words the Wife is free to come back to the Court upon a further financial application.

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It may be useful to relate that conclusion to our own legislation. Section 14 of the Matrimonial Proceedings and Property Ordinance (Cap.192) reads:-

"14. (1) If a maintenance agreement includes a provision purporting to restrict any right to apply to a court for an order containing financial arrangements then -

(a) that provision shall be void; but

(b) any other financial arrangements contained in the agreement shall not thereby be rendered void or unenforceable and shall, unless they are void or unenforceable for any other reason (and subject to sections 15 and 16), be binding on the parties to the agreement.

(2) In this section and in section 15 -

'mainten agreement' means any agreement in writing made, whether before or after the commencement of this Ordinance, between the parties to a marriage, being -

(a) an agreement containing financial

- |                          |                         |
|--------------------------|-------------------------|
| (2) (1962) P.101         | (9) (1952) V.L.R.143    |
| (3) (1961) 105 Sol.J.441 | (20) (1927) A.C.515     |
| (7) (1968) 2 Q.B.1       | (21) (1965) H.K.L.R.815 |

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arrangements, whether made during the continuance or after the dissolution or annulment of the marriage; or

(b) a separation arrangement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

'financial arrangements' means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage (including a marriage which has been dissolved or annulled) in respect of the making or securing of payments or the disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the family."

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Having regard to sub-section 1(a) and to the definitions of "maintenance agreement" and "financial arrangement" it is apparent that the Wife's undertaking to make no further financial claim or demand against the Husband, contained in the Deed of Arrangement sanctioned by Briggs, J. in 1970, was void and that the learned judge had no power to sanction that undertaking. To hold otherwise would be to set the Court in defiance of the Legislature for had the Legislature meant void "unless sanctioned by the Court" nothing would have been simpler than to have said so. It is true that the undertaking was not that the Wife would not apply to the Court but that she would make no claim or demand against the Husband. But such an undertaking includes any claim or demand made through the medium of the Court so that effectively, the Wife was agreeing not to come back to the Court.

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As to this the learned Judge said that whereas what was agreed in Hyman v. Hyman (1) was that the wife would not go to the Court, what was agreed in this case was that the parties would go to the Court and they did go and they obtained an order of dismissal. That is true but they agreed to go to the court once and once only - and there lies the rub. If the principle of Barnard v. Barnard (3) be accepted, as I think it must, here

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(1) (1929) A.C. 601

(3) (1961) 105 Sol.J.441

was a maintenance agreement "purporting to restrict any (second or subsequent) right to apply to a court for an order containing financial provisions" and it was void.

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10 I find difficulty in accepting the proposition advanced by McMullin, Ag.J.A. whose draft judgment I have had the advantage of reading, to the effect that paragraph (7) of R.6 of the Matrimonial Causes Rules confers statutory power upon the Court to sanction an agreement not to come back to the Court. As it seems to me any such interpretation of the rules would conflict with the plain provisions of section 14(1)(a) of the Matrimonial Proceedings and Property Ordinance. Yet section 28(b) of the Interpretation and General Clauses Ordinance provides that no subsidiary legislation shall be inconsistent with the provisions of any ordinance. Nor can I find assistance as does my learned brother from section 15(6) of the Matrimonial Proceedings and Property Ordinance which he construes as providing that section 14 of that Ordinance is not to inhibit the Court in dealing with financial arrangements brought to it under the Ordinance or any other enactment. The subsection reads:

30 "(6) For the avoidance of doubt it is hereby declared that nothing in this section or section 14 affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment (including a provision of this Ordinance) to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings".

40 The power which is declared to be uninhibited is the power to make an order containing financial arrangements, not an order to sanction an agreement not to come back to the Court. It is significant also that the other matter which the subsection declares to remain uninhibited is the right of either party to apply for an order containing financial arrangements.

Having reached the conclusion that the Wife is entitled to come back to the Court, what type of application is now open to her and in

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particular is she free to make applications of a type the possibility of which did not exist at the date of her decree? An example of this type of application is a transfer of property order under section 6(a) of the Matrimonial Proceedings and Property Ordinance, Cap. 192, a form of relief which was introduced in 1972 after the marriage of the parties had been dissolved. There was some discussion in the court below as to whether such relief conferred a new jurisdiction on the Court or amounted only to new machinery. As it seems to me a new jurisdiction has been conferred in the sense that it is now open to the Court to make an award of a type previously not capable of being made, a circumstance which goes beyond mere provision of new machinery and support for this view is to be derived from the case of Wachtel v. Wachtel (22) where Lord Denning, M.R. describes similar provisions introduced in England as "designed to accord to the courts the widest possible powers in readjusting the financial position of the parties and (also) to afford the courts the necessary machinery to that end." Again in Trippas v. Trippas (23), having rejected the assertion that in assessing the quantum of the lump sum payment it was proper to proceed on the same principles as would apply in assessing the quantum of annual payments under the law as it stood before the Acts of 1963 and 1965 were passed in England, Lord Denning M.R. said:

"The Divorce Reform Act, 1969, and the Matrimonial Proceedings and Property Act, 1970 have revolutionised the law on all these matters"

whilst Mr. Justice Scarman referred to sections 2, 4 and 5 of the Matrimonial Proceedings and Property Act, 1970 as representing a reform of the law.

But is this new jurisdiction retrospective? It seems to me that it is, on the authority of Williams v. Williams (24), Powys, v. Powys (18) and Chaterjee v. Chaterjee (25). On the basis of those authorities I conclude that even if, contrary to the view to which I have come, the case of L. v. L. (2) is one which should be followed in this jurisdiction, it is still open

(2) (1962) P.101 (23) (1973) FAM.134  
(18) (1971) FAM.340 (24) (1971) FAM.271  
(22) (1973) FAM.72 (25) (1976) 2 W.L.R.397



to the Wife to apply for financial provision of a nature not available to her at the date of the dissolution of the marriage.

In this connection the learned judge in the court below said:

"I do not see how the court in, say, 1970, could, by dismissing a claim then before the court, in effect dismiss a future claim which had not yet been made."

10 but despite that, went on to say subsequently in what Mr. Jackson described as a self-contradictory conclusion of principle:

"If the order of dismissal in the present case had been made on or after 1st July, 1972 it would have barred a new claim under section 6 and in my view the fact that it was made before that does not make the order any less of a bar."

20 For the reasons I have given I do not consider that the order is a bar to applications for relief of a type which did not exist at the date of the dissolution of the marriage. I am fortified in this conclusion by the consideration that the converse would result in a gross inequity in that whilst the Wife would be barred from coming to the Court for any type of new relief because of the judge's order of 1970, the Husband should he fall upon hard times, would be perfectly free to do so.

30 If my conclusion that L. v. L.(2) should not be followed in this jurisdiction be correct, and if I am right in holding, on the basis of Chaterjee v. Chaterjee (25) and related cases, that it is open to the Wife now to come to the Court for relief of a nature not available to her at the time of the divorce, the issue as to whether there is a subsisting maintenance agreement capable of variation, is academic. For the sake of completeness however and in deference to the arguments advanced upon the point and lest my  
40 earlier conclusions should not find favour elsewhere, I will state my view of that and other matters argued before us.

Mr. French contends that there is no subsisting maintenance agreement, within the meaning of section 15(1) of the Matrimonial

(2) (1962) P.101  
(25) (1976) 2 W.L.R.397

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Proceedings and Property Ordinance (Cap.192), to be varied. Having regard to the very wide definition in section 14(2) of "maintenance agreement" I do not think that he is right. As to this the learned judge said "Whether the two Trust Deeds are properly to be regarded as 'an agreement' or whether they ought to be treated as entirely separate and distinct, they are clearly 'subsisting'". With respect, so also is the Deed of Arrangement in that it contains covenants by the Wife of a continuing nature as, for example, to bring the child up in the Roman Catholic faith. In my view, the learned judge was wrong to accept Mr. French's argument that the Deed of Arrangement was no longer subsisting. That Deed, covenanting as it does for financial arrangements for the Wife and containing covenants of a continuing nature by the Wife, is itself a subsisting maintenance agreement capable of variation and it is untainted by the subscription of any third party - a feature of the Deed in Young v. Young (26) which resulted in its being held not to constitute a maintenance agreement.

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A further pointer to the continued existence of a subsisting maintenance agreement is to be found in the fact that the consent order made by Briggs, J. on 23rd May, 1970 contained liberty to either party to apply in respect of (inter alia) "any matter relating to the implementation of the said Deed of Arrangement or of the said Trust Deeds". All the Deeds are very much alive and it would be perfectly possible, for example, for the Husband to apply to the Court in respect of the Wife's alleged failure to bring the child up in the Roman Catholic faith. Other possible applications relating to either Trust Deed (A) or Trust Deed (B) can easily be envisaged.

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In connection with a possible application to vary the agreement under section 15 of the Matrimonial Proceedings and Property Ordinance, certain technical defects were explored in the court below. It was said that r.100 of the Matrimonial Causes Rules requires that a claim under section 15 should be made by an originating summons and that, since the present claim was made by a judge's summons it was defective. The learned judge regarded this defect as readily curable having regard to r.3

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(26) 117 Sol.J. 204

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of the Matrimonial Causes Rules, O.2. r.1 of the Rules of the Supreme Court and s.9(g) of the Supreme Court Ordinance. Again the application was not in the form prescribed, that is to say that it was not on Form 16 and the application had not stated the variation which the Wife sought to have made in the Deeds but had merely said that she asked the Court to make such variations as it thought fit. These again were matters which the learned judge seemed to regard as of little consequence but he was impressed by the argument that any application for variation should have been started in the District Court.

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As to this Mr. Jackson, in a somewhat convoluted argument which had reference to sections 12 and 33 of the Supreme Court Ordinance and to sections 20(3) and 45 of the Courts Act 1971, sought to demonstrate that the High Court had jurisdiction. To my mind he succeeded but, if even the application should be resumed, I would leave it to the judge hearing the application to decide whether or not he would proceed or whether he would require the defects to which I have earlier referred, to be cured by an application in more orthodox form. In reaching any such decision the judge would, no doubt, be alive to the probability that any application commenced in the District Court would almost certainly be the subject of eventual transfer to the High Court.

A further point taken by Mr. French in the court below was as to the residence of the Wife. It is a prerequisite to an application for variation under section 15 that each of the parties be, for the time being, either resident or domiciled in Hong Kong. In this connection there is no difficulty in regard to the Husband but the Wife is not normally either resident or domiciled in Hong Kong - indeed it was a term of the agreement between them and that she should reside in either the United Kingdom or the Federal Republic of Germany. When the summons was amended on 21/1/76 to include the application under section 15, she prefaced her affidavit in support by describing herself as "for the time being resident in Hong Kong and now residing at the Hilton Hotel." Here the learned judge appears to have applied the limitation "for the time being" to residence with the same

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severity as to domicile saying "there is inevitably some degree of permanence involved in domicile and when residence and domicile are being considered as alternative qualifications it is not unreasonable to regard the same element of permanence as involved in both". For this reason he considered that the objection to jurisdiction should have been upheld on the ground that the length of the Wife's intended stay in the Colony was not known. With respect I am unable to agree. Residence is a far more ephemeral state than is domicile and in the particular circumstances of this case the Wife could not be in any sense ordinarily resident in Hong Kong for she had contracted to live in the United Kingdom or in the Federal Republic of Germany. Any residence was necessarily of a temporary nature for the purpose of these proceedings and such residence was, in my view, adequate to satisfy the requirement of the section.

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Mr. French took the further point that the Wife's affidavit was deficient as to residence in that it did not depose to her residence as required by r.100 of the Matrimonial Causes Rules and Form 16 thereto. Counsel's point as I understand it was that even if the irregularity of the absence of any Form 16 was waived or cured, the preface as to residence which I have recited above, immediately preceded the words "make oath and say as follows" so that the Wife could not be said to have sworn as to her residence. Whilst fully appreciating the point Mr. French makes, I consider the juxtaposition of words of which he complains to be so insignificant as to rob his point of any merit.

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I turn now to the allegation of mistake. I agree with the learned judge that the order dismissing the prayers for financial provision was an interlocutory order; that on the basis of Guerrara v. Guerrara (26) and I agree also with the learned judge's belated recognition of the fact that the Wife had grounds for attacking the consent order, upon her own account, on the basis of mistake - and that for the reasons acknowledged by the judge. Upon this point there is a cross-appeal.

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The learned judge however did not consider

(26) (1974) 1 W.L.R. 1542

10 that the consent order could be attacked on the same basis in relation to the provision made for the child, and here I would, with respect, differ from him. On the basis of the Wife's uncontested affidavit, she was given to understand by her solicitors that the child's maintenance would be provided for "down to the last aspirin". It emerges however from her affidavit that nothing has been paid to or for the benefit of the child for more than six years and, from Trust Deed (A), that there is no obligation upon the Trustees to pay any income to or for the benefit of the child until he becomes 25 years of age, even assuming that in the meantime the income has not been paid over to the Husband settlor. It is only necessary to pose the rhetorical question: would the Wife have signed the Deed of Arrangement had she been aware that this was the theoretical position, a position which has been translated into fact up to the present time, to be aware that here was mistake of the most vivid and elementary type. It appears to be agreed on behalf of the Wife that the sum of half a million dollars set aside for the child is in itself an adequate sum but what is attacked is the absolute discretion of the Trustees to withhold the income thereof and in my view the consent order can be assailed upon that ground, the learned judge being in error when he said

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"I am satisfied that there are ample powers in the Trustees and in the Court to ensure the proper maintenance of the child and there is no mistake alleged which could be proved and which could justify varying the order in so far as it affects the child."

40 It is entirely true that there are ample powers vested in the Trustees to ensure the proper maintenance of the child but it is equally true that there is no obligation whatsoever upon them so to act and in the light of the absolute discretion given to the Trustees the suggestion that there are ample powers in the Court to ensure the proper maintenance of the child is fallacious. Howard v. Howard (27). In my view the Wife's affidavit amply demonstrates that her subscription to the Deed of Arrangement was the product of mistake as to the true interpretation and possible effect of Trust Deed (A).

50 (27) (1945) P.1

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Mr. French defends the wide discretionary provisions of that Deed on the ground that there may be, in the background, some shadowy rich uncle, aunt, or godparent so benevolently inclined towards the child - to the exclusion or partial exclusion of other nephews, nieces or godchildren - as to render maintenance or advancement from the trust fund superfluous. Such a person there may be, though there is not the slightest evidence to that effect: but we are here concerned not with a testator who cannot foresee the date of his demise or the circumstances then or later obtaining, but with a father, providing, or purporting to provide, for the child of his marriage after dissolution of that state. Such a man is living in the present, aware of day-to-day conditions and it is for him realistically to provide for the child rather than to leave that child at the whim of trustees whose discretion is so wide that they are under no obligation to provide a penny towards maintenance until the child reaches the age 25. If the proof of the pudding be in the eating, the child's financial history at the hands of the Trustees provides that proof. Apart from a few desultory reimbursements to the Wife of expenses incurred on behalf of the child in the early days of the divorce, the child has received not a penny from the Trustees for years. This is far removed from the assurance of the Wife's solicitor to her that the child's expenses would be met from the trust fund "down to the last aspirin". Years ago an offer, which even the Husband's counsel described as insufficient, was made in the sum of HK\$250 p.m., that sum to be over and above the cost of educational and medical expenses. The Wife rejected this offer, a reaction which Mr. French describes as "childish". Others might regard it as being not without an element of dignity and a rightful repudiation of an offer not within the spirit, if strictly within the letter of the Trust Deed.

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To my mind that history - all within the framework of the Trust Deed - demonstrates the inadequacy of the Deed as a provision for the child. But it is not with inadequacy per se that I am here concerned but with the mistake of the Wife, induced by her professional advisers, as to the true content and effect of the Deed.

There is however one very objectionable

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inherent feature of Trust Deed (A) which, to my mind, should not have received the blessing of the Court and that is contained in Clause 9 thereof. In construing that clause it must be borne in mind that nowhere in the Deed is there any actual obligation placed upon the Trustees to pay income for the maintenance, advancement or benefit of the child that matter being left to the discretion of the Trustees. Clause 9 reads in part:

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10           "9. In paying or applying income to or for the use of the Child or any Children of the Child as aforesaid, the Trustees, with absolute discretion, may pay the same to either parent of the Child ... Any payment or application of income or capital so made by the Trustees shall be and constitute a full and complete discharge to the Trustees in respect thereof and the Trustees shall not be required to see to the application thereof nor to obtain any further receipt or accounting therefor."

