



of the 16th day of November, 1903, and said evidence to

IN THE SUPREME COURT OF BRITISH COLUMBIA.

ON APPEAL FROM THE COUNTY JUDGES CRIMINAL COURT.

BETWEEN:

His Majesty the King, His Crown and REX,

Respondent;

And

LAI PING,

Appellant;

- NOTICE OF APPEAL TO FULL COURT -

TAKE NOTICE that the Full Court will be moved at its present sittings at the Court House, City of Vancouver, on Friday the 11th. day of November, 1904, by counsel on behalf of the above named appellants for leave to appeal from the judgment or conviction of His Honour Alexander Henderson, Esquire, a judge of the County Court of Vancouver, exercising criminal jurisdiction under the provisions of Part 54 of the Criminal Code relating to speedy trials for indictable offenses, whereby he did on the 16th day of February, 1904, at the City of Vancouver, Province of British Columbia, convict Lai Ping (Appellant) for that the said Lai Ping of Lulu Island, County of Vancouver, did commit perjury with intent to procure the conviction of Matakichi Yamasaki for an offence punishable with death, namely, murder, by swearing on the preliminary inquiry held before H. O. Alexander, Esquire, Stipendiary Magistrate in and for the county of Vancouver, at the City of Vancouver, in the said County of Vancouver, on the 2nd. day of December, A. D., 1903, unto a charge preferred against the said Matakichi Yamasaki whereon he was charged with the murder of one Chin Lin Jung, that the said Lai Ping did see the said Matakichi Yamasaki come out of the house of the said Chin Lin Jung about the hour of half past three o'clock in the morning



of the 6th, day
be false

Page 5²⁰, 32 oath

Waring - 43, 44, 53
54, 60, 62
#

Lai Ping committed by J.A. Russell
on 11th Dec. 1903

14 Dec 1903 - Alexander went
to Westminster Jail and
took confession

IN THE SUPREME COURT OF BRITISH COLUMBIA
ON APPEAL FROM THE COUNTY COURT OF VANCOUVER
BETWEEN
R. H. X.
AND
LAI PING,
APPELLANT
vs
THE KING,
RESPONDENT

TAKE NOTICE that the said LAI PING
present sitting at the Court House
Friday the 11th day of November, 1904, in
of the above named appellants for leave to appeal
judgment or conviction of His Honor Alexander
Magistrate, a Judge of the County Court of Vancouver, exercising
original jurisdiction under the provisions of Part 64 of the
Criminal Code relating to speedy trials for indictable offences,
whereby he did on the 18th day of February, 1904, at the City
of Vancouver, Province of British Columbia, convict LAI PING
(Appellant) for that the said LAI PING of said Island, County
of Vancouver, did commit perjury with intent to procure the
conviction of Katakichi Yamasaki for an offence punishable
with death, namely, murder, by swearing on the preliminary
inquiry held before H. G. Alexander, Magistrate, Respondent,
Magistrate in and for the County of Vancouver, at the City of
Vancouver, in the said County of Vancouver, on the 2nd day of
December, A. D., 1903, unto a charge preferred against the said
Katakichi Yamasaki wherein he was charged with the murder of
one Chin Tin Tung, that the said LAI PING did see the said
Katakichi Yamasaki come out of the house of the said Chin Tin
Tung about the hour of half past three o'clock in the morning



of the 6th. day of November, 1903, knowing said evidence to be false, and with the intent to mislead the said H. O. Alexander, against the form of the Statute in such case made and provided, and against the Peace of our Sovereign Lord, the King, His Crown and Dignity, upon the following among other grounds:

1. That the said judgment or conviction, is invalid ~~in~~ that there was no evidence before the Learned Trial judge to support the alleged defence, it not having been shewn that an oath was administered Lai Ping at the time of the commission of the alleged perjury;
2. That the necessary corroboration of the alleged perjury was only obtained by the improper admission of evidence;
3. That the sentence imposed was irregular and in excess of jurisdiction.

And on other grounds.

DATED at Vancouver this 8th. day of November, A. D. 1904.

F. R. McD. Russell

 SOLICITOR FOR THE ABOVE-NAMED
 APPELLANT.

To the Hon. Charles Wilson, Esq.,

Attorney-General for the Province of British Columbia.

*Lee
 King & Phinney
 40-1
 6 Am. C.C.
 474-476.
 — 11 —*

S. C. OF B. C.
ON APPEAL FROM THE COUNTY
JUDGE'S CRIMINAL COURT.

99
100

R E X

vs.

LAI PING.

NOTICE OF APPEAL TO FULL COURT

Read
over 9/04

100
99

RUSSELL & RUSSELL.



Jur. Sworn on Gospel
Sells & Hart
3 Borden's & Bayham 232
Chinese Oath - Rex v. Ah Hoey
9 B.C. 569

Rex v. Entschman - Carrington, Harshman 248
Dancer oath

Birch & Somerville 2 Dr. Com. L. Rpts 243
Taylor Vol 2 - § 1380
(An irregularity)

Binding on his Conscience
Taylor Vol 2 § 1388.

more Binding
If a witness states that a certain oath is binding on his Conscience, he may not be afterwards asked if he considers any other form of oath more binding on his Conscience

"The Queen's Case"
2 Borden's & Bayham 289
Taylor Vol 2 - § 1388.

Roscoe's Crim Evidence at p 37

"You had better, as good boys, tell the truth."

R v. Rieve & Hancock
L. R., 1 Cr. C. C. Res 362

Opium "If you will give me a piece of gin"
Doe v. Ch. Est 38

Removal of inducement
Roscoe 41

Woods Case
Phipson 231
— Enough evidence if Confession got out



[Faint, mostly illegible handwritten text in pencil, appearing to be a legal document or correspondence. The text is mirrored across the page, suggesting bleed-through from the reverse side.]

[Large red handwritten scribbles, possibly initials or a signature, located on the right side of the page.]

IN THE SUPREME COURT OF BRITISH COLUMBIA.

IN THE FULL COURT.

ON APPEAL FROM THE COUNTY JUDGE'S CRIMINAL COURT.

BETWEEN:

R E X,

RESPONDENT;

A n d

LAI PING,

APPELLANT:

CASE ON APPEAL FROM THE JUDGMENT OF
HIS HONOR JUDGE HENDERSON.

MESSRS. GIBSON & SELL,

Solicitors for the Appellant;

A. E. POTTER, ESQ.,

Solicitor for the Respondent.

Bradley - af = 14 213.D.

Pealier oath

18 213.D.

Taking affirmation where he should have taken
~~an oath~~

Ry v Moon & Linn L.R. 287

hush v alii Lam & Linn L.R.

Ry v Johnson

18 213.D. 587

IN THE SUPREME COURT OF BRITISH COLUMBIA.

IN THE FULL COURT.

ON APPEAL FROM THE COUNTY COURT JUDGE'S CRIMINAL COURT.

ACQUITTAL dated 25th Jan. 1904----- 2
BETWEEN:

EVIDENCE taken at trial before His Honor Judge
 Henderson--- R E X,----- 4

ASSIGNMENT ON ADMISSIBILITY OF CONFESSION OF Respondent;----- 123

A n d

CONFESSION OF LAI PING dated 14th Dec. 1903--- 142

COUNSEL'S OBJECTIONS - 1st Feb. 1904----- 144
 LAI PING,

VERDICT - Judge Henderson----- Defendant: 9

INDEX OF EVIDENCE.

CASE FOR THE PROSECUTION - 25th Jan, 1904----- 4

H. O. ALEX ----- 4

* CASE ON APPEAL FROM THE JUDGMENT----- 10

* * OF HIS HONOR JUDGE HENDERSON.----- 23

DAVID LEW Direct Examination----- 31

* * Cross Examination----- 38

* * Re Examination----- 71

CHARLES LEE POOK Direct Examination----- 77

* * * Cross Examination----- 78

* * * Re Examination----- 81

G. S. CAMPBELL Direct Examination----- 82

* * Cross Examination----- 90

* * Re Examination----- 94

J. E. MURCHISON Direct Examination----- 95

* * Cross Examination----- 96

YAMAGAKI Direct Examination -----	29
INDEX .	102
Re examination -----	108
STATEMENT OF CASE ON APPEAL-----	1
ACCUSATION dated 29th, Jan. 1904-----	2
EVIDENCE taken at trial before His Honor Judge Henderson-----	4
ARGUMENT ON ADMISSIBILITY OF CONFESSION OF LAI PING	129
CONFESSION OF LAI PING dated 14th Dec. 1903---	142
Cross Examination-----	145
COUNSEL'S OBJECTIONS - 1st Feb. 1904-----	144
J. MURKIN Direct Examination-----	147
VERDICT - Judge Henderson-----	149
CASE FOR INDEX OF EVIDENCE.	155
CASE FOR THE PROSECUTION - 29th Jan, 1904-----	4
H. O. ALEXANDER Direct Examination-----	4
" " Cross Examination-----	18
" " Re Examination-----	28
DAVID LEW Direct Examination-----	31
" " Cross Examination-----	45
" " Re Examination-----	72
CHARLIE LEE FOOK Direct Examination-----	77
" " " Cross Examination-----	78
" " " Re Examination-----	81
C. S. CAMPBELL Direct Examination-----	82
" " Cross Examination-----	90
" " Re Examination-----	94
J. E. MURCHISON Direct Examination-----	95
" " Cross Examination-----	96

The King v. Lai Ping
S. 5
Crown, District Attorney
Vancouver, B.C.
June, 1904
H. H. ...

ACCUSATION.
STATEMENT OF CASE ON APPEAL.

CANADA
PROVINCE OF BRITISH COLUMBIA

The prisoner, Lai Ping, was convicted before His Honor Judge Henderson, in the County Judges' Criminal Court for that on the certain information against Matakichi Yamasaki for murder the prisoner committed perjury and was sentenced to ten years in the Penitentiary at hard labor.

From this conviction and judgment the prisoner appeals that no oath was administered to the prisoner and he did not therefore commit perjury.

For that the said Lai Ping of India Island, County of Vancouver, did commit perjury with intent to procure the conviction of Matakichi Yamasaki for an offence punishable with death, namely, murder, by swearing on the preliminary enquiry held before H. C. Alexander, a Stipendiary magistrate in and for the County of Vancouver, at the City of Vancouver, in the said County of Vancouver, on the 2nd December, A. D., 1903, unto a charge preferred against the said Matakichi Yamasaki wherein he was charged with the murder of one Chin Lin Jung, that the said Lai Ping did see the said Matakichi Yamasaki come out of the house of the said Chin Lin Jung about the hour of half past three o'clock of the morning of the 5th day of November, 1903 knowing said evidence to be false and with the intent to mislead the said H. C. Alexander.

S.C.
 "The King" - Lai Ping
 This is the paper writing marked "A" referred to in the
 affidavit of Senes Gilbert Hosang
 sworn before me this the 15th day of June, 1904
W. H. Harris

ACCUSATION.

against the form of the Statute in such cases made and
 provided and against the peace of our SAVED BRITISH COLUMBIA, the
 King, His Crown and Dignity)
 CANADA)
 PROVINCE OF BRITISH COLUMBIA)
 COUNTY OF VANCOUVER)
 TO WIT:)
 A. B. Pottenger)
 Crown Prosecutor.)

Friday the 29th day of January, A. D., 1904 at the
 City of Vancouver, in the County of Vancouver, before His
 Honor Alexander Henderson, Judge of the County Court of
 Vancouver, exercising criminal jurisdiction under the
 10 provisions of part 54 of the Criminal Code relating to
 speedy trials for indictable offences. Lai Ping, who is
 committed for trial to the common gaol at the City of New
 Westminster and is now a prisoner in close custody, stands
 charged this day before His Honor Alexander Henderson,
 Judge, sitting in open court for the trial of the said
 Lai Ping, as follows:-

For that the said Lai Ping of Lulu Island, County of
 Vancouver, did commit perjury with intent to procure the
 conviction of Matakichi Yamasaki for an offence punishable
 20 with death, namely,- murder, by swearing on the preliminary
 enquiry held before H. O. Alexander, a Stipendiary
 magistrate in and for the County of Vancouver, at the City
 of Vancouver, in the said County of Vancouver, on the 2nd
 December, A. D., 1903, unto a charge preferred against the
 said Matakichi Yamaski wherein he was charged with the
 murder of one Chin Lin Jung, that the said Lai Ping did
 see the said Matakichi Yamaski come out of the house of
 the said Chin Lin Jung about the hour of half past three
 o'clock of the morning of the 6th day of November, 1903
 30 knowing said evidence to be false and with the intent to
 mislead the said H. O. Alexander.

County Court Judge's Criminal Court.

Against the form of the Statute in such case made and provided and against the peace of our Sovereign Lord, the King, his Crown and Dignity.

"A. B. Pottenger"
Crown Prosecutor.

Mr. A. B. Pottenger for the Crown; Mr. A. B. Taylor for the accused, who, having been duly arraigned pleads "Not Guilty."

On the request of Mr. Taylor, all witnesses, with the exception of Mr. H. G. Alexander, ordered to be excluded from the Court Room.

Mr. Pottenger: I understand my learned friend who is acting for the prisoner does not propose that these two cases should be tried at once, but any evidence that may be brought out in this case can be used in the other case.

NOTICE FOR THE PROSECUTION.

H. G. ALEXANDER, called and sworn. Exam. by

Mr. Pottenger.

Q: What is your name? A: Henry Osborne Alexander.

Q: You are a stipendiary magistrate, I understand, are you not? A: Yes, for the County of Vancouver.

Q: You had a charge of murder, I believe, before you were appointed, against one Matsuzaki Yamazaki?

A: Yes, I am that that be ascertained. This Japanese was named in the indictment as Yamazaki. It ought to be Matsuzaki. I am that that be amended.

Q: Yes, I am that that be ascertained. This Japanese was named in the indictment as Yamazaki. It ought to be Matsuzaki. I am that that be amended.

Q: Yes, I am that that be ascertained. This Japanese was named in the indictment as Yamazaki. It ought to be Matsuzaki. I am that that be amended.

Q: Yes, I am that that be ascertained. This Japanese was named in the indictment as Yamazaki. It ought to be Matsuzaki. I am that that be amended.

Q: Yes, I am that that be ascertained. This Japanese was named in the indictment as Yamazaki. It ought to be Matsuzaki. I am that that be amended.

Q: Yes, I am that that be ascertained. This Japanese was named in the indictment as Yamazaki. It ought to be Matsuzaki. I am that that be amended.

"The King" re Lai Ping
This is the only "B" referred to in the
affidavit, Soulo Gilbert Hosang
sworn before me this 15th June 1904
H. O. Alexander

A Commissioner for taking Affidavits
within British Columbia.

In the County Court Judge's Criminal Court.
(Before His Honor, Judge Henderson.)

Vancouver, Jan. 29th./04.

REX vs. LAI PING. (Perjury).

Mr. A. B. Pottenger for the Crown; Mr. A. D. Taylor for
the accused, who, having been duly arraigned pleads
"Not guilty."

10 Upon the request of Mr. Taylor, all witnesses, with the
exception of Mr. H. O. Alexander, ordered to be excluded
from the Court Room.

Mr. Pottenger: I understand my learned friend who is act-
ing for the prisoner does not propose that these two
cases should be tried at once, but any evidence that
applies to both cases, brought out in this case can
also be used in the Wo Wai case.

CASE FOR THE PROSECUTION.

15 H. O. ALEXANDER. Called and sworn. Exam. by
Mr. Pottenger.

1. Q: What is your name? A: Henry Osborne Alexander.

20 2 Q: You are a stipendiary magistrate, I understand,
Mr. Alexander? A: Yes, for the County of Vancouver.

3 Q: You had a charge of murder, I believe, before you
lately, against one Matakichi Tamasaka? A: Matakichi
Yamasaki.

4 Q: Yes, I ask that that be corrected. This Japan-
ese is named in the accusation as Tamasaki. It ought
to be Yamasaki. I ask that that be amended.

Mr. Taylor: There is no objection.

5 Q: Who laid this information, Mr. Alexander? A:

30 One Chan Toy. The information do you mean against the
Japanese?

6 Q: Against the Japanese for murder, yes? A: Yes,

one Chan Toy.

7 Q: When did this information charge that the murder had taken place? A: Well, the information is in. I think it was the 6th. day of November.

8 Q: Is that the information? That is the murder case?

A: Yes, this is the information. On or about the 6th. Nov. he killed and murdered Chin Lin Jung. I might say, for the guidance of the court that this man Chin Lin Jung was also called Charlie Sing. In some places you see him mentioned as Charlie Sing, and in others, Chin Lin Jung.

9 Q: I understand you held the preliminary investigation in that matter? A: I did.

10 Q: When was it held? A: Well, it was held on various days; the first taking of evidence was on the 30th. Nov.

11 Q: I suppose some witnesses were duly examined in that case? A: Yes, there were several on the 30th. Nov.- Woo Wai.

12 Q: That is one of the accused? A: One of the accused was examined. He was sworn by burning paper; that is, his name was written on - he wrote his name on a piece of paper. He was sworn through the interpreter who had previously been sworn, that he was to tell the truth, the whole truth, and nothing but the truth, or his soul would burn up as that paper had been burned. I am speaking of Woo Wai. On Dec. 2nd. the same course was pursued in regard to Lai Ping, the other accused.

13 Q: Then the prisoner Lai Ping was duly sworn before you? A: He was.

14 Q: Was he asked how he swore, or anything of that sort? A: Yes, he was.

15 Q: What did you say to him in that regard? A: Well, I asked him how he swore and he intimated that he swore through burning paper, writing his name on a piece of

24 Q: Is that (exhibiting document) the deposition
paper that was given to him.

16 Q: Who was the interpreter at this time? A: David C
Lew. but in, I object to that going in. The

17 Q: He interpreted the evidence of both? A: All
through that, yes. Even a judge's notes, taken by a

18 Q: Both Lai Ping and Woo Wai? A: Yes. or evi-

19 Court (to witness): You administered the oath?

A: I administered the oath, both to the interpreter and
to the two witnesses; that is, through the interpreter

10 to the witnesses. the deposition that was taken as

20 Q: Mr. Pottenger: Have you had much experience with
David Lew as an interpreter? A: I have. a then to

21 Q: Has he acted for you in many cases? A: Well,
I have seen a good deal of him in the courts. all.

22 Q: And what would you say as to his liability as an
interpreter? Court (to Mr. Pottenger): Do you think it
necessary for you to raise this question? ~~the~~

Mr. Pottenger: Well, I do not. this action.

23 Court: I think you had better go ahead. If there is any
20 objection Mr. Taylor will bring it out. in as my

23 Q: Mr. Pottenger (to witness): Will you refer to the
evidence that was given by Lai Ping? Tell us what
course was pursued in regard to taking down the evi-
dence, or how it was done in this case? A: Well,
Mr. Macneill appeared for the private prosecution,
and Mr. R. W. Harris for the defence. The witness
was sworn and he was examined by the prosecutor, that
is, counsel for the prosecution and was cross-examined by
counsel for the defence. The evidence was taken down
30 by me as usual in all preliminary enquiries, and at the
end of it it was retranslated back to the witnesses,
and then was signed by the witnesses, by the
interpreter and by myself.

24 Q: Is that (exhibiting document) the deposition
as taken down? A: Yes.

25 Q: Mr. Taylor: Wait. Before my learned friend
puts that in, I object to that going in. The
proper course is to ask the witnesses present what was
said by the witness. Even a judge's notes, taken by a
judge, or a statement of this kind is not proper evi-
dence. I have another objection, but the first ob-
jection is that is not proper proof of what was taken
10 on the occasion in question.

Witness: This is the deposition that was taken as
directed by the court.

Mr. Taylor: If my learned friend has handed them to
the witness to refresh his memory -

Mr. Pottenger: There are not Judge's notes at all.
They are the depositions as taken down in the pre-
liminary enquiry in the usual way. There can be no
doubt they can be used in evidence at any time -
can be brought up at the trial of this action.

20 Court: Are you putting those in as your case?

Mr. Pottenger: Yes, I intend to put those in as my
case. That is the record. It is not judge's notes
at all - it is the record signed by the witness
himself. It was signed by Lai Ping and is not, in
any sense, judge's notes. Witness: Those were not
taken as notes whatever, but as straight depositions
as required by the Code.

Mr. Taylor: I want my objection noted on that point.
If my learned friend pins his faith to that I am
30 quite satisfied. I have nothing more to say. I
have made my objection.

26 Q: Mr. Pottenger (to witness): Now, Mr.

Alexander, you will just refresh your memory with

that deposition, and just tell us what Lai Ping said?
Mr. Taylor: I object, because anything Mr. Alexander
said is hearsay evidence as translated by the inter-
preter, and Mr. Alexander did not hear Lai Ping say
anything. All the information the magistrate has is
through the mouth of the interpreter who may have put
words into the witness's mouth which the witness did not
use. It is hearsay evidence of the purest kind.

10 Mr. Pottenger: According to that, there never could be
a charge of perjury laid against a man when an inter-
preter was employed. The interpreter would be the only
man who could swear. Would it be an admissible
question to ask the magistrate what the interpreter
said.

Mr. Taylor: No, that is not admissible, because what
the interpreter said in English the accused did not
understand and therefore it was not said in his
presence - in the presence of the accused.

27 Court: This was translated back? Witness:
20 This was translated back. I might say there were
check interpreters sitting there.

28 Mr. Pottenger: How many interpreters were
there in court? A: Well Mr. Lew was the official
interpreter, and Mr. Macneill; there was Charlie
Fook who actually did check Lew once - that is he
made a remark to the counsel and the counsel said "he
did not finish the whole answer." There was the
prosecutor, a man who understands English well, and has
often talked it, and other Chinamen there.

30 Court; Well, go ahead.

29 Mr. Pottenger: Well, I would ask the question
again: What was said by Lai Ping that caused you - or
just tell us how did this charge of perjury come to
be paid against Lai Ping? A: Well, as the evidence

went on - the first of it arose in this way - there was another witness called - Lai Ping had made certain statements - there was another witness Choy Shong who had not been out of custody. Lai Ping stated that he knew -

Mr. Taylor: There it is - he is going on to state what Lai Ping stated. Lai Ping was sworn through an interpreter.

Court (to witness): The actual fact is the interpreter stated to you what he, Lai Ping, said? A: Yes, sir.

Court: That would be admissible.

Mr. Taylor: The witness cannot state what the interpreter told him Lai Ping said.

Court: He can state what the interpreter stated was the evidence. Lai Ping makes the statements in Chinese to the interpreter and the interpreter gives the English of it.

Mr. Taylor: That is my objection, the witness cannot give the English as given to him by the interpreter.

Court: That is rather extraordinary.

Mr. Taylor: I don't think it is.

Court: I think it is, because the prisoner had an interpreter there to check.

Mr. Taylor: Not at all. The prisoner was a witness called. He had no person there representing him. As a matter of fact, the prisoner had no interpreter there to check witnesses at all at this enquiry.

Court: I see your point. I am going to allow him to state what the interpreter said, and if I am wrong you will have the benefit of it afterwards.

Mr. Taylor: I want a formal objection made as to any statement made by the present witness or the interpreter stated to him as the language of Lai Ping. Let that be taken down clearly. I object on the

ground it is hearsay and not admissible. The whole determination of this case depends upon the reliability of that interpreter.

Court: Yes, of course it is possible that the interpreter was a scoundrel and a villain.

Mr. Taylor: I do not say that, but even an innocent mistake on the part of the interpreter, David Lew when he put the Chinese into English would mislead the court, and would be utterly unknown to the accused.

10 Witness: I might say ~~that~~ it was re-translated back, and there were checks there by the prosecutor.

Court: I think we had better have it down that the objection is noted and let him go ahead.

Witness: Well, when this Choy Shong had not been seen - he had been in custody from the time the coroner's inquest had been taken up to this time, up to the hearing of this, and Lai Ping stated he knew him, or stated several little incidents to prove that he knew him, when this boy Choy Shong was called, and he denied

20 knowing Lai Ping. I had him sent out and brought Lai Ping back, and put him down amongst the men at the end, and asked him to pick out the Chinamen he knew down there; and he did not pick him out and there was a flat denial there that he knew him. I had my suspicions aroused then, and I had Lai Ping held.

31 Q:- What was the particular statement of Lai Ping? Was there any other statement he made in his evidence?

A: Yes, the particular statement on which this charge was founded was that about half-past three - he lived opposite
30 site Charley Sing's house - about half-past three in the morning he came out to urinate - he lived opposite about one door up, and that he saw the accused, this

Matakichi Yamasaki come out of Charlie Sing's door, and that he recognized him across the street. There was evidence that it was blowing and raining, and they said, though, that it pretty light because it was moonlight, and that he could tell him across the street. However, he recognized him at that distance.

Court: I see, Mr. Pottenger, the charge against the prisoner is that he swore he saw this Matakichi Yamasaki come out of the house of Chin Lin Jung about half-past
10 three o'clock in the morning of the 6th. November?

witness: Yes, Charlie Sing is Chin Lin Jung.

32 Q: That is the whole charge? A: That was the material part of his evidence in the whole trial - was to identify this Japanese as having come out of that house at that particular time.

33 Q: Mr. Pottenger: Is there anything in the evidence of this witness, Mr. Alexander, which denies that, or modifies that in any way? A: In the evidence of this witness?

20 Mr. Taylor: My general objection I made holds to all this evidence.

Witness: Of course it was denied.

34 Q: Mr. Pottenger: But in the evidence of this witness, the prisoner? A: Anything that denied that?

35 Q: Or modified it? A: Modified - well, I can't from memory say. In this evidence here?

36 Q: Yes? A: Well -

37 Q: Court: That is an extremely difficult question.

Witness: It is an extremely difficult question to answer.

30 38 Mr. Pottenger: Did this matter come up to cross-examinations again? A: Yes.

39 Q: What did the witness Lai Ping say in cross-examination in this regard? A: He said he had seen him

come out of there.

40 Court: That is to say, he persisted in the state-
ment? A: In the statement that he had seen -

41 Mr. Pottenger: Will you just read what he said in
cross-examination, or did he say anything? A: Well, he
said again in cross-examination that "it was ^{about} half-past three
when I was going to bed that I saw the accused coming
out of Charlie's house, that was the time I saw him coming
out, and the only time. I was standing in my door

10 urinating when I saw the accused." That was in the cross-
examination. "There was a little rain coming down at
the time, and not very much wind. The moon was not
shining at the time. I went out to urinate, as I was
turning to go into my house I saw the accused come out
of Charlie's," and then he said "no light that came out
of the house as he came out and there was no light in his,
the witness' room" as I was going in." And then he said
"there was a light in my house but it could not shine
out as I had closed the door behind me. I was about ten
20 paces away from the accused when he came out of Charlie's.
I knew the accused when I saw him; I know him well by
sight.