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Whether the potential effect of this clause was appreciated or whether the clause was inserted as a result of a too slavish adherence to a precedent, I do not know. Its effect however is to give the Trustees an absolute discretion to pay income from the trust fund to (inter alia) the Husband. But the Husband is the settlor. It is thus possible for the Trustees to stultify the trust as to income by

30           permitting the very settlor to use the trust fund as his private investment. Indeed, the final sentence of the clause refers also to the application of capital in this manner and whilst it may be argued that that reference over-reaches the discretion given in the early part of the clause, a possible interpretation is that the trust could be stultified as to both income and capital.

No doubt it can be argued that the Bank Trustee would never agree to any proposal by the Husband, the other trustee, so to apply either income or capital to him and that in the event of the Bank Trustee's refusal so to act, its decision in the matter would be binding under Clause 8 of the Deed. The fact remains, however that the Bank Trustee is given an absolute discretion in the matter and if it did so agree to pay either income or capital to the Husband, neither Trustee being required to see to the application thereof, the child

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would be defenceless in the light of an absolute discretion. (Howard v. Howard (27) and Dundee General Hospital v. Walker (28) ).

If it be argued that Clause 4(d) imposes upon the Trustees the obligation to accumulate the income of the trust fund and to hold such accumulation as an accretion to capital, subsequently paying it to the child under Clause 4(e) upon his obtaining the age of 25 years, it can be answered that in the light of Clause 9 there is nothing to prevent the Trustees saying to the child when that time comes: "There is no income; we have paid it to your father in our absolute discretion and we are under no obligation to see to the application thereof."

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In my view Clause 9 is a highly objectionable clause which should never have been approved by the Court and the Wife is now entitled to attack it.

Quite apart from any question of Clause 9 or of mistake, however, the Wife is entitled to ask the Court to review the arrangements made on behalf of the child since, under section 5(5) of the Matrimonial Proceedings and Property Ordinance, the power to make an order involving financial provision for a child of a family may be exercised "from time to time". There is no ambiguity about that phrase and any agreement purporting to restrict the child to one application and one only, falls foul of section 14(1) and is void. As to this, the learned judge's comments as to convenience do not persuade me otherwise.

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As to whether or not the Wife is entitled to seek more than one lump sum, I am not persuaded that the decision in Coleman v. Coleman (17) was wrong but if it be correct that the Wife can come to the Court for an order under section 6 of the Matrimonial Proceedings and Property Ordinance (Cap.192) that question may be academic since "property" includes money. (Interpretation and General Clauses Ordinance, (Cap.1) s.3)

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There remains the Wife's allegations of non-disclosure and actual misrepresentation by the Husband of his financial position just prior to the dissolution of the marriage. She deposes that she was advised by her solicitor and counsel in about August, 1969 that she had reasonable grounds for expecting a settlement of some

(17) (1973) FAM.10  
(27) (1945) P.1  
(28) (1952) 1 All E.R.896 274.



10 H.K. \$1.5 million for herself and \$2,000,000 for the child but that during November and December, 1969 her solicitors communicated to her an offer of \$750,000 for herself and \$500,000 to or for the benefit of the child together with the provision of a furnished house for both, an offer which she rejected. During the same months she was visited by the Husband on several occasions when he represented that he was in circumstances of acute financial difficulty and embarrassment and referred to certain contingent liabilities regarding a venture in Alaska which had collapsed. At this point the Wife alleges the Husband stated that if she did not accept the offer which she had already rejected she ran the risk of getting nothing.

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20 In about the middle of December, 1969 the offer of \$750,000 for the Wife was increased to one of \$850,000, the offer in respect of the child and the provision of a furnished home remaining unaltered. It is the Wife's evidence that having regard to what the Husband had represented to her regarding his financial position and to her solicitor's statement that the Husband was not as wealthy as had been supposed, she accepted the terms then proposed. It is her complaint that her solicitors made no independent enquiries into the Husband's financial resources or means. She exhibits to  
30 her affidavit the result of enquiries subsequently made by a mercantile agent in Sydney, Australia as to the directorships and shareholdings of the Husband in Australia and, whilst the particulars given in the agent's report do not establish the precise financial position of the Husband, they may be said to suggest a degree of wealth which may not be commensurate with his protestations in 1969.

40 There being no affidavit by the Husband in clarification of these holdings and there being a firm allegation by the Wife that she was misled by the Husband as to his financial position and would not have signed the deeds had the true position been known to her, it seems to me that it is now open to her to come to the Court on the basis of alleged misrepresentation by the Husband as to his finances.

The Wife further complains that she was

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misled by her advisers into believing that her tax liability in England would amount to some 25%-30% of her income whereas in fact it proved to be approximately 50% and that she had been similarly misled into the belief that it would be possible to find a house of the type stipulated in the Trust Deed for the equivalent of HK\$400,000 which proved not to be the case.

I would allow the appeal, dismiss the cross-appeal and remit the amended summons to the judge to be dealt with upon its merits. To that there is one qualification. The first prayer of the amended summons asked for an order setting aside or varying the consent order of the 23rd May, 1970. The 10th prayer asked for an order varying or revoking the financial arrangements contained in the Deed of Arrangement and the two Trust Deeds. In my view too much time has elapsed and too much water has passed under the bridge for it to be appropriate to set aside the order of the 23rd May, 1970 or to revoke the financial arrangements contained in the Deed of Arrangement and the two Trust Deeds. Accordingly I would remit the matter as though the words "setting aside" in the first prayer and the word "revoking" in the 10th prayer were deleted. The appellant is entitled to her costs here and in the court below. There will be a certificate for two counsel. Liberty to either side to apply.

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Joseph Jackson, Q.C., Nicholas Wall and B. Downey (Hampton, Winter and Glynn) for appellant.

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Christopher French, Q.C., Charles Ching, Q.C. and D. Chang (A. Tsang & Co.) for respondent.

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JUDGMENT OF McMULLIN J.A.

1976, No. 6

Coram: Pickering, J.A., McMullin and Leonard, JJ.

J U D G M E N T

McMullin, J.:

10 The wife in this case succeeded in her  
petition for divorce. It was the second petition  
presented by her in the case. The first of these  
petitions was presented in November 1969, upon  
several grounds which included the attribution of  
disgraceful conduct to her husband. Between that  
date and the date of presentation of the second  
petition in January of 1970 the parties, with the  
assistance of their legal advisers, had come to  
certain arrangements. Accordingly application  
was made to obtain the court's approval of these  
arrangements under the then existing rule which  
has since been replaced by Rule 6 of the  
Matrimonial Causes Rules of 1972. This  
application was heard, together with an ex parte  
application for leave to file a further petition,  
by Briggs, J. (as he then was) on the 16th of  
January 1970. Upon that day leave was given to  
file a further petition and, in the same ruling,  
20 the learned judge granted leave to implement the  
proposed agreement which comprised a deed of  
arrangement securing a lump sum payment of  
\$850,000 to the wife in final settlement of all  
the wife's financial claims upon the husband and  
which in addition proposed the establishment of  
two trusts, one for the benefit of the petitioner  
and the child of the marriage and one for the  
benefit of the child of the marriage. Pursuant  
to that order of the 16th of January a second  
30 petition was filed by the wife on the sole ground  
of the husband's adultery. This was set down for  
hearing in April as an undefended cause for  
dissolution of marriage and prior to that, on the  
25th of March, the first petition was dismissed  
by Briggs, J. A decree nisi was granted on the  
23rd of May 1970 upon oral evidence of the wife in  
support of her petition, her husband not defending.  
Immediately thereafter Briggs, J. adjourned the  
matter into chambers where after hearing counsel  
40 in support he made a consent order which included  
a number of consequential provisions relating to  
the custody of the child and which also included  
the provisions which are the bedrock of the  
dispute in the present appeal. These are in the  
following terms:

50 "5. Pursuant to the provisions of Section  
15 of the Matrimonial Causes Ordinance and  
of Rule 2A of the Matrimonial Causes Rules  
1968 the Deed of Arrangement dated the 22nd  
day of May 1970 made between the parties

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and submitted to this Court and exhibited  
to the said joint affidavit and marked  
'TM-1' be approved.

6. Upon the Respondent paying to the  
Petitioner the sum referred to in the said  
Deed of Arrangement and upon the Trust Deeds  
annexed thereto coming into force and upon  
the Respondent paying the amounts payable  
thereunder, the Petitioner's applications  
for maintenance, a lump sum payment, and  
secured provisions for the said child and  
for herself be dismissed".

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Subsequently the wife became dissatisfied with  
the terms of the deed of arrangement and the trust  
deeds which constituted the whole of the financial  
provision for herself and the child of the marriage.  
On the 1st August 1975 she applied to the court by  
summons for a number of different kinds of relief  
under sections 4, 5 and 6 of the Matrimonial  
Proceedings and Property Ordinance Cap. 192. On  
the 23rd of January 1976 the matter was heard  
before Huggins, J. in chambers. The parties were  
represented as they have been upon the hearing of  
this appeal, Mr. Jackson appearing for the wife and  
Mr. French for the husband. A number of points were  
taken on behalf of the husband by way of objection  
to the proceedings all of which, somewhat further  
elaborated and amplified, have been put before us  
on the hearing of this appeal. In an oral ruling  
given immediately after the hearing Huggins, J.  
dismissed the application for ancillary and other  
relief basing himself principally upon the ground  
that he was without jurisdiction to hear such an  
application following upon the dismissal by  
consent of the claim for ancillary relief at the  
time of granting the decree. He found that the  
application was incompetent under the law as it  
stands in Hong Kong. Subsequently on reducing  
his reasons to writing, in an extensive ruling  
dated 14th February 1976, he intimated that he  
believed he had been in error as to one aspect  
of his oral ruling and that, as later advised,  
he would have been prepared to hold that he had  
the jurisdiction to deal with the application of  
the wife upon one of the grounds advanced in  
her regard viz.: that her consent to the  
financial arrangements made for herself and the  
child of the marriage were due to mistake upon  
her part and misrepresentation upon that of her  
husband. The learned judge took the view that

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10 the matter before him was of the nature of an interlocutory application in respect of which there was inherent power to intervene for the purpose of correcting any order made as a result of mistake or misrepresentation. The husband, the respondent in the present appeal, while seeking to uphold the order of Huggins, J. of the 23rd of January 1976 takes issue by way of cross-appeal with this latter finding of the judge and he asks us to say that the principal reason given by the judge in finding himself without jurisdiction in respect of both the mother and the child of the marriage is valid and ought to be sustained. That reason is to be found in the English decision in the case of L. v. L.(1), a decision of two judges of the Court of Appeal in which it was held that the judge in the court below had no jurisdiction to entertain a fresh claim made by a wife for maintenance following upon the dismissal of her application for maintenance, pursuant to an agreement between herself and her husband that her application should be dismissed upon certain terms including the payment to her of a lump sum of £600.

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50 In his helpful summary of the points in issue, following the sequence of them in his opponent's argument, Mr. French enumerated some eight propositions arising therefrom. I think, however, that those propositions may, for convenience and clarity, be reduced to five. These are as follows: (1) The consent order dismissing the claim for maintenance does not in law bar the wife from returning to the court for further financial provision. Three separate matters are subsumed under this contention; firstly, it is said that the decision in L. v. L. (1) was (a) per incuriam and (b) wrong in law; secondly, if that case was rightly decided it is not in any event binding upon the court in this territory and ought not to be followed as a matter of principle; thirdly, even if rightly decided, and if applicable and applied to the case of the wife it does not apply to the case of the child. Associated with this first proposition, although it was argued quite separately and was in fact the last of Mr. French's eight propositions, is the contention that Coleman v. Coleman (2) was also wrongly decided. In that case Sir George Baker P. held that the court had no jurisdiction to

(1) (1962) Probate Division 101  
(2) (1976) 2 W.L.R. 397

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entertain a wife's application for a further lump sum under section 2(1)(c) of the Matrimonial Proceedings and Property Act 1970 subsequent to an order whereby she had been awarded a lump sum after the granting of the decree of divorce.

Secondly, it was said that the order of the judge may be impugned on the ground that the materials put before him were insufficient in themselves, and insufficiently explored in the time available, to warrant his making the order of dismissal contingent upon the implementing of an agreement which, it was said, was in its nature wholly unjust to the wife and child. Thirdly, the order could be impugned on the basis of mistake or misrepresentation vitiating the agreement itself by reason of inadequate or incompetent professional advice and misrepresentation on the part of the husband. Fourthly, that, in any event, section 6 of the Matrimonial Proceedings and Property Ordinance provided a remedy by way of transfer of property which was not available at the time of the consent order and that the wife was entitled now to avail herself of those provisions. The authority relied upon in respect of that contention was Chaterjee v. Chaterjee(3) in which the Court of Appeal in England considering legislation in terms similar to section 6 of the Ordinance, held that its provisions were retrospective and that they enabled a wife who, in 1959 had obtained an order for maintenance in her favour following upon a decree of divorce, to apply to the court in 1974 for a transfer of property order although such order could not have been made at the time when she had obtained the order for maintenance. Fifthly, and alternatively to all the foregoing, the wife in this case was entitled to apply to the court under section 15 of the Matrimonial Proceedings and Property Ordinance which gives power to the court to vary a subsisting maintenance agreement.

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In considering the first of these propositions it is helpful, for the avoidance of confusion, to bear in mind that the position of the wife is significantly different from that of the child under the existing legislation. The distinction is of importance in relation to the bearing, if any, which the decision in L. v. L.(1) and Coleman v. Coleman (2) may have upon the case of the child.

- (1) (1962) Probate Division 101  
(2) (1973) L.R. Fam. Div.10  
(3) (1976) 2 W.L.R. 397

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Section 5 dealing with a financial provision for the child concludes with a provision which is absent from section 4 which deals with financial provision for the parties to the marriage. It is in the following terms :-

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10           "(5) While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time; and where the court makes an order by virtue of subsection (1)(b) in relation to a child it may from time to time make a further order under this section in relation to him."

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20           The power to make orders from "time to time" in respect of children was to be found also in section 26 of the Matrimonial Causes Act 1950, and in L. v. L. (1), Willmer, L.J. contrasts those words with the words which he was concerned to construe and which are for practical purposes identical with the words in our sections 4(1) and 5(1) viz.: before or on granting the decree of divorce ... or at any time thereafter". He held that while an order made under the former provision was a final or "once-for-all" order but he implied that the same was not the case where an order had been made or dismissed under the latter provision.

30           There is no doubt that the English case law on this matter, which has been canvassed exhaustively before us, presents a somewhat puzzling picture and I have considerable sympathy with Pickering, J.A. as to what he regards as a condition of total disarray. In the end, however, and notwithstanding some obvious discordance, I am not persuaded either that L. v. L.(1) was decided per incuriam or that it is wrong in principle. I think it is conceded that right or wrong, that case says two very plain and very important things. These conclusions may both be found in the judgment of Willmer, L.J. with which the other judge,  
40           Davies, L.J. agreed. First, he said, once an application for maintenance has been dismissed by the court, jurisdiction does not exist to entertain a fresh application. The change in the formula from: "on any decree" in the prior legislation to "on pronouncing such a decree ... or at any time thereafter" did not admit of the presentation of multiple applications but merely

(1) (1962) Probate Divison 101

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extended the time for making a single application. If that proposition is correct, and is applicable to the present case, clearly it would apply only to the case of the wife and not to that of the child. But, secondly, the learned judge went on to deal with the question which arose in that case, as it does in the present, the question whether the agreement made between husband and wife in consideration of which she had consented to have her application for maintenance dismissed had any force in law. Since the passage in which he deals with this question conveniently summarises the position argued for here both in relation to the wife and to the child I will quote that passage in extenso. What the learned judge said appears on page 118 and is as follows :-

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" This is enough to dispose of the appeal; but in case I am wrong, and in deference to the argument which have been presented to us, I think it right to express my views as briefly as possible with regard to the other points that have been argued. It is, of course, well established that the jurisdiction of the court to award maintenance to a wife cannot be ousted by any private agreement between the parties: see Bennett v. Bennett following Hyman v. Hyman. Such an agreement is unenforceable against the wife as being contrary to public policy. But it is otherwise when the agreement is brought before the court and an order of the court is made giving effect to its terms. Such an order was made in Mills v. Mills, where by consent the wife's claim for maintenance was dismissed on payment by the husband of an agreed lump sum. The principle involved was succinctly stated by Denning L.J. in Bennett v. Bennett as follows:

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'If the parties do not oust the jurisdiction of the Divorce Court, but preserve it by making their agreement subject to the sanction of the court, then, once it is sanctioned, it is valid.' A little later he continued: 'Its sanction should, I think, be obtained in this way if the parties agree on a figure for maintenance, the court should be asked to make an order for that figure; if they agree on a secured provision, the court

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10 should be asked to approve the deed which contains the provision: if they agree on a lump sum in composition of maintenance the court should be asked to dismiss an application for maintenance or to discharge the existing order, as the case may be (Mills v. Mills); but it would, I think, be entitled to refuse to do so if it did not think it proper to permit the composition.' To the same effect was the observation of Jenkins L.J. in Russell v. Russell: 'The principle in Hyman v. Hyman, be it remembered, is satisfied by any bargain which is brought before the court for approval and approved by the court.'

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20 Here the agreement between the parties was brought before the court, was sanctioned by the court, and became the subject of an order of the court whereby the wife's claim for maintenance was dismissed. The principle of Hyman v. Hyman does not, therefore, apply, and in these circumstances I confess I find it difficult to see why the wife should not be held to her agreement. If the agreement is binding on her, it seems to me that her present attempt to claim maintenance for a second time constitutes a clear breach of it. I am not impressed by the argument of Mr. Comyn that the sanction of the court for such an agreement is not properly obtained unless there is a full investigation by the court of all the circumstances, with affidavits of means filed on both sides. We are dealing here with a case in which both parties were competently advised by solicitors, one of whom was present on the hearing of the summons. The summons was heard by an experienced registrar and it is to be presumed that he did not make the order giving effect to the terms of the agreement without satisfying himself that it was proper in all the circumstances to do so. I do not think it is right, therefore, to dismiss the making of the consent order as a mere formality equivalent (to use Mr. Comyn's phrase) to no more than putting a rubber stamp on the agreement of the parties. It seems to me that everything necessary to be done to give binding effect to the agreement was done in this case. The wife, therefore,

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is in my judgment, precluded by the  
agreement from making this second attempt  
to obtain an order for maintenance against  
her husband.."

In support of his contention that this decision  
was, first of all, per incuriam Mr. Jackson  
referred us to the decision in Barnard v. Barnard  
a decision of the Court of Appeal in May 1961 a  
very brief note of which appears at page 441 of  
Vol. 105 of Sol. Journal. In that case, upon the  
granting of a decree nisi; the court made what  
amounted to a nominal order against the husband by  
way of maintenance. He was to pay ls. per year.  
He appealed against that order and Ormrod, L.J.  
pointed out that the introduction of the words  
"on pronouncing a decree nisi for divorce or  
nullity of marriage or at any time thereafter" had  
the effect that a nominal order for maintenance no  
longer served any useful purpose. Notwithstanding  
that finding, he nevertheless dismissed the motion.  
This decision was not brought to the attention of  
the court in L. v. L.(1) which was decided only a  
few months later. For my part I doubt if it would  
have been much assistance unless the court in L.  
v. L. could have been supplied with a report which  
carried the matter a little further. All that this  
brief note seems to say is that a wife's right to  
claim maintenance no longer requires a nominal  
order to keep it alive in view of the altered  
wording of the section. No one is now concerned  
to deny that. The note certainly does not record  
the learned judge as saying that, if dismissed,  
the wife may apply again and, as I have observed,  
although the order is said to serve no useful  
purpose it was not, in the event, discharged. On  
the other hands in Burton v. Burton and Gibbons(4)  
and in R. v. R. (5) judges in the Divisional  
Court, subsequent to the decision in L. v. L.,(1)  
are recorded as giving opinions which favour the  
appellant's view here. In the former case Ormrod,  
L.J. refused to make a consent order dismissing a  
wife's application for maintenance saying that  
even if he dismissed it the dismissal would not  
be effective. In the latter case, Karminski, J.  
was in favour of the wife's agreement to have a  
claim for maintenance dismissed and he made the  
consent order sought but added that there was  
nothing in the wife's conduct which should  
preclude her from applying for maintenance

(1) (1962) Probate Divisional 101

(4) (1964) 108 Sol.J. 584

(5) (1967) 111 Sol. J. 926

thereafter. Once again we have no note either of the argument or of the reasoning which led up to these conclusions. Indeed, it might be said, thus far, that insofar as the question of decision per incuriam was involved in any of these cases the absence of any mention of the decision in L. v. L.(1) in the two last quoted, assuming them to have been directly contrary to that decision, is rather more remarkable than the absence of any mention of Barnard v. Barnard (6) by the court in L. v. L.(1) itself. When one sets the quality of the reports in all these three cases against that in L. v. L.(1) Mr. Jackson's suggestion that the judgment in the latter case suffers an additional dilution in authority for not having been, in the proper sense, a reserved judgment seems difficult to sustain. To judge by the brevity of the notes of the decisions in the Solicitors Journal cases it seems very clear that the judges involved in those cases did not take time for consideration. By contrast, in L. v. L.(1) the appellate court did adjourn for the purposes of decision for two days (over a weekend) and reasoned judgments were delivered setting out in some detail the arguments on the cases cited and the principles considered and adopted.

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Mr. Jackson however also relies upon the decision in M. v. M.(7) a decision of Sir Jocelyn Simon P. which was not only carefully prepared but was one of a number of cases specially selected and dealt with together for the purpose of giving instruction to practitioners as to the principles and practice prevailing in the divorce jurisdiction. Having referred to section 4 of the Matrimonial Causes Act of 1963, which provided machinery for the bringing of arrangements and agreements, whether collusive or not, relating to matters in contention in matrimonial disputes before the court for its consideration, he went on to advise as to his practice in dealing with applications under section 5(2) of that Act, under which the court derives its power to take such agreements and arrangements into consideration and to give directions thereon (a provision similar in terms to section 18(B) paragraph (c) of the Ordinance). In relation to that he said as follows:

- (1) (1962) Probate Divisional 101
- (6) (1961) 105 Sol.J. 441
- (7) (1967) L.R. Probate Div. 313

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"Thirdly, as to provisions for a wife's maintenance. Where the result of the agreement or arrangement is likely to be the grant of a decree to a wife, I do not, in other than quite exceptional circumstances, sanction a term providing for the dismissal for all time of a wife's claim to maintenance. When I do dismiss a wife's claim for maintenance it is intended as an indication to a judge dealing subsequently with an application by the wife for leave to make a claim for maintenance out of time or to a registrar dealing subsequently with a wife's claim for maintenance that I have been satisfied either that the wife's conduct has been such that it would be unjust that her husband should be ordered to provide maintenance for her or that her support has been adequately and reasonably provided for in some other way. Even so, the tribunal dealing with the matter subsequently is not concluded by my order : it is intended as no more than an indication of the view I have come to on the material before me. Again with the aim of giving some guidance to the registrar, where I have sufficient material before me to indicate that the wife would be entitled to substantial maintenance were it not for her own actual or potential income at the time, I make a nominal order in her favour. Where I have insufficient evidence before me, whether going to conduct or means, to be able to form any view as to what extent the wife should be maintained by the husband, my order is silent as to maintenance: this, once more, is intended as no more than an indication to the registrar that I have had insufficient material to come to a concluded view on the matter and it does not preclude the wife from subsequently claiming maintenance."

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Both sides in the present case have claimed support from this passage. But I must observe that in order to avoid the clear implication of the opening few sentences i.e. that case may arise justifying the dismissal of a wife's claim for all time - Mr. Jackson was constrained to supply a gloss or key to the true meaning of the learned President's words. He says in effect that

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the passage contains a kind of code to indicate to any registrar or to any judge who may later be dealing with the case what his views were of the merits of the application before him. No doubt that is so. The proceedings before the judge upon such applications are presumably of a preliminary character and precede the granting of the actual decree. I find the phrase "when I do dismiss a wife's claim for maintenance" a little puzzling in that context, but I assume it refers back to the previous sentence and that what the learned President is saying is that when he sanctions an agreement containing a term providing for dismissal of the wife's claim for all time this is as an indication to the judge or registrar subsequently dealing with the case that it was one which he, on the material before him, considered proper. Mr. Jackson points to what is said by the learned President in reference to M. v. M. (No. 2) (7) at the top of page 324 in the same report and he says that that is an illustration of the President's code in action. What the President there said was:

"Moreover, it seemed to me to be one of those exceptional cases where it would be wrong to demur to the wife, in consideration of the other ample provision made for her, covenanting to abandon any further claim to maintenance."

To my mind however this explanation does nothing to dispose of Mr. French's contention that the importance of that decision lies, for present purposes, principally in the fact that the President of the Probate, Divorce and Admiralty Division of the High Court was apparently of the view that cases would occur when it was proper for a wife to divest herself finally of all future rights to further orders of maintenance through the invocation of the courts.

The shortcomings of the decision in L. v. L. (1) were said also to include the fact that certain decisions of the Australian courts had not been drawn to the attention of Willmer and Davies, L.JJ. and that moreover, their attention had not been drawn to the provisions of section 1 of the Maintenance Agreements Act of 1957 (corresponding in terms closely with section 14 of the Matrimonial

(1) (1962) Probate Division 101  
(7) (1967) L.R. Probate Div. 313

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Proceedings and Property Ordinance) which rendered void any provision in an agreement purporting to restrict the right to apply to a court for an order containing financial arrangements. I shall return to the Australian cases later for I think they are best considered in relation to Mr. Jackson's submissions on the value of persuasive precedents even assuming that L. v. L. (1) was rightly decided. As to the statute, however I think, with Mr. French, that it is very unlikely that that very experienced bench could have overlooked the fact that there were such provisions, more especially as the judgment of the court below made specific reference to the Act of 1957, admittedly in passing and without discussion of its terms either by counsel or the judge at first instance. It is far more likely, to my mind, that both of the learned judges of appeal were well aware of the nature of these provisions but that they did not regard them as undercutting the principle which they were disposed to express.

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I turn now to the other aspect of the picture : the subsequent history of L. v. L. (1) in the English courts. Among the cases to which we have been referred there are firstly those cases in which L. v. L. (1) has been specifically mentioned. In Wilkins v. Wilkins (8) a husband had succeeded in obtaining from the registrar an order varying the terms of a prior consent order for payment of maintenance which the husband professed to have been too onerous. On appeal from that decision, Baker, J. set aside the order of the registrar and allowed the appeal upon a ground which is of considerable importance in relation to a later point in the present case. What he said, in effect, was that the husband's objection, based as it was upon the ground of mistake and misunderstanding on his part of the effect of the original order, was one that could only be taken upon appeal from that order. Mr. Jackson points out, correctly that Wilkins v. Wilkins (8) is not a direct authority for the proposition that the dismissal by consent of an application for maintenance bars any further claim in that behalf. The fact remains that L. v. L. (1) is among the authorities enlisted by Baker, J. to support his view of the effect of the consent order. It seems unlikely that he would have done so if, by 1969, it was already

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(1) (1962) Probate Div. 101

(8) (1969) 2 All E.R.463

widely accepted on the Bench and at the Bar that L. v. L. (1) was dubious law. It is noteworthy that in Wilkins v. Wilkins (8) the learned judge made reference to an earlier case (although not one cited before us) which presents a clearer instance of the ratio in L. v. L. (1) having been approved by a subsequent decision. That was the case of Re Minter (deceased) (9). In that case there had been a consent order discharging a previous maintenance order made in favour of the wife. The husband having paid her £12,000 she undertook to make no further claim against him or his estate. After her husband's death the wife applied under section 26 of the Matrimonial Causes Act 1965 for reasonable provision basing her application on the ground of fraudulent concealment of assets by her husband at the time of the compromise. Stirling, J. found that even if the order reciting the compromise in 1964, upon the dismissal of the maintenance application, recorded an agreement by the parties including a covenant to make no claim against the estate yet the wife was not barred from making such an application because the provisions of subsection 4 of that section impose an express statutory obligation upon the court to have regard to any order of the court dismissing an application for maintenance in deciding whether to make an order for maintenance out of the estate of a deceased person. He took the view that it was the intention of the Legislature in this provision that the court should not lose ultimate control of an application under section 26 and that the original order of dismissal was something that should go to the merits but should not be treated as affecting jurisdiction. Such considerations of course do not arise in the present case, but what is of interest is that Stirling J. on the way to reaching his conclusion on the meaning of section 26 considered whether the wife in his case should be barred from approaching the courts by a parity of reasoning with the decision in L. v. L. (1). Summarising his understanding of the decision in L. v. L. (1) he says on page 415:

"The court accepted that the law hitherto had been, and that consequently it remained, that the court had no jurisdiction, once a claim for maintenance has been dismissed, to entertain a second application. I mention this last point

- (1) (1962) Probate Div. 101  
(8) (1969) 2 All E.R. 463  
(9) (1969) 3 All E.R. 412

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merely to distinguish a second application for maintenance from an application under section 26 of the Matrimonial Causes Act 1965."

In Powys v. Powys (10) Brandon, J. was primarily concerned with the question whether the legislative provisions introduced in 1963 and 1970 giving the court for the first time power to make respectively lump sum orders and transfer of property orders were retrospective in their nature and thus capable of invocation by a wife who sought variation of maintenance orders made in 1962. At page 351 the learned judge said:

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" I thought at once time that the principle laid down in L. v. L. (1962) P. 101 that the court had no power to entertain more than one original application for maintenance, might apply so as to prevent the court from entertaining an original application for a lump sum order after it had once entertained and adjudicated upon an original application for a periodical payment order or a secured provision order or both. On this view financial provision would be treated as a composite matter, and, if a wife desired to have two or all of the three kinds of order potentially available, her application for them would have to be made at the same time in one single application, and not by successive original applications for different kinds of financial provision at different times. Having considered the decision in L. v. L. carefully, however, I do not think that it should be interpreted as having so wide an effect. It does certainly decide that, once one original application for a particular kind of financial provision had been made and adjudicated upon, the court cannot entertain another original application for the same kind of financial provision. But it does not decide that, in such a case, the court cannot entertain an original application for a different kind of financial provision. It may well be that, in many cases, the court would not in practice make an order on such further application; but that is not the same as saying that it would have no power to do so."

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(10) (1970) L.R. Probate Div. 340



10 Of this Mr. Jackson says that it is of the nature of obiter. I think the same comment would fairly describe the attitude of counsel to the brief mention of L. v. L.(1) in Chaterjee v. Chaterjee (3) a case which is later to be considered in another connection. In that case once again the retroactive effect of the legislation was in question. The court in Chaterjee v. Chaterjee (3) was not considering the effect of the dismissal of an application for maintenance. The court was concerned with the question whether after a long lapse of time it was proper to grant a variation of an original maintenance order by giving the wife a lump sum to which she had not been entitled at the date of that order. But what is said by Ormrod, L.J. at pages 402 and 404 would certainly seem to imply approval of the reasoning in L. v. L. (1) as to the second of the two main issues which the court purported to decide in that case viz. the propriety of arrangements entered into for the purpose of leaving a husband free of future financial responsibility. Then again in Brister v. Brister (11) (also arising in another connection in the present case) L. v. L.(1) is mentioned with no hint that even by that date its pedigree was in doubt.

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30 In this regard, perhaps the most important of the cases touching upon the soundness of the decision in L. v. L. (1) is Coleman v. Coleman (2) a case heard before Sir George Baker P. in June 1972. For in that case the learned President not only came to the conclusion that the words "lump sum or sums" in section 2(1)(c) of the Matrimonial Proceedings and Property Act 1970 were intended to provide for the payment of a lump sum by instalments and did not give the court power to make a second or any subsequent lump sum order but did so by express reliance on the fact that the court in L. v. L. (1) had construed the words "or at any time thereafter" in section 1 of the Matrimonial Causes (Property and Maintenance) Act 1958 as enabling the court to make one order only upon the application of the parties.