42 Q: Did he say anything about whether it was - ? A:
Well, he says "although it was raining, as it was the
18th. by the Chinese month, it was moonlight; everybody
knows it is moonlight on the 18th. Chinese month. Some-
body told me it was moonlight on the 18th. Chinese month,
the neighboring Chinese told me, this had been told me
since lately since the murder." He said he positively
30 identified this man.

43 Q: Was there any further evidence, Mr. Alexander,
during the enquiry as to whether this Jap Yamasaki was at
Charlie's house that night? A: Yes, he was at Charlie's

house that night, earlier in the night.

44 Q: Was there any evidence as to where he was about the time this man swears -?

Mr. Taylor: My learned friend is now asking the witness if in the course of this enquiry there was any other evidence. I presume he means evidence of other people. Then the proper course is to call those other witnesses.

Mr. Pottenger: What occurred, Mr. Alexander, that made you have this man arrested and have an information laid
10 against him, as you did, that he swore falsely - that Lai Ping swore that Yamasaki came out of -? A: Well, for the defence there was a straight contradiction.

Mr. Taylor: All my learned friend can say is, in consequence of there being other evidence. Witness: There was a straight contradiction on the part of the wit-
nesses for the defence.

46 Q: Mr. Pottenger: And so you had this information laid What became of this preliminary enquiry in regard to this murder charge? A: The accused was dismissed: The charge
20 against him was dismissed.

47 Q: Did you see, or when did you see the prisoner Lai Ping after you had committed him on this charge? A: I did not commit him on this charge.

48 Q: You had this information laid? A: Well, I saw him more than once after that, I saw him up in the police court, but after he was committed he was taken to Westminster.

49 Q: Did you see him in Westminster? A: I did.

50 Q: Will you tell us why you went to Westminster. A:
30 Well, from information received, I was asked to go, because Lai Ping wanted to speak to me.

51 Q: Did you go over? A: I did.

52 Q: Who went with you? A: Colin Campbell, chief

constable, and David Lew, Interpreter. After we got to Westminster, Charlie Loo Fook was also brought up to the Provincial gaol as interpreter.

53 Q: Who is Charlie Loo Fook? A: He was, as I understand, at the trial or the preliminary enquiry with regard to this murder charge; he apparently was a check, because he was -

10 54 Q: Court: A check interpreter? A: Yes, because he was the one who checked Lew. He stood up and mentioned the fact to the solicitor for the prosecution, that this one particular sentence had not been finished, but the interpreter had been, I might say, had been stopped by the solicitor for the prosecution in his answer, and had not time to finish it.

55 Q: As I understand it, you and Charlie Fook and Colin Campbell and David Lew went to the Provincial gaol? A: Charlie Fook came up afterwards with Colin Campbell. He went to get him and I went on up with Lew to the gaol.

56 Q: Did you see Lai Ping? A: I did.

20 57 Q: Before Colin Campbell and Charlie Fook came up? A: I did.

58 Q: Did you have any conversation with him? A: I did. I asked him in English if he wanted to talk to me. I said: "Do you want to talk to me?" and he said "Yes"- or, either "talk" to me or "speak" to me, I forget exactly which it was. I said "Do you want to speak to me?" and he said "Yes."

30 59 Q: Anything further? A: I might say I understood he was going to tell us what he knew with regard to this offence.

60 Q: With regard to this particular offence with which he is charged now? A: They were searching for evidence against one Can Toy for subornation of perjury, and I understood it was particular - he was

going possibly to incriminate this man Chan Toy, and as a natural result he would possibly give evidence against himself.

61 Q: You asked him then if he wanted to say anything and he said he did? A: He did.

62 Q: That was in the presence of who - yourself and David Lew - anyone else? A: Well, I can't say whether David Lew was actually with me when I spoke to him, because I walked on to where the cells were; he may
10 have been and may not. I may have been alone, because I do not recollect he spoke to him in those words.

63 Q: Was anything else said? A: I got a paper, and I took Charlie Lee Fook -

64 Q: Before Fook and Campbell came back, was anything said about threatening him in any way? A: I did not.

Objected to by Mr. Taylor as leading.

Court: That is a proper question; that is, if he is going to give what purports to be a confession.

20 Mr. Taylor: No; the proper course is to ask what was stated previous to this confession.

Court: No, it is not, if you will pardon me. The proper question is to ask directly was anything said, either by way of threat or promise to induce - I can give you authority for that, it is perfectly legitimate in prefacing a confession to ask directly.

Mr. Taylor: I submit to your lordship's ruling. Of course, it does not make very much difference with a witness like Mr. Alexander, but it might with some
30 witnesses. I submit to your lordship's ruling, but while doing so, I am of the same opinion still.

Witness: Well, I might say there was nothing said with regard to threatening him or inducing him in any way

to make this confession. I was there, and there was nothing that I could see in any way, shape or form that was to be held out to him to induce him to make this confession.

Mr. Taylor: Of course, I must hear repeat my objection on the point that the witness states there was nothing so far as he was concerned, said. Of course he has told us now - he is just getting to the stage when David Lew and Loo Fook were there, and they

10 manifestly spoke in Chinese? A: I might say there was very little said before the actual proceedings took place.

Court: In so far as Mr. Alexander is concerned, he can only testify to what he said himself? A: Yes.

I might say, your lordship, I was very very careful in taking the statement down. The statement I took down I was very careful to see in every that no advantage was taken of that prisoner, so far as I could.

Court: I will allow the statement and Mr. Taylor's
20 objection is noted. If it should transpire therefore that there was a threat made in the Chinese language by some of the others it might vitiate Mr. Alexander's evidence on this point.

Witness: Of course I only speak as far as - I do not understand Chinese.

65 Mr. Pottenger: I understand Lai Ping understood a little English? A: Yes, he understood a little English because he said in answer to that question whether he wanted to speak to me, he said yes.

30 66 Q: Tell us the preliminaries, now? A: Well, I swore both David Lew and Charlie Loo Fook.

67 Q: As interpreters? A: As interpreters. I swore to interpret and Charlie Loo Fook to check him.

I gave the warning that you will find in the Criminal Code and you will find in the confession there that was translated to him, and I took down his statement.

68 Q: As it was translated by Lew? A: As it was translated by Lew. It was then re-translated back to the accused, and it was signed by him, by the two interpreters, and by myself.

69 Q: You saw them all sign? A: I saw them all sign.

70 Q: Is that (exhibiting document) the statement you took down? A: That is the statement.

10 Mr. Taylor: Before that goes in, I make objection that while it may possibly go in to identify it cannot go in as part of the evidence until the interpreters have been examined, because all the circumstances connected with this alleged confession must be properly ventilated and shown to be perfectly free and voluntary and not induced in any way.

Court: I think the best course would be to let it be marked now, and if I admitted it, and there was no other evidence given except the evidence of Mr. Alexander respecting it, if your point was good it would be rejected, in the case of a reserved case or an appeal it would not injure you very much by letting it go in now.

20 Mr. Taylor: Well, if it is made evidence now, it is evidence, and that is the end of my objection to it.

I want now to make objection that that is not evidence against the accused until it is proved properly that the interpreters who interpreted that evidence -

Court: Unless it is further authenticated?

30 Mr. Taylor: Yes, unless it is further authenticated, and that is my point.

Court: I think perhaps it would be better to take it that way. I do not want to do anything to prejudice the

prisoner.

(Document marked for identification.)

(Mr. Taylor, having obtained permission, peruses document.)

71 Q: Mr. Pottenger: That document, Mr. Alexander, then, contains everything that was said on that occasion by Lai Ping as interpreted to you by David Lew? A: It is a-

72 Q: There is nothing omitted? A: No.

73 Q: My learned friend has consented to allow me to
10 question Mr. Alexander as to the evidence given by Woo Wai in this investigation so as not to make it necessary to call Mr. Alexander again. (To witness): The prisoner Woo Wai, I believe, was a witness in this preliminary investigation? A: He was.

74 Q: Was he duly sworn? A: He was.

75 Q: How was he sworn? A: By writing his name on a piece of paper. He wrote it himself, too.

Court: I do not quite like that interjecting, because it may make confusion later on. We will get Mr. Alexander
20 again, if necessary.

Mr. Pottenger: If your honor will allow me, I will ask the witness to tell the court what warning he gave to the prisoner before he took the statement?

Mr. Taylor: If he warned him in Chinese I have no objection.

Court: I think he stated that he gave -

Mr. Taylor: No, he said as far as he was concerned there was no warning. Witness: I didn't do anything of the sort. I said I gave the usual warning you will find in the
30 criminal code.

Mr. Taylor: That is already in. Witness: I think you will find in that document - you will find the whole proceedings.

76 Q: Mr. Pottenger: And as far as you know, the proceedings

was contained in that document, are true? A: As far as I know.

77 Q: Anything relating to what you did is true? A: Is true.

78 Q: I understand Cross-exam. by Mr. Taylor.

78 Q: As the result of what happened at this preliminary enquiry you ordered this Lai Ping to be detained in custody? A: I did.

79 Q: And on that he was detained in custody and you laid an information against him? A: I did not lay an information.

80 Q: Well, you prepared it? A: I don't know I even prepared it, I believe I did. I prepared one, but whether - I did prepare an information, I was not certain whether - there is another one I think was drawn up subsequently. I may be mixing it up.

81 Q: At any rate, the informations are in your handwriting? A: That is my handwriting, yes.

82 Q: You have taken a sort of fatherly interest in this matter since you prepared these informations? A: No; nothing more than I thought these men were guilty and as a magistrate I considered it my duty to have them arrested.

83 Court: That is not a fatherly interest, but a judicial interest? A: A judicial interest, your lordship.

84 Mr. Taylor: The moment you laid that information - ? A: I didn't lay it.

85 Q: You prepared that information - an information was laid, and the hearing of this matter passed into the hands of the police magistrate of the city of Vancouver? A: It did.

86 Q: And he was the magistrate who committed this prisoner? A: He was.

87 Q: So from the moment of the end of this preliminary enquiry your judicial connection with this matter ceased?

A: Yes. they wished to swear on burning paper, and

88 Q: And then you became a witness? A: I did.

89 Q: I understand at that preliminary enquiry all the evidence of these Japanese was taken through the medium of an interpreter? A: Yes. the time of the pro-

90 Q: You have spoken of another interpreter, Charlie Lee Fook? A: I have. ~~Japanese examined?~~ A: Yes.

10 91 Q: That interpreter was there, I understand, in the interests of the private prosecutor in this matter? A: I think so. Yes.

92 Q: That is to say, he was with Mr. Macneill? A: Yes.

93 Q: And this man Lai Ping was a witness there? A: He was, on behalf of the prosecution.

94 Q: You have had a good deal of experience in examining Chinese witnesses? A: I have had a certain amount - quite a lot, both in criminal matters - ~~large, who~~

95 Q: And civil matters? A: And civil matters. ~~in a~~

20 96 Q: And would you know what among the Chinese is considered a really binding oath on their conscience? A: Well, I might say the only one that apparently among the Chinese would be binding is the yellow oath, but I might say that a great many of them - I don't think that would bind them. That is, they will come into court and will state that they will tell the truth by burning paper. ~~of? A: No, I don't think he was there.~~

97 Q: But your experience is they do not tell the truth by burning paper? A: Well, they do not tell ~~the~~
30 the truth as a general rule by burning anything. ~~this~~

98 Q: By your experience the oath that really is binding on the Chinaman is what is called the yellow oath, and cutting off a chicken's head? A: To a certain extent, I don't know whether that is binding on all of them

99 Q: And that was not done in this case? A: It was

not. There was one man said in court the yellow oath or
burning paper was all the same to him. These men
intimated they wished to swear on burning paper, and
they were sworn that way.

100 Court: They were anxious to tell the truth under
any circumstances? A: Yes.

1 Mr. Taylor: You remember the time of the pre-
liminary enquiry into this charge at the police court
there was a number of Japanese examined? A: Yes.

10 2 Q: Five or six? A: Yes.

3 Q: They were really witnesses against this man
Lai Ping? A: Yes.

4 Q: I would like to ask you if you saw those five
or six Japanese the day before they were examined in
the police court? A: I did.

5 Q: And was that in your judicial capacity? A: No,
it was not.

6 Q: Then in what capacity was it? A: Mr. McHarg, who
was going to undertake the prosecution was engaged in a
20 case up here. He had not been able to see these
Japanese to get their evidence, and was wondering how
he could get it done, and I said: "If you like, I
will go over their evidence and see what they have to
say," and I did that.

7 Q: Then on that occasion you met those Japanese
when Nishiyama, and when David Lew the Chinese inter-
preter were there? A: No, I don't think he was there.

8 Q: Nishiyama was there? A: Yes.

9 Q: And then the statement was taken from the Japs
30 what they were going to say in the police court in this
case? A: Yes, well, I can't say their statement was
taken, because there were a lot of statements taken from
these Japanese before, the police had gone out to
Steveston and collected their evidence.

110 Q: At any rate -? A: Well, wait - I want to explain this because you are apparently trying to throw slurs on me -

11 Q: Not at all. A: I just wish to state to the court how it came about.

12 Q: Those Japanese - you misunderstand me - they are going to be called, and I want to be prepared. A: Well, I took - wherever there had been a statement made by these Japanese before the murder trial, I took that statement, and I said: "Now, you tell me your story," and I followed them along on their statements. That is principally what I did." Where I had not got one of these statements I took down a short note for the benefit of Mr. McHarg. It was done in that way.

AFTER RECESS.

H. O. ALEXANDER. Cross-exam. by Mr. Taylor cont'd.

13 Q: You were examined in the police court on the preliminary enquiry in this case? A: Yes.

14 Q: That was heard, I think, before Mr. J. A. Russell? A: Yes.

15 Q: You as a stipendiary magistrate, had no jurisdiction over offences committed in the city of Vancouver? A: No, unless by request of the police magistrate in his absence.

16 Q: At any rate, the magistrate who held the preliminary enquiry as to this charge against Lai Ping was Mr. J. A. Russell? A: Yes, he was the police magistrate.

17 Q: You were examined as a witness there? A: I was.

18 Q: And were you present during any other part of the examination in the police court, except your own examination? A: Yes, I think I was present most of the time, if not all, but I am not absolutely certain

as to the end of that enquiry because it was either- that was in the - no, I don't think I was there the whole of the time. I think towards the end I was not. I think I left there to go up and hold small debts court, something like that, I wont be sure. I was there during the greater part of the time. I think I left shortly before three.

119 Q: Do you remember how long after this Lai Ping had been committed by Mr. Russell was it you went over was it you went over and saw him in Westminster gaol?

A: I could tell you in a minute by referring.

20 Q: Yes, I have no objection? A: What was the date of the committal?

21 Q: He was committed on the 11th. December? A: It was the 14th December. This is the date of the confession. I was just fixing the time I went over to see Lai Ping. That is the date I went over.

22 Q: I think you said there was a charge against a Chinaman named Chan Toy? A: I didn't say there was a charge. I said they were enquiring into a charge against him. There had been - I might say the day I went over to see Lai Ping there was a charge laid against this man Chan Toy.

23 Q: And you were really endeavouring to get evidence in support of the charge against Chan Toy? A: I was not doing anything of the sort. I said the police, as I understood, were trying to get evidence, and I knew nothing about seeing this man Lai Ping until I was told by them he wanted to see me.

30 24 Q: Who was it told you that? A: Mr. Campbell.

30 25 Q: Was David Lew present when he told you that? A: I can't say whether Dave Lew was there when he told me that or not.

26 Q: At any rate, it was in consequence of inform-

ation you got from the police you went over to see this man Lai Ping? A: Yes.

127 Q: In what capacity did you go to see Lai Ping?

A: Well, as he expressed a desire to see the man whom he had appeared before in the big courthouse, the magistrate, he said the first man; and that is the reason I went. I was asked to go.

28 Court: You say you saw Lai Ping at his request, as you were informed? A: As I was informed he wished to

10 see me to speak to me, to tell something, I went over.

29 Mr. Taylor: Then you went there, did you send for Charlie Lee Fook? A: I discussed it with Mr. Campbell,

and it was, we said to make - to have this thing straight so there could be no doubt about it, it was better to have another interpreter to check.

30 Q: At any rate, as a result of the conference between you and Campbell, Lee Fook was sent for? A: Fook was sent for. Campbell brought him up; he went to get him in Westminster as he went over.

20 31 Q: At any rate, after Charlie Lee Fook appeared on the scene you swore Lee Fook and David Lew? A: David Lew went to interpret, the other to check.

32 Q: What authority do you think you had to swear these two interpreters then? A: Well, he wished to -

33 Q: (Question repeated) Well, I thought as a magistrate, he had asked me to go over there, and as a magistrate I thought I had the power to swear those two interpreters.

34 Q: And then in the presence of those interpreters 30 this statement was made? A: It was.

35 Q: And did the interpreters ask Lai Ping any questions? A: I think there was one question asked him at the end of the confession, but it was not asked by either of the interpreters, it was asked by Mr. Campbell.

136 Q: Through an interpreter or in English? A: Through the interpreter and I was not going to take it down, it was asked at the end and I was not going to take it, and they said "there is no use putting that in," and I said "he said it, and it had better go in." I can refer to the words.

37 Q: Never mind. A: I think it is better to refer to them, because it has really no connection or not much bearing on the confession.

10 38 Q: You stated in your examination in chief you had given this man or told the interpreters rather, to give him the warning that is provided for? A: In the Code, yes.

39 Q: Where is that provided for in the Code? A: You will see in preliminary enquiries.

40 Q: Ah, that is what I want to get at. I would like to know where you find the authority. You say you gave the statutory warning? A: It is the statutory warning I quite admit - if you will let me explain,
20 I quite admit there is no procedure in the matter of a confession, and after that warning, as there, if the man wanted to make a statement I thought in order he would not be taken advantage of I would give him that warning as provided in the preliminary enquiries.

41 Q: When you referred to the warning as provided, you meant the form that the magistrate is to use at the end of preliminary enquiries? A: Yes, that is the form.

42 Q: You were aware then that warning had already
30 been given to Lai Ping by Mr. Russell, who had asked him to make the usual statement - you were aware of that? A: Yes.

43 Q: And you were aware that Lai Ping had been defended by council at the preliminary enquiry? A: Yes.



144 Q: And after the magistrate gave him that preliminary warning in the presence of his counsel he said he had nothing to say? A: Yes.

45 Q: And three days after that you went to this gaol and gave him the warning again, the same warning he would have taken on the preliminary enquiry? A: Yes.

46 Q: After swearing those two interpreters? A: After swearing those two interpreters. The man said he wanted to say something to me, and I did not want to take advantage of the man in any way, shape or form. That is why I gave him warning

47 Q: Did you know then that David Lew had already seen this man Lai Ping in the gaol there, several times? A: I don't think that I understood he had seen him several times. I think, to the best of my recollection as far as I could understand, he had seen him a couple of times.

48 Q: Do you know with what object David Lew had seen him these couple of times? A: Well, as I understood it, they were searching for evidence against this man Chan Toy.

48 Q: You have no doubt, in their search for evidence against this Chan Toy, David Lew asked this man Lai Ping a number of questions? A: He may have.

49 Q: David Lew was then the official interpreter, at least, he had acted as the official interpreter in the Steveston murder enquiry? A: He had. I might say when Mr. Hussey came up to investigate then, I swore him in to truly, yo take evidence in the investigation; they were investigation the matter before the preliminary enquiry was ever held.

50 Q: Of course, there is no doubt that Lai Ping would know that David Lew was the official interpreter, A: I could not say that.

151 Q: He had been examined by David Lew at that enquiry?

A: At the preliminary enquiry, yes; he had also been examined by another interpreter up in the police court, on his own -

52 Q: Did you know whether or not Campbell had been present when David Lew had seen this Lai Ping on the previous occasion? A: I understood so, yes.

53 Q: Then you fully understood that chief constable Campbell, and David Lew in his - the official
10 interpreter - had seen this Lai Ping at least on two occasions before you took the statement from him? A: I do, because he told me the man had asked him to ask me to go over.

54 Q: Then you quite understood from what was told you when you went over there that Lai Ping was going to make a confession? A: I had an idea of that; what he exactly was going to say I could not tell.

55 Q: No, but you knew he was going to make some statement? A: I did, yes, or I understood so. I
20 didn't know whether he would say anything.

56 Q: You had a good idea when the chief constable or the official interpreter asked you to go there, that his statement was going to help the crown - and would not help the accused? A: No, I did not suppose it was.

57 Q: It must have been in the nature of a confession? A: I could not tell, but I understood they wanted evidence against this man Chan Toy. I may say
30 I had an idea that he would make a confession if he was going to incriminate Chan Toy, he would naturally make a confession.

58 Q: Did you see the other prisoner, Woo Wai, any time? A: No. I may say I am not in the habit of going amongst prisoners and trying to get confessions out of them at all. The man sent for me and I simply

remember any particular talk.

158 Q: You could not remember the particular talk, because it would be in Chinese? A: No, they were talking. 55 went.

159 Q: No, but of course if the police had told you Woo Wai wanted you you would have gone in the same way?

A: I would, most certainly.

60 Q: Do I understand all this long statement of Lai Ping's was dictated straight out by Lai Ping, without any questions put by the interpreter? A: Yes, it was.

61 Q: Except one question that had no bearing? A:

Yes, it may have an indirect bearing. You will see it down

10 at the end there. If you look at the language of that confession it is very peculiar the way he repeated himself every few times. He would say a few words and then say "this is the truth." I would, purposely, not allow them to ask questions; this was asked afterwards, and as he said it, I thought the whole thing had better go in, and if there was any question about it it would be asked, but I told them, told the police that they had better not ask any questions of him, until afterwards.

20 62 Q: Do you remember if the interpreter Lew said anything to Lai Ping when Lai Ping put his sign on that paper, - said anything in Chinese? A: Lew may have said something.

63 Q: Was there not some conversation between the interpreter David Lew after this was all down when Lai Ping was asked to make his Chinese mark - some conversation between David Lew and Lai Ping? Just before Lai Ping put his mark there? A: I can't remember any particular conversation, what they may have been talking between the three of them they were talking.

64 Q: There was some talk between the two interpreters and Lai Ping before Lai Ping put his name on that paper? That is what I want to get at? A: Well, I can't remember any particular talk.

165 Q: No you could not remember the particular talk, because it would be in Chinese? A: No, they were talking.

66 Q: But what it was about you do not know? A: When he went to sign his name - whether he was told they wanted him to sign his name or not, I cannot tell.

67 Q: There was some talk of some kind at that time? A: There was talk at various times, but if there was any particular talk at the time he signed his name I can't remember.

10 68 Q: Court: What you mean is there was some talk between the interpreters and the prisoner which was not interpreted to you? A: No he spoke to them several times and it was not translated; there was apparently nothing that he was saying as far as I could understand.

69 Mr. Taylor: What I want to get at is this - you have told the Court there were no questions asked. Now, I understand you to say after this had been reduced to writing and before Lai Ping put his name on in Chinese characters there was some conversation of some nature
20 between the interpreters and Lai Ping? A: That is what I say; there may have been, I don't remember any particular conversation. I might go as far as to say this, I believe I asked the man to sign his name, I could not say for certain or not, but it is natural when he made the confession I am sure I must have asked him to sign his name.

Redirect by Mr. Pottenger.

70 Q: My learned friend has asked you about conversation the interpreters had with the prisoner. As
30 a matter of fact, I think you said the whole of this confession was read over to the prisoner before he signed his name? A: Yes.

Court: I think that is already down.

171 Mr. Pottenger: Will you read the warning that you gave him?

Mr. Taylor: The warning is there - it does not need to be read.

72 Court: Is it on that? A: Yes, sir.

Mr. Taylor: That will be evidence in chief, anyway, because the witness stated he had given the warning.

Court: If it is once it does not make it any stronger to, put it in a second time.

10 73 Mr. Pottenger: You said there was one particular question asked. Will you tell us what that particular question was? A: I think it was in regard - this one with regard to whether Chan Toy did not tell him that if he said he saw the Jap coming out of Chin Lin Jung's house at half-past three that he would get the Jap convicted. I might say I asked this question myself, because the name Chin Lin Jung had been used, and also Charlie Sing, and I asked him whether white people called Chin Lin Jung Charlie Sing - I asked him whether Charlie
20 Sing was Chin Lin Jung, because, there was no doubt about it, but I just wished to have it appear straight. If I may be permitted to make one explanation with regard to my connection with the matter; I had sent these two men down there. I had retained them in custody and I had had this information laid against them and my position in the matter was I was the only one who knew the evidence thoroughly from end to end, and Mr. McHarg had very little time to look into the matter - he was retained at the last minute by the
30 Japanese, and I naturally knowing the evidence, and being the only one who could go into the evidence thoroughly with him, I did post him on the evidence, because I was the only one who thoroughly knew the

evidence, it had come up before me in such a way that I knew it thoroughly, and there was no one else who could post him as well as I could. This was at the preliminary enquiry.

174 Court: Before Mr. Russell? A: And when it is suggested I took a leading part, I did post him, because he did not know the evidence, and taking - viewing it that the men were guilty. I never would have had the information laid against them if I had not thought they were guilty.

10

D. C. LEW, Sworn. Exam. by Mr. Pottenger.

1 - Q: In the County Court Judge's Criminal Court. Yes,
 (Before His Honor, Judge Henderson.)

2. Q: How long have you been an interpreter? A: Oh, for
 two years; that is, in Vancouver, Jan. 29. 04.

3. Q: In court on and off? A: Yes, sir.

4. Q: REX vs. LAI PING. (*erjury.)

Mr. A. B. Pottenger for the Crown; Mr. A. D. Taylor for
 the accused.

Prisoner having been duly arraigned pleads "Not Guilty."

Case for the Prosecution.

H. O. A: EXANDER. (Evidence previously transcribed.)

10 DAVID LEW. Called.

Mr. Taylor: Before this witness is sworn I want your Honor
 to allow me to ask him what form of oath he takes, if he
 is a christian he wants to take the oath on the Holy
 Evangelists. Lew: I am a Christian; I am a baptist.