40 Then there were the cases in which the courts had expressed themselves in terms consonant with the decision in L. v. L. while not making reference to that decision. Thus in Smith v. Smith (12) Lord Denning, M.R., considering a wife's

(1) (1962) Probate Div. 101

(2) (1973) L.R. Fam.Div.10

(3) (1976) 2 W.L.R. 397

(12)(1971) All E.R.244

(11) (1970) 1 AU. E.R. 913

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application under section 17 of the Matrimonial Causes Act 1965 for variation of a post-nuptial settlement whereby on obtaining the whole of the interest in the former matrimonial home she would abandon any further claim to maintenance, came to the conclusion that in the circumstances of the case that was a proper order to make. Mr. Jackson seeking to apply the code which he discerns in the judgment of Simon P. in M. v. M. (7) suggests that this order would merely be, as it were, a nod in the direction of any judge who might subsequently be confronted with an application for further relief. I find it very difficult to understand how this could be so although I may not have fully understood the implication of counsel's arguments upon the point. Wright v. Wright (13) is a case which at first sight offers more comfort to the appellant. A wife agreed to withdraw her claim for maintenance in return for her husband permitting her to obtain a decree nisi upon her answer to his petition. This arrangement was submitted to the judge for his approval under section 5(2) of the Matrimonial Causes Act 1965 and an oral representation was made on behalf of the wife to the effect that she would not apply for maintenance unless any unforeseen circumstances should in the future arise making it impossible for her to maintain herself. The judge approved the arrangement. Later the wife applied for maintenance and obtained an order in her favour from the registrar. The husband appealed from this order and Brandon J. allowed his appeal discharging the registrar's order. In her turn, the wife appealed from this decision to the Court of Appeal. Sir Gordon Willmer referred to Hyman v. Hyman (14) - the foundation of the principle that the parties to such an agreement cannot by their agreement oust the jurisdiction of the court - and he went on to consider two possible and diametrically opposite views of the law. The first was that the court always has an absolute right to go behind any agreement between the parties on the question of maintenance for a wife; the second was the view taken by the judge in the court below in that case viz. : that where there is an agreement between the parties approved by the court effect must be given to it. An intermediary possibility, put forward by counsel on behalf of the husband, was to the effect that such an agreement was merely one of many items to be considered upon the subsequent application for

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(7) (1967) L.R. Probate Div. 313

(13) (1971) W.L.R. 1219

(14) (1929) A.C. 601

maintenance. This view, which appears to me to be closely similar to the position taken by Mr. Jackson in the present case in elaborating the code which he finds in the words of Sir Jocelyn Simon in M. v. M. (7) seems fairly clearly to have been discounted by Sir Gordon Willmer but that learned judge did go on to say of the agreement between the parties (page 1224) :

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10 "I accept that it would not be right to say that it has to be construed like a statute, or that it absolutely forbids any possible award of maintenance, except upon the strictest proof of the existence of the circumstances mentioned. If and insofar as the judge so decided, I would not agree wholly with his conclusion. But I do not think that he went so far as that. I think that he was thinking along the same line as I myself am thinking, namely, that 20 the existence of this agreement, having regard to the circumstances in which it was arrived at, at least makes it necessary for the wife, if she wants to justify an award of maintenance, to offer prima facie proof that there have been unforeseen circumstances, in the true sense, which makes it impossible for her to work or otherwise maintain herself."

30 In dismissing the appeal it is clear that he upheld the decision of the judge below but drew a distinction between strict proof and prima facie proof which however leaves intact the proposition that, even where an award of maintenance has been made, the existence of an agreement sanctioned by the court, restricting the court's right to intervene, so far from being regarded as a nullity, will have the effect of inhibiting to some extent the court's power to make a further order. I think it is of importance that the court in Wright v. Wright (13) was not dealing with a subsequent 40 application made after the dismissal by consent of a claim for maintenance. That is to say, the L. v. L.(1) situation was not in the picture and I think that is why Sir Gordon Willmer - a few lines above the passage I have already quoted - was able to say that he was approaching the matter before him de novo and in the absence of authority. I cannot find anything in this judgment to justify the absolute character of the principle announced in

- (1) (1962) Probate Div. 101
- (7) (1967) L.R. Probate Div. 313
- (13) (1971) W.L.R. 1219

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the headnote to the effect that no agreement between parties can deprive the court of jurisdiction to review the question of maintenance for a wife even where an agreement has been sanctioned by the court. On the contrary I think that this decision, insofar as it touches our present concern, favours the view of Mr. French as clearly as do any of the other decisions to which reference has already been made. It disposes of the contention that an agreement which is in itself - whether by virtue of the principle in Hyman v. Hyman (14) or through the working of the statutory provisions which echo that decision - invalid and unenforceable must remain so despite the fact that it has obtained the blessing of the court.

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Apart from these cases Mr. French relied upon expressions which are to be found in other cases and in some of the leading academic authorities which say, or imply, that a wife may wholly abandon all future claims to support. Thus, in Nash v. Nash (15) a decision like that in M. v. M. (7) intended as a headline for the profession we find Scarman, J. saying - in reference to the two features which, in his opinion, the court will look for before approving an agreement for a wife's provision - "as to the first, it can be said with confidence that the court will seldom, if ever, approve an agreement under which the wife abandons for all time her claim to maintenance unless as in Mills v. Mills, some effective provision be made for her by agreement : ...." It is true that he goes on then to say that such an agreement does not bind the wife or the court, but he supports that statement by reference to Hyman v. Hyman (14) the principle of which, of course, is not in doubt but which does not dispose of L. v. L. (1) and which moreover preceded the statutory provisions enabling the courts to approve arrangements. He then continues:

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"The better course, where a wife does not at the time need maintenance and the Mills v. Mills procedure is inappropriate, is to make a nominal order or to allow her claim to stand adjourned generally."

One may ask why, in 1965, that was still said to

- (1) (1962) Probate Div. 101
- (7) (1967) L.R. Probate Div. 313
- (14) (1929) A.C. 601
- (15) (1965) L.R. Probate Div. 266

10 be the better course (notwithstanding what had  
been said in 1961 in Barnard v. Barnard (6) as to  
nominal orders no longer serving a useful  
purpose) if, at the later date, it was not the  
settled opinion of the courts that the approval  
of an agreement to abandon future claims was  
fully effective to shut out any later application.  
There is then the statement in Chaterjee v.  
10 Chaterjee (3) where Ormrod, L.J. refers without  
any appearance of dissent, to the fact that in  
L. v. L.(1) Willmer, L.J. had stressed the  
importance of bearing in mind (admittedly upon  
the assumption - contrary to his own opinion -  
that there was a discretion to deal with a second  
application) the importance, in exercising any  
such discretion, of the fact that a husband may  
have ordered his financial affairs in the belief  
that he was quit of his financial obligations to  
20 his wife. In the same vein are the observations  
of Brandon J. in Powys v. Powys (10) where (at  
page 354) he considers favourably the  
possibility of permitting a husband "to dispose  
finally, by a single payment, of all his obligations  
to the wife."

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30 Mr. French then referred us to Halsbury's  
Statutes and to the 12th Edition of Rayden on  
Divorce. In the general note, in the former work,  
relating to section 15 of the Inheritance  
(Provision for Family and Dependants) Act of 1975  
which gives to the court wide powers to make  
orders for financial provision for dependants out  
of the estate of a deceased person it is said that  
the section enables spouses, by agreement, to  
obtain an order barring either of them from making  
an application for family provision on the death of  
the other. This I take is used as a buttress to  
the argument that there is no general feature of  
public policy running through the law relating to  
40 divorce which renders inoperative all attempts by  
spouses to oust the jurisdiction of the courts.  
Mr. French then had some satisfaction in pointing  
out that in the monumental work with which his  
opponent is closely associated there appears at  
page 789 what he termed a "bell-clear statement  
of principle" to the effect that where an  
agreement of this kind is embodied in an order  
dismissing the application for financial  
provision and property adjustment the wife's right  
to any further financial provision or property

- (1) (1962) Probate Div. 101  
(3) (1976) 2 W.L.R. 397  
(6) (1961) 105 Sol. J. 441  
(10) (1970) L.R. Probate Div. 340

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adjustment wholly ceases. The text is supported at this point by reference, amongst other cases, to L. v. L.(1) Mr. French concedes that the footnote does also sound a warning note by drawing cautionary attention to M. v. M. (7), Wright v. Wright (13) and one of the Solicitors Journal cases Burton v. Burton (4). In this connection counsel also pointed to the fact that Barnard v. Barnard (6), which had appeared in the index of cases in earlier editions, had disappeared therefrom in the latest editions. One should, perhaps, not pay too much attention to such adventitious portents but I do not think that they should be wholly disregarded. Mr. Jackson informed us that he did not know why Barnard v. Barnard (6) was not referred to in the 11th and 12th editions but said that it would be cited in the next supplement. For all that, when one considers the confidence with which it is now presented as being the true root of authority it is strange that it should never have been represented as such in the text. By contrast L. v. L.(1) to the present time remains firmly rooted in the footnotes, its principle flourishing in the text. In a situation where some cross-currents in opinion are manifest such straws may help to show the direction of the major stream. At all events, putting all this material together, I do not find it possible to say either that L. v. L. (1) was decided per incuriam or that it does not represent the true state of the law in England at the present time. It has not been shown to my satisfaction that under the law as it stands in England it is impossible for parties to an arrangement of this kind to obtain the court's sanction, in a fitting case, for a final settlement of all financial and property claims upon each other including sanction to an agreement that there shall be no further approaches to the courts. Although the concept of public policy was much canvassed in the Australian case of Kitchin v. Kitchin (16) to which I must soon refer, I think Mr. French was right to point out that there are two aspects to public policy even where matrimonial matters are concerned. First there is the need to protect the wife and children against improvident settlements but secondly there is the need to preserve in this area of contract, in common with all other areas, the

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- (1) (1962) Probate Div.101
- (4) (1964) 108 Sol.J. 584
- (6) (1961) 105 Sol.J.441
- (7) (1967)Probate Div. 313
- (13) (1971) W.L.R. 1219
- (16) (1952) W.L.R. 143

10 right to secure finality of accommodation in cases where the court can be assured that the offer is sufficiently generous and secure. Long before the legislation in England which permits the parties to seek the sanction of the court upon agreements it was the opinion of Denning, L.J. (as he then was) in Bennett v. Bennett (17) that if an agreement between husband and wife purported in express terms to oust the jurisdiction of the court - an agreement void in itself on the Hyman v. Hyman (14) principle - was taken to the court for its sanction the parties would thereby preserve the jurisdiction of the court and the agreement so sanctioned would be valid.

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20 But even if L. v. L. (1) correctly represents the state of the law in England ought we to follow it here? Upon the application to vary before him Huggins, J. (relying upon Trimble v. Hill (18) ) said that the courts in Hong Kong are enjoined to follow decisions of the Court of Appeal in England in the interpretation of colonial statutes which are identical to Acts of the Imperial Parliament. Clearly he did not mean that we are obliged to do so or else he would not have quoted his own decision in CHAN Wai-keung v. The Queen (19) where he had said that we should not follow that court's decisions blindly. I think, with respect, that he was quite right to say immediately thereafter that where the interpretation of the statute depends upon the context of that statute in a pattern of relevant legislation the interpretation of an identical statute in another jurisdiction may be misleading. Mr. Jackson asks us to say that the Australian cases - but in particular Kitchin v. Kitchin (16), where the question of construction turned upon a closely similar phrase to the phrase in our legislation:

40 "On the granting of a decree .., or at any time thereafter"

correctly interpret that form of words to permit a multiplicity of applications. But there is a cardinal distinction between the legislative position prevailing in the State of Victoria in 1952 and that with which the court was dealing in the present case in 1970. In 1952 in Victoria it

(1) (1962) Probate Div.101 (17)(1952) 1 K.B.249  
(14) (1929) A.C. 601 (18)(1975) A.C.342  
(16) (1952) V.L.R. 143 (19)(1965) H.K.L.R.819



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would seem that there was no power in the court to make (a) a lump sum order or (b) to approve a maintenance agreement. Neither of these statutory powers was available to the English courts at the time of L. v. L.(1) but they are available to the courts in Hong Kong at the present time and were available in 1970. In Kitchin v. Kitchin (16) the wife (petitioner) agreed to accept £15,000 in full satisfaction of all claims to alimony and, further, undertook not to make any further or other claim or demand to the court for any increase of alimony and this agreement was embodied in an order of the court. In that case as In L. v. L.(1) and in the present case the court was considering two matters : (a) Does the wording of the section mean one application only? and (b) Can the parties by agreement oust the jurisdiction of the court? O'Bryan, J. and Sholl, J. answered both of those questions in the negative but Coppel, J., the dissenting judge, answered the first question in the affirmative. He, while holding that an order dismissing one application exhausted the jurisdiction of the court under the section, nevertheless held with the other judges that the covenant to oust the jurisdiction was void. The difference in the legislative situations in Hong Kong and in Australia to which I have referred does not touch upon the first of those questions but it is very much in point in relation to the second. So far as the interpretation of the words in section 4(1) and section 5(1) are concerned, apart from what I have already said in relation to the decision in L. v. L. (1), I find myself in full agreement with the opinion of Coppel, J. where at page 167 he says:

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"Now it is, in my opinion, clear that the right of either party to apply for a variation of an existing order will disappear if once the original order is discharged. That would seem to be so because of the inherent nature of an order to vary - there must be something in existence which is capable of variation."

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And later in the same paragraph he says:

"With the greatest respect to those who think otherwise I do not think that as a mere matter of English expression the words can

(1) (1962) Probate Div. 101  
(16) (1952) V.L.R. 143



10 be so construed. As I shall show later there is ample authority for the view that these words are intended to define the time within which an application must be made and no authority at all for the view that they confer a right to make successive applications. But if authority is needed for what I regard as the plain grammatical meaning of the phrase it will be found in Re Hooper's Trust (1865), 5 New Rep. 462 - a case upon the construction of a settlement. There Stuart V.-C. held that the words 'at any time' meant 'at any one time' and not 'from time to time'".

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20 As to the second question - the ousting of the jurisdiction - the views of the judges in Kitchin v. Kitchin (16) I think are admirably summarised in a passage from the judgment of Sholl, J. in which having considered the principle of Hyman v. Hyman (14) and the fact that such agreements are in themselves contrary to public policy, illegal and void, he goes on to say (page 160):

30 "Then can the intervention of a court order, with or without undertakings, produce a different position? The court has no jurisdiction to order the direct payment of a lump sum by the husband to the wife. It can dismiss an application for permanent alimony, or for the discharge, variation, suspension, or revival of an existing order, but I do not see how it can have jurisdiction to restrain in advance the making of future applications in proper circumstances. The parties on their part cannot legally agree, whether in consideration of a lump sum or otherwise, that an application or applications will not in proper circumstances be made. With all deference, therefore, to those who hold a different view, I am unable, for myself, to understand how the parties and the court can in combination produce a result which neither they nor it can separately produce, whereby on payment of a lump sum, all future applications, whether proper or not, are forever barred."

40 For my part I find it difficult to believe that he would have felt enabled so to express himself

- (14) (1929) A.C. 601  
(16) (1952) V.L.R. 143

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if the court in his jurisdiction had had at that date the power to award lump sums and to approve or sanction agreements even agreements providing for a total lump sum quittance of all future liability.

By contrast with the situation in Kitchin v. Kitchin (16) when the Court of Appeal in New South Wales came to consider this problem in Shaw v. Shaw (20) the Legislature in that state had provided (section 87(1)(k) of the Matrimonial Causes Act 1959) express power to sanction an agreement for the acceptance of periodic sums in lieu of rights under an order for maintenance or any right to seek such an order. Brereton, J. accepted that section 87(1)(k) of the Act did empower the court to sanction an agreement which included a promise not to resort any further to the court for relief. And he accepted that this would preclude further applications. The document which the court was construing was not a formal agreement between the parties. It was headed "Terms of Settlement" and it contained a list of the orders to which the parties were prepared to consent and to which they did consent. None of those orders made any reference to an agreement to accept the orders as a final settlement and there was no undertaking not to return for further relief. In making the order sought by consent, however, the judge at first instance stated that he sanctioned and approved an agreement pursuant to the section 87(1)(k) of the Act. All three judges of the Court of Appeal were of the opinion that the terms of agreement as noted in the order were not such as came within that provision and the petitioner was thereby not barred from making a further application for provision for herself and her children. In coming to this conclusion however two of the judges saw fit to engage upon more or less elaborate discussions of the effect of certain of the English decisions including Mills v. Mills (21), L. v. L. (1), and Bennett v. Bennett (17) all of these discussions having as their point of departure and their rock of principle the decision in Hyman v. Hyman (14). The burden of the judgments on this matter is that there is no authority to show an inherent power in the court to sanction an agreement

(1) (1962) Probate Div.101 (17)(1952) 1 K.B.249  
(14) (1929) A.C.601 (20)(1965) 66 Sr.N.S.W.  
(16) (1952) V.L.R. 143 (21)(1940) P.124

10 which is of its own nature a void and illegal agreement. They stressed, as Mr. Jackson has stressed before us, the fact that the making of orders as empowered under statute is a different matter from the sanctioning of an agreement. On the question of the inherent powers of the court both those learned judges (Brereton, J. and Asprey, J.) addressed themselves to certain general statements of principle in some of the English cases which held in favour of the existence of such an inherent power. Thus in Russell v. Russell (22) at page 295 Jenkins, L.J. had said:

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"The principle in Hyman v. Hyman, be it remarked, is satisfied by any bargain which is brought before the court for approval and approved by the court".

20 In L. v. L. (1) as we have seen Willmer, L.J. found that the agreement brought before the court and sanctioned by the court was enforceable. And in Bennett v. Bennett (17) Denning, L.J. said of such an agreement:

"Once it is sanctioned it is valid".

30 Both of the judges in Shaw v. Shaw (20) sought to explain these expressions by reference to the special circumstances disclosed upon the facts in each case and thus to demonstrate that no general principle was being enunciated. Their general view was that the courts have no power inherently to transmute something which is in its nature void into something valid and that it requires the intervention of a statute to confer such power. I can only say, with the greatest respect, that I am wholly unpersuaded by this demonstration. All of the passages seem to me most clearly to signify what is to my mind a perfectly agreeable truth viz. : that the evil which public policy discerns in attempts by parties privately to divest themselves of rights which it is in the interest of the state that they should have is purged by the court's approval for the courts are the watch-dogs of the body politic on just such matters as these, matters 40 which are at one and the same time of public and private concern. But apart from all that I would say that in any event insofar as statutory power is deemed necessary to give to the court a right of sanction such a power is to be found in Hong

(1) (1962) Probate Div.101 (20) (1965) 66 Sr.N.S.W.  
(17) (1952) 1 K.B. 249 (22) (1959) P.283

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Kong in paragraph 7 of Rule 6 of the Matrimonial Causes Rules made under the provisions of section 18(B) paragraph (c) of the Ordinance. While that power is not so explicit as was the power given to the court by the New South Wales legislation I think that in the end in view of the provisions of section 15(6) of the Matrimonial Proceedings and Property Ordinance it amounts to the same thing. I will refer to those provisions later.

Insofar as the courts in Kitchin v. Kitchin (16) and Shaw v. Shaw (20) set themselves against the existence of an inherent power to sanction such agreements I have ventured to differ on the ground of L. v. L.(1). That case was not concerned with statutory powers, for at that date none existed to sanction or to give directions, and the learned judges were, as I understand them, expounding the Common Law. But even if they were wrong then, the point has been overtaken by Statute in Australia and in England and in Hong Kong. If the lack of inherent power "to make valid the void" is said to destroy the force of L. v. L.(1) (decided when there was no statutory power to approve), the subsequent giving of such power must call in question the value of Kitchin v. Kitchin (16). I put the matter thus tentatively because it may be said that, if there is no inherent power, the then statutory power merely to consider and to give directions is not a power to "make valid the void". As to that I can only say : (a) that I believe there is an inherent power (per L. v. L.); (b) if there is not, then the statutory power should not be regarded as more limited in its nature than that conferred by the legislation in New South Wales. Where an agreement offends public policy only because it seeks to close the doors of the court in one particular matter, I think it must be within the court's power to say, in a fitting case, that the public interest is not offended. I can see no reason why the power to give directions whether by inherent jurisdiction or under the local rule should not include a power either to make an order following precisely the salient clauses of the agreement submitted to the court or else to direct simply that the agreement as sanctioned should be implemented. Mr. Jackson made much of the fact that the duty of the judge under sections 4 and 5 of the Ordinance was to

- (1) (1962) Probate Div. 101
- (16) (1952) V.L.R. 143
- (20) (1965) 66 Sr. N.S.W.

10 make orders. That is perfectly true but he has a power also to approve agreements and he did both of those things. I find support for the view that the court has power to sanction a final clearing of accounts by former marriage partners in the fact that the Legislature itself has provided (section 15(6) of the Matrimonial Proceedings and Property Ordinance) that section 14 of the Ordinance is not to inhibit the action of the court in dealing with financial arrangements brought to it under the Ordinance or any other enactment. This, presumably, would cover applications under Rule 6 of the Matrimonial Causes Rules which gives the court power to consider such arrangements and to give directions thereon. The opening words of subsection (6) of section 15 - following precisely the formula of the 1957, 1965 and 1970 English legislation - state that the provision is for the avoidance of doubt. Whatever else that may mean, I incline to the view that it is apt also to confirm and preserve both the pre-statutory power of the court to give its sanction to agreements which might otherwise be objectionable and its present statutory powers in that behalf.

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50 The primary purpose of section 15(6) is no doubt to emphasize that the power to intrude upon the private contractual arrangements of the parties is additional to and not in substitution for all other powers given to the courts by the matrimonial legislation generally. I note also that the power to give directions in relation to agreements brought before the court (i.e. by rules under section 7 of the Divorce Reform Act 1969) came into being in England later than the legislation avoiding provisions in agreements purporting to circumvent the court's jurisdiction. Nevertheless the words of section 15(6) are perfectly general in their nature and I see no reason to suppose that they were not intended to save any power which might be conferred. I think it is clear from the cases already cited - in particular M. v. M. (7) and Nash v. Nash (15) - that the English courts have regarded the power given under section 5 of the Matrimonial Causes Act 1965 (equivalent to that given by section 18B(c) of the Ordinance) as conferring jurisdiction : (a) to sanction an agreement and (b) to do so even where the agreement aims at a final settlement.

50 There is nothing equivocal about the prohibition announced in section 14. But does it

(7) (1967) L.R. Probate Div. 313

(15) (1965) L.R. Probate Div. 266

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aim at fettering the courts as well as the contracting parties? I am disposed to believe that it does not. When one surveys the very ample array of powers given in this legislation generally to oversee and intrude upon private dispositions at the instance of a dissatisfied party it may be tempting to conclude that the legislative trend over the century and a half since the Civil Courts in England were enabled to dissolve a marriage has been to offset the effects of a concession so questionable in relation to the health of society by preserving as far as possible the material obligations of a contract still regarded as being ideally - and uniquely - indissoluble. Something of that kind is discernible in the judgment of Sholl, J. in Kitchin v. Kitchin (16) where having considered the existing legislation he says (page 163) :

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"I should be disposed myself to anticipate that the Legislature might view with misgiving an alteration of the law which might render it easier for husbands to buy their way at once, in the event of divorce, out of future obligations to their wives the contemplation of which may at present not infrequently provide some deterrent against breaches of the marriage tie."

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Coppel, J., in the same case, takes the opposite view (page 167):

"In interpreting such legislation there would appear to be no reason for assuming a priori that the Legislature intended to make the ex-husband's obligation as extensive as it had been during the marriage."

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Either way, these observations are, no doubt, by way of reflection, obiter, upon the desiderata of public policy, as to which Sir George Jessel said in Gandy v. Gandy (23) at page 379:

"... there is no reason more dangerous to give than, and no reason on which such difference of opinion exists as, that of public opinion."

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I bear that caution in mind. Nevertheless, if conventional wisdom and prescriptive usage are

(16) (1952) V.L.R. 143

(23) (1881-5) All E.R. Rep. 276

the true roots of public policy - as I take it they are - I am reluctant to believe that section 14 (or its English equivalent) is the formal declaration of a new consensus which has so modified the right to seek finality in litigation that, in this one area, it must be regarded as totally abrogated. Indeed, one might think the opposite development the more likely in view of the steadily strengthening position of women in society and the advance of public welfare generally. Therefore, although with considerable diffidence in view of the strong opinions which have been set up against this view, I think it would still be open to a court, whether here or in England, to make an order containing financial arrangements which included a stipulation that a stated lump sum payment was to be made in full and final satisfaction of all future claims. I do not think that it was argued that such a power did not exist before the introduction of the prohibitory legislation. I think it did and that it is among the powers saved by section 15(6) of the Ordinance. It may be said that in the present case Briggs, J. did not make "an order containing financial arrangements" (section 15(6)) at all. Technically that may be correct. But he did unquestionably make an order endorsing the parties' financial arrangements. Moreover his order of the 23rd of May 1970 not merely approved those arrangements but made the formal order dismissing the claim for maintenance conditional upon the coming into force of those arrangements. To my mind any distinction which might be drawn between an order of that kind and an order setting out the salient features of the arrangements themselves would, in the circumstances, be somewhat unrealistic.

On balance it appears to me to be the preferable view that L. v. L.(1) was rightly decided and that, so far at least as the wife's interests are concerned, it ought to be followed here; alternatively the powers conferred by Rule 6 of the Matrimonial Causes Rules give warrant for the approval by Briggs, J. of the parties arrangement.

The case concerning the child stands upon a different statutory foundation. As I have pointed out subsection 5 of Section 5 contains provision for the court to make orders "from time to time". Willmer, L.J. in L. v. L. (1) and Coppel, L.J. in Kitchin v. Kitchin (16) are at one in the view that such a form of words would be apt to confer a right

(1) (1962) Probate Div. 101  
(16) (1952) V.L.R. 143

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to make successive applications. Clearly, that provision escapes the restriction established by the first of the principles enunciated in L. v. L. (1). But what of the second? It is not difficult to see the desirability of leaving the courts in control of the fortunes of children of a broken marriage. In their case more than in the case of a wife the court must be mindful that it stands, as it were, in loco parentis patriae to protect those innocent and under disability, so far as possible, from the ill consequences of the breaking of the bond which was their principal guarantee of security. It should be remembered that the English legislation did not contain any such provision in respect of a child at the time that L. v. L. (1) was decided nor was there before the court in that case any question of a child's interests. It is true as Huggins, J. points out that in the course of the argument in L. v. L. (1) Willmer, L.J. did suggest that an application on behalf of the child which had been dismissed might not later be reviewable. But that indication must of course be read subject to the circumstances which I refer to above. In M. v. M. No. 2(7) however a somewhat less equivocal indication may be found where Sir Jocelyn Simon, approving an agreement entered into by a wife, implies that the terms of it will be effective to bar also any further claims on behalf of her children. There is also the factor to which I have already referred: the apparent intention of the Legislature section 15(6). Not without some hesitation, I have come to the conclusion that even in the case of provision for a child it is within the court's power to sanction an agreement which absolves the husband (or the wife as the case may be) from all future financial responsibility. I think the entire slant of the authorities to which I have referred already is in favour of the view that the courts possess the power to serve the interests of finality in appropriate cases and in doing so to relinquish its own right to intervene further in the parties' affairs. Therefore where the court has made an order under section 5(1)(a) and has at the same time approved an arrangement which precludes further approaches to the court it no longer (within the opening phrase of subsection 5 of section 5) retains the "power to make an order in any proceedings by virtue of subsection (1)(a)". As for the power to vary and discharge orders

(1) (1962) Probate Div. 101  
(7) (1967) L.R. Probate Div. 313



conferred by section 11, I am content to echo the opinion of Huggins, J. and to say that the consent order in this case does not come within the provisions of that section. In any event, if I am correct in what has been said above concerning the decision in L. v. L.(1), recourse to section 11 is equally barred with any further application under sections 4 and 5.

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10 The matters I have dealt with already seem to me to constitute by far the most important issue in this case. The remaining contentions can, I trust, to be dealt with more briefly. Of these it will be convenient to take firstly what has been referred to as the Chaterjee approach. The argument here is that, at the time when Briggs, J. made the consent orders, there was not available in the law power to award a transfer of property order such as now exists in section 6 of the Ordinance. According to Mr. Jackson this section  
20 creates a new jurisdiction conferring a new and substantive right to provision. In that case a wife who had obtained an order for weekly maintenance in 1955 resumed cohabitation with her former husband in 1961 in the house which had been purchased by him. In 1974 she left her husband and successfully applied to the registrar for leave to apply out of time for lump sum payment and transfer of settlement of property orders under sections 23 and 24 of the Matrimonial Causes Act of 1973,  
30 provisions which had not been in the law at the time the original order for maintenance. The Court of Appeal dismissed the husband's appeal from this order and held that sections 23 and 24 (which correspond to our present sections 4, 5 and 6) were retroactive in their effect. Mr. French does not dispute the authority of this decision but he presses the view which was successful before Huggins, J. that is to say that the new provisions do not create new substantive rights but are merely an  
40 additional form of machinery whereby the matrimonial "pool of assets" can be distributed. He enlists the decisions in Doherty v. Doherty (24) and Wilson v. Wilson (25) in support of the contention that a distinction is to be drawn between the several sorts of financial provision which are now open to the courts to make under the various sections. The true dichotomy, he says, is between orders for periodic payments and secured periodic payments on the one hand and, on the other, orders for lump sum  
50 payments and property adjustment orders. Money is

(sic)

- (1) (1962) Probate Div. 101  
(24) (1975) 3 W.L.R.1  
(25) (1975) 3 W.L.R. 357

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to be equated with money's worth, the house with the lump sum. Since therefore the wife's application for a lump sum has been dismissed in the present case he relies on what was said by Brandon, J. in Powys v. Powys (10) where, dealing with the effect of the decision in L. v. L. (1) the learned judge said " it does certainly decide that, once one original application for a particular kind of financial provision had been made and adjudicated upon, the court cannot entertain another original application for the same kind of financial provision." The attempt to enlist section 6 in the present case is, counsel says, an attempt to resurgent a claim to financial provision of the same kind as the one already dismissed. He also supports the finding of Huggins, J. who quoted extensively from the decision in Doherty v. Doherty (24) where Ormrod, L.J. had said that the new sections 23 and 24 of the English Act were part and parcel of a single code provided for the making of lump sum orders as alternatives to property adjustment orders, thus making a more convenience method available to the courts for a just distribution of property following upon dissolution of marriage. To my mind these are points of substance. Had the powers in section 6 been available in 1970 it may well be that a transfer of property order would have been made alternatively to the provision in the agreement, or to some part of it, so that the agreement would have been altered at the discretion of the court to include some such provision prior to dismissing the wife's claim. But I can see no reason to suppose that if these new powers had been available the wife would have been awarded something more by way of money's worth, or would have demanded something more by way of money's worth, simply by virtue of the existence of such powers. That is what I understand to be the meaning of what was said by Huggins, J. at page 10 of his ruling :

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"If the order of dismissal in the present case had been made on or after the 1st of July 1972 it would have barred a new claim under section 6 and in my view the fact that it was made before that does not make the order any the less of a bar."

Mr. Jackson professes to find a total contradiction between that passage and the passage at the top of

- (1) (1962) Probate Div. 101
- (10) (1970) L.R. Probate Div. 340
- (24) (1975) 3 W.L.R.1

page 7 where the learned judge said:

"I do not see how the court in, say, 1970, could, by dismissing a claim then before the court, in effect dismiss a future claim which had not yet been made."

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10 But the learned judge was, as I understand it, dealing there with a wholly different matter. He was in fact expressing a measure of dissent from what had been said by Willmer, L.J. in L. v. L.(1) to the effect that, even if successive orders were permitted under the law, a sanctioned agreement would nonetheless be binding to oust the jurisdiction of the court. That has nothing to do with the suggestion that section 6 provides a wholly new form of substantive relief which remains available notwithstanding the dismissal by consent of an application for lump sum and periodic payments. Huggins, J. there seems to be agreeing with the opinion of the Australian judges to the effect that the court does not have an inherent power to sanction an agreement ousting its own jurisdiction where that jurisdiction would otherwise admit of several applications. He took the view that the opinion of Willmer, L.J. was valid only in the context, of a situation which admitted of only one application for financial provision concluding for all time the rights of the parties, a situation which could in no way be touched by the later coming into force of an additional new method of distributing the assets. In other words, the first principle in L. v. L.(1) was correct, in his opinion, but he demurred to the second. For the reasons I have given I do not, with respect, agree with that part of his judgment. I accept, of course, as he did the first principle, viz. : that the dismissal of a claim of maintenance, whether by consent or not, bars a second claim. But I adhere also to the second principle - that a sanctioned agreement ousting the jurisdiction is effective as against both the wife and the child of the marriage. That is what we are primarily concerned with in this case at least as regards the child, for the first of these two principles does not touch his case.