Mr. Taylor: When did he become a Christian; A: I have been
 in this country eight years; my brother was pastor of the
 Methodist Mission for about 10 years past, and the whole
 family is Baptist.

Mr. Taylor: I would like to know how long.

20 Court: I do not know there is any authority for going into
 the matter any further. This is an examination voir dire?

Mr. Taylor: Yes.

Court: Well, he has satisfied me.

Mr. Taylor: If he says that he is a Christian and that the
 oath is binding on his conscience, that is an end of it.

Court: (To Lew): What is a binding oath?

Lew: That is the only oath I consider. Well, it is a

D. C. LEW. Sworn. Exam. By. Mr. Pottenger.

1 Q: You are a Chinese interpreter, I believe? A: Yes, sir.

2 Q: How long have you been an interpreter? A: Oh, for two years; that is, in --

3 Q: In court on and off? A: Yes, sir.

4 Q: Have you acted in many cases during that time? A: Quite a number; I have been on the police court lately for the last two months, your honor.

10 5 Q: Have you ever had any objection taken to you as an interpreter?

Court: I do not think you need go into that.

6 Mr. Pottenger: I understand you acted as interpreter in this murder charge against the Jap Yamasaki? A:

Yes, I was sworn as interpreter in the investigation and took my oath as interpreter; that is, I signed a declaration.

7 Q: You were sworn in as interpreter in the early stage of the investigation? A: Yes.

20 8 Q: Before it came up before Mr. Alexander? A: Before anything at all.

9 Q: When it came up before Mr. Alexander you were sworn then as interpreter? A: Yes, sir.

10 Q: Do you know Lai Ping? A: Yes, sir.

11 Q: He is one of the prisoners? A: Yes sir.

12 Q: Was he in that investigation, preliminary enquiry, before Mr. Alexander? A: Yes, in the case against the Japanese.

30 13 Q: Do you know whether Lai Ping was sworn? A: He was sworn, yes.

14 Q: You saw him take the oath? A: The magistrate administered the oath and I interpreted the oath to him.

15 Q: What form of oath was taken? A: Well, it is a



piece of paper with his name written on, repeat the oath to him and the witness burns the paper, which is the regular way of administering the oath in the court here, and also ^{down} in the other court.

16 Q: That is quite the usual method of swearing Chinese?
A: Yes, that is.

17 Q: You are speaking of the oath the prisoner took in the proceedings against the Japanese for murder?
A: Yes, your Honor.

10 18 Q: Mr. Pottenger: You interpreted his evidence, did you?
A: Yes, sir.

19 Q: Did you interpret it properly? A: From the English language into the Chinese and from the Chinese into the English.

20 Q: That is to say, you interpreted it-? A: Truly and properly.

21 Q: Interpreted the questions asked by the counsel, to Lai Ping and then interpreted his answer back into English? A: Yes, sir.

20 22 Q: Were those answers taken down? A: They were taken down by the magistrate.

23 Q: Could you state what Lai Ping said, the material points of the evidence of Lai Ping? A: I don't quite understand exactly your question.

30 24 Q: Can you give the substance or the material parts of the evidence of Lai Ping, that Lai Ping gave against this Jap? A: The witness said - Lai Ping said that on the night of Charlie Sing's murder, about half past three in the morning, he saw the - he saw a Japanese come out of Charlie Sing's place, and at that time he was coming out of his house to urinate outside his house; that is as near to my recollection as I can remember.

25 Q: And the magistrate's signature? A: Yes.

in chin?

- Q: You say all those signatures put on that paper? A:
- 25 Q: Did he say any particular Japanese? A: As near as I remember, the accused pointed out - the accused was sitting right in front of the prisoner across the desk - Yamasaki, and Yamasaki was pointed out by the witness.
- 26 Q: The witness then said Yamasaki was the man who came out of the house? A: Yes.
- 27 Q: At that time. You say this evidence was taken down by the magistrate? A: Yes, sir.
- 10 28 Q: After it was taken down did you interpret it any more, or have anything more to do with it? A: After the cross-examination was through, and through by both sides - counsel, the evidence that is written down was re-interpreted into Chinese to the witness.
- 29 Q: You did that? A: I did.
- 30 Q: Then Lai Ping signed? A: Yes.
- 31 Q: You read it over, practically you read it over and interpreted it back to the prisoner? A: No, the magistrate read over, and I interpreted into Chinese
- 20 32 Q: When it was read over in that way did you recognize it as the evidence that had been given? A: I didn't understand exactly your question.
- 33 Q: You say that the magistrate read this evidence and you interpreted it to the prisoner? A: Yes.
- 34 Q: That evidence as read over by the magistrate and interpreted by you at that time, was that the evidence that Lai Ping had given? A: Yes sir.
- 35 Q: It was correct? A: It was correct.
- 36 Q: Will you look at that, Mr. Lew. You will see the signature at the end probably? A: That is my own signature, here.
- 30 37 Q: Is that (indicating) Lai Ping's signature? A: Yes, sir.
- 38 Q: And the magistrate's signature? A: Yes.

39 Q: You saw all those signatures put on that paper? A:

A: Yes, sir.

40 Q: And is that the deposition as taken down at that time, that is the paper? A: Yes, sir; this is all the paper that was taken down, all the evidence that was taken down.

41 Q: At that time? A: At that time, yes.

42 Court: Is that the whole thing?

Mr. Pottenger: That is Lai Ping's whole deposition.

10 Mr. Taylor: My objection to that going in is already noted.

Court: Your objection is not so strong now.

Mr. Taylor: It may not be, but it stands there; that is all.

43 Mr. Pottenger: Were there any other interpreters in the magistrate's court at this time? A: Yes, sir; at the preliminary hearing there was interpreters for the private prosecution.

44 Q: Who was that, do you remember? A: Mr. Charlie Fook was one of them, and Mr. Chin Toy, another, say beside him, and another beside them. Charlie Fook and Chin Toy was the two that were with the counsel all the time.

45 Q: Did they check you at all? A: They only checked me once; that was through an interruption by Mr. Macneill the counsel for the private prosecution on account that he didn't - he was going to say something before I had given my answer from the witness fully, so that was stopped there, but I had to go back - I had explained to the court and was allowed to give it full, afterwards.

30
30 46 Q: That is the only time? A: That is the only time I know.

(Information, Rex vs. Chin Toy, marked exhibit I. Deposition in same case, marked exhibit 2.)

47 Q: Have you ever seen that document before? A:

Yes, sir.

48 Q: Where did you see it first? A: I could not tell
you the exact time I seen it, but it was when the
prisoner was in custody in the cell below the court
house here. I could not tell you the date.

49 Q: You do not remember the day? A: No.

50 Q: Was it before or after the preliminary enquiry?
A: Oh it was after.

51 Q: It was after the preliminary enquiry before Mr.
Alexander? A: Yes.

52 Q: That is to say, the preliminary enquiry into the
murder? A: After the preliminary hearing of
Yamasaki.

53 Q: It was after Lai Ping had been given into custody.
Where did you say you saw it? A: In the
constable's office here.

54 Q: Did you see anybody write it? A: Well, I saw
the prisoner write.

55 Q: Which prisoner, Lai Ping? A: Lai Ping, yes.

20 56 Court: Write this? A: This document.

57 Mr. Pettenger: Do you know any of the circumstances
connected with the writing of that? How it came
to be written? Of your own knowledge do you know
why that was written or how it came to be written,
and the circumstances connected with the writing
of it? A: I think -

58 Q: Tell us just exactly what you know? A: I
remember the witness asked - I asked if he could
write.

30 59 Q: The witness? - the prisoner? A: Lai Ping asked
me if he could write? I said yes; then he asked
if anybody would take it down for him. I said "the
constable will." I said "if you want to write

you have to ask permission to go up to the desk, go up to the office, so this is how -

60 Q: You just read that: A: Translate it into English, you mean?

61 Q: Yes? A: "Notice to Chin Toy." I can't translate word for word, but that is the kind of form of opening the letter.

10 Court: Take your time about it, so when you are translating it will go on the notes in an intelligent way. Have you ever written a translation of it?

A: I have.

62 Q: Well take that and see if that is - did you make that translation? A: I made that translation myself.

Mr. Taylor: You might let me see that translation.

Court: I did not intend it to be handed in, but I was informed the witness had made that translation, so he would be entitled to read it off.

20 63 Mr. Pottenger: (to witness) You made that translation, did you? A: Yes, sir, "Notice, Chin Toy." Now the magistrate does not believe our words. What will you do about it? You acted wrong in this matter since the magistrate imprisoned me, and I lay in my bunk. I think that man is not him; must attend to the matter. (Sgd) Lai ping."

Marked exhibit "3"

64 Q: You say that Chin Toy asked you if that would be sent out? A: Lai Ping.

30 65 Q: Did he know that the police would see it? A: I told him so I told him that he would have to ask permission to write, and the police would take it out; that is, they will pass it out, deliver it.

66 Q: Who was in the office at that time, do you remember in the police office when that was written? A:

Myself was there, the magistrate Alexander was there.

67 Q: Were any policemen there? A: I don't quite remember, I could not just swear whether there was; the police were coming in and out.

68 Q: You say Magistrate Alexander was there? A: Yes, I am positive of that.

69 Q: Did he see this paper? A: Yes, he did; he saw the prisoner write it too. He was on one side of the desk and the prisoner on the other.

70 Q: I see the magistrate's signature appears on the back. Will you explain how that came to be? A: As to my recollection I think that the prisoner Lai Ping wrote the letter; the magistrate ask me what he says in the letter, and I translate to the magistrate and I handed over to the magistrate, and I think he turned it over and initialed it, as near as I could remember.

71 Q: Did you have any conversation with the prisoner Lai Ping while he was in the cell down here, except what you have told us, about this letter? A: I had once; that is he come up one day to the office, and that I think that was the day before the police court trial. He said to me - he is kind of, you know what an old man always does, kind of talking all the time you know, pretty near. He says: "I don't know what to do in this matter, I can't see nobody, and I wanted to see Chin Toy," and I said to him "I don't think you could see him until you gave evidence in the trial. I didn't say in the court, in the trial I think. I think that is about what he told me."

72 Q: Did you ever go over to Westminster to see the prisoner? A: I did, and provincial police

Campbell took me over some time.

73 Q: How many times did he take you over, now? A:
Altogether three times.

74 Q: Just start on the first occasion on which you
went over. Who went over on that occasion? A:
Mr. Campbell did with myself.

75 Q: Do you remember when that was? A: That is one
of the times Mr. Campbell had to take some white
prisoner over, that is the first time.

10 76 Q: Do you remember when that was? A: It has been
some time now. I can't tell you the date. I
have no -

77 Q: But you can fix it in this way, how many days
it was after these men were committed for perjury,
after they had been in Mr. Alexander's court? Was
it before the preliminary investigation down in
the police court, that is, the preliminary
investigation into this charge of perjury? Would
it be before that first time you were over? A:
20 No, after, I think.

78 Q: Would it be shortly after that, or when? A: It was
only shortly after that.

79 Q: You cannot fix the date? A: No, I can't.

80 Q: You and Mr. Campbell went over? A: Yes.

81 Q: Did you see the prisoner Lai Ping? A: I see the
prisoner Lai Ping and I see the prisoner Woo Wai.

82 Q: Did you ~~have~~ any conversation with them or did
Mr. Campbell converse with them through you?

30 A: I interpreted whatever Mr. Campbell got to tell
them.

83 Q: Did you say anything to Lai Ping yourself besides
what Campbell told you? A: I don't think I did.

84 Q: What? A: Oh, I did in this way: Before Mr.
Campbell would open his conversation, I would ask

- Q: The first time you went over did Campbell ask how he is, and if he break down his habit yet or something of that kind. That is outside of what Mr. Campbell did ask him.
- 85 Q: Did you know what was the object of you and Campbell going over there to see Lai Ping?
A: I think I do.
- 86 Q: What was he object? A: When that letter was written and the way it reads, of course in Chinese it would have a very suspicious way, and we went over there with the object of getting evidence and getting information as to Mr. Chin Toy, regarding Mr. Chin Toy.
- 87 Q: Regarding Chin Toy's connection with these perjury charges? A: Yes.
- 88 Q: And that was the object you understood you went over to Westminster for? A: To my knowledge it is.
- 89 Q: When did you go over again, Mr. Lew? A: I went over twice after that.
- 20 90 Q: How long after that did you go again? A: I think it was the next day, the second time.
- 91 Q: Who went that time? A: The magistrate Mr. Alexander, and myself, Mr. Campbell.
- 92 Q: The three of you went over there? A: I think this is all, yes.
- 93 Q: That was the second time you went over there? A: I think so, yes.
- 94 Q: You say you went over three times altogether, I think? A: Yes.
- 30 95 Q: Did you go over again after that? A: After that, yes.
- 96 Q: Who went over that time? A: Campbell and myself.

- 97 Q: The first time you went over did Campbell ask any questions? A: He did.
- 98 Q: What did Lai Ping - we are only dealing with Lai Ping in this case - what did Lai Ping say to him? A: Before Mr. Campbell told me to ask anything, Mr. Campbell spoke in the broken English ask if Lai Ping want to talk or want to say anything to him.
- 99 Q: He said that to Lai Ping? A: Yes.
- 10 100 Q: Did Lai Ping reply? A: Yes, Lai Ping replied.
- 1 Q: In English? A: I don't know quite whether he say "yes, say something" but he answered him. Mr. Campbell asked if he got anything to say.
- 2 Q: What did Lai Ping say - yes? A: Said yes.
- 3 Q: Was there any further conversation? A: Yes, and then he tell Mr. Campbell that he dont want - I think he told Mr. Campbell that he don't want to tell him anything just now, or something of that kind, and that he wanted to see judge, and then he went through - you know how it is, in broken English, you know, it is a kind of mixed-up affair, and he would tell Campbell he wanted to see the judge and Campbell asked him - this was all taking place between Campbell and the prisoner in a broken language.
- 20 4 Q: You heard it? A: I heard it, yes; he wanted to see judge. Mr. Campbell asked what judge - that was the next - he says the big judge, or the big court judge, or something like that; any way, at the final he says "the man who hear me before."
- 30 5 Q: And did you understand who he meant by that? A: I do, yes.
- 6 Q: Who did you understand? A: He meant the magistrate

that tried him at the preliminary hearing, according to that.

107 Q: Who would that be? A: That would be Magistrate Alexander.

8 Q: Now, Mr. Lew, before this statement was taken by magistrate Alexander-? A: Which statement?

9 Q: You have said Mr. Alexander went over the next day? A: Yes.

10 Q: You say the next day you and Campbell and Alexander went over? A: Yes, sir.

11 Q: Did you see Lai Ping? A: Yes.

12 Q: Who were present when you saw Lai Ping? A: Myself Mr. Campbell, the magistrate Mr. Alexander, interpreter Charlie Fook were all present.

13 Q: Who is Charlie Fook? A: He is the interpreter at New Westminster.

14 Q: Had he acted in this case in any way before? A: Well, in the preliminary hearing of the murder case of Yamasaki, he is acting interpreter, checking interpreter for the private prosecution.

14 Q: This is the man you told us before who checked you in one slight matter? A: Yes.

15 Q: How is it Charlie Fook happened to be present in Westminster when you went to Westminster this time? A: Well, I think Campbell got him there to check me.

16 Q: Did the prisoner make a statement at that time? A: Yes, he did.

17 Q: Was it taken down? A: It was taken down in writing.

18 Q: Who took it down? A: Magistrate Alexander did.

19 Q: Before that statement was taken on that day or on any previous day, did you yourself make any

threats or offer any inducement or promises to the prisoner to induce him to make that confession?

A: No, sir, we didn't, all the time I went over with Campbell or this particular time, warning - I refer to this particular time - the warning was read over the magistrate and interpreted by myself, checked by interpreter Charlie Lee Fook to the prisoner; and the time Campbell and myself went over before, Campbell always told me to warn them before they began the conversation.

120 Q: There is only once you went over there before - that is the first time.

21 Q: And did you warn them? A: I did, yes.

22 Q: What did you tell them? A: That you don't - in the words I told them - "you don't have to say anything unless you wish, but you are not obliged to say so, that whatever you say it will be taken down and made - taken down in writing, that whatever you do, might use as evidence against you at your trial.

23 Q: You always warned Lai Ping? A: Always did then, and Woo Wai too.

24 Q: Never mind about him. This is what you did yourself, and you have also said, I believe that nobody else said anything to the prisoner in the nature of a threat or promise or inducement to get him to make this confession. A: No.

25 Q: Is this the statement that was taken down by Mr. Alexander at that time? A: Yes, sir; that is my own signature and the other interpreter's signature.

26 Q: Charlie Fook's? A: Yes, And the prisoner's own signature in Chinese.

127 Q: That is Lai Ping? A: Yes.

28 Q: Nobody else's signature there? A: Mr. Alexander's signature.

29 Q: You saw all these signatures? A: I saw all these signed.

30 Q: And that is the statement as taken down at that time? A: Yes, sir.

(Marked previously I.A.D.K. for identification)

10 31 Q: After Mr. Alexander had written this down from your interpretation did you interpret it again?

A: After it was taken down did I read it over again?

32 Q: Yes? A: The magistrate read over and I interpret over the second time - re-interpret it over to the prisoner.

33 Q: Was that before he put his signature? A: No, that is, - certainly, yes, before.

20 34 Q: Does this statement contain a true statement of what the prisoner said - what Lai Ping said on that occasion? A: That statement contains what the prisoner said; that was given by myself, as interpreted over to the magistrate by myself.

35 Q: That is a correct interpretation of what the prisoner said on that occasion? A: It must be because others -

36 Q: You know it is? A: I know it is, because there was others besides myself thereto do the checking. I swear that is a true translation, interpretation, of his statement.

30 (Marked exhibit 4.)

Mr. Taylor: It goes subject to my objection. It depends a great deal upon the cross-examination of this witness.

Mr. Pottenger: Well, I will leave it until after the cross-examination.

147 Court: In the meantime the present witness states
 48 that the prisoner signed that after the witness
 had read over and interpreted it. I know he has a

Mr. Taylor: presses objection.

49 Cross-exam by Mr. Taylor. *ing house? A: Yes.*

137 Q: You tell us you have been acting as interpreter
 off and on for two years? A: Yes, sir. *anything*

38 Q: And you were the interpreter for the Crown on
 investigation into Charlie Sing's murder? A: Yes,
 10 sir. *establishment in Vancouver? A: As I connected with*

39 Q: How did you come to be interpreter for the Crown
 on that occasion? A: I come to be?

40 Q: How was it you were appointed interpreter? A: Well
 I was appointed, I was called in by Mr. Campbell and
 sworn in before the magistrate and Supt. Hussey. *in law*

41 Q: Were you sent for by Campbell? A: Yes, sir.

42 Q: This business about this murder was mixed up a good
 deal in the minds of the Chinese at any rate, with
 the gambling question, wasn't it? A: What was
 20 the question again, please? *Man of Victoria,*

43 Q: Was not this Chinese murder at Steveston mixed up
 in the minds of the Chinese with gambling? A:
 The common reputation as far as news round the
 Chinese population goes that this man that murder
 Charlie Sing was that it was done by highbinders
 and that sort of people - wait till I finish my
 answer - that they were down on him and try to put
 him out of business. *place*

44 Q: Charlie Sing was a gambler? A: Yes, he is, I
 30 think. *I am cross-examining you; you know the court*

45 Q: He had a gambling establishment at Steveston? A:
 Yes. *connected you have acted in connection with at least*

46 Q: That is the murdered man. *last two years in*

*Vancouver? A: I am not connected with any
 gambling house.*

147 Court: By reputation? A: By reputation.

48 Mr. Taylor (to witness) You know he had a gambling place there? A: Yes, certainly I know he has a house down there.

49 Q: And you know it is a gambling house? A: Yes.

50 Q: The idea was he had been murdered by the highbinders? A: Can't prove it by me; I don't know anything about - that is the way the reputation goes.

10 51 Q: By the way, are you connected with any gambling establishment in Vancouver? A: Am I connected with any gambling establishment in Vancouver?

52 Q: Yes? A: No.

53 Q: Never been connected with any of Man Lee's establishments? A: No, sir.

54 Q: Never in any way? A: There is no firm of Man Lee in Vancouver.

20 55 Q: Well, have you been connected with any of those gambling establishments? You know quite well what I mean? A: I beg your pardon; there is an opium wholesale house owned by Wing Man of Victoria, and I am the man there attending his business, in the Vancouver branch.

56 Q: And connected with that same establishment there are two or three gambling places in Vancouver? A: Not that I know, nothing to do with it.

57 Q: Do you know or not there are several gambling places connected with that house? A: I act with no house that is gambling understand, Mr. Taylor. I don't think it is the place here, to -

30 58 Q: Well, I am cross-examining you; you know the court will stop me if I go out of my way. I am instructed you have acted in connection with at least one gambling house in the last two years in Vancouver? A: I am not connected with any gambling house.

159 Q: You were charged in the police court with gambling
in one house not long ago? A: I am not charged and -

60 Q: Weren't you charged in connection with gambling in
the police court within the last one or two years?

You deny that? A: I deny - I don't know at all.

61 Q: You deny you appeared in the police court and
gave a false name? A: The time they had a raid

on one place and I happened to be there, and I
was told by people, of course, that it is better

110 70 Q: for me to leave the amount of money there and not
to answer than appear and have my name there,

because it was a put-up job, so I was happened

to be there the night they had it, because I just
was in the doorway. were absolutely incompetent,

62 Q: You did not give your own name when arrested? A:

I didn't; I didn't give no name at all. what?

63 Q: Do you mean to say you did not give any name

to the police when arrested? A: I certainly

didn't. might have been for a different reason.

2020 64 Q: You deposited a fine, and in what name was the

fine left there? A: I don't know who was in

charge put it down for me, might have put a

different name just for the sake of my reputation.

65 Q: You were arrested in one of Wing's houses? A:

I beg your pardon, not in Wing's house or any

house that I ever did have any connection with

any gambling house. may be counsel on one side.

66 Q: Just at the time of Sing's murder didn't you know

there was difficulty between Wing's gambling house -

2030 72 Q: establishment and - A: No, I don't. give me the

67 Q: Is this the first time you heard of the so-called

highbinder society having gone to Wing's establish-

ment at Vancouver and stopped gambling there just

74 Q: before Sing's murder? A: I know there was what

At how can a man swear when he forgets it? As

I said -

they call hingbinders - blackmailers - whatever it is, went to a certain gambling house and was smashing things up.

168 Q: Well, you did know? A: But anything that Wing, or anything of that kind I don't know at all.

69 Q: You have been several times when called as interpreter objected to as incompetent? A: I don't believe I ever was; well, the only time I was objected to was by you, Mr. Taylor.

10 70 Q: You swear that? A: You ask Mr. Cumyow who was called as one of your interpreters in it.

71 Q: Don't you remember in this very room the chief justice ordering you out of the position of interpreter because you were absolutely incompetent, don't you remember that? A: No.

Court: How would the chief justice know that?

Mr. Taylor: Well, the chief justice did so. I am not suggesting anything that did not occur.

Court: It might have been for a different reason.

20 Mr. Taylor: No, because he found so much difficulty in getting the evidence down. (to witness) You recollect in this very room the chief justice after you had interpreted in a case for some time, ordered another interpreter should be called, stating that he must have a competent interpreter? A: Not to my knowledge, it is it will be Mr. Cum Yow checking whereas you may be counsel on one side. That is the only time, if there is any time, that is the only time there is.

30 72 Q: Do you remember any -? A: If you give me the name of the case, I will tell you right away.

73 Q: You recollect something of that kind occurring? A: I do not.

74 Q: Do you swear nothing of that kind ever occurred? A: How can a man swear when he forgets it? As I said -

175 Q: You wont say it did not occur? A: Not to my knowledge, I never was. I don't think, Mr. Taylor for a moment you are going to criticize one interpreter's character any better than the other. If you are I could tell you my character will stand all sort of investigation from away back, whereas the other is a criminal, has been convicted, is an ex-convict.

10 76 Q: You have only been an interpreter for two years? A: More than that.

77 Q: Where did you say you had been an interpreter for two years? A: Well, in court, but I have done a good deal of private interpreting for canneries and all that private business.

78 Q: Did you say you interpreted this investigation in the Steveston muder? A: Yes, sir, I did.

79 Q: You knew these men were charged with perjury? A: What men?

20 80 Q: Lai Ping and Woo Wai were charged with perjury. You were aware at the time Mr. Alexander ordered them to be detained in custody and a charge of perjury was laid against them? A: I don't know they were arrested on any ground any more than their evidence was contradict each other so bad and they were ordered to be detained, that is all I know.

81 Q: You knew at the time the information for perjury was laid against them? A: The next morning I knew.

30 82 And you say you were down in the cell and got that paper you produced? A: Which paper?

83 Q: The yellow paper? A: I beg your pardon; I said I didn't get the paper from the cell.

84 Q: Well, you were downstairs in the office here? A: I wasn't downstairs; I was in Mr. Campbell's office.

185 Q: That is in this building downstairs? A: Yes.

86 Q: And you saw Lai Ping when he gave you this paper?

A: No, he didn't give me that paper first certainly not.

87 Q: This paper says Lai Ping asked the police to take

it and write - A: I beg your pardon. I said in my

evidence Lai Ping asked if he could write. I said:

"yes, you have to ask permission at the office."

88 Court: He did not give the paper to the witness.

10 A: That is what you are trying to drive at?

88 Q: Mr. Taylor: This occurred down stairs, here? A:

In Mr. Campbell's office.

89 Q: What were you doing in his office at the time?

A: Well, I was working there.

90 Q: And Lai Ping asked you if he could send a

message out to Chin Toy? A: He didn't ask me, he

asked me if he could write, and I said "if you

want to write you have to ask permission and go

up to the office and the police will deliver it

20 for you."

91 Q: Lai Ping did write this paper out. Did you see

him write it out? A: Certainly.

92 Q: After he had written it out where did he leave it?

A: He folded it up, and left it on the desk.

93 Q: Who picked it up off the desk, when did you

next see it? A: Mr. Alexander was at one desk,

the prisoner on another desk and I think I was doing

some typewriting work there, and after he wrote

that he folded it up and asked me "who I give it

30 to?" I said: "Leave it there, I will tell him."

94 Q: You had told Lai Ping that he could, after he had

written at the desk, that the police would take

this out and deliver it? A: Yes.

95 Q: It was after you had told him that he wrote

this thing? A: No, before.