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Kindred to the foregoing point was the contention of Mr. Jackson that in any event the wife was entitled to approach the court under section 15 of the Ordinance for the variation of

(1) (1962) Probate Div. 101

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a subsisting maintenance agreement within the meaning of that section. To this Mr. French has made a number of objections which I am bound to say appear to me to be of a very technical nature. Firstly, on the authority of Young v. Young (26) he says that the arrangements made between the parties here (consisting of the deed of arrangement and the two trust deeds) do not constitute a subsisting maintenance agreement within the meaning of the section because of the existence of the Bank trustee as a third party to the arrangement. I think Mr. Jackson's reply to that was sufficient. He says that the trustee - the Hong Kong and Shanghai Bank - is not a party beneficially entitled thereunder, unlike the third party involved in Young v. Young (26). If this contention were correct then, as Mr. Jackson has pointed out, section 15 could never apply in the case of an arrangement which involved a trust or settlement of this kind.

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Then it is said that the proceedings before Huggins, J. insofar as the wife proposed to invoke the provisions of section 15 were misconceived. That is said to be the case because by virtue of section 2 of the Ordinance the word "court" means the District Court wherever jurisdiction is given to that court by virtue of the provisions of the Matrimonial Causes Ordinance and section 10(B) of the latter Ordinance gives the District Court any power exercisable under section 15 of the Matrimonial Proceedings and Property Ordinance. This situation Mr. French says is underlined by the provisions of subsection 3 of section 15 of the latter Ordinance which says that the District Court shall not entertain an application under subsection 1 of the section unless both parties to the agreement are resident in Hong Kong. There is then the fact that Rule 100(1) of the Matrimonial Causes Rules provides that an application under section 15 of the Matrimonial Proceedings and Property Ordinance for the alteration of a maintenance agreement shall be made by originating application containing the information required by Form 16. Form 16 which appears in the appendix to those rules is headed "in the District Court of Hong Kong ....". Further, it is objected that the wife's affidavits do not disclose what alterations she desires to be made in the instrument of settlement and this, counsel says, is something the husband was entitled to know in

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(26) (1973) 117 Sol. J. 204

order to be apprised of the relief which was sought against him or to afford him an opportunity of coming to some agreement with his former wife concerning her suggestions. Again, it is said that the wife has not actually sworn that she is resident in Hong Kong but merely states in the part of her affidavit preceding the jurat, that she is staying at a certain hotel in the Colony. It is common ground that the wife had, prior to the proceedings before Huggins, J., very recently returned to Hong Kong and had, indeed, come for the purpose of taking part in those proceedings. The affidavits disclosed that it was her intention to live either in Germany or in England with the child of the marriage and the effect of this latter objection is that not a sufficient quality of residence has been shown, in any event, to justify her approaching any court in Hong Kong under section 15, on the ground that it has not been shown that she is either domiciled or resident in Hong Kong. It was also said that the form of the application was wrong inasmuch as a claim under section 15 shall be made by originating application, (Rule 100 of the Matrimonial Causes Rules), in the district Court (section 19B(b) and section 10E(1) of the Matrimonial Causes Ordinance), and that it should include the information required by Form 16 which of course would include the particular alterations desired in respect of the deeds. Huggins, J. by stating more than once that several of these defects were readily curable came to the conclusion that if the remedy under section 15 was available at all there should be a new claim in proper form. He was also of the view that the words "resident for the time being" in section 15(1) imply some element of permanance of residence and that as this was not shown on the affidavits the objection to jurisdiction, should probably have been upheld on that ground also.

To all of this Mr. Jackson objects that it constitutes "barrage of technicalities". So far as the question of residence is concerned he says that the wife has sworn that she is resident and that is sufficient to found the application, there being nothing upon the other side. As to the forum, he asks us to say that in any event the High Court has all the powers of the District Court for purposes material to this case and he says that if the application was technically wrong in regard to the form of summons taken out this is a classic case for the application of the remedial provisions of

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Order 2 rule 1 of the Rules of the Supreme Court. So far as Hong Kong being the correct forum for the litigation of these matters I think Mr. Jackson must be right. Insofar as it may be that the wrong court in Hong Kong was chosen I can only say that I hope it is the case that the rules admit sufficient flexibility for the curing of any such defect. I would regard it as wholly unjust that the matters of substance between the parties should have to be decided upon such a point as a possible mistake as to the choice the tribunal, more especially in view of the power given by section 10E, and the rules made thereunder which allow of the transfer of matters concerning ancillary relief, commenced in the District Court, to the Supreme Court. But in any event I do not find it necessary to come to a final conclusion in respect of all these many tangled procedural and jurisdictional objections for, as it seems to me, any claim under section 15, in common with all other claims that she may have, is barred by reason of the wife having agreed in the Deed of Arrangement that she would "make no further financial claim or demand against the husband either on her own account or on behalf of the child" and by reason of her having consented to the dismissal of her claim. It is clear that the learned judge in chambers would have dismissed the section 15 claim upon that ground save that, when he came to give his considered reasons, he found himself disposed to accede to the argument that he might have had a jurisdiction in regard to the case of the wife arising from what had been said concerning all those matters of mistake or misrepresentation or lack of adequate advice which in sum were said to vitiate the wife's consent to the agreement which ousted the court's jurisdiction. I think, with respect, he was wrong to think so and to that matter, and final point in this appeal, I must now turn.

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What was said about the agreement involving the three deeds, assuming it to be enforceable, was, as I understood the argument, that the entire arrangement required further inspection by the court which, it was said, upon a close examination of the many clauses and provisions thereof and upon a consideration of the background circumstances of all parties concerned, would be driven to the conclusion that the agreement so wholly inadequately reflected the true intentions of the wife, the merits of her

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10 position, and the true needs of herself and the child, in relation to the father's power to provide, that the intervention of the court was required to recast the whole scale and manner of the provision for the husband's former dependants. To this must be added the indictment of the court's interventions thus far, on the ground that the scrutiny given to the terms of the arrangement on the several occasions when the matter came before Briggs, J., whether in court or in chambers, was too cursory to reflect an adequate appreciation of the radical deficiencies which that arrangement is said to disclose. I do not propose to discuss these alleged deficiencies which have been sufficiently canvassed in the other judgments in this appeal. It is clear that Huggins, J. was himself somewhat exercised about certain features of the arrangements particularly in relation to the provision made for the child. As regards the submission that the consent order was a nullity because Briggs, J. did not have sufficient information to be satisfied that it was proper to dismiss the application on the basis of the parties agreement (in particular, in this connection, Mr. Jackson mentioned the lack of an affidavit of means by the husband), Huggins, J. took the view that there was jurisdiction to make the order and that any attack upon the consent order of the 16th of January 1970 should have been either by way of appeal or by way of a separate proceeding. With that view I am in full agreement, but on the question of mistake and misrepresentation it seems to me that the learned judge ought to have taken a similar view. It may be that there are many criticisms which can legitimately be made of the arrangement from the point of view of the wife and child. In particular there is the question of the dominant position which appears to be given to the settlor-husband as co-trustee with the bank. But all of these matters as it seems to me are fit subject for an appeal or for an action to set aside on stated grounds. In Wilkins v. Wilkins (8) a husband, had made a financial arrangement with his wife and subsequently obtained a decree nisi and consented to an order for maintenance in terms of the agreement. Later, he returned to the court with an application to vary on the ground that he had completely miscalculated the nature of his own agreement. At this point a new consent order was negotiated with less onerous terms. Subsequently the husband took out a further summons to vary the substituted consent order on

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(8) (1969) 2 All E.R. 463



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the ground that he could not afford to pay. This application, which was made before the registrar, succeeded and the registrar varied the second consent order. From this decision the wife appealed. Baker, J. allowing the appeal held that the Registrar should not have done so even though the judge's order was by consent. He held that once a judge has approved a consent order it would be wrong in principle for the court to upset the order, in the absence of fraud, other than upon appeal. It is of interest that in the same case the learned judge also relied upon a passage from the judgment of Willmer, L.J. in L. v. L.(1) where the latter had said that he was not impressed by the argument that the sanction of a court to an agreement is not properly obtained unless there is full investigation by the court of all the circumstances, with affidavits of means filed on both sides. In Coleman v. Coleman (2) at page 20 Sir George Baker having expressed the view that finality can be achieved by agreement went on to say that there was much to be said for leaving decisions to the discretion of the court to be exercised in the light of changed circumstances but added that:

"Non-disclosure of assets or fraud could always be dealt with by giving leave to appeal the original order out of time and setting it aside."

On the other hand in Brister v. Brister (11) where a husband sought to have a patent error in a consent order for maintenance corrected by application to the registrar and upon that being refused appealed to the Court of Appeal, Ormrod, J. rejected the contention that the order had created an estoppel, firstly on the ground that there was no contractual basis for the estoppel, which derived only from the order, but secondly because the order was itself not a final but an interlocutory order. And for that latter proposition he relied upon the decision of Jessel, M.R. in Mullins v. Howel (27). He also called in question the opinion of Baker, J. in Wilkins v. Wilkins (quoted above) and he said:

"Where the court is asked to review an order made upon what subsequently turns out to be a mistaken basis, I do not think it is accurate to say that it is purporting

- (1) (1962) Probate Div. 101
- (2) (1973) L.R. Fam. Div. 10
- (11) (1970) 1 All E.R. 913, (1970) W.L.R. 664
- (27) (1879) 11 Ch. Div. 763



to act as an appellate tribunal : it is exercising its power to vary 'having regard to all the circumstances of the case', or its inherent power to vary interlocutory consent orders referred to by Jessel, M.R. in the case I have already cited."

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10 Earlier, however, in dealing with the argument of counsel that the consent order was essentially a contract embodied in an order and could be relied upon as an estoppel he went on to say that though there were many authorities which would support that contention they were all cases arising from judgments or orders made by consent by parties litigating in other divisions of the court. And then he said at page 668 :

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20 "In certain cases arising out of maintenance proceedings, a consent order will be a final order in others it will found an estoppel, but in all such cases underlying the consent order there will be found a true contract."

30 He quotes L. v. L. (1) in support of that proposition. Huggins, J. relying upon Brister v. Brister (11) and Mullins v. Howell (27) found that there was power to vary a consent order where that order was not final but interlocutory. He referred for this purpose to Salter Rex & Co. v. Ghosh (28) where it is said that the question whether an application is of an interlocutory or final nature depends upon the nature of the application itself and not upon the finality of the order made. Taking that as his base, he then purported to follow the authority, which Mr. Jackson has also urged upon us, in this court, the decision in Guerrera v. Guerrera (29), where it was held that orders made on applications for ancillary relief in matrimonial proceedings in the Family Division, including orders for the transfer of property or the payment of a lump sum, are to be regarded as interlocutory orders for the purposes of an appeal. With respect I do not see how that decision established the matter before the learned judge as an interlocutory application. It may be that, as he said, "appeals against property adjustments or financial arrangements in divorce proceedings are interlocutory appeals" but the matter before him was not an appeal but an application to vary. Further, a patent element of finality was lacking in Guerrera v. Guerrera (29) as in Brister v. Brister (11) for the consent orders were not made by way of dismissal.

40 (1) (1962) Probate Div.101 (28)(1971) 3 W.L.R.  
(11) (1970) 1 All E.R.913 (29)(1974) 3 All E.R.460  
(27) (1879) 11 Ch. Div. 763

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Huggins, J. considering that question rejected the idea that a consent order dismissing a prayer for maintenance was "somehow more inviolate than a consent order granting maintenance ..." but he rejected that contention on the basis of the inherent jurisdiction of the court to prevent injustice. To my mind the matter is concluded by the passage I have already quoted from the judgment of Ormrod, J. in Brister v. Brister (11). The question whether the order in the present case was of a final nature or not brings us back once more to the question with which we started : the validity of the agreement to oust the jurisdiction of the court. Once it is granted that that was a valid arrangement then, echoing the words of Ormrod, J., under the consent order in this case there is to be found a true contract and the order is one of a final nature. For these reasons even in regard to the question of mistake, misrepresentation or inadequate judicial consideration I agree with Mr. French that the proceedings before Huggins, J. were not competent. In the final result I would dismiss this appeal and allow the cross-appeal.

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No. 51  
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No. 51

JUDGMENT OF LEONARD J.J.

1976, No. 6  
Coram: Picerking, J.A., McMullin & Leonard, JJ.  
Date : 17th December, 1976.

J U D G M E N T

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Leonard, J. :

The fundamental matters for decision here appear to me to be firstly whether the words "at any time thereafter" used in sections 4 and 6 of our Matrimonial Proceedings and Property Ordinance permit a plurality of application and secondly, if they do, whether it is open to an applicant to make a second application having agreed to and suffered the "dismissal" of the first. I agree with Pickering, J.A. that this court is not obliged to follow either of the rationes on which

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(11) (1970) 1 All E.R.913

10 the case of L. v. L. (1) was decided and I consider that since Barnard v. Barnard (2) was not before the court in L. v. L. (1) and no clear guidance can be gained from later case law the question as to whether a party whose application for financial provision has been "dismissed" can re-apply should be treated as *res integra*. Barnard v. Barnard (2) in deciding that a nominal order is unnecessary in order to keep alive the wife's rights assumes an affirmative answer to the question. Since that is the assumption of three Lords Justices and since a similar assumption appears to have been made by Karminski J. in R. v. R. No. 2 (3) it would require a most compelling indication in our legislation to persuade me that the wife is not free to come back on her own behalf and on behalf of the child in this case.

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20 Little assistance is to be obtained from decided cases on the meaning of the phrase "at any time". Used in a covenant in a marriage settlement to settle after-acquired property becoming owned at any time during coverture it clearly meant "at any one time" (Re Hoopers Trust 1865 5 New Rep. 462) but in Digges' Case (4) it was held that a power to do a thing "at any time" is not confined to one execution the words being regarded as equivalent to "from time to time as often as the donee of the power shall think good". In sections 4 and 6 of our Matrimonial Proceedings and Property Ordinance the words are used in 30 conferring a jurisdiction but the entire phrase is "on granting a decree ... or at any time thereafter (whether ... before or after the decree is made absolute)" so that in themselves they are ambiguous.

40 I look for their interpretation to the legislation as a whole and see the fundamental difference between the parties in this case as a conflict between the desirability of finality on the one hand and the desirability that in family matters the courts should retain flexibility on the other.

The jurisdiction of the courts in Hong Kong to order financial provision stems from section 29 of the Divorce Ordinance 1933. This section enabled the court "on any decree" to order the husband to secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her life as "having regard to her fortune, if any, to

(1) (1962) P.101

(3) (1967) 111 Sol.J.

(2) (1961) 105 Sol.J.441

(4) 1 Rep. 173

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the ability of her husband and to the conduct of the parties" was reasonable. Subsection (2) empowered the court, again "on any decree", to make an order on the husband for payment to the wife during their joint lives of monthly or weekly sums for her maintenance and support any such order might be made either in addition to or instead of an order under subsection (1). Subsection (3) enabled the court "if the husband afterwards from any cause becomes unable to make such payments" to discharge or modify the order or temporarily suspend it as to the whole or any part of the money so ordered to be paid, and again to revive the order wholly or in part as the court might think fit. This subsection applied to orders under both subsection 1 and subsection 2. Subsection 4 enabled the court where it was satisfied that the means of the husband had increased to increase the amount payable under the order. This subsection applied to orders under subsections 2 and 3 but not to orders under subsection 1. The powers conferred under section 29 and its wording were similar to the powers conferred and words used in section 190 of the Supreme Court of Judicature (Consolidation) Act 1925. Subsections 3 and 4 of our Ordinance took the place of the proviso to subsection 2 of the 1925 Act so that in 1933 the court could, in Hong Kong, discharge, modify or suspend an order made under section 29(1) if the husband became unable to pay. An order made under subsection 2 or 3 could only be altered if the means of the husband increased. These two exceptions apart no order could be made otherwise than "on the decree". Our law in this respect remained unchanged (although there were substantial amendments to the Divorce Ordinance in 1956) until 1967 when the Matrimonial Causes Ordinance No. 1 of 1967 was enacted, repealing our 1933 Ordinance. The relevant provisions of the Matrimonial Causes Ordinance of 1967 were based on section 16 of the Matrimonial Causes Act 1965 in England, to which our section 28 corresponded. This reads:

"28. (1) On granting a decree of divorce or at any time thereafter (whether before or after the decree is made absolute), the court may, if it thinks fit and subject to subsection (3), make one or more of the following orders -

(a) an order requiring the husband to secure to the wife, to the satisfaction

of the court, such lump or annual sum for any term not exceeding her life as the court thinks reasonable having regard to her fortune (if any), his ability and the conduct of the parties;

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(b) an order requiring the husband to pay to the wife during their joint lives such monthly or weekly sum for her maintenance as the court thinks reasonable;

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(c) an order requiring the husband to pay to the wife such lump sum as the court thinks reasonable."

Subsections 2 and 3 are immaterial. Section 43 of this Ordinance was derived from section 31 of the 1965 Act and provided :

"43 (1) Where the court had made an order under section 33(3) or section 34 or any of the provisions mentioned in section 41(2) (other than an order for the payment of a lump sum), the court shall have power to discharge or vary the order or to suspend any provisions thereof temporarily and to revive the operation of any provision so suspended.

(2) The powers exercisable by the court under this section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.

(3) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage."

Section 41(2) of the 1967 Ordinance was derived from section 29 of the Matrimonial Causes Act 1965, and defined ancillary relief with reference inter alia to section 28(1) 7. It was clearly the intention of our Legislature, then, to bring our law into line with that pertaining in England which had widened the jurisdiction of the courts.

Substantial amendments to our Matrimonial Law were made in 1972. These amendments came about by the Matrimonial Causes (Amendment)(no.2) Ordinance

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1972 and by the enactment of the Matrimonial Proceedings and Property Ordinance 1972. Both of these Ordinances came into force on the 1st July 1972 so that they were clearly closely interlinked in the mind of the Legislature. The Matrimonial Causes (Amendment) (No.2) Ordinance brought into force here the amendments in the law of divorce that had been enacted in England in the Matrimonial Causes Act 1969. Sections 4, 5 and 6 of Matrimonial Proceedings and Property Ordinance correspond to sections 2, 3 and 4 of the Matrimonial Proceedings and Property Act 1970. Section 7 corresponds to section 5 of the English Act and lists matters to which the court is obliged to have regard "in deciding whether to exercise its powers under sections 4 or 6". These include "(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; and (c) any physical or mental disability of either of the parties to the marriage." These particularly the last quoted are matters susceptible of change. The expression used in the opening words of this section is I emphasize "In deciding whether to exercise its powers to make orders ..." rather than "In deciding whether to grant or dismiss applications".

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The orders which may be made under section 4 are for periodical payments, secured periodical payments and "such lump sum or sums as may be so specified". The orders which may be made under section 6 are for property transfers, property settlements, orders varying ante-nuptial or post-nuptial settlements and orders extinguishing or reducing the interests of either of the parties to the marriage under such settlements. Section 5(1) enables the court to make financial provision for a child of the marriage by making any one or more of the orders mentioned in subsection (2) :

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- "(a) before or on granting the decree of divorce ... or at any time thereafter;
- "(b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal."

The orders mentioned in subsection (2) are orders for periodical payments, for secured periodical payments and for "such lump sum as may be so specified." A lump sum may be made payable by instalments which may be ordered to be secured. Subsection (5) of this section is of interest. It reads :

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"(5) While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time; and where the court makes an order by virtue of subsection (1) (b) in relation to a child it may from time to time make a further order under this section in relation to him."

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That the Legislature should have thought it necessary to change the construction here from "at any time thereafter" to "from time to time" and specifically to confer power to make a "further order" is a matter which I must regard as some indication that once orders have been sought under sections 4 or 6 and refused a spouse cannot come back again. The question is, is it a compelling indication when the legislation is read in its entirety and given "such fair large-liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit" that section 19 of the Interpretation Ordinance requires. I do not think so. Section 11(1) of the Ordinance (which corresponds to section 9 of the English Act) enables the court to vary or discharge or to suspend temporarily any provision (or to revive the operation of any provision suspended) of orders made by virtue of section 4(1)(a) (periodical payments) or section 4(1)(b) (secured periodical payments) section 4(2)(b) (payment of lump sum by instalments) section 5(2)(a) (periodical payments to child) section 5(2)(b) (secured periodical payments to child) section 5(4) (payment of lump sum by instalments to child) and any order made by virtue of section 6(b) (settlement of property) section 6(c) (varying ante-nuptial or post-nuptial settlements of property) or (d) (extinguishing or reducing interests under any settlement). The court is not enabled to vary discharge or suspend orders made under section 4(1)(c) (lump sums) section 5(2)(c) (lump sum to child) or section 6(a) (transfers of property). These omissions do

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not appear to me to be of significance since orders under these subsections would be of immediate effect and they could not be undone by variation or discharge. The omissions are not a curtailment of jurisdiction but rather a recognition that the subject matter of such orders may have been disposed of. Subsection (5) of section 11 is of interest. It provides.

"(5) No such order as is mentioned in section 6 shall be made on an application for the variation of an order made by virtue of section 4(1)(a) or (b) or section 5(2)(a) or (b), and no order for the payment of a lump sum shall be made on an application for the variation of an order made by virtue of section 4(1)(a) or (b) or of section 8(6) (a) or (b)."

This prevents orders for transfer and settlement of property and variation of settlements from being made on applications for variation of periodical payments or secured periodical payments (to spouse or child) and prevents lump sum orders being made on applications for such variations (in the case of spouse only) or in cases of applications brought by either party to an existing marriage for variation of an order previously made providing for periodical payments or secured periodical payments. This again is to my mind more a wise curtailment procedurally than a limitation of jurisdiction. It prevents orders for property transfer, settlements of property and variation of settlements and orders for lump sum payments being made on applications for variation of periodical payments and thereby prevent surprise. It does not however suggest that applications for orders for property transfer etc. may not be made while orders for periodical payments are still in force. Subsection (7) obliges the court when exercising the powers conferred by section 11 to have regard to any change in any of the matters to which the court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death." The Legislature clearly has constantly in mind the effect which changing circumstances may have and intends to preserve to the court that flexibility frequently referred to as desirable in family matters.



Section 14 (which corresponds to section 13 of the English Act) renders void any provision in a maintenance agreement restricting any right to apply to a court for an order containing financial arrangements while keeping alive any other financial arrangements. "Maintenance agreement" is defined in very wide terms as meaning any agreement in writing made .... between the parties to a marriage, being

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- 10           "(a) an agreement containing financial arrangements ...; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements."

20           The variety and technicality of these provisions in our Matrimonial Proceedings and Property Ordinance represent a marked change from the simplicity of the provisions originally contained in our Divorce Ordinance, when the only powers given to the courts were to secure the payment to the wife of a gross sum or an annual sum for any term not exceeding the life of the wife or to order monthly or weekly payments to be made to a wife. Each amendment of those I have listed shows the tendency of the Legislature to widen the powers of the court and to give the court a greater discretion. We see a tendency towards flexibility welcomed in England as

30           early as Mills v. Mills (5) when the application had still to be made "on a decree" Sir Wilfrid Greene, M.R. there observed that it would be (sic) unfortunate to attempt to lay down a precise time limit within which an application might be said to be made "on the decree", provided it be a reasonable one in relation to the date of the decree. The tendency to enlarge the discretionary powers of the court became more marked with the passage of the Divorce Reform Act 1969 and the Matrimonial

40           Proceedings and Property Act 1970, two enactments which went hand in hand. Our corresponding legislation the Matrimonial Causes Ordinance and the Matrimonial Proceedings and Property Ordinance, both of 1972, both of which came into force on the same day, are as closely connected one with the other. Commenting on the inter-relation of the two Acts in England in Wachtel v. Wachtel (6) Ormrod, J. had this to say:

(5) (1940) P.124

(6) (1973) F.72

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"These two Acts which are clearly intended to be read together form the new code of family law. In my judgment it is the duty of the court when exercising its discretionary powers under the Act of 1970 to give effect to the new approach to these family problems which is explicit in the Divorce Reform Act 1969 and implicit in the Matrimonial Proceedings and Property Act 1970."

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Lord Denning, M.R. reading the judgment of the court of Appeal referred to the plaintiff of Lord Hodson in Pettitt v. Pettitt (7) at 811 when he had said :

"I do not myself see how one can correct the imbalance which may be found to exist in property rights as between husband and wife without legislation."

and commented:

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"Now we have legislation. In order to remedy the injustice Parliament has intervened."

He had earlier observed :

"We regard the provisions of sections 2, 3, 4 and 5 of the Act of 1970 as designed to accord to the courts the widest possible powers in readjusting the financial position of the parties and to afford the courts the necessary machinery to that end, as for example is provided in section 4. It must not be overlooked in this connection that certain of the provisions of the Act of 1970 are new : see for example section 7(2). Further, so far as we are aware, the principles clearly stated in section 5(1)(f) have nowhere previously found comparable statutory enactment."

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When discussing the one-third rule he observed :

"In any calculation the court has to have a starting point. If it is not to be one third, should it be one half or one quarter? A starting point at one third of the combined resources of the parties is as good and rational a starting point as any other,

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(7) (1970) A.C.777

remembering that the essence of the legislation is to secure flexibility to meet the justice of particular cases, and not rigidity, forcing particular cases to be fitted into some so-called principle within which they do not easily lie." (my emphasis)

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10 It is I consider against this background of constantly widening powers and the desire to give flexibility to the courts in family matters that one must approach the question of jurisdiction. One must I consider strain to accept jurisdiction rather than to reject it. Against the desire for finality must be set the desirability of flexibility.

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20 It is to be noted that the particular sections in question contemplated the making of orders or the refusal to make them rather than the granting or dismissal of applications. Indeed in the light of the wording of the sections the very word "dismissal" appears inappropriate. One does not dismiss an application for maintenance except in a loose sense of the word; one refuses to make an order on it. As early as Hyman v. Hyman (8) it is observed:

"The statutory powers of the court ... were granted partly in the public interest to provide a substitute for the husband's duty of maintenance."

30 An agreement by a wife to "barter away her right to future maintenance" was contrary to public policy. The court has in the wording of section 7 to "decide whether to exercise its powers under sections 4 or 6". The Ordinance does not visualise anything so final as dismissal of an application once and for all. Insofar then as the agreement entered into in this case provided that the application for maintenance should be dismissed it was inaccurate in its terminology. So too was the order questioned in these proceedings.

40 In Bennett v. Bennett (9) Denning L.J. (as he then was) when holding that a covenant in a deed by a wife not to proceed with her prayers for maintenance was void as being contrary to public policy appears to have regarded ouster of the jurisdiction of the court as the offensive factor. It seems however from Hyman v. Hyman (8) that the

(8) (1929) A.C.601

(9) (1952) 1 K.B. 249

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public interest to be safeguarded is not only that the jurisdiction of the court should not be ousted but also the public interest that the husband's duty of maintenance should be preserved. True the public interest no longer centres on the husband's duty to maintain the wife but on the duty of the party who is the more affluent to support the party who is the less affluent. That the obligation is now mutual does not to my mind change the public interest in its performance. Notwithstanding section 14 of the Ordinance the question is not entirely academic for the second ground upon which L. v. L. (1) was decided is dependent upon Bennett v. Bennett (9) and it is from Bennett v. Bennett (9), that the observation of Jenkins, L.J. in Russell v. Russell (10) that:

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"The principle in Hyman v. Hyman ... is satisfied by any bargain which is brought before the court for approval and approved by the court."

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stems. I do not think we should follow these pronouncements or the second ratio in L. v. L. (1) because of the wideness of the canon of public concern accepted in Hyman v. Hyman (8). If it had been the intention of the Legislature to enable the court to deprive itself of future jurisdiction by sanctioning agreements restricting any right to apply to a court for any order containing financial arrangements it would have been easy for the Legislature to have inserted words "other than an agreement approved or sanctioned by the court" in section 14 I find the precise purpose of section 15(6) hard to follow but do not think this is its intention. If it is it might with advantage have been more explicit. As it stands I read it as saving jurisdiction and not as limiting it. I am not impressed by the argument that the provision in the agreement here did not restrict the right to apply to a court because it required an application to the court. I am not impressed because a provision requiring or permitting one application amounts to a provision restricting the right to apply if only one application can be made. That the Matrimonial Causes Ordinance radically altered the basis of divorce is apparent and with this alteration came changes in the law of maintenance. Indeed throughout the demesne of family law one can observe greater freedoms most evident being the freedom of the parties to come

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(1) (1962) P.101 (9) (1952) 1 K.B.249  
(8) (1929) A.C.601 (10) (1956) P.283

to agreement. In the words of Lord Denning in Wachtel v. Wachtel (6) :

10 "No longer are there long contested divorce suits. Nearly every case goes uncontested. The parties come to an agreement, if they can, on the things that matter so much to them. They decide up the furniture. They arrange for the custody of the children, the financial provision for the wife, and the future of the matrimonial home. If they cannot agree, the matters are referred to a judge in chambers."

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20 This break with tradition is nowhere shown with more clarity than in giving jurisdiction to make awards in favour of either party when previously they might have been made only in favour of the wife. The fact of such a break must be acknowledged. However, a limitation on the new freedom to contract is immediately apparent and not only because of the statutory invalidity of a provision purporting to restrict the right to apply to the court. Either party, to an agreement freely arrived at may, because of section 15, seek to have it altered. All financial arrangements in a maintenance agreement are by the section subject to alteration and by section 16 alteration even after the death of a party is possible. The emphasis once again is on flexibility rather than finality. Whether or not the documents in this case constitute a maintenance agreement (and I am of the view that they do notwithstanding the superimposition on them of the order of court or the appointment of a trustee) is immaterial to the interpretation of sections 4, 5 and 6. The purpose of section 15 is clear and its effect is to impose severe limitation on freedom to contract with finality. It is noteworthy that agreements may be altered even where a change in circumstances has been foreseen by the parties when making the agreement. Sections 4, 5 and 6 must be read with this in mind.

40 The entire tenor of the legislation is in my view to preserve to the court flexibility and jurisdiction to make such orders as the circumstances prevailing at the time of the application demand. The tenor is such that the courts should be anxious to find jurisdiction rather than to reject it. I am therefore of the opinion that neither of the

(6) (1973) F.72

In the Supreme Court of Hong Kong. Appellate Jurisdiction Civil Appeal No. 6 of 1976 No. 51 Judgment of Leonard, J.J. dated 17th December 1976 (cont'd)

rationes in L. v. L.(1) should be followed.

I would allow this appeal with costs here and below and hold that the learned trial judge had jurisdiction to entertain applications for the various reliefs set out in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 of the amended inter parte summons (redated the 21st January 1976). Such reliefs if granted would have the effect the varying the consent order made on 23rd May 1970. I do not consider that jurisdiction to set it aside exists in proceedings constituted as these are constituted nor that these proceedings are suited to or proper for that purpose. It is unnecessary for me to go into my reasons for so holding since the same result can be attained without the consent order being set aside. Again any orders under prayers 2 to 9 inclusive would have the effect of varying the financial arrangement contained in the deed of arrangement and the two trust deeds annexed and it is therefore unnecessary for me to consider the various technical difficulties raised by counsel for the respondent to the assumption of jurisdiction, in the proceedings as they are now framed, under section 15 of the Matrimonial Proceedings and Property Ordinance.

I would remit the matter as proposed by Pickering, J.A.