196 Q: First of all, he asked you if he could write? A:
Yes.

97 Q: At any rate, he wrote this on the understanding
with you that it would be taken out and delivered?
A: With me?

98 Q: You are the only man who discussed it with him
in Chinese? A: He asked me, yes.

99 Q: And the impression you gave him in talking to
10 him was this would be taken out and delivered to
Chin Toy, that is what he wrote it for? A: He
wrote it for,- certainly for Chin Toy.

200 Q: He understood from what you told him this would
be delivered to Chin Toy? A: I told him it
would be so delivered, certainly.

1 Q: Then he left it on the desk, what happened? A:
Then Mr. Alexander asked me what he wrote. I
unfolded it and translated it to Mr. Alexander,
and I handed it over to Mr. Alexander and he
20 initialled it on the back.

2 Q: You don't know what became of it after that? A:
No, it is not my place to find out.

3. Q: At any rate, it was never taken out and delivered
to Chin Toy? A: How would I know? You can ask
the police whether it was delivered or not. It is
not my place to say whether it is delivered or not;
my duty is to interpret from one language to the
other.

4 Q: Quite right, but you told Lai Ping it would be
30 taken out. At any rate, the last you saw of this
it was given to Mr. Alexander; you translated it
to him and he put his name on the back of it? A:
I read it over to Mr. Alexander and he initialled
it on the back.

205 Q: And you say that the translation which was put in
of this document is correct? A: To the best of my
ability it is a true translation of it.

6 Q: Have you got that little slip you had with your
translation in type? Those words, I want to call
your attention to this part of the translation, the
words "that man is not him?" A: Yes.

7 Q: You swear that is a correct translation? A:
I swear that is the true meaning of that Chinese
character as wrote on that paper.

8 Q: That is the only meaning that can be given to
that character? A: The only one.

9 Q: Look at the Chinese and look at what you have got
there? A: A man - another interpreter may put it
ina different word, but still it would have to mean
the same meaning.

10 Q: What else could be put there, because another
interpreter does put something there? A: Yes,
and another interpreter may put a lot of other
things to that, too.

11 Q: What other word could you put to that - "that
man is not him?" A: Well, he may put "the other
man."

Court: "That man is not the other man?" A: Yes.

12 Q: Is the word "man" used a second time - "that man
is not the man?" A: No, the true translation of
that is "that man is not him." That is what I have
got. I think it is the best.

13 Q: Mr. Taylor: You think that is the best translation
you can put there? A: Well, if there is any other
interpreter can do it better, show him, that is,
if he done it true.

14 Q: You say it was on the 10th of the month Dec.,
I think, marked by Mr. Alexander. Then you have no
doubt it was the 10th Dec. that he wrote that paper?

A: I can't tell you the date, because the thing has been some time.

115 Q: But that is the date on the back? A: I don't say the date, I don't say the initial.

16 Q: You saw Mr. Alexander initial it at the time? A: I did, yes.

17 Q: How long after you had seen Lai Ping write that paper was it the first time you went to New Westminister? A: How long after.

10 18 Q: Yes; how many days? A: What was the question against?

19 Q: I ask how many days it was after you saw Lai Ping write that paper you have just been translating you went to Westminister to see him in the gaol? A: I think two or three days; I am not sure, I can't swear to it.

20 Q: You say you went with Mr. Campbell to get evidence against Chin Toy, that is right? A: We went over because according to the letter, the way it reads, it is a very, as I told you, very suspicious, we went over to get information re Chin Toy.

21 Q: Did you see both Woo Wai and Lai Ping that first time you went over? A: We did.

22 Q: You say you had a talk - you and Campbell - to Lai Ping? A: I interpreted what Mr. Campbell had to say to the prisoner.

23 Q: What was the first thing you interpreted for Campbell to the prisoner at that time? A: Well, I couldn't tell you from word to word, but as near as I can recollect I think Mr. Campbell said "ask if he has anything to say!"

24 Q: Did you say anything to the prisoner about having this letter that you had seen him right a couple of days before? A: No; what right have I to tell the

prisoner anything that it was not - that the constable didn't say so?

225 Q: Well, I don't know; I was not there. I don't know what Mr. Campbell told you. I wish you were there.

26 Q: Was there anything said about that letter? A: No.

27 Q: Was anything said about Chin Toy? Was his name mentioned? A: Was his name mentioned?

10 28 Q: Yes? A: I might have asked him questions, asked him - I don't quite remember what is the exact conversation took place at that time.

29 Q: Try and refresh your memory and tell us how the conversation began, that is to say, the conversation you interpreted. First, you have told us, Campbell spoke a few words to the man in broken English? A: Yes.

30 Q: And then something occurred in Chinese which you interpreted. I want to know what you first interpreted? A: Well, there wasn't very much interpreting at that time, because Campbell spoke to the Prisoner in broken English. I don't think there was very much that time. I couldn't remember quite exact what it is. I don't think I could. It has been some time now.

31 Q: Do you remember what you said to the prisoner? A: I didn't have very much to say to the prisoner any more than when I go in those two different times first and last I always ask them how they were, if they had broken down the opium habit, just a few words of that kind.

232 Q: I want you to think of the first time, if you can recollect what conversation you had yourself with the man? A: I haven't -

33 Q: No recollection? Was anything said by you or by Mr. Campbell through you as to the charge that had been laid against them? A: I can't tell you which time; there is two prisoners. I got it kind of mixed up, but there is one time anyway he asked Campbell about it, and Campbell took out the Code from the book case.

~~19~~
~~20~~
~~21~~
~~22~~
~~23~~
~~24~~
~~25~~
~~26~~
~~27~~
~~28~~
~~29~~
~~30~~
~~31~~
~~32~~
~~33~~
~~34~~
~~35~~
~~36~~
~~37~~
~~38~~
~~39~~
~~40~~
~~41~~
~~42~~
~~43~~
~~44~~
~~45~~
~~46~~
~~47~~
~~48~~
~~49~~
~~50~~
~~51~~
~~52~~
~~53~~
~~54~~
~~55~~
~~56~~
~~57~~
~~58~~
~~59~~
~~60~~
~~61~~
~~62~~
~~63~~
~~64~~
~~65~~
~~66~~
~~67~~
~~68~~
~~69~~
~~70~~
~~71~~
~~72~~
~~73~~
~~74~~
~~75~~
~~76~~
~~77~~
~~78~~
~~79~~
~~80~~
~~81~~
~~82~~
~~83~~
~~84~~
~~85~~
~~86~~
~~87~~
~~88~~
~~89~~
~~90~~
~~91~~
~~92~~
~~93~~
~~94~~
~~95~~
~~96~~
~~97~~
~~98~~
~~99~~
~~100~~

Q: What did he do with the Code? A: I think Campbell read it.

35 Q: And you translated? A: Yes.

36 Q: What was it he read? A: Well, he read as to the charge.

37 Q: And the punishment for it? A: That is so.

38 Q: He read out what the charge of perjury was and what the punishment was? A: Yes.

39 Q: Do you remember his reading out the part where it spoke of imprisonment for life? - of there being very long imprisonment for perjury like this? A: I don't quite remember the time, but he took out the Code and read it over to them.

40 Q: And read about the charge and punishment. What charge was it Campbell read out and you interpreted to the prisoner? A: Well, I could not give it from word to word, but as near as I could make it out and the way I interpreted it to them it is liable to from 7 years to 14 years, something of that, and that is, if the case is proven.

41 Q: A;; that we are now talking about is the first

occasion? A: I can't tell you whether it was the first or second or what it was; it was one of the times.

242 Q: At any rate, you know Campbell referred to the Code and you told the prisoner? A: I think he asked Mr. Campbell as to what was the - no, Campbell asked, "do you know what the charge is?" something of that.

10 43 Q: And the prisoner evidently didn't know, did not understand because you had to tell him what the charge was? A: Didn't understand?

44 Q: You say Campbell asked him if he knew what the charge was, and a little later, Campbell got the Code and you translated it to the prisoner? A: Yes.

45 Q: So evidently when the prisoner first went there he did not understand the charge and the punishment? A: I couldn't tell you just now how it is, but anyway that is what took place.

20 46 Q: At any rate, you recollect interpreting to the prisoner the punishment was anyway from 7 to 14 years? A: Yes.

47 Q: And that was in the gaol at Westminster? A: Yes.

48 Q: And you added the words "if the charge was proved" in speaking to the prisoner? A: I added the words?

30 49 Q: Yes, you said just now "if the charge is proved?" A: Well, that is what was interpreted to them - Mr. Campbell said,

50 Q: So you told the prisoner if the charge was proved against him the punishment would be from seven to fourteen years? A: I think that is what it is, yes.

251 Q: That is what it was. Was there anything said
just after that about the charge not being proved?

A: No.

52 Q: Was there not some conversation something like
this "of course, perhaps the charge won't be
proved against you." Do you remember saying
something like that to the prisoner? A: I
don't remember.

53 Q: Well, you may have said so? A: I don't think
I did, though. I don't think that was told to me.

64 Q: Was there anything said about the punishment being
perhaps less than 7 years? A: I don't think
it did.

55 Q: The prisoner says there was something said about
the punishment being less than 7¹/₂ years. Do you
recollect that part? A: I think the prisoner
answers - says - "I am more-" he told me "I am
50 something, and if it is two or three at all
I won't come out alive" or something like that,
that is what he said. That was all.

56 Q: How old did he say he was? A: I think he told
me he was 50 something, and he also said he was
sorry that he had ever done it ^{or} had ever
become in it, or something like that.

57 Q: The prisoner said, after he heard what the punish-
ment was, he was an old man, and if the punish-
ment was as much as seven years -? A: No, he
didn't say if as much as seven years. He said
"If I get it at all - if I get any term at all,
I don't think I ever could come out alive," and
then after that he sigh for a while, and then
he says he is sorry he ever mix up in it, or
ever become, something to that effect. He said
a few words mumbling away to himself.

258 Q: You may have asked him something of that kind -

Q: The prisoner says you said to him after telling him what the punishment was that possibly the punishment might be less. Will you deny you said that? A: I never said to him at all not anything like that.

59 Q: Nothing at all that the punishment might be less than the term you read out from the Code? A: I don't think I said anything about the Code, or anything at all. Mr. Campbell read from the Code and I interpreted. A: That sounds better.

60 Q: But after that did you not say to the prisoner in certain circumstances the punishment might be less than you mentioned to him? A: I don't think I did, Mr. Taylor.

61 Q: Will you swear you did not? A: I swear that I did not, no.

62 Q: You do not think so. I understood you to say you went over there really to get information against Chin Toy? A: That is what we went for, on that letter which we thought may lead us to further - we thought possibly it might lead us to the murder, if possible.

63 Q: And Chin Toy. Do I understand his name was not mentioned in your conversation with Lai Ping at all? A: I don't remember if there is anything; it has been some time now of course. I am not attending to interpreting in one court alone; there is other cases in other courts.

64 Q: Did you not ask Lai Ping some questions as to whether Chin Toy had anything to do with this case, or anything of that kind? You say Campbell's suspicion was aroused by this letter? A: There might in this way, by Campbell through me interpreting, if Chin Toy got them as a witness, but I am not sure though.

265 Q: You may have asked him something of that kind - did not Chin Toy get the accused to go and give evidence at that enquiry? A: Yes.

66 Q: And do you recollect at all what Lai Ping said on that occasion? A: I don't think there was any more said.

67 Q: Do you remember saying to Lai Ping it would be much easier for him, there would be a shorter term, if he helped you in reference to Chin Toy? A: If he helped me? What has he got to help me about?

68 Q: To help Campbell? A: That sounds better.

69 Q: That is what I mean? A: No, nothing of that kind or anything like it. The only thing I said he asked me one time that if I could tell the guard, if I could - of Campbell could tell the guard to give him some opium, and I says I don't think it is Campbell could tell him to do anything, but I will tell him just the same; and then he fell back in the chair. He sat down and he was in a kind of uneasy mamer, and he signed "I don't know what to do" he mutter to himself. "Well, "I said, " a man always get on better by telling the truth."

70 Q: That was the first occasion? A: I don't know which time, but that was the only time I said it.

71 Q: That was when he was feeling very bad at the thought of getting 14 years? That was after you had told him the punishment was 14 years? A: I told you I can't refer to what time, because I can't tell you. I could not remember what it is, but I think it was the first time. I am not sure.

72 Q: And it was on the first occasion you think it was you told him the extreme punishment was 14 years?

73 A: Yes, I think so.

73 Q: And then you say the man said he was old and if he got any term at all, he would not live through

it? A: Excuse me just a minute; I don't know whether it was him or Woo Wai; that Code was read over to them; it may be Woo Wai for all I know.

274 Q: You wont say it was not Lai Ping? A: Well, I cant fix my memory on one or the other, but it was one of them.

75 Q: Perhaps both were told that? A: No, it was only one that the Code was read to.

10 76 Q: Lai Ping instructs me you told him the punishment was 14 years? A: What he told you has nothing to do with me.

77 Q: It was probably Lai Ping? A: I told you I can't fix my memory on one or the other, but it was one of them, the Code was read to.

78 Q: Were they both together? A: No, they were separate.

79 Q: We have been talking about Lai Ping, but now you switch off to Woo Wai? A: No, I don't, but it was one of the two.

80 Q: Which was it fell back in the chair? A: Lai Ping.

81 Q: Then you told him it would be better for him to tell the truth? A: I told both of them.

82 Q: Campbell was there when you told him that? A: Certainly. He went over with me.

86 Q: Was that the last thing you said to Lai Ping on that occasion when he sat in the chair there, it would be better for him if he told the truth? A: I didn't say it was better for him to tell the truth. I said "a man always gets on better by telling the truth." I didn't refer to any particular man or men, or anybody.

87 Q: I have no doubt Lai Ping understood - A: I don't

288 care what he understood; that is what I say.

288 Q: What did you think Lai Ping understood when you told him that? Did you suppose he thought you were referring to the man in the moon? A: I don't know what he may understand, but that is what I said to him.

89 Q: You meant Lai Ping to understand that for himself?

A: I meant it for no one. I said "a man always get on better by telling the truth"

10 90 Q: You did not mean Lai Ping to take a lesson by that and tell the truth. You did not mean that you meant it for him? A: I didn't mean it for anybody; that is what I told him.

91 Q: Was that the last thing you said to Lai Ping on that occasion? A: I don't think there was any more, not that I could remember.

~~92~~ Q: Lai Ping says that at that time you told him that his imprisonment would be much shorter if he told the truth. What have you got to say to that? A: No sir, I did not tell anything of that kind.

93 Q: Nothing of the kind? A: No sir.

94 Q: What do you mean by saying it was better for people - better for them to tell the truth? What had you in your mind when you spoke of it being better? A: Well that is common sense; a man always get on better by telling the truth.

Court: It was not what the witness said. The witness said he told him that after the prisoner said he could not get opium.

95 Q: Mr. Taylor: Did you mean to say he could get some opium if he spoke the truth? A: I didn't mean nothing, but just like this, it was after he talked, he was just about ordered by the guard to go back and he asked me if I would tell Campbell to tell the guard to give him some opium. I kind of laughed, I said I didn't think Campbell had anything

~~to say here, but anyway I would tell him, and he fell back in the chair and signed, "I don't know what to do" or something and I said "A man always gets on better by telling the truth."~~

296 Q: I want to know what you meant by that, in saying that? What had you in your mind when you said that to the prisoner? A: He was in a very uneasy manner, and worry over something, or something like that, and he didn't know what to do, didn't know what to say, or what to do, apparently, and I simply say that, I meant it for anybody; I didn't have any individual in mind - never used meant it for him.

97 Q: Why did you say that you did not mean it for him? A: Why did I say it?

98 Q: Yes? A: Why I say is I didn't mean it?

99 Q: Yes. A: I didn't mean it for him nor anybody, but I simply said to you that is what was going on; You asked me what was going on.

20 300 Q: What was your object in saying that? A: There is no object in it.

1 Q: Again, what was your object in saying that? A: No object I told you.

2 Q: What do you think Lai Ping understood from that? A: How would I know what he understood.

3 Q: I want to know what you intended him to understand. You must have had something in your mind when you said that to him? A: I didn't intend him to understand anything.

30 ~~4~~ Q: How many days after that was it you went with Mr. Alexander, A: I think it was the next day. I am not sure though; the times are getting mixed up.

5 Q: The first time you talked to Lai Ping, did you get any information about Chin Toy? A: He talked

CROSS-EXAM

to Mr. Campbell in broken language - in broken English, that he tell the judge all, about it, and that was the only thing that happened there, I think.

306 Q: So you did not get any information about Chin Toy the first time? You did not really get any information about him the first time? A: Well, we think he did, he tell all.

7 Q: What do you think you got about Chin Toy? A: I haven't got any, it is the constable that got it.

8 Q: But you were there interpreting? A: I was there, certainly.

9 Q: What information do you think you got on that first occasion about Chin Toy? A: I don't understand your question; you have to put a plainer way.

10 Q: You told me you thought you got some information about Chin Toy on that first occasion? A: That is what we wanted to go for.

20 11 You think you succeeded to a certain extent? A: Yes.

11 Q: What information did you get about him on the first occasion? A: When the prisoner said to Mr. Campbell that he would like to see the Judge, "and you bring him over, I tell him all!"

12 Q: Did Campbell or you ask the man any questions on that occasion? - ask Lai Ping - you or Campbell? A: We did. We asked him if he had got anything to say.

30 13 Q: But beyond that, did you ask him any questions? A: I don't remember if we did.

14 Q: Was there anything said of this kind: "Did Chin Toy have anything to do with this matter?" A:

I think Campbell was asked the prisoner if Chin Toy didn't - if Chin Toy got him to be a witness

against Yamasaki's case, or something like that.

315 Q: Sp there was one question asked at any rate? A:
Yes.

16 Q: You think it was the next day you went along with
Mr. Alexander? A: Yes.

17 Q: You had no idea at all what Lai Ping was going to
say when Mr. Alexander got there? A: No, I hadn't.
though coming back to myself I thought that he may
tell something about the murder, but I haven't no
10 idea that he confess right before Mr. Alexander.

18 Q: You had no idea of that? A: No.

19 Q: Perhaps it was not the next day, but when the
confession was given, you went over from here with
Mr. Alexander? A: Yes, sir, and with Campbell.

20 Q: And you went to the jail there? A: Yes.

21 Q: Did you see Lai Ping before Charlie Lee Fook came?
A: No, we didn't - I was with Mr. Alexander in the
sitting room.

22 Q: And was Lai Ping there? A: No, and then Mr.
20 Campbell, I think, was on his way, getting
another interpreter, and when - I beg your pardon -

23 Q: So that you did not see Lai Ping on that
occasion until Charlie was there too? A: Wait
till I finish my answer. When Charlie Lee Fook
came back with Campbell the guard opened the cell,
opened the door and Mr. Alexander walked first and
Charlie Lee Fook the interpreter followed Mr.
Alexander and it was down in that cell there
we got this statement.

30 24 Q: Mr. Alexander swore you to interpret? A: Yes.

25 Q: Did you ask Lai Ping any questions? A: No.

26 Q: Did Charlie ask Lai Ping any questions? A: Mr.
Alexander swore me first, and then swore Charlie
Lee Fook as a check interpreter afterwards.

Then I think we took a table up in front of the

cell there, and we took the confession - we took his statement rather.

327 Q: I want to know if during that statement, there were any questions asked of Lai Ping - any explanation of what he was saying - You understand what I mean, when examining witnesses?

A: There was no questions asked until the very last of his statement, and then there was one question asked, I think, by Mr. Campbell.

10 28 Q: On the first occasion when you had seen him, when he told you he wanted to see judge, what judge was it he told you he wanted to see? A: He said the man that tried him before.

29 Q: This occasion was after he had been tried by Mr. Russell wasn't it? A: Yes, and he also say "that big house" or "the big court."

30 Q: At any rate, he said the man who tried him before. Were those his words? A: Yes, and he said the man, the big house judge, or big court judge, something like that.

31 Q: Were had Lai Ping been tried before except by Mr. Russell in the police court? A: By magistrate Alexander in the court house here.

32 Q: What was he tried for by Mr. Alexander? A: For a witness.

33 Q: As a witness - you call that being tried? A: Didn't he give evidence there?

34 Q: Is that being tried? A: Well, if it isn't -

35 Q: Is that what you understood the witness to mean?

30 A: I didn't mean at the trial, he gave evidence there.

36 Q: When he said the man who tried him before you mean to say the man who examined him before? A: That is what he meant, that is what the witness meant.

37 Q: And that is what you meant by being tried? A: Yes.

338 Q: After the confession had been written out by Mr. Alexander, I understand it was re-read by you to the witness? A: Yes.

39 Q: Do you remember when the witness signed it, was there any conversation between you and Charlie and Lai Ping before he put his name in Chinese characters to that? A: There was no conversation; the only conversation was when Charlie or somebody said "It looks very bad for Chin Toy." That is what Charlie state - that was the only thing there.

10

40 Q: Did Charlie say that in Chinese? A: No, in English.

41 Q: Did you say anything? There was no conversation of any kind. Lai Ping said nothing and you and Charlie said nothing just before Lai Ping put his name in Chinese characters at the bottom of that paper? A: No.

42 Q: Nothing at all? A: Nothing at all.

20

43 Q: Did you tell Lai Ping to sign his name, how did he know? A: I told Lai Ping to sign his name, certainly, I point with my finger.

44 Q: There was that much conversation? A: That is not a conversation no, You don't count that for conversation, when the magistrate asks the witness to sign, and I interpret to sign here.

45 Q: All you said then to Lai Ping was the two words, "sign here" - is that all you said to him? A: That is all I did.

30

46 Q: You are sure of that? A: Perfectly sure.

47 Q: Did Lai Ping say anything to you? A: I don't think he did, no.

48 Q: Refresh your memory now: I want to know if Lai Ping said anything to you before he put his name on that paper? A: I don't think he did.

349 Q: Will you say he did not say anything? A: He is always mumbling something to himself, but anyway he didn't talk to me - I can swear to that.

50 Q: You will swear he didn't say anything to you?

A: I will swear he didn't say anything to me after he signed his name, or before he signed his name.

51 Q: Get that down. A: He is taking down every bit of it.

10 52 Q: Court: If you are going to contradict him, I think you ought to place all the circumstances before him.

Mr. Taylor: I have not finished cross-examining him.

If I want to contradict a witnesses' precise statement well and good, but if the witness tells me on one occasion nothing was said and on another witness says something was said, without saying what was said -

Court: We will not get any further forward by conducting an argument here. Of course you are conducting your own case.

20 53 Q: Mr. Taylor (to witness) How many times did you see Woo Wai over there? A: Just as many times as we saw Lai Ping, because when we go we see the two of them.

54 Q: Then you only saw Woo Wai three times then?

A: I think it is three times.

55 Q: Think again. Are you quite sure you only saw Lai Ping three times? A: I think that was all.

56 Q: I want to know if you didn't see him at least four times? A: Before he gave his statement?

30 57 Q: Counting the time he gave his statement and before.

Counting the time he gave his statement, as one?

~~A: We seen him a time after he gave his statement you know.~~

58 Q: You were counting that time you saw him afterwards as one of the three? A: No, I think it is four,

counting that one.

359 Q: So you saw him twice then, before he gave his statement? A: Well, I have got it badly mixed up. I kind of think it is three times.

60 Q: In all, or twice before the statement? Once at the statement, and once after - four in all? Which is it now? A: May be four counting the last time after the statement is taken.

61 Q: Then if that is the case, you must have seen him twice before the statement was taken? A: I can't swear to that. I could tell you if I had my day books here, the day I went over. I won't say anything I am not sure of.

62 Q: You may possibly have seen him twice before the statement? I am not asking you to state positively and in every case Campbell was with you, on every occasion you saw Lai Ping? A: I think so, yes.

63 Q: Well, is it possible you saw Lai Ping on any occasion alone, now? A: I think I saw Woo Wai alone once - not Lai Ping.

64 Q: You are not quite sure though? A: No. I am sure I didn't see Lai Ping but I saw Woo Wai alone once.

65 Q: And were you on the search for evidence against Chin Toy if you saw Woo Wai? A: Well, how that leads to, was that at the time before this time I went alone when he talked to Mr. Campbell that night, that he was going to tell something next day, or something like that, I think that was the reason I went back, but he didn't say anything, he hadn't a word to say to me that time I went there. The guard called him up, and I said "have you anything to say - anything to tell? - No." That was the only thing there was no word exchanged at all.

66 Q: You say you saw Lai Ping sworn at the inquiry

about the murder of Charlie Sing? You saw Mr.

Alexander administer the oath? A: Yes.

367 Q: You gave the oath? A: Yes.

68 Q: Do you remember what you said? Was there anything said to this man Lai Ping, before he took the oath?

A: What do you mean?

69 Q: I want to know if anything was said to him about the oath he was going to take? A: Who said?

70 Q: You were in the court there interpreting. You know what I mean. Was anything said to him about the of oath before he was sworn. A: I asked if he was christian? I think that was all. He said, no.

71 Q: Then you administered the paper oath? A: Yes.

72 Q: Nothing more? A: No.

73 Q: What is the difference between what they call the paper oath and the yellow chicken oath, among the Chinese? A: What is difference?

74 Q: Yes. I don't mean to say the difference in the form of taking it, but do the Chinese make any difference in the form of solemnity between the paper and the chicken oath? A: Well they consider it is one of the most serious, and they consider when they take that oath, it is very sincere.

20

Court: That is the yellow oath? A: Yes, but as used in court all the time, down in the police court, where every two days or every day you ask a person whether he is christian or not; if christian he takes the bible, and if he is not a christian, the paper is offered to him.

30

75 Q: But the oath, the Chinese really consider binding on their conscience, is the yellow chicken oath?

A: No, I have seen this paper -

76 Q: Yes, administered? A: I never seen the way, but there is many a way of breaking saucer; you repeat

Law
300-37am

the oath and then break a saucer.

377 Q: But that form of oath is never administered here?

A: No.

Mr. Taylor: You were present at the Chin Toy preliminary inquiry - subornation of perjury? A: Yes.

78 Q: And Lai Ping was called as a witness? A: Yes.

79 Q: You were interpreter? A: Yes.

80 Q: And you told the Crown in that case -? A: Yes.

10 81 Q: That they ought to insist upon Lai Ping taking the chicken oath? A: I didn't - I beg your pardon - I didn't insist upon anything of that kind.