No. 52 Order of Mr. Justice Pickering, Mr. Justice McMullin and the Hon. Mr. Justice Leonard dated 17th December 1976

No. 52

ORDER OF MR. JUSTICE PICKERING,  
MR. JUSTICE McMULLIN AND HON.  
MR. JUSTICE LEONARD

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IN THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION  
CIVIL APPEAL NO. 6 of 1976

(On Appeal from Divorce Jurisdiction Action No. 14 of 1970)

BETWEEN

(1) (1962) P.101

HANNELORE DE LASALA

and

ERNEST FERDINAND PEREZ LASALA

Appellant  
(Petitioner)

Respondent  
(Respondent)

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
Civil Appeal  
No. 6 of 1976

No. 52  
Order of Mr.  
Justice  
Pickering, Mr.  
Justice  
McMullin and  
the Hon. Mr.  
Justice Leonard  
dated 17th  
December 1976  
(cont'd)

BEFORE THE HONOURABLE MR. JUSTICE PICKERING, THE  
HONOURABLE MR. JUSTICE McMULLIN AND THE HONOURABLE  
MR. JUSTICE LEONARD IN COURT OF APPEAL

O R D E R

10 ON MOTION by way of appeal from the ruling  
of the Honourable Mr. Justice Huggins made on the  
23rd day of January 1976 made unto this Court by  
Counsel for the Appellant (Petitioner) AND UPON  
NOTICE by way of cross-appeal dated the 7th day of  
October 1976 for the Respondent (Respondent);

AND UPON HEARING Counsel for the Appellant  
(Petitioner) and Counsel for the Respondent  
(Respondent);

20 AND UPON READING the Honourable Mr. Justice  
Huggins' Ruling;

THIS COURT DID ORDER that the said appeal  
and cross-appeal should stand for judgment;

AND the said appeal and cross-appeal standing  
this day for judgment in the presence of Counsel for  
the Appellant (Petitioner) and for the Respondent  
(Respondent);

30 THIS COURT DOETH ORDER that the appeal be allowed  
and the cross-appeal be dismissed and that the amended  
summons dated the 1st day of August, 1975 and re-dated  
the 21st day of January, 1976, be remitted to the  
judge to be dealt with upon its merits, as though  
the words "setting aside" in the first prayer and the  
word "revoking" in the 10th prayer were deleted;

AND IT IS ORDERED that the Respondent  
(Respondent) do pay to the Appellant (Petitioner) her  
costs of the hearing before the Honourable Mr. Justice  
Huggins and her costs occasioned by the said appeal  
and cross-appeal and in taxing the said costs of the  
Appellant (Petitioner) there shall be allowed the

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costs of the attendance of two counsel on behalf  
of the Appellant (Petitioner).

Liberty to either party to apply for further  
directions.

Dated the 17th day of December 1976.

(sd.) S.H. Mayo  
Registrar.

No. 52  
Order of Mr.  
Justice  
Pickering, Mr.  
Justice  
McMullin and  
the Hon. Mr.  
Justice Leonard  
dated 17th  
December 1976  
(cont'd)

No. 53  
Affidavit of  
Robert Eli Low  
dated 28th  
December 1976

No. 53

AFFIDAVIT OF ROBERT ELI LOW

IN THE SUPREME COURT OF HONG KONG

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APPELLATE JURISDICTION

CIVIL APPEAL NO. 6 OF 1976

(ON APPEAL FROM DIVORCE JURISDICTION ACTION NO.  
14 OF 1970)

BETWEEN

HANNELORE DE LASALA

Appellant  
(Petitioner)

and

ERNEST FERDINAND PEREZ DE  
LASALA

Respondent  
(Respondent)

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I, ROBERT ELI LOW of 922 Union House,  
Chater Road, Hong Kong, Solicitor, do make oath  
and say as follows :-

1. I am a Solicitor in the firm of Alexander  
Tsang & Company of 922 Union House, Hong Kong,  
Solicitors for the Respondent, and I have the  
conduct of this Action on behalf of the Respondent.



2. On the 17th December 1976 the Court of Appeal allowed the Appeal of the Appellant from the Ruling of the Honourable Mr. Justice Huggins made on the 23rd January 1976 and dismissed the Respondent's cross appeal and ordered that the Respondent should pay the cost of the Action both in the Court of Appeal and in the Court below.

In the Supreme Court of Hong Kong. Appellate Jurisdiction Civil Appeal No. 6 of 1976

No. 53  
Affidavit of Robert Eli Low dated 28th December 1976 (cont'd)

10 3. The general grounds upon which the Respondent seeks leave of the Court of Appeal to appeal to Her Majesty in Council are as follows:-

- (a) That the Court of Appeal was wrong in not following the decision of L. v. L. (1962) P.101.
- (b) That the Court of Appeal was wrong in holding that the Order made by the Honourable Mr. Justice Geoffrey Briggs (as he was then) on the 23rd day of May 1970 was not of a final nature.
- 20 (c) That the dissenting Judgment of the Honourable Mr. Justice McMullin J.A. in the Court of Appeal is correct.
- (d) That the Court of Appeal was wrong in holding that there was jurisdiction to entertain the application of the Appellant.
- (e) That the Court of Appeal was wrong in dismissing the cross appeal of the Respondent.

30 4. A matter of extreme importance of this case is whether finality in any financial agreement or settlement can ever be achieved between the parties in a matrimonial dispute.

5. For the reasons stated above, among other reasons, the question involved in the Appeal is one which has great general or public importance and ought to be submitted to her Majesty in Council.

6. The Respondent Ernest Ferdinand Perez de Lasala humbly ask leave of the Court of Appeal to appeal to Her Majesty in Council.

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
Civil Appeal  
No. 6 of 1976

No. 53  
Affidavit of  
Robert Eli Low  
dated 28th  
December 1976  
(cont'd)

SWORN at the Courts of Justice)  
Victoria, Hong Kong, this 28th ) (sd.) R.E. Low  
day of December, 1976. )

Before me,

(sd.) Raymond Low  
Commissioner for Oaths.

This Affidavit is filed on behalf of the Respondent

A copy of this Affidavit was served on Hampton, Winter & Glynn by Chit Book on 28.12.76.

IN THE SUPREME COURT OF  
HONG KONG  
APPELLATE JURISDICTION  
CIVIL APPEAL NO. 6 OF 1976  
(ON APPEAL FROM DIVORCE  
JURISDICTION ACTION NO.  
14 of 1970)

In the Supreme Court of Hong Kong. Appellate Jurisdiction Civil Appeal No. 6 of 1976  
No. 53  
Affidavit of Robert Eli Low dated 28th December 1976  
(cont'd)

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BETWEEN

HANNELORE DE Appellant  
LASALA (Petitioner)

and

ERNEST FERDINAND  
PEREZ DE LASALA Respondent  
(Respondent)

---

A F F I D A V I T

of

ROBERT ELI LOW

---

20

Sworn on the 28th day of  
December 1976.

Filed on the 28th day of  
December 1976.

Filed on behalf of the  
Respondent (Respondent).

30

ALEXANDER TSANG & CO.,  
Solicitors for the  
Respondent (Respondent),  
922 Union House,  
Chater Road,  
HONG KONG.

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
No. 6 of 1976

No. 54

NOTICE OF MOTION FOR LEAVE TO  
APPEAL TO THE PRIVY COUNCIL

No. 54  
Notice of  
Motion for  
Leave to Appeal  
to Privy  
Council dated  
28th December  
1976.

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IN THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION

CIVIL APPEAL NO. 6 OF 1976  
(ON APPEAL FROM DIVORCE JURISDICTION ACTION NO.  
14 of 1970)

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BETWEEN

HANNELORE DE LASALA

Appellant  
(Petitioner)

10

and

ERNEST FERDINAND PEREZ DE LASALA

Respondent  
(Respondent)

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NOTICE OF MOTION FOR LEAVE  
TO APPEAL TO THE PRIVY  
COUNCIL

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TAKE NOTICE that the Court of Appeal will  
be moved on Tuesday the 18th day of January 1977  
at 9.40 o'clock in the forenoon or so soon  
thereafter as Counsel on behalf of the abovenamed  
Respondent (Respondent) can be heard for an Order  
giving leave to appeal to Her Majesty in Council  
pursuant to provisions contained in the rules in  
the Orders in Council regulating appeals from the  
Supreme Court or Court of Appeal for Hong Kong to  
Her Majesty in Council from a Judgment of the  
Court of Appeal given on the 17th December 1976  
whereby it was adjudged that the appeal of the  
abovenamed Appellant (Petitioner) from the Ruling  
of the Honourable Mr. Justice Huggins made on the  
23rd January 1976 be allowed and the Respondent's  
(Respondent's) cross appeal be dismissed and  
whereby it was further ordered that the Respondent  
(Respondent) do pay the cost of the said Appeal  
and the Court below.

20

30

Dated the 28th day of December, 1976.

(Sd) Alexander Tsang & Co.  
Solicitors for the Respondent  
(Respondent)

To: Messrs. Hampton, Winter & Glynn,  
Solicitors for the Appellant (Petitioner),  
113-6 Jardine House  
Hong Kong.

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
No. 6 of 1976

No. 54  
Notice of  
Motion for  
Leave to Appeal  
to Privy  
Council dated  
28th December  
1976.  
(cont'd)

In the Supreme Court of Hong Kong. Appellate Jurisdiction No. 6 of 1976  
No. 54  
Notice of Motion for Leave to Appeal to Privy Council dated 28th December 1976.  
(cont'd)

A copy of this Notice of Motion was served on Hampton Winter & Glynn by Chit Book on 28.12.76.

IN THE SUPREME COURT OF HONG KONG

APPELLATE JURISDICTION

CIVIL APPEAL NO. 6 of 1976

(ON APPEAL FROM DIVORCE JURISDICTION NO. 14 OF 1970)

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BETWEEN

10

HANNELORE DE Appellant  
LASALA (Petitioner)

and

ERNEST FERDINAND  
PEREZ DE LASALA Respondent  
(Respondent)

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NOTICE OF MOTION FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL

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Filed the 28th day of December 1976 at 3.45 p.m.

20

ALEXANDER TSANG & CO.,  
Solicitors for the  
Respondent (Respondent),  
922 Union House,  
Chater Road,  
HONG KONG.

No. 55

ORDER OF MR. JUSTICE PICKERING, MR.  
JUSTICE McMULLIN AND MR. JUSTICE  
LEONARD

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
No. 6 of 1976

1976, No. 6

BEFORE THE HONOURABLE MR. JUSTICE PICKERING, THE  
HONOURABLE MR. JUSTICE McMULLIN AND THE HONOURABLE  
MR. JUSTICE LEONARD IN COURT OF APPEAL

No. 55  
Order of Mr.  
Justice  
Pickering, Mr.  
Justice  
McMullin and  
Mr. Justice  
Leonard dated  
18th January  
1977.

O R D E R

10 UPON READING the Notice of Motion herein,  
dated the 28th day of December, 1976, on behalf of  
the Respondent (Ernest Ferdinand Perez de Lasala)  
for leave to appeal from a Judgment of the Court of  
Appeal given on the 17th December 1976, to the  
Judicial Committee of the Privy Council pursuant to  
the Orders in Council regulating appeals from the  
Court of Appeal for Hong Kong to Her Majesty the  
Queen in Council;

20 AND UPON HEARING Counsel for the Appellant  
and Counsel for the Respondent;

AND UPON READING the Affidavit of Robert Eli  
Low filed herein on the 28th day of December 1976,

IT IS ORDERED that :-

- 30 (1) Leave to appeal to Privy Council be granted  
conditional upon the Respondent within one  
month from the date hereof entering into good  
and sufficient security to the satisfaction  
of the Court, in the sum of HK\$30,000 for  
costs of appeal and despatching Record of  
appeal to England within three months from  
the date hereof;
- (2) Costs of this application to abide the result  
of the appeal.

Dated the 18th day of January, 1977.

{sd.} S.H. Mayo            L.S.  
Registrar

In the Supreme  
Court of Hong  
Kong. Appellate  
Jurisdiction  
No. 6 of 1976

No. 56  
Memorandum of  
Payment into  
Divorce Court

No. 56

MEMORANDUM OF PAYMENT INTO  
DIVORCE COURT

IN THE SUPREME COURT OF HONG KONG

APPELLATE JURISDICTION

CIVIL APPEAL NO. 6 OF 1976

(ON APPEAL FROM DIVORCE JURISDICTION ACTION NO.  
14 OF 1970)

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BETWEEN	HANNELORE DE LASALA	Appellant (Petitioner)	10
	and		
	ERNEST FERDINAND PEREZ DE LASALA	Respondent (Respondent)	

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Please receive into Court the sum of  
HK\$30,000.00 paid in by the Respondent (Respondent)  
pursuant to the Order herein dated the 18th day of  
January 1977 as security for costs of appeal.

Dated the 10th day of February, 1977.

(Sd.) Alexander Tsang & Co.  
(Solicitors for the Respondent) 20  
(Respondent).

To the Registrar,  
Supreme Court,  
Hong Kong.

RECEIVED HK\$30,000.00 into Court  
for the above credit this 10th  
day of February, 1977.

(Sd.) S.H. Mayo L.S.  
Registrar



A copy of this Memorandum was served on Hampton, Winter & Glynn by Chit Book on 10.2.77.

IN THE SUPREME COURT OF HONG KONG.

APPELLATE JURISDICTION

CIVIL APPEAL NO. 6 of 1976

(ON APPEAL FROM DIVORCE JURISDICTION ACTION NO. 14 OF 1970)

In the Supreme Court of Hong Kong. Appellate Jurisdiction No. 6 of 1976 No. 56 Memorandum of Payment into Divorce Court (cont'd)

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BETWEEN

HANNELORE DE LASALA Appellant  
(Petitioner)

and

ERNEST FERDINAND PEREZ DE LASALA Respondent  
(Respondent)

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MEMORANDUM ON PAYMENT INTO DIVORCE COURT

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Filed the 10th day of February, 1977 at 4.00 p.m.

ALEXANDER TSANG & CO.,  
Solicitors for the Respondent (Respondent),  
Rooms 919-922 Union House,  
No. 9-25 Chater Road,  
Hong Kong.

20

In the Supreme Court of Hong Kong. Appellate Jurisdiction No. 6 of 1976

No. 57

ORDER OF MR. JUSTICE PICKERING,  
MR. JUSTICE McMULLIN AND MR.  
JUSTICE LEONARD

No. 57  
Order of Mr. Justice Pickering, Mr. Justice McMullin and Mr. Justice Leonard dated 29th April 1977.

IN THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION

CIVIL APPEAL NO. 6 of 1976  
(ON APPEAL FROM DIVORCE JURISDICTION ACTION NO. 14 OF 1970)

BETWEEN:	HANNELORE DE LASALA	Appellant (Petitioner)	10
	and		
	ERNEST FERDINAND PEREZ DE LASALA	Respondent (Respondent)	

BEFORE THE HONOURABLE MR. JUSTICE PICKERING, THE HONOURABLE MR. JUSTICE McMULLIN AND THE HONOURABLE MR. JUSTICE LEONARD IN COURT OF APPEAL.

O R D E R

UPON READING the Notice of Motion herein, dated the 25th day of April, 1977, on behalf of the Respondent (Ernest Ferdinand Perez De Lasala) for final leave to appeal to Her Majesty in Council pursuant to provisions contained in the Rules and Orders in Council regulating appeals from the Court of Appeal for Hong Kong to Her Majesty the Queen in Council; 20

AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent;

AND UPON READING the Certificate of Registrar filed herein on the 15th day of April 1977. 30

IT IS ORDERED that :-

- (1) Final leave to appeal to Her Majesty in Council pursuant to provisions contained

in the Rules and Orders in Council regulating appeals from the Court of Appeal for Hong Kong to Her Majesty the Queen in Council be granted; and

- (2) Costs of this application to abide the result of the appeal.

Dated the 29th day of April, 1977.

(sd.) S.H. Mayo                      L.S.  
Registrar.

In the Supreme Court of Hong Kong. Appellate Jurisdiction No. 6 of 1976

No. 57  
Order of Mr. Justice Pickering, Mr. Justice McMullin and Mr. Justice Leonard dated 29th April 1977  
(cont'd)

IN THE PRIVY COUNCIL

No. of 7

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O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG  
COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 1976

(On appeal from Divorce Jurisdiction  
Action No. 14 of 1970)

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B E T W E E N :

ERNEST FERDINAND PEREZ  
DE LASALA

Appellant

- and -

HANNELORE DE LASALA

Respondent

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RECORD OF PROCEEDINGS

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THEODORE GODDARD & COMPANY,  
16 St. Martin's-le-Grand,  
London EC1A 4EJ,  
London Agents for  
Messrs. DEACONS  
Solicitors for the Appellant.

Pritchard Englefield & Tobin and  
Buckeridge & Braune,  
23 Great Castle Street,  
London W1N 8NQ.  
London Agents for  
HAMPTON, WINTER & GLYNN,  
Solicitors for the Respondent.