82 Q: Didn't he take it? A: Yes. I was acting for the Crown - I was called by the Crown, and the - not the Crown counsel but Mr. Macneill said to the court that the yellow oath should be taken.

83 Q: Will you say that Mr. Macneill was in the police court? A: Mr. Macneill demand that yellow oath.

84 Q: Mr. Macneill? A: Certainly.

20 85 Q: You swear now that Mr. Macneill was there and demanded the yellow oath in the police court? A: In the police court.

86 Q: On the charge of subornation of perjury? A: In the Chin Toy charge of subornation of perjury.

87 Q: Court: What was conducting the case for the Crown? A: Mr. Livingstone.

88 Q: You think it was Mr. Macneill who suggested the yellow oath? A: Lai Ping?
89 Q: At any rate, you sat it was not you? A: It was not me.

30 30 90 Q: Mr. Taylor: As a matter of fact, the yellow chicken oath was administered to Lai Ping at that inquiry? A: Yes.

91 Q: Why was it administered then instead of burning paper? A: Well, I think it happened like this: I was called as an interpreter when the clerk asked for the name the Chief of the police Court shoved me a piece of paper and pencil and just then I was up at the edge of the box and Mr.

Macneill got up and objected and say, "I don't want that oath to be taken" or something of that kind. Anyway he demand the yellow oath, Mr. Macneill at the police court, and then the court was adjourned - let me see - yes, that is right, the court was adjourned, and the magistrate asked me that time I think, and I explained to the court that any time that any parties challenge the party that was going to take the oath, should be the party who was challenged, drawing it up, which is the proper way, and so the court was adjourned, so for their interpreter who was there, to check me, to draw it up, but when the morning comes the next day, they can't draw it, their interpreter don't know how, and I was ordered by the Crown to draw it up afterwards. They object - come with two or three afterwards, say they want to take the one they had drawn up, but after consideration and argue by both sides, counsel and the translation was read, and their oath was simply to make, to compel the witness to tell the same story what he told before; so that oath was rejected and my oath taken as demanded by Mr. Macneill. I didn't insist or ask the Crown say anything to tell the Crown to insist upon him taking that oath.

- 392 Q: Eventually he did take the chicken oath? A: Yes.
- 93 Q: You say that was entirely at the suggestion of Mr. Macneill? A: To the court - to everybody present there - it is that Mr. Macneill had demanded for that oath.
- 94 Q: You say it was entirely owing to what Macneill said that the chicken oath was administered? A: Mr. Macneill said, he demands that oath there, and they grant his request.

- 395 Q: Do you remember what the Magistrate said about the chicken oath then? Didn't the magistrate say he would insist upon the chicken oath? A: Yes, that is another part. When Chin Toy talked to his counsel, when the counsel asked the prisoner to go into the ante-room, and they talk, and then Mr. Macneill come back and says he want to go on with the case by taking the paper oath, which the magistrate refused to do, on account of the demands in the first place, and then back out a few minutes afterwards.
- 10 20
- 96 Q: Did not the magistrate say he would insist himself on that, because he thought it was the only oath binding on Lai Ping? A: I can't tell exactly the words the magistrate used, but it was something like that.
- 97 Q: He thought it was the only oath that would bind Lai Ping? A: No, he didn't say the only oath that would bind Lai Ping.
- 20 20 98 Q: The most binding oath - put it like that? A: I think it was something like that - I can't repeat it
- 99 Mr. Alexander was the man who conducted - that you are speaking of now? A: Yes. I beg your pardon for a moment - not Mr. Macneill, Mr. Macneill's partner, Mr. Marshall - I got mixed up with Mr. Macneill because he was the counsel, what the Chinese calls him. It was Mr. Marshall I swear to that now - Mr. Marshall.
- Re-direct by Mr. Pottenger.
- 30 400 Q: Lai Ping was sworn on the chicken oath that time? A: Yes.
- 1 Q: Did you interpret his evidence? A: I interpret his evidence?
- 2 Q: How did his evidence then, agree with the evidence set out in that statement? The evidence Lai Ping gave at that time against Chin Toy?

chicken oath and the paper oath, but comparing it with

Mr. Taylor: Before my learned friend asks that question, he cannot in the circumstances, avail himself of anything said by Lai Ping on that occasion, because it was made under reserve, Anything said on that investigation, at that inquiry should not be used as evidence against him. I have elicited the fact, in cross-examination, that Lai Ping was sworn on the chicken oath recently, and my object in doing that was in reference to the form of oath. My learned friend now wants to compare Lai Ping's evidence under the chicken oath, with Lai Ping's evidence formerly, under the common oath, I will call it.

Court: That is to say, the evidence under the chicken oath, is to be compared with the evidence under the burnt paper oath?

Mr. Taylor: Yes.

Court: Upon which evidence the prisoner is now charged.

Mr. Taylor: Yes, but the reason I am objecting now, that he cannot compare, cannot say anything or give one word in it of what occurred under the chicken oath, in the examination against Chin Toy in the police court, is, because when this witness, Lai Ping, was sworn in that inquiry and examined, it was under the reservation in the code that his words should not be used in any charge against him. In other words, that evidence is privileged.

Court: How do you know that?

Mr. Taylor: The records of the court on that occasion will show that.

Mr. Pottenger: That is right, your honor. I might say, it was taken, subject to that objection; but I was not comparing his evidence given under the

chicken oath and the paper oath, but comparing it with the voluntary statement made in Westminster, which was not made under oath at all. I would not have tried to go into the proceedings in the Chin Toy charge, in the police court at all had not my learned friend cross-examined this witness, and thereby opened it up.

Court: What is your question?

10 Mr. Pottenger: Simply this: How did Lai Ping's evidence as given under the chicken oath in this Chin Toy investigation compare with the voluntary statement made by him in Westminster, that is in court here?

Mr. Taylor: That is open to just the objection I made your honor.

Court: You say that the evidence given when the prisoner took this oath called the yellow oath, that was given with the reservation that it would never be used against him?

20 Mr. Taylor: Yes.

Court: How do I know that?

Mr. Pottenger: I admit that.

Court: That is not usual is it?

Mr. Taylor: No, it is unusual; but it can be done, and it was done.

Court: What I want to be satisfied about is, how am I bound by that reservation?

Mr. Taylor: Because the law says it cannot be used in any criminal proceedings against him.

30 Mr. Pottenger: My point is this: My learned friend has waived that very point by opening it up.

Court: You say, but for his cross-examination on that point, you would be precluded?

Mr. Pottenger: That is my position.

Court: That is not exactly a sound position, because

I think the prisoner is entitled to the benefit and I should think it would require an express waiver.

403 Q: Mr. Pottenger (to witness): You say, I believe, that you are not sure which of the prisoners this section of the code was read to? A: I am not sure.

4 Q: You don't know whether it was Woo Wai or Lai Ping?

A: Yes.

5 Q: If Constable Campbell says it was not Lai Ping, but Woo Wai, you would not deny that? A: No,

10 // because it is just one of them. I can't fix my mind whether it was Woo Wai or Lai Ping?

6. Q: You say it was the older man who said something about his age - about being an old man at that time?

A: Yes, when he sighed, when he was ordered by the guard to go down, he uttered a sigh to himself and he said he don't know what to do - don't know what to do - something of that kind.

7 Q: You don't remember which it was? A: No.

8 Q: You said something to him about it being better to tell the truth. Tell us exactly what you did say that time? A: I says "a man always get on better by telling truth" That is all that was said, there was nothing outside of that.

9 Q: You did not tell him it would be better for him?

A: No I didn't tell him it would be better for him, or better for anybody, but a man always get on better by telling the truth.

10 Q: This was after the charge of perjury was laid against him, was it, you said this to him? A:

30 Oh yes, after he was convicted (committed)

11 Q: And he signed because he had got mixed up in this perjury case? A: Yes, and he also say he was sorry he ever got mixed up, or ever got in the

thing words of that meaning.

412 Q. And then you said a man always gets on better if he tells the truth.

413 What is your name? A: Charlie Lew Fook.

14 Q: You are the Chinese interpreter, I believe, Mr. Fook? A: Yes.

15 Q: Do you remember an occasion on which you went to the Westminster Hall with Constable Campbell to see Lai ping? A: I do.

16 Q: I think that Mr. Alexander and Mr. David Lew were there at the time? A: Yes.

17 Q: That is the occasion I refer to. Do you remember that Lai Ping made a statement at that time?

A: Yes.

18 Q: Was it taken down? A: Yes, before Mr. Alexander.

19 Q: Mr. Alexander wrote you what he said? A: He says - Mr. Alexander says to Lai ping - we could not say nothing to him, what he tells us he put it down.

20 Q: That is to say, you were not allowed to ask him any questions? A: No.

21 Q: Who did the interpreting? A: David Lew.

22 Q: And you followed the confession - the statement as it went along? A: Yes, that was the case.

23 Q: Were you sworn? A: Yes sir.

24 Q: And was David Lew sworn? A: Yes sir.

25 Q: Did you find any mistakes at all in David's interpreting? A: No not that I noticed.

26 Q: And after the statement was over, did you sign it? A: Yes sir.

27 Q: And did Lai ping sign it? A: Yes sir.

28 Q: And Mr. Alexander? Is that the statement that was signed at that time? A: Yes.

01
02
03
04
05
06
07
08
09
10
11

- (referring to the one previously marked for identification)
- 429 CHARLIE LEE FOOK. Called and sworn. Exam. by Mr. Pottenger.
- 413 What is your name? A: Charlie Lee Fook.
- 14 Q: You are the Chinese interpreter, I believe, Mr. Fook? A: Yes.
- 15 Q: Do you remember an occasion on which you went to the Westminster Jail with Constable Campbell to see Lai ping? A: I do.
- 16 Q: I think that Mr. Alexander and Mr. David Lew were there at the time? A: Yes.
- 10 17 Q: That is the occasion I refer to. Do you remember that Lai Ping made a statement at that time. A: ~~Exam~~ Yes.
- 18 Q: Was it taken down? A: Yes, before Mr. Alexander.
- 19 Q: Mr. Alexander wrote you what he said? A: He say - Mr. Alexander say to Lai ping - we could not say nothing to him, what he tells us he put it down.
- 20 20 Q: That is to say, you were not allowed to ask him any questions? A: No.
- 21 Q: Who did the interpreting? A: David Lew.
- 22 Q: And you followed the confession - the statement as it went along? A: Yes, that was the check.
- 23 Q: Were You sworn? A: Yes sir.
- 24 Q: And was David Lew sworn? A: Yes sir.
- 25 Q: Did you find any mistakes at all in David's interpreting? A: No not that I noticed.
- 26 Q: And after the statement was over, did you sign it? A: Yes sir.
- 30 27 Q: And did Lai ping sign it? A: Yes sir.
- 28 Q: And Mr. Alexander? Is that the statement that was signed at that time? A: Yes.

(referring to the one previously marked for identification)

429 Q: Before this prisoner, Lai ping, signed it, was it read over to him again, the whole thing? A: I think it did.

30 Q: You think it was. You say that before the confession started, Mr. Alexander gave some sort of warning to the prisoner, did he? You said something about must not say anything to him - anything said would be used against him, or something - you heard that said? A: Yes.

31 Q: And you had no doubt the prisoner understood it? A: No.

32 Q: Did you hear anybody use any threats, or make any promises to the prisoner in order to get him to make that statement? A: Not while I was there.

33 Q: Did you were there the whole time Lai Ping was being examined? A: That statement.

34 Q: Yes, you were there the whole time? A: Yes.

20 35 Q: And there were no threats made, or promises held out? A: No, not that I know.

36 Q: You did not do it yourself? A: Oh no.

37 Q: Nor did David Jew do it? A: No, not while I was present.

38 Q: Nor did Mr. Campbell or Mr. Alexander ask you to say anything of that sort to the prisoner? A: No.

39 Q: And they didn't say anything of that sort? A: No.

Cross-examined by Mr. Taylor.

30 40 Q: That was the first time you had seen Lai Ping in the jail there? A: Yes.

41 Q: Who asked you to go there? A: Mr. Campbell.

42 Q: Do you know what for? A: He asked me to go up and interpret.

- 443 Q: For what? A: Interpret Lai Ping.
- 44 Q: Tell me the exact words Mr. Campbell said to you when he ask you to go up there? A: Well, he asked me to go up to the jail and see Lai Ping for to interpret.
- 45 Q: To do what? A: Interpret.
- 46 Q: Interpret what? What were they going to do there? A: He didn't say what they would do there. Then I walked up with him going up to the jail.
- 10 47 Q: What did he say going up to the jail? A: Didn't say anything more.
- 48 Q: Did he tell you what they were going to interpret that they were going to examine Lai Ping? A: He didn't say they were going to examine Lai Ping.
- 49 Q: What was it you were going to interpret? A: He asked me to go up.
- 50 Q: And interpret what? A: Lai Ping.
- 51 Q: Then you understood you were going to see Lai Ping? A: Yes, I went up with him.
- 20 52 Q: Is that all you knew? A: That is all I knew.
- 53 Q: When you got there, where was it you saw Lai Ping? A: The first I saw was down stairs in the jail cell.
- 54 Q: Was there anyone there when you got there? A: Not when I first got there.
- 55 Q: You two went down to see Lai Ping together? A: yes.
- 56 Q: You and David Lew and Mr. Alexander, did you all go down together? A: Yes, all went down to see him.
- 30 57 Q: And you and David Lew were both sworn by Mr. Alexander? A: Yes sir.
- 58 Q: You ask or did David Lew ask Lai Ping any

- questions? A: I don't think so.
- 459 Q: How was this statement taken down, which you have got here - which was made out? A: Taken down by writing by Mr. Alexander.
- 60 Q: And while that was going on, did you and Lew ask Lai Ping any questions? A: I could not say whether he asked.
- 61 Q: You are not quite sure whether you asked him questions or not? A: No.
- 10 62 Q: You may have asked him - David Lew may have said, when he was asking, said to him "what about Chin Toy" something like that, and then he put it down? A: Well, I could not remember.
- 63 Q: After it had all been written out by Mr. Alexander and he read it over which of you translated it back to Lai Ping? A: David Lew.
- 64 Q: You are sure of that? A: Yes.
- 65 Q: And who was it asked Lai ping to sign? A: Mr. Alexander through the interpreter.
- 20 66 Q: Which of you was it? A: David Lew.
- 67 Q: What did the interpreter say to Lai ping when he asked him to sign? A: I didn't say anything to him.
- 68 Q: No, but what did David Lew say? A: Asked him to sign that paper.
- 69 Q: Is that all he said? A: That is all I remember.
- 70 Q: You are sure that is all David Lew said to him after Mr. Alexander said "ask Lai ping to sign - show him where to sign" and David Lew turned and said to Lai ping "to sign here" A: Yes.
- 30 71 Q: Is that all David Lew said? A: Yes sir.
- 72 Q: Sure of that? A: I am quite sure he asked him to sign that. I don't know whether there was

anything more.

473 Q: There may have been something more? A: There may have been something more - I won't say, and may be not.

74 Q: What is the difference between this paper oath as they call it, the burnt paper oath, and the yellow chicken oath? Which is the most binding the most solemn oath to the Chinese? A: They generally take the chicken oath as the strongest.

10 75 Q: That is what is considered the binding oath that really makes a Chinaman tell the truth? A: Yes.

76 Q: They don't attach much importance to the paper oath? A: No.

Re-direct by Mr. Pottenger.

77 Q: Did Lai Ping make any objection to signing that paper? A: No, not that I know of.

78 Q: About this paper oath, haven't you often seen that administered in courts? A: Yes.

79 Q: It is used quite frequently? A: Often.

see him write all this letter, I saw him write part of it - I was in and out of the office, between the office and the basement.

86 Q: There is no doubt that he wrote that? A: There is no doubt, I saw him beginning it, and I saw him ending it, he started on it again, he wrote part of it with special and part with open.

87 Q: What happened to that letter afterwards? A: It has been in my possession.

88 Q: Did Lai Ping give it to you? A: Yes, it was left on the table there, and I took charge of it. Mr. Alexander had been there, making out some summons and some other papers that evening and I suggested to him, being as he had been there all the time, that he had better initial it. It was practically

in the office all the time that he had been there,
only it was only a few minutes. I had my initials
C. S. CAMPBELL. Called and sworn. Exam. by

Mr. Pottenger.

489 Q: You had charge of the prisoner? A: Yes.
480 Q: What is your name? A: Colin Smith Campbell.

81 Q: You are the Provincial Constable here? A: I am.

82 Q: Have you ever seen that document before? A:
Yes sir.

83 Q: Where did you see it, Mr. Campbell? A: In my
office.

84 Q: Tell us the occasion and when it was you saw
it? A: I saw it on the night of December, 03.

10 (Exhibit "3") Lai Ping, the prisoner asked
me to see Ah Chung or David Lew.

85 Q: He said that in English? A: Yes, "he likee see
Chung" something like that. And I brought him
up to the office from the cell, and I believe
before he came up he motioned that he wanted to
write a letter. I think that is what he wanted to
go up there for, and after he came up, - I didn't
see him write all this letter, I saw him write
part of it - I was in and out of the office,
20 between the office and the basement.

86 Q: There is no doubt that he wrote that? A: There is
no doubt, I saw him beginning it, and I saw him
ending it, he started on it again, he wrote part
of it with apencil and part with apen.

87 Q: What happened to that letter afterwards? A: It
has been in my possession.

88 Q: Did Lai Ping give it to you? A: Yes, it was left
on the table there, and I took charge of it. Mr.
30 Alexander had been there, making out some summons
and some other papers that evening and I suggested
to him, being as he had been there all the time,
that he had better initial it. It was practically

in the office all the time that he had been there, only it was only a few minutes. I had my initials on it as well.

489 Q: You had charge of the prisoner Lai Ping and Woo Wai? A: Yes.

90 Q: Well us how they came to be put down in the cell given into your charge? A: Well, after the preliminary inquiry into the murder of Chin Lin Jung or Charlie Sing, by Yamasaki who was accused of the murder, after that they were given in charge by the magistrate, Mr. Alexander, and a charge was subsequently laid against both of them for perjury - both Lai Ping and Woo Wai.

91 Q: Did you take them over to Westminster? A: Not till after - they were not taken until after they were committed at the police court by Mr. Russell.

92 Q: They were kept /here? A: They were kept here.

93 Q: Did you have any conversation with Lai Ping while he was here? That is, between the time he was committed by Mr. Alexander and the time he was examined before Mr. Russell A: No particular conversation.

94 Q: He did not tell you anything or you did not have any conversation with him in relation to the charge that is now laid against him, during that time? A: No, I had after he was committed.

95 Q: Where, here or in Westminster? A: On his way to Westminster.

96 Q: You say you had some conversation with him on the way over to Westminster, after he was committed A: Yes sir.

97 Q: Committed by whom? A: By Mr. Russell.

98 Q: What was he committed for? A: No, I beg your

was going over I asked David Law to accompany me,
pardon that was after he had given evidence at
the Chin Toy case, that was the conversation that
I had with him. It was after he was committed,
and after he had given evidence on the Chin Toy case.

499 Q: After he had given evidence on the Chin Toy case
he conversed with you on the way over to Westminster

A: A little.

500 Q: Did you promise him anything, or threaten him in
any way to make him confess, or make him make a
statement? A: No, sir.

1 Q: He was talking in English? A: No, he had been
saying on the way - he says like this "oh ah - I
think they kill me"- that is the words he say, and
I asked him what was the matter "Well he say, they
kill me sure and I just asked him "who was going
to kill you Lai Ping" and he says "I think Chin
Toy kill me because me tell him it against him"
Not as plain English as that, but those are the
words.

20 2 Q: He said this in English - at least, broken
English? A: Broken English.
Court (to witness) Chin Toy was then charged with
subornation of perjury? A: He was committed.

3 Q: Mr. Pottenger: You had a conversation with him
before this Mr. Campbell. Wasn't this after you had
the conversation in Westminster with him? A: Oh yes

4 Q: Tell me when you first saw him in Westminster?
A: It was the evening that he was brought over
after being committed; that was on the 12th December

30 5 Q: You went over with him? A: I did.

6 Q: And you had some conversation? A: I went over
that night, and I brought over two prisoners to
the Provincial jail on Saturday evening. When I

was going over I asked David Lew to accompany me,
and we saw Lai Ping that night.

507 Q: What was your object in seeing Lai Ping that
night? A: Well it was to get evidence to inquire
into the case against Chin Toy principally.

8 Q: This was before the preliminary investigation
before Mr. Russell in the chin Toy case? A: Yes.

9 Q: You say just you and David Lew went to see him
that time? A: Yes.

10 10 Q: Did you threaten or promise him anything if he
would make a statement at that time? A: I did not

11 Q: Did you at any time promise him or threaten him,
in order to induce him -? A: I did not.

12 Q: To make a statement, You held out no inducement
whatever? A: I did not.

13 Q: This first occasion you went over, did he make any
statement? A: No, he made no statement. You mean
in conversation or anything like that?

14 Q: Yes? A: Well, I asked him if he had anything
20 to say to me, and in his broken English he explained
that he had nothing to say now. He said: "I no sav-
vee talk English very much. You catch him judge.
I tell him all. "I asked him what judge did he want
to see, and he explained that it was "the big
housee judge." I repeated it several times to
make sure it was in this court room the judge in
this court room, and he satisfied me it was Mr.
Alexander. I asked him if it was the judge in the
other court room - the little court room, he
30 said "no, it was the judge in the big house."

15 Q: David Lew was with you at this time? A: Yes.

16 Q: But he did not do any interpreting then to Lai
Ping? A: Well, yes, I think I asked him, I told

him to tell him in Chinese that he did not need to say anything, but that whatever he did say might be taken down and used against him, or used against them.

517 Q: After you told him that, David said something to
27 him, did he? A: Yes, as I understood, he interpreted.

18 Q: But on that occasion he did not make any state-
28 ment? A: Nothing more than what I have just now
10 told you.

19 Q: When did you go back to see him? A: On
Monday, that would be the 14th.

20 Q: What day was this they were talking of before?
A: Saturday the 12th.

21 Q: On Monday the 14th you went back again? A: Yes.

22 Q: Who went with you? A: David Lew and Mr. Alexander
the stipendiary magistrate. We left here and went
to Westminster, and after getting there I went and
~~for~~ ^{got} Charlie Lee Fook and brought him up as a
20 check interpreter. I thought it would be well.

I believe I suggested it at the beginning that
we should have two.

23 Q: Why did you think of Charlie Lee Fook any
particular reason? A: One thing was he was the
handiest man, he knew him well, and another thing
I thought it would be a good idea if we had him
because he was check interpreter in the preliminary
inquiry in the Yamasaki trial.

24 Q: Who was he acting for? Or who was he check
30 interpreter for at that time, who was he acting for
Charlie Fook? A: Mr. Macneill had charge of the
private prosecution and he was - the Crown were
working with Mr. Macneill in the case.

525 Q: And where did Charlie Fook come in? Was he
working with Mr Macneill too? A: Yes, Chin Toy,
I believe, was the man.

26 Q: And these men were called by Mr Macneill - the
witnesses knew Yamasaki? A: Yes.

27 Q: You went and got Charlie Fook what happened then?
A: At the time I got Charlie Fook I had taken
Chin Toy at the same time.

28 Q: I mean when you went over to Westminster and got
10 Charlie Fook? A: Yes, I happened to locate Chin Toy
there that day, and I brought him up to the gao;
with Charlie Lee Fook.

29 Q: You arrested him that day? A: Yes, he was
arrested that day; I brought them both up. After
I had arrived there Magistrate Alexander went down
into the wing where Lai Ping was held and Charlie
Lee Fook and David Lew and I followed. Then David
Lew was sworn in as interpreter. Charlie Lee was
sworn in as check interpreter and a confession was
20 received.

30 Q: He made a statement did he? A: Yes.

31 Q: As far as you know at this time there were no
threats or promises made or held out? A: None
whatever. I was very particular. I have had a good
deal of experience in that way in getting evidence.
I was very particular about it.

32 Q: Was there any warning given to the prisoner, to
Lai Ping? A: Yes.

33 Q: Who gave the warning? A: The magistrate through
30 the interpreter.

34 Q: What did he say to him? Do you remember the
substance of what he said? A: The usual warning
that is given was read out.

- 535 Q: Was Lai Ping questioned, or did he simply make the statement? A: He made the statement voluntarily.
- 36 Q: Were there any questions at all? A: There was one question asked.
- 37 Q: At what stage of the inquiry or confession? A: It was when the enquiry was supposed to be all over, I asked him the question that is there.
- 38 Q: What was said? A: I can't use the -
- 39 Q: What was it about? A: I asked him if - I asked him did Chin Toy tell him that if he said that he saw the Jap come out he would get the Jap convicted? I think that is the substance of it.
- 40 Q: And that was the only question? A: That was the only question.
- 41 Q: After this statement had been made and magistrate Alexander had written it out, was it read over again and translated to him? A: It was; the magistrate read it over and David Lew interpreted it back to the prisoner. The prisoner David Lew, Charlie Lee Fook and the magistrate signed it in my presence.
- 42 Q: Are those the signatures? A: They are.
- 43 Q: And that is the document? A: It is.
- 44 Q: Did David Lew or Charlie Fook have any conversation with Lai Ping at the time he signed there? Of course you would not know what they were saying? A: Not that I am aware of. There was little conversation after we left that place.
- 45 Q: I mean, with Lai Ping? A: No, not that I know of.
- 46 Q: Did you ever read any section of the code to Lai Ping? A: No, I don't think so.
- 47 Q: Mr. Taylor: That is a rather unfortunate way of putting a question to your own witness.
- 48 Mr. Pottenger? Did Lai Ping ever say anything to you

Campbell
8-10-21
about what he was charged with, or anything of that sort, or what his sentence was to be? A: He did.

549 Q: Lai ping said that? A: He did.

50 Q: What did he say? A: He asked me one time - at least, I took it for granted that he wanted to know - he says "how much you think I catchee?" or "how much you think I get"

51 Q: When was this? A: I believe that is sometime while he was herein Vancouver.

52 Q: What did you say to him? A: I told him I had no idea; that would be left to the judge.

55 Q: Is that all that was said? A: I told him - I think I told him that the extreme penalty was life.

54 Q: And that was all that was said? Do you know Steveston at all well, Mr. Campbell? A: Pretty well; I have been there quite often.

55 Q: Do you know the street on which this Charlie Sing's house is located? A: I do.

20 56 Q: Lai Ping in his deposition here swears that he recognized Yamasaki come out of Charlie Sing's house, or go into Charlie Sing's house, I guess it is, isn't it - no, come out. About half past three in the morning he at that time, Lai ping, was at his own door, just across the street. You say you know that street? A: I do.

57 Q: What would you say about that - recognizing him across the street? A: I don't think it would be possible for him on a dark night, or even on a fairly light night.

30 58 Q: You know that locality fairly well? A: I do there is a verandah in front of Charlie Sing's house, and all along that side of the street I believe. The verandah I suppose would be probably 8 ft wide and

they are not very high. I took notice to that while I was there at the time of this - while we were investigating. I was there after dark the forepart of the night when there was more lights lit than there would be in the early morning, and although I didn't put it to a test I am positive in my own mind I could not be positive of identifying anybody across the street. In fact,

10 you take it in the streets of Vancouver, here, even when the lights are lit, I venture to say you would not be positive of a person across the street.

559 Q: How far is it across that street? A: I should judge it would be somewhere in the neighborhood of 40 feet from house to house.

Cross-exam. by Mr. Taylor.

60 Q: On this occasion when you say that after Lai Ping had been examined in the Chin Toy case you were going back to Westminster and he made some statement. He was in your custody then. A: He was.

61 Q: I understand that when you went over on the 12th. December you went over with Lew in order to get evidence against Chin Toy, that was practically it? A: Practically yes.

62 Q: And your intention was to see Lai Ping and Woo Wai and try to get from them something to implicate Chin Toy? A: Yes, if we could.

63 Q: And you took David Lew with you to interpret? A: Yes.

30 64 Q: And so far as any warning that was given you say on that occasion was given of course by Lew? Any warning to Lai Ping was given through the interpreter Lew? A: Yes, and by me as well.

65 Q: Do you mean to say you think Lai Ping understood a

warning in English? A: Well, if he understands a little English he understands enough to answer those questions I asked him. They would not be as intelligible as a man that could talk better English.

566 Q: You have changed your mind from when you were examined a minute or so ago as to the warning given through the interpreter? A: It was given through him. I also told him that he could not say anything myself.

10 66 Q: Of course you do not understand Chinese at all? A: I understand one or two words.

67 Q: So you are not in a position to state what occurred between Lai Ping and Lew on any of these occasions? A: No.

68 Q: And there is no doubt you took David Lew over there as spokesman for you? A: I took him over there as official interpreter. He had been sworn in for that work.

20 69 Q: You say you did on one occasion while Lai Ping was in custody tell him what the penalty was for the crime with which he was charged? A: Yes, when he asked me.

70 Q: How many visits did you pay to the gaol in company with Lew to see Lai Ping altogether? A: Either three or four; I am not certain of that.

71 Q: Were there two before the statement was made when Mr. Alexander was present, or only one? A: No, one visit.

30 72 Q: One visit before that? A: We went there on the evening of the 12th and we went there on the 14th

73 Q: What was the object of the further visit to Lai Ping after ^{the} ~~the~~ statement was got? A: To see if we could get more evidence against Chin Toy.

74 Q: As the result of your interview on the 12th with

Lai Ping what did you understand was going to happen when you took Mr. Alexander there? A: Well, I thought sure that we was going to get some good evidence against either Chin Toy or Lai Ping himself. I felt confident of that. We were successful, I thought.

575 Q: Do I understand you got no information whatever on the first occasion? A: I did not.

76 Q: And when did you arrest Chin Toy? A: Well, I suppose he was then into custody practically on the 14th down in Chinatown, New Westminster, but he really was not - he didn't know he was arrested until after this statement of Lai Ping was -

77 Q: Who arrested Chin Toy? A: I did.

78 Q: On what day? A: On the 14th day of Dec./03.

79 Q: After this statement had been obtained from

Lai Ping? A: Well, that was the first he knew he was arrested.

80 Q: But I want to know if it was after this statement you got from Lai Ping you arrested Chin Toy, or before? A: It was not till he was arrested until after the statement was made.

81 Q: When was it Chin Toy was taken over to Westminster? A: He was arrested in Westminster. I will explain to you, Mr. Taylor, and then you can see for yourself When I went to look for Charlie Fook as an interpreter I had no idea of meeting Chin Toy in Westminster, and when I went to look for Charlie Lee Fook Chin Toy was in the building, and as soon as he saw me he cleared out. I didn't notice him until I saw him going out the back way, and we followed up and when we came to him I told him I wanted him to come up to the gaol

82 Q: So he was practically in custody? A: If he had

~~582~~ wanted to go away I would not have let him.

583 Q: And the reason you took him into custody was in consequence of what you ^{had} heard on the 12th? A: Not exactly.

84 Q: Partly? A: I was always of the opinion that Chin Toy had engaged these men.

85 Q: Do you mean to say you were of that opinion when these men were first examined? A: I might say I was suspicious of Chin Toy when he was acting as interpreter at the inquest, so much so that I went up there before he got out to investigate for myself.

10

86 Q: And you came to the conclusion from that moment these two men - from that very minute, you came to the conclusion they were committing perjury, and you were going to see them through? You came to the conclusion these men were guilty from the start, and have always been of that opinion - this man Lai Ping? A: After they had given their evidence; I didn't know them before that.

20

87 Q: But the moment they gave their evidence at the preliminary enquiry you made up your mind they were perjuring themselves? By the way, you have seen a good many Chinese sworn in courts? A: Yes.

88 Q: And in your experience is it not a fact that the binding oath is the yellow chicken oath? That is appealed to whenever they want to get at the truth A: It has been done here several times.

30

89 Q: Don't you know this as a fact, when they want to get at the bottom of a thing they refer to the chicken oath? A: Well, in my own mind I think the chicken oath most binding, although when the chicken oath was taken at the police court up here, some of them told me that was no more binding

then the burning of the paper, and that was some of the interpreters for the defence.

590 Q: Mr. Pottenger: At any rate, Mr. Campbell you have often seen this burning paper oath administered
A: I have.

91 Q: You have had considerable experience? A: Both in the superior and inferior courts.

92 Q: You, I suppose, had some connection with this case from the very minute they began to investigate Charlie Sing's murder? A: I did.

93 Q: You were connected with the case in your official capacity? A: I was.

94 Q: When did Chin Toy first come up in this case, or when did he get mixed up in it.

Objected to by Mr. Taylor.

Court: It is not always necessary to go over the cross-examination again unless you think it is material.

95 Mr. Pottenger (to witness) When did you first become acquainted with Chin Toy? A: At the inquest at Steveston, yes.

96 Q: And you were sort of keeping your eye on him ever since? A: I have, in fact, I might say he wanted to go out with me. I told him no, he had better go out on the train that I might go out that night. That was on the night of the 6th November, the night - no, the night it was reported to me.

J. F. MURCHISON. Called and sworn. Exam. by Mr.

Pottenger.

597 Q: What is your name? A: John Edward Murchison.

98 Q: You are the chief of police at Steveston, I believe

A: Yes.

99 Q: Do you know Charlie Sing's house, the house that
Charlie Sing used to live in at Steveston? A: Yes.

I know it very well.

600 Q: You are very well acquainted with that locality?

A: Yes.

1 Q: How far is it across the street there opposite
Charlie Sing's house, Mr. Murchison? A: Do you
mean on a straight line?

2 Q: Yes, A: I think it is 34 feet. I took the
measurements - I didn't take the measurement straight
across, but I took it on an angle. It is one door
West as you might call it, 39 ft and one door east
from a straight line across is 38 ft.

3 Q: Those are the two houses that are almost directly
opposite? A: There is no house

as I understand it, that is directly opposite?

A: There is a house directly opposite, two
houses, you mean directly opposite.

4 Q: Yes, those are the houses that come most nearly
to be directly opposite? A: Yes.

5 Q: Lai Ping sworn in his evidence in this murder
trial that he stood opposite Charlie Sing's house
at 3 o'clock in the morning, half past three, and
recognized a man coming out of Charlie Sing's house
at that time. What would you say about that? A:

Well, I could not - not on a dark night. I don't
think I could any ordinary night.

6 Q: Have you been in that locality at night? A: Yes,
often.

7 Q: And did you investigate? A: Yes, I have taken

notice to that.

608 Q: Tell us about the front of Charlie Sing's house?

A: Well, it is covered with a low verandah which projects out 8 ft and it is 7 1/2 ft that is the outer side towards the St. you might call it street or alley.

9 Q: Seven and a-half feet high? A: Yes.

10 Q: And projects out 8 ft? A: Yes.

11 Q: Does that cover the whole sidewalk? A: Yes, it
10 covers the whole sidewalk, across the whole thing, with plank clean across between the buildings there.

12 Q: It is all sidewalk? A: Yes, but it covers the sidewalk right in front of the building.

13 Q: You do not think it is possible for any man to recognize another across that street? A: No, I don't think it is.

14 Q: If the lights were out? A: That is, if the lights were out. Unless he was outside in the light I would not be prepared to say he could
20 have.

Cross-exam. by Mr. Taylor.

15 Q: Do you consider you have keen eyesight? A: I consider I have.

16 Q: Do you swear it is impossible for a man to recognize a man across the street? Remember this man was coming from the house and there would be a light from the doorway as he came? A: I would not say it was impossible for anyone providing there was light in the house, at the door.

30 17 Q: So you are not prepared to swear when Lai Ping said from the door of his house he looked across and recognized the men who came out of Charlie's house - you are not prepared to say that is ~~it~~ a physical impossibility? A: Well, it would be for me.

618 Q: Then if there was a light behind the man shining
627 out of the doorway as the man came out? A: Well, ~~ston?~~
it would be all owing to the extent of the light,
28 but the lights that were used and generally used
round those places are nothing but lanterns.

19 Q: It depends altogether upon the circumstances,
whether it was a dark night, and whether it was
29 light from the inside? A: Well, I remember the
night this happened and it was a very dark night
about that time. (11 Jan. 1904.)

10 20 Q: You say it ~~was~~^{is} only about 38 ft across; it is
less than 40ft? A: It is less than 40.

21 Mr. Pottenger: If Lai Ping says "I didn't see
, any light in Charlie's house when I went out?
Mr. Taylor: That is on a previous occasion.

Mr. Pottenger: I am reading from his evidence in the
Yamasaki case.

22 Court (to witness) There are no street lights, in
Steveston? A: No, your honor.

08 20 23 Q: In this locality of which you speak, at any rate? ,
A: No, well there isn't in none of the streets,
that is, no street lights, or course it is all
covered along with a low verandah; the street has
there a very dark light, as you might call it.

24 Mr. Pottenger: What would you say about a man describ-
ing the clothes that a man had on across the street?
A: I would say it was impossible.

25 Q: If he said he had on black clothes would you think
he could see whether they were black? A: I don't
30 think he could. I couldn't.

26 Q: When he says when the accused opened Charlie's door
there was no light that came out. Would you think
it was possible for him to recognize a man when he

says that? A: No.

Feb. 1/04.

627 Court: Do you know where Lai ping lives in Steveston?

A: Well, I know where he claims to live.

28 Q: Where is that? Opposite Charlie's house - the murdered man's house? A: Yes - well, it was a little below, if anything. It was not straight across your worship. is a Christian?

29 Q: It was one of the two 38 or 39 ft across? A:

Yes, 39. (to interpreter) Ask the witness what

his religion (adj'd till Mon. Feb.1/04.)

Witness: I believe in Christ

Mr. Taylor: How long has he been in this country?

A: Six years; going on it will be seven years.

Mr. Taylor: And has he ever been baptized in the Christian faith here?

Mr. Pattenger: I object. My learned friend is entitled to ask whether this man's oath is binding on his conscience.

Court: Oh well, let it go.

Mr. Taylor: I want to know if he ever formally in any way belonged to or joined any Christian church since he has been in this country? How did he become a Christian?

Witness: No, I was not baptized.

Mr. Taylor: Ask him what he understands by taking an oath on the bible? A: Yes, I understand it.

Mr. Taylor: I want him to tell me what it is.

Court: Not what the bible is but what is the meaning to him of taking an oath?

Interpreter: It means he would not tell any untruth in the name of God.

Mr. Taylor: Why wouldn't he tell an untruth?

Interpreter: He believes God will punish him.

(Witness sworn) Direct exam. by Mr. Pattenger.

Feb. 1/04.

Third Day.

Case for the Prosecution. Continued.

YAMASAKI. Called.

Goro Kaburagi, Interpreter. Sworn.

Mr. Taylor: I ask the court to ask the necessary question if this man is a Christian?

Court: You may ask the question you wish.

Mr. Taylor: (to interpreter) Ask the witness what his religion is:

Witness: I believe in Christ.

Mr. Taylor: How long has he been in this country?

A: Six years; going on it will be seven years.

Mr. Taylor: And has he ever been baptized in the Christian faith here?

Mr. Pottenger: I object. My learned friend is entitled to ask whether this man's oath is binding on his conscience.

Court: Oh well, let it go.

Mr. Taylor: I want to know if he ever formally in any way belonged to or joined any Christian church since he has been in this country? How did he become a Christian?

Witness: No, I was not baptised.

Mr. Taylor: Ask him what he understands by taking an oath on the bible? A: Yes, I understand it.

Mr. Taylor: I want him to tell me what it is.

Court: Not what the bible is but what is the meaning to him of taking an oath?

Interpreter: It means he would not tell any untruth in the name of God.

Mr. Taylor: Why wouldn't he tell an untruth?

Interpreter: He believe God will punish him.

(Witness sworn) Direct exam. by Mr. Pottenger.

10

30

630 Q: What is your name? A: Watakichi Yamasaki.

31 Where does he live? A: In the city of Vancouver.

32 Q: Has he ever lived anywhere else? A: I was in Lulu Island.

33 Q: What was he doing there? A: Fishing season he was fishing.

34 Q: Does he remember the night that Charlie Sing was murdered? A: Yes.

10 35 Q: Where was he the night before Charlie Sing was
10 murdered? That is, the night that Charlie Sing was
murdered - the same night? A: He was at Charlie's
place in the evening, and afterwards late at night
of course he went up to his own place to sleep.

36 Q: What time did he go to Charlie Sing's place that evening?

Interpreter? Which night?

37 Mr. Pottenger: That evening.

Interpreter: On the 5th? Well, quite a long while ago, I don't remember exactly. I think it was about five or six o'clock in the morning I went there.

38 Q: In the morning? A: I mean, in the evening.

39 Q: How long did he stay there? A: I think I was there up to 11 o'clock

40 Q: From 5 to 11 he was there all the time? A: Yes; perhaps a little before 11 he left there.

41 Q: Where did he go when he left Charlie Sing? A: I went back to Madokoro's place.

42 Q: What did he go there for? A: That is my place to sleep.

30 43 Q: How far would it be from Charlie Sing's to Madokoro
A: About 10 minutes walk, perhaps less.

44 Q: Did he leave Madokoro's place again that night? A: No.

45 Q: When did he next leave Madokoro's place? A:

A: Perhaps a little after 11 or a little before 12; sometime between 11 and 12 o'clock he left that place the next day.

646 Q: That would be about noon the next day? A: Yes, about.

47 Court: Stayed there all night from 11 in the evening until probably 11 or 12 the next morning, that is why he says is it? A: Yes.

10 48 Mr. Pottenger: After he left Charlie Sing's place at 11 o'clock that night did he go back there at all? A: The next day?

49 Q: No, that night, was he near Charlie Sing's again that night? A: No, I didn't go there at all.

50 Q: Who else were at Madokoro's place that night? A: In the same room where he was?

51 Q: Well, who did he see when he went to Madokoro's? A: Tanaka and Takahashi, Shirri, Osawa, Koniya.

52 Court: Five or six? A: Five.

53 Mr. Pottenger? Five besides himself or including himself?

54 Court: Were they all Japanese? A: Yes.

55 Q: What did he do when he went to Madokoro's? A: Took off my pants and retired, undressed and went to bed.

56 Q: How many of these men that he named slept in the same room with him? A: Those are the follow who sleep in the same room. The room is like this and these men he mentioned were the persons sleep in this manner in the same room.

30 57 Q: Did each one sleep in a separate bed? A: Well, some single and some two.

58 Q: Did he sleep with any other Japanese or did he sleep alone? A: I was sleeping with other.

59 Q: Was he sleeping in the same bed with another one?

- 575 Q: When did you begin to play black jack - what hour?
A: Yes.
- 660 Q: Who was he? A: Tanaka.
- 61 Q: When he went into Madokoro's in to that room,
did he speak to anybody? A: Yes, I spoke to
Tanaka when I went into the room and of course I
was a little under the influence of the wine or
liquor and so I may have spoken to some others,
but I don't remember it, but next morning I was
told I was speaking to some others.
- 10 62 Q: He remembers speaking to Tanaka? A: Tanana yes.
- 63 Q: Was Tanaka awake? A: Yes, he was awake when I
went in there, he was not sleeping, he was awake.
- 64 Q: Did he see either of the prisoners between 11
o'clock that night and the time that he says he
left Madokoro's the next ^{day} morning? A: No, I
didn't see them.
- 65 Q: Did he see either of the prisoners?
Court: Strictly speaking, it is only the case of one
prisoner we are taking up now.
- 20 66 Q: Did you see Lai Ping at all that night?
A: Which is Lai Ping? (Lai Ping stands up.
Witness: No, I did not.
- Cross-exam. by Mr. Taylor.
- 67 Q: Was fishing your only occupation at Steveston,
last summer? A: After fishing I was in gambling.
- 68 Q: He was a partner of the murdered man's, Charlie
Sing, wasn't he? A: Yes, I was.
- 69 Q: And he was in the habit of going to Charlie Ding's
every night? A: Yes.
- 30 70 Q: You used to run one of the games there, didn't you?
A: I was yes, dealing.
- 71 Q: The night before Charlie sing's murder you were
dealing black jack weren't you? A: Yes, I was.
- 72 Q: How long did you play black jack that night? A:
About two hours.

- 673 Q: When did you begin to play black jack -, what hour of
the evening? A: I think about seven o'clock
when we begun.
- 74 Q: Then you stopped playing black jack about nine
I suppose? A: Yes, about nine.
- 75 Q: From 9 till 11 what did you? A: I was playing
another game called poka-poka up to that time.
- 76 Q: Up till 11? A: About ten, up to ten.
- 77 Q: And you think you left Charlie's about 11
10 o'clock that night? A: Yes, about 11.
- 78 Q: You were pretty drunk weren't you? A: Well,
yes, I think I was, somewhat.
- 79 Q: Why do you think it was 11 o'clock when you left?
A: Well, because I was there up to that time. We
know generally how long we play the game, and about
how long this game lasts and so on. I could
calculate that way.
- 80 Q: He did not look at any clock or find out the time
definitely when he left Charlie Sing's. A:
20 Makayama told him when he first finish the first
game of black jack. He ask him what time, and
Nakayama answer him about 9 o'clock so he knew
that time and then after that he could calculate
that from that.
- 81 Q: Although you were pretty drunk you made up your
mind it was 11 o'clock when you went home? A: Well
I was drunk but not very drunk.
- 82 Q: Well, it may have been 12 o'clock isn't that right
A: No.
- 30 83 Q: Did you find out the time when you got back to the
boarding house - Madokoro's, did you find out from
anyone what time it was when you got there? A:
Well, not only myself, next morning I saw Tanaka,
my bedfellow, I said "about what time was it when

I came home last night" He said "well it was about 11 o'clock"

684 Q: That is next morning? A: He also was told or answered by Tanaka, so that from even that he thinks his time was not very far from what he mentioned.

85 Q: You say there were five men in that room when you got home at 11 o'clock? A: Yes, there were five.

86 Q: Did you hear any noise in the night, men going in and out of that bedroom? A: No, I don't remember anything.

87 Q: According to you then, nothing happened during the night? A: No, I don't remember anything.

88 Q: What time did you get up the next morning? A: About 11.

89 Q: When you left Charlie's at 11 o'clock did you see Charlie there? A: Yes, he was there.

90 Q: What part of the gambling house was he in? A: His own room.

20 91 Q: That means the small room? A: Yes.

20 92 Q: And did you speak to Charlie just before you went away? A: Yes, I told him good night.

93 Q: What time were you in the habit of leaving the gambling house and going home? A: There was no fixed rule at all. Sometimes I returned home at ten, sometimes later, then on some occasions I came back in the morning after daylight.

94 Q: Was the gambling house kept open all night? A: Oh, yes, sometimes two or three days.

30 95 Q: And you were in the habit of going into the gambling house at any hour of the day or night? A: No, after I came back home I never went again. I never went to any place after I retired until I

got up, the next morning.

696 Q: But didn't he sometimes go in there at two or three o'clock in the morning? A: No.

97 Q: Was he ever there as late as three o'clock in the morning? A: Oh yes, I was there.

98 Q: You have sometimes stayed there all night? A: Yes.

99 Q: Played there all night? A: Yes.

700 Q: Did you ask Charlie for any money that night? A: Yes, I asked him for \$5.00; he gave me \$5.00.

10

1 Q: Just before you left, didn't you ask Charlie for some more money? Were there not some words between him and Charlie just before he left? A: Nothing.

2 Q: Does he say the only thing that occurred between himself and Charlie as to any money that night was getting \$5.00 from Charlie? A: No.

3 Q: Were there any other Japanese at Charlie Sing's that night? A: Yes, a good many of them playing there.

20

4 Q: How many? A: Ten or eleven.

5 Q: Among those men were there any that lived in the same room as he does, that he has mentioned as living in the same room? A: No, in the evening, about in the evening there was one, but not in the time I retired - left the place.

6 Q: Which one of those men had been at Charlie's during the evening? A: He says Tanaka.

7 Q: And what time did Tanaka leave? A: He could not remember the exact time.

30

8 Q: Was Tanaka the only one of his fellow boarders that was in Charlie's any time during that evening? A: He is not sure but perhaps Komiya was there; he is not sure but thinks so, because those two comes there very often, nearly every evening.

- 709 Q: Do you remember being examined in the police court about a month ago in this case? A: What police court: three points; one is for the place for
- 10 Q: Down in Vancouver here? A: Yes, I remember it.
- 11 Q: Do you remember saying then that you were positive there were two of your fellow boarders at Charlie Sing's that night? A: Yes, they were there.
- 12 Q: Is he sure now Komiya was there as well as the other man? A: Yes, he thinks so.
- 10 13 Q: What did he mean? I want to know whether those two men were there or not? A: Well, he says he thinks he was.
- 14 Q: When you were examined in the police court you had no doubt about it." Were any of the five men that lived with you, in Charlie sing's house that night" the answer was "yes, two" "What time did they leave Charlie's gambling house, the other Japs? He doesn't know what time these two men went out" Does he remember saying that? A: That is all right.
- 20 15 Q: Now, is he sure there were two men? A: Yes, he says there was two.
- 16 Q: And the two must have been Tanaka and Komiya? A: Yes.
- 17 Q: Who was it you remember speaking to when you got home that night? A: I thought when I came back home I thought I spoken to Tanaka.
- 18 Q: That was his impression that he spoke to Tanaka A: Yes, I spoke to Tanaka.
- 19 Q: Is there a private room at Charlie's gambling house that no one used to go into but yourself and Charlie? A: No, wasn't such a room.
- 30 20 Q: No private room at all? A: No.
- Re-direct by Mr. Pottenger.
- 21 When he says there is no private room, does he

OSAWA, Called.

mean there is only one room downstairs? A: There is only three rooms; one is for the place for gambling, another is Charlie's room, another is the kitchen, that is all. There is no other room.

728 Q: They are all together, downstairs? A: Yes.

truth.

Mr. Taylor: Why should he not tell an untruth? A:

If I tell an untruth I be punished.

10

Osawa, Examined, by Mr. Pettibone.

729 Q: What is your name? A: Osawa.

30 Q: Ask him if he remembers the night Charlie King was murdered? A: I do remember.

31 Q: Where was he that night? A: I was at Madokoro's.

32 Q: What time did he go to Madokoro's that night? A: I was that evening at Madokoro's.

33 Q: He was there all the evening? What time did he get there? A: Well, the whole afternoon and evening.

34

34 Q: Was not out at all? A: No.

35 Q: Who else slept in the room at Madokoro's with him?

A: Keniya, Shirri, Takahashi, and myself, Tanaka Yamaguchi, that is all.

36 Q: How many was that? A: Six.

37 Q: Does he remember what time Yamaguchi came in that night? A: I think it was about 11 o'clock.

38 Q: Was he in bed at the time? A: Yes, I was in bed.

39 Q: Was he asleep? A: Yes, I was sleeping.

40 Q: How does he know that Yamaguchi came in at 11?

41

A: Because he came in and he aroused Keniya with a loud voice.

42 Q: That is why he woke up? A: Yes.

43 Q: How did he know what time it was? A: Tanaka said

OSAWA. Called.

Mr. Taylor (to Osawa) What is your religion? A:

I believe in Christ.

Mr. Taylor: He is a christian then? A: Yes.

Mr. Taylor: What do you understand by taking an oath on the bible? A: I believe not to tell an un-

truth.

Mr. Taylor: Why should he not tell an untruth? A:

If I tell an untruth I be punished.

10 47 Osawa. Sworn.Exam. by Mr. Pottenger.

729 Q: What is your name? A: Osawa.

30 Q: Ask him if he remembers the night Charlie Sing was murdered? A: I do remember.

31 Q: Where was he that night? A: I was at Madokoro's?

32 Q: What time did he go to Madokoro's that night? A: I was that evening at Madokoro's.

33 Q: He was there all the evening? What time did he get there? A: Well, the whole afternoon and evening.

20 34 Q: Was not out at all? A: No.

35 Q: Who else slept in the room at madokoro's with him? A: Koniya, Shirri, Takahashi, and myself, Tanaka Yamasaki, that is all.

36 Q: How many was that? A: Six.

37 Q: Does he remember what time yamassaki came in that night? A: I think it was about 11 o'clock.

38 Q: Was he in bed at the time? A: Yes, I was in bed.

39 Q: Was he asleep? A: Yes, I was sleeping.

40 Q: How does he know that Yamasaki came in at 11?

30 40 A: Because he came in and he aroused Komiya with a loud voice.

41 Q: That is why he woke up? A: Yes.

42 Q: How did he know what time it was? A: Tanaka ask

me what time is it?

743 Q: How did he find out what time it was? A: Always I hang my watch by my side, bedside, so I looked at it.

44 Q: And it was about 11 o'clock? A: And I told him or answered him about 11 o'clock.

45 Q: Was there any light in that room at that time? A: There was a large big lamp there burning.

46 Q: Did that lamp burn all night? A: All night.

01 10 47 Q: What did Yamasaki do when he came in? A: First thing he woke up Komiya and ask him "how much did you make" Yamasaki asked Komiya how much did you make?" Komiya said about \$4.00.

48 Q: Not what he said, but what did you do? What did Yamasaki do? A: Then after that he undressed himself and went to bed.

49 Q: Did he get to bed by himself, or with somebody else? A: Went into Tanaka's bed.

50 Q: Was Osawa up again that night? A: Yes.

08 20 51 Q: What time? A: I think about 11 - I mean, 1.

52 Q: About one he thinks? A: Yes.

53 Q: Did he look at his watch that time? A: No, I didn't look at watch.

54 Q: Tell us why he got up? A: I noticed the rain strike against the window and produced such a noise and I was anxious about my boat in the storm.

55 Q: There was a storm coming up was there, and he got anxious about his boat? A: Yes.

08 30 56 Q: What did he do when he got up? A: At that time I looked outside of the window and retired again.

57 Q: Was the lamp burning at that time? A: It was there.

- 758 Q: Did he see Yamasaki at that time? A: I saw
Tanaka and him was in bed together.
- 59 Q: As near as he can judge, that was about one
o'clock? A: Yes, I think it was about one or so.
- 60 Q: Did he get up again that night? A: I did.
- 61 Q: About what time? A: About three.
- 62 Q: Did he look at his watch that time? A: No,
I didn't look at it that time when I got up.
- 63 Q: He thinks it was about three? A: Yes.
- 10 64 Q: What did he do at that time? A: I walked
direct to Takashahi and he got up. We put on
rubber shoes and rain coat or rather oil coat
and rubber boots and oil clothes and put cap on
and went outside.
- 65 Q: Did he see Yamasaki at this time when he got up?
A: Yes, as soon as I got in bed.
- 66 Q: He was in bed with Tanaka? A: Yes.
- 67 Q: Where did they go when they went out he and
this other man? A: We went outside on a kind of
wharf like place, and he tightened the rope to the
bitts so that the boat would not get away and
be not bash.
- 20 68 Q: How long did that take them? A: Well perhaps
forty minutes.
- 69 Q: Does he know what time it was when they went back
to Madokoro's?
Court: Forty minutes.
- 70 Q: Mr. Pottenger: Was there a light in the room
when he got there? A: Yes.
- 30 71 Q: Did he see Yamasaki? A: Yes, and Tanaka was
there too.
- 72 Q: They were in bed together? A: Yes.
- 73 Q: What did they do when they came back? A: We
undressed and went to bed again.

774 Q: Where did Takashashi sleep? A: Next to Tanaka - no
next to Yamasaki.

75 Q: Tell us the order in which Tanaka, Yamasaki and
this man -

Court (to Mr. Pottenger) Does it matter from your
point of view?

Mr. Pottenger: Well, I just want to show the position
of these men, to show what Yamasaki would know
about -

10 Witness: He thinks next to Tanaka.

76 Q: Tanaka and Yamasaki? A: Takashashi's bed next
to Tanaka he thinks.

Court: This is really cross-examination. You have
got what you want to prove - that is, that on
both occasions when he went out, he found
Yamasaki there. Is not that what the point is,

Mr. Pottenger: Yes. (to witness) After they
came back, did he look at his watch? A: Yes, I
looked at my watch, because Takahashi asked me.

20 77 Q: What time was it? A: Twenty minutes to four.

78 Q: Was there anything to indicate Yamasaki was out
while they were away? A: There was not any
indication at all.

Cross-examined by Mr. Taylor.

79 Q: You say you went out about three. You are only
guessing at that? A: Yes.

80 Q: It may have been a few minutes before a quarter
to three, perhaps? A: No, he does not think so,
because he went out and he knows he could guess at
it about how much time it would take to do his work

30

81 Q: It may have been a little longer than forty
minutes then? A: Well no, he does not suppose it
would take a few minutes more, but he could not

make any mistake more than five minutes that is all.

782 Q: It may have been a few minutes before three when you went out, and it was twenty minutes to four when you got back? A: He can't say sure, but he doesn't think very much before three.

83 Q: When you went out at three o'clock how many men did you leave in the room? A: Four.

84 Q: Sure they were all there when you went out? A: Yes.

10 85 Q: What makes him sure - did he count them - look over them to see particularly that all the four men were there, when he went out? A: Yes he is sure, because it was such a small place - he can't -

86 Q: Can't possibly make a mistake. And were any of the four men awake when he went out with Takahaski? A: He is not sure whether they knew or not.

87 Q. Did you speak to any of the others? A: Well another thing he says, he was not particular - he was very particular not to make any big noise. He don't like to wake people but he doesn't know some of them know.

88 Q: Did you speak to any of the men before you went out? A: No, he didn't speak to anybody.

89 Q: Did you speak to any of the men when you came back any of the other four men? A: No, I did not.

happen to him?

Court: If there could be anything more than the breaking or smiting of his conscience, that might be the result?

30 Interpreter: Well, not only that, his God will punish him.

(Witness exits)

Examined by Mr. Fottenger.

TANAKA CALLED.

Mr. Taylor (to interpreter) Ask him nothing more than what his religion is, that is all? A: I believe in Christ.

Mr. Taylor: That is his religion? A: Yes.

Q: How long has he lived in Canada? A: Four years.

Q: How long has he been a Christian? A: Four years.

Q: How long after he arrived in Canada, did he become a Christian? A: As soon as I arrived here.

10 Q: The next day? A: No.

Q: Well how long? A: About 10 days or half a month.

Q: What, according to him, made him a christian? How did he become a christian? A: He went to Japanese friend, who told him about Christ.

Court: Did he go to a mission?

Interpreter: Yes.

Q: Where was it? A: Victoria.

Court: Before he takes the oath, ask him what will happen if he does not tell the truth or what he expects might happen? A: My conscience will strike me.

20

Court: That seems to indicate that he has a conscience and had scruples about it. I think that will be sufficient sanction.

Mr. Taylor: You might ask him if that is all that will happen to him?

Court: If there would be anything more than the breaking or smiting of his conscience, that might be the result?

30

Interpreter: Well, not only that, his God will punish him.

(Witness sworn)

Examined by Mr. Pottenger.

- 790 Q: What is your name? A: T. Tanaka.
- 91 Q: Ask him if he remembers the night Charlie Sing was murdered? A: Yes, I do.
- 92 Q: Where was he that night? A: Lulu Island.
- 93 Q: Whereabouts in Lulu Island? In Mafokoro's place.
- 94 Q: Did he see Yamasaki come in that night? A: Yes, I remember him as he came back.
- 95 Q: About what time did he come in that night? A: about 11 o'clock.
- 10
- 96 Q: How does he know the time? A: Because I ask Osawa that night.
- 97 Q: And Osawa told him? A: Yes.
- 98 Q: What did yamasaki do when he came in? A: He went to bed.
- 99 Q: Where did he goto bed? A: He came into my bed.
- 800 Q: Does he know whether Yamasaki went out again that night or not? A: He didn't go out.
- 1 Q: Well ~~he~~^{we} was awake again that night - this man?
- 20 A: No.
- 2 Q: Tanaka never woke him up then - Yamasaki I mean, never woke this man up again that night? A: No.
- 3 Q: What time did this man get up in the morning? A: About 11 o'clock in the morning.
- 4 Q: And where was Yamasaki when this man got up? A: In bed.
- 5 Q: Was he asleep? A: Yes.
- 20 Q: Cross-examined by Mr. Taylor.
- 6 Q: Were you at Charlie Sing's that night? A: Yes.
- 30 7 Q: What time? A: Sometime about twilight.
- 8 Q: Twilight? A: That is, about the darkening.
- 9 Q: He means about 5 o'clock in the afternoon? A: Perhaps so, perhaps it was five.

- 810 Q: What were you doing then from the time you left
Charlie Sing's until 11 o'clock? A: He say ^{about} he got up
after that he left Charlie's place, he went to
Chinaman's place.
- 11 Q: That is another gambling place? A: Yes.
- 12 Q: What time did you get home? A: About 10.
- 13 Q: Were you asleep when Yamasaki come in? A: Yes,
he was sleeping.
- 14 Q: And was it Yamasaki coming in, woke him up? A:
10 Well I was woke up by his talking
- 15 Q: Was Yamasaki drunk? A: Yes he was somewhat
drunk.
- 16 Q: How long did you lie awake after yamasaki came in?
A: Perhaps he was awake about 10 minutes or so -
he can't say sure but about.
- 17 Q: Did you hear anything during the night? any man
getting up and going out anything of that kind? A:
No, I don't know.
- 18 Q: So you don't know who got up, who went out, and who
20 came in in the night at all? You were sound asleep?
A: I don't know whether some other person went out
or not.
- 19 Q: Was he ^{sound} asleep 10 minutes after Yamasaki came
in until he got up in the morning? What I want to
know is, if he knows anything that happened at all
during the night in that room? A: No, he could
not tell.
- 20 Q: Could not tell who went out and who went in?
Court: That is, after yamasaki came in, and they
30 went to sleep.
Mr. Taylor: Yes. (to witness) Do you remember being
examined in the police court a few days ago in this
case? A: Yes.

821 Q: And do you remember this question there: "From the time Yamasaki got home at 11 o'clock till he got up the next morning he knows nothing" And the answer was "he was sound asleep during that night" Is that right? A: That is what he says now.

22 Q: What was your religion before you came to Canada? A: Buddhism.

Mr. Taylor: Does he mean by that he is a Christian?

As I don't know.

Q: Well ask him? A: Yes.

Q: What was your religion before you came to Canada?

A: Buddhism.

Q: How long have you been in Canada? A: Going on to be five years now.

Q: How long after he came to Canada did he change his religion? A: About two years after.

Q: Why did he change his religion? A: Because I came to this country.

Q: Is that the only reason why he changed his religion?

A: He says "My religious conviction is not as strong like some others. - Often in Japan I was a Buddhist, simply because my family was Buddhist; I didn't have special reason."

Mr. Taylor: And I suppose when he goes back to Japan he will be a Buddhist again? A: I may.

Q: Well, his idea is, he adopts his religion, or speaking in a general way, the religious beliefs of

the people in whose company he lives? A: No, he would not change his religion now - Christ, he says.

Mr. Taylor: Were you ever taught anything about what Christianity means? A: Well I know something.

Q: What does he mean by Christianity, let him tell you?

A: I could not tell you very much about the theology I never learned it.

- Q: ASK TAKAHASHI. CALLED. *considered is a standing date on his*
MR. TAYLOR: Ask him what his religion is? A: I *to*
believe in God. *all the theology.*
- Q: Do you mean by that you are a christian? A: Well *ere*
first he ask me whether in Japan or Canada. I said
would his religion change whether in Canada or Japan.
Q: He said no. I said what do you believe then? He *is*
said in God. *is the truth? A: Well if he tells*
Mr. Taylor: Does he mean by that he is a christian?
10 Q: A: I don't know. *say to swear to, to tell the truth?*
Q: Well ask him? A: Yes. *ask the best. do not say*
Q: What was your religion before you came to Canada?
A: Buddhism. *say? A: He says, God in heaven. say to*
Q: How long have you been in Canada? A: Going on to be
five years now.
Q: How long after he came to Canada did he change his
religion? A: About two years after. *of religious*
Q: Why did he change his religion? A: Because I came to
this country. *printed form we have that only states*
20 Q: Is that the only reason why he changed his religion?
A: He says "My religious conviction is not as
strong like some others. Often in Japan I was a
Buddhist, simply because my family was Buddhist;
I didn't have special reason.
Mr. Taylor: And I suppose when he goes back to Japan
he will be a Buddhist again? A: I may. *of the book?*
Court: Well, his idea is, he adopts his religion, or
speaking in a general way, the religious beliefs of
the people in whose company he lives? A: No, he
30 would not change his religion now - Christ, he says.
Mr. Taylor: Were you ever taught anything about what
christianity means? A: Well I know something. *old*
Q: What does he mean by christianity, let him tell us?
A: I could not tell you very much about the theology
I never learned it.

- Q: Ask him what oath he considers is a binding oath on him to tell the truth? A: He says before with regard to that he can't tell the theology.
- Q: No, I understand, but ask him what oath he considers is binding on him to tell the truth? A: He thinks ^{What} there is a God in heaven he swear to.
- Q: I want to know what he ought to do to be sure he is going to tell us the truth? A: Well if he tells a falsehood he thinks God in heaven may punish him.
- 10 Q: And what is he ready to swear to, to tell the truth?
A: Well whatever you think the best.
- Q: That is not the question - I want to know what he thinks the best? A: He says, God in heaven.
- Q: How was he sworn when he was a Buddhist to tell the truth?
Court: What is the ceremony of taking the oath?
Interpreter: Well we have not any form of religious belief in our court. The only thing is, we sign our name to a printed form we have that only states
20 "I will not tell any untruth; if I tell an untruth I will be liable to punishment by the criminal law" and he signs his name, that is all. We have not any religious idea connected with ours whatever.
- Court: Ask him if swearing ^{the taking of an oath on the Bible} ~~on the bible~~ is to him of any ~~insignificance~~ ^{significance} - the mere kissing of the book?
A: When I kiss to the Scripture I will not tell an untruth at all.
- Court: Ask him if he wishes to take the oath by
30 kissing the Book, or does he wish to make a solemn affirmation? Tell him that he has the privilege of choosing which of the two he pleases? A: It would not make any difference to him whether kissing the Bible

Court: Well, let him select the form of oath he prefers, it is his privilege. A: I will take the Bible.

(Witness sworn) Exam. by Mr. Pottenger.

823 Q: Ask him if he remembers the night Charlie Sing was murdered? A: Yes.

24 Q: Where was he that night? A: I was at Madokoro's house.

25 Q: Does Yamasaki live there? A: Yes.

10 26 Q: Was Yamasaki there that night? A: Yes.

27 Q: What time did he come in? A: I went in bed half past eight, and I don't - I can't say sure but I think it was perhaps 2 or 3 hours later he came in.

28 Q: He does not know exactly when? A: He thinks between half past ten and 11, but he is not sure.

29 Q: Did he wake up when Yamasaki came in? A: Yes.

30 Q: Was he awake again that night? A: Yes, I wake up in midnight some time in the night, during the night.

31 Q: Did anything waken him? What happened? A:

20 I have not a watch myself, so I can't tell you sure but about two o'clock I was told the next day two friends came in Harada and Nakayama came in about two o'clock in the morning.

32 Q: He says somebody told him this the next day. Did he see these men come in? A: He says these two men came into there; he didn't see, but he was told the next day.

33 Q: Well never mind, he did not see them come into this room? A: Oh, no, no,

30 34 Q: Was he awake? A: Awake because he heard noise yes, down stairs.

35 Q: And the next day he was told 2 men came there about 2, Harada and Nakayama. Where is this room where they all sleep? A: IN Madokoro's.

- 836 Q: And it is down stairs or up stairs? A: Up stairs where they sleep.
- 37 Q: And where was this noise that he heard that woke him up? A: Well it was down stairs. he was sleeping
- 38 Q: Did he see anybody go out of the room in which he slept that night? A: I don't know; yes, I woke up afterwards though, I was awakened that night one of my friends woke me and said "Takahashi Takahashi" because of the boat had to be looked after by these men by himself and the other, and as he was awakened by the man. went out with Osawa? A: Yes.
- 10 39 Q: By whom? A: Osawa, by a man named Osawa. Then I got up and he asked me to go to the boat to look after the boat so that is the reason I got when up. at noise woke you up? A: With regard to that?
- 40 Q: And did he go to look after the boat? A: Then; we had the lantern and we all put the rain coat and so on, and went outside.
- 41 Q: Who went out? A: Myself and Osawa. as yamada and
- 20 42 Q: Does he know what time this was? A: I don't know what time we went, and when we came back I said to Osawa Mr. Osawa it is quite late about what time is it and he told me about 20 minutes to four. time it was, said something about finding out
- 43 Q: How long were they out? A: 30 or 40 minutes.
- 44 Q: Did he see Yamasaki when he went out? A: Yes, I saw him. and so on, and he told me about the time.
- 45 Q: Where was he? A: Yamasaki and Tanaka and I slept next to him. time did you go out with Osawa? A: I
- 30 46 Q: Was he asleep when he went out - Yamasaki? A: Yes. and out when I came back.
- 47 Q: Did he see him when he came in? A: Yes, I saw him.
- 48 Q: Was he in the same place? A: Yes. takes 30 or 40 min.
- 49 Q: Asleep? A: Yes.
- 54 Q: Do you remember being examined in the Yellow court

850 Q: What time did this man get up in the morning? A:
500 Q: Do you remember being asked there how long you
Yamasaki?

51 Q: No, this man (indicating witness) A: About seven.

52 Q: Was Yamasaki there then? A: Yes, he was sleeping
60 Q: He was asked this question "How long were you out
right in the same place.

53 Q: Was there any light in the room? A: Yes, a lamp
Q: He doesn't know how long he was
out, but when he came back he saw the time, and he
up there.

Cross-examined by Mr. Taylor)

54 Q: At what time did you hear this noise down stairs?

10 A: I didn't know that time.

55 Q: That was before you went out with Osawa? A: Yes.

56 Q: Did that noise down stairs wake any of the othermen
up as well as you? A: I can't tell.

57 Q: Well, did you speak to any of the other men when
that noise woke you up? A: With regard to that?

58 Q: With regard to anything? A: No I didn't speak;
simply in the bed I heard somebody was making a
noise downstairs that is all.

59 Q: How did you know the next day it was Harada and
20 Nakayama? Who told you the next day that what noise
was? A: I didn't need to ask the name of the
persons, because I know their voice.

60 Q: He said something about finding out the next day
what time it was, said something about finding out
next day about it? A: I asked the boss of the
house, Madokoro and we talked about last night's
storm, and so on, and he told me about the time.

61 Q: What time did he say it was? A: About two.

30 62 Q: Now, what time did you go out with Osawa? A: I
didn't know then, just what time it was, only I
found out when I came back.

63 Q: And how long were you out with Osawa? A: We took
care of two boats, so it must have taken 30 or 40 min-
utes.

64 Q: Do you remember being examined in the Police court

A: Yes.

865 Q: Do you remember being asked there how long you
were out? A: I don't think I was asked on that
point in the police court:

66 Q: He was asked this question "How long were you out
with Osawa? A: He doesn't know how long he was
out, but when he came back he saw the time, and he
just simply knew what time he came back" Ask him
if he remembers that? A: I don't remember whether
10 I was asked that question or not.

67 Q: If he was asked the question why didn't he say
30 or 40 minutes down there? The question is
there, why didn't he answer 30 or 40 minutes, like
he does to-day? A: I don't think I was asked part
icularly like that.

68 Q: It may have been 45 minutes he was out? A: If
you did ask me before like that of course I might
answer that way.

69 Q: Answer that he didn't know is not sure? A: He
20 was not asked he says.

70 Q: Well he was it is down here. He says he was not
asked that before? A: He was not asked particular-
ly like that - closely like that.

71 Q: You may have been out 45 minutes with Osawa?
A: He didn't have watch.

72 Q: Then he may have been out 45 minutes or 50
minutes? A: He was not working for hours or minutes
so he could not tell just exactly how much, that
is only his supposition.

30

Re-direct by Mr. Pottenger.

73 Q: Mr. Taylor asked him something about this noise
downstairs. Was this noise that he heard down
stairs after Yamasaki came in? A: After Yamasaki
came in.

KUWATA, CALLED.

874 Q: When he woke up that time did he see Yamasaki?

A: No, I didn't see - look at Yamasaki but I heard

Q: he was snoring. ~~is he a Christian?~~ A: About

Court: Is he familiar with the key in which Yamasaki

Q: snores? How did he know it was Yamasaki? A:

Because he knows the direction where Yamasaki sleeps

and only one person between him and Tanaka does not

snore, so that he know it must be Yamasaki

- 582 KOMIYA. CALLED. same as did this man have any
Mr. Taylor: Ask him what his religion is? A:
Christianity.
- Q: How long have you been a christian? A: About
five years.
- Q: How long has he been here from Japan? A: He
says about five years.
- Q: How soon after his arrival here did he become a
Christian? A: About half a year. with Yamasaki? A:
- 10 Q: Why did he become a Christian? A: Well I could
not tell the reason why. that time when he came in?
- Q: Does he know what christianity means? A: I could
not tell you minutely. at that time.
- Q: What was it made him change his religion from Buddhism
to christianity? A: Because I know that
Christianity is better religion. A: No he was not
- Q: Ask him if he understands the taking of an oath to
speak the truth means? A: Well he knows the oath.
- Q: Ask him if he knows what the effect of taking an
oath is - what it means by taking an oath to speak
20 the truth? A: If I tell a lie I be punished.
- Court: Does he take the oath by swearing on the
Bible? A: Yes.
- 34 (Witness sworn. Exam. by Mr. Pottenger)
- 875 Q: What is your name? A: S. Komiya.
- 75 Q: Ask him if he remembers the night Charlie Sing
was murdered? A: Yes.
- 77 Q: Where was he that night? A: I was at Madokoro's
house. Well I was sleeping a little after I
- 30 78 Q: Did he see Yamasaki there that night? A: Yes.
- 79 Q: Was he there when Yamasaki came in? A: Yes.
- 80 Q: Was he asleep? A: Well I was sleeping but I was
awakened by Yamasaki
- 81 Q: Did he know what time this was? A: I came back
about 10 o'clock and yamasaki came back a little
afterwards.

- 882 Q: When Yamasaki came in did this man have any conversation with him? A: Yes, I had a conversation with him.
- 83 Q: What was it about? A: He asked me how much I make to-night.
- 84 Q: Who did? A: Yamasaki.
- 85 Q: Asked this man? A: Yes.
- 86 Q: And did Yamasaki say anything else to him? A: No.
- 87 Q: Did he sleep in the same room with Yamasaki? A: Yes.
- 10
- 88 Q: Did Yamasaki go to bed that time when he came in? A: At that time I went out to the W. C. and I saw Yamasaki was in bed at that time.
- 89 Q: When he came back into the room? A: Yes, he was in bed when I came in.
- 90 Q: Was Yamasaki sleeping alone, or - A: No he was not alone, he was with Tanaka.
- 91 Q: What time did this man get up in the morning? A: About nine in the morning.
- 20 92 Q: Did he see Yamasaki when he got up? A: He was in asleep.
- 93 Q: Did he hear Yamasaki get up during the night? A: No.
- 94 Q: Was he awake himself again? A: No.
- Cross-examined by Mr. Taylor.
- 95 Q: You say you left Charlie ging's house about 10? A: Yes, about then.
- 96 Q: How long after you got home, did yamasaki come home? A: Well I was sleeping a little after I came home, so that I suppose it was about 11 or so.
- 30 97 Q: What was Yamasaki's usual time for getting home? A: He had not any fixed time for hom to come back.
- 98 Q: Was 11 o'clock early? A: It was rather early,

906 that is the reason I asked him, why did you come
home.

899 Q: He asked Yamasaki why he came home so early? A:
Yes, he said "because I didn't sleep well the past
two nights, so I asked another man to take charge
of the place, or his business and he came back
early.

900 Q: Was Yamasaki drunk? A: I think he was somewhat
drunk.

10 1 Q: After he had gone to bed that night, after
Yamasaki had come in and this man had gone to bed
himself, you didn't hear anything all night? A:
No, I didn't hear.

2 Q: You didn't hear any man getting up and going out
and coming back again? A: No I don't know.

3 Q: Did you hear any noise down stairs about 2
o'clock? A: No I didn't hear.

4 Q: Then you must have been sound asleep from shortly
after 11 until he woke up in the morning? A: No.

20 5 Q: Then you don't know what happened in the room
during the night? A: No, I do not.

I don't know, and they started reading it very
loud, and I kind of wondered at them reading it so
loud, two of them together, and Lai Ping picked
up another paper and he held it up to his face,
and he said "Do you hear them? They are giving me
fits there - they will kill me anyway if I tell
the truth about Shin Toy"

20 16 Q: Lai Ping said this to you? A: Yes.

17 Q: In English? A: Yes, he talks pretty good
English.

18 Q: That is before he has been examined by the police

J. MUNROE. Called and sworn. Exam. by Mr Pottenger.

906 Q: What is your name? A: John Munroe.

7 Q: You are a provincial policeman? A: Yes.

8 Q: I believe sometime you have had charge of the
prisoner, Lai Ping? A: Yes.

9 Q: Has he ever spoken to you about this case of this
charge? A: Yes.

10 Q: On what occasion? A: On one occasion, well twice,
going from Westminster in the car.

10 11 Q: You were bringing him over here? A: Yes, I was
10 bringing him over here as a witness.

12 Q: What was the first occasion you were bringing him
over the first time? A: He was a witness on Chin
11 Toy's case.

13 Q: A witness against Chin Toy? A: Yes.

14 Q: That is on the charge of subornation of perjury?
A: Yes.

15 Q: What did he say on that occasion? A: Well after
we sat down in the car at Westminster there was
20 two other Chinese sitting very close up to us in
25 the car, and they had a Chinese paper with Chinese
30 characters on it, anyway either Chinese or Japanese,
I don't know, and they started reading it very
35 loud, and I kind of wondered at them reading it so
40 loud, two of them together, and Lai Ping picked
45 up another paper and he held it up to his face, and
and he said "Do you hear them? They are giving me
50 fits there - they will kill me anyway if I tell
55 the truth about Chin Toy"

30 16 Q: Lai Ping said this to you? A: Yes.

30 17 Q: In English? A: Yes, he talks pretty good
English.

18 Q: That is before he had been examined in the police
and that he saw Yamasaki come out of Charlie King's
house. What would you say to that? A: Oh well

I would say he would probably know it was a man
court against Chin Toy. You say there was another
occasion on which you had conversation? A: Yes,
it was another time going over but I don't just
remember how many days or how long, but he said
they would kill him sure, and I would see it
before we were through with this case or they would
kill him sure" Of course in the first place when
we were sitting beside these other parties, I
moved him to the other end of the car, as soon as
he told me they were telling him they would kill
him, and I moved him twice when the Chinamen were
speaking to him.

10

91 Q: The second time you said they said they would kill
him sure? A: Yes, he said they would kill him
sure. He didn't say who, but he said, "You see
they will kill me sure"

20 Q: Did he give any reason? A: Yes, he said, if he
told the truth about what Chin Toy did, they would
kill him. I said to him "Why would they kill him?"
He said "If I tell the truth about Chin Toy"

20

21 Q: I believe you used to be on the Police at Steveston
A: Yes.

22 A: Do you know this locality where Charlie Singhouse
is? A: Yes, I knew it well.

23 Q: How long were you at Steveston? A: About four or
five summers.

24 Q: And did your duty call you to this part of the
town? A: Three summers, part of three summers.

30

25 Q: Lai Ping's evidence in the murder case, he said
he recognized as he came out of his house, which
was across the street, just one door out of line,
at about 3 o'clock in the morning or before three
and that he saw Yamasaki come out of Charlie Sing's
house. What would you say to that? A: Oh well

I would say he would probably know it was a man that came out but I don't think he would know who it was. He could see probably that it was a person or some person being there, but I don't think any man could identify a person there if it was dark in that locality where it was.

926 Q: He said no light came out of the door behind Yamasaki when he came out and he also goes on and describes the clothes he had on what do you think of that? A: Oh it is impossible if it is dark at night there it is impossible.

27 Q: Even supposing it was not very dark what do you think? A: Yes, I think it is impossible, if it was not very dark.

28 Q: Do you know Charlie Sing's house in particular. A: Yes, I do.

29 Q: What is the front of it like? A: No paint on it - I think the windows are painted, but hardly any paint, might be paint round the windows and edge of the door, but I don't know there is any paint on the house. A dirty colored verandah sticks out over it in front of the house on both sides. It is a very dark place, always was a very dark place anyway.

Cross-examined by Mr. Taylor.

30 When you speak about the impossibility of seeing across there, you are only judging by your general knowledge of the place, are you, you have made the experiment?

30 A: I have made the experiment many a time.

31 Q: You mean to say you have stood at that particular place, and tried to recognize people coming out of Charlie Sing's place? A: Not this particular place, but all the places I have.

932 Q: And you could not see them come out? A: I could see them, but I could not recognize them.

33 Q: You could not recognize a man coming out unless it was a fine night, and not particular dark? A: I don't think you can. I am prepared to say you could not recognize a man across the street at all at Steveston.

34 Q: Any night? A: Well -

35 Q: Any night? A: Well it all depends on the light.

10 36 Q: How far is it across from the door nearly opposite Charlie Sing's? A: Oh well it is about 38 to 40 feet.

37 Q: What is the width of the street? A: Probably 38 feet.

38 Q: This man you say that Lai ping made a statement about in the tram, he was in custody? A: Yes.

39 Q: You were the police constable in charge of him at that time on both occasions? A: I was.

20 Court: (to witness) Do you know who the Chinamen were who were making the remarks under cover of the newspaper? A: I don't but if I see one of them I would know him again any time, any time I met him, but they came out of Westminster; I think they were Westminster Chinamen - I would know one of them any time I met them.

Mr. Pottenger: That is all the evidence I propose to call. I now tender that statement of Lai Ping taken at Westminster by Mr. Alexander.

Court: I understood that was in.

30 Mr. Pottenger: It was never put in as an exhibit. It was marked for identification. My learned friend said he objected to it going in as evidence.

Court: Yes, he did at first. (To Mr. Taylor) What

do you say now?

Mr. Taylor: I still object, and am prepared to argue it is not admissible against the accused.

Court: Why not?

10

Mr. Taylor: Well of course I intend, if your honor wants to hear argument on that now, that is really the most important part of the case - I am prepared to argue that now unless we take all the argument together. I submit that statement is not evidence because there was, previous to that confession being made words were used by Lew who was a person manifestly in authority and was there as the spokesman of Campbell on the only occasions on which Campbell officially visited this man Lew was there in the capacity of interpreter. First of all Campbell told this man to explain the punishment against him and then there was this statement by Lew.

20

Court: Your admission first is, it is not admissible because some inducement was held out?

Mr. Taylor: Yes.

Court: And the other ground?

Mr. Taylor: Well that is my ground?

Court: It has nothing to do with hearsay? You have withdrawn hearsay?

30

Mr. Taylor: So far as that, it is not hearsay now, because Lew has proved it, but I object to the evidence that was taken down in this case, that your honor heard from Mr. Alexander still as hearsay. That statement which Mr. Alexander makes if that goes anyway beyond the confession is certainly inadmissible. We must confine ourselves to the confession because I still adhere to my point that what Mr. Alexander said as to what this man Lai Ping

had sworn to on a particular occasion outside of what was written down by Lai was hearsay. Now we come to the confession. There was a statement made; Mr. Campbell said, first of all Lew seemed to think he had read the code to this man, and then he rather changed, was not quite sure, but Campbell said he had told this man what the punishment was; and Lew before this confession was given when they went over to the jail, was with Campbell as spokesman and was there manifestly so far as the chinamen were concerned as a person of authority. He told this Chinaman - I don't know it makes much difference what the exact words were, but he told the chinaman it was better for people if they spoke the truth. There is nothing to show whatever that after that - first of all, the statement of Campbell that he had told this man what the punishment was, and then the statement of Lew - nothing whatever to show, and it was on the Crown to show that that was removed - the impression left by that before this confession was made; and that being the case, it would render that confession inadmissible. If a prisoner is once told by a person in authority that the extent and the gravity of the charge - if there is ^{any} suggestion held out by that same person in authority it will be better for them to tell the truth than I say any confession taken after that is not admissible unless there is affirmative proof that the inducement, slight as it may have been has been removed.

10

20

30

Court: Well there are some authorities just exactly contrary to your contention Russell on Crimes - the very language used "better to tell the truth"

Of course you must take into consideration the surrounding facts, and they are not just baldly as you have stated because there was a considerable interval between informing the prisoner Lai Ping that he might be punished with imprisonment for 14 years and the statement of David Lew that it would be better for him to tell the truth.

Mr. Taylor: I do not see that that makes any difference

10

Court: It makes a ^{great} deal of difference. All the authorities go to show you must take the surrounding circumstances and come to a conclusion as to whether the alleged inducement was made, or whether the language used was made in reference to the inducement held out. Now as a matter of fact David Lew used the words "better to tell the truth" with reference to the man's disturbed state of mind.

Mr. Taylor: That is what he says.

20

Court: Well that is the only evidence there is to it
Mr. Taylor: But you must take into consideration what the man manifestly meant. Lew told us he did not mean anything. If your honor decides against me on this point I will ask for a reserved case on it.

30

Court: I have informed you I am against you, but even now if you show me authority directly in your favor I am always open to conviction before I decide. After I decide I suppose it is too late. to cite authorities but I have not said it is too late. I cannot see any connection between the statement that the prisoner might suffer punishment for 14 years and David Lew's admonition to him. There was a long interval between it had nothing

whatever to do with Campbell's statement to him about 14 years. That statement was made to him at his own request. Campbell stated the prisoner asked him what he might get, and he was told, that is the evidence, something of that sort, and later on this man was sighing and in a disturbed state of mind and the interpreter wanted to know what was the matter with him and he said he was worried and did not know what to do and then David Lew says "You had better tell the truth"

10

AFTER RECESS.

(Mr Taylor concludes argument against reception of alleged confession of the accused)

Court: A confession in order to be admissible - I read from Russell on Crimes - must be free and voluntarily must not be restricted by any sort of threats or violence or obtained by any indirect or direct promise or by the exercise of any improper influence and this has been expressed in different ways by different judges. One says that a confession must be free and voluntary That is Mr. Justice Cave. If it flows from hope or fear excited by a person in authority it is inadmissible. Another judge expresses something in this way that any admission forced from the man by flattery hope or by the torture of fear is inadmissible. Now in this case there are two questions properly for decision First whether the alleged confession is made by an inducement or threat from a person in authority and secondly whether the words which are argued to constitute the inducement or threat are actually such words as could be given that meaning and whether a confession following upon a statement of that kind or a threat and I am forced to conclude it is only by a very strained interpretation of those words

20

30

is free and voluntary or not. Now the argoment
 has been pretty full on both sides and a number
 of cases have been cited some of which it seems
 to me may perhaps be taken to be in favor of the
 contention by Mr. Taylor for the defence but I have
 to decide it according to the principle or the best
 principle that I can ascertain as a guide on which
 the decisions seem to have proceeded. It is a
 question for the court to decide whether under the
 10 particular circumstances of the case the confession
 is admissible. Now it seems to me that it requires
 a strained interpretation of all the circumstances
 to warrant the conclusion or inference that these
 words uttered by David Lew were an inducement or a
 threat. In the re-direct examination which has
 been read he states that he intended these words
 to be a moral reflection though that is not the
 language he used but words were used with
 20 reference to what had occurred in the past - that
 the prisoner was bemoaning his fate his hard lot
 and expressing his sorrow hat he had ever had
 anything to do with the case or had been mixed up
 in it and David Lew said then "a man is always
 better for telling the truth" Now it is quite
 30 capable of the meaning that David C. Lew was preach-
 ing a sort of sermon or homily on the folly of a
 man getting himself into trouble by telling an
 untruth; but even if it did refer to what it was
 expected the prisoner was going to say I am unable
 to say that the words contained any threat or
 promise. I am not able to see where any ordinary
 person could be misled into the belief that the
 words would constitute a promise or inducement,
 or a threat and I am forced to conclude it is only
 by a very strained interpretation of those words

Mr. Alexander and others assert that if you want that I could honestly say that the words used constituted a threat or promise and my conclusion is that the confession is admissible.

Mr. Pottenger: I would ask that the clerk of the court read the confession.

Mr. Taylor: The court has read it.

Court: I have not read it yet I just looked at it - it should be read.

(Marked exhibit 4 and read by Clerk of the

10 Court. Mr. Taylor waives interpretation of same to the prisoner)

Mr. Pottenger: That is the case for the crown.

Mr. Taylor: As your honor has ruled that confession is in I am not going to call any evidence for the accused but simply to raise another point. It is useless for me to refer to the other evidence as I would have done if that confession had not been admitted because I submitted to your honor apart from that confession there was no evidence to

20 convict. There is one other point I want to raise.

Your honor will remember - of course it really comes down to a question of law - that at the trial the evidence was that the oath was administered to Lai Ping at this inquiry; that is to say the oath in which perjury was assigned. The charge does not set out in what manner the oath was administered. I do not mean to say that is necessary but we have no notice of what form the oath was administered. However, they chose to pin their

30 faith to the administering of the oath by the burning of paper. The point we take is this That oath is not binding on Lai Ping. All the witnesses

Mr. Alexander and others assert that if you want to bind a chinaman you have to administer the chicken or yellow oath. I do not mean to say no other oath is binding but what all the witnesses say amounts to this - if you want to get the truth from a chinaman the way to get it is by administering the chicken or yellow oath. Counsel for the crown says "Oh yes in this case this man accepted the oath" but I want you to point out a contradiction of a serious kind in the evidence between the evidence of Mr. Alexander and Lew, because Mr. Alexander certainly gave the evidence as he supposed it to have occurred. Mr. Alexander said when this man was called his intention was to have asked - he cannot say was, because it was done through the interpreter - if the paper oath was binding on him. The interpreter says that was not done. Lew says this man was asked if he was a christian and without anything further he says the burnt paper oath was administered and nothing more. So I submit there is no evidence at all that this man took upon himself to say the paper oath was binding on his conscience. And that being the case I submit that was not a binding oath, on the evidence we have here on Lai Ping. The proper course would have been to have put the question to Lai Ping formally and shown what oath was binding on his conscience, and so much is that the case, that there have been cases where after the evidence has been given, it has been rejected in toto because the evidence was given in such a form that it was not binding. For instance if a

10

20

30

man states he has not a religious belief, he cannot affirm under the Canada Evidence Act, which is exactly the same as the law in England. Then if I cannot say what oath is binding on my conscience. I cannot give my evidence at all. That is the law, and it has been applied in a number of cases and so much is this the case that if a man has once admitted he has a religious belief he must have administered to him the binding oath according to that religious belief or his evidence is not good. (Phipson p. 416)

10 Court: The first point is that the oath taken by the prisoner Lai Ping in a certain proceedings and upon the evidence given under that oath that no prosecution lies because the oath was not shown to be binding on the prisoner.

Mr. Taylor: Yes, where sworn upon the Bible the Holy Evangelists.

Court: I just want to get the point.

20 Mr. Taylor: That is my point it is for the prosecution to show in a case in perjury that the oath on which they assign perjury was a binding oath upon the prisoner and they have failed to do that because on their own evidence they admit that the binding oath among the Chinese - or the most binding solemn oath among the Chinese is the yellow chicken oath. On that the Chinaman does - if he ever does - speak the truth. I am not speaking now from my stand point but the Crwon's standpoint and it is for them to show affirmatively that the paper oath that was administered to this man was binding upon him.

30 Court: I will not take the responsibility of dis-

missing the prosecution or the indictment upon that ground Mr. Taylor.

Mr. Taylor: Well I would ask as the confession has been admitted and your honor is against me on that I would ask for a reserved case on the confession and I will ask for a reserved case on the other point.

10

Court: I do not think I can give you a reserved case but now that the machinery for taking an appeal is much simplified I think I should not give a reserved case unless I have some doubt Why should I reserve a case? I have not any doubt.

Mr. Taylor: It is absolutely a question of law.

Court: It is quite easy now is it not for you to appeal? You do not even require the consent of the Attorney general. Until 1900 you had to get the consent of the Attorney General and sometimes that was not given. And therefore your appeal would be stopped at the outset.

20

Mr. Taylor Section 743. of course it is a matter for the discretion of the court but where it is a pure question of law as this matter is it is only a question of reserving a case. If it is reserved the parts of the evidence that are applicable on the single point are sent up to the court in the other case we have of course to go over the whole evidence which causes more delay and considerably more expense to the prisoner and in a reserved case I would submit a case embody

30

ing only the points involved? On the other point I should have to take the whole of the evidence.

Court: Well that is what I think you should do.

When I say the whole of the evidence not

necessarily the evidence of all the witnesses but certainly the whole of the evidence of David C. Lew and probably of the magistrate and Mr. Campbell. At any rate I do not feel that I ought to excise any part of the evidence and then send up a portion of it because I would like if it went to the full court for them to have the benefit of the whole of it. In any event Mr. Pottenger I would not have imposed sentence to-day

10 Mr. Pottenger: I was going to ask your honor to reserve sentence as a matter of fact. That is if you decide the prisoner guilty.

Court: I wont even decide the point whether a case should be reserved or not - I will consider that and decide to-morrow. I do not approve altogether of reserving a case unless it was such a case where I was admitting evidence that I had some doubt about whether it was properly admissible or not and before the amendment to the Code

20 I should have been much more disposed to reserve a case than now for the simple reason that unless a case were reserved the accused might be prevented from getting a further hearing at all simply by the refusal of the Attorney General to grant leave for the appeal. Now the consent of the Attorney General is not required and it is simply a question of making application to the Full Court for leave to appeal. If I do reserve a case the Full Court will come to the conclusion naturally

30 that I had some doubt about it though of course I would not like to flatter myself that my opinion would have any great weight with them. There is no reason why I should not give a verdict as a jury

(3)
89/1/04
"A. S. K."

of the case; I must find the prisoner guilty of the crime with which he is charged. As to the question of sentence and the other question as to the reserving of a case they will be adjourned until to-morrow.

Mr. Taylor: I am prepared on behalf of Woo Wai to allow all the evidence taken to stand as applicable to his case, leaving to my learned friend to supplement that evidence on any points bearing on Woo Wai's case. That will shorten matters very materially.

Mr. Pottenger: It is understood then that the Japanese evidence taken in this case will be admitted in the other case.

Mr. Taylor: Certainly the Japanese evidence to-day would go in the other case and any other evidence applicable you can use. That will shorten the proceedings.

(Motion for judgment reserved) administered, voluntarily said as follows:-

"The Japanese who was arrested for the murder of Charley Sing (Chin Sin Jung), is not the man I saw coming out of Charley Sing's house the night of the murder. This is the truth. I did not see anyone come out at half past three o'clock in the morning as I swore in Court at the preliminary inquiry at Vancouver. This is the truth. About twelve o'clock I saw them counting money at Chin Sin Jung's and Chin Sin Jung was there too, but I did not see anybody come out. Between twelve o'clock and half past three in the morning I did not see anybody come out of Charley Sing's house. But after twelve o'clock I had to go out to buy five cents worth of oil, and when passing Chin Sin Jung's place I saw four or five Japanese sitting supper there at the table where the talking was done."

142

(1)
29/1/04
"A. D. K."

CONFESSIOIN OF LAI PING.

LAI PING having stated he wishes to make a voluntary statement with regard to the charge of perjury preferred against him, the same was taken down by me through the interpreter, David Ceda Lew, duly sworn, checked by Charlie Lee Fook. The warning as follows was dully given to the
10 said Lai Ping through the interpreter:

"If you wish to make a statement you may do so. You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favor and nothing to fear from any threat which may have been held out to you to make any admission or confession of guilt, but whatever you may say may be given in evidence against you upon your trial notwithstanding such promise or threat"

20 Lai Ping after said warning having been duly administered, voluntarily said as follows:-

"The Japanese who was arrested for the murder of Charley Sing (Chin Sin Jung), is not the man I saw coming out of Charley Sing's house the night of the murder. This is the truth. I did not see anyone come out at half past three o'clock in the morning as I swore in Court at the preliminary inquiry at Vancouver. This is the truth. About twelve o'clock I saw them counting money at Chin Sin Jung's and Chin Sin Jung was there too, but I did not see
30 anybody come out. Between twelve o'clock and half past three in the morning I did not see anybody come out of Charlie Sing's house. But after twelve o'clock I had to go out to buy five cents worth of oil, and when passing Chin Sin Jung's place I saw four or five Japanese eating supper there at the table where the talking machine is.

Ah Toy told me to say so. Chan Toy told me to say so. He did not tell me why he wanted me to say it. Chan Toy told me: "I think they are going to let the Japs go." He said: "I know you have lived at Chinatown on Lulu Island for a long while, and know it well," and asked me to come and give evidence and to tell just the sentence that I saw the Jap come out at half past three in the morning. He told me to do this at Vancouver, i. e. He had the conversation with me at Vancouver when he told me to tell about the Jap

10 Chan Toy talked to me saying that he was going to get Ah Him to give evidence, but being that I lived there at Lulu Island longer and knew all matters better than Ah Him that he got me to give the evidence. He, Chan Toy, did not promise me anything but said if in case of imprisonment he would ^{yet} give me some wages, but did not state or promise how much a day or how much a month. It just depends on how much Chan Toy likes to pay me. Chan Toy did not tell me if I said I saw the Jap come out of Chin Sin Jung's house at half past three, that he would get the Jap convicted."

20 White people call Chin Sin Jung Charley Sing.

Taken before me this 14th day of December at the Provincial Jail, New Westminster, B. C.

20 what form the oath was administered "H. O. Alexander"

Lai to the administering of the S. M. by the burning of His X name was taken as "David C. Lew," Interpreter:

binding of Ping Ping. Mr. Alexander "Charlie Lee Fook," Interpreter:

you want to bind a Chinaman you have to administer the chicken or yellow oath. I do not mean to say no other evidence is binding, but what all the witnesses say amounts to this - if you want to get the truth from a Chinaman the way to do is to administer the chicken or yellow oath. The counsel for the Crown says: "Oh, yes; but in this case the man accepted the oath. I want to point out

In the County Court Judge's Criminal Court.
(Before His Honor, Judge Henderson.)

Vancouver, Feby. 1st/04.

REX V. LAI PING.

At the close of the case for the prosecution, Mr. Taylor said:-

As your lordship has ruled that confession is in, I am not going to call any evidence for the accused. It is useless for me to refer to the other evidence, as I would have done if that confession were not admitted, because I submitted to your lordship apart from that confession there is no evidence to convict; but there is one other point I want to raise, and that is a point of law.

Your lordship will remember, because it really comes down to a point of law, that at the trial the evidence was that an oath was administered to Lai Ping at this enquiry. That is to say, the oath on which perjury was assigned, the charge does not set out in what manner the oath was administered. I do not mean to say that is necessary, but we have no notice in what form the oath was administered. However, they choose to pin their faith to the administering of the oath by the burning of paper. The point we take is this, that that oath is not binding on Lai Ping. Mr. Alexander and others assert that if you want to bind a Chinaman you have to administer the chicken or yellow oath. I do not mean to say no other evidence is binding, but what all the witnesses say amounts to this - if you want to get the truth from a Chinaman the way to do is to administer the chicken or yellow oath. The counsel for the Crown says; "Oh, yes; but in this case the man accepted the oath. "I want to point out

a contradiction of a serious kind between the evidence of Mr. Alexander and Lew: Of course, Mr. Alexander certainly gave his evidence as he supposed it to have occurred, because Mr. Alexander said when this man was called, his intention was to have asked - he cannot say it was because it was done through one interpreter - if the paper oath was binding on him. The interpreter says that was not done
 Lew says the man was asked if he was a Christian, and without anything further he says the burnt paper oath was administered, and nothing more. So I submit there is no evidence at all that this man took upon himself to say the paper oath was binding on his conscience, and that being the case I submit that was not a binding oath, on the evidence we have here, on Lai Ping.

10
20

The proper course would have been to put the question to Lai Ping as to what form of oath was binding on his conscience and so much is that the case that there have been cases where evidence has been given that was afterwards rejected in toto, because the evidence was given in such a form that it was not binding, for instance, if a man states he has not a religious belief he cannot affirm under the Canada Evidence Act which is exactly the same as the law in England. Then, if I cannot say what oath is binding on my conscience I cannot give my evidence at all. That is the law and it has been applied in a number of cases: and so much as this, that if a man once admitted he had a religious belief, he must have administered to him the binding oath according to that religious belief, or his evidence is not good. (Phipson, p. 416.)

20
30

Court: The first point is that the oath taken by the prisoner Lai Ping in a certain proceeding and upon the evidence given under that oath that no prosecution lies, because the oath was not shown to be binding on the

prisoner?

Mr. Taylor: Yes. For instance, we are sworn upon the bible - the Holy Evangelists -

Court: I just want to get the point.

Mr. Taylor: That is my point. It is for the prosecution to show in a case of perjury that the oath on which they assign perjury was a binding oath upon the prisoner, and they have failed to do that, because on their own evidence they admit that the binding oath amongst the Chinese - or I do not go so far as that - the most binding solemn oath among the Chinese is this yellow chicken oath. On that the Chinaman does - if he ever does - speak the truth. I am not speaking now from my standpoint but the Crown's standpoint; and it is for them to show affirmatively that the paper oath that was administered to this man was binding upon him.

Court: I will not take the responsibility of dismissing the prosecution or the indictment upon that ground, Mr. Taylor.

Mr. Taylor: Well, my lord, I would ask, as the confession has been admitted and your lordship is against me on that point, I would ask for a reserved case on the confession, and I will ask for a reserved case on the other point as well.

Court: I do not think I can give you a reserved case, but now that the machinery for taking an appeal is much simplified I think I should not give you a reserved case unless I have some doubt. Why should I reserve a case? I haven't any doubt.

Mr. Taylor: It is absolutely a question of law.

Court: It is quite easy now, is it not, for you to appeal? You do not even require the consent of the attorney general, until 1900 you had to get the consent of the attorney general, and sometimes that was not given,

and your appeal would be stopped on the first go off.

10 Mr. Taylor: Sec. 743. Of course it is a matter for the discretion of the Court, but where it is a pure question of law as this matter is, it is only a question of reserving a case. If it is reserved, the parts of the evidence that are applicable to this reserved case, on the single point, are sent up to the Court. In the other case we have of course to go over the whole evidence, which cause^s more delay and considerably more expense to the prisoner, and the reserved case is a proper one for your lordship to take down or to order. In a reserved case I would submit a case embodying only the points in this, and on the other point I should have to take the whole of the evidence.

10 Court: Well, that is what I think you should do. When I say the whole evidence, not necessarily the evidence of all the witnesses, but certainly the whole of the evidence of David C. Lew, and probably of the magistrate and of Mr. Campbell. At any rate, I do not feel that I ought to excise any part of the evidence and then send
20 up a portion of it, because I would like, if it went to the Full Court, that they should have the benefit of the whole of it. In any event, Mr. Pottenger I would not have imposed sentence to-day.

Mr. Pottenger: I was going to ask your Honor to reserve sentence as a matter of fact - that is, if you decide the prisoner guilty.

Court: I wont even decide the point whether a case should be reserved or not, I will consider that and decide that to-morrow.

30 Mr. Pottenger: In regard to that, my learned friend has said it would be less expense to the prisoner. My learned friend would have to get a transcript of the whole evidence before he could decide what parts he could use.

Court: I do not approve altogether of reserving a case unless it was such a case where I was admitting evidence that I had some doubt about whether it was properly admissible or not; and before the amendment to the Code I should have been much more disposed to have reserved a case than now; for the simple reason that unless a case were reserved, the accused might be prevented from getting a further hearing at all, simply by the refusal of the attorney general to grant leave for the appeal. Now

10 the consent of the attorney general is not required to
 10 be asked to grant leave - it is simply a question of making application to the Full Court for leave to appeal - I think that is the form - and hear the argument, and practically it is the same as a reserved case. The reason is if I do reserve a case the Full Court will come to the conclusion naturally enough that I had some doubt about it although of course I would not like to flatter myself that my opinion would have any great weight with them.

Mr. Taylor: I have seen a reserved case put in this

20 way - the magistrate, or judge I think it was, in one case in British Columbia, where he said "I have no doubt whatever."

Court: Then, on the authorities he should not have reserved a case.

Mr. Taylor: No, "but as it is an important question of law, a reserved case was asked for, and I am giving it."

Court: Yes; it might be put in that way. Well, I will just consider and decide to-morrow morning just formally whether I will reserve a case, or simply suggest

30 that you take your remedy by appeal. You do not require leave from me to appeal.

Mr. Taylor: No.

Mr. Pottenger: I move for judgment.

Court: There is no reason why I as a jury should not give a verdict on the case. I must find the prisoner Lai Ping guilty of the crime with which he is charged. As to the question of sentence, and the other question as to the reserving of a case those will be adjourned until to-morrow.

I hereby certify the foregoing to be a true and accurate report of the said objections.

"P. Evans"

Official Stenographer.



Supreme Ct

94

04

Re

Lai Ping

19.21 Nov 1904

Application for removal
Case expd - Russell for
motion - Nathan Gault
motion refused

R. H. M